

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

IN THE MATTER OF

Paulette Cunningham on behalf of Felton)	
Cunningham (deceased))	
COMPLAINANT,)	Case No. 01-H-36
AND)	
)	Date of Order: March 19, 2008
Linh Bui and Quyen Phan)	Date Mailed: March 24, 2008
RESPONDENTS.)	

FINAL ORDER

TO:	Damien Ortiz	Thanh Phan and Ngoc Phan
	John Marshall Law School	1442 W. Argyle St.
	Fair Housing Legal Clinic	Chicago, Il. 60640
	28 E. Jackson, Ste. 500	
	Chicago, Il. 60604	

YOU ARE HEREBY NOTIFIED that, on March 19, 2008, the Chicago Commission on Human Relations issued a ruling in favor of Respondents in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(14) and 250.150, Complainant may seek 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
Dana V. Starks, Chair and Commissioner

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FINAL RULING ON LIABILITY

Complainant Paulette Cunningham (“Complainant” or “Ms. Cunningham”) filed an amended complaint with the Chicago Commission on Human Relations (“the Commission” or “CCHR”) on behalf of her deceased son Felton Cunningham (“Mr. Cunningham”) alleging that he had been denied the opportunity to rent an apartment from Respondents, Linh Bui and Quyen Phan, due to his parental status and his race, African-American, in violation of Chapter 5-8-030 of the Chicago Fair Housing Ordinance (“CFHO” or “Ordinance”).¹ Respondents in their Verified Response denied that Mr. Cunningham was denied an apartment due to either his parental status or his race.

After an investigation, the Commission found substantial evidence that the Ordinance had been violated and ordered conciliation. When that proved unsuccessful, the case was set for Administrative Hearing and assigned to a Hearing Officer. An Administrative Hearing was held on October 30 and 31, 2006, with prior notice given to all parties. Complainant and her counsel appeared as did Respondents, who were represented by their children, Thanh Phan and Ngoc Phan. A Vietnamese interpreter was present and translated the testimony of Respondent Linh Bui from Vietnamese into English and questions to her from English to Vietnamese. The interpreter also assisted Respondents with translation during the course of the hearing. Based on the evidence introduced at that hearing, the Hearing Officer made recommended Findings of Fact and Conclusions of Law.²

After the first proposed recommended decision and order, Complainant timely filed objections. Respondents timely filed a response. Complainant’s objections are discussed in this ruling.³

¹ The original Complaint was filed by Mr. Cunningham in April 2001 and claimed discrimination based on parental status only. It was amended on August 13, 2001 to substitute Ms. Cunningham for Mr. Cunningham due to his death. This First Amended Complaint continued to list parental status as the only basis of discrimination. On December 18, 2002, Ms. Cunningham filed the Second Amended Complaint listing parental status and race as the claimed bases of discrimination.

² Tr. means transcript. C. Ex. means Complainant’s Exhibit. R. Ex. means Respondent’s Exhibit. H. Ex. means Hearing Officer’s Exhibit.

³ As a result of responses to Complainant’s Objections, the first proposed Finding of Fact #7 was split into two, thus adding one numbered paragraph to the Findings of Fact in the Final Recommended Decision. In

FINDINGS OF FACT

1. Felton Cunningham was an African American male with five and three year old sons. He and his sons moved into the Salvation Army shelter on Lawrence and Lakeshore Drive in Chicago sometime shortly before June, 2000. During the time he lived in the shelter until February 2001, he was working and attending culinary school at Kennedy King on the South Side of Chicago and succeeding in building a good life for himself and his children. He had a relationship with a female resident of the shelter, Marla Brackett Alrabadi and they were taking care of both sets of children. [Tr. 105-6, 134, 148-49, 273-4]
2. Respondents Linh Bui and Queyen Phan are Vietnamese immigrants who owned a multi-unit residential building at 1442 W. Argyle in Chicago, Illinois. They operated a nearby restaurant from 1990-2002. [Tr. 21-2, 28]
3. At the shelter, where Felton Cunningham and his children stayed during 2000 until approximately March 2001, residents were expected to comply with strict rules that included an evening curfew, working or attempting to work and/or being in school and keeping free from drugs (with drug testing). Mr. Cunningham had complied with those rules during his stay at the shelter. Residents had to make plans to find their own place to live. They could obtain rental assistance from Catholic Charities. [Tr. 109-10]
4. Mr. Cunningham was attempting to find an apartment by looking at ads in the newspapers. He had to stay within a budget for his rental assistance to work. Monthly rent of \$600 was within that budget. He saw a *Chicago Reader* advertisement from Respondents for an apartment at 1442 N. Argyle. That ad indicated that it was a two-bedroom completely renovated unit with one bathroom for \$600 but did not say that the unit had no kitchen. [C. Ex. 1; Tr. 35-6,120-01, 125]
5. Mr. Cunningham called Respondent Bui about the apartment at 1442 W. Argyle. Two different versions of what happened during and after that telephone call exist based on the allegations of the Complaint and the Commission's Jurisdictional Checklist [R. Ex. X] on the one hand and Marla Brackett Alrabadi's testimony on the other hand.
6. The Complaint in this case, which was signed under oath by Mr. Cunningham (and both Amended Complaints adopt these allegations), alleges that he saw an ad in the *Reader* for the apartment at 1442 W. Argyle, called the listed number, and spoke to Lynn, who said she had a two-bedroom apartment for rent. In the Complaint, Mr. Cunningham alleges that he informed Lynn in that conversation that he was interested in the apartment and that he was a single parent with two children, at which point Lynn said she was looking for a single person with no children. [Complaint, ¶¶3-4] That is consistent with the statements contained in the Jurisdictional Checklist. [R. Ex. X]⁴ Neither the Complaint nor Mr. Cunningham's

addition, Complainant moved to strike the portions of Respondents' response to her objections that relied on new material not admitted at the hearing. The Hearing Officer granted that motion and did not rely on any such information in his recommended Findings of Fact.

⁴ The statement in the Jurisdictional Checklist is as follows: "When I spoke with this woman named Lynn at the phone number which was given.... I told her that I was a single parent with two children looking for a two bedroom apartment, she told me they did not want any children living in the apartment." [R. Ex. X at p. 1, #6].

statements in the Commission's Jurisdictional Checklist make any reference to Mr. Cunningham personally visiting the unit and having Respondent Bui state that she wanted someone single to rent the unit. The Complaint filled out by Mr. Cunningham for the John Marshall Law School Fair Housing Legal Clinic similarly does not state that Mr. Cunningham personally visited the unit. [Complaint, C. Ex. 5 at p. 5; R. Ex. X]

7. On the other hand, Ms. Brackett Alrabadi testified that she, Mr. Cunningham, and his children visited the unit⁵ and were told by the woman there that she wanted only one person to rent it. [Tr. 119-20] She testified that she had heard Mr. Cunningham call about this and other units. [Tr. 111-20, 145] In responding to a question about what he said in his telephone conversation about Respondents' unit, Ms. Brackett Alrabadi testified that he said he was interested in the apartment, that he would like to see it, and that tomorrow was fine. [Tr. 145] She did not testify that there was any mention by him of his having any children, which contradicts the allegations in the Complaint and the Jurisdictional Checklist. [Compare Complaint, ¶¶3-4, Ex. 5 at p. 5; R. Ex. X with Tr. 145]
8. Ms. Brackett Alrabadi testified that at the building, Mr. Cunningham spoke to a Vietnamese woman who, when she saw them and his children, started saying, "No, no, no." Ms. Brackett Alrabadi said that Mr. Cunningham responded by saying that he had made an appointment. But the woman said, "You do by yourself." He responded by telling her that, when he had spoken to her earlier by telephone, he had told her he had two sons. But the woman kept repeating, "Single, single." He argued with her and they left. He did not see the apartment. [Tr. 119-20].⁶
9. Ms. Alrabadi said Mr. Cunningham was frustrated because he had a difficult time finding an apartment within his price range on the north side near the excellent school his children were attending. She also said he wanted an apartment where he could make breakfast and other meals for himself and his children. [Tr. 122-23, 154].
10. Mr. Cunningham found an apartment at 38th and King Drive on the south side of Chicago that had two bedrooms and a kitchen with appliances. He moved there in February 2001. His children remained in their same school. After school his sister, who lived on the north side, picked them up and took them to Ms. Cunningham's house on the south side, where he picked them after he was finished for the day at Kennedy-King College. Ms. Alrabadi moved into the same building about one month later. Frequently she prepared meals for his children. Mr. Cunningham died in May 2001. [Tr. 148-49, 153-57, 275]

⁵ Based on the original Complaint, the Commission finds that this visit occurred on or about January 17, 2001.

⁶ The Hearing Officer did not credit Ms. Brackett Alrabadi's testimony because it was inconsistent with Mr. Cunningham's written statements and lacked credibility due to its own internal inconsistencies and problems including that Ms. Brackett Alrabadi identified the Vietnamese translator instead of Respondent Bui as the person she saw at the apartment. The Hearing Officer observed that although both women are Vietnamese, they have a different appearance. [Tr. 135-36, 160-01] Ms. Brackett Alrabadi also could not name the street where the apartment was located until she had the address put in front of her. [Tr. 156-7]

11. Mr. Cunningham was referred to the John Marshall Law School Fair Housing Legal Clinic by Frank Cade, who knew Mr. Cunningham because he worked for Catholic Charities and was assisting Mr. Cunningham obtain financial assistance. [Tr. 215, C. Ex. 5 at p. 5] Prior to the referral, Mr. Cade called the phone number listed in the *Reader* ad for 1442 W. Argyle and spoke to Respondent Bui. He was asked by Bui whether only he would be living in the unit. After he said yes, he was told that he could come to see it. After the referral, Mr. Cade was assigned by Lillian Seymore, who is in charge of testing at the Clinic, to complete his test. Mr. Cade had already been trained as a tester for the Clinic. He completed the test that he had begun by going to visit the unit. When he got there on February 3, 2001, Ms. Bui told him that it was not ready and she needed to finish the apartment. [Tr. 176, 215-19; C. Ex. 5 at pp. 8-9]⁷
12. Lillian Seymore, who is in charge of testing at the John Marshall Clinic, assigned Patrick Ingram, who is African American and employed as a truck driver, to conduct a test at 1442 W. Argyle posing as a single African-American father with a higher salary and more time on the job than Mr. Cunningham. Mr. Ingram was unsuccessful reaching Respondents over the telephone, so he went to the apartment. He rang the first floor bell but there was no answer. He saw a light on the second floor and rang that bell. A man answered the bell and told him Respondent Linh was not home. When Mr. Ingram persisted in asking about the apartment, the person living on the second floor told him the basement apartment had been rented. [Tr. 252-60]
13. That man was Theodore Weddell, a tenant of Respondents who worked as the building handyman. A few weeks earlier, Ms. Bui had asked him to unclog her sink. That caused him to go to the basement. After he was down there, he told her that she should not rent the apartment because it was not a legal apartment in that the bedrooms had no windows, there was only one means of egress, and there was no kitchen.⁸ He admitted telling someone who came to view the apartment a fact he knew not to be true, namely that the apartment had been rented. She said he did that because it was more likely to end the inquiry. Mr. Weddell was not authorized to act on Respondent's behalf in telling Mr. Ingram that the apartment had been rented. [Tr. 72-4, 391-405]
14. Ms. Seymore acknowledged that Mr. Cade had a stake in Mr. Cunningham's obtaining an apartment because, as a function of his employment with Catholic Charities, Mr. Cade was assisting Mr. Cunningham to obtain financial assistance. Ms. Seymore believed that, despite some discrepancies on the form he filled out, Mr. Cade had made the call to Respondents before he had been assigned as a tester by Ms. Seymore. She said it was not uncommon for someone to be assigned to complete a test that had already been initiated before a referral

⁷ All of what happened when Mr. Cade called Respondents and when he visited 1442 W. Argyle is based on Mr. Cade's completion of a test narrative that is contained in the John Marshall Clinic's file relating to Mr. Cunningham. It was admitted without objection from Respondents. [Tr. 246-47] As such, there is no hearsay objection to this evidence even though Mr. Cade did not testify due to his death prior to the hearing.

⁸ This statement was not allowed into evidence as an expert opinion or for the truth of the matter asserted but rather as evidence that Ms. Bui had been given this information by Mr. Weddell. [Tr. 394-97]

was made to the Clinic. She acknowledged that the facts that Mr. Cade already knew Mr. Cunningham and had some stake in the outcome had the potential to affect Mr. Cade's credibility. [Tr. 215-20]

15. Ms. Seymore acknowledged that the test showed that parental status was not the cause of Mr. Cunningham's not getting the apartment, in that neither tester—the one posing as a parent or the one posing as a single male—had been able to see the apartment or rent it. The Clinic attorneys did not ask her to do a test based on race, even though Mr. Cunningham and both testers were African-American. [Tr. 221-3]
16. At least one bedroom in the basement apartment at 1442 W. Argyle did not have windows, which would violate of the City's building code if someone was inhabiting that unit. When the Commission's investigator saw the unit, it was vacant, not available for rent, and appeared to have no kitchen. [Tr. 85-6, 99-102]
17. Respondent Bui submitted a Verified Response that she signed in the presence of a notary public. In that Verified Response she stated:

2. Respondent lacks sufficient knowledge to answer the allegation that she is looking for a single person with no children. The respondent has impairment in English to sufficiently answer the question. She wanted one person for the apartment because the apartment is approximately 600 square feet of space with a bath, 2 bedrooms with no windows, and a no kitchen. [*sic.*]

[Verified Response at ¶2]. The Verified Response also contains the statement that Respondents did not discriminate on the basis of parental status. [Verified Response at ¶4]

18. Respondent Bui maintained that she spoke in Vietnamese to her daughter who, despite having some difficulty in understanding Vietnamese, translated what she was saying into English. She testified that what she wanted to communicate was that, while she preferred a single person, she would have accepted someone with children who could pay the deposit. [Tr. 64-5] However, she did not rent the basement apartment to anyone because she had been told by her tenant, Ted Weddell, that it was unsuitable. [Tr. 70-3]
19. Based on his observations at the hearing, the Hearing Officer found that Ms. Bui understands a fair bit of English based on her answering questions with a short yes or no before they were translated, but that she does not speak much English. The investigator in this case also noted that when she interviewed Ms. Bui, her son had to interpret for her. In situations where she is not speaking in Vietnamese and is confronted with persons speaking to her in English about difficult matters, Ms. Bui was observed by the Hearing Officer to be impatient and very assertive in a way that certainly could have been regarded as insensitive communications by someone who did not know her. [Tr. e.g. 29-30,70, 73, 76, 98-9]

CONCLUSIONS OF LAW

1. The Chicago Fair Housing Ordinance provides in pertinent part, at Section 5-08-030, Chicago Municipal Code, 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:....

B. To publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, sign or other writing of any kind relating to the sale rental or leasing of any residential property within the City of Chicago which will indicate or express any limitation or discrimination in the sale, rental or leasing of such residential real estate, predicated upon race, color, ... parental status,... of any prospective buyer, lessee or renter of such property.

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, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.

2. Section 420.120 of the Rules and Regulations of the Chicago Commission on Human Relations provides in pertinent part as follows:

It is a violation of the FHO to cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any actual or intended preference, limitation or discrimination because of a person's membership in one of the protected classes.

- a) The prohibition shall apply to all written or oral notices, statements or advertisements by any...person...having the right to sell, ret, lease or sublease any housing accommodation or any agent of these....
- b) Discriminatory notices, statements and advertisements include, but are not limited to, the following:
 - 1) Using words, phrases, photographs, illustrations, symbols or forms which would convey or suggest to a reasonable person any preference, limitation or discrimination regarding the availability of a dwelling based on membership in a Protected Class:

- 2) Expressing to persons such as brokers, salespersons, employees, prospective sellers or renters any preference, limitation or discrimination regarding any person because of that person's membership in a Protected Class.
3. Section 420.130 of the Rules and Regulations of the Chicago Commission on Human Relations provides in pertinent part as follows:

It is a violation of the FHO for a person to refuse to sell or lease a dwelling to a person or to refuse to negotiate with a person for the sale or lease of a dwelling because of that person's membership in a Protected Class. Such prohibited actions include, but are not limited to:....

 - b) Failing to sell, rent, or lease a dwelling to, or failing to negotiate for the sale, rental or leasing of a dwelling with any person because of the person's membership in a Protected Class.
4. Pursuant to Section 5-08-040 of the CFHO and Section 2-160-020 of the Chicago Human Rights Ordinance, the term "parental status" means "the status of living with one or more dependent minor or disabled children."
5. To prove the claim that Felton Cunningham was denied the opportunity to view and rent the basement apartment at 1442 W. Argyle in Chicago because of his parental status or race, Complainant must show that this denial was caused by intentional discrimination based on either status. *Akangbe v. 1428 West Fargo Condominium Association*, CCHR No. 91-FHO-7-5595 (March 25, 1992) at 13. That means that the discrimination must be shown to be purposeful rather than accidental. *Id.* See also *King v. Houston/Taylor*, CCHR No. 92-H-162 (March 16, 1994).
6. When a complainant seeks to prove a disparate treatment discrimination claim by direct evidence, the issues are whether the direct evidence is credible and if so, whether it has resulted in an actionable claim. *Collins and Ali v. Magdenowski*, CCHR No. 91-FHO-70-5655 at 20-21, 23-24 (Sept. 16, 1992); *Pinchback v. Armistead Home Corp.*, 907 F.2d 1447,1452 (4th Cir. 1990); and *King v. Houston/Taylor, supra*.
7. Complainant failed to prove by a preponderance of the evidence that Respondents failed to let Mr. Cunningham see or rent the basement apartment and told him that they would not rent to someone with children. The evidence was too contradictory to support the conclusion that Respondents said the apartment was not available to someone who had children. Respondent refused to let a tester claiming to be single see the apartment. Shortly after it was advertised for rent, it was taken off the market because Respondents had questions about whether it could be legally rented.
8. To establish a *prima facie* case of race discrimination based on refusal to rent, the evidence must show that: (1) the complainant was a member of a group protected by the Chicago Fair Housing Ordinance; (2) the complainant applied for and was qualified to rent the housing

unit in question; (3) the complainant was rejected as a tenant; (4) the housing unit remained available to rent thereafter (or was rented to someone not of the complainant's race). *Ojukwu v. Baum Management*, CCHR No. 91-FHO-74-5659 (Nov. 19, 1992); *Campbell v. Dearborn Parkway Realty*, CCHR No. 92-H-154 (May 6, 1993).

9. Complainant cannot establish a *prima facie* case of race discrimination relating to Mr. Cunningham's inability to rent Respondents' basement apartment because Complainant cannot meet the fourth prong of this *prima facie* standard. [FOF #19].
10. When Mr. Weddell communicated with tester Patrick Ingram at 1442 W. Argyle, he had no authority from Respondents to say anything about the availability of the basement apartment and hence was not acting as Respondents' agent. *Toledo V. Brancato*, CCHR No. 95-H-122 (July 9, 1997); *Gallegos v. Baird & Warner*, CCHR No. 01-H-21 (Jan. 18, 2002).

DISCUSSION

The Commission fully agrees with the Hearing Officer that this is a sad case. Felton Cunningham had accomplished a great deal in his nine-month stay at the Salvation Army shelter on the north side of Chicago. He had become employed and was attending culinary school. He had a close relationship with his two sons, who were in a very good school near the shelter. He had established a close relationship with a woman who was also in the shelter. Together they were looking out for each other and caring for both sets of their children. [Findings of Fact ("FOF") #1, 3, 9]

To continue his efforts to build a good life for himself and his children, he needed to find an apartment within a strict budget. Then he saw an advertisement in the *Chicago Reader* for a two bedroom apartment near his children's school at exactly the right price, only to be rejected when he attempted to see and/or rent the apartment. Less than four months later he was dead. [FOF #3-8].

The perfect apartment that the advertisement seemed to present was not real; it was a mirage. It was a two bedroom basement apartment with low ceilings and no windows in at least one of the bedrooms, a violation of the City building code. Worse, it did not have a kitchen, so there was no way for Mr. Cunningham to make breakfast in the morning or other meals to share with his children. In fact, shortly after the ad was placed, the apartment was taken off the market because Respondents had been told it was not a legal apartment due to the lack of windows in the bedroom. It has never been rented. [FOF ##4-5, 7, 10, 13, 16, 19]

Complainant cannot prevail in this case because of the above facts and problems with the evidence, in part due to the deaths of Felton Cunningham and tester Frank Cade. There is no consistent evidence about what happened after Mr. Cunningham saw Respondents' *Reader* advertisement. His own statements contained in the Complaint and the Commission's Jurisdictional Checklist contend that he called Respondent Bui only to be told that she did not want children living in the apartment. However, Ms. Brackett Alrabadi's testimony about that conversation makes no reference to Mr. Cunningham referring to his children in his call with Ms. Bui. In fact, in recounting what happened at the alleged visit of the unit, she testified that Mr. Cunningham said he had mentioned the children in the telephone call but was told to come look at the unit. [FOF ##7-9].

Unlike Mr. Cunningham's statement, Ms. Brackett Alrabadi testified that the two of them and the children went to the apartment, where they heard Ms. Bui say words to the effect that she only wanted a single person living in the unit. However, she did not identify Ms. Bui as the person she saw that day, but instead identified the Vietnamese interpreter at the hearing. [FOF ##7-9] She could not remember what street she had gone to until reminded. She did not know where on the north side Respondents' building was located. [FOF ##8-9; Tr. 111-45] In summation, the Hearing Officer could not credit Ms. Brackett Alrabadi's testimony on this point, because it contradicts the only statements we have from Mr. Cunningham, is self-contradictory, shows a lack of memory, and was incorrect on the important point of identifying Respondent Bui. [FOF ##7-9]

Complainant in her objections attempts to salvage this situation in two ways. First she faults the Hearing Officer for focusing on one piece of the problem, Ms. Brackett Alrabadi's failure to say, in reporting what she heard Mr. Cunningham say when talking on the telephone to Ms. Bui, that he had children. [Complainant Objections at 2-3] She criticizes the Hearing Officer and Respondents for failing to elicit the entire conversation. The complete portion (unlike the partial portion cited by Complainant) of the testimony on this point is as follows:

Hearing Officer Saltzman: Do you know when Mr. Felton talked to this woman about the apartment, what she said to him and what he said to her over the phone?

The Witness: I could only hear what he said to her.

Hearing Officer Saltzman: What did he say to her?

The Witness: He called her and said I'm interested in the apartment in the two bedroom, and he said he would like to come see the apartment. Then he said tomorrow is fine. Then he said, okay, bye.

Hearing Officer Saltzman: Next question. [Tr. 145]

Less than a page later, Respondents did inquire further about this conversation and were told by Ms. Brackett Alrabadi that she knew only what Mr. Cunningham had said. Complainant had an opportunity to conduct a re-direct examination of this witness but did not choose to ask further questions about this conversation. [Tr. 154-57]

Second, Complainant contends that because Mr. Cunningham cannot testify about this due to his death, "it should not be concluded that Complainant's and Mr. Brackett Alrabadi's accounts are **excessively** distinct." [Cmplt. Objections at 3] However, the Hearing Officer has to base his findings of fact on the evidence. When Complainant's version of that evidence has serious contradictions in it, the Hearing Officer should not ignore those contradictions simply because circumstances (in this case the tragic death of Complainant) make it difficult for this contradiction to be resolved. Even if Complainant were alive to testify, his prior statements in which no personal visit to the property was alleged along with Ms. Brackett Alrabadi's testimony would still present problems for Complainant's case, because they are two contradictory accounts of what happened. For these reasons, the Hearing Officer recommended that Complainant's first objection be overruled and the Commission adopts that recommendation. The reality here is that there is no credible evidence to

prove a violation of the Ordinance.

The test conducted by the John Marshall Law School Fair Housing Legal Clinic did not strengthen Complainant's proof; instead it weakened it. One of the testers had a stake in the outcome in that he knew Mr. Cunningham and it was his job to help him obtain housing assistance. The testing coordinator acknowledged that was a problem but maintained that the problem did not benefit Complainant; that is, the testing coordinator admitted that the test did not show discrimination based on parental status, given that neither the tester presenting as single nor the tester presenting as having children were able to view or apply to rent the apartment. The testing coordinator was not asked to do a test based on race, so none was conducted. [FOF ##11-5].

Complainant claims in her second objection that the Hearing Officer placed too little emphasis on the information contained in tester Frank Cade's report and too much on the tester's apparent interest in the outcome. [FOF ##14-15; Cmplt. Objections at 4-5] The problem with this argument is that Ms. Seymore, the testing coordinator for the John Marshall Clinic and Complainant's witness, herself acknowledged that the test did not show evidence of parental status discrimination. [FOF #15]

In these objections, Complainant is asking the Commission to re-weigh the Hearing Officer's credibility determinations despite Commission case law holding that it cannot do so unless that determination is against the manifest weight of the evidence. *Stovall v. Metroplex et al*, CCHR No. 94-H-87 (10-16-96). The Commission does not find the Hearing Officer's findings of fact and credibility determinations to be against the manifest weight of the evidence. For these reasons, the Commission overrules Complainant's first and second objections

On the basis of this evidence, Complainant failed to prove that Mr. Cunningham was denied the opportunity to see and/or rent the apartment due to his parental status, based on either direct or indirect evidence. Given the discrepancies in the evidence described above, the Hearing Officer could not find that either a discriminatory comment was made to Mr. Cunningham or that he was denied the opportunity to see and/or rent the apartment on the basis of his parental status. Complainant's evidence is simply not probative of discrimination.

As for the claim of race discrimination, the Hearing Officer concluded that Complainant has not proved that, after Mr. Cunningham was denied the apartment, it remained available for rental. This is the fourth prong of the *prima facie* case needed to initially establish a viable claim of race discrimination. [Conclusions of Law ##8-9]. The apartment was not rented to anyone because Ms. Bui's tenant informed her that it was unsuitable. [FOF ##16, 19] For that reason, Complainant has not established a *prima facie* case of race discrimination. [Conclusions of Law ##8-9] In addition, there was no way to show that Respondents knew that Frank Cade was African-American when he spoke to them over the telephone.

Complainant's third objection challenges this conclusion in two ways. One is that the Hearing Officer failed to apply the Negative Inference Order of December 29, 2005. [Complainant Objections at 6-7] That order provides that "the Commission takes a Negative Inference that Respondents *have never rented to African-American tenants at the building at 1442 West Argyle.*" Complainant did not present or raise any issue regarding this order until witness Stacy Erenberg testified. When

Complainant did object to that testimony, the Hearing Officer indicated that he would not give weight to it and Complainant then agreed to not pursue the issue raised by the Negative Inference. [Tr. 336-38; 415-17]. However, the negative inference does not aid Complainant in making out a *prima facie* case. [Conclusion of Law #8]. There is still no evidence that, after rejecting Mr. Cunningham and the testers, Respondents rented the apartment to anyone. Rather, the evidence is that Respondents took it off the market after learning that it could not legally be rented.

The second portion of this objection directly challenges the conclusion that the fourth prong of the *prima facie* test cannot be met. In doing so, Complainant relies on the Commission's decision in *Matias v. Zachariah*, CCHR No. 95-H-110, (Sept. 18, 1996). That case is inapposite because in that case, there was credited direct evidence of racial animus and additionally the Commission made the following finding:

18. The Commission does not believe that Mr. Zachariah refused to rent to Ms. Matias because the basement apartment was uninhabitable due to lack of heat, foundation problems and sewer backups. It is instructive that when his counsel specifically asked him, "Can you tell us the reason ... you didn't rent to Miss Matias?" (Tr. 207), Mr. Zachariah nervously sputtered a rambling answer which never even mentioned the lack of heat. (Tr. 207) Rather, he brought up the fact that he had recently moved, there was a leak under the steps, the windows were broken and that he planned to sell the building. (Tr. 207) The Commission is convinced that Mr. Zachariah hoped that having space heaters in the basement, combined with heat from the boiler room, would suffice for his tenant. Additionally, neither the foundation problems nor the occasional sewer problems were such that they prevented him from agreeing to rent the apartment to the Complainant.

In short, in *Matias* the Commission resolved the credibility question against the respondent landlord. Here, in the end the Hearing Officer credited the testimony of Ms. Bui and Mr. Weddell that the unit was not rented to anyone because of the issues raised by Mr. Weddell. [FOF ##16, 19].

In addition, the conflicts in Complainant's evidence, as outlined above, present problems in proving even a *prima facie* case. [FOF ##7-9 and pp. 15-8]. If Mr. Cunningham was rejected during his telephone call as he claimed, there is no basis in the evidence to conclude that Respondents knew he was African- American. If Ms. Brackett Alrabadi's testimony were to be credited, then the basis of his rejection, as allegedly stated by Respondents, was that he was not renting the apartment alone, not his race. Because the Hearing Officer found that he could credit neither version, and the Commission has accepted his findings, there simply is no credible evidence upon which to base a finding of discrimination.

On the basis of the credible evidence, Complainant failed to prove that Mr. Cunningham was denied the opportunity to see and/or rent the apartment due to his parental status or race, using either the direct evidence or indirect evidence methods of proof. Given the discrepancies in the evidence described above, the Hearing Officer could not find either that a discriminatory comment was made to Mr. Cunningham or that he was denied the opportunity to see and/or rent the apartment on the basis of his parental status or race. Complainant's evidence is simply not probative of either form of discrimination.

What made this case a little closer were Ms. Bui's statements in her Verified Response. With statements like, "Respondent lacks sufficient knowledge to answer the allegation that she is looking for a single person with no children" and "[s]he wanted one person for the apartment" she made it appear that she could be discriminating. Her abruptness in dealing with people due to an inability to communicate in English and her impatience in certain situations only made matters worse, because persons in protected groups correctly believe that such behavior is often an open display of contempt and discrimination.

However, in this case, the Hearing Officer found that the statements in the Verified Response were the results of sloppiness and translation problems, in part because of his observations of Ms. Bui and in part because the other evidence in the case speaks against discriminatory behavior. Similarly, based on his observations of Ms. Bui, he found that her abruptness was not a display of discriminatory animus but a problem caused by her language difficulties and impatience. [FOF #17-9].⁹

"It is the Commission's responsibility to assess witness credibility and weigh the evidence before it." *Page v. City of Chicago*, 299 Ill. App. 3d 450, 486, 701 N.E.2d 218, 229 (1998), leave to appeal denied, 182 Ill.2d 552, 707 N.E.2d 1240 (1999). Consequently, the Hearing Officer and the Commission determine witness credibility, choose among conflicting inferences, and may disregard the testimony of any witness determined not to be telling the truth. *Guy v. First Chicago Futures, Inc.*, CCHR No. 97-E-32 (Feb. 18, 2004); *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002); *Crenshaw v. Harvey*, CCHR No. 95-H-82 (May 21, 1997); *Bray v. Sandpiper Too et al.*, CCHR No. 94-E-43 (Jan. 11, 1996); *Sanders v. Onnezi*, CCHR No. 93-H-32 (Mar. 16, 1994). In reaching conclusions about the witnesses' credibility, the Hearing Officer may consider, among other things, the witnesses' bias and demeanor. *McGee v. Sichon*, 96-H-26 (Dec. 30, 1997); *Poole v. Perry*, CCHR No. 02-E-161 (Feb. 15, 2006). Because of the testimony found not credible and the Commission's analysis of the evidence as set forth above, Complainant has failed to carry her burden of proof.

CONCLUSION

For these reasons, the Commission adopts the hearing officer's recommendations, finds for Respondents, and so DISMISSES the Complaint.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:



Dana V. Starks, Chair and Commissioner

⁹ Respondents and their representatives (their adult children) were quick to criticize Complainant's attorney and the John Marshall Clinic for failure to follow certain testing protocols, but they would be better served if they accepted that their own actions led to what the Hearing Officer and Commission believe was a good faith, legitimate belief by Mr. Cunningham and his attorneys that discriminatory conduct had occurred, even though in the end that belief turned out to be incorrect.