Question MPT-1 – February 2025 – Selected Answer 1

Tan & Singh Law Offices LLC
740 East Broadway, Suite 200
Centralia, Franklin 33402

MEMORANDUM

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin -- Defense of housing discrimination claim

I. Introduction

This objective memorandum will analyze the legal and factual arguments that we should raise in Larkin's defense, as well as the legal and factual arguments that Turner may raise in support of his claim that Larkin's refusal to rent to him stemmed from discriminatory reasons in violation of the federal Fair Housing Act (FHA).

As applicable to our case, Section 3604 of the FHA makes it unlawful "to refuse to negotiate for the sale or rental of of, or otherwise make unavailable or deny, a dwelling to any person because of . . . familial status." 42 U.S.C. § 3604(a). The FHA applies to Larkin because he does not fall under the safe-harbor provision in Section 3603 (which shields owner-occupiers in buildings with four or fewer units). Larkin's building has twenty units, and he does not live there.

The Supreme Court in *McDonnell Douglas Corp. v. Green* has interpreted the FHA's prohibition on housing discrimination along two different axes, depending on the nature of the discriminatory policy (as the court noted in *Baker v. Garcia Realty Inc.*). If a landlord discriminates against a tenant through "specific actions that may be ambiguous," then the courts apply what I call the pretext version of the *McDonnell Douglas* test. If the policy at issue is facially neutral, then the courts apply the disparate-impact version of the *McDonnell Douglas* test. *Baker*.

This analysis will thus proceed along those two axes. I will first analyze whether Larkin's stated preference for renting to married couples may have violated the *McDonnell Douglas* pretext test (as articulated in *Karns*). I will then analyze whether Larkin's occupancy policy violates the *McDonnell Douglas* disparate-impact test (as articulated in *Baker*).

Ultimately, we have a colorable argument that Larkin did not violate the *McDonnell Douglas* pretext test because his preference for renting to married couples is grounded in legitimate, nondiscriminatory reasons that appear to be genuine, not pretextual. With regard to the occupancy policy, however, Turner likely has a strong case that Larkin did violate the *McDonnell Douglas* pretext test because while he has substantial, legitimate, nondiscriminatory interests in maintaining that policy, there are likely less restrictive means of achieving those interests.

II. Larkin has likely not violated the *McDonnell Douglas* pretext test because his nondiscriminatory preference for married couples does not appear to be pretextual

As the Fifteenth Circuit noted in *Karns*, courts apply the three-part burden-shifting test set forth in *McDonnell Douglas* when evaluating claims for discrimination under Section 3604(a) of the FHA. Under, the first prong of that test, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. If that is satisfied, the second prong of the test requires defendants to articulate legitimate nondiscriminatory reasons for the challenged policies. And if that is satisfied, the third prong of the test requires plaintiffs to prove that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

Here, the first two prongs of the test have likely been satisfied. Turner has a prima facie case for housing discrimination, and Larkin has stated legitimate nondiscriminatory reasons for his preference for married couples. Turner, however, will likely not be able to satisfy the third prong. Although it is a close call, Larkin's preference for renting to married couples appears to be genuine and *not* a mere pretext for discriminating against renters based on familial status.

A. Turner has established a prima facie case of housing discrimination

The first prong of the *McDonnell Douglas* three-part test imposes the initial burden on plaintiffs proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of housing discrimination under the FHA, plaintiffs must show (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available. *Karns* (citing *McDonnell Douglas*). This part of the memorandum will evaluate each of those four sub-elements in turn. Ultimately, Turner appears to have established his prima facie case.

i. Turner is a member of a protected class under the FHA based on his "familial status"

As noted above, Section 3604 of the FHA protects people against housing discrimination on the basis of familial status. In pertinent part, the FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent." FHA § 3604(a). In *Karns*, the court held that the plaintiff, who had two children under the age of 18 who resided with her, was a member of a protected class under the FHA based on her familial status.

Here, Turner has stated in his HUD administrative complaint that he has three children, all under the age of 18, who are domiciled with him. Under the FHA and *Karns*'s interpretation of it, this qualifies him as a member of an FHA protected class based on his familial status.

ii. Turner applied for and was qualified to rent Larkin's apartment

As the Fifteenth Circuit has noted, the term "applied for" is "interpreted broadly and includes inquiries into the availability of a dwelling." *Karns*. "Qualified to rent" means that "the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background." *Karns*.

Here, Turner clearly applied for the apartment by virtue of texting Larkin to inquire about its availability. In his HUD administrative complaint, he noted that he can "easily" afford the apartment on his income, has "good rental history," and has "good credit." On this basis, he was likely also qualified to rent Larkin's apartment.

iii. Turner was denied housing, and Larkin refused to negotiate with him

In *Karns*, the court held that the plaintiff was denied housing because the defendant never followed up with her after the plaintiff placed her first call to inquire about a unit.

Here, Turner has also clearly been denied housing because Larkin never got back to him about the rental unit after their first text exchange.

iv. Larkin's rental unit remained available

In *Karns*, the plaintiff had discovered that the defendant's apartment had not yet been occupied when she made a second call to the defendant nearly a month after her first inquiry. On that basis, the court held that the unit remained available.

Here, Mr. Larkin has successfully rented his unit to a married couple. But it took him "a couple of months" to do so. The *McDonnell Douglas* test does not lay out a specific amount of time that a unit must remain available. If, as the *Karns* court seemed to suggest, a unit remains available when it has not been rented for up to a month from the time the plaintiff first tried to rent it, then so too here will a court likely hold that Mr. Larkin's unit remained available after Mr. Turner made his inquiry.

B. Larkin has articulated a legitimate nondiscriminatory reason for his policy in favor of married tenants

If a plaintiff has established a prima facie case, the court next turns to the second prong of the *McDonnell Douglas* test, which holds that "a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate nondiscriminatory reasons for the challenged policies." *Karns*.

In *Karns*, the defendant stated two nondiscriminatory reason for not renting to the plaintiff: (1) her concern about the plaintiff's finances, and (2) her concern that the plaintiff was unmarried. As the court noted, the FHA "does not include marital status among its protected classifications." Thus, the court held the defendant's stated nondiscriminatory reasons to be sufficient for meeting her burden under the second prong.

As applicable to the *McDonnell Douglas* pretext analysis (I will address the occupancy policy in the disparate-impact analysis below), Larkin's stated reason for not renting to Mr. Turner is that he has a long-standing preference for renting to married couples. The reason for this is partly financial -- as Larkin explained, he "like[s] to have two incomes for each apartment" that he rents. If one of the occupants lost a job, there would be another to pay their rent. Per *Karns*, because marital status (and financial status) are not covered under the FHA, Larkin has stated legitimate nondiscriminatory reasons for refusing to rent his apartment to Mr. Turner.

C. Larkin's nondiscriminatory reasons for his preference for renting to married couples do not appear to be pretextual

If the defendant satisfies his burden under the second prong of the *McDonnell Douglas* pretext test, the court finally turns to the third prong, which holds that "the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination." *Karns*.

The court in *Karns* found the defendant's stated nondiscriminatory reason for not renting to the plaintiff to be pretext for discrimination based on familial status. The court noted that the defendant declined to negotiate with the plaintiff after having only learned that the plaintiff was an unmarried mother of two small children. At no point in the conversation did the defendant actually inquire into the plaintiff's finances (including her income, credit history, assets, or liabilities). As the court noted, the defendant assessed the plaintiff's ability to pay rent "based on her familial status, not on her financial situation." *Karns*. The defendant's attempt to cast her act of discrimination as one based on *marital* status (unprotected) rather than *familial* status (protected) was similarly unavailing because the defendant offered to show her apartment to the plaintiff when the plaintiff later called pretending to be a single (but childless) woman. On that basis, the court found that the defendant had refused to rent to the plaintiff because the plaintiff had children, not because she was unmarried. *Karns*.

Here, the facts cut in multiple directions, but we ultimately have the stronger argument. Larkin has repeatedly turned down single people and unmarried couples who have applied for the apartment, without regard to whether or not they had minor children. During his exchange with one applicant, Jake, Larkin affirmed that he cares about whether applicants are married because he has found they're able to pay their rent on time and are less likely to flake out on him. This indicates that Larkin does genuinely care about the marital status of applicants.

Larkin also noted that he did not specifically have a problem with Turner having minor children. Indeed, Larkin has rented to married couples with children before, including one with two children right now. He said that he "wouldn't mind having a married couple with one child in the apartment that Turner wanted to rent." This indicates that Larkin is not opposed to applicants who come to the unit with minor children, so long as those families otherwise abide by his occupancy policy (which I will discuss below).

This argument is further buttressed by Larkin's exchange with Turner. Unlike the defendant in *Karns*, who first asked about the size of the plaintiff's family before asking about her marital status, Larkin's first question was about whether Turner was married.

Turner may attempt to argue the fact that Larkin then probed into family size suggests that the question about marriage might have been pretextual. Turner may try to claim that Larkin refused to continue negotiations once he learned about the three children during the phone call. But Larkin could argue that it did not matter to him whether Turner had children, but only how many people would be in the unit (because of his

occupancy policy). After all, on the call, Larking asked "Would anyone else be living there?," not whether Turner had children (which was information that Turner himself volunteered). In his conversation with Jake, Larkin similarly never asked about children, only focusing his inquiry on whether Jake was married and whether there would be multiple people living in the apartment.

Turner may try to argue that Larkin's emphasis on marriage as a proxy for financial status masks some nefarious intent. It is true that Larkin never did ask Turner about his finances, which he would have otherwise found to be satisfactory. Larkin even admits that Turner might have had a good job and might have had good credit. But, however illogical on Larkin's part, this rationale is a genuine one, not pretextual. As Larkin notes, he once had a bad experience with renting to a single guy with a good income who ended up losing his job and being unable to pay his rent.

It is likely, therefore, that a court will find Turner to have not satisfied his burden under the third prong.

III. Larkin's occupancy policy likely violates the *McDonnell Douglas* disparate-impact test because there are less restrictive means of achieving the goals underpinning the policy

In *Baker*, the district court held that the *McDonnell Douglas* test takes on a slightly different hue when the court is analyzing a "facially neutral policy" rather than "specific actions that may be ambiguous." Under this altered test, the three prongs are: (1) "the plaintiff tenant first must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect"; (2) "if the plaintiff makes this showing, the burden then shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests"; and (3) "if the defendant landlord meets the burden at step two, the burden shifts back to the plaintiff to show that the substantial, legitimate, nondiscriminatory interests supporting the challenged policy could be served by another practice that has a less discriminatory effect."

That case concerned whether a "bedrooms plus one" occupancy policy was a legitimate nondiscriminatory reason for rejecting a rental application. The plaintiff in that case, who had a wife and five minor children, attempted to rent a three-bedroom apartment from the defendant.

A. Larkin's occupancy policy likely has caused or will predictably cause a disparate impact on people with children

As noted above, the first prong of the *McDonnell Douglas* disparate-income test asks whether requires the plaintiff to show that "a challenged practice caused or will predictably cause a discriminatory effect." In *Baker*, the court held that the defendant's "bedrooms plus one" occupancy policy clearly had a disparate impact because it affected families with minor children more than it did the general population.

Here, a court will likely find that the same logic applies to Larkin's occupancy policy. Imposing a strict of limit of three people is going to have an outsized effect on people with children than on people who do not have children.

B. Larkin has a substantial, legitimate, nondiscriminatory reason for his occupancy policy

Defendant in *Baker* claimed that the occupancy policy helped to avoid the risk of large groups of students at local Aberdeen University overpopulating units in an attempt to reduce their rental payments. The court held this reason to be a "substantial, legitimate, nondiscriminatory interest"

Here, Larkin has stated that his reason for the occupancy limit relates to the "character of the neighborhood." Because the unit is located close to Slate Street, which is populted with nightclubs, Larkin has had issues in the past with young people "cramming" four people into a two-bedroom apartment to keep their housing costs down. For that reason, he has limited occupancy for his two-bedroom units to only three people. On this basis (and because his rationale is so similar to the one the court approved in *Baker*), Larkin appears to have articulated a substantial, legitimate, nondiscriminatory interest for his occupancy policy.

C. Larkin's occupancy policy is likely not overbroad, but there may be less restrictive means of achieving its stated rationale

The *Baker* court noted that plaintiffs meet their burden under the third prong by showing that a facially neutral occupancy policy is overbroad *or* by showing that the goals of that policy can be achieved with a less restrictive means.

The Fifteenth Circuit, according to the *Baker* court, has held that "in cases of alleged familial-status discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad. There is no "mathematical formula," but the Fifteenth Circuit has suggested that a significant mismatch would occur where a landlord limits occupancy to 2 but the code limits it to 4.

i. Larkin's occupancy policy is likely not overbroad

In *Baker*, D's policy would have limited the occupancy of the apartment in question to four people, whereas the code (stated limits in terms of number of people per square foot of living space) would have permitted up to eight people to live in the apartment. The district court held this to be a significant mismatch.

In our case, Larkin has an occupancy policy limiting the number of occupants for the apartment to three. Under Section 15 of the Centralia Municipal Housing Code, however, an apartment the size of his (about 500 square feet) can be occupied by up to four people.

The difference between three and four occupants is a slight one. The case law suggests that a difference of 100% between what is permitted by a municipal code and what a landlord allows creates a significant mismatch. But here the difference is merely 33%. On that basis, it is unlikely that a court will find that Larkin's occupancy policy is overbroad.

ii. There are likely other less restrictive means to achieving the goals underpinning Larkin's occupancy policy

In *Baker*, the plaintiffs showed that the defendant could use a less restrictive means of meeting the company's stated goal of avoiding renting to large groups of college students by distinguishing between college students and families with multiple children in the housing application. The defendant company provided no reason as to why it did not make this distinction.

Here, a court is likely to find that Larkin could also meet his stated goal of reducing overcrowding in his units by simply asking applicants whether they are young and single (since age and marital status are not protected categories for FHA purposes) or more older / established (and therefore less likely to party). On that basis, Larkin could still achieve his stated goals while reducing the likelihood of disparate impact for applicants with families.

IV. Conclusion

For the aforementioned reasons, we likely have the strongest argument that Larkin did not engage in housing discrimination on the basis of his preference for married couples, which does not appear to violate the *McDonnell Douglas* pretext test because Larkin's preference is legitimate, nondiscriminatory, and genuine. Our weakest argument (and Turner's strongest) will be with regard to the occupancy policy, which

likely violates the *McDonnell Douglas* disparate-impact test because there are less restrictive means of meeting the policy's stated goals.

Question MPT-1 – February 2025 – Selected Answer 2

To: Elise Tan
From: Exaimnee

RE: Peter Larkin - Defense of Housing Discrimination Claim

Hi Elise,

I have reviewed the case and documented you provided, and have summarized the case for you below. It looks as though we have two areas to focus on with Mr Larkin's Defense, notably figuring out if Mr Larkin's actions had a (1) Discriminatory Intent and (2) Discriminatory effect.

The Federal Housing Act provides that individuals cannot be discriminated on the basis of race, color, religion, sex, familial status, or national origin. 42 USC Section 3604. Discrimination can be either proved by discriminatory intent or discriminatory effect on behalf of the landlord.

The case here concerns the discrimination based on "familial status", which refers to the presence of minor children in the household.

Claim that Larkin acted with Discriminatory Intent

The first issue that Larkin will need to privide a defense on is whether or not his conduct consituted discrimination under the FHA, specifically by him denying on the basis of familial status.

A. McDonnell Test
There is a three-part test that is set forth Tin *McDonnell Douglas Corp v. Green 411 US 792*, that evaluates claims of discrimination by landlords against tenants. The tenant must bear the burden of proving their prima faciae case of discrimination, then the burden shifts to the defendant to articulate a non-discriminatory reason for the challenged policy. If the defendant is able to prove a non-discriminatory activity, then the plaintiff can prove that the non-discriminatory reason asserted by the defendant are merely pretextual.

B. Strength of Turner's Prima Facie Case

To prove a prima faciae case of housing discrimination under the Federal Housing Act, the tenant must show that the are a protected class; (2) that they applied for, and were qualified to rent the dwelling, and that they were denied housing, or the landlord refused to negotiate with them, and (4) that the dwelling remained available. *McDonnell,1973*.

Mr Turner claims that when he called Mr Larkin and inquired about the property in question, that Mr Larkin asked about his marital status, and then whether or not there would any additional people living there. Mr Larkin did not ask specifically about children on the phone, rather Mr Turner raised the fact that children would be renting there. However, given that there was children going to be living at the apartment, and Mr Larkin knew this, Mr Turner likely is able to meet the first prong, or proving that they are a protected class. Mr Larkin admits that it was likely that Mr Turner was qualified financially to rent the dwelling. The record also provides that the apartment remained available for two additional months after Mr Turner's phone inquiry. Therefore, it is likely that Mr Turner can raise a prima facie case of discrimination FHA.

C. Strength of Mr Larkin's Non-Discriminatory Reasoning

Given that Mr Turner can likely make a prima facie case for discrimination, the McDonnell test then requires Mr Larkin to prove that his actions had a non-discriminatory purpose, or did not discriminate against the protected class in the prima facie complaint. Mr Larking states that he was asking about Marital status, and is discriminating on that basis, not familial status. Mr Larkin does not care so much about the presence of children, rather he claims that the denial of unmarried tenants has a basis in financial security.

It is important to note, that martial status is not a protected class under the FHA. 42 USC Section 3604. The analysis must focus on whether or not Mr Larkin's actions were associated with discrimination based on familial status. Here, Mr Larkin has a good change of being able to prove that his actions were not discriminatory towards the protected class of familial status, rather it was towards the unprotected class of maritial status. Mr Larkin knows that married couples are more financially stable, and in his experience privide him with future tenancy in a more definite basis. Mr Larkin states that unmarried couples are more likely to move out, break up, or a single person is more likely to not be able to afford rent due to job loss. The key factor here is that Mr Larkin discriminated on the basis of a non-protected class, and the purpose of his actions were to seek out tenants that were more stable in their lives, which can provide more financial stability.

D. The liklihood of Mr Turner being able to prove Mr Larkin's policies were merely pretextual.

Given that Mr Larkin can likely prove that his policy was not discrimintory towards familal status, rather it was for the purpose of favoring marital couples, an unprotected class, Mr Turner has to prove that Mr Larkin's policy is merely pretextual.

In the case Karns v. USHUD, 2006, the court found that the tenant claimed that the non-discriminatory purpose of a familal status discirmination claim was merely pretexual. In this case, the landlord specifically asked about children, then asked about marital status, and then in a subsequent conversation only asked about the presence of children, and didn't ask about maritial status. The court concluded that the claim that the non-discriminatroy purpose of denial was based on marital status is proven by the record. It was clear that the lanlord in that case only cared about familal status, and marital status was pretextual, not central to the tenant's denial. Unlike Karns, in our case, Mr Larkin did not ask about children, and only asked about marital status. Mr Turner's marital status was the central reason as to why he denied their tenancy. It wasn't, like in the Karns case, a way of usupring discrimination prohibition. The record supports that Mr Larkin only inquired about marital status, not familal status.

Additionally, Mr Larkin has evidence of denying single couples without children for the same reason as he denied Mr Turner. The record does not support a pattern of behavior that would give rise to the finding that maritial status was merely pretextual.

D. The liklihood of a successful discrimination claim
Mr Turner was able to prove a prima facie case of discrimination, however Mr Larkin had a non-discriminatory purpose of declinign residency on the basis of martial status, not familial status, and therefore Mr Larkin likely has a valid defense.

Claim that Larkin's policy had a discriminatory effect

A second issue that must be analyzed is whether or not Mr Larkin's conduct had a discriminatory effect. We have discussed that it is likely that Mr Larkin can prove that his actions to not rent to unmarried had a valid, non-pretextual non-discriminatroy purpose, however this analysis sets forth whether or nor Mr Larkin's policy of restricting the number of tenants had a discriminatroy impact against familial status.

A similar but distinct test is applied by the courts for evaluating whether or not a lardlords action had a discriminatory effect on a tenant, and would therefore be a violation under the FHA. *Baker v. Garcia Realty (1996).* Under this test, the plaintiff must must make a prima facie case showing that a challenged practice caused or will

cause a discriminatroy effect. If the plaintiff can prove this, then the defendant has the burden to prove that the landlord's challenged policy is neccessary to achieve one or more substantial, legitimate, nondiscriminatory interests. *Id.* If the defendant can prove that, then the plaintiff must then prove that there was another policy which acheived the same purpose for the landlord, that had a less discriminatory effect. *Id*

A. Liklihood of Mr Turner being able to prove a prima facie case of a discriminatory impact.

Mr Turner must be able to prove that Mr Larkin's actions had a discriminatory impact against Mr Turner's familial status. Familil status refers to the presence of children living with the parent. 42 USC Section 3601. In Baker, the court found that a "bedroom plus one" policy clearly impacted families with minor children more than it does the general populaiton. Similar to Baker, by Mr Larkin refusing to rent any unit to more than three people, despite the size of the unit, his policy is having a discriminatory effect on familal status. It is likely that Mr Turner can raise a prima facie case.

B. Liklihood that Mr Larkin can prove that his policy is neccessary to to achieve a substantial, legitimate, non-discriminatory interest

Since Mr Turner can likely raise a valid prima facie case, Mr Larkin will need to prive that his policy of restricting the occupancy of his units is neccessary to further a substantial, legitimate, non-discriminatory interest. *Baker 1996*. Mr Larkin states that his occupancy policy is to prevent people from packing into his apartments, and preventing from paying appropriate rent. Mr Larkin has stated that in the area of the apartment in question, there are nighclubs and many younger residents that try to cram multiple people into a two bedroom apartment to keep their housing costs low.

In Baker, the court held that restircting occupancy based on the liklihood of college residents cramming in multiple people was a valid reason, however later held that it was overbroad, but that the policy met the requirement of showing that it was a legitimate reason.

C. Liklihood of whether Mr Turner can prove that Mr Larkin's occupancy policy was overbroad.

If the court finds that Mr Larkin does have a valid reason to have a discriminatory impact, then Mr Turner is required to show that Mr Larkin's policy was not overboard. *Baker 1996*. Additionally, it has been found that if the occupancy restriction is vastly different that the local zoning ordinance, then that can be evidence

that the limit it overbroad. *Id.* According to Centralia's zoning ordinance, the maximum occupancy for a 500 foot apartment is no more that 4 people.

Although Mr Larkin's policy is more restrictive than the zoning residence, the court is not likely to find that there is a substantial difference, and therefore not find it as constituting evidence that Mr Larkin's policy was overbroad.

However, like the court found in Baker, although preventing college students from cramming into apartments was a valid reason, limiting the occupancy of all units was found to be overbroad. Therefore, it is likely that a could will also find, like in Baker, that Mr Larkin's policy of restricting occupany to limit young people from cramming into units, is overbroad and therefore invalid. Mr Larkin could simply ask about age and status before accepting tenancy from young individuals.

D. It is likely that Mr Larkin's occupancy restriction is overbroad and therefore Mr Turner has a valid claim of discriminatory impact.

Mr Turner was able to provide a prima facie case for discriminatory impact from Mr Larkin's occupancy restriction. Although Mr Larkin had a valid reason for doing so, it was likely overbroad and therefore invalid to negate Mr Turner's prima facie complaint.

Question MPT-1 – February 2025 – Selected Answer 3

Tan & Singh Law Offices LLC
740 East Broadway, Suite 200
Centralia, Franklin 33402

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin - Defense of Housing Discrimination Claim

Issue

The issue is whether landlord Peter Larkin violated the United States Fair Housing Act, 42 USC section 3604(a) when he essentially denied Mr. Martin Turner from renting one of the two-bedroom apartments owned by him. Specifically, the issue is whether Turner can prove that (1) Mr. Larkin violated the Fair Housing Act when he denied Mr. Turner, based on discrimination, for being single rather than married; (2)

Mr. Larkin violated the Fair Housing Act when he denied Mr. Turner, based on discrimination, for having three children under the age of eighteen; and (3) Mr. Larkin violated the Fair Housing Act when he denied Mr. Turner, based on discrimination, due to the fact that four people would be living in the two-bedroom five-hundred square foot apartment.

Brief Answer

Larkin posted a two bedroom aprtment he was trying to rent online. Turner inquired via text message if the apartment was available. The apartment was still available. Larkin inquired into whether Turner was married and who all would be living with him. Turner is single and has three minor children that live with him. Turner has now brought a discrimination claim against Larkin. Turner likely has three arguments for discrimination that he may present: (1) discrimination on marital status; (2) discrimination based on familial status; and (3) disparate treatment due to occupancy policy.

Larkin has a strong argument for discrimination on martial status. There can be no claim brought for discrimination based on marital status. This will be his best defense, and he will most likely prevail. Larkin also has a strong argument that his occupancy policy is proper. Larkin has a legitimate, nondiscriminatory reason the occupany policy, that college students over populate and attempt to lower their rent. Further, Larkin's policy is not disproportionality different from the municipal housing code. Larkin's toughest challenge will be arguing that he did not discriminate based on familial status. Larkin will need to establish a legitimate reason that is not pretextual. His strongest argument is that he denied the application due to his marital status. We will need to discuss all these options to Larkin and create a plan to best defend him.

Law & Analysis

A. Martial Status

Larkin will not be found to have violated the Fair Housing Act by denying Turner based on his martial status.

The Fair Housing Act (FHA) makes it unlawful to "refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status." 42 U.S.C. section 3604(a). The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent or someone with an equivalent custodial relationship. 42 USC section 3602(k).

Courts apply the three-part burden-shifting test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), for evaulating claims of discrimination under 42 USC section 3604(a). First, plaintiffs bear the initial burden of proving a prima facie case of discrimination under the FHA, plaintiff musts show (1) that they are a member of a protected class; (2) that they applied for and were qualified to rent the dwelling; (3) that they were denied housing or the landlord refused to negotiate with them; and (4) that the dwelling remained available. *Karns v. US Department of Housing and Urban Development,* (15th Cir. 2006).

It is undisputed that at all relevant times, Turner had three children under the age of 18 who resided with him. It is also undisputed that Larkins owns the two-bedroom apartment, rents the apartment out, and a few months after this encounter with Turner rented the apartment to a married couple.

First, there is no question that Mr. Turner "applied for" and "was qualified" to rent the dwelling owned by Mr. Larkin. The term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling. *Id.* Here, Mr. Turner texted Mr. Larkin and made an inquiry into whether the apartment was still available. The Fifteenth Circuit has stated that this qualified as an inquiry, as in Karns, the plaintiff also reached out via text message to inquire about the availability of a two-bedroom apartment. "Qualified to rent" means that the individual meets such factos as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background. *Id.* Turner asserts in his Adminsitrative Complaint that he is "employed as a data analyst," "can easily afford that apartment on my income," and has a "good rental history and credit score." If we accept these facts as true in this moment, Turner has alleged sufficient facts that a court would likely find that he was qualified to rent.

Second, Turner likely can meet the element of being "denied housing or the landlord refused to negotiate with them." Turner texted Larkin to inquire if the apartment was still available. After a few questions regarding Turner's marital status and who would be living with him, Larkin stated "I don't know. I need to think about that. I'll get back to you." Larkin never reached back out. In *Karns*, the plaintiff inquired to the landlord, the landlord asked how many were in her family and asked if she was married, then stated "I don't know. I've got to pay my mortgage. I'll think about it and get back to you," and never reached back out. The Fifteenth Circuit found this to be a denial/refual to negotiate. As the texts are very similar, with both stating that they will think on it and get back and then never reaching out, it is likely a court would find this a denial or a refusal to negotiate.

Third, the dwelling did remain available. On November 6, 2024, Turner inquired about the apartment via text message. Turner checked on Craigslist two months after the text exchange, and saw that the unit was still available. It was still listed for rent. Larkin also admitted that it took a couple of months, but he did eventually rent the apartment to a married couple.

Fourth, Turner must make a prima facie showing that he is a member of a protected class. Turner might argue that he was denied renting the apartment due to his martial status, as he is single and a widow and not married. The Fifteenth Circuit has held that the FHA "does not include martial status among its protected classifications." *Karns*, (15th Cir. 2006) (citing 42 USC section 3604(a)). By section 3604(a) omitting "marital status" from categories of protected classes under the FHA, a claim for discrimination cannot be brought based on martial status. This element fails for Turner.

In conclusion, if Turner is basing his discrimination claim on his martial status, he will fail as the Fifteenth Circuit has made clear that martial status is not protected under the FHA. This will be Larkin's best defense, and Larkin is very likely to succeed unless the decision is appealed and the Fifteenth Circuit does not follow its own precedent.

B. Familial Status

Larkin could be found to have violated the Fair Housing Act by denying Turner based on his familial status. Turner might be able to make a prima facie case of discrimination based on familial status under the FHA.

As analyzed above, Turner is likely to prove three of the four elements that courts are to look at from McDonnell when evaluating claims of discrimination under 42 USC section 3604(a). The element of "a member of a protected class" was not met above. It could be met here, and if so, Turner would have a prima facie case. The burden would then shift to Larkin and he would have to rebut the presumption of illegality by demonstrating that there were articulate legitimate nondiscriminatory reasons for the challenged policies.

Here, Turner is a member of a protected class. Turner is the parent and residing with three of his children that are all under the age of eighteen. All three of the children are domiciled with him 42 USC 3602(k). Thus, Turner is a member of a protected class, and he has made a prima facie case of discrimination.

Larkin might be able to rebut the presumption. Larkin's best argument is that he was concerned that Turner was unmarried. As discussed above, marital status is not a ground for a discrimination claim. Larkin can make a strong argument that he did

eventually rent the apartment, and it was to a married couple. Larkin has denied four single people from living in the same apartment. Larkin can also show that he has rented to a married couple before with a child. These facts could rebut the presumption.

Larkin could attempt to argue that he was concerned about Turner's finances, but this argument will likely fail to rebut the presumption. Larkin never inquired into Turner's finances. In fact, Larkin knew nothing about Turner's finances. All Larkin knew about Turner is that he was single and had three children under the age of eighteen. Any argument about finances would fail, as they did in *Karns*. (15th Cir. 2006) (finding that the landlord "possesed no information whatsoever about Karn's income, credit history, assets, or liabilities" and "had not asked a single question about Karn's finances").

In conclusion, Larkin will need to rebut the presumption of the prima facie case. Larkin's best argument is that he was concerned about Turner's marital status, as that is not a grounds for a discrimination claim. Larkin has a long standing policy of preferring married couples, and there are specific instances we can show to the court to rebut the presumption. It would then be on Turner to prove by a preponderance of the evidence that the nondiscrimniatory reasons asserted by Larkin are merely pretextual for discrimination.

C. Occupancy Policy

The Fair Housing Act (FHA) makes it unlawful to "refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status." 42 U.S.C. section 3604(a). The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent or someone with an equivalent custodial relationship. 42 USC section 3602(k).

Turner could argue that Larkin's occupancy policy, while facially neutral, had a disparate impact on them because of their familial status. In this type of case, the Fiftteenth Circuit applies a three-part disparate impact analysis: (1) the plaintiff tenant first must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff makes this prima facie showing, the burden then shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory itersets; and (3) if the defendant landlord meets the burden at step two, the burden shifts back to the platiniff, who may then prevail only if they can show that the substantial, legitimate, nondiscriniatory interests supporting the

challenged practice could be served by another practice that has a less discriminatory effect. *Baker v. Garcia Realty Inc.*, (D.C. D.F. 1996).

(1) Here, Larkin has a policy that for a five hundred square feet apartment, only three occupants can live there. Turner likely can establish a prima facie case of disparate treatment. Larkin's policy clearly impacts families with minor children more than it does the general population. *See Baker*. Minor children frequently share bedrooms, and families with minor children tend to have larger households than families without minor children at home. *Id. In Baker*, the landlord had a bedrooms plus one policy, which affected families. Here, Larkin has a policy of limiting how many occupants based on the square footage. It is likely that a court could find this to meet the prima facie showing.

(2) Larkin now receives the burden to articule one or more substantial, legitimate, nondiscriminatory interests served by its policy. Larkin is trying to avoid college students that attempt to place multiple occupants in one apartment to save money. This overpopulation concern has been recognzied in *Baker* as an adequate, legitimate, nondiscriminatory interest. Thus, Larkin can likely articule one or more substantial, legitimate, nondiscriminatory interests served by its policy.

(3) The burden then shifts back to Turner to demonstrate that Larkin's policy is overbroad or that there is a less restrictive means to acheieve. The Fifteenth Circuit has held that in cases of alleged familial-status discriminatino, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad. *Baker* (D.C. D.F. 1996). In Baker, the code permitted right people while the landlord's policy allowed four. This significant mismatch provided evidence that it was overbroad. The apatment in this case is 500 square feet. Under the Centralia Municipal Housing Code section 15, a dwelling of 500 square feet can have no more than four people. Larkin only allows three. This is not a significant mismatch like in Baker. Accordinly, it is likely that Turner will not be able to prove this claim.

In conclusion, Larkin will need to be able to articule nondiscriminatory reasons for the policy, such as college students over populating to lower rent, which is a strong argument in this circuit. Then, Larkin can argue that there is no signicant mismatch between his policy and the Municipal Housing Code. Larkin likely has a strong chance of prevailing.

Conclusion

Larkin posted a two bedroom aprtment he was trying to rent online. Turner inquired via text message if the apartment was available. The apartment was still available. Larkin inquired into whether Turner was married and who all would be living with him. Turner is single and has three minor children that live with him. Turner has now brought a discrimination claim against Larkin. Turner likely has three arguments for discrimination that he may present: (1) discrimination on marital status; (2) discrimination based on familial status; and (3) disparate treatment due to occupancy policy.

Larkin has a strong argument for discrimination on martial status. There can be no claim brought for discrimination based on marital status. This will be his best defense, and he will most likely prevail. Larkin also has a strong argument that his occupancy policy is proper. Larkin has a legitimate, nondiscriminatory reason the occupany policy, that college students over populate and attempt to lower their rent. Further, Larkin's policy is not disproportionality different from the municipal housing code. Larkin's toughest challenge will be arguing that he did not discriminate based on familial status. Larkin will need to establish a legitimate reason that is not pretextual. His strongest argument is that he denied the application due to his marital status. We will need to discuss all these options to Larkin and create a plan to best defend him.

Question MPT-1 – February 2025 – Selected Answer 4

MEMORANDUM

To: Elise Tan
From: Examinee
Date: February 25, 2025
Re: Peter Larkin - Objective Memorandum; Defense of Housing Discrimination Claim

Brief Answer

After reviewing the applicable legal standards under this jurisdiction, it is likely that Larkin's actions present a disparate-impact on Turner and he would be found liable under the statute, as discussed more fully below. While Larkin's actions were not unambiguously discriminatory, they likely did have a disparate-impact. And while the policy is likely not overbroad, it may still have a disparate-impact on Turner. My analysis is below.

Legal Standard

Under the US Fair Housing Act (FHA) Section 3604, it is unlawful for a landlord 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, sex, familial status, or national origin."
Under this statutory scheme, familial status "means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent . . ."
Here, Martin Turner's claim against our client is on the basis of discrimination against his family, which includes three children under the age of 18. Therefore, this law applies.
In the 15th circuit, courts apply two different standard depending on the nature of the actions taken or policy enforced by a landlord. If an action discriminates through specific actions that may be ambiguous, the court applies the *McDonnell Douglas* test. However, if the courts are analyzing a facially neutral policy, they will apply the disparate-impact analysis as seen in *Baker v. Garcia Realty, Inc.* In either approach, the plaintiff has the initial burden to show discrimination or disparate impact. See *Karns v. US Dept.*; see also *Baker*.

Legal Exemption

Under the FHA, an exemption applies to landlords that maintain and occupy the living quarters as his residence. If this is the case, a landlord may discriminate on the basis of familial status.
Larkin may maintain this property but he has admitted that he lives in a town home a mile away. Therefore, this exemption would not apply to Larkin.

Turner likely satisfies the initial burden under the McDonnell Burden shifting test

In *Karns v. US Dept. of Housing and Urban Dev.*, the 15th circuit articulated the McDonnell Douglas test. Plaintiff bear the initial burden to prove a prima facie cse of discrimination under the FHA. Id. To do this, a plaintiff must show "(1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available."
Here, one avenue for Turner to prevail is to meet this burden and show that him and his family were discriminated against by Larkin through specific discriminatory acts. His success depends on how he will fare on each prong, as discussed below.

Member of a protected class

As explained above, Turner is alleging he is a member of the protected class "familial status." This requires a showing that Turner's family included "one or more individuals (who have not attained the age of 18 years) being domiciled with ... a parent."
Here, Turner likely satisfies this requirement. As he alleged in his HUD Administrative Complaint form, he is a widower and single parent of three children: Martha, age 16; Maura, age 12; and Max, age 6. This prong is therefore not at issue in this dispute.

Applied for and were qualified

In the 15th circuit, "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling. *Karns*. And "qualified to rent" means that the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background. *Karns*.

In *Karns*, the plaintiff testified that she was inquiring to the landlord about a 2-bedroom apartment and spoke to the landlord through text wherein the landlord asked about her familial status and expressed hesitancy to rent to her after finding out she was not married and had two small children.

Here, the situation is similar, where Turner reached out to Larkin to inquire about the apartment through text. This satisfies the "applied for" requirement under the applicable legal standard. Additionally, Turner has alleged in his complaint form that he has good rental history and good credit, is employed as a data analyst and can easily afford the apartment. As such, if Turn can support these claims, then he likely can satisfy this prong under the applicable legal standard.

Denied or refused to negotiate

In *Karns*, the court found that the landlord refused to negotiate or denied when they failed to text the plaintiff back after saying they had to think about it.

Here, Larkin performed the same action as the landlord in *Karns* by telling Turner he did not know and needed to think about it after Turner inquired about the apartment. This prong is also likely satisfied.

Dwelling remained available

In *Karns*, the apartment was considered still available after it stayed listed about a month later.

Here, Turner inquired about the apartment on November 6, 2024 and the apartment was still available for the next two months. This likely satisfies this prong.

Overall, Turner can likely satisfies the first part of the *McDonnell Douglas* burden shifting test.

Larkin can likely shift the burden back to Turner under the McDonnell Burden shifting test

After a plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden shifts tot he defendant to articulate legitimate nondiscriminatory reasons for the challenged policies. Karns.

In *Karns*, the landlord asserted two nondiscrimnatory reasons for her refusal to negotiate with the plaintiff: (1) she was concerned about plaintiff's finances, and (2) she was concerned the plaintiff was unmarried.

Here, Larkins is in a similar position where he explained that his reasons for not wanting to rent to Turner were based largely on the fact that he was single, which impacts the financial ability of the tenant to pay as married tenants are more likely to have two incomes; and because he has a policy against renting to people with more than three people.

Turner may be able to show one of the reasons Larkin asserts are pretextual, but Larkin may be able to prevail on the other

After a defendant asserts legitimate nondiscriminatory reasons, the plaintiff may still prevail by showing they are pretextual, or in other words, an excuse that attempts to cover the discriminatory intent. *Karns*.

In *Karns*, a reason given by the landlord was fear for the plaintiff's ability to pay rent. However, the court found pretext here because the landlord never attempted to gain information about the plaintiff's ability to pay. Rather they stopped responding to the plaintiff after finding out only about their familial status. The Landlord never even asked a single question about plaintiff's finances.

The other reason given was fear over the plaintiff being unmarried. However, this was proven to be pretextual because the landlord refused to rent after finding out plaintiff was single and had kids, but then agreed to show the property to the plaintiff after she presented herself as single but with no kids. This shows the reason was based on the children's presence, not marital status.

Here, Larkin's first reason likely cannot be supported as nondicriminatory. Larkin's texts with Turner are similar to the communications in *Karns* where Larkin asked about who would be living with Turner and never asked about Turner's finances. This shows his reason for not renting to Turner was based on something other than his states reasons of concern about finances. Even though Larkin may subjectively believe single people are unable to be financially stable, this is too similar to Karns for that argument to have much weight.

Larkin gives another reason for his refusal which is his policy of not renting to people with more than 3 individuals. This reason likely cannot be shown to be pretextual as it is a policy rather than an action. As such, with this reason, plaintiff likely cannot prevail on this line of reasoning. However, the court would likely further examine the policy to see if it has a disparate impact, as discussed below.

Turner could likely shift the burden to Larkin under the Baker Disparte-Mpact Analysis

In the 15th circuit, courts will apply a three part disparate impact analysis. The initial burden lies with the plaintiff who must make a prima facie case showing the challenged practice caused or will predictably cause a discriminatory effect. *Baker*.

In *Baker*, the landlord had a "bedroom plus one" policy which clearly impacted families with minor children more than the general population. The policy provided for a maximum occupancy of 3 people in a 2 bedroom apartment, 4 people in a 3 bedroom, and 5 people in a 4 bedroom. The policy was not based on square footage.

Here, Larkin's policy is similar in that it prevents any group with more than 3 people from renting. Therefore, the burden would likely shift to Larkin.

Larkin could likely prove that the challenged practice is necessary to achieve appropriate interests

In *Baker*, after the burden shifts, a landlord must then prove the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatry interests. In Baker, the landlord showed that the occupany policy avoided the risk of large groups of Aberdeen students overpopulating units in an attempt to reduce their rental payments. This was found to be legitimate.

Here, Larkin advances the same policy reason which is to prevent young people from cramming to many people into a single apartment. The area is close to nightclubs that attract young people and Larkin has had issues in the past with this. Therefore, this likely meets Larkin's burden.

While Larkin's policy is not overbroad, he could ahve used less restrictive means

In *Baker*, after the burden shifts back to the plaintiff, the plaintiff may prevail by showing the policy is overbroad or that there is a less restrictive means to achieve the result. In *Baker*, the plaintiff showed the policy was overbroad by showing a mismatch between occupancy limits set by municipal code and those set by the landlord. The municipal code has a limit of 8 while the policy had a limit of 4, exactly half of what was legally allowed. This showed a significant mismatch.

The plaintiff also showed that there was a less restrictive means available, specifically identifying whether the intended renters were young, students or a family.

Here, Larkin's policy is not overbroad. The Centralia Municipal Housing code for this particular apartment (which has square footage of 500) allows for no more than 4 people. Larkin's policy is only slightly less at 3. Therefore, it likely would not be considered overbroad.

However, Larkin could ascertain the demographics of the people he is renting to, much like what would have been appropriate in Baker. Larkin could have easily told the difference between renters who are young and renters who area family. Indeed, he did find this information out. He knew Turner had a family and Larkin also has evidence that he chose not to rent to a group of young people in the past. Therefore, Larkin would likely be found liable under this statute.

Conclusion

While Larkin may be able to show he did not take ambiguous, discriminatory actions under *Karns*, his refusal to rent to Turner likely did result in disparate impact that would open his to liability here.