UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of Clyde Moorer, Charging party, v. Luz Kolgjeraj and Marjie Kolgjeraj, Respondents.	HUDALJ 05-93-0761-1 Decided: April 27, 1995

Mark S. Johnson, Esquire
For the Respondents

Michael Kalven, Esquire
For the Secretary

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed by Clyde Moorer ("Complainant") alleging that Luz Kolgjeraj and Marie Kolgjeraj ("Respondents") violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (sometimes "the Act"), by refusing to rent or negotiate to rent an apartment to Complainant because of his race or color and by telling Complainant that an apartment was unavailable when it was in fact available for rent. The Department of Housing and Urban Development ("HUD" or "the Secretary") investigated the complaint, and after deciding that there was reasonable cause to believe that discriminatory acts had taken place, issued a Charge of Discrimination against Respondents on June 27, 1994. The Charge alleges that Respondents engaged in housing discrimination on the basis of race or color in violation of sections 804(a) and (d) of the

Act (42 U.S.C. §§ 3604(a) and (d)), and sections 100.60 and 100.80 of the regulations (24 C.F.R. §§ 100.60 and 100.80).

After Respondents filed an Answer to the Charge, an oral hearing was held on January 10, 1995, in Detroit, Michigan. The hearing had originally been scheduled for October 18, 1994, but was twice postponed upon joint motion of the parties. At the close of the hearing, the parties were ordered to file proposed findings of fact, conclusions of law, and briefs in support thereof. The last brief was received on March 2, 1995.

Findings of Fact

1. Complainant is a black Afro-American. Stipulation ("Stip.") 8.

2. Respondents are husband and wife. They are natives of Albania and speak English with a heavy accent. They own a four-unit residential rental property located at 2637-2639 Casmere, Hamtramck, Michigan. TR. 58, 66-67.[1]

3. On July 22, 1992, at about 2:00 p.m., Complainant telephoned Respondents' home in response to an advertisement for an apartment for rent that had appeared in a local newspaper, the *Hamtramck Citizen.* A woman with a heavy accent who did not identify herself answered the telephone, said that the apartment was still available and invited Complainant to view it that afternoon. Complainant declined the invitation because he had to go to work, but requested to see the apartment the next day at 2:00 p.m. She assented. TR. 36-37, 58, 65.

4. Shortly before 2:00 p.m. on July 23, 1992, Complainant called Respondents' home a second time to confirm that he could see the apartment that had been advertised. The same woman again answered the telephone and told Complainant that someone would be at the building to show him the apartment at that time. TR. 38.

5. When Complainant arrived at Respondents' building at 2637-2639 Casmere, he could hear people talking in the lower front unit. He knocked on the open door, through which came the smell of paint, but no one answered, so he stepped in and saw two men standing together and talking. When they noticed him, Complainant introduced himself and said he was there to see the apartment that had been advertised in the *Hamtramck Citizen.* With a little snicker, one of the men then told Complainant that it had been rented 20 minutes earlier. As Complainant turned to leave, both men burst out laughing.

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[1]The following reference abbreviations are used in this decision: "TR." for "Transcript," and "SX." for "Secretary's exhibit."

Complainant did not ask either man to identify himself. The entire incident took approximately two minutes. TR. 39-40, 54.

6. Upon returning home, Complainant again telephoned Respondents' home, spoke to the same woman he had spoken to before, and asked whether the apartment that had been advertised in the *Hamtramck Citizen* was still available for rent. She said it was. Complainant did not ask the woman to explain the discrepancy between what he had been told at the building on Casmere and her assertion that the apartment remained available for rent. TR. 41-42.

7. Believing that he had been discriminated against, Complainant filed a complaint with the Fair Housing Center of Metropolitan Detroit on the same day the incident occurred. In his complaint, Complainant described the man who told him the apartment had been rented as 55 to 60 years old, six feet tall, heavy set, 205 pounds, with a gold tooth. SX. C.

8. On the next day, July 24, 1992, a white tester with the Fair Housing Center, Bradley Hoth, went to Respondents' building at 2:00 p.m. pursuant to an appointment that had been made the evening before by telephone. Mr. Kolgjeraj arrived shortly thereafter and offered to rent the second floor rear apartment to the tester. Mr. Hoth described Mr. Kolgjeraj as 50 years old, five feet six inches tall, 140 pounds, with two gold teeth. SX. F.

9. When Complainant was falsely told that Respondents' apartment had been rented, he was standing in the first floor front apartment of Respondents' building. That apartment had been rented on or about July 18, 1992, to Afrim Kusari. Mr. Kusari testified that the apartment had been painted before he moved in on July 25, 1992, but that he did not know who painted it or when. He smelled no paint when he moved in. Mr. Kusari was not one of the two men to whom Complainant spoke on July 23, 1992. TR. 86-89.

10. Mr. Kolgjeraj is five feet six inches tall, weighs approximately 160 pounds, and has two gold teeth. Stip. 5.

Subsidiary Findings and Discussion

The Congress passed the Fair Housing Act to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. Parma,* 494 F. Supp. 1049, 1053 (N.D. Ohio 1980), *rev'd on other grounds,* 661 F.2d 562 (6th Cir. 1981), *cert.*

denied, 456 U.S. 926 (1982). *See also United States v. City of Black Jack,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975); *cf. Griggs v. Duke Power Co.,* 401 U.S. 424 (1971). The Act was designed to prohibit "all forms of discrimination [even the] simple-minded." *Williams v. Matthews Co.,* 499 F.2d 819, 826 (8th Cir. 1974), *cert. denied,* 419 U.S. 1021, 1027 (1974).

The Act makes it unlawful, *inter alia:*

> (a) To refuse to ... rent ... or to refuse to negotiate for ... rental of, or otherwise make unavailable or deny, a dwelling to any person because of race [or] color ....
>
> * * *
>
> (d) To represent to any person because of race [or] color ... that any dwelling is not available for inspection ... or rental when such dwelling is in fact so available.

42 U.S.C. §§ 3604(a) and (d); *see also* 24 C.F.R. §§ 100.60 and 100.80.

In order to establish a prima facie case under 42 U.S.C. § 3604, the Charging Party must show that: (1) Complainant is a member of a protected class under the Act; (2) Respondents were aware of that fact; (3) Complainant was ready and able to accept Respondents' offer to rent; and (4) Respondents refused to deal with him. *Hamilton v. Svatik,* 779 F.2d 383, 387 (7th Cir. 1985). The Charging Party has satisfied elements (1) and (3), but not elements (2) and (4), because the record falls short of proving that Mr. Kolgjeraj was the man who falsely told Complainant that the apartment had been rented. Complainant testified on cross-examination at pages 49-50 of the transcript as follows:

> Q. You can't honestly sit here and tell this court that Mr. Kolgjeraj is the individual you spoke to, can you?
>
> A. No, sir, I cannot.
>
> Q. You can't identify this person you spoke with that day, can you?
>
> A. No, sir.
>
> Q. You don't have any information that the person that you spoke with had any authority to speak on behalf of Mr. Kolgjeraj, do you?
>
> A. Repeat that again, sir.

> Q. You don't have any information that the person you may have spoken with had any authority from Mr. Kolgjeraj to speak on his behalf, regarding the apartment, do you?
>
> A. No, sir.
>
> Q. Since you can't identify Mr. Kolgjeraj as the person you spoke with or the person that you spoke with as an agent of Mr. Kolgjeraj, you have no evidence that Mr. Kolgjeraj discriminated against you, do you?
>
> A. No, sir.

The Charging Party not only ignores this testimony on brief, but misrepresents the record by arguing that "Complainant testified that he thinks it was Luz Kolgjeraj who spoke to him at the Building. (T:49)" Brief, p. 17. Complainant did not testify at page 49 of the transcript or anywhere else that "he thinks" Mr. Kolgjeraj was the man who spoke to him at Respondents' building.

Despite this evidence, the Charging Party argues that Mr. Kolgjeraj must be the culprit because: (1) Mrs. Kolgjeraj told Complainant that someone would be at Respondents' building to meet him when he got there, and Mr. Kolgjeraj was the only person who showed apartments to prospective tenants; (2) Mr. Kolgjeraj lied when he said he was not at the building at 2:00 p.m. on July 23 and July 24, 1992; (3) Only Mr. Kolgjeraj and Mr. Kusari had keys to the apartment where the incident occurred; (4) When Mr. Kolgjeraj spoke to Complainant on July 23, 1992, he was wearing painters' coveralls which made him appear larger than he is; and (5) There are "striking similarities" between Complainant's description of the man who spoke to him and the tester's description of Mr. Kolgjeraj. These arguments have no merit.

Complainant was not shown the apartment that was for rent, the upstairs rear apartment. The incident occurred in the first floor front apartment, Mr. Kusari's apartment, and Mrs. Kolgjeraj did not tell Complainant to go to the first floor front apartment to find the person who would show him the apartment that was for rent. Furthermore, although I find incredible Mr. Kolgjeraj's claim that he could not have been at his apartment building at 2:00 p.m. on July 23, 1992, it does not necessarily follow that it was Mr. Kolgjeraj who falsely told Complainant at that time on July 23 that Respondents' apartment was no longer available for rent.[2] The fact that Mr. Kolgjeraj

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[2]Mr. Kolgjeraj claimed that he could not have been at his apartment building at 2:00 p.m. on either July 23 or July 24 because he was miles away at work at that time. TR. 66. I do not find that claim

was less than a fully credible witness does not discharge the Charging Party's burden to prove each of the four elements of a prima facie case by a preponderance of the evidence.

That only Mr. Kolgjeraj and Mr. Kusari had keys to Mr. Kusari's apartment is at best inconclusive evidence against Mr. Kolgjeraj. The two men whom Complainant encountered could have been Mr. Kolgjeraj and an unknown person, or painters, or repairmen, or maintenance workers, or neighbors of Mr. Kusari, or friends of either Mr. Kolgjeraj or Mr. Kusari, or simply trespassers who got in through a door inadvertently left unlocked. The record permits nothing more than this sort of speculation, and it is the burden of the Charging Party, not Respondents, to establish the identity of the man who spoke to Complainant.

The tester from the Detroit Fair Housing Center described Mr. Kolgjeraj as a man 65 pounds lighter, 5 to 10 years younger, and half a foot shorter than the man Complainant described in his complaint to the Detroit Fair Housing Center. Contrary to the Charging Party's argument, the two descriptions are strikingly *dissimilar.* Millions of people have gold teeth. That both men were described as having gold teeth does not suffice to identify Mr. Kolgjeraj as the malefactor in this case.[3]

Finally, there is too much difference between the two descriptions to credit the argument that Complainant described a much larger man because the man he saw was wearing white coveralls whereas Mr. Kolgjeraj apparently was not wearing white coveralls when he met the tester the next day. The inescapable fact remains that Complainant could not identify Mr. Kolgjeraj as the man who spoke to him in Mr. Kusari's apartment on July 23, 1992. Accordingly, the Charging Party has not proved a prima facie case, and the Charge of Discrimination must be dismissed. It is so ORDERED.

THOMAS C. HEINZ
Administrative Law Judge

Dated: April 27, 1995.

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credible because I credit the tester's identification of Mr. Kolgjeraj as the man who offered the upstairs rear apartment for rent at about 2:00 p.m. on July 24, 1992. Since Mr. Kolgjeraj was at the building at 2:00 p.m. on July 24, 1992, he could also have been at the building at 2:00 p.m. on July 23, 1992.

[3]In his complaint filed with the Detroit Fair Housing Center, Complainant stated that the man who spoke to him on July 23 had one "gold tooth." SX. C. The tester's report accurately states that Mr. Kolgjeraj has "2 gold teeth." SX. F., Stip. 5.

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by THOMAS C. HEINZ, Administrative Law Judge, in HUDALJ 05-93-0761-1, were sent to the following parties on this 27th day of April, 1995, in the manner indicated:

_____
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