

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

<p>Joseph Gray 7 Wright Court Apartment 5-K Madison, Wisconsin 53704</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Kennedy Heights 224 Kennedy Heights Madison, Wisconsin 53704</p> <p style="text-align: center;">Respondent</p>	<p>RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Case No. 1224</p>
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A complaint was filed in the above-entitled matter with the Madison Equal Opportunities Commission (MEOC) on July 22, 1980 alleging discrimination. Pursuant to an investigation by MEOC Human Relations Investigator Mary Pierce, an initial Determination dated December 9, 1980 was issued finding Probable Cause to believe discrimination had occurred in this matter.

Conciliation was waived and/or unsuccessful and the matter was subsequently certified to public hearing.

On June 3, 1981, a hearing was held before MEOC Hearing Examiner Allen T. Lawent. Attorney William Bradford Smith represented the Complainant, who also appeared in person. Attorney Donald Heaney of Isaksen, Lathrop, Esch, Hart and Clark represented the Respondent. Based on the record of the hearing and any written arguments submitted by the parties, the Examiner proposes the following Recommended Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Joseph Gray, is an adult residing in the State of Wisconsin.
2. The Respondent operates housing units within the City of Madison known as "Kennedy Heights" with a business office at 224 Kennedy Heights.
3. The Complainant's reading ability is at a "5th Grade" level and he has great difficulty writing.
4. The Complainant applied to the Respondent for housing in June of 1980 and the Respondent refused to rent to him.
5. The Complainant had made one other unsuccessful application to the Respondent for housing prior to September, 1979.
6. Ruth Nichols and her husband Jim were involved in the processing of the 1980 application, but not in the processing of the 1979 application.
7. The Respondent rejected the Complainant in 1980 based on information received from other landlords and references. The information included a report from Les Maisonettes Apartments that Gray was not listed on any lease at 2445 Fontaine Circle and therefore was not considered an official tenant. Gray had listed 2445 Fontane Circle as his present address on his June 1980 application to Kennedy Heights.
8. The other information received from various landlords alleged that Gray had been involved in some disturbances during his residency. Not all of the information received by Kennedy Heights regarding Gray's alleged involvement in the disturbances was accurate.

RECOMMENDED CONCLUSIONS OF LAW

1. The Complainant is a person within the meaning of Section 3.23(4)(a), Madison General Ordinances.
2. The Respondent is a person having the right of rental or lease of housing within the meaning of Section 3.23(4)(a), Madison General Ordinances.
3. The Respondent did not refuse to rent or lease housing to the Complainant on the basis of handicap in violation of Section 3.23(4)(a), Madison General Ordinances.

RECOMMENDED ORDER

That this case be and hereby is dismissed.

MEMORANDUM OPINION

Inability to read or write may be a handicap¹ under particular circumstances within Section 3.23(4)(a), Madison General Ordinances. I make no finding in this case as to whether it was or was not under these circumstances, as there is no need to reach that issue.

However, I will assume for purposes of argument that the Complainant is handicapped under Section 3.23, Madison General Ordinances. I also point out that the 1980 refusal is the only refusal to rent or lease housing at issue. Any claims arising out of the 1979 denial are untimely, and any violation arising out of the 1981 refusal was not stated in the complaint and therefore was not at issue during this hearing.

I find in this case, even assuming the Complainant is handicapped by his inability to read and write beyond a "5th grade" level, that there was absolutely no connection between the Respondent's refusal to rent to the Complainant and his alleged handicap.

The Complainant has neither shown by example or by inference that a person who was not handicapped (i.e., could read and write) would have been treated any differently. Simply, the Respondent received information that the Complainant had been involved in several disturbances at previous residences. While most of this information turned out to be inaccurate, the Respondent had no way of knowing this at the time the application was rejected. The Respondent would just as likely have rejected Mr. Gray even if he could have been able to read and write more proficiently.

Further, Gray was rejected because he was not listed on any lease at his "present address" (Les Maisonettes). While Gray presented evidence that he did pay rent at that address for three months while he and his family were living with his mother-in-law, the fact remains that his name was not listed on the lease and he likely had no legal obligation to pay the rent. The Respondent presented evidence that it has never rented to persons whose most recent address was found to be a "non-reference" (i.e., the individual did not have a lease at the address listed), at least since Ruth Nichols has been working for the Respondent.

This case is dismissed.

Signed and dated this 7th day of July, 1981.

Allen T. Lawent
Hearing Examiner

¹One particular definition of handicapped person follows (See Section 504 of the Rehabilitation Act of 1973): ". . . any person who (A) has a physical or mental impairment which substantially limits one or more major life activities, (B) has a record of such impairment, or (C) is regarded as having an impairment." (See 29 U.S.C., Sec. 706(6) 1976) The definition is cited in Dairy Equipment v. DILHR 290 N.W. 2d 330, 22 EPD 20,809 (1980). While the Complainant did not present any medical evidence to establish that his condition is a handicap per se, certainly inability to read and write may under some circumstances be regarded or perceived as a handicap.

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AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
) SS.
 COUNTY OF DANE)

Tana M. Baldwin, being first duly sworn on oath deposes and says:

1. That she is a secretary in the Office of the Equal Opportunities Commission, City of Madison, Dane County, Wisconsin and as such secretary did on the 8th day of July, 1981, at approximately 3:30 P.M., place in envelope(s) addressed:

Joseph Gray
 7 Wright Court
 Apartment 5-K
 Madison, Wisconsin 53704
 Kennedy Heights
 224 Kennedy Heights
 Madison, Wisconsin 53704

William Bradford Smith
 111 South Fairchild
 Madison, Wisconsin 53703

Donald L. Heaney
 ISAKSEN, LATHROP, ESCH, HART and CLARK,
 S.C.
 122 West Washington Avenue
 P.O. Box 1507
 Madison, Wisconsin 53701

a true and correct copy of the RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER and NOTICE OF RIGHT TO APPEAL attached hereto.

2. That on or about said time, the said 4 envelope(s) was/were deposited at the City-County Building Mail Room at 210 Monona Avenue in the City of Madison, Dane County, Wisconsin.

Tana M. Baldwin

Subscribed and sworn to before me this

8th day of July, 1981.

Allen T. Lawent

Notary Public, State of Wisconsin

My Commission is permanent

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Attached are the Recommended Findings of Fact, Conclusions of Law and Order of the Equal Opportunities Commission's Hearing Examiner. The Rules of the EOC provide for appeal of this decision in the following terms:

10.1 Either party may appeal the recommended findings of fact, conclusions of law and order of the Commission's designee within ten (10) days after receiving them by filing written exceptions to such findings, conclusions or order.

10.2 If neither party appeals the recommended findings of fact, conclusions of law, or order within ten (10) days, they become final findings, conclusions and order of the Commission.

This Notice, Findings, Conclusions of Law and Order have been sent to both parties. Any appeal from these Findings, Conclusions and Order must be postmarked or delivered at the offices of the EOC within ten (10) days of the date of receipt.

Dated at Madison, Wisconsin this 8th day of July, 1981.

Allen T. Lawent
Hearing Examiner