

ORIGINAL

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DES MOINES CIVIL AND HUMAN RIGHTS
COMMISSION

Plaintiff,

v.

PATRICK KNUEVEN and
MARY KNUEVEN

Defendants.

No. EQCE084694

JURY INSTRUCTIONS, VERDICT FORM,
AND SPECIAL INTERROGATORIESFILED
POLK COUNTY, IOWA
2021 MAY 20 PM 3:01
CLERK DISTRICT COURT

STATEMENT OF THE CASE

Members of the Jury:

This is a civil case brought by the Des Moines Civil and Human Rights Commission alleging Patrick and Mary Knueven engaged in discriminatory housing practices in two ways. First, by charging higher rent based on religion and/or national origin, and second, by steering a potential tenant or tenants from renting defendant's housing property based upon religion and/or national origin.

The Knuevens deny these allegations.

Do not consider the Statement of the Case as proof of any claim. Decide the facts from the evidence and apply the law, which I will now give you.

Instruction 1

My duty is to tell you what the law is. Your duty is to decide all fact questions and to accept and apply the law I give you.

The order in which I give these instructions is not important. You must consider all of the instructions together because no one instruction includes all of the applicable law.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Instruction 2

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Instruction 3

You shall base your verdict only upon the evidence and these instructions. Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (*e.g.*, answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Instruction 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Instruction 5

The Defendant served on the Plaintiff a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the Plaintiff or which Plaintiff failed to deny.

Instruction 6

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Instruction 7

You have heard evidence claiming a witness made statements before this trial while not under oath that were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

Instruction 8

You have heard evidence claiming a party made statements before this trial while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of the party's testimony during the trial but you are not required to do so. You should not disregard the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

Instruction 9

The fact that the plaintiff is the Des Moines Civil and Human Rights Commission should not affect your decision. All persons are equal before the law, and the Des Moines Civil and Human Rights Commission is entitled to the same fair and conscientious consideration by you as any other person.

Instruction 10

The Des Moines Civil and Human Rights Commission used testers during the investigation of defendant's housing practices. Testers are individuals who, without an intent to rent a home, pose as renters for the purpose of collecting evidence of housing practices, essentially testing for illegal housing practices. You may consider tester evidence that is admitted in this case as you would any other evidence that is admitted for your consideration as provided in the instructions.

Instruction 11**Housing Discrimination – Count I – Patrick Knueven**

To support its claim of housing discrimination in Count I against Patrick Knueven, the Plaintiff Des Moines Civil and Human Rights Commission must prove:

1. In August 2017, a tester (hereinafter referred to as the protected tester) posed as a member of a protected class of religion or national origin.
2. The protected tester inquired about or applied for a dwelling from defendant Patrick Knueven.
3. Defendant Patrick Knueven discriminated in the terms, conditions, or privileges of a rental by charging higher rent to a protected tester than someone not of the protected class.
4. The tester's religion or national origin was a motivating factor in defendant Patrick Knueven's decision.

If any of the above elements has not been proved, your verdict must be for the defendant Patrick Knueven. If the Commission has proven all of these elements, your verdict must be for the Commission on the issue of liability.

Instruction 12**Housing Discrimination – Count I – Mary Knueven**

To support its claim of housing discrimination in Count I against Mary Knueven, the Plaintiff Des Moines Civil and Human Rights Commission must prove:

1. In August 2017, a tester (hereinafter referred to as the protected tester) posed as a member of a protected class of religion or national origin.
2. The protected tester inquired about or applied for a dwelling from defendant Mary Knueven, personally or through an agent of Mary Knueven.
3. Defendant Mary Knueven, personally or through an agent, discriminated in the terms, conditions, or privileges of a rental by charging higher rent to a protected tester than someone not of the protected class.
4. The tester's religion or national origin was a motivating factor in defendant Mary Knueven's, or her agent's, decision.

If any of the above elements has not been proved, your verdict must be for the defendant Mary Knueven. If the Commission has proven all of these elements, your verdict must be for the Commission on the issue of liability.

Instruction 13**Housing Discrimination – Count II – Patrick Knueven**

To support its claim of housing discrimination in Count II against Patrick Knueven, the Plaintiff Des Moines Civil and Human Rights Commission must prove:

1. In August 2017, a tester (hereinafter referred to as the protected tester) is a member of a protected class based upon religion or national origin.
2. The protected tester sought to rent housing from the defendant Patrick Knueven.
3. The defendant Patrick Knueven engaged in steering by discouraging the protected tester from pursuing the housing and encouraging someone not of the protected class to pursue such housing.
4. The tester's religion or national origin was a motivating factor in defendant Patrick Knueven's steering.

If any of the above elements has not been proved, your verdict must be for the defendant Patrick Knueven. If the Commission has proven all of these elements, your verdict must be for the Commission on the issue of liability.

Instruction 14**Housing Discrimination – Count II – Mary Knueven**

To support its claim of housing discrimination in Count II against Mary Knueven, the Plaintiff Des Moines Civil and Human Rights Commission must prove:

1. In August 2017, a tester (hereinafter referred to as the protected tester) is a member of a protected class based upon religion or national origin.
2. The protected tester sought to rent housing from the defendant Mary Knueven, personally or through an agent of Mary Knueven.
3. The defendant Mary Knueven, or her agent, engaged in steering by discouraging the protected tester from pursuing the housing and encouraging someone not of the protected class to pursue such housing.
4. The tester's religion or national origin was a motivating factor in defendant Mary Knueven's steering or the steering of her agent.

If any of the above elements has not been proved, your verdict must be for the defendant Mary Knueven. If the Commission has proven all of these elements, your verdict must be for the Commission on the issue of liability.

Instruction 15

As used in Instruction Nos. 11-14, a tester's religion or national origin was a "motivating factor" if that factor played a part in the defendant's actions toward the tester. However, a tester's religion or national origin need not have been the only reason for defendant's actions.

Instruction 16

The evidence you have heard regarding the Commission's 2015-2016 testing and investigation into alleged housing discrimination by Patrick Knueven and/or Mary Knueven may be considered by you only on the question of whether such evidence proves a *motive* or *intent* by Patrick Knueven and/or Mary Knueven to engage in discriminatory housing practices in 2017. It may not be considered for any other purpose, including whether Patrick Knueven and/or Mary Knueven discriminated against any tester on the basis of religion or national origin in 2015-2016.

Instruction 17

You have heard testimony about the business practices engaged in by one or more of the Defendants. You may not return a verdict for the Plaintiff merely because you disagree with a Defendant's conduct or believe a decision to be harsh or unreasonable. Unless you find a Defendant's conduct violated the City Ordinance or Iowa Code as explained to you in Instructions 11-14, the Defendants may run their business as they see fit.

Instruction 18

You may find that the housing tester's national origin or religion was a motivating factor in the defendant's actions and conduct if it has been proven that the defendant's stated reason(s) for its actions and conduct are not the real reason(s), but are a pretext to hide discrimination on the basis of national origin or religion.

Instruction 19

A person may act through its agent and an agent may bind the person by acts and statements made while acting within the scope of the authority delegated to the agent by the person.

An agency relationship exists where an agent has actual (express or implied) authority or apparent authority to act on behalf of a principal.

Actual authority to act is created when a principal intentionally confers authority on the agent either by writing or through other conduct which, reasonably interpreted, allows the agent to believe that he has the power to act. Actual authority includes both express and implied authority.

Express authority is derived from specific instructions by the principal in setting out duties, while implied authority is actual authority circumstantially proved.

Apparent authority is authority the principal has knowingly permitted or held the agent out as possessing.

Instruction 20

Under the Des Moines Municipal Code and the Iowa Code the Des Moines Civil and Human Rights Commission has the right to seek a civil penalty for illegal housing discrimination.

If you find that either defendant Patrick Knueven or Mary Knueven or both, discriminated in housing by one or both of the claims of housing discrimination made by the Des Moines Civil and Human Rights Commission, then you may assess a civil penalty to vindicate the public interest in an amount not to exceed \$50,000 per claim.

The Commission does not seek an award of any actual damages to an individual person or tester.

Instruction 21

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

Instruction 22

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect.

Remember you are not partisans or advocates; you are judges of the facts. Your sole interest is to find the truth and do justice.

Instruction 23

I am giving you one verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman.

After deliberating for six hours, excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.