

(1) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2019] NZHRRT 6

Reference No. HRRT 039/2016

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN OLIVIA MINH GODFREY

PLAINTIFF

AND GLENDA MAREE HARVEY

FIRST DEFENDANT

AND PHILIP GEORGE HARVEY

SECOND DEFENDANT

AT AUCKLAND

BEFORE:

Ms MA Roche, Co-Chairperson
Ms LJ Alaeinia JP, Member
Mr MJM Keefe QSM JP, Member

REPRESENTATION:

Mr G Robins and Ms J Emmerson for plaintiff
Mr P Drummond and Ms R Oakley for defendants

DATE OF HEARING: 24, 25 and 26 September 2018

DATE OF DECISION: 22 January 2019

DECISION OF TRIBUNAL¹

[1] Mr and Mrs Harvey own several rental properties in Palmerston North. In October 2015, they advertised one of these properties to rent. Olivia Godfrey is blind and uses a

¹ [This decision is to be cited as *Godfrey v Harvey* [2019] NZHRRT 6.]

guide dog. She inspected the available rental property and expressed her interest in renting it to the Harveys but did not secure it. The property was rented to a group who had viewed the property before Ms Godfrey did. The main issue to be determined is whether Mr and Mrs Harvey, in their treatment of Ms Godfrey, discriminated against her because of her use of a guide dog and thereby breached the Human Rights Act 1993 (HRA).

Background

[2] Ms Godfrey has been blind since she was three and began using a guide dog while at University. She is the mother of three children who were all under the age of five in October 2015.

[3] Ms Godfrey and her husband experienced marital difficulties and decided to separate. Following this decision, they remained living in their marital home while Ms Godfrey sought alternative accommodation for herself and the children.

[4] On 16 October 2015, Ms Godfrey came across an advertisement for a house on Dahlia Street, Palmerston North, on the Homeads website. The house appeared to be suitable and the advertisement specified that the landlords (who were Mr and Mrs Harvey) were negotiable as to pets. Using the Homeads online form, Ms Godfrey provided her contact details and requested the landlords' contact details.

[5] On 17 October 2015, Ms Godfrey telephoned Mrs Harvey regarding the Dahlia Street house. Mrs Harvey told her that the house was currently tenanted but that she could view it. Mrs Harvey did not disclose that earlier that day she had met a group of three people (Sean Curtin and friends) who wished to flat in the house and whom Mrs Harvey thought would be suitable tenants, subject to them meeting Mr Harvey.

[6] On 18 October 2015, Ms Godfrey visited the Dahlia Street property with her friend, Nick Jessen. The tenants showed them around and Ms Godfrey thought the house seemed suitable. On 20 October 2015, she visited the property again with her housekeeper, Nivene Mills, to get her view on whether the house was suitable. Ms Mills agreed that it was and Ms Godfrey decided she would like to rent it.

[7] On 20 October 2015, Ms Godfrey telephoned the Harveys in the evening. Mr Harvey answered her call and Ms Godfrey expressed her interest in renting the property. Mrs Harvey was in the shower while Mr Harvey and Ms Godfrey had this conversation. There was some communication between Mr and Mrs Harvey while Ms Godfrey was on the phone. The details of the conversation between Ms Godfrey and Mr Harvey are in dispute, however, both parties agree that during the conversation, Ms Godfrey disclosed to Mr Harvey that she was blind and had a guide dog.

[8] On 21 October 2015, Ms Godfrey rang Mrs Harvey in the late afternoon. The details of this conversation are also in dispute. Mrs Harvey says that she informed Ms Godfrey that the house was gone, while Ms Godfrey says Mrs Harvey told her the house was more suitable for students than a family and that she and Mr Harvey were "not keen on dogs".

[9] On 24 October 2015, Mr and Mrs Harvey met Sean Curtin and friends at the house and agreed to rent it to them. The tenancy agreement was signed on 8 November 2015 and the tenancy commenced on 27 November 2015.

[10] Ms Godfrey secured another property in late October or early November and moved into it with her children on 24 November 2015. She did not bring her guide dog with her when she viewed this property, nor did she disclose its existence to the landlord until the signing of the tenancy agreement. This was because she did not wish to be discriminated against.

[11] On 3 November 2015, Ms Godfrey made a complaint to the Human Rights Commission that she had been discriminated against on the grounds of her disability when she applied to rent a property from the Harveys. She complained that the Harveys declined her application because she had a guide dog. This complaint led to her proceedings in the Tribunal.

[12] On 12 May 2017, the Tribunal referred Ms Godfrey's complaint back to the Human Rights Commission for mediation pursuant to s 92D of the HRA.

[13] On 28 June 2017, the parties attended mediation. However, the complaint was not resolved and the proceedings in the Tribunal resumed.

The legal framework

[14] Disability is a prohibited ground of discrimination under the HRA. Reliance on a guide dog is included in the definition of disability. See s 21(1)(h)(vi):

21 Prohibited grounds of discrimination

- (1) For the purposes of this Act, the *prohibited grounds of discrimination* are—
- ...
 - (h) disability, which means—
 - ...
 - (vi) reliance on a guide dog, wheelchair, or other remedial means:

[15] It is unlawful to discriminate on a prohibited ground in the provision of land, housing, and other accommodation. See s 53(1):

53 Land, housing, and other accommodation

- (1) It shall be unlawful for any person, on his or her own behalf or on behalf or purported behalf of any principal,—
- (a) to refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
 - (b) to dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
 - (c) to treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
 - (d) to deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or

(e) to terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation,—
by reason of any of the prohibited grounds of discrimination.

[16] The Tribunal is required to determine whether Mr and Mrs Harvey breached s 53(1) by refusing to rent the Dahlia Street property to Ms Godfrey, or by treating her differently from others in the same circumstances when she sought to rent it, by reason of her reliance on a guide dog.

[17] Should a breach of s 53(1) be established, it will be necessary for the Tribunal to consider what remedy should be granted to Ms Godfrey.

Factual disputes

[18] In order to determine whether Mr and Mrs Harvey breached s 53(1), it is necessary to resolve a number of factual disputes between the parties. These are:

[18.1] Was the Dahlia Street property available for rent at the time Ms Godfrey made an offer to rent it or had it already been rented in principle to Sean Curtin and friends?

[18.2] What took place during the telephone conversation between Ms Godfrey and Mr Harvey on 20 October 2015? Did Mr Harvey agree to rent the property to Ms Godfrey before she disclosed her reliance on a guide dog?

[18.3] What took place during the telephone conversation between Mrs Harvey and Ms Godfrey on 21 October 2015? Did Mrs Harvey tell Ms Godfrey that she couldn't have the property because the Harveys were not keen on dogs?

[19] A further factual dispute that exists is whether Ms Godfrey disclosed confidential details of settlement discussions at mediation in breach of s 85 of the HRA.

Was the house available for rent at the relevant time or had it already "gone"?

[20] Mr and Mrs Harvey both gave evidence that when Mrs Harvey met Sean Curtin and friends on 17 October 2015, she agreed to let the property to them, subject to them meeting Mr Harvey. Although a tenancy agreement had not been signed, bond had not been paid, and references had not been checked, it was understood between Mrs Harvey and Sean Curtin and friends, that they were to have the property, subject to them meeting Mr Harvey. Mr Harvey would have also met the group on 17 October, but was unable to do so because he was unwell. Mrs Harvey gave evidence that she and Mr Harvey worked as a team with respect to their rental properties and made all their decisions together which is why she wanted Mr Harvey to meet the group as well. However, in her mind it was a "done deal" if Sean Curtin and friends had wanted it, even before they met Mr Harvey, as she was confident he would agree with her assessment of the group.

[21] Mr Harvey gave evidence that he and Mrs Harvey did not take a tenancy agreement form to the meeting with Sean Curtin and friends on 24 October 2015. He said that the

purpose of the meeting was only for him to meet them and that, from memory, the group did not have their bond together yet. He could not recall if the group had supplied references and said that he does not always check references as he takes people at face value.

[22] Sean Curtin appeared as a witness for the Harveys. He gave evidence that the group had viewed the property together on 13 October 2015, and arranged to meet the landlords there on 17 October 2015. The meeting took place but only with Mrs Harvey. Mr Harvey did not attend as he was sick. Mr Curtin said that at that meeting, Mrs Harvey was agreeable to renting the property to them subject to signing an agreement, paying bond and meeting Mr Harvey. He said that it was his view that an agreement to rent the property had been reached on 17 October and that signing an agreement, paying bond and meeting Mr Harvey were mere formalities. He also said that the group did not look for any further properties after the 17th as they had secured the Dahlia Street house and, had the property been rented to someone else after the meeting on 17 October 2015, he would have been surprised and disappointed.

[23] Ms Godfrey says that the house was still available when she expressed interest in renting it. She points to a number of factors as supporting this position. These include the facts that the group had not met Mr Harvey at this time and that a tenancy agreement was not signed until 8 November 2015. She also notes that the Homeads advertisement stayed up until 27 October 2015, that prospective tenants were still making enquires, and that, as a prospective tenant, she was encouraged to go through the house by Mrs Harvey after Mrs Harvey had already met the Sean Curtin group there.

[24] We find, having considered the evidence of the witnesses, that on 17 October 2015, an agreement was made between Mrs Harvey and Sean Curtin and friends that they were able to rent the Dahlia Street house subject to a number of formalities. Sean Curtin gave frank evidence regarding his impression that the house had been offered to his group. The evidence of Mr and Mrs Harvey concerning the way they did business, and in the case of Mrs Harvey, that she had shaken hands with, and promised the house to, the group upon her first meeting with them is accepted.

Conversation between Mr Harvey and Ms Godfrey on 20 October 2015

[25] The issue of whether the house had been promised to Sean Curtin and friends by Mrs Harvey on 17 October 2015 is relevant to the determination of the dispute between Ms Godfrey and Mr Harvey as to what was said between them during their telephone conversation of 20 October 2015.

[26] Ms Godfrey says that during her conversation with Mr Harvey, an agreement had been made that she could rent the Dahlia Street property and that she and Mr Harvey were discussing how to get the tenancy agreement to her as his printer was broken. She says that the tenor of the conversation changed after she disclosed that she relied on a guide dog and that Mr Harvey then said he had to discuss the matter with his wife who would get back to her the following afternoon as she worked nights and would be asleep in the morning. Mr Harvey was adamant that he would not agree to rent a property over

the phone to someone neither he nor his wife had met. He also denied taking Ms Godfrey's telephone number or agreeing that Mrs Harvey would get back to Ms Godfrey the following day. He did however agree that his printer was broken and that Mrs Harvey worked night shifts.

[27] Mr and Mrs Harvey gave evidence that Mrs Harvey was showering when this conversation took place and that Mrs Harvey told Mr Harvey from the shower that the house was gone while he was still talking to Ms Godfrey.

[28] Having regard to the evidence of Mr and Mrs Harvey regarding their rental business and, in particular, their evidence that they made their decisions jointly and needed to both meet prospective tenants, we accept that Mr Harvey did not agree to rent the property to Ms Godfrey during their telephone conversation. We also accept that Mrs Harvey told him from the shower that the house was gone.

[29] We otherwise prefer Ms Godfrey's evidence about the call. This is because her knowledge that the Harveys' printer was broken and that Mrs Harvey worked night shifts, could only have come from Mr Harvey. This leads us to conclude, with respect to the printer, that the conversation went as far as to discuss documents. It leads us to conclude, with respect to Mrs Harvey's night shifts and consequent need to sleep during the mornings, that there was a conversation about what time Mrs Harvey would be able to get back to Ms Godfrey the following day. It is undisputed that Ms Godfrey disclosed her blindness and the existence of her guide dog to Mr Harvey. Both Mr Harvey and Ms Godfrey agree that the conversation ended, following her disclosure of the guide dog, with him telling her that he needed to discuss her application with his wife.

The back-up list

[30] Although an agreement in principle had been made to rent the Dahlia Street property to Sean Curtin and friends on 17 October 2015, Mr and Mrs Harvey continued to advertise it and allowed Ms Godfrey to inspect it without informing her that it was already "gone". This was because the possibility remained that the agreement with Sean Curtin and friends would not be finalised. As noted earlier, the advertisement was not taken down until 27 October. Mrs Harvey agreed, when asked, that it would have been possible that Sean Curtin and friends may not have agreed to sign a tenancy agreement or that they may have been unable to pay the bond. She said that in that case, "you move on".

[31] When asked why, in her first conversation with Ms Godfrey, she did not tell her the property had already gone to other people, Mrs Harvey said that it was so that if the group pulled out, "we could revert". She explained that the agreement was a done thing as far as she was concerned *if* the group wanted it. However, she said that "people do pull out and we would go back to the list". Accordingly, rather than telling Ms Godfrey that it was gone, Mrs Harvey left her with the impression it was available and encouraged her to view it.

[32] Mr Harvey gave similar evidence, after confirming he did not tell Ms Godfrey when he spoke to her that the property was gone. He said, "we weren't saying no to anybody

because you never know, the tenancy might fall over and you might need to get back to the people who were interested”.

[33] The evidence of Mr and Mrs Harvey leads us to conclude that although the property had been promised to Sean Curtin and friends, an informal back-up list of interested prospective tenants was being kept so that if the Sean Curtin agreement fell through, other “back-up” tenants would be available. Accordingly, Ms Godfrey was allowed to inspect the property on two occasions to assess its suitability. We find that, as a prospective tenant, she would have been a candidate for the back-up list for the property at the time of her conversation with Mr Harvey on 20 October 2015. During this conversation, Ms Godfrey disclosed her reliance on a guide dog. The following day, Mrs Harvey says she told Ms Godfrey that the property had gone to other people.

Telephone conversation on 21 October 2015

[34] Mr Harvey had told Ms Godfrey that Mrs Harvey would call her back the following day in the afternoon because she would be asleep in the morning after her night shift. Mrs Harvey did not call in the afternoon and after waiting some time, Ms Godfrey rang her. Mrs Harvey and Ms Godfrey are in dispute concerning the content of this telephone call. Mrs Harvey says that the conversation was short and that she told Ms Godfrey that the house was gone, as an agreement in principle had been made to rent it to Sean Curtin and friends, subject to Mr Harvey meeting them. Mrs Harvey initially denied that she knew about the guide dog at the time of this conversation and denies mentioning dogs. Ms Godfrey says that Mrs Harvey told her that they didn’t want to rent the property to her because they weren’t “keen on dogs”, that when Ms Godfrey explained the dog was a trained guide dog and would not cause damage, Mrs Harvey commented that the guide dog wouldn’t be small, and that she told her that when the advertisement had said that pets were negotiable, the Harveys had really meant cats. Ms Godfrey says that she offered an extra ten dollars a week and asked Mrs Harvey to reconsider and also undertook to get the carpets professionally cleaned when she vacated to which Mrs Harvey replied that such a clause would be in the rental agreement in any case.

[35] Following her conversation with Mrs Harvey, Ms Godfrey sent text messages to three of her friends, informing them that the owners of Dahlia Street had declined to rent the property to her because of her guide dog. Copies of these texts were included in the common bundle.

[36] Although as noted earlier, Mrs Harvey initially denied knowing that Ms Godfrey used a guide dog at the time of this conversation, later in her evidence she said that she was not sure. When Mr Harvey was asked whether he discussed Ms Godfrey’s blindness and reliance on a guide dog with his wife after his phone call with her, he said that he thought he did. We find that it is probable that Mr Harvey did discuss the details of his telephone conversation with Ms Godfrey with his wife the evening it occurred, and that this discussion would have included the topic of the guide dog. Accordingly, we find that when Mrs Harvey spoke to Ms Godfrey the following day, she was aware of the guide dog.

[37] Having heard the evidence of both Mrs Harvey and Ms Godfrey concerning the conversation between them, we prefer the evidence of Ms Godfrey as to whether dogs were discussed during the call. Ms Godfrey gave detailed evidence of the conversation with Mrs Harvey that started with the assertion that the Harveys weren't keen on dogs and then led to the topics of the size of the dog and the fact that the Harveys had meant in their ad that they were open to cats. Having found that Mrs Harvey was aware of the guide dog we accept that Mrs Harvey, when telling Ms Godfrey she could not have the tenancy, told her that the Harveys were not keen on dogs and that Ms Godfrey responded by offering to have the carpets cleaned on vacation of the property as she has claimed.

[38] We have accepted that the property was at this time already conditionally promised to Sean Curtin and friends. This was already the case when on 17 October 2015, Mrs Harvey encouraged Ms Godfrey to view the property without disclosing to her it was gone. However, after the conversation between Mrs Harvey and Ms Godfrey on 21 October 2015, she was clearly no longer on, or a candidate for, the back-up list. We accept that Ms Godfrey's guide dog was a material factor in this and a material factor in the reason why she was not considered as a tenant for the property even in a back-up capacity. The Harveys in their evidence said that they had family dogs and that their daughter, who has a dog, occupies one of their rental properties. This does not persuade us that Mrs Harvey did not say to Ms Godfrey that they did not wish to have a dog at the Dahlia St property.

Mediation

[39] At the hearing, evidence was called to the effect that Ms Godfrey disclosed confidential details about the settlement negotiations that occurred at mediation to her neighbour. Ms Godfrey denies this. The evidence called was third hand hearsay and can be given little weight. It was suggested by Mr Drummond that this evidence diminished Ms Godfrey's credibility. It did not.

Did Mr and Mrs Harvey's treatment of Ms Godfrey breach s 53(1) of the Human Rights Act?

[40] Ms Godfrey has claimed that Mr and Mrs Harvey:

[40.1] Refused to grant her a tenancy (s 53(1)(a)).

[40.2] Treated her differently from others in the same circumstances (s 53(1)(c)).

[40.3] Denied her the right to a tenancy (s 53(1)(d)).

By reason of the fact that she relies on a guide dog.

[41] We have found that when Ms Godfrey applied to rent the Dahlia Street property from Mr and Mrs Harvey, it was no longer available in that it had been conditionally promised to Sean Curtin and friends. Had that arrangement fallen through, the Dahlia Street property would have been available. It was otherwise "taken". It follows that it is not established that the Harveys refused to grant Ms Godfrey a tenancy in respect of the

Dahlia Street property, or denied her the right to a tenancy, by reason of her reliance of a guide dog. The claimed breaches of s 53(1)(a) and (d) are not established.

[42] We turn now to s 53(1)(c). We have found that, although the Dahlia Street house had been let, in principle, to Sean Curtin and friends, it was still being advertised and tenants allowed to view it so that back-up tenants would be available if the agreement with Sean Curtin and friends fell through. For this reason, potential tenants were not being told that the property was “gone”. Ms Godfrey was encouraged to view it and did not strike any difficulties while pursuing the tenancy until her disclosure to Mr Harvey that she relied on a guide dog.

[43] After this, the Harveys did not get back to her as Mr Harvey had agreed, and when she followed up, Mrs Harvey told her the house was unsuitable for her and that they were not keen on dogs. We find that Ms Godfrey’s reliance on a guide dog was a material factor in the Harveys’ decision not to retain Ms Godfrey as a back-up tenant until the agreement with Sean Curtin and friends was either finalised or cancelled. We also find that had she not had a guide dog, she would have been retained as back-up tenant. It follows that Ms Godfrey was treated differently from other persons in the same circumstances when seeking to acquire accommodation by reason of her reliance on a guide dog. A breach of s 53(1)(c) is established.

Remedy

[44] Section 92I(2) of the HRA provides that in proceedings under s 92B(1) of the Act (as here), the plaintiff may seek any of the remedies described in s 92I(3). That is, if the Tribunal is satisfied (as we are) on the balance of probabilities that the defendant has committed a breach of Part 2, the Tribunal may grant one or more of the following remedies:

- (a) a declaration that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint:
- (b) an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:
- (c) damages in accordance with sections 92M to 92O:
- (d) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach:
- (e) a declaration that any contract entered into or performed in contravention of any provision of Part 1A or Part 2 is an illegal contract:
- (f) an order that the defendant undertake any specified training or any other programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of this Act:
- (g) relief in accordance with the Illegal Contracts Act 1970 in respect of any such contract to which the defendant and the complainant or, as the case may be, the aggrieved person are parties:
- (h) any other relief the Tribunal thinks fit.

[45] It is no defence that the breach was unintentional or without negligence on the part of the party against whom the complaint is made. However, the Tribunal must take the conduct of the parties into account in deciding what, if any, remedy to grant. See s 92I(4).

[46] The heads of damages allowed by s 92M(1) are:

92M Damages

- (1) In any proceedings under section 92B(1) or (4) or section 92E, the Tribunal may award damages against the defendant for a breach of Part 1A or Part 2 or the terms of a settlement of a complaint in respect of any 1 or more of the following:
 - (a) pecuniary loss suffered as a result of, and expenses reasonably incurred by the complainant or, as the case may be, the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:
 - (b) loss of any benefit, whether or not of a monetary kind, that the complainant or, as the case may be, the aggrieved person might reasonably have been expected to obtain but for the breach:
 - (c) humiliation, loss of dignity, and injury to the feelings of the complainant or, as the case may be, the aggrieved person.
- (2) ...

[47] It is further provided in s 108B that before the Tribunal grants any remedy under Part 3, it must give the parties to the proceedings an opportunity to make submissions on the implications of granting that remedy and the appropriateness of that remedy. In the present case, oral closing submissions were made at the conclusion of the hearing on 26 September 2018. Written closing submissions were also filed on that date.

[48] Ms Godfrey seeks:

[48.1] A declaration that Mr and Mrs Harvey have committed a breach of Part 2 of the HRA, s 92(1)(3)(a);

[48.2] Damages of no less than \$35,000 for humiliation, loss of dignity and injury to feelings, s 92(3)(c) and s 92M(1)(c); and

[48.3] An order pursuant to s 92(3)(f), that Mr and Mrs Harvey undertake training as to the obligations of landlords under the HRA, in order to assist them to comply with s 53 of the HRA in future.

A declaration

[49] We address first the question of a declaration. While the grant of a declaration is discretionary, the grant of such declaratory relief should not ordinarily be denied and there is a “very high threshold for exception”: *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 at [107]–[108]. There is nothing before us which would justify the withholding from Ms Godfrey of a formal declaration that Mr and Mrs Harvey breached s 53(1)(c) of the HRA.

Damages for humiliation, loss of dignity and injury to feelings

[50] Ms Godfrey seeks an award of damages of \$35,000 for humiliation, loss of dignity and injury to feelings (emotional harm). Ms Godfrey gave evidence that her treatment by the Harveys made her feel discouraged, frustrated, stressed, humiliated and angry. She said that she considered giving up her guide dog to increase her chances of being accepted for a tenancy. She also gave evidence that she did not disclose her reliance on

a guide dog to the landlord of the property she eventually rented until she went to sign the tenancy agreement, and then, took a friend with her to act as a witness as a precaution.

[51] Ms Godfrey and her friends gave evidence that her experience with the Harveys occurred at a difficult time in her life, her marriage having ended, necessitating alternative accommodation.

[52] Ms Godfrey's friend Nicholas Jessen gave evidence that he had talked to Ms Godfrey on the phone after hearing from her by text that she had been turned down for the property because of her dog and that he had recalled that the landlord's decision had made her very angry. He said he guessed this was the worst time of Ms Godfrey's life.

[53] Ms Godfrey's friend, Melissa Downey, gave evidence that she received a text message from Ms Godfrey at 5:34pm on 21 October 2015, that read:

I just got told by another landlord that they won't rent a property to me because they don't want a guide dog. I'm feeling so disheartened. I desperately want to get out of here but nobody's letting to me.

[54] Ms Downey said that being turned down for the house was "a real kick in the guts" to Ms Godfrey and that following this, Ms Godfrey's emotional state was the worst that Ms Downey had ever observed. When questioned about the text at the hearing, Ms Godfrey conceded that she had not been turned down by other landlords because of her guide dog, rather that she had found a previous property she had investigated to have too small a backyard to accommodate a dog.

[55] Ms Godfrey and her friends gave evidence about her marriage break-up and unhappy domestic situation. In closing submissions, Mr Drummond submitted that a causal connection between Ms Godfrey's distress and the behaviour of the Harveys should be established as Ms Godfrey had a number of sources of distress in her life at the time. In other words, her feelings could not be solely attributed to her treatment by the Harveys. It is accepted that Ms Godfrey was at a very difficult time in her life. However, the Tribunal must be concerned with the effect of the breach of HRA s 53(1)(c) and damage caused by that breach.

[56] It is accepted that Ms Godfrey was upset and angry following her conversation with Mrs Harvey. It is accepted that she felt unfairly treated and discriminated against. It is also accepted that she thereafter considered it necessary to conceal her guide dog from a prospective landlord which caused her humiliation. We find that humiliation, loss of dignity and injury to feelings (as discussed and defined in *Hammond v Credit Union Baywide* [2015] NZHRRT 6, (2015) 10 HRNZ 66 at [152]–[153] and [170]) have been established.

[57] We do not accept that Ms Godfrey seriously considered giving up her guide dog. Whilst we accept that she discussed this with her friends, we do not accept this would have been a real possibility, given her evidence that the guide dog was essential to the safety of herself and her children.

[58] We turn now to the assessment of damages. In doing so we recognise that each case is different, as recognised in *Winter v Jans* HC Hamilton CIV-2003-419-854, 6 April 2004 at [59] and that there is an inherently subjective element to the assessment of humiliation, loss of dignity and injury to feelings. The circumstances of each aggrieved individual will be specific to them and unique: *Hammond* at [177.2].

[59] The discriminatory treatment we have found occurred consisted of the decision of the Harveys not to consider Ms Godfrey as a back-up tenant because of her guide dog, conveyed to her in a telephone call by Mrs Harvey where Ms Godfrey was left to understand her guide dog was the impediment to her tenancy. The discriminatory treatment was limited to this single interaction and can be distinguished from cases where behaviour which results in humiliation, loss of dignity, and injury to feelings is prolonged or protracted.

[60] The actions of the Harveys did not result in Ms Godfrey being denied a tenancy, rather she lost the opportunity to remain as a back-up tenant in the event the Sean Curtin tenancy did not proceed.

[61] In assessing quantum, account must be taken not only of the circumstances in which the discriminatory behaviour took place but also the consequences: *McClelland v Schindler Lifts New Zealand Ltd* [2015] NZHRRT 45, (2015) 13 NZELR 324 at [111]. Ms Godfrey's evidence was that she found another house to rent within approximately two weeks. Her tenancy agreement for this property was signed on 13 November 2015. She was not left seeking alternative accommodation for a protracted period and, in any case, would not have been able to secure the Dahlia Street property even had her guide dog not been an impediment as the Sean Curtin tenancy proceeded.

[62] In closing submissions, Mr Robins offered the decisions of the Tribunal in *McClelland* and *Meulenbroek v Vision Antenna Systems Ltd* [2014] NZHRRT 51, (2014) 10 HRNZ 113 and *Singh v Singh* [2016] NZHRRT 38, as useful comparison points for the assessment of damages.

[63] In *Meulenbroek*, the discriminatory treatment experienced by the plaintiff took place over a protracted 10 month period. He was eventually dismissed from his employment at his home. The director of the defendant company who carried out the dismissal, which the plaintiff described as "horrible", did not then leave the plaintiff's home as requested, but repossessed the company's equipment from him then and there in a manner the Tribunal described as "grossly insensitive": at [176]. The plaintiff's emotional state following the dismissal gave rise to concerns for his safety. The Tribunal awarded \$25,000 for emotional harm which Mr Robins suggests should be adjusted to reflect the passage of time at five percent per annum to \$30,387.

[64] *McClelland* also involved employment discrimination. In assessing the damages awarded for emotional harm, the Tribunal noted that the manner in which officers of the defendant company went about terminating the plaintiff's employment maximised the shock, dismay, hurt and humiliation he experienced. The plaintiff lost his job and was stigmatised before his colleagues as deceptive, selfish and indifferent to their safety.

Following his dismissal, he was unable to find commensurate work and was reduced to living in a motor home for two months while seeking accommodation. He experienced depression and a loss of self-worth. The Tribunal awarded \$25,000 for emotional harm which Mr Robins suggests should be adjusted to reflect the passage of time at five percent per annum to \$28,940.

[65] *Singh* concerned a single incident where the plaintiff's turban was struck with a clipboard by a defendant, his employer. In *Singh*, the relevant interaction took place in the context of an employment relationship where the plaintiff had a degree of vulnerability evidenced by his status as a migrant worker without a written employment contract, being paid less than the minimum wage. The incident resulted in the plaintiff receiving medical treatment for suicidal feelings, depression and anxiety concerning which medical evidence was provided to the Tribunal. The Tribunal noted that the behaviour of the defendant was aggressive and physical, humiliated the plaintiff in public view, and compromised the plaintiff's identity as a Sikh. The Tribunal awarded \$25,000 for emotional harm which Mr Robins suggests should be adjusted to reflect the passage of time at five percent per annum to \$27,562.

[66] Mr Robins also referred us to the case of *Proceedings Commissioner v Knapp* (1997) 4 HRNZ 318 (CRT) which concerned the refusal to grant a tenancy to the plaintiff by reason of her family status. This is the only decision before the Tribunal concerning discrimination in the area of accommodation. The award of damages for emotional harm in that case, of \$1,000, provides little guidance given that this was made some 20 years previously.

[67] It was noted in *Hammond* at [170.3] that, while an award of damages is to compensate for humiliation, loss of dignity and injury to feelings rather than to punish the defendant, the conduct of the defendant may exacerbate the humiliation, loss of dignity or injury to feelings and may therefore be a relevant factor in the assessment of the quantum of damages to be awarded. In this case, nothing about the conduct of Mr and Mrs Harvey exacerbated the emotional harm experienced by Ms Godfrey. There was no evidence of malice or of deliberately hurtful or offensive behaviour on their part.

[68] The breach of s 53 in the present case consisted of a single incident rather than treatment over a protracted period as in *Meulenbroek* and *McClelland*. The loss was of a chance to rent the property rather than the rental of the property itself. Within approximately two weeks Ms Godfrey had secured alternative accommodation. We have accepted Ms Godfrey suffered emotional harm and was upset and angered by her treatment. However, we do not find that such harm was to the level established in *Meulenbroek* or *Singh*, neither were the consequences of the discrimination Ms Godfrey experienced protracted as in *McClelland*. We believe an appropriate response to what happened in the present case is an award of damages in the first band discussed in *Hammond v Credit Union Baywide* at [176]. We award \$4,000 under s 92M(1)(c).

Training order

[69] Mr Drummond submitted that a training order was unnecessary. He submitted that the entire HRA process, which has been on foot now since November 2015, had been an education for Mr and Mrs Harvey and they accept they could have done things better. He also submitted they could be distinguished from the defendants in *Meulenbroek* and *McClelland* in that they are not a large commercial enterprise but rather “Mum and Dad investors” operating four rental properties. We accept that Mr and Mrs Harvey are now well aware of the non-discrimination provisions of the HRA and their obligations under s 53. We accept the submission of counsel that a training order is unnecessary and we decline to make it.

Formal orders

[70] For the foregoing reasons the decision of the Tribunal is that:

[70.1] A declaration is made under s 92I(3)(a) that Glenda Harvey and Philip Harvey committed a breach of s 53(1)(c) of the Human Rights Act 1993 by discriminating against Olivia Godfrey for reason of her reliance upon a guide dog.

[70.2] Damages of \$4,000 are awarded against Glenda Harvey and Philip Harvey under ss 92I(3)(c) and 92M(1)(c) of the Human Rights Act 1993 for humiliation, loss of dignity and injury to the feelings of Ms Godfrey.

Costs

[71] Costs are reserved.

[71.1] Ms Godfrey is to file her submissions within 14 days after the date of this decision. The submissions for Mr and Mrs Harvey are to be filed within a further 14 days and a right of reply by Ms Godfrey within 7 days after that.

[71.2] The Tribunal will then determine the issue of costs on the basis of the written submissions without any further oral hearing.

[71.3] In case it should prove necessary, we leave it to the Co-Chairperson of the Tribunal to vary the foregoing timetable.

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Ms MA Roche
Co-Chairperson

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Ms LJ Alaeinia JP
Member

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Mr MJM Keefe QSM JP
Member