IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRED DONALD JOHNSON, and SANDRA JOHNSON, his wife,	)	
Plaintiffs,	)	
vs.	)	Nos. 70 C 1636 and 70 C 16
HOMESTEAD REALTY, INC., TINA SIEGEL, and TOM NELSON,	)	
Defendants.	)	

MEMORANDUM OF DECISION

AUG 5, 1971

JULIUS J. HOFFMAN, District Judge. These actions were brought pursuant to the Fair Housing provisions of the Civil Rights Act of 1968, 42 U.S.C. Sections 3604(a), (d), 3612a. The court has jurisdiction of the subject matter of both suits. 28 U.S.C. 1343(4). The cases were ordered consolidated for trial under the provisions of Rule 42(a) of the Federal Rules of Civil Procedure and were tried to the court without the intervention of a jury.

The plaintiffs in both cases, Fred Donald Johnson and Sandra Johnson, are a married couple and are Negroes. The defendant, Homestead Realty, Inc., is named in both actions.

This defendant is an Illinois corporation with four (4) offices in the Northern District of Illinois, located in the cities of Dolton, South Holland, Calumet City and Chicago. (Official Transcript, page 666). The individual defendant in Cause No. 70 C 1636 is a saleswoman, for Homestead Realty, Inc. The individual defendant in Cause No. 70 C 1696 is also employed by Homestead as a real estate salesman.

The plaintiffs allege in their respective complaints that the defendants have refused to show, sell or negotiate for sale, and have falsely represented as being unavailable for sale, real estate properties conforming to the plaintiffs' requests. The plaintiffs also allege that they were and are ready, willing and able to purchase a home at a reasonable price. In Cause No. 70 C 1636, the plaintiffs assert that on May 23, 1970, the defendant, Homestead, had available for sale three (3) properties that conformed to the plaintiffs' specifications: 14408 Avalon, Dolton, Illinois; 36 East 155th Place, South Holland, Illinois; 14603 Woodlawn, Dolton, Illinois, In Cause No. 70 C 1696, the plaintiffs allege that on June 10, 1970, the defendant, Homestead, had available for sale three (3) properties that conformed to the plaintiffs' specifications:

14816 Minerva, Dolton, Illinois; 14436 Parnell, Riverdale, Illinois; 36 East 155th Place, South Holland, Illinois.

In both complaints, it is set forth: that the plaintiffs have suffered great and irreparable injury and that they have no adequate remedy at law, and as relief seek a declaratory judgment that they may not be deprived of the right to see, purchase or negotiate the purchase of any home on the basis of race, an injunction against such deprivation, an award of actual damages in the amount of $500.00, the assessment of attorneys fees and costs, and an award of $10,000.00 exemplary damages.

The evidence showed that a number of years ago, Homestead, instituted a system of marking its real estate listing sheets for the purpose of recording the racial composition of the neighborhoods in which were located homes that were for sale. A "XX" marking was placed on a listing sheet if the property was located on a block on which Negroes were living. Listing sheets for homes located on blocks on which no Negroes lived had no such marks. Thus a "XX" on a listing sheet indicated that the home was on a block that was either all-Negro or was racially integrated, and the absence of a mark

meant that the block was all-white. (Official Transcript, page 26, 456). In addition, Homestead kept a record of a prospect's race on that person's prospect card. (Official Transcript, page 49).

The defendants have not denied the use of the "XX" system. How the "XX" records were used, however, is the subject of dispute between the parties and conflicting evidence. There was testimony that "XX" on a listing meant that home could not be shown to Negro prospects, and that Homestead Realty maintained a policy of not showing homes to Negroes in all-white areas. (Official Transcript, pages 27, 39, 127). It was testified that when Negroes asked to see property in all-white areas, they were told that a contract to purchase the particular home was pending, even when that was not true. (Official Transcript, pages 32, 145).

There was also testimony, however, that the "XX" system was not used for the purpose of discriminating against prospects on the basis of race. (Official Transcript, p. 676). The office manager of Homestead testified that the "XX" system was used because mortgage companies wanted to know the racial

composition of the areas and the races of the prospective purchasers. (Official Transcript, p. 675). That testimony was not contradicted. There was extensive testimony that Homestead did not at any time maintain a policy of discrimination against Negroes (Official Transcript, pp. 456, 614, 643, 651, 659, 669), and that sales personnel were told to treat all prospects in the same manner regardless of race. (Official Transcript, pp. 510, 581).

Certainly the preponderance of the evidence does not establish that the "XX" system was used by Homestead for the purpose of maintaining a policy of discrimination against Negroes. Testimony to the contrary was given by witnesses actively participating in the firm's business. Some evidence tending to show discrimination came from witnesses whose involvement with the company was either part-time, not recent, or both. (Official Transcript, pp. 19, 70-71, 74, 110). Moreover, there was uncontradicted evidence that Homestead had in the past sold many homes to Negroes in areas that were then all-white and were not recorded as "XX," (Official Transcript, pp. 750-51; Defendants' Exhibit Nos. 12, 13) as many as fifty (50) or sixty (60) in 1969 and 1970. (Official Transcript, pp. 678-79).

Furthermore, Homestead began to phase out the "XX" system before the plaintiffs had had any dealings with them (Official Transcript, p. 458), and sales personnel were told that listings were no longer to be marked "XX." (Official Transcript, pp. 474, 559).

The plaintiffs attempted to prove their allegations of discrimination against them by the defendants by means of evidence provided by so-called "testers" and by their own accounts of two separate dealings with Homestead. The Johnsons' first contact with Homestead occurred on May 23, 1970, at the company's office in South Holland. The plaintiffs entered the office through the front door, into a room in which there were others seated, and were directed to an office in the rear. (Official Transcript, p. 269). They spoke with one of Homestead's sales persons, the defendant Ernestine Siegel, and informed her that they were interested in a four-bedroom, bi-level house, not more than ten (10) years old, with a two-car garage, at a price between $24,000.00 and $30,000.00. (Official Transcript, pages 270-71, 397, 513, 548). Miss Siegel told the plaintiffs that the office had no homes listed to meet their specifications. (Official Transcript, p. 272). After the brief interview, Miss Siegel asked whether the plaintiffs' car was parked in

the parking lot, and they answered that it was. She said they might leave by the rear door, which was in the office at the rear and was convenient to the parking lot. (Official Transcript, p. 273).

The plaintiffs contend that the representation that no homes were available on May 23 that met their specifications was false, and endeavored to prove that contention by testimony of "testers." The "testers" were white persons who went to the Homestead Realty Office and held themselves out to be married couples who were looking for a home to purchase. The "testers" were either told of or shown homes that were available, and the plaintiffs assert that the testimony of the "testers" proves that the representation made to the plaintiffs that no homes were available within their specifications was false, and that the failure to show said homes was due solely to the plaintiffs' race. That conclusion does not follow from the evidence, however, because none of the three (3) houses discovered by the "testers" was available and met the specifications of the plaintiffs. The house at 14408 Avalon, in Dolton, is not a bi-level (Official Transcript, p. 617; Defendants' Exhibit No. 6), and the plaintiffs did not express any interest in houses other than bi-levels. (Official Transcript, p. 433).

The house at 14603 Woodlawn, in Dolton, also is not a bi-level. (Official Transcript, p. 617; Defendants' Exhibit No. 5). The house at 36 East 155th Street in South Holland was not available because a contract to purchase the house was pending on May 23. (Official Transcript, p. 697; Defendants' Exhibit No. 11). In addition, the South Holland property had only a one-car garage. (Official Transcript, p. 618; Defendants' Exhibit No. 7).

The credibility of the so-called "testers" was not at issue, since the defendants have not disputed the substance of their testimony. It should be observed, however, that if the credibility of those witnesses were at issue, their testimony would be given little weight. The "testers" admitted that they told many untruths in carrying out their investigations. The fact that a witness has misrepresented or lied on a previous occasion warrants doubt as to his credibility in giving testimony, and weak moral character reflects negatively on credibility as well. IIIA Wigmore on Evidence, §§1008, 920 (Chadbourn Rev. 1970). The conduct of the "testers" constituted more than mere misrepresentation. They carried out the reprehensible practice of consuming the valuable time of sales personnel with no intention of purchasing a home, so that the sales people's time was not available for earning a commission, but was wasted. (Official Transcript, p. 690).

The Johnsons' second contact with Homestead Realty occurred on May 29, 1970, at the company's office in Dolton. The plaintiffs entered the office through the front door and entered a room in which there were some other people present. They were shown to an office in the rear where they talked with Tom Nelson, a salesman and the defendant in Cause No. 70 C 1696. (Official Transcript, pp. 277-78). The plaintiffs told Mr. Nelson that they were seeking a house with three (3) or four (4) bedrooms, in the $24,000.00 to $30,000.00 price range. (Official Transcript, p. 278); that the house had to be in South Holland or Dolton (Official Transcript, p. 586), and that it was not to be more than ten (10) years old. (Official Transcript, p. 436). There was some discrepancy in the testimony as to the style of house which the Johnsons told Nelson they wanted. Mr. Johnson testified that he expressed an interest in ranch houses (Official Transcript, p. 278), but Mr. Nelson testified that the plaintiffs requested only bi-level homes. (Official Transcript, p. 581). On deposition, however, Mr. Johnson stated that their requests was for bi-level homes. (Official Transcript, p. 338; Deposition of Fred Donald Johnson, October 26, 1970, p. 25). I find, therefore, that on May 29, 1970, the plaintiffs inquired about three (3) or four (4) bed-room bi-level homes, up to ten (10) years old, in Dolton or South Holland; priced between $24,000.00 and $30,000.00. Mr. Nelson

informed the Johnsons that he had nothing to show them that would meet their specifications, and that the type of home in which they were interested would cost at least between $35,000.00 and $40,000.00 in the Dolton or South Holland areas. (Official Transcript, p. 646).

The plaintiffs returned to the Dolton office on June 10, 1970, and again spoke with the defendant Nelson. Mr. Nelson informed the plaintiffs that he did not have any houses to show them. (Official Transcript, p. 282). During the period between the May 29 and June 10 visits of the plaintiffs, Mr. Nelson learned that the plaintiffs had previously dealt with the defendant Siegel in Homestead's South Holland office, and was told by the office manager to have nothing to do with them for that reason. (Official Transcript, pp. 588, 688). In addition, during the May 29th interview Mr. Nelson had asked the plaintiffs about their financial status and ability to make a down payment, but they refused to give him any such information and said they would handle their own financing. (Official Transcript p. 340; Deposition of Fred Donald Johnson, October 26, 1970, p. 26). Because the plaintiffs were unwilling to disclose their financial status, Mr. Nelson determined that they were not bona fide purchasers and that he should not waste his time with them. His lack of interest in the plaintiffs

as customers was not motivated by considerations of race. (Official Transcript, pp. 591, 688).

The plaintiffs allege in their complaint, in Cause No. 70 C 1696, that the representations made by the defendant Nelson, that there were no homes available within their specifications, was false, and attempted to prove that allegation through the testimony of "testers." There was evidence that white "testers" were shown three (3) houses on June 10, 1970, located at 14816 Minerva, in Dolton, 14436 Parnell, in Riverdale, and 36 E. 155th Street, in South Holland. That evidence did not substantiate the plaintiffs' allegation that there were homes available at that time that met their specifications, and that they were not shown to the plaintiffs solely because of the plaintiffs' race. Neither the Dolton house nor the Riverdale house were bi-level, the former being a ranch house (Official Transcript, pp. 629, 638; Defendants' Exhibit No. 10) and the latter being a bungalow. (Official Transcript, pp. 628-29; Defendants' Exhibit No. 9). The house at 36 East 155th Street in South Holland was not available because there was a contract pending on it as of May 23, 1970. (Official Transcript, p. 697; Defendants' Exhibit No. 7).

42 U.S.C. §1982 provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to . . . purchase . . . real and personal property.

42 U.S.C. §3604 provides in pertinent part:

> . . . it shall be unlawful--
>
> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.
>
> (d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

The burden is on the plaintiffs to prove by a preponderance of the evidence that the defendants, or any of them, violated any of the provisions of the aforementioned statutes. United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969). The plaintiffs have not proven that the defendants, or any of them, deprived them of their right to purchase property, refused to sell or negotiate the sale of property because of race, or represented because of race that any dwelling was not available for sale when in fact such dwelling was so available.

The plaintiffs not only failed to prove any violation by the defendants of any of the provisions of the civil rights acts upon which liability could be based but they also failed

to prove that they suffered any damage from the alleged violations. There is no evidence whatsoever of injury to the plaintiffs of an economic or financial character. The plaintiffs did testify that they suffered injury to their pride and that they felt humiliated in their dealings with the defendants. Much was made of the fact that the defendant Siegel invited the defendants to leave the Homestead office in South Holland by the back door. (Official Transcript, p. 431). There was uncontradicted evidence, however, that they were within a few feet of that door when the interview was completed (Official Transcript, p. 540), the rear door was closer to the parking lot where the plaintiffs' car was parked (Official Transcript, p. 311), and it was customary for both white and Negro prospects to leave by that door when they had a car parked in the parking lot. (Official Transcript, pp. 541-42).

Mrs. Johnson also testified that after June 10, 1970, she felt rejected and insulted by the defendants' alleged actions, and that as a result she missed her menstrual period for three (3) consecutive months. (Official Transcript, pp. 409-13). There was no medical testimony, however, to establish that the difficulty was caused by Mrs. Johnson's alleged mental reaction to her experience with the defendants nor was any bill for medical services offered in evidence.

Judgment will be entered in favor of the defendants in both causes. This memorandum of decision will stand as the Court's findings of fact and conclusions of law to satisfy the requirements of Rule 52 of the Federal Rules of Civil Procedure.