

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

CELESTE HALL, Complainant,

VS.

RICHARD P. GERDNER, Respondent.

CP# 10-85-13662

THIS MATTER, a complaint filed by Celeste Hall (Complainant) with the Iowa Civil Rights Commission (Commission) charging Richard P. Gerdner (Respondent) with discrimination in housing on the basis of race came on for hearing on the 24th day of March 1987 before Hearing Officer Ione G. Shadduck. The Complainant was represented by Teresa Baustian, Assistant Attorney General. The Respondent was represented by William J. Cahill, attorney at law.

The issues in this case are:

Issue I - Did Gerdner discriminate against Hall on the South 14th Street in Burlington, Iowa?

Issue II - If Gerdner did discriminate against Hall, what is the appropriate remedy?

FINDINGS OF FACT

The parties stipulated to the following procedural facts: [starred *; see Joint Exhibit 1]

*1. The Complainant, Celeste A. Hall, filed a verified complaint with the Iowa Civil Rights Commission ("Commission") on October 14, 1985, alleging a violation of Iowa Code Chapter 601A in the refusal to rent housing to her on the basis of race, which filing was within the statute of limitations.

*2. Said complaint was served on Respondent on November 1, 1985.

*3. The investigation was completed on February 27, 1986. The investigator recommended a finding of probable cause on Complainant's allegation of racial discrimination in housing.

*4. Hearing officer Leo Kam determined probable cause existed to credit Complainant's allegation of racial discrimination on March 24, 1986.

*5. Respondent was notified of the probable cause determination on March 27, 1986.

*6. Conciliation was unsuccessfully attempted and, by letter dated April 9, 1986, Respondent requested bypassing further conciliation.

*7. The Acting Executive Director of the Commission, Louis Martin, recommended bypassing further conciliation on July 1, 1986; Gretchen Hamlett, a Commissioner of the Commission, approved the Acting Director's recommendation on June 26.

8. Except for approximately 11 years, Hall was a resident of Burlington all her life. She was employed by AAA and had been for 6 years. Hall was married and had three children, ages 16, 12 and 4.

9. In July of 1985, she lived at 1816 Barrett Street in Burlington. When she moved in, she paid \$350.00 a month rent. That was raised to \$370.00 in June 1985. Because of increasing rent, she was looking for a house to buy or with option to buy.

10. Gerdner owned the house at 1204 South 14th Street in Burlington. Prior to Gerdner buying that house, it had been for sale and Hall had talked with a realtor about it. She was interested in that particular location because it was closer to her relatives and to the school she and two of her children had attended.

11. In July 1985, Hall decided to pursue rental instead of buying. She checked the ads and inquired about different properties. She wanted the South Hill. She responded to an ad in the Hawk Eye dated Tuesday, July 30, 1986, by calling the given number. Mrs. Gerdner answered the call and asked her to call back when her husband was home. She did so. Gerdner explained that he had bought the house at an auction and the owner had left town without signing the contract of sale and that he couldn't rent it until the contract was signed. Hall requested to see the property anyway and arrangements were made for 6:30 that same evening. Hall, her husband and their two daughters kept the appointment. The Hall family is Black. They viewed the house, expressed their interest in renting it and exchanged phone numbers. Gerdner did not ask the Halls about their income, references or their current landlord. The Halls were the first persons to look at the property. They, were told the rent would be \$300.00. No deposit was taken because Gerdner did not want to do anything until he received the signed contract from the seller of the property. Hall left believing that they were just waiting for the signed contract and that then they could arrange to rent the house. She proceeded to obtain boxes and started packing.

12. When Hall called Gerdner to see if the contract had received, she was told the property was already rented.

13. Effective May 1986, Hall's rent was raised to \$385.00.

14. On August 9, 1985, Gerdner rented the house to the Riffel family, husband, wife and three children - all white.

15. The Riffels saw the ad in the paper on August 4th. They called Gerdner and set up an appointment to see the house on either the 5th or 6th. They were also told at first that the rent would be \$300.00, and that he had not received the signed document necessary for his renting the house. Gerdner did not request any information about the family income of the Riffel's. He did ask him about his employment and present landlord. The Riffels expressed their interest, but had some things they had to check on. They requested a call if and when the property was available

and that they would talk to him about it at that time. They did not assume the rental was theirs, but hoped Gerdner would call them and give them an opportunity to discuss it. Gerdner did, in fact, call the Riffels and told them that the property was available and that they could rent it if they were interested. That occurred on the 6th, 7th, or 8th of August. They rented the house on Friday, August 9, paid \$325.00 deposit and \$175.00 for the remainder of the month of August. Rent was to be \$315.00. The Riffels actually paid only \$175.00 for 23 days instead of \$237.59.

16. On August 5, 1987, the Auction Company sent the unsigned contracts to the seller in Florida by overnight Federal Express. It is assumed the seller received the contracts on August 6, 1987. There is no evidence as to when the seller signed, returned or Gerdner received the signed contract. They could conceivably have been received as early as August 7th. Gerdner testified that the Auction Company called him on August 9th, the same day he rented the property to the Riffels.

17. Gerdner stated that he looks for tenants who are interested in staying, taking care of the place, and who pay their bills.

18. Gerdner chose the Riffels based on the questions they asked when shown the property, their willingness to do painting in the house, request to replace a ceiling fixture and their expression of interest. Gerdner admitted the Halls were also interested in the property, that they didn't say one way or the other how long they'd stay. Gerdner didn't remember whether or not he gave Halls his phone number or asked that they call in a week.

19. Both Celeste and her husband were upset by the refusal of Gerdner to give them the opportunity of renting the house they wanted.

CONCLUSIONS OF LAW

The complaint by Celeste Hall against Richard P. Gerdner was timely filed, processed and the issues in the complaint are properly before the Hearing Officer and ultimately before the Commission.

ISSUE I - Did Gerdner discriminate against Hall on the basis of race when he failed to rent her the house at 1204 South 14th Street in Burlington, Iowa?

1. Richard P. Gerdner is the owner of the property at 1204 South 14th Street, Burlington, Iowa, and is, therefore, subject to Iowa Code §60 1A. 8, 1985, which provides in pertinent part as follows:

It shall be an unfair or discriminatory practice for any owner...

1 . To refuse to ... rent ... any real property or housing accommodation ... to any person because of the race ... of such person.

2. To discriminate against any person because of .. race ... in the terms, conditions or privileges of the ... rental ... of any real property or housing accommodation or any part, portion or interest therein.

2. Case law concerning the proper allocation of burden of production and persuasion in the housing discrimination area is still not highly developed in Iowa. Federal cases have used by analogy the analysis applied in individual employment discrimination cases under McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this analysis a complainant is required, initially, to establish a prima facie case as follows: (1) complainant is a member of a protected class, (2) complainant applied and was qualified for an available rental unit, (3) complainant was rejected, (4) the unit was rented to a member of a nonprotected class. The purpose of establishing a prima facie case is the elimination of the most common nondiscriminatory reasons for a complainant's rejection. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). A showing of a prima facie case raises a presumption that the complainant was discriminated against.

3. In the case at issue, Hall is a black person and her family is black. She is, therefore, a member of a protected class. She asked to view a rental unit, expressed interest in renting that unit as soon as the contract of sale was signed making Gerdner owner of the house, and Hall was qualified to rent that house. Gerdner did not rent her the house. Gerdner rented the house to a white family. She has, therefore, established a prima facie case of discrimination.

4. In order to rebut the presumption of discrimination raised by Hall's showing of a prima facie case, Gerdner must "produce evidence allowing some legitimate, nondiscriminatory reason for the challenged action. See Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 296 (Iowa 1982).

5. Gerdner stated that he looks for tenants who are interested in staying, taking care of the place, and who pay their bills. Gerdner chose the Riffels, a white family, based on the questions they asked, their willingness to paint some of the rooms, their desire to replace a ceiling fixture and their expression of interest in the property.

6. The burden of proof remains on Complainant Hall and she must now be given an opportunity to prove that Gerdner's proffered reason was not the true reason for the rental decision. See Burdine, 450 U.S. at 256. This burden may be met "either directly by persuading the court that a discriminatory reason more likely motivated [Gerdner] or indirectly by showing that [Gerdner's] proffered explanation is unworthy of credence." Burdine, 450 U.S. at 256.

7. Both the Halls and the Riffels called Gerdner for an appointment to see the rental house. Both were told over the phone that the rent would be \$300.00 a month. Both families were shown the house - the Halls on July 30th and the Riffels on August 5th or 6th. Both were told that there was a problem with actually renting the house until the seller signed the real estate contract. Both were told Gerdner would call them when the contract was signed. The contract could not have been signed prior to August 6th. Gerdner said he received it on August 9th, the same day he rented the house to the Riffels. Gerdner did not call the Halls when the contract was signed. He chose to rent to the Riffels. Gerdner asked Riffel about his employment and his present landlord.

Gerdner did not ask the Halls about their employment or their landlord. The Halls were the first persons to view the house. They believed that they would be moving in as soon as the contract was signed. The Riffels expressed an interest, but said they had some things to check out first. They did not believe they would be moving in but hoped that they would be called to discuss rental when Gerdner received the contract. Although the usual procedure in renting units is to take a deposit, Gerdner was not in a legal position to do so prior to the signing of the sales contract by the seller.

Subjective qualifications in a housing case, although appropriate if applied equally, are not appropriate if they are the only qualifications. Objective qualifications, such as the ability to pay the rent, are appropriate. References from current or prior landlords are appropriate. Stability on a job is appropriate. In the case at issue, Gerdner did not consider Hall's ability to pay. She was currently paying a higher rate of rent than he was asking for this rental unit. He did not consider her job and how long she had worked there. He did consider Riffel's job, but the evidence does not indicate he considered how long he had held that job. His reasons for choosing the Riffels, a white family, over the Halls, a black family, were all subjective. Gerdner did not evaluate the two families in a similar manner. He treated them differently. It is concluded that Gerdner's reasons were more than likely based on discriminatory motivation and, therefore, a violation of Iowa Code §601A.8.

ISSUE 2 - If Gerdner did discriminate against Hall, what is the appropriate remedy?

1. When an unfair or discriminatory practice is determined, Iowa Code §601A.15(8)(1985) requires an order that the respondent cease and desist from the discriminatory or unfair practice. It should be so ordered.
2. Iowa Code §601A.15(8)(1985) further requires a respondent to take remedial action necessary to carry out the purposes of Iowa Code chapter 601A.
3. Remedial action under Iowa Code chapter 601A provides "or making whole a victim of discrimination and for carrying out the policies of Chapter 601A. See Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 171 (Iowa 1982).
4. Hall was paying \$370.00 rent when her application to rent Gerdner's rental unit was made. Her rent was raised to \$385.00 in May 1986. The difference in rent for the 22 days of August 1985 was \$96.26 ($370 - 30 \times 22 = 271.26 - 175.00$); the difference for 8 months based on \$370.00 less \$325.00 = 2960 2600 or \$360.00; the difference for 10 months based on \$385.00 less \$325.00 = \$600.00; for a total difference of \$1056.26. Hall should be reimbursed for this difference in rent.
5. The only evidence of emotional distress was by Hall's own testimony that she was upset and hurt. It has been found that "humiliation can be inferred from the circumstances as well as established by testimony." Seaton v. Sky Realty Co., 491 F.2d 634, 636 (7th Cir. 1974). Under the circumstances of this case, it is concluded that Hall should be awarded \$2500.00 for emotional distress.

RECOMMENDED DECISION AND ORDER

1. Richard P. Gerdner, the Respondent, has committed an unfair and discriminatory practice by refusing to rent a house to Celeste Hall on the basis of race in violation of Iowa Code §601A.8 (1985).

2. IT IS THEREFORE ORDERED that Richard P. Gerdner shall cease and desist from further discrimination in the rental of his properties on the basis of race.

3. IT IS FURTHER ORDERED that Richard P. Gerdner pay to Celeste Hall the rent differential in the amount of \$1056.26, plus 10% interest per annum from the date of filing this complaint (October 14, 1985), until paid.

4. IT IS FURTHER ORDERED that Richard P. Gerdner pay to Celeste Hall the amount of \$2500.00 for emotional distress damages, plus 10% interest per annum from the date of filing this complaint until paid.

Signed this 27th day of July 1987.

IONE G. SHADDUCK
Hearing officer

FINAL DECISION AND ORDER

The Iowa Civil Rights Commission has received and reviewed the Proposed Findings of Fact, Conclusions of Law, Recommended Decision and order of Hearing Officer Ione G. Shadduck dated July 27, 1987.

On August 28, 1987, the Iowa Civil Rights Commission, at its regularly scheduled meeting adopted the Hearing Officer's Proposed Decision as its own Findings of Fact, Conclusions of Law, Decision and Order.

Signed this 28th day of August, 1987.

John Stokes, CHAIRPERSON