City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF:

Alex Nibbs
Complainant,
v.

PT Chicago, LLC and
Waterton Residential, LLC f/k/a Waterton
Property Management LLC
Respondents.

Case No.: 14-H-61

Date of Ruling: May 11, 2017

FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

On August 21, 2014, Complainant Alix Nibbs (a Housing Choice Voucher holder) filed her Complaint alleging that Respondents PT Chicago, LLC and Waterton Residential, LLC f/k/a Waterton Property Management LLC (collectively referenced as "Respondents") violated §5-08-030 of the Chicago Fair Housing Ordinance by discriminating against her based on her source of income in connection with her efforts to rent apartment #2-4109 in Respondents' apartment building located at 555 W. Madison St., Chicago IL 60661 (referenced as "Presidential Towers"). In particular, Complainant alleged in her Complaint that Respondents' minimal-income requirement for renters had a disparate impact on Housing Choice Voucher holders. By its Order of February 3, 2015, the Commission found substantial evidence to support the alleged violation of the Ordinance based upon Complainant's source of income.

The Commission conducted the administrative hearing on March 1, 2016. Both Complainant and Respondents were represented by counsel. Complainant presented the testimony of herself and Milton Santiago, who is the Program Integrity Manager for the Chicago Housing Authority. Respondents presented the testimony of David Scharfenberg, who was the General Manager for Presidential Towers during the pertinent time and Matthew Mehan, who is Respondents' leasing manager for Presidential Towers. In addition, the parties submitted 21 joint stipulations of fact and seven stipulated exhibits. Complainant presented a closing argument while Respondents chose to rest on their forthcoming post-hearing brief. Both parties filed post-hearing briefs on April 12, 2016, and responsive briefs on May 3, 2016.

On November 28, 2016, the Administrative Hearing Officer issued the Recommended Ruling on Liability and Relief, which recommended that the Commission rule in favor of Respondents and against Complainant on Complainant's source of income discrimination claim. Complainant timely filed her Objections to the Recommended Ruling on December 26, 2016. On January 16, 2017, Respondents filed their response to Complainant's Objections, and, on January 26, 2017, Complainant filed her reply in support of her Objections. This matter is now ripe for decision.

II. FINDINGS OF FACT

1. The United States Department of Housing and Urban Development ("HUD") funds the Housing Choice Voucher program under which "HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing." 24 C.F.R. 982.1(a)(1). The Chicago Housing Authority ("CHA") administers the Housing Choice Voucher program in Chicago. Tr. 47-48; 24 C.F.R. 982.1(a)(1). The Housing Choice Voucher program was formerly known as the Section 8 program and the Housing Choice Vouchers were formerly known as Section 8 vouchers.[1] Tr. 57.

2. Complainant Alix Nibbs is a Housing Choice Voucher holder who resides at 1606 East 50th Place in the Hyde Park neighborhood of Chicago. Transcript ("Tr.") 7-8. Complainant has held a Voucher for the past four years. Tr. 8.

3. The Housing Choice Voucher program specifies that at least 75% of the Vouchers must go to households designated as "very low income" *(i.e.,* households whose income does not exceed 50% of the metropolitan area's median income). Stipulated Exhibit 6 (CHA's Housing Choice Voucher Program Administrative Plan, at 4-12 (12-01-2012 version)). The median income for the Chicago metropolitan area (which consists of Cook, DuPage, Kane, Lake, McHenry, and Will Counties for purposes of this calculation) was $72,400 in fiscal year 2014. Stipulated Exhibit 6. The "very low income" bracket ranged from $25,350 to $47,800 depending upon the number of persons in the family in fiscal year 2014, and the "very low income" bracket was an income of $25,350 or less for a one person family such as Complainant's. Stipulated Exhibit 6.

4. Under the Housing Choice Voucher program in Chicago, the monthly total tenant payment for Voucher holders is the greater of the following amounts: (a) 30% of the family's monthly adjusted income; (b) 10% of the family's monthly gross income; or (c) a minimum rent of $75. Tr. 49; Stipulated Exhibit 5 (CHA's Housing Choice Voucher Program Administrative Plan, at 6-26 (12-01-2012 version)).

5. Complainant works part-time at the Marshall's store located at 1101 South Canal St. in Chicago and she earns $260 to $300 per week. Tr. 16. Complainant's income falls within the CHA's "very low income" bracket and she pays $258 for her portion of her rent as a Voucher holder. Tr. 104, 8.

6. The process by which a Voucher holder receives approval to rent an apartment is as follows. Once the property owner approves a Voucher holder's application, the CHA provides the Voucher holder with a Request for Transfer Approval ("RTA Form") to submit to the property owner for completion. Tr. 60-61. Once the property owner completes the RTA Form, the CHA will schedule an inspection of the unit. Tr. 61. If the unit passes inspection, the CHA will pull a list of comparables for the unit to see what the other properties in the area are renting

[1] The witnesses used the phrases "Housing Choice" and "Section 8" interchangeably at the administrative hearing. For simplicity, the Commission will refer to Housing Choice Vouchers as "Vouchers" and to those individuals who possess Housing Choice Vouchers as "Voucher holders."

for, contact the property owner to agree upon the rent, and approve the Voucher holder for lease occupancy. Tr. 61-64. This process can take from one to three months to complete. Tr. 63-64.

7. Under the Housing Choice Voucher program, the rent charged by property owners to Voucher holders at the time period pertinent to this case was not to exceed the lowest of the following amounts: (a) an amount determined by the CHA, not to exceed 110% of the fair market rent (or the CHA's 300% fair market rent exception authority) for the unit bedroom size minus any utility allowance; (b) the reasonable rent; or (c) the rent requested by the owner. Stipulated Exhibit 4 (CHA's Housing Choice Voucher Program Administrative Plan, at 17-23 (12-01-12 version)).

8. Complainant was part of the CHA Mobility Program in 2014. Tr. 8. The mobility program provides support for Voucher holders to enable them to move to areas known as "opportunity areas" (*i.e.*, census tracts with less than 20% of the inhabitants with income below the poverty level and less than a 5% concentration of subsidized housing) where they could not otherwise afford to pay the market rent even with the financial support provided by their Vouchers. Tr. 8, 46-47.

9. At the pertinent time in 2014, the CHA applied an exception payment standard for Voucher holders who sought to rent in opportunity areas that provided for rental payments of up to 300% of the fair market rents.[2] Tr. 68-69; Stipulated Exhibit 4. To determine whether "exception rent" [3] should be paid in an opportunity area, the CHA would pull together rents for comparable units in the area to see what other tenants are paying. Tr. 68. Where the market rent in the opportunity area is higher than the CHA's regular payment standard, "exception rent" can be approved by the CHA to cover more of the Voucher holder's housing assistance payments. Tr. 68-69. In other words, the "payment standard for units located in opportunity areas is adjustable to match comparables up to the market rent." Stipulated Exhibit 1 (Complainant's Rent Burden Worksheet).

10. Complainant began to look for a new apartment in 2014 after she was told by the CHA that she could not remain in her current residence because her neighborhood was no longer in an opportunity area. Tr. 36. The CHA provided Complainant with a list of zip codes within opportunity areas where she should look for a new apartment and all of the recommended areas were in downtown Chicago. Tr. 36.

11. The CHA Mobility Program with its provision of "exception rent" provides Voucher holders with the opportunity to live in apartments and neighborhoods where they could not have otherwise afford to live. Tr. 37.

12. Presidential Towers, which is owned and managed by Respondents, is located at 555 W. Madison St., Chicago IL 60661. Respondents' Response to Complaint, ¶1; Stipulation of Fact #21. Presidential Towers has 2,346 apartments with an on-site staff of 70 employees including six leasing consultants, a leasing manager, and a community manager. Tr. 85-86.

---

[2] The CHA lowered the allowable level of "exception rent" to 150% of the fair market rent on August 14, 2014. Tr. 134-35.

[3] During the administrative hearing, the parties occasionally made reference to the phrase "super voucher." The phrase "super voucher" is synonymous with "exception rent." Tr. 69.

13. Presidential Towers requires fair housing training as part of its orientation process for new employees. Tr. 81. All Presidential Towers staff members have received some fair housing training. Stipulation of Fact, #11.

14. Presidential Towers accepts rental applications from Voucher holders who seek to reside there. Tr. 83.

15. The CHA expects that property owners will administer their properties with respect to Voucher holders just "like they would with any other tenants." Tr. 70. Moreover, per Program Integrity Manager Milton Santiago, property owners "shouldn't be giving the families in the Housing Choice Voucher program any type of preference or any type of special treatment just because they are in the Housing Choice Voucher program." Tr. 45, 70-71. Instead, Voucher holders are supposed to be treated like any other tenant. Tr. 71. Presidential Towers' management understood that the CHA expected them to evaluate Voucher holders the same as any other applicants. Tr. 89.

16. As of July 10, 2014, Presidential Towers had received and processed applications from at least 32 Voucher holders. Stipulation of Fact #3.

17. Between 2013 and 2015, Presidential Towers conditionally approved the applications of 15 Voucher holders for tenancies with the only condition being that a guarantor was needed to meet Presidential Towers' rent-to-income ratio. Stipulations of Fact ##13-15.

18. Between 2013 and 2015, Presidential Towers unconditionally approved the applications of an additional seven Voucher holders for tenancies. Stipulations of Fact ##13-15, 20.

19. Three of the Voucher holders who applied and were approved for tenancies between 2013 and the present rented apartments at Presidential Towers, where they remain in residence. Stipulations of Fact ##17, 20; Tr. 93-94. At the time they moved into Presidential Towers, each of the Voucher holders received the 300% "exception rent." Tr. 139. One of Presidential Towers' Voucher holders no longer receives the 300% "exception rent." Tr. 98.

20. Presidential Towers charges the market rate rent for its apartments. Tr. 143. Presidential Towers does not reserve an apartment for a prospective tenant until the prospective tenant submits an application, application fee, and administrative fee for a specific apartment. Tr. 86, 117. Presidential Towers does not accept multiple applications for the same apartment. Tr. 117.

21. In Chicago, the apartment leasing season stretches between April and September. Tr. 120-21. During that time period, Presidential Towers may conduct 20 to 30 apartment showings per day. Tr. 121. Presidential Towers' nicer and best-priced units do not remain on the market for a very long period of time. Tr. 120-21.

22. Complainant wanted to move to the area where Presidential Towers is located because it was no more than ten minutes walking distance from her job. Tr. 10.

23. Complainant first inquired about Presidential Towers through an internet listing service in May 2014. Tr. 115, 19-20. Complainant called the next day to set up an appointment. Tr. 116, 20.

24. When Complainant arrived at Presidential Towers in May 2014, she toured the property with Abbey Meierholz (one of Respondents' leasing agents), who learned what kind of unit that Complainant was looking for and gathered Complainant's contact information. Tr. 115-17. Meierholz and Complainant also spoke about a specific apartment. Tr. 119. Complainant told Meierholz that she was a Voucher holder and wanted to speak with her representative from the CHA about how to move forward. Stipulation of Fact #3; Tr. 116.

25. Complainant was in contact with Candice Duhart, a CHA Mobility Program employee, throughout her dealings with Presidential Towers. Tr. 9, 20. Duhart advised Complainant that Presidential Towers is in a zip code that is within a CHA opportunity area. Tr. 20-21.

26. Presidential Towers' former General Manager David Scharfenberg acknowledged that Presidential Towers was in a CHA opportunity area in 2014. Tr. 96-97.

27. Meierholz followed up with Complainant multiple times after Complainant's visit in May 2014. Tr. 116, 118-19. Meierholz told Complainant that the first unit that she was interested in was no longer available because it was either rented out or the current tenant renewed their lease. Tr. 120.

28. Complainant expressed interest in a second unit (#2-3809) in late June 2014, but that unit became unavailable before Complainant could submit an application for it. Tr. 29-30, 120. Complainant then made an appointment with Meierholz to return to Presidential Towers to search for another unit. Tr. 30. The appointment was set for early July 2014 because Meierholz was going to be off work for an extended weekend. Tr. 30.

29. On or about July 10, 2014, Complainant submitted an application and paid a $60 application and $400 administrative fee for unit #2-4109 (the "Apartment") in Presidential Towers. Stipulations of Fact ##2, 3; Tr. 91, 117; Complaint, ¶1; Response to Complaint, ¶1. After it received Complainant's application, Presidential Towers took the Apartment off the market. Tr. 125-26.

30. The Apartment was a one-bedroom unit that had a monthly market rent of $1,857. Tr. 12; Complaint, ¶1; Response to Complaint, ¶1; Stipulated Exhibit 3 (Comparable Units Report for 555 W. Madison St.).

31. Every prospective renter at Presidential Towers has to provide verification of income. Tr. 140. It is the leasing specialist's responsibility to collect all information necessary to process a prospective tenant's application. Tr. 126-27.

32. At the time she applied for the Apartment, Complainant submitted four pay stubs (two of which were duplicates), bank statements, and driver's license information to Presidential Towers. Tr. 10-11, 31. Meierholz requested additional pay stubs because Presidential Towers policy is to require the three most recent pay stubs from applicants. Tr. 127-28, 99. Complainant informed Presidential Towers that she had given all of the pay stubs that she had

and Presidential Towers continued to process Complainant's application even though she provided less income documentation than is typically required. Tr. 128, 123.

33. Complainant also provided Meierholz with a copy of her Voucher and her CHA Rent Burden Worksheet, which was dated June 25, 2014 and contained her name, Voucher number, and number of bedrooms (one) authorized but was otherwise blank. Tr. 23, 123, 126-27, 13; Stipulations of Fact, ##2-3; Stipulated Exhibit 1.

34. Duhart told Complainant that the CHA had dealt with Presidential Towers before and that the amount of rent for the Apartment would be within the coverage of the 300% "exception rent" provided by the CHA Mobility Program though she did not actually authorize Complainant to receive such "exception rent" at that time. Tr. 10, 22. Complainant then told Presidential Towers' staff that her Voucher would cover the rent for the Apartment and Presidential Towers' staff presumed that Complainant's Voucher would, in fact, cover the rent. Tr. 99-101, 110, 123-25, 135, 138.

35. After Presidential Towers received Complainant's application and supporting documentation, Meierholz passed the application off to Presidential Towers' processor, Ranika Hawkins. Tr. 86. Hawkins then transmitted Complainant's application to a third-party company known as First American Registry ("First American"). Tr. 86. Presidential Towers set up guidelines with First American that First American used to determine whether the applications of prospective tenants should be approved, declined, or approved with conditions. Tr. 86. Per its understanding with Presidential Towers, First American evaluates the applications of prospective tenants based on the applicant's credit history, rental history, and income. Tr. 86.

36. Although Complainant passed the credit and background checks, First American determined that Complainant's application was "approved with conditions" because she did not have sufficient income. Tr. 86, 91-92, 128.

37. At the pertinent time, Presidential Towers required that prospective tenants have rent-to-income ratio of 34% or less. Stipulated Fact #1; Tr. 94, 127, 87-88. Consequently, a prospective tenant would need a minimum income of at least $66,852 to satisfy Presidential Towers' rent-to-income ratio.[4]

38. Thus, although Presidential Towers gave Complainant income credit for the presumed value of her Voucher ($1,857) for purposes of the First American screen, she still lacked sufficient income to meet the rent-to-income ratio ("the minimum-income requirement"). Tr. 128.[5]

39. The purpose of the minimum-income requirement is to ensure that a tenant is able to continue to pay rent and uphold their lease obligations by paying any other expenses (such as utilities) that are over and above the rent itself. Tr. 94, 98-99.

---

[4] This total is derived by multiplying the monthly rent for the Apartment ($1,857) times the number of months (12) times three.

[5] Although Respondents have received no guidance from the CHA or HUD regarding this matter, they now -- after considering this case -- determine whether Voucher holders have sufficient income by assessing whether they have income that is three times the portion of the rent that the Voucher holder is expected to pay. Tr. 136-37.

40. Voucher holders who did not meet minimum-income requirement were not automatically disqualified from renting at Presidential Towers. Tr. 105-06. Instead, Presidential Towers -- as instructed by the CHA -- undertakes an individualized analysis of a prospective tenant's application if the application comes back "approved with conditions." Tr. 90-92, 110-11.

41. Generally, when a Voucher holder's application is "approved with conditions" due to insufficient income, Presidential Towers will offer them the opportunity to obtain a guarantor who can bolster their income so that they can meet the minimum-income requirement. Tr. 92.

42. Presidential Towers seeks a guarantor even if it presumes that the CHA will cover a Voucher holder's rent because it has no assurance that the CHA will continue to pay the rent indefinitely and individuals are evaluated on an ongoing basis to assess their eligibility for the Housing Choice program during the course of their tenancy. Tr. 110-11.

43. Two of the three Voucher holders who currently reside at Presidential Towers have secured guarantors. Stipulation of Fact #18; Tr. 97-98.

44. Although Presidential Towers offers full-time college students the option of seeking a guarantor if they otherwise have insufficient income, prospective market rate tenants have their applications denied if they lacked sufficient income to satisfy the rent-to-income ratio. Tr. 106-07.

45. Matthew Mehon, Presidential Towers' leasing manager, assumed oversight of Complainant's application once her application was returned as "approved with conditions" by First American. Tr. 113, 130. After confirming that Complainant did not have any additional income to add, Presidential Towers offered Complainant the option of obtaining a guarantor. Tr. 130.

46. Complainant asked her daughter, Nadia Nibbs ("Nadia"), to serve as her guarantor. Tr. 13. However, Complainant's efforts to use Nadia as her guarantor were unsuccessful because Nadia also lacked sufficient income to meet the minimum-income requirement. Tr. 14, 131-32.

47. Both Mehon and Hawkins spoke with Complainant and asked her if she could get another guarantor. Tr. 14-15. Complainant told Mehon that she did not have another guarantor. Tr. 34.

48. Overall, Complainant made approximately eight in-person visits to Presidential Towers and she had numerous conversations with Meierholz, Hawkins, and Mehon during the course of her effort to rent the Apartment. Tr. 11-12, 129, 130-34.

49. Presidential Towers denied Complainant's rental application because neither Complainant nor Nadia (her prospective guarantor) had sufficient income to satisfy Presidential Towers' required 34% rent-to-income ratio. Stipulation of Fact #1.

50. Complainant decided not to pursue her application with Presidential Towers after her prospective guarantor was denied. Tr. 15, 132.

51. On or about July 29, 2014, Complainant informed Presidential Towers of her decision and requested a refund of the money that she had paid. Tr. 132. Presidential Towers refunded Complainant's money on July 30, 2014. Tr. 134.

52. Complainant told Duhart that her application had fallen through and Duhart advised her to get an attorney. Tr. 37-38.

53. On August 4, 2014, Complainant filed her Complaint against Respondents alleging that they violated the Fair Housing Ordinance by failing to rent to her based on her source of income (Housing Choice Voucher). *See* Complainant's Complaint.

III. CONCLUSIONS OF LAW

1. Section 5-08-030 of the Chicago Fair Housing Ordinance provides in relevant part as follows:

> It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent, lease or sublease any housing accommodation, within the City of Chicago, or any agent of any of these, or any real estate broker licensed as such:
>
> . . .
>
> > A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the race, color, sex, gender identity, age, religion, disability, national origin, ancestry, marital status, parental status, military discharge status or source of income of the prospective or actual buyer or tenant thereof.

2. "A respondent violates the CFHO when s/he refuses to consider an applicant to rent an apartment due to his/her protected status under the Ordinance," *Jones v. Shaheed,* CCHR No. 00-H-82, at 7 (Mar. 17, 2004), and it is well-settled that the "refus[al] to rent complainant an apartment because of her desire to use her Section 8 voucher to pay a portion of the rent" is an Ordinance violation. *Sullivan-Lackey v. Godinez,* CCHR No. 99-H-99 (July 18, 2001), *aff'd*, 352 Ill.App.3d 87, 815 N.E.2d 822 (1st Dist. 2004); *Hodges v. Hua,* CCHR No. 06-H-11, at 8 (May 21, 2008); *McGee v. Sims,* CCHR No. 94-H-131, at 8 (Oct. 18, 1995).

3. It is undisputed that Complainant relies upon a Housing Choice Voucher as her principle source of income to pay her rent. Nonetheless, "Complainant bears the burden of proving by a preponderance of the evidence that Respondent[s] did in fact refuse to rent to her because of her source of income," *McGee v. Sims, supra*, at 8, because the refusal to rent to a Voucher holder -- standing alone -- does not automatically constitute source of income discrimination in violation of the Fair Housing Ordinance. *See Lopez v. Arias,* CCHR No. 99-H-12, at 19-20 (Sep. 20, 2000).

A. The Contentions of the Parties

4. Complainant relies on disparate impact and disparate treatment theories of liability to prove her case. In particular, Complainant asserts that Respondents' use of their minimum-income requirement to evaluate the applications of prospective tenants who are Voucher holders violates the Fair Housing Ordinance because the requirement: (1) has an unlawful disparate impact on Voucher holders; and (2) constitutes intentional discrimination against Voucher holders because Respondents continued to use the minimum-income requirement after they knew or should have known that the requirement has an adverse impact on Voucher holders.

Respondents assert that Complainant's claims should fail for four reasons: (1) Complainant lacks standing to pursue her disparate impact claim because she failed to show that she was otherwise qualified to rent the Apartment by proving that the CHA would have paid the requested rent for the Apartment; (2) Complainant failed to show any discrimination based on the source, rather than the amount, of her income; (3) Respondents' showing that their minimum-income requirement is necessary to achieve one or more legitimate, non-discriminatory interests defeats Complainant's disparate impact and disparate treatment claims; and (4) Complainant's failure to show that she is "otherwise qualified" to rent the Apartment defeats her disparate treatment claim on the merits.

Before turning to the legal framework for the proof necessary to establish Complainant's claims under her theories of liability, the Commission will first consider Respondents' "not otherwise qualified to rent" and "amount of income, not source of income" defenses because these defenses -- if valid -- would defeat Complainant's claims.

B. Complainant has standing to pursue her disparate impact claim

5. Respondents assert that Complainant's "fail[ure] to establish that she was otherwise qualified to rent the apartment in question...is fatal to her entire case." Respondents' Post-Hearing Brief ("Resp. Br."), at 1. In particular, Respondents contend that Complainant must prove "that the CHA would have in fact paid the requested rent of $1,857" for the Apartment to have standing to bring her disparate impact claim and that she lacks sufficient evidence to make this required showing. Resp. Br., at 3-5. Respondents also contend that Complainant's failure to establish that she was otherwise qualified to rent the Apartment renders her unable to establish a *prima facie* case under her disparate treatment theory. Resp. Br., at 6.

6. With respect to standing, the Commission has previously held:

> standing turns on one's personal stake in the dispute.... In order to establish that interest, the plaintiff must show that: (1) she has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Richardson v. Chicago Area Council of Boy Scouts of America, CCHR No. 92-E-80, at 6-7 (Feb. 19, 2003) (citations omitted). Thus, "[t]o have standing to bring a disparate impact claim, [Complainant] must show that she was personally injured by [Respondents'] alleged

discriminatory practice." *Farrell v. Butler University*, 421 F.3d 609, 617 (7th Cir. 2005); *Melendez v. Illinois Bell Telephone Co.*, 79 F.3d 661, 668 (7th Cir. 1996).

7. The Seventh Circuit Court of Appeals has held that these standing principles require employment discrimination plaintiffs who allege disparate impact claims to show that they are qualified for the positions sought. *See, e.g., Melendez*, 79 F.3d at 668. As the Court of Appeals explained:

> The basis for this qualification requirement is apparent. Absent direct evidence showing that a plaintiff was not hired or promoted because of a discriminatory employment practice, we assume that an unqualified plaintiff was not hired or promoted for the obvious reason -- that he was unqualified. Such a plaintiff would have no standing to sue under Title VII, for he could not claim that he was injured, much less affected, by the defendant's use of an employment practice with an allegedly disparate impact.

Melendez, 79 F.3d at 668.

8. Respondents urge the Commission to hold that complainants who seek to prove housing discrimination claims under a disparate impact theory must first satisfy this "qualification requirement" by showing that they are "otherwise qualified" to rent the apartment that they seek. Resp. Br., at 2-4. The Commission need not decide this issue in this case because even if a "qualification requirement" applies to complainants who seek to prove housing discrimination under a disparate impact theory, such a requirement would not bar Complainant from having standing to bring her claims for two reasons.

9. First, as the Seventh Circuit held in *Melendez*, a plaintiff need not prove her qualifications where there is evidence that plaintiff was, in fact, harmed by the allegedly discriminatory policy under challenge. *Melendez*, 79 F.3d at 668-69. In this case, the parties have stipulated that Respondents "denied the application of Complainant because neither Complainant nor her Guarantor, Nadia Nibbs, met [Respondents'] qualification standard of 34% rent-to-income ratio." Stipulation of Fact #1. Thus, since it is undisputed that Complainant was harmed by the allegedly discriminatory policy she challenges, Complainant need not prove that she was "otherwise qualified" to rent the Apartment under the *Melendez* standard.

Second, the Commission finds -- contrary to Respondents' assertion -- that the CHA would have paid sufficient "exception rent" to enable Complainant to rent the Apartment. In particular, the evidence shows that: (a) Complainant is a Voucher holder who was a participant in the CHA Mobility Program; (b) Presidential Towers was located within an "opportunity area" in 2014; (c) the "fair market rent" for a one-bedroom apartment in Chicago in fiscal year 2014 was $826[6]; (d) the 300% "exception rent" then available could have covered the $1,857 market

[6] *See* HUD FY 2014 Fair Market Rent Documentation System -- Calculation for Cook County Illinois, available at https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2014_code/2014summary.odn. The Commission takes administrative notice of HUD's calculation of the fair market rent for fiscal year 2014 as such a fact is indisputable and capable of accurate and ready determination. *Hutchinson v. Iftekaruddin*, CCHR No. 09-H-21, at 5 n.6 (Feb. 17, 2010); *see also New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 702 n.22 (10th Cir. 2009) (taking judicial notice of the contents of the websites of two federal agencies); *Kenneally v. Bank of Nova Scotia*, 711 F.Supp.2d 1174, 1183 (S.D.Cal. 2010) (taking judicial notice of the contents of HUD's website); *Deutsche Bank National*

rent that Presidential Towers charged for the Apartment; (e) the $1,857 market rent that Presidential Towers sought to charge for the Apartment was roughly $300 to $550 lower than the market rent for comparable units; (f) Presidential Towers' personnel presumed that Complainant's Voucher would provide sufficient funds to cover the rent for the Apartment; and (g) each of Presidential Towers' current tenants who are Voucher holders received the 300% "exception rent" at the time they moved into Presidential Towers. Findings of Fact, ##2, 8, 19, 26, 30, 34; Stipulated Exhibit 3 (Comparable Units Report for 555 W. Madison Street). These facts establish by the preponderance of the evidence that Complainant would have obtained the "exception rent" necessary to rent the Apartment had she not been denied based upon Respondents' minimum-income requirement and Respondents have pointed to no evidence that would support a contrary finding.[7]

C. The Commission has not barred Voucher holders from challenging minimum-income policies under the Fair Housing Ordinance based on a source of income theory of discrimination

10. Respondents assert that Complainant's claims for discrimination must fail because Complainant's inability to meet its 34% rent-to-income ratio was due to the *amount* of her income rather than the *source* of her income. Resp. Br., at 6-9. In support of this argument, Respondents rely upon the Commission's earlier decision in *Jackson v. Wilmette Realty,* CCHR No. 99-H-32 (Sep. 27, 1999).

In *Jackson*, the respondents had a minimum-income policy that required rental applicants to have an income at least three times the rent to qualify for an apartment. *Jackson v. Wilmette Realty, supra,* at 3. The complainant, whose income consisted of $500 in Social Security benefits per month, alleged that the respondents refused to rent to her based on her source of income. *Jackson v. Wilmette Realty, supra,* at 6. The respondents sought to dismiss the complainant's complaint on the ground that she was rejected due to the amount, and not the source, of her income because the monthly amount of Social Security benefits that the complainant received was less than $1,293 (which is three times the amount of the monthly rent ($431) of the apartment that she sought). *Jackson v. Wilmette Realty, supra,* at 6.

The Commission rejected the complainant's claim and dismissed her complaint for failure to state a claim for which relief could be granted under the Chicago Fair Housing Ordinance. *Jackson v. Wilmette Realty, supra,* at 6-8. In its decision, the Commission stated that:

> A property owner of a dwelling unit, or a rental agency on behalf of an owner, may establish and enforce reasonable policies as to the *amount* of income a

---

Trust Co. v. Dolinay, No. NHSP-120180, 2015 WL 12642175, at *3 n.9 (Conn. Super. Ct. December 24, 2015) (taking judicial notice of the "fair market rent" figures for West Haven published by HUD).

[7] The fact that Milton Santiago, CHA's Program Integrity Manager, testified that he was unable to say whether the CHA would have authorized Complainant to receive "exception rent" for the Apartment (Tr. 66-67) does not show -- as Respondents imply -- that the CHA would have refused to authorize "exception rent." In his testimony, Santiago candidly acknowledged that he lacked sufficient information to comment on whether Complainant would have received "exception rent" because he was unfamiliar with the details of Complainant's file, he had not looked at the Apartment's "comparables," and he did not know whether Presidential Towers was in an opportunity area. Tr. 58-60.

> potential tenant must have in relation to the amount of rent. Commonly known as rent-to-income ratios, although they may also be stated as income-to-rent ratios, such policies have the legitimate, non-discriminatory purpose of assuring the property owner that the prospective tenant of a dwelling unit will be able to pay the rent.
>
> Specifically, a reasonable rent-to-income ratio helps assure the property owner that the prospective tenant will have sufficient household income after paying rent (and sometimes utilities) to cover other living expenses such as utilities not included in the rent, maintenance and repairs that are the tenants responsibility, food and household items, clothing, transportation, health care costs, and similar living expenses. The premise is that a tenant household which is paying too high a proportion of its income as rent subjects a property owner to the risk that rent will not be reliably paid. The rent-to-income standard acknowledged in the Complaint, essentially that the rent should not be more than one-third of household income, is within the range typically encountered in the housing rental market and not inherently unreasonable.

Jackson v. Wilmette Realty, supra, at 4 (emphasis in original).

The Commission further found that "[a]lthough there is no doubt that Social Security is a lawful manner of supporting oneself, the Complaint provides no explanation as to how the denial of [c]omplainant's application to rent was based on her being a recipient of Social Security in particular or of public benefits in general." *Jackson v. Wilmette Realty, supra,* at 5. In addition, complainant made no allegations that "could be interpreted to state a claim either (a) that Wilmette agrees to rent to applicants with a comparable amount of income if it comes from a different source or (b) that [r]espondents' rent-to-income standard was adopted or applied to [c]omplainant as a pretext to discriminate against her because her income comes from Social Security disability benefits (or public sources generally)." *Jackson v. Wilmette Realty, supra,* at 7-8. Finally, the complaint did not allege that Social Security recipients as a group could not meet the rent-to-income ratio and qualify to rent an apartment costing $431 per month. *See Boyd v. Parkview Management Corp.,* CCHR No. 10-H-48, at 4 (June 18, 2013) ("there is no evidence that Social Security recipients as a group cannot qualify to rent an apartment costing $495 per month. A Social Security retirement check averages $1,230 per month and can range as high as $1,923-$3,350 per month [and] Social Security recipients may have additional income").

11. Respondents' reliance on *Jackson* is misplaced. In *Boyd v. Parkview Management Corp., supra,* the Commission explained why its holding in *Jackson* does not apply to bar source of income claims in housing discrimination claims asserted by Voucher holders who challenged minimum-income requirements. *Boyd v. Parkview Management Corp., supra,* at 3. In *Boyd,* the complainant alleged that the respondent's minimum-income requirement -- which required income equal to or greater than four times the monthly rent -- had a disparate impact on those whose source of income was Social Security benefits. *Boyd v. Parkview Management Corp., supra,* at 1-2. Complainant Boyd sought to analogize her source of income case concerning Social Security benefits to the Commission's prior "substantial evidence" findings in two cases "based on disparate impact analyses where the respondents refused to rent a housing unit to a complainant with a Housing Choice Voucher based on an income policy requiring that the complainant's monthly income be at least three times the rent." *Boyd v. Parkview Management Corp., supra,* at 2.

The Commission held that the complainant's effort to rely on prior substantial evidence determinations was "not proper" because such determinations "shall not be published or cited as precedent" (*see* Commission Regulation 270.510), and it rejected the complainant's effort to analogize her source of income claim to source of income claims concerning Voucher holders. *Boyd v. Parkview Management Corp., supra,* at 2. As the Commission explained:

> [the] analysis of minimum income requirements in Housing Choice Voucher cases is distinguishable from the facts in this case [*Boyd*]. The Housing Choice Voucher covers a portion, and in some cases all, of the recipient's rent, which is paid directly to the property owner as a rent subsidy in addition to the recipient's cash income. Therefore, the property owner can reasonably expect that any income in addition to the voucher can be used to cover the other obligations of tenancy and living expenses. On the other hand, Social Security benefits are cash income paid to the recipient. Thus, if a rental applicant does not have income sufficient to cover the obligations of tenancy and the rent, a property owner can reasonably refuse to rent to that applicant.

Boyd v. Parkview Management Corp., supra, at 3. Accordingly, the Commission's prior decision in *Jackson* does not bar Complainant's source of income claims in this case.

D. Complainant has failed to offer sufficient evidence to prove liability under her disparate impact theory

12. "Under the theory that adverse impact establishes a presumption of discrimination, it is not necessary for the complainant to make a showing of intent to discriminate." *McClinton v. Antioch Haven Homes/Haynes,* CCHR No. 91-FHO-42-5627, at 26 (Feb. 26, 1992). Rather, "[w]here a landlord employs a facially neutral practice which has an adverse impact on a protected class of people, that practice is 'fair in form, but discriminatory in practice' and a violation of the [Ordinance] is presumed to have occurred." *McClinton, supra,* at 6.

13. "Disparate impact analysis is a two-step process. First, the plaintiff must make a *prima facie* showing that the challenged [housing] practice -- even if facially neutral -- had a disparate impact on a protected class." *Walton v. Chicago Department of Streets & Sanitation,* CCHR No. 95-E-271, at 9 (May 20, 2000); *Campbell v. Brown/Dearborn Parkway Realty,* CCHR No. 92-FHO-18-5630, at 50-51 (Dec. 17, 1992) ("[i]n any case involving alleged discriminatory impact, whether because of parental status, employment, race, or otherwise, the complaining party must establish a prima facie case by demonstrating that a facially neutral practice has a disparate impact on a protected group").

14. "The complainant bears the burden of establishing that a facially neutral policy or challenged act actually or predictably results in discrimination." *Boyd v. Parkview Management Corp., supra,* at 4; *Johnson v. Hyde Park Corporation d/b/a/ Hyde Park Citgo,* CCHR No. 08-P-95/96, at 6 (Feb. 15, 2012) (the challenged practice must have "a significant or substantial statistical disparate impact upon a protected class"); *Green v. Altheimer & Gray,* CCHR No. 94-E-57, at 20 (Jan. 30, 1997) (complainant "must demonstrate that the challenged employment practice disproportionately impacted upon protected employees *as a group,* not just himself") (emphasis in original).

15. Proving a disparate impact requires a showing that the protected group fared more poorly under the challenged policy than those who are not in the protected group. Consequently, "[t]he basis for a successful disparate impact claim involves a comparison between two groups -- those affected and those unaffected by the facially neutral policy. This comparison must reveal that although neutral, the policy in question imposes a 'significantly adverse or disproportionate impact' on a protected group of individuals." *Tsombanidis v. West Haven Fire Department,* 353 F.3d 565, 575 (2d Cir. 2003)[8]; *Gashi v. Grubb & Ellis Property Management Services, Inc.,* 801 F.Supp.2d 12, 16-17 (D.Conn. 2011) ("[t]o properly compare the impact of the policy on the two groups, a court should rely on proportional statistics rather than whole numbers").

16. With the exception of cases concerning practices that have "a clear and obvious disparate impact" on members of a protected class, *see Scott v. Owner of Club 720,* CCHR No. 09-P-02, at 5 (Feb. 16, 2011),[9] [s]tatistical evidence is...normally used in cases involving fair housing disparate impact claims." *Tsombanidis,* 352 F.3d at 575-76; *Schwarz v. City of Treasure Island,* 544 F.3d 1201, 1218 (11th Cir. 2008) ("[t]ypically, a disparate impact is demonstrated by statistics") (internal quotation marks omitted). No matter the type of evidence that the complainant relies upon, "there must be some analytical mechanism to determine disparate impact." *Tsombanidis,* 352 F.3d at 576.

17. "If the complainant clears th[e] hurdle" of showing that the challenged practice has a disparate impact, the case shifts to the business justification, if any, which the defendant offers for its use of the challenged practice[]." *Walton, supra,* at 9. "There are 'two components' of this phrase of the disparate impact case: first, a consideration of the justifications an employer offers for his use of [the] practices; and second, the availability of alternative practices to achieve the same business ends, with less [discriminatory] impact." *Green v. Altheimer & Gray, supra,* at 18 (internal quotation marks omitted). "If the [respondent] shows that its actions were justified, then the burden shifts back to [complainant] to show 'a viable alternative means' was available to achieve the legitimate [business] objective without discriminatory effects." *Gallagher v. Magner,* 619 F.3d 823, 834 (8th Cir. 2010), *cert. dismissed,* 132 S.Ct. 1306 (2012).

18. Complainant argues that she has met her burden of establishing that Respondents' minimum-income policy has a disparate impact on Voucher holders based on the following evidence. First, Complainant cites to the CHA's policy of requiring that 75% of its Vouchers

---

[8] Although the *Tsombanidis* decision concerned a disparate impact claim under federal fair housing statutes, the Commission looks to decisions concerning other relevant laws for guidance in resolving its own cases. *See, e.g., McClinton, supra,* at 19 n.5.

[9] In *Scott,* a public accommodations case, the Commission held that the complainants did not need to present statistical evidence to prove their disparate impact claims after it took administrative notice of the fact that "hairstyles such as braided cornrows and dreadlocks...are overwhelmingly associated with and worn by African-Americans" and found that the respondent nightclub's policy of barring the entrance of customers wearing braided hair had "a clear and obvious disparate impact on potential customers who are African-American...[and] intentionally subject[ed] African-Americans to more stringent terms of admittance compared to potential customers of other races." *Scott v. Owner of Club 720, supra,* at 5. This case is distinguishable from *Scott* because, as discussed below (*see* Conclusions of Law ##22-23, 29-32), the evidence before the Commission does not establish that Respondents' policy has a "clear and obvious" disparate impact on Voucher holders as compared with non-Voucher holders and there is no evidence that Respondents implemented their policy to intentionally discriminate against Voucher holders.

must go to families designated as "very low income" and, as explained above (*supra*, at Finding of Fact #3), "very low income" families do not -- by definition -- have sufficient income to meet Respondents' minimum-income requirement for the Apartment (*e.g.*, $66,852 per year). Complainant's Post-Hearing Brief ("Comp. Br."), at 1-2, 5-6. Second, Complainant points to the parties' stipulation that: (a) Respondents conditionally approved 14 Voucher holders between 2013 and 2014 with the only condition being that a guarantor was needed to meet Respondents' rent-to-income ratio; and (b) only three out of the 22 Voucher holders whose applications were approved or conditionally approved by Respondents between 2013 and 2015 became residents of Presidential Towers. Comp. Br., at 3, 5-6. According to Complainant, "[t]here is a strong argument that the stipulations, and the stipulations alone establish[] disparate impact and a pattern and practice of discrimination." Comp. Br., at 5.

19. The Commission disagrees for the following reasons. Although Respondents' minimum-income requirement would automatically exclude at least 75% of Chicago Voucher holders if strictly applied, Respondents -- as Complainant knows (*see, e.g.*, Comp. Br., at 6) -- do *not* strictly apply the minimum-income requirement to Voucher holders. Instead, Respondents provide Voucher holders who do not meet the minimum-income requirement but otherwise qualify for tenancy with the opportunity to obtain a guarantee from a person who meets the minimum-income requirement. The availability of the guarantee option appears to have made a difference for some Voucher holders as shown by the fact that two of the three Voucher holders who reside at Presidential Towers have guarantors.[10] Finding of Fact #43. On the other hand, Respondents do not offer the guarantor option to market rate applicants, whose applications will be denied if they do not meet Respondent's minimum-income requirement.

20. Thus, to determine whether Respondents' minimum-income policy has a disparate impact on Voucher holders, the Commission must compare how prospective tenants who are Voucher holders fare under Respondents' *actual* policy with how prospective market rate tenants fare. The federal district court's decision in *Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F.Supp. 148 (S.D.N.Y. 1989), is illustrative. In *Bronson*, plaintiffs alleged that defendants' rental policy of not considering any person whose income was not at least three times the rent of the apartment for which the person applied had a disparate impact on African-American and Latino applicants in comparison to white applicants in violation of the federal Fair Housing Act. *Bronson*, 724 F.Supp. at 149-150.[11] The court granted plaintiffs' motion for a preliminary injunction after finding that the application of defendants' "triple income test":

> ha[d] a substantially disparate impact upon otherwise qualified minority households. Of the roughly 14,063 non-minority households within the applicant pool, 3,945 or 28% qualify for tenancies at Crestwood under the triple income test. By contrast, only 14% of the minority households otherwise capable of affording defendants' apartments qualify under the test. Consequently, non-

[10] Moreover, Complainant does not argue that it is unreasonably difficult for Voucher holders to obtain a guarantor and the record contains no evidence to show whether the other 13 Voucher holders whom Presidential Towers conditionally approved between 2013 and 2015 were unable to obtain a guarantor (like Complainant) or whether they were able to obtain a guarantor but simply chose to pursue other rental options.

[11] Plaintiffs also alleged that defendants' policy of not accepting any Section 8 voucher holders had a disparate impact on African-Americans and Latinos and that defendants' "triple income test" effectively excluded all Section 8 voucher holders. *Bronson*, 724 F.Supp. at 149-50, 152.

> minorities qualify at a rate of more than twice th[e rate] for minorities. Using these same statistical figures, an odds analysis demonstrates that the odds of being excluded by the triple income test are 2.5 times greater for minority persons than non-minority persons.

Bronson, 724 F.Supp. at 154.

21. Where, on the other hand, complainants have failed to offer sufficient evidence from which the Commission could determine whether the allegedly discriminatory policy had a disparate impact upon the complainants' protected group in comparison with others, the Commission has found that complainants failed to sustain their burden of proof and ruled against them. *See, e.g., McClinton v. Antioch Haven Homes/Haynes, supra,* at 26-27. In *McClinton,* complainant alleged that respondents' policy adversely impacted her based on her parental status of living with six children. The Commission rejected the complainant's disparate impact claim after finding as follows:

> No evidence was introduced to establish that Antioch's policy has a disproportionate impact upon persons because of their 'parental status.' Complainant has introduced no evidence, statistical or anecdotal, from which any conclusions can be drawn regarding Antioch's two-person-per-bedroom rule.
>
> Complainant relies upon the testimony of respondents' expert for the proposition that 'it is very difficult for low income families and particularly large low income families to obtain housing'.... She argues from this that Antioch's policy 'impacts most harshly on families.'
>
> Whether it is harder for a low-income parent of six children to find affordable housing in the Chicago area than it is for a parent of five children is not addressed. Indeed, there is no evidence in the record regarding the difficulties low-income persons without children have in finding housing. It could certainly be argued that Antioch's occupancy policies adversely impact upon persons without children since, unless they are elderly or disabled, the policies bar such occupancy.
>
> In addition, there was no evidence introduced regarding the family composition of persons who applied for occupancy at Antioch, the family composition of persons living at Antioch, census data concerning seven member households or any other evidence whatsoever, other than the individual facts of Complainant's applications which establishes a disparate impact claim.

McClinton v. Antioch Haven Homes/Haynes, supra, at 26-27.

22. In this case, the parties submitted the following stipulated evidence regarding Voucher holders: (a) at least 32 Voucher holders applied to Presidential Towers as of mid-July 2014; (b) Presidential Towers approved the applications of 22 (or 69%) of the Voucher holders between 2013 and 2015, of whom 15 (47%) were approved on the condition that they obtain guarantors and seven (22%) who were unconditionally approved; (c) three Voucher holders who successfully applied to Presidential Towers in 2013 or thereafter moved in and are current residents; and (d) two of the three Voucher holders who currently reside at Presidential Towers

have guarantors. *See* Findings of Fact ##16-19. This undisputed evidence shows that Voucher holders have had some success in having their applications approved (both conditionally and unconditionally) and becoming residents in Presidential Towers notwithstanding Respondents' minimum-income requirement.[12] It is also clear that Respondents' policy of offering Voucher holders the opportunity to obtain guarantors when they otherwise lack sufficient income has contributed to this success in becoming residents of Presidential Towers.[13]

On the other hand, neither party has presented evidence as to how Respondents' minimum-income requirement has impacted on market rate applicants who seek to reside at Presidential Towers. Thus, although it is highly probable that Respondents' minimum-income requirement presented a barrier for some market rate applicants in 2014 given the considerable income needed to satisfy Respondents' rent-to-income ratio for a unit such as the Apartment ($66,852), the significantly lower median household income in City of Chicago for that year ($50,702),[14] and the fact that market rate applicants were not offered the opportunity to obtain

---

[12] It is difficult to quantify with further specificity the degree of success that the Voucher holders have obtained because of the manner in which the parties have presented the evidence. For example, the Commission cannot calculate what percentage of the Voucher holders who applied had their applications approved during any given period of time because the timeframe during which the evidence of the number of applications from Voucher holder was presented (namely, from some unspecified date through July 2014) does not coincide with the timeframe during which the evidence regarding how many Voucher holder applications were approved was presented (namely, on a calendar year basis between 2013 and 2015). *Compare* Stipulation of Fact #3 *with* Stipulations of Fact ##13, 14, 15, 19, 20.

[13] This feature of Respondents' policy distinguishes this case from other cases where defendant property owners caused a disparate impact by strictly applying minimum-income requirements to totally exclude Voucher holders. *See, e.g., Commission on Human Rights and Opportunities v. Sullivan Associates,* 739 A.2d 238, 242-44, 251-56 (Conn. 1999).

The *Sullivan Associates* decision is also distinguishable because that case was decided under a distinctive housing discrimination law which provides that "[t]he provisions of th[e] section with respect to the prohibition of discrimination on the basis of lawful source of income shall not prohibit the denial of full and equal accommodations solely on the basis of insufficient income." *Sullivan Associates,* 739 A.2d at 251-52, *quoting* Conn. General Statute §46a-64c(b)(5). Defendants argued that the statute's "insufficient income" exception enabled them to exclude all Voucher holders based on their inability to satisfy its minimum-income policy (which required a minimum weekly income of one month's rent). *Sullivan Associates,* 739 A.2d at 252 & n.33. The Connecticut Supreme Court narrowly construed the statutory "insufficient income" exception to allow a landlord to use its discretion "to determine whether, presumably for reasons extrinsic to the Section 8 housing assistance calculations, a potential tenant lacks sufficient income to give the landlord reasonable assurance that the tenant's portion of the stipulated rental will be promptly paid and that the tenant will undertake to meet the other obligations implied in the tenancy." *Sullivan Associates,* 739 A.2d at 254. The holding in *Sullivan Associates* offers limited guidance because the Chicago Fair Housing Ordinance does not contain an "insufficient income" exception. *See, e.g., Smith, Torres & Walker v. Wilmett Real Estate & Mgt. Co.*, CCHR Nos. 95-H-159 & 98-H-44/63, at 10 (Apr. 13, 1999) (the Commission looks to decisions interpreting other anti-discrimination laws for guidance "only if the laws under consideration do not contain language that is 'significantly different' from the text of the Ordinance").

[14] *See* https://censusreporter.org/profiles/16000US1714000-chicago-il/. The Commission takes administrative notice of this federal census data, as both federal and state courts have done. *See, e.g., Skolnick v. Board of Commissioners of Cook County,* 435 F.2d 361, 363 (7th Cir. 1970); *System Development Services, Inc. v. Haarmann,* 389 Ill.App.3d 561, 575 (5th Dist. 2009).

guarantors if they otherwise lacked sufficient income, it is not possible on this record to quantify the degree to which Respondents' policy negatively impacted upon market rate applicants. Consequently, as in *McClinton*, the record contains too many unanswered questions to allow the Commission to draw a conclusion as to how Respondents' minimum-income requirement impacts on Voucher holders as compared with market rate non-Voucher holders. *See McClinton v. Antioch Haven Homes/Haynes, supra,* at 27 (rejecting the complainant's disparate impact claim based on her parental status where, *inter alia,* there was "no evidence in the record regarding the difficulties low-income persons without children have in finding housing").

23. For these reasons, the Commission finds that Complainant has failed to present sufficient evidence to meet her burden of establishing that Respondents' minimum-income policy as applied has a disparate impact on Voucher holders in comparison with non-Voucher holders. Although Complainant has provided evidence that Respondents' minimum-income requirement had a negative impact on a number of Voucher holders, the fact that some Voucher holders have successfully applied and become residents of Presidential Towers combined with Complainant's failure to offer any evidence regarding the manner in which Respondents' minimum-income requirement has impacted upon market rate applicants dooms her effort to prove that Respondents' policy had a *disparate* impact upon Voucher holders. Establishing that Respondents' policy had a negative impact upon Voucher holders is not enough. Since Complainant has not proven her *prima facie* case that Respondents' policy has a disparate impact upon Voucher holders, the Commission need not address the remaining questions of whether Respondents have a business justification for their policy and -- if so -- whether a less-discriminatory alternative was available to achieve Respondents' legitimate objectives. *See McClinton v. Antioch Haven Homes/Haynes, supra,* at 27.

E. Complainant has failed to offer sufficient evidence to prove liability under her disparate treatment theory

24. Complainant asserts that Respondents intentionally discriminated against her by purposefully continuing to apply its minimum-income requirement to applicants who are Voucher holders after it received notice in 2013 that the policy likely had an adverse impact on Voucher holders. Comp. Br., at 5. Complainant has the burden of proving by a preponderance of the evidence that Respondents were motivated to deny her the opportunity to rent the Apartment based on her source of income. *See, e.g., Crenshaw v. Harvey,* CCHR No. 95-H-82, at 17 (May 21, 1997). Complainant may meet her burden of proof through either the direct or indirect methods of proof. *See, e.g., Pierce v. New Jerusalem Christian Development Corp.,* CCHR No. 07-H-12/13, at 5 (Feb.16, 2011).

25. Complainant, who offers no direct evidence of discrimination, relies on the indirect method of proof in this case. *See* Complainant's Pre-Hearing Memorandum ("Comp. Mem."), at 6. To establish a *prima facie* case for intentional housing discrimination under the indirect method, Complainant must establish: (1) she is a member of a protected class covered by the Ordinance; (2) Respondents were aware that Complainant was a member of the protected class; (3) Complainant was ready and able to rent the property at issue; and (4) Complainant was not allowed to rent the property. *Pierce v. New Jerusalem Christian Development Corp., supra,* at 5. If Complainant establishes a *prima facie* case, the burden shifts to Respondents to articulate a legitimate, non-discriminatory reason for the refusal to rent. *Hutchison v. Iftekaruddin,* CCHR No. 09-H-21, at 6 (Feb. 17, 2010). If Respondents satisfy this burden, Complainant may still

prevail if she shows that the articulated reason is a pretext for discrimination. *Hutchinson v. Iftekaruddin, supra,* at 6.

26. The evidence shows that Complainant has proven the elements of her *prima facie* case. *See* Findings of Fact ##2, 24, 48; Conclusion of Law #9. Moreover, the Commission has previously held that rent-to-income ratios such as the one utilized by Respondents "have the legitimate, non-discriminatory purpose of assuring the property owner that the prospective tenant of a dwelling unit will be able to pay the rent" and that the type of rent-to-income ratio used by Respondents, "essentially that the rent should not be more than one-third of household income, is within a range typically encountered in the housing rental market and is not inherently unreasonable." *Jackson v. Wilmette Realty, supra,* at 4.[15] Complainant herself acknowledges that "Respondents' argument that its minimum-income policy is legitimate, is not disputed" and that "[i]t is reasonable that an applicant show enough income to pay their rent and other tenancy obligations." Complainant's Reply Brief ("Comp. Rep."), at 6.

27. Thus, to meet her burden under the indirect method of proof, Complainant must show that the legitimate non-discriminatory reason offered by Respondents for their decision not to approve Complainant's application (namely, her inability to satisfy their minimum-income requirement) was not the true reason for Respondents' action but was instead a pretext for discrimination against Complainant based on her status as a Voucher holder. *See, e.g., Crenshaw v. Harvey, supra*, at 19-20.

28. Complainant can show that Respondents' proffered reason for its denial of her application "is pretextual, either directly by persuading the Commission that a discriminatory intent more than likely motivated Respondent or indirectly by showing that [their] proffered reason is unworthy of credence." *Crenshaw v. Harvey, supra,* at 20 (internal quotation marks omitted). "[P]roof the stated reasons were not the 'true reasons,' can take any form that would impeach the [property owner's] statement. Generally, this can be done in either of two ways: 1) Through statements or other evidence expressing an [property owner]'s discriminatory animus, notwithstanding any reason the [property owner] has articulated, or 2) Through evidence otherwise undercutting the credibility of the [property owner]'s proffered reasons." *Audett v. Simko Provision Co.,* CCHR No. 92-E-39, at 8 (June 16, 1993) (internal quotation marks omitted). It is not enough to show that the property owner made an "error of business judgment" or "failed to follow sound business practices." *Audett v. Simko Provision Co., supra,* at 9. Instead, Complainant must show that Respondents "did not honestly believe in the reasons [they] gave" for failing to approve Complainant's application. *Thomas v. Chicago Department of Public Health,* CCHR No. 97-E-221, at 44 (July 18, 2001).

29. Complainant offers no evidence that Respondents had a discriminatory animus towards her based on her status as a Voucher holder. To the contrary, the record shows that Respondents put in significant time and effort to get Complainant's application for tenancy approved. Tr. 134. In particular, Complainant personally interacted with Respondents' personnel during her eight visits to Presidential Towers and Respondents' personnel showed her multiple apartments. Tr. 17-18, 20, 29-30, 129. In addition, Respondents' personnel had numerous calls and in-person meetings with Complainant during the course of her efforts to rent

[15] As the Commission pointed out in *Jackson,* HUD's regulations cap the total that Voucher holders may pay towards rent at 30% of the family's monthly adjusted income. *See* Stipulated Exhibit 5; *Jackson v. Wilmette Realty, supra,* at 4 n.2.

the Apartment. Finding of Fact #48. Complainant acknowledged that Mchon (the leasing manager for Presidential Towers) was "nice" and "very calm" and that he maintained an appropriate tone and seemed sincere over the phone even though she was upset.[16] Tr. 15, 32, 34. Respondents also processed Complainant's application even though she failed to submit her three most recent pay stubs as required by Respondents' policy and Complainant listed an amount of monthly income on her application that did not match up with the pay stubs she did provide. Tr. 127-28, 141-42. Finally, Respondents invited Complainant to continue the application process by obtaining another guarantor (*see* Finding of Fact #47) and there is no evidence that casts doubt on the sincerity of Respondents' offer to continue to work with Complainant in her effort to obtain an apartment at Presidential Towers.

More generally, Respondents mandated that all Presidential Towers staff receive fair housing training, Presidential Towers has unconditionally approved the applications of seven Voucher holders and conditionally approved the applications of 15 others between 2013 and 2015, and Presidential Towers has had Voucher holders as tenants in the past and present. Findings of Fact ##13, 17-19. These facts weigh against the claim that Respondents acted with discriminatory animus towards Complainant based on the fact that she is a Voucher holder. *See, e.g., Gardner v. Ojo et al.*, CCHR No. 10-H-50, at 7 & n.8 (Dec. 19, 2012) ("[t]he Commission has previously found that a respondent's willingness to rent to other persons with a complainant's same source of income undercuts the claim that the respondent has acted with a discriminatory motivation") (citing multiple cases); *Cooper & Ashman v. Parkview Realty, supra,* at 9 (same).

30. With no evidence of discriminatory animus, Complainant instead offers several reasons to question the sincerity of Respondents' explanation that it rejected her application due to her failure to satisfy their minimum-income requirement. First, Complainant asserts that Respondents were placed on notice that their minimum-income requirement had an adverse impact on Voucher holders when the Commission made a substantial evidence finding in another source of income case involving Presidential Towers, and that Respondents' continued use of their requirement after the 2013 finding constitutes intentional discrimination against Voucher holders. Comp. Br., at 2-7; Comp. Rep., at 3-4.

The Commission rejects this argument. As stated above (*see* Conclusion of Law #11), Complainant's attempt to rely on a prior substantial evidence determination is "not proper" because such determinations "shall not be published or cited as precedent." *Boyd v. Parkview Management Corp., supra,* at 2, *quoting* Commission Regulation 270.510. This is so because "[a] finding of 'substantial evidence' is *not* a finding of liability. Rather, it is a *preliminary* determination that there is substantial evidence that a respondent *may* have violated the Fair Housing Ordinance." *Belcastro v. 860 North Lake Shore Drive Trust,* CCHR No. 95-H-160, at 4 (Nov. 5, 1998) (emphasis added). The applicable standard for determining substantial evidence -- namely, "whether or not there is more than a mere scintilla of relevant evidence such that

[16] The Commission acknowledges and credits Complainant's testimony regarding her frustration with the process of trying to rent the Apartment and her belief that Respondents' discriminated against her. Nonetheless, as the Commission has previously held, a complainant's sincere belief that she has been discriminated against is not -- standing alone -- sufficient to prove her discrimination claim. *See, e.g., Cooper & Ashman v. Parkview Realty,* CCHR No. 91-FHO-48-5633, at 11 (Sep. 8, 1992) ("[t]he Commission feels that Complainants truly believed that the incident happened as was testified to by them, but, this belief by the Complainants alone is not sufficient to prove their case by a preponderance of the evidence").

reasonable minds might find it sufficient to support such a conclusion" -- is fundamentally different from the standard required to establish liability under the Ordinance. *Belcastro v. 860 North Lake Shore Drive Trust, supra,* at 2 (internal quotation marks omitted). Consequently, given the actual nature of the Commission's substantial evidence finding, Respondents' continued application of its minimum-income requirement to Voucher holders does not reflect a conscious decision by Respondents to continue the use of a policy that the Commission has *found* to be discriminatory as Complainant wrongly implies.[17]

31. Next, Complainant criticizes Respondents for not seeking guidance from the Commission after the 2013 substantial evidence finding and for not adopting its current minimum-income requirement for Voucher holders (namely, requiring Voucher holders to have income that is three times the portion of the rent that they are expected pay) until after this lawsuit was filed. Comp. Br., at 4-5. The Commission does not find that these criticisms show that Respondents' application of its minimum-income requirement to Complainant in 2014 was a pretext for discrimination. As explained above, the Commission's finding of substantial evidence was *not* a finding of discrimination and the factual circumstances in that prior case were different. Conclusion of Law #30. Moreover, Complainant does not specify what guidance she believes that Respondents could have received from the Commission aside from the admonishment that they should give an individualized assessment to each Voucher holder who submits an application, which is the message that Respondents heard from the Commission in 2013 and have incorporated into their policy.[18] Tr. 85, 90-92, 110-11.

Complainant also disregards the unchallenged testimony of Respondents' executives Sharfenberg and Mehon that Respondents had received no advice from the CHA or HUD with regard to how to process the applications of Voucher holders other than the instruction to evaluate Voucher holders the *same* as any other applicants. Tr. 84-85, 88-89, 93, 136. CHA Program Integrity Manager Santiago confirmed that the CHA would have provided such direction to property owners. Finding of Fact #15. Furthermore, the evidence shows that all prospective tenants were subjected to the minimum-income requirement regardless of their source of income. *See* Findings of Fact ##35, 37. Under these circumstances, even if the

[17] In any event, the Commission notes that the factual circumstances in the prior case (*Williams v. Waterton Associates LLC,* CCHR No. 12-H-61), are distinct from the facts in this case. In *Williams,* the complainant -- unlike Complainant in this case -- never actually submitted an application to Presidential Towers and, as a result, no individualized assessment of the complainant's application and income could take place. Tr. 107-08. Moreover, Respondents deny that they continued to apply their minimum-income requirement to applications from Voucher holders in the same fashion after the substantial evidence finding in *Williams.* Scharfenberg, who was the general manager of Presidential Towers during the pertinent time, testified that Respondents did not apply the minimum-income requirement the same way in 2014 as it did in 2013 at the time of the *Williams* case, and he testified that Complainant did receive an individualized assessment of her application in 2014. Tr. 85, 90-91, 102, 105, 109.

[18] The parties have attached, as Stipulated Exhibit 2, a November 20, 2013 memorandum from the Executive Director of the Cook County Commission on Human Rights that contains guidance regarding how to screen Voucher holders who are prospective tenants and states that "in order to calculate the rent-to-income ratio of a prospective [Voucher holder] tenant, a landlord should only consider the portion of the rent that the [Voucher holder] would actually be responsible for." However, there was no testimony regarding this exhibit at the administrative hearing and there is no evidence in the record that Respondents were aware of its existence in 2014. Consequently, the Commission finds that this memorandum has no bearing on the question of whether Respondents *intentionally* discriminated against Complainant based on her source of income.

Commission were to accept Complainant's argument that Respondents' current policy is a better business practice, the timing of Respondents' decision to modify the manner in which they apply their minimum-income requirement to Voucher holders does not suggest pretext. *See Audett v. Simko Provision Co., supra,* at 9 (pretext is not shown by an "error in business judgment" or the "fail[ure] to follow sound business practices").

32. Finally, Complainant questions why Respondents would have applied their minimum-income requirement to her given that the requirement was "solely for the purpose to ensure someone's ability to pay the rent" and that Respondents' presumed that the CHA would have paid sufficient "exception rent" to enable her to rent the Apartment. Comp. Br., at 2, 3 ("Respondents knowingly utilized a minimum income application policy with no direct or causal relationship to a voucher holder's ability to pay rent"). In particular, Complainant's queries: "Why does a voucher holder need a guarantor if the minimum income policy was implemented to ensure payment ability, which it was testified to that the CHA has always done? The only logical explanation is that Respondents purposefully continued the utilization of the policy to keep the number of voucher holders in the building at a minimum." Comp. Br., at 6.

The Commission rejects this argument because it is based on a mistaken factual predicate: namely, that Respondents maintain their minimum-income requirement "solely" to ensure that prospective tenants could pay their rent. Presidential Towers' General Manager Scharfenberg credibly testified that the purpose of the minimum-income requirement is to ensure that a tenant is able to continue to pay rent *and* uphold their lease obligations by paying any other expenses (such as utilities) that are over and above the rent itself. Finding of Fact #39; *see also Jackson v. Wilmette Realty, supra,* at 4 (recognizing that rent-to-income policies have this purpose). Even Complainant, in her reply brief, recognized that Respondents' minimum-income policy was intended to require "that an applicant show enough income to pay rent and *other tenancy obligations.*" Comp. Rep., at 6 (emphasis added). Moreover, Scharfenberg testified that the minimum-income requirement helped to protect Presidential Towers in the event that the CHA reduced the amount of a Voucher holder's "exception rent" below the 300% level, as happened with one of Presidential Towers' current Voucher holders. Tr. 98.[19] In view of this evidence, the Commission finds that Complainant has failed to successfully challenge the honesty of Respondents' assertion that they applied their minimum-income requirement for a non-discriminatory purpose when they evaluated Complainant's application.

33. In sum: Complainant has failed to prove that the legitimate, non-discriminatory reason offered by Respondents for their decision not to approve Complainant's application (namely, because Complainant and her proposed guarantor did not meet Respondents' minimum-income requirement) was a pretext for discrimination against her based on her status as a Voucher holder. Consequently, Complainant has failed to meet her burden of establishing that Respondents intentionally discriminated against her under the indirect method of proof.

[19] Although the Housing Choice Voucher Program is primarily for low-income persons, there are persons in the Program who have a higher income and some Voucher holders eventually end up paying all of their rent because the CHA reduces the portion of its payments towards the rent as income of the Voucher holder increases. Tr. 46.

IV. COMPLAINANT'S OBJECTIONS

34. On December 26, 2016, Complainant timely filed her Objections to the Recommended Ruling ("Objections"). Respondents thereafter filed their response to the Objections and Complainant filed a reply. Pursuant to Regulation 240.610(b), objections to a recommended ruling must include (i) relevant legal analysis for any objections to legal conclusions, (ii) specific grounds for reversal or modification of any findings of fact including specific references to the record and transcript, and (iii) specific grounds for reversal or modification of any recommended relief. Pursuant to §2-120-510(l) of the Chicago Municipal Code, the Commission must and does adopt the findings of fact recommended by a hearing officer if they are not contrary to the evidence presented at the administrative hearing. Furthermore, "[a] party cannot use the objections to retry their case or rewrite the facts of th[e] case to suit their version of events." *DeHoyos v. La Rabida Children's Hospital and Caldwell,* CCHR No. 10-E-102, at 20 (June 18, 2014).

In her Objections, Complainant asserts that the Recommended Ruling on Liability and Relief ("recommended ruling") contains a number of legal and factual errors.

35. First, Complainant asserts that the recommended ruling's legal conclusion with respect to her disparate impact claim is erroneous because the hearing officer found relevant and considered the fact that Respondents offer Voucher holders who are "approved with conditions" (*i.e.,* those who pass credit and background and checks but who lack sufficient income to meet Respondents' minimum-income requirement) the opportunity to obtain a guarantor ("the guarantor option") so that they can meet the minimum-income requirement. Objections, at 2-3. According to Complainant, Respondents' policy of offering Voucher holders the guarantor option is an "unnecessary accommodation" because Respondents stated that "the purpose of a guarantor is to ensure payment of rent" and Voucher holders can pay the rent with their vouchers because "affordability is built into the Section 8 program." Objections, at 2-3. Complainant further asserts that "source of income protection would be pointless under the Chicago Fair Housing Ordinance" if the Commission adopts the hearing officer's analysis because "[b]uilding owners can implement a rent-to-income ratio as most already have implemented, and then use the guarantor feature as a defense to a disparate impact case." Objections, at 3.

For the following reasons, the Commission overrules Complainant's objection and finds that the hearing officer's consideration of Respondents' policy of offering Voucher holders the guarantor option was appropriate.

36. To prevail on a disparate impact claim, a complainant must identify a "facially neutral practice" used by the respondent and show that that practice has a disparate impact upon a protected class. *See, e.g., McClinton v. Antioch Haven Homes/Haynes, supra,* at 26; Conclusion of Law #13 (citing additional cases). In this case, the hearing officer found that: (a) Respondents' had a "facially neutral practice" of requiring all of their prospective tenants to satisfy their minimum-income requirement; (b) Respondents offered the guarantor option to Voucher holders (including Complainant) who were "approved with conditions"[20]; and (c) Presidential Towers denied Complainant's rental application because neither Complainant nor

[20] Respondents also offered the guarantor option to college students if they otherwise lack sufficient income to meet the minimum-income requirement. Finding of Fact #44. Complainant's assertion that the hearing officer overlooked this fact is incorrect. *Compare* Finding of Fact #44 *with* Objections, at 3-4.

her prospective guarantor (her daughter Nadia) had sufficient income to satisfy Respondent's minimum-income requirement. Findings of Fact ##36-45, 49. Complainant does not challenge these factual findings in her Objections.

The Commission analyzes a respondent building owner's actual tenant-selection practice when determining whether a complainant who brings a housing discrimination case has established his/her disparate impact claim. *See, e.g., McClinton v. Antioch Haven Homes/Haynes, supra,* at 26-29; *Campbell v. Brown/Dearborn Parkway Realty, supra,* at 50-54; *see also* Conclusions of Law ##15-16 (citing federal cases to the same effect). Consequently, since Respondents' offer of the guarantor option to Voucher holders is indisputably part of Respondents' overall tenant-selection practice, the hearing officer correctly considered this evidence in his analysis. Indeed, it would have been legal error to fail to consider Respondents' offer of a guarantor option to Voucher holders.

Furthermore, Complainant's assertion that Respondents' guarantor option is an "unnecessary accommodation" is unavailing for two reasons. First, because Complainant has not established a *prima facie* case by showing that Respondents' facially-neutral minimum-income requirement has a disparate impact on Voucher holders, the Commission need not address the issue of whether Respondents' guarantor option has a business justification or whether it is merely an unnecessary accommodation as Complainant contends. *See, e.g., McClinton v. Antioch Haven Homes/Haynes, supra,* at 27; Conclusions of Law ##17, 23.

Second, Complainant's assertion regarding the guarantor option is based on a misreading of the factual record and the hearing officer's factual findings. In particular, although Complainant asserts that "the purpose of the guarantor is to ensure payment of rent" (Objections, 2, 3), the hearing officer found -- based on the uncontested testimony of one of Respondent's executives -- that the guarantor has a broader purpose. In particular, Presidential Towers seeks a guarantor even if it presumes that the CHA will cover a Voucher holder's rent because it has no assurance that the CHA will continue to pay the rent indefinitely, and Voucher holders are evaluated on an ongoing basis to assess their eligibility for the Housing Choice Program during the course of their tenancy.[21] Finding of Fact #42. The guarantor also enables Voucher holders to satisfy Respondents' minimum-income requirement, which in turn is intended to ensure that the tenant is able to continue to pay rent *and* uphold their lease obligations by paying any other expenses -- such as utilities -- that are over and above the rent itself. Finding of Fact #39. The hearing officer's findings on this issue are well-supported by the record and the Commission adopts them.

Finally, the Commission rejects Complainant's assertion that the Fair Housing Ordinance's protection against source of income discrimination will become "pointless" if the Commission adopts the recommended ruling. Overt discrimination against Voucher holders based on their source of income has been an enduring problem in Chicago, as the Commission's prior decisions have shown.[22] The Ordinance's protection against "source of income"

---

[21] Respondents' concern that CHA might change the level of rental support that it provides to a Voucher holders during the course of the Voucher holder's tenancy is not hypothetical: one of the Voucher holders who currently resides at Presidential Towers no longer receives the "300% exception rent" that they received at the time they began their tenancy. Finding of Fact #19.

[22] *See, e.g., Shipp v. Wagner,* CCHR No. 12-H-19, at 7 (July 16, 2014) (finding liability for source of income discrimination where respondents' advertisements stated "Not Section 8 Approved" and "No

discrimination will continue to deter such discriminatory conduct and provide a remedy when it does occur if the Commission adopts the recommended ruling.

Moreover, contrary to Complainant's implication (Objection, at 3), the hearing officer's analysis does not preclude liability under a source of income theory in future cases with analogous facts. Building owners who implement a rent-to-income ratio with a guarantor option for Voucher holders do not have immunity from disparate impact claims under the Fair Housing Ordinance. A complainant can prevail under a disparate impact theory against a building owner who adopts this type of policy, if the evidence shows that the policy has a disparate impact on Voucher holders vis-a-vis non-Voucher holders and the building owner fails to offer a business justification for the policy. Complainant failed to establish liability in this case, as explained above (*see* Conclusions of Law ##22-23), because she did not offer sufficient evidence to prove that Respondents' minimum-income requirement had a disparate impact on Voucher holders.

37. Second, Complainant objects to the hearing officer's finding that she was required to provide evidence showing that Voucher holders faired more poorly than non-Voucher holders under Respondents' minimum-income requirement to prove her disparate impact claim. *See* Conclusions of Law ##15-16, 20-23. Complainant asserts, in reliance on the Commission's decision in *Scott v. Owner of Club 720, supra,* that disparate impact claims do not require a comparison between the protected class and the non-protected class where the disparate impact on the protected class is "clear and obvious." Objections, at 4-5. Complainant further asserts that the recommended ruling is flawed because the Respondents' minimum-income requirement had a "clear and obvious" disparate impact on Voucher holders and the hearing officer erred by "ignor[ing] Commission disparate impact precedent in *Scott,*" and instead relying on the non-binding federal court decision in *Tsombanidis v. West Haven Fire Department,* 353 F.3d 565 (2d Cir. 2003). Objections, at 4, 5.

As shown below, Complainant has misconstrued the Commission's decision in *Scott v. Owner of Club 720, supra,* and the hearing officer correctly found that *Scott* is factually distinct from this case. *See* Conclusion of Law #16. Furthermore, the hearing officer's reliance on the federal court decision in *Tsombanidis v. West Haven Fire Department, supra,* was appropriate because *Tsombanidis* is fully consistent with the Commission's precedent.

38. To recap, the African-American complainants in *Scott* alleged that respondent engaged in race discrimination by refusing to allow them to enter respondent's club based on respondent's policy of denying entrance to persons with braided hair and cornrows. *Scott v. Owner of Club 720, supra,* at 4-5. Complainants sought to prove liability under both disparate impact and disparate treatment theories of liability. *Scott v. Owner of Club 720, supra,* at 4. The hearing officer rejected complainants' disparate impact claim on the grounds that the theory "require[s] proof of a significant or substantial statistical disparity in order to establish that a challenged practice has a disparate impact" and "neither [c]omplainant submitted any statistical studies or other evidence as to the frequency of braided hairstyles among different races." *Scott v. Owner of Club 720, supra,* at 5.

The Commission stated that it "respect[ed] the hearing officer's analysis as reflecting well-established approaches to discrimination claims in the case law," and the Commission did

---

Section 8"); *Diaz v. Wykurz and Locascio,* CCHR No. 07-H-28, at 6-7 (Jan. 7, 2010) (finding liability against a respondent who told complainant that she would not accept complainant's Section 8 voucher).

not overrule any prior Commission cases that analyzed and resolved disparate impact claims using the approach outlined by the hearing officer. *Scott v. Owner of Club 720, supra,* at 5. However, the Commission did not apply its "well-established" approach to the disparate impact claim in *Scott* due to the unique evidence that was before it. In particular, the Commission

> conclude[d] *on this evidence* that Club 720's policy barring the wearing of braids by customers does violate the Chicago Human Rights Ordinance. It has a clear and obvious disparate impact on potential customers who are African-American.... Even though other individuals and religious or ethnic groups may wear hairstyles such as braided cornrows and dreadlocks, in Chicago these hairstyles are overwhelmingly associated with and worn by African-Americans, a fact of which the Commission may take administrative notice.

Scott v. Owner of Club 720, supra, at 5 (emphasis added; citations and footnotes omitted).[23] Thus, the Commission's holding that respondent's anti-braid policy had a disparate impact was based on its factual finding that braided hairstyles "were overwhelmingly associated with and worn by African-Americans." The Commission further held that it could "conceive of no reasonable justification for requiring a person to avoid wearing a braided hairstyle in order to patronize a nightclub in the City of Chicago." *Scott v. Owner of Club 720, supra,* at 6.

39. The evidentiary record developed at the administrative hearing shows that this case is factually distinguishable from *Scott*. In contrast to the discriminatory anti-braid policy in *Scott*, there is no evidence that Respondents' minimum-income requirement was motivated by an intent to discriminate against Voucher holders. Moreover, the Commission has previously held that minimum-income requirements such as Respondents' policy have a "legitimate, non-discriminatory purpose" (*see* Conclusion of Law #26, *quoting Jackson v. Wilmette Realty, supra,* at 4), and Complainant concedes that Respondents' policy "is admittedly fair in form and facially neutral." Objections, at 6.

Furthermore, although Complainant asserts that Respondents' minimum-income requirement had a "clear and obvious" disparate impact on Voucher holders "because 75% of the protected class is excluded" (Objections, at 5), the evidentiary record does not support Complainant's position. As the hearing officer has explained, Complainant's assertion that 75% of Voucher holders are disqualified under Respondents' minimum-income requirement is based on the percentage of Voucher holders who would not meet Respondents' requirement *without* consideration of Respondents' guarantor option. Conclusion of Law #19. Assessing the impact of Respondents' minimum-income requirement without consideration of the guarantor option is inappropriate because the undisputed evidence shows that Respondents offer the guarantor option to Voucher holders who passed credit and background checks but who otherwise lacked sufficient income to meet Respondents' requirement. Finding of Fact #41.

---

[23] The Commission also held that the respondent's anti-braid policy "intentionally subject[ed] African-Americans to more stringent terms of admittance compared to potential customers of other races," and the Commission expressed its agreement with the reasoning of a South Carolina Supreme Court decision, which held that striking a prospective African-American juror based on the fact that he wore dreadlocks "was inherently discriminatory and racially motivated" because "dreadlocks retain their roots as a religious and social symbol of historically black cultures." *Scott v. Owner of Club 720, supra,* at 5 (citing to *McCrea v. Gheraibeh,* 380 S.C. 183, 669 S.E.2d 333 (2008)).

The parties' stipulated facts establish that 22 of the 32 Voucher holders (or 69%) who applied to Presidential Towers between 2013 and 2015 were approved or conditionally approved for tenancy, including seven (22%) who were approved without conditions under Respondents' minimum-income requirement. Finding of Fact #22. On the other hand, the record contains no evidence regarding the impact that Respondents' minimum-income requirement had on non-Voucher holders who applied for apartments at Presidential Towers during the pertinent time. Finding of Fact #22. Without such evidence, it is impossible to determine whether Respondents' minimum-income policy had *any* disparate impact on Voucher holders, let alone the type of "clear and obvious" disparate impact that the Commission found in *Scott.*[24] Furthermore, unlike in *Scott,* there are no facts of which the Commission can take administrative notice that would establish that Respondents' minimum-income requirement has a disparate impact on Voucher holders.

In her reply in support of her Objections ("Reply"), Complainant notes that the "Commission did not draw any other comparisons to other races in its disparate impact analysis" in *Scott.* Reply, at 2. While this is correct, no such comparison was required in that case. Given that braided hairstyles are "overwhelmingly" worn by African-Americans, logic compels the conclusion that correspondingly few non-African-Americans wear braided hairstyles. It was on these facts that the Commission found that respondent's anti-braid policy had a "clear and obvious" disparate impact on African-Americans. In this case, by contrast, evidence comparing how Voucher holders and non-Voucher holders fared under Respondents' minimum income requirement is required because facts showing how Respondents' requirement impacted Voucher holders does not allow any conclusion to be drawn about how the requirement impacted non-Voucher holders. In sum: there is no way to know on this factual record whether Respondents' minimum income requirement had a disparate impact on Voucher holders or a negative impact on both Voucher holders and non-Voucher holders. *Supra,* at footnote 24.

40. Because the evidentiary record contains no "clear and obvious" evidence that Respondents' minimum-income requirement has a disparate impact on Voucher holders, the hearing officer appropriately relied on the Commission's well-established analytic framework to assess Complainant's disparate impact claim. Commission precedent requires, among other things, that a complainant offer sufficient evidence from which the Commission can determine whether the policy in question has a disparate impact upon the complainant's protected group in comparison with others. *See* Conclusion of Law #21, *quoting McClinton v. Antioch Haven Homes/Haynes, supra,* at 26-27; *Campbell v. Brown/Dearborn Parkway Realty, supra,* at 50-52. The hearing officer's reliance on the federal court's decision in *Tsombanidis v. West Haven Fire Department, supra,* was likewise appropriate because *Tsombanidis* is consistent with the Commission's precedent and the Commission looks to decisions concerning other relevant laws

[24] The Commission's conclusion would be the same even if -- as Complainant erroneously asserts -- Respondents' minimum-income requirement, in fact, disqualified 75% of Voucher holders. Without any evidence as to the percentage of non-Voucher holders who are disqualified by Respondents' minimum-income requirement, it would be impossible to know whether Respondents' requirement had either (i) a *negative* (but non-actionable) impact on Voucher holders -- as would be the case if the requirement also disqualified 75% of non-Voucher holders; or (ii) a *disparate* (and actionable) impact on Voucher holders -- as would be the case if the requirement, for example, disqualified only 15% of non-Voucher holders.

for guidance in resolving its own cases.[25] *Compare* Conclusions of Law ##15-16 (quoting *Tsombanidis*) *with McClinton v. Antioch Haven Homes/Haynes, supra,* at 19 n.5, 26-27; *Campbell v. Brown/Dearborn Parkway Realty, supra,* at 50-52.

41. Finally, the Commission rejects Complainant's effort to rely on an 11-year-old substantial evidence order and investigative summary from a different case against a different respondent as authority in support of her Objections. *See* Objections, at 7-8 & Appendix A. As Complainant herself admits, "a [s]ubstantial [e]vidence [o]rder may not be cited under Commission regulations" (Objections, at 7), and the hearing officer properly rejected Complainant's effort to rely on another substantial evidence determination. Conclusion of Law #34 (citing Commission precedent). Similarly, the Commission has "repeatedly and consistently" held that investigative summaries, which consist of "unsworn statements," and the "characterizations and summarizations" of the Commission's staff, are inadmissible.[26] *See, e.g., Chimpoulis & Richardson v. J&O Corp., d/b/a The Cove Lounge et al.,* CCHR No. 97-E-123/127, at 32 n.41 (Sep. 20, 2000). Furthermore, even if the investigative summary were otherwise admissible, Complainant's failure to introduce this document at the administrative hearing bars its consideration by the Commission at this post-hearing phase of the case. *See, e.g., Santiago v. Bickerdike Apartments,* CCHR No. 91-FHO-54-5639, at 6 n.4 (May 26, 1992) ("[p]arties and their counsel are hereby warned that matters not in evidence at a hearing are not to be cited or relied upon in post hearing briefs").

V. CONCLUSION

Complainant Alex Nibbs has not proved by a preponderance of the evidence that Respondents PT Chicago, LLC and Waterton Residential, LLC f/k/a Waterton Property Management LLC failed to rent an apartment to her based on her source of income. Accordingly, the Commission finds in favor of Respondents, and the Complaint in this matter is hereby DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega, Chair and Commissioner
Entered: May 11, 2017

[25] In addition, *Tsombanidis* (like *Scott*) recognizes that statistical evidence is not required to prove disparate impact. *See Tsombanidis,* 352 F.3d at 576 ("[a]lthough there may be cases where statistics are not necessary; there must be some analytical mechanism to determine disproportionate impact").

[26] The investigative summary also references the decision in *Commission on Human Rights and Opportunities v. Sullivan Associates,* 739 A.2d 238 (Conn. 1999), a case that Complainant asserts shows that "Respondents' policy violated the Chicago Fair Housing Ordinance." Reply, at 3. However, as the hearing officer has explained (*see* Conclusion of Law #22 at footnote 13), *Sullivan Associates* is distinguishable for factual and legal reasons and it does not dictate the result in this case.