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Effects of Fair Housing Laws on Single Family Homes

*Joseph C. Hunter**

IN 1965 THE 106TH OHIO GENERAL ASSEMBLY passed Ohio's first fair housing law effective October 30, 1965.¹ Doing so, the Ohio legislature extended the jurisdiction of the existing Ohio Civil Rights Commission to the field of housing.

Although the law covered a variety of practices associated with the rental and sale of residential property² its main thrust centered upon multiple housing that contained three or more dwelling units, whether or not one of the units was occupied by the owner and all vacant land that was to be used for residential construction. The law also covered single and double family residences if the owner was not in occupancy or was not the last person to have occupied the housing involved.

By excluding single and double owner-occupied residential dwellings, the 1965 law had a limited effect upon approximately fifty per cent of the housing in the state of Ohio. This paper will not deal with the unlawful practices involving lending institutions, restrictive covenants or blockbusting. Instead it will address itself to the administration of that portion of Chapter 4112 of the Ohio Revised Code which deals with an individual's attempt to find housing.

Role of the Civil Rights Commission

Applying the procedures that had been established for unlawful discriminatory acts involving employment and public accommodations, the fair housing law provides that a person who feels that he has been discriminated against in renting or purchasing the covered housing may file a charge with the Commission. The law does not permit the Commission itself to initiate actions in the area of housing nor to accept charges from third-parties who have been made aware of a fair housing violation. An aggrieved party—called the complainant—must file a charge against another—called the respondent—and as in employment and public accommodations complaints, the Commission investigates, makes a determination as to Probable Cause, and attempts conciliation by means of informal conference and persuasion. If these attempts at conciliation fail, the Commission then moves to the next

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¹ Am. Sub. S.B. No. 189.

² Ohio Rev. Code § 4112.02. Among the unlawful discriminatory practices established by section 4112.02 of the Ohio Revised Code and applicable to all housing are discrimination in financing terms, restrictive covenants, blockbusting and discouraging prospective purchasers.

administrative step which is a public hearing. A public hearing is a quasi-judicial proceeding presided over by a Commission-appointed Examiner who is, by Commission decision, an attorney at law. The Commission is represented by the state Attorney General's Office and the Respondent, if he so chooses, by his attorney of record. An additional stipulation applicable to housing complaints is that the complainant must have "acted with the intention of fulfilling any contracts or agreements that he was seeking."³ This provision was included apparently to prevent the filing of housing charges merely to test whether the housing would be made available on a non-discriminatory basis.

Four regional offices of the Ohio Civil Rights Commission enforce Ohio's laws against discrimination. Each office handles one quadrant of the state. The Northeast Regional Office, located in Cleveland, Ohio, has jurisdiction over the twenty counties in the northeast quadrant of the state, an area containing almost one half of the population of the entire state. Its volume of cases is approximately fifty per cent of the Commission's intake.

Enforcing Fair Housing

Soon after the Northeast Regional Office began the administration of the 1965 Fair Housing Law, a major weakness became evident. There was no provision for holding the housing agreement in abeyance until the Commission had investigated the charge and in finding unlawful discrimination had made attempts to conciliate the matter. A single home subject to a charge (*i.e.*, where the owner was not the last occupant) and vacant land selling as residential property have unique qualities. If the property is rented or sold before the resolution of the case, the complainant was without remedy under the 1965 law, regardless of whether the Commission made a finding of *probable cause* or issued a cease and desist order after public hearing before a Commission-appointed hearing examiner. If the respondent controlled other property that would satisfy the complainant's housing needs, such property could be offered as a satisfactory remedy or could even be the subject of a mandatory order if the case reached the public hearing stage.

With the exclusion of single homes where the owner was the last occupant, the cases involving single homes that were brought to the attention of the Northeast Office dealt either with rental investment property or single homes that were part of developmental tracts. In the cases dealing with developmental housing, a leeway was added to the Commission's attempts to conciliate an individual case. Even though the home or site subject of complaint may have individual characteristics, its location in a development meant that in most cases if the instant

³ Ohio Rev. Code § 4112.05(B).

home were sold during investigation of the charge, other homes controlled by the respondent were available that satisfied the complainant's housing needs.

From October 30, 1965 through September 1, 1969 the Northeast Office received thirteen charges dealing with single homes (Complaints concerning multiple dwellings for this period numbered two hundred two). Of these thirteen, two dealt with rental property, and probable cause was found in both. In one, the complainant received an offer of the housing. The other case went to a public hearing and is still unresolved. In three of the remaining eleven, no probable cause was found to support the allegations of the charge. In two the Commission found no jurisdiction. Of the six probable cause house-purchase cases, five were terminated with an offer to the complainant of the house involved in the case or equivalent housing and the sixth (6th) case went to a public hearing and is still unresolved.

From October 30, 1965 through September 1, 1969 the Northeast Region also received eleven cases dealing with vacant lots which were to be sold for residential purposes. Probable cause was found in eight of these cases, and during conciliation attempts five cases resulted in the respondent's offering the land to the complainant. The other three probable cause cases went to a public hearing and as of this writing have not been finally resolved. Of the three remaining cases one charge was withdrawn by the complainant, and the other two were dismissed for lack of jurisdiction.

Analysis of the Problem

From a review of these statistics it would appear that despite the limited coverage of the 1965 law and the inability on the part of the complainant or the Commission to hold property until the case was resolved, the law works fairly well. What these figures do not disclose is that even with expedient handling of complaints on the part of Commission staff, often the complainant has found other housing by the time the respondent's offer is forthcoming. The charge must be investigated and a written report submitted by the Regional Office to the Commission. If attempts at conciliation are unfruitful and a public hearing is held, more time is consumed. During this time the property is still on the market for rent or sale, and the complainant often feels compelled to pursue other housing leads. The investigation of housing cases is far and away more emotional than either public accommodations or employment cases. In employment cases the investigator is usually meeting with an individual who is accustomed to dealing with governmental representatives. This is also true, though on a much lesser scale, in public accommodations cases. In housing cases there is a reluctance to voluntarily provide records that are necessary for a complete investiga-

tion. Therefore, the majority of the subpoenas that are issued by the Commission during its investigations involve housing cases.

The housing case that, on the surface, appears to be open and shut, must nonetheless be thoroughly investigated. This is not only because a thorough investigation is desirable in all cases, but also because of the "creativity" of the respondent in developing evidence to refute the allegations in the complainant's charge. One of the most difficult points for a new investigator to learn is that responsible and respected members of the community will look him straight in the eye and relate situations that the investigation demonstrates to be entirely untrue. This is no way indicates that an investigator should begin an investigation with a preconceived idea, but that he must concentrate on the evidence and the evidence alone.

On June 17, 1968 the United States Supreme Court in *Jones v. Mayer*⁴ handed down a landmark decision, prohibiting all racial discrimination in the sale or rental of both real and personal property under a 102-year-old federal civil rights act.⁵ The distinctions between owner-occupied and non-owner-occupied property and commercial or personal residences under state law became irrelevant under the federal law. The Court held unequivocally that the statute enacted pursuant to the 13th Amendment to the United States Constitution "bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute thus construed, is a valid exercise of the power of Congress to enforce the 13th Amendment."⁶

Of equal interest to all advocates of open housing was the application in the *Jones* case of that portion of the federal statute authorizing enforcement by injunction. Only six known actions in Ohio have been commenced under authority of the *Jones* decision and the 1866 law. In all six, temporary relief was granted by the trial court permitting a rapid conciliation of the case or the continued availability of the property involved until hearing on the merits of the complaint.

The 1866 law does not, however, provide any administrative machinery for its enforcement. It therefore places the aggrieved party in the position of seeking private counsel to enforce his rights.

The Fair Housing Title (Title VIII) of the Civil Rights Act of 1968⁷ is a three part law, reaching its maximum strength on January 1, 1970, when it will cover all one-family houses which are sold or rented with the services of a real estate broker, salesman, agent, or other person engaged in the business of selling or renting dwellings. This new law allows an aggrieved person to bring a civil action to secure rights

⁴ 392 U.S. 409, 88 S.Ct. 2186 (1968).

⁵ Civil Rights Act of 1866; 42 U.S.C. § 1982.

⁶ *Jones v. Mayer*, *supra* n. 4, at 413.

⁷ 82 Stat. 73; 42 U.S.C. § 3601-3619.

guaranteed by the appropriate statutes. It also makes provision for the court to provide an attorney when it can be demonstrated that the aggrieved party cannot afford the costs of a private law suit. This law contains a provision for referring cases to state or municipalities who have fair housing laws which provide rights and remedies substantially equivalent to those provided by the federal statute. As of September 1, 1969 the Ohio Civil Rights Commission has not received any remanded cases from the Department of Housing and Urban Development, which is the administrative agency for the 1968 federal fair housing law.

There are sixteen municipal fair housing ordinances or resolutions in Ohio. As of September 1, 1969, these municipal regulations had been used a total of four times, according to a survey made by the Northeast Regional Office of local municipal administrators.

The 108th Ohio General Assembly amended the sections of the Ohio Revised Code comprising Ohio's fair housing law. These amendments not only bring the Ohio law abreast to the 1968 federal housing law as of January 1, 1970 but it surpasses the federal law. The Ohio act, which will become law as of November 12, 1969, unlike the federal law, covers all housing. The new law will also allow the aggrieved person to file an action in Common Pleas Court and gives the Court the power to grant appropriate relief, including a permanent or temporary injunction along with actual damages and court costs. These amendments not only bring single owner-occupied homes under the jurisdiction of the Ohio Civil Rights Commission but go on to provide a method of holding the housing in abeyance until a satisfactory resolution can be made.

Conclusion

The 1965 Ohio fair housing law, the 1968 federal housing law, and the 1866 civil rights law have not made significant changes in the racial housing patterns in the state of Ohio. Unlike the void that existed just four short years ago, however, the legal machinery now exists to assist an individual in getting fair treatment in satisfying his housing needs.