

COMMONWEALTH OF MASSACHUSETTS
BOSTON FAIR HOUSING COMMISSION

**Boston Fair Housing Commission,
James Stokel and Gladys Stokel,**

Complainants

v.

**Paul Linder,
d/b/a Prestige Rental Solutions
Respondent**

BFHC No. 28-BFHC-2007

HUD No. 01-07-0522-8

August 6, 2010

APPEARANCES:

Catherine Lizotte, Assistant Corporation Counsel, City of Boston Law Department,
for Complainant Boston Fair Housing Commission

Natalie R. Megaloudis, Esq., for Complainants James Stokel and Gladys Stokel

Norman J. Kaplan, Esq., for Respondent Paul Linder

DECISION OF THE HEARING OFFICER

I. SUPPLEMENTAL PROCEDURAL HISTORY

This decision on damages and other remedies follows the decision on liability in this case. After hearing testimony concerning the allegations of discrimination against respondent Paul Linder at a four-day Public Hearing, I issued a decision on March 3, 2010. I concluded that Linder made a unlawful national origin inquiry of and discriminatory statement to Gladys Stokel as part of the rental application process, knowing it was improper and legally prohibited, in violation of BFHC Regs., §§ 1.04(i) and 1.04(e) and G.L. c. 151B, § 4(6)(c).

Upon finding unlawful discrimination, I ordered the BFHC to certify for public hearing this matter to determine damages and other remedies. At the public hearing on damages held on April 1, 28, 29, and 30, 2010, complainants Gladys and James Stokel testified on their own behalf. The respondent Linder did not call any witnesses on his behalf. The parties introduced eight exhibits.

On May 10, 2010, the Stokels filed their "Application for Fees and Costs" along with affidavits and other submissions in support. On May 24, 2010, Linder filed an "Opposition to Complainants Gladys and James Stokel's Application for Fees and Costs." On June 11, 2010, the BFHC and the Stokels jointly filed their "Proposed Findings of Fact and Rulings of Law" on damages. On that same date, Linder filed his "Findings of Fact and Conclusions of Law on The Issue of Damages." On July 8, 2010, Linder filed a "Supplemental Conclusions of Law on The Issue of Damages."

After considering the entire record, including all testimony and exhibits introduced at the Public Hearing on liability and on damages, and the post-hearing submissions of the parties, and based on the relevant, credible evidence, and the reasonable inferences drawn from such evidence, I make the following Findings of Fact, Conclusions of Law, and Order. I incorporate by reference my decision on liability, dated March 3, 2010, including its findings of fact and conclusions of law, as if fully set out here. To the extent that the testimony of a witness is in accord with my findings, it is accepted; to the extent it is not, or is irrelevant to my findings, it is rejected. To the extent that a party's findings of fact and conclusions of law are in accord with my findings and conclusions, they are accepted; to the extent that they are not, they are rejected.

II. SUPPLEMENTAL FINDINGS OF FACT

Gladys Stokel

38. Gladys Stokel testified credibly and sincerely about her strong emotional reaction to Linder's unlawful inquiry.

39. Linder's inquiry initially shocked Gladys Stokel and made her feel "upset" and "uncomfortable." Mrs. Stokel testified that because she was in shock she did not cry immediately in response to Linder's inquiry. A few days later, however, she cried for some nights. I credit this testimony. Although Mrs. Stokel had no problem being asked a similar question in social occasions, she reacted adversely to Linder's inquiry because of the difference in context.

40. As more fully explained below, I find that Linder's national origin inquiry caused Gladys Stokel to experience stress, fear, anxiety, and loss of sleep from April 25, 2007, the date of Linder's inquiry, through the date of Gladys Stokel's public hearing testimony on April 28, 2010. Given the context it occurred, her ongoing stress and anxiety was reasonable, understandable, and foreseeable.

41. Mrs. Stokel testified that once Linder made his national origin inquiry, she "knew right away that they were not going to get the apartment." She shared her feeling with her husband once they left the meeting with Linder. Her testimony is consistent with Mr. Stokel's testimony that immediately after they left Linder's office, Mrs. Stokel looked "defeated" and

"dejected." I credit his testimony. In further support of the Stokels' testimony, the next day, July 26, 2007, before being told that the owner had denied their rental application, James Stokel called or emailed the BFHC to determine if Linder's national origin inquiry was proper and was told by someone in the BFHC it was illegal. Further, on July 27, 2007, after Linder told him that the landlord had denied them the apartment, Mr. Stokel rejected Linder's offer to continue to assist the Stokels in finding an apartment, even though they felt desperate to secure alternative housing by August 31, 2007.

42. Mrs. Stokel testified credibly that she blamed herself for their inability to obtain a new apartment. Mrs. Stokel's testimony is supported by the July 27, 2010 email from James Stokel to investigator Olga Niese of the BFHC, where he stated: "I can't believe we are not good enough to rent an apartment. Gladys is blaming herself for this situation and it is not right that she feels this way."

43. As a result of Linder's inquiry, Mrs. Stokel decided that she would not go with her husband again to find an apartment. She felt that if she did, she would continue to jeopardize their chances to obtain an apartment, "[b]ecause I'm an immigrant and that was the only question that Mr. Paul Linder asked me, where I was from, and you know, I felt like I was a big problem for my husband to get a place." I find her testimony credible.

44. From July 25, 2007 to August 20, 2007, as a result of Linder's inquiry, Gladys Stokel experienced substantial fear, stress, and anxiety that they would not secure an apartment to rent because of her national origin. The lease on the Stokels' basement apartment expired on August 31, 2007. Although the Stokels paid a deposit for the new apartment at 1234 Commonwealth Avenue on July 31, 2007, and signed the lease for the apartment on August 11, 2007, Mrs. Stokel testified that she remained uncertain they had successfully rented the apartment until August 20, 2007, when the new landlord returned the countersigned lease notifying the Stokels they could move into the apartment on September 1, 2007. I credit her testimony and find her reaction reasonable under the circumstances.

45. Gladys Stokel testified that she was embarrassed, humiliated, and upset by her experience with and treatment by another real estate company, Boston's Best Realty, less than two weeks earlier, related to her national origin. When comparing Linder's actions to those of Boston's Best Realty, Mrs. Stokel testified that Linder's actions were more upsetting and caused her more pain. I find her testimony credible, in light of the increased desperation she felt in finding a new apartment before September 1, 2007, and based on the cumulative effect of her experiences with Linder and Boston's Best Realty.

46. Gladys Stokel credibly testified that she experienced further stress, fear, anxiety, and loss of sleep during the period the Stokels resided at 1234 Commonwealth Avenue from

September 1, 2007 through August 31, 2008. (The Stokels moved into their current apartment on Royce Road on September 1, 2008.) During the winter months in the apartment at 1234 Commonwealth Avenue, Mrs. Stokel lost sleep from the banging of heat pipes, or alternatively, through nights without heat when the landlord tried to prevent the heat pipe noise by shutting off the heat at night. Although she experienced stress and loss of sleep related to the housing conditions, I find that during this period Gladys Stokel also continued to experience emotional distress related to Linder's inquiry, including fear, stress, and anxiety that she again would be discriminated against because of her national origin, knowing that at some point in the future they would have to extricate themselves from their housing problems by renting a new apartment. Mr. Stokel testified that during this period Mrs. Stokel lost sleep "always having to think about [the case] and deal with it." I credit his testimony.

47. Gladys Stokel testified that she began experiencing pain in her lower back and stomach in approximately April of 2008, which exacerbated over time until November 4, 2008, when she sought care and treatment from her medical doctor. She underwent procedures for an ulcer in January 2009. I credit this testimony, which is supported in part by her medical records.

48. Gladys Stokel testified at public hearing on April 28, 2010, that she still has problems sleeping, feels very stressed, and continues to experience pain in her stomach, has ulcers, and is very nervous, taking medication for her stomach pain and acid reflux. She further testified that she is not interested in engaging in many activities, remains in her apartment for most of her time, has problems sleeping, cries, and has pain in the lower left side of her back. I credit her testimony about her current emotional and physical condition. As explained below, however, based on the Stokels' testimony, and the presence of the other independent intervening stressors since August 2008, I am not persuaded that the Stokels' established a sufficient causal nexus between Linder's discriminatory inquiry and her physical condition and most of the symptoms of emotional distress she was experiencing on the date of her public hearing testimony.

James Stokel

49. James Stokel felt uncomfortable about Linder's inquiry when he asked it, and later concluded it was discriminatory after talking with his wife that evening upon leaving Linder's office. He could tell "she was affected by it and it upset me." He also testified that he personally was offended because Linder singled out his wife. After receiving notice of the complaint filed by the Stokels against Linder in this action, Linder called James Stokel and stated that he would get "paid back." James Stokel testified that Linder's comment was stressful to him. I credit this testimony.

III. REMEDIES

Upon a finding of unlawful discrimination, I may grant appropriate remedies to effectuate the purpose of the BFHC's Enabling Act¹ and BFHC Regs., §§ 2.09 (b)(B) and (t). Relief may include an award of compensatory damages, including damages for emotional distress, a civil penalty assessment, a determination of punitive damages, attorney fees and costs, and an order for appropriate remedial action.

Emotional Distress Damages

In determining whether to award emotional distress damages, the BFHC applies the standards established by the Supreme Judicial Court in *Stonehill College v. Massachusetts Commn. Against Discrimination*, 441 Mass. 549, 576-77 (2004). Such an award must be supported by "substantial evidence of the emotional suffering that occurred, as well as substantial evidence of a causal connection between the complainant's emotional distress and the respondent's unlawful act." *DeRoche v. Massachusetts Commn. Against Discrimination*, 447 Mass. 1, 7 (2006), citing *Stonehill College*, 441 Mass. at 576. A finding of discrimination alone, however, does not permit an inference of emotional harm." *Id.*

Factors for determining the amount of emotional distress damages include the nature, character, and severity of the alleged harm, whether complainants attempted to mitigate the harm, and "the length of time the complainant has suffered and reasonably expects to suffer." *Stonehill College*, 441 Mass. at 576. Emotional distress damage awards, when made, should be "fair and reasonable, and proportionate to the distress suffered," and its "factual basis must be made clear on the record." *Id.* "Emotional distress existing from circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable." *Id.*

The burden of proving emotional distress from discrimination, however, is less stringent than for establishing the tort of intentional or negligent infliction of emotional distress. *Bournemouth Hospital, Inc. v. MCAD*, 371 Mass. 303, 317 n.11 (1976). For example, "[e]vidence of a physical manifestation of the emotional distress, or expert testimony, is useful but not essential to support an award of emotional distress damages." *Boston Pub. Health Commn. v. Massachusetts Commn. Against Discrimination*, 67 Mass.App.Ct. 404, 411 (2006), citing *Stonehill College*, 441 Mass. at 576.

Gladys Stokel

Applying the above standards, and based on the credible evidence, I conclude that Gladys Stokel is entitled to an emotional distress award in the amount of ten thousand dollars (\$10,000.00) to reasonably compensate her for the distress proximately caused by Linder's discriminatory

¹ St. 1994, c. 37, as amended by St. 1998, c. 165 ("Enabling Act").

inquiry. In making my findings as to her emotional distress damages, I take into account my assessment of Mrs. Stokel's demeanor when testifying.

Gladys Stokel was initially "shocked," "upset," and "uncomfortable" by Linder's inquiry. She "knew right away that they were not going to get the apartment." Mr. Stokel described Mrs. Stokel as looking "defeated" and "dejected" upon leaving Linder's office. She experienced crying episodes for some nights. It was foreseeable that Mrs. Stokel would experience a high level of stress, fear, and anxiety between Linder's inquiry on July 25, 2007 and August 20, 2007, the date the landlord executed the lease for her new apartment. Feeling desperate to secure alternative housing, Mrs. Stokel reasonably feared that her national origin would prevent them from finding a new apartment before their lease expired on their basement apartment on August 31, 2007. As a result, Mrs. Stokel would not go with her husband again to find an apartment because she believed it would continue to jeopardize their chances to obtain an apartment. I find that Mrs. Stokel's significant emotional reaction to Linder's statement was reasonable given that Mrs. Stokel was "especially sensitive to the matter" of her national origin. See *Hughes v. Colber*, HUDALJ 05-93-0510-1 at *7 (Feb. 9, 1995) (finding prospective tenant's emotional distress resulting from respondent landlord's statement that she had "too many kids" was reasonable, given that "she was especially sensitive to the matter of the number of children she had because of her recent surgery"). Here, Linder's inquiry was made less than two weeks after Boston's Best Realty denied the Stokels an apartment related to Mrs. Stokel's national origin, and a day after the Stokels filed a discrimination complaint in the BFHC against Boston's Best Realty.

I was also persuaded that the stress, fear, and anxiety Mrs. Stokel experienced due to Linder's discriminatory inquiry continued during the period she resided at 1234 Commonwealth Avenue from September 2007 through August 2008, before she moved to her current apartment on Royce Road. She credibly testified that her strong emotional reaction had not diminished during this period. It is reasonable to conclude, for example, that Mrs. Stokel feared confronting discrimination again knowing that at some point in the future they would have to search for a new apartment in order to extricate themselves from their difficult housing situation. However, based on the Stokels' testimony, and the presence of the other independent intervening stressors since August 2008, I am not persuaded that the Stokels' established a sufficient causal nexus between Linder's discriminatory inquiry and most of the symptoms of emotional distress she is presently experiencing. I conclude that the emotional impact on Gladys Stokel from Linder's inquiry has subsided over time since September 2008, after she moved to her Royce Road apartment, although I conclude that it has not entirely dissipated.

Additionally, without proof establishing a claim of intentional infliction of emotional distress, which she has failed to do here, Mrs. Stokel may not recover for any adverse emotional reaction from how Linder defended or litigated this case in the BFHC. See *Iantosca v. Merrill Lynch*

Pierce Fenner & Smith, Inc., 112508 MASUP, 080775BLS, 2009 WL981389 (Fabricant, J.) (Mass. Super. November 25, 2008).

Here, the parties agree that during the past five years Mrs. Stokel has been emotionally effected by a number of stressors, including being frightened by neighbors while residing in their basement apartment from July 2005 through August 2007; the treatment by Boston's Best Realty in mid-July 2007; the lawsuit by the Office of Attorney General against Boston's Best Realty from November 2007 through November 2008; experiencing loud noise or cold when the landlord turned off the heat at night during the winter of 2007-2008; and from this case being litigated in the BFHC. The presence of these other stressors, however, does not obviate Linder's liability for emotional distress damages proximately caused by Linder's discriminatory inquiry. It is not unusual for a victim of discrimination to experience multiple sources of emotional distress. In making the award here, I distinguish the emotional distress causally connected to Linder's discriminatory inquiry from the independent sources of emotional distress, while recognizing Mrs. Stokel's susceptibility to emotional distress from Linder's inquiry, as described above. "In a fair housing case, discriminators must take their victims as they find them; and damages are measured on injuries actually suffered by the victim and not on the basis of the injuries that would be suffered by a reasonable person." *U.S. Dept. of Housing and Urban Development v. Ocean Sands, Inc.*, 1993 WL 343530, at *17 n.21 (HUDALJ September 3, 1993) (citations omitted).

Notwithstanding the above, Linder is also responsible for the aggravation of Mrs. Stokel's emotional condition. See for e.g., *Pierce v. Nawn*, 5 Mass. App. Ct. 224, 225-226 (1977). Similarly, Gladys Stokel need not prove that Linder's inquiry was the sole cause of Mrs. Stokel's emotional distress; where Linder's unlawful conduct was a "significant contributing factor" to her overall emotional condition, as here, he is liable for causing that harm. See for e.g., *Delicata v. Bourlesses*, 9 Mass. App. Ct. 713, 720 (1980); *Lally v. Volkswagen Aktiengesellschaft*, 45 Mass.App.Ct. 317, 327 (1998); *Tritsch v. Boston Edison Co.*, 363 Mass. 179, 181-182 (1973).

Mrs. Stokel also testified about experiencing back and stomach pains, acid reflux, and a gastric ulcer, attributing Linder's statement as the cause or substantial contributing factor. I find, however, the evidence insufficient to attribute, in whole or in part, Mrs. Stokel's ulcer and related stomach and back pains, or her acid reflux, to Linder's inquiry. Although her medical records confirm her ulcer and related physical symptoms, they do not provide any evidentiary support on the question of causation. I conclude that establishing causation relating to Mrs. Stokel's medical condition required expert medical testimony, given the number of potential causes or contributing factors, where the physical symptoms first appeared more than eight months after Linder's inquiry, where Mrs. Stokel did not seek care and treatment from a doctor for her physical problems for more than fifteen months after meeting with Linder, and where the medical records do not mention Linder's inquiry or its impact. See for e.g., *Rizzo v. Cotter*, 2007 Mass.App.Div. 185, 188 (2007) (given plaintiff's "complicated medical profile," expert

testimony on causation required); *Lally v. Volkswagen Aktiengesellschaft*, 45 Mass.App.Ct. at 324-325 (expert testimony required on technical medical issues beyond common knowledge of a layperson); *Held v. Bail*, 28 Mass.App.Ct. 919, 921 (1989) ("if the causation question involves questions of medical science or technology, the jury requires the assistance of expert testimony").

James Stokel

James Stokel also seeks recovery of damages for emotional distress he claims he suffered as a result of Linder's discriminatory inquiry. Based on the evidence, however, Mr. Stokel failed to establish a sufficient factual basis for finding that he suffered compensable emotional distress attributable to Linder's inquiry. Mr. Stokel testimony was quite limited, consisting of conclusory statements that did not describe the nature, severity, or character of the alleged harm. He did not testify to the length of time he was "upset" or uncomfortable" as a result of the discriminatory inquiry. Rather, his testimony indicated that any emotional reaction was quite limited in degree and short-lived, lasting a few days.

Because I conclude that Mr. Stokel did not present sufficient facts to establish his claim for emotional distress damages, the BFHC need not reach the legal question of whether Mr. Stokel may recover emotional distress damages based on his association with his wife, a member of a protected class, or where he is a percipient witness to the discriminatory conduct and where the discrimination caused him to suffer substantial emotional distress.

Other Compensatory Damages

I deny the Stokels' request for other compensatory damages. The Stokels' sought compensatory damages related to an award of one year of damages for the \$150.00 difference in rental each month between the apartment they discussed with Linder (\$1,075.00), and the apartment they rented beginning in September 2007 through August 31, 2008 at 1234 Commonwealth Avenue (\$1,225.00); the difference of broker fees of \$73.00; a truck rental fee of \$163.00 to move their belongings into storage for one month; and \$138.00 in rental storage fees. The Stokels also seek compensatory damages for lost apartment search time, claiming that as a result of Linder's inquiry the Stokels lost valuable time to find another apartment. They claim that after Linder asked Gladys Stokel where she was from, they had to resume the apartment search process again and look for a new real estate broker.

I deny the Stokels' request for other compensatory damages for the following reasons. First, the Stokels failed to establish a causal connection between Linder's discriminatory inquiry and these damages. Rather, the compensatory damages sought for the rental difference and broker fees would only have been (potentially) recoverable if I had found that the Stokels were denied housing as a result of discrimination. Further, the Stokels did not adequately explain how the brief two-day delay in awaiting the landlord's decision on approving their application, or their need to find another real estate agent, impeded their ability to secure another apartment for rent.

Linder's inquiry did not prevent the Stokels from immediately pursuing other housing opportunities. Further, I find that the Stokels may not recover for truck rental and storage costs where their lease on their basement apartment did not expire until August 31, 2007, and where they placed a deposit on the apartment at 1234 Commonwealth Avenue on July 31, 2007, signed the lease for the apartment on August 11 2007, and received the landlord's signature on the lease agreement on August 20, 2007, to begin renting on September 1, 2007.

Punitive Damages

Based on my findings of fact, I conclude that an award to the Stokels of punitive damages is not appropriate. I note that although the Stokels requested an award of punitive damages in their post-trial submissions, they failed to provide any reasons I should grant such an award here. See *Dartt v Browning-Ferris Indus., Inc.*, 427 Mass. 1, 16-17 (1998).

Civil Penalty

To vindicate the public interest, under the BFHC's Enabling Act² and BFHC Regs., §§ 2.09(b)(B)(iii) and 2.09(t)(4)(i), I may assess a civil penalty against Linder. In considering the suitability of a civil penalty, I have considered (1) the nature and circumstances of the violation; (2) the degree of respondent's culpability; (3) any history of prior violations; (4) the financial circumstances of the respondent; (5) the goal of deterrence; and (6) other matters as justice may require. See *Gilbert v. Weeks*, BFHC No. 34-BFHC-2007, at *10 (Commissioner's decision, June 26, 2009); citing *HUD v. Jerrard*, 1990 WL 456959, at *13 (HUDALJ Sept. 28, 1990).

Because the respondent has not been adjudged to have committed any prior discriminatory housing practice, I may assess, under BFHC Regs., § 2.09(t)(4)(i), a civil penalty against Linder "in an amount not to exceed \$10,000"

Linder failed to produce any information on his financial circumstances, as is his burden. Therefore, in imposing the civil penalty, I did so without consideration of Linder's financial circumstances.

I conclude that a civil penalty in the amount of seven thousand five hundred dollars (\$7,500.00) is warranted and reasonable in light of the particular facts presented. Linder's discriminatory inquiry was a serious violation of anti-discrimination laws and BFHC regulations. For reasons detailed in my decision on liability, I found that Linder knew his national origin inquiry was improper and legally prohibited. He also knowingly disregarded the potential the Stokels might, as they in fact did, interpret his inquiry as discriminatory. Linder also admitted that he had made inquiries of other prospective applicants about where they were from.

² St. 1994, c. 37, as amended by St. 1998, c. 165 ("Enabling Act").

I conclude that the civil penalty imposed is needed to deter future discriminatory inquiries by Linder, and by others, including but not limited to, any other person, corporation, association, firm, or enterprise engaged in the business of selling or renting dwellings in the City of Boston. The civil penalty imposed here sends a strong message that the BFHC will not tolerate the making of discriminatory national origin inquiries, or any other form of inquiry prohibited by BFHC Regs., § 1.04(i) and G.L. c. 151B, § 4(6)(c), or the making of any discriminatory statement in violation of BFHC Regs., § 1.04(e). Imposing this civil penalty is particularly necessary in this case where Linder is the principal of a real estate company that employs other real estate agents who work under his broker's license, and where Linder did not appreciate the wrongfulness of his inquiry, and admitted making similar inquiries of other prospective applicants.

Attorneys Fees and Costs

BFHC's Enabling Act and BFHC Regulations, § 2.09 (t)(5) authorizes the BFHC to determine reasonable attorneys fees and costs for the "prevailing aggrieved party unless special circumstances make the recovery of such fees and costs unjust." See also G.L. c. 151B, § 9.

The Supreme Judicial Court in *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324 (1993), approved the lodestar method for calculating attorneys fees in discrimination cases. The court stated that the MCAD also employs "the lodestar method as its starting point in calculating a reasonable attorney's fee under c. 151B, § 5," citing *Karen Baker vs. Town of Winchester School Committee*, MCAD No. 87-BEM-0283 (Nov. 12, 1991).

Under this lodestar method, a fee award is determined by multiplying the number of hours reasonably expended by the Stokels' counsel to litigate their case in the BFHC by a reasonable hourly rate, taking into account factors such as "complexity, the result obtained, and the experience, reputation, and ability of the lawyer." *Borne v. Haverhill Golf & Country Club, Inc.*, 58 Mass.App.Ct. 306, 324 (2003), citing *Fontaine v. Ebtec Corp.*, 415 Mass. at 325. A lodestar amount may then be adjusted upward or downward. *Fontaine v. Ebtec Corp.*, 415 Mass. at 326.

Efforts to determine the number of hours reasonably expended involve more than simple addition of all the hours expended. Rather, the BFHC must review carefully the complainants' submissions to determine whether the proffered number of hours is "reasonable," including whether the hours expended on work appears excessive, duplicative, insufficiently documented, otherwise unnecessary, or expended on issues in which the Stokels failed to prevail.

Application for Attorneys Fees and Costs

Having prevailed before the BFHC, the Stokels seek attorneys fees in the amount of \$39,743.71 and \$12,473.92 in costs. In their fee application, the Stokels' counsel, Attorney Natalie R. Megaloudis of the law firm Megaloudis, Greenbaum, Nagel, Fisher and Paliotti, LLP ("GNFP"), seeks reimbursement for 170.29 hours of work performed at \$200.00 per hour. GNFP attorney

Lauren M. Ruggles seeks reimbursement for 32.74 hours of work performed at \$150.00 per hour. GNFP paralegal Michele Urann and GNFP's law clerks seek reimbursement for approximately nine hours of work performed at \$85.00 per hour. The Stokels retained their attorney, Natalie Megaloudis, and GNFP, in January 2009.

Based upon the submissions of the parties, my findings of fact and conclusion of law in this matter, along with my intimate knowledge of the proceedings in this case, I find that an award of attorneys' fees and costs to the Stokels is warranted, and that no special circumstances exist to find such an award unjust.

Attorneys Fees

In determining whether the hours sought are compensable, I carefully reviewed the contemporaneous time records maintained by Stokels' counsel. I find that Attorney Megaloudis and GNFP's time entries are sufficiently descriptive and detailed and have provided sufficient supporting documents and affidavits to support their petition for attorneys' fees. The amount of time expended by Attorney Megaloudis and GNFP is reasonable based on this case's protracted proceedings, including addressing respondent's extensive discovery; responding to numerous discovery disputes; preparing oppositions to Linder's pre-trial motions, including six motions to dismiss; representing the Stokels at four (4) full days of public hearing on liability and three and one-half (3½) days of public hearing on damages; and drafting lengthy post-hearing submissions. Attorney Megaloudis also reduced GNFP's billable time to account for any duplicative or excessive time expended.

I find that the respondent Linder's extremely vigorous defense is largely responsible for the substantial number of hours the Stokels' counsel expended in this case, particularly where Linder did not dispute making his national origin inquiry during the Stokels' rental application process.

Nevertheless, I reduce the attorney fees by twenty percent (20%) for lack of success on other aspects of the Stokels' claims; i.e., for not prevailing on Mrs. Stokel's request for damages for her ulcer and related physical symptoms, on Mr. Stokel's request for an award of emotional distress damages, on the Stokels' request for other compensatory damages, and on portions of their motion for protective order regarding discovery. See *Wynn & Wynn, P.C. v. Massachusetts Commn. Against Discrimination*, 431 Mass. 655, 676 (2000); *Smith v. Bell Atlantic*, 63 Mass.App.Ct. 702, 724-725 (2005).

I find that an hourly rate of \$200.00 an hour for attorney Megaloudis is reasonable, based on her level of experience, my assessment of her competence in representing her clients' interests, and the prominent role she played pre-hearing, and at the lengthy public hearings in this matter. I find that the hourly rate of attorney Ruggles of \$150.00 is reasonable, based on her level of experience and her role in this matter. I further find that the hourly rate of GNFP paralegal

Michele Urann and law clerks of \$85.00 is reasonable. The hourly rates granted are well within the fair market rates charged by counsel and paralegals with similar experience in Boston's legal community. In making my hourly rate determination, I rely in part on the Affidavit of Attorney Stephen A. Roach, filed in support of the Stokels' Application for Fees and Costs, as well as my own knowledge of the fair market rates in Boston's legal community.

With the reduction of fees by twenty percent (20%), I find that the hours billed are reasonable and that therefore Attorney Megaloudis and GNFP are entitled to attorneys fees in the amount of \$31,794.68. It is not warranted to adjust this amount either upward or downward.

Costs

The Stokels submitted a list of 43 items designated as costs, totaling \$12,473.92. The Stokels' request was documented and supported by affidavit and invoiced copies of their costs. The Stokels costs are reasonable, with \$11,678.78 of the \$12,473.92 in costs sought for transcripts of depositions and public hearings. I therefore determine that the Stokels are entitled to \$12,473.92 in costs.

IV. ORDER

Based upon the above foregoing Findings of Fact and Conclusions of Law, and the Findings of Fact and Conclusions of Law in my decision on liability in this matter, and pursuant to the authority granted me under the Enabling Act and BFHC Regs., §§ 2.09(a)(B) and (t), I order the following:

- a. The respondent, Paul Linder, with respect to the sale or rental of a dwelling, cease and desist from making any oral inquiry concerning national origin or ancestry, or any other form of inquiry prohibited by BFHC Regs., § 1.04(i) and G.L. c. 151B, § 4(6)(c).
- b. The respondent, Paul Linder, cease and desist from making, printing, or publishing any statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on national origin, or an intention to make any such preference, limitation, or discrimination, or on any other basis prohibited under BFHC Regs., § 1.04(e);
- c. The respondent, Paul Linder, pay to the complainant Gladys Stokel the amount of ten thousand dollars (\$10,000.00) in damages for emotional distress for his discriminatory national origin inquiry and unlawful statement. Interest on this damage award accrues at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made, or until this order is

reduced by a court judgment and post-judgment interest begins to accrue. Payment shall be made within sixty (60) days of receipt of this Order;

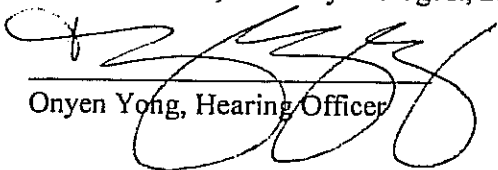
- d. The parties promptly notify the Clerk of the Commission when the respondent Linder makes the ordered payment for emotional distress to the complainant Gladys Stokel. If the respondent fails to comply with the terms of this payment Order within the time period allotted, the complainant Gladys Stokel should notify the BFHC's Director of Investigations;
- e. The respondent, Paul Linder, pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500.00), provided to the BFHC's Director of Investigations within 60 days of this decision, payable to the Neighborhood Housing Trust, a trust fund administered by the City of Boston to be used solely for programs that benefit publicly assisted housing residents in the City of Boston;
- f. The respondent, Paul Linder, pay to Gladys and James Stokel \$31,793.97 in attorneys fees and \$12,473.92 in costs, for a total amount of \$44,267.89. If the fees and costs are not paid within 60 days of this decision, the BFHC shall "arrange to have adjudicated in court, at the Commission's expense . . . the allowance of reasonable attorney's fees and costs" to the complainants, pursuant to BFHC Regulations, § 2.09 (t)(5);
- g. The respondent, Paul Linder, attend and complete a fair housing, anti-discrimination training course, pre-approved by the BFHC, within 90 days of this decision. The training session shall be at least four (4) hours in length. Within at least 30 days prior to the training date, the respondent Linder shall submit a draft training agenda to the BFHC's Director of Investigations for approval by the BFHC. Within 30 days after completion of the training, the respondent Linder shall submit documentation of compliance with this training requirement to the BFHC's Director of Investigations, signed by the trainer, identifying the training topics and the date and time of the training session(s); and
- h. Pursuant to BFHC Regulations, § 2.13(a), upon entry of the Final Order of this Commission under § 2.09(s), the Executive Director shall deliver a copy of this Commission's Order to the appropriate licensing bodies and professional associations governing real estate brokers and agents.

The BFHC shall retain jurisdiction of this matter for as long a necessary to ensure the respondent Linder's compliance with provision (c)-(g) of this Order.

This constitutes the final Order of the Hearing Officer. Any party aggrieved by this Order may seek judicial review pursuant to BFHC Regs., § 2.10.

Failure to comply with this order will result in the BFHC's initiation of enforcement proceedings, or enforcement by referral to the MCAD, pursuant to BFHC Regs., § 2.11.

SO ORDERED, this ^{6th} day of August, 2010.


Onyen Yong, Hearing Officer