

IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO  
GENERAL DIVISION

MICHELLE R. GODFREY  
Appellant

CASE 96-202

Judge Jeffrey M. Welbaum

v.

MIAMI METROPOLITAN  
HOUSING AUTHORITY

ENTRY AFFIRMING DECISION

Appellee

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CLEVELAND COURTS

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This is a decision of an appeal from an administrative agency brought under O.R.C. 2506.01. On October 10, 1995, Appellant Michelle Godfrey executed a certificate to receive Section 8 housing assistance with Appellee Miami Metropolitan Housing Authority, (hereinafter referred to as "MMHA.") On April 10, 1996, MMHA notified Appellant of its decision to terminate her from housing assistance for two reasons. First, she had moved from the unit without proper notice to MMHA. Secondly, she had failed to report a family size change when her son moved out of the unit. On May 23, 1996, Appellant received an appeal hearing on the agency's decision. On May 28, 1996, the hearing officer issued a written decision upholding the termination.

The appellant timely filed a Notice of Appeal and Amended Notice of Appeal. She filed several preliminary motions

including a motion for the taking of additional evidence under O.R.C. 2506.03. The agency failed to record the testimony at its administrative appeal hearing. Consequently, the Court granted the motion to take testimony and held a hearing on August 30, 1996. The parties were granted leave to file post hearing memoranda. The presentation of the evidence and the memoranda submitted by the attorneys in this case were exceptional.

The Court does not have the authority, obligation, or inclination to decide this case de novo. In Re Locke, (1972) 33 Ohio App. 2d 177, Schira v. Stowe (1990), 69 Ohio App. 3d 841. In these cases the reviewing court must give due deference to the agency's resolution of evidentiary conflicts and the court may not substitute its judgment for that of the administrative agency. Budd Co. v. Mercer, (1984), 14 Ohio App. 3d 269. When additional evidence is taken, the court's task is to engage a hybrid analysis. The court applies the law to the evidence as it was presented to the agency. It then acts as the finder of fact in regard to the new evidence admitted under O.R.C. 2506.04. Then based upon the entire record the court determines if the agency's decision was unsupported by the preponderance of substantial, reliable and probative evidence or is otherwise contrary to law. Harvey v. Cincinnati Civil Service Commission (1985), 27 Ohio app. 3d 304.

Since the Court labors in its review of the agency order without the benefit of a verbatim transcript of the testimony below, it unfortunately had to rehear a large portion

of the case which was presented to the hearing officer. Hopefully this practice will not be repeated during the next appeal from the administrative decisions of the Miami Metropolitan Housing Authority. Tape recorders and audio tapes are not that uncommon or expensive in this region of the world. The Court makes the supplemental factual findings herein based upon the credibility of the witnesses and the exhibits admitted into evidence.

The rental unit was procured by Appellant Michelle Godfrey in October 1995. She signed the Section 8 contract with Pam and Jason Sommers, who owned the property on November, 6, 1995. Shortly thereafter Mrs. Sommers expressed her dissatisfaction with the \$416.00 per month rent because they were losing money on the contract. She requested that Mrs. Godfrey pay the water bill. Mrs. Godfrey refused.

The unit had a mold problem on the walls and ceiling prior to Mrs. Godfrey's occupancy. The owners painted over the mold to prepare the unit for rental to Mrs. Godfrey. In November 1995 Mrs. Godfrey told the owners that her son, Branden, was extremely ill, suffering from shortness of breath caused by the mold on the walls. Then in November and December he continued to suffer. He was extremely ill from severe colds, congested bronchial tubes and even coughed blood. In December she had to take Branden to the emergency room for treatment. He had shortness of breath and had to use an inhaler daily during this period.

According to Mrs. Godfrey's testimony she reported the problem to the agency twice in March 1997. She told them once verbally in mid-March and once in writing. Plaintiff's Exhibits 3 & 4. When she reported the problem in mid-March 1997, she spoke with Vicki. She was told to send her complaint to the owners in writing. Then, Mrs. Godfrey put her complaints to the Sommers in writing. Plaintiff's Exhibit 1.

The mold was temporarily removable by cleaning. Remarkably, according to Mrs. Godfrey, she only cleaned the mold a couple of times. She used soap, Lysol, bleach and water. After these applications the fungus reappeared. She testified she didn't think it was her responsibility to clean it. When she told the owners of the problem they promised to install baseboard heat and apply special paint to fix the problem, but the repairs were not made. The Sommers wanted to rescind the contract. After the repairs were not made in a timely manner, Mrs. Godfrey wanted to rescind the contract as well.

The owners wanted to either sell or rent the unit to someone else. In addition to their dissatisfaction with the rent, the owners did not like the damage that her dogs caused to the yard. In early March 1996, they informed Mrs. Godfrey that she would have to vacate the premises. This was fine with her. She expressed to them her intention of leaving the unit so she could care for her sick grandmother. Mr. Sommers told her he anticipated showing the unit to new renters or buyers. He advertised the unit in mid-March. During mid-March, in

anticipation of the possible upcoming move, Mrs. Godfrey hired Carl Jolliff, Mrs. Godfrey's brother-in-law, to do some yard work. He testified it was his understanding at the time that this had to be done before the landlord could show the house. Mr. Jolliff repaired the yard and then sowed grass seed about two weeks later. He was paid fifty dollars for the job in early April.

On March 25, 1996, Branden became particularly ill with an asthma attack. Mrs. Godfrey took him to see a physician. He wrote a note that Branden should not be exposed to mold or mildew. Plaintiff's Exhibit 2. That evening Mrs. Godfrey left her son at her mother's home. She enrolled her son in her mother's school district on a temporary basis. At one point in her testimony, Mrs. Godfrey stated she began to stay at her sister's house in late March. She told Mr. Sommers and Jennifer Schmidlapp from South Street School she would be staying with her mother. Plaintiff's Exhibit 6.

On March 26, Mrs. Godfrey left two notes with MMHA collectively advising the agency of her son's illness and the cause, requesting an inspection, and an emergency leave to vacate the premises due to health concerns. Plaintiff's Exhibits 3 & 4. She anticipated that her request would be granted and began moving her possessions out of the unit.

On March 27, Mrs. Godfrey disconnected her telephone at the unit. Around this date, Mr. Sommers and Mrs. Godfrey discussed her being moved out of the unit on April 6. She agreed

to vacate. On April 1, 1996, Robert Tobias, a housing inspector from the agency, inspected the unit. Having seen worse mold and mildew during his MMHA inspections, Mr. Tobias deemed the amount of the fungus cleanable, thus permissible. He made this determination based upon the tolerance of a normal person, not a person affected with fungus induced asthma. He told Mrs. Godfrey to clean the mold. She told him she already had. However, other repairs were ordered by Mr. Tobias.

During the morning of April 5, Kenny Lawson helped Mrs. Godfrey move several items from the unit to her mother's house. This included her refrigerator, stove, television, and couch. Later in the day, Mr. Tobias returned to the unit for a follow-up inspection. He observed that much of the furniture was missing and many possessions were boxed. It appeared to him the occupants had moved or were in the process of moving. He confronted Mrs. Godfrey with this observation. She denied that she was moving. He told her she needed permission to move. She acknowledged this.

Mr. Tobias noted a problem with the repairs. The electrical repairs were not made by a licensed electrician. The owners used Mr. Sommer's cousin to do the repairs. Mr. Sommers called Mr. Tobias by telephone on April 5, and told Mr. Tobias he refused to have the electrical repairs done by a licensed electrician. He acknowledged his understanding that his refusal would be a breach of the contract. The Sommers hoped they would be terminated from the program for their refusal. In March, Mrs. Godfrey had encouraged Mr. Sommers to not make any repairs

expecting this would help her receive a housing certificate for another unit. On April 5, she told Mr. Tobias that the Sommers would not make the repairs and she should be permitted to move.


Mrs. Godfrey told the Sommers on a couple of different occasions she would be out of the unit by Saturday, April 6. The Sommers expected to meet her at the unit on April 5, to complete the move, but she was not there. Plaintiff's Exhibit 10. At the time, she and Kenny Lawson were in the process of delivering a load of her property to her mother's house. Plaintiff's Exhibit 12. The Sommers tried to reach her at that time, but couldn't. Plaintiff's Exhibit 10. Consequently, the owners decided to move the rest of the furniture and property out of the unit into the garage so the new renters could take possession. They changed the locks.

When the Sommers reached Mrs. Godfrey at her mother's house by telephone to inform her of these new developments later in the day, she was surprised and upset. She didn't want them handling her property and the garage was not secure. She reported the lockout to the police on April 6 before moving her possessions out of the garage. The police officer notified the agency of the situation. The next business day Mrs. Godfrey reported to the agency that she had been unlawfully evicted.

These supplemental findings are incorporated into the entire record. The Court finds that based upon the entire record the decision of the Miami Metropolitan Housing Authority entered May 28, 1996 terminating the Section 8 housing certificate of

Michelle Godfrey is supported by the preponderance of substantial, reliable, and probative evidence. The Court further finds that said decision is not unconstitutional, illegal, arbitrary, capricious, or unreasonable. The decision of the Miami Metropolitan Housing Authority issued May 28, 1996, is hereby affirmed.

It is so ordered.

  
Jeffrey M. Welbaum, Judge

cc: Byron K. Bonar, Attorney for Appellant  
Robert M. Harrelson, Attorney for Appellee