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**Case no. 7/2007**

**Parties to the case:**

**A (private sellers)**

**B**

**Administrative decision of 16 May 2007**

**Composition of the Equality Tribunal:**

**Aslak Syse, Chair**

**Else Leona McClimans, Deputy Chair**

**Thom Arne Hellerslia**

**Atle Larsen**

**Torkjel Nesheim**

## **Subject-matter of the case**

The case concerned the question of whether a bidder's ethnicity was the reason why sellers did not accept his bid for the sale of a housing property, and whether this constituted direct discrimination under section 4 of the Anti-Discrimination Act.

## **The facts of the case**

The property in question was offered for sale on the market in October 2006. The sellers were A. The property is a detached house with a rental apartment in the basement. An estate agent handled the sale.

According to the sales prospectus drawn up by the estate agent, the suggested price was NOK 4,950,000. It was indicated in the prospectus that the basement apartment needed upgrading.

Ordinary viewings of the house were held on 15 and 16 October 2006.

According to the estate agent's record of bids, a total of five bids were submitted for the house. The first bid was made by B and was for NOK 4,600,000. The bid was submitted at 13:30 on 16 October and had a deadline for acceptance at 14:00 the same day.

A bid of NOK 4,750,000 was then made by C. The bid was submitted at 17:00 on 17 October with a deadline for acceptance at 12:00 the next day.

B raised his bid to NOK 4,800,000. This was done at 10:38 on 18 October. Three minutes later, C submitted a bid of NOK 4,900,000. Finally, at 11:22, B submitted the highest bid of NOK 4,950,000. Just under an hour later, C were told that their bid had been accepted. At the same time, B was told that his bid had been rejected.

According to the estate agent, the sellers were continuously informed of bids and the name of the bidders in the usual manner. According to the agent, the sellers had not indicated in advance that they would prefer some bidders to others.

In an article in *Verdens Gang (VG)* on 19 October 2006, B recounted the sale of the house. According to the article, B believed that the sellers' rejection of his bid had to be racially motivated. The article was written by journalists X and Y.

In the article the journalist and the sellers are quoted as follows:

*Sellers: Many people consider whether the person in question fits into a community. This is common. We have a very special neighbourhood that we are very fond of. So we want to sell to the people who fit into the neighbourhood best...*

*VG journalist: So this buyer didn't fit in?*

*Sellers: We think that some people are better suited for a house than others. For example, I think that it's right that people who take over a house that requires a certain amount of*

*maintenance should have what it takes to maintain it. People who have probably never mowed a lawn before might not fit in very well. This is not a special case,...*

VG has sent a statement from journalist Y. She states that she did not make any particular notes on her initial contact with the sellers. According to journalist Y, the sellers had stated that the neighbourhood community was very special. The sellers had also told her that B wanted to split the house up into studio apartments, which the sellers did not want.

Journalist Y then contacted B, who denied having said anything about wanting to divide the house up into studio apartments. He had never said anything other than that his family consisting of three persons would be living in the house.

According to journalist Y, the above-mentioned quotes in the newspaper article were taken from the next time she was in touch with the sellers. She wrote the quotes directly into her manuscript on her computer. Journalist Y states that the quotes were read aloud to the sellers, who approved them. In their complaint regarding the opinion reached by the Anti-Discrimination Ombud, the sellers deny that the quotes were read aloud for approval.

B is married and has a two-year-old child. B has an ethnic background other than Norwegian. He was born and has grown up in Norway.

### **Consideration by the Equality and Anti-Discrimination Ombud and subsequent proceedings**

The Equality and Anti-Discrimination Ombud took the matter up on his own initiative following an article in VG on 19 October 2006. The Ombud contacted B, who believed that he had been discriminated against in connection with the sale of the housing property in question. He had submitted the highest bid, but was nonetheless not allowed to buy the property. B wanted the Ombud to consider the matter and determine whether he had been a victim of ethnic discrimination in breach of the Anti-Discrimination Act.

The Ombud issued his opinion on the case on 31 November 2006. The Ombud found that the sellers had acted in breach of section 4 of the Anti-Discrimination Act. The Ombud concluded that the reason why the sellers accepted a bid that was lower than B's highest bid was B's ethnicity.

In the Ombud's assessment of the facts, the burden of proof had shifted to the sellers pursuant to section 10 of the Anti-Discrimination Act. In this connection, the Ombud referred to the sellers' statements to VG regarding who *fits into a neighbourhood* and who *has probably never mowed a lawn before*, the fact that the sellers did not know the buyers, and the basic principle that a seller normally chooses the highest bid.

In the Ombud's opinion, the sellers had not succeeded in meeting their burden of proof. After an overall assessment, the Ombud found that the statements quoted in VG were the sellers's real reasons for not selling to B. Furthermore, the Ombud found that it had not been proved that B had attended a new viewing after the ordinary viewing on Sunday, 15 October, as the sellers claimed.

In a letter dated 21 December 2006, A complained about the Ombud's opinion. They pointed out that they had not been given an opportunity to comment on B's statement to the Ombud that he denied having been to a new viewing. In their opinion, therefore, the ordinary requirements regarding the right to be informed of the other party's case had not been satisfied in the Ombud's administrative proceedings.

The Ombud considered reversing his opinion on the basis of the complaint, but decided to maintain his opinion on the case. With regard to A's claim that a procedural error had been made, the Ombud confirmed that the e-mail in question had by error not been sent to them for comment. The Ombud regretted this procedural error. In the Ombud's view, however, the error had had no effect on the Ombud's opinion, since his decision was made on the basis of the sellers's statements to VG. As the Ombud saw it, he would have interpreted the statements in the same way even if it were assumed that the private viewing actually did take place. Furthermore, the statements were made to VG after the alleged private viewing.

The Ombud referred the case for consideration by the Equality Tribunal in a letter dated 5 February 2007.

The case was dealt with at a meeting of the Tribunal held on 16 May 2007 in Oslo. Tribunal members Aslak Syse (Chair), Else Leona McClimans (Deputy Chair), Thom Arne Hellerslia, Atle Larsen and Torkjel Nesheim took part in the case proceedings.

A attended the Tribunal proceedings, together with the witnesses N and NN. Margrethe Søbstad represented the Equality and Anti-Discrimination Ombud. The Tribunal's secretariat was represented by Christel Kirkøen.

### **The parties' arguments**

A deny that the buyer was chosen on the basis of ethnicity. On the contrary, the choice was based on other specific, practical details.

B came to visit on the day after the ordinary viewings and asked to see the property. He was allowed to do so.

A claim that at the new viewing, B talked about knocking down a wall and building premises for a nanny. However, A wanted to have a buyer who appreciated the house as it was. They thought that this would reduce the risk of complaints. They also felt a certain pride as regards the renovation of the house.

A also claim that B was angry about the fact that, despite attending numerous viewings and making many bids, his bid had not been accepted for any dwelling. A point out that they found his behaviour frightening, and that they quickly agreed that they did not in any event wish to sell to B. In A's opinion, one would not ordinarily talk about grounds of this nature to a newspaper.

The statement in VG was a reply to a general question from the journalist as to what would have been an ideal buyer. The reply was not linked to B. A cannot confirm the way the matter was described in the VG article. The quotes in the article were not read out for approval.

A called their neighbours, N and NN, as witnesses. A told N about the meeting with B on the day after the ordinary viewings, what B said and did, and that this was the reason why they did not want to sell to B.

A have also submitted written confirmation from the estate agent in which he confirms that between 09:30 and 10:00 on the day after the ordinary viewings, A informed him that B had been to a new viewing and had a brief conversation with A. At this point in time, the sellers did not mention that they did not wish to have B as a buyer.

A emphasise that they have a good dialogue with people from many parts of the world.

B believes that the reason for the sellers' rejection of his bid must have been ethnicity.

B denies that he was at a new viewing, as is claimed by A. He went to look at the house from outside. However, it was dark in the house, so he assumed that no one was home.

He never said anything other than that he intended to live in the house with his wife and child. However, he had noted that there was a studio apartment in the house that could be rented out. This was also stated in the advertisement for the sale of the house.

### **The Tribunal's deliberations**

This case concerns the decision of a private individual not to sell a dwelling to a person of an ethnic background other than Norwegian. Pursuant to section 7 of the Equality and Anti-Discrimination Ombud Act, the Tribunal is competent to make binding administrative decisions as to whether or not there has been a breach of the Anti-Discrimination Act.

In the complaint regarding the opinion of the Ombud, A argue that a procedural error was committed in the Ombud's handling of the case. A had not been given an opportunity to comment on B's information to the Ombud to the effect that he denied having been to a new viewing. The customary right to be informed of the other party's case had thereby not been observed in the Ombud's procedures. During the Tribunal's processing of the case, A have been given the opportunity to comment on all the information in the case, including the information in question provided by B. Any errors in the Ombud's procedures were therefore rectified in the Tribunal proceedings.

The Anti-Discrimination Act applies to all areas of society except for family life and *personal relationships*, see section 3 of the Act. In principle, the Act applies wherever discrimination based on ethnicity, etc. can conceivably occur. The purpose of the Act is to *promote gender equality, ensure equal opportunities and rights and prevent discrimination based on ethnicity, etc.*, see section 1 of the Act.

Access to a dwelling is of fundamental and crucial importance for individuals. The Norwegian housing market largely consists of private dwellings that are offered for sale. In order to fulfil the purpose of the Act, therefore, it is important to prevent discrimination in connection with the sale of dwellings.

It follows from the preparatory works to the Anti-Discrimination Act, on page 75 of Proposition No. 33 (2004-2005) to the Odelsting, that the exception regarding personal

relationships must be interpreted in a narrow sense. The limit for whether or not the Act is applicable must be drawn on the basis of an overall assessment. An example mentioned concerns the private sale of a car where the seller, due to the skin colour of the highest bidder, chooses the person with the second highest bid. If the seller does not know any of the bidders, the situation does not fall within the scope of the exception for personal relationships, and the statute is applicable. With regard to the lease of a dwelling, it is stated that the exception will cover the lease of a room in a person's own dwelling, while the Act will apply to the lease of an apartment in which the owner does not himself reside.

A were not going to live in the dwelling themselves after it was sold. A did not know the couple whose bid for the house was accepted prior to the purchase. Consequently, the Act is applicable to the sale of the dwelling, and sets limits with regard to the principle that sellers of dwellings are free to choose which bid they wish to accept.

Section 4 of the Anti-Discrimination Act prohibits differential treatment on the basis of ethnicity, national origin, descent, skin colour, language, religion or belief (ethnicity, etc.)

The Act does not require that there be any intent of discrimination in order for the prohibition to apply, the fact that a discriminating effect occurs is sufficient and that this effect is due to ethnicity, etc. The prohibition against discrimination also covers omissions.

The question is whether B's ethnicity was the reason for A's refusal to accept his bid.

It follows from section 10 of the Anti-Discrimination Act that the burden of proof shifts to A if there are circumstances that give reason to believe that they attached importance to B's ethnicity as a negative factor when they decided not to accept his bid for the house.

The question of whether B's allegation is supported by the chain of events and the external circumstances of the case must be considered on its merits. The fact that B, unlike the couple whose bid for the house was accepted, does not have an ethnic Norwegian background is not in itself sufficient to shift the burden of proof to A, cf. page 130 of Report No. 33 (2004-2005) to the Odelsting and the Equality Tribunal's case no. 26/2006.

B's bid for the house was not accepted, despite the fact that the bid was NOK 50,000 higher than that of the couple whose bid was accepted.

According to VG, the day after the house was sold, A stated that they wished to sell to the persons who fit into the neighbourhood best. To the following question from the journalist: *So this buyer did not fit in?*, A replied: *We think that some people are better suited for a house than others. For example, I think that it's right that people who take over a house that requires a certain amount of maintenance should have what it takes to maintain it. People who have probably never mowed a lawn before might not fit in very well.*

In the light of the above, the Tribunal finds that there are circumstances that give reason to believe that A attached importance to B's ethnicity as a negative factor when they decided not to accept his bid for the house. Reference is made to the connection in the above-mentioned statements, and to information that the journalist concerned contacted A again after having confronted B with A's version before the newspaper interview was printed, and that B had an ethnic background other than Norwegian and that he bid NOK 50,000 more than the couple whose bid was accepted.

A must therefore show it to be more likely than not that grounds other than B's ethnicity were the reason for their not wanting to accept his bid for the house.

B did not attend the Tribunal proceedings.

At the Tribunal proceedings, A gave an account of the circumstances relating to the sale of the house, and how she perceived B's behaviour when he visited her on the morning after the ordinary viewing and asked to be allowed to see the house again.

A was not comfortable with the way B behaved. As she saw it, he barged into the house, was angry, aggressive and unpleasant. He also stated that he wanted to knock out a wall in the basement and build premises for a nanny, and that he wanted to expand the living room, which would entail tearing down the new terrace that the sellers had built outside the living room.

The neighbour N told the Tribunal that on the same morning, before the round of bidding had begun, A had told her on the telephone about her experience of B's visit, and that they had decided not to sell to B on account of the poor impression she had received of him during the viewing.

The Tribunal sees no reason to doubt the credibility of A's statement, and finds that they decided not to sell to B on account of his behaviour. B's bid was only NOK 50,000 higher than the amount for which the house was sold. At the Tribunal meeting, A stated that they would have been content to sell the house for NOK 4,000,000, whereas it was sold for NOK 4,900,000. Furthermore, they wanted a buyer who was happy with the house as it was. Contrary to the couple whose bid was accepted, B had expressed a desire to change the house.

A have thereby shown it to be more than likely that grounds other than B's ethnicity were the reason for their not wanting to accept his bid for the house.

Consequently, A did not act in breach of section 4 of the Anti-Discrimination Act by not accepting the highest bid from B.

The decision of the Tribunal is unanimous.

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This decision is a final administrative decision that cannot be reviewed by means of a administrative complaint. Pursuant to section 12 of the Act on the Equality and Anti-Discrimination Ombud and the Equality Tribunal (the Anti-Discrimination Ombud Act) regarding review of Tribunal decisions, the decision may be brought before a court of law for a full review of the case. Legal proceedings for the review of a Tribunal decision must be brought within three months of receipt of notification of the decision. Legal proceedings regarding the validity of a Tribunal decision shall be brought against the State represented by the Tribunal.

**CASE 7/2007**

**The Equality Tribunal has made the following administrative decision:**

A did not act in breach of section 4 of the Anti-Discrimination Act by not accepting the highest bid from B when they sold their residential property.

Oslo, 16 May 2007

Aslak Syse  
Chair

Else Leona McClimans  
Deputy Chair

Thom Arne Hellerslia

Atle Larsen

Torkjel Nesheim