



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:

Demetrius Hodges
Complainant,

v.

Simon Gua Hua and Hui M. Chao
Respondent.

Case No.: 06-H-11

Date Mailed: July 10, 2008

TO:

Kathleen Clark
Lawyers' Committee for Better Housing
220 S. State St., Suite 1700
Chicago, IL 60604

Simon Gia Hua
4531 S. Mozart
Chicago, IL 60632

Hui M. Chao
4531 S. Mozart
Chicago, IL 60632

FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on May 21, 2008, the Chicago Commission on Human Relations issued a ruling in favor of Respondent/s 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 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
Dana V. Starks, Chair and Commissioner

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Date of Ruling: May 21, 2008

FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

Complainant, Demetrius Hodges, filed this Complaint alleging violations of the Chicago Fair Housing Ordinance, Chapter 5-8 of the Chicago Municipal Code. Her Complaint alleges that Respondents Simon Gia Hua and Hui M. Chao discriminated against her by denying her an opportunity to lease an apartment in their building based on her source of income, a Section 8 Housing Choice Voucher. On October 19, 2006, the Commission determined that there was substantial evidence to support the alleged violation.

A public Administrative Hearing was conducted on July 12, 2007. On January 30, 2008, the Administrative Hearing Officer issued his First Recommended Decision in which he recommended that the Commission find in favor of Respondents and against Complainant on her claim of source of income discrimination. Complainant timely filed her response and objections to the First Recommended Decision ("Objections") on February 29, 2008.

In her Objections, Complainant asserts that certain relevant facts were not considered, the factual findings are incomplete, and that the credibility determinations are based on "impermissible factors." Respondents did not file a response to Complainant's response and objections. This matter is thus ripe for decision. After a consideration of the evidence offered at the Administrative Hearing, the parties' post-hearing submissions, and Complainant's Objections, the Commission finds for the reasons stated below that Complainant has failed to sustain her burden of showing that Respondents discriminated against her based on her source of income when she attempted to lease an apartment in their building.

II. FINDINGS OF FACT

Adopting the Hearing Officer's recommendations, the Commission makes the following factual findings:

1. Complainant Demetrius Hodges has resided at 2447 E. 74th Street in Chicago with her three children since May 2007. Transcript ("Tr.") 14. For two years preceding their move to 74th Street, Complainant and her children resided at 4900 S. Indiana Avenue. Tr. 14. Complainant has been a good tenant, who has never been evicted or had any portion of her security deposits withheld for damages to units that she has rented. Tr. at 15. Complainant is employed at Amalgamated Bank of Chicago as a customer service representative. Tr. 14.
2. Complainant has had a Section 8 Housing Choice Voucher since 1998 and she pays her monthly rent through Chicago's Housing Choice Voucher Program. Tr. 14-15. Under the Housing Choice Voucher Program, Complainant pays thirty percent of her income for rent and the Program pays the remaining 70%. Tr. 15.

3. Respondents Simon Gia Hua and Hui M. Chao (a married couple) are the owners of a three unit rental property located at 2704 W. 37th Place in Chicago (the "Property"). Tr. 4, 82. Respondent Hua is an engineer for Duraco, Inc. Tr. 99.
4. Respondents, who purchased the Property around August 2004, never owned any rental property prior to that purchase. Tr. 82-83. At the time Respondents purchased the Property, two of its three units were rented. Tr. 83.
5. Respondent Hua set about trying to rent the Property's third unit (which had three bedrooms) by paying money to advertise its availability on the Internet at www.apartments.com. Tr. 83-84, 90; Complainant's Exhibit 1. This was the first time Respondent Hua had ever attempted to offer an apartment for rent. Tr. 84. Respondent Hua did nothing to familiarize himself with the laws regarding the leasing of apartments prior to offering the vacant unit for rent. Tr. 98. Notwithstanding Respondent's efforts to attract a renter, the Property's three bedroom remained available for rent between August 2004 and July 28, 2006, when it was leased by Respondents to a tenant. Tr. 92, 95.
6. Respondents' ad for the Property provided a description of the unit available for rent and indicated that interested persons could contact Mike or Simon at (312) 927-3530 and (773) 879-6817. Complainant's Exhibit 1; Tr. 4-5. The "Simon" referenced in Respondents' ad is Respondent Simon Hua. Tr. 4-5. The "Mike" referenced in Respondent's ad is Mike (Zhiwei) Hu, who is Respondent Chao's brother-in-law. Tr. 4-5, 101-02. Mike Hu served as an agent for Respondents regarding the Property. Tr. 5, 94.
7. Respondent Hua and Mike Hu had an unwritten procedure that they used for responding to inquiries regarding the Property unit available for rent. Tr. 85-87, 102. When a prospective tenant called, they would invite the person to come to look at the unit and fill out an application. Tr. 86-87, 102. After the application was completed, they would check credit and verify employment. Tr. 87, 102. Respondents have never rented out an apartment to a prospective tenant who did not complete an application. Tr. 87.
8. In February 2006, Complainant decided to move from the Indiana Avenue location to another apartment elsewhere because she wanted relocate her family to a safer, more stable neighborhood. Tr. 15-16, 40. Complainant, who participated in the Housing Opportunity Program operated by CHAC (a private company which administers the Chicago Housing Choice Voucher Program), sought to find an apartment in an "opportunity neighborhood." Tr. 16-17. "Opportunity neighborhoods" have lower rates of poverty and crime and better schools and employment opportunities. Tr. 16.
9. Complainant searched on the Internet, found the [apartments.com](http://www.apartments.com) website, and came across Respondent's ad for the Property. Tr. 16. Complainant was interested in Respondent's ad because the Property is located within an "opportunity neighborhood" known as Brighton Park. Tr. 16.
10. Complainant decided to pursue the opportunity to rent the Property and she made two calls to the phone numbers listed in Respondents' ad. Tr. 19.
11. Complainant made her first call on March 2, 2006 at 3:18 p.m. to the (312) 927-3530 number and spoke to Respondent Hua. Tr. 5, 24; Complainant's Exhibit 2. This call (the "Hua call") lasted 54 seconds. Complainant's Exhibit 2, at 2.¹ Complainant made her second call on

1. Complainant's Exhibit 2 is a telephone log from Complainant's extension at Amalgamated Bank. Tr. 23. Complainant testified that her Exhibit 2 accurately reflected the calls that she made to the calls that she made to the telephone numbers listed in Respondents' ad. Tr. 24; *see also King v. Houston/Taylor*, CCHR Case No. 92-H-162,

March 2, 2006 at 3:19 p.m. to the (773) 879-6817 number and spoke to Mike Hu. Tr. 5. This call (the "Hu call") lasted 50 seconds. Complainant's Exhibit 2, at 2.

12. The parties agree to—or at least do not dispute—much of what was said during the Hua and Hu calls. In particular, during the Hua call: (a) the parties exchanged greetings; (b) Complainant asked if the three-bedroom unit was still available for rent and Respondent Hua indicated that it was; (c) before Complainant mentioned that she had a Section 8 voucher, she asked if she could make an appointment to view the unit and Respondent Hua said that she could do so anytime; and (d) Complainant asked what would come along with the unit and Respondent Hua told her about the appliances and utilities that would be provided. Tr. 19-20, 91. Complainant had a very similar exchange and covered the same matters during her call with Mike Hu. Tr. 21.
13. The parties, however, sharply dispute what was said regarding Section 8 during the Hua and Hu calls. Complainant testified that the following exchange occurred during her call with Respondent Hua: I ask him, do you all rent to Section 8 voucher holders and he said no, under no circumstances. I said well, can you explain to me why. He said no, we just don't deal with Section 8. So I stated to him you can't tell me why at all. He said no. I told him thank you and have a nice day. Tr. 20. Complainant indicated that Respondent Hua "spoke real good English," that there were no language barriers between them during the telephone call, and that she is "positive" he understood her when she said her source of income is Section 8. Tr. 44. Complainant further testified that she had the following exchange with Mike Hu after he indicated that she could come set up an appointment to view the apartment: "I said, well, let me ask you a question, do you all take Section 8, he said no. I say is there a reason why you don't take it. He said well, my boss just say no, we don't take Section 8. I then ended the phone call." Tr. 22.
14. Respondent Hua, who testified that his recall of his conversation with Complainant was neither vague on the one hand nor complete on the other (Tr. 89), had a different recollection regarding what was said about Section 8 during his conversation with Complainant. When Complainant asked him about Section 8, he responded by asking her: "What is Section 8?" Tr. 88. When other prospective tenants called and asked him about Section 8, he told them that he did not understand because he is a new owner and he would ask them: "What is Section 8?" Tr. 88-89. Respondent Hua further testified that he was not real familiar with Section 8 prior to the time that Complainant filed her Complaint and that he did nothing to familiarize himself with the laws regarding the leasing of apartments prior to offering the Property unit for rent. Tr. 90, 98. Respondent Hua denies telling Complainant that he absolutely did not take Section 8 (Tr. 89-90), and he testified that he would have had no reason to reject her because he had spent money to advertise the availability of the apartment for rent. Tr. 90.
15. After the conversation between Respondent Hua and Complainant took place, another prospective tenant explained to Respondent Hua that if he participated in the Section 8 program and accepted the voucher, the government would guarantee to pay him rent. Tr. 89. Respondent Hua told that prospective tenant that he would "definitely" participate in the program if the government made a guarantee to pay. Tr. 89. This prospective tenant made an appointment and came to view the vacant apartment at the Property. Tr. 93. Respondent Hua gave her a rental application but she never filled it out and returned it to Respondent. Tr. 93.
16. Mike Hu testified that although he did not recall the telephone call he had with Complainant,

at 13 (March 16, 1994)(relying on phone records to establish the length of a call and to corroborate a party's version of what occurred).

he never told any prospective tenant that they did not accept Section 8 voucher holders. Tr. 103. Mike Hu, who has never had any fair housing training, also testified that he knew in March 2006 that it was a violation of Chicago law to reject someone because they had a Section 8 voucher. Tr. 104-05. Mike Hu further testified that Respondent Hua had never mentioned anything about Section 8 to him but told him to invite prospective tenants over to look at the unit and then given them an application form. Tr. 104.

17. As counsel for Complainant and former counsel for Respondents acknowledged (Tr. 109, 115), the key disputed fact in this case concerns the parties' differing versions of what was said during the Hua and Hu calls regarding Section 8. The resolution of the question of what was said regarding Section 8 turns on the credibility of the testimony of the respective witnesses. In determining the credibility of a witness, the Commission considers a number of factors including: (a) the witness' demeanor; (b) the clarity, certainty, and plausibility of the testimony; (c) whether the testimony has been impeached or contradicted by other testimony or documentary evidence; (d) whether the testimony has been corroborated by other testimony and documentary evidence; and (e) the witness' interest or disinterest in the outcome of the proceedings. *See, e.g., Jones v. Shaheed*, CCHR Case No. 00-H-82, at 12 (March 17, 2004); *Doxy v. City of Chicago Public Library*, CCHR Case No. 99-PA-31, at 11 (April 18, 2001); *Buckner v. Verbon*, CCHR Case No. 94-H-82, at 12 (May 21, 1997); *Pryor v. Carbonara*, CCHR Case No. 93-H-29, at 5 (May 17, 1995); *King v. Houston/Taylor*, CCHR Case No. 92-H-162, at 13 (March 16, 1994).
18. The Commission's credibility findings with respect to what was said regarding Section 8 during the Hua and Hu calls are as follows: First, although Complainant testified in a clear and straightforward manner during her direct examination, she was somewhat evasive during her cross-examination and her testimony was impeached and contradicted by documentary evidence and other testimony in the following ways:
 - a. Complainant testified that the Hua call lasted from three to seven minutes and that the Hu call lasted up to two minutes. Tr. 43, 49. The phone records introduced by Complainant, however, establish that the Hua call lasted only 54 seconds and the Hu call lasted 50 seconds. Complainant's Exhibit 2, at 2.
 - b. Complainant testified that she made the Hua and Hu calls at around 3:18 p.m. on March 2, 2006. Tr. 24. However, Complainant alleged in her Complaint (which was executed by Complainant under oath a little more than a month after the calls took place on April 7, 2006) that she made the calls at about 12:30 p.m.² Although Complainant's hearing testimony as to the timing is corroborated by her telephone records (*see* Complainant's Exhibit 2, at 2), the fact that her recollection as to the timing of the calls was off by almost three hours only a month after the calls took place casts doubt on the reliability of her recollection as a whole.³
 - c. Complainant testified that Respondent Hua spoke "real good English" and that there were no language barriers between them during their telephone call. Tr. 44. While

2. Although neither party offered Complainant's Complaint as an exhibit during the Administrative Hearing, the Commission can take administrative (or "judicial") notice of pleadings filed in this case. *See State Farm Mutual Automobile Insurance Co. v. Grebner*, 132 Ill.App.2d 234, 237, 269 N.E.2d 337, 339 (2d Dist. 1971)(holding that "the court could take judicial notice of the pleadings"); *Nogle v. Nogle*, 53 Ill.App.2d 457, 459, 202 N.E.2d 683, 684 (4th Dist. 1964)(same).

3. Complainant suggests that these timing-related discrepancies regarding the Hua and Hu calls should not impact on the assessment of the credibility of her testimony. Objections, at 3. However, the Commission has previously recognized that the fact that a party's testimony varied with respect to the timing of the key event made that party an "ineffective witness"(*King*, at 2 n.2) and Complainant has cited no authority to the contrary.

it is true that Respondent Hua has familiarity with the English language and that he ordinarily conducts business in English while performing his engineering job (Tr. 99-100). Complainant's characterization of Respondent Hua's command of English as being "real good" diverges from what the Administrative Hearing Officer observed during the Administrative Hearing. Respondent Hua frequently relied on the Chinese language interpreter to understand questions posed by counsel.⁴ On another occasion, the Administrative Hearing Officer had to call upon the interpreter to translate a question for Respondent Hua after counsel for both parties expressed well-founded concerns as to the responsiveness of his initial answer to a straightforward question (*i.e.*, "Did you consider offering Ms. Hodges an opportunity to apply for your open unit?"). Tr. 96-97. Respondent Hua had difficulty understanding certain other questions (such as whether he had written policies governing the rental of apartments, the meaning of the word "vaguely," and whether he considered offering Complainant an opportunity to apply for the Property's open unit (Tr. 84-85, 89, 96-97)), that someone with a "real good" command of English would have understood. Moreover, the Commission does not find that Respondent Hua's apparent difficulties with understanding English were contrived. Respondent's Hua's difficulties with communicating in English could very well have lead to misunderstandings during the parties' conversation.

- d. Complainant's testimony regarding her call with Mike Hu was inconsistent. On direct examination, Complainant testified that she asked Hu the "*same questions*" as she had asked Respondent Hua and that Hu explained to her the "*same thing*" that Respondent Hua had explained. Tr. 21-22 (emphasis added). By contrast, when Complainant was asked on cross-examination to explain the disparity in the length of time that the Hua and Hu calls lasted, she testified that she had gotten "all the information" that she could "get about the unit from [Respondent Hua]" so that when Hu "shut [her] down instantly, there was no need for [her] to go into a long, lengthy conversation with [him]." Tr. 50.
- e. Complainant's testimony as to when she spoke with Joyce Bonner from CHAC regarding her conversations with Respondent Hua and Hu was contradicted by Bonner's testimony. In particular, Complainant testified that she spoke with Bonner in April 2006. Tr. 54. Bonner, by contrast, testified that she first spoke with Complainant in June 2006 after Complainant came to CHAC to obtain additional property referrals. Tr. 68, 74.

The above matters undermine the reliability of Complainant's testimony and her credibility in general. *See, e.g., Doxy*, at 11 (finding party's testimony unreliable, in part, because it was "impeached several times"); *Buckner*, at 12 (finding party's testimony not credible where she contradicted herself throughout the hearing); *King*, at 2 n.2 (discrepancy in testimony regarding the timing of the key event made party an "ineffective witness"); *Cf. Ordon v. Rahman and Al-Rahman Animal Hospital*, CCHR Case No. 92-E-139, at 10 (July 22, 1993) ("When a witness testifies credibly and specifically. . . her testimony should be credited unless she is impeached or contradicted"). The fact that Complainant has a "firm and unwavering" belief (Objections, at 3, 5) that she was discriminated against by Respondents does not in itself render her testimony credible. *See, e.g., Cooper & Ashmon v. Parkview Realty*, CCHR Case No. 91-FHO-48-5633, at 11 (September 8, 1992) ("The Commission feels that Complainants truly believed the incident happened as was testified to by them, but, this belief by the Complainants alone is not sufficient to prove their cases by a preponderance of the evidence").

4. Mike Hu likewise relied on the interpreter and his command of the English language appeared to be limited.

19. Second, Respondent Hua's testimony regarding Section 8 in general and what the parties said regarding Section 8 during their telephone conversation provides additional cause to doubt Complainant's account of what occurred. Respondent Hua (an engineer by trade) testified that he was in fact unaware of what the Section 8 program involved at the time he spoke with Complainant. The Commission finds this testimony credible in view of the undisputed evidence that Respondents were first-time landlords who were making their first effort to rent out an apartment at the time Complainant made her effort to rent the Property, and that Respondent Hua had taken no steps to familiarize himself with the laws regarding the leasing of apartments prior to offering the vacant unit for rent.⁵

Furthermore, the Property unit had been vacant from the time Respondents purchased the Property in August 2004 through the time Complainant made her efforts to rent the Property in March 2004, and Respondents were paying money to advertise the availability of the Property unit. The extended period during which the Property unit was vacant provided Respondents with an economic incentive to rent the unit to *any* interested tenant that would not have been present if Respondents had multiple prospective tenants to choose from.

It is also undisputed that Respondent Hua provided a rental application to another prospective tenant who had explained to him that Section 8 was a government program that involved government guaranteed rent payments. (*supra*, at ¶15) Respondent Hua's willingness to proceed with the rental process *after* learning of this prospective tenant's status as a Section 8 Housing Choice Voucher holder suggests that he would not disqualify a prospective tenant for this reason. See *Ordon*, at 9 (Evidence that respondent rented to persons who relied on the source of income in question while not "by itself . . . vitiat[ing] the claim that discrimination . . . does make it appear that respondent more than likely did not discriminate based on 'source of income' and it further serves to reduce the credibility of complainants that the incident occurred as alleged"). In sum, given all of the above evidence, the Commission finds to be credible Respondent Hua's testimony that he had no reason to reject Complainant and that he never told Complainant that Respondents absolutely did not take Section 8.⁶

20. The Commission also finds credible Mike Hu's testimony that Respondent Hua never mentioned anything to him about Section 8. It does not make sense that Respondent Hua would have talked to Hu about the Section 8 program when Hua did not understand what the Section 8 program involved until *after* his call with Complainant. Moreover, in view of its findings regarding the credibility of Respondent Hua's testimony, the Commission does not find (as Complainant asserts) that Hu told Complainant that his boss told him that they do not

5. This observation should not be construed as an indication that the Commission considers a party's ignorance of the law to be a defense to an action under the Fair Housing Ordinance. To the contrary, if Respondents had in fact denied Complainant an opportunity to rent a unit in the Property on account of her status as a Section 8 Housing Choice Voucher holder, they would have violated the Fair Housing Ordinance even if they did not subjectively know that such conduct was illegal.

6. In her Objections, Complainant asserts that it was "inconsistent" for Respondent Hua to testify that he did not have a complete recollection of his conversation with Complainant on the one hand (*supra*, at ¶14), and to deny that he told Complainant that he absolutely did not take Section 8 on the other. Objections, at 3. The Commission respectfully disagrees. There is nothing inherently implausible about a person not recalling every detail of a conversation but nonetheless recalling that he or she did not say a certain thing. This is particularly true here. The Commission has found to be credible Respondent Hua's testimony that he did not know what the Section 8 program entailed at the time he had the telephone conversation with Complainant. Given that he did not know what Section 8 was, the Commission also finds credible Respondent Hua's denial that he told Complainant that they absolutely did not take Section 8.

take Section 8.⁷ Finally, the Commission finds it credible that Hu (who understood that it was illegal to refuse to lease to someone because they held a Section 8 voucher) never told any prospective tenants that they did not accept Section 8.

21. Complainant never went to view the Property and she did not complete Respondent's rental application. Tr. 53. Complainant felt that there was no need to go to the Property and proceed with her efforts to rent the apartment in light of her understanding that Respondents did not accept Section 8. Tr. 59.
22. Immediately after she made the Hua and Hu calls, Complainant (who had previously received training from CHAC as to what to do if she felt that she had been discriminated against on account of her status as a Section 8 voucher holder) called a CHAC employee named Sarah Washington to tell her of the conversations. Tr. 22-23, 26; Complainant's Exhibit 2, at 2. Washington asked Complainant to prepare a letter summarizing what happened during both phone calls. Tr. 22. After reviewing Complainant's letter, Washington called Complainant to encourage her to file a case against Respondents with the Commission and to provide her with contact information for the Commission. Tr. 22-23, 26, 70.
23. Complainant continued her housing search and she located another potential rental apartment in an opportunity neighborhood within the next day or two. Tr. 25. Complainant called the owner of this property and she experienced discrimination after she told the owner that she had a Section 8 voucher. Tr. 25, 35.⁸ Complainant spoke with Washington from CHAC about this second incident and she filed a housing discrimination complaint against this owner with the Commission at the urging of Washington. Tr. 25, 26, 35, 70.
24. Complainant filed her Complaint against Respondents in this case on April 7, 2006. At this time, Respondents were still attempting to rent the Property. Tr. 92, 95.⁹

III. CONCLUSIONS OF LAW

1. Section 5-08-030 of the Chicago Fair Housing Ordinance provides in relevant part as follows:

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

- A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in

7. Complainant asserts in her Objections that she would have had no way of knowing that Respondent Hua was Mike Hu's "boss" (*supra*, at ¶13) unless the conversation occurred the way that she recalled it. Objections, at 2. However, the testimony at the Administrative Hearing established that Respondent Hua was not Mike Hu's "boss" because Hu was not employed by Respondents. Tr. 93. Rather, Mike Hu is Respondent Chao's brother-in-law. Tr. 101-02.

8. In her Objections, Complainant mistakenly asserts that testimony regarding this second incident of discrimination was first elicited during Complainant's cross-examination. Objections, at 5. Complainant, however, initially testified as to this second incident of discrimination during her direct examination. See Tr. 25.

9. Complainant faults Respondents for not taking no steps after they received the Complaint to contact Complainant to offer her the opportunity to rent or even to apply. Objections, at 6. However, Respondent Hua testified without contradiction that he did take actions--albeit unsuccessful actions--to contact Complainant to offer her an opportunity to apply after he received her Complaint. Tr. 95-98.

the furnishing of any facilities or services in connection therewith, predicated upon the race, color, sex, gender identity, age, religion, disability, national origin, ancestry, marital status, parental status, military discharge status or source of income of the prospective or actual buyer or tenant thereof.

2. "A respondent violates the CFHO when s/he refuses to consider an applicant to rent an apartment due to his/her protected status under the Ordinance," *Jones*, at 7, and it is well-settled that the "refus[al] to rent complainant an apartment because of her desire to use her Section 8 voucher to pay a portion of the rent" is an ordinance violation. *Sullivan-Lackey v. Godinez*, CCHR Case No. 99-H-99 (July 18, 2001), *aff'd*, 352 Ill.App.3d 87, 815 N.E.2d 822 (1st Dist. 2004); *McGee v. Sims*, CCHR Case No. 94-H-131, at 8 (October 18, 1995).
3. It is undisputed that Complainant relies upon a Section 8 voucher as her source of income to pay her rent. Nonetheless, "Complainant bears the burden of proving by a preponderance of the evidence that Respondent[s] did in fact refuse to rent to her because of her source of income." *McGee v. Sims*, CCHR Case No. 94-H-131, at 8 (October 18, 1995). "A complainant, seeking to prove through direct evidence a claim of disparate treatment in housing based on [source of income], does not need to use the shifting burden analysis contained in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). Instead, s/he may show that the direct evidence of discriminatory intent is creditable and that it resulted in an actionable claim." *Pudelek/Weinmann v. Bridgeview Garden Condominium Association et al.*, CCHR Case Nos. 99-H-39/53, at 11 (April 18, 2001); *Jones*, at 11.
4. Complainant has testified that both Respondent Hua and Respondents' agent Mike Hu stated to her that Respondents did not accept Section 8 and that she was deterred from actually going to the Property to pursue the opportunity to lease the apartment because of the statements of Hua and Hu.¹⁰ Because Complainant's testimony, if true, would establish direct evidence of discriminatory intent, the issue is whether the direct evidence is credible, and if so, whether it has resulted in an actionable claim. *Pryor*, at 4; *King*, at 11.
5. In order for Complainant to prevail, it is her burden to prove by the preponderance of the evidence that the portions of the Hua and Hu telephone conversations which concerned Section 8 took place as she testified. *Cooper & Ashmon*, at 8. In particular, it is necessary for her to prove by a preponderance of the evidence that Respondent Hua and Mike Hu made the allegedly discriminatory statements regarding Section 8. *Cooper & Ashmon*, at 8-9.
6. For the reasons stated above in findings of fact eighteen through twenty, the Commission does not find Complainant's testimony as to what was said regarding Section 8 during the Hua and Hu calls to be credible. Moreover, Complainant has failed to present any other testimony or evidence to corroborate her account of what was said during the calls. Thus, while the Commission accepts that Complainant believed the conversations occurred as she testified,¹¹ the Commission finds that Complainant has failed to carry her burden of proof as to this issue.

10. Complainant correctly argues that if the Commission found that Respondent Hua and/or Hu made the discriminatory statements attributed to them, it would not require Complainant to show that she actually went to the Property to complete a rental application. The Commission does not require complainants to engage in "futile gestures" in the face of their knowledge of discriminatory policies. See, e.g., *Pudelek/Weinmann*, at 20-21; *Jones*, at 14, 16.

11. The divergence between Complainant's testimony and what the Commission finds that Respondent Hua and Hu actually said could be explained by misunderstandings created by the limited English speaking abilities of Hua and Hu. It is also possible that the initial confusion created during the Hua and Hu calls was magnified by the fact that Complainant (per her testimony) experienced a similar instance of source of income discrimination during a phone call one or two days later.

See *Cooper & Ashmon*, at 11.¹²

7. In sum, after examining all of the evidence, the Commission concludes that Complainant has failed to sustain her burden of showing by a preponderance of the evidence that her source of income (i.e., reliance on her Section 8 voucher) was the reason that she was denied an opportunity to lease an apartment at the Property. Instead, the Commission finds that Respondents did not lease the apartment to Complainant because Complainant failed to visit the Property and complete a rental application as Respondents' policy required.

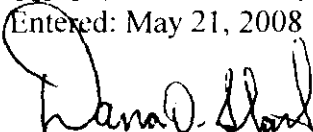
IV CONCLUSION

For all of the above reasons, the Commission finds in favor of Respondents Simon Gia Hua and Hui M. Chao and against Complainant Demetrius Hodges on Complainant's source of income discrimination claim.

CHICAGO COMMISSION ON HUMAN RELATION

Entered: May 21, 2008

By:



Dana V. Starks, Chair and Commissioner

12. Complainant asserts that there would be no plausible reason for her to continue searching for an apartment unless Respondents had discriminated against her. *Objections*, at 2. However, the fact that Complainant *believed--* albeit as a consequence of misunderstanding or confusion (*supra*, at n.11)--that she had been subjected to discrimination provides a plausible explanation for why she would continue her apartment search after her telephone contact with Respondents.