



STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. HG19RT-62233  
HUD NO. 02-11-0447-8

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CHARLES LAWSON, AND THE  
DIRECTOR OF THE NEW JERSEY  
DIVISION ON CIVIL RIGHTS,

Complainants,

v.

GEORGE TESTA,

Respondent.

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Administrative Action

**FINDING OF PROBABLE CAUSE**

Complainant Charles Lawson, who is African-American, resides in Jersey City, Hudson County, and alleges that he was prevented from renting an apartment located at 177 South Essex Avenue, Orange, NJ (“the building”), because of his race.

Respondent George Testa, who is Caucasian, resides in South Orange, Essex County, and owns the building. The building houses two stores and approximately eight apartments.

**SUMMARY OF COMPLAINT**

On May 2, 2011, Complainant filed a verified complaint with the Division on Civil Rights (DCR) alleging that Respondent violated the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. In particular, Complainant alleged that he called Respondent on December 7, 2010, to ask about an apartment rental, and that Respondent offered to show him an available unit the following day. Complainant alleged that after Respondent saw him in person the next day, he declined to show Complainant an apartment solely because of Complainant’s race.

**SUMMARY OF RESPONSE**

Respondent denied discriminating against Complainant for any unlawful reason including race. Respondent asserted that he never met Complainant and was unaware of his race.

## SUMMARY OF INVESTIGATION

In a certification, Complainant alleged that he saw an on-line advertisement for an apartment rental. He stated that on December 7, 2010, he called the telephone number listed in the advertisement and spoke to a woman who identified herself as Ms. Testa. Complainant stated that when he explained that he was calling about the apartment, she handed the phone to a man who identified himself as George Testa. Complainant stated that Respondent spoke to him briefly, asked where he lived, and then arranged to meet Complainant at the building at 3 p.m., the following day.

Complainant alleged that on December 8, 2010, he arrived at the building at approximately 2:45 p.m. Complainant stated that he waited in front of the building for approximately thirty minutes. He stated that the building had an "Apartment for Rent" sign on the entrance door and a store called "Odds & Ends" on the first floor. Complainant alleged that a Caucasian man was sitting inside the store staring at him through the window.

Complainant stated that he went to his car, which was parked across the street, and called the number from the advertisement. He said that when Ms. Testa answered, he told her that he was at the building waiting for her husband. Complainant stated that she told him that Respondent should already be at the building. She told him that he drove a red car and usually parked it in front of Odds & Ends.

Complainant walked across the street to the front of Odds & Ends and noticed that the lights in the store were off. He saw a red car parked in front of the store. Complainant said that he called Ms. Testa again and asked if there was any way she could have Respondent contact him. Complainant alleged that Ms. Testa replied, "Listen, if that red car is there, he is there." Complainant said that after he hung up, he knocked on the front window of Odds & Ends, but no one responded.

Complainant alleged that he waited in front of the building for approximately another twenty minutes and then sat inside his car. Complainant said that after about ten minutes, he saw a Caucasian woman exiting the building. He asked her if she would go inside and let Respondent know that he was waiting to see the apartment. Complainant said that the woman declined but offered to call the Respondent from her cell phone. Complainant observed the woman speaking on her cell phone but could not hear the conversation. After the woman left, Complainant continued to wait in front of the building.

Complainant stated that after about another hour, he started his car and drove north on South Essex Avenue. Complainant stated that when he made a u-turn and drove back toward the building, he saw the man who had been watching him from the store get into the red car. Complainant described the man as a Caucasian male, approximately 5' 9," with a medium build and gray hair. Complainant stated that he honked his horn but the man drove away. Complainant stated that he tried to follow but lost sight of the car. Complainant stated that he believed that Respondent had purposely avoided him after seeing that he is Black. Complainant stated that he felt angry and

disillusioned. He felt his blood pressure go up and became nauseous.

Complainant's cellular phone records show that on December 7, 2010, a telephone call was placed to Respondent's number at 9:03 a.m., and that on December 8, 2010, he called the number again at 4:06 p.m. and 4:27 p.m. The initial call lasted 28 seconds. The latter two calls lasted two minutes apiece. During the investigation, the investigator called the number and spoke to a woman who identified herself as Ms. Testa. She told the investigator that she recalled speaking to Complainant on December 8, 2010, and telling him that her husband drove a red car and should have been at the building.

DCR spoke to the Respondent by telephone. He denied any recollection of speaking to Complainant or making an appointment for him to see the apartment. Respondent stated that he did not use applications or lease agreements, only "verbal contracts without a paper trail." Respondent said that a "family friend" helped him run credit checks on prospective tenants. When asked for the name of the family friend, Respondent stated that it was not actually a family friend, but a contact of his daughter's. When the investigator asked Respondent for his daughter's name and/or the name of the contact, Respondent stated that he would try to provide that information at a later date. However, Respondent never provided the information. Respondent was also asked to provide the number of tenants at the property, their races, and their contact information. Respondent agreed to provide that information but never did.

Investigators visited the building on two occasions in an attempt to speak with Respondent, gather more information, and ascertain the racial make-up of the tenants. While the investigators were unable to speak with Respondent or any current tenants, they did interview a witness who stated that he recently moved out of the building. The witness stated that he lived in the building for approximately two years and that there were no African-American tenants. The witness, who is Caucasian, stated that Respondent was "old school" and "would never consider renting to a Black guy." The witness described Respondent as being of medium build and height with gray hair.

Respondent did not respond to requests from DCR investigators to meet in person to discuss the matter further.

## ANALYSIS

At the conclusion of the investigation, DCR is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the LAD as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. N.J.A.C. 13:4-10.2; see also Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073 (1991). A finding of probable cause is not an adjudication on the merits, but rather an "initial culling-out process" whereby the DCR makes a preliminary determination of whether further action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). In making this determination, the DCR must consider whether, after applying the applicable legal

standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

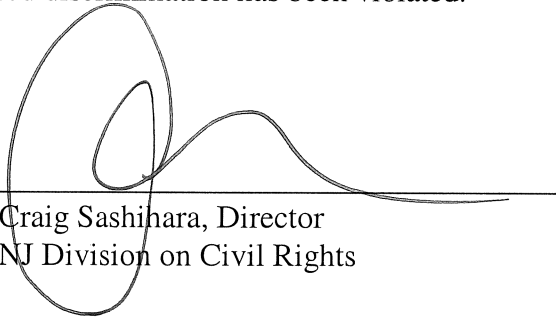
In this case, Respondent offered only a general denial of ever having spoken to or seen Complainant, but declined to discuss the matter in detail with the investigator or provide requested materials necessary for the investigation. Complainant, on the other hand, provided a detailed account of the matter, which was supported by the investigation. The investigation confirmed that Respondent and his wife lived together, that they shared the telephone number supplied by Complainant, that Respondent owned the building, and that the building had a store called "Odds & Ends" on the first floor and a rental sign in the window. A witness's physical description of Respondent appeared to match the general description provided by Complainant. Telephone records supported Complainant's allegation that he called the Respondent's number on December 7 and 8, 2010. Although there was some discrepancy as to the precise time of the calls, Respondent's wife confirmed that she spoke to Complainant on December 8, 2010, and told him that her husband drove a red car and that he was at the building. A former tenant reported that the building had no African-American tenants. DCR noted that according to the 2010 census, 72% of the residents of Orange are African-American. Based on the investigation, the Director found that the circumstances created a reasonable suspicion that Respondent offered to show the apartment to Complainant, arranged a time to meet, saw him through a window, and then changed his mind after seeing the Complainant's race. In the absence of any plausible rebuttal or explanation, the Director finds it reasonable to accept Complainant's assertion that the Respondent saw him and reached a conclusion about his suitability as a tenant based on a discriminatory animus. The Director, acting in the public interest, has elected to intervene as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

### FINDING OF PROBABLE CAUSE

In view of the above, the DCR investigation found a reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe that the LAD's prohibition against race-based discrimination has been violated.

5-3-12

Date



Craig Sashihara, Director  
NJ Division on Civil Rights