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:

Cheryl Hutchison
Complainant,
v.

Mohammed Iftekaruddin
Respondent.

Case No.: 09-H-21

Date of Ruling: February 17, 2010
Date Mailed: February 25, 2010

TO:

Matthew P. Weems
Law Office of Matthew P. Weems
1652 W. Ogden Ave.
Chicago, IL 60612

Nathaniel Lawrence
Lawrence, Morris & Maldonado
2835 N. Sheffield Ave., Suite 232
Chicago, IL 60657

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on February 17, 2010, 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 compensatory damages in the amount of $2,500, plus interest on that amount from October 17, 2007 through February 17, 2010, in accordance with Commission Regulation 240.700.

2. To pay to Complainant punitive damages in the amount of $1,500, plus interest on that amount from October 17, 2007 through February 17, 2010, in accordance with Commission Regulation 240.700.

3. To pay a fine to the City of Chicago in the amount of $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 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.

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

5. To comply with the orders for injunctive relief stated in the enclosed ruling.

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 **March 25, 2010**. Any response to such petition must be filed and served on or before **April 8, 2010**. 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
Dana V. Starks, Chair and Commissioner

City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60610
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF:	
Cheryl Hutchison **Complainant,** **v.**	**Case No.:** 08-H-21
Mohammed Iftekaruddin **Respondent.**	**Date of Ruling:** February 17, 2010

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant Cheryl Hutchison filed a Complaint against Respondent Mohammed Iftekaruddin[1] on April 17, 2008, alleging a violation of the Chicago Fair Housing Ordinance ("CFHO"). She specifically claims discrimination based on source of income because Respondent allegedly refused to rent an apartment to her after discovering she was a participant in the federal "Section 8" housing voucher program and would use her voucher to support her rent. Respondent filed a Verified Answer on June 12, 2008, denying the allegations of discrimination. After completing its investigation, on December 18, 2008, the Commission issued an Order Finding Substantial Evidence of a violation of the CFHO. An administrative hearing took place on August 18 and October 21, 2009. The hearing officer issued her Recommended Ruling on Liability and Damages on December 29, 2009. Complainant filed and served objections to the Recommended Ruling. Respondent did not submit any objections.

II. FINDINGS OF FACT

Respondent's Property Ownership and History with the Section 8 Program

1. Respondent currently owns six properties throughout the city of Chicago, Illinois and has a total of approximately 66 rental apartments within these properties. (Tr. 117, 141). He bought his first property in 1980. (Tr. 140)

2. Since 1989, Respondent has rented apartments to several tenants who have used Section 8 vouchers to pay their rent. (Tr. 117, 142-143). At least two of these tenants previously resided at the 1474-1478 W. Winnemac building ("the property"), which is at issue in the Complaint. (Tr. 143). As of the date of the hearing, Respondent had three Section 8 tenants, one of which—Ms. Cherry—had been a tenant for twenty years. (Tr. 142)

3. In the past, the Chicago Housing Authority ("CHA"), which oversees the Section 8 program locally, has repeatedly denied Respondent's rent increase requests for his tenants that

[1] The Complaint named as Respondents "John" and the owner of the property at 1474-1484 W. Winnemac in Chicago. Mohammad Iftekaruddin has acknowledged that he is both the owner and the person who called himself "John" in the conversations alleged in the Complaint. Iftekaruddin also explained in his Verified Answer that the property is held by the American National Bank and Trust Company as trustee in a trust for which he is the beneficiary. (See also Compl. Exs. L and M)

used the Section 8 vouchers. (Tr. 145-146)[2] For example, Ms. Cherry's rent has increased very little, if any, over the last 20 years. *Id.* Respondent's other Section 8 tenants have gone three to four years without a rental increase for the same reason. (Tr. 146).

4. Respondent has encountered other difficulties with the Section 8 program and/or its participants. For example, in April or May 2007, a potential tenant who intended to use a voucher applied for an apartment with Respondent and paid the application fee. (Tr. 118) Respondent filed out the necessary paperwork with CHA but it took three weeks before the property was inspected (which is part of the rental process for the Section 8 program). (Tr. 118-119) The Respondent passed the inspection, but the potential tenant decided not to rent the apartment after nearly a month of delay. (Tr. 119)

5. In July 2007, another Section 8 tenant filed a complaint against Respondent with CHA regarding the condition of her apartment and the common areas. (See Letter dated August 14, 2007).[3] CHA sent Respondent a notice of the complaint and informed him that CHA would conduct a complaint inspection on the tenant's behalf.[4] *Id.*

Complainant Attempts to Rent an Apartment from Respondent

6. On or about October 14, 2007, Complainant saw an advertisement in the Chicago Tribune to rent a one-bedroom apartment in the Andersonville neighborhood for $850 per month. (Tr. 32, Compl. Ex. C) On October 16, 2007, she called the number listed in the ad and spoke to "John," whom she later learned was Respondent Mohammad Iftekaruddin. (Tr. 33-34) Respondent told Complainant that an apartment at the property was still available and they made an appointment to view it the next day. (Tr. 34-35)

7. On October 17, 2007, Respondent showed Complainant the apartment, including the laundry and storage areas. (Tr. 38). After the viewing, Complainant told Respondent that she wanted to fill out an application immediately. (Tr. 39) The apartment had only been available for one week and she was the first person to apply. (Tr. 121-122)

8. Complainant brought current credit reports from Experian, TransUnion. and Equifax with her at the time of the showing. (Tr. 40) She wanted to "prove ahead of time" to Respondent that she had good credit. (Tr. 46) The Experian report showed a credit score of 753 (out of 800) and the TransUnion report showed a score of 758. (Tr. 43, 45-46, Compl. Exs. G-I) A minimum credit score of 700 was required to rent one of the Respondent's apartments. (Tr.139)

9. Complainant testified that Respondent "thoroughly reviewed" the Equifax report and said it was acceptable. (Tr. 40) However, Respondent testified that he did not look at the report in detail because he typically does his own credit checks. (Tr. 122-123, 139-140)

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[2] Complainant testified that an entity called CHAC runs the Section 8 program. (Tr. 76) However, the distinction between CHA and CHAC is not relevant to our discussion here because the entities appear to be interchangeable for purposes of administering the Section 8 program locally. (Tr. 75-76)

[3] This document was included in the record as part of Complainant's Motion to Supplement the Hearing Record, which was filed after the August 18, 2009, hearing date and granted without objection from the Respondent. (Tr. 169-170)

[4] Neither party provided any additional information for the hearing record regarding the ultimate outcome of the complaint and inspection.

10. In filling out the application, Complainant wrote that she had a Section 8 voucher and told Respondent that she was on disability. (Tr. 47) She also mentioned that the voucher would cover approximately $944 in rent. *Id.* Respondent did not ask Complainant if she had a job or the source of her income for payment of the rent. (Tr. 94-95, 129)

11. Respondent initially said that he would accept the voucher but would have to check Complainant's references. (Tr. 47-48) In response, Complainant provided the name and address of her current landlord and the name and telephone numbers for two of her friends, Ms. Everett and Ms. Baker. (Tr. 49-50) The Respondent told her that he also needed Ms. Everett's and Ms. Baker's addresses, which Complainant did not have at the time. (Tr. 50).

12. Respondent testified that he also informed Complainant that she would have to pay a $35 application fee so that he could verify her credit history. (Tr. 123-124) He claimed that Complainant left without paying the required fee. (Tr. 123) Respondent also stated that he did not tell her he was going to rent her the apartment because he "never says anything to anybody without verifying" the information provided by the prospective tenant. (Tr. 125)

13. In contrast, Complainant testified that Respondent never told her he would have to independently verify her credit rating. (Tr. 95) She testified further that he never asked her to pay an application or credit check fee and that, if he had done so, she would have paid it because she had sufficient cash and her checkbook with her at the time. (Tr. 48, 95) She also stated there was nothing on the application form regarding an application fee. (Tr. 48) Finally, Complainant testified that Respondent said he would rent the apartment to her as long as her references checked out. (Tr. 105-106)

14. Later in the evening on October 17, 2007, Complainant called Respondent and gave him the addresses for Ms. Everett and Ms. Baker. (Tr. 50-51) Respondent took the information and said he would contact them. (Tr. 51) He did not mention payment of the $35 fee or tell Complainant that her application was incomplete. (Tr. 62, 133-134)

15. Complainant called Respondent again on October 19, 2007, to see if he had contacted her references. (Tr. 52) He had not. Instead, Respondent told Complainant that he could not rent the apartment to her because he had an exclusive listing agreement with the Apartment Guys (an apartment rental service) for the property. (Tr. 52, 138) During this second conversation, Respondent still did not mention payment of the $35 fee or tell Complainant that her application was incomplete. (Tr. 62, 133-134)

16. Complainant also contacted Apartment Guys. She viewed rental properties with one of their employees on or about October 23, 2007. (Tr. 53-55) After driving by the property, Complainant relayed her conversation concerning Respondent's agreement with Apartment Guys and learned that none of Apartment Guys' listings were exclusive. (Tr. 56) This fact was confirmed by the owner of Apartment Guys, David Kelley, who testified at the hearing that in October 2007, his company had a non-exclusive agreement with Respondent to help him rent apartments, including those at the property. (Tr. 15) The non-exclusive agreement meant that any realtor could show the property to prospective tenants. (Tr. 16)

Complainant Contacts the Lawyers' Committee for Better Housing

17. Immediately after her conversation with Respondent on October 19, 2007, the Complainant called the Lawyers' Committee for Better Housing ("Lawyers' Committee") and spoke with attorney Christine Kellogg, who worked with the Tenant Advocacy Program. (Tr. 52-

53) Complainant asked Ms. Kellogg to contact Respondent on her behalf regarding the apartment. Ms. Kellogg did so sometime between October 23-25, 2007. (Tr. 52-53, 128, Compl. Ex. N)

18. Respondent testified that he spoke to a woman regarding Complainant, but believed she worked with CHA because she did not identify herself. (Tr. 128) Respondent testified further that the caller "told me in like a threatening manner, you better give the apartment to [Ms. Hutchison], if not, you'll be in trouble." *Id.* In response, Respondent stated that the apartment had already been rented. (Tr. 129)[5]

19. Indeed, sometime between October 20 and 21, 2007, Respondent had received an application from a potential renter through another rental company—the Apartment People. (Tr. 126) The rental company verified the renter's credit and Respondent entered into a lease with him on October 23, 2007. (Tr. 127, Resp. Ex. 2)

20. During his conversation with Ms. Kellogg, Respondent also said that he had "bad experiences with Section 8" in the past. (Tr. 145-146, 160, Compl. Ex. N.) At the hearing, Respondent explained that those problems included CHA's failure to approve Respondent's requests to increase the rent for his Section 8 tenants and CHA's delay in handling the inspections. *Id.*

21. In March 2008, Complainant enlisted her friend Karen Everett to contact Respondent under the guise of being a potential renter. Ms. Everett called the same number in the advertisement used by Complainant several months earlier and spoke to Respondent. (Tr. 22, 25, Compl. Exs. A and C). Ms. Everett inquired whether he would accept Section 8 and Respondent stated he didn't think Section 8 would pay for the apartment and that it would take two to three weeks for the apartment to be inspected by CHA. (Tr. 28, Compl. Ex. A)

Complainant's Problems with Her Prior Landlord

22. Complainant had originally contacted the Lawyers' Committee to assist her with problems involving a prior landlord. (Tr. 75-76) That individual had repeatedly failed CHA inspections and, as a result, had his (Section 8) rent abated several times for Complainant's unit. *Id.* Based on the abatements and other complaints from Complainant, in 2006 the landlord had served several 30-day notices in an attempt to evict Complainant from her apartment. *Id.* at 75, 82, 96-97. These efforts were delayed after Complainant contacted the Lawyers' Committee.

23. However, sometime in late August 2007, Complainant received another Notice of Termination of Tenancy from the landlord. (*See* Compl. Ex. Q) According to the Notice, as of September 30, 2007, Complainant's month-to-month tenancy would end and she had to vacate the property or face a lawsuit for possession of the apartment. *Id.*

24. Complainant and the Lawyers' Committee negotiated with the landlord such that if she could find another apartment by October 2007, the landlord would not go through with the eviction. (Tr. 82) Despite this agreement, the landlord filed the lawsuit for possession of her

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[5] Subsequently, Complainant contacted Respondent again and he reiterated that he had already rented the apartment. (Tr. 58)

apartment (not for payment of rent) on October 23, 2007. (Tr. 88)[6] However, Complainant was not served with a copy of the lawsuit until November 28, 2007.

25. From late November 2007 through April 30, 2009, instead of moving out of her prior apartment, Complainant retained two different lawyers and incurred over $10,000 in legal fees to defend against the eviction lawsuit. (Tr. 88, 92, Compl. Exs. R-T) Complainant testified that she would not have defended against the lawsuit if she had been able to rent the apartment at the property. (Tr. 89-90)[7]

Complainant's Health Condition

26. For the past ten years, Complainant has suffered from several ailments, including hypothyroidism, fibromyalgia, and various other rheumatoid conditions. (Tr. 72-73, 103) She sees a physician for these health issues twice a month. (Tr. 73)

27. Complainant testified that as a result of failing to get the apartment at the property, her conditions worsened (as evidenced by changes in the results of various blood tests), she lost sleep, and felt even more physically ill. (Tr. 74)

III. CONCLUSIONS OF LAW AND ANALYSIS

Section 5-8-030 of the Chicago Fair Housing Ordinance prohibits discrimination in the rental of housing, including the following provision:

> It shall be an unfair housing practice and unlawful for any owner...or other person, firm or corporation having the right to sell, rent, lease, sublease, or establish rules or policies for any housing accommodation, within the City of Chicago, or any agent of these, or any real estate broker licensed as such...to refuse to sell, lease or rent any real estate for residential purposes within the City of Chicago because of the...source of income of any prospective buyer, lessee or renter of such property.

Commission Regulation 420.130 further interprets the Chicago Fair Housing Ordinance as follows:

> 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....Such prohibited actions include, but are not limited to:

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[6] There was some dispute during the hearing regarding the date that the landlord filed the complaint against Ms. Hutchison. However, a review of the docket sheet for the eviction proceeding on the Cook County Clerk of the Circuit Court's website (which provides a searchable electronic database for the docket sheets of all state court cases filed within Cook County, Illinois) revealed that the landlord filed the lawsuit on October 23, 2007, and served Ms. Hutchison by certified mail as of November 28, 2007. The hearing officer therefore takes judicial notice of these dates. See *Richardson v. Boy Scouts of America*, CCHR No. 92-E-80 (Apr. 20, 1993), noting that the Commission may take judicial (i.e. administrative) notice of facts that are "indisputable and capable of accurate and ready determination."

[7] Ms. Hutchison finally moved out of the prior apartment on April 30, 2009. (Tr. 92)

(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....

The Commission has long since determined that a Section 8 voucher is a "source of income" under the CFHO. See *Smith et al v. Wilmette Real Estate & Mgmt. Co.*, CCHR Nos. 95-H-159 & 98-H-44/63 (Apr. 13, 1999). This determination was upheld by the Illinois Appellate Court in *Godinez v. Sullivan-Lackey*, 815 N.E.1d 822 (Ill.App. 2004), affirming *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (July 19, 2001) . Thus, a landlord's refusal to consider potential tenants because they have a Section 8 voucher constitutes unlawful discrimination under the CFHO. See, e.g., *Marshall v. Gleason*, CCHR No. 00-H-1 (April 23, 2004); *Lopez v. Arias*, CCHR No. 99-H-12 (September 21, 2000); *Torres v. Gonzales*, CCHR No. 01-H-46 (Jan. 18, 2006); *Draft v. Jercich*, CCHR No. 05-H-20 (July 6, 2008); *Sercye v. Reppen & Wilson*, CCHR No. 08-H-42 (Oct. 21, 2009); *Diaz v. Wykurz and Locasio*, CCHR No. 07-H-28 (Dec. 16, 2009).

Complainant has the burden of proving her discrimination claim by a preponderance of the evidence using either the direct or indirect methods of proof. *Torres v. Gonzales*, *supra.*; *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 29, 2004). Under the direct evidence method in a fair housing case, a complainant may meet her burden of proof through credible evidence that the respondent directly stated or otherwise indicated that s/he would not offer housing to a person based on a protected class, such as having and intending to use a Section 8 voucher. *Jones, supra.* at 8. Direct evidence is that which, if believed, will allow a finding of discrimination with no need to resort to inferences. *Richardson v. Boy Scouts of America*, CCHR No. 92-E-80 (Feb. 21, 1996); *Matias v. Zachariah*, CCHR No. 95-H-110 (Sept. 18, 1996).

The indirect method of proof includes the shifting burden analysis described by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), and followed by the Commission. *Gleason, supra.* at 8. Using this method in a housing discrimination case, the Complainant must initially establish a *prima facie* case. She may do so by showing that she (1) belongs to a protected class; and (2) was denied the opportunity to rent or own housing that was available; or (3) was offered housing on terms different from the offers made to others. *Id.* at 11. The burden then shifts to the respondent to articulate a legitimate, nondiscriminatory reason for the refusal to rent, sell, or offer identical terms. If the Respondent satisfies this burden, the Complainant may still prevail if s/he shows that the articulated reason is a pre-text for discrimination. *Id.*

A. Complainant Established a Violation of the CFHO By Direct Evidence

Complainant has proved a violation of the CFHO through direct evidence. The evidence shows that after discovering that Respondent had failed to follow up on her rental application and references, Complainant asked Christine Kellogg at the Lawyers' Committee to speak with him. Along with other evidence, Ms. Kellogg's notes, offered into evidence as Complainant's Exhibit N, establish that she did so.

At the hearing, Respondent conceded that he received the phone call from Ms. Kellogg regarding Complainant's efforts to rent the apartment at the property. He testified he was told in a "threatening manner" that he "better give the apartment" to Complainant or he would be "in trouble." In response, Respondent told Complainant that he "had bad experiences with Section

8." At the hearing, Respondent explained that by "bad experiences" he meant CHA's repeated refusal to grant his requests to increase the rent for his existing Section 8 tenants, despite the fact that one tenant had paid the same amount of rent for 20 years, and the delay caused by the inspection process.

As explained in *Richardson* and *Matias*, cited above, direct evidence is evidence that, if believed, will allow a finding of discrimination with no need to resort to inferences. Respondent's statement to Ms. Kellogg and his explanation for that statement are direct evidence that he chose not to rent to Complainant because of his negative experiences with Section 8 and, correspondingly, Complainant's Section 8 status. See, e.g., *Sullivan-Lackey v. Godinez*, supra., finding a violation of the CFHO based on direct evidence that respondent stated that he did not accept Section 8 because he didn't want to be "audited", and *Huff v. American Management & Rental Service*, CCHR No. 97 H 187 (Jan. 22, 1999), finding a violation of the CFHO based on direct evidence that respondent's employee told the complainant she could not use her Section 8 voucher to pay rent.

Notably, direct evidence of a violation of the CFHO exists where there is a showing that the respondent directly stated *or otherwise indicated* that he did not offer housing to the complainant because of her Section 8 status. *Jones, supra.* at 8. In his conversation with Ms. Kellogg, Respondent did exactly that: he clearly indicated that his "bad experiences with Section 8" prevented him from renting to the Complainant.[8] That Respondent believed he was speaking to a CHA employee is irrelevant; the statement is direct evidence of his discriminatory intent.

Although Respondent has had several Section 8 tenants over the years, the evidence also shows that believed he had experienced difficulties navigating through the Section 8 program, including repeatedly failing to receive requested rent increases, delays in the inspection process, which caused him to lose a potential renter, failing a CHA inspection and enduring complaints from his Section 8 tenants. Although it is understandable that the Respondent would be frustrated with the CHA/Section 8 program given these experiences, but this frustration cannot be allowed to fuel discrimination against potential Section 8 renters.

As pointed out by the appellate court in *Godinez v. Sullivan-Lackey, supra.* at 7 and 9, a landlord may be able to make a showing in a particular case that cooperating with the Section 8 program's regulatory requirements will impose more than a *de minimus* burden on him, including a showing of a substantial financial burden; however a generalized objection to the burdens of cooperation with the Section 8 program is not a defense. Here, Complainant has not shown that it would have imposed a substantial burden on him to have considered Complainant for tenancy and, if she was accepted, to have cooperated with the administrative requirements of the Section 8 program. Despite what may have occurred in other situations, the evidence is that Complainant's voucher was more than sufficient to cover the rent Respondent was seeking for the apartment. Given that Respondent was advertising the apartment for rent, presumably he believed it to be in rentable condition and in general compliance with the City's code provisions for dwelling units, and Respondent made no showing that it would have been possible to meet the housing quality standards of the Section 8 program. Also, Respondent made no showing that, at the point on October 19, 2007, when he told Complainant he would not rent to her, he had another applicant prepared to sign a lease and make the initial rent and/or deposit payments he was requesting.

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[8] It also appears that the Respondent attempted to discourage Ms. Everett from applying for one of his apartments after she asked if he would accept a Section 8 voucher, by stating he didn't think Section 8 would pay for it and that it would take at least three weeks to get an inspection.

B. Complainant Established a Violation of the CHFO Through Indirect Evidence

Complainant has also proved a violation of the CFHO through indirect evidence. As set forth above, using this method, a complainant must initially establish a *prima facie* case. If she does so, the burden then shifts to the respondent to articulate a legitimate, nondiscriminatory reason for his refusal to rent to the complainant. Even if a respondent meets this burden, the complainant may still prevail by showing that the reason was merely a pretext for discrimination.

Here, Complainant established a *prima facie* case. Based on her testimony, she belonged to a protected class because she intended to use her Section 8 voucher as a source of income to pay rent. The evidence also showed that Respondent denied Complainant the opportunity to rent an apartment at the property even though she was the first person to apply, she immediately made clear her interest in renting the apartment, promptly followed up with a phone call to provide missing information about her references, and provided documentation that she had excellent credit. Respondent nevertheless told her on October 19, 2007, that he would not rent to her, falsely stating that he had an exclusive listing with Apartment Guys. He rented the apartment a few days later to an individual who was not using a Section 8 voucher to support the rent.

Respondent insists that he had a legitimate, non-discriminatory reason not to rent to the Complainant—that she failed to pay the required $35 application fee. Respondent's defense is similar to that discussed and rejected by the Commission in the *Godinez, supra.* There, the complainant needed to move quickly to preserve her Section 8 eligibility. She viewed an apartment, received an application and paid a $25 fee. While applying for the apartment, the complainant disclosed to the landlord-respondent that she intended to use a Section 8 voucher to pay rent. *Id.* at 3. The respondent argued that the complainant's failure to return the application, rather than discrimination, explained his refusal to rent to her. *Id.* at 2-4. The Commission rejected this defense as "utterly incredible" because the complainant was "desperate to move" and had paid the fee, and the respondent failed to explain how or why a portion of complainant's completed application was found on the floor of the building. *Id.*

Similarly, in this case, the hearing officer found that Respondent's explanation lacked credibility. First, the hearing officer credited Complainant's testimony that Respondent never asked her to pay an application fee and that if he had, she could have easily done so because she had cash with her and a checkbook. As the hearing officer noted, this is a person who brought three credit reports along with her as well as the names and telephone numbers of three references, and who knew she needed to move because her prior landlord had given her a notice of termination. Under these circumstances, and like *Godinez*, it is hard to believe that the Complainant would have allowed a rental opportunity to pass her by because of a $35 fee.

Second, in two subsequent telephone conversations with Complainant, Respondent never mentioned that her application was incomplete, never stated that she failed to pay the fee, and never offered her an opportunity to do so. Instead, he gave her excuses and misstatements regarding checking her references and his relationship with Apartment Guys. Third, there is no evidence (including any testimony from Respondent) that Respondent mentioned a failure to pay the fee as a reason for his refusal to rent to Complainant when he spoke to Ms. Kellogg. Instead, he said he had "bad experiences" with Section 8. Thus, the Respondent's purportedly legitimate, non-discriminatory reason for refusing to rent to Complainant fails. The failure to request or collect an application fee was, if anything, based on Respondent's having already decided he was

not going to rent to Complainant because he did not want to deal with the Section 8 voucher program. Complainant has, therefore, again proved a violation of the CFHO by indirect evidence.

IV. RELIEF

Complainant argues that she is entitled to damages including emotional distress damages, punitive damages, out of pocket-losses (which include attorneys fees paid to defend the eviction lawsuit initiated by her prior landlord), and any applicable pre- and post-judgment interest on the damages. Each category is discussed below.

A. Emotional Distress Damages

Emotional distress damages are generally recoverable in a housing discrimination case. See Chicago Municipal Code § 2-120-510(1). The Commission considers the following factors to determine the amount of emotional distress damages to award to a prevailing complainant: the length of time the complainant experienced emotional distress; the severity of the distress; the vulnerability of the complainant, and the duration and egregiousness of the underlying discrimination. See *Rogers v. Diaz*, CCHR No. 01-H-33/34 (Apr. 17, 2002) citing *Nash & Demby v. Sallas Realty & Sallas*, CCHR No. 92-H-128 (May 17, 1995). Based on these factors' severity, awards for emotional distress damages upon a finding of housing discrimination have ranged from as little as $400 to as much as $40,000 and various amounts in between. See, e.g., *Godard v. McConnell*, CCHR No. 97-H-64 (Jan. 17, 2001), awarding $400 where respondent was only one of dozens of landlords who discriminated against the complainant, causing emotional distress; *Sellers v. Outland*, CCHR No. 02-H-37 (Oct. 15, 2003), 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), awarding $40,000 for egregious sexual harassment including physical violence and eviction threats resulting in sleep loss, nightmares, flashbacks, and migraine headaches; *Sullivan-Lackey, supra.* at 14, awarding $2,500 in emotional distress damages where the discrimination was a one-time occurrence without malice or epithets and where complainant could not show exacerbation of pre-existing medical conditions; *Jones, supra.* at 26, awarding $3,000 for emotional distress after refusal to rent due to source of income and disability where complainant felt humiliated, helpless, and stressed and had problems eating and sleeping.

Here Complainant seeks $10,000 in damages for emotional distress. However, the hearing officer did not believe that she is entitled to this amount of emotional distress damages, noting that she may receive in this case only those damages that are attributable to this Respondent's discriminatory refusal to rent. *Sullivan-Lackey*, supra. at 13; citing *Barnett v. T.E.M.R. Jackson Rental et al.*, CCHR No. 97-H-31 (Dec. 6, 2000). Not all of Complainant's emotional distress can be attributed to this Respondent.

Based on her testimony, Complainant has had pre-existing and chronic medical problems for years. Complainant testified that for the past ten years, she has suffered from hypothyroidism, fibromyalgia, and various other rheumatoid conditions, for which she regularly sees several doctors. Complainant also testified generally that as a result of failing to get the apartment, these conditions worsened, she lost sleep, and she felt even more physically ill. However, the assertion that those conditions worsened due to the Respondent's conduct is too speculative to support a large award for emotional distress. Complainant made only the self-serving, uncorroborated statement that her a blood test results showed levels "higher than they had ever been" following her encounter with the Respondent. Moreover, at the time that she went to see the property, she was under the stress of having to find an apartment because of the

looming eviction—stress that was not caused by the Respondent but by her then-existing rental situation. Accordingly, there is little specific evidence to support Complainant's assertion that her medical conditions were worsened because of Respondent's conduct.

In addition, the discriminatory conduct consisted of a single, discrete act of rejecting Complainant's application on October 19, 2007. It involved a refusal to rent rather than harassment. Respondent's conduct toward Complainant was not particularly egregious. It did not involve expressions of malice toward Complainant herself or any derogatory epithets directed to her. Complainant's physical symptoms as she described them were not clearly linked to Respondent's conduct. See *Godinez, supra.* at 14. The hearing officer recommended an award of $2,500 for emotional distress damages. The Commission finds this amount warranted by the evidence, but not more.

In her objections to the Recommended Ruling, Complainant states without elaboration that this case is indistinguishable from *Jones v. Shaheed, supra*, where $3,000 was awarded for emotional distress arising from housing discrimination based on source of income. Although both Complainant and Jones suffered from pre-existing health conditions and personal challenges, in *Jones*, the complainant established a more severe violation than in this case. Jones was subjected to both disability and source of income discrimination. She was subjected to directly-stated and personally humiliating discriminatory intent when told by the respondent that she could not be considered as a tenant because she was not working. Also she was directly subjected to embarrassment and humiliation when required to explain that she had the HIV virus. Jones also provided more specific evidence of the emotional impact of the respondent's discriminatory conduct on her than Complainant provided in this case. Thus the Commission is not persuaded that *Jones* requires a higher emotional distress damages award here.

B. Punitive Damages

The Commission has awarded punitive damages where a respondent's actions are willful and wanton, malicious, or recklessly disregarded the rights of the complainant. See *Rogers, supra.* at 11, and *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21. 1998). Punitive damages are also required to deter respondents from discriminating against others in the future. *Rogers,* supra. at 12. Respondent's conduct, while violating the CFHO, did not rise to the level of willfulness or maliciousness toward Complainant herself. However, Respondent was frustrated by his prior experiences with CHA and its administration of the Section 8 program. He allowed his frustration with other Section 8 renters to evolve into discrimination against the Complainant, without considering her right to be free from such discrimination as a result of her intent to use a Section 8 voucher to pay the rent. Moreover, Respondent "gave her the run-around" when she repeatedly inquired about the status of her application, including the misstatements about Apartment Guys. These actions showed a reckless disregard for Complainant's rights, and such conduct should be punished and deterred. Accordingly, the hearing officer recommended that Complainant be awarded $1,500 in punitive damages. The Commission agrees with the hearing officer's analysis and adopts the recommendation.

In her objections, Complainant argues that $1,500 in punitive damages is "insufficient as a matter of law" because it fails to take into account the financial position of Respondent as the owner of six buildings having 66 rental housing units. Complainant also argues that Respondent engaged in multiple violations, pointing to the evidence from Complainant's tester, Karen Everett. Complainant also argues that there should be a higher multiplier of the actual damages, that is the $2,500 for emotional distress, because that amount is low.

Although the Commission agrees that it may award higher amounts or multipliers of punitive damages and has in some instances done so, it is not persuaded that a higher amount is warranted let alone required in this case, for the reasons set forth by the hearing officer. Respondent is being assessed a fine and ordered to pay emotional distress damages and attorney fees in addition to the $1,500 in punitive damages. In total, the additional $1,500 is sufficient on these facts to make Complainant whole and to punish and deter the conduct found to be discriminatory.

C. Out-of-Pocket Losses

Complainant seeks reimbursement for approximately $10,000 in attorney fees that she incurred to defend against the eviction proceeding filed by her prior landlord. Notably, in the lawsuit, the prior landlord sought only possession of the apartment, not the payment of rent, because the Complainant had been current on her rent payments.

Complainant argues that she would not have incurred legal fees to defend the lawsuit had she been able to rent the apartment from Respondent. The hearing officer in her recommendation noted that Complainant chose to hire private legal counsel and defend the lawsuit, but did not establish that she had no alternative to incurring such an amount of legal fees to defend against the tenancy termination. More importantly, the hearing officer found the connection between those legal fees and Respondent's conduct too attenuated and not reasonably foreseeable.

Complainant objects to the hearing officer's recommendation not to hold Respondent responsible for this out-of-pocket loss and argues, citing tort law principles, that all that is necessary is some reasonable connection between the unlawful conduct and the damage suffered.

The Commission has held that a respondent is only liable for those damages that are attributable to the ordinance violation and reasonably foreseeable. *Godinez, supra.* at 13; citing *Barnett v. T.E.M.R. Jackson Rental et al.*, CCHR No. 97-H-31 (Dec. 6, 2000). The Commission agrees with the hearing officer that there was no evidence that Respondent knew or could have reasonably foreseen that Complainant was seeking to rent his apartment because she was facing termination of her current tenancy or that she would incur legal fees of $10,000 to defend against the termination of her tenancy. This causal connection is too remote to be compensable as damages for Respondent's discriminatory refusal to rent an apartment to Complainant.

The evidence was that the lawsuit Complainant was incurring attorney fees to defend was filed on October 23, 2007, but not served on Complainant on November 28, 2007. Respondent told her he would not rent to her on October 19, 2007. Complainant did not provide much evidence about continued efforts to rent another apartment after October 19, 2007; although she did look at apartments with Apartment Guys on October 23, 2007. In particular, she did not provide evidence to establish that she could not have sought and rented other housing after Respondent's rejection.

The nature of Respondent's violation of the CFHO, as found, should also be taken into account in assessing Respondent's responsibility for Complainant's attorney fees to defend the termination of her tenancy by another landlord. As explained above, Respondent discriminated against Complainant by refusing to seriously consider her application after he found out that she planned to use a Section 8 voucher. However, even if Respondent had promptly accepted Complainant as a tenant (and signed the documentation which launches CHA's process of

inspection and lease negotiation), the Commission must take judicial notice that this the CHA inspection and leasing process can take a few weeks to complete, with at least some possibility that the unit will not pass initial inspection or that for other reasons the voucher holder will not ultimately rent the unit. During that processing period, it is not a violation of the CFHO for a landlord to rent the unit in question to another person who is immediately able to pay the stated rent and deposit. Put another way, a landlord is not required by the CFHO to incur any substantial financial loss in order to rent to a Section 8 voucher holder, including the loss of several weeks' rent which is immediately available to the landlord. Rather, under the CFHO a landlord is required not to refuse to consider an otherwise-qualified applicant because that person would use a Section 8 voucher, and not to refuse to take reasonable, *de minimis* steps to facilitate a voucher holder's pursuit of tenancy through the Section 8 program. Further, a landlord may not treat a Section 8 voucher holder differently as an applicant based on stereotypical generalizations about voucher holders or the Section 8 program. See *Smith et al., supra.* Here, however, Respondent received an application from another person on October 21, 2007, and signed a lease with that person on October 23, 2007, ten days after the showing to Complainant and receipt of her application and four days after he rejected Complainant. He may have decided to do that even if he had not discriminated against Complainant, as he was not obligated by the CFHO (or by any contractual agreement with Complainant) to hold the apartment for her during the processing period. Thus *on this evidence* the Commission cannot find it reasonably foreseeable that Complainant would ultimately have been able to rent Respondent's apartment and thus avoid any of the costs she may have incurred because her current landlord was trying to terminate her tenancy.

D. Interest on the Damages

Section 2-120-510(l), Chicago Municipal Code, allows the Commission to award interest on actual damages from the date of the ordinance violation. Commission Regulation 240.700 provides for pre- and post-judgment interest at the prime rate, adjusted quarterly, compounded annually starting at the date of the violation. The hearing officer recommended that Respondent pay interest on the emotional distress damages and punitive damages (totaling $4,000) starting from October 17, 2007, through the date of the final order issued by the Board of Commissioners. Although this amounts only to pre-judgment interest, the Commission adopts the recommendation as made by the hearing officer.[9]

E. Fine

Section 5-08-130 of the CFHO provides for a maximum fine of $500 for each offense. The hearing officer recommended the maximum fine of $500 be imposed, and the Commission adopts the recommendation.

F. 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. *Pudelek and Weinmann v. Bridgeview Garden Condo. Assoc.* et al., CCHR No. 99- H-

[9] However, Respondent should keep in mind that if he fails to pay the damages and interest as ordered in a timely manner, he will be subject to additional monetary penalties under the enforcement process described in Reg. 250.220. See, e.g., *Marshall v. Borouch*, CCHR No. 05-H-39 (Dec. 14, 2006), imposing a $500 fine for failure to pay the fine and damages ordered after a liability finding, plus additional fines of $100 per day for any continued noncompliance after a date specified.

39/53 (Apr. 19, 2001); *Godard, supra.* at 11.[10] The Commission adopts the hearing officer's recommendation and awards Complainant reasonable attorney fees and costs.

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.

V. SUMMARY AND CONCLUSION

The Board of Commissioners finds Respondent Mohammed Iftekaruddin liable for source of income discrimination in violation of the Chicago Fair Housing Ordinance. As detailed above, the Commission orders the following relief:

1. Emotional distress damages in the amount of $2,500, plus interest dating from October 17, 2007, through December 17, 2009.

2. Punitive damages in the amount of $1,500, plus interest dating from October 17, 2007, through December 17, 2009.

3. A fine of $500, payable to the City of Chicago.

4. Payment by Respondent of Complainant's 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: Dana V. Starks, Chair and Commissioner
Entered: February 17, 2010

[10] Complainant sought reimbursement for out-of-pocket costs she incurred to bring this claim *pro se*, including faxes, copying, phone calls and transportation (totaling $330.30). See Complainant's Pre-hearing Memorandum. She subsequently retained counsel to represent her in this case. She may present those costs for consideration in conjunction with the attorney fee petition.