City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Patricia Gilbert and Vernita Gray
Complainant,
v.

7355 South Shore Drive Condominium Association and Shelley Norton
Respondents.

Case No.: 01-H-18/27

Date of Ruling: July 20, 2011
Date Mailed: August 5, 2011

TO:
Michael Conway
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321 N. Clark Street, Suite 2800
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Shelley Norton, President
7355 South Shore Drive Condominium Association
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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on July 20, 2011, 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:

1. To pay to Complainant Patricia Gilbert compensatory damages in the amount of $100, assessed against Respondents jointly and severally, plus interest on that amount from September 5, 2000, in accordance with Commission Regulation 240.700.

2. To pay to Complainant Vernita Gray compensatory damages in the amount of $2,000, assessed against Respondents jointly and severally, plus interest on that amount from April 1, 2000, in accordance with Commission Regulation 240.700.

3. Respondent 7355 South Shore Drive Condominium Association to pay a fine of $500 for each of two violations found, to the City of Chicago, for fines in the total amount of $1,000.

4. Respondent Shelley Norton to pay a fine of $100 for each of two violations found, to the City of Chicago, for fines in the total amount of $200.

5. To pay Complainants' reasonable attorney fees and associated costs as determined pursuant to the procedure described below.[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

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. However, because attorney fee proceedings are now pending, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Attorney Fee Procedure

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **September 2, 2011**. Any response to such petition must be filed and served on or before **September 16, 2011**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630 (b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: July 20, 2011

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to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to the Complainant, through counsel of record if applicable. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

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.

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FINAL RULING ON LIABILITY AND RELIEF

1. Statement of the Case

On March 9, 2001, Complainant Patricia Gilbert filed a complaint against Respondents, The 7355 S. Shore Drive Condominium Association ("Association") and Shelley Norton, the president of the Association Board, alleging that Respondents prevented her from purchasing Unit 310 from its owner, Archie Bates, because of her race (white) and sexual orientation (lesbian), in violation on the Chicago Fair Housing Ordinance, specifically Chicago Municipal Code §5-8-030.

On March 30, 2001, Complainant Vernita Gray filed a Complaint against Respondents alleging that they had harassed her because of her sexual orientation (lesbian). The Complaint alleged that the harassment included derogatory comments, assessments that were double what other unit owners were assessed for extermination services, berating Gray's guests, accusing Gray of being a troublemaker, having Gray evicted from her unit for nonpayment of assessments whereas heterosexual unit owners who were behind in their assessments were not evicted, failing to replace Gray's unit door which had been damaged in the eviction, failing to notify Gray of a new fitness center in the building, and falsely blaming Gray for rerouting the Association's gas bill. On November 16, 2001, Complainant Gray filed an amended complaint alleging continued harassment and retaliation for filing the March 30, 2001, complaint by fining Gray improperly for violations of Association rules which were not enforced against others and continuing to seek attorney fees in the eviction action.

On March 30, 2006, the Commission entered an order finding substantial evidence of violations of the Fair Housing Ordinance and consolidating the two cases. The administrative hearing was held on January 9, 10, 11, and 12 and March 15, 16, and 26, 2007. Complainant Gray filed a second amended complaint on March 15, 2007, after obtaining leave to file it during the hearing process. Both parties filed post-hearing briefs.

Unfortunately, after more than three years, the hearing officer originally assigned to the case had yet to produce a recommended decision. Consequently, on September 14, 2010, the Commission dismissed the original hearing officer from the case and appointed a successor hearing officer. Following that appointment, the Commission duplicated and sent to the second hearing officer the record developed before the original hearing officer. The Commission's order appointing the second hearing officer left it to the hearing officer to determine whether it would

be "permissible or practical" to consult with the original hearing officer concerning his observation of the demeanor of the witnesses and whether it would be necessary to rehear any testimony from the original hearing.

The new hearing officer determined after review of the record that it was not necessary to consult with the original hearing officer concerning his observation of witness demeanor and not necessary to rehear any testimony. The second hearing officer also concluded that, after more than three years had passed since the hearing, consultation with the original hearing officer or rehearing any original testimony would not be likely to shed any useful light on the underlying issues.

On February 4, 2011, the second hearing officer issued a First Recommended Decision. Both sides filed objections to the First Recommended Decision and both sides filed responses to the objections. The hearing officer then issued his Final Recommended Decision, bringing the matter to the Board for a final ruling on liability and on relief if liability is found.

The Board of Commissioners reiterates the hearing officer's apologies to the parties for the inexcusable delay between the close of the administrative hearing in 2007 and the issuance of the recommended decisions. The Board appreciates the hearing officer's efforts to proceed as expeditiously and diligently as possible, acknowledging the time and effort necessary for him to read a lengthy record multiple times to become familiar with the issue in the case.

Respondents objected to the second hearing officer's issuing any recommended decisions, maintaining that their due process rights have been violated because the recommended decision requires assessing the relative credibility of the witnesses but the second hearing officer did not observe the witnesses testify. To the extent that Respondents object to the removal and replacement of the original hearing officer and his replacement by the new hearing officer, the Board of Commissioners reaffirms that this was the only reasonable course of action under the circumstances of this case, even though the Commission has long acknowledged the importance of the hearing officer's ability to observe the demeanor of witnesses in determining their credibility. See, e.g., *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); *Hernandez v. Colonial Medical Center & Correa*, CCHR No. 05-E-14 (Nov. 28, 2006); and *Rivera v. Pera et al.*, CCHR No. 08-H-13 (June 15, 2011). Nevertheless, the Board of Commissioners supports and reaffirms the new hearing officer's decision not to consult with the original hearing officer and not to rehear any testimony.

The new hearing officer determined that consultation with the original hearing officer or rehearing testimony was not necessary because, while observation of witness demeanor can be helpful in assessing witness credibility, other factors are also useful guides to assessing credibility. These factors include the plausibility of the testimony, the plausibility of the attacks on witness credibility, bias and interest in the outcome of the proceedings, and the overall logical likelihood that the testimony is accurate. Following a thorough review of the record, the hearing officer concluded that these factors enabled him to assess the relative credibility of the witnesses. Furthermore, he determined that the likelihood that consultation with the original hearing officer and/or rehearing testimony would provide him with further insight into the issues was too small to justify taking such actions. A major consideration in this regard was that three years had elapsed since the original hearing and more than a decade had elapsed since many of the events at issue. During such a period of time, memories likely have faded to such an extent that the chances that rehearing testimony would have provided any useful assistance to the assessment of credibility were greatly outweighed by the added expense such a course of action would have

imposed upon all parties, the added delays in bringing this matter to a conclusion, and the considerable inconvenience to the witnesses.

As for consultation with the original hearing officer, it is likely that the passage of time has also dulled his memory of witness demeanor. Moreover, the Commission tried for three years to get the original hearing officer to issue a recommended decision but met with no success. Considering that the original hearing officer had been removed from the case by the Commission, had been terminated as a Commission hearing officer, and had been replaced on this case, it was highly unlikely that the original hearing officer would have suddenly changed his behavior and cooperated with a request for his perception of witnesses' demeanor. The Commission agrees with the new hearing officer's decision, finding it prudent and reasonable.

2. Findings of Fact

A. Parties

1. At the time of the hearing, Complainant Vernita Gray had resided at 7355 South Shore Drive, Unit 508, for six years and 11 months. (1/9 Tr. 29) Gray is a lesbian, working at that time as a GBLT liaison and hate crimes specialist for the Cook County State's Attorney, and had been a gay activist in Chicago since 1969. (1/9 Tr. 30, 32) Gray testified that she had a dating relationship with Complainant Patricia Gilbert from fall 1998 to 2004. (1/9 Tr. 37) Gilbert testified that she dated Gray for six years but they never lived together. (1/10 Tr. 258)

2. At the time of the hearing, Respondent Shelley Norton resided in Units 305 and 307 in the 7355 South Shore Drive building. (3/15 Tr. 127) She purchased Unit 305 in 1985 and 307 in 2002. *Id.* Norton had worked for the Association on site since 1995 and had been onsite property manager since 2000. (3/15 Tr. 127-28) Since 1995, Norton had been president of the Association Board (3/15 Tr. 134) and had served as a board member since 1991. (3/15 Tr. 132)

3. Norton testified that in 1991 the building was "headed for disaster." There were prostitutes and drug addicts, as well as urine and feces in the hallway. Only ten owners lived in the building. (3/15 Tr. 132-33) Norton testified to numerous improvements made since she became president of the Association Board. These included a new hot water heater, electronic controls for the boiler, planting flowers, instituting a 100% extermination program, new carpeting and tile, new laundry machines, a fitness center, and getting rid of problem individuals. According to Norton, by 2000, building residents were "enjoying a harmonious environment." (3/15 Tr. 141-42) Norton testified that she was proud and defensive about the improvements. (3/15 Tr. 142)

B. Building Residents

4. Stanton Robinson testified that he had lived in the building since 1991, having purchased Unit 209 in 1978 for his mother, who died in 1991. (1/11 Tr. 596) He had served on the Association Board since 1997. (1/11 Tr. 597)

5. Robinson testified that prior to 2000, there were problems in the building, including trespassers, people suspected of drug dealing and prostitution, and break-ins. (1/11 Tr. 599-600) Robinson testified that Norton took a leadership position to correct problems in the building. He described Norton's approach as "assertive and structured. I prefer that to pushy." (1/11 Tr. 601) He maintained that the building began to look better under Norton's leadership. (1/11 Tr. 602)

6. Robinson testified that his windows were an eyesore. They needed curtains; the air conditioners were not properly mounted; and he used cardboard for insulation. Robinson related that Norton told him to correct it "in a very assertive way." According to Robinson, Norton was also very assertive with him when she thought he had not paid his assessment timely. (1/11 Tr. 602-03) Robinson testified that others in the building complained about Norton's approach. (1/11 Tr. 603-04)

7. Eugene Love testified that he owned Unit 304 for 15 years before selling it to his tenant in 2004. (1/12 Tr. 13) He began serving on the Association Board in 1993. (1/12 Tr. 14) Love testified that the building was plagued by deferred maintenance, sewer odors, poor lighting, an outdated motif, more tenant-occupied than owner-occupied units, and drug sales. (1/12 Tr. 17) According to Love, when Norton became president of the Association, she took charge of building operations. (1/12 Tr. 20) Special assessments were imposed; the building interior was brightened; and the sewer problems were corrected around 1996. (1/12 Tr. 18-19) The condo declaration was amended to discourage sales to investors. (1/12 Tr. 19)

8. Love testified that Norton was insistent on timely payment of assessments and fanatical about posting notices. He related that part of the problem of deferred maintenance was due to owners not paying their assessments. (1/12 Tr. 22)

9. Sharese Shields testified that she moved into Unit 408 in February or March 2000 and lived there for five years. (1/10 Tr. 268-69) She found Norton to be intrusive, offensive, and overbearing. (1/10 Tr. 376) Shields opined that Norton was not good at managing people or "recognizing that you don't have to use an elephant gun to deal with everyday problems." (1/10 Tr. 404)

10. The hearing officer found that Norton was obsessed with the building, with enforcing compliance with building rules, and with warding off what she regarded as threats to the building's "harmonious environment." He found that Norton was completely lacking in tact, diplomacy, common decency, and common courtesy. He found that anyone whose conduct Norton viewed as detrimental to the building incurred her wrath regardless of the person's race or sexual orientation.

C. Gray's Purchase

11. Gray testified that she saw an ad in the *Sun-Times* for the condo in 7355 South Shore Drive and she responded and arranged to meet the unit owner in January 2000. (1/9 Tr. 38-39) Gray had a first meeting with members of the Association Board in January 2000 to discuss the possibility of her moving in. (1/9 Tr. 42; 3/15 Tr. 154) In accordance with the Association's standard procedure, at the first "welcome meeting," Norton went over the Association rules, notices, and a 1997 amendment which required that purchasers from that point forward occupy their units. Gray completed a credit background check form, a form related to her current landlord, and a verification of employment form. She provided two years' W-2 forms and two months' pay stubs. Gray was given an opportunity to ask questions. (3/15 Tr. 165-68)

12. Norton testified that a week prior to Gray's closing, the seller's attorney requested an assessment letter, right of first refusal letter, water letter, and mortgage clause in the certificate of insurance. Norton testified that such requests from a seller's attorney were common. (3/15 Tr. 168-69) Gray closed and became a unit owner on February 22, 2000. (3/15 Tr. 154)

D. Gray's Move-In

13. Gray testified that in February 2000, Gilbert and she brought a ladder in the front door and Norton came upstairs and admonished them not to bring ladders through the front door. (1/9 Tr. 45) Gray moved into the building in March 2000 and Gilbert assisted her. (1/9 Tr. 43) Gray testified that at this point, Gilbert was visiting her at the building four to five times per week. (1/9 Tr. 49) On cross-examination, Gray testified that Gilbert was visiting two to three times per week. (1/9 Tr. 125) Gilbert estimated that in mid-February and March 2000, she was visiting Gray at the building three to four days per week and spending the night. (1/10 Tr. 259-60) She further testified that she and Gray would go in and out together, and when they went to a black tie event, Gray would wear a tux and Gilbert would wear a dress. (1/10 Tr. 260) She estimated they did this two or three times in spring 2000. (1/11 Tr. 547) Gilbert testified that she met Norton with Gray in mid-February 2000. (1/10 Tr. 261)

14. Gray testified that in March 2000, in a conversation in the hallway of the building with only Gray and Norton present, Norton commented to Gray that Gray's white friend and Gray were not going to turn the building into a Halsted Street and bring her white friends from the north side into the building. (1/9 Tr. 47-48) Gray testified that Halsted Street between Belmont and Grace is known as a gay area with rainbow flags on the pylons; according to Gray, the area is commonly referred to as "Boys' Town." (1/9 Tr. 48)

15. Norton testified that she first learned of Gray's sexual orientation in March 2001. She learned of it from a demonstration conducted at the building protesting Gray's eviction (discussed *infra*), from the complaints filed with the Commission, from an article in the *Windy City Times,* and from one other source that Norton could not recall. (3/15 Tr. 155-57) Norton admitted that she would see Gilbert with Gray during exterminations on the second Saturday of each month and that she would see Gilbert with Gray on the building security camera. But Norton maintained that she never saw them hugging, kissing, or holding hands, or in tux and gown, and that no one told her during 2000 that Gilbert and Gray were partners or dating. (3/15 Tr. 157-60) Norton denied making the Halsted Street statement that Gray attributed to her (3/15 Tr. 163) and testified that prior to hearing Gray's testimony, she never associated Halsted Street with the gay community. (3/15 Tr. 161-63)

16. On cross-examination, Norton agreed that it would be fair to say that she was aware of the comings and goings of people in the building. As property manager and Board president, she was vigilant and kept tabs on things. (3/16 Tr. 405) She maintained that she saw Gray and Gilbert together but considered them associated as friends. (3/16 Tr. 406) She did not recall Gray saying at her prospective buyer's meeting that she was a gay and lesbian advocate with the State's Attorney's office. (3/16 Tr. 408)

E. Gilbert's Effort to Purchase

17. Gilbert testified that she heard that Unit 310 was for sale. She testified that she asked Norton about it and that Norton promised to get back to her but never did. (1/10 Tr. 262) In early March 2000, she contacted a real estate agent, who showed her the unit and put her in touch with Carolyn Moore-Brown, who was handling matters for her brother, Archie Bates, who owned the unit. (1/10 Tr. 262-63) She signed a contract to purchase the unit on March 14, 2000 (C. Ex. 34), and was given a mortgage pre-approval by Cendant Mortgage on March 17, 2000. (C. Ex. 52) Gilbert testified that a closing date was set for April 2000. (1/10 Tr. 269) Gilbert

identified Yvette Stringer as the attorney representing her in the transaction. (1/10 Tr. 269) On March 21, 2000, Gilbert faxed Norton a document entitled "Information Needed Before Appraisal Can Be Ordered" and asked that Norton complete the document and fax it back. (C. Ex. 35) The document showed a closing date of April 21, 2000. Norton completed the form and faxed it to Gilbert, who forwarded it to the relevant individual. (1/10 Tr. 357) Gilbert conceded that Norton responded promptly. (1/11 Tr. 499) Gilbert went through the Association's standard process for approving a new owner/resident (C. Exs. 33, 36-39) and had her first welcome meeting with Norton and two other Board members on March 29, 2000. (C. Ex.40, 1/10 Tr. 264) Norton testified that they went through the welcome packet, the notices, and issues; that Gilbert completed the standard forms; and that Gilbert advised that she needed to close by April 21. (3/15 Tr. 276-77) The Association approved Gilbert as a prospective purchaser on April 10, 2000. (C. Ex. 41) Norton testified that she recommended Gilbert's approval. (3/15 Tr. 285) Gilbert testified that Norton gave Gray her move-in packet early because Norton was concerned that she might be on vacation when the closing would take place. (1/10 Tr. 360-61)

18. Gilbert testified that as she was going through the Association's financial reports, she asked her attorney to question where some of the money was going and to inquire about the terms of the Board members and officers. (1/10 Tr. 290-91) By letter dated April 10, 2000, Stringer advised Norton that closing was scheduled for April 21, 2000, and asked for details concerning election, retention, tenure, and removal of board members; details as to how funds obtained through a special assessment were spent; and information concerning Association expenditures on legal fees. (C. Ex. 44) Norton responded by letter to Stringer dated April 14, 2000, which closed (C. Ex. 45):

> To address you or your client's concerns about the Board of Directors, it appears that your client, Patricia Gilbert, has some specific concerns at the outset. If this is so, it may be important that she address these now and receive a copy of the Declaration and ByLaws so that she can read it in full, in order to make a competent decision about her residency at The 7355 South Shore Drive Condominium.

19. Gilbert testified that, as of April 19, 2000, the April 21 closing date had to be moved because they did not get the title in time and because Norton would not provide a letter stating that the seller was current with the assessments. (1/10 Tr. 293-94) On cross-examination, when asked about details that had to be met for the transaction to close, Gilbert testified that she did not know and that her attorney was handling such matters. (1/11 Tr. 407-98, 503-04, 513-14)

20. Gilbert's counsel called Stringer as a witness. Stringer testified that she had been friends with Gilbert since 1997. (1/11 Tr. 583-84) Stringer testified that she was admitted to practice law on May 4, 2000. She denied serving as Gilbert's attorney prior to that date, although she admitted that she advised Gilbert concerning the condo purchase but not as an attorney. (1/11 Tr. 588) At that point, Complainant's counsel abruptly terminated the questioning and Stringer was dismissed as a witness.[1] Norton testified that she never received a request from Gilbert for an

[1]The record reflects that Stringer sent letters to Norton on Gilbert's behalf on April 10 (C. Ex. 44) and April 19, 2000. (C. Ex. 46). Both letters were on letterhead of "Yvette Y. Stringer, Attorney at Law," and both referred to Gilbert as her client. It is clear from Gilbert's testimony that she believed Stringer was acting as her attorney, as opposed to a lay adviser, in April 2000. Because it appears that Stringer may have been holding herself out as an attorney prior to her May 4, 2000, admission to practice, the hearing officer recommended that the Commission send copies of this decision, Complainant's Exhibits 44 and 46, and the relevant pages of the transcript to the Attorney Registration and Discipline Commission and any other relevant authorities having jurisdiction over the unauthorized practice of law. The Commission intends to do that as recommended.

assessment letter (3/15 Tr. 289) and that such a request usually would come from the seller's attorney. (3/15 Tr. 290)

21. Gilbert testified that Moore-Brown and Carolyn Smith, another resident at the building, told her that Norton had said that if Bates had to sell to a white person, why couldn't he have gotten more money. (1/10 Tr. 300-01) Norton denied ever making such comments. (3/16 Tr. 321) Gilbert related that she got "vibes" from Norton that Norton did not like her and Gray because they were a gay couple. (1/10 Tr. 302) Gilbert testified that at her first meeting with the Board, she asked if she would be the first white person in the building and Board member Leelee said, "Yes. But if you can live with us, we can live with you." (1/11 Tr. 529)

F. Gilbert's Attempt to Move In

22. By letter dated April 19, 2000 (C. Ex. 46), Stringer advised Norton that the closing had been delayed until April 25 or 26 but that the seller had agreed to permit early possession and sought to arrange for delivery of Gilbert's move-in fee and receipt of the keys. By letter to Stringer dated April 19, 2000 (C. Ex. 47), Norton replied that Gilbert's moving in prior to closing would violate Association rules. By letter to Stringer dated April 20, 2000 (C. Ex. 48), Norton advised:

> Please refer to our Amendment to the Declaration & Bylaws (Document # 9783413) dated November 6, 1997. These units are owner-occupied. Patricia Gilbert is not yet an owner until she formally closes on the unit and provides a view of her signed RESPA statement by seller and buyer from the Title company. The Seller, Mr. Archie Bates nor his attorney has contacted this office regarding this matter. Patricia Gilbert has the right to move-in **only** after she closes on the property, and only then is she considered an official owner with all the amenities provided to an Association Member. (Emphasis in original.)

23. On April 22, 2000, Gilbert moved her possessions into Unit 310. Gilbert testified that she hired a mover to load her possessions and move them into the unit. (1/10 Tr. 304) On cross-examination, Gilbert testified that she did not accompany her possessions to the building because the rules said that the units had to be owner-occupied and she was not the owner yet. (1/11 Tr. 530). She related that Bates had said she could take her possessions to the unit, that his sister Moore-Brown would be there and would move them in. (1/11 Tr. 531)

24. Norton and Robinson testified separately but similarly concerning the April 22, 2000, incident. According to their testimony, the moving truck arrived, accompanied by Gray and Moore-Brown. Norton called Robinson and Board member Calvin Turner and also called the police. Gray told the responding police officer that she was from the State's Attorney's office and that the items on the truck belonged to Bates, the unit owner. Aware that Bates was selling the unit and that he lived in Germany, Norton, Robinson, and Turner stated that the items belonged to Gilbert and that moving them in would amount to a trespass. The responding officer called his sergeant for assistance. Eventually, the police telephoned Bates in Germany and Bates stated that the items on the truck belonged to him. The police were unable to conclude that a trespass was occurring and allowed the items to be moved in. (1/11 Tr. 617-22; 3/15 Tr. 300-04)

25. Gilbert testified that in July 2000, she spoke with Bates, who said he still wanted to follow through with the purchase. (1/10 Tr. 313-15) By letter dated July 10, 2000, Bates confirmed a sale price of $30,000 and advised Gilbert of contact information for his new

attorney. (C. Ex. 51) By letter dated September 5, 2000, Bates advised Respondents of the pending sale to Gilbert and requested "all information, documentation and records needed for the final real estate closure/sale of my unit." (C. Ex. 43)

26. By letter dated September 5, 2000, Respondents advised Bates that because of the passage of time, Gilbert would have to start the approval process anew. Respondents also advised Bates that the Board would not approve a sale to Gilbert because of the deception perpetrated when Gilbert's possessions were moved into Bates' unit on April 22, 2000, even though Gilbert's request to move in before closing had been denied. Gilbert testified that in September 2000, Norton told her that she would never be allowed to move into the building because she was a deceptive person. (1/12 Tr. 315-17)

27. As discussed, *infra*, the hearing officer found that Norton admitted to Sandra McMikel that she prevented Gilbert from moving into the building because she did not want a gay lifestyle in the building. However, the hearing officer also found that Gilbert, Gray, Moore-Brown, and Bates moved Gilbert's possessions into the unit despite the denial of Gilbert's request for an early move-in, and they accomplished this by falsely representing Gilbert's possessions to be Bates'. Accordingly, the Commission agrees with the hearing officer's assessment of this evidence and finds, by a preponderance of the evidence, that Respondents have proved that they would have blocked the sale from Bates to Gilbert in September 2000 even if Gilbert had been heterosexual.

G. Front Door Incident

28. Gray testified that after she had lived in the building for seven or eight months, her former foster child came over with his current foster mother to visit. Gray explained that when a resident activates the front door for entry, the door does not buzz; instead a green light is illuminated. According to Gray, her visitors did not realize that and Gray came down to let them in the front door. Gray maintained that as she exited the elevator, Norton put her head out and "literally bee lined down the hallway." Gray testified that when she opened the door to let her guests in, Norton accused the child who was seven or eight years old of "trying to rip the handle off the door." (1/9 Tr. 55-56) Gray continued (1/9 Tr. 57):

> It was like as soon as she looked at me and then she turned to him. She started in on him, You're trying to rip the handle off the door. You're trying to tear something up. His mom and I were appalled.

29. Pamela Edwards testified that she was president of the Board of 7363 South Shore Drive, which shared many common vendors and issues with 7355 South Shore Drive. (1/12 Tr. 140) She related that she visited Norton about once per week. (1/12 Tr. 153)

30. Edwards testified that on June 3, 2000, she was in Norton's office when they heard noise in the hallway from the back of the building. Norton looked in the security camera and saw someone at the front door pulling on the door. Norton called out to stop pulling on the door and walked toward the door when Gray came down and told Norton to stop hollering at the child, saying that he was only a child. Gray told Norton that Norton worked for the building, "work[ed] for us," to which Norton replied that she did not want the door broken and Gray replied telling Norton that she should get a job. (1/12 Tr. 143-50)

31. Norton testified that in June or July 2000, she was in the office and heard a loud banging noise at the front door. She saw an adult woman and a young child, and the boy was yanking

down on the door handle. Norton testified that she told the boy to stop, the boy told her to shut up, and the woman told the boy not to say that. Norton opened the door and explained about the use of a green light instead of a buzzer. Norton testified that as she was walking back to the office, Gray came off the elevator and said not to treat her guests that way. Norton replied that she would speak to anyone yanking on the door handle, to which Gray responded that Norton didn't know what she was doing, that Norton was not a property manager, and that Norton was stealing from the Association. According to Norton, Gray said, "You work for me missy," and Norton responded that she worked for the entire Association. Norton further testified that Gray said she was going to get Norton out, and Norton responded telling Gray that she had to calm down and decide whether she wanted to live in the building because she could not be ugly with people in the building. (3/15 Tr. 183-88)

32. Darlene Butler testified that she and her adopted son visited Gray three times between April and June 2000. Each time she left her son to stay with Gray for the weekend. According to Butler, she "was going through some things myself," and Gray was giving her a break from childcare. Butler testified that on the first visit she arrived between 6:00 and 7:30 p.m. Norton was in the office and came to the door and opened it when she spoke. Butler had concluded that the door was jammed because she could not open it. Butler testified that her son was just trying to open the door. According to Butler, Gray came off the elevator as Norton opened the door. Butler testified that the second visit occurred in May but Butler could not recall anything about it. The third visit occurred in June on a Sunday between 1:00 and 3:00 when she encountered the same problem with the door. Butler testified that Norton came out of the office and there was an argument as Butler's son was skipping through the hallway. Butler testified that Norton stated she was sick and tired of this "gay ass shit." (3/16 Tr. 560-83) Norton denied making the "gay ass shit" comment and denied being in the office at 6:30 p.m. on a Friday in April, May, or June or at 3:00 p.m. on a Sunday. (3/16 Tr. 598-99)

H. Norton's Statements to Shields and McMikel

33. Sharese Shields testified that within the first couple of months of her moving in during February or March 2000, Norton commented to her that the walls were thin and intimate conduct could be heard. According to Shields, Norton expressed that she was not happy with Gray moving in because Gray did not respect Association rules or the Association's culture. (1/10 Tr. Tr. 377-79) Shields testified that Norton felt that she had worked hard to rid the building of certain conduct and she did not want lesbian conduct in the building. (1/10 Tr. 382)

34. Shields testified to her conflicts with Norton. According to Shields, Norton reprimanded her for spraying furniture outside near the building's lawn. (1/10 Tr. 397) Norton, falsely in Shields' view, accused Shields of having the Association janitor do personal work for her on Association time. (1/10 Tr. 398) In 2002, a friend of Shields parked Shields' car in Shields' parking space and Norton yelled from the window to do a better job of parking. (1/10 Tr. 401) Shields testified to disputes with Norton over payments Shields made on a weekend and over Shields' checks missing dates and signatures, which jeopardized Shields' parking space. (1/10 Tr. 412-13, 415)

35. Sandra McMikel testified that she moved into the building in February 2003. According to McMikel, within a few months after moving in, she had conversations with Norton when she would go to do laundry. The conversations took place in the laundry room or the office. Norton frequently discussed various residents in the building. In three of the conversations, according to McMikel, Norton spoke of Gray and Gilbert being gay, said that she had prevented Gilbert from

moving into the building, and said that she did not want the gay lifestyle in the building. As of the hearing, McMikel was engaged in litigation with the Association over special assessments and Association fees and was making payments, pursuant to court ruling, into escrow. (1/9 Tr. 193-239)

36. Norton denied ever stating that she would not permit gays or lesbians to move into the building. (3/15 Tr. 163) She denied ever speaking with Shields about Gray or Gilbert. (3/15 Tr. 238) Norton testified to conflicts with Shields. According to Norton, in July 2000, Shields became delinquent in her assessments and was making partial payments when a check was returned NSF. (3/15 Tr. 235-37) Norton testified that assessments were due the first of the month but owners had a grace period to pay by the 15th to avoid late fees. According to Norton, Shields' check would show up in the Association's mailbox early on the morning of the 16th. In December 2003, Norton checked the box at midnight on the 15th, saw no check from Shields, and assessed Shields a late fee. According to Norton, Shields came to the office, belittled Norton, accused Norton of stealing, and told Norton to get a man and not to "fuck with" Shields. (3/15 Tr. 230-34)

37. Norton denied ever speaking to McMikel about Gray or Gilbert. (3/15 Tr. 262) Norton testified to conflicts with McMikel. She testified that in 2005, McMikel was angry over being fined for missing an extermination but McMikel's husband paid the fine. (3/15 Tr. 261) Norton testified that McMikel was upset over plumbing issues in her bathroom and believed they were the Association's responsibility, but Norton told her that the issues were internal to the unit and that McMikel should have settled them with the seller. (3/15 Tr. 262-63) Norton testified that McMikel refused to pay a special assessment for the boiler and increases in the assessments for her unit, and the matter was in litigation as of the hearing. (3/15 Tr. 263-64)

I. Credibility Assessments

38. The hearing officer found that he could not credit Norton's denials of knowledge of Gray's and Gilbert's sexual orientation or her denials of negative comments concerning their sexual orientation. Testimony concerning Norton's negative remarks came from a diverse group of witnesses (Butler, Gray, McMikel, and Shields), who testified to such comments being made under diverse sets of circumstances. It is unlikely that these individuals engaged in a conspiracy to fabricate their testimony and it is also unlikely that they would be honestly mistaken about such highly-charged matters. Butler had no axe to grind against Norton. Although McMikel and Shields had conflicts with Norton, conflicts between building residents and Norton apparently were quite common, owing to Norton's lack of tact, diplomacy, and common courtesy. Shields was no longer living in the building and thus was no longer in any personal conflicts with Norton. Moreover, there is evidence that Shields actually defended Norton in an interview with an investigator from the U.S. Department of Housing and Urban Development during a HUD investigation of Gilbert's federal complaint of racial discrimination. (R. Ex. 27 at Bates-stamped page 0290)

39. Furthermore, the hearing officer found it highly unlikely that Norton, a woman obsessed with the building and with ensuring its continued "harmonious environment," was unaware of Gray's sexual orientation and her relationship with Gilbert. Norton's obsession with the building was so compulsive that she stayed up until midnight the night of December 15, 2003, to determine whether Shields was, in fact, depositing her assessment payment in the Association's mailbox in time to avoid a late fee. The hearing officer found it quite likely that Norton was aware of Gray's sexual orientation and remarked negatively about the impact of the "homosexual

lifestyle," on the building's environment.

40. Respondents objected to the hearing officer's recommended findings. Respondents argue that Butler, Gray, McMikel, and Shields did participate in a conspiracy against Norton. Respondents contend that Norton was far more credible than Butler, Gray, McMikel, or Shields. The hearing officer indicated that he reviewed the record again upon receiving these objections and considered the cases cited by Respondents in support of their positions. He determined that the cases cited by Respondents reinforce the conclusions reached in the First Recommended Decision.

41. In *Gilun v. Tomasinski*, CCHR No. 91-FHO-85-5670 (July 29, 1992), the complainant alleged, among other things, that he had been harassed because he is gay. The critical evidence was complainant's testimony that the mother of his landlord had screamed at him that he was a "fagget" and that he should die on the street from AIDS. The Commission found this testimony not credible because the landlord's mother spoke almost no English. The Commission also found not credible the complainant's testimony that the landlord had made an identical remark, finding it highly unlikely that she would have done so and observing that the complainant never alleged any such remarks by the landlord until the actual hearing. *Gilun* illustrates credibility determinations driven in large part by the plausibility of the testimony and the overall logical likelihood that the testimony was accurate. Similarly, in *Anderson v. Stavropoulos*, CCHR No. 98-H-14 (Feb. 16, 2000), the Commission rejected as not credible testimony by a complainant that one of the co-owners of the building in which he was a tenant had used racial slurs, because the co-owner spoke very little English. Again, the Commission focused on the plausibility of the testimony and the overall logical likelihood of its being accurate.

42. The hearing officer used a similar approach in determining that Norton's denials of knowledge of Complainants' sexual orientation and her denials of making derogatory comments about their sexual orientation were not credible. The hearing officer found it implausible that such diverse individuals as Gray, Butler, McMikel, and Shields conspired to fabricate their testimony. The hearing officer observed that Butler had no axe to grind against Norton and that Shields' conflicts with Norton had ended when she ceased residing in the building. The hearing officer also observed that Shields defended Norton against a charge of racial discrimination during the investigation by HUD of Gray's and Gilbert's complaint. The hearing officer also found it unlikely that Norton would have been unaware of Gray's and Gilbert's relationship and their sexual orientation in light of the very tight watch that she kept on the comings and goings in the building. The hearing officer reaffirmed these findings after receiving and reviewing Respondents' objections to the First Recommended Decision, and reaffirmed his finding as consistent with the Commission's prior rulings.[2] The Commission finds the hearing officer's findings reasonable and not against the manifest weight of the evidence.

J. Gray's Assessments and Eviction

43. Norton testified that, as of March 15, 2000, Gray had not paid her assessment. Norton testified that she asked Gray about it and Gray got upset, saying that the seller had paid it. (3/15 Tr. 175-76) Norton further testified that Gray did not pay her $100 move-in fee; did not advise

[2]The hearing officer noted that elsewhere he did not credit portions of Gray's testimony. For example, as discussed *infra*, he did not credit Gray's testimony about the quality of the door Norton had installed to replace the door damaged in the eviction because he considered it implausible. It is permissible to find some testimony of a witness credible and some not credible. See, e.g., *Sanders v. Onnezi*, CCHR No. 93-H-32 (Mar. 16, 1994); *Rankin v. 6954 N. Sheridan Inc., DLG Management, et al.*, CCHR No. 08-H-49 (Aug. 18, 2010).

that she had a cat, which carried a $50 fee; and refused to provide a RESPA statement which would have shown whether the seller was to pay the March assessment. (3/15 Tr. 176) Norton opined that Gray's actions in not paying the March assessment, not reporting the cat, and not providing the RESPA statement were a vendetta for Gilbert not being able to move into the building. (3/15 Tr. 182) Norton did not explain how these actions which occurred in March 2000 could have been a vendetta for Gilbert's inability to move into the building, an incident which occurred a month later.

44. Norton testified that if an owner tries to pay on a delinquent account, she tries to work with the owner, especially if the owner comes forward and provides information as to a specific date by which the owner intends to pay in full. Norton testified that Gray was allowed to make partial payments through June 2000. (3/16 Tr. 489-99)

45. Gray made a payment on June 14, 2000, which brought her balance to zero. (3/16 Tr. 421; Resp. Ex. 32) Gray made no payments in July, August, or September 2000. (3/15 Tr. 190; Resp. Ex. 32) On September 21, 2000, Respondents' counsel, Herbert Fisher, sent Gray a letter demanding $926.58 within 31 days of service of the letter and warning that if payment was not received action pursuant to the Illinois Forcible Entry and Detainer Act would be instituted for possession of the premises. Gray signed for the letter on September 25, 2000. (R. Ex. 33) By letter to Fisher dated October 2, 2000, Gray responded. (C. Ex. 11) Gray's letter asked Fisher why she had not received statements showing her account to be past due and questioning the amount claimed. She also complained of not receiving a financial report or statement from the Association Board and claimed harassment. She ended her letter, "I am disputing the amount due and the validity of this debt. If a suit is filed I welcome the opportunity to defend against this claim." Gray did not tender any money at that time. (1/9 Tr. 143-44)

46. By letter dated October 12, 2000, Fisher responded asking for a copy of any cancelled check that Gray had claimed to have paid in July and admonishing Gray that the notice period would expire on October 26, 2000, and that if the account was not paid in full by that time, a forcible entry and detainer suit would be filed against her. (C. Ex. 12) When Gray received Fisher's response, she did nothing further. (1/9 Tr. 144)

47. In November 2000, the Association filed a forcible entry and detainer action against Gray. A notice issued on November 2, 2000, instructed Gray to appear in court on November 16, 2000. The notice was served by posting as attested to by Cook County Deputy Sheriff Mary Jane Teichert. (C. Ex. 15)

48. Gray did not appear on November 16, 2000. She testified that she never received the notice to appear. (1/9 Tr. 63-67) Judgment for possession was entered against Gray on November 16, 2000, with judgment stayed until January 15, 2001. (C. Ex. 15) Gray testified that she received a letter from the Sheriff stating that he was taking possession of her unit. She contacted the Sheriff's office and was advised that she had to go to court, so she then went to court on February 5, 2001, to file an emergency motion. (1/9 Tr. 68, 175; C. Ex. 16)

49. A hearing was held on February 7, 2001. Present were Gray, Norton, and Kristal Rivers, an associate of Fisher. The transcript of the hearing reflects that the court was concerned with proper service, was concerned with Gray's having failed to make any payments since at least August 2000, and believed it was necessary to have Fisher present to resolve the matters. Rivers reported that Fisher was in Florida and would return to Chicago in March. The court entered Gray's motion to vacate the judgment of November 16, 2000, and continued the matter until

March 9, 2001. (R. Ex. 59)

50. Gray did not advise the Sheriff's office of the February 7 proceedings. (1/9 Tr. 176) Gray testified that she purchased a cashier's check on February 23 but did not deliver it that day. When she got home, she found that she had been evicted. (1/9 Tr. 72-74, 176) Norton testified that on February 23, 2001, at 9:00 a.m., a deputy sheriff arrived to evict. Norton let him in and accompanied him to Gray's unit. She also called a locksmith. The sheriff rammed the deadbolt, removed items from the unit, and placed them on the front lawn. The locksmith arrived, repaired the damage, installed a new deadbolt, and gave Norton the keys. Norton posted the eviction notice and a note to Gray to see Robinson to retrieve her cat. Norton gave Robinson the keys so he could admit Gray to the unit to get her cat. (3/15 Tr. 199-201)

51. On February 26, 2001, Gray filed a motion seeking access to her unit. (C. Ex. 21) The matter came for hearing before the court on February 27, 2001. Gray was represented by Stringer. Rivers appeared for the Association, accompanied by Norton. Stringer represented, inaccurately, that the court had, on February 7, vacated its previous order of possession and stayed any eviction against Gray until March 7.[3] The judge criticized Norton for allowing the eviction to proceed, oversaw the return of Gray's medications, and told Norton to provide Gray with the keys to the unit and to return any of Gray's possessions that were returnable. (C. Ex. 62)

52. Stringer prepared an order which the judge signed on February 27, 2001, finding as follows (C. Ex. 24):

> 1. On 2-7-01 this Court entered an Order vacating & dismissing the Order of 11-16-00;
> 2. The matter was continued to 3-9-01; all sanctions were stayed until that date;
> 3. That Defendant was evicted from unit #508 on 2-23-01 by the Cook County Sheriff's Dept. in violation of the Court's 2-7-01 Order.

52. At the March 9, 2001, hearing, the judge again criticized Norton for allowing the eviction to proceed, telling Fisher, "The court considered that sort of a slap in the face to the court inasmuch as everybody knew the matter was being continued until your return." (C. Ex. 65, at A-115, Bates stamp C-204) On March 9, the court entered judgment against Gray for $1307.50 plus $284.50 attorney fees plus $380.80 court costs. (R. Ex. 38) On March 27, 2001, the court denied Gray's motion to hold Norton in contempt but awarded Gray $250 for five days' lodging and ordered that the door to her unit be replaced. (C. Ex. 26)

53. On April 27, 2001, the Association filed a motion in Cook County Circuit Court to "delete findings from draft order entered on February 27, 2001." (R. Ex. 48) The motion alleged that findings 1-3 of the order (quoted above) were false and that Stringer had submitted the draft order to the court without first showing it to Rivers, the Association's counsel present at the February 27 hearing.[4] On August 28, 2001, the court entered an order granting the motion and awarding an additional $1,961 is attorney fees against Gray. (R. Ex. 49) Gray appealed. The Illinois Appellate Court affirmed the trial court's correction of the February 27, 2001, order and modified the award of attorney fees to $1,299.75. (R. Ex. 50) The court wrote, in part (*Id.* at 8):

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[3]In misrepresenting the court's actions of February 7, Stringer continued to display a lack of professional ethics. See *supra* note 1. The hearing officer recommended that the Commission transmit the record of Stringer's misrepresentations to the ARDC.

[4]It appears that Stringer thus continued her pattern of ethical lapses, and the hearing officer again recommended that the Commission transmit the relevant exhibits to the ARDC.

> Although the trial court may have believed that, pursuant to the custom of attorneys, plaintiff would have contacted the sheriff if any eviction order had been placed with the sheriff before the February 7, 2001, hearing, the trial court ruled that it had not in fact entered a stay on February 7, 2001. (There is nothing in the record to indicate the trial court's knowledge on February 7, 2001, that an eviction order had been placed with the sheriff.) Even if the legal effect of the continuance order was to stay the eviction, neither party requested the sheriff to stay the eviction because of the court order of February 7, 2001.
>
> The trial court believed that it was not plaintiff's [the Association's] legal duty to implement the stay effected by the continuance order by providing a copy to the sheriff. Defendant [Gray] does not provide authority for her implied position that plaintiff had the legal duty to contact the sheriff. We believe that it was defendant's burden as movant to contact the sheriff. It was also defendant's burden to request that a stay of eviction be included in the court order of February 7, 2001. The trial court properly corrected the erroneous finding that defendant had been evicted in violation of the February 7, 2001, order.

54. The Commission agrees with and adopts the hearing officer's proposed finding that, by a preponderance of the evidence, although Respondents were hostile to Gray because of her sexual orientation, Respondents proved that Gray would have been evicted regardless of her sexual orientation. The record reflects that the first time Gray fell behind in paying her assessments, Respondents accepted partial payments from her until she brought her account current on June 14, 2000. The record further reflects that, beginning July 1, 2000, Gray made no payments whatsoever. Furthermore, upon receipt of the demand letter, Gray responded defiantly, stating that she welcomed the opportunity to defend against the impending lawsuit. When Fisher responded admonishing Gray that she owed the amount claimed and that if she did not pay a forcible entry and detainer action would be taken against her, Gray did nothing. She did not even tender the amounts that she admitted she owed. Although Gray maintained that she never received notice of the November 16, 2000, hearing, whether she in fact received notice is irrelevant. The deputy sheriff certified that she properly served Gray and Respondents had no reason to know that Gray had not received notice of the court date. Thus, from Respondents' perspective, Gray compounded her failure to make any payments and her failure to respond when Fisher admonished her that a forcible entry and detainer action would be taken against her by failing to show up for the hearing. Even after the February 7, 2001, hearing, Gray tendered no money to Respondents, nor had she advised Respondents of a date on which she would tender the money that the court told her to pay, when the sheriff showed up to evict her the morning of February 23, 2001.

55. The Appellate Court found that Respondents had no legal obligation to stop the eviction on February 23, 2001. The hearing officer and the Commission are bound by that finding. Certainly common decency and common courtesy should have motivated Norton to stop the eviction, but as the hearing officer characterized the situation, due to her obsession with the building, Norton had neither common decency nor common courtesy. The Association had received no money from Gray since mid-June 2000; its efforts to collect short of eviction had been met with defiance; and Norton was not about to stop the eviction regardless of Gray's sexual orientation.

56. Norton testified that in 2000 there were a minimum of four forcible entry and detainer

cases. (3/16 Tr. 492) Norton testified that since 2000 there have been accounts more than three months delinquent that were not sent for legal proceedings, but in all instances the owner or a representative was in contact with Norton. In one case, the owner had died and the estate requested to wait to pay the delinquency until the unit was sold. Norton agreed but the estate continued to accrue late fees and fines. (3/16 Tr. 258-59) Although Gray attempted to dispute Norton's testimony, the record explains the instances that Gray pointed to, such as one instance where the owner filed for bankruptcy, thereby staying the forcible entry and detainer action, and another instance where the delinquent owner moved before the eviction occurred. (3/16 Tr. 247-37) And, as noted above, when Gray was making partial payments, no action was initiated against her as she brought her account to a zero balance on June 14, 2000. It was only after she ceased making any payments for more than seven months that she was evicted.

K. Door Replacement

57. Gray testified that Respondents replaced the door to her unit that was damaged during the eviction but the replacement was inferior to the original, lacked a peephole, was a different color from the other doors in the building and was a "piece of plywood." (1/9 Tr. 96-98) Gray testified that the replacement door was not of the same thickness as doors on other units but conceded that she did not measure its thickness. (1/9 Tr. 155) Gray testified that she did not request a peephole because she thought the door was temporary and that the workers would return with the old door. (1/9 Tr. 155-56) At another point in her testimony, Gray stated that she objected to the door to the people who installed it. (1/9 Tr. 185) Gray testified that she and Shields laughed about the door being a "gay door" a couple of times but conceded that no one commented that the door being a different color called attention to it as a gay door. (1/9 Tr. 157) Gray testified that the door was so thin, she was able to punch a hole in it with a key. (1/9 Tr. 187, 189) However, she made no effort to replace the door. (1/9 Tr. 187)

58. Norton testified that, in response to the court's order that the door be replaced, she replaced it with a similar door which she described as "solid." (3/15 Tr. 210-13) Norton testified that an Association rule requiring that doors have at least a two-hour fire rating and painted the same color as other doors on the floor wasn't enforced. (3/16 Tr. 464-65) She testified that Gray was in charge of her replacement door and could have given the door company specifications. (3/16 Tr. 566-67) Gray, however, testified that the door was neither strong nor safe. (3/26 Tr. 611) She related that she was locked out and punched a hole in the door with her fist. (3/26 Tr. 611) She covered the hole with a metal plate. (3/26 Tr. 621-22) Gray testified that she did not ask about replacing the door because her request would fall on deaf ears. (3/26 Tr. 622-23) She described the door as "hollow." (3/26 Tr. 623)

59. The hearing officer did not credit Gray's testimony concerning the door, finding it highly unlikely that, if the door was as flimsy and unsafe as Gray portrayed it, she would have endured it for six years between its installation and the hearing with no efforts to get it changed. The court ordered Respondents to replace the damaged door and there is no evidence that Gray, who by that point was represented by counsel, protested to the court that Respondents had circumvented the order by installing an inferior door. Gray also made no protest to Respondents to change the door and took no action herself to change the door. Furthermore, the record reflects that Gray was prone to exaggeration in her testimony. For example, Gray testified that she lost virtually all of her possessions in the eviction. (1/9 Tr. 72-74) That testimony is contradicted by the Sheriff's Eviction Worksheet which shows clothes, books, dishes, refrigerator, stove, stuffed animals, dresser, shoes, and pictures left on the premises. (C. Ex. 20)

L. Gas Bill

60. Gray testified that when she moved into the building, she called the gas company to get the final bill for 4419 N. Racine[5] sent to her at the building. Instead, according to Gray, the gas company sent the Association's bill for the building to her and the bill showed the Association thousands of dollars in arrears. (1/9 Tr. 50) Gray testified that at the June 2000 Board meeting, Norton told people in the building that Gray had gotten the gas bill and sabotaged the building's ability to pay the bill and had acted maliciously. (1/9 Tr. 50, 51-52)

61. Norton testified that she had not received the gas bill for some time and contacted People's Gas Company. According to Norton, in late November 2000, she discovered that Gray had called about the gas bill in May 2000 and in June 2000 Gray had the bill rerouted to 4914 N. Winchester. Norton testified that People's Gas waived the late fees and credited the account in February 2001. She sent a letter to all owners explaining what had happened. The letter, dated February 6, 2001, characterized Gray's actions as malicious. (3/15 Tr. 178-80; C. Ex. 9)

62. Norton testified that she initially inquired of People's Gas as to why she had not received a gas bill in August 2000. (3/16 Tr. 346) She sent a follow-up letter to the President of People's Gas on November 21, 2000. (R. Ex. 26) Norton did not speak to Gray about the matter because, she testified, Gray had been uncooperative and had lied to Norton previously. (3/16 Tr. 352-53)

63. On November 28, 2000, Norton sent a letter to Nancy Donahue of the State's Attorney's Office accusing Gray of acting maliciously. Norton still had not spoken to Gray about the matter when she sent the letter. (3/16 Tr. 355-37; C. Ex. 54) On December 19, 2000, People's Gas advised Norton by letter that it was unable to determine if Gray had acted maliciously. Norton did not speak to Gray about the matter and did not notify the State's Attorney's Office. (3/16 Tr. 360-61; C. Ex. 55)

64. The hearing officer characterized Norton's actions as lacking in common decency and common courtesy. But, as the hearing officer previously found, Norton's obsession with the building rendered her incapable of displaying common decency and common courtesy. Norton's suspicions of Gray's malicious diversion of the gas bill arose after Gray had been involved in orchestrating the illegal move-in of Gilbert's possessions into Bates' unit and the false representation that the items belonged to Bates, after Gray had fallen several months in arrears in assessments with no effort to pay them, after Gray had met Fisher's demand for payment with defiance and ignored Fisher's follow-up demand, and mostly, after Respondents had obtained a judgment of possession against Gray and were proceeding toward eviction. Norton took what might have been an error in communication between Gray and People's Gas or what might have been a clerical error by People's Gas and blew it up into allegations, never substantiated, of malicious conduct. Norton's actions reflect, to borrow Shields' characterization, Norton's tendency to use an elephant gun to deal with minor matters. Although Gray has proven Norton's anti-gay animus, the Commission adopts the hearing officer's finding that, by a preponderance of the evidence, Norton would have taken the same actions with respect to the gas bill even if Gray had been heterosexual.

[5]The hearing officer noted that it is unclear whether Gray misspoke or the court reporter erred in transcribing her testimony as it appears that Gray's residence prior to moving into the building was 4914 N. Winchester.

M. Fitness Center

65. In February 2001, the building opened a fitness center. Gray testified that she never received an invitation to join the fitness center. She did not inquire about it because she expected an invitation. (1/9 Tr. 103-04) Norton testified that Gray, along with all other owners, was invited to join the fitness center. (3/15 Tr. 244-45) The record contains a February 6, 2001, letter to Gray inviting her to join the new fitness center. (C. Ex. 8) Seeing that at this time, Gray was focused on avoiding eviction, it is plausible that she received the invitation but paid no attention to it. In any event, on the record before the hearing officer, the hearing officer found that it is at least as likely that Gray was invited to join the new fitness center as it is that she was snubbed.

N. 2007 Board Meeting

66. On January 24, 2007, Respondents advised all owners of an emergency Board meeting scheduled for January 27, 2007, to discuss a special assessment to pay legal fees incurred in defending the instant actions. (C. Ex. 66) Norton recorded the meeting and transcribed the tape in a document labeled "Board Meeting Minutes." (3/26 Tr. 698; C. Ex. 67)

67. The minutes reflect that Norton had Robinson read the complaints, which Norton characterized as one-sided. Norton stated that the Board did not discriminate against Gray or Gilbert. She denied a request from Gray that she also read a Commission letter dated March 30, 2006. Further discussion of the specifics of the cases was minimal and was in response to inquiries and comments from owners present at the meeting. The minutes also reflect debate over whether the Association should be paying that portion of the legal fees attributable to Norton's personal defense, with Gray opining that it should not and that Norton should cover half of the legal fees personally.

3. Conclusions of Law

Section 5-08-030 of the Chicago Fair Housing Ordinance includes the following provisions describing what constitutes a violation:

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

A. Gray's Claim of Sexual Orientation Discrimination

Gray's claim of sexual orientation discrimination is based on direct evidence of Respondents' anti-gay animus. The Commission recognized proof of housing discrimination by direct

evidence in *Pudelek and Weinman v. Bridgeview Garden Condominium Ass'n et al.*, CCHR No. 99-H-39/53 (Apr. 18, 2001):

> Typically, claims of intentional discrimination are proved by indirect evidence through the shifting burden approach established in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). However, when a complainant has direct proof of intentional discrimination, s/he may prove intent by introducing credible evidence that shows the discriminatory intent and that shows that this unlawful intent resulted in an actionable claim.

Id. at 18 (citations omitted).

As detailed in the Findings of Fact, Gray has provided ample direct evidence of Respondents' discriminatory animus and creation of a hostile housing environment for Gray based on her sexual orientation. This included: Gray's testimony that in March 2000, Norton told her that she would not turn the building into a Halsted Street; Butler's testimony that Norton stated in June 2000 in relation to Gray that she was tired of this "gay ass shit"; Shields' testimony that within the first couple of months of moving in, Norton told her that the walls were thin and intimate conduct could be heard, that she was not happy with Gray moving in because Gray did not respect the building's culture, and that she did not want lesbian conduct in the building; and McMikel's testimony that within a few months after she moved in during February 2003, Norton spoke of Gray and Gilbert being gay and of not wanting the gay lifestyle in the building.

Commission Regulation 420.175(a) provides: "Harassment on the basis of actual or perceived membership in a Protected Class is a violation of the FHO. An owner, lessee, sublessee, assignee managing agent or other person having the right to sell, rent or lease any dwelling, or any agent of these, has an affirmative duty to maintain a housing environment free of harassment on the basis of membership in a Protected Class."

Reg. 420.175(b) further provides: "Slurs and other verbal or physical conduct relating to an individual's membership in a Protected Class...constitutes harassment when the conduct: (i) has the purpose or effect of creating an intimidating, hostile or offensive housing environment; (ii) has the purpose or effect of unreasonably interfering with an individual's housing; or (iii) otherwise adversely affects an individual's housing opportunity."

As recommended by the hearing officer, the Commission finds that Norton's negative and derogatory comments about Gray's sexual orientation had the purpose and effect of creating a hostile and offensive housing environment for Gray which interfered with her protected housing rights and violated the Chicago Fair Housing Ordinance.

Respondents object to this finding, arguing that in only one instance were the derogatory comments directed at Gray. Respondents' objection is based on a narrow view of what constitutes hostile environment harassment that is not supported by the law. Certainly derogatory comments about Gray's sexual orientation made to other persons (especially when they are other residents of the building) created a hostile housing environment just as derogatory comments made directly to Gray did.

Gray alleges other acts of harassment by Respondents. By far, the most serious of these is the February 23, 2001, eviction of Gray. As discussed in the Findings of Fact, the eviction was tainted by Norton's anti-gay animus and her desire to rid the building of the "gay lifestyle." However, the Commission adopts the hearing officer's recommended finding that it is more

likely than not that Respondents would have evicted Gray even if she were heterosexual. Thus, the eviction presents a case of mixed motives.

In *Pearson v. NJW Office Personnel et al.*, CCHR No. 91-E-126 (Sept. 21, 1992), the Commission held that in a mixed-motive case, where a respondent has proved that it would have taken the adverse action regardless of Complainant's membership in a protected class, the respondent is not absolved of liability but damages are reduced appropriately. The Commission reasoned that "any time an illegal motive has played a part in an employment decision covered by the Ordinance, the Ordinance has been violated." *Id.* at 29. The Commission further held that a respondent is not required to formally plead the "same result" defense as an affirmative defense. *Id.* at 30. It held that the burden of proof is on the respondent found to have discriminated to prove that it would have taken the same action anyway. *Id.* The Commission further opined, "[T]he employer's contention that it had valid reasons to be dissatisfied with the employee is an element to be taken into account in the calculation of complainant's damages. Even if complainant was discharged for illegal reasons, respondents may be able to reduce damages by proving, by a preponderance of the evidence, that complainant would have been discharged at the actual date of discharge or at a later date for legitimate reasons unrelated to discrimination." *Id.* at 31. In setting forth these standards, the Commission emphasized that an all-or-nothing result is not required, that determining what would have happened absent the discriminatory motive is a difficult decision for a fact-finder, and that the Commission will not lightly determine that a respondent would have taken the same action anyway, and that the Commission will resolve any ambiguities against the discriminating respondent. *Id.* at 31-32.[6]

Although *Pearson* was an employment discrimination case decided under the Chicago Human Rights Ordinance, the Commission has considered and applied mixed motive analysis in housing and public accommodation cases as well. In an early housing discrimination case, *Lawrence v. Atkins*, CCHR No. 91-FHO-17-5602 (July 29, 1992), the respondent argued that he rejected the complainant as a tenant for legitimate reasons other than her race, but the Commission found the landlord did not in fact rely on those reasons in rejecting her. The Commission cited with approval the leading federal mixed motive decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241 (1989), for the principles, first, that the test for liability is whether the impermissible motive was a factor in the decision at the moment it was made and, second, that if so the burden shifts to the respondent to show that the same decision would have been made without consideration of the impermissible factor. However, in *Lawrence v. Atkins*, the "same result" test did not become an issue, because the Commission ruled that no mixed motive was shown.

In *Campbell v. Brown and Dearborn Parkway*, CCHR No. 91-FHO-18-5630 (Dec. 16, 1992), the Commission acknowledged and applied a mixed motive analysis, citing *Pearson*, in finding that a discriminatory motive played a part in the occupancy policy under challenge and that the respondent landlords failed to prove they would have adopted the occupancy policy without relying in whole or in part on their discriminatory animus to exclude families with children. Thus the Commission ruled that a "same result" defense was not established and no reduction in damages was required.

In *McDuffy v. Jarrett*, CCHR No. 92-FHO-28-5778 (May 19, 1993), the Commission discussed mixed motives in the context of a landlord's decision to evict the complainant both

[6]The Commission noted in *Pearson* that it was not adopting the federal formula regarding mixed motives in its entirety. *Id.* at 29.

because of her failure to pay rent and because of her refusal to comply with his demands for sex, citing *Pearson* and *Campbell*. In *McDuffy*, the Commission found that the complainant was subjected to sexual harassment in the form of a hostile environment but not to *quid pro quo* sexual harassment with regard to the eviction. Thus the Commission awarded damages for the emotional distress of the complainant due to the hostile environment created by the respondent's sexual demands. But the denial of damages arising from the eviction was based on a finding of no liability, not on a "same result" finding arising from a mixed motive analysis.

Mixed motive analysis was also considered in a public accommodation discrimination case involving a commercial tenancy. *Lapa v. Polish American Veterans Association et al.*, CCHR No. 01-PA-27 (Mar. 21, 2007). There, the Commission determined that a gay commercial tenant who was subjected to a hostile environment in the form of homophobic slurs and epithets was entitled to damages for emotional distress arising from that conduct but not to out-of-pocket losses arising from his eviction because he had repeatedly failed to pay timely rent, thus failing to meet a critical tenant obligation for which a heterosexual tenant was also evicted. Again, although there was discussion of mixed motive analysis, the Commission found that discriminatory animus did not play a part in the eviction, so there was no liability for that action.

These decisions show that discussions of mixed motives and "same result" defenses have often intertwined with consideration of whether mixed motives are involved at all. In assessing liability the Commission has sometimes looked at specific actions of a respondent and found that certain actions were motivated by discriminatory animus (at least in part) while others were not. Whether this approach is more appropriate than a mixed motive analysis of a respondent's conduct remains a case-specific factual determination.[7]

Complainants object to any application of the "same result" defense. They observe that Commission statements applying *Pearson* to cases under the Fair Housing Ordinance were dicta and urge that the Commission not apply *Pearson* to the Fair Housing Ordinance because doing so would undermine the policy of that ordinance against discrimination in housing. However, they provide no analysis as to how the "same result" defense undermines the Fair Housing Ordinance's policy against discrimination in housing to any greater extent than applying the "same result" defense in employment discrimination cases undermines the Human Rights Ordinance's policy against discrimination in employment. Complainants have provided no principled reason to disregard the Commission's statements, even in dicta, that mixed motive analysis and its accompanying "same result" defense can be applied in cases under the Chicago Fair Housing Ordinance. The Commission thus accepts the hearing officer's application of mixed motive analysis to the facts of this case.

Complainants next urge that *Pearson* be overruled and that the "same result" defense be rejected generally. The hearing officer left that issue for the Commission to resolve.

The Commission does not accept Complainant's proposal that it overrule *Pearson* and reaffirms the mixed motive analysis set forth in that decision. These principles have been cited in interpreting the Human Rights and Fair Housing Ordinances since the Commission began enforcing the ordinances in their present form. They remain a fair and reasonable approach to

[7]Which approach is used may depend on whether essential elements or preconditions to a claim have been established. See, e.g. *Lopez v Arias*, cited and quoted *infra*. A respondent may have a discriminatory animus, but to support a liability finding the evidence must show that discriminatory intent "played a part" in the adverse action taken against the complainant. Under either approach, the resulting damages may be similar even though the liability findings (and resulting fines) may differ.

balancing the equities between complainants and respondents in many of the factual situations typically encountered in discrimination cases.

Even as dicta, the Commission's prior decisions make it clear that, when discriminatory animus or intent does "play a part" in causing or exacerbating an adverse action against a complainant, liability is established but damages can be reduced to take into account the non-discriminatory contributing factors if a respondent can prove that the non-discriminatory factors would have produced the "same result."

In *Pearson*, for example, the Commission explained its application of mixed motive analysis as follows: "Even if complainant was discharged for illegal reasons, respondents may be able to reduce damages by proving, by a preponderance of the evidence, that complainant would have been discharged at the actual date of discharge or at a later date for legitimate reasons unrelated to discrimination." *Pearson, supra* at 31. The Commission then determined that Pearson would have been discharged eventually because of the non-discriminatory factors and that the discharge would have occurred about one and one-half months after the actual date of discharge. Thus the Commission awarded damages for lost wages for only that period.

In the instant case, as discussed in the Findings of Fact, the Commission finds that Respondents have proved their "same result" defense with respect to the eviction of Gray on February 23, 2001. While Norton's anti-gay animus played a part in the events that led to Gray's eviction, Gray would have been evicted even if she were not gay because she failed to make any assessment payments since June 14, 2000; because upon receipt of Fisher's demand letter she reacted defiantly and failed to pay even the amount that she conceded she owed; because she ignored Fisher's follow-up letter; because she failed to appear at the hearing on Respondents' forcible entry and detainer petition even though she had been properly served; and because even after her appearance in court on February 7, 2001, she had yet to pay the amount the court told her to pay and had not indicated to Respondents that she would pay it as of the time when the sheriff showed up to evict her. Furthermore, the Commission finds that Respondents had no legal duty to stop the eviction on February 23, 2001; that Gray took no action to request an express stay of eviction from the court and took no action to notify the Sheriff's Office of the February 7 court proceedings; and that Respondents' allowing the eviction to proceed resulted from Norton's obsession with the building and lack of common decency and courtesy as much as from Norton's anti-gay animus. Accordingly, the Commission finds that Respondents' damages must be reduced to take into account the non-discriminatory factors also causing the eviction.

Gray asserts that Respondents harassed her because of her sexual orientation with respect to the misdirected gas bill incident. As detailed in the Findings of Fact, the Commission finds that Respondents have proved their "same result" defense with respect to the gas bill matter. Accordingly, Respondents' damages must also be reduced to take into account the non-discriminatory factors contributing to the accusations against Gray regarding the gas bill.

Gray asserts further acts of harassment with respect to the allegedly substandard replacement door and alleged failure to invite her to join the new fitness center. As detailed in the Findings of Fact, the hearing officer found that Gray failed to prove by a preponderance of the evidence that Respondents failed to invite her to join the new fitness center and failed to prove by a preponderance of the evidence that the replacement door was substandard. These findings go to liability: Gray has failed to prove that these adverse actions took place, and for that reason, no violation can be found or damages awarded as to these allegations.

To recap, Gray has proved by a preponderance of the evidence that Respondents have violated the Fair Housing Ordinance through harassment because of her sexual orientation. However, Respondents have proved a "same result" defense to damages with respect to the eviction and the gas bill incident. Gray has not proved by a preponderance of the evidence that the she was not invited to join the fitness center or that the replacement door was substandard.

B. Damages for Violation Against Gray

Gray offered evidence of substantial out-of-pocket losses but all of those losses involved personal property lost or destroyed as a result of the eviction of February 23, 2001. Because Respondents have proved that they would have evicted Gray on February 23, 2001, regardless of their discriminatory intent, the hearing officer's recommended finding was that those losses are not recoverable. The Commission agrees with this recommendation and denies compensation for the claimed out-of-pocket losses.

Gray requested emotional distress damages of not less than $30,000. (Complainants' Pre-Hearing Memorandum filed December 8, 2006) Gray testified that after the eviction, she went into psychotherapy for one year. (1/9 Tr. 110-11) The Commission agrees with the hearing officer that emotional distress damages attributable solely to the eviction are not recoverable because of Respondents' successful "same results" defense. Gray also testified that the ordeal has made her more passionate about her work as a gay and lesbian advocate. (1/9 Tr. 111-12)

The issue before the Commission is to place a value on Gray's emotional distress arising from the hostile environment created because of her sexual orientation which would not have occurred had Gray not been a member of the protected class. That harassment must focus on Norton's derogatory and negative remarks about Gray's sexual orientation, including expressions of intent to keep the "gay lifestyle" out of the building. Norton's derogatory remarks against Gray's sexual orientation began in March 2000 and continued at least until the time she filed her initial Complaint and her Amended Complaint of November 16, 2001. She made these derogatory remarks to a variety of individuals (including Gray herself) under a variety of circumstances. These remarks were egregious and repeated. But Gray's most severe emotional distress including her psychotherapy did not occur until the eviction in February 2001, about a year into the period of the generally hostile housing environment created and maintained by Norton's derogatory comments.

The Commission has recognized that acts of discrimination, particularly harassment, frequently cause emotional distress which is compensable in damages. Expert testimony is not necessary to establish emotional distress. The Commission bases the amount of such damages on, among other factors, the length of time complainant has experienced the distress, the severity of the distress, the vulnerability of the complainant, and the egregiousness and duration of the underlying discrimination. See, e.g., *Warren and Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR No. 07-P-62/63/92 (July 15, 2009), at 25-28 (collecting authority).

The hearing officer recommended that the Commission award $2,000 for emotional distress stemming from the maintenance of this hostile housing environment. Complainants objected that this recommended award is unreasonably low. The hearing officer reviewed the record again along with the cases cited by Complainants, but was not persuaded to alter his recommendation as to the amount of emotional distress damages to be awarded to Gray. The Commission has also reviewed the record and the positions of the parties and hearing officer.

Complainants in their objections cite *Hussian and Decker*, CCHR No. 93-H-13 (Nov. 15, 1995), awarding $5,000 in emotional distress damages to a complainant who was sexually harassed by her landlord. The Commission relied on evidence that the complainant had been sexually abused as a child and the respondent was aware of the abuse. The Commission also relied on testimony from the complainant's expert witness that the her depression and other symptoms were symptoms commonly displayed by sexual harassment victims.[8]

In the instant case, there is no evidence that Complainant Gray has a level of fragility anywhere comparable to that of the complainant in *Hussian*. On the contrary, Gray appears from the record to be a very resilient individual. She testified that as a result of the harassment, she became more passionate in her work as a GBLT liaison and hate crimes specialist.

Gray's testimony concerning her emotional distress was related predominantly to the effects of the eviction, particularly the personal items that she lost during the eviction. She testified that she still cries on anniversaries of important personal dates because of the loss of mementos related to those dates. But, as discussed above, because Respondents have proved that Gray would have been evicted regardless of her sexual orientation, the Commission will not award damages for the emotional distress the eviction caused her.

This situation can also be compared to that of the complainant in *Brennan v. Zeman*, CCHR No. 00-H-5 (Feb. 19, 2003), who was awarded $5,000 in emotional distress damages arising from sexual orientation harassment by his landlord in the form of derogatory remarks over a period of about five months, some in front of other tenants and closely accompanied by the imposition of differential terms and conditions of continued tenancy which resulted in the non-renewal of his lease. In that case, no mixed motive for the differential treatment and non-renewal was asserted or proved; the conduct was found to have been caused entirely by the landlord's animus against the complainant's sexual orientation. Reviewing Commission criteria and precedents for determining emotional distress damages and acknowledging that emotional distress is never easy to quantify, the Commission took into account that this complainant was especially vulnerable because he was quiet about his sexuality, which was revealed to his neighbors through the landlord's conduct and which he was required to reveal to his employer, who demanded to know the basis for his complaint when he sought time off to pursue it at the Commission. In addition, the revelation resulted in neighbors making derogatory remarks about his sexual orientation over a period of several months. The Commission explained that the $5,000 reflected a mid-range of emotional distress experienced by the complainant, which was significant but not so extended or egregious as to justify a top measure of damages.

In a more recent case of sexual harassment of a tenant over a period of about a year, the Commission also awarded emotional distress damages of $5,000, finding that the complainant was vulnerable for several reasons and that she experienced physical as well as emotional manifestations which were long-lasting. *Gray v. Scott*, CCHR No. 06-H-10 (Apr. 20, 2011). Again there was no evidence of any mixed motive by the landlord which might have reduced the amount of damages.

These decisions suggest that $5,000 in emotional distress damages is something of a mid-range benchmark where an individual has been harassed in his or her housing environment, has

[8]Similarly, in *Boyd and Williams*, CCHR No. 92-H-72 (June 16, 1993), the Commission awarded $5,000 for emotional distress based on evidence that, due to the sexual harassment by her landlord, the complainant was depressed, felt dehumanized and that her womanhood was taken away from her, and continued to suffer from nightmares.

experienced significant and long-lasting effects, and there is no evidence of mixed motives that might reduce the damages amount.

After considering the hearing officer's findings in this case and emotional distress damage awards in similar cases where mixed motives and the "same result" defense were not at issue, the Commission finds that the hearing officer's recommendation of $2,000 to Gray for her emotional distress is appropriate to the facts of this case. It recognizes the seriousness of this type of harassment and its likely impact on the person subjected to it. At the same time, it recognizes that Gray did not prove significant or long-lasting effects from the harassment exclusive of the eviction. This remains a substantial award while taking into account the "same results" defense. Accordingly, the Commission accepts and adopts the hearing officer's recommendation of $2,000 in emotional distress damages for Gray.

C. Gray's Second Amended Complaint

As the Commission has recognized in prior cases, the Fair Housing Ordinance does not contain any provision prohibiting retaliation against an individual for filing a complaint with the Commission or otherwise participating in Commission proceedings. Such a provision is found only in the Human Rights Ordinance. See *De los Rios v. Draper & Kramer, Inc.*, CCHR No. 05-H-32 (Aug. 23, 2006); *Coleman v. Cradon Place Board of Directors*, CCHR No. 03-H-45 (June 23, 2003). Accordingly, a retaliation claim under the Fair Housing Ordinance is not available.

Gray sought and received leave to file her Second Amended Complaint during the one-month period between the fourth and fifth days of the administrative hearing in 2007. The Second Amended Complaint does not specifically check "retaliation" as a claimed basis on the Commission's face sheet for complaints but only "sexual orientation." In the allegations, however, Gray characterizes the new alleged conduct as "in retaliation for my filing of a complaint before this Commission" followed by the statement, "Because of Respondents' acts, I have suffered renewed humiliation and continue to live in a hostile living environment." Thus the Commission can still consider, based on the allegations of the Second Amended Complaint, whether Gray proved additional harassing conduct based on her sexual orientation.

The Commission agrees with and adopts the hearing officer's recommended finding that, even if a retaliation prohibition may be implied in the Fair Housing Ordinance, Gray failed to prove a *prima facie* case of retaliation because she offered no evidence of retaliatory intent and the circumstances of the conduct do not support an inference of it. The Second Amended Complaint stems from the January 24, 2007, notice of an Association Board meeting on January 27, 2007, and the meeting itself. Gray testified that Respondents used the meeting to publicize Gray's sexual orientation and eviction to owners throughout the building, particularly owners who had purchased their units after February 2001 and were not otherwise aware of these facts.

However, the record reflects that Respondents had legitimate reasons for these actions, with no evidence that the reasons are pretextual. The Association owed Atty. Fisher $17,000 in legal fees, largely for the defense of these discrimination Complaints. The Association lacked the cash to pay the fees and had to impose a special assessment on unit owners. The transcript of the meeting shows that, to explain the reason for the legal fees, Norton had Robinson read the complaints filed with the Commission. Of course, these Complaints were public documents under Commission Regulation 220.410(b) and Gray had no privacy interest in them. Nor is there any evidence that Gray had tried to keep either her sexual orientation or these discrimination Complaints confidential within the condominium. Moreover, the Association Board and unit

owners were entitled to be informed about litigation in which the Association was involved. The transcript further shows that all discussions of the proceedings pending before the Commission were in connection with discussion of the motion to levy the special assessment and that Gray herself spoke against the Association paying Norton's share of the legal fees. Furthermore, the Complaints were filed in March 2001. There is no evidence explaining why, if Respondents intended to retaliate against Gray for filing her Complaint, they waited almost six years to do so. Because Gray failed to prove retaliatory or discriminatory intent in the publicizing of these Complaints, she failed to prove that this conduct was an additional violation of the Fair Housing Ordinance.

D. Gilbert's Claims of Race and Sexual Orientation Discrimination

Commission Regulation 420.100(k) defines violations of the Fair Housing Ordinance to include:

> Denying or delaying the processing of a sales offer or an application made by a person or refusing to approve a person for purchase of or occupancy in a dwelling because of that person's membership in Protected Class.

Gilbert maintains that Respondents discriminated against her by precluding her from purchasing Bates' unit on two occasions. First, in April 2000, Respondents allegedly sabotaged the sale by failing to provide the assessment letter needed to close. Second, in September 2000, Respondents allegedly prevented the sale by refusing to approve Gilbert as a purchaser.

Like Gray, Gilbert sought to prove her claims of discrimination with direct evidence. Gilbert, however, offered insufficient evidence to support her claim of race discrimination. The only evidence offered was Gilbert's testimony that Moore-Brown and Smith told her Norton had said if Bates had to sell to a white person, why couldn't he have gotten more money. Such multiple-level hearsay testimony not based on the personal knowledge of the witness cannot meet Gilbert's burden of proof even under the more relaxed rules of evidence permitted by Commission Regulation 240.314. In addition, this comment, if made, does not affirm an intent to preclude approval of Gilbert's purchase even though it expresses a biased view about Gilbert's race and perhaps some discomfort with having a white unit owner.[9] Accordingly, the Commission accepts and adopts the hearing officer's recommendation and finds for Respondents with respect to Gilbert's claim of race discrimination.

As discussed in the Findings of Fact and with respect to Gray's claims of sexual orientation discrimination, there is ample evidence of Norton's anti-gay animus. However, Gilbert has failed to prove that the first alleged act of discrimination, a refusal to provide an assessment letter so that Gilbert and Bates could close, ever occurred. As discussed in the Findings of Fact, Norton testified plausibly and without contradiction that the request for an assessment letter typically comes from the seller and that she never received such a request. Gilbert testified that such details were handled by Stringer, who was her attorney, but Stringer denied acting as Gilbert's attorney in April 2000 as Stringer did not become licensed to practice

[9]Norton also made a comment to Gray about not wanting Gray and her "white friend" Gilbert to turn the building into a Halsted Street and bring her white friends from the north side into the building. (Finding of Fact #14) The hearing officer found this remark was focused on the sexual orientation of Gray and Gilbert rather than Gilbert's race, and the Commission agrees with that characterization in light of the evidence of other remarks by Norton expressly stating her intention to keep gay people out of the building.

law until May 4, 2000. Upon Stringer's testimony that she was not licensed until May 4, 2000, examination of her abruptly halted. Thus, there is absolutely no evidence that anyone ever requested the assessment letter, the document that Respondents are alleged to have discriminatorily denied to Gilbert.

In *Lopez v. Arias*, CCHR No. 99-H-12 (Sept. 20, 2000) at 15, the Commission explained the need to prove all elements of a claim:

> One cannot discriminate illegally without the tools to discriminate. If a racist landlord rejects a potential tenant of color at a time when the landlord has no vacant units and no reason to anticipate any vacancies, we may condemn the landlord's racism as immoral but the rejected prospective tenant has no legal cause of action. There can be no discriminatory refusal to rent when there is nothing available to rent.

The Commission's analysis in *Lopez* applies with equal force to Gilbert's claim based on the failure to close in April 2000. There can be no discriminatory refusal to provide the assessment letter when the assessment letter was not requested, and the only conclusion that the record supports is that the assessment letter was never requested. Accordingly, the Commission accepts and adopts the hearing officer's recommendation that it must find for Respondents with respect to Gilbert's claim of sexual orientation discrimination in April 2000.

The record with respect to Gilbert's claims of sexual orientation discrimination in September 2000, however, suffers from no similar defect. There is no question that Respondents affirmatively preempted the renewed effort by Bates to sell to Gilbert at that time. Respondents wrote to Bates and told him that they would not approve Gilbert as a purchaser. Furthermore, Gilbert testified credibly and without contradiction that she asked Norton in September 2000 what she had to do to get her purchase approved and Norton replied that there was nothing Gilbert could do because Gilbert would never be approved. The hearing officer found that Gilbert's sexual orientation was a factor in this harsh, blanket rejection, although Respondents proved a "same result" defense that precludes more than nominal damages, as discussed below.

E. Damages for Violation Against Gilbert

Gilbert requested out-of-pocket damages of $20,000, reflecting the difference between the purchase price of Bates' unit at 7355 South Shore Drive and the unit at 7337 South Shore Drive which she purchased a few months later in December 2000. She also requested compensation for moving expenses associated with the blocked purchase, as well as the costs of the appraisal and background check for purchase of Bates' unit. Gilbert requested $5,000 in emotional distress damages for the claimed race and sexual orientation discrimination.

As discussed in the Findings of Fact, the hearing officer found that Gilbert proved her *prima facie case* as to this claim with direct evidence of discriminatory intent. Specifically, Sandra McMikel testified credibly that Norton admitted to McMikel that she prevented Gilbert from moving into the building and that she did not want the gay lifestyle in the building.

However, also as discussed in the Findings of Fact, Respondents have proved by a preponderance of the evidence that Gilbert defied Respondents' denial of her request to move in early in April 2000 and moved her possessions into Bates' unit by falsely claiming that they belonged to Bates. Furthermore, Respondents have proved by a preponderance of the evidence that because of the intentional misrepresentation and unauthorized move-in, Respondents would

have refused to approve a sale to Gilbert even if Gilbert were not a lesbian. Therefore, Respondents have proved their "same result" defense.

The discussion with respect to Gray's claim of the "same result" defense applies with equal force to Gilbert's claim as to the discrimination that occurred in September 2000. Respondents are liable for discriminating against Gilbert but their successful "same result" defense serves to reduce their damages. Specifically, because Respondents would have prevented Gilbert from purchasing Bates' unit even if she were not a lesbian, Gilbert may not receive more than nominal compensatory damages for losses resulting from the blocking of her purchase. The hearing officer recommend that the Commission find for Gilbert with respect to her claim of discrimination in September 2000 but award her only nominal emotional distress damages of $1.00.

Complainants have objected to the recommendation that Gilbert be awarded only $1.00 in nominal damages. Complainants suggest that any finding of discrimination must carry with it some award for emotional distress. To the extent that Complainants make this argument, the hearing officer viewed it as a misreading of Commission precedent, explaining that although emotional distress need not be proved with expert testimony and need not be proved with particularized precision, there must still be evidence of emotional distress to support an award, because such damages are not automatic. See, e.g., the recent rulings in the public accommodation area awarding a wheelchair user unable to access a retail business only $1.00 in emotional distress damages: *Cotten v. Addiction Sports Bar and Lounge*, CCHR No. 08-P-68 (Oct. 21, 2009) and *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (Dec. 16, 2009).

In the instant case, the hearing officer regarded all evidence of consequential damages as directly attributable to Respondents' blocking the sale of Bates' unit to Gilbert. However, as discussed above, Respondents proved that they would have blocked the sale even if Gilbert had been heterosexual. Accordingly, in the hearing officer's view, no more than nominal damages may be assessed against Respondents.

As for Gilbert, the Commission agrees with the hearing officer and does not find any award for the claimed out-of-pocket losses warranted in this case. Because of her own conduct of moving her possessions into the unit before closing when she knew it was not allowed, Gilbert cannot recover for those expenses or losses. The evidence is quite clear that as a result of that conduct, especially its deceptive nature, Respondents would not have allowed Gilbert's purchase of Bates' unit to go forward even if she had been heterosexual.

At the same time, the Commission has determined that Gilbert's sexual orientation was a factor in Respondents' decision to block her purchase and preclude any future effort to purchase, and finds that this justifies at least nominal damages for the emotional distress of experiencing such discrimination even in the face of the "same result" defense barring any substantial damages for the loss of opportunity to purchase a unit in the condominium. The Commission has determined that the nominal damages in this case should be more than $1.00 in light of the direct expression by Norton to McMikel that she was motivated in part by her discriminatory intent to keep the "gay lifestyle" out of the building. At least some emotional distress must flow from this discrimination itself (e.g., *Antonich v. Midwest Building Management*, CCHR No. 91 E-150 (Oct. 21, 1991)), including the knowledge of this type of preclusive statement made to another unit owner, even though such damages must remain nominal. The Commission thus increases the emotional distress damages award for Gilbert to $100.

4. Remedies

A. Compensatory Damages

As explained above, all of Complainants' requests for damages to compensate for out-of-pocket losses are denied. Complainant Vernita Gray is awarded $2,000 in emotional distress damages and Complainant Patricia Gilbert is awarded $100 in emotional distress damages, with both awards imposed jointly and severally against Respondents 7355 South Shore Condominium Association and Shelley Norton.

B. Punitive Damages

Complainants requested punitive damages in their Pre-Hearing Memorandum but did not specify an amount and did not object to the hearing officer's recommended denial of punitive damages. The Commission does not find punitive damages appropriate in this case.

The purpose of punitive damages is to punish and deter wrongdoers. See, e.g., *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), and *Rankin, supra.* The Commission may consider a respondent's financial condition. *Nash/Demby v. Sallas Realty & Sallas*, CCHR No. 92-H-128 (Apr. 19, 2000).

In the instant case, Respondents are sufficiently punished and deterred from future discrimination by the emotional distress damages, fines, and attorney fees imposed against them, in addition to the resources they expended litigating the case for over a decade. Respondents have stated in a post-hearing submission that they are no longer represented by counsel because of inability to pay. Further, the Association will likely impose special assessments on its owners to pay any relief awards, as it already imposed a special assessment to pay its own attorney fees. Thus, any punitive damages would be paid by residents who did not directly take part in the discrimination and by Complainant Gray herself. Even when no evidence was presented about financial circumstances, the Commission has previously taken notice of a respondent's likely wealth when considering punitive damages. *Day v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct. 20, 2010).

C. Interest on Damages

Section 2-120-510(l) of the Chicago Municipal Code provides for payment of interest on damages awarded. Reg. 240.700 provides for pre- and post-judgment interest to be awarded at the bank prime loan rate as published by the Board of Governors of the Federal Reserve System, adjusted quarterly, calculated on a daily basis from the date of the violation and compounded annually. Such interest is routinely awarded.

The hearing officer noted that the record does not pinpoint the exact date that the violation against Gray began, but the first instance of Norton's anti-gay comments testified to was the Halsted Street comment that Norton made to Gray herself. Gray testified that this occurred in March 2000 but did not specify a precise date. Accordingly, the hearing officer recommended that the Commission award interest beginning on April 1, 2000. The Commission finds that this date reasonably determines when a hostile environment was established as to Gray based on her sexual orientation, especially because the remark clearly implicated her sexual orientation as commonly understood by a gay or lesbian individual living in Chicago, and it was made directly to Gray. See, e.g., *Salwierak v. MRI of Chicago Inc. et al.*, CCHR No. 99-E-107

(July 16, 2003); *Fox v. Hinojosa*, CCHR No. 99-H-116 (June 16, 2004); and *Edwards v. Larkin*, CCHR No. 01-H-35 (Feb. 16, 2005).

As to Gilbert, she testified that Norton told her in September 2000 that she would never be allowed to move into the building. However, the specific date of violation can be pinpointed to September 5, 2000, the date of the letter to Bates stating that the Board would not approve a sale to Gilbert. (Finding of Fact #26)

D. Fines

Pursuant to Section 5-8-130 of the Chicago Municipal Code, the Commission may impose a fine up to $500 against a respondent found to have violated any provision of the Chicago Fair Housing Ordinance. The hearing officer recommended fines of $500 against Norton individually for each of the two violations (one against Gray and one against Gilbert), for total fines of $1,000. The hearing officer recommended fines of $100 against the Association for each of the violations, for total fines of $200.

For the reasons stated below, the Commission assesses the responsibilities of each of these two Respondents differently and has determined that the appropriate fines are $100 per violation against Norton and $500 per violation against the Association.

The hearing officer correctly pointed out that the Association is vicariously liable for the actions of Norton, its agent, and that Norton is also individually liable for her own discriminatory actions taken as the Association's agent. The Commission agrees with the hearing officer that there is no evidence that any other person connected with the Association, such as any member of the Association Board, shared Norton's anti-gay animus or participated in Norton's violations of the Fair Housing Ordinance. Furthermore, any fine rendered against the Association, as opposed to the fine rendered against Norton personally, will likely be passed on to the unit owners, including Gray. These circumstances caused the hearing officer to recommend a lower fine against the Association and the maximum fine against Norton, consistent with *Warren, supra*, a public accommodation discrimination case where the Commission fined the individual perpetrator who made derogatory comments to gay and transgender customers $500 and fined the corporate entity whose liability was based solely on the doctrine of *respondeat superior* $100.

The situation in this case is distinguishable from that in *Warren*. The business respondent in *Warren* had a strong anti-discrimination policy. Only a single discriminatory incident was involved, in which a security guard with no role in the management of the business made derogatory remarks about gay and transgender customers which they were able to hear. The business respondent terminated the services of the company which employed the guard based on this misconduct.

By contrast, in the instant case, the Board of Commissioners finds that the Association bears a much higher level of responsibility for the discrimination against Complainants. Respondent Norton was its president and day-to-day manager. She was the face of the Association for most purposes, and from the evidence of her strong, visible operational role it was clear the Association knew and condoned her conduct. In light of the number of unit owners who knew of Norton's derogatory remarks about Complainants' sexual orientation and her stated intent to keep the "gay lifestyle" out of the building, it is highly unlikely that the Association Board was unaware of Norton's animus against gays and lesbians and its role in her treatment of

Complainants. Yet there was no evidence of any effort by the Association to prevent discriminatory practices or oppose the hostile environment Norton created based on Complainants' sexual orientation.

E. Injunctive Relief

No injunctive relief was sought and the Commission does not find it necessary in this case.

F. Attorney Fees

Both Gilbert and Gray are prevailing parties with respect to their claims of sexual orientation discrimination. Accordingly, the hearing officer recommended that the Commission award them attorney fees.

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to order a respondent to pay a prevailing complainant's reasonable attorney fees and associated costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to such an order. See, e.g., *White v. Ison*, CCHR No. 91-FHO-126-5711 (July 22, 1993), and *Jenkins v. Artists' Restaurant*, CCHR No. 90-PA-14 (Aug. 14, 1991). The Commission adopts the hearing officer's recommendation and awards Complainants their reasonable attorney fees and costs.

Pursuant to Commission Regulation 240.630, Complainants may serve and file a petition for attorney's fees and/or costs, supported by arguments and affidavits, no later than 28 days from the mailing of this Final Ruling on Liability and Relief. The supporting documentation shall include the following:

1. A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work.

2. A statement of the hourly rate customarily charged by each individual for whom compensation is sought.

3. Documentation of costs for which reimbursement is sought.

5. Conclusion

For the reasons stated above, the Commission finds Respondents liable for sexual orientation discrimination in violation of the Chicago Fair Housing Ordinance (1) as to Complainant Vernita Gray by subjecting her to a hostile housing environment because she is a lesbian; and (2) as to Complainant Patricia Gilbert by blocking her second effort to purchase a condominium unit in September 2000. The Commission orders Respondents to pay the following monetary relief:

1. Respondent Shelley Norton is ordered to pay a fine of $100 to the City of Chicago for each of the two violations, for a total of $200 in fines.

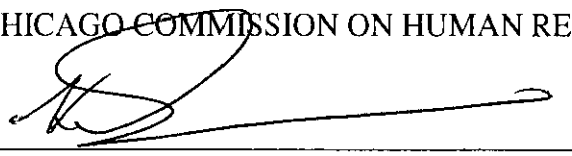
2. Respondent 7355 South Shore Condominium Association is ordered to pay a fine of $500 to the City of Chicago for each of the two violations, for a total of $1,000 in fines.

3. Respondents jointly and severally are ordered to pay emotional distress damages of $2,000 to Complainant Vernita Gray, plus interest dated from April 1, 2000.

4. Respondents jointly and severally are ordered to pay emotional distress damages of $100 to Complainant Patricia Gilbert, plus interest dated from September 5, 2000.

5. Respondents jointly and severally are ordered to pay Complainants' reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Kenneth Gunn, First Deputy Commissioner
Entered: July 20, 2011