City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Barbara Evans
Complainant,

v.

Mark Pasieka
Respondent.

Case No.: 20-H-63

Date of Ruling: September 14, 2023
Date Mailed: September 25, 2023

TO:
Alexander Hartz
Julie Pautsch
Legal Aid Chicago
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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on September 14, 2023, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Fair Housing Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent and his attorney:

a. Make payment to Complainant of $1,500 in emotional distress damages;
b. Make payment to Complainant of $1,500 in punitive damages;
c. Make payment to Complainant of pre- and post-judgment interest on the emotional distress damages from the date of the violation, July 31, 2020;
d. Make payment to Complainant of post-judgment interest on the punitive damages;
e. Reasonable attorney fees and costs;
f. Respondent Mark Pasieka to make payment to the City of Chicago of a fine in the amount of $1,000; [1]

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[1]**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago according to an invoice which will be mailed under a separate cover.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

g. Respondent's attorney, Izabella Bielinska, to make payment to the City of Chicago of a fine in the amount of $250.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS

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IN THE MATTER OF:

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v.
Mark Pasieka,
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CASE NO.: 20-H-63

FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

Complainant Barbara Evans (Complainant) filed a Complaint on October 19, 2020, naming Mark Pasieka as Respondent (Respondent) and alleging that he discriminated against her based on her source of income, in violation of the Chicago Fair Housing Ordinance (CFHO). Chi.Muni.Code 5-8-030. Complainant participates in the Section 8 Housing Choice Voucher Program (HCVP). Respondent is the owner of the building located at 3535 W. Belmont, Chicago, IL, and rents units in the building, including the unit that is the subject of this Complaint.

On November 23, 2020, Attorney for Respondent, Izabella Bielinska, filed her appearance along with Respondent's Response to Complaint and Position Statement.

On April 20, 2022, the Commission issued the Order Finding Substantial Evidence of a violation of the Chicago Fair Housing Ordinance, and on June 27, 2022, it issued the Order Appointing Hearing Officer and Commencing Hearing Process. The parties' document requests,

if any, were due on July 29, 2022, and the Commission set the initial pre-hearing conference for September 6, 2022.

On July 29, 2022, Respondent served his Request for Production of Documents, which Complainant responded to on August 19, 2022. Complainant also served her Request for Documents on July 29, 2022. When Complainant received no response to the document requests, she filed Complainant's Motion to Compel Discovery Responses on August 26, 2022.

On September 5, 2022, Respondent filed an Emergency Motion to continue the pre-hearing conference, asserting that Attorney Bielinska was unable to appear on September 6, 2022, due to a family emergency. Given the lateness of the filing of the Emergency Motion, the hearing officer proceeded with the pre-hearing conference. Counsel for Complainant appeared and stated that he did not object to the Emergency Motion; thus, the matter was continued to September 20, 2022, at 10:00 a.m. The hearing officer also extended the date for Respondent to respond to Complainant's Motion to Compel Discovery Responses until September 15, 2022. Order of September 6, 2022.

On September 20, 2022, Complainant was represented by her attorney, Alexander Hartz, and Respondent and Attorney Bielinska appeared. Bielinska represented that she had filed and served Respondent's responses to Complainant's discovery request, with documents attached in digital format, on September 15, 2022. Attorney Hartz stated that he had not yet received the digitally filed documents, and thus had not had the opportunity to confirm that Respondent's responses to Complainant's discovery request were complete. During the pre-hearing conference, Bielinska provided Hartz with hard copies of the documents, and agreed to properly serve the production responses. Hartz was granted the right to renew Complainant's Motion to Compel if the written responses and documents were not received in full by September 23, 2022. Order of September 20, 2022. The hearing officer set October 14, 2022, for pre-hearing memoranda to be filed and served, and scheduled the matter for hearing for November 1, 2022.

Complainant filed her pre-hearing memorandum on October 14, 2022. The hearing officer did not receive a pre-hearing memorandum from Respondent.

On October 28, 2022, Hartz filed Complainant's Motion *in Limine* and corresponding exhibits and Complainant's Motion to Strike Respondent's Affirmative Defenses and corresponding exhibits. Complainant's motions were served by email to Bielinska, the Commission on Human Relations, and the hearing officer. Although Respondent must have served a copy of Respondent's Pre-Trial Memorandum[1] on Complainant, because he attached the memorandum to the Motion to Strike, it became clear to the hearing officer that she herself had not received Respondent's pre-hearing memorandum and exhibits by proper service, as required by Rule 240.130.

On November 1, 2022, prior to the anticipated start of the hearing, the hearing officer held a pre-hearing conference to address the problems with receipt of Respondent's pre-hearing memorandum with attorneys for the parties only: Alexander Hartz and Julie Pautsch, attorneys for Complainant, and Izabella Bielinska, attorney for Respondent.

The problems were: (1) neither the hearing officer nor the Commission received Respondent's pre-hearing memorandum and the related exhibits from Respondent, as required by CCHR rules and regulations; and (2) it was not clear which exhibits Respondent intended to be part of the memorandum. Accordingly, Respondent was granted 21 days, until on or before November 22, 2022, to file and serve a motion explaining why or how Respondent was in compliance with the Order of September 20, 2022, or offer a good cause reason to explain why the pre-trial

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[1] Respondent misnamed the memorandum a pre-trial memorandum. The CCHR rules and regulations speak to the requirement to file a pre-*hearing* memorandum. Section 240-130 (a). Although the error is a minor technical problem, it speaks to Respondent's counsel's lack of diligence or perhaps merely carelessness in following the Commission's rules and regulations and the Orders entered in this matter; or perhaps a failure to understand that proceedings under the CCHR are administrative hearings and do not follow rules applicable to trials in state or federal court.

memorandum was not properly filed and served as required by Rule 240.130 (a). In addition, Respondent was granted leave until on or before November 22, 2022, to file his response, if any, to Complainant's Motion in *Limine* and Motion to Strike. Respondent's counsel was cautioned that failure to comply with the rules and regulations could subject Respondent to be found in default. Additionally, Complainant was granted leave until on or before November 29, 2022, to file a response to Respondent's motion regarding his compliance with the September 20 order, and a reply to Respondent's response to Complainant's Motion in *Limine* and Motion to Strike. Attorney Julie Pautsch's Motion for Leave to File *Instanter* her appearance on behalf of Complainant was granted. Rulings on the outstanding motions were to be made by mail. Order of November 1, 2022.

On November 22, 2022, Respondent filed, by email, his Motion for Leave to File Pre-Trial Memorandum *Instanter*, Respondent's Pre-trial Memorandum, and attached three exhibits to the motion. Respondent also attached a certificate of service to Hartz by email but did not include either the Commission or the hearing officer.

On January 17, 2023, the hearing officer ruled by mail on Respondent's Motion to File Pre-Trial Memorandum *Instanter,* Complainant's Motion *in Limine*, and Complainant's Motion to Strike Affirmative Defenses. Regarding Respondent's Pre-Trial Memorandum and his Motion to File *Instanter*, Bielinska asserted that the memorandum and exhibits were served by email and also that she personally deposited copies in the U.S. mail. It is unclear what happened, but neither the Commission nor the hearing officer received the mailed copies of the memorandum Bielinska indicated were initially served, nor the copies she stated were mailed on November 22, 2022. Nonetheless, the hearing officer granted Respondent's Motion to File *Instanter* and denied Complainant's Motion to Strike. Striking a pre-hearing memorandum is a harsh penalty that denies a party the opportunity to assert his/her defense, and it appeared that Bielinska served the

memorandum by email, and she also attested that she believed the memorandum was also served by mail.[2]

Regarding Complainant's Motion in *Limine*, the hearing officer found that Respondent failed to show how testimony from two proposed witnesses (Brown and Southward) was relevant to the property at 3535 W. Belmont but denied the Motion to Strike relating to Respondent's brother, Chris Pasieka. Complainant's Motion to Strike the Affirmative Defenses was denied, as it appeared that Respondent was characterizing direct evidence as to his defense as "affirmative defenses," and Respondent would have the chance to introduce that evidence at hearing. The matter was set for a final pre-hearing conference, to be held via Zoom, on January 24, 2023, at 10:00 a.m. Order of January 17, 2023.

On January 24, 2023, the final pre-hearing conference was held; the parties were represented by their respective counsel. The parties were encouraged to submit a joint statement of facts and did so later at hearing.[3] The matter was set for hearing on March 13, 2023.

At the hearing, Complainant was represented by Attorneys Hartz and Pautsch, and Respondent was represented by Attorney Bielinska. Both parties gave evidence, but neither side called any additional witnesses. The parties did submit an Agreed Statement of Facts ("Parties' Agreed Facts"). The hearing officer directed the parties to file their post-hearing briefs within 28 days after the transcript of the hearing became available at the Commission offices.

The Commission received the transcript of the hearing, date-stamped March 29, 2023. To make sure that both parties were aware of the timing, the hearing officer directed that post-hearing briefs

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[2] The hearing officer noted that it was particularly troublesome that Respondent did not provide hard copies of the Pre-Hearing Memorandum and Exhibits at the hearing. Although it appeared that Respondent was able to serve those documents by email, in reviewing the emailed copies of the Exhibits, some documents appeared to be cut off. Order of November 17, 2022.

[3] In her pre-hearing memorandum, Complainant proposed Stipulated Facts and contended that Complainant's counsel had contacted Respondent's counsel on two occasions in an attempt to discuss the stipulated facts, but Respondent's counsel did not respond. Complainant's Pre-Hearing Memorandum, p. 1.

be filed on or before April 26, 2023. The parties were reminded that they could review the transcript at the Commission offices if they did not order a copy of the transcript. Order of April 12, 2023.

On April 26, 2023, counsel for Complainant served Complainant's post-hearing brief and accompanying exhibits by e-mail on the Commission, the hearing officer, and counsel for Respondent. However, Respondent's post-hearing brief was not filed with the Commission until May 4, 2023, and the hearing officer did not receive the post-hearing brief until May 14, 2023, by Federal Express.[4]

II. FINDINGS OF FACT

1. At all times relevant to the Complaint, Complainant Barbara Evans was a resident of the City of Chicago and participated in the Housing Choice Voucher Program (HCVP), also known as the "Section 8" program. See, Agreed Statement of Facts ("Agreed Facts"), ¶ 1.

2. Respondent was the owner of a housing unit which he offered for rent, located at 3535 W. Belmont Ave., Chicago, IL 60618. *Id.* ¶ 5.

3. The HCVP is intended to provide safe, decent, and affordable housing to low-income individuals in the private rental market. Agreed Facts, ¶ 2. The HCVP is housing assistance authorized by Section 8 of the U.S. Housing Act of 1937, as amended. 42 U.S.C. § 1437f (o). The Public Housing Authority (PHA) that administers Complainant's HCVP is the

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[4] Throughout the course of these proceedings, Respondent's counsel has been careless in complying with filing deadlines and appears to have misrepresented certain dates. On May 12, 2023, the hearing officer reminded counsel for Respondent that the post-hearing brief needed to be properly served on all the parties, including the hearing officer. Complainant's counsel sent an email also asking for the brief to be mailed to him if the exhibits were too large for an email; he further objected "to the Commission relying on Respondent's post-hearing brief because it was not timely submitted. Respondent also did not timely request an extension." See, email from Alexander Hartz to [Hearing Officer] Paula Roderick and Izabella Bielinska, May 12, 2023. Although Complainant was correct in that Respondent's brief was untimely filed (and counsel did not request an extension of time), the hearing officer declines to strike the post-hearing brief. In the interest of having a complete record, Respondent's post-hearing brief is accepted. However, as noted below, Respondent's attorney is subject to a fine. See, Relief Section, below.

Chicago Housing Authority (CHA). One of the purposes of the HCVP is "aiding low-income families in obtaining a decent place to live and promoting economically mixed housing." *Id.* § 1437f (a). *Id.* pp. 3, 19-21.

4. "An HCVP participant is allowed to move with their HCV to a new unit with continued assistance from the HCVP. To move with continued assistance under the HCVP, the participant must notify the CHA and be issued a Request for Tenancy Approval (RTA), also known as "moving papers." Participants in the HCVP are allowed to request moving papers once a year. See, CHA, *Housing Choice Voucher Program Administrative Plan* §10-I.B., at 10-1-2. Moving papers will "expire approximately 90 days after they are issued." CHA, *HCV FAQs* at 5." Agreed Facts ¶¶ 21-23.

5. The HCVP requires the participant and prospective landlord to execute a minimum one-year lease. 24 C.F.R. § 982.309 (a)(1). For any lease, the PHA must "inspect the unit, determine whether the unit satisfies the HQS [Housing Quality Standards], and notify the family and owner of the determination." *Id.* § 982.305(b)(2)(i). There is no fee charged to either the owner of a prospective unit or the HCVP participant for an initial inspection. *Id.* § 982.405 (e)-(f). Agreed Facts, ¶¶ 24-26.

6. On June 25, 2020, Complainant received her RTA packet. Agreed Facts, ¶ 4.

7. Respondent owns an apartment located at 3535 W. Belmont Avenue, Chicago, Illinois 60618, with a coach house and at least one other unit for rent. Tr. pp. 95-96; Jt. Exh. B;[5] Agreed Facts, ¶¶ 4-6. Respondent listed the apartment for rent as residential real estate in Chicago, Illinois. *Id.* The listing on Apartments.com for 3535 W. Belmont included two units

[5] Hereinafter, Tr. will refer to the transcript of the hearing, followed by the page number. Exh. will refer to exhibits, followed by the exhibit designation; and Jt. Exh. will refer to joint exhibit, followed by the exhibit designation.

for rent: Unit 1, Studio, 1.5 baths, 1,000 sq. ft. for 12-month lease at $1,500 per month with $1,500 security deposit; and Unit 2, Studio, 1.5 baths, 1,300 sq. ft. for 12-month lease at $1,800 per month with $1,800 security deposit. Jt. Exh. B. The unit description stated, "The first floor of the coach house is a space that needs to be built out and finished; has 2 doors and a roll up garage door perfect for a studio art or workspace, central air conditioning and heat, stainless steel appliances, garbage disposal. That is why we require higher than normal credit scores, which results in a classier tenant and drama-free building where people treat others as they wish to be treated. My tenants are extremely intelligent and considerate. They treat others as they wish to be treated." *Id.* p. 3

8. Respondent stated that he sought tenants with higher-than-normal credit ratings, over 700, Tr. pp. 81-82; 92-93, and that he was looking for "classy tenants." Tr. p. 100. Complainant said she believed her credit ratings averaged about 600. Tr. pp. 52-53.

9. Respondent acknowledged that the ad (Jt. Exh. A) was for the unit that he was renting; however, he claimed that there was "something wrong" with the ad. Tr. p. 97. Respondent denied being responsible for placing the ad. Tr. pp. 103-04. He also claimed it was not the right ad.

10. On July 31, 2020, Complainant contacted Respondent through Hotpads.com, a rental property website, stating that she wanted to schedule a viewing for the coach house, and requesting that Respondent send more information. Tr. p. 4. At the time that Complainant inquired about the premises, the monthly rent was listed as $1,500, while Complainant's current rent was $1,588. Agreed Facts, ¶ 7; Tr. p. 16. Complainant did not pay any portion of the rent at her current housing, as her Housing Choice Voucher covered the entire rent. Tr. p. 16. Complainant stated that she became interested in the unit while viewing the photos in the ad. Tr. p. 46. Complainant also said that she wanted to move due to the living conditions in her

current apartment. The tenants were loud, she could hear everything going on below her apartment, and there was a lot of partying and "things like that." Tr. pp. 16-17.

11. Complainant stated that the noise and conditions around her current apartment caused her anxiety and stress, and it affected her a lot, often causing her to leave home. Complainant sometimes went to her mother's house when the neighbors were "partying or being loud," until she could calm herself down. Tr. p. 17.

12. Respondent scheduled an appointment for Complainant to view the 3535 W. Belmont apartment at noon on Sunday, August 2, 2020. Agreed Facts, ¶ 10. Complainant and Respondent exchanged text messages to confirm the appointment. Complainant sent Respondent a text message stating, "I would like to let you know that I would be using a Section 8 voucher to pay a portion of my rent." Agreed Facts, ¶ 11; Tr. pp. 22-24; Jt. Exh. 1.

13. Complainant testified that she wanted to let Respondent know that she was a Housing Choice Voucher holder because she did not want to get all the way to the apartment and spend money to get there on the bus, only to have Respondent tell her in person that he would not accept her Voucher. Tr. pp. 24-25.

14. Respondent responded to Complainant saying that currently, he was "not set up for Section 8." Jt. Exh. B.

15. Complainant texted Respondent a portion of the CCHR description of the Chicago Fair Housing Ordinance (Section 8 Vouchers and Source of Income Discrimination) to let him know that the statement he made to her could be considered discrimination [based on source of income] for using the Housing Choice Voucher. Tr. p. 25; Jt. Exh. 1.

16. Respondent responded that he understood inspections would be necessary. Tr. p. 25; Jt. Exh. 1.

17. Complainant stated that after Respondent acknowledged that the unit needed inspections, he did not respond any further to her or tell her that she could still attend the viewing. Tr. p. 24.

18. Complainant did not keep the appointment to view the apartment. Agreed Facts, ¶ 17. She testified that she believed it would be fruitless to make the trip to view the apartment because Respondent had stated that he understood that the apartment needed an inspection and that he believed the unit could not pass an inspection.

19. Respondent testified that he never told Complainant that she could not view the apartment or that she was not eligible to rent the unit because she was a Voucher holder. Complainant acknowledged that Respondent did not tell her that she could not view the apartment or that he would not give her an application. Tr. pp. 37, 86-87.

20. Respondent testified that he was making repairs to the building and unit in the hopes of making the unit available to Housing Choice Voucher holders. Respondent talked about having problems with the City of Chicago building inspector but did not provide timeframes. Respondent also said that he has been "working on" the building for 14 years. When he bought the building in 2008, there were problems with the gas disconnection because the previous owners were "not in compliance." Respondent stated that the pipe that supplied the drinking water to his unit was a lead pipe. Respondent states that he was able to replace most of the lead pipes. Tr. pp. 64-65.

21. Respondent testified that the building still had foundation issues; the building had multiple porches and the porches were "real bad," but that he fixed the porches shortly after Complainant inquired about renting the coach house. Respondent said that he is still in the process of bringing the building into compliance with the City of Chicago Building Code, "let alone CHA voucher ordinances which supersede the requirements of City of Chicago

ordinances." Tr. p. 65. Respondent stated that the building was "a mess and still is." *Id.* He testified that he believes the biggest problems are the foundation, a porch, and a parapet wall, none of which are in compliance with the Building Code. Tr. pp. 72-73.

22. Respondent stated that he has had experience with Section 8 voucher holders and that more than one has applied for one of his units. All of the voucher holders came to view the units, and one came to view the coach house. Tr. pp. 75-77. Respondent asserts that he has not yet rented to a Section 8 voucher holder, but he intends to. Tr. p. 79. Respondent states that he has taken the proactive step of having his cousin, who has a lot of units with Section 8 voucher tenants, to view Respondent's units and tell him what he needs to do to be compliant. Tr. pp. 79-80.

23. Complainant stated that when Respondent told her that his property was "not currently set up for Section 8 vouchers," she felt "the same as I felt previously, like upset and hurt because I'm not given a chance to even view a unit or even meet me in person to see my character." Complainant stated that she filed this Complaint "to stop potential landlords or to stop people from discriminating against people like me... people that have or is using a housing voucher to pay a portion of their rent." Tr. pp. 27-28.

24. Complainant stated that she wanted to move from her current living situation because of the living conditions, that her neighbors were so loud that she could hear "everything from below me, loud music, a lot of like partying..." Tr. p. 17. Complainant stated that the noise caused her anxiety and stress, and she lost sleep. Complainant claimed that the noise caused her so much anxiety that she would have to leave her home just to calm herself down. *Id.* She added that the noise even impaired her ability to perform her job, eventually causing her to be fired. *Id.* pp. 18, 51. Complainant further testified that she sought counseling and attended therapy sessions, but when asked, "Did your living situation, was

that a reason that you were seeking therapy?" Complainant responded, "Yes and no." She explained that she sought therapy because she "had noticed myself being different, like my moods and me being anxious a lot." *Id.* pp. 18-19.

III. CONCLUSIONS OF LAW

25. This case arises pursuant to the Chicago Fair Housing Ordinance, which provides, "[I]t shall be an unfair housing practice and unlawful for any owner, ..., managing agent, or other person, firm or corporation having the right to sell, rent, lease, sublease... to refuse to sell, lease or rent, any real estate for residential purposes within the City of Chicago because of the race, color,... source of income of the proposed buyer or renter." Chi.Muni.Code 5-8-030 (c).

26. Under the Code, "source of income" means the lawful manner by which an individual supports himself or herself and his or her dependents." *Id.* Section 2-160-020 (n). In addition, Rule 420.130 of the CCHR provides, "It is a violation of the FHO for a person to refuse to sell, rent or lease a dwelling to a person ... because of that person's membership in a Protected Class...." "Membership in one of the Protected Classes" means that a person is or has, or is perceived to be or have, one or more of the following: a particular race, color, sex, . . ., source of income ..." Rule 420.130; Chi.Muni.Code 2-160-020 (c) (24).

27. "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 (Mar. 17, 2004) (emphasis added). It is well established that Housing Choice/Section 8 Vouchers are considered a source of income. See, e.g., *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), *aff'd*, *Godinez v. Sullivan-Lackey et al.,* 815 N.E.2d 822 (Ill.App. 2004); *Rankin v. 6954 N. Sheridan, Inc., DLG Management*, et

al., CCHR 08-H-49 (Aug. 18. 2010) (the Commission found that a property manager refused to rent an apartment to a Section 8 voucher holder, stating that the owner did not accept Section 8 recipients); *Pilgram v. Elects Realty Champions LLC et al.,* CCHR No. 14-H-77 (Apr. 14, 2016); *Draft v. Jercich*, CCHR No. 05-H-20 (July 16, 2008); and *Shipp v. Wagner and Wagner, supra* (citing, *Smith, Torres & Walker v. Wilmette Real Estate & Mgmt. Co.,* CCHR Nos. 95-H-159 & 98-H-44/63 (Apr. 13, 1999).

28. The Commission has jurisdiction over this case given that the alleged violation occurred within the City of Chicago, and Complainant filed her Complaint within 300 days of the actions of which she complains.[6] Rule 210.110. At all times relevant, Respondent was a landlord leasing a unit in his building and was subject to the CFHO. Chi.Muni.Code 5-8-020.

29. A "complainant has the burden of proving her claim of discrimination by a preponderance of the evidence using either the direct or indirect methods of proof." *Shipp v. Wagner and Wagner,* CCHR No. 12-H-19, at 6 (July 16, 2014); see also, *Diaz v. Wykurz,* 07-H-28 (Dec. 16, 2009). "Under the direct evidence method in a fair housing case, a complainant may meet her burden of proof through credible evidence that the respondent directly stated or otherwise indicated that s/he would not offer housing to a person based on *a protected class*, such as having and intending to use a Section 8 voucher." *Shipp v. Chicago Realty Consulting Group, LLC d/b/a Keller Williams Realty*, CCHR No. 12-H-31 (Jan. 10, 2019), citing *Shipp, supra*. "Direct evidence is that which, if believed, will allow a finding of discrimination with no need to resort to inferences." *Id.* See also, *Richardson v. Boy Scouts of America,* CCHR No. 92-E-80 (Feb. 21, 1996); and *Matias v. Zachariah,* CCHR No. 95-H-11 0 (Sept. 18, 1996).

[6] In June 2022, the Chicago Fair Housing Ordinance was amended, extending the statute of limitations to 365 days.

30. Complainant strenuously argues that she has established by direct evidence that Respondent discriminated against her. Complainant argues that when she informed Respondent that she was a Housing Choice Voucher holder, he immediately responded by text that the unit "was not set up to accept Section 8 vouchers." Agreed Facts, ¶ 12. Further, when Complainant replied to Respondent to state, "Chicago's Fair Housing Ordinance prohibits discrimination against people who use a Section 8 Housing Choice Voucher as a source of income, which includes making statements such as, "Not set up for section 8," Jt. Exh. 2, Respondent only replied that he was told he "needed inspections." Agreed Facts, ¶ 14. Respondent's statements that his property was not set up for Section 8, and that he believed he could not pass an inspection, taken together with the fact that he knew that source of income discrimination violated the Chicago ordinance, may be seen as direct evidence of source of income discrimination. Tr. pp. 36-37; Jt. Exh. 1. See, e.g., *Rankin v. 6954 N. Sheridan, Inc. et. al.*, CCHR No. 08-H-49 (Aug. 18, 2010); and *Shipp v. Chicago Realty Consulting Group, supra.* Respondent cannot escape the ultimate conclusion – the statements made to Complainant were "[d]irect evidence...which, if believed, [allow for] a finding of discrimination with no need to resort to inferences." See, *e.g.*, *Shipp v. Wagner and Wagner, supra.*

31. Even assuming there was no direct evidence of discrimination, Complainant can prevail by using the indirect evidence method. Using the indirect method, Complainant must establish a *prima facie* case of housing discrimination. To do so, she must show that she 1) belongs to a protected class; 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 who were not members of her protected class.[7] *Shipp v. Wagner and Wagner, supra*, at 6.

[7] Respondent argues that Complainant cannot establish even a *prima facie* case of a CFHO violation because Respondent only stated, "We currently are not set up to accept Section 8 vouchers," and that *Complainant* did not follow through and schedule an appointment to view the unit. Resp. Post Hrg. Brief, p. 1. According to Respondent,

32. If Complainant relies on the indirect method of proof, she has made out a *prima facie* case of "source of income" discrimination. Complainant 1) is in a protected class – her source of income is a Housing Choice Voucher, and 2) was denied the opportunity to rent housing that was available. *Shipp v. Wagner and Wagner, supra.* More generally, Complainant has established by a preponderance of the evidence that sufficient facts exist to imply discrimination in the absence of a credible, non-discriminatory explanation for Respondent's actions." See, e.g., *Blakemore v. Treasure Island Foods et al.*, CCHR No. 10-P-50 (June 2, 2011).

33. There is no dispute that Complainant was in a protected class and that she was denied a rental opportunity when Respondent told her he needed an inspection and was not set up for Section 8 voucher holders. Agreed Facts, ¶¶ 12, 14.

34. Respondent's attempts to establish a legitimate non-discriminatory reason for his actions fail. Respondent's argument that he was in the process of repairing the unit [and, what was less clear, the building itself] misses the point. Respondent's concerns over the financial stresses of maintaining housing units for rent may be understandable. Tr., pp. 66-73. The Commission has previously recognized that a landlord might be able to demonstrate that, in individualized circumstances, renting to a Housing Choice Voucher recipient would be so burdensome as to constitute a legitimate, nondiscriminatory reason for rejecting the applicant. See e.g., *Sullivan-Lackey, supra* at 8 (footnote), citing, Attorney General v. Brown, 400 Mass. 826, 511 N.E.2d 1103 (Mass 1987). However, the circumstances under which the burden created by the Section 8 program requirements will rise to a level sufficient to excuse a

in order to establish discrimination, Complainant needed to show, but did not, that she was refused a viewing or an application, that she applied, and her application was rejected, or that she was qualified to rent the unit, and the owner refused to rent the unit based solely on her source of income. *Id.* p. 2. Respondent's formulation of the *prima facie* case is simply not accurate.

landlord's participation are limited. *Sullivan-Lackey, supra* at 9 (footnote), citing, *Smith et al. v. Wilmette Real Estate & Mgt. Co.* (*Smith II*), CCHR Nos. 95-H-159 & 98-H-44/63 (Oct. 6, 2000). In order for a landlord to demonstrate that the purported burdens created by the Section 8 program constitute a legitimate, nondiscriminatory reason justifying his or her refusal to participate, he or she must make a particularized showing that the burdens would be substantial as to him or her. *Smith II, supra.* Respondent has made no such showing here. Indeed, if the unit and building were in such a state of disrepair that Respondent was concerned that the building was in violation of the City of Chicago Building Code and could not pass a CHA inspection, one wonders why he believed he was offering the unit for rent to "high class" tenants, or to any tenant for that matter. There is nothing in the language of the ordinance to support that a landlord who is renting property can claim as a defense to discrimination that the housing needs repairs and cannot pass a City of Chicago inspection, much less a CHA inspection.

35. Respondent makes several other arguments,[8] but in the end, claims that he was indeed waiting for Complainant to show her the unit. Resp. Post Hrg.[9] Brief at 2. In determining the credibility of a witness at a hearing, the Commission considers a number of factors, including: (a) the witness's demeanor; (b) the clarity, certainty, and plausibility of the testimony; (c) whether the testimony has been impeached or contradicted by other testimony or documentary evidence; (d) whether the testimony has been corroborated by other testimony

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[8] Respondent appeared to argue that since there was some evidence that Complainant had filed other claims of discrimination, this Complaint should not be given the weight that the evidence merited. However, there is no bar against a complainant filing a complaint when she believes she has been discriminated against. Additionally, there is no caselaw which suggests that a complaint should be given less weight because the complainant has filed other complaints, unless that complainant has filed those complaints for an improper purpose. See, *e.g., Robinson v. Mercy Hospital et al.*, CCHR No. 12-P-03 (Jan. 30, 2012) (where the Commission dismissed the complaint after the complainant filed a third complaint against the same respondent while the other investigations remained pending); and *Robinson v. FedEx Office & Print Services, Inc.*, CCHR No. 16-P-22 (May 23, 2016) (where the Commission dismissed the complaint after determining it had been filed for the purpose of harassing the respondent).
[9] Hereinafter, "Hrg." denotes hearing.

and documentary evidence; and (e) the witness's interest or disinterest in the outcome of the proceedings. *Hodges v. Hua,* CCHR No. 06-H-11 (May 21, 2008) (citing cases). Respondent's testimony was unclear. He stated, "Me and my wife were cleaning the coach house, the courtyard while we were waiting for whoever was supposed to show up that day." Tr. p. 84. Respondent provided no evidence that he followed up with Complainant when she did not arrive to view the unit. The hearing officer found that Respondent's testimony simply was not credible.

36. Respondent's credibility was further placed in doubt as he tried to explain that there was a problem with the rental listing being posted because the unit was gutted. Tr. pp. 96-97. He stated, "I did not post this. I hope I wasn't drunk or something and made so many mistakes." *Id.* p. 98. Respondent admitted, in fact, that he had no Section 8 tenants.[10] And the ad – that the landlord desired "classy" tenants – is consistent with his testimony that he required higher than average credit scores.

37. Complainant's evidence was sufficient to show by a preponderance of the evidence that Respondent discriminated against her based on her source of income. *Blakemore, supra.* Accordingly, the Commission adopts the hearing officer's finding that Complainant has shown through indirect evidence that Respondent discriminated against her; thus, his actions violate the CFHO, and he is liable for discriminating against Complainant based on her source of income.

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[10] And, perhaps unintentionally, Respondent's counsel confused the matter by asking Respondent his views about race, because she said, "Race goes to character; the issue is discrimination." Tr. p. 103. Respondent's attempts to say that he would accept Section 8 tenants and implying he was racially discriminatory simply was not credible.

IV. RELIEF

Damages Sought

38. Complainant requested all relief available under law, including but not limited to, $1,056 in out-of-pocket damages, $6,000 in emotional distress damages, $10,000 in punitive damages, attorney fees and costs, and other relief as appropriate. Compl. Post Hrg. Brief, pp. 5-10.

39. Upon determining that a violation of the CFHO has occurred, the Commission may award relief which "may include but is not limited to: an order to cease the illegal conduct complained of; to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of the respondent; to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs incurred in pursuing the complaint before the commission or at any stage of judicial review; and to take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages and back pay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapters 2-160 and 5-8. Chi.Muni.Code, 2-120-510 (l).

40. While the Commission's Board of Commissioners must adopt the hearing officer's factual findings unless they are contrary to the evidence presented, in making the final ruling the Board has the authority to adopt, reject or modify the hearing officer's recommendations. *Wiles v. The Woodlawn Org. et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

Out-of-Pocket Damages

41. It is not clear what, if any, out-of-pocket damages Complainant incurred. Complainant contends that she lost the opportunity to rent Respondent's "newly renovated coach house for $1,500 per month, but she paid $1,588 per month for her [current] noisy apartment just over a mile away." Compare 2328 N Lawndale Ave 2nd Floor Chicago, IL 60647 with 3535 W. Belmont Avenue, Chicago, Illinois 60618." Compl. Post Hrg. Brief, pp. 5-6. Complainant's calculations may be correct; however, she offered no evidence to support the amount of rent she actually paid (versus the portion of rent covered by her Housing Choice Voucher, which may have covered the entire rent). Complainant acknowledged that she had no income during the relevant time period and did not pay any portion of her rent, Tr. p. 52, further supporting the conclusion that she did not sustain out-of-pocket damages.[11]

42. For these reasons, the Commission agrees with the hearing officer's finding that Complainant failed to present sufficient evidence to support her claim for out-of-pocket damages.

Emotional Distress Damages

43. Emotional distress damages are generally recoverable in a housing discrimination case. See, Chi.Muni.Code 2-120-510 (l). The Commission considers the following factors to determine the amount of emotional distress damages to award to a prevailing complainant: the length of time the complainant experienced emotional distress; the severity of the distress; the vulnerability of the complainant; and the duration of the underlying discrimination. *Hutchison v. Iftekaruddin,* CCHR No. 08-H-21 (Feb. 17, 2010), citing *Rogers v. Diaz*, CCHR

[11] Complainant was unclear about whether losing her job due to the alleged stress caused by her current living environment was connected to her source of income claim. She testified on direct examination that she had a hard time fulfilling her work obligations because the noise at her current apartment was distracting, and she was unable to perform her job duties appropriately. Tr. pp. 49, 50-51. Complainant later stated that she started work in September 2020, after the incident at issue. *Id.* p. 51.

No. 01-H-33/34 (Apr. 17, 2002). Compensatory damages include damages for embarrassment, humiliation, and emotional distress caused by discrimination. *Nash and Demby v. Sallas Realty, et al.*, CCHR No. 92-H-128 at p. 20 (May 17, 1995). Moreover, as the Commission stated in *Sercye v. Reppen et al.,* CCHR No. 08-H-42 (Oct. 21, 2009), "Because of the difficulty in evaluating the emotional injuries which result from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries. Humiliation can be inferred from the circumstances as well as established by testimony." *Id.* Emotional distress damages may be proved solely by the testimony of the complainant without medical evidence. See, e. g., *Figueroa v. Fell*, CCHR No. 97-H-5 (Oct. 21, 1998); *Soria v. Kern*, 95-H-13 (July 17, 1996); and *Nash and Demby*, *supra.*

44. Complainant seeks an award of $6,000 in emotional distress damages, based on the argument that she was "fragile and vulnerable" to the effects of being discriminated against. Complainant credibly testified that Respondent's discriminatory conduct negatively affected her, and her distress was evident throughout the hearing. However, Complainant did not offer documentation to support her claim.[12] Complainant's testimony was unclear. It appeared that she saw a therapist sometime after the events here, but for reasons only some of which were attributable to the claimed discrimination; others were due to "personal reasons."

45. The Commission agrees with the hearing officer's recommendation of an award of $1,500 in emotional distress damages. This figure is consistent with other Commission cases, although less than the amount Complainant is seeking. See, e.g., *Hutchison, supra* (where the Commission awarded $2,500 in emotional distress damages where the incident was discrete and the emotional distress was not due solely to the respondent's conduct); and

[12] Indeed, the parties disputed whether Complainant had produced any medical records (Complainant's counsel stated that a document was produced in discovery, and offered as an exhibit in the pre-hearing memorandum, but not offered into evidence at hearing; Respondent claimed that no record was produced during discovery). Tr. pp. 54-57.

Cotten v. Top Notch Beefburger, Inc., CCHR No. 09-P-31 (Feb. 16, 2011) (where the Commission awarded $500, less than what was sought by the complainant, finding that while the complainant's description of his emotional distress was not specific enough, he did prove that he experienced some level of emotional distress).

Reasonable Attorney Fees and Costs

46. Section 2-120-510 (1) of the Chicago Municipal Code allows the Commission to order a respondent to pay a prevailing complainant's reasonable attorney fees and associated costs. The Commission has routinely found that prevailing complainants are entitled to such an order. *Brown v. Nguyen et al.*, CCHR No. 15-H-07 (Jan. 12, 2017).

47. Complainant seeks attorney fees and costs in an amount to be determined in accordance with Commission Rule 240.639. Pre Hrg. Memorandum, p. 15. Complainant's attorneys ably represented her throughout the hearing process. Complainant should be awarded her reasonable attorney fees and costs, upon satisfactory proof of same.

Punitive Damages

48. Complainant is also seeking $10,000 in punitive damages. Compl. Post Hrg. Brief., pp. 13-14.

49. "The purpose of an award of punitive damages in these kinds of cases is 'to punish . . . his outrageous conduct and to deter him and others like him from similar conduct in the future.'" *Rankin v. 6954 N. Sheridan, Inc.*, CCHR No. 08-H-49, at 19 (Aug. 18, 2010) (citing, *Horn Houck v. Inner City Horticultural Foundation*, CCHR No 97-E-93, quoting *Smith v. Wade*, 461 U.S. at 54; COL #13"). "In considering how much to award in punitive damages where they are appropriate, 'the Commission also looks to a respondent's history of discrimination, *any attempts to cover up, and the respondent's attitude towards the judicial process*.'" *Id.* (emphasis added).

50. Complainant contends that this substantial award in punitive damages is justified because given the length of time the ordinance has been in place and Respondent's experience as a housing provider going back to 2008, he should have been aware of Chicago's anti-discrimination laws. Complainant also cites Respondent's attorney's difficulties in conforming to the requirements of various orders issued during the judicial process, as well as to the Commission's rules.

51. Complainant further argued that this Commission should consider that inflation has significantly increased in recent years; therefore, awards of punitive damages should be increased accordingly. Compl. Post Hrg. Brief, at 8.

52. Respondent's testimony was troubling. Even on cross examination, he sought to justify his statements regarding the need for inspections and gave no indication that he understood that he could be violating the CFHO. As noted above, Respondent's decision was clearly based on his unilateral determination that the unit could not pass the required inspection.[13] On the other hand, there was no evidence that Respondent repeatedly violated the CFHO (although his attitude towards the Chicago Building Code was distressing) and there were no other indicia of evidence that justifies a large award.

53. The Commission finds that the hearing officer's recommendation of $1,500 in punitive damages is appropriate.

Interest

54. Pursuant to Section 2-120-510 (1), the Commission may award interest on a complainant's actual damages. Rule 240.700 provides for an award of pre- and post-judgment

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[13] It is disconcerting that if it was true that the unit was in as poor a condition as Respondent claimed that he was still in the process of offering the unit for rent.

interest at the prime rate, adjusted quarterly, and compounded annually starting from the date of the violation.

55. Complainant is entitled to pre- and post-judgment interest on the emotional distress damages, and post-judgment interest on the punitive damages. *Edwards v. Larkin,* CCHR No. 01-H-35 (Feb. 23, 2005).

Fines

56. The CFHO provides that any covered party found in violation shall be punished by a fine up to $1,000 per violation. Chi.Muni.Code 5-8-130.

57. The Commission finds that Respondent was dismissive of Complainant and the Chicago Fair Housing Ordinance, and refused to take responsibility for his actions. Accordingly, the Commission modifies the hearing officer's recommendation of a fine against Respondent Mark Pasieka in the amount of $500, and increases the fine to $1,000.

58. In addition, the Commission agrees with the hearing officer that a fine be assessed against Respondent's attorney. The hearing officer declined to strike Respondent's pre-hearing memorandum or post-hearing brief although both were received late and without a motion for extension of time or excuse for the delay. Throughout this proceeding, Respondent's counsel was at best careless, and at worst, intentionally ignoring CCHR rules, regulations and orders. Counsel was cautioned on several occasions of the consequences that Respondent and/or his counsel could incur for failure to comply with a Commission or hearing officer order. See, e.g., Orders of November 1, 2022, and January 17, 2023. Rule 235.440 provides that monetary sanctions may be imposed on an attorney…if the attorney's conduct contributed to the procedural noncompliance. See, e.g., *Flores v. A Taste of Heaven et al.,* CCHR No. 06-E-32 (Jan. 29, 2009); and *Cotten v. Congress Plaza Hotel,* CCHR No. 06-P-69 (Oct. 6, 2009).

59. Respondent's counsel's failure to timely comply with Orders and to follow the rules and regulations of the Commission resulted in several delays and inconveniences to Complainant, her attorneys, the Commission, and the hearing officer. Accordingly, the Commission assesses a fine against Respondent's counsel in the amount of $250.

V. OBJECTIONS AND REQUESTS FOR REVIEW

60. Commission Rule 240.610 (b) provides that each party is permitted to file objections to a hearing officer's recommended ruling. The Rule further provides that objections 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.

61. Respondent properly filed objections to the hearing officer's recommended decision, citing four main arguments: (1) Complainant failed to show that Respondent acted with discriminatory intent; (2) Complainant's actions indicate that she did not intend to rent the unit; (3) Complainant's testimony conflicts with her alleged intent [to rent Respondent's unit]; and (4) Complainant failed to prove any damages.

62. Respondent argues that discriminatory intent cannot be inferred from Respondent's brief exchange with Complainant regarding the available unit. Respondent states that Complainant cannot show that he refused to allow her to view or apply for the unit. Respondent further argues that Complainant's failure to move forward to view and apply for the unit demonstrates that she had no intention of renting the unit. Respondent states that his statement to Complainant that the unit was "not set up for Section 8" is not sufficient evidence to establish a cause of action for discrimination. Respondent also argues that Complainant testified that she needed to move from her current housing because the

environment caused her anxiety; however, Complainant never moved from that housing, in direct contradiction with her testimony. Further, Respondent asserts that the hearing officer erred in recommending damages because Complainant never proved any damages for emotional distress. Finally, Respondent argues that his conduct during the brief encounter with Complainant did not warrant an award of punitive damages, as there was no evidence that his conduct was egregious.

63. In reviewing a party's objections to the hearing officer's [] Recommended Decision, [the Commission] shall not simply reweigh the credibility of witnesses or other evidence unless the recommendation is against the manifest weight of the evidence. See, e.g., *Flax-Jeter v. Chicago Dept. of Aviation,* CCHR No.91-E-146 (June 15, 1994); and *Reid v. F.J. Williams Realty et al.,* CCHR No. 93-H-42 (Feb. 22, 1995). See also, *Bosh v. CAN et al.,* CCHR No. 92-E-83 (Apr. 19, 1995) (objections are generally not granted when no new arguments are raised); and *Hall v. Becovic,* CCHR No. 94-H-39 (June 21, 1995) (the Commission will not sustain objections which merely reargue what was presented at hearing, unless it finds the recommended decision contrary to the manifest weight of the evidence). Objections will not cause a change in a recommended order unless new and material facts are asserted, clearly erroneous findings are made, errors of law are made, or conflicts exist with Commission precedent. *Bosh v. CHA et al.,* CCHR No. 92-E-83 (Apr. 19, 1995). In his objections, Respondent reasserts his previous arguments. He fails to show how the hearing officer's credibility assessments and statements of fact are against the manifest weight of the evidence. Respondent's objections do not present new and material facts, clearly erroneous findings, errors of law, or conflicts with Commission precedent.

VI. SUMMARY AND CONCLUSION

In conclusion, the Commission rules that Complainant has established a claim of

discrimination based on source of income, the use of a Section 8 Housing Choice Voucher, and finds Respondent liable for source of income discrimination in violation of the CFHO. As detailed above, the following relief is ordered:

a. Make payment to Complainant of $1,500 in emotional distress damages;

b. Make payment to Complainant of $1,500 in punitive damages;

c. Make payment to Complainant of pre- and post-judgment interest on the emotional distress damages from the date of the violation, July 31, 2020;

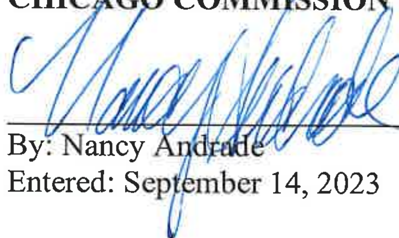
d. Make payment to Complainant of post-judgment interest on the punitive damages;

e. Reasonable attorney fees and costs;

f. Respondent Mark Pasieka to make payment to the City of Chicago of a fine in the amount of $1,000;

g. Respondent's attorney, Izabella Bielinska, to make payment to the City of Chicago of a fine in the amount of $250.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Nancy Andrade
Entered: September 14, 2023