

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGELIQUE STRONG,

Plaintiff,

vs

CHATSFORD MANOR APARTMENTS,
d/b/a KESWICK MANOR APARTMENTS,
ERNIE ZITZEWITZ, and JUSTINE
ZITZEWITZ, Individually and In
Their Capacity as Rental Agents
for KESWICK MANOR APARTMENTS,
Jointly and Severally,

Case No. 96-CV-74940
Hon. Bernard Friedman

Defendants.

LEWIS & MUNDAY, P.C.

Thomas J. Guyer (P24409)
Donica Thomas Varner (P49785)
Attorneys for Plaintiff
1300 First National Building
Detroit, Michigan 48226
(313) 961-2550

COHEN & WARREN, P.C.

Harland E. Cohen (P26956)
David W. Warren (P32449)
Attorneys for Defendants
Co-Counsel for Defendants

**HARVEY, KRUSE, WESTEN &
MILAN, P.C.**

James Sukkar (P28658)

Mediation Date: February 23, 1998 at 3:00 p.m.

PLAINTIFF'S MEDIATION SUMMARY

INTRODUCTION

This is a fair housing race discrimination action brought pursuant to the Fair Housing Amendments Act of 1988, 42 U.S.C. 5

3601, et seq., Sections 1981 and 1982 of the Civil Rights Act of 1866; and the Michigan Elliott-Larsen Civil Rights Act, MCL § 37.2501, et seq.; MSA § 3.548(501), et seq. Plaintiff, Angelique Strong, is an African-American attorney practicing law in Oakland County who was unlawfully denied the opportunity to rent an apartment at Keswick Manor Apartments ("Keswick Manor") because of her race. Plaintiff was discriminated against by Defendant Chatsford Manor Apartments ("Chatsford Manor"), the owner of Keswick Manor, and its agents, Ernie Zitzewitz ("Mr. Zitzewitz") and Justine Zitzewitz ("Ms. Zitzewitz"). Herbert and Harry Spoon are the principle owners of Chatsford Manor.

FACTS

Plaintiff Angelique Strong is an African American female. She graduated from the Ohio State University school of law in May of 1995 and thereafter took and passed the next Ohio bar examination.

In October of 1995, Ms. Strong moved to Michigan and joined the law firm Hardy, Lewis & Page, P.C. as an associate. Ms Strong took and passed the Michigan Bar examination and was admitted to practice in Michigan in June, 1996. At Hardy, Lewis & Page Ms. Strong practices management side employment law, representing several Fortune 500 companies.

After being sworn in as a Michigan attorney, Ms. Strong began looking for an apartment. Since her lease expired at the end of August, Ms. Strong thought it would be a good time to move to another apartment.

Ms. Strong had decided to search for an apartment in the Southfield area, since that would be close to work and affordable. She had driven by Kewsick Manor Apartments on the way to and from work and thought that they looked pleasant and affordable, and therefore wrote down the telephone number of the complex. Keswick Manor is a residential apartment complex consisting of 50 units in four buildings located on Eleven Mile Road in Southfield, Michigan. Keswick is an assumed named of Chatsford, Manor, a Michigan Co-partnership.

On or about July 16, 1996, Ms. Strong, called Keswick Manor to inquire about renting a one-bedroom apartment beginning in September and spoke to Ms. Zitzewitz.¹ Ms. Zitzewitz told Plaintiff that she would not know the availability of an apartment in September until August. Plaintiff then asked to be placed on the waiting list and informed Ms. Zitzewitz that she would stop by in a day or two to view a rental unit and to confirm her place on the waiting list.

The next day, Plaintiff visited Keswick and buzzed the unit identified as "office/manager". Mr. Zitzewitz answered the outer door and identified himself as the office manager but kept the door slightly ajar. He did not invite Ms. Strong in. When Plaintiff informed Mr. Zitzewitz that she would like to view a model apartment unit and confirm her place on the waiting list, Mr. Zitzewitz rudely, falsely and with racially discriminatory intent

¹ The Statement of Facts is supported by the relevant portions of Plaintiff's Deposition Transcript, which is attached as EXHIBIT A and Plaintiff's letter to the Fair Housing Center of Metropolitan Detroit dated August 5, 1997, which is attached as EXHIBIT B.

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 961-2550

told Ms. Strong, from behind the door:

1. The waiting list had a least 30 names on it;
2. It would be "doomsday" before Plaintiff got an apartment in that complex;
3. "Sweetie, you are not going to get an apartment here"; and
4. "Sweetie, we don't have any apartments for you".

Mr. Zitzewitz then shut the door in Plaintiff's face. Plaintiff returned to work extremely confused and disturbed about her interaction with Mr. Zitzewitz. She explained her experience to her colleague, Henry Andries, Jr. ("Mr. Andries"), a white male. At Plaintiff's request, Mr. Andries called Keswick Manor to inquire about an apartment. Mr. Andries called Keswick Manor and spoke with Ms. Zitzewitz within one hour of Plaintiff's return to her office. Ms. Zitzewitz told Mr. Andries that a one-bedroom apartment would be available to rent in late August or early September and that there were only 6 names on the waiting list. Ms. Zitzewitz encouraged Mr. Andries to place his name on the waiting list if he was interested in the apartment. (See Statement by Mr. Andries, EXHIBIT C).

Ms. Strong was deeply distressed when Mr. Andries reported his conversation with Justine Zitzewitz. She had been advised by Ms. Zitzewitz that she would not know whether an apartment would be available until August. Yet Mr. Andries had been advised that there would be an apartment available and, indeed, was given the approximate date of availability. Ms. Strong believes that her voice would be identified as that of African American person and Mr.

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 961-2550

Andries would be identified as Caucasian. This fact, combined with her rude treatment at the hands of Mr. Zitzewitz lead Ms. Strong to believe she had been discriminated against on the basis of race.

Ms. Strong discussed the situation at Keswick Manor with the Hardy Lewis & Page partner who supervised her work, Terrance Page. Mr. Page encouraged her to contact the Fair Housing Center of Metropolitan Detroit ("FHC"). Mr. Page had defended cases referred by the Fair Housing Center to cooperating attorneys before and was aware of the FHC's reputation for fairness.

Among other fair housing activity, FHC uses "testers" to determine whether lessors of real property are engaged in discriminatory practices. Voluntary testers are trained to assume a specific identity which meets certain characteristic and then attempt to apply for rental housing. One "protected" tester (the tester in a suspect classification) and one comparison tester each visit a rental unit within the same day. The testers are asked to assume a set of characteristics such as income level, employment and marital status. The characteristics of the testers are generally comparable, although the protected tester usually assumes a slightly higher income, (EXHIBIT D, deposition of Clifford Shrupp). At the conclusion of their visit each tester writes a report about their experience. The testers are trained to write their reports detailing only factual manner, and avoid making editorial or judgmental comments.

Based on Ms. Strong's description of her experience with

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 961-2550

Keswick Manor, the FHC decided to test that apartment complex. Accordingly, FHC sent two sets of testers to Keswick Manor. On July 29 at approximate 12:30 p.m. Mary Ratkowski (white) visited Keswick Manor and inquired about renting an apartment. She was invited into the apartment complex by Mr. Zitzewitz who told her that an apartment would be available soon. He showed Ms. Ratkowski the apartment he shared with his wife Justine and advised her that all the units had the same lay-out. When Ms., Ratkowski pressed Mr. Zitzewitz about the availability of an apartment, Mr. Zitzewitz told her that two units would be available soon, and to call again in one week.

Approximately one hour later tester Arnetta Pinkard (African American) visited Keswick Manor. She too encountered Ernie Zitzewitz, but her treatment was radically different than that of her white counterpart. She was asked by Mr. Zitzewitz "what do you want". Ms. Pinkard was not invited in or shown an apartment. Instead, Mr. Zitzewitz spoke to her with the door slightly ajar. He advised her that two apartments would be available in mid August. He then asked her if she was married, and asked "are you people from Detroit". He then suggested that Ms. Pinkard apply at a nearby complex, Whispering Hollows.

Ms. Pinkard described her experience with Mr. Zitzewitz at her deposition.

Q. Did you ask to come into the building?

A. I asked if I could see an apartment, but I couldn't see an

apartment. He never invited me into the building.

* * *

Q. Did he seem to be polite?

A. I don't know how you would call polite for someone to come to the door and ask, what do you want. I don't know how you would take that. I didn't take it as an insult, but I thought it was rather strange I never got in the building.

(EXHIBIT E, Pinkard dep, pgs 19,22)

Just one hour after warmly greeting a white tester and giving her a personal tour of an apartment, Mr. Zitzewitz brusquely questioned Ms. Pinkard from behind a barely opened door and attempted to steer her to another complex. (EXHIBIT F, Ratkowski, Pinkard reports).

On August 13, 1996 the Fair Housing Center sent two additional testers to Keswick Manor. Deanna Morrow, an African American female, arrived at 10:10 a.m. and was met by Ms. Zitzewitz. Ms. Zitzewitz showed Ms. Morrow a vacant apartment and advised her that there would not be a unit available unit October 1st. Ms. Morrow talked with Ms. Zitzewitz for a few minutes, and Ms. Zitzewitz then told her that the apartment would be available the second week in September.

About an hour and one half later Sarah Smith Redmond (a Caucasian female), visited Keswick Manor and also met Ms. Zitzewitz. She, too was shown a vacant apartment but was advised that an

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 961-2550

LAW OFFICES
LEWIS & MURRAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 961-2550

apartment would be available in two weeks. Ms. Zitzewitz also provided Ms. Redmond an information sheet indicating prices, processes, phone number and address. Ms. Redmond was invited to put her name on a waiting list.

Again, the white tester was given preferential treatment. Ms. Redmond was invited to put her name on a waiting list and was told an apartment was available in two weeks (before the end of August). Ms. Morrow was told that no apartments were available until October, and then, when Ms. Zitzewitz became more comfortable with her, that a unit would be available the second week in September. Ms. Zitzewitz spent twice as much time, (25-30 minutes) with the white tester as with the African American tester (15 minutes). (EXHIBIT G, Redmond Morrow reports).

The FHC analyzed Ms. Strong's account of her treatment and the test results² and concluded that Keswick Manor apartments clearly discriminated against African American applicants. The majority of the tests conducted by the FHC result in inconclusive data. Roughly ten percent of the cases tested by the FHC are considered so conclusive that the complaint is referred to an attorney. Ms. Strong's case was referred to an attorney.

APPLICABLE LAW

The Fair Housing Amendments Act of 1988 provides, in part that:

In a civil action under subsection(a), if the court finds that a discriminatory housing practice

² The fair housing center also tested Keswick Manor in November, 1995. At that test the white tester was treated more favorably, however, the difference in treatment between the two testers was not considered conclusive.

has occurred . . . , the court may award to the plaintiff actual and punitive damages . . .

42 U.S.C. § 3613(C)(1).

Punitive damages are also available for violations of the Civil Rights Acts of 1866. Patterson v. McClean Credit Union, 491 U.S. 164, 181 n.4; 105 L. Ed.2d 132; 109 S.Ct. 2363 (1989) (holding that punitive damages are available under 42 U.S.C. § 1981.)

LIABILITY

Liability in this case is clear. In three instances in the summer of 1996, white rental applicants were treated more favorably than black applicants. There is no explanation for this fact pattern other than discrimination based on race.

It is anticipated that Defendants will argue that the testing evidence is not strong because the difference in treatment of testers is slight. For example, Defendants may argue that the difference between what Ms. Morrow was told about availability (second week in September) was not drastically different from what the white tester, Sarah Redmond, was told (end of August). To the contrary, the difference between what these testers were told is of an enormous significance, particularly where, as here, waiting lists are not kept with any regularity or any uniformity. In a fifty unit apartment complex, like Keswick Manor, with limited turnover, it is important to apply for an opening roughly coincident with the availability of an apartment. Ms. Zitzewitz ensured that Ms. Redmond would be able to do so by suggesting that she contact her again soon because of the rapidly approaching availability date.

LAW OFFICES
LEWIS & MURRAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226

(313) 961-2550

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 561-2550

The odds were great that Ms. Morrow, faced with a one month wait, would either go elsewhere or call back after available units were rented.

Moreover, the differences in information each tester was given, although more arguably minor in terms of time, provides clear evidence of an attempt to racially discriminate. Why else would Ms. Zitzewitz tell Ms. Morrow that an apartment would be available the second week in September and one hour later tell Ms. Redmond that an apartment was available at the end August? Why would Mr. Zitzewitz tell Ms. Strong that the waiting list had sixty names on it when only a few hours later Ms. Zitzewitz told Henry Andries on the phone that an apartment would be open in late August and that there were only six names on the waiting list?

The strong evidence of discrimination here consists not only of the disparate information given black and white testers, but also in the drastic difference in their treatment. White applicants at Keswick Manor are invited in, shown apartments and encouraged to apply soon. Black applicants are not allowed to cross the threshold, but instead addressed through a barely opened door. Black applicants are asked "what do you want", referred to as "sweetie", and advised that it will be "dooms day" before the applicant is afforded the privilege of a rental unit. Black applicants are not only screened, they are offensively screened.

Defendant will also argue that the fact that roughly fifty percent of the tenants at Keswick manor are African American is

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48220
(313) 961-2550

evidence of an intent not to discriminate. In fact, the percentage is proof of discrimination.

It is an unfortunate comment on our society that, at any point in time, the percentage of African American citizens with incomes at a certain level decreases as household income increases. A much smaller percentage of households earning more than \$100,000.00 per year is African American than the percentage at \$40,000.00 per year. This translates into a racial disparity of "applicant flow" at different rental rates.

In Southfield Michigan, an integrated community, the percentage of African American applying for apartments renting for \$2,000 per month is significantly less than the percentage of African Americans in the overall population of Southfield. Conversely, the applicant flow for apartments renting for \$530.00 per month, the rental rate at Keswick Manor, is largely African American. Plaintiff will present expert testimony that an apartment complex in Southfield in 1996 which rents apartments for \$530.00 per month should have a percentage of black residents greatly in excess of fifty percent if all applicants are treated equally. A fifty percent African American rental rate at Keswick Manor can only be explained by discrimination against African American renters.

Plaintiff will also present evidence that a neighborhood in racial transition will have a gradual conversion from white to black residents up to a certain point, and beyond that point, "white flight" will occur and the neighborhood will become solely African

American. The critical point is approximately fifty percent. This fact was not lost on the Zitzewitzs. While they reluctantly accepted certain black applicants, they were determined not to allow their apartment complex to become predominantly African American. Generally, racial quotas for rental units are unlawful. U.S. v Starrett City, 660 F Supp 668 (ED NY, 1987) aff'd 840 F2d 1096 cert den 488 U.S. 946.

Evidence of racial discrimination in this case is abundant, conclusive and offensive to the average juror.

DAMAGES

Plaintiff Angelique Strong, to her credit, has not attempted to inflate her actual damages. When she was unable to apply at Keswick Manor she renewed her lease at Franklin Towers in Southfield and paid slightly more rent. Her work performance suffered somewhat as a result of the emotional distress caused by the discrimination she suffered; however, Ms. Strong is too intelligent to allow discriminatory treatment by the Zitzewitzs to affect her career path and she now works as well as ever. She has not sought psychological counseling, although plaintiff will testify about the emotional distress she has suffered.

Under Fair Housing law, however, punitive (federal) and exemplary (state) damages are allowed. Ms. Strong's case for punitive and exemplary damages is compelling.

Angelique Strong will make an excellent witness. Her intelligence and competence will be immediately apparent to every

Law Offices
Lewis E. Munday
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 661-2550

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48220
(313) 551-2550

juror. Ms. Strong has been determined by the principals of an excellent law firm to be competent to render sophisticated professional services to fortune 500 companies. Ms. Strong has spent her life striving to rise above her family's limited educational background and financial resources to become a responsible citizen with the expectation that she would be judged on her individual merit. Plaintiff's life directly challenges the types of stereotypes of young African Americans. The Zitzewitzs, however, concluded that Ms. Strong was an undesirable tenant based solely on her race and unlawfully gave her false information about the availability of an apartment and treated her with disrespect. The actions of the Zitzewitzs will offend any jury.

In comparable cases monitored by the Fair Housing Center, six figure punitive damage awards are not infrequent.

Plaintiff will argue that the corporate Defendants have been dismissed, and the jurors will be sympathetic to the Zitzewitzs because of their age. This argument ignores the practical reality of jury deliberations. Notwithstanding any jury instructions, this jury will want to punish someone, and moreover, will assume that the Zitzewitzs will be indemnified by Kewick Manor. Further, the jury will ascertain that the Zitzewitzs were undoubtedly acting on tacit instructions from their employers when they screened African American applicants. Indeed, notwithstanding the pendency of this lawsuit, Keswick Manor still does not comply with federal law requiring the posting of Fair Housing posters.

In addition, if Plaintiff prevails on liability, which is almost certain, then under both state and federal laws she will be entitled to attorney fees and costs. Both attorney fees and costs are substantial in this case given the fact that four testers, three Fair Housing Center employees, the Zitzewitzs and the owners of Keswick Manor have been deposed.

Accordingly, Defendants submit that an award of \$150,000.00 is appropriate and is consistent with a probable jury award in this matter.

Respectfully submitted,

LEWIS & MUNDAY, P.C.

By: _____

JS
Thomas J. Guyer (P24409)
Donica Thomas Varner (P49785)
Attorneys for Plaintiff
1300 First National Building
Detroit, Michigan 48226
(313) 961-2550

Dated: February 16, 1998

LAW OFFICES
LEWIS & MUNDAY
A PROFESSIONAL CORPORATION
FORMERLY LEWIS, WHITE & CLAY, P.C.
1300 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
(313) 961-2550