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THE TRIAL COURT
COMMONWEALTH OF MASSACHUSETTS

Hampden, ss

No. 91-CV-0106

Hampden Division

Housing Court Department

PORTIA ANDREWS,
Plaintiff

v.

SPRINGFIELD HOUSING AUTHORITY,
Defendant

RULINGS AND ORDER ON PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

1. In its findings, rulings, and order for entry of judgment dated February 18, 1992, the court found and ruled that the defendant Springfield Housing Authority (SHA) violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1988) (Section 504) and the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (1988) (FHAA) when it refused the plaintiff's (Tenant's) request to use her chapter 707 housing subsidy in the Town of Ware. The court found and ruled that the Tenant, a recovering drug addict, was handicapped within the meaning of both statutes, and that her request that she be permitted to use her housing subsidy in Ware in order to help her remain drug free was a request for a reasonable accommodation that the statutes required the SHA to make.

2. The court further found and ruled that the Tenant had not proved that she had incurred actual damages as a result of the SHA's conduct, or that she was entitled to punitive damages against the SHA. The Tenant does not challenge the court's

findings and rulings with respect to actual damages. Through this motion, she seeks an award of nominal damages, punitive damages, and declaratory or injunctive relief beyond that requested in the original complaint. These points will be considered in order below.

3. Nominal Damages. The Tenant has not previously argued that she is entitled to nominal damages as a result of the violations proved against the SHA. This request, however, is properly before the court on motion pursuant to Mass.R.Civ.P. 59(e). Where discriminatory conduct in violation of the Fair Housing Act has been proved but, as here, the evidence in support of compensatory damages is "speculative and unconvincing," the federal courts nevertheless permit aggrieved parties to recover $1.00 in damages, whether characterized as "minimal compensatory damages," Marr v. Rife, 545 F.2d 554 (6th Cir. 1976), or as "nominal damages," Fort v. White, 530 F.2d 1113 (2d Cir. 1976). Given that an actual and substantial violation has been proved in this case, a similar result under the FHAA as under the earlier portions of the Fair Housing Act is appropriate. The Tenant thus is to be allowed nominal damages of $1.00.

4. Punitive Damages. In support of this motion, the Tenant cites authorities in addition to those upon which she originally relied. Measuring the facts proved against the standard those authorities articulate, I conclude that my original ruling relative to punitive damages should be

reconsidered. That ruling states that to obtain punitive damages the plaintiff would have to prove an intentional act of discrimination (not alleged here), or that the SHA or its supervisors knew that discriminatory practices were carried on, that it failed to take reasonable steps to correct those violations, and that such failure was callous and wanton. I reasoned that since it was not shown that the SHA or its supervisors knew that discriminatory practices were being carried on, punitive damages were not appropriate.[1]

5. This is not the correct standard for the imposition of punitive or exemplary damages under the FHAA. Under 42 U.S.C. § 1983, punitive damages may be imposed when the defendant's conduct "involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 103 S.Ct. 1625 (1983). The federal courts have adopted this standard under the Fair Housing Act. Asbury v. Brougham, 866 F.2d 1276 (10th Cir. 1989) (citing Smith v. Wade, supra).

6. Thus, to obtain punitive damages it was not necessary for the Tenant to prove that responsible officials in the SHA actually knew that discriminatory practices were carried on. In Smith v. Wade, supra, it was sufficient for the court to find that the defendant, a prison guard who placed the

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[1] As the Tenant observes, the court's original decision referred to the "failure to train" line of cases under 42 U.S.C. § 1983, because evidence of the failure of the SHA to train its staff in the anti-discrimination laws suggested this analogy. The original decision, however, did not rest on this standard, but rather on the standard set forth above and contained in ¶ 34 of the original decision.

plaintiff in a cell in which he was assaulted by other inmate knew or should have known that an assault against him was likely under the circumstances. In this case, the Tenant may obtain punitive damages by showing reckless or callous indifference to her federally protected rights if she has shown that responsible SHA officials knew or should have known that unlawful discrimination against those with handicaps was probable under the circumstances that it created or permitted to exist.[2]

7. The subsidiary findings of the court are sufficient to satisfy this standard. Section 504 has been the law of the land, applicable to all SHA programs because the SHA receives

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[2] This formulation is entirely consistent with the common law of Massachusetts concerning "reckless" conduct. In Commonwealth v. Welansky, 316 Mass. 383, 55 N.E.2d 902 (1944), Justice Lummus articulated the standard for recklessness that has often been cited: usually, wanton or reckless conduct consists of affirmative acts in disregard of the probable harmful consequences to another. But where there is a duty of care for the safety of others, "wanton or reckless conduct may consist of intentional failure to take such care in disregard of the probable harmful consequences to them or of their right to care." Id. at 397, 55 N.E.2d at 909.

The Welansky court recognized that intent to cause harm is not an element of recklessness. "What must be intended is the conduct, not the resulting harm." Id. at 398, 55 N.E.2d at 910. The standard is "at once subjective and objective." If the danger to another is in fact realized by the defendant, his subsequent voluntary act or omission which caused the harm is wanton or reckless, even if a person of ordinary prudence would not have realized the danger. "'But even if a particular defendant is so stupid or so heedless. . . that in fact he did not realize the grave danger, he cannot escape the imputation of wanton or reckless conduct in his dangerous act or omission, if an ordinary normal man under the same circumstances would have realized the gravity of the danger. A man may be reckless within the meaning of the law although he himself thought he was careful.'" Id. at 398-99, 55 N.E.2d at 910 (citations omitted).

substantial federal funds, since 1973. The FHAA had been in effect for approximately three years before the events in this case occurred. Numerous court decisions and detailed federal regulations have added flesh to the statutes. Nevertheless, no official at the SHA has received any training in this area of the law.[3] As I originally observed, the failure to train, without more, might perhaps be characterized as negligent rather than reckless -- although it does seem to fall under a dictionary definition of "callous," which is "hardened in sensibility; unfeeling." But more is involved here than the failure to provide training to certain employees.

8. While federal law has for more than fifteen years required the SHA to designate an individual to coordinate its efforts to comply with Section 504, no such individual had ever been designated down to the time of trial. No internal standards or protocols exist within the SHA to guide its staff

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[3] Although not a matter of evidence, I have no reason to question the SHA's representation that in the past, as in the current year, it has sought -- so far unsuccessfully -- federal funds through the CIAP (modernization) program for staff training in the requirements of the anti-discrimination laws. This representation is a two-edged sword, indicating as it does awareness on the part of the SHA for such training. Although CIAP is probably a good source for training funds, the unavailability of CIAP money does not excuse the total lack of any staff training over a period of more than fifteen years. In addition to in-house resources, training may well be available in this area of the law at minimal cost or at no cost from HUD, EOCD, the office of the Attorney General, and from local organizations such as the Center for Public Representation (a widely respected mental health law office located in the nearby City of Northampton), the Mental Health Legal Advisors' Committee, and, indeed, from Western Massachusetts Legal Services itself, whose staff have considerable expertise in disability law.

in discharging its legal obligations under Section 504 and the FHAA. If the SHA has ever evaluated its policies with respect to anti-discrimination law, this evaluation was unknown to the Rental Assistance Director, who, apart from physically accessible units, has never made a reasonable accommodation to an applicant for one of her 2,500 subsidized rental units. See 24 C.R.R. § 8.51, requiring agencies such as the SHA to undertake compliance self-evaluations. Thus, no SHA staff person had any understanding of the law or of his or her duties under it, even to the point of failing to understand that federal law applied to the SHA in the operation of its large state programs. Certainly the people making the decisions had no understanding of the law of reasonable accommodation to those with mental handicaps or to those who are handicapped by reason of substance addiction. This lack of knowledge began with the Assistant Executive Director for Management and extended through all levels of the SHA staff, both those on the front lines and those making the ultimate decisions.

9. Taken in its totality, the failure over a long period of time to take any steps to create and monitor policies and standards for implementing the law, or to insure that responsible staff had even a rudimentary knowledge of their duties under the anti-discrimination laws, amounts to reckless or callous indifference to the federally protected rights of those with handicaps. The SHA knew or should have known that under these circumstances violation of the federally protected

rights of applicants such as the Tenant herein was highly probable if not virtually assured, because it is inconceivable that many of these applicants have not been handicapped within the meaning of federal law. The Rental Assistance Director, indeed, testified that the SHA regularly deals with many people struggling with substance abuse problems, to name only one category of non-physical handicap. See Germany v. Vance, 868 F.2d 9 (1st Cir. 1989) (official displays reckless or callous indifference when it would be manifest to any reasonable official that his conduct was very likely to violate an individual's constitutional [here statutory] rights).

10. As the Smith v. Wade court noted, "punitive damages are never awarded as of right, no matter how egregious the defendant's conduct." Id., 103 S.Ct. at 1638. They are discretionary once the underlying facts are found. The purpose of punitive or exemplary damages is to punish the wrongdoer and to deter future unlawful conduct. Id.; Restatement (Second) of Torts § 908(1) (1979).

11. While based upon the considerations set forth above I believe that some punitive damages award is appropriate, the Tenant's suggestion of $150,000 goes far beyond what is reasonable on the facts of this case. While the large size of the SHA's operation is clear, one cannot evaluate a public housing authority in the same manner as a private landlord. Anyone familiar with publicly funded housing will recognize that while the assets and the budget may be large, public

housing authorities nevertheless typically operate on a shoestring, often to the detriment of services that are important to tenants.

12. Further, I believe that the Tenant's analysis relative to punitive damages overlooks a crucial distinction: while the totality of the SHA's conduct over many years contributes to a finding and ruling that the SHA is appropriately liable for punitive damages, those damages are awarded based only upon the specific conduct involved in this case. After review of the authorities cited by the parties, with special note of the recent case of <u>HUD v. Dedham Housing Authority</u>, HUDALJ 01-90-0424-1 (decision 2/4/92), I conclude that punitive damages of $5,000 will serve the purposes of punishment, example, and deterrence, without unnecessarily incurring the risk of affecting services provided to tenants.

13. <u>Declaratory and Injunctive Relief</u>. Even if this case is a proper vehicle for the broad injunctive and declaratory relief that the Tenant now requests (particularly where such a request has not even been raised by the pleadings or suggested prior to the instant motion), the SHA has represented that it will undertake training and implementation consistent with this court's decision and that it will share its plans and proposals with counsel for the Tenant. Under these circumstances, I do not believe that the requested injunctive or declaratory relief is appropriate at this time. I request, however, that copies of the orders in this case be furnished to all SHA staff who

may have initial or ultimate responsibility for decisions involving tenants or applicants with handicaps.

14. For the above reasons, the plaintiff's motion to alter or amend the judgment is allowed in part and denied in part, as stated above. An amended judgment is to enter for the plaintiff for $5,001.

So entered this 3rd day of April, 1992.

William H. Abrashkin
William H. Abrashkin
First Justice

THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss

No. 91-CV-0106

Hampden Division

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PORTIA ANDREWS
Plaintiff

VS.

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Defendant

ENTRY OF AMENDED JUDGMENT

This action came on for hearing before the court, William H. Abrashkin, Justice, presiding, and the issues having been duly heard and findings having been duly rendered, it is hereby ORDERED and ADJUDGED UNDER Rule 58, M.R.C.P.:

Amended Judgment entered for the Plaintiff for $5001.00.

Judgment entered at 10:30 A.M. On" April 4, 1992

JERROLD B. WINER
CLERK/MAGISTRATE