

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Sheryl DePriest
296 Mallard Lane
Madison WI 53704

Complainant

vs.

Oak Park Terrace
571 Banding Lane
Madison WI 53704

Respondent

**HEARING EXAMINER'S
RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

CASE NO. 20151190

On August 3, 2017, the Equal Opportunities Commission Hearing Examiner, Clifford E. Blackwell, III, held a public hearing in Room 103A of the Madison City-County Building, 210 Martin Luther King, Jr. Boulevard. The Complainant, Sheryl DePriest, appeared in person and by her attorney, David Geier. The Respondent, Oak Park Terrace, appeared by its representative, Michelle Godbout and by its attorney, Jessica Kramer. Based upon the record of the proceedings, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Sheryl DePriest, is a Black female with no permanent address at the time of hearing.
2. The Respondent, Oak Park Terrace, leases mobile homes lots in the city of Madison, Wisconsin.
3. The Complainant contacted the Respondent in November 2014 to inquire about rental of a lot owned by the Respondent.
4. On an unknown date, the Complainant began residing at 296 Mallard Lane, Madison, Wisconsin.
5. In November 2014, the residence at 296 Mallard Lane was owned by Shawntell Vann, and was located on land leased from Oak Park Terrace.
6. Michelle Godbout is a White female and had been the Community Manager of Oak Park Terrace for approximately four years at the time of hearing.

7. The Complainant received Social Security Disability Income, and would perform work for churches to supplement that income.
8. The Complainant and Ms. Godbout had an understanding that the rent payments for 296 Mallard Lane would be paid on the 20th day of each month when she received her Social Security Disability Income check.
9. The Complainant would occasionally provide checks from churches in payment of the rent for 296 Mallard Lane.
10. Oak Park Terrace had issued 5-Day Notices to Pay or Quit to Shawntell Vann and the Complainant, during the period the Complainant resided at 296 Mallard Lane.
11. Oak Park Terrace issued a 14-Day Notice Terminating Tenancy to Shawntell Vann on September 8, 2015.
12. The 14-Day Notice Terminating Tenancy listed the reason for breach of the lease as "Unauthorized Occupant."
13. The 14-Day Notice Terminating Tenancy gave Ms. Vann and the Complainant 14 days from the date of service of that Notice to move or have an eviction action filed against them.
14. The Complainant was ultimately evicted from 296 Mallard Lane in January 2017.
15. Complainant twice applied for, and was denied, housing with Oak Park Terrace based upon her inability to meet the credit requirements.
16. Oak Park Terrace runs its application verification, including any credit check and criminal background check, through a third-party vendor.
17. Collin Robinson is a bi-racial male, and was raised by the Complainant after the passing of his mother. Mr. Robinson refers to the Complainant as his mom or stepmom.
18. In the summer of 2015, Mr. Robinson had a conversation with Michelle Godbout about renting a lot at Oak Park Terrace.
19. Mr. Robinson's grandmother, Sheryl LaBelle (female, White), resided across the street from the Complainant in 2014 and 2015.
20. Mr. Robinson, on an unknown date, inquired with Oak Park Terrace about cosigning a lease for the Complainant.
21. In the summer of 2015, Mr. Robinson had two conversations with Ms. Godbout. In the initial conversation, Mr. Robinson was inquiring about renting a lot, and Ms. Godbout called the Complainant's home a "trap house", and mentioned that she paid her rent with "church checks." During the second conversation, Ms. Godbout mentioned "squatter's law" to Mr. Robinson in reference to the Complainant.

22. Mr. Robinson filled out an application for residency with Oak Park Terrace in the summer of 2015.
23. Christine Pryor is a Black female and the Complainant's goddaughter. In the summer of 2015, Ms. Pryor would visit the Complainant at 296 Mallard Lane.
24. During the summer of 2015 Christine Pryor overheard a conversation between Ms. Godbout and Jennifer Reese, in which Ms. Godbout referred to every "Tom, Dick, and Harry coming out of the house," and "all them niggers down there" and having "a plan for her, et cetera."
25. Jennifer Reese is a White female, and has been a resident of Oak Park Terrace since 2010. In 2015, Ms. Reese lived across the street from the residence owned by Shawntell Vann.
26. Debra Schultz-Graff is a White female, and has been a resident of Oak Park Terrace since 2000.
27. The Complainant and Shawntell Vann were issued 5-Day Notices to Pay or Quit from Oak Park Terrace on May 6, 2015 and September 8, 2015.
28. Shawntell Vann was issued a 14-Day Notice Terminating Tenancy regarding the unauthorized occupancy of the Complainant at 296 Mallard Lane on September 8, 2015.

CONCLUSIONS OF LAW

1. The Complainant is a member of the protected class Race (Black) and is entitled to the protections of the City of Madison Equal Opportunities Ordinance 39.03.
2. The Complainant is a member of the protected class Source of Income (other: church) and is entitled to the protections of the City of Madison Equal Opportunities Ordinance 39.03.
3. The Respondent is a housing provider within the meaning of the City of Madison Equal Opportunities Ordinance 39.03 and is subject to its terms and conditions.
4. The Respondent did not discriminate against the Complainant in the terms and conditions of her rental (harassment) on the basis of her race in violation of the Equal Opportunities Ordinance.
5. The Respondent did not discriminate against the Complainant in the terms and conditions of her rental (harassment) on the basis of her source of income.

ORDER

It is ordered that the complaint is dismissed. The parties are to bear their own costs and expenses.

MEMORANDUM DECISION

In her complaint, filed on October 15, 2015, the Complainant alleges that the Respondent discriminated against her in the terms and conditions of her rental (harassment) on the basis of her race (Black) and source of income (other: church) in violation of MGO 39.03(4)(d). The Initial Determination by the City of Madison Department of Civil Rights found that there was probable cause to believe that the Complainant was discriminated against in the terms and conditions of rental (harassment) in regard to her race (Black) and source of income (other: church).

Cases of discrimination can be proven by either the direct or the indirect method. In the direct method, the parties present their cases, the Hearing Examiner examines the facts and, without reliance on inference, reaches a determination of liability or not. Cases utilizing the direct method usually have convincing testimony of discriminatory language or conduct. In a case presented by the indirect method, the parties present their facts and apply those facts, be they inferential or direct, to the respective burdens of proof and production that the law places on the parties. The indirect method of demonstrating discrimination is also known as the burden shifting approach and derives from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) and the cases that follow those decisions.

The Hearing Examiner finds that the proof in this matter is best analyzed using the indirect method. When analyzing a case using the indirect method, the Hearing Examiner first must determine, for each allegation of harassment, if the Complainant has established a *prima facie* claim of discrimination. A complaint of harassment on the bases of race or source of income must meet the *prima facie* standard; that is, the Complainant must establish that 1) she is a member of the protected class as defined by the Madison General Ordinance Sec. 39.03, 2) the Respondent is a housing provider as defined by the Ordinance, and 3) she suffered harassment by the Respondent. Harassment is a pattern of verbal, visual or physical behavior or conduct, based upon an individual's membership in a protected class, severe or pervasive enough to create a living environment that a reasonable person would consider intimidating, hostile or abusive. The Complainant must prove each element of the *prima facie* claim by a preponderance of the evidence, which can also be stated as by the greater weight of the credible evidence.

Presuming the Complainant meets this burden of proof, the burden shifts to the Respondent to present a legitimate, nondiscriminatory explanation for its actions. This is a burden of production and not one of proof.

If the Respondent carries its burden of production, the Complainant might still prevail if she can point to evidence in the record demonstrating that the Respondent's proffered explanation is either not credible, or represents a pretext for an otherwise discriminatory motive.

There has been no dispute in this case that the first two elements of establishing a *prima facie* case have been met. The Complainant is a member of the protected classes race and source of income, and the Respondent is a housing provider as that term is defined in MGO 39.03.

Where the dispute lies is in whether or not the Complainant experienced harassment. Harassment under the Ordinance is defined as a pattern of verbal, visual or physical behavior or

conduct, based upon an individual's membership in a protected class, severe or pervasive enough to create a living environment a reasonable person would consider intimidating, hostile or abusive. The Complainant testified to feeling harassed by the Respondent through its agent, Michelle Godbout. During her testimony at hearing, the Complainant described feeling harassed in primarily the following instances: receipt of 5-Day Notices to Quit or Pay, conversations that were relayed to her by others in which Ms. Godbout reportedly made disparaging or racially motivated remarks, an instance involving storage bins, an instance involving snow removal, and instances involving vehicle registration and towing. The Complainant attributes these instances of alleged harassment to her race and source of income.

The Complainant testified that she had contacted Ms. Godbout in November of 2014 about taking over the trailer owned by Shawntell Vann that sat on the property located at 296 Mallard Lane in Madison, Wisconsin. The property on which Ms. Vann's trailer was located was owned by the Respondent and leased to Ms. Vann. The Complainant testified that in November 2014 she spoke with Ms. Godbout, who gave the Complainant approval to move in to the trailer and pay the rent. Ms. Godbout testified that she did speak to the Complainant, and that she gave the Complainant an application for rental of the property, which she received back in January 2015. Complainant testified that she did not receive an application from Ms. Godbout during their November 2014 contact, but that Ms. Godbout did give her approval to move in to Ms. Vann's trailer. During the interim time between Complainant's November 2014 conversation with Ms. Godbout and her return of the rental application, Complainant was living in the trailer owned by Ms. Vann on the property leased by Ms. Vann from the Respondent. In November 2014, it was the policy of the Respondent that the person or persons leasing the land from the Respondent must also hold the title to the mobile home that was placed on that lot. In other words, a third party could not rent a mobile home from the person or persons who owned that home and were renting the lot from the Respondent. Complainant testified that she received the title to the trailer in October 2015.

Given this somewhat confusing background, the issues for hearing are whether or not the Complainant was discriminated against in the terms and conditions of her rental (harassment) by the Respondent on the bases of her race or source of income. The Hearing Examiner will first address whether or not the Complainant suffered harassment on the basis of her race.

Testimony in this case surrounding the allegation of harassment on the basis of race came largely from sources other than the Complainant. The Complainant testified that she had heard from other people that Ms. Godbout was talking to others about her, using disparaging or racially motivated remarks or language. One such source was Christine Pryor, the Complainant's goddaughter, who testified at hearing that while she was visiting another resident of Oak Park Terrace, she overheard a conversation between Ms. Godbout and Jennifer (Jenny) Reese. During this conversation Ms. Pryor testified that she heard Ms. Godbout refer to "every Tom, Dick and Harry coming out of the [Complainant's] house" and "all them niggers down there" and that Ms. Godbout "had a plan for her, et cetera" in reference to the Complainant. Ms. Reese and another resident of Oak Park Terrace, Debra Schultz-Graff both testified that they had never heard Ms. Godbout use the word nigger. Ms. Reese and Ms. Godbout stated in their testimony that the conversation referred to by Ms. Pryor between Ms. Godbout and Ms. Reese had never happened.

The Complainant's stepson, Collin Robinson, testified that in the summer of 2015 he had two conversations with Ms. Godbout regarding rental at Oak Park Terrace. In the first

conversation, Mr. Robinson indicated he was interested in renting a lot that had been rented by his family for a number of years. Mr. Robinson testified that at a certain point in the conversation with Ms. Godbout, it "turned." At that time, Mr. Robinson's grandmother, Sheryl Labelle, lived across the street from the Complainant. Ms. Godbout thought Mr. Robinson was referring to the lot on which the Complainant resided, and not Mr. Robinson's grandmother's, and started referring to the property at which the Complainant resided as a "trap house" and making statements about police calls. Mr. Robinson attributed the comment about the police calls as a reference to his brothers. During this conversation, Mr. Robinson also testified that Ms. Godbout referred to the Complainant as the one who pays using "church checks." Mr. Robinson testified that the term "trap house" is used to refer to a place that is "generally identified as drug infested, obnoxious, loud, just troubling to the community itself." Mr. Robinson did share the content of this conversation with the Complainant. During Mr. Robinson's second conversation with Ms. Godbout, the Complainant was present, as was Shawntell Vann, the owner of the home that sat on the rented lot at 296 Mallard Lane. Mr. Robinson was in the Army at that time, and had flown to Madison in an attempt to help the Complainant resolve a rent payment issue with the Respondent. Mr. Robinson testified that at that meeting, Ms. Godbout made a reference to "squatters' law."

Both Ms. Pryor and Mr. Robinson individually shared these conversations with the Complainant who testified that she felt angry, hurt, and embarrassed, and that hearing of these conversations was mentally disturbing. The Complainant testified that she already dealt with depression, and that hearing of these conversations increased her depression and anxiety.

In addition to these conversations, the Complainant testified that she felt harassed after having been issued a notice regarding storage bins on the property she occupied, and that this notice was harassing and discriminatory, as her neighbors had not received the same notice, and to the Complainant's belief, were in violation of the same policy. Ms. Godbout testified that no such notice was ever issued to the Complainant, and none was produced at trial. Ms. Godbout also testified that there were lots on the Respondent's property that were "grandfathered" to having additional storage units, as the one storage unit restriction had not always been the Respondent's policy.

The Complainant also testified to having issues with a vehicle she had parked on the property at 296 Mallard Lane. During her testimony, Complainant indicated Ms. Godbout had asked her to put decals on her car and move the vehicle, which the Complainant testified she did. Sometime after that, Ms. Godbout put a tag on her car indicating it was immobile. The Complainant removed this tag. Ms. Godbout again tagged the Complainant's vehicle indicating it was immobile and subsequently had the vehicle towed. Ms. Godbout testified that per the park rules, a resident's vehicle had to be current on its registration and in operable condition. The Complainant testimony also included an incident that happened during the winter of 2015 during which her vehicle was plowed in by a maintenance person removing snow for Oak Park Terrace. The Complainant testified that she had to call the Madison Police Department to help her shovel out her vehicle, and that hers was the only vehicle plowed in. Ms. Godbout testified that in order to plow the streets up to the sidewalk, a resident would have to move their vehicle. She testified that there was an overflow lot available to residents to move their vehicles during a snow event, and that the Complainant had not done that during the snow event at issue.

The Complainant in this matter has testified to several instances in which she felt she was being harassed by the Respondent through its agent, Michelle Godbout. The Hearing Examiner agrees that all of these incidents experienced by the Complainant may be unpleasant

or inconvenient, and that they may rise to the level of harassment. Certainly being referred to as "nigger" by the White rental manager and having one's identity characterized as living in a drug house or other form of nuisance indicates an attitude which could result in harassment, embarrassment and humiliation.

That there is an issue of credibility as demonstrated by the testimony of Ms. Reese and Ms. Schultz-Graff, does not limit the impact of the testimony concerning Ms. Prior's experience and that of Mr. Robinson. The Hearing Examiner was not impressed by the testimony of either Ms. Reese or Ms. Schultz-Graff. Neither individual's testimony was given with certainty and there appeared to be a close personal relationship between Ms. Reese and Ms. Godbout that created doubt in the mind of the Hearing Examiner about the veracity of the testimony given.

That Ms. Godbout may have held racist views of the Complainant, by itself does not determine the outcome of the complaint, however. First, with respect to Ms. Godbout's statements, the Hearing Examiner must determine to what extent those statements and views bind the Respondent, and with respect to the other actions complained of by the Complainant, the Hearing Examiner must determine if Ms. Godbout motivated the Respondent's actions towards the Complainant. It must be acknowledged that as the Property Manager, Ms. Godbout was the on-site personification of the Respondent.

With respect to the Complainant's enumeration of incidents which she felt were harassing, the tagging of her car, the plowing in of her car and notices relating to the number of storage bins, the Hearing Examiner finds that these incidents are sufficiently pervasive and intimidating to create an inference of discrimination when taken along with Ms. Prior's and Mr. Robinson's testimony. This inference of discrimination is sufficient to shift the burden to the Respondent to produce a legitimate, nondiscriminatory explanation for its actions. In this regard, the Ms. Godbout testified to the Respondent's policies about parked automobiles, the availability of alternative parking during snowstorms, and the change in policy concerning the number of permitted storage bins. These all represent legitimate, nondiscriminatory explanations for the Respondent's actions. The testimony of Ms. Godbout is sufficient to shift the burden back to the Complainant to demonstrate that the Respondent's explanations are either not credible or represent a pretext for an otherwise discriminatory motive.

The Complainant fails to meet her burden of proof with respect to these various actions which she claims to be harassing. There is nothing in the record to indicate that Ms. Godbout was unequally enforcing these rules with respect to the Complainant or that Ms. Godbout was less than truthful about the policies or the application of those policies to the Complainant and her property. The Hearing Examiner cannot find that the Respondent's application of these policies to the Complainant, no matter how frustrating the Complainant might have found that, to be discrimination in the terms and conditions of rental in the form of harassment.

The Hearing Examiner now turns back to the issue of Ms. Godbout's statements made directly to Mr. Robinson and as overheard by Ms. Prior. These are the only statements in the record that tie Ms. Godbout to any potentially harassing conduct. The question is whether two statements of an agent for the Respondent create a sufficiently severe or pervasive environment of intimidating verbal conduct to be considered harassment under the Ordinance. The Department has, on several occasions, taken the opportunity to indicate that it views harassing conduct, especially of a managerial agent, more severely than do the federal courts. Had Ms. Godbout made the statements under consideration directly to the Complainant or in the Complainant's presence, the Hearing Examiner would have little difficulty finding that especially

the comment overheard by Ms. Prior to likely create a hostile housing environment. That the Complainant received the statements second hand hardly diminishes the impact they had upon the Complainant, but do give the Hearing Examiner pause. Having found that the Hearing Examiner finds Ms. Prior's statement more credible than that of Ms. Reese, the Hearing Examiner believes that the circumstances of an overheard private conversation is intertwined with Ms. Godbout's right of privacy. There is not sufficient testimony in the record about the circumstances in which Ms. Godbout made her comments for the Hearing Examiner to be able to determine whether they were made with an expectation of privacy or not. Holding racist beliefs is not actionable under the Ordinance. Given expression to those beliefs, if done so outside of one's position as an employee of the Respondent, is likely not actionable either. Giving voice to those beliefs in the capacity of a manager for the Respondent is actionable; however, the record is not sufficiently clear for the Hearing Examiner to determine in what capacity Ms. Godbout's statement overheard by Ms. Prior were being made.

Clearly, Ms. Godbout's statement to Mr. Robinson was made in her capacity as the Property Manager for the Respondent. Use of the words "trap house" to describe the Complainant's tenancy does not directly demonstrate the type of racial views reflected in the statement overheard by Ms. Prior. That it is an unprofessional and degrading statement is not in doubt. That Ms. Godbout held that view because of the Complainant's race as opposed to Ms. Godbout's observations of the happenings at the Complainant's homestead is in question.

Taking the record as a whole, the Hearing Examiner concludes that the Complainant has failed to carry her burden of proof as to whether the Respondent has caused or permitted the harassment of the Complainant on the basis of her race such that it deprived the Complainant of her rights as a tenant in violation of the ordinance.

The Hearing Examiner will now turn to whether or not the Complainant experienced harassment as a result of her source of income. Again, the Complainant has the burden of establishing a *prima facie* claim of discrimination, and if successful, the Respondent has the opportunity to produce a legitimate, non-discriminatory reason for its actions. If the Respondent is able to do so, the burden then shifts back to the Complainant to show that the Respondent's reason was not credible, or represented a pretext for an otherwise discriminatory motive. Here again the Hearing Examiner finds the Complainant has failed to establish a *prima facie* claim.

The Complainant testified that she would pay her rent on the 20th of every month when she received her social security disability income. Social security disability income is a lawful source of income as that term is defined under MGO 39.03. Occasionally the Complainant would also pay by checks issued from various churches in the area for whom she would do work. Mr. Robinson testified that Ms. Godbout referred to the Complainant in a conversation with him as the one who paid using "church checks." Whether submitted by the Complainant or from the issuing church directly, these checks were always accepted by the Respondent as payment for the Complainant's rent. Both the Complainant's receipt of social security disability income and checks from local churches would be considered lawful sources of income under the Ordinance. The Respondent accepted both of these forms of payment from the Complainant in payment of the rent for the lot located at 296 Mallard Lane.

The Complainant testified to receiving several 5-Day Notices to Quit or Pay Rent. The Complainant testified that she felt harassed by receipt of these notices, and that this harassment was as a result of her use of "church checks" to pay her rent.

Ms. Godbout testified that it was the regular practice of Oak Park Terrace to issue 5-Day notices for non-payment of rent to tenants whose rent was not received by the fifth day of the month. The issue at hearing is whether or not the Complainant was harassed based upon her source of income. It is clear from the record that the Complainant regularly paid her rent late, and as a result, Oak Park Terrace would issue a 5-Day notice. While the receipt of a 5-Day notice month after month may have felt harassing to the Complainant, nothing in the record suggested that these notices were issued as a result of the Complainant's source of income, but rather solely because of the lack of any timely rent payment, regardless of its source. In fact, regardless of the source of the payment, or the fact that payment was made beyond the 5-Day period given to cure the rent default as outlined in the 5-Day notice, the Respondent did continue to accept payment of the rent in any form the Complainant provided. The Hearing Examiner finds that the issuance of the 5-Day notices does not have the appearance of harassment, as by the Complainant's own admission, rent was not timely paid, and that these notices were not issued because of the source of payment.

Mr. Robinson's statement that Ms. Godbout identified the Complainant as the person who paid by "church checks" demonstrates nothing other than Ms. Godbout knew who the Complainant was and identified her by the source of her payment. While not a socially acceptable manner of identification, it does not create an inference that Ms. Godbout acted in accordance with her knowledge of the source of the Complainant's rental payments.

Ms. Godbout may well have harbored ill will towards the Complainant based upon the Complainant's payments from sources other than wages in what might be called "the usual way", but the record fails to demonstrate that Ms. Godbout acted upon any such feelings in taking any of the actions identified by the Complainant.

On the matter of harassment based on the Complainant's source of income, the Complainant has failed to establish her *prima facie* claim of harassment. Even if the Complainant were successful in carrying this burden, the Respondent has provided a legitimate, non-discriminatory reason for the issuance of the notices.

While the Hearing Examiner is sympathetic to how the Complainant must have felt after hearing about the conversations relayed to her by Mr. Robinson and Ms. Pryor, and the frustration and feelings of dismay caused by repeatedly receiving notices from one's landlord, ultimately, these actions, as testified to at hearing, do not demonstrate discrimination.

For the foregoing reasons, this complaint is dismissed.

Signed and dated this 11th day of November, 2019.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Joseph Humphrey
Jessica M Kramer