IN THE SUPREME COURT OF OHIO

AKRON METROPOLITAN HOUSING AUTHORITY	)	**On Appeal from the Summit County Court of Appeals, Ninth Appellate District**
and	)	
JUNE DAVIDSON	)	**Court of Appeals Consolidated Case Nos. 23056 and 23060**
Appellants,	)	
v.	)	**OHIO SUPREME COURT CASE NO. 07-0254**
OHIO CIVIL RIGHTS COMMISSION	)	
and	)	
FAIR HOUSING ADVOCATES ASSOCIATES, INC.	)	
and	)	
FONTELLA HARPER	)	
Appellees.	)	

FILED
JUL 25 2007
CLERK OF COURT
SUPREME COURT OF OHIO

MERIT BRIEF OF APPELLANTS AKRON METROPOLITAN HOUSING AUTHORITY AND JUNE DAVIDSON

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I. STATEMENT OF THE CASE.

Plaintiff-Appellee Fontella Harper initiated this case in February of 2003 when she contacted Plaintiff-Appellee Fair Housing Advocates Associates, Inc. ("FHAA") and both submitted a charge affidavit to the Plaintiff-Appellee, Ohio Civil Rights Commission ("OCRC"). Ms. Harper's charge affidavit asserts that the Defendant-Appellant, Akron Metropolitan Housing Authority ("AMHA") and one of its property managers, Defendant-Appellant June Davidson ("Davidson"), violated Ms. Harper's fair housing rights by tolerating tenant-on-tenant racial harassment in her housing complex and that AMHA failed to take adequate, effective steps to end the harassment. After conducting an investigation, the Akron Regional Office of the OCRC made a finding of no probable cause. Ms. Harper and FHAA timely requested reconsideration and on January 29, 2004, the OCRC reversed its Regional Office and found it probable that AMHA and Ms. Davidson violated the Fair Housing Act. Ms. Harper and FHAA elected to pursue their respective cases in common pleas court.

On June 17, 2004, the OCRC filed its Complaint asserting the following claims against AMHA and Ms. Davidson: (1) Discrimination in the terms or conditions, of renting or leasing any housing accommodations based on race in violation of Ohio Rev. Code § 4112.02(H)(4) (Appendix at pages 30-31.); and, (2) Failure to provide an environment free from racial hostility. Thereafter, with leave of the trial court, on August 9, 2004, FHAA and Ms. Harper filed their Complaint as Interveners asserting the following claims against AMHA and Ms. Davidson: (1) Failure to provide an environment free from racial hostility; and (2) Conspiracy to deprive a person of rights, privileges and immunities in violation of 42 U.S.C. §1985. (Appendix at pages 38-39.)

AMHA and Ms. Davidson timely answered. Extensive discovery was conducted. On September 21, 2005, Appellants filed a Motion for Summary Judgment essentially arguing that Ohio does not recognize a cause of action for a hostile housing environment under Ohio Rev. Code § 4112 (Appendix at pages 29-37.). FHAA and Ms. Harper filed Motions for Summary Judgment as well. The trial court denied Appellees' Motions for Summary Judgment and granted Appellants' Motion for Summary Judgment, concluding that Ohio does not recognize a hostile housing environment cause of action under Ohio's Fair Housing Act. (Appendix at page 11.) The trial court further concluded that even if such an action were recognized, Ms. Harper did not present sufficient evidence to support such a claim in this case. (Appendix at page 11.) Appellants timely appealed.

The Ninth District Court of Appeals consolidated the appeals for the purpose of filing the record, briefing, and oral argument. The appeal was fully briefed and argued by the parties. On December 29, 2006, the Court of Appeals, in a split decision, reversed and remanded the judgment of the trial court. (Appellate Court Decision and Journal Entry at page 12.) (Appendix at page 24.) In that decision, the majority concluded, among other things, "that a cause of action based upon a hostile living environment is actionable in Ohio and that Ms. Harper established an issue of material fact that the elements of such action were present in this matter." *Id.* at 11. (Appendix at page 23.) As a case of first impression, the majority determined that a hostile living environment claim was a logical extension to those claims based upon various types of harassment already recognized by federal courts, in particular, hostile working environment. *Id.* As such, the majority manufactured the following test to establish a *prima facie* case of a hostile living environment:

> 1) [P]laintiffs are members of a protected class, 2) the harassment was unwelcome, 3) the harassment was based on the race of plaintiffs, 4) it was

> sufficiently severe or pervasive to alter the plaintiffs' living conditions and create an abusive environment and 5) that either (a) the harassment was committed by a landlord, or (b) the landlord, through its agents or supervisory personnel, knew or should have known about the harassment and failed to take immediate and appropriate corrective action.

Id. at 8 – 9. (Appendix at pages 20-21.)

The dissenting judge strongly criticized the majority's creation of this new cause of action in Ohio warning that "[t]he majority's decision opens the door to judicially legislate against 'bad neighbors' within the context of public housing." *Id.* at 13. (Appendix at page 25.) This expansion of court dockets is unnecessary. *Id.* The dissent also took issue with the analogy between the present cause of action and a cause of action for hostile working environment:

> Private employers exercise immediate control over their employees, so that it is reasonable to hold them accountable for the known and tolerated hostile acts of their employees in the workplace. I believe that it is unreasonable to hold lessors in housing situations to the same level of accountability given the impracticability of both the exercise of such control over rents and the burden of policing 'bad neighbors.'

Id.

Thereafter, AMHA and Ms. Davidson timely appealed to this Court, which accepted the appeal on May 2, 2006. In accordance with the Rules of Court, the record was filed on May 25, 2007 making the merit brief due on July 5, 2007. A stipulation to extend the time in which to file merit briefs was submitted on June 29, 2007, which extended the time in which to file Appellants merit brief to on or before July 25, 2007.

II. STATEMENT OF FACTS.

Ms. Harper is an African-American woman who has lived in public housing with her two sons, Demitrios Tayon and Samarr Lopp, for approximately eighteen years. (Harper Deposition at page 6: 17-19; 15-16.) (Supplement at page 1.) Specifically, the Harpers reside at an AMHA housing development known as Van Buren Homes located in Barberton, Ohio and have lived in

that development during the entire period of their public housing tenancy. Ms. Harper's current address is 254 Illinois Place in Barberton, Ohio. The family lived at 227 Illinois Place prior to moving into 254 Illinois Place in 1998. Relocating to 254 Illinois Place marked an improvement in their living conditions: the apartment was bigger and recently renovated. (Harper Deposition at page 16: 23-25; 17:11-14) (Supplement at pages 2-3.)

During August of 2001 Beverly Kaisk and her two children, Kimberly Lewis and Keith Kaisk (the "Kaisks") moved into an apartment at 252 Illinois Place, neighboring the Harpers. Kimberly Lewis[1], a minor residing in that apartment, suffered from a mental health disorder. (Davidson Deposition at page 110:5-10; Manual Deposition at page 48:13-14.) (Supplement at pages 19, 25.)

To understate their relationship, the Harper and Kaisk families did not get along. According to Harper and the OCRC, Ms. Harper and her two sons were passive, innocent neighbors victimized by the Kaisk family. However, the evidence demonstrates that both families actively participated in and perpetuated a nasty neighborhood feud. A threatening and explosive incident occurred between the families on September 29 and 30, 2001:

Q. Handing you what's been marked as Exhibit F, do you recognize that?

A. Yes.

Q: What is it?

A: It's a complaint I filed against the neighbors when their son was outside behind my car on his skateboard popping it up in the air and hitting the back of my car.

[1] Kimberly Lewis is at times referred to in the record below as Kimberly Kaisk. In this brief, she will be referred to as Kimberly Lewis.

(Harper Deposition at page 23:12-25; and, Harper Deposition Exhibit "F".) (Supplement at pages 4, 27-30.)

Ms. Harper testified that at the time of this incident, she called Ms. Davidson, an AMHA property manager at Van Buren Homes. According to Ms. Harper, Ms. Davidson told her to call the police and to submit her complaint to AMHA in writing. (Harper Deposition at page 28:1-12.) (Supplement at page 7.) Ms. Harper complied with Ms. Davidson's directive: to wit, she called the police, and she submitted her complaint to AMHA in writing. (Harper Deposition at page 28:1-12.) (Supplement at page 7.) The day following the incident, is a three-and-a-half page document wherein Ms. Harper describes the incident in detail. (Harper Deposition Exhibit "F".) (Supplement at pages 27-30.) There is no mention of racial animus in her report:

> Q: When you described that incident back at the time when it occurred and you documented that in Exhibit F –
>
> A. Correct.
>
> Q: --Why didn't you include racial language that you're now claiming was used? Why did you leave that out of your description?
>
> A. Actually when I typed this, I didn't put it in there because I figured I had already told the manager about it. I called her on the phone and told her what was going on up there, asked her could she come up there. She told me to call the police so I figured she already knew.

(Harper Deposition at page 27:9-25.) (Supplement at page 6.)

The Barberton Police Department's record of its contemporaneous investigation of the incident likewise does not document race hostility toward Ms. Harper or her family; the police department report corroborates Ms. Harper's self-depiction of the incident:[2]

[2]AMHA contracts with the Summit County Sheriff's Department to provide security at Van Buren Homes. Pursuant to the contract, the Sheriff's deputies work exclusively on AMHA matters. (Porter Deposition at pages 11:19) (Supplement at page 20.) When a resident files a complaint with AMHA management at Van Buren, the complaint is forwarded to the head of the AMHA security department, which transmits it to a Sheriff's deputy for investigation and follow-up. (Manuel Deposition at pages 9:21-25; 10:1-23; and, Porter Deposition at page 15:18-23.)

> Said that there's a fight in the lot, have a nice day, then hung up. Beverly Kasic [sic] called later & says two B/M's are trying to fight w/her husband. Arguing because they thought a child damaged their car while skateboarding. Everyone advised & will follow up in small claims.

(Deposition of Davidson at page 72:13-23; Deposition Exhibit "15".) (Supplement at pages 14, 31.)

Thereafter, the families continued to spar. Ms. Harper admits that she actively engaged in the argument with her neighbors. (Harper Deposition at page 26:18-21) (Supplement at page 5.) Ms. Harper opines that she called the police several times with complaints about her neighbors and she admits that the police responded each time. (Harper Deposition at page 33:17-25; 34:1-7.) (Supplement at pages 8-9.) In addition to Ms. Harper's calls to security, the evidence demonstrates that the Kaisks likewise made complaints against the Harpers:

> Spoke with Fontella Harper at 254 Illinois and Beverly Kaisk at 252 Illinois about the continuous fighting between the kids. Kimberly Kaisk is 14 years old and weighs about 300 lbs. Kimberly is also bipolar and is having several problems in school. The Kaisk family is in the process of being transferred to another development which is a good idea. If the problem continues then we will have reason for eviction.

(Manuel Deposition at page 55:13-17; and, Exhibit "24".) (Supplement at pages 26, 33.)

Nothing in the documentation generated by Harper herself or by security reflects that the dispute was motivated by racial animus. Ms. Harper maintains that she did so complain:

> I filed several racial harassment complaints. I did it in writing but these complaints never, ever came back to me when I asked for copies of them. They just all of a sudden disappeared. I filed complaints about the family calling me and my son niggers, nigger lovers, Black bitch, Black everything, Black fuckers. I mean it was all vulgar language. But we was always a Black something or we was always a nigger something or they were always going to do something.
>
> I put all this in writing and gave it to June Davidson which is what she told me to do. Put it in writing, give it to her. I put it in writing, gave it to her. I don't see

---

(Supplement at pages 21-23.) AMHA also contracts for security with the Barberton Police Department. (Manuel Deposition at page 18:8-9.) (Supplement at page 24.)

> any of that here today. You're not giving me any of the complaints that I filed in writing about the racial harassment.

(See Harper Deposition at pages 71:21-25; 72:1-16.) (Supplement at pages 10-11.)

Although Ms. Harper testified that she submitted written documentation of her complaint of racial harassment, there is no such documentation in existence. Ms. Harper implies that AMHA destroyed evidence in this case although no spoliation charge is contained in her complaint or was made to the trial court, and she produced no evidence to support her verbal claim that she submitted written complaints of racial harassment to AMHA.

On August 27, 2002, the Kaisks requested a hardship transfer out of Van Buren and into other AMHA housing. (Davidson Deposition at page 76:18-25.) (Supplement at page 15.) As a basis for this request, the Kaisks stated that Ms. Harper threatened their lives:

> [Beverly Kaisk] came into the office and asked for transfer papers, and I asked why, and she said she needed a hardship transfer request because her life is being threatened by her neighbor, Fontella Harper, and her relatives.

(Davidson Deposition at page 76:22-25 and 77:1.) (Supplement at pages 15-16.) The Kaisks' request for a hardship transfer was granted on September 13, 2002. (Davidson Deposition at page 76:15-17; Davidson Deposition Exhibit #16.) (Supplement at pages 15, 32.) Consequently, the Kaisks relocated to a different AMHA development on November 4, 2002. Ms. Harper admits that unlike the Kaisks she did not request that AMHA relocate her family. The relocation of the Kaisks ended the feud. (Harper Deposition at page 78:15-25; 79:1-3.) (Supplement at pages 12-13.)

III. LAW AND ARGUMENT.

PROPOSITION OF LAW NO. 1:

OHIO DOES NOT, AND SHOULD NOT, RECOGNIZE A HOSTILE HOUSING ENVIRONMENT CLAIM UNDER ITS FAIR HOUSING LAW.

A. Fair housing laws were neither intended to be a vehicle for the resolution of neighborhood disputes nor to attach liability to landlords for such disputes.

There are no material facts in dispute in this lawsuit with regard to the underlying circumstances that gave rise to it. Simply put, neighbors of different races living in AMHA housing were fighting. Both neighbors actively engaged in the feud. Ms. Harper admits her active participation, that she called the police several times with complaints about her neighbors, and that the police responded each time. (Harper Deposition at pages 26:18-21; 33:17-25; 34:1-7.) (Supplement at pages 5, 8-9.) In addition to Ms. Harper's calls to security, the evidence demonstrates that the Kaisks likewise made complaints against the Harpers and that the police likewise responded. (Manuel Deposition at page 55:13-17; and, Exhibit "24".) (Supplement at pages 26, 33.) Ultimately, the feud ended when the Kaisks' request for a hardship transfer was granted and the family relocated to a different AMHA development. (Davidson Deposition at page 76:15-25; 77:1; Davidson Deposition Exhibit #16; see also Harper Deposition at page 78:15-25; 79:1-3.) (Supplement at pages 12-13, 15-16, 32.) There is no allegation that AMHA or any of its employees engaged, in any manner whatsoever, in the ruckus between these neighboring families. Nonetheless, Ms. Harper and the OCRC contend that AMHA and its property manager, Ms. Davidson, are liable to Ms. Harper under Ohio's Fair Housing Act. This conclusion requires the instant Court to interpret Ohio's fair housing law in a manner that holds landlords culpable for tenants' conduct occurring on a landlord's property. This is a misapplication of Ohio law and should be rejected by the Court.

Congress and the state legislatures did not intend the Fair Housing Act to serve as a means by which neighbors of different races may bring neighborhood feuds into court when such feuds have little or no actual relation to housing discrimination. *See* 42 U.S.C. §3601 (Appendix at page 40.); *Halprin v. The Prairie Single Family Homes of Dearborn Park Assoc'n* (7th Cir. 2004), 388 F.3d 327, 328-29; *Lawrence v. Courtyards at Deerwood Assoc.* (S.D. Florida 2004), 318 F.Supp.2d 1133, 1142. Nothing in the language, the legislative history, or the case law interpreting the Fair Housing Act indicates that Congress intended the Act to operate in such a manner. *U.S. v. Weisz* (S.D.N.Y. 1996), 914 F.Supp. 1050, 1054. *See also, Walton v. Claybridge Homeowners Association* (S.D.Ind. 2004), 2004 WL 192106 7; *Southend Neighborhood Imp. Ass'n v. St. Clair County* (7th Cir. 1984), 743 F.2d 1207, 1210 ("Here we have only a claim that the County's inaction regarding certain properties violated Section 3604. The Act was not designed to address [these] concerns...").

It is well settled that a "landlord... is not the keeper of its tenants." *Bradley v. Carydale Enterprises* (E.D. Virginia 1989), 730 F.Supp. 709, 720. It is further understood that a proprietor is not liable to a tenant for the negligence of another tenant on the premises, so long as the latter acted without the proprietor's consent or authority. *Darnell v. Columbus Show Case Co.* (Ga. 1907), 58 S.E. 631, 632. Here, Appellants had neither a duty to control the conduct of the Kaisk and Harper families nor to protect them from one another's misconduct. *Siino v. Reices* (1995), 628 N.Y.S.2d 757, 758.

B. <u>An analogy between the present cause of action and that of hostile working environment is misplaced.</u>

The relationship between an employer's duty and its ability to control employees through discipline or termination and that of a public housing provider's duty and ability to control the

conduct of its tenants is tenuous and abstract. Basing housing law on existing employment law is specious and misplaced:

> [T]he policy considerations for allowing an employer to regulate the conduct of its employees and the work environment are not the same as those that come to mind in determining whether a homeowner association or property manager should be held accountable for the conduct of private homeowners within a community. Accordingly, the court is not persuaded by the employment cases.

See also Lawrence at 318 F.Supp.2d at 1149. As properly recognized by The Honorable Judge Slaby in the appellate court's dissent:

> Private employers exercise immediate control over their employees, so that it is reasonable to hold them accountable for the known and tolerated acts of their employees in the workplace. I believe it is unreasonable to hold lessors in housing situations to the same level of accountability [as employers] given the impracticability of both the exercise of such control over renters and the burden of policing 'bad neighbors.'
>
> ***
>
> Given the existence of other remedial measures to address neighbors who perpetuate intolerable or dangerous living environment, I find no reason to expand the law and create a cause of action to subject lessors to greater liability.

(Appellate Court Decision and Journal Entry at 13.) (Appendix at page 25.)

The Ninth District Court of Appeals predicates its ruling on the erroneous conclusion that "federal courts have recognized such a cause of action based upon various types of harassment." (Appellate Court Decision and Journal Entry at 6.) (Appendix at page 18.) Notwithstanding the fact that the instant action is in state, not federal court, the federal cases that the appellate court relies on are easily distinguished from the instant case. Of the six cases cited, five involve direct acts of harassment perpetrated by the landlords. *Honce v. Vigil* (10th Cir. 1993), 1 F.3d 1085 (Tenant sued Defendant landlord following landlord's repeated efforts to ask tenant out on a date); *Dicenso v. Cisneros* (7th Cir. 1996), 96 F.3d 1004 (Defendant landlord suggested that

Plaintiff tenant perform sexual favors in lieu of monetary rent); *Smith v. Mission Associates Ltd. Partnership* (D. Kan. 2002), 225 F.Supp.2d 1293 (Plaintiff accused on-site manager and other employees of Defendant property owner of pervasive racial and sexual language); *Neudecker v. Boisclair Corp.* (8th Cir. 2003), 351 F.3d 361; (Plaintiff tenant brought suit alleging that employees of the landlord and their children had harassed him); *Halprin,* 388 F.3d 327 (Plaintiff brought suit against neighbors and homeowners' association after both directly harassed him on account of Plaintiff's religion). In the case at bar, Ms. Harper, the Fair Housing Advocates Associates, and the OCRC do not allege that AMHA or Ms. Davidson directly harassed Ms. Harper. Rather, they seek to recover money damages for the housing authority and its property manager's alleged failure to protect Ms. Harper from the alleged misconduct of the Kaisks. The legal authority relied upon by the appellate court is not on point.

The sole legal authority referenced by the appellate court that is remotely on point is *Bradley v. Carydale Ents.* (E.D.Va. 1989), 707 F.Supp. 217. In that case, it was argued that the defendants created a hostile housing environment. The plaintiff tenant, an African American, asserted that the defendant landlord neither investigated plaintiff's complaints of racial harassment nor attempted to remedy the feud. The plaintiff argued that this inaction was due to the plaintiff's race. *Id.* at 221. In support, the plaintiff produced evidence demonstrating that the landlord timely investigated all non-racially related complaints. *Id.* at 219. In the instant case, unlike *Bradley,* there is no evidence that Appellants treated Ms. Harper's complaint differently from any other complaint concerning fighting neighbors. In fact, there is no evidence that any action taken by AMHA or Ms. Davidson had anything whatsoever to do with race. To the contrary, the evidence supports the conclusion that AMHA and Ms. Davidson acted in conformity with AMHA policies and practices regarding neighborhood disputes. Accordingly,

the appellate court's reliance on *Bradley* to support the creation of a hostile living environment claim in Ohio is unpersuasive.

Further, the Kaisks alleged use of racial slurs against the Harpers cannot be imputed to AMHA so as to give rise to Ms. Harper's claim of a violation of the Fair Housing Act. *Louisiana ACORN Fair Housing v. Preferred Equities* (E.D.La., Jan. 23, 2001), 2001 WL 64769.[3] The Appellants did not create the allegedly hostile environment. The environment was created by the conduct of Appellant Harper, her family, and a third party, the Kaisks. Furthermore, the Fair Housing Act and related Ohio statutes were not created to serve as "some all purpose civil code regulating conduct between neighbors." *Lawrence*, 318 F.Supp.2d at 1142 (*quoting Gourlay v. Forest Lake Estates Civil Ass'n of Port Richey* (M.D.Florida, 2003), 276 F.Supp.2d 1222, 1232 (case subsequently settled)). *See also Halprin*, 388 F.3d at 330 ("[W]e do not want, and we do not think Congress wanted, to convert every quarrel among neighbors in which a racial or religious slur is hurled into a federal case.") The United States District Court for the Second Circuit recently reiterated this position in *Lachira v. Sutton, et al.*, 2007 U.S. Dist. LEXIS 33250. It is inconceivable that either Congress or the Ohio legislature intended to hold a low-income housing provider liable for the actions of its tenants when those very actions would not subject the tenants to liability.

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[3] In *ACORN*, a fair housing advocacy organization sued the owner of a hotel property. The hotel owners used a marketer to entice people to view certain residential apartments in the hotel, presumably for sale. The plaintiff alleged that the hotel's owners communicated to the marketers that prospective purchasers could not be foreigners, and on this basis, the plaintiff brought a claim under the Fair Housing Act. The court, having been presented with no evidence that the hotel's owners themselves had made or encouraged such statements, held:

> [W]ithout providing any evidence to link PEC [the hotel owners] with the alleged conduct, the plaintiff cannot hold PEC liable for alleged offenses emanating from the alleged unlawful activities. For this reason, the Court finds that plaintiff has failed to rebut PEC's motion and that PEC is entitled to summary judgment on the ground that it had no involvement in the alleged discriminatory conduct and that such conduct cannot be attributed to it.

ACORN, 2001 WL at 4 (internal citations omitted).

The decision of the appellate court is wholly without merit, and is distinguished by the facts of cases decided by those few federal courts that have recognized a hostile housing environment cause of action. As such, Appellants respectfully request that this Court reverse and remand the present action.

C. The Appellate Court's Holding Raises Issues Impacting First, Fourth and Fourteenth Amendment Rights Under The United States Constitution.

The final element of the appellate court's hostile housing environment test[4] is that, "the landlord, through its agents or supervisory personnel, knew or should have known about the harassment and failed to take immediate and appropriate corrective action." (Appellate Court Decision and Journal Entry at page 9.) (Appendix at page 21.) The ramifications of enforcing this new law necessarily impinge upon First, Fourth and Fourteenth Amendment constitutional rights.

Obviously, in the absence of a truce between feuding tenants, immediate and appropriate corrective action means that when a low-income housing provider concludes that a housing environment is hostile, our courts require the landlord to either relocate or evict one or both of the feuding tenants.[5] The horns of this dilemma are fraught with enforcement impracticalities. Setting aside the harsh reality that relocation is not viable given the current shortage of low-

[4] 1) [P]laintiffs are members of a protected class, 2) the harassment was unwelcome, 3) the harassment was based on the race of the plaintiffs, 4) it was sufficiently severe or pervasive to alter the plaintiffs' living conditions and create an abusive environment and 5) that either (a) the harassment was committed by a landlord, or (b) the landlord, through its agents or supervisory personnel, knew or should have known about the harassment and failed to take immediate and appropriate corrective action. (Appellate Court Decision and Journal Entry at pages 8-9.) (Appendix at pages 20-21.)

[5] Indeed, the appellate court emphasizes the availability of eviction as an appropriate resolution to tenant feuds. "AMHA has control over who is allowed to be a tenant in their facilities and has the authority to evict anyone who does not comply with the terms of the lease they enter into with AMHA." (Appellate Court Decision and Journal Entry at page 8.) (Appendix at page 20.) As discussed below, eviction raises constitutional concerns.

income housing[6] and that eviction leaves families homeless,[7] even if these things did not occur, constitutional violations occur when the fair housing law to function as an authority pursuant to which landlords must police the verbal conduct of their tenants, with the result that the landlord has a legal obligation to relocate or evict if the landlord concludes that the verbiage is offensive. As elaborated upon below, the Ninth District Court of Appeals unintentionally opens the floodgates for the constitutional violation of individuals' rights under the First, Fourth, and Fourteenth Amendments.

1. Freedom of Speech Under the First Amendment.

The First Amendment to the United States Constitution states that "Congress shall make no law . . . abridging the freedom of speech . . ." U.S. Const. Amend. I. (Appendix at page 41.)

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[6] Relocation is not a viable solution given the current shortage of low-income housing and ever decreasing public housing assistance. *See* Ronald R. Volkmer, *Low-Income Housing and the Charitable Exemption*, 34 CREIGHTON L. REV. 47, 69 (2000). It may be a significant period of time before a unit becomes available at an AMHA location. In fact, studies have found that the wait for low-income housing averages between nineteen (19) and twenty (20) months. National Health Care for the Homeless Council, *Reaching the Undeserved*, http://www.nhchc.org/ReachingTheUnderserved0906.pdf (Sept. 1, 2006); Julie Levin & Murray Levin, *Tinsley v. Kemp—A Case History: How the Housing Authority of Kansas City, Missouri Evolved From a "Troubled" Housing Authority to a "High Performer"*, 36 STETSON L. REV. 77, n.3 (2006). This is certainly not the "immediate" solution to tenant disputes as envisioned by the appellate court. Indeed, many low-income housing providers only operate a single location, effectively removing the option to relocate its tenants. These providers would be left with the unreasonable and unnecessary burden of forcing content tenants to swap residences with a discontented, feuding tenant.

[7] Eviction as a means to resolve neighborhood feuds presents even more problems than relocation. In addition to constitutional concerns discussed herein, the wait lists for public housing are at incredible lengths, *see* John J. Ammann, *Housing Out the Poor*, 19 ST. LOUIS U. PUB. L. REV. 309, 310-12 (2000). With a hostile living environment cause of action, property owners would have the means to evict less desirable tenants under the guise of compliance with the new test. Indeed, the ruling of the appellate court would have the unintended effect of enabling "secret and silent discrimination." *Joy v. Daniels* (4th Cir. 1973), 479 F.2d 1236, 1242. *See also, Henry Knox Sherrill Corp. v. Randall* (Conn.Com.Pl. 1975), 33 Conn.Supp. 15, 21 (noting that the risk of harm is magnified as "the very nature of the [eviction] action, the expense of obtaining counsel, and the probable unavailability of appellate review, make it quite likely that a substantial number of those [evicted] tenants will not have a real opportunity to present their defense in a summary process action.") This risk greatly outweighs the benefits gained from ending a neighborhood feud given the potential harm that befalls an evicted public housing tenant: forced homelessness, diminished quality of life and resources, as well as mental suffering. Andrew Scherer, *Why People Who Face Losing Their Homes in Legal Proceedings Must Have a Right to Counsel*, 3 CARDOZO PUB. L. POL'Y & ETHICS J. 699, 707-08 (2006).

The actions of AMHA and other low-income housing providers constitute state action,[8] and must respect the First Amendment rights of tenants. The appellate court's hostile housing environment test has the unintended effect of significantly chilling that right.

According to the appellate court, a low-income housing provider will be found liable of creating a hostile housing environment if, among other things, it "knew or should have known about the harassment and failed to take immediate and appropriate corrective action." (Appellate Court Decision and Journal Entry at pages 8-9.) (Appendix at page 20-21.) Faced with this exposure to liability, low-income housing providers would under the logic of the Court of Appeals now have an affirmative duty to quash *any* neighborhood feud that appears to offend the listener, lest a court conclude that the provider should have known of the harassing nature of the feud and taken action to stop it.[9] To this end, landlords will likely implement zero-tolerance policies regarding the use of certain words on their premises, thereby taking decisive action to prohibit any speech that could offend other tenants. *See Davis v. Monroe County Bd. Of Educ.* (1999), 526 U.S. 629, 681-82 (Kennedy, J., *dissenting*). In so doing, low-income housing providers will suppress both protected and unprotected speech thus violating their tenants' First Amendment rights. *Ashcroft v. Free Speech Coalition* (2002), 535 U.S. 234, 255 ("[State actors] may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter.") *See also, NAACP v. Button* (1963), 371 U.S. 415, 433; *Cantwell v. State of Connecticut* (1940), 310 U.S. 296, 304; *Doe v. Univ. of Michigan* (E.D.Mich.1989), 721 F.Supp. 852, 864. Similarly, in *Saxe v. State*

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[8] *See infra* note 11.

[9] To suggest that the Appellate Court's holding will only compel low-income housing providers to quash speech not protected by the First Amendment is disingenuous. Housing providers are not constitutional law scholars. The difference between protected and non-protected "harassing" speech is too minute for the layperson to differentiate. *See Speiser v. Randall* (1958), 357 U.S. 513, 525. Indeed, there is much dispute among constitutional scholars as to what does and does not receive First Amendment protection. Accordingly, the Appellate Court's holding calls upon low-income housing providers to crack down on all potentially harassing speech.

College Area School Dist. (3d Cir. 2001), 240 F.3d 200, the plaintiffs brought suit challenging the constitutionality of a public school district's zero-tolerance, anti-harassment policy. The policy defined "harassment" as:

> [V]erbal or physical conduct based on one's actual or perceived race, religion, color, national origin, gender, sexual orientation, disability, or other personal characteristics, and which has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive environment.

Id. at 202. The Third Circuit found the school district's policy unconstitutional in violation of the First Amendment. *Id.* Writing for the majority, future Supreme Court Justice Samuel Alito noted that "there is no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive, including statements that impugn another's race or national origin or that denigrate religious beliefs." *Id.* at 206 (*citing Brandenburg v. Ohio* (1969), 395 U.S. 444); *Cantwell*, 310 U.S. 296. *See also*, *Hustler Magazine v. Falwell* (1988), 485 U.S. 46. By prohibiting offensive, yet lawful, speech the policy was deemed overbroad and therefore unconstitutional despite the school district's compelling reasons for the policy. *Saxe*, 240 F.3d at 217.

The countless zero-tolerance or strict anti-harassment policies that will result in Ohio following an acceptance of the Appellate Court's holding will undoubtedly result in suppression of protected speech. "[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad [laws]." *Broadrick v. Oklahoma* (1973), 413 U.S. 601, 612. *See also, Dambrot v. Central Michigan University* (6th Cir. 1995), 55 F.3d 1177, 1182 (*quoting Members of City Council of City of Los Angeles v. Taxpayers for Vincent* (1984), 466 U.S. 789, 801, and noting that a law is

overbroad and, thus, unconstitutional if there is "a realistic danger that the [law] itself will significantly compromise recognized First Amendment protections of parties not before the court."). The adoption of the lower court's holding will chill protected speech, and, therefore, this Court must reverse.

2. Unreasonable Search and Seizure Under the Fourth Amendment.

The Fourth Amendment to the United States Constitution[10] provides, in relevant part, that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . ." U.S. Const. Amend. IV. (Appendix at page 42.) The Fourth Amendment protects against two distinct situations: (1) unreasonable searches of property; and, (2) unreasonable seizures of property. *Soldal v. Cook County, Ill.* (1992), 506 U.S. 56, 63. A seizure of property is the "meaningful interference with an individual's possessory interests in that property." *Id.* (*quoting U.S. v. Jacobsen* (1984), 466 U.S. 109, 113.) At the very core of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. U.S.* (1961), 365 U.S. 505, 511. The appellate court seeks to block access to this safe haven by arbitrarily shedding the public housing tenant of his right to his home.

A participant in a public housing program has a constitutionally protected property interest in continued tenancy. *Gorsuch Homes, Inc. v. Wooten* (2nd Dist. 1992), 73 Ohio App.3d 426, 432. Thus, the eviction of a tenant from public housing must comply with Fourth Amendment concepts of reasonableness. Reasonableness involves a balancing of the governmental and private interests. *New Jersey v. T.L.O.* (1985), 469 U.S. 325, 341. In cases

[10] The Fourth Amendment was made applicable to the states by the Fourteenth Amendment. *Ker v. State of California*, 374 U.S. 23, 30-31 (1963).

similar to the present, the private interest is squarely set on sustained housing and an avoidance of homelessness. According to the appellate court, the government has an interest in a tenant's peaceful enjoyment of their accommodations. (*See Appellate Court Decision and Journal Entry* at page 3.) (Appendix at page 15.) While the governmental interest is important, it fails to rise to the level of the private interest at stake. Homelessness is a severe and debilitating human condition that cannot be taken lightly. As such, the appellate court's recognition of a hostile housing environment claim and its promulgated test fly in the face of the Fourth Amendment to the United States Constitution. "[T]he rule is that the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution." *U.S. v. Chicago, M., St. P. & P.R. Co.* (1931), 282 U.S. 311, 328-29. Accordingly, the appellate court may not condition an individual's right to public housing upon the tenant relinquishing his rights under the Fourth Amendment to the United States Constitution. As such, Appellants respectfully request that this Court reverse and remand the present action.

3. <u>Procedural Due Process Under the Fourteenth Amendment.</u>

The Fourteenth Amendment guarantees that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV. (Appendix at page 43.) A tenant in federally subsidized housing has a constitutionally protected property interest in that housing. *Gorsuch Homes,* 73 Ohio App.3d at 432. An AMHA eviction amounts to state action,[11] and therefore the due process requirement of the Fourteenth Amendment to the

[11] AMHA receives federal funding for the operation of its low-incoming housing:

> The participation of the federal government in such housing projects is conditioned upon state approval. The state is thus involved for there would otherwise be no federal direct funding through rent subsidies and indirect funding through mortgage benefits... [T]hese factors coupled with utilization of state eviction procedure have 'so far insinuated [the state] into a position of interdependence' with [low-income housing providers] that [eviction of a low-income housing

United States Constitution is invoked. *Joy v. Daniels* (4th Cir. 1973), 479 F.2d 1236, 1239; *McQueen v. Druker* (1st Cir. 1971), 438 F.2d 781, 784-85; *Gorsuch*, 73 Ohio App.3d at 432.

Procedural due process claims involve a three-part test. First, the Plaintiff must identify the constitutionally protected property interest at stake. *Thomas v. Cohen* (6th Cir. 2002), 304 F.3d 563, 576. It is well accepted that a participant in a public housing program has a constitutionally protected property interest in continued tenancy. *Davis v. Mansfield Metropolitan Housing Authority* (6th Cir. 1984), 751 F.2d 180, 184; *Jeffries*, 678 F.2d at 925; *Ressler v. Pierce* (9th Cir. 1982), 692 F.2d 1212, 1215; *Joy*, 479 F.2d at 1241; *Swann v. Gastonia Housing Authority* (D.C.N.C. 1980), 502 F.Supp. 362, 365. Accordingly, the test's first element has been satisfied.

Second, the Plaintiff must show that "the deprivation of that interest contravened notions of due process." *Id.* Courts are clear, "[w]hen a plaintiff has a protected property interest, then a pre-deprivation hearing of some sort is generally required to satisfy the dictates of due process." *Leary v. Daeschner* (6th Cir. 2000), 228 F.3d 729, 742. Just what type of due process is necessary is dependent upon a balancing of the competing interests at stake. *Cleveland Bd. of Educ. v. Loudermill* (1985), 470 U.S. 532, 543. These include the private interests affected by the state action, the government's interest in the eviction of the feuding tenant(s) including the financial costs of any procedural safeguards, and finally, the risk of an erroneous eviction. *See id.* at 543. Eviction of a low-housing tenant is equivalent to declaring that tenant and his family homeless. *Turner v. Chicago Housing Authority* (N.D. Ill. 1991), 760 F.Supp. 1299, 1301;

> tenant] 'cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment.'

Joy, 479 F.2d at 1239 (*quoting, Burton v. Wilmington Parking Auth.* (1961), 365 U.S. 715, 725.) *See also Jeffries v. Georgia Residential Finance Authority* (11th Cir. 1982), 678 F.2d 919, 923.

United States v. Leasehold Interest in 121 Nostrand Avenue (E.D.N.Y. 1991), 760 F.Supp. 1015, 1032; Ken Karas, *Recognizing a Right to Counsel for Indigent Tenants in Eviction Proceedings in New York*, 24 COLUM. J.L. & SOC. PROBS. 527, 532 (1991) (noting that one study has estimated that one in four families that are evicted from low-income housing end up in homeless shelters). Accordingly, the private interest is in continued housing and the avoidance of homelessness. Comparatively, the government's interest rests squarely in removing problem tenants through the most economically efficient process. When these interests are compared, the interest of the tenant severely outweighs those of the government and the low-income housing providers.

However, our inquiry does not end there. The final element, the risk of an erroneous eviction, is of particular importance. Unlike other reasons for eviction, such as criminal misconduct, a feud between tenants more often than not involves a "he said, she said" scenario. Accordingly, there exists the real concern that the tenant with the most compelling argumentative skills will succeed in forcing the eviction of the other, regardless of the actual merit to the claim. Such a high risk of error necessitates the imposition of a thorough investigation preceding any decision to evict. When combined with the strength of the private interest, it is necessary to impose a pre-eviction hearing of the highest level for every low-income housing tenant prior to eviction. The time necessary to satisfy the due process requirement is clearly greater than that required by the appellate court's "prompt and immediate action" standard. As such, it is impossible for a landlord to comply with both the appellate court's order and its obligations pursuant to the United States Constitution.

IV. CONCLUSION.

For the reasons discussed above, the decision below is fundamentally flawed in its reasoning and has significant negative Constitutional and ethical implications. Accordingly, the Appellants urge this Court to reverse the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction has been sent by regular, U.S. mail this 24th day of July, 2007, to:

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Appendix

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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

OHIO CIVIL RIGHTS COMMISSION, et al.	)	**CASE NO. CV 04 06 3416**
Plaintiffs	)	**JUDGE ELINORE MARSH STORMER**
-vs-	)	
AKRON METROPOLITAN HOUSING AUTHORITY, et al.	)	**JUDGMENT ENTRY RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**
Defendants	)	**(Final and Appealable)**

This matter is before the Court on the parties' Cross-Motions for Summary Judgment and responses in opposition. Plaintiff, The Ohio Civil Rights Commission ("OCRC") filed a Motion for Summary Judgment, and plaintiffs Fontella Harper ("Harper") and Fair Housing Advocates Association ("FHAA") also filed a Motion for Summary Judgment. Defendants Akron Metropolitan Housing Authority ("AMHA") and June Davidson responded in opposition and filed their separate Motion for Summary Judgment, to which Plaintiffs Harper and FHAA responded in opposition.

This case involves allegations of a cause of action resulting from a claim of a racially "hostile housing environment." This is a case of first impression in Ohio.

Facts

The OCRC originally filed suit to enforce R.C. 4112.01, alleging that unlawful housing discrimination occurred in the defendant AMHA's failure to provide an environment free from racial hostility. Plaintiffs FHAA and Harper intervened alleging that they were the parties who were actually discriminated against. Harper, who is African American, had lived in one of

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AMHA's developments, Van Buren Homes ("Van Buren") since 1991. In August of 2001, Beverly Kaisk ("Kaisk"), who is Caucasian, and her two minor children Kimberly and Keith moved in two doors down from Harper. Harper asserts that shortly after the Kaisks moved in, racially motivated confrontations began between them. Harper alleges that the Kaisks would swear at the Harpers and their African American visitors, and use racial epithets, including calling them "niggers" and "black bitches." Harper asserts that the Kaisks' name calling, swearing and shouting escalated into threats of violence towards the Harpers. Harper further asserts that these were not isolated incidents and that the Kaisks continuously called the Harpers racially derogatory names, physically confronted Harper and otherwise interfered with the quiet use of her rental property. Harper contends that she complained to AMHA about the racial harassment and nothing was done to rectify the situation. Harper asserts that she met with FHAA and OCRC in November of 2002 to get assistance in dealing with the alleged racial harassment. Harper alleges that AMHA refused to rectify the situation, thus permitting a racially hostile living environment.

AMHA argues that Ohio courts do not and would not recognize a hostile housing environment claim under the Fair Housing Act ("FHA"). AMHA also asserts that it had no duty to resolve what was essentially a neighborhood feud between Harper and the Kaisks, and the alleged use of racial slurs by the Kaisks against the Harpers cannot be imputed to AMHA giving rise to a claim under the FHA. Alternatively, AMHA argues that even if it had a duty to resolve the feud, it acted reasonably in handling the situation under the circumstances. AMHA had Harper fill out a written Resident Complaint Form ("RCF"). AMHA security, in the form of the Barberton Police Department, investigated and concluded that it was a dispute between neighbors with conflicting accounts of what took place. Unable to determine which party was

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the instigator in the disputes, AMHA monitored the situation. In 2003, the Kaisks requested a transfer to new housing, which was granted, ending the dispute.

Summary Judgment Standard

Pursuant to Civ.R. 56(C), summary judgment is proper if: (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of his motion. *Id.* Once this burden is satisfied, the nonmoving party has the burden, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. *Id.*

Analysis of Cause of Action

Plaintiffs base their claim on the Ohio Fair Housing Act ("OFHA"), R.C. 4112.02(H)(4), which states in pertinent part that it is unlawful discriminatory practice to:

> Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because of race, color, religion, sex, ...

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Plaintiffs assert that the OFHA is analogous to the Federal Fair Housing Act ("FHA"), 42 U.S.C. 3601. The FHA is "a comprehensive open housing law." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413, (1968). The purpose of the statute, as expressed by Congress, is "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. Thus, it is intended to promote "open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat." *Otero v. New York City Housing Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973). In order to achieve its purpose, the provisions of the FHA are to be construed broadly. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211-212 (1972).

Plaintiffs argue pursuant to *Honce v. Vigil* (10th Circ. 1993), 1 F.3d 1085, 1088, that the law related to harassment in housing emanates from fair employment law, most notably Title VII. Plaintiffs ask that the Court recognize that the hostile housing environment cause of action is based on the same principles as an employer's duty to protect its employees from co-worker sexual harassment in the workplace, and that the same legal standards apply in both situations.

Comparison to Claims for Sexual Harassment in Ohio

While Ohio has not recognized a cause of action for hostile housing environment, Ohio does recognize a cause of action for hostile work environment sexual harassment. In *Hampel v. Food Ingredients Specialties, Inc.* (2000), 89 Ohio St. 3d 169, the Ohio Supreme Court held that in order to establish a claim of hostile work environment sexual harassment, the plaintiff must show (1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive to affect the "terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment," and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its

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agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action. *Id.* at 176-177.

In *Varner v. Goodyear Tire & Rubber Company*, 2004 Ohio 4946, (Ninth Dist. 2004), the Ninth District Court of Appeals stated that in order to determine whether an environment is sufficiently hostile to warrant a finding of sexual harassment the court must examine the totality of the circumstances including: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.... while psychological harm, like any other relevant factor, may be taken into account, no single factor is required." *Id.* at P18 citing *Harris v. Forklift Systems* (1993), 510 U.S. 17, 23). The Court went on to state that the standards for judging hostility are such that "the ordinary tribulations of the work place, such as, sporadic use of abusive language, gender-related jokes, and occasional teasing" will not constitute a hostile work environment. *Id.* citing *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 788.

Federal Cases That Have Recognized the Cause of Action

Plaintiffs argue that the FHA prohibits tenant on tenant harassment in housing and that although Ohio has yet to recognize the existence of a "hostile housing environment" cause of action, several federal courts have recognized such a claim based on the same legal principals as hostile work environment sexual harassment, therefore Ohio should also. Plaintiffs cite *Dicenso v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996), *Smith v. Mission Associates Ltd. Partnership*, 225 F.Supp.2d 1293 (D.Kan. 2002), and *Williams v. Poretsky Management, Inc.*, 955 F. Supp. 490 (D. Md. 1996) to support their argument.

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In *Dicenso v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996), the tenant accused the landlord of sexual harassment when he proposed an exchange of sexual favors for rent. The court analyzed Title VII, which requires that sexual harassment be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment in order to be actionable. *Id.* at 1008. The court in *Dicenso* recognized a hostile housing environment cause of action, and held that when the Title VII standard for sexual harassment is applied to the housing context, a claim is actionable when the offensive behavior unreasonably interferes with use and enjoyment of the premises. *Id.* at 1008. However, the *Dicenso* court concluded that that although the landlord in that case may have harassed the tenant, he did so only once, and he did not touch an intimate body part, or threaten her with any physical harm, therefore this alone did not create an objectively hostile environment. *Id.* at 1009.

In *Smith v. Mission Associates Ltd. Partnership*, 225 F.Supp.2d 1293 (D.Kan. 2002), the plaintiffs, a resident employee of an apartment complex, his live-in girlfriend, and her children, sued the defendant apartment management companies alleging that they were subjected to discrimination resulting in a hostile housing environment because the girlfriend's children were bi-racial. The court set forth the elements necessary for a prima facie case of hostile housing environment as: 1) plaintiffs are members of a protected class, 2) the conduct was unwelcome, 3) the conduct was based on the race of plaintiffs, 4) it was sufficiently severe or pervasive to alter the plaintiffs' living conditions and create an abusive environment and 5) defendant knew or should have known about the harassment. *Id.* at 1298 – 1299. The court held that the plaintiffs satisfied the first three elements of a prima facie case of hostile housing environment. *Id.* at 1301. The court also held that because some of the harassing conduct occurred in the plaintiff's work place, and the housing and work environment in that case were one and the same, it

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affected the plaintiffs' housing environment. *Id.* at 1300. The court held that there was a question of fact for a jury as to the severity and pervasiveness of the conduct. *Id.* The Court also held that the people accused of the offensive conduct were employees of the plaintiffs' landlord, therefore, the landlord knew or should have known about the harassment, and the Court denied summary judgment as to the claim for hostile housing environment. *Id.* at 1301.

In *Williams v. Poretsky Management, Inc.*, 955 F. Supp. 490 (D. Md. 1996), Plaintiff lessee, joined by a local fair housing coalition, brought an action for discrimination on the basis of sex under the FHA against defendant lessor and claimed that she had been assaulted in the apartments by an apartment employee. The court recognized the cause of action and applied similar legal standards as those used in the *Dicenso* case. *Id.* at 496. The court then denied defendant's request for summary judgment, holding that the Plaintiff and the fair housing coalition had stated a prima facie case for hostile housing environment under the FHA that could not be dismissed as a matter of law. *Id.* at 498.

Cases Which Do Not Recognize the Cause of Action

AMHA asserts that it did not create the alleged hostile environment, and if any such environment existed, the Kaisks created it. Defendant argues that the FHA and the OFHA were not created to serve as "some all purpose civil code regulating conduct between neighbors." *Lawrence v. Courtyards at Deerwood Ass'n.* 318 F. Supp. 2d 133, 1142-1143 (D. Fla. 2004), quoting *Gourlay v. Forest Lake Estates Civil Ass'n of Port Richey, Inc.*, 276 F.Supp.2d 1222, 1232 (M.D. Fla. 2003).

In *Lawrence,* the homeowners, an African-American couple, asserted that shortly after moving into their home in a residential development, a neighbor started a racially based campaign to drive them out of the neighborhood. The homeowner's association responded to the

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complaints of the homeowners and their neighbor, but always advised that they would not become involved in their personal dispute. After moving out of the neighborhood, the homeowners sued the association, alleging that it allowed the neighbor to create a racially hostile housing environment. The court granted defendants' motion for summary judgment on the Lawrence's claims under FHA 42 U.S.C. 3604, holding that it applies only in connection with the sale or rental of a dwelling, and the actions complained of in the case all occurred after the Lawrences bought their home, not while they were trying to acquire the home. *Id.* at 1143.

The *Lawrence* court also granted defendants summary judgment on the interference claim under FHA 42 U.S.C. 3617 because defendants had no duty to stop the neighbor's conduct and they directed no threatening conduct towards the homeowners. *Id.* The *Lawrence* court acknowledged various decisions suggesting that discriminatory conduct, similar to that which has been held to support a hostile work environment, could also support a claim under the FHA. To prevail under that theory, the court stated that the Lawrences had to establish that race played some role in the conduct of the Defendants. The court, citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, (1973), went on to state that discrimination may be proved directly with evidence that a discriminatory reason motivated the defendants, or indirectly with evidence of a prima facie case and evidence the Defendant's proffered explanation for the action taken is a pretext. *Id.* at 1147. The court determined that the record did not establish a discriminatory motive under either test, and thus, he court did not recognize a cause of action under the FHA for a hostile housing environment. *Id.* at 1150 – 1151.

Defendant also argues that many of the cases Plaintiffs rely on are distinguishable from the case at bar because in those cases, the Defendant itself was directly performing the harassing conduct. See *Honce v. Vigil*, 1 F.3d 1085(10th Circ. 1993) (Tenant sued defendant landlord

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following landlord's repeated efforts to ask tenant out on date.); *Dicenso v. Cisneros*, supra; *Smith v. Mission Associates Ltd. Partnership*, supra; and *Williams v. Poretsky Management, Inc.*, supra. None of these cases involved situations where either a homeowner's association or a housing association were found liable for failure to contain or control the conduct of one neighbor against another.

Limitation on Claims When Recognized

Courts allowing claims for racial discrimination under the FHA have limited the application of section FHA 42 U.S.C. 3617 to only the most extreme or violent conduct. See *Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845, 852 (N.D.Ill. 2003) (detonation of explosive device simulator combined with racial epithets stated § 3617 claim); *Bryant v. Polston*, 2000 U.S. Dist. LEXIS 16368, at *3 (S.D. Ind. Nov. 2, 2000) (allegations that defendants followed plaintiffs' friends into the woods with a shotgun, walking back and forth in the yard while displaying a shotgun, shooting a pistol into the water behind their home, and running over the foot of one of plaintiffs' children with a boat trailer stated a claim under § 3617); *Johnson v. Smith*, 810 F. Supp. 235, 238-39 (N.D. I11. 1992) (allegations of cross-burning on plaintiff's lawn and breaking plaintiff's windows stated claim under § 3617); *Seaphus v. Lilly*, 691 F.Supp. 127,139 (N.D. I11. 1988) (allegations of physical assault and attempted arson of plaintiff's home stated a § 3617 claim); *Waheed v. Kalafut*, 1988 U.S. Dist. LEXIS 964 (N.D. Ill. Feb. 2, 1988)(allegations that defendant firebombed house, screamed racial epithets, and threw beer bottles and rocks constituted claim under § 3617).

> On one side lie cross-burning, fire-bombing and other similarly overt discriminatory acts designed to intimidate, coerce, or interfere with housing rights. On the other side lie unfortunate skirmishes between neighbors, tinged with discriminatory overtones or occasional discriminatory comments. Nothing in the text of the FHA or the case law interpreting it indicates that Congress intended to federalize the latter type of dispute... The more difficult cases lie in

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> the middle, and factors such as the frequency and severity of the conduct are relevant when determining how to assess a case, just as they are in a sexual harassment case.

Walton v. Claybridge Homeowners Ass'n, 2004 U.S. Dist. LEXIS 946, 21-22 (D. Ind. 2004).

Plaintiff's Claims Instanter

In this case, the complaint alleges that the Defendant caused Plaintiff Harper to experience a racially hostile housing environment because the Defendant tolerated or ratified Kaisk's racially motivated harassment by failing to stop it. Plaintiff asserts that in September of 2001 she initially verbally complained to AMHA about a confrontation with the Kaisks that included the use of verbal epithets. The apartment manager instructed Harper to submit the details of the incident in a written RCF. Harper included details of the confrontation, but made no mention of the racial slurs or racially motivated language. This RCF was the only written communication about the subject of the complaint. Pursuant to AMHA policy, the incident was investigated by AMHA security, but because Harper never put anything in the RCF about the alleged racial harassment, that was not specifically investigated.

Harper later video taped another incident between her and the Kaisks. The written report and deposition testimony of the two Deputies who viewed the tape indicate that there were no signs of any racial comments being made on the video. Harper states that there were further instances of racial harassment that she believed she was forced to endure from the Kaisks. However, there is no evidence that she reported them in writing to AMHA, nor any other corroborating evidence that the alleged harassment was ongoing. Even assuming the incidents occurred, they do not rise to the level of violence or extreme conduct.

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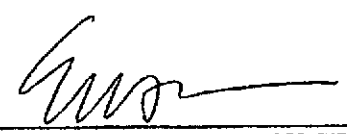
Conclusion

To date, Ohio has not recognized a cause of action under the OFHA for a hostile housing environment. The Court does not reach the issue because even if the cause of action were cognizable under the OFHA based on the same legal principles as hostile work environment, the evidence fails to establish that the alleged harassment was sufficiently severe and pervasive as to alter the terms of Plaintiff Harper's living environment, or that Defendant had sufficient notice of the alleged harassment. This appears to be an example of an unfortunate ongoing skirmish between neighbors that may have been tinged with discriminatory overtones or occasional discriminatory comments. While the behavior is reprehensible and the effect on the plaintiff's well being is relevant to determining whether the plaintiff actually found the environment abusive, the sporadic use of offensive language is not sufficient to constitute a hostile environment. See *Varner v. Goodyear Tire & Rubber Company*, supra. Additionally, there is not evidence that the Defendant had sufficient notice of the alleged harassment to be held liable.

The Court has reviewed the motions, responses, and applicable law and concludes that the Plaintiffs have not demonstrated that Ohio would recognize a cause of action for a hostile housing environment under these facts, construing them most strongly in Plaintiff's favor. Therefore, Defendants are entitled to judgment as a matter of law and their motion for summary judgment is granted. Plaintiffs' motions for summary judgment are denied.

The Court, having so ruled, finds that this is a final appealable order pursuant to Civil Rule 54 and there is no just cause for delay, all claims having been disposed of.

IT IS SO ORDERED.



JUDGE ELINORE MARSH STORMER

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Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties notice of this judgment and its date of entry on the Journal.

JUDGE ELINORE MARSH STORMER

cc: Attorney David A. Oppenheimer
Attorney Andrew L. Margolius
Attorney Michelle Morris
Attorney Richard A. Green

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COURT OF APPEALS
2006 DEC 29 AM 7: 36
SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO)	IN THE COURT OF APPEALS
COUNTY OF SUMMIT)	NINTH JUDICIAL DISTRICT
OHIO CIVIL RIGHTS COMMISSION, et al.	C. A. Nos. 23056 & 23060
Appellants	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 04 06 3416
AKRON METROPOLITAN HOUSING AUTHORITY, et al.	
Appellees	

DECISION AND JOURNAL ENTRY

Dated: December 29, 2006

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Judge.

{¶1} Appellants, the Ohio Civil Rights Commission ("OCRC"), Fontella Harper, and Fair Housing Advocates Associates, Inc. ("FHAA"), appeal the decision of the Summit County Court of Common Pleas, which awarded summary judgment in favor of appellees, Akron Metropolitan Housing Authority ("AMHA") and June Davidson. This Court reverses.

I.

{¶2} This appeal is a result of AMHA's allegedly discriminatory handling of a bitter dispute between appellant Harper and her white neighbors at Van Buren

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Homes. Harper, a black woman, and her two sons moved into the Van Buren Homes rental housing development in 1991. Van Buren Homes is owned and operated by AMHA. Appellee June Davidson is the property manager at Van Buren Homes.

{¶3} In 1998, the Harper family moved to 254 Illinois Place, which is also located at Van Buren Homes. In 1991, the Kaisk family moved next door to the Harpers. Shortly after the Kaisks became the Harpers' neighbors, the two families began to engage in heated confrontations. Appellant Harper alleges that the Kaisk family would swear at members of her family and guests to her home, using racial epithets. Harper maintains that the name calling, swearing and shouting escalated to overt threats of violence towards her family.

{¶4} The origin of this dispute is traceable to October 2001. On October 1, 2001, Harper submitted a Resident Complaint Form ("RCF") to AMHA, in which she alleged certain facts that led to the filing of the complaint in this matter. Harper alleged that a series of incidents occurred on September 29, 2001, and September 30, 2001, involving Harper, the Kaisks, Harper's cousin and the cousin's daughter. Van Buren Homes' standard procedure was to refer all RCF's to the security department which had a contract with both the Summit County and Barberton Sheriff's Departments.

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{¶5} Moreover, the lease terms specifically provided:

> "The OWNER may terminate or refuse to renew the lease only for serious or repeated violations of material terms of the lease, including but not limited to failure to make payments due under the lease or to fulfill the TENANT obligations set forth in Section VII ***.[1]"

Despite this policy, Harper alleged that Van Buren Homes' management neither investigated nor resolved Harper's complaint regarding her neighbors' racial remarks and other harassing conduct. According to Harper, the harassment continued through January of 2003. Harper alleged that her black guests were also victims. Harper testified through deposition that she filed numerous racial harassment complaints verbally and in writing and gave them to June Davidson, but they have just disappeared.

{¶6} In late 2002, the Kaisks applied for a hardship transfer out of Van Buren Homes on the basis that Harper and her relatives had threatened their lives. The requested transfer was granted, and the Kaisks moved out of Van Buren Homes.

{¶7} In February 2003, Harper contacted FHAA. Subsequently, both Harper and the FHAA submitted a charge affidavit with the OCRC. The charge affidavit asserted that the AMHA and one of its property managers, June Davidson, violated Harper's fair housing rights by tolerating tenant-on-tenant

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[1] Section VII requires the tenant to conduct himself or herself in a manner "which will not disturb their neighbors' peaceful enjoyment of their accommodations."

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racial harassment in the Van Buren Homes complex and that AMHA failed to take adequate, effective steps to end the harassment. The OCRC found probable cause of discrimination and filed suit. Harper and the FHAA intervened. Claims were asserted under the entirety of both the federal and Ohio Fair Housing Acts.

{¶8} The appellants and the appellees filed cross motions for summary judgment and response briefs. The trial court awarded summary judgment in favor of appellees. The OCRC and appellants Harper and the FHAA filed notices of appeal. This Court consolidated the appeals.

{¶9} The OCRC filed an appellate brief asserting three assignments of error. Harper and the FHAA also filed a brief setting forth three assignments of error. The assignments of error have been rearranged and some have been combined to facilitate review.

II.

HARPER AND FHAA'S SECOND ASSIGNMENT OF ERROR

"A HOSTILE ENVIRONMENT CLAIM MAY BE PREMISED ON THE FAIR HOUSING ACT'S INTERFERENCE CLAUSE, THE TERMS AND CONDITIONS CLAUSE, OR THE CLAUSE REQUIRING HOUSING TO BE AVAILABLE TO ALL PROTECTED CLASSIFICATIONS[.]"

{¶10} All six of appellants' assignments of error challenge the trial court's award of summary judgment in favor of AMHA. To prevail on a motion for summary judgment, the party moving for summary judgment must be able to point to evidentiary materials that show that there is no genuine issue as to any material

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fact, and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the nonmoving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins* (1996), 75 Ohio St.3d 447, 449.

{¶11} This Court finds that appellants' Harper and FHAA's second assignment of error is dispositive of the appeal. Therefore, we will discuss it first.

{¶12} In Harper and FHAA's second assignment or error, appellants argue that the trial court erred in not recognizing a cause of action for a hostile housing environment in Ohio. This Court agrees.

{¶13} Appellees argue that the underlying action is nothing more than a dispute between tenants and that this type of dispute is not actionable under state or federal anti-discrimination laws. However, appellees fail to understand the point of appellants' claim. Appellees' argument focuses on the Kaisks' racist acts rather than AMHA's apparent toleration of those acts. Such toleration by AMHA arguably interfered with Harper's right to enjoy her lease.

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{¶14} Both the federal and Ohio fair housing acts guarantee equal terms and conditions for protected classes such as race. Section 3617, Title 42 U.S. Code and R.C. 4112.02. Ohio's Fair Housing Act provides, in pertinent part:

> "It shall be an unlawful discriminatory practice:
>
> "For any person to ***
>
> "Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because of race, color, religion, sex, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located[.]" R.C. 4112.02(H)(4).

Furthermore, R.C. 4112.08 provides that fair housing protections in Ohio are to be construed and interpreted liberally.

{¶15} Although the issue of a hostile living environment claim is a matter of first impression in Ohio, federal courts have recognized such a cause of action based upon various types of harassment. See *DiCenso v. Cisneros* (C.A.7, 1996), 96 F.3d 1004, 1008 (hostile living environment based upon gender); *Honce v. Vigil* (C.A.10, 1993), 1 F.3d 1086, 1088 (hostile living environment based upon gender); *Smith v. Mission Assoc. Ltd. Partnership* (D.Kan. 2002), 225 F.Supp.2d 1293 (hostile living environment based upon racial harassment); *Neudecker v. Boisclar Corp.* (C.A.8, 2003), 351 F.3d 361, 364 (hostile living environment based upon disability); *Halprin v. Prairie Single Family Homes of Dearborn Park Assn.*

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(C.A.7, 2004), 388 F.3d 327, 330 (hostile living environment based upon religion); *Bradley v. Carydale Ents.* (E.D.Va. 1989), 707 F.Supp 217, 223 (racial harassment in housing).

{¶16} Appellants argue and this Court agrees that tenant versus tenant harassment is analogous to co-worker harassment in the workplace. In *Hampel v. Food Ingredients Specialties, Inc.* (2000), 89 Ohio St.3d 169, the Supreme Court of Ohio set forth the requirements for establishing a claim of hostile environment in the workplace due to sexual harassment:

> "In order to establish a claim of hostile-environment sexual harassment, the plaintiff must show (1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive to affect the 'terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment,' and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action." Id., paragraph two of syllabus.

While noting that most courts also require the plaintiff to show that he or she belongs to a protected class, the Court in *Hampel* found it unnecessary due to the fact that there are only two sexes and both of them are entitled to protection under R.C. 4112.02(A). Id. at 733, Fn. 2.

{¶17} In addressing the issue of a hostile living environment, the court in *Smith* stated:

> "The elements necessary for a prima facie case of hostile housing environment are 1) plaintiffs are members of a protected class, 2) the conduct was unwelcome, 3) the conduct was based on the race of

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> plaintiffs, 4) it was sufficiently severe or pervasive to alter the plaintiffs' living conditions and create an abusive environment and 5) defendant knew or should have known about the harassment." 225 F.Supp.2d 1293 at 1298-1299, citing *Reeves v. Carrollsburg Condominium Unit Owners Assn.* (D.D.C. Dec. 18, 1997), No. CIV.A. 96-2495RMU.

{¶18} After reviewing the record, federal case law, and Ohio case law regarding discrimination in the workplace, this Court finds that the trial court erred in not recognizing a cause of action for a hostile living environment in this case. This is not a case of harassment of a neighbor by a neighbor where each neighbor owns his or her own property. The property at issue in this case is a public housing development owned and operated by AMHA. AMHA has control over who is allowed to be a tenant in their facilities and has the authority to evict anyone who does not comply with the terms of the lease they enter into with AMHA. In this case, the lease provided, in relevant part:

> "VII. TENANT OBLIGATIONS
>
> "The TENANT agrees:
>
> "***
>
> "R. To conduct himself/herself and cause other persons who are on the premises with the TENANT'S consent to conduct themselves in a manner which will not disturb the neighbors' peaceful enjoyment of their accommodations; or to engage in illegal or other activity which impairs the physical or social environment of the development."

{¶19} Based upon the Supreme Court of Ohio's decision in *Hampel*, this Court finds that the elements necessary to establish a prima facie case of hostile living environment under the facts in this case are 1) plaintiffs are members of a

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protected class, 2) the harassment was unwelcome, 3) the harassment was based on the race of plaintiffs, 4) it was sufficiently severe or pervasive to alter the plaintiffs' living conditions and create an abusive environment and 5) that either (a) the harassment was committed by a landlord, or (b) the landlord, through its agents or supervisory personnel, knew or should have known about the harassment and failed to take immediate and appropriate corrective action.

{¶20} After finding that Ohio does not recognize a cause of action under Ohio's Fair Housing Act for a hostile living environment, the trial court concluded that even if such an action were recognized in Ohio, Harper did not present sufficient evidence to establish that the alleged harassment was sufficiently severe or pervasive as to alter her living environment, or that AMHA had sufficient notice of the alleged harassment. This Court disagrees.

{¶21} Initially, this Court notes that the trial court improperly weighed the credibility of Harper's allegations and enforced its own factual conclusion regarding the evidence. This is not permissible on summary judgment. *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 249. The trial court characterized the situation between the Harpers and the Kaisks as "an unfortunate ongoing skirmish between neighbors that may have been tinged with discriminatory overtones or occasional discriminatory comments." Viewing the facts in the light most favorable to the nonmoving party, however, this Court finds that Harper presented evidence of the existence of a genuine issue of material fact that the elements of a

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hostile living environment existed in this case. Harper alleged that the Kaisk family would swear at members of her family and guests to her home, using racial epithets. Harper maintained that the name calling, swearing, and shouting escalated to overt threats of violence towards her family. Harper stated that the harassment was continuous from September 2001 through January of 2003. Harper further alleged that she filed numerous racial harassment complaints both verbally and in writing with the management of Van Buren Homes, but that her complaints were neither investigated nor resolved.[2]

{¶22} Appellants Harper and FHAA's second assignment of error is sustained.

OCRC'S FIRST ASSIGNMENT OF ERROR

"THE TRIAL COURT IMPROPERLY REQUIRED PLAINTIFFS TO DEMONSTRATE VIOLENT OR EXTREME CONDUCT IN ORDER TO ESTABLISH A HOSTILE LIVING ENVIRONMENT CLAIM."

OCRC'S SECOND ASSIGNMENT OF ERROR

"THE TRIAL COURT IMPROPERLY DETERMINED THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER THE HARPER FAMILY WAS SUBJECTED TO SEVERE OR PERVASIVE HARASSMENT BASED ON THEIR RACE."

---

[2] While June Davidson stated in her deposition testimony that she had been aware of an ongoing controversy between the Kaisk family and the Harper family for over a year, she concluded that the controversy was not racially based. Ms. Davidson based her conclusion upon a belief that harassment based upon race no longer exists in today's society.

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OCRC'S THIRD ASSIGNMENT OF ERROR

"THE TRIAL COURT IMPROPERLY DETERMINED THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER THE LANDLORD WAS PUT ON NOTICE OF THE RACIALLY HOSTILE ENVIRONMENT."

HARPER AND FHAA'S FIRST ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED WHEN IT HELD THAT EVEN IF OHIO ADOPTED THE DOCTRINE OF HOSTILE ENVIRONMENT IN HOUSING, INSUFFICIENT FACTS SHOWED A HOSTILE ENVIRONMENT HERE."

HARPER AND FHAA'S THIRD ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED WHEN IT ARTICULATED FACTS THAT SHOWED NOTICE OF THE HARASSMENT AND AN ESCALATING PATTERN OF HARASSMENT YET CONCLUDED NO NOTICE AND NOT SEVERE OR PERVASIVE MISCONDUCT."

{¶23} OCRC's first, second, and third assignments of error are rendered moot by this Court's resolution of Harper and FHAA's second assignment of error. Harper and FHAA's first and third assignments of error are rendered moot as well. Therefore, we decline to address appellants' remaining assignments of error. See App.R. 12(A)(1)(c).

III.

{¶24} In sum, this Court finds that a cause of action based upon a hostile living environment is actionable in Ohio and that Harper established an issue of material fact that the elements of such action were present in this matter. Having found that the trial court improperly awarded summary judgment in favor of

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AMHA, the judgment of the Summit County Court of Common Pleas is reversed, and the cause remanded to the trial court for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellees.

DONNA J. CARR
FOR THE COURT

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MOORE, J.
CONCURS

SLABY, P. J.
DISSENTS, SAYING:

{¶25} I respectfully dissent.

{¶26} I would not recognize a cause of action for hostile housing environment. The majority's decision opens the door to judicially legislate against "bad neighbors" within the context of public housing. I believe that it is then inevitable that feuding tenants in private housing would seek similar remedies. In fact, other remedies such as nuisance actions, police intervention and defamation actions are already available to address such situations.

{¶27} I further disagree with the analogy between a cause of action for hostile working environment and hostile housing environment. Private employers exercise immediate control over their employees, so that it is reasonable to hold them accountable for the known and tolerated hostile acts of their employees in the workplace. I believe that it is unreasonable to hold lessors in housing situations to the same level of accountability given the impracticability of both the exercise of such control over renters and the burden of policing "bad neighbors." This is especially unreasonable given that such a claim is viable only for renters as against other renters of the same housing authority or landlord and not for private homeowners. "Bad neighbors" are not exclusive to a rental housing environment. Given the existence of other remedial measures to address neighbors who

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perpetuate an intolerable or dangerous living environment, I find no reason to expand the law and create a cause of action to subject lessors to greater liability. I would affirm the trial court's finding that no such cause of action for hostile living environment exists in Ohio.

APPEARANCES:

JIM PETRO, Attorney General, DAVID A. OPPENHEIMER, and SHARON D. TASSIE, Assistant Attorney Generals, for appellants.

ANDREW L. MARGOLIUS, Attorney at Law, for appellants.

MICHELE MORRIS, Attorney at Law, for appellees.

RICHARD A. GREEN, Attorney at Law, for appellees.

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COURT OF APPEALS
DANIEL M. HORRIGAN

2007 FEB 16 AM 8: 19

SUMMIT COUNTY
CLERK OF COURTS

IN THE SUPREME COURT OF OHIO

AKRON METROPOLITAN HOUSING AUTHORITY, et al.,	)	On Appeal from the Summit County Court of Appeals, Ninth Appellate District
Appellants,	)	
v.	)	Court of Appeals Consolidated Case Nos. 23056 and 23060
OHIO CIVIL RIGHTS COMMISSION, et al.,	)	
Appellees.	)	07 - 0254

NOTICE OF APPEAL OF APPELLANTS AKRON METROPOLITAN HOUSING AUTHORITY AND JUNE DAVIDSON

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FILED
FEB 09 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

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Notice of Appeal of Appellants Akron Metropolitan Housing Authority and June Davidson

Appellants, Akron Metropolitan Housing Authority and June Davidson, hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Summit County Court of Appeals, Ninth Appellate District, entered in the Court of Appeals Consolidated Case Nos. 23056 and 23060, on December 29, 2006.

This case presents legal issues of public or great general interest and involves a substantial constitutional question.

Respectfully submitted,

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Counsel for Appellants

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Notice of Appeal has been sent by regular, U.S. mail this 8th day of February, 2007, to:

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Michele Morris
Counsel for Appellants

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XLI. LABOR AND INDUSTRY
CHAPTER 4112. CIVIL RIGHTS COMMISSION
GENERAL PROVISIONS

4112.02 Unlawful discriminatory practices

It shall be an unlawful discriminatory practice:

(A) For any employer, because of the race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(B) For an employment agency or personnel placement service, because of race, color, religion, sex, national origin, disability, age, or ancestry, to do any of the following:

(1) Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person;

(2) Comply with a request from an employer for referral of applicants for employment if the request directly or indirectly indicates that the employer fails to comply with the provisions of sections 4112.01 to 4112.07 of the Revised Code.

(C) For any labor organization to do any of the following:

(1) Limit or classify its membership on the basis of race, color, religion, sex, national origin, disability, age, or ancestry;

(2) Discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any person as an employee because of race, color, religion, sex, national origin, disability, age, or ancestry.

(D) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of race, color, religion, sex, national origin, disability, or ancestry in admission to, or employment in, any program established to provide apprentice training.

(E) Except where based on a bona fide occupational qualification certified in advance by the commission, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to do any of the following:

(1) Elicit or attempt to elicit any information concerning the race, color, religion, sex, national origin, disability, age,

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or ancestry of an applicant for employment or membership;

(2) Make or keep a record of the race, color, religion, sex, national origin, disability, age, or ancestry of any applicant for employment or membership;

(3) Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding race, color, religion, sex, national origin, disability, age, or ancestry; but an employer holding a contract containing a nondiscrimination clause with the government of the United States, or any department or agency of that government, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain that proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes;

(4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination, based upon race, color, religion, sex, national origin, disability, age, or ancestry;

(5) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race, color, religion, sex, national origin, disability, age, or ancestry of that group;

(6) Utilize in the recruitment or hiring of persons any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source known to discriminate against persons because of their race, color, religion, sex, national origin, disability, age, or ancestry.

(F) For any person seeking employment to publish or cause to be published any advertisement that specifies or in any manner indicates that person's race, color, religion, sex, national origin, disability, age, or ancestry, or expresses a limitation or preference as to the race, color, religion, sex, national origin, disability, age, or ancestry of any prospective employer.

(G) For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of race, color, religion, sex, national origin, disability, age, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

(H) For any person to do any of the following:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin;

(2) Represent to any person that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, because of race, color, religion, sex, familial status, ancestry, disability, or national origin;

(3) Discriminate against any person in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any person in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of race, color, religion, sex, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located, provided that the person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects or incident to the person's principal business and not only as a part of the purchase price of an owner-occupied residence the person is selling nor merely casually or occasionally to a relative or friend;

(4) Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or

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homeowners insurance, because of race, color, religion, sex, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located;

(5) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located;

(6) Refuse to consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit to a married couple or either member of a married couple;

(7) Print, publish, or circulate any statement or advertisement, or make or cause to be made any statement or advertisement, relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations, or relating to the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, that indicates any preference, limitation, specification, or discrimination based upon race, color, religion, sex, familial status, ancestry, disability, or national origin, or an intention to make any such preference, limitation, specification, or discrimination;

(8) Except as otherwise provided in division (H)(8) or (17) of this section, make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning race, color, religion, sex, familial status, ancestry, disability, or national origin in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations. Any person may make inquiries, and make and keep records, concerning race, color, religion, sex, familial status, ancestry, disability, or national origin for the purpose of monitoring compliance with this chapter.

(9) Include in any transfer, rental, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant;

(10) Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the racial, religious, sexual, familial status, or ethnic composition of the block, neighborhood, or other area in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of persons of any race, color, religion, sex, familial status, ancestry, disability, or national origin, in the block, neighborhood, or other area will or may have results including, but not limited to, the following:

(a) The lowering of property values;

(b) A change in the racial, religious, sexual, familial status, or ethnic composition of the block, neighborhood, or other area;

(c) An increase in criminal or antisocial behavior in the block, neighborhood, or other area;

(d) A decline in the quality of the schools serving the block, neighborhood, or other area.

(11) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any person in the terms or conditions of that access, membership, or participation, on account of race, color, religion, sex, familial status, national origin, disability, or ancestry;

(12) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by division (H) of this section;

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(13) Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change with respect to its religious, racial, sexual, familial status, or ethnic composition;

(14) Refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any person because of the race, color, sex, familial status, age, ancestry, disability, or national origin of any prospective owner or user of the lot;

(15) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of a disability of any of the following:

(a) The buyer or renter;

(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the person described in division (H)(15)(b) of this section.

(16) Discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any person or in the provision of services or facilities to any person in connection with the housing accommodations because of a disability of any of the following:

(a) That person;

(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the person described in division (H)(16)(b) of this section.

(17) Except as otherwise provided in division (H)(17) of this section, make an inquiry to determine whether an applicant for the sale or rental of housing accommodations, a person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with that person has a disability, or make an inquiry to determine the nature or severity of a disability of the applicant or such a person or individual. The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of whether they have disabilities:

(a) An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) An inquiry to determine whether an applicant is qualified for housing accommodations available only to persons with disabilities or persons with a particular type of disability;

(c) An inquiry to determine whether an applicant is qualified for a priority available to persons with disabilities or persons with a particular type of disability;

(d) An inquiry to determine whether an applicant currently uses a controlled substance in violation of section 2925.11 of the Revised Code or a substantively comparable municipal ordinance;

(e) An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.

(18)(a) Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the person with a disability, if the modifications may be necessary to afford the person with a disability full enjoyment of the housing accommodations. This division does

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not preclude a landlord of housing accommodations that are rented or to be rented to a disabled tenant from conditioning permission for a proposed modification upon the disabled tenant's doing one or more of the following:

(i) Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a workerlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;

(ii) Agreeing to restore at the end of the tenancy the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if it is reasonable for the landlord to condition permission for the proposed modification upon the agreement;

(iii) Paying into an interest-bearing escrow account that is in the landlord's name, over a reasonable period of time, a reasonable amount of money not to exceed the projected costs at the end of the tenancy of the restoration of the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if the landlord finds the account reasonably necessary to ensure the availability of funds for the restoration work. The interest earned in connection with an escrow account described in this division shall accrue to the benefit of the disabled tenant who makes payments into the account.

(b) A landlord shall not condition permission for a proposed modification upon a disabled tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;

(20) Fail to comply with the standards and rules adopted under division (A) of section 3781.111 of the Revised Code;

(21) Discriminate against any person in the selling, brokering, or appraising of real property because of race, color, religion, sex, familial status, ancestry, disability, or national origin;

(22) Fail to design and construct covered multifamily dwellings for first occupancy on or after June 30, 1992, in accordance with the following conditions:

(a) The dwellings shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.

(b) With respect to dwellings that have a building entrance on an accessible route, all of the following apply:

(i) The public use areas and common use areas of the dwellings shall be readily accessible to and usable by persons with a disability.

(ii) All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by persons with a disability who are in wheelchairs.

(iii) All premises within covered multifamily dwelling units shall contain an accessible route into and through the dwelling; all light switches, electrical outlets, thermostats, and other environmental controls within such units shall be in accessible locations; the bathroom walls within such units shall contain reinforcements to allow later installation of grab bars; and the kitchens and bathrooms within such units shall be designed and constructed in a manner that enables an individual in a wheelchair to maneuver about such rooms.

For purposes of division (H)(22) of this section, "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

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(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

(J) For any person to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, to obstruct or prevent any person from complying with this chapter or any order issued under it, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful discriminatory practice.

(K)(1) Nothing in division (H) of this section shall bar any religious or denominational institution or organization, or any nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with a religious organization, from limiting the sale, rental, or occupancy of housing accommodations that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference in the sale, rental, or occupancy of such housing accommodations to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin.

(2) Nothing in division (H) of this section shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(3) Nothing in division (H) of this section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations. Nothing in that division prohibits the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(4) Nothing in division (H) of this section requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(5) Nothing in division (H) of this section pertaining to discrimination on the basis of familial status shall be construed to apply to any of the following:

(a) Housing accommodations provided under any state or federal program that have been determined under the "Fair Housing Amendments Act of 1988," 102 Stat. 1623, 42 U.S.C.A. 3607, as amended, to be specifically designed and operated to assist elderly persons;

(b) Housing accommodations intended for and solely occupied by persons who are sixty-two years of age or older;

(c) Housing accommodations intended and operated for occupancy by at least one person who is fifty-five years of age or older per unit, as determined under the "Fair Housing Amendments Act of 1988," 102 Stat. 1623, 42 U.S.C.A. 3607, as amended.

(L) Nothing in divisions (A) to (E) of this section shall be construed to require a person with a disability to be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the person with a disability, other employees, the general public, or the facilities in which the work is to be performed, or to require the employment or training of a person with a disability in a job that requires the person with a disability routinely to undertake any task, the performance of which is substantially and inherently impaired by the person's disability.

(M) Nothing in divisions (H)(1) to (18) of this section shall be construed to require any person selling or renting

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property to modify the property in any way or to exercise a higher degree of care for a person with a disability, to relieve any person with a disability of any obligation generally imposed on all persons regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.

(N) An aggrieved individual may enforce the individual's rights relative to discrimination on the basis of age as provided for in this section by instituting a civil action, within one hundred eighty days after the alleged unlawful discriminatory practice occurred, in any court with jurisdiction for any legal or equitable relief that will effectuate the individual's rights.

A person who files a civil action under this division is barred, with respect to the practices complained of, from instituting a civil action under section 4112.14 of the Revised Code and from filing a charge with the commission under section 4112.05 of the Revised Code.

(O) With regard to age, it shall not be an unlawful discriminatory practice and it shall not constitute a violation of division (A) of section 4112.14 of the Revised Code for any employer, employment agency, joint labor-management committee controlling apprenticeship training programs, or labor organization to do any of the following:

(1) Establish bona fide employment qualifications reasonably related to the particular business or occupation that may include standards for skill, aptitude, physical capability, intelligence, education, maturation, and experience;

(2) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, including, but not limited to, a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this section. However, no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual, because of the individual's age except as provided for in the "Age Discrimination in Employment Act Amendment of 1978," 92 Stat. 189, 29 U.S.C.A. 623, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 623, as amended.

(3) Retire an employee who has attained sixty-five years of age who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equals, in the aggregate, at least forty-four thousand dollars, in accordance with the conditions of the "Age Discrimination in Employment Act Amendment of 1978," 92 Stat. 189, 29 U.S.C.A. 631, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 631, as amended;

(4) Observe the terms of any bona fide apprenticeship program if the program is registered with the Ohio apprenticeship council pursuant to sections 4139.01 to 4139.06 of the Revised Code and is approved by the federal committee on apprenticeship of the United States department of labor.

(P) Nothing in this chapter prohibiting age discrimination and nothing in division (A) of section 4112.14 of the Revised Code shall be construed to prohibit the following:

(1) The designation of uniform age the attainment of which is necessary for public employees to receive pension or other retirement benefits pursuant to Chapter 145., 742., 3307., 3309., or 5505. of the Revised Code;

(2) The mandatory retirement of uniformed patrol officers of the state highway patrol as provided in section 5505.16 of the Revised Code;

(3) The maximum age requirements for appointment as a patrol officer in the state highway patrol established by section 5503.01 of the Revised Code;

(4) The maximum age requirements established for original appointment to a police department or fire department in sections 124.41 and 124.42 of the Revised Code;

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(5) Any maximum age not in conflict with federal law that may be established by a municipal charter, municipal ordinance, or resolution of a board of township trustees for original appointment as a police officer or firefighter;

(6) Any mandatory retirement provision not in conflict with federal law of a municipal charter, municipal ordinance, or resolution of a board of township trustees pertaining to police officers and firefighters;

(7) Until January 1, 1994, the mandatory retirement of any employee who has attained seventy years of age and who is serving under a contract of unlimited tenure, or similar arrangement providing for unlimited tenure, at an institution of higher education as defined in the "Education Amendments of 1980," 94 Stat. 1503, 20 U.S.C.A. 1141(a).

(Q)(1)(a) Except as provided in division (Q)(1)(b) of this section, for purposes of divisions (A) to (E) of this section, a disability does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other person, if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.

(b) Division (Q)(1)(a) of this section does not apply to an employee, applicant, or other person who satisfies any of the following:

(i) The employee, applicant, or other person has successfully completed a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance, or the employee, applicant, or other person otherwise successfully has been rehabilitated and no longer is engaging in that illegal use.

(ii) The employee, applicant, or other person is participating in a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance.

(iii) The employee, applicant, or other person is erroneously regarded as engaging in the illegal use of any controlled substance, but the employee, applicant, or other person is not engaging in that illegal use.

(2) Divisions (A) to (E) of this section do not prohibit an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee from doing any of the following:

(a) Adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual described in division (Q)(1)(b)(i) or (ii) of this section no longer is engaging in the illegal use of any controlled substance;

(b) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees;

(c) Requiring that employees not be under the influence of alcohol or not be engaged in the illegal use of any controlled substance at the workplace;

(d) Requiring that employees behave in conformance with the requirements established under "The Drug-Free Workplace Act of 1988," 102 Stat. 4304, 41 U.S.C.A. 701, as amended;

(e) Holding an employee who engages in the illegal use of any controlled substance or who is an alcoholic to the same qualification standards for employment or job performance, and the same behavior, to which the employer, employment agency, personnel placement service, labor organization, or joint labor-management committee holds other employees, even if any unsatisfactory performance or behavior is related to an employee's illegal use of a controlled substance or alcoholism;

(f) Exercising other authority recognized in the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101, as amended, including, but not limited to, requiring employees to comply with any applicable federal standards.

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(3) For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination.

(4) Division (Q) of this section does not encourage, prohibit, or authorize, and shall not be construed as encouraging, prohibiting, or authorizing, the conduct of testing for the illegal use of any controlled substance by employees, applicants, or other persons, or the making of employment decisions based on the results of that type of testing.

[FN1] See Notes of Decisions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

Current through 2007 File 9, and 12 to 14 of the 127th GA (2007-2008), apv. by 6/30/07, and filed with the Secretary of State by 6/30/07.

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Effective: [See Text Amendments]

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER I--GENERALLY

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in

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his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Current through P.L. 110-46 (excluding P.L. 110-42 & 110-44)
approved 07-05-07

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C

Effective: [See Text Amendments]

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 45--FAIR HOUSING
SUBCHAPTER I--GENERALLY

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Current through P.L. 110-46 (excluding P.L. 110-42 & 110-44)
approved 07-05-07

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C

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
ANNOTATED
AMENDMENT I--FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<This amendment is further displayed in three separate documents according to subject matter>

<see USCA Const Amend. I, Religion>

<see USCA Const Amend. I, Speech>

<see USCA Const Amend. I, Assemblage>

Current through P.L. 110-47 approved 07-13-07

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C

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
ANNOTATED
AMENDMENT IV–SEARCHES AND SEIZURES

Amendment IV. Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Current through P.L. 110-46 (excluding P.L. 110-42 & 110-44)
approved 07-05-07

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UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
ANNOTATED
AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

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U.S.C.A. Const. Amend. XIV-Full Text

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

Current through P.L. 110-46 (excluding P.L. 110-42 & 110-44)
approved 07-05-07

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