

IN THE CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISION

CUYAHOGA METROPOLITAN
HOUSING AUTHORITY
1441 WEST 25TH STREET
CLEVELAND, OHIO 44113

PLAINTIFF

VS.

WILLIE HUMPHRIES
9500 WADE PARK, 413
CLEVELAND, OHIO 44106

DEFENDANT

) CASE NUMBER 93 CVG 6480

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) LANDLORD-TENANT

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) REFEREE'S REPORT AND
RECOMMENDATION

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This case came on to be heard on April 12, 1993, before Barbara A. Reitzloff, to whom this case was assigned pursuant to Ohio Civil Rule 53, to take evidence on all issues of law and fact, regarding plaintiff's first cause of action.

Plaintiff in court with counsel.

Defendant in court with counsel.

FINDINGS OF FACT:

1. Plaintiff Cuyahoga Metropolitan Housing Authority ("CMHA") is a public housing agency which owns and operates the Wade Apartments Public Housing Estate ("Wade Apartments"), located at 9500 Wade Park, Cleveland, Ohio.

2. CMHA owns and operates Wade Apartments with assistance from the U.S. Department of Housing and Urban Development under the Public Housing Program of 1937. 24 C.F.R. Title IX (1989).

3. Wade Apartments is a public housing estate occupied primarily by elderly and handicapped tenants.

4. In August 1990, CMHA and defendant Willie Humphries entered into a written rental agreement for lease of Apartment 413 at Wade Apartments. Mr. Humphries has occupied Apartment 413 as CMHA's tenant since August 1990. Mr. Humphries is the sole occupant of the apartment.

5. Mr. Humphries is a single, thirty-three year old man. Mr. Humphries has been diagnosed as a paranoid schizophrenic.

6. CMHA filed this eviction action against Mr. Humphries based upon his alleged violation of his lease.

7. CMHA in its complaint also lists Mr. Humphries' alleged failure to pay rent as grounds for the eviction; however, the termination notice served to Mr. Humphries does not include non-payment as grounds for the termination, and CMHA agreed at trial that the action was proceeding on the basis of Mr. Humphries' conduct and not non-payment of rent.

8. The court took testimony from a number of witnesses, and makes the following findings regarding the incidents alleged in CMHA's complaint:

A. On August 15, 1992, CMHA Police Officer Tim Dennis responded to a complaint regarding a disturbance in Mr. Humphries' apartment. At Mr. Humphries apartment, Officer Dennis found Mr. Humphries and another resident, Derrick Buchanan, engaged in an argument about money. Mr. Buchanan reported that Mr. Humphries had taken Five Dollars (\$5.00) from Mr. Buchanan's pocket, and would not permit Mr. Buchanan to leave the apartment. Upon Officer Dennis' arrival, Mr.

Buchanan left the apartment, and returned to his own. No violent physical contact occurred during this incident, and neither Mr. Buchanan nor Mr. Humphries suffered any injuries.

B. On August 22, 1992, Martha Walton, who functions as the assistant manager of Wade Apartments, observed Mr. Humphries and another individual in a restricted area in the basement. She instructed them to leave. After some verbal resistance, Mr. Humphries and the other individual left the area. Ms. Walton believes that Mr. Humphries admitted the other individual into the building improperly, through a door other than the front door, although she did not witness the individual entering the building.

C. On or about September 18, 1992, CMHA Police Officer Harry Ray was involved in ending an altercation between some individuals on the third floor of the building. Mr. Humphries and three or four other people were observing, although not participating, the altercation. Officer Ray ordered everyone in the hall to return to their apartments. Mr. Humphries did not do so. Instead, he went to the lobby where a few minutes later he again encountered Officer Ray. Officer Ray remained in the lobby, completing reports. Mr. Humphries stood in the lobby, in front of, next to, and behind Officer Ray for approximately thirty minutes. Mr. Humphries did not talk to or take any action against Officer Ray. At Officer Ray's request, a CMHA Police zone car responded. At the instruction of the officers from the zone car, Mr. Humphries left the lobby without further incident.

D. CMHA in its complaint alleges that Mr. Humphries created a disturbance at Wade Apartments. However, CMHA introduced no evidence regarding this alleged disturbance.

E. Donna Marshall, a tenant at Wade Apartments, testified that she saw Mr. Humphries punch another tenant in the mouth. Mr. Humphries denied doing so. The victim of the alleged assault was not present at trial, and had not been subpoenaed to appear. Mr. Humphries denied assaulting the other tenant. The testimony of CMHA's witness was somewhat less than credible, due to the testimony itself and the demeanor of the witness when testifying. As a result, the court therefore finds that insufficient evidence has been presented to establish that Mr. Humphries assaulted a fellow tenant at Wade Apartments on September 20, 1992.

9. On October 1, 1992, CMHA served Mr. Humphries with a thirty day (30) Notice of Termination and Invitation to Explain ("termination notice"), a copy of which was attached to plaintiff's complaint as plaintiff's Exhibit B.

10. On November 30, 1992, CMHA served Mr. Humphries with a three day notice to vacate pursuant to Revised Code 1923.04, a copy of which was attached to plaintiff's complaint as Plaintiff's Exhibit C.

11. On or about December 18, 1992, CMHA issued and posted in the common area of Wade Apartments a list of persons who were not to be permitted to enter Wade Apartments. A copy of that list was admitted as Defendant's Exhibit A.

12. At the bottom of the above-described list appeared the following:

"No visitors for:	Laura Ann Yucas	#1405
	J. T. Rembert	# 302
	Willie Humphries	# 413
	Paul Magbie	#1411"

13. On or about December 24, 1992, Mr. Humphries saw the above described list posted on a wall at Wade Apartments. Upon seeing the list, Mr. Humphries became angry, took the notice off the wall, and went to the on-site management office to see the property manager, John Rose.

14. In the management office, Mr. Humphries began to argue with Mr. Rose about the prohibition against Mr. Humphries having visitors. The argument became heated, and Mr. Humphries tried to punch Mr. Rose, who avoided the blow. Ms. Walton interposed herself between Mr. Rose and Mr. Humphries. Mr. Humphries continued to argue loudly with Mr. Rose, but did not physically threaten Ms. Walton. Some time later, Mr. Humphries left the management office.

15. In April 1993, Mr. Humphries was contacted by a CMHA police officer who heard loud noise coming from Mr. Humphries apartment. The officer determined that the noise was coming from a fan in the apartment. The officer instructed Mr. Humphries to turn the fan off. Mr. Humphries refused to do so.

16. Neither Mr. Rose nor Ms. Walton have received training during their employment with CMHA to assist them in dealing with tenants with mental or emotional disabilities.

17. Mr. Rose and Ms. Walton have had some experience in dealing with one tenant at Wade Apartments with mental or emotional disabilities, Laura Yucas. Ms. Yucas, according to Ms. Walton, has been evicted from Wade Apartments.

18. With one exception, the CMHA police officers who testified, most of whom are assigned regularly to Wade Apartments, have received no training from CMHA in responding to or dealing with individuals with mental or emotional disabilities. Officer Higgenbotham did receive one and a half hours of classroom training, a small portion of which dealt with mentally or emotionally disabled tenants. Officer Higgenbotham testified that he felt inadequately trained to deal with such individuals.

19. CMHA does employ a small number of social workers to provide assistance to the estate manager in dealing with mentally or emotionally disturbed tenants. Each social worker is assigned to a number of estates or buildings.

20. Solomon Vance is the social worker employed by CMHA who is assigned to Wade Apartments. In addition to Wade Apartments, Mr. Vance serves eight to ten other CMHA estates.

21. In approximately July 1992, CMHA contacted Mr. Vance regarding Mr. Humphries. Mr. Vance made attempts to and then did contact Mr. Humphries. Mr. Vance completed a "resident contact note" describing his contact with Mr. Humphries. A copy of that note was admitted into evidence as Defendant's Exhibit C.

22. Mr. Vance, upon receiving information from Ms. Walton regarding Mr. Humphries conduct and his mental or emotional handicap, advised Ms. Walton that in the event of further harassment or threatening conduct by Mr. Humphries, management should call the police to transport Mr. Humphries to St.

Vincent's Hospital. Mr. Rose was made aware of Mr. Vance's advice.

23. Mr. Vance tried three times in July to contact Mr. Humphries without success. On September 3, 1992 Mr. Vance did made contact with Mr. Humphries, and conducted an initial interview. There was no evidence introduced which would establish further contact with Mr. Humphries by Mr. Vance.

24. At no time during the series of incidents described in CMHA's complaint did Mr. Rose or Ms. Walton contact the police to transport Mr. Humphries to St. Vincent's Hospital, nor did Mr. Rose or Ms. Walton advise the CMHA police officers of Mr. Vance's instructions regarding Mr. Humphries.

25. In each of the incidents described in paragraph 8, above, CMHA police officers spoke to Mr. Humphries, calmed him down, and resolved the incident. At no time did CMHA police officers contact officers from the Cleveland Police Department to arrange transportation of Mr. Humphries to a hospital or psychiatric facility, nor did the CMHA police officers make similar arrangements on their own initiative.

CONCLUSIONS OF LAW AND FACT

CMHA has filed this action against Mr. Humphries based upon his alleged violation of the terms and conditions of his lease. Mr. Humphries raises as a defense to this action that (1) CMHA failed to introduce into evidence the notice of termination and notice to vacate served upon Mr. Humphries and (2) CMHA has failed to provide Mr. Humphries with reasonable accommodations of his handicap, as Mr. Humphries argues is

required by 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. 794 (1988).

1. Plaintiff's first cause of action

CMHA has offered testimony regarding a number of incidents involving Mr. Humphries. Only some of these incidents may be considered by the court.

To terminate the tenancy of a tenant who resides in public housing, the public housing authority must serve the tenant with a notice of termination in accordance with federal requirements. 24 C.F.R. 566.4(1). The notice must state the reasons for the termination 24 C.F.R. 566.4(1)(3). The public housing authority may rely only on the grounds contained in the notice of termination when prosecuting its eviction action. See Zanesville Metropolitan Housing Authority v. Callipare, No. CA-81 13 (Ct. App. Muskingum Cty. Dec 10, 1981). See Also Associated Estates Corp. v. Bartell, 21 Ohio App.3d 6, 492 N.E.2d 841 Cuyahoga Cty. 1985).

In this case, CMHA has alleged in its notice five instances of conduct as the basis for the termination of Mr. Humphries' tenancy. These incidents allegedly occurred on August 15, August 22, September 18, September 19 and September 20, 1992. The court has determined that no evidence was introduced regarding the September 19, 1992 incident (see paragraph 8(d), above), and has determined that insufficient evidence was introduced to prove that the September 20, 1992 incident took place. The court therefore may consider only the three incidents which occurred on August 15, August 22 and September 18, 1992 when rendering its decision of CMHA's first

cause of action. Those incidents are described in paragraphs 8(A), 8(B) and 8(C), above.

CMHA, at trial, did introduce evidence of other incidents, all but one of which occurred prior to the March 22, 1993 filing of CMHA's complaint. CMHA did not serve Mr. Humphries with a notice of termination based upon these incidents, did not plead them in its original complaint, or amend its complaint to include these items. As a result, Mr. Humphries was deprived of an opportunity to discuss these incidents with management, and to file a grievance based upon them, if necessary. Furthermore, Mr. Humphries was not on notice that these incidents would serve as a basis of plaintiff's complaint. Both due process and the federal regulations governing public housing require that the court therefore not consider these incidents when ruling on plaintiff's first cause of action.

CMHA may terminate Mr. Humphries' lease for serious or repeated violation of material terms of the lease or other good cause. 24 C.F.R. 966.4(1)(1). Among other obligations, Mr. Humphries lease requires him to "conduct himself...in a manner which will not disturb his neighbors' peaceful enjoyment of their accommodations and will be conducive to maintaining the estate in a decent, safe and sanitary condition..." and to "refrain from illegal or other activity which impairs the physical or social environment of the estate." Lease Article 9, §N & O. The three incidents described in paragraphs 8(a), 8(b), and 8(c), above, namely the incident involving Mr. Buchanan, the incident in which Mr.

Humphries and another individual were in a restricted area of the basement, and the encounter with Officer Ray, while not serious violations of Mr. Humphries' Lease, could be said to either disturb the neighbors' peaceful enjoyment of their accommodations (the incident with Mr. Buchanan) or to impair the physical or social environment of the estate (the basement incident and the encounter with Officer Ray). These incidents do constitute repeated violations of Mr. Humphries' lease with CMHA.

Mr. Humphries, in his defense, argues that CMHA is violating §504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. §794 (1988), prohibiting discrimination on the basis of handicap. Section 504 states in relevant part, "No otherwise qualified individual with handicaps...shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance..." It is undisputed that CMHA is subject to the Federal Rehabilitation Act.

To prove that CMHA has violated Section 504, Mr. Humphries must prove that (1) he is handicapped; (2) that he is otherwise qualified for tenancy at Wade Apartments; (3) that CMHA could make reasonable accommodations which would enable Mr. Humphries to meet the eligibility requirements for tenancy; and (4) that CMHA has failed to make those accommodations. The first question, then, is whether Mr. Humphries has established that he is handicapped. An

individual is handicapped if he has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. 24 C.F.R. 8.3.

Mr. Humphries himself testified that he is a paranoid schizophrenic. Mr. Rose and Ms. Walton acknowledge the existence of Mr. Humphries mental illness, both in their testimony and the referral of Mr. Humphries to Mr. Vance, who noted Mr. Humphries history of "emotional disturbances and mental stress." Mr. Humphries offered unrefuted testimony that he was hospitalized at the Cleveland Psychiatric Institute (CPI) within the last six months, that he took medication for his mental illness, and that he received treatment from the Community Guidance Center. Mr. Humphries treatment for his mental illness, the testimony of CMHA's employees describing Mr. Humphries' conduct, and CMHA's referral of Mr. Humphries to the social worker, Mr. Vance, are sufficient to establish that Mr. Humphries mental impairment substantially limits his ability to function on a daily basis, his ability to care for himself, and his ability to live with others in a social environment. He therefore is handicapped as defined by the Federal Rehabilitation Act.

The second factor to be established by Mr. Humphries is whether he is "otherwise qualified" for tenancy at Wade Apartments. Mr. Humphries has been a tenant at Wade Apartments for over two and one half years. Apparently Mr. Humphries met all eligibility requirements, financial and otherwise, at the time he moved into the premises. CMHA has

not alleged that he no longer meets those requirements. CMHA is evicting Mr. Humphries for his conduct, which appears attributable to his mental illness. As a result, Mr. Humphries is "otherwise qualified" for tenancy at Wade Apartments.

The next factor to consider is whether CMHA could make reasonable accommodations to enable Mr. Humphries to continue his tenancy at Wade Apartments. In considering whether an accommodation is "reasonable" the court may consider the financial and operational hardship the accommodation will impose on the agency.

CMHA has to some extent recognized the existence in its tenant population of individuals with special mental or emotional needs. As a result, CMHA employs social workers to interact with the tenant, assess the situation, and make recommendations to the management with respect to the tenant.

Solomon Vance is the social worker assigned to Wade Apartments. In that capacity, management requested assistance from Mr. Vance in dealing with Mr. Humphries. The records presented at trial by CMHA contain three status notes from Mr. Vance. From the notes it appears that during the week preceding July 15, 1992, Mr. Vance attempted to contact Mr. Humphries without success. On or about July 28, 1992, Mr. Vance spoke to Ms. Walton, who informed Mr. Vance that Mr. Humphries had a history of "emotional disturbance and mental stress," and had become a problem, threatening and harassing other residents. At the point Mr. Vance advised Ms. Walton that in the event of further problems, Mr. Walton should

contact the City of Cleveland Police Department and arrange for Mr. Humphries to be transported to St. Vincent's Hospital for psychiatric assistance. Finally, in September 1992, Mr. Vance contacted Mr. Humphries and, with a Dr. Yang and a Mrs. Middleton, discussed Mr. Humphries' condition. Mr. Vance's notes end abruptly there, without further recommendation or follow-up.

It is apparent from Mr. Vance's involvement that CMHA knew that Mr. Humphries would benefit from periodic assistance from a social worker, and the social worker, Mr. Vance, understood that one solution to Mr. Humphries inappropriate behavior would include transportation of him to St. Vincent's Charity Hospital, for psychiatric assistance. Periodic contact with a social worker and hospitalization if and when Mr. Humphries harassed or threatened others would constitute a reasonable accommodation with minimal financial or administrative impact on CMHA. An additional accommodation, which could be accomplished with minimal cost and effort would be training of CMHA's staff and security officers in dealing with mentally handicapped individuals. Of the manager, the assistant manager, and the security officers who testified, only one security officer had received any training in the area, and that officer admitted he was not equipped to deal with mentally handicapped individuals he encountered.

That such training would assist both Mr. Humphries and tenants in the building others is apparent from Mr. Humphries' encounter with Officer Ray. Although he admits that Mr. Humphries did not speak to him in a threatening manner or make

any threatening gestures, Officer Ray was sufficiently disturbed and intimidated by Mr. Humphries presence to request that a zone car respond to the scene to assist the officer. Training would enhance Officer Ray's ability to evaluate accurately a situation involving Mr. Humphries (or another handicapped individual) and to respond effectively. This accommodation would benefit CMHA's staff, Mr. Humphries, and other residents, and could be accomplished with minimal expense.

A second incident which reflects the need for training is the incident involving Mr. Humphries, Mr. Rose and the "no visitors" list. While the decision to ban all visitors to any individual tenant is questionable, it seems particularly unwise to cut off all contact for any individual with Mr. Humphries' mental problems. While the court does not condone, Mr. Humphries behavior, CMHA's concerns could have been handled more effectively if the staff had information and training in dealing with mentally handicapped individuals.

Mr. Humphries has established that he is a handicapped individual. While the court cannot say with absolute certainty that the reasonable accommodations described above will bring Mr. Humphries into compliance with his lease, he has established by a preponderance of the evidence that with reasonable adjustments to accommodate his handicap, he is qualified for tenancy at Wade Apartments. CMHA therefore is required to make those reasonable accommodations. CMHA's failure to make the reasonable accommodations constitutes a violation of §504 of the Federal Rehabilitation Act of 1973,

and precludes plaintiff's recovery on its first cause of action. If reasonable accommodations fail to bring Mr. Humphries into compliance with his lease, CMHA may institute another eviction action. However, judgment in this case entered for the defendant on plaintiff's first cause of action.


In addition to the Federal Rehabilitation Act, Mr. Humphries argues that CMHA's conduct in failing to provide reasonable accommodation for his handicap is also a violation of the Fair Housing Amendment Act of 1988, 42 U.S.C.A. 3604(F)(1) & (2). As the court has determined that CMHA's conduct violates the Federal Rehabilitation Act, it is not necessary at this time to determine whether such conduct also violates the Fair Housing Act.

Finally, Mr. Humphries argues that CMHA failed to introduce into evidence the notice of termination and notice to vacate served on Mr. Humphries. Mr. Humphries does not deny receipt of the notices, and the failure on the part of plaintiff's counsel to formally move for admission of the documents is technical at best. In light of the court's decision regarding Mr. Humphries' claim, this argument is moot and therefore will not be decided by the court.

CONCLUSION OF LAW AND FACT

For the foregoing reasons, judgment is entered for defendant on plaintiff's first cause of action. Defendant may remain in the premises.

RECOMMENDED:


BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED:

William H. Corrigan
JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION

SERVICE

A copy of the Referee's Report was sent by ordinary United States mail to the Plaintiff's Attorney M. Neal Cox, 1441 West 25th Street, Cleveland, Ohio 44113 and to the Defendant's Attorney Edward G. Kramer, 3214 Prospect Avenue, Cleveland, Ohio 44115-2600 this *28th* day of June 1993.

IN ORDER TO BE CONSIDERED, ALL OBJECTIONS TO THE REFEREE'S REPORT MUST BE IN WRITING WITHIN FOURTEEN (14) DAYS OF FILING AND MUST COMPLY WITH THE OHIO RULES OF PROCEDURE AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

RECOMMENDED:

Barbara A. Reitzloff
BARBARA A. REITZLOFF
HOUSING COURT REFEREE
CLEVELAND MUNICIPAL COURT

APPROVED:

William H. Corrigan
JUDGE WILLIAM H. CORRIGAN
CLEVELAND MUNICIPAL COURT
HOUSING DIVISION