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:

Rosezena Pierce and Rosa Parker
Complainant,
v.
New Jerusalem Christian Development Corporation and Marvin G. Hunter
Respondents.

Case No.: 07-H-12/13

Date of Ruling: February 16, 2011
Date Mailed: March 18, 2011

TO:

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New Jerusalem Christian Development Corporation
& Marvin G. Hunter
1533 S. Pulaski Road
Chicago, IL 60623

New Jerusalem Christian Development Corporation
& Marvin G. Hunter
1529 S. Pulaski Road
Chicago, IL 60623

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on February 16, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent New Jerusalem Christian Development Corporation 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 New Jerusalem Christian Development Corporation:

1. To pay to Complainant Rosezena Pierce damages in the total amount of $80,000, plus interest on that amount from November 30, 2006, in accordance with Commission Regulation 240.700.

2. To pay to Complainant Rosa Parker damages in the total amount of $30,000, plus interest on that amount from November 30, 2006, in accordance with Commission Regulation 240.700.

3. To pay fines to the City of Chicago in the total amount of $1,500.[1]

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

Payments of damages and interest are to be made directly to Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, 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

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

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 **April 15, 2011**. Any response to such petition must be filed and served on or before **April 29, 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 CCHR Reg. 240.630(b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

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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.

City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
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IN THE MATTER OF:

Rosezena Pierce and Rosa Parker
Complainants,
v.

New Jerusalem Christian Development Corporation and Marvin G. Hunter
Respondents.

Case No.: 07-H-12 and 07-H-13

Date of Ruling: February 16, 2011

FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

On April 2, 2007, Complainant Rosezena Pierce (CCHR No. 07-H-12) and Complainant Rosa Parker (CCHR No. 07-H-13) filed these consolidated Complaints with the Commission on Human Relations. Both Complaints allege that Respondent New Jerusalem Christian Development Corporation and Respondent Marvin G. Hunter discriminated against them on the basis of their source of income in violation of the Chicago Fair Housing Ordinance, Chapter 5-08 of the Chicago Municipal Code, by refusing them opportunities to purchase homes based upon their source of income. Respondents filed Verified Responses to the Complaints, and after completing its investigation, by Order dated March 12, 2009, the Commission found substantial evidence that Respondents violated the Ordinance as alleged.

By order dated September 3, 2009, the Commission consolidated the two cases pursuant to its authority under CCHR Reg. 210.810, appointed a hearing officer, and set this matter for a pre-hearing conference on October 19, 2009.

A pre-hearing conference was held on October 19, 2009. Counsel for Complainants appeared. Respondent Marvin G. Hunter also appeared. Steven Shaykin, attorney of record for Respondents at that time, did not appear and had not filed a motion for continuance of the pre-hearing conference or in any other way contacted the Commission regarding the need for a delay.

Although an order of default could have been entered pursuant to CCHR Reg. 235.310(d), consideration was given to Marvin G. Hunter's effort to appear. Therefore, with the agreement of the parties present, a long hearing date of February 3, 2010, was scheduled, with the Pre-Hearing Memorandum due on January 14, 2010.

Subsequently, the parties became engaged in a discovery dispute. On or about November 2, 2010, Complainants filed their Motion to Compel Discovery alleging that Respondents had failed to respond to timely file discovery requests by October 26, 2009, the date such requests were due. Respondents failed to respond to the Motion to Compel.

By order dated December 7, 2009, the hearing officer confirmed the date of the hearing and ruled on the Motion to Compel, directing Respondents to submit their responses to the discovery requests on or before December 14, 2009, and imposing a $250 fine for failure to

comply with CCHR Reg. 240.400 *et seq.* regarding discovery. The order warned Respondents that failure to comply would result in further sanctions.

Respondents failed to comply with the order of December 7, 2009, regarding discovery. Therefore, on December 22, 2009, Complainants filed their Motion for Additional Sanctions, citing Respondents' continued failure to respond to discovery.

By order dated and mailed on January 14, 2010, the hearing officer held that a ruling on all pending motions would be issued on January 22, 2010, and ordered that the administrative hearing in this matter be rescheduled to February 25, 2010, with the Pre-Hearing Memorandum due no later than February 5, 2010.

On January 20, 2010, Attorney Steven Shaykin filed a Response to Complainant's Motion for Additional Sanctions and Motion to Vacate or Modify Sanctions. Both the Response and the Motion to Vacate were untimely in that they were filed well after the time limits provided by CCHR Reg. 210.310 (14 days for the Response) and CCHR Reg. 235.150 (28 days for the Motion to Vacate or Modify Sanctions) as measured from the December 7, 2009, order. On the same date, Attorney Shaykin filed a Motion to Withdraw as counsel for Respondents, citing irreconcilable differences with his clients and detailing numerous instances of lack of response to his communications and/or cooperation in the defense against Complainants' claims.

To bring order to this matter, the hearing officer issued an order on January 23, 2010, converting the hearing scheduled for February 25, 2010, to a pre-hearing conference, cancelling the due date of the Pre-Hearing Memorandum, and taking all motions under advisement. Pursuant to CCHR Reg. 270.340, Complainants and Respondents were allowed up to 14 days within which to object to the Motion to Withdraw. The hearing officer's order was served on all parties. In particular, New Jerusalem Christian Development Corporation and Marvin G. Hunter were served at their address as provided by their attorney: 1533 S. Pulaski Rd., Chicago, Illinois 60623.

Neither Respondent filed any objection to Attorney Shaykin's Motion to Withdraw as counsel.

By Order dated February, 20, 2010, the hearing officer granted Attorney Shaykin leave to withdraw as counsel for Respondents, and directed Respondents to appear at the second pre-hearing conference (as noticed by the order of January 23, 2010) scheduled for February 25, 2010, with or without counsel, at which time a new date for the administrative hearing would be discussed and set. This order was served upon Respondents New Jerusalem Christian Development Corporation and Marvin G. Hunter.

Both orders issued on January 23 and February 20, 2010, specified that failure to comply could result in an order of default against Respondents with fines and costs including attorney fees.

On February 25, 2010, the second pre-hearing conference was held. Complainants appeared for the conference. Respondents failed to appear. Therefore, on March 16, 2010, the hearing officer issued an order finding Respondents in default and setting a date of March 25, 2010, for the administrating hearing. This order was served on all parties. Subsequently, the date for the administrative hearing was rescheduled to May 18, 2010, via Confirming Order issued by the hearing officer to all parties on March 24, 2010. Thereafter, pursuant to Complainants'

Motion for Continuance, an order was issued by the hearing officer and served on all parties rescheduling the administrative hearing to June 24, 2010.

Complainants' Pre-Hearing Memorandum was timely submitted on March 11, 2010. Respondents did not submit a Pre-Hearing Memorandum.

On June 24, 2010, the hearing on Complainants' *prima facie* case was held. Complainants and one witness, Attorney Angie Hall, appeared and provided testimony and exhibits to support Complainants' claims. Respondents New Jerusalem Christian Development Corporation and Marvin G. Hunter did not appear at the hearing.

Beginning with the order of January 23, 2010, all orders were sent directly to New Jerusalem Christian Development Corporation and Marvin G. Hunter by the hearing officer by U. S. Mail to Respondents' last known address of 1533 S. Pulaski Road, Chicago, Illinois 60623, as provided by their attorney. None of these notices were returned to the hearing officer as undeliverable. Yet Respondents failed to appear at the second pre-hearing conference or the administrative hearing, or to otherwise comply with the orders issued by the hearing officer in this case. In the exercise of extreme caution, the hearing officer forwarded her Recommended Ruling on liability and relief to the same address and also to 1529 S. Pulaski Road, Chicago, Illinois 60623, which is also shown as Respondents' address on file with the Illinois Secretary of State.

II. APPLICABLE LEGAL STANDARDS

The Chicago Fair Housing Ordinance (CFHO), at §5-08-030 of the Chicago Municipal Code, provides in pertinent part:

> It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent, lease or sublease any housing accommodation, within the City of Chicago, or any agent of any of these, or any real estate broker licensed as such:
>
> > A) To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in 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. [Emphasis added].

In addition, CCHR Reg. 420.130 provides:

> It is a violation of the FHO for a person to refuse to sell, rent or lease a dwelling to a person or to refuse to negotiate with a person for the sale, rental or leasing of a dwelling because of that person's membership in a Protected Class (see Reg. 100(26) above). Such prohibited actions include, but are not limited to:

a) Failing to accept or consider a person's offer because of that person's membership in a Protected Class;

b) Failing to sell, rent or lease a dwelling to, or failing to negotiate for the sale, rental or leasing of a dwelling with any person because of the person's membership in a Protected Class;

CCHR Reg. 420.100 further provides:

It is a violation of the Chicago Fair Housing Ordinance (FHO) to impose different prices, terms or conditions relating to the sale, rental or occupancy of a dwelling or to deny or limit services, privileges or facilities in connection with the sale, rental or occupancy of a dwelling because of the membership of the actual or prospective buyer, renter or tenant in one of the Protected Classes (see Reg. 100(26) above)

Prohibited actions under §5-8-030(A) of the FHO include, but are not limited to:

(c) Failing to process a person's offer for the sale, purchase or rental of a dwelling or failing to communicate an offer accurately based on that person's membership in a Protected Class;

(g) Discriminating against a person in connection with a real estate-related transaction because of that person's membership in a Protected Class;

(k) 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 a Protected Class.

Finally, CCHR Reg. 235.320 regarding the effect of a default provides in pertinent part:

A defaulted respondent is deemed to have admitted the allegations of the complaint and to have waived any defenses to the allegations including defenses concerning the complaint's sufficiency. An administrative hearing after an order of default shall be held only to allow the complainant to establish a prima facie case and to establish the nature and amount of relief to be awarded. A complainant may present a prima facie case through the complaint alone or may present additional evidence. Although the defaulted respondent may not contest the sufficiency of the complaint or present any evidence in defense, the Commission itself must determine whether there was an ordinance violation and so must determine whether the complainant has established a prima facie case and whether it has jurisdiction. A defaulted respondent may present evidence as to relief to be awarded.

A housing discrimination case may be proved through either the direct or indirect method of proof. *Marshall v. Gleason,* CCHR No. 00-H-1, at 8-9 (Apr. 21, 2004).

Claims of intentional discrimination are generally proved by indirect evidence through the shifting burden approach established in *McDonnell Douglas v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed2d 668 (1973). Thus, in a housing discrimination case, a complainant may prove a *prima facie* case by establishing that: (1) he or she is a member of a protected class covered by the Ordinance; (2) the respondent was aware that the complainant was a member of the protected class; (3) the complainant was ready and able to purchase the property at issue; and (4) the complainant was not allowed to purchase the property. *Thomas v. Prudential Biros Real Estate,* CCHR No. 97-H-59 and 97-H-60 at 8 (Feb. 18, 2004).

However, when a complainant has direct proof of intentional discrimination, the complainant may prove intent by introducing credible evidence that shows the discriminatory intent and that this unlawful intent resulted in an actionable claim. *Rankin v. 6954 N. Sheridan Inc. et. al,* CCHR No. 08-H-49 (Aug. 18, 2010) at 7; *Hutchinson v. Iftekaruddin,* CCHR No. 09-H-21 (Feb. 17, 2010) at 6. "[D]irect evidence is evidence that, if believed, will allow a finding of discrimination with no need to resort to inferences." *Pinchback v. Armistead Homes Corp.,* 907 F2d 1447,1452 (4 Cir. 1990).

The Commission has held that source of income discrimination includes discrimination because of income received from the Section 8 program or other governmental sources. *Rankin* and *Hutchinson, supra*; *Sullivan-Lackey v. Godinez,* CCHR No. 99-H-89 (July 18, 2001) aff'd *Godinez v. Sullivan-Lackey,* 352 Ill.App.3d 87, 91-93, 815 N.E.2d 822,827-829 (1 Dist. 2004) (specifically holding that Section 8 vouchers are covered as a source of income under the CFHO); *Jones v. Shaheed,* CCHR No. 00-H-82 (Mar. 17, 2004) at 8 (Social Security Disability income); *McCutcheon v. Robinson,* CCHR No. 95-H-84 (May 20, 1998) (public aid income);

III. FINDINGS OF FACT

As stated above, by order dated and mailed on March 16, 2010, pursuant to CCHR Reg. 235.320, Respondents were found in default in this case. Therefore, in determining the following facts, the hearing officer relied upon the following: the Complaint filed by Complainant Rosezena Pierce; the Complaint filed by Rosa Parker; testimony of Attorney Angie Hall and Complainants Pierce and Parker; and exhibits admitted at the administrative hearing in this case as contained in the transcript of hearing ("TR" for Transcript; "Ex" for Exhibit).

1. The Choose to Own Housing Choice Voucher Home Ownership Program ("Choose to Own")[1] is a City of Chicago program that provides opportunities for low-income families to purchase a home by providing vouchers to finance a portion of their mortgage. The Choose to Own program is comparable to the Section 8 program provided to renters. (TR.14-20)

2. In order to qualify for participation in the Choose to Own program, persons must complete numerous requirements, including but not limited to attendance at orientations, receiving at least 40 hours of home ownership counseling, attending homebuyer classes, and obtaining pre-approval for a mortgage. (TR 14-20; Ex. 20 A; Ex 20 C)

[1] The Choose to Own program was sometimes confused with "CHAC." However, CHAC was the name of the entity which—at the time of the events in this case—administered Chicago's Section 8 Housing Choice Voucher program and had a role in administering the Choose to Own program as well.

3. The New Homes for Chicago program ("New Homes") is also provided by the City of Chicago. Under this program, subsidies and benefits are provided to developers who agree to develop vacant land in disadvantaged neighborhoods and sell a percentage of the developed properties to low income families at a price below fair market value. (TR 49-50, 70-71, 98-99)

4. The New Homes program also provides city and federal government grants to low income purchasers of homes made available through the program by participating developers. (TR 49-50, 69-71)

5. From at least March 8, 2006, through December 2006, Respondent New Jerusalem Christian Development Corporation participated as a developer in the New Homes program. Pursuant to its participation, Respondent New Jerusalem listed its Hunter's Haven development on the City of Chicago's website listing of Homeownership Opportunities (TR 71-72; Ex. 23)

7. Respondent Marvin G. Hunter stated in Respondents' Verified Response dated November 20, 2007, that on that date he was the "principle owner" of Respondent New Jerusalem Christian Development Corporation, with authority to bind the corporation. (Respondents' Verified Response, p.2).

8. Under the Choose to Own program, sellers are required to agree to and sign the terms of the CHAC New Construction Rider. Without the execution of this Rider by the Seller, the buyer cannot receive financing under the Choose to Own program. (TR 33-45, 79; Ex. 8, 12)

9. Complainant Rosezena Pierce completed the eligibility requirements to participate in the Choose to Own program in early 2006. (TR 55-59) During the same period, she also completed the eligibility requirements to receive additional city and federal grant funding for the purchase of a home under the New Homes program. (TR 69-71; Pierce Comp.¶¶1,2)

10. After completing the eligibility requirements of the two programs, Pierce signed a purchase agreement provided to her by Respondent New Jerusalem's real estate broker for the purchase of a single family home and paid $1,000 in earnest money. The purchase agreement was for the purchase of a single family home to be built at 1339 S. Kedvale, Chicago, Illinois for the amount of $180,000. The home was being built in Respondents' Hunter's Haven development. (TR 25-26, 71-78; Pierce Compl. ¶¶3,4,5; Ex.10)

11. Complainant Rosa Parker completed the eligibility requirements to participate in the Choose to Own program in 2006. (TR 90-93) During the same period, she also completed the eligibility requirements to receive additional city and federal grant funding for the purchase of a home under the New Homes program. (TR 90-98; Parker Comp.¶2).

12. After completing the eligibility requirements of the two programs, Parker signed a purchase agreement provided to her by Respondent New Jerusalem's realtor for the purchase of a single family home and paid $19,500 in earnest money. The purchase agreement was for the purchase of a single family home to be built at 1345 S. Kedvale, Chicago, Illinois for the amount of $195,000. (TR 95-102; Parker Compl. ¶¶3,4,5; Ex. 16,17).

13. Pierce and Parker each informed Respondents' real estate broker of their status as qualified participants in the Choose to Own and New Homes programs, and they were assured by the broker that they were therefore eligible to contract to purchase their homes. (TR 98; Pierce Compl.¶3; Parker Compl.¶3)

14. Pierce and Parker were each represented by Attorney Angie Hall, Staff Attorney for the Community Economic Development Law Project, regarding the prospective closings on the homes for which they had signed purchase agreements. (TR 14-23)

15. As Staff Attorney for the Community Economic Development Law Project, Hall was responsible for reviewing contracts and purchase agreements processed through the Choose to Own program, and in particular for ensuring execution of the required CHAC Rider and assigning volunteer attorneys to represent participants through the closing process. (TR 14-23)

16. Hall testified that she informed Respondents of their obligation to sign the CHAC Rider in order for the Pierce and Parker purchase agreements to be processed under the Choose to Own program. (TR 33-45) Specifically, Hall stated and documentation shows:

a. Hall forwarded letters on behalf of Pierce and Parker to Respondent New Jerusalem's representative, Attorney Steven Shaykin, with copies of the CHAC Riders, requesting that New Jerusalem execute the riders. (TR 33-39; Ex. 8 and 12)

b. Hall made numerous phone calls to Shaykin's office and was assured by his assistant that he had received the letters with the attached riders. Hall's phone calls were not returned. (TR 39)

c. Hall spoke with Sarah Shaw and Maiyannie Hubbard, real estate agents representing Respondent New Jerusalem, in attempts to receive the riders from New Jerusalem or to ascertain any problems New Jerusalem needed addressed regarding the riders. (TR 29, 44-45; Ex. 13)

d. Hall received the riders back with notations signed by Shaykin stating "The seller does not agree to make any changes to the contract."

e. Thereafter, Hall again unsuccessfully attempted to reach Shaykin by phone to ascertain the reasons his client refused to sign the riders. Instead, she was informed by his assistant, "It's just not in his client's best interest to do those transactions." (TR 42)

17. Thereafter, Pierce and Parker were each informed by Hall that the purchase of the homes for which they had signed agreements could not take place due to New Jerusalem's refusal to sign the CHAC Rider. (TR 79, 102-103)

18. Pierce unsuccessfully attempted to find another home to purchase prior to the expiration of her Certificate of Eligibility and Voucher from the Choose to Own program. She was unable to find another home within the approximately one month left in her eligibility. At the time of the administrative hearing she was continuing to rent. (TR 81-85)

19. New Jerusalem returned half of Pierce's earnest money in November 2006 and the remaining half in December 2006, thereby formally terminating the transaction. (Pierce Compl. ¶8.

20. New Jerusalem returned Parker's earnest money in November 2006, thereby formally terminating the transaction with her. Additionally, because the home she could find was not part

of the New Homes program, Parker could not take advantage of the grants and equity available to her under that program. (Parker Compl. ¶9)

21. Parker found another home to purchase prior to the expiration of her eligibility and voucher. However, that home was not comparable to the home she sought to purchase from Respondent New Jerusalem. Specifically, the home she was able to purchase was not new construction, did not have new appliances, needed roof replacement, and did not provide the accessibility she would have had for her disabled sister. (TR 108-115)

IV. CONCLUSIONS OF LAW AND DISCUSSION

A. Hunter's Individual Liability

The Commission affirms the recommendation of the hearing officer, overruling Complainants' objections, that Marvin G. Hunter must be dismissed as a Respondent in this case. In their Complaints, Complainants named as Respondents both New Jerusalem Christian Development Corporation and Marvin G. Hunter. Complainants did not specifically state in their Complaints whether they intended to include Hunter as a Respondent in his official capacity or as an individual. However, the Commission has treated their Complaints as naming Hunter as an individual, given that New Jerusalem was itself named as a Respondent.

As noted in ¶7, above, Respondent Marvin G. Hunter stated in Respondents' Verified Response dated November 20, 2007, that on that date he was the "principle owner" of New Jerusalem Christian Development Corporation with authority to bind the corporation. (Respondent's Verified Response, p.2). Additionally, the hearing officer took notice that the Illinois Secretary of State's Corporation File Detail Report on its website lists Hunter as both the Registered Agent and President of New Jerusalem Christian Development Corporation.[2]

Complainants argue in their objections that Hunter was named and notified that he was a respondent separate from New Jerusalem and should not be absolved from liability because he failed to respond to discovery. These, however, are not the criteria for finding liability.

Hunter's "official capacity" is not sufficient to support a finding of individual liability. The corporation in which he is clearly a principal official was itself named as a Respondent and is by this ruling being found liable. Thus there is no need for Hunter to be named in an "official capacity" as a stand-in for the corporation. Naming an individual in his "official capacity" is the equivalent of naming the corporate or other entity and is redundant when, as here, the entity itself is named (and is capable of being sued). To illustrate, in *Adams v. Chicago Fire Dept.*, CCHR No. 92-E-72 (Oct. 14, 1993), the Commission explained that a supervisor in the Chicago Fire Department cannot be sued in his official capacity because it is the equivalent of suing the City of Chicago, which was already named as a respondent. In *Heller v. A&B Garage et al.*, CCHR No. 95-PA-26&27 (May 12, 1997), the Commission dismissed as an individual respondent the president of a condominium association board of directors who was named in his official capacity because there was no longer a respondent entity for him to represent after the board was dismissed from the case. The Commission explained that he could only be treated as having

[2] The listing also states that New Jerusalem Christian Development Corporation is a not-for-profit corporation. As such, it would have had officers and a board of directors but not an "owner" in the strict sense. It nevertheless appears that Hunter regarded himself as the "principal" official of the corporation.

been sued in his official capacity where the complaint did not accuse him of taking any action, directly or indirectly, against the complainants and no action could be imputed to him personally.

Without question, individuals can be named and held liable under the Chicago Fair Housing Ordinance as long as they fit into one of the enumerated classes that are prohibited from engaging in discriminatory practices under the ordinance. *Doe v. 12345 Condo. Assn. et al.*, CCHR No. 98-H-190 (Apr. 30, 1999). Under the Fair Housing Ordinance, those enumerated classes include any "person, firm, or corporation having the right to sell, rent or lease any housing accommodation, within the City of Chicago, or any agent of any of these." §5-8-010, Chicago Muni. Code. Hunter is clearly an agent of New Jerusalem Christian Development Corporation, which at the time in question had a right to sell the housing units Complainants sought to purchase. Although the precise extent of his personal authority has not been established in this case, he signed Verified Responses representing that he was the "principle owner" of New Jerusalem with authority to bind that corporation, and as president of the corporation presumably had some personal authority independent of the corporation's board of directors.

But Hunter's capacity to be named as a respondent in his personal capacity does not resolve the issue of his individual liability for the discriminatory conduct found in this ruling. As explained in *Stanley v. Chicago Police Dept. et al.*, CCHR No. 01-E-31 (Oct. 2, 2001), to determine whether an individual has been named in his personal capacity, the Commission must decide whether there are claims that the named person took allegedly discriminatory or adverse action against the complainant, thus suggesting he or she was not named merely as another way to sue the entity. See *Love v. Chicago Office of Emergency Communications*, CCHR No. 01-E-46 (Oct. 16, 2001), holding that a government agency's executive director could be found personally liable for the discharge of an employee where it was alleged that he signed the discharge letter and stated that he had reviewed the matter. See also *Southwest Community Congress v. Chicago Public Library et al.*, CCHR No. 00-PA-44 (May 21, 2001).

Thus, to find individual liability, there must be evidence that the individual personally participated in the alleged discriminatory conduct. Cases involving presidents of condominium association boards of directors further illustrate this point in a housing context. In *Gilbert v. Thorndale Beach North Condo. Assn. et al.*, CCHR No. 01-H-74 et al. (May 30, 2002), claims against a board president were dismissed where the complainants did not allege that she took any action against them other than to convene and preside over a meeting to address the dispute involving the complainants among the residents. In *Isaac v. 7720-7723 N. Sheridan Rd. Condo. Assn. et al.*, CCHR No. 03-H-79 (Apr. 26, 2004), a complaint was dismissed as to condominium association board members described as "collectively, the Board" because when acting collectively as a corporate board they are not subject to individual liability. In *Jara v. Shoreline Towers Condo. Assn. et al.*, CCHR No. 05-H-18 (Nov. 10, 2005), a complaint was dismissed as to a condominium association board president where there was no allegation that he personally participated in the alleged discriminatory conduct, noting that he could not be held personally liable for acts of the association merely because he is president. By contrast, in *De Los Rios v. Draper & Kramer, Inc., et al.*, CCHR No. 05-H-32 (Aug. 23, 2006), the president and a property manager of a condominium association were held to have been named in their personal capacity where the complaint was read to allege that they personally took specific actions as agents of the association.

Thus the hearing officer correctly determined that the claims made and evidence presented regarding Hunter concern only his official capacity as president and a "principal" of New Jerusalem Christian Development Corporation. There were no allegations in the

Complaints, nor was any evidence presented at the hearing to show that Hunter personally decided not to sign the CHAC Riders or even that he personally set any policy that resulted in the refusal to sign the CHAC Riders. The decision not to sign was communicated by Attorney Shaykin and his office staff, without any attribution to Hunter personally. There is no evidence as to what individual made the decision nor is there evidence to sufficient to support an inference about individual participants in the decision. On the evidence before the Commission, the decision is as likely to have been made by Attorney Shaykin, who communicated it, as by Hunter. This evidence is sufficient to establish the corporate liability of New Jerusalem, as explained below, but not the individual liability of Hunter. Therefore, Hunter must now be dismissed as a Respondent.

B. New Jerusalem's Liability

New Jerusalem Christian Development Corporation was held in default due to failure to respond to discovery requests and failure to attend scheduled proceedings. Thus, new Jerusalem is deemed to have admitted the allegations of the Complaints subject to proof by Complainants of their *prima facie* case. CCHR Reg. 235.320.

1. Complainants proved their *prima facie* case of source of income discrimination.

Complainants proved that they are persons receiving income from the Choose to Own program, a government funded program with the purpose of providing assistance to low income families to enable them purchase homes. The program is analogous to Section 8 voucher funding for renters, and so the decisions cited above support the determination that Choose to Own benefits are also a source of income, supporting Complainants' planned purchase of a home. As such, Complainants have proved that they are member of a protected class under the CFHO.

Next, Complainants established that they were otherwise qualified and ready to purchase the homes they sought to purchase from New Jerusalem.

The evidence also established that New Jerusalem was the owner of the Hunter's Haven development and had the right to sell housing accommodations in that development in the City of Chicago. As such, New Jerusalem is a proper respondent under the CFHO. *Thomas v. America's Best Mortgage,* CCHR 93-H-64 (Sept. 14, 1995).

Further, New Jerusalem through its authorized representatives—real estate agents Shaw and Hubbard and Attorney Shaykin—was aware of Complainants' status as members of a protected class. Parker and Pierce credibly testified that they communicated with and received documentation, including floor plans, virtual tours, and purchase agreements from the real estate agents on behalf of New Jerusalem. (TR 73-74, 95-101) Both Complaints allege and Complainants credibly testified that they made Respondent's real estate agents aware of their sources of income for the purchase of the homes. Attorney Hall credibly testified that she was informed that the real estate agents and Attorney Shaykin represented New Jerusalem regarding each Complainant's purchase of homes in New Jerusalem's Hunter's Haven development. She credibly testified that she informed the real estate agents and Attorney Shaykin of Complainants' sources of income to support their purchases and the requirements necessary to complete the transaction.

Likewise, the evidence sufficiently established that, after providing Complainants with purchase agreements for the identified properties and accepting each Complainant's earnest money through its real estate agents, New Jerusalem refused, through Attorney Shaykin, to sign

and process the CHAC Rider necessary for Complainants to receive the Choose to Own funding needed to effectuate the sales transaction. Thereafter, New Jerusalem returned Complainants' earnest money, terminating the real estate transaction without further explanation.

To the extent any agency issues exist in this case, it is recognized that an agency relationship may be inferred from facts and circumstances. *Toledo v. Brancato*, CCHR No. 95-H-122 (July 9, 1997); see also *Warren & Elbert v. Lofton & Lofton Mgmt. d/b/a McDonald's, et al.*, CCHR No. 07-P-62/63/92 (July 15, 2009) for a thorough discussion of agency principles applicable to Commission cases. In this case, Complainants have sufficiently established through evidence and the reasonable inferences that Respondent acted through authorized agents in accepting Complainants' offers to purchase homes, then failing to process the offers and/or refusing to sell the homes due to one of Complainants' sources of income (Choose to Own) in violation of §5-8-030(A) of the CFHO; CCHR Reg. 420.100(c), (g) and (k); and CCHR Reg. 420.130(a) and (b).

V. REMEDIES

A. Out-of-Pocket Losses

Complainants requested damages to cover certain out-of pocket expenses. Complainant Parker testified that she incurred $150 in transportation and childcare costs associated with her renewed search for a home due to Respondent's violation. (TR 112) Complainant Pierce testified that she incurred $75 in transportation costs associated with her renewed search for a home due to Respondent's violation. (TR 82)

The Commission has long held that a complainant may recover damages for out-of-pocket losses even without written documentation of such damages as long as the complainant can testify to the amount of damages with certainty. *Horn v. A-Aero 24 Hour Locksmith Service et al*, CCHR No. 99-PA-032 (July 19, 2000); *Williams v. O'Neal*, CCHR No. 96-H-73 (June 8, 1997); *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 1996); *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995); *Khoshaba v. Kontalonis*, CCHR No. 92-H-171 (Mar. 16, 1994). See also *Torres v. Gonzales*, CCHR No. 01-H-46 (Jan. 18, 2006), and *Rankin, supra.* However, compensatory damages for out-of-pocket losses or emotional distress should not be awarded when they cannot be shown to have been caused by the discriminatory conduct or foreseeable to the respondents. *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al*, CCHR No. 99-H-39/53 (Apr. 18, 2001)

Here, neither Complainant offered any testimony or other evidence giving details such as the day, month, or destination for which expenses were incurred. Nor was there any other information that would allow the hearing officer to conclude the amounts stated were more than speculative and could be attributable to Respondent's violation. As such, the hearing officer recommended that these out-of-pocket expense claims be denied. Complainants have objected, arguing that their testimony was sufficiently specific given that the events occurred a number of years ago.

Pierce's testimony (Tr. 81-82) is as follows:

Q: In terms of your search for a new place, did you have any costs involved with that?

A: Just like traveling costs, just to like go around and look at different homes in different neighbor[hoods]. Probably not more than $75 as far as gas expenses, or anything like that.

Parker's testimony (Tr. 112) is as follows:

Q: Did you—when you were participating in a new home search to find something else, did you have any costs involved with that?

A: Costs for somebody to watch my daughter at that time, and my son, of course, because he was a handful, and transportation, because I was on the bus. I wasn't driving at the time.

Q: You were on the bus looking at properties?

A: Uh-huh.

Q: Do you know about how much in costs you had between child care and transportation?

A: Like $150.00. Not much.

Although a victim of a discriminatory denial of housing may be compensated for the costs of searching for other housing, the Commission agrees with the hearing officer that these claimed expenses were insufficiently supported by Complainants' testimony or other evidence, and so denies them.[3] Complainants' vague and tentative testimony provides nothing but proposed amounts accompanied by general statements of the types of costs claimed (gas, bus fare, child care), and a general time frame during which the costs were incurred. This is an insufficient foundation on which to determine the reasonableness of the amounts claimed. The proposed amounts are merely speculative.

B. Emotional Distress Damages

Complainants seek $20,000 each in emotional distress damages based on prior awards of the Commission and the evidence in this case.

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash & Demby v. Sallas Realty et al.*, CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky*, CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway*, CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell*, CCHR

[3] Complainants stated in their pre-hearing memorandum that they would prove they were unable to receive certain grants, subsidies, and other financing due to the discrimination. In their itemizations of requested damages in the pre-hearing memorandum, they listed, "The value of grants, subsidies, and other financing that [each Complainant] was not able to receive due to New Jerusalem's refusal to sell" and "The value of any lost equity that resulted from New Jerusalem's refusal to sell." (Complainants' Pre-Hearing Memorandum, p. 22) However, no specific figures were attached to these general requests, nor was any evidence presented at the hearing which would allow the Commission to make findings as to the monetary value of these losses to either Complainant. Indeed, it may be difficult to place a present monetary value on these lost opportunities.

No. 01-H-101 (Apr. 6, 2003); *Marable v. Walker*, 704 F.2d 1219, 1220 (11 Cir. 1983); and *Gore v. Turner*, 563 F.2d 159, 164 (5 Cir. 1977).

In general, the size of an emotional distress damages award is determined by (1) the egregiousness of the respondent's behavior and (2) the complainant's reaction to the discriminatory conduct. The Commission considers factors such as whether the testimony regarding the emotional distress is detailed rather than conclusory, the length of time the complainant has experienced emotional distress, the severity of the mental distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998) at 13-4; *Nash and Demby, supra;* and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997). See also the more recent discussion of the applicable standards in *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009), as well as *Rankin, supra,* a recent ruling discussing the standards for awarding emotional distress damages in the context of a discriminatory refusal to rent.

In addition, "The Commission does not require `precise' proof of damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress." *Diaz v. Wykurz et al.*, CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland*, CCHR No. 02-H-73 (Oct. 15, 2003), aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

It has been acknowledged that, due to the emotional investment in buying a home, a refusal to sell may justify a higher emotional distress award than a refusal to rent. *Nash and Demby, supra.*

In this case, the Complainants provided detailed testimony regarding the rigorous process they completed to qualify to purchase a home. They each detailed evidence showing that they were particularly vulnerable in their needs for the homes they chose through Respondent. They each detailed the devastating aftermath of New Jerusalem's refusal to sell to them the homes for which they had placed an offer and submitted earnest money.

Rosezena Pierce testified that she had always lived in rental properties and was seeking a safe and affordable home large enough for her two children and her younger sister who was living with her. (TR 53-54) She testified that the home she selected through Respondent had three bedrooms, two baths, and a spacious backyard sufficient for her family. She testified that upon learning of Respondent's refusal to sell her the house, she had less than a month before her eligibility under the Choose to Own program expired. Home prices had risen and she could not find a comparable or even suitable home. As such, as of the date of the hearing, Pierce and her family continued to rent. (TR 81-85) Pierce testified that she will need to repeat all of the numerous steps she originally followed in order to re-qualify to purchase a home through the Choose to Own program. (TR 83)

Rosa Parker testified that at the time she attempted to purchase a home from Respondent, she was living in a rented apartment with her five children (including one disabled daughter) and one grandchild. She stated that she wanted to provide her children with a home of their own that was large enough for the family. She stated she also was seeking a home which would be

wheelchair accessible for her disabled sister, whose care she was sharing with her mother but who could not be accommodated in Parker's apartment building. (TR 88-90) She cited difficulties in finding rental units to accommodate her sister and her many children. (TR 91) She stated that the home she selected through Respondent had sufficient room for her family and was wheelchair accessible so that she could care for her sister. (TR 100-102; Exs. 16, 17) She stated that upon learning of Respondent's refusal to sell her the house, she had very little time before her eligibility under the Choose to Own program expired and that home prices had risen.

Although Parker was able to purchase a home, the home was not comparable to her original choice of in that it was not new construction, required her to replace the roof and a furnace, and was in a less safe neighborhood. Additionally, the home she was able to purchase was not wheelchair accessible, necessitating continued trips to her mother's house to care for her disabled sister. Finally, because the home Parker was able to purchase was not offered under the New Homes program, she lost the equity and grant money she would have received for the home selected through Respondents. (TR 109-113)

Each Complainant testified that she and her family were "devastated" at not being able to purchase the homes they had selected. They stated they were humiliated and embarrassed by having to disclose to friends, family, and neighbors that the homes they had qualified for and selected were not being made available to them. (TR 78-80, 105-109)

As noted in *Rankin, supra,* awards by the Commission for emotional distress damages upon a finding of housing discrimination have ranged from as little as $400 to as much as $40,000. A review of such awards indicates that those in substantial amounts ($10,000 or more) were based upon discrimination accompanied by particularly egregious or malicious conduct, such as derogatory epithets directed at the complainant, or where the impact of the behavior is proven to be profoundly severe. See, e.g., *Fox v. Hinojosa,* CCHR No. 99-H-116 (June 16, 2004), awarding $10,000 for emotional distress where a landlord made repeated derogatory remarks to a tenant regarding his sexuality and informed his family that he is gay, causing physical symptoms like nausea; and *Sercye v. Reppen & Wilson,* CCHR No. 08-H-42 (Oct. 21, 2009), where $15,000 was awarded for emotional distress based on testimony regarding Complainant's shame in being denied housing and evidence of the lasting effects of the denial. Awards up to $5,000 have been made where the evidence of emotional distress was minimal, the discrimination consisted of a one-time refusal to rent, but the Complainant was considered vulnerable. See, e.g., *Torres v. Gonzales, supra,* where the complainant was a single parent with three children and limited means who had been required to vacate previous rental housing and needed to find a stable home and school environment.

Here, there is no evidence of epithets or similar egregious conduct personally directed at Complainants. However, the emotional distress, anguish, humiliation, embarrassment, and continuing effects in the aftermath of the discrimination and the particular vulnerability of the Complainants as low income, working single mothers trying to provide for their children as well as extended family members have been well-established by the evidence.

The particular vulnerability of the Complainants is shown by the stated need for the homes in question and the strenuous lengths Complainants went to in order to qualify to purchase the homes.

The devastating aftermath of Respondent's refusal to sell, including complete loss of opportunity to purchase a home (Pierce) and loss of opportunity to house her disabled sister (Parker), are extensive and continuing to date, more than four years after the refusal. Parker still

has to travel from her home to care for the disabled sister she hoped to house. She credibly testified that the home she was able to purchase was in need of costly repair and is in an area that is less safe for her children than that which would have been realized in the home she selected from Respondent. Pierce, having lost the opportunity to purchase a home while she was qualified to do so under the Choose to Own program, continues to rent the housing where she lives.

Additionally, Respondent's actions in refusing to respond to numerous inquiries regarding their refusal while continuing to hold Complainants' earnest money, effectively abrogating Complainants' opportunity to find suitable alternative homes, contributed to the emotional distress suffered by Complainants.

The evidence warrants the hearing officer's recommended emotional distress damage awards of $20,000 to each Complainant. Such awards are consistent with the amounts awarded in housing discrimination cases involving more egregious violations with long-lasting effects. The Commission, like the hearing officer, gives particular weight to the frustration of Complainants' attempts to realize the dream of owning a home of their choice which resulted from Respondent's violation of the Fair Housing Ordinance.

C. Punitive Damages

In their Pre-Hearing Memorandum, Complainants requested punitive damages awards of $60,000 each.

Punitive damages are appropriate when a respondent's discriminatory conduct is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra.*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "The purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also *Restatement (Second) of Torts* §908(1) (1979), *Akangbe v. 1428 W. Fargo Condo. Assn.*, CCHR No. 91-FHO-7-5595 (Mar. 25, 1992), and *Castro v. Georgeopoulous*, CCHR No. 91-FHO-6-5591 (Dec. 18, 1991). In *Castro*, the Commission awarded punitive damages, first, to deter and punish the named property owners who blatantly disregarded the law when they refused to rent an apartment based on an applicant's color and national origin, telling him the apartment was rented when in fact it was not, and second, to deter other landlords from engaging in similar discriminatory practices.

In determining the amount of punitive damages to be awarded, the size and profitability of a respondent are factors that normally should be considered. *Soria v. Kern*, CCHR No. 95-H-13 (July 18, 1996) at 17, quoting *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (July 22, 1993) at 18. However, "neither Complainants nor the Commission have the burden of proving Respondent's net worth for purposes of...deciding on a specific punitive damages award." *Soria, supra* at 17, quoting *Collins & Ali v. Magdenovski*, CCHR No. 91-H-70 (Sept. 16, 1992) at 13. Further, "If Respondent fails to produce credible evidence mitigating against the assessment of punitive damages, the penalty may be imposed without consideration of his/her financial circumstances." *Soria, supra* at 17.

In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent's history of discrimination, any attempts to cover up the conduct, and the respondent's attitude towards the adjudication process including whether the

respondent disregarded the Commission's procedures. *Brennan v. Zeeman*, CCHR No. 00-H-5 (Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.*, CCHR No. 97-H-187 (Jan. 20, 1999). See also *Rankin, supra* at 19-20.

The Commission agrees with the hearing officer that this case is an appropriate one in which to make significant punitive damages awards. First, the evidence has established that Respondent's actions were in clear violation of the Chicago Fair Housing Ordinance and Commission regulations. The evidence shows that Respondent provided Complainants with purchase agreements for the properties, received the signed agreements, and accepted earnest money from each Complainant. The evidence further shows that Respondent intentionally and specifically refused to complete the real estate transactions solely because of Complainants' source of income to support the purchases through the Choose to Own program, apparently because additional inspections were required which should not have been a problem for new construction. In addition, Respondent's attorney refused to respond to calls from Complainants' attorney attempting to discuss the matter and determine whether Respondent's concerns could be addressed. This conduct demonstrates willful and wanton disregard of Complainants' protected rights under the Chicago Fair Housing Ordinance.

Second, as a participant in the New Homes for Chicago program which provided benefits and subsidies to developers, Respondent was required to make a percentage of the housing units in the Hunter's Haven development available to low-income buyers. The Hunter's Haven development was specifically listed on the City of Chicago's website listing of homeownership opportunities under the New Homes program. It may be logically concluded that as a participant in the program, Respondent derived the benefits and subsidies available for such participation.[4] Yet Respondent failed and refused to sell properties to Complainants, low income heads of household who were qualified to purchase under the New Homes program. The evidence established that this failure and refusal was based upon the Complainants' source of income, specifically their eligibility to receive subsidized support for their home purchases under the Choose to Own program.

It is a miscarriage of justice for Respondent to benefit from the significant monetary and other consideration it presumably received through the New Homes program while denying legally protected rights to people qualified to purchase homes under that program and the Choose to Own program. New Jerusalem knew it was receiving these benefits from the City of Chicago as an incentive to develop and provide affordable housing for low and moderate income households in partnership with the City. By refusing to cooperate with Choose to Own—another City-supported program linked to the Section 8 voucher program for renters and designed to promote homeownership for qualified low income households that participate in the Section 8 voucher program—New Jerusalem denied to these Complainants the very opportunities they were supposed to be supporting, negating the purpose of its own selection as a City-supported housing developer. The record clearly establishes that Complainants were fully qualified to purchase homes in the Hunter's Haven development, with no apparent material risk or harm to Respondent from signing the CHAC Waiver authorizing additional inspections and enabling Complainants to utilize the subsidies offered under Choose to Own. (Tr. 34)

[4] The City ordinance accepting New Jerusalem as a developer in the New Homes program authorized developer subsidies to New Jerusalem up to $870,000, plus up to $2,040,000 in home purchase subsidies, for a total of $2,910,000 in subsidies. In addition, New Jerusalem was eligible to receive free City-owned lots on which to build housing units along with waivers of certain City fees and deposits and the benefits of any perimeter site improvement work. How much of these subsidies and benefits New Jerusalem actually received is undetermined.

Finally, in addition to blatantly discriminating against Complainants based on their source of income, Respondent caused additional burden and disruption in this case by withholding discovery responses and repeatedly failing to cooperate with or adhere to the orders and rulings of the Commission.

In sum, Respondent has completely and willfully disregarded the laws, regulations, and procedures applicable in this situation. Therefore, substantial punitive damages are warranted to punish Respondent's actions in this case, deter future violations by this Respondent, and discourage such violations by others like Respondent.

The amount of the punitive damages award should be considered in light of the Respondent's actions and previous punitive damages awards by the Commission. As noted in *Rankin, supra.*, awards of punitive damages by the Commission in source of income discrimination cases have ranged from $250 to $5,000 to "deliver the message about providing equal rental opportunities to Section 8 voucher holders." *Rankin, supra* at 20.

In *Akangbe v. 1428 W. Fargo Condo. Assn., supra*, the actions of a condominium association barred the complainant from purchasing a unit because of his national origin, then forced him to move from the unit where he and his family had lived for two years. In addition, the respondents tried to conceal their discriminatory actions from the Commission by misrepresenting certain facts. The Commission awarded $7,000 in punitive damages as deterrence and punishment, noting among other things that when actual damages are low, potential wrongdoers will not be sufficiently deterred from engaging in prohibited activities unless substantial punitive damages awards are made.

In some later housing discrimination cases, the Commission has made higher awards of punitive damages when the complainant was deprived of a housing opportunity as a result of the discriminatory conduct. For example, in *Soria v. Kern, supra*, $10,000 in punitive damages was ordered where a defaulted respondent had explicitly refused to rent to a complainant because of her race and completely disregarded Commission procedures. Similarly, in *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997), $10,000 in punitive damages was ordered where a landlord explicitly refused to rent to a prospective tenant upon learning her race.

In *Figueroa v. Fell*, CCHR No. 97-H-5 (Oct. 21, 1998), the Commission ordered $35,000 in punitive damages where a landlord explicitly and persistently created a hostile housing environment based on a complainant's Hispanic ancestry. In addition, the respondent and his attorney exhibited extreme disrespect and disregard for the Commission's adjudication process. The Commission found that a sizeable award was needed to deter future violations.

In *Nash and Demby, supra,* as re-determined on remand, CCHR No. 92-H-128 (Apr. 19, 2000), the Commission awarded $29,000 in punitive damages to a proposed African-American sublessee who was rejected because of his race and another $2,500 in punitive damages to the lessee who was attempting to sublease the rental unit, where the property owner explicitly refused to rent to blacks stating that black people "run down the property value and run down the neighborhood as well." The Commission explained that in determining the amount of punitive damages to award in a given case a court must consider "the degree of reprehensibility of defendant's conduct, the relationship between the punitive damage award and the harm caused by the conduct, defendant's gain from the misconduct, and the financial condition of defendant." *Id.*, quoting *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 111 S.Ct.1032, 113 L.Ed.2d 1 (1991) and also citing *Proctor v. Davis.*, 291 Ill.App.3d 265, 682 N.E.1d 1203 (1st Dist. 1997) and *Figueroa, supra.*

In the instant case, New Jerusalem engaged in source of income discrimination that is, as a starting point, comparable to the violations noted in the Section 8 cases involving refusal to rent. However, this case involves not a refusal to rent but a refusal to sell—conduct that has been shown to have long-lasting and potentially permanent effects on the lives of these Complainants. Moreover, Respondent's conduct is exacerbated by its participation in a program from which it substantially benefited and which had a purpose of providing housing opportunities to the very people against whom Respondent discriminated. Due to the facts of this case, Respondent's actions warrant awards of punitive damages that may be higher than those awarded in previous source of income discrimination cases involving rentals. Respondent's actions in completely failing to respond to discovery or to the order compelling its response to discovery requests, then allowing itself to be defaulted by failing to attend scheduled proceedings including the administrative hearing, circumvented the very process designed to determine the extent of Respondent's actionable conduct including any mitigating circumstances. Respondent should not be allowed to benefit in any way from its failure to respond to discovery and participate in the Commission's adjudication process.

The hearing officer recommended that punitive damages of $7,500 per Complainant be assessed against Respondent. Complainants object to this amount arguing that on the facts as found by the hearing officer, as well as Respondent's conduct during this litigation, both Complainants should receive a $60,000 award as requested. Complainants cite essentially the same facts and legal authority discussed by the hearing officer and reviewed above.[5]

The Board of Commissioners has determined that an increase in punitive damages is warranted as to Complainant Parker, from the $7,500 recommended by the hearing officer to $10,000. This award is consistent with that in certain cases noted above involving a willful refusal to rent based on a protected class, although not as high as in certain other housing discrimination cases involving direct expressions of malice toward a complainant or her protected class. As further discussed below, in combination with the emotional distress damages, the Commission finds that $10,000 in punitive damages is sufficient to make Parker whole.

The Board has determined that an even higher amount of punitive damages is warranted as to Complainant Pierce because of the even more egregious impact of Respondent's conduct on her access to homeownership opportunity.

Although both Pierce and Parker were unable to take advantage of certain subsidies available to them due to their low income status, Parker was able to find another home to purchase prior to expiration of her eligibility for the Choose to Own program and thus became a homeowner, even though she found the alternative home less desirable than the one she had chosen in the Hunter's Haven development. As a result, she was able to take advantage of at least some of the homeownership subsidies available to her. (Tr. 110)

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[5] The Commission also acknowledges Complainants' citation of *Sellers v. Outland, supra.* While re-affirming the reasoning utilized in awarding $120,000 in punitive damages in that case (finding severe sexual harassment of a tenant by her landlord), it must also be noted that the punitive damages award was reversed by the Illinois Appellate Court due to inadequate notice of the potential for punitive damages in the default hearing process. *Outland v. Sellers*, Ill.App.Ct No. 1-04-3599 (Sept. 15, 2008). The same problem is not present in this case, where Complainants did notify Respondent in their Pre-Hearing Memorandum that they were seeking $60,000 apiece in punitive damages.

By contrast, Complainant Pierce lost all of the homeownership subsidies available to her and intended to benefit a person in her position. When she lost the opportunity to purchase in the Hunter's Haven development, she had only about a month left before her six-month window of eligibility for the Choose to Own program would expire. She tried to find another home to purchase but felt rushed, could not finding anything suitable, and decided not to purchase anything she would not be satisfied with. In addition, prices were rising, making it even more difficult to find an acceptable home she could afford within the limit of her $130,000 pre-qualification approval letter.[6] She continues to rent rather than own the residence for her household. (Tr. 81-84)

The Board of Commissioners finds that an even higher award of punitive damages is warranted to make Pierce whole, given that she was deprived of all reasonable opportunity to become a homeowner during the period of her eligibility, as intended by the New Homes and Choose to Own programs for which she qualified. As to Pierce, the Board of Commissioners awards as punitive damages the full $60,000 she requested.

D. Interest on Damages

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the Chicago Fair Housing Ordinance or the Chicago Human Rights Ordinance. Pursuant to CCHR Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually.

The hearing officer recommends that the Commission award pre- and post-judgment interest on all damages awarded in this case starting from November 30, 2006. This date was recommended based on evidence in the record which indicates that Respondent returned Complainants' earnest money, thus signaling complete termination of the real estate transactions, in November 2006. There was no objection to this calculation of the violation date. Based on the allegations of their Complainants, Finding of Fact #20 indicates that Parker's earnest money was returned in its entirety on an unspecified date in November 2006, and Finding of Fact #19 indicates that half of Pierce's earnest money was returned on an unspecified date in November 2006 and the remaining half on an unspecified date in December 2006. Based on these findings, the choice of November 30, 2006, is a reasonable determination of the date of violation for each Complainant. Accordingly, the Commission orders payment of pre- and post-judgment interest on the damages from November 30, 2006.

E. Fine

Section 5-8-130 of the Chicago Fair Housing Ordinance provides that any covered party found in violation shall be punished by a fine not exceeding $500 per violation. There are two Complainants involved in this case as to whom Respondent committed two separate violations of the Fair Housing Ordinance. Respondent's direct refusal to sell warrants the maximum fine, as recommended by the hearing officer. See, e.g., *Rankin, supra.* Therefore, The Commission fines Respondent $500 for each violation, for a total of $1,000.

Further, the hearing officer recommended that Respondent be fined an additional $500 for its failure to comply with the Commission's orders issued January 23, 2010, February 20,

[6] The pre-qualification letter was issued by Marquette Bank on April 28, 2006. (Ex. 18)

2010, March 16, 2010. No objections to this recommendation were received and accordingly the Commission imposes an additional fine of $500 as a procedural sanction pursuant to CCHR Regs. 235.310 and 235.420 for failure to comply with Commission orders and regulations.

F. Other Relief

No injunctive relief was requested or recommended. The hearing officer recommended that this final ruling finding a violation of the Chicago Fair Housing Ordinance be reported to "the City of Chicago" in light of Respondent's benefits from and possible future participation in the New Homes for Chicago program.[7] The Commission agrees with the recommendation and will forward a copy of this ruling to the Department of Housing and Economic Development and any other appropriate City of Chicago entities.

G. Attorney Fees

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to order a respondent to pay all or part of 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, and the hearing officer recommended it in this case. *Hall v. Becovic,* CCHR No. 94-H-39 (Jan. 10, 1996), aff'd *Becovic v. City of Chicago et al.*, 296 Ill. App. 3d 236, 694 N.E.2d 1044 (1st Dist. 1998); *Soria v. Kern, supra* at 19. Accordingly, Complainants are awarded their reasonable attorney fees and associated costs in an amount to be determined by further proceedings.

Pursuant to Commission Regulation 240.630, Complainant 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.

VII. CONCLUSION

The Commission finds Respondent New Jerusalem Christian Development Corporation liable for source of income discrimination in violation of the Chicago Fair Housing Ordinance and orders the following relief:

1. Payment to the City of Chicago of a fine of $500 each for the two ordinance violations found against each Complainant, plus an additional fine of $500 as a

[7] Neither New Jerusalem Christian Development Corporation nor Hunter's Haven is currently listed on the website of the Department of Housing and Economic Development as a source of City-funded homes for purchase. It appears that the homes were never built. (Tr. 106)

procedural sanction for failure to comply with Commission orders and regulations, for a total of $1,500 in fines;

2. Payment to Complainant Rosezena Pierce of emotional distress damages of $20,000 plus punitive damages of $60,000, for total damages of $80,000;

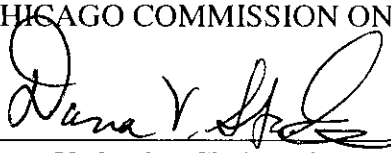
3. Payment to Complainant Rosa Parker of emotional distress damages of $20,000 plus punitive damages of $10,000, for total damages of $30,000.

4. Payment of interest on each of the foregoing damages awards from the date of violation of November 30, 2006;

5. Payment of Complainants' reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

The Commission finds individual Respondent Marvin G. Hunter not liable, as explained above. Accordingly, as to Hunter individually the Complaint is dismissed.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: February 16, 2011