

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
March 3, 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. PROCEDURAL HISTORY

On August 14, 2007, complainants James Stokel and Gladys Stokel ("Stokels") filed a housing discrimination complaint with the Boston Fair Housing Commission ("BFHC"). In their complaint, the Stokels allege that (1) Paul Linder, a rental broker, d/b/a Prestige Rental Solutions ("Linder"), and M. Kaufman, the owner of the apartment unit at issue ("owner"), discriminatorily interfered with and denied them a rental at 1315 Commonwealth Avenue in Allston, Massachusetts, based on Gladys Stokel's national origin and ancestry; (2) when meeting with the Stokels about renting an apartment, Linder made an unlawful inquiry into Gladys Stokel's national origin and ancestry; and (3) that the owner made an unlawful inquiry or instructed Linder to do so, in violation of M.G.L. c. 151B, §§ 4(6)(a) and 4(4)(a) and City of Boston Code, Ordinances, Title 10, § 154 (1982), as amended by St. 1994, c. 37 and St. 1998, c. 165 ("Boston Ordinances").

On October 26, 2007, after a full investigation, the BFHC issued a Probable Cause Determination charging Linder with making an unlawful inquiry into Gladys Stokel's national origin, in violation of G.L. c. 151B, § 4(6)(a) and Boston Ordinances. The BFHC found Lack of Probable Cause on the Stokels' claim that the unit owner made an unlawful inquiry into Gladys Stokel's national origin, or instructed Linder to do so, or that Linder or the unit owner discriminatorily refused to rent to them. On October 31, 2007, the Massachusetts Commission Against Discrimination ("MCAD") issued a "concurrence" with the BFHC's Determination, pursuant to Section 4 of the Memorandum of Agreement between the MCAD and the BFHC, dated September 12, 2000.

This matter has a long procedural history, with continuances granted to counsel for Linder and the Stokels, to allow further discovery by the parties, to address numerous discovery disputes, and to hear argument and rule on Linder's Motions to Dismiss.

On February 6, 2008, pursuant to its regulations, the BFHC certified this matter for Public Hearing on March 20 and 27, 2008. The BFHC held a Settlement Conference on March 14, 2008, where the Public Hearing was continued in response to respondent Linder's oral request for continuance. On October 9, 2008, the BFHC again certified this matter for Public Hearing for November 13, 2008. On November 11, 2008, the BFHC granted Linder's Consented to Motion to Continue the Public Hearing. On December 29, 2008, the BFHC recertified this matter for Public Hearing for January 8 and 22, 2009. Also, on December 29, 2008, Linder filed a Motion to Dismiss. On January 6, 2009, Natalie Megaloudis, Esq., filed an appearance on behalf of the Stokels, along with a Request for Continuance of the Public Hearing, which was granted on that same date.

The BFHC held a Pre-Hearing Conciliation Conference on February 26, 2009. The BFHC held a second Pre-Hearing Conference on March 19, 2009. At the second Pre-Hearing Conference, the parties presented arguments on respondent Linder's first Motion to Dismiss and on various discovery motions. On March 20, 2009, this Commissioner denied Linder's first Motion to Dismiss, ruled on discovery motions and recertified this matter for Public Hearing for June 4, 2009, which was later continued to June 19, 2009. In the interim, on April 27, 2009, Linder filed a second Motion to Dismiss, which I denied on May 13, 2009. The parties attended a Status Conference on June 19, 2009, in lieu of the scheduled Public Hearing, to address numerous discovery disputes. A second Status Conference was held on July 29, 2009, to address additional discovery disputes. On August 4, 2009, the BFHC again recertified this matter for Public Hearing for October 22, 2009. On October 21, 2009, Linder filed a third Motion to Dismiss which I denied on October 22, 2009. On November 4, 2009, Linder filed a fourth Motion to Dismiss which I denied after hearing argument on November 20, 2009. Linder filed his fifth Motion to Dismiss on December 21, 2009, which I deny below.

Prior to the Public Hearing, the parties agreed to bifurcate the proceedings, where, in this first phase, the parties would address liability. If I found liability, the parties agreed that I would schedule a separate Public Hearing on damages and other remedies.

The BFHC heard testimony on this matter at the Public Hearing on October 22, November 4 and 5, 2009. The parties presented their final arguments on November 23, 2009. Complainants James Stokel and Gladys Stokel testified on their own behalf and called respondent Paul Linder as a witness in their case. Paul Linder testified on his own behalf. At the hearing, the complainants introduced one exhibit and the respondent introduced four exhibits. On December 21, 2009, respondent Linder filed his post-hearing "Findings of Fact and Conclusions of Law on The Issue of Liability." On that same date, the BFHC and the Stokels jointly filed their "Proposed Findings of Fact and Rulings of Law."

After considering the entire record, including all testimony and exhibits introduced at the Public Hearing, 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. 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. FINDINGS OF FACT

1. The complainants James Stokel and Gladys Stokel currently reside together in an apartment unit in Allston, Massachusetts. The Stokels have resided in that apartment since September 2007. The Stokels have been married to each other and living together since 2006.

2. Gladys Stokel was born in and lived in Venezuela until 1989. She emigrated to and has lived in the United States since 1989. Spanish is Mrs. Stokel's primary language. English is her second language, which she first learned upon her arrival to the United States. Mrs. Stokel speaks English with a slight accent.

3. The respondent Paul Linder is a licensed and registered real estate broker, d/b/a Prestige Rental Solutions, with his business office located at 1292 Commonwealth Avenue, Allston, Massachusetts.

4. On July 25, 2007, the Stokels resided in a basement apartment unit at 1086 Commonwealth Avenue in Boston. They had lived in that unit since July 2005. Although their one year lease was to expire on August 31, 2007, the Stokels decided to try to find another apartment to move into by August 1, 2007, before the expiration of their one year lease. The

Stokels' sought another apartment because their neighbors were so noisy and disruptive that it was affecting their ability to sleep and their quiet enjoyment of their premises.

5. The Stokels began their search for a new apartment beginning in early July 2007. They were looking to find a first floor apartment, in a quiet building, near public transportation, within a certain price range.

6. Linder has been a real estate broker since 1984. He has substantial experience in renting residential real estate in Massachusetts. In July 2007, Linder's real estate broker license was up-to-date and current.

7. Linder has owned and worked for Prestige Rental Solutions for six years. Prestige Rental Solutions specializes in residential rentals, mainly in the Allston/Brighton neighborhoods of Boston. Its offices are located at 1292 Commonwealth Avenue in Allston, Massachusetts. In July 2007, Linder employed five agents and one office staff person at Prestige Rental Solutions.

8. Prior to owning Prestige Rental Solutions, Linder worked as a rental agent for Linden Realty in the Brighton area of Boston for approximately fifteen to eighteen years.

9. In the early afternoon on Wednesday, July 25, 2007, James Stokel walked into the offices of Prestige Rental Solutions, looking for an apartment for him and his wife to move into on August 1, 2007. After introducing himself to Linder in his office, James Stokel and Linder talked together for about twenty minutes. Mr. Stokel told Linder he was married. Linder asked Mr. Stokel questions to gather information in connection with the Stokels renting an apartment for August 1. Linder asked about the Stokels credit history. James Stokel replied that he had an excellent credit history but that his wife did not have a credit history. Linder was outgoing, talkative, and friendly towards James Stokel during the time they were together during the afternoon of July 25, 2007.

10. Linder then called the building superintendent at 1315 Commonwealth Avenue and requested permission to show vacant apartments in the building. He had previously learned that the superintendent allowed agents to show apartments. The superintendent granted this request.

11. Linder and James Stokel then walked across the street to the multiple dwelling apartment building at 1315 Commonwealth Avenue. After obtaining keys from the superintendent, Linder showed James Stokel three vacant rental units located on the first floor, third floor and fifth floor. Linder's office assistant accompanied them. Mr. Stokel expressed interest in renting the first floor unit, apartment 106, one of the three units Linder showed him.

12. Immediately after viewing the three units Linder and James Stokel returned to Linder's office where Stokel completed a rental application. Linder gave James Stokel a rental application for his wife, Gladys, to fill out. They then made arrangements for Mr. Stokel and his wife to return to Linder's office between 6:30 and 7:00 p.m. that evening so Gladys Stokel could return her completed rental application and so that he could provide Linder a rental deposit.

13. Prior to James Stokel viewing the three vacant apartments at 1315 Commonwealth Avenue the Stokels had viewed in July 2007 at least fifty-five other apartment units in the Allston/Brighton area for possible rental.

14. At approximately 7:00 in the evening of July 25, 2007, James and Gladys Stokel arrived at Prestige Rental Solutions to complete the rental application process for apartment 106 at 1315 Commonwealth Ave., Allston, MA ("subject apartment"). The Stokels and Linder met together for about fifteen minutes in Linder's office.

15. Mr. Stokel greeted Linder and introduced him to his wife Gladys, who briefly introduced herself to Linder, while speaking with a "slight" Spanish accent. The Stokels then sat down on a love seat perpendicular to where Linder was sitting behind his desk. Linder did not address Gladys Stokel but spoke only with James Stokel. Linder answered all of Mr. Stokel's questions including the inquiry regarding his credit. Linder had already checked on Mr. Stokel's credit and replied that Mr. Stokel had excellent credit.

16. Either Mr. or Mrs. Stokel then handed Gladys Stokel's completed rental application to Linder. Mr. Stokel gave Linder a deposit on the subject apartment. Linder took the application and the deposit, gave Mr. Stokel a receipt for the deposit, and provided the price for the apartment.

17. At or near the end of their evening meeting, Linder asked Mrs. Stokel, "So Gladys, where are you from?" In response, Mrs. Stokel said she was from Venezuela. Mr. Stokel then asked Linder "why, have you ever been there?" Linder replied that he had not been there, but perhaps he would like to go there some time. Prior to Linder asking Gladys Stokel where she was from, Linder had not inquired of or engaged in any conversation with her. Linder had only directed his attention to and conversation with Mr. Stokel. Shortly thereafter, the Stokels left Linder's office. Before leaving, James Stokel asked Linder to contact him as soon as possible regarding the subject apartment because the Stokels wanted to move into the apartment by August 1.

18. Linder made his inquiry of Gladys Stokel in the context of conducting his business during and as part of the rental application process. I find that there was no legitimate non-

discriminatory reason why Linder made his inquiry of Gladys Stokel during the process of trying to rent them the subject apartment.

19. Linder asked Gladys Stokel where she was from to learn her national origin and/or ancestry. Linder did not provide any credible evidence supporting another objective for his inquiry, "So Gladys, where are you from?" This finding is supported by the fact that Linder did not ask James Stokel, a Caucasian male, where he was from, but after Linder heard Gladys Stokel speak with an accent, Linder asked her where she was from.

20. James Stokel testified that Linder's demeanor and mood on the evening of July 25, 2007 was noticeably different from what it had been earlier that afternoon, when Mr. Stokel had met with Linder without his wife. He described Linder as quite friendly, talkative and informative during the afternoon, while in the evening with him and his wife together, he said that Linder was markedly less talkative and friendly and seemed to prefer to be somewhere else. I credit this testimony.

21. Immediately upon Linder asking Gladys Stokel where she was from, Mrs. Stokel felt upset and uncomfortable, believing it was an inappropriate question. She observed that besides making his national origin inquiry, Linder had not talked with her or asked her even one question about her application. James Stokel felt uncomfortable about the question when Linder asked it, and later concluded it was discriminatory after talking with his wife that evening upon leaving Linder's office. In reaching their conclusion, the Stokels could not identify any other explanation for why a real estate agent would want to inquire or know information about where Gladys Stokel was from, except for discrimination.

22. James Stokel testified that before being told that the owner had denied their rental application he had called or emailed the BFHC on July 26, 2007 to determine if Linder's national origin inquiry was proper and was told by someone in the BFHC it was illegal. I credit this testimony. The Stokels had recently become more alert to discrimination related to Mrs. Stokel's national origin as a result of their experience less than two weeks earlier with another landlord. The landlord had denied the Stokels a rental after asking Gladys Stokel for her (Venezuelan) passport, which they believed was for the purpose of identifying her national origin. James Stokel had contacted the BFHC soon after this incident and filed a discrimination complaint about it with the BFHC on July 24, 2007, the day before meeting with Linder on July 25, 2007.

23. Linder testified that he processed the Stokels' rental applications in accordance with his usual custom and practice for prospective tenants. For example, prior to forwarding the Stokels' rental application to Mrs. Kaufman, the owner of the subject apartment, Linder said he had a credit check performed and checked references with the Stokels' current landlord and Mr. Stokel's employer. I credit this testimony.

24. Linder testified that he did not record any information related to Gladys Stokel's national origin or ancestry on any document or other form of written or electronic media. Linder also did not use any information concerning Mrs. Stokel's national origin or ancestry in processing their rental application. I credit this testimony.

25. In the morning of the next day, Thursday, July 26, 2007, Linder faxed the Stokels' rental application and related paperwork to Kaufman. Linder testified that he did not communicate to Kaufman any information related to Mrs. Stokel's national origin or ancestry. I credit this testimony.

26. In the morning of Friday, July 27, 2007, Kaufman communicated to Linder by phone her decision to deny the Stokels' rental application.

27. Linder testified that prior to referring the rental application to Kaufman he had no prior business relationship or contact with her. The sole prior contact Linder had was with the Superintendent of the building at 1315 Commonwealth Avenue. I credit this testimony.

28. On July 27, 2007, after not hearing from Linder, James Stokel called Linder to find out whether the owner had approved their rental application. Linder informed James Stokel that the owner had denied their application. When first asked by Stokel, Linder said he didn't know the reason why. After Stokel repeatedly pressed Linder for the reason for the denial, Linder finally stated that the same landlord had recently denied a prior rental application by the Stokels, through a different broker, for an apartment in another building.

29. Linder testified that unknown to him at that time, Kaufman had previously denied the Stokels' application to rent another apartment she owned in the Brighton area of Boston because of Gladys Stokel's lack of credit history. I credit this testimony.

30. There is no evidence that Kaufman turned down the Stokels for the subject apartment because of Mrs. Stokel's national origin or for any other discriminatory reason.

31. I credit Linder's testimony that he had no authority to make the decision whether or not to accept the Stokels as tenants at the subject apartment. I conclude that Kaufman was solely responsible for rejecting the Stokels' rental application for the subject apartment.

32. At the conclusion of his conversation with James Stokel on July 27, 2007, Linder offered to continue to assist the Stokels in finding an apartment. Mr. Stokel, however, decided not to meet with Linder again, even though he felt desperate to find alternative housing by August 1. Mr. Stokel testified that he declined Linder's offer of assistance because he felt uncomfortable working with Linder after Linder asked what Stokel described as an

“inappropriate” and “insulting” question to gather information about his wife’s national origin, and because of his belief that the rental denial was related to Linder’s improper inquiry. I credit this testimony.

33. In reaching their conclusion that the rental denial was discriminatory and related to Linder’s improper inquiry, the Stokels reasonably interpreted Linder’s change in demeanor and mood between his afternoon and evening meetings and Linder’s reluctance in informing them of the reason(s) for denial of their rental application as directly related to Linder’s inquiry to learn about Gladys Stokel’s national origin.

34. I conclude that Linder did not ask Gladys Stokel where she was from based on a discriminatory motive or animus. Rather, I conclude that Linder made the inquiry of Mrs. Stokel regarding her national origin to initiate a conversation in an attempt to establish some relationship with Mrs. Stokel as a current and as a prospective future client, in what Linder described as a very competitive real estate rental market in the Allston/Brighton sections of Boston.

35. Although I find that in making his inquiry of Gladys Stokel, Linder did not have any discriminatory animus against Mrs. Stokel because she was from Venezuela, was of Hispanic ancestry, or spoke with a slight accent, nor did he use the information about Mrs. Stokel’s national origin in the application process. I conclude that when asking Gladys Stokel where she was from that Linder knew it was an improper and legally prohibited inquiry. I conclude that Linder also knowingly disregarded the potential the Stokels might, as they in fact did, interpret his inquiry as discriminatory.

36. My conclusion that Linder knew his inquiry of Gladys Stokel was improper and legally prohibited is based on a number of factors. First, Linder was a highly experienced residential real estate broker who had worked in the real estate industry for approximately 23 years. He was also the sole owner, since 2003, of a real estate business. It would strain common sense to conclude that as a business owner with his level of real estate experience, Linder had not taken the steps necessary to fully educate himself about the requirements under the state’s anti-discrimination laws, including its prohibition against brokers making inquiries of rental applicants regarding their national origin or other protected category. Second, Linder admitted that the real estate-related classes he attended included instruction on housing discrimination. Third, Linder’s testimony also reflected that he was aware that making this type of inquiry during the rental process is improper. During his testimony, Linder stated that from his training and experience he was aware and understood on July 25, 2007, that it would have been improper for him to have informed the owner about Gladys Stokel’s national origin. Linder could not adequately explain, however, why he thought it was permissible for him to inquire about Mrs. Stokel’s national origin during the application process, but yet improper for him to communicate

that information to the owner. Fourth, Linder maintained that he could not recall attending a course on prohibited housing discrimination practices prior to July 25, 2007. He also claimed that prior to July 2007 he had received almost no instruction about state discrimination laws. Linder stated, however, that in renewing his real estate broker license every two years since 1984, he was required to take twelve hours of real estate related coursework for each two-year period. It is not credible that Linder attended over one hundred forty hours of real estate related courses from 1984 to July 2007 without attending a single class on discrimination laws or on prohibited discriminatory practices in housing. Fifth, Linder's credibility on this issue was undermined by his contradictory testimony about whether he made similar inquiries of other prospective applicants. Although claiming he was unable to recall any specific incident where he made a similar inquiry, and while denying it at other times, Linder also reluctantly admitted that he had made inquiries of other prospective applicants about where they were from. Based on his entire testimony and his demeanor when testifying on these topics at hearing, I do not credit Linder's testimony that at the time he made the inquiry of Gladys Stokel he did not know it was improper and legally prohibited.

37. Based on their reasonable belief that they had been victims of discrimination, the Stokels filed a complaint with the BFHC on August 14, 2007.

III. CONCLUSIONS OF LAW

Linder's Claims for Complaint Dismissal

Linder requests dismissal of the complaint, arguing that the BFHC was required under its Regulations to make a final administrative disposition within one year of the date of receipt of the complaint, unless impracticable to do so, and that it was not impracticable to do so. BFHC Regs., § 2.09 (u). I deny the motion to dismiss for the reason that I exercised my discretion, pursuant to BFHC Regs., §§ 2.01(h)(3)(vi) and 2.09(u), in extending the time, because I concluded that it was impractical to make a final administrative disposition within one year. Final administrative disposition was delayed until this date as a result of reasonable requests for continuances by counsel for Linder, and later by counsel for the Stokels, to allow further discovery by the parties, to address numerous discovery disputes, and to hear argument and rule on Linder's Motions to Dismiss. Nevertheless, I conclude that the failure to make a final administrative disposition within a year was harmless error, as Linder was not prejudiced.

Additionally, I deny Linder's request for dismissal of the complaint because the BFHC did not notify the complainants and respondent in writing of its inability to dispose of the case within one year, and the reasons for the delay. BFHC Regs., § 2.09(u). Although the BFHC did not provide written notice, I conclude it was a harmless error, where no party was prejudiced by the failure to provide the written notice, and where all parties, including the respondent, were fully

aware of the delay and the reasons for the delay, as described above, and where dismissal would result in unfair prejudice to the Stokels, who had no responsibility for or control over the BFHC's administrative failure to provide the written notice.

Linder's second ground for dismissal is also without merit. Linder requests dismissal of the complaint because when the Stokels were asked to state in paragraph 3, "the following is alleged to occur or is about to occur," the Stokels did not allege an unlawful inquiry as an independent cause of action, but only "[d]iscriminatory refusal to rent and interference." The question of a complaint's sufficiency, however, "turns on whether it provides enough information to give the defendant notice of what the dispute is about and asserts a right to recovery cognizable on some acceptable legal theory." *Eagle Fund, Limited v. Sarkans*, 63 Mass. App. Ct. 79, 83 n.8 (2005), quoting *Multi Technology, Inc. v. Mitchell Mgmt. Sys., Inc.*, 25 Mass. App. Ct. 333, 335 (1988). Here, Linder received actual notice of the unlawful inquiry claim in the complaint. In paragraph 7 of the complaint, which asks for "a brief and concise statement of the facts regarding the alleged violation," the complaint specifically references Linder's national origin inquiry. Further, paragraph 10 of the complaint specifically cites G.L. c. 151B, § 4(6)(c), which prohibits national origin inquiries, providing sufficient notice to Linder that the Stokels' unlawful inquiry claim constituted an independent cause of action.

Linder's Inquiry

To establish a prima facie case of an unlawful inquiry under BFHC Regs., § 1.04(i),¹ complainants must establish that: (1) on July 25, 2007, Linder was a person engaged in the business of renting dwellings;² (2) Linder caused to be made an oral inquiry of Gladys Stokel concerning her national origin or ancestry, and (3) the Stokels were seeking to rent or lease a housing accommodation covered under BFHC Regulations.³

Similarly, to establish a prima facie case of an unlawful inquiry under G.L. c. 151B, § 4(6)(c), complainants must establish that: (1) on July 25, 2007, Linder was a licensed real estate broker

¹ BFHC Regs., §1.04(i) provides in relevant part that "[i]t is unlawful to cause to be made any written or oral inquiry or record, . . . concerning the race, color, religious creed, marital status, handicap, military status, children, **national origin**, sex, age, **ancestry**, sexual orientation or source of income of any person or group of persons seeking to rent, lease, or buy housing or land" (emphasis added).

² BFHC Regs., § 1.03 (a) provides in relevant part that the Regulations "shall apply but are not limited to any person, . . . firm or enterprise engaged in the business of . . . renting dwellings; or . . . rental . . . of residential real property; or any person, . . . firm or enterprise whose business consists in whole or in part of the making of residential real estate related transactions.

³ BFHC Regs., §1.03(b) provides that, "All housing accommodations not expressly excluded by these Regulations or housing law in the City of Boston are subject to these Regulations." No exemption applies here. See BFHC Regs., §1.05.

of multiple dwelling housing accommodations, or a person having the right to rent or lease; (2) Linder caused to be made an oral inquiry of Gladys Stokel concerning her national origin or ancestry, and (3) the Stokels were seeking to rent or lease a housing accommodation covered under the statute.⁴

The complainants met their burden of proving that Linder violated BFHC Regs., § 1.04(i) and G.L. c. 151B, § 4(6)(c). It is undisputed that on July 25, 2007 Linder was a licensed real estate broker engaged in the business of renting and leasing housing accommodations, including multiple dwelling housing accommodations. The Stokels also established that when Linder made his inquiry they were seeking to rent or lease a unit in a multiple dwelling housing accommodation. Although the parties did not present evidence as to the total number of units at 1315 Commonwealth Avenue, I conclude from James Stokel's testimony that the building included at least five floors of apartment units, meeting the definition of a "multiple dwelling" under G.L. c. 151B, § 1; "a dwelling which is usually occupied for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other."

The complainants also proved that when Linder asked Gladys Stokel "where are you from," he was inquiring about her national origin or ancestry. While neither Chapter 151B or BFHC Regulations define the term "national origin," Massachusetts courts have looked to the Equal Employment Opportunity Commission for definitional guidance. See, for example, *Nguyen v. University of Massachusetts*, 66 Mass. App. Ct. 276, 281 n.9 (2006), quoting 29 C.F.R. § 1606.1 (2005) ("an individual's, or his or her ancestor's, place of origin . . . or . . . the physical, cultural or linguistic characteristics of [an individual's] national origin group").

The complainants also established that Linder "caused to be made" an oral inquiry about Gladys Stokel's national origin. I reject Linder's argument that G.L. c. 151B, § 4(6)(c) and BFHC Regs., § 1.04(i) are inapplicable, asserting he "made" but did not "cause to be made" an inquiry about Gladys Stokel's national origin.

Where Chapter 151B does not define the phrase "cause to be made" a written or oral inquiry, I must look to its "usual and accepted meaning," derived "from sources presumably known to the statute's enactors, such as its use in other legal contexts and dictionary definitions." *Commonwealth v. Davie*, 46 Mass. App. Ct. 25, 28 (1998), quoting *Commonwealth v. Zone*

⁴ Massachusetts General Laws c. 151B, § 4(6)(c) provides in relevant part that "[i]t shall be an unlawful practice" for "the owner [or] . . . licensed real estate broker . . . of . . . multiple dwelling . . . housing accommodations, or other person having the . . . right to rent or lease . . . or any agent or employee of such a person, to cause to be made any written or oral inquiry or record concerning the race, religious creed, color, **national origin**, sex, sexual orientation, . . . **ancestry** or marital status of the person seeking to rent or lease or buy any such accommodation . . . (emphasis added).

Book, Inc., 372 Mass. 366, 369 (1977). Additionally, my statutory interpretation is designed to determine legislative intent, “as evidenced by the language used, and considering the purposes and remedies intended to be advanced.”⁵ *Mullally v. Waste Management of Massachusetts, Inc.*, 452 Mass. 526, 531 (2008), quoting *Glasser v. Director of the Div. of Employment Sec.*, 393 Mass. 574, 577 (1984).

I therefore conclude that the phrase “cause to be made” in BFHC Regs., § 1.04(i) and G.L. c. 151B, § 4(6)(c) encompasses both an inquiry made personally by an owner or broker of housing accommodations as well as an inquiry that an owner or broker authorizes or directs an agent to make. See Random House Dictionary (2009) (defining the verb “to cause” as “to be the cause of” or “to bring about,” and defining the term “to make” as “to bring into existence” or “to effect”). My interpretation is consistent with the MCAD’s statutory interpretation, see *Brown v. Skarbow*, 5 MDLR 1609, at pp. 12-13 (1983) (holding owner of rental property liable for violation of G.L. c. 151B, § 4(6)(c) when she herself made the unlawful oral inquiry as to marital status, race and national origin), and I give substantial deference to the MCAD’s reasonable interpretation of the statute it is charged with enforcing. *Commerce Ins. Co. v. Commissioner of Ins.*, 447 Mass. 478, 481 (2006).⁶

Moreover, to adopt Linder’s proposed statutory and regulatory interpretation would seriously undermine the effectiveness of the prohibition against unlawful inquiries, by insulating owners and brokers from liability when they make the improper inquiry themselves. Linder’s interpretation “would frustrate the general beneficial purposes” of the Boston Ordinances, which empowers the BFHC to protect against housing discrimination in the City of Boston. *Mullally v. Waste Management of Massachusetts, Inc.*, 452 Mass. 526, 531 (2008) (citations omitted). It also would conflict with the Massachusetts General Court’s mandate that Chapter 151B “shall be construed liberally for the accomplishment of its purposes.” G.L. Chapter 151B, § 9.

I further reject Linder’s argument that the complainants claims under BFHC Regs., § 1.04(i) and G.L. c. 151B, § 4(6)(c) must fail because they did not prove that Linder had a discriminatory intent or animus when making his national origin inquiry of Gladys Stokel, that he did not otherwise deviate from his customary broker practices, did not communicate the national origin information to the owner, did not cause the subject apartment’s owner to deny the Stokels’ rental application, or take some other housing-related adverse action against the Stokels. By their plain language, BFHC Regs., § 1.04(i) and G.L. c. 151B, § 4(6)(c) provide that a real estate broker’s inquiry into the national origin of a person seeking to lease an apartment *per se* constitutes a discriminatory practice, without the need to establish discriminatory intent or prove an adverse

⁵ BFHC Regulations defines a “Discriminatory Housing Practice” as “a discriminatory housing practice that is unlawful under GL c. 151B, Section 4 and the Statute, Section 5. BFHC Regs., §1.02(i).

⁶ On October 31, 2007, the MCAD concurred with the BFHC’s probable cause determination in this case under G.L. c. 151B, § 4(6)(c).

housing-related consequence from making the inquiry. As detailed below, I also reach this conclusion by relying in part on the interpretation of and rationale for a related BFHC Regulation, BFHC Reg., § 1.04(e).

The Stokels' reaction to Linder's inquiry provides strong support for the rationale for and need to hold a real estate broker strictly liable for making an inquiry into the national origin or ancestry of a prospective tenant during the rental application process. Here the Stokels reasonably interpreted the entire application process through the lens of Linder's inquiry. They reasonably construed, for example, Linder's change in demeanor between the afternoon and evening meetings, Linder's apparent resistance to provide James Stokel the reasons for the owner's rejection, and the owner's denial of their rental application as discriminatory and directly related to Linder's inquiry into Gladys Stokel's national origin and/or ancestry. Further, although desperate for a new apartment, James Stokel declined Linder's offer of further assistance after the owner denied him the subject apartment. He refused to accept the offer because he and his wife reasonably believed Linder's inquiry was discriminatory, and because they concluded that the rental denial was related to Linder's improper inquiry.

Linder's Inquiry as a Statement of Preference or Discrimination

I also conclude that Linder's national origin inquiry of Gladys Stokel violated BFHC Regs., § 1.04(e), which states, in relevant part, that, [i]t is unlawful to make . . . or cause to be made . . . any . . . statement . . . with respect to the . . . rental of housing or land that indicates any preference, limitation or discrimination based on . . . national origin . . . [or] ancestry, or that indicates an intention to make any such preference, limitation or discrimination. These prohibitions shall apply to all . . . oral notices or statements by a person engaged in the . . . rental of a dwelling."⁷ I find that Linder received sufficient notice of this claim in the complaint.⁸

To establish a prima facie claim for discriminatory statements under BFHC Regs. § 1.04(e), the Stokels must prove that: (1) Linder made a statement; (2) the statement was made to Gladys

⁷ Similarly, G.L. c. 151B, § 4(7B) provides, in relevant part, that it is an "unlawful practice" for "any person to make . . . any statement . . . with respect to the . . . rental of . . . multiple dwelling . . . housing accommodations . . . that indicates any preference, limitation, or discrimination based on . . . national origin . . . [or] ancestry . . . or an intention to make any such preference, limitation or discrimination except where otherwise legally permitted."

⁸ Because the Stokels' BFHC complaint cited specifically to violations of M.G.L. c. 151B, i.e., §§ 4(6)(a) and 4(4)(a), but did not cite § 4(7B), I conclude that the complaint did not provide Linder sufficient notice of the § 4(7B) claim. I therefore will not rule here on whether Linder violated this statutory provision. On the other hand, where the Stokels' complaint alleged that Linder violated the Boston Ordinances generally, without specific reference to any specific BFHC regulatory provision(s), I conclude that Linder was placed on sufficient notice that his conduct may have violated one or more provisions of BFHC regulations governing housing discrimination, including BFHC Regs. § 1.04(e).

Stokel with respect to the rental of a dwelling; and (3) the statement indicated a preference, limitation, or discrimination on the basis of national origin or ancestry or that indicates an intention to make any such preference, limitation, or discrimination. See *Gilbert v. Weeks*, BFHC No. 34-BFHC-2007 (Commissioner's decision, June 26, 2009); see also 42 U.S.C. § 3604(c);⁹ *White v. U.S. Dept. of Housing and Development*, 475 F.3d 898, 904 7th Cir. 2007); *Southern California Housing Rights Center v. Krug*, 564 F.Supp.2d 1138, 1151 (C.D. Cal. 2007).

To establish a violation of BFHC Regs., § 1.04(e), a complainant is not required to establish the subjective intent of the respondent to discriminate. See *Gilbert v. Weeks*, BFHC No. 34-BFHC-2007, citing *White v. U.S. Dept. of Housing and Development*, 475 F.3d at 905-06; *Jancik v. Department of Housing and Urban Development*, 44 F.3d 553, 556 (7th Cir. 1995); *Southern California Housing Rights Center v. Krug*, 564 F.Supp.2d at 1151.¹⁰ Rather, a statement by a respondent violates BFHC Regs. § 1.04(e) if it "would discourage an ordinary (person) of a particular [national origin or ancestry] from applying for an apartment . . . or would suggest to an ordinary [person] that people [of a particular national origin or ancestry] are preferred or dis-preferred for the housing in question." See *Gilbert v. Weeks*, BFHC No. 34-BFHC-2007, citing *Southern California Housing Rights Center v. Krug*, 564 F.Supp.2d at 1151; citing *Housing Rights Center v. Donald Sterling Corp.*, 274 F.Supp.2d 1129, 1137-38 (C.D. Cal. 2003), *aff'd*, *Housing Rights Center v. Sterling*, 84 Fed.Appx. 801 (9th Cir. 2003) (brackets in original; internal quotations and citations omitted); and *Jancik v. HUD*, 44 F.3d at 556.

Consistent with 42 U.S.C. § 3604(c), the rationale for BFHC Regs., § 1.04(e) is that it "protect[s] against [the] psychic injury' caused by discriminatory statements made in connection with the housing market." *Gilbert v. Weeks*, BFHC No. 34-BFHC-2007, citing *U.S. v. Space Hunters, Inc.*, 429 F.3d 416, 424-425 (2nd Cir. 2005) (citations omitted); citing *HUD ex rel. Stover v. Gruzdaitis*, No. 02-96-0377-8, 1998 WL 482759, at *3 (HUD ALJ Aug. 14, 1998) ("stating that section [3604(c)] protects the right 'to inquire about the availability of housing without being subjected to racially discriminatory statements'").

⁹ Consistent with BFHC Regs., § 1.04(e), the Fair Housing Act, 42 U.S.C. § 3604(c), prohibits, in relevant part, real estate brokers from "mak[ing] or caus[ing] to be made any statement . . . with respect to the . . . 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."

¹⁰ I also rely on case law under 42 U.S.C. § 3604(c) for guidance in construing BFHC Regs., § 1.04(e). The United States Department of Housing and Urban Development ("HUD") has authorized the BFHC to enforce fair housing laws in the City of Boston as a "substantially equivalent" agency to HUD's enforcement under Title VIII of the Civil Rights Act of 1968. An agency is deemed substantially equivalent "if [HUD] determines that [it] enforces a law that is substantially equivalent to the Fair Housing Act with regard to substantive rights, procedures, remedies, and the availability of judicial review." 24 CFR 115.201. See *Gilbert v. Weeks*, BFHC No. 34-BFHC-2007.

The Stokels met the elements of a prima facie case of a preferential or discriminatory statement in violation of BFHC Regs., § 1.04(e) by proving that: (1) Linder made a statement to Gladys Stokel on July 25, 2007, (2) the statements by Linder were made to Gladys Stokel with respect to the rental of the unit; and (3) that the Stokels reasonably interpreted Linder's statements to Gladys Stokel as indicating a preference, limitation, or discrimination on the basis of her national origin or ancestry or indicated an intention to make any such preference, limitation, or discrimination. I conclude that Linder's inquiry indicated to the Stokels that because of Gladys Stokel's national origin and/or ancestry they were disfavored for the subject apartment, as it "would suggest to an ordinary [person] that people [of Gladys Stokel's national origin or ancestry] are . . . dis-preferred for the housing in question." *Southern California Housing Rights Center v. Krug*, 564 F.Supp.2d at 1151, quoting *Housing Rights Center v. Donald Sterling Corp.*, 274 F.Supp.2d 1129, 1137-38 (C.D. Cal. 2003).

Linder's First Amendment Challenge

I reject Linder's claim that his unlawful inquiry is constitutionally protected speech under the First Amendment to the United States Constitution. The United States Supreme Court has specifically upheld federal and state antidiscrimination laws against constitutional challenge on First Amendment grounds. *Wisconsin v. Mitchell*, 508 U.S. 476, 113 S. Ct. 2194, 2200 (1993); citing *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984); *Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984); and *Runyon v. McCrary*, 427 U.S. 160, 176 (1976). See also *U.S. v. Space Hunters, Inc.*, 429 F.3d at 425. Moreover, the applicable BFHC Regulations and Chapter 151B provision provide adequate notice of the offending conduct.

IV. ORDER

Upon a finding of unlawful discrimination I am authorized to grant damages and other remedies to effectuate the purpose of the Boston Ordinances and BFHC Regs., §§ 2.09(b)(B) and (t). Therefore, based upon the above foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted me under the Boston Ordinances and BFHC Regs., §§ 2.09(a)(B) and (t), I order that the BFHC certify for public hearing this matter to determine damages and other remedies.

SO ORDERED, this 3rd day of March, 2010.



Onyen Yong
BFHC Hearing Commissioner