



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

IN THE MATTER OF:

Kimberly Shipp
Complainant,
v.
Charles Wagner and Janice Wagner as
Trustee of the Wagner Land Trust
Respondents.

Case No.: 12-H-19

Date Mailed: September 8, 2014

TO:

Don Brown
Law Offices of Don Brown
15255 S. 94th Street, Suite 500 #140
Orland Park, IL 60462

Jonathan Lubin
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Chicago, IL 60603

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on July 16, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondents 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 Respondents:

1. To pay to Complainant emotional distress and punitive damages in the total amount of \$5,500, plus interest on that amount from March 22, 2012, in accordance with Commission Regulation 240.700.
2. To each pay a fine to the City of Chicago in the amount of \$500.¹
3. To pay Complainant's 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.

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.

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 **October 6, 2014**. Any response to such petition must be filed and served on or before **October 20, 2014**. 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

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(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF:

Kimberly Shipp
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Trustee of the Wagner Land Trust
Respondents.

Case No.: 12-H-19

Date of Ruling: July 16, 2014

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On April 4, 2012, Complainant Kimberly Shipp filed a Complaint with the Commission on Human Relations alleging that Respondent Charles Wagner violated the Chicago Fair Housing Ordinance, Chapter 5-8 of the Chicago Municipal Code, by publishing advertisements for the rental of residential real property that discriminated on the basis of Complainant's source of income and by refusing to rent a housing unit to her because of her source of income. After completing its investigation, on October 31, 2013, the Commission entered a substantial evidence finding.

On March 31, 2014, Complainant filed a Motion to Amend her complaint to add Janice Wagner, trustee of the Wagner Land Trust, as a respondent. The Commission conducted an administrative hearing on April 22, 2014; prior to the commencement of the hearing, the hearing officer granted Complainant's motion. All parties were represented by counsel. On May 9, 2014, Complainant filed a Post-Hearing Memorandum.

On May 20, 2014, the hearing officer issued his recommended ruling. No objections have been received.

II. FINDINGS OF FACT

1. Complainant Kimberly Shipp is a female resident of the City of Chicago. (Tr. 13). Complainant currently resides in the 1600 block of West 100th Street in the City of Chicago. This is a two-story home where she has lived for approximately one year. Complainant's prior address was at 11735 S. Parnell, Chicago, IL. (Tr. 13).
2. Complainant has been a Housing Choice voucher holder since 2003.¹ (Tr. 14). In the winter of 2012, Complainant enrolled in the Chicago Housing Authority (CHA) Mobility Program. According to Complainant, eligibility for the Mobility Program allows rents to be subsidized at a higher level than voucher holders who are not in the

¹ The Housing Choice Voucher program was previously known as the "Section 8" program.

program. The Mobility Program would have provided income allowing Complainant to rent a house for \$1,350 per month. (Tr. 14).

3. In the spring of 2012, Complainant sought to rent an apartment or home in either the Mt. Greenwood or Beverly neighborhoods of the City of Chicago. She sought these neighborhoods for the “good schools and low crime rate.” (Tr. 14). Complainant believed that the area on South Parnell where she had been living was a high crime area with bad schools. (Tr. 15).
4. Complainant began her search for housing using both a realtor and by exploring specific websites such as Craigslist and Trulia. (Tr. 15).
5. On or about March 22, 2012, Complainant viewed a rental advertisement on Craigslist for a three bedroom property located at 2821 W. 102nd Place, Chicago, IL, renting for \$1,350 per month. (Tr. 15).
6. The Craigslist advertisement that Complainant viewed contained the words, “Not Section 8 Approved.” (Tr. 19, Complainant Ex. A).
7. There was a link to a website where pictures of the home could be found contained in the Craigslist advertisement. The link read, “Photos at <https://sites.google.com/site/2821w102pl/>.”
8. Complainant viewed the Google website and found an advertisement for the subject property with the headline *House For Rent: Well Maintained Raised Ranch in West Beverly*. Also contained in the advertisement were the words “No Section 8.” (Tr. 19-20, Complainant Ex. B).
9. Complainant testified, with little emotion, that when she saw the advertisement she felt “sad and frustrated.” (Tr. 16). She stated that her time to find a new place using her voucher was expiring and she needed a better school and home for her kids. She had approximately six or seven days remaining before her voucher expired at that time.
10. Complainant called the number on the advertisement and spoke with Respondent Charles Wagner. Even though the advertisements indicated that a Section 8 voucher would not be accepted, Complainant felt that she could convince Mr. Wagner to rent to her because she was in the Mobility Program. (Tr. 17).
11. Complainant called Mr. Wagner and spoke with him about the apartment. He asked Complainant if she had a job. Complainant told him “no,” but also told him that she receives disability. She then asked Mr. Wagner whether he would take Section 8. He told her, “no.” (Tr. 17).
12. When asked at the hearing how she felt after that conversation, Complainant said (once again), “sad and frustrated.” This was the entirety of Complainant’s testimony on direct examination.
13. Complainant was not given the opportunity to attempt to convince Mr. Wagner to accept her voucher because she was in the Mobility Program. When she first called, Mr. Wagner told her that he was going to call her back that evening; apparently to discuss the listing at

greater length. However, after Mr. Wagner stated that he did not take Section 8, Complainant said “goodbye,” and then hung up the telephone. (Tr. 24). Mr. Wagner did not call her back that evening.

14. Complainant convincingly testified that she called her attorney, who was assisting her in trying to obtain a home, “Probably like 30 or 40 minutes after I got through crying, because I needed a home, and I was trying my best to get a home for my kids.” (Tr. 26)
15. Mr. Wagner testified that Complainant’s attorney called him approximately 20 minutes after his conversation with Complainant, and told Mr. Wagner that “I had my ad wrong.” Mr. Wagner stated that he told Complainant’s attorney, “Why don’t you bring your client over to the house on Sunday, I have appointments.” Mr. Wagner further testified that the attorney’s response was, “No, I want you to move my client to the front of the list and give her the house now...” (Tr. 45).
16. At the hearing, Complainant testified that she was unaware that Mr. Wagner had invited her, through her attorney, to apply for the home or to attend the open house scheduled for that Sunday.
17. Mr. Wagner held a showing of the property that Sunday and two out of six people who had scheduled appointments showed up. One of them rented the property. (Tr. 40-41).
18. Due to difficulties finding a landlord who would accept her voucher, Complainant was required to obtain two extensions on her voucher. (Tr. 34). Complainant continued to look for housing with the assistance of a real estate agent.
19. Mr. Wagner testified that the reason he ran an advertisement that said “Not Section 8 Approved” was that he had been informed by a real estate agent that “you have to get - become Section 8 approved, and he led me to believe that this was a process where I would have to have inspections, spend more money and the one thing that we don’t have is a lot of money, and I didn’t want to spend a lot more.” (Tr. 41).
20. Of more relevance to the instant case is what Mr. Wagner encountered when he tried to run an advertisement in the *Beverly Review*. According to Mr. Wagner, he wanted the advertisement to state, “No Section 8.” (Tr. 41). The paper would not accept that wording (presumably because they knew the limitation expressed violated the Chicago Fair Housing Ordinance). According to Mr. Wagner, a representative of the *Beverly Review* told him that the advertisement could state, “Not Section 8 Approved,” so he included that language.
21. The hearing officer found that Mr. Wager was undoubtedly aware he was violating the law when he changed the wording on his advertisement in an effort to accomplish the same goal; discouraging Housing Choice voucher holders from applying to rent his home.
22. The hearing officer further determined that Mr. Wagner’s later testimony that he would have been willing to rent his apartment to someone with a government voucher was not credible. It is contradicted by the advertisements he placed and by the statements he made to Complainant.

23. Mr. Wagner characterizes the call he received from Complainant's attorney as a "shake down," asserting that he felt like he was "being attacked." The hearing officer did not find that to be the case. The hearing officer found that Complainant, through her attorney, was attempting to enforce her right to be considered as a tenant regardless of the source of her income.
24. Mr. Wagner contends that had Complainant completed an application and looked at the house, he would have treated her like everybody else and would have allowed her to rent the house despite being on government assistance. (Tr. 46). The hearing officer determined that Mr. Wagner's assertion may have been true after he was threatened with legal action, but it certainly was not true before.

IV. CONCLUSIONS OF LAW

1. The Commission on Human Relations has proper jurisdiction over the parties and over the subject matter of this controversy.
2. Respondent Charles Wagner published an unlawful limitation on the basis of source of income by placing an advertisement on Craigslist that stated, "Not Section 8 Approved," in violation of the Chicago Fair Housing Ordinance.
3. Respondent Charles Wagner published an unlawful limitation on the basis of source of income by placing an advertisement on Google that stated, "No Section 8," in violation of the Chicago Fair Housing Ordinance.
4. Respondent Charles Wagner published a communication that indicated a limitation in the rental of a residential real estate on the basis of source of income by placing an advertisement in the *Beverly Review* that stated, "Not Section 8 Approved," in violation of the Chicago Fair Housing Ordinance.
5. Respondent Charles Wagner refused to rent his property to Complainant on the basis of her source of income by orally stating to Complainant that he did not accept Section 8, in violation of the Chicago Fair Housing Ordinance.
6. The Wagner Land Trust, acting through its Trustee, Respondent Janice Wagner, as owner of the subject property with Respondent Charles Wagner acting as its authorized agent, is vicariously liable for the discriminatory conduct of Mr. Wagner. See, e.g., *Hall v. Becovic*, CCHR No. 94-H-39 (June 22, 1995) and *Rogers and Slomba v. Diaz*, CCHR No. 01-H-33/34 (Apr. 17, 2002).

V. DISCUSSION

Section 5-8-030 of the Chicago Fair Housing Ordinance provides in relevant part as follows:

It shall be an unfair housing practice and unlawful for any owner... 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...:

- 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...predicated upon the... source of income of the prospective or actual buyer or tenant thereof.
- B. To publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, sign, or other writing of any kind relating to the sale, rental or leasing of any residential property within the City of Chicago which will indicate or express any limitation or discrimination in the sale, rental or leasing of such residential real estate, predicated upon the...source of income of the prospective or actual buyer or tenant thereof.
- C. 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.

Section 420.130 of the Rules and Regulations of the Chicago Commission on Human Relations 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:

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

Similarly, Section 420.120 of the Rules and Regulations of the Commission provides in pertinent part as follows:

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

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

- 2) Expressing to persons such as...renters any preference, limitation or discrimination regarding any person because of that person's membership in a Protected Class.

The Commission has long since determined that a Housing Choice 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.2d 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 when Complainant called to inquire about renting a house, she informed Respondent James Wagner that she had a Housing Choice voucher and asked if he would accept it. Mr. Wagner told Complainant that he would not accept her voucher.

At the hearing, Mr. Wagner conceded that he received a phone call from Complainant regarding the available house for rent. He testified that he and Complainant discussed the particulars of the house, such as room size and the location of the laundry area. Mr. Wagner further testified that Complainant asked him whether he would accept "Section 8," and he replied that he was not "Section 8 approved." (Tr. 43).

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. Mr. Wagner's statement to Complainant that he was not approved to rent to tenants with Section 8 indicates that he was prevented from renting to Complainant because of her status as a Housing Choice voucher holder. This statement is direct evidence of an intent to discriminate against individuals based on source of income. 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.

B. Respondents' Advertisements Discriminated on Their Face

Both the Craigslist advertisement that stated "Not Section 8 Approved," and the referenced Google ad that stated "No Section 8," expressed an unlawful limitation on the basis of the Complainant's source of income. In her post-hearing memorandum, Complainant relied solely upon these advertisements to establish a violation of our Ordinance and not upon the oral statements made on the telephone by Mr. Wagner. The hearing officer determined that for liability purposes, this is a distinction without a difference. The advertisements unlawfully limited rental applicants to those whose source of income was anything other than government voucher payments, which violates the CHFO.

Mr. Wagner's only explanation for placing the offending advertisements was that an unnamed real estate agent had allegedly asked him if he accepted Section 8 and told Mr. Wagner that he had to become "Section 8 approved." Mr. Wagner stated that this comment led him to believe that there was a process where he would have to have inspections and "spend more money." (Tr. 41). While in a given situation it might be possible for a housing provider to prove that he or she would suffer a substantial financial hardship if s/he rented to a Housing Choice voucher holder, no such showing was made here. *Sullivan-Lackey v. Godinez, supra.* A generalized objection to the burdens of cooperation with the Section 8 program is not a defense. *Hutchinson v. Iftekaruddin*, CCHR No. 08-H-21 (Feb. 17, 2010) at 8.

Accordingly, the Commission finds Respondents liable for refusing to rent to Complainant based on her source of income in violation of the CFHO.

VI. REMEDIES

Upon determining that a violation of the Chicago Fair Housing Ordinance or the Chicago Human Rights Ordinance has occurred, the Commission may award relief as set forth in Section 2-120-510(l) of the Chicago Municipal Code:

[T]o order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to an order: to cease the illegal conduct complained of; to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; to hire, reinstate or upgrade the complainant with or without back pay or to provide such fringe benefits as the complainant may have been denied; to admit the complainant to a public accommodation; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages or

accommodations of the respondent; to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs incurred in pursuing the complaint before the commission or at any stage of judicial review; to take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages and back pay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violation of provisions of Chapter 2-160 and Chapter 5-8.

A. Emotional Distress Damages

It is well established that the compensatory damages which may be awarded by the Commission may 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 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 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). Based on the severity of each of these factors, awards for emotional distress damages upon a finding of refusing to rent to a voucher holder have ranged from \$1,500 to as much as \$15,000 and various amounts in between. See, e.g., *Draft v. Jercich*, CCHR No. 05-H-20 (July 16, 2008), awarding \$5,000 in emotional distress damages based on Complainant's testimony of emotional impact when she could not move her family to a better neighborhood and was required to remain in an apartment with fewer bedrooms for her children; *Sercye v. Reppen and Wilson*, CCHR No. 08-H-42 (Oct. 21, 2009), awarding \$15,000 in emotional distress damages where Complainant offered testimony to emotional impact lasting over the course of one year; *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.

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.

Here, Complainant seeks an award of \$2,500 in emotional distress damages and an additional \$5,000 in what she calls “Delayed Housing Opportunity” damages. In view of the hearing officer, on direct examination concerning Complainant’s emotional damages, her testimony consisted of a rehearsed-sounding phrase: “sad and frustrated.” This testimony alone would warrant only nominal damages. However, the hearing officer noted that Complainant’s testimony also detailed her efforts to find a better neighborhood for her children, with less crime and good schools. Complainant testified that her inability to rent Respondents’ home brought her to the brink of the expiration of her voucher and required her to obtain two extensions. Complainant further testified that after her conversation with Respondent James Wagner, she contacted her attorney only after she stopped crying. It is reasonable to conclude that all of these factors caused Complainant emotional distress and anxiety.

Complainant offered no authority for the creation of a new type of intangible damage to be entitled “Delayed Housing Opportunity.” As pointed out by the hearing officer, the damages proximately flowing from the fact that a complainant must forego better schools, live in a less desirable neighborhood, and deprive herself and her family of the intangible benefits of a more favorable living environment, are elements of emotional distress damages which are considered when calculating recoverable damages.

Having considered the factors to determine emotional distress damages, the hearing officer recommended an award of \$3,000 for the level of emotional distress Complainant proved in this case. The Commission approves this recommended amount.

B. Punitive Damages

Punitive damages are appropriate when a respondent’s action 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).

In determining the amount of punitive damages to be awarded, the “size and profitability [of the 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).

Respondent James Wagner testified that when he attempted to place an advertisement in the *Beverly Review* that stated, “No Section 8,” the newspaper would not accept it. At that point, he knew or should have known that the reason he was not allowed to place such an ad was because the policy of refusing to rent to persons receiving a government housing voucher was illegal. Yet, Mr. Wagner, apparently at the suggestion of the *Beverly Review*, just minimally altered the language of the ad, while maintaining the discriminatory rental policy. This evidence supports a finding that Respondent James Wagner willfully denied Complainant housing solely because of her Housing Choice voucher and in reckless disregard of Complainant’s rights.

Complainant is seeking an award of \$10,000 in punitive damages. However, the hearing officer determined that no evidence was introduced regarding the size or profitability of Respondents. Additionally, there was no evidence introduced showing a history of discriminatory conduct on the part of Respondents. As such, the hearing officer was not persuaded that a higher amount of punitive damages was warranted in this case. The hearing officer recommended an award of punitive damages in the amount of \$2,500, noting that the amount is sufficient to accomplish the purposes of punitive damages. The Commission agrees and adopts the hearing officer’s recommendation.

C. Interest on Damages

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. Such interest is routinely awarded and shall be calculated starting from March 22, 2012, the date of the discriminatory incident.

D. Fine

Pursuant to Section 2-160-120 of the Chicago Municipal Code, the Commission must impose a fine between \$100 and \$1,000 if a respondent is found to have violated the Chicago Human Rights Ordinance. Accordingly, the Commission imposes a fine of \$500.

E. 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-39/53 (Apr. 19, 2001); *Godard, supra.* at 11. 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.

VII. CONCLUSION

The Commission finds Respondents Charles Wagner and Janice Wagner as Trustee of the Wagner Land Trust 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;
2. Payment to Complainant of emotional distress damages in the amount of \$3,000;
3. Payment to Complainant of punitive damages in the amount of \$2,500;
4. Payment of interest on the foregoing damages from the date of violation on March 22, 2012;
5. Payment 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: Mona Noriega, Chair and Commissioner

Entered: July 16, 2014