SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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TP 08-00988

PRESENT: MARTOCHE, J.P., FAHEY, GREEN, PINE, AND GORSKI, JJ.

IN THE MATTER OF SHERWOOD TERRACE APARTMENTS
AND DENNIS HANKINSON, PETITIONERS-RESPONDENTS,

                                    V   MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS AND
KUMIKI GIBSON, COMMISSIONER, NEW YORK STATE
DIVISION OF HUMAN RIGHTS, RESPONDENTS-PETITIONERS.

CAROL A. GOSTOMSKI AND HOUSING OPPORTUNITIES
MADE EQUAL, INC., RESPONDENTS.

JAMES D. HARTT, ROCHESTER, FOR PETITIONERS-RESPONDENTS.

CAROLINE J. DOWNEY, BRONX (MICHAEL K. SWIRSKY OF COUNSEL), FOR
RESPONDENTS-PETITIONERS.

　　　　Proceeding pursuant to Executive Law § 298 (transferred to the
Appellate Division of the Supreme Court for the Fourth Judicial
Department by order of the Supreme Court, Erie County [Kevin M.
Dillon, J.], entered March 5, 2008) to annul a determination of
respondent-petitioner Kumiki Gibson, Commissioner, New York State
Division of Human Rights. The determination found that petitioners-
respondents had engaged in an unlawful discriminatory practice with
respect to housing.

　　　　It is hereby ORDERED that the determination is unanimously
confirmed without costs, the petition is dismissed, the cross petition
is granted, and petitioners-respondents are directed to pay respondent
Carol A. Gostomski the sum of $4,381.75 for economic damages, with
interest at the rate of 9% per annum, commencing July 2006, and the
sums of $8,000 for mental anguish and humiliation, $4,000 for her
children's mental anguish and humiliation, and $10,000 for punitive
damages, with interest at the rate of 9% per annum, commencing
November 15, 2007; to pay respondent Housing Opportunities Made Equal,
Inc. the sum of $2,596 for economic damages, with interest at the rate
of 9% per annum, commencing May 2006, and the sum of $8,000 for
punitive damages, with interest at the rate of 9% per annum,
commencing November 15, 2007; and to pay the Comptroller of the State
of New York the sum of $8,000 for a civil fine and penalty, with
interest at the rate of 9% per annum, commencing November 15, 2007.

　　　　Memorandum: Petitioners-respondents (petitioners) commenced this
proceeding pursuant to Executive Law § 298 seeking to annul the

determination of respondent-petitioner Kumiki Gibson, Commissioner of
the New York State Division of Human Rights (Commissioner), that they
unlawfully discriminated against respondent Carol A. Gostomski
(complainant) by refusing to permit her to rent an apartment after
learning that she had two children, then ages six and eight (*see* § 296
[5] [a] [1]). Contrary to the contentions of petitioners, we conclude
that the determination that they discriminated against complainant and
her children based on familial status is supported by substantial
evidence (*see generally 300 Gramatan Ave. Assoc. v State Div. of Human
Rights*, 45 NY2d 176, 179-180; *Matter of Woehrling v New York State
Div. of Human Rights*, 56 AD3d 1304, 1305; *Matter of Matteo v New York
State Div. of Human Rights*, 306 AD2d 484, 485), and that the awards of
compensatory damages to complainant and her children should not be
disturbed (*see 300 Gramatan Ave. Assoc.*, 45 NY2d at 184; *Matter of New
York State Div. of Human Rights v Gruzdaitis*, 265 AD2d 904). In
addition, the Commissioner properly exercised her discretion in
awarding economic damages to respondent Housing Opportunities Made
Equal, Inc. (HOME) for resources expended by HOME in investigating
complainant's allegations against petitioners (*see* § 297 [4] [c]
[iii]; *Havens Realty Corp. v Coleman*, 455 US 363, 376; *Mixon v
Grinker*, 157 AD2d 423, 426-427). Finally, we conclude that the awards
of punitive damages to complainant and HOME are "supported by the
evidence and [are] authorized by Executive Law § 297 (4) (c) (iv) as a
deterrent against housing discrimination" (*Woehrling*, 56 AD3d at 1305;
see Matteo, 306 AD2d at 485; *Matter of Van Cleff Realty v New York
State Div. of Human Rights*, 216 AD2d 306, 307).

Entered: April 24, 2009   Patricia L. Morgan
                                                  Deputy Clerk of the Court