



City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

An'Nurah Muhammad
Complainant,

v.

Delta Kappa Realty & Property Management
and Nina Dimitropoulos
Respondents.

Case No.: 18-H-50

Date of Ruling: September 14, 2023

Date Mailed: September 27, 2023

TO:

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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on September 14, 2023, the Chicago Commission on Human Relations issued a ruling in favor of Respondents in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a review of this Order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS

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An’Nurah Muhammad,)	
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v.)	Case No. 18-H-50
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Delta Kappa Realty & Property Management)	
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Respondents.)	

FINAL RULING ON LIABILITY & RELIEF

I. Introduction.

On June 27, 2018, Complainant An’Nurah Muhammad filed a complaint against Respondents Delta Kappa Realty & Property Management and Nina Dimitropoulos¹ alleging discrimination in her housing. Complainant alleged that Respondents refused to rent available housing to her based on her race and source of income. This Complaint was signed and filed with the Commission one month after the alleged discriminatory actions by Respondents.

On June 6, 2018, after making numerous attempts to contact Respondents, including personal delivery, without success, the Commission issued an Order of Default. As a result of that default order, all allegations in Complainant’s Complaint were deemed to have been admitted by

¹ Respondents are Nina Dimitropoulos and Delta Kappa Realty & Property Management. Delta Kappa Realty is solely owned by Nina Dimitropoulos. References to “Respondents” mean both; references to “Respondent Dimitropoulos” are referring to Nina Dimitropoulos acting for both herself and Delta Kappa Realty.

Respondents, and Respondents were deemed to have waived any deficiencies in the Complaint. CCHR Reg. 235.320.

Initially, neither Complainant nor Respondents were represented by counsel. After the hearing officer held a status conference and asked both sides to submit settlement offers, Complainant submitted an initial demand for between \$90,000 and \$100,000. At this point, Respondents obtained counsel; Complainant was still unrepresented.² The Pre-Hearing Memorandum filed by Complainant repeated that damages demand.

The hearing was held on September 7 and September 27, 2019. Because of the Order of Default issued against Respondents, they were unable to contest the allegations of the Complaint but could contest the basis for any damages award. Subsequently, the hearing officer recommended a finding of liability against Respondents and in favor of Complainant, and recommended damages and other relief. The Commission adopted the hearing officer's recommendations and found for Complainant and awarded damages and other relief.

On July 26, 2021, Respondents filed a Petition for *Writ of Certiorari* before the Circuit Court of Cook County, claiming the Commission erred by denying Respondents' motion to vacate the default.³ Respondents argued that "substantial justice" was not done by the Commission, as Respondents were not fully advised of the extent of damages sought because the Complaint merely sought "all relief available under the law." C., par. 6.⁴ Respondents argued that they first learned of the extent of the damages sought in the settlement offer proffered after

² Much of the history of this case is contained in *Dimitropoulos and Delta Kappa Realty and Property Management v. Chicago Commission on Human Relations and An'Nurah Muhammad*, 21 CH 3632 (Cook County Chancery Division, October 4, 2022) (hereinafter, "Circuit Court Order").

³ Respondents also claimed, *inter alia*, that the Commission erred by affirming the hearing officer's decision not to disqualify himself and entered findings against the manifest weight of the evidence. As the Circuit Court's Order to remand was based only on the Commission's refusal to vacate the default order, these other bases will not be reviewed in this Ruling.

⁴ "C., par. 6" refers to Complainant's Complaint, paragraph 6.

the status conference. Thereafter, Respondents argued, they obtained legal counsel and fully participated in the Commission proceedings.

Based on these arguments, the Circuit Court ruled:

Applying the “substantial justice” standard, the Court finds the Commission abused its discretion in denying the motion to vacate. [Respondents Delta Kappa Realty and Property Management and Dimitropoulos] made a compelling argument that [they] did not have notice of the extent of relief being sought from her. Before the [Commission] hearing began, she appeared by counsel and was ready and able to defend against the charges. Substantial justice is better served when a decision is made on the merits rather than on a procedural error.

The Circuit Court Order remanded the case to the Commission with “the instructions to grant the motion to vacate and allow [Respondents] to participate fully in the administrative hearing.”

On remand, the Commission vacated the order of default, and the case was assigned to a new hearing officer on November 1, 2022. The hearing officer did not review the transcripts or the previous Commission Ruling on Liability and Relief prior to issuing a Recommended Ruling on Liability in this matter in order not to be influenced by the vacated decision.⁵

Following the assignment to the new hearing officer, the parties engaged in the pre-hearing procedures. Respondents were represented by counsel throughout these procedures. On December 5, 2022, the parties attended a Pre-Hearing Conference, at which time Complainant was informed of the effect of the order of default being lifted. Complainant, who is not a legal professional, was confused by the ruling and was upset that she had to start over in presenting her case. The parties agreed to extend the discovery deadlines, and the hearing officer set a hearing date for January 31, 2023. The early date was at Complainant’s request and over the

⁵ In Complainant’s Pre-Hearing Memorandum filed March 21, 2023, for the hearing in April 2023, Complainant argued that Respondents’ “indifference” to Commission proceedings should be addressed by this hearing officer and the Commission. As a result of the default being vacated, Respondents’ actions in ignoring the Commission’s procedures prior to default can no longer be taken into consideration in Complainant’s case.

objections of Respondents. The parties discussed that significant documents were attached to the filings by the Commission and Respondents to the Circuit Court.

On January 24, 2023, Complainant filed an appearance of counsel and a motion to continue the hearing of this matter which had been scheduled for January 31, 2023. This motion was granted. A new date of April 4, 2023, was set for the hearing.

II. Findings of Fact.

1. Complainant is an African-American woman. C., par. 1.
2. Complainant had a federal Housing Choice Voucher on May 18, 2018. C., par. 1; Exh. 1.⁶ It was valid until June 2018. Tr., p. 14.⁷ She had been a recipient of a Housing Choice Voucher (commonly known as Section 8) for 30 years. Complainant lost her Voucher in 2018 when she did not lease appropriate housing within the time allotted after an eviction from her previous housing. Tr., pp. 15, 21-22. She regained a voucher in 2020, after the events complained of in this Complaint, but lost it again due to her failure to find suitable housing within the timeframe allotted by the Housing Choice Voucher program. Tr., p. 89.
3. Complainant currently lives with two of her children and four grandchildren in an apartment in Chicago. She described the apartment as a “huge utility room.” Tr., p. 11.
4. Complainant has some difficulty reading due to a disability. Tr., p. 13.
5. On June 27, 2018, Complainant filed this Complaint against Respondents Delta Kappa Realty and Nina Dimitropoulos alleging housing discrimination. C. Complainant told Commission staff the facts that were the basis of her Complaint, and the Commission staff prepared the Complaint based on that conversation. Tr., p. 65. Complainant checked the boxes on the

⁶ Exh. refers to Exhibit, followed by the exhibit number.

⁷ Tr., refers to the hearing transcript, followed by the page number of the transcript.

Commission's complaint form which alleged that Respondents had refused to rent to her due to her race and source of income. C. This Complaint was signed and filed a month after the alleged discriminatory actions by Respondents. C. The Complaint also included the following specific allegations:

1. I am an African-American woman and a CHA Housing Choice (or Section 8) Voucher holder.
 2. On May 18, 2018, I inquired about a 3-bedroom townhouse for rent located at 2320 W. Flournoy Street in Chicago, that I had seen on hotpads.com and spoke with a real estate agent on the phone.
 3. Over the phone the agent, Nina Dimitropoulos, and I arranged to see the property. She told me no one else was seeing the property and I was promised the property once I saw the property and gave her the money.
 4. I went to the unit with my daughter and grandson on May 19, 2018, and after viewing the unit, Nina reiterated the rent and asked about my income, and I responded that my mobility housing covered the whole amount. She then told me, "No, I don't take Section 8, no Section 8."
 5. I called back pretending to be someone else and spoke to Nina on the phone and mentioned I would be paying with Section 8 vouchers. She told me she did not take Section 8 housing and told me she would call me back, which she never did.
 - 6: This conduct constitutes housing discrimination based on source of income in violation of the Chicago Fair Housing Ordinance, Section 5-8-030 of the Municipal Code. I am seeking all relief available under the law.
6. When questioned about the allegations in this Complaint, Complainant said she never told Respondent Dimitropoulos that she "had money." Tr., p. 65.
 7. Respondent Dimitropoulos is a licensed real estate managing broker in the State of Illinois. Tr., p. 124. She is the sole proprietor and owner of Delta Kappa Realty and Property Management. Tr., p. 123. She has been in the industry for over 40 years. Tr., p. 124.
 8. Respondent Dimitropoulos has taken continuing education courses over the years and understands the rights of tenants against discrimination. Tr., p. 152. She has never been

disciplined by the Illinois Department of Financial and Professional Regulations. She has never had any complaints filed against her by the Illinois Department of Financial and Professional Regulations. Tr., p. 125; Exh. A. She is a member of the Multiple Listing Services; she has never had a complaint filed against her with the MLS or any other professional organization. Tr., pp. 125-126.

9. Respondent Dimitropoulos does mostly sales of residential and some commercial properties, but does take on a few rentals, generally for existing clients as a favor. Tr., p. 127. She operates in the city and some suburban areas. Tr., p. 127.
10. In May 2018, Respondent Dimitropoulos was representing an owner who wished to lease the property at 2320 West Flournoy in Chicago. It was an apartment in a complex of townhomes. Tr., p. 128, Exh. B. A picture showed there are stairs to the apartment. Exh. B. The two-story upper unit was the subject of this matter. Tr., p. 129.
11. Respondent Dimitropoulos testified that she follows certain procedures when she is asked to act as an agent for someone who wishes to rent properties. The property is listed on the MLS with her name and contact information. If someone asked her for an appointment, she would talk to them and then proceed with an initial showing. If the potential tenant was interested, she would give them an application and inform them of background and credit checks; she would charge the prospective tenant \$50 per credit check. When the application was returned, she would do her "due diligence" and contact the prospective tenant's previous owner or landlord and would verify employment. She would then present this information to the owner of the property and, if he or she was happy with the information, he or she would propose the lease; it was the owner's decision. Respondent Dimitropoulos would not make a recommendation about the applications. In order to

lease the property, the prospective tenant would have to have an amount equivalent to one month's rent and the first month's rent. Tr., pp. 130-132, 143, 156. Exh. E.

12. At the time of the events in this matter, Respondent Dimitropoulos had never leased a property to an applicant who was a Housing Choice Voucher holder. She had "heard of it but had never done it." Respondent Dimitropoulos was not familiar with the procedure to qualify to rent to a Housing Choice Voucher applicant, but she was aware the property needed to be inspected. She had attended three Chicago Housing Authority (CHA) seminars about Housing Choice Vouchers. Tr., pp. 132-133.
13. Respondent Dimitropoulos testified she had never refused to rent to someone because they had a Housing Choice Voucher; she had just never dealt with an applicant who had one. Tr., p. 133. Respondent Dimitropoulos had told people that buildings were "not Section 8 approved;" she did not know how long that approval process took. She expected to obtain that information from tenants who were more familiar with the process than she was. Tr., pp. 134, 139.
14. On May 13, 2018, Complainant called Respondent Dimitropoulos to inquire about a three-bedroom apartment located at 2320 W. Flournoy Street, Chicago, Illinois. C., par. 2; Tr., p. 8. [Complainant stated that the date was May 18, 2018, in her Complaint, but using official phone records at the hearing, noted that the conversation took place on May 13, 2018]. Respondent Dimitropoulos has no recollection of this phone call, but she does not remember all of the people who call her. Tr., p. 137.
15. Complainant had seen the listing on hotpads.com. C., par. 2.
16. The apartment was currently leased; the lease was due to expire on June 30, 2018. Exh. D.

17. In her Complaint, Complainant alleged that during the phone conversation on May 13, 2018, Respondent Dimitropoulos told her no one else was looking at the property. C., par. 3. Further, Complainant alleged that Respondent Dimitropoulos “promised the property once [Complainant] saw the property and gave her the money.” C., par. 3. In her testimony at the hearing, Complainant said that Respondent Dimitropoulos stated over the phone that Complainant was to “come there and sign a lease with her” Tr., p. 9. Complainant said that she “never told [Respondent Dimitropoulos] that I had money.” Tr., p. 65. The Commission agrees with the hearing officer that it is not credible that a rental agent would “promise” an apartment sight unseen to a prospective tenant. The Commission further agrees with the hearing officer’s finding that Respondent Dimitropoulos did not promise Complainant that the apartment was hers or that she could sign a lease at the initial appointment.
18. In her Complaint, Complainant said she went to the Flournoy apartment on May 19, 2018, with her daughter and grandson; both were unnamed in the Complaint. C., par. 4. In her testimony at the hearing, Complainant testified that she went to the apartment with two daughters and her three grandchildren. Tr., p. 39. One of the grandchildren was named Prophet; Complainant said only Prophet, who in 2018 was 12 years old, and her daughter Samina went to view the apartment with her. Tr., p. 39. Prophet was the only witness for Complainant who testified about these events at the hearing; he said only he and his grandmother went to see the apartment. Tr., p. 114. Respondent Dimitropoulos recalled that two women came to look at the apartment. Tr., p. 136.
19. Complainant testified that as she and her family approached the apartment, Respondent Dimitropoulos “was not smiling” and asked Complainant who she was. Complainant was

smiling and when Respondent Dimitropoulos did not smile back, Complainant “felt kind of alone.” Tr., p. 40.

20. In her Complaint, filed a month after the events, Complainant said, “After viewing the apartment, Nina reiterated the rent and asked about my income.” C., par., 4. In their testimony at the hearing, Complainant and Prophet said Respondent Dimitropoulos “blocked the door,” but after some discussion permitted them to enter and view the apartment. Tr., pp. 19, 42. Respondent Dimitropoulos denied that she blocked Complainant from entering. Tr., p. 139. The Commission accepts the hearing officer’s finding that Complainant’s and Prophet’s testimony that Respondent Dimitropoulos initially barred their entry into the apartment was not credible.

21. In testimony, Complainant and Prophet both stated that Respondent Dimitropoulos said prior to showing them the apartment that they were “black” and would not let them in. Tr., pp. 42, 115. The Complaint, filed a month after the events alleged, did not make this serious allegation; in fact, there were no allegations in the Complaint about any racial statements by Respondent Dimitropoulos or that Respondent Dimitropoulos initially refused to allow Complainant and Prophet entry into the unit. C. Respondent Dimitropoulos testified that she has been in Chicago for over 50 years and “accepts everyone.” Tr., p. 140. Respondent Dimitropoulos’s testimony is bolstered by the lack of discrimination complaints filed against her in regulatory and membership bodies. Tr., pp. 124-126. The Commission agrees with the hearing officer that Complainant’s and Prophet’s testimony that Respondent Dimitropoulos said directly to them that they were black is implausible and not credible, and further agrees that there were no statements

about race made by Respondent Dimitropoulos to Complainant or her grandson on May 19, 2018.

22. In her Complaint, Complainant alleged that Respondent Dimitropoulos asked Complainant about her income. C., par. 4. Complainant responded that “mobility housing covers the whole amount [of rent],” to which Respondent Dimitropoulos responded, “No, I don’t take Section 8, no Section 8.” C., par. 4. At the hearing, Complainant testified that Respondent Dimitropoulos said, “I’m not going to take [Section 8] from you,” and “I can’t take that. They’ll kill me if I – she said they’ll kill her – if I take – in that neighborhood or something; if she took a voucher, that thing, this.” Tr., pp. 9, 43. This statement, “They’ll kill me” was not in the Complaint filed a month after the encounter.
- C. The Commission accepts the hearing officer’s determination that Complainant’s testimony that Respondent Dimitropoulos said, “I’m not going to take [Section 8] from you,” and “I can’t take that. They’ll kill me if I take,” is not credible and these allegations are not proven.
23. Respondent Dimitropoulos denied saying that she would not take Section 8 but did testify that she told applicants the apartment “was not approved for Section 8.” Tr., pp. 138, 160.
24. Respondent Dimitropoulos testified at the hearing that she does not recall Complainant saying she was a Housing Choice Voucher holder, but she would not have stated that the landlord did not take Section 8. Tr., pp. 140, 160. Respondent Dimitropoulos admitted that she does not recall much about her conversation with Complainant that day but recalls giving Complainant an application. Tr., pp.140-141. Complainant testified that she did not take an application, nor did Respondent Dimitropoulos take the CHA Request for Tenancy Approval (RTA) packet from her when Complainant offered it to her. Tr., p. 72.

Complainant did not fill out an application, and she did not pay the fee to process an application. Tr., p. 141. In testimony from the 2019 hearing on this matter (used without objection at the hearing to impeach Complainant), Complainant was asked, “Did you tell her at this meeting on May 19, 2018, that you would be using a Housing Voucher?”

Complainant answered, “No.” Tr., p. 70. The Commission accepts the hearing officer’s finding that Complainant has not proved with credible testimony that she told Respondent Dimitropoulos that she had a Housing Choice Voucher.

25. Additionally, in testimony from the 2019 hearing on this matter (used without objection at the hearing to impeach Complainant), Complainant said that a “friend” called Respondent Dimitropoulos pretending to be interested in the apartment and Respondent Dimitropoulos told the friend that she did not take Section 8. That “friend” was not identified or proffered as a witness in the hearing on April 4, 2023, nor did Complainant offer any testimony about that alleged event. Tr., pp. 70-71. The Commission finds that Complainant did not prove that she had a friend to call Respondent Dimitropoulos pretending to be interested in the apartment in question.

26. In her Complaint, Complainant stated that she called Respondent Dimitropoulos at some unspecified time after the event pretending to be another person and, when she said she would be using Section 8, Respondent Dimitropoulos said she would not take Section 8. C. par. 5. In her direct testimony, Complainant did not testify about this phone call. In response to Respondents’ counsel’s questioning, Complainant said all of the allegations in her Complaint were correct. Tr., p. 65. The Commission accepts the hearing officer’s finding that Complainant did not prove she made a subsequent phone call to Respondent Dimitropoulos, pretending to be another person.

27. Complainant's Exhibit 2, phone records from AT&T, show there were four calls between Complainant and Respondent Dimitropoulos in May and June 2018. On May 13, 2018, the parties' phones connected for an elapsed time (ET) of one minute, 59 seconds. This corresponds to the date the parties made arrangements to meet. Tr., p. 159. On May 31, 2018, the parties' phones connected for an ET of 21 seconds. This corresponds to the phone call that Complainant testified she made to convince Respondent Dimitropoulos to rent to her. (See paragraph 28 below) Two other calls were originated from Respondent Dimitropoulos's phone: one on June 4, 2018, for 0 seconds, and one on June 12, 2018, for 5 seconds. Both of those phone connections were more likely than not a mistaken call; in any event, no conversation such as Complainant described in her Complaint could have taken place during these calls. Exh. 2. The Commission accepts the hearing officer's determination that Complainant has not proven the substance or existence of a phone call either from a friend or from Complainant herself pretending to be interested in the property as a Housing Choice Voucher holder.

28. In her testimony, Complainant said she called Respondent Dimitropoulos on May 31, 2018, because she wanted the apartment and wanted to represent herself as a good tenant, but Complainant felt that "all [Respondent Dimitropoulos] saw was [her] color." Tr., p. 45. Complainant did not make any allegations of racial statements by Respondent Dimitropoulos during this phone call. Tr., p. 45.

29. Complainant never gave Respondent Dimitropoulos the RTA packet, which is an application to the CHA for Housing Choice Voucher approval for a tenant, to be completed by a prospective landlord. Tr., p. 45. Complainant claimed Respondent Dimitropoulos would not accept the packet from her. Tr., p. 45. Respondent

Dimitropoulos said Complainant never offered the RTA packet to her. Tr., p. 141.

Respondent Dimitropoulos said she gave Complainant an application, but that Complainant never completed it or returned it to her. Tr., p. 141. The Commission agrees that Complainant has not proved by credible evidence that she ever offered Respondent Dimitropoulos her RTA packet.

30. Two years after the events of this matter, Respondent Dimitropoulos was approached by a prospective tenant with a CHA Housing Choice Voucher. Respondent Dimitropoulos contacted the CHA to request an explanation of the procedures. She was able to qualify the rental with the CHA and rented to that tenant. Tr., pp. 133, 149-150, 161-163.

Respondent Dimitropoulos took the application from this prospective tenant and vetted the prospective tenant before taking the RTA packet and submitting it to the CHA. Tr., pp. 149-150. There was some “back-and-forth” with the CHA prior to the approval. Tr., p. 150. The applicant is African-American. Tr., p. 150. This rental took place after Complainant had filed her Complaint with the Commission.

31. From February to June 2018, facing eviction, Complainant looked at numerous apartments. Tr., p. 81. She could not find an apartment because “all they [landlords] were talking about is the stupid evictions.” Tr., pp. 81, 84-85. Complainant also stated, “The eviction is what caused nobody to rent to me at that time.” Tr., p. 85.

32. In June 2018, Complainant did find an apartment, but could not complete the paperwork because she “had a court date and they took me away from my family.” Tr., p. 47.

Complainant had missed several court dates on a matter unrelated to her eviction, and when she did appear in court, she was “remanded to the custody of the Department of Human Services to be admitted for a fitness restoration treatment on an inpatient basis.”

Tr., pp. 54, 85; Exh. 5. Complainant then lost her Housing Choice Voucher because the deadline for using the Voucher had passed. Thereafter, Complainant and her family experienced a period of homelessness, sleeping in a car, staying with friends, and occasionally staying in hotels. Tr., pp. 47-49, 99-100. Complainant blames all of her difficulties on losing her Housing Choice Voucher in 2018. Tr., p. 55.

33. Complainant has had a number of evictions, beginning both before and after the events in question. Tr., pp. 73-77, 111. Complainant regained her Voucher in 2020, but subsequently lost it again. Tr., p. 89. Complainant lost her Voucher again because although she had found an apartment, she failed to pay the security deposit. Tr., pp. 89, 98-99.
34. Complainant testified that the difficulties she has endured the last few years have affected her. She testified that she is “so sick of this. It’s a lot of things I don’t remember. It’s too much for me. I’m trying to put it behind me. I’m trying to be normal” Tr., p. 86.
35. Complainant did not have receipts or records for most of the [h]otels she stayed in. She said her receipts were taken from her when she was evicted; she did not provide a date for when this occurred. Tr., p. 91. Complainant did have credit card bills that showed a few motel expenses. Tr., pp. 48-50.
36. A check stub from November 2018 showed Complainant’s year-to-date income for 2018 was \$68,000. Tr., p. 94. Exh. H. Complainant first claimed she had no recollection of earning that amount of money. Tr., p. 95. Later, she said she bought a car and was paying back SSI funds she collected while she was working. Complainant owed \$20,000 in back SSI funds. Tr., p. 106.

37. Complainant's grandson, Prophet Muhammad, testified about the encounter with Respondent Dimitropoulos on May 19, 2018. Tr., p. 114. He said he was there with his grandmother, his mother, two cousins and an aunt. Tr., p. 114. He was the only one of Complainant's family members to testify, aside from Complainant. Tr., p. 114. He was 12 years old at the time; he was 17 at the hearing. Tr., pp. 114-115.
38. Prophet testified that the woman at the property said she would not take Section 8 vouchers for payment, and "She said they will kill her out here if I do;" that the woman would not let them in, and she said, "black and stuff like that." Tr., p. 115. Prophet admitted that he "mostly forgot about a whole lot of it" and stated, "I don't remember a lot of it. Not really." Tr., pp. 116, 118. He testified that he and Complainant were given a tour of the apartment, but he could not remember any conversation in the apartment, only outside. Tr., p. 119.

III. Conclusions of Law and Discussion

At the time of this Complaint, Section 5-8-030 of the Chicago Fair Housing Ordinance ("CFHO or Ordinance") provided in relevant part as follows:

It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent, lease, or sublease any housing accommodation, within the City of Chicago, or any agent of any of these, or any real estate broker licensed as such:

C. To refuse to sell, lease or rent any real estate for residential purposes within the City of Chicago because of the race, color, sex, age, religion, disability, national origin, ancestry, gender identity, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.

A complainant may establish a *prima facie* case of intentional housing discrimination under the direct or indirect method; in both methods, the complainant must prove by a preponderance of the evidence that the elements of proof are established. *Blakemore v. Antojitos*

Guatemaltecos Rest., CCHR No. 01-PA-5 (Apr. 20, 2005); *Leadership Council for Metro. Open Comms. v. Souchet*, CCHR No. 98-H-107 (Jan. 17, 2001); *Sheppard v. Pabon*, CCHR No. 94-H-173 (Oct. 12, 1995)

“Under the direct evidence method of proof 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.” *Shipp v. Wagner and Wagner*, CCHR No. 12-H-19 (July 16, 2014), see also cases cited therein; *Diaz v. Wykurz, et al.*, CCHR No. 07-H-28 (Dec. 16, 2009).

Under the indirect evidence method of proof in a fair housing case, a complainant must establish by credible evidence that: (1) she is a member of a protected class covered by the Ordinance; (2) the respondent was aware the complainant was a member of the protected class; (3) the complainant was ready and able to rent the property at issue; and (4) the complainant was not allowed to rent the property. *Hawkins v. Village Green Holdings Co., LLC*, CCHR No. 14-H-35 (July 12, 2018); *Diaz, supra*.

The Commission has long held that refusing to rent a housing unit because the prospective renter intends to use a CHA Housing Choice Voucher (formerly known as a Section 8 voucher and often referred to as Section 8) to pay part of the rent is discrimination based on source of income and thus a violation of the CFHO. *Hawkins, supra*; *Diaz, supra*; *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (July 18, 2001) *affd*, *Godinez v. Sullivan-Lackey*, 352 Ill.App.3d 87, 91-93, 815 N.E.2d 822, 827-829 (1st Dist. 2004) (specifically affirming that Section 8 vouchers are covered as a source of income under the CFHO); see also *Pierce and*

Parker v. New Jerusalem Christian Development Corp, et al., CCHR No. 07-H-12/13 (Feb. 16, 2011), citing *Rankin v. 6954 N. Sheridan Inc., et al.*, CCHR No. 08-H-49 (Aug. 18, 2010).

Neither party in this matter introduced evidence about the CHA Housing Choice Voucher Program. The program provides assistance in paying for rental housing. The voucher recipient is required to find the apartment, meet the landlord's standard requirements, pass the CHA screening requirements for income and other factors, and pay 30-40% of their income toward the rent, <https://www.thecha.org/residents/housing-choice-voucher-hcv-program>.

According to the CHA's website:

The CHA's Housing Choice Voucher (HCV) Program plays a vital role in housing families with children, the elderly and people with disabilities across Chicago. Using federal funds provided by the U.S. Department of Housing and Urban Development (HUD), the voucher program helps participant families pay for housing in the private market, such as apartments, duplexes, condominiums, townhouses and single-family homes. Participant families contribute 30-40% of their income toward rent and utilities and the CHA pays the remainder directly to the property owner.

<https://www.thecha.org/residents/housing-choice-voucher-hcv-program>

This hearing was based almost exclusively on witness testimony. Thus, the hearing officer's assessment of the credibility of witnesses played a key role in her recommended ruling. To assess the credibility of a witness, a hearing officer considers a number of factors, including: (a) the witness's demeanor; (b) the clarity, certainty and plausibility of the testimony; (c) whether the testimony has ever been impeached or contradicted by other testimony and documentary evidence; and (e) the witness's interest or disinterest in the outcome of the proceedings. *Hawkins, supra*; *Newby v. Chicago Transit Authority et al.*, CCHR No. 09-E-10 (Feb. 19, 2014).

Complainant's evidence was riddled with inconsistencies and implausibilities which affect the credibility of many of her statements and the testimony of her one additional witness.

Some instances include:

In her Complaint filed merely one month after the incident, Complainant did not allege that Respondent Dimitropoulos said Complainant was "black;" a serious and significant accusation but testified to that effect five years later. In fact, other than to check the "Race" box on the Commission's Complaint form, Complainant made no allegations of race discrimination in her Complaint.

In her Complaint filed merely a month after the incident, Complainant did not allege that Respondent Dimitropoulos said about Section 8, "I can't take that. They'll kill me if – she said they'll kill her if I take" Section 8, but testified years later that Respondent Dimitropoulos made those statements.

Complainant stated in her Complaint that she called Respondent Dimitropoulos after the first refusal pretending to be someone else and was again told, "I don't take Section 8." However, Complainant never testified about that call at the hearing, did not admit any documentary evidence to support this statement, and did not offer any other witnesses to verify that call.

Complainant stated in her Complaint that Respondent Dimitropoulos showed her the apartment and after the showing stated she did not take Section 8. In her testimony at the hearing, Complainant testified that she was blocked by Respondent Dimitropoulos from entering the apartment and they had this discussion about Section 8 prior to a viewing. Notably, Complainant then testified that despite the alleged blocking and statement by Respondent Dimitropoulos that she would not take Section 8, Respondent Dimitropoulos then showed Complainant the apartment.

In her Complaint and again in her testimony, Complainant said that Respondent Dimitropoulos told her in their initial phone call to come and sign a lease and the apartment was "hers." As Chicago renters know, and this hearing officer takes judicial notice of, credit checks and employment verification, plus deposits, from prospective tenants are standard practice in Chicago. It is simply not plausible that an experienced real estate agent would offer to lease to anyone without some, if not all, of those steps taking place. In addition, Complainant never told Respondent Dimitropoulos she had money for the credit checks or other expenses.

Complainant testified that she called Respondent Dimitropoulos on May 31, 2018, to convince her that she would be a good tenant, even though Complainant testified that Respondent Dimitropoulos had said on May 19, 2018, she would not rent to her because of her color and use of a Section 8 voucher, seemingly shutting down any possibility of Complainant renting the apartment in question.

At the hearing, Complainant testified that she gave Respondent Dimitropoulos the RTA packet, but at an earlier hearing, she testified that she never told Respondent Dimitropoulos that she was a Housing Choice Voucher holder.

Analysis using the direct method of proof.

Complainant in this case sought to establish discriminatory conduct by the direct method. First, she claimed that Respondent Dimitropoulos refused to rent to her, stating that Complainant was “black.” In support of this contention, she offered her own testimony that Respondent Dimitropoulos said Complainant was “black” upon first meeting her, and the testimony of her grandchild, who said Respondent Dimitropoulos said, “black and stuff like that.” Complainant did not include this very incriminating statement in her Complaint, filed a month after the apartment viewing. Her grandson’s testimony was extremely limited and word-for-word identical to Complainant’s testimony about the alleged discriminatory statements, but he could remember nothing else of that event. No other witnesses, including Complainant’s daughter who went to the apartment viewing, or the others who could have testified to Complainant’s reaction that day, were present at the hearing to testify about that event. Finally, Respondent Dimitropoulos has been a realtor for over 30 years and has never had a complaint on this basis asserted against her; she strongly and credibly denied making racial statements or having any bias toward Complainant. The Commission agrees with the hearing officer that the testimony of Complainant and her grandson lacks plausibility and thus is not credible. The Commission thus finds that Complainant has not proved that Respondents discriminated against her based on her race.

Second, Complainant claimed that Respondent Dimitropoulos stated she would not rent to her because Complainant would pay with a Housing Choice Voucher, including stating, “No, no, no. They will kill me if I rent to you.” Again, the only evidence of this discriminatory

statement is testimony from Complainant and her then-12-year-old grandson. The hearing officer did not find these statements plausible or credible due to the inconsistency with the Complaint filed a month after the incident. In addition, Complainant testified in an earlier hearing that she never told Respondent Dimitropoulos that she had a Housing Choice Voucher. The Commission accepts the hearing officer's finding that Complainant has not proved that Respondents discriminated against her because she had a Housing Choice Voucher.

However, Respondent Dimitropoulos admitted that she has said in the past that an apartment was "not approved for Section 8." Direct evidence of discriminatory acts or statements can be established when the actor or speaker uses code words to attempt to mask discriminatory comments or actions. *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997) (the respondent's statement that he was seeking "good tenants" seen as code words for non-minority tenants); *Akangbe v. 1428 W. Fargo Condominium Association*, CCHR No. 91-FHO-5594 (Mar. 25, 1992) ("I feel very strongly that to sell to the present occupants would without question decrease the value of our property and jeopardize my investment," ruled as code words). However, referring to the state of the subject property as Respondent Dimitropoulos did when she told prospective tenants the property was "not approved for Section 8" has been determined by the Commission to be just a statement of fact. In *Diaz v. Wykurz, et al.*, CCHR No. 07-H-28 (Dec. 16, 2009), one respondent was found not liable despite the fact that she responded that she did not know how Section 8 worked and suggested the complainant call another person to discuss the matter further. This was deemed a statement of fact and not indicative of discriminatory intent. See also, *Moreno v. Apartment Guys, et al.*, CCHR 09-H-27 (Nov. 19, 2012) (the respondent's statement that the rental agency did not have "units available with owners that are

set up to accept vouchers, or that are willing to go through the process to accept them in the future” did not provide substantial evidence of discriminatory intent).

In contrast, another respondent in *Diaz* was found liable because she knew enough about the Section 8 program to say she did not want to accept Section 8 as payment because she did not want the hassle; she said she would not accept Section 8 but to call another party; she tried to push the decision off on another party stating that they would not accept Section 8; and finally, she told the complainant that she would not accept Section 8. These actions were found to be sufficient proof of discriminatory intent.

The Commission agrees with the hearing officer’s finding that Respondent Dimitropoulos did not discriminate against Complainant based on her race, finding that Complainant’s and her grandson’s testimony that Respondent called them “black” lacked credibility. The Commission further agrees that Respondent Dimitropoulos never said she would not take Section 8 and that the testimony of Complainant and her grandson to that effect lacked credibility.

The Commission finds that Complainant has failed to prove her complaints of racial and source of income discrimination against Respondents by credible evidence using the direct method of proof.

Analysis using indirect method of proof.

Complainant also could have proved a *prima facie* case of discrimination on the basis of race or source of income using the indirect method of proof. This requires a complainant to establish with credible evidence that, 1) she is a member of a protected class covered by the Ordinance; 2) the respondents were aware she was a member of that protected class; 3) the

complainant was ready and able to rent the property in question; and 4) the complainant was not allowed to rent the property. *Hawkins, supra*, and cases cited therein. If a complainant establishes those elements of her *prima facie* case by a preponderance of the evidence, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for the refusal to rent. *Hawkins, supra*, and cases cited therein.

Complainant in this case did not prove all of the elements of her *prima facie* case using the indirect method of proof. She proved she was a member of two protected classes, in that she was African-American and that her source of income to pay the rent was a Housing Choice Voucher. She proved that Respondent Dimitropoulos knew her race, but she did not prove that Respondent Dimitropoulos knew she was a Housing Choice Voucher holder. Complainant also did not prove that she was ready and able to rent the apartment, as she did not complete the application, pay for the credit check, or one month's rent plus the security deposit. Complainant did not establish that the CHA would have approved payment for the unit in question or that she was capable of paying the remainder of the rent as required under the CHA's Housing Choice Voucher Program. Complainant stopped the process before she was denied the apartment. Similarly, in *Hawkins*, the complainant's case failed when she did not establish using the indirect method of proof that the CHA would have approved the monthly rental.

The Commission accepts the hearing officer's finding that Complainant did not prove that she was discriminated against due to race or source of income by Respondents using the indirect method of proof.

Even though Complainant failed to prove elements of a *prima facie* case by the indirect method, she could still prevail if she had proved that Respondents "made it clear that it will not

rent to the complainant because of a protected status.” *Hawkins, supra*. In such cases, the completion of the rental process, e.g., filling out the application, paying for the credit checks, etc., is excused as a “futile gesture.” To rely on the “futile gesture” doctrine, Complainant would still have to prove that she is a member of a protected class; that Respondents discriminated against her race and source of income; that she was reliably informed about this discrimination and would have taken steps to rent the apartment but for the discrimination; and Respondents would have discriminated against her had she applied for the apartment. Complainant has not proven that Respondent Dimitropoulos made racial statements, so Complainant has not proved Respondents “made clear” she would not rent to Complainant due to her race. Similarly, Complainant has not proved that Respondents knew that she was a Housing Choice Voucher holder. Finally, Complainant has not proved that she was ready and financially able to rent the apartment at the time it was available but for the discrimination. Indeed, Complainant admitted that she “never told [Respondent Dimitropoulos] that I had money.” Tr., p. 65.

The Commission adopts the hearing officer’s finding that Complainant has failed to prove her complaints of race and source of income discrimination against Respondents by credible evidence using the indirect method of proof, including the futile gesture analysis.

IV. Conclusion

For the reasons stated above, the Commission finds that Complainant An’Nurah Muhammad has not met her burden of proving by a preponderance of the evidence that Respondents Delta Kappa Realty & Property Management and Nina Dimitropoulos discriminated against her in the rental of an apartment based on her race or source of income. Accordingly, the Commission finds that Respondents have not violated the Chicago Fair Housing Ordinance as alleged in the Complaint.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Nancy Andrade, Chair & Commissioner

Entered: September 14, 2023