

**BEFORE THE IOWA CIVIL RIGHTS COMMISSION**

**TERRY L. MORRIS and DIANE MORRIS, Complainants,**

**VS.**

**DARREL COX and PATTI COX, Respondents.**

**CP# 10-85-13676**

**CP# 10-85-13677**

THIS MATTER, complaints filed by Terry L. Morris (CP# 10-85-13676) and Diane Morris (CP# 10-85-13677) (Complainants), [cases consolidated for purposes of the public hearing] with the Iowa Civil Rights Commission (Commission) charging Darrel Cox and Patti Cox (Respondents) with discrimination in housing on the basis of race, came on for hearing in Boone, Iowa on November 12, 1986, before Ione G. Shaddock serving as Hearing Officer. The Complainants were represented by Teresa Baustian, Assistant Attorney General and Stephen D. Lombardi, private attorney. The Respondents were represented by Jim P. Robbins, Attorney at Law.

Several issues requiring rulings were presented during the hearing and the rulings will be made in this proposed decision:

ISSUE 1 - Complainants objected to evidence of the facts that Complainants had filed complaints against the Hoffmans and Lawrence Happel and the amount of settlements in those cases. Respondents' request setoffs for the amount of the settlements. It is RULED that the evidence is admitted and that setoff is inappropriate.

ISSUE 2 - Complainants took exception to the post-hearing ruling allowing an attorney/client privilege claimed by Leonard Nelson. The exception is of record.

ISSUE 3 - Respondents moved for dismissal for lack of evidence and because the legal elements were not met. Ruling will be made after the Conclusions of Law.

ISSUE 4 - Pages 64, 65, and 66 of the Terry Morris deposition were submitted into evidence by Respondents.

Complainants requested that if those pages were admitted the entire transcript should be admitted. It is RULED that Respondents' Exhibit C is the entire deposition and is admitted into evidence.

Having reviewed the testimony, exhibits and record, the Hearing Officer makes the following proposed findings of fact, conclusions of law, recommended decision and order.

**FINDINGS OF FACT**

1. The Complainant, Terry L. Morris, timely filed verified complaint CP# 10-85-13676, with the Iowa Civil Rights Commission on October 16, 1985 alleging a violation of Iowa Code, Chapter 601A, discrimination in housing on the basis of race, against Darrel Cox and through amendment on February 13, 1986 against Patti Cox.

2. The Complainant, Diane Morris, timely filed verified complaint CP #10-85-13677, with the Iowa Civil Rights Commission on October 16, 1985 alleging a violation of Iowa Code, Chapter 601A, discrimination in housing on the basis of race, against Darrel Cox and through amendment on February 13, 1986 against Patti Cox.

3. The two cases were consolidated for purpose of public hearing.

4. The cases were investigated, probable cause found, conciliation unsuccessfully attempted and the cases proceeded to public hearing with Notices issued on September 15, 1986.

5. Diane Morris and Terry Morris are wife and husband, married on October 4, 1974. Diane is a white person and Terry is mixed Indian and a Black person. The children were mixed and their Black characteristics were observable. Terry and Diane have four children: Janon, age 11; Terry, Jr., age 10; Jesma, age 8; and Elijah, age 7. Diane grew up in Iowa. Prior to moving to Boone, the Morris family lived in Sioux City, Iowa.

6. In June 1985, the Morris Family visited with Amy Sinn, Diane's sister who lives in Boone, for two weeks. During that time Diane and Amy contacted Century 21 Realty and specifically Laura Quam, a Century 21 agent, for help in finding a rental unit. Diane informed Quam that she had four children. They were shown several properties. The one which Diane was interested in was located at 1140 Union Street, Boone, Iowa, a three bedroom house. She was then referred to Clark Realty, who was handling rental of that property. Clark Realty informed her that there was a \$275.00 deposit and the monthly rent was \$275.00. Diane felt the deposit was too high because considerable cleaning was needed and offered to pay \$100.00 deposit. Clark Realty then called the owners of the house [Allen and Alma Hoffman, Scottsdale, Arizona] to see if they would accept the lesser amount.

They agreed and the deposit and rent for one month were sent directly to the Hoffmans in the form of a money order. The oral agreement was for a month to month rental. The Morris family had no direct contact with the Hoffmans. Clark Realty representatives were informed that there were four children and a dog.

7. On July 6, 1985, the Morris family moved to Boone. The decision to move to Boone was based on Terry's drug related associations in Sioux City and the resulting marital problems. The Boone move was an attempt to solve their problems. They chose Boone because Diane's sister lived in Boone at that time and felt a small town environment would help them solve their problems.

8. The house at 1140 Union Street was in a residential district. Complainants moved into that house late afternoon on July 6, 1985. They used a Ryder truck and had several friends helping

them unload the truck. The children and the dog were still in Sioux City. Sometime during the unloading, Diane noticed a group of people gathered on the front lawn of the house directly across South Benton Street and facing the side of the Union Street house. Lawrence Happel lived in that house. The people just lined up and watched the unloading process. No one said "Hi" or offered to help. It was dark by the time they finished unloading. The next morning they got up at 4:00 a.m. and drove the rented truck back to Sioux City.

9. The Morris family including the children and the dog, returned to their new home at 1140 Union on July 7, early evening. Diane spent the next day or two unpacking and organizing the house; the children played outside; and, Terry was pretty much incapacitated because he was having problems with his arm. He was receiving workers compensation at the time. No one from the neighborhood visited them. They had no phone. On the 9th, Diane went back to Sioux City with Terry who was scheduled to have surgery on his arm; he was hospitalized and they again returned to Boone on the evening of the 11th. The children had stayed with Amy during this trip to Sioux City.

10. The next several days were spent unpacking and organizing the house. For about the first week after the surgery, Terry was in bed recuperating from the surgery. He did go out to do some shopping several times. The dog was chained to a ground hook near the garage. About a week later, because some neighborhood children teased the dog, he was moved and chained to the garage. No one complained to the Morris's that the dog barked nor that he was wearing paint off the garage because of where he was chained. Amy visited Diane frequently after she got off work in the afternoon.

11. On July 16th, the Morris's drove to Sioux City to pick up the workers comp checks and to get Terry's cast removed. They left around 9 or 10 in the morning and returned after dark. Amy watched the children at 1140 Union and was there when they returned. Upon their return, Amy informed them that they had been served with an eviction notice. This was 10 days after they had moved in.

12. Diane was not shocked by the eviction notice. She felt unwanted in the neighborhood and had a bad feeling from the time they unloaded the truck. She had observed cars driving back and forth slowly past the house and felt they were just staring at them. One neighbor child told the Morris children to get out of Boone; a couple others called the children "nigger", including Joel Cox, son of Respondents.

13. The eviction notice ignited the problems between Terry and Diane. She blamed him, they argued; and, around August 5th Terry left. He returned to Sioux City and then to South Dakota. Diane and the children were left to face the eviction on their own.

14. Darrel and Patti Cox, husband and wife and both white, owned and lived in the house at 1136 Union Street next door to 1140 Union. Their son was named Joel. Their driveway was between the two houses. Otherwise the houses were fairly close together. The Morris house was on a corner directly across South Benton Street from the house of Lawrence Happel, also a white person. The Coxes moved into 1130 Union in August 1980. For almost eight months prior to that, they had rented 1140 Union from the Hoffmans. Darrel Cox is a law enforcement officer of

the Iowa State Patrol and was serving as a community service officer. Patti Cox is a registered nurse employed by the Des Moines Area Community College in Boone as a clinical nursing instructor. Lawrence Happel was semi-retired.

15. When the Morris family moved in, the Coxes were on vacation. They did not return until late evening on July 10, 1985. When they returned home that evening they noticed lights on in the house at 1140 Union and a car in the driveway. On July 11th, Darrel mowed his lawn. He noticed that the children who had moved in were Black children. He noticed that the lawn at 1140 Union had not been mowed for quite some time. His own had not been mown for eight days. It should be noted that the Hesser's across the street had been gone for about two weeks and their yard had not been mown either. Several neighbors came over and talked with Darrel. Their main concern was who was living in the house at 1140 Union. They expressed concern was that they saw "a Black man and a white woman with the moving van", and didn't know how many people were living there. The neighbors reported to Darrel that they had seen a Black man and two white women and seven children in the area of the 1140 Union residence. [Transcript 293]. It is noted that Terry, a Black man, and Diane, a white woman, and four children of mixed race were living in the house. Diane's sister and her two children who lived in Boone, all white, did visit at 1140 Union, but did not live there.

16. It should be noted that the Cox family arrived home late afternoon on July 10th. Diane and Terry Morris returned from Sioux City late on July 11th. The children and Amy Sinn were present at 1140 Union on the 10th and 11th. On the morning of July 12, 1985, the next day and less than a day and a half from the time they returned from vacation, Darrel Cox went to Clark Realty to talk with John Clark about the rental of 1140 Union. The rental precedent with the Hoffmans was that when renters move out, they help find other renters. The Coxes did so when they moved out. The last renter was Linda Hensco who moved out when she married John Clark. For that reason, Darrel Cox went to see John Clark. He said he wanted to know who was living at 1140 Union. When Darrel returned from the meeting with John Clark, he conferred with his wife, Patti Cox. At 12:30 p.m. on July 12, 1985, that same day, the Coxes placed a phone call to the owners of 1140 Union, Allen and Alma Hoffman in Scottsdale, Arizona. During that phone conversation, Patti told the Hoffmans that there was a Black man and two white women and seven children in and out of the house. Darrel stated that the purpose of calling the Hoffmans was to see who was living in the house, how many people were living in the house, and whether or not they had rented the house. The Coxes owned no interest nor had any rights in the property located at 1140 Union.

17. John Clark testified that on July 12th, Darrel Cox inquired as to whether or not there was an ordinance which would prevent two families from living in a house such as 1140 Union. He was told by Darrel that there was apparently a Black man and four children with a white wife and another lady with three or four children moving in. Sometime after the Coxes had called the Hoffmans, the Hoffmans called John Clark in a belligerent manner inferring he should have checked the renters out. They threatened to sue Clark. Clark found out about the eviction notice from Leonard Nelson, attorney for the Hoffmans, when Nelson called Clark and said that: "We're in a lot of trouble." Clark denies being a party to leasing the house to the Morris family. [Transcript 210].

18. Amy Sinn, sister of Diane Morris, helped in the moving and witnessed the people gathered in the yard of the Happels. Amy was staying with the Morris children on the day the Sheriff served the eviction notice. She had two children. Amy accompanied Diane to John Clark's office after the eviction notice. John did not deny or admit the reasons the Hoffmans gave for eviction was based on race. He said it was because of the lawn, junk cars, and such things. He did show Diane and Amy the non-discrimination plaque that was posted in the Realty office.

19. One day when the Morris family returned from Des Moines, they found their dog frightened and cowering because someone had thrown bottle rockets at him. This was after the 4th of July. No one had ever complained to them about the dog. [Transcript 1491].

20. Gene Hesser, who lived across Union Street from the Morris family, had been on vacation and returned just after the Morris family moved in. Shortly after he arrived home, Lawrence Happel and another neighbor, Bob Greco, came over and expressed concern about a Black man, two white women and seven kids moving in. Later at work, he heard rumors that a petition was being circulated in the neighborhood to force the Morris family out and rumors of an eviction notice. He never saw the petition. Darrel's son had told him his dad was going to see John Clark. Gene Hesser did not know of any reason why the Morris family should be evicted. His wife, Karen, also knew of no reasons for the eviction. [Transcript 463]. Gene was concerned with what he felt were racist feelings in the neighborhood.

21. The Morris family felt and believed that there were neighborhood meetings held to discuss getting them out of the neighborhood. Hesser had heard rumors of such meetings but knew of none. [Transcript 252].

22. Leonard Nelson, attorney for the Hoffmans, prepared and had the eviction notice served. He claimed attorney-client privilege on questions relating to the Hoffmans' reasons for requesting that an eviction notice be served.

23. Darrel Cox stated that he was concerned about the lawn, the dog, toys in the driveway, the fact that they didn't know who was living in the house. [Transcript 333].

24. On July 11<sup>th</sup>, Patti Cox observed the lawn needing to be mowed, the dog, and seven children. On the 12<sup>th</sup>, they were going to see John Clark to find out if he had rented 1140 Union. She said the neighbors were confused as to whom had moved in. Darrel reported to Patti that Clark had not rented the property. They decided then to call the Hoffmans and Patti initiated the call at 12:38 p.m. on July 12, 1985. They talked for 13 minutes. Patti stated that her inquiry of the Hoffmans was: "I'm calling to inquire about your rental policies." When Mrs. Hoffman asked: "Why? What do you see?", Patti described the occupants of 1140 Union "to be a Black man and a white woman and four children, and another white lady with three children to be there frequently." She also reported that there was a dog in the backyard and that the lawn had been unmown. [Transcript 350].

25. Patti Cox stated that the call to the Hoffmans was also based on the confusion expressed by the neighbors as to the tenants of 1140 Union, i.e., a Black man, white woman, four children, and frequently another white woman and two children. Neither Patti, Darrel, or any of the neighbors

who expressed confusion as to the actual tenants at 1140 Union walked across the driveway or across the street to introduce themselves and find out who actually was renting that house.

26. Diane and the children, without money or a place to live, were forced to sell or give away most of the furniture they owned; she had to sell her daughter's hamster farm; she had to pawn her wedding ring for \$20.00. They were forced to move into a one-room motel room at the Shangri-La Motel in Boone, not one of Boone's finest. Both Diane and Terry were observably emotionally distraught in testifying about the problems caused as a result of the eviction. It should be noted that the four Morris children were present in the courtroom throughout the hearing and were exceptionally attractive children and remarkably well behaved.

27. The Morris family believed that formal meetings were being held to discuss their removal from the neighborhood. There were get-togethers for various reasons - just talking, picnics, fixing kitchens - but the neighbors all testified that there were no formal meetings, not even discussions of the Morris family. It is admitted that the Morris family was invited to the Block picnic. This occurred after the eviction notice had been served.

28. On August 5th, when Diane and Terry were having the argument which resulted in his leaving, the Morris family believed that the Cox family and some neighbors were looking in their windows from the driveway and that Darrel Cox said, "We should try harder to get them out of Boone." Terry Morris, Jr. so testified, [Transcript 120].

29. No other Black persons lived in the neighborhood of 1140 Union Street, Boone, Iowa.

30. John Pulver, age 14 and a neighbor behind the Morris house, testified that some of the neighborhood kids teased the Morris children and called them nigger. The children would go in the house crying. John witnessed some kids shoot fireworks at the dog. He testified that Joel Cox would not play with the Morris children because they are Black. [Transcript 430]

31. Lawrence Happel admitted telling neighbors that "a dark man and a white woman and four dark children, and there was three extra children living there, white - or was there but I didn't think they were living there." [Transcript 475].

## **CONCLUSIONS OF LAW**

1. The complaints were timely filed, processed and the issues in the complaints are properly before this Hearing Officer and ultimately before the Iowa Civil Rights Commission.

2. Darrel Cox and Patti Cox are persons as defined in Iowa Code §601A.2(2) 1985, and are, therefore subject to Iowa Code §601A.11, 1985, which provides in pertinent part as follows:

It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

Some actions are so defined by statute or common law that they may be illegal if committed only by certain persons or classes of persons. For example, Iowa Code §601A.8 (1985), provides in part as follows:

It shall be an unfair or discriminatory practice for any owner, or person acting for an, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salesmen, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin or disability of such person.
2. To discriminate against any person because of his (sic) race, color, creed, sex, religion, national origin or disability, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.
3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin or disability is unwelcome, objectionable, not acceptable or not solicited.
4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity. [emphasis added]

It is clear that the statute defines certain persons or classes of persons whose actions could be illegal (unfair or discriminatory), i.e. owners or persons acting for owners. In criminal law, a person not so defined or not within the class of those by whom the crime may be personally perpetrated may, by aiding and abetting the commission of the offense, also be rendered criminally liable. Under the federal aiding and abetting statute, individuals aiding and abetting a federal offense may be punished as principals. 21 AM.Jur.2d Criminal Law, §164, at 320-321 (1981).

An aider or abettor is one who advises, counsels, procures, or encourages another to commit a crime. The aider or abettor need not know that the activity constitutes a crime. Mere presence and consent are not sufficient to constitute aiding or abetting, but it is not necessary to know every last detail of the offense. The involvement of an aider or abettor may be shown

circumstantially and an act of slight importance may warrant a jury's finding of participation in the crime. A person cannot aid and abet unless another commits the offense. 21 AM.Jur.2d Criminal Law, §164, at 324-326 (1981). Where a crime requires the existence of a particular intent, an alleged aider or abettor cannot be held as a principal unless the aider knew the perpetrator of the act had the required intent or the aide possessed the required intent. To prove a violation of the federal aiding and abetting statute it must be shown that the aider associated with the act, participated in it as something the aider wished to bring about and sought through action to make it succeed. Furthermore, there must be evidence that the aider shared the state of mind required for the statutory offense although need not have the exact intent as the principal, but such intent, often difficult to demonstrate by direct proof, may be inferred from the surrounding circumstances. 21 AM.Jur.2d Criminal Law, §171, at 329 (1981). The liability of an aider and abettor extends to the natural and reasonable consequences of the acts knowingly and intentionally aided and encouraged. 21 AM.Jur.2d Cumulative Supplement July 1986, Criminal Law, §171, at 51.

Common law concepts of civil liability for aiding and abetting are set forth under Subsection (b), section 876, Restatement of Torts, i.e., a person is liable for harm resulting to a third person if the person knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other. The Court in Landy v. Federal Deposit Insurance Corporation, 486 F.2d 139 (1973), identified three elements required for liability: (1) that an independent wrong exist; (2) that the aider or abettor know of that wrong's existence; and (3) that substantial assistance be given in effecting that wrong. The Court cited Restatement of Torts §436 in identifying the relevant factors in determining if the assistance given is substantial enough to make an individual liable for the act of another: (1) the amount of assistance given; (2) the presence or absence at the time of the act; (3) relation to other person; and (4) state of mind.

The issue which must be addressed is whether or not Darrel Cox and Patti Cox aided and abetted in the eviction of Terry Morris, Diane Morris and the four Morris children from the house at 1140 Union Street, Boone, Iowa. The Morris family paid the required deposit and one month's rent directly to the owners of the house, the Hoffmans who live in Scottsdale, Arizona. They moved in on July 6, 1985. On July 16, 1985, ten days later, Leonard Nelson, an attorney acting on behalf of the Hoffmans, had the Morris family served with an eviction notice. The only contact with the Hoffmans between those two dates was the phone call on July 12, 1985, made by Patti Cox in which she informed the Hoffmans that there was a Black man and a white woman and four children moving in at 1140 Union and another white lady with three children who was there frequently. She also informed the Hoffmans that there was a dog in the backyard and the lawn needed mowing. They talked for thirteen minutes. Would the Morris family be evicted for having a dog in the backyard? Both realty agents were informed that there was a dog. There was no restriction on having pets. Would the Morris family be evicted because the lawn had not been mowed? If the lawn had been mowed when they moved in, it would only have been six days since it had been cut; this was in July when grass does not ordinarily grow fast. The lawn of the Cox house had not been mown for eight days; the Hesser lawn across the street had not been mown for two weeks. The unmowed lawn is not a credible reason for eviction. Would the Morris family have been evicted because a white woman and three children visited them frequently? Because some toys were left on the driveway? None of these are credible reasons for eviction. The only information provided by Patti Cox to the Hoffmans which



could have triggered the eviction was that a Black man and a white woman lived in that house. The Coxes witnessed events at 1140 Union for less than a day and a half before they took action. Darrel Cox first went down to see John Clark. He inquired whether or not there was an ordinance which would prevent two families from living at 1140 Union. There was none. It is noted that there were not two families living at 1140 Union. Darrel informed John Clark that there was apparently a Black Man and four children with a white wife and another white lady with three or four children moving in. Learning there was no ordinance to prevent the move at 1140 Union, Darrel went home and discussed the situation with his wife Patti. They decided to take further action by calling the Hoffmans directly. Their reason for calling was to see who was living in the house and whether the Hoffmans had rented the house. Now this house was a little more than a driveways distance from where the Coxes lived. Neither Darrel or Patti walked across that driveway to find out who their neighbors were. Instead they made a phone call to Arizona. Why would they do that? The Morris family was home. Darrel saw the Black children in the yard playing. The neighbors had expressed their confusion as to the occupants of the house who were witnesses testified that they knew of no reasons why the Morris family should be evicted.

What was the relationship between the Coxes and the Hoffmans? The Coxes had once rented the house at 1140 Union from the Hoffmans. They were aware that renters usually helped find other renters for that house when they moved out. The Coxes did so when they moved out and would have been aware of the Hoffmans' rental policies.

What were the consequences of the phone call from Patti Cox to the Hoffmans? The Hoffmans told Patti Cox that they would check things out. Shortly thereafter, the Hoffmans called John Clark. They were belligerent and wanted to know why he had not checked the renters out. They threatened to sue him. What additional information could Clark have provided the Hoffmans? He could have explained that only one family with a dog and four children were renting. Why would they threaten to sue him for that? There is no evidence that there was a restriction on number of children. Clark became concerned that he would lose the potential list for sale of the house at 1140 Union because he had not "checked the renters out." The eviction notice was served on the Morris family. They were given 30 days to remove themselves. Although Clark denies being a party to the renting of the house, Leonard Nelson, Hoffman's attorney, called him and told him that "We're in a lot of trouble."

This is concluded that the eviction of the Morris family from the rental unit at 1140 Union Street, Boone, Iowa was based on the fact that the unit was rented to a white woman who was married to a Black man. It is further concluded that the decision to evict the Morris family was a direct result of the information provided to the Hoffmans in the phone call made on July 12, 1985 by Patti and Darrel Cox. It is further concluded that the phone call made by Patti and Darrel Cox to the Hoffmans was with the intent to provide information which they were reasonably certain would result in the eviction of the Morris family. It is therefore concluded that Patti Cox and Darrel Cox violated Iowa Code §601A.11 by aiding and abetting Alma and Allen Hoffman in evicting the Morris family from 1140 Union Street, Boone, Iowa, on July 16, 1985. Respondent's motion to dismiss is denied.

## **REMEDIES**

Section 601A. 15(8), The C 1985, provides in pertinent part as follows:

If upon taking into consideration all of the evidence at a hearing, the Commission determines that the respondent has engaged in a discriminatory or unfair practice, the Commission shall ... issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgement of the Commission will carry out the purposes of this chapter...

a. For the purpose of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

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(4) Sale, exchange, lease, rental assignment of sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the Commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

The Morris family is now settled in a house in Sioux City, Iowa. That house is a three bedroom house as was the house at 1140 Union. The rent in Boone was \$275.00 a month. The rent in Sioux City is \$350.00 a month, a difference of \$75.00. Respondents should pay the difference from September 1, 1985 through date of hearing, November 1, 1986, or 14 months at \$75.00, a total of \$1050.00. The amount of actual damages

resulting from the forced move with no place to go, the selling or giving away of personal possessions including the wedding ring and the children's hamster farm was estimated at \$500.00-\$1000.00. It is reasonable to conclude that the loss incurred was \$500.00 and Complainants should be awarded that amount.

The devastating effect that this experience had on the Morris family was clear and convincing from the demeanor of Diane, Terry, and the children. They had suffered emotional distress. They were still suffering emotional distress at the time of the hearing. In Dacy v. Burlington Northern Railroad, the Commission established categories as guidelines to assist the trier of fact in

weighing evidence. Although those guidelines were established for employment situations, they can also be helpful in situations where other illegal acts result in emotional distress. The categories are as follows:

#### CATEGORY I - EMPLOYER MOTIVATION

- 5 - Malicious acts, reckless disregard for results;
- 3 - Deliberate acts to harass and exclude based solely on membership in protected class;
- 1 - Intentional acts of hostility mixed with insensitivity and incompetence.

#### CATEGORY II - SEVERITY OF DISTRESS

- 5 - Severe emotional distress, traumatic (e.g. inability to work, relate to family, friends);
- 3 - Serious emotional distress (e.g. hurt, anger, difficulty in relating to others);
- 1 - Some emotional distress (e.g. anger, frustration, hurt pride);

#### CATEGORY III - LENGTH OF EFFECTS

- 5 - Long term, therapy required;
- 3 - Recovery in progress, therapy would help, but not required.
- 1 - Temporary, no therapy necessary.

#### CATEGORY IV - COMPLAINANTS STATUS

- 5 - Innocent in acts, vulnerable because of prior related stress.
- 3 - Innocent in acts, no prior stress;
- 1 - Early participant in acts, then rejection made known.

In the case at issue, Respondents' motivation would be a "3", deliberate acts to exclude based solely on membership in a protected class; the severity of distress would be rate "5"; length of effects would be rated "3"; and Complainant status would be rated "5". The total points equal 16 of 20. The Morris family was moving to Boone, a small, quiet town, where they could renew and rebuild their marriage and family relationship - a new start in a new place. What could Terry and Diane do when the neighbors either ignored or stared at them? When their children were called niggers? When their dog was abused and found cowering? The treatment they received culminating in eviction tore that family apart again. Why? How could they defend themselves - already vulnerable because of their personal problems? Could they strike out at the neighbors? No. What they did was strike out at each other. All they wanted was a chance to live like other

people and because Terry and the children were Black, and because Terry married a white woman, they were denied that chance. The policy of the Commission is a "make whole" policy. To "make whole" is always impossible. In a case such as this with four young children caught in the wicked web of prejudice is particularly difficult. It is concluded that a trust fund or insurance coverage be provided in order that each child receive \$2500.00 plus the current rate of interest. If a trust fund is set up, Diane Morris should be designated trustee. If an insurance policy is drawn up, the surviving children should be equal beneficiaries. It is further concluded that Diane Morris who with the children bore the brunt of the eviction, should be awarded \$15,000.00 for emotional distress and Terry Morris should be awarded \$7,500.00 for emotional distress, each plus 10% annum. interest from October 16, 1985 until paid in full.

### **RECOMMENDED DECISION AND ORDER**

1. Darrel and Patti Cox violated Iowa Code §601A.11, 1985, in aiding and abetting the eviction of Terry Morris and Diane Morris because of race.
2. IT IS HEREBY ORDERED that Respondents shall pay to Complainants \$1050.00, the difference between the rent they would have paid in Boone and the rent they had to pay in Sioux City, plus \$500.00 for actual damages incurred in the forced move.
3. IT IS FURTHER ORDERED that Respondents provide a trust or insurance policy in the amount of \$2500.00 for each of the four Morris children. The trust or insurance shall accrue interest at the current rate and be payable to each child when that child reaches the age of 21. If a trust is set up, Diane Morris shall be name Trustee. If an insurance policy is set up, the surviving children shall be named equal beneficiaries.
4. IT IS FURTHER ORDERED that Respondents pay to Diane Morris for emotional distress the amount of \$15,000.00 plus 10% per annum interest from the date of filing the complaint, October 16, 1985, until paid in full.
5. IT IS FURTHER ORDERED that Respondents pay to Terry Morris for emotional distress the amount of \$7,500.00 plus 10% annum. interest from the date of filing the complaint, October 16, 1985, until paid in hill.

Signed this 19th day of March, 1987.

IONE G. SHADDUCK Hearing Officer

### **RECOMMENDED ORDER ON ATTORNEY FEE AWARD**

ON THIS 16th day of July 1987, the Application for Attorney Fees by Stephen D. Lombardi was received pursuant to Order issued June 30, 1987, and shall be labeled Post-Hearing Exhibit 1. Attorney Lombardi requests fees based on 106.55 hours and costs advanced in the amount of \$70.02. He further requests the rate of \$75.00 per hour and a multiplier of two based on the nature of the case. Resistance to Application for Attorney Fees was received on July 16, 1987.

The advance costs include \$64.02 for 291 miles at .22/mile. The State authorizes .21/mile. It is recommended that Lombardi should be reimbursed for advanced costs in the amount of \$67.11.

The itemization of time spent includes time spent in the case against Lawrence Happel. The Commission is not authorized to award fees for work in that case. Therefore, an estimated 10.55 hours will be deducted from the total time of 106.55, leaving a balance of 96 hours.

Section 601A.15(8)(a)(8), Iowa Code, authorizes the Commission to award reasonable attorney fees as remedial action when the Commission determines that the respondent has engaged in a discriminatory or unfair practice. The March 1987, News Bulletin of the Iowa State Bar Association includes the determination that the average non-trial work hourly rate in Iowa is to be \$67.00 and the trial rate is \$72.00. It is estimated that approximately one half of attorney Lombardi's time was spent on trial work, therefore, an average hourly fee will be used, i.e., \$69.50. Based on \$69.50 an hour for 96 hours, the Morris family should be awarded \$6,672.00 toward their attorney fees. The Hearing Officer declines to make an upward adjustment of the stated reasonable fee. Upward adjustment is based on complexity of the litigation, novelty of the issues, high quality of representation, and the "great benefit\* to the class. The record does not justify an upward adjustment based on those characteristics nor on the "riskiness" of the case. Blum v. Stenson, 104 S.Ct. 1541 (1984).

### **RECOMMENDED ORDER**

Respondents, Darrell Cox and Patti Cox, shall pay to Terry L. Morris and Diane Morris \$67. 11 for costs advanced by their attorney, Stephen Lombardi, and \$6,672. 00 toward their attorney fees.

Signed this 17th day of July 1987.

IONE O. SHADDUCK  
Hearing Officer

### **FINAL DECISION AND ORDER**

The Iowa Civil Rights Commission has received and reviewed the Hearing Officer's Proposed Findings of Fact, Rulings, Conclusions of Law, Recommended Decision and Order dated March 19, 1987, and the Hearing officer's Recommended Order on Attorney Fee award dated July 17, 1987.

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

Signed this 28th day of August, 1987.

JOHN STOKES, Chairperson