City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, Fourth Floor
Chicago, IL 60610
(312) 744-4111 [Voice]
(312) 744-1081 [Facsimile] / (312) 744-1088 [TTY]
cchrfilings@cityofchicago.org

IN THE MATTER OF:

Latrice Scales and Kenjuan Gayles
Complainants,

v.

MAC Property Management LLC,
Greenwood 5201 LLC, David Gefsky, and
Jeremy Bowen
Respondents.

Case No. 18-H-12

FINAL RULING ON LIABILITY & RELIEF

I. Introduction

Complainant Latrice Scales (Complainant or Scales) brought this Complaint against MAC Property Management LLC (MAC Properties) and Greenwood 5201 LLC, on February 27, 2018. In the Complaint, Complainant alleged that her source of income was a Housing Choice Voucher and that on September 27, 2017, she sought to rent Unit 2 at 5205 S. Greenwood. Complainant alleged that Respondents refused to rent the unit to her because she was a Voucher Holder. [Complaint]. On April 10, 2018, Respondent MAC Properties submitted its Response denying that they subjected Complainant to housing discrimination based on her source of income.

On May 2, 2018, Complainant submitted a First Amended Complaint in which she added David Gefsky and Jeremy Bowen as Respondents. [First Amended Complaint].[1] In the First Amended Complaint, Complainant alleged that her first application with MAC Properties was for a

[1] Counsel for Respondents originally filed the Response listing only MAC Property Management LLC as the represented party. Counsel later filed an attorney appearance listing all Respondents as represented parties and incorporating those parties in the original Response.

unit at 5228-36 S. Greenwood. She further alleged that after being approved by MAC Properties, MAC Properties Listing Agent Jeremy Bowen told Complainant the unit was not available. The First Amended Complaint also alleged that after Complainant identified a different unit – 5205 S. Greenwood, Unit 2 – Bowen would not allow her to pay the $450 administrative fee to take the unit off the market, because she was a Voucher holder. [First Amended Complaint at ¶¶2-4]. On June 8, 2018, Respondents responded to the First Amended Complaint by denying the allegations.

On October 21, 2019, the Chicago Commission on Human Relations (CCHR) found that there was substantial evidence of a violation of the Chicago Fair Housing Ordinance; namely, source of income discrimination. On June 16, 2021, the CCHR entered an order appointing Steven Saltzman as the hearing officer in this case and scheduled a pre-hearing conference for July 21, 2021. Hearing Officer Saltzman has presided over this case since then.

On November 9, 2021, Complainant moved to amend the complaint a second time, seeking to add her son, Kenjuan Gayles (Gayles) as a Complainant, and adding other allegations, including that the hearing officer consider that:

> "Respondents' actions have been discriminatory towards all previous/current CHA applicants and residents that have been denied the opportunity to pay the administrative fee to remove their designated unit(s) off the market. The Respondent intentionally allows non-CHA voucher holders the opportunity to apply to any unit, pay the administrative fee immediately, and remove the unit from the market until leased."

[Complainant's Motion to Amend Complaint After Finding of Substantial Evidence at ¶2].

Respondents objected. The hearing officer granted Complainant's motion to amend to add Gayles as a Complainant as well as the allegation that Respondents have been discriminatory to all previous/current CHA applicants and residents. [February 9, 2022 Order]. That order did not specifically direct Complainant to file a Second Amended Complaint adding the allegations in her

motion, although later orders did. [*Id.;* September 26, 2022 Order]. Nevertheless, Respondents submitted responses to each paragraph of the Second Motion to Amend by responding to the new allegations. [March 28, 2022, Respondents' Response to Second Motion to Amend Complaint].

The administrative hearing took place on September 13, 2022, and October 4, 2022. Complainants Scales and Gayles both testified and offered exhibits into evidence. Respondents' representative, Director of Resident Services Jeanette Ramey, testified and Respondents offered exhibits into evidence.

In late March 2023, the hearing officer, having reviewed the transcripts in this case, realized that while Respondents had offered testimony regarding various documents that had been listed in their pre-hearing memorandum, they had never made a motion to introduce those exhibits into evidence. In order to ensure that the record was complete, the hearing officer entered an order requiring Respondents to list all of their exhibits which had been referenced in the administrative hearing and formally move that they be admitted into evidence. In that order, the hearing officer set a deadline for Complainants to object to the motion, and then for Respondents to reply to the objection. [March 28, 2023 Order].

Complainants submitted objections to Respondents' Exhibits 1, 14-21 and 36-40 on relevance grounds asserting that none of these exhibits (most of which were Housing Choice Voucher Housing Assistance Payment (HAP) contracts) had anything to do with whether Complainants had been denied units because they were Housing Choice Voucher holders. [Complainants' Objections to Respondents' List of Exhibits].

Respondents replied and argued:

> 7. Complainants have objected to 14 of Respondents' exhibits on the sole basis of irrelevancy. [*Sic*]. All but 1 of the 14 exhibits are HAP contracts. These exhibits are relevant because they show that Respondents have a continued history of renting units to CHA applicants at the buildings where Complainants submitted rental applications.

8. Respondents' Exhibit 1 – Notice of Viewing, is a notice to the tenant of 5328 South Greenwood Avenue, Unit 104, Chicago, IL, 60615 ("Unit 104") letting the tenant know that the property needed to show the apartment. This notice is relevant as it shows the property was actively trying to rent Unit 104 before Complainants applied for the unit and that other prospective tenants were actively engaged in securing the unit.

9. Respondents' Exhibits 14-21 are various HAP contracts that show Respondents rented to 7 different CHA applicants in the building where Complainants applied. Complainants allege that Respondents not only discriminated against Latrice Scales and Kenjuan Gayles, but also discriminated against other CHA applicants by refusing to rent to subsidized tenants.

10. Respondents' Exhibits 14-21 are relevant to this matter as they show that before, during, and after Complainants filed their Complaints, Respondents rented to other CHA applicants at 5326-5336 S. Greenwood Avenue, Chicago, IL 60615.

11. Respondents' Exhibits 36-40 are 4 different HAP contracts for a different building where Complainants submitted a rental application.

12. Respondents' Exhibits 36-40 are similar to 14-21 in that they are relevant to this proceeding, as they show Respondents have perpetually rented to CHA applicants.

[Respondents' Response to Complainants' Objections to Respondents' List of Exhibits to be Entered into Evidence at ¶¶7-12].

The hearing officer stated the following in his Order:

With respect to Complainants' objections to Respondents' Exhibits 14-21 and 36-40, there is a reason why these exhibits are potentially relevant to the determination of this case. Evidence offered to show that Respondents rented apartments to Section 8 or Housing Choice Voucher recipients in buildings in which Complainants sought to rent an apartment may support a defense to Complainants' claims. *See Marshall v. Gleason*, CCHR No. 00-H-1 (Apr. 21, 2004). For that reason, Complainants' objections to these exhibits are denied.

Complainants' objection to Respondents' Exhibit 1 is also denied because as stated by Respondents, this document is offered to show that Respondents were "actively trying to rent Unit 104 before Complainants applied for the unit and that other prospective tenants were actively engaged in securing the unit." This document thus could undercut Complainants' claims and therefore, the objection is denied.

No other exhibits introduced at the administrative public hearing have been objected to. Therefore, it is on the order of the hearing officer that Respondents' Exhibits 1-41 are admitted into evidence.

[May 8, 2023 Order]. At the administrative hearing, Complainants' Exhibits A, B. C, E, F, G, J, K L,

M, N and O were admitted into evidence. [Tr. pp. 108-12].

II. Findings of Fact[2]

1. Complainant Scales was living with her son, Complainant Gayles, in August 2017 when they realized they needed to find new housing. [Tr. pp. 18-20, 196].[3] Scales was about to start a new job at the University of Illinois (UIC Medical Center) as a registered nurse. [*Id.* at pp. 69-70]. Gayles was attending UIC on a scholarship and was also employed. [*Id.* at p. 195].

2. Complainants were Chicago Housing Authority (CHA) Housing Choice Voucher holders, meaning that due to their income, they received vouchers for approved housing to pay a portion of their rent. They were also participants in the CHA's Mobility Program which allowed them to live in "opportunity areas," where there is access to better jobs, better schools and additional resources. [Tr. p. 32]. As a result, the market rent in such areas exceeds the market rent in other areas. [*Id.*]. One of those opportunity areas was in the Hyde Park neighborhood in Chicago. [*Id.* at pp. 38-41].

3. On August 25, 2017, having identified 5328 S. Greenwood, Apt. 104, and 5201 S. Greenwood, Apt. 1115-3 on the internet as units she was interested in, Scales emailed Jeremy Bowen at Respondent MAC Properties to schedule a time for her to view both units. [Resps. Ex. 2].

4. On August 28, 2017, Scales submitted a lease application online.[4] [*Id.* at pp. 28, 124; Complts. Ex. G; Resps. Ex. 3]. At the hearing, Scales testified that when she submitted the application

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[2] Hereinafter, Findings of Fact will be designated FOF.

[3] The following abbreviations will be used throughout this Ruling. "Tr." means the transcript of the administrative hearing; "Complts." means all Complainants in this case; "Resps." means all Respondents in the case; and Ex. means exhibit.

[4] It should be noted that the lease application form used by MAC Properties does not specify

for Unit 104, she was not aware that applications for apartments were on a first come, first served basis and subject to availability. [Tr. p. 124]. She was then shown Cmplts. Ex. G (her lease application, which says in small print, "Applications for apartments will be accepted on a first come, first served basis, and subject to the availability of the apartment type requested)." [*Id.*; Resps. Ex. 3, Cmplts. Ex. G]. Gayles submitted his lease application on August 29, 2017. [Cmplts. Ex. E]. Both Complainants were pre-approved by Bowen on August 29, 2017. [Cmplts. Ex. F].

5. Prior to the tenancy application approval process referenced above, Scales toured both units: 5328 S. Greenwood, Apt. 104 and 5201 S. Greenwood, Apt. 1115-3 on August 29, 2017. She was not interested in Apt. 1115-3. [*Id*; Tr. p. 124]. Scales testified that during her viewing of Unit 104, Bowen told her there would be a $450 administrative fee once she decided whether she wanted to proceed with a particular unit. [Tr. p. 29].

6. After viewing Unit 104, Scales met with Bowen at the MAC Properties office. She testified that at this meeting, she informed Bowen that she would be using a Housing Choice Voucher to rent the unit. Bowen told Scales she would not be able to pay the $450 administrative fee if she was going to use a Voucher; however, Complainant did offer to pay the fee. [Tr. p. 29].

7. On August 29, 2017, at 12:45 p.m., Bowen informed Scales that her lease application had been approved, but not for a specific unit. [August 29, 2017, Recorded Communication listed as Resps. Ex. 6; *see* Cmplts. Ex. F; Tr. pp. 124-25]. During that conversation, Bowen made it clear that he now knew that Complainants were going to be using a Housing Choice Voucher to rent the apartment. [August 29, 2017, Recorded Communication, listed as Resps. Ex. 6]. In that conversation, Bowen asked Scales when she would be coming in to complete the Request for Tenancy Approval (RTA) that was required for the CHA to approve a Housing Choice Voucher holder to rent a specific

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which unit a prospective tenant is seeking to rent.

apartment. [*Id.*]. In that telephone conversation, Bowen urged Scales to promptly come in with her portion of the paperwork, stating, "The sooner the better, so we can get the ball rolling." [*Id.*]. Scales could not visit the office before Saturday, September 2, 2017, so she and Bowen agreed that she would go in on that day. [*Id.*].

8. On September 2, 2017, Scales called MAC Properties and stated that while she was scheduled to visit the office that day, she was busy and wanted to come in on Tuesday, September 5, 2017. Scales was told by the person answering the telephone that Bowen would be out of the office on September 5, 2017. [September 2, 2017, Recorded Communication listed as Resps.' Ex. 11]. Scales stated that she would call back. [*Id.*; Tr. pp. 130-31].

9. Complainants had not completed the required RTA for Unit 104 as of September 4, 2017. [Tr. pp. 228-29. 244-47; FOF ¶¶6, 8].

10. Bowen called Scales on September 4, 2017, at 12:14 p.m. [September 4, 2017, Telephone Communication at 12:14 p.m.; Resps. Ex. 12; Tr. pp. 133-34]. In that telephone call, Bowen informed Scales that he had some bad news for her in that Unit 104 had been rented. Scales responded that she thought the unit was hers. [*Id.*].

11. In that call, Bowen informed Scales that when using a Housing Choice Voucher, the unit being considered had to be vacant because the CHA is not able to conduct an inspection of an occupied unit. Bowen further stated that when he showed the unit to Scales, he was not aware that she would be using a Housing Choice Voucher. He also indicated that before a CHA inspection could take place, the unit, once vacant, would have to be painted and repaired. Bowen further stated that MAC Properties does not accept the administrative fee from Housing Choice Voucher holders at the outset. He explained that once the administrative fee is paid, a unit is taken off the market. In the case

of Housing Choice Voucher holders, if Respondents were to accept the fee and then remove the unit from the market, the unit would remain vacant while the CHA scheduled the inspection, which might not occur right away. Following the inspection, there is a period during which the CHA negotiates the rent amount with Respondents. This may result in the unit being vacant for a while; and sometimes, the CHA and Respondents do not reach an agreement. Bowen asked Scales if she wanted to continue her apartment search. Scales stated that she had "put all her eggs in that basket" and that she was homeless. She then stated that any apartment she chose must be located in a mobility area. Bowen responded that MAC Properties does not have many apartments in mobility areas. Scales asked how "they" could take the apartment away. She stated that "they" gave the apartment away to a market rate renter, and she believed that was discriminatory. Bowen repeated that the apartment had to be vacant in order for the CHA to inspect it and this unit was not vacant when Scales expressed interest in it. He stated that MAC Properties does not take a unit off the market until the "entity" [CHA] has approved the unit and the rent amount has been negotiated. [*Id.*].[5]

12. Later, on September 4, 2017, Scales called Bowen back and acknowledged that Unit 104 was not available and asked about other available units in mobility areas. [Tr. pp. 134-40]. Bowen informed her that there was an available unit in this mobility area that would be available on September 13, 2017. [Tr. pp. 134-40]. During that telephone call, Scales stated that Bowen had been very helpful. She asked if Respondents would take the unit off the market if she submitted her paperwork at that time. Bowen responded that for the property to be taken off the market, the

[5] Scales testified that on September 5 (or September 4 or 6), Bowen informed her in a telephone call that Unit 104 was no longer available and then added that it had been rented. [Tr. p. 35]. She also testified that Bowen told her in this call that she was not able to rent Unit 104 because she was a CHA Voucher holder, and it would be difficult for her to rent an apartment with MAC Properties. [*Id.*]. Scales further testified that Bowen told her that if he had known from the beginning that she was a Voucher holder she would never have had the chance to rent an apartment from MAC Properties. [*Id.* pp. 35-36].

decision to rent, the rent amount, and approval by the CHA as to the condition of the unit had to be "set in stone." He stated that the process by which market rate renters proceed through the rental process differs from the process for Housing Choice Voucher holders and he understood that this may seem unfair. He stated that Respondents have rules regarding the tenancy approval process for market rate applicants. Bowen told Scales there was another unit that was vacant and hence more available. [September 4, 2017, Recorded Telephone call at 12:51].

13. Unit 104 became unavailable as of September 1, 2017, when two market rate applicants paid a $450 administrative fee to secure that unit and remove it from the market. Those two applicants had seen the unit on August 19, 2017, paid the $450 administrative fee on September 1, 2017, and then later signed a lease for the unit on September 9 and 10, 2017. [Resps. Exs. 1, 7-10; Tr. pp. 238-48].[6]

14. MAC Properties Director of Residential Services Ramey testified that in 2017, MAC Properties required that rental applicants interested in a particular unit had to submit a $450 administrative fee at the time of the application in order for the unit to be taken off the market. The unit would be held for either one to three, or four to seven days pending approval of the application by MAC Properties. If at the end of this period, a lease was not signed the applicant forfeited the administrative fee. For applicants with a Housing Choice Voucher, MAC Properties's policy was not to collect the administrative fee. First, paying the fee only guaranteed holding the unit for up to seven days. The CHA typically could not inspect a unit and negotiate the rent amount so that the lease could be signed within seven days, so a Housing Choice Voucher applicant would always forfeit the fee should an agreement not be reached. [Tr. pp. 224-25]. MAC Properties' policy, therefore, was to

[6] This call was not marked as an exhibit but was played during the hearing. [Tr. p. 138].

take a unit off the market for a Housing Choice Voucher applicant only after the CHA scheduled an inspection. [*Id.* p. 226]. However, in order for the CHA to even schedule an inspection, the unit had to be vacant. Unit 104 was occupied when Complainants expressed interest. Ramey also testified that after an inspection request was submitted, it typically took the CHA 30-45 days to conduct the inspection, order any repairs to be completed by the unit owner, and then reach an agreement on the rent amount. [*Id.* pp. 226-27]. This was not the same policy that was explained to Scales by Bowen during their September 4, 2017 call. [September 4, 2017 Recorded Telephone call at 12:51; FOF #11].

15. With respect to Unit 104, the successful applicants were market rate renters who signed the lease several days after the hold resulting from the payment of the $450 fee should have expired. [Resps. Exs. 9-10; Tr. pp. 224-25].[7]

16. On September 5, 2017, at 2:34 p.m., Bowen called Scales regarding completing the RTA packet. Scales expressed concerns about completing the top portion and other portions of the RTA. Bowen indicated that he would complete the portion that was the responsibility of the management company to complete when Scales visited the MAC Properties office so that she would not have to sign a blank document. There was no further discussion about Unit 104 at 5328 S. Greenwood having been taken off the market or having been rented to someone else. Scales stated she would visit the MAC Properties office on September 6, 2017, to complete the packet with Bowen's assistance. [September 5, 2017, Recorded Communication at 2:34 p.m.; Resps. Ex. 29].

[7] Most of the testimony about this and the documents referenced above was given by Director Ramey. [Tr. pp. 217-18]. Ramey worked closely with Bowen. [*Id*]. She testified that at the time, MAC Properties kept regular records of emails between itself, its employees, tenants and applicants and also kept records of telephone conversations between MAC Properties employees and callers. [*Id.* at pp. 220-21].

17. Scales had found another apartment she liked online, 5205 S. Greenwood, Unit 2. She went to view the unit on September 6, and liked it but wanted to exchange the appliances. She was told she could do so for $150, which she agreed to. [Tr. p. 43]. Scales returned to the MAC Properties office and completed the RTA packet on that same day. [Resps. Ex. 27A, p. 3]. The owner portion was completed by MAC Properties Employee Pamela Smith on September 7, 2017. [*Id*].

18. Prior to completing the RTA for Unit 2 at 5205 S. Greenwood, Scales spoke to the director of MAC Properties. Scales informed the director about Unit 104 being unavailable and how Mobility Program rentals could be expedited by the CHA and that the CHA offered incentives to owners willing to accept Housing Choice Vouchers. The director stated she was unaware that the CHA provided incentives. [Tr. pp. 43-46]. The director told Scales that MAC Properties has current tenants who are Housing Choice Voucher holders. She added that Bowen needed to be more educated about the process regarding Housing Choice Voucher holders. [*Id*. at pp. 46-47].

19. Scales called Bowen on September 26, 2017, but he was not in the office. Scales called again the following day. [Resps. Exs. 31 and 31A]. On that day, Scales spoke to Bowen, who informed her that MAC Properties had submitted two applications, one of which was hers, to the CHA for a Housing Quality Standards inspection for Unit 2. [Resps. Ex. 31]. He stated that the CHA scheduled an inspection for the other application but not for Scales's application. [*Id*.]. Scales was very upset. [*Id*.].

20. The other applicant for Unit 2 was also a Housing Choice Voucher holder. He had first seen the unit on or around August 29, 2017, and had indicated a desire to start the CHA leasing process. [Resps. Ex. 25]. That applicant had already been approved. [Tr. p. 261]. An RTA packet had

been completed by him and was apparently signed on August 29, 2017. [Resps. Ex. 26].[8]

21. The other Housing Choice Voucher applicant's RTA packet was sent to the CHA on September 5, 2017, and was apparently approved by the CHA prior to September 27, 2017. Respondents then rented Unit 2 to that applicant following the CHA inspection; however, the lease was not finalized until November 17, 2017. [Resps. Exs. 27, 32-34].

22. After not being able to rent an apartment from MAC Properties, Complainants were homeless for over four months. Scales had to stay in motels and store her property, which cost a significant amount of money. She suffered emotional distress, which may have contributed to her loss of employment. [Tr. pp. 59-92, 155-62]. Gayles was homeless for several months and also suffered emotional distress. [Tr. pp. 202-05].

23. With respect to Complainants' claim in their Second Amended Complaint that CHA voucher holders as a whole were treated discriminatorily by MAC Properties, Respondents introduced documents showing that "at least nine (9) subsidized tenants have lived therein [in the building where Unit 104 was located] between 2016 and 2022; one in 2016, two in 2018, one in 2019, one in 2020, two in 2021, and two in 2022. [Resps. Exs. 14-22]. Similarly, with respect to the building where Unit 2 was located, there were "at least six (6) subsidized tenants therein between 2018 and 2022; two in 2018, one in 2019, two in 2020, and one in 2022." [Resps. Exs. 35-40].

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[8] There was no date for two of the applicant's three signatures on the RTA packet. [Resps. Ex. 26]. The only signature that had a date was a signed release for the CHA to obtain the applicant's Com Ed record. [*Id.*]. In addition, the RTA packet did not have the landlord information or landlord's signature completed on the 2nd page, as it appears was required. [*Id.*]. However, Ramey testified that Ex. 26 was just the portion of the RTA packet that the prospective tenant would have completed. [Tr. pp. 266-67]. She testified that the completed packet was submitted to the CHA and MAC Properties received an email from the CHA acknowledging receipt on September 5, 2017. [Resps. Exs. 26-7; Tr. pp. 266-68]. Scales did not complete her RTA packet until September 6, 2017. [Resps. Ex. 27A].

III. Conclusions of Law and Discussion

A. Overview of the Applicable Law

Section 5-08-030 of the Chicago Fair Housing Ordinance (CFHO) 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:
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> C. To refuse to sell, lease or rent any real estate for residential purposes within the City of Chicago because of the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, gender identity, marital status, parental status, military status, or source of income of the proposed buyer or renter.

The Commission has clearly determined that the refusal to rent an apartment to a prospective tenant because s/he will be using a Housing Choice Voucher is a violation of the CFHO based on source of income. *Sullivan-Lackey v. Godinez,* CCHR No. 99-H-89 (July 18, 2001) (where the Commission ruled that Section 8 vouchers are a lawful source of income under the CFHO),*affirmed*, *Godinez v. Sullivan-Lackey et al.,* 815 N.E.2d 822 (Ill.App. 2004). See also, *Shipp v. Wagner*, CCHR No. 12-H-19 (July 16, 2014) (See cases cited therein).

Complainant has the burden of proving her discrimination claim by a preponderance of the evidence using either the indirect or direct methods of proof. *Torres v. Gonzales,* CCHR No. 01-H-46 (Jan. 18, 2006); *Jones v. Shaheed,* CCHR No. 00-H-82 (Mar. 29, 2004).

The indirect method of proof includes the shifting burden analysis described by the Supreme Court in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973), and followed by the Commission. *Marshall v. Gleason,* CCHR No. 00-H-1 (Apr. 23, 2004). Using the indirect method of proof in a housing discrimination case, a complainant must initially establish a *prima facie* case by showing that s/he (1) belongs to a protected class that is known to the respondent; and (2) was denied the opportunity to rent or own housing that was available; or (3) was offered housing on terms different from the offers made to others outside her protected class. *Id.* The burden then shifts to the respondent to articulate a legitimate, nondiscriminatory reason for refusing to rent, sell, or offer identical terms for the housing. If the respondent satisfies this burden, the complainant may still prevail if s/he shows that the articulated reason is a pretext for discrimination. *Id.*

A complainant seeking to prove a claim of disparate treatment in housing through direct evidence need not engage in the shifting burden analysis contained in *McDonnell Douglas*. Instead, s/he may show that the direct evidence of discriminatory intent is creditable and that it resulted in an actionable claim. *Shipp, supra*; *Rankin v 6954 N Sheridan, Inc. et al.*, CCHR No. 08-H-49 (Aug. 18, 2010); *Hutchison v. Iftekaruddin*, CCHR No. 08-H-21 (Feb. 17, 2010); *Diaz v. Wykurz,* CCHR No. 07-H-28 (Dec. 16, 2009); *Jones supra*; and *Pudelek/Weinmann v. Bridgeview Garden Condo Assoc., et al*, 99-H-39/52 (Apr. 18, 2001).

Direct evidence of discriminatory acts or statements can be established when the actor or speaker uses code words to attempt to mask discriminatory comments or actions. *Hawkins v. Village Green Holding Company LLC*, CCHR No. 14-11-35 (July 12, 2018). See also, *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997) (where the respondent's statement that he was seeking "good tenants" was ruled to be common code words for nonminority tenants and provided direct evidence

of the respondent's intentional racial discrimination against the complainant).

B. Source of Income Discrimination Claim Regarding Unit 104

Complainants have asserted that Respondents' refusal to rent Unit 104 to them was discriminatory based on their source of income in violation of the CFHO. Arguably, based on Scales's testimony, which on these points was not refuted by Respondents' evidence, Complainants have made a *prima facie* case of housing discrimination by showing that, 1) as Housing Choice Voucher holders, they were members of a protected class, 2) they were denied the opportunity to rent Unit 104 at a time when it was, arguably, available, and 3) they were offered the unit on terms different than others because as Housing Choice Voucher holders, they were not allowed to pay the $450 administrative fee to have the unit taken off the market pending approval of their application, unlike market rate applicants. [FOF #2, 4-10, 13]. *See Marshall, supra.*

Respondents' articulated reason for not allowing Complainants to pay the $450 administrative fee to have the unit taken off the market is that, because Complainants were Housing Choice Voucher holders, the CHA would have to first conduct a Housing Quality Standards (HQS) inspection of the unit, and then engage in rent negotiations with Respondents. Respondents argued that just getting an inspection scheduled can take a long time, so taking the unit off the market prior to scheduling the inspection would result in the unit being off the market for a very long time. [FOF #14]. Through the testimony of Director of Resident Services Ramey, Respondents asserted that they take a unit off the market for a Housing Choice Voucher applicant only after the CHA has scheduled the inspection. [*Id.*]. Even then, there is often a considerable delay in actually renting the unit to a Voucher holder, as the inspection may direct that certain repairs be made, and the CHA and Respondents will then enter rent negotiations. [*Id.*]. The reality of the delays in the CHA process was underscored by what occurred in the rental of Unit 2. [FOF #20-21]. In addition, the CHA would not

even schedule an inspection of Unit 104 because it was not vacant when Complainants expressed interest. [FOF #15]

One issue is that what Bowen told Scales about the CHA inspection process was inconsistent with Ramey's testimony on this subject. Bowen told Scales that MAC Properties would not take the unit off the market until the inspection had been completed, any repairs were made, and the rent negotiated. [*Id.*, #12]. However, what occurred regarding the other Housing Choice Voucher holder's rental of Unit 2, underscored that what Ramey had testified to was actually the policy of MAC Properties in that the unit was taken off the market when the CHA scheduled the HQS inspection. [*Id.* #21-22].

In light of these circumstances, the Commission agrees with the hearing officer that Respondent MAC Properties's policy of not allowing a Housing Choice Voucher applicant to pay the $450 administrative fee at the outset and have the unit taken off the market was a legitimate, non-discriminatory practice that did not violate the CFHO with respect to Complainants' attempts to rent Unit 104. *See* e.g., *Marshall, supra* at p. 9-14; and *Lopez v. Arias*, CCHR No. 99-H-12 at 12-20 (Sept. 20, 2000).

In this case, the market rate applicants for Unit 104 toured the unit before Complainants were even aware of its availability and then paid the $450 administrative fee on September 1, 2017, resulting in the unit being taken off the market, prior to Complainants submitting their RTA. [Tr. pp. 228-29, 237-50; Resps. Exs. 1, 7-10].

The only remaining issue regarding the discrimination claim as to Unit 104 is that the market rate renters paid the $450 administrative fee on September 1, 2017, but did not actually sign the lease until September 9 and 10, 2017. [FOF #13]. Since MAC Properties asserted that it only kept a unit

off the market for a maximum 6-7 days, "but more likely 3 days," the issue is whether the fact that the market rate renters did not sign the lease for about eight days supports Complainants' claim of source of income discrimination. [*Id*; Tr. pp. 224-26]. Presumably, that issue could have been raised if Complainants, who have the burden of proof, had established that between September 5-9, the unit was vacant during which time the CHA could have scheduled an HQS inspection for Complainants; however, no such evidence was presented.

C. Source of Income Discrimination Claim Regarding Unit 2

Similarly, Complainants have arguably stated a *prima facie* case of housing discrimination regarding MAC Properties leasing Unit 2 to someone other than Complainants because, 1) Complainants were members of a protected class; 2) they sought to rent Unit 2, and 3) they were offered the unit on terms different than market rate renters because, as Housing Choice Voucher holders, they were not allowed to take the apartment off the market by paying the $450 administrative fee. [FOF #2, 4, 7, 14, 16-18].

Respondents' articulated reason for not renting Unit 2 to Complainants is that another Housing Choice Voucher holder had seen Unit 2 before Complainants; they had submitted their RTA packet to Respondents; the CHA had scheduled the inspection of Unit 2 for them; and MAC Properties rented Unit 2 to that other Housing Choice Voucher holder. [FOF #19-21]. While Complainants have contended that the employee at MAC Properties who assists Housing Choice Voucher applicants was unavailable to complete Complainants' RTA packet until September 7, 2017, Scales did not submit her portion of the packet to MAC Properties until September 6, 2017, one day after MAC Properties had sent the other Housing Choice Voucher holder's completed RTA packet to the CHA. [Complainants' Post Hearing Brief at p. 3; FOF #16-20]. See, *McGhee v. MADO*

Management LP, CCHR No. 11-H-10 (Apr. 18, 2012). In the end, Complainants cannot meet the third prong of the *prima facie* case, in that Respondents rented Unit 2 to someone *within* Complainants' protected class. [FOF #17-21]. The Commission finds that there is simply no basis to conclude that Complainants, whose discrimination claim is entirely based on their assertion that they were being treated adversely because they were Housing Choice Voucher holders, were discriminated against with respect to Unit 2 when the successful tenant was also a Housing Choice Voucher holder who rented Unit 2 using his Voucher. While there is no prior Commission case law with this exact scenario, this conclusion is so obvious that it must be dispositive.

To be clear, this does not mean that a complainant who asserts that s/he was discriminated against not only on the basis of being a Housing Choice Voucher holder, but also for some other reason like race, cannot prevail if that complainant can prove that in fact the evidence supported that the decision not to rent to the complainant was due to the difference in race between the complainant and the successful renter, even though both were also Housing Choice Voucher holders. However, there is no evidence or assertion here that the alleged discrimination in this case was based on something other than that Complainants were Housing Choice Voucher holders. Therefore, given the facts, they cannot prevail on this claim.

D. Complainants' Claim that Other CHA Voucher Holder Applicants/Tenants Have Been Discriminated Against Based on MAC Properties's Administrative Fee Policy

As stated above, Complainants were allowed by the hearing officer to amend their Complaint to add the following claim:

> "Respondent(s)' actions have been discriminatory towards all previous/current CHA applicants and residents that have been denied the opportunity to pay the administrative fee to remove their designated unit(s) off the market. [The] Respondents intentionally allow non-CHA voucher holders the opportunity to apply to any unit,

> pay the administrative fee immediately, and remove the unit from the market until leased."

[Scales's Motion to Amend Complaint After Finding of Substantial Evidence at ¶2].

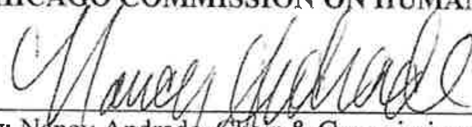
The Commission on Human Relations Enabling Ordinance and its implementing rules provide, in pertinent part, that the Commission is authorized to receive, investigate, and adjudicate complaints of alleged violations of the Chicago Fair Housing Ordinance. Chi.Muni.Code 2-120-510 (c). It is further provided that any person may file a complaint with the Commission if the complaint alleges an ordinance violation...and meets all [] jurisdictional requirements. Rule 210.110. Class actions may not be filed at the Commission at any time. Rule 210.170. Complainants' separate claim that "Respondent(s)' actions have been discriminatory towards all previous/current CHA applicants and residents that have been denied the opportunity to pay the administrative fee to remove their designated unit(s) off the market," is essentially, a class action claim. Complainants may only bring allegations of incidents which have harmed them personally and those allegations were fully adjudicated at the hearing.

IV. CONCLUSION

For the reasons stated above, the Commission finds that Complainants Latrice Scales and Kenjuan Gayles have not met their burden of proving by a preponderance of the evidence that MAC Property Management, LLC, Greenwood 5201 LLC, David Gefsky, and Jeremy Bowen discriminated against them in their housing based on their source of income. Accordingly, the Commission finds that Respondents have not violated the Chicago Fair Housing Ordinance as alleged in the Complaint.

The Commission, therefore, enters an order dismissing all claims made in Complainants' Complaint and subsequent Amended Complaints.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Nancy Andrade, Chair & Commissioner
Entered: September 14, 2023