

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
351 WEST WILSON STREET
MADISON, WISCONSIN**

BERNARDO D. LEWIS, <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> JEFFERY LEWITZKE, <p style="text-align: center;">Respondent.</p>	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Case No. 1160
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A complaint was filed with the Madison Equal Opportunities Commission on September 23, 1976 alleging race discrimination in housing by respondent and co-respondent, Munz Investment Real Estate Incorporated. An initial determination of probable cause to believe that discrimination had occurred was issued on May 17, 1977. Conciliation having failed, this case was brought on for hearing. On September 8, 1978, the motion to dismiss complaint against Munz Investment Real Estate Incorporated was granted. On October 5, 1978, a motion to dismiss complaint against Lewitzke was denied. Hearing on this matter was convened on November 9, 1978. Complainant appeared in person and by Percy L. Julian, Jr. of Madison, Wisconsin. Respondent appeared in person and by Julie K. Mitby of Madison, Wisconsin. Both parties submitted briefs after the hearing. I now make the following:

RECOMMENDED FINDINGS OF FACT

1. Complainant is black.
2. Respondent is white.
3. Respondent in September of 1977, was employed by Munz Investment Real Estate Incorporated as resident manager of an apartment building at 454 West Dayton Street, Madison, Wisconsin.
4. Complainant was a tenant at 454 West Dayton Street in September, 1977.
5. During September of 1977, Munz Investment Real Estate Incorporated provided a vacuum cleaner for the use of all tenants at 454 West Dayton Street.
6. Prior to September 21, Mr. Lewis had the vacuum cleaner in his apartment for at least one week, while he was unavailable to let others obtain it.
7. During the afternoon of September 21, 1977, complainant discovered that the vacuum cleaner was no longer in his apartment.
8. He then ascertained from Angela Myers, a black woman who, with her husband Ron, lived in the apartment next to complainant, that respondent had permitted her to enter complainant's apartment to get the vacuum cleaner.
9. Complainant then went downstairs to respondent's apartment. When respondent came to the door, complainant began to shout obscenities and heated words at him.
10. Lewitzke responded calmly, but Lewis continued his tirade for about 5 minutes.
11. At that point, Lewitzke attempted to end a conversation and close the door. Lewis struck the door quite forcefully, causing it to hit Lewitzke in the head so that it made a noise loud enough to be heard within the apartment across the hall, with its door closed.
12. At that point respondent lost his temper, spat at complainant, and said "you fucking nigger".
13. Complainant then called respondent a "honky motherfucking pig", stepped back to what is described as a "martial arts stance" and challenged respondent to a fight.
14. Respondent's wife pulled him back and then closed the door of their apartment. Respondent said nothing further to complainant.

15. Complainant went back to his apartment. Subsequently, complainant received an eviction notice from Munz Investment Real Estate Incorporated and moved out.
16. Respondent did not issue the eviction notice, nor did he make the decision to have the notice issued. His superiors at Munz were responsible for the eviction notices.

RECOMMENDED CONCLUSIONS OF LAW

1. The Madison Equal Opportunities Commission has jurisdiction over the events complained of in this case.
2. Section (4)(a) of the Madison Equal Opportunities ordinance prohibits conduct by landlords and their agents which would amount to imposition of different conditions of rental upon tenants because of the tenants race, etc. That fiat outlaws courses of conduct calculated to insult and degrade persons because of their race. Doubtless some uses of racial epithets could form a part of such a course of conduct. However, in order for the use of racial epithets to be construed as imposing different conditions of rental, they must at least be shown to be intentionally used as part of a plan to discourage blacks from tenancy or make tenancy oppressive, and if used by landlords agents, they must be used in the context of the agents action on behalf of his or her employer.
3. In the instant case the evidence does not prove either of those elements. Mr. Lewis' unprovoked, assaultive conduct toward Mr. Lewitzke was the motive of respondent's use of this extremely offensive term, not some general intent to discourage tenancy by Lewis or other blacks. And, by assaulting Lewitzke Mr. Lewis had removed the incident from the landlord-tenant context. Mr. Lewitzke was not acting as the agent of Munz when he made that comment. He was acting privately as a victim of Mr. Lewis' attack. Consequently, Lewitzke's use of the term "fucking nigger" does not constitute a violation of Section (4)(a) of Madison General Ordinance 3.25.
4. An employee is not answerable at law for the acts of his employer or his superiors. Consequently, an action does not lie against Mr. Lewitzke for Munz Real Estate's eviction of Mr. Lewis.
5. As Mr. Lewitzke is guilty of no violation of the Madison Equal Opportunities Ordinance, based on the events complained of in this case, the case should be dismissed.

RECOMMENDED ORDER

Complaint #1160 is hereby ordered dismissed.

Signed at Madison, Wisconsin this 11th day of September, 1979.

Robert L. Greene, Esq.
Hearing Examiner

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BERNARDO D. LEWIS, <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> JEFFREY LEWITZKE, <p style="text-align: center;">Respondent.</p>	MEMORANDUM ACCOMPANYING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Case No. 1160
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This complaint arose out of an altercation between complainant and respondent on September 21, 1976, in the course of which Mr. Lewitzke spat on Mr. Lewis, who is black, and called him a "fucking nigger". Subsequently, eviction notices were served on Mr. Lewis by Munz Investment Real Estate Incorporated (Munz).

A complaint was filed with the Madison Equal Opportunities Commission on September 23, 1976 against Munz and Lewitzke. An initial determination of probable cause against Munz and Lewitzke was issued on July 12, 1977. Subsequently, respondent Munz and complainant reached an agreement which resulted in the portion of the complaint against Munz being dropped.

At the hearing on the complaint versus Lewitzke, complainant was represented by Percy L. Julian, Jr., respondent by Julie K. Mitby.

The complaint against Lewitzke rests on two contentions. First, that because Mr. Lewitzke was an agent of Munz, his use of a racial epithet in addressing complainant was "discriminating . . . because of . . . race . . . in the terms, conditions or privileges pertaining to the rental or lease of . . . housing . . ." Madison General Ordinance 3.23(4)(a) in violation of the Madison Equal Opportunities Ordinance.

Second, that Mr. Lewitzke was in large part responsible for the eviction of Mr. Lewis, which occurred as a result of the incident on September 21, 1976, and that the eviction constituted a violation of Madison General Ordinance 3.23(4)(a).

As to the first contention, the ordinance certainly does establish some minimum standard of treatment for tenants in regard to their race, sex, etc. It is absurd to believe that the Equal Opportunities Ordinance would prohibit refusal to rent to persons on those bases and yet permit landlords and their agents to require black tenants to live under a pall of degradation, insult and indignity. The precise scope of the standard need not be decided here, since Mr. Lewitzke's conduct clearly did not come within the perview of this standard.

Four witnesses testified about the incident between complainant and respondent: Mr. Lewis; Mr. Lewitzke; Chris Lewitzke, respondent's wife; and Cherry Christian Martin, a black woman who at the time occupied the apartment across the hall from the Lewitzkes. Lewis' testimony is confusing and inconsistent in the extreme and contradicts that of all other witnesses including one brought on Lewis' behalf.

In part, his testimony is that upon arriving home on September 21st, he discovered that the landlord's vacuum cleaner, which he had left in his apartment for several days, was not there. He then ascertained that Mr. Lewitzke had let Angela Myers, a black woman who was complainant's next door neighbor, into his apartment to retrieve the vacuum. Then he went downstairs to the Lewitzke's apartment. Chris Lewitzke answered the door. Lewis asked for Mr. Lewitzke, who came to the door. Lewis, in a calm, quiet voice, asked Lewitzke why he had let Myers into his apartment when Lewis had asked him not to do so. At that point, according to complainant, respondent did not answer the question but instead blew up, spit on complainant and said "I am tired of you fucking niggers", and came at Lewis in such a manner that Lewis believed that he was going to strike him. Complainant further testified that he at first encouraged Lewitzke to fight, then thought better of it, said "forget it" and went upstairs to his own apartment immediately with no other words being exchanged.

Under further examination, Mr. Lewis stated that: He was positive that he never cussed at Lewitzke; that he may have cussed at Lewitzke; that as Lewis was leaving after the incident Lewitzke yelled at him "you are evicted, you are evicted, get out, get out." He also indicated that Lewitzke instead said "you are evicted, you are evicted, get out," later that day when Lewis went back to Lewitzke's apartment to ask why he had been spat upon.

The remaining witnesses tell quite a different story. Their testimony is in agreement that after respondent came to the door, complainant began to shout at him in an offensive and quite obscene manner. Respondent

attempted to calmly discuss the matter, but complainant continued with his obscene shouting. After about five minutes of this, respondent attempted to end the conversation and close the door to his apartment. Lewis struck the door quite forcefully, causing it to strike Lewitzke in the head with sufficient force to make a rather loud noise. At that point respondent admits to losing his temper, spitting at complainant and calling him a "fucking nigger". Then Lewis called Lewitzke a "honky motherfucking pig", stepped back into a "martial arts stance" and challenged Lewitzke to fight. Mrs. Lewitzke then called respondent back inside and the apartment door was closed.

One Michael Thompson, a friend of complainant was in complainant's apartment on September 21 and waited there while Lewis went to respondent's apartment. He testified that Lewis was gone for five to ten minutes. As Mr. Lewis tells the story, the incident could not have lasted anywhere near five minutes.

After reviewing all the testimony the examiner finds that considering its internal inconsistency, contradiction by all other witnesses, and the demeanor of the witnesses, Mr. Lewis' testimony lacks credibility and that the incident was as related by Ms. Martin and the Lewitzke's. Accepting that version of the facts, Mr. Lewis verbally and physically attacked Mr. Lewitzke. Mr. Lewitzke commendably kept his temper in check for quite some time. At the point that Lewis struck him in the head with the door he lost his temper. His choice of words was deplorable. But it was entirely personal, not in his capacity as an agent for Munz, rather as a person grievously provoked by Mr. Lewis and one who proceeded to respond in kind. Lewis may not claim that his civil rights were violated because he received some abuse in response to his abuse of Mr. Lewitzke.

Thus, the examiner concludes that, given the circumstances surrounding it, Mr. Lewitzke's use of the term "fucking nigger" does not constitute a violation of Madison General Ordinance 3.23(4)(a).

As for the second contention that Lewitzke should be accountable for the eviction of complainant, all the credible evidence on the record indicates that Mr. Lewitzke did not have the authority to evict complainant, and in fact the decision was made, not by Lewitzke, but by his superiors, employees of Munz Real Estate. Therefore, a cause of action based on that eviction lies only against Munz or the individuals who made the decision, certainly not against Lewitzke. Since neither contention against respondent Lewitzke holds up, this complaint should be dismissed.

Dated at Madison, Wisconsin this 11th day of September, 1979.

Robert L. Greene, Esq.
Hearing Examiner