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

Kimberly Shipp
Complainant,
v.

Chicago Realty Consulting Group, LLC d/b/a Keller Williams Realty
Respondent.

Case No.: 12-H-31

Date of Ruling: January 10, 2019

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On May 4, 2012, Complainant Kimberley Shipp filed a Complaint alleging that Respondent Chicago Realty Consulting Group, LLC d/b/a/ Keller Williams Realty ("Keller Williams") discriminated against her based on her source of income -- she is a Housing Choice Voucher holder -- in violation of the Chicago Fair Housing Ordinance ("CFHO"), Chapter 5-8-030 of the Chicago Municipal Code, when one of Respondent's agents, Eloise Harris, explicitly told Complainant, both verbally and in writing, that the owner of a home located at 9737 S. Winston in Chicago "would not accept Section 8," and as a result, Complainant was unable to rent the home. On August 14, 2012, Complainant filed an Amended Complaint that added Mr. Donn Nettles, who was the owner of 9737 S. Winston, as an additional Respondent. The protracted procedural history of this case is set forth below.

The Commission investigated the allegations of Complainant's Amended Complaint and entered an Order Finding No Substantial Evidence on August 22, 2013. Complainant timely filed a Request for Review and the Commission entered an Order Granting Request to Review for Limited Purpose on October 30, 2014. On November 14, 2014, the Commission entered a second Order Finding No Substantial Evidence. Undaunted, Complainant timely filed a Second Request for Review. On November 10, 2016, over the opposition of Respondent Nettles, the Commission entered an Order Finding Substantial Evidence and subsequently scheduled a settlement conference for January 17, 2017.

Unlike Complainant and Respondent Nettles, Respondent Keller Williams did not appear for the settlement conference. On January 27, 2017, the Commission issued to Respondent Keller Williams a Notice of Potential Default and Other Sanctions for Failure to Attend Settlement Conference. In this Notice, the Commission advised Respondent Keller Williams that it needed to submit by February 10, 2017, an explanation providing good cause for its absence from the settlement conference in order to avoid the entry of an order of default. Respondent Keller Williams, which was represented by counsel, failed to respond to the Commission's Notice. As a result, the Commission issued an Order of Default against

Respondent Keller Williams on March 9, 2017, and subsequently scheduled this case for an Administrative Hearing on October 3, 2017.[1]

The parties thereafter engaged in written discovery and filed motions for leave to serve subpoenas on a number of individuals and entities. In its Orders dated August 28 and September 14, 2017, the Commission granted the parties leave to issue subpoenas to the following persons and entities: Melanie Toney of Housing Choice Partners; Deborah Berthgold Smith of Classic Realty Group; Ezekiel Morris, the managing broker of Respondent Keller Williams; Lindsey Nettles, Respondent Nettles' niece; Jessica Mallon, the Fair Housing Director of the Chicago Housing Authority ("CHA"); and to the corporate designee of the CHA regarding the CHA's exception rent policy and the agency's communication with the Commission concerning that policy.

The Administrative Hearing took place as scheduled on October 3, 2017. Complainant and Respondent Nettles attended and testified. Deborah Bergthold-Smith, Melanie Toney, and Jessica Mallon (who was represented by CHA Assistant General Counsel Gina Jang) also testified pursuant to their subpoenas. However, neither Respondent Keller Williams nor its counsel appeared, and Ezekiel Morris (Keller Williams' managing broker) failed to comply with the subpoena that Respondent Nettles successfully served on him.

The Commission thereafter set a briefing schedule for the parties' post-hearing briefs and response briefs. Complainant and Respondent Nettles completed their briefing on February 20, 2018. Respondent Keller Williams did not file a post-hearing brief.

On August 27, 2018, the Hearing Officer issued the Recommended Ruling on Liability and Relief, which recommended that the Commission rule in favor of Complainant and against Respondents on Complainant's source of income discrimination claim.

On October 10, 2018, Complainant filed a Request for Voluntary Withdrawal of Complaint as to Respondent Nettles. On October 16, 2018, the Hearing Officer entered an Order of Dismissal dismissing Respondent Nettles from this case. This matter is now ripe for decision. For the reasons stated below, the Commission finds in favor of Complainant Shipp and against Respondent Keller Williams.

II. FINDINGS OF FACT

1. The United States Department of Housing and Urban Development ("HUD") funds the Housing Choice Voucher program under which "HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing." 24 C.F.R. 982.1(a)(1). The Housing Choice Voucher program was formerly known as the Section 8 program and the Housing Choice Vouchers were formerly known as Section 8 vouchers.[2]

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[1] The Commission, Complainant, and Respondent Nettles continued to provide Respondent Keller Williams -- through its counsel -- with notice of all Orders and party-generated submissions that were filed after the entry of the Order of Default.

[2] The witnesses used the phrases "Housing Choice" and "Section 8" interchangeably at the Administrative Hearing and the phrases should be treated as synonyms for purposes of this decision. Moreover, for simplicity, the Commission will refer to Housing Choice/Section 8 Vouchers as "Vouchers" and to those individuals who possess Housing Choice/Section 8 Vouchers as "Voucher holders."

2. The amount of rental subsidy that is available under the Housing Choice Voucher Program is based on a local "payment standard" that reflects the cost to lease a unit in the local housing market. 24 C.F.R. 982.1(a)(3). Once the payment standard is calculated, the Voucher holder will receive a rental subsidy that is equal to the difference between the amount of the payment standard and the expected total tenant payment -- which is the greater of 10% of the Voucher holder's gross monthly income or 30% of the Voucher holder's adjusted monthly income. Nettles Exhibit 4 (CHA Rent Burden Worksheet for Kimberly Shipp).

3. The CHA administers the Housing Choice Voucher program in Chicago. *See* Nettles Exhibit 6 (Chicago Housing Authority Administrative Plan for the Housing Choice Voucher Program – Effective Date: September 1, 2011 (excerpt)); Nettles Exhibit 2.

4. Complainant Kimberly Shipp is a Housing Choice Voucher holder. Tr. 5. In 2012, Complainant, who has children, held a Voucher that enabled her to rent a four bedroom unit in 2012. Tr. 6, 14; Nettles Exhibit 2.

5. In late 2011 or early 2012, Complainant enrolled in the CHA Mobility Program. Tr. 6. The Mobility Program is designed help Voucher holders move into "opportunity areas" and "low poverty areas" where they would experience a better quality of life and have a better location to raise their children. Tr. 6.

6. In 2011 and 2012, the CHA defined an "opportunity area" as a community area in Chicago with a poverty rate of less than 23.49% and an African-American population of 30% or less. Tr. 93-95. At that time, CHA defined a "low poverty area" as a community area in Chicago with a poverty rate of less than 16%. Tr. 95; Complainant's Exhibit 3 (CHA Map of Opportunity and Low Poverty Areas). All other areas of the City were designated as "traditional areas." Tr. 96-97.

7. Ms. Mallon, CHA's corporate designee, testified as follows regarding the CHA's "exception rent" policy during the applicable timeframe. Effective September 1, 2011, the CHA's administrative plan for the Housing Choice Voucher Program specified that the CHA would "administer a set-aside of tenant-based vouchers for use in a demonstration program to expand affordable housing choices within housing opportunities areas in the City of Chicago." Nettles Exhibit 6; Tr. 155. Under its demonstration program, "the CHA may approve special exception payment standards[3] on a unit-by-unit basis up to 300 percent of the HUD published FMRs (fair market rents) for the City of Chicago." Nettles Exhibit 6; Tr. 151, 156. To be eligible to participate in this program, a Voucher holder "must select housing in a housing opportunity area," complete mobility counseling, and agree that they are not eligible to use the homeownership option. Nettles Exhibit 6; Tr. 151, 156. This policy was still in effect in April 2012. Tr. 156.

8. Ms. Mallon further testified that the CHA -- notwithstanding the policy set forth in its administrative plan (which limited payment of exception rent to Voucher holders seeking housing in *opportunity areas*) -- allowed an unspecified number of Voucher holders who participated in the Mobility Program to receive exception rent for housing in *low poverty areas* prior to July 1, 2012. Tr. 120-21, 125, 127, 145, 149, 152, 170-72, 177-78. Although the CHA did not provide "blanket approval" for Voucher holders to receive exception rent in low poverty

[3] The special exception payment standard was also referred to as "exception rent" by the parties and the CHA. *See* Tr. 151-52, 156.

areas in 2012, Ms. Mallon testified that it was "possible" that the agency would have approved exception rent for a unit in a low poverty area if "everything for th[e] particular unit added up."[4] Tr. 127.

9. In July 2012, the CHA eliminated the low poverty area designation and areas that had previously been designated as "low poverty areas" became "traditional areas." Tr. 93, 119; Complainant's Exhibit 5 (e-mail chain between Jessica Mallon from the CHA and Kristen Lee from the Commission on Human Relations), at 2.[5]

10. In 2012, the CHA contracted with Housing Choice Partners of Illinois ("HCP") so that HCP could help Voucher holders find housing units within opportunity and low poverty areas. Tr. 91-92. All Voucher holders who participated in the CHA's Mobility Program were required to work with HCP to facilitate their search for housing. Tr. 94.

11. Complainant resided at 11735 S. Parnell Avenue in Chicago's Roseland neighborhood during the spring of 2012 when the events pertinent to this case occurred. Nettles Exhibit 2; Tr. 55-56. Complainant felt scared to live in Roseland and she wanted to relocate her kids to a better neighborhood so that they could receive a better education. Tr. 14, 55. Complainant has a son who is paralyzed from the waist down and she also wanted to move to find a better home for him. Tr. 7, 14.

12. In April 2012, Complainant was looking to use her Voucher to move into a low poverty area or opportunity area. Tr. 7-8. Complainant focused her housing search on available units in the vicinity of the Beverly and Mount Greenwood neighborhoods. Tr. 8-9. The CHA designated both Beverly and Mount Greenwood as opportunity areas in 2012. Complainant's Exhibit 3.

13. Complainant was working with her assigned Mobility Program counselor/staff person and a realtor (Deborah Berthgold-Smith from the Classic Realty Group) to assist her with her search for housing. Tr. 7, 11, 30, 78.

14. At all times pertinent to this case, the house located at 9737 S. Winston (hereinafter, the "Winston house") was owned by Don Nettles. Tr. 192-93. The Winston house is located in the Washington Heights neighborhood, which the CHA had designated as a low poverty area in 2012. Tr. 97, 106.

15. Mr. Nettles engaged a real estate broker named Eloise Harris who was an agent and sponsored licensee of Respondent Keller Williams (a real estate brokerage). Tr. 203-04, 206, 15-16; Keller Williams' Response to Complaint, ¶11; Nettles Exhibit 8 (Exclusive Listing Agreement (CAR) for 9737 South Winston Avenue, Chicago IL 60620), at 1. Ms. Harris had sold the Winston house to Mr. Nettles in 1997 and she was Nettles' broker when he previously rented the house. Tr. 195-96. Mr. Nettles has known Ms. Harris for over a decade and she was a patient of his and had an office in the same building. Tr. 221, 196.

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[4] "Everything" refers to whether the rent for the charged unit was in line with the rent for comparable units, the location and the amenities of the unit, and the amount that the tenant was able to pay. Tr. 128.

[5] Although the CHA eliminated the low poverty area designation in July 2012, the agency took no action to correct its erroneous payment of exception rent in previously designated low poverty areas until 2014 when the agency informed landlords in those areas that they were no longer entitled to receive exception rent. Tr. 120, 126.

16. On April 2, 2012, Mr. Nettles and his wife signed an exclusive listing agreement with Respondent Keller Williams to market and lease the Winston house for $1,700 a month. Tr. 205-07, 222-23; Nettles Exhibit 8, at 1. The listing agreement specified that Ms. Harris -- "a sponsored licensee" of Respondent Keller Williams -- would be the "Sellers' (*i.e.*, the Nettles') exclusive designated agent" for purposes of providing the agreed upon services, which included communicating and negotiating with prospective tenants until the lease of the Winston house was fully executed. Nettles Exhibit 8, at 1. The listing agreement expressly authorized Ms. Harris to place the Winston house in any multiple listing services that she was participating in. Nettles Exhibit 8, at 3. Finally, Respondent Keller Williams agreed that it is bound by federal, state, and local fair housing laws and ordinances and that it would comply with them. Nettles Exhibit 8, at 4.

17. In early April 2012, Ms. Berthgold-Smith notified Complainant by e-mail that the Winston house was available to be rented. Tr. 9. Ms. Berthgold-Smith reached out to Ms. Harris by e-mail and scheduled a showing of the Winston house for Complainant on April 10. Tr. 9-10, 22, 29.

18. The monthly rent that Mr. Nettles sought for the Winston house ($1,700) was slightly under the average rent for the comparable units and was approved based on the CHA's comparable rent report. Tr. 149; Complainant's Exhibit 6. However, Complainant's CHA rent burden worksheet -- which is designed to show whether the Voucher holder can afford the unit he/she has selected -- indicates that Complainant would have been able to pay a "maximum allowable gross rent" of only $1,631 unless she received "exception rent" under the Mobility Program. Nettles Exhibit 4; Tr. 61-64, 137.

19. On April 10, Complainant called Ms. Harris to cancel the scheduled showing of the Winston house because her son became ill and had to go into the hospital. Tr. 22, 29, 67. Complainant -- who has an unspecified disability -- told Ms. Harris that she would have to call her back to reschedule the showing because she needed to check with her daughter, who was her source of transportation. Tr. 28-29. Complainant did not mention that she is a Voucher holder during her April 10 conversation with Ms. Harris. Tr. 70.

20. On April 18, Ms. Berthgold-Smith sent an e-mail to Ms. Harris in which she inquired whether the owner of the Winston house would accept Section 8. Complainant's Exhibit 5, at 2.

21. After receiving Ms. Berthgold-Smith's e-mail, Ms. Harris contacted Mr. Nettles, mentioned Complainant's name, and told him that Complainant's broker asked whether he would accept Section 8 vouchers. Tr. 210-11. Although Mr. Nettles expressed his belief that "renting to a Section 8 renter would guarantee that the rent was paid regularly," he also told Ms. Harris that "he didn't want to start the approval process that he understood Section 8 required because he was going to rent to his niece" and he expected that his niece's credit report would be back soon. Respondent Nettles Position Statement (filed with his Pre-Hearing Memorandum on August 11, 2017) ("Nettles Position Statement"), at 2.[6] Mr. Nettles knew and told Ms. Harris that the process to obtain approval to rent to a Voucher holder is longer than with a conventional

[6] Respondent Nettles' Pre-Hearing Memorandum and Position Statement are part of the Official Record (*see* Commission Rule 240.510(g)) and the Commission has previously cited to such position statements filed by parties in its past decisions. *See, e.g., Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89, at 6, 11 (July 8, 2009); *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34, at 5-6 (April 21, 2010).

renter because an inspector has to come in and he also told Ms. Harris that he wanted to get a renter in the property "as soon as possible." Tr. 197-98, 212. Although Mr. Nettles did not tell Ms. Harris that he would not consider Section 8 applicants, he provided Ms. Harris with no instructions regarding how she should respond to the other broker's inquiry. Tr. 212; Nettles Position Statement, at 2.

22. On April 19, Ms. Harris sent to Ms. Berthgold-Smith an e-mail in which she stated: "I apologize for the late notice. I spoke to my client and drafted an email last night. He will not accept Section 8. Thanks to you and your client for your interest." Complainant's Exhibit 5, at 1; Tr. 80-81.

23. After Ms. Berthgold-Smith received Ms. Harris' April 19 e-mail, she called Complainant and told her what the e-mail stated. Tr. 82. On the morning of April 22, Ms. Berthgold-Smith forwarded Ms. Harris' April 19 e-mail to Complainant. Tr. 82, 16.

24. Complainant called Ms. Harris on April 22 to try to sell herself as a tenant. Tr. 12, 21. Complainant told Ms. Harris that she was in the Mobility Program and she explained what the program involved. Tr. 12, 33. Complainant also told Ms. Harris that she had a copy of her credit report. Tr. 32, 34. Ms. Harris informed Complainant that she could make another appointment to see the Winston house, there would be a $30 application fee for a background check and credit application, and that two other prospective tenants were also considering the house. Tr. 12, 22, 31-32. Ms. Harris further informed Complainant that the owner did not take Section 8 and he would not do so because Section 8 took too long to pay. Tr. 12, 22, 50-51. Ms. Harris, who was not angry and did not use any harsh/inappropriate language during the call, offered Complainant an appointment to view the Winston house on May 5 and Complainant accepted. Tr. 52-53, 24-26.

25. The events of April 22 -- when Complainant read Ms. Harris' April 19 e-mail and spoke with Ms. Harris by phone -- left Complainant "feeling disgusted" and "hurt." Tr. 14, 57. Complainant was under pressure to find housing during April 2012 because her Voucher (which was valid for a sixty-day period subject to extension) was approaching expiration and the rejection she experienced on April 22 added to the pressure. Tr. 7, 14. Complainant did not seek any medical treatment for the emotional distress that she experienced. Tr. 56.

26. Prior to May 5, Complainant called Ms. Harris and left her a voicemail message to cancel her scheduled May 5 appointment to view the Winston house. Tr. 26. Complainant cancelled her appointment because she had other obligations to tend to on May 5 and she told Ms. Harris that she was going to reschedule in her voicemail message. Tr. 26-27.

27. Complainant never completed the application process for the Winston house but she would have done so but for the statements about Section 8 that Ms. Harris made in her April 19 e-mail to Ms. Berthgold-Smith and during her August 22 conversation with Complainant. Tr. 13.

28. Complainant neither met nor had any communications with Mr. Nettles during 2012 and she dealt only with Ms. Harris during her effort to lease the Winston house. Tr. 15, 49.

29. Instead of rescheduling her appointment to view the Winston house, Complainant filed her Complaint with the Commission on May 4 and continued to search for suitable housing. Complaint; Tr. 57-58.

III. CONCLUSIONS OF LAW

1. Section 5-8-030 of the Chicago Fair Housing Ordinance ("CFHO") 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:
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> > 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 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. . ..
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> > * * *
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> > 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, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buy or renter.

In addition, Rule 420.130 of the Commission's Rules provides that:

> It is a violation of the FHO for a person to refuse to sell, rent or lease a dwelling to 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;

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 v. Shaheed,* CCHR No. 00-H-82, at 7 (March 17, 2004). "The Commission has long since determined that a Housing Choice voucher is a 'source of income' under the CFHO." *Shipp v. Wagner and Wagner,* CCHR No. 12-H-19, at 6 (July 16, 2014) (citing to *Smith et al. v. Wilmette Real Estate & Mgmt. Co.,* CCHR Nos. 95-H-159 & 98-H-44/63 (April 13, 1999)); *Hutchinson v. Iftekaruddin,* CCHR No. 09-H-21, at 6 (Feb. 17, 2010) (same). In 2004, the Illinois Appellate Court affirmed the Commission's determination on this point. *See Godinez v. Sullivan-Lackey,* 352 Ill.App.3d 87, 93 (1st Dist. 2004), *aff'g, Sullivan-Lackey v. Godinez,* CCHR No. 99-H-99 (July 18, 2001).

Consequently, it is clear beyond doubt that "a landlord's refusal to consider potential tenants because they have a Section 8 voucher constitutes unlawful discrimination under the CFHO." *Diaz v. Wykurz, et al.*, CCHR No. 07-H-28, at 5 (Dec. 9, 2009) (citing cases); *Pigram v. Elects Realty Champions LLC et al.*, CCHR No. 14-H-77, at 6 (April 14, 2016).

3. Because the Commission has entered an Order of Default against Respondent Keller Williams and in favor of Complainant, the Commission finds that Respondent Keller Williams has admitted the allegations in the Amended Complaint and that it has waived any defenses to the allegations including defenses concerning the Amended Complaint's sufficiency. Commission Rule 235.320. Nonetheless, the Commission itself must decide whether there was a violation of the CFHO so it must determine if it has jurisdiction and whether Complainant has established a prima facie case against Respondent Keller Williams. Commission Rule 235.320; *Gardner v. Ojo et al.*, CCHR No. 10-H-50, at 13 (Dec. 19, 2012)(citing cases).

4. The Commission has jurisdiction over this case given that the alleged violation occurred within the City of Chicago and that Complainant filed her Complaint within 180 days of the actions of which she complains. Commission Rule 210.110.

5. "Complainant has the burden of proving her claim of discrimination by a preponderance of the evidence using either the direct *or* indirect methods of proof." *Shipp v. Wagner and Wagner, supra,* at 6 (emphasis added); *Diaz v. Wykurz, supra,* at 5 (same). "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." *Shipp v. Wagner and Wagner, supra,* at 6. "Direct evidence is that which, if believed, will allow a finding of discrimination with no need to resort to inferences." *Shipp v. Wagner and Wagner, supra,* at 6 (citing cases).

6. Complainant has established a prima facie case of source of income discrimination against Respondent Keller Williams. In particular, the evidence shows that Ms. Harris made it clear in her April 19 e-mail to Ms. Berthgold-Smith and her August 22 conversation with Complainant that her client would not accept Section 8. Findings of Fact ##22, 24. Statements to the effect that a respondent "would not accept the Section 8 voucher constitute[] direct evidence of discrimination in violation of the CFHO." *See, e.g., Diaz v. Wykurz, supra,* at 6 (citing cases); *Hall v. Woodgett,* CCHR No. 13-H-51, at 4-5 (Oct. 8, 2015) (citing cases); *Shipp v. Wagner and Wagner, supra,* at 7.

7. Furthermore, Respondent Keller Williams is vicariously liable for the actions of Ms. Harris' actions under agency principles. As the Commission has recognized, an "agency relationship is a consensual, fiduciary one between two legal entities, where the principal has the right to control the conduct of the agent and the agent has the power to affect the legal relations of the principal." *Warren, et al. v. Lofton & Lofton Management d/b/a McDonalds, et al.,* CCHR Nos. 07-P-62/63/92, at 19 (July 15, 2009) (internal quotation marks omitted). Moreover, [a] principal may be held liable for the tortious actions of an agent even if the principal does not itself engage in any illegal conduct relative to the injured party so long as the agent commits his/her torts within the scope of his/her agency." *Warren, et al. v. Lofton & Lofton Management d/b/a McDonalds, et al., supra,* at 20 (citing cases).

Respondent admits that Ms. Harris is its agent and sponsored licensee. Furthermore, the evidence presented at the administrative hearing shows that Ms. Harris acted within the scope of her agency by performing her duties as specified under the exclusive listing agreement between

Respondent and Mr. Nettles when she made the discriminatory statements. Findings of Fact, ##15, 16, 20-22, 24; *see Rankin v. 6954 N. Sheridan Inc., et al., supra,* at 13-14. Consequently, the Commission finds that Respondent Keller Williams has violated the CFHO because its agent (Ms. Harris) rejected Complainant as a potential tenant on account of her status as a Housing Choice Voucher holder. *See, e.g., Diaz v. Wykurz, supra,* at 5 (citing cases).

IV. REMEDIES

8. Under 2-120-510(l) of the Chicago Commission on Human Relations Enabling Ordinance:

> 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;...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,...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 backpay 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 Chapters 2-160 and 5-8.

9. Complainant seeks to recover emotional distress damages in the amount of $8,000 for frustration, humiliation, disappointment, anxiety, and lost housing opportunity and award of $10,000 in punitive damages from Respondent Keller Williams. Complainant does not seek to recover any recovery for out-of-pocket expenses. *See* Complainant's Pre-Hearing Memorandum, at 4-6. It is Complainant's burden to prove by a preponderance of the evidence that she is entitled to the damages claimed. *See, e.g., Carter v. CV Snack Shop*, CCHR No. 98-PA-3, at 5 (Nov. 18, 1998).

A. Emotional Distress Damages

10. "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." *Montelongo v. Azapira,* CCHR No. 09-H-23, at 2 (Feb. 15, 2012). "Emotional distress damages are awarded in order to fully compensate a complainant for the emotional distress, humiliation, shame, embarrassment and mental anguish resulting from a respondent's unlawful conduct." *Winter v. Chicago Park District and Lincoln Park Conservatory,* CCHR No. 97-PA-55, at 16 (Oct. 18, 2000). The Commission does not require "precise proof" of damages for emotional distress, *Nash & Demby v. Sallas & Sallas Realty,* CCHR No. 92-H-128, at 20 (May 17, 1995), and "[n]either expert testimony nor medical evidence is necessary" to establish such damages. *Ordon v. Al-Rahman Animal Hospital,* CCHR No. 92-E-139, at 14-15 (July 23, 1993); *Hanson v. Association of Volleyball Professionals,* CCHR No. 97-PA-62, at 11 (Oct. 21, 1998). A complainant's testimony -- standing alone -- may be sufficient to establish that he or she suffered compensable emotional distress. *Hanson v. Association of Volleyball Professionals, supra,* at 11; *Ordon v. Al-Rahman Animal Hospital, supra,* at 14-15. The Commission also acknowledges that "[p]utting a dollar value on emotional distress and suffering is unavoidably subjective and difficult." *Ordon v. Al-Rahman Animal Hospital, supra,* at 16; *Hanson v. Association of Volleyball Professionals, supra,* at 11.

11. Emotional distress damages are generally recoverable in a housing discrimination case, and "awards for emotional distress damages upon a finding of housing discrimination have ranged from as little as $400 to as much as $40,000 and various amounts in between." *Hutchinson v. Iftekaruddin, supra*, at 9 (citing cases). "The Commission considers the following factors to determine the amount of emotional distress damages to award to a prevailing complainant: the length of time the complainant experienced emotional distress; the severity of the distress; the vulnerability of the complainant; and the duration and egregiousness of the underlying discrimination." *Hutchinson v. Iftekaruddin, supra*, at 9. The Commission also considers the totality of the circumstances to ensure that damages are apportioned when separate wrongs have combined to cause a complainant's injury. *See, e.g., Jones v. Shaheed, supra,* at 26; *Hutchinson v. Iftekaruddin, supra*, at 9. This is necessary because a "[r]espondent cannot be held responsible for injuries not caused by his own (or his agent's) misconduct." *Hoskins v. Campbell,* CCHR No. 01-H-101, at 7 (April 16, 2003).

12. Although Complainant seeks an emotional distress award of $10,000, the facts of this case call for a considerably lower award for the following reasons:

(a) Complainant's testimony concerning the emotional distress that she experienced on account of the discriminatory behavior -- namely, that she felt "disgusted" and "hurt" -- was bare-bones and brief (*compare Shipp v. Wagner and Wagner, supra,* at 9) though the Commission does credit Complainant's testimony that being rejected by Ms. Harris increased the pressure she felt as she tried to finding housing before her Voucher expired. Complainant did not seek any medical treatment for her distress. Nor did she offer any testimony that would permit the Commission to infer that her distress lasted for any appreciable period of time or caused any physical impact on her;

(b) The discriminatory conduct occurred during a single day (April 22) when she read an e-mail and had a telephone call with Ms. Harris and the conduct itself was not particularly egregious. Ms. Harris did not exhibit any malice towards Complainant or use any epithets during the April 22 call. To the contrary, Complainant admits that Ms. Harris showed no anger and did not use any hostile or inappropriate language during their call;

(c) Respondent's discriminatory conduct was not the cause of Complainant's inability to rent the Winston house. Even if Respondent had not discriminated against her, Complainant would have been unable to rent the Winston house for two independent reasons: first, she lacked sufficient income to rent the house; and second, Mr. Nettles had a pre-existing plan to rent the house to his niece which he executed once she passed her credit check; and

(d) Complainant testified that she had unsuccessfully applied to rent other housing and was "finding a lot of discrimination during this time period based on [her] [V]oucher." Tr. 57-58, 71. Indeed, Complainant had filed more than one source of income case alleging that she was denied housing based on the fact that she relied on Section 8. Tr. 70-71. Complainant prevailed in at least one of these cases and she was awarded $3,000 in emotional distress damages based on a CFHO violation that occurred on March 22, 2012. *See Shipp v. Wagner and Wagner, supra,* at 6-9, 11. Given Complainant's belief that she was suffering multiple instances of discrimination based on her source of income during the pertinent time, the Commission finds that it cannot attribute all of Complainant's emotional distress to the actions of Respondent in this case. *See, e.g., Jones v. Shaheed, supra,* at 26 (apportioning emotional distress damages from housing discrimination where complainant suffered three instances of discrimination during the pertinent time); *Hutchinson v. Iftekaruddin, supra*, at 9 (where complainant's emotional

distress has more than one cause, "she may receive in this case only those damages that are attributable to this respondent's discriminatory refusal to rent").

13. The Commission has awarded emotional distress damages in the range of $1,500 to $3,000 in several housing discrimination cases that involved a single, non-egregious refusal to rent to a Voucher holder who suffered emotional distress but did not document medical treatment or provide other evidence to show how the discrimination exacerbated any of their on-going medical conditions. *See Shipp v. Wagner and Wagner, supra,* at 9 (awarding $3,000 for emotional distress); *Hutchinson v. Iftekaruddin, supra*, at 9-10 (awarding $2,500); *Diaz v. Wykurz, supra,* at 9 (awarding $2,500); *Sullivan Lackey v. Godinez, supra,* at 14 (awarding $2,500); *Rankin v. 6954 N. Sheridan Inc., et al., supra,* at 18-19 (awarding $1,500). In each of these cases, the complainants actually lost the opportunity to obtain housing on account of the discrimination. This fact made a difference in terms of damages that they received for their emotional distress. In *Shipp v. Wagner and Wagner,* for example, complainant Shipp's testimony about "her efforts to find a better neighborhood for her children, with less crime and good schools" and about how "her inability to rent [r]espondents' home brought her to brink of the expiration of her voucher...[,] required her to obtain two extensions" and made her cry proved evidence of emotional distress that entitled her to damages beyond the "nominal damages" that the Commission might otherwise have awarded. *Shipp v. Wagner and Wagner, supra,* at 9.

14. As explained above, Respondent's discrimination did not actually deprive Complainant of the opportunity to rent the Winston house. Thus, Complainant is not entitled to recover for any emotional distress that would have flowed from her inability to move her family out of an undesirable neighborhood into a better neighborhood and more suitable housing. Instead, Complainant is limited to recovering "emotional distress damages for a single incident of short duration based on the inherent distress which is inferred to flow from experiencing discrimination." *Cotten v. Eat-A-Pita,* CCHR No. 07-P-108, at 8 (May 20, 2009).

15. In cases where, as here, complainants have provided limited evidence of emotional distress in cases involving discrimination in housing, public accommodations and employment, the Commission has typically awarded less than $1,000 for emotional distress damages. *See Cotten v. Eat-A-Pita, supra,* at 10-11 (citing seven cases). In consideration of the limited evidence offered by Complainant to establish her emotional distress, the fact that all of the emotional distress she was experiencing during this time period was not attributable to Respondent, and prior Commission decisions, the Commission finds that an award of emotional distress in the amount of $750 is appropriate. *See, e.g., Hoskins v. Campbell, supra*, at 8 (awarding $750 in emotional distress damages to a Voucher holder who had experienced discrimination from other potential landlords where respondent's "violation was a single brief action without face-to-face contact, involved a refusal to rent, was not particularly egregious and had no clearly-linked medical consequences" but caused complainant to suffer "frustration and stress"); *Huff v. American Management and Rental Service,* CCHR No. 97-H-187, at 7-8 (Jan. 20, 1999) (awarding $750 in emotional distress damages to a Voucher holder who offered brief testimony about her emotional distress and not all of her distress was attributable to the respondent).

B. Punitive Damages

16. Complainant seeks an award of punitive damages against Respondent Keller Williams. "The Commission has repeatedly held that punitive damages may be awarded when a respondent's actions were willful, wanton or taken in reckless disregard of the complainant's

rights. The Commission also looks to a respondent's history of discrimination, any attempts to cover up and respondent's attitude towards the judicial process (including whether the respondent disregarded the Commission's processes). Further, the Commission has regularly held that the purpose of punitive damages is to punish the violator and to deter him or her from taking similar, discriminatory actions in the future." *Warren, et al. v. Lofton & Lofton Management d/b/a McDonalds, et al., supra,* at 28.

17. The Commission "has repeatedly expressed concern that in housing discrimination cases in particular, potential wrongdoers may not be sufficiently deterred by awards of actual damages, which are often quite small, and has recognized that substantial punitive damages may be necessary, when appropriate, to provide a meaningful deterrent." *Hall v. Woodgett, supra,* at 8 (internal quotation marks omitted).

18. 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, at 17 (July 18, 1995) (internal quotation marks omitted). However, "neither Complainant nor the Commission have the burden of proving Respondent's net worth for purposes of...deciding on a specific punitive damages award." *Soria v. Kern, supra,* at 17 (internal quotation marks omitted). Furthermore, "[i]f 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 v. Kern, supra,* at 17.

19. The Commission finds that an award of punitive damages is warranted against Respondent Keller Williams. Respondent Keller Williams' licensed real estate broker (Ms. Harris) informed Complainant in writing and verbally that the property owner whom she was working for (Mr. Nettles) would not accept Section 8 for the rental of the Winston house. Even if a property owner has expressly instructed a licensed real estate broker to discriminate against prospective tenants based on their source of income (and the evidence shows that this is not the case here, *see* Finding of Fact #21), it would be inexcusable for the broker to follow such an illegal instruction in reckless disregard for a prospective tenant's rights. "The Commission has repeatedly awarded punitive damages in housing discrimination cases where, as here, respondents have made it clear that they were not going to rent to complainants for a reason that is unlawful under the CFHO." *Hall v. Woodgett, supra,* at 9. The Commission finds that an award of punitive damages is warranted to punish Respondent Keller Williams for Ms. Harris' action in rejecting Complainant due to her source of income, and to deter such discriminatory action in the future.

20. The Commission has typically awarded punitive damages in the range of $1,500 to $5,000 in source of income cases involving the sort of direct evidence of discrimination that the record reveals in this case. *See Hall v. Woodgett, supra,* at 10 (citing cases); *Shipp v. Wagner and Wagner, supra,* at 9. The Commission finds that an award on the high end of this scale is warranted given that: (a) Respondent Keller Williams is a real estate brokerage; (b) Ms. Harris knew that discrimination against a potential tenant based on their source of income was illegal (Tr. 213); (c) Respondent Keller Williams entirely disregarded the Commission's proceedings after its counsel appeared at the pre-hearing conference; (d) Ezekiel Morris (Respondent Keller Williams' managing broker) failed to appear at the Administrative Hearing to testify despite the fact that he received a subpoena that was successfully served on him; and (e) the modest award of actual damages in this case might in itself serve as an insufficient deterrent against future discriminatory conduct. Consequently, the Commission finds that an award of $5,000 will be sufficient to accomplish the purposes of punitive damages under the facts of this case. *See Hall v. Woodgett, supra,* at 10 (awarding $5,000 in punitive damages).

C. Interest on Damages

21. Section 2-120-510(1) of the Chicago Municipal Code allows an additional award of interest on damages ordered to remedy violations of the Chicago Fair Housing Ordinance. Pursuant to Commission Rule 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate adjusted quarterly from the date of the violation, and compounded annually. Accordingly, the Commission awards pre- and post-judgment interest on all damages awarded in the case starting from April 22, 2012, the date Complainant read Ms. Harris' April 19, 2012 e-mail and had her telephone conversation with Ms. Harris, as set forth in Rule 240.700. *See, e.g., Steward v. Campbell et al.*, CCHR No. 96-E-170, at 16 (June 18, 1997).

D. Fine

22. Section 5-8-130 of the CFHO provides that any covered party found in violation shall be punished by a fine in any amount not exceeding $1,000. "The Commission has repeatedly assessed fines of $500 against respondents who have discriminated against prospective tenants on the basis of their source of income." *Hall v. Woodgett, supra,* at 10 (citing cases). The Commission finds that the maximum fine of $1,000 shall be assessed against Respondent Keller Williams based on its willful disregard of Complainant's rights and the fact that it failed to fully participate in the Commission's proceedings. *See, e.g., Marshall v. Feed Restaurant,* CCHR No. 15-P-26, at 18; *Hall v. Woodgett, supra,* at 10; *Rankin v. 6954 N. Sheridan Inc., et al., supra,* at 21 (citing cases). Finally, as stated above, Ezekiel Morris (Respondent Keller Williams' managing broker) failed to comply with a properly issued subpoena by appearing to testify at the Administrative Hearing on October 3, 2017. The subpoena itself expressly referenced Commission Rule 220.240, which concerns the consequences for failing to comply with a subpoena. In particular, Rule 220.240(a) provides that the "[f]ailure to comply with a properly issued subpoena shall constitute a separate violation of the Human Rights Ordinance or the Fair Housing Ordinance" and that "[e]very day that a person fails to comply with a subpoena shall constitute a separate and distinct violation for which a fine may be imposed not exceeding $1,000." Commission Rule 220.240(a). Consequently, the Commission finds that a fine of $500 against Mr. Morris is appropriate based upon his failure to comply with the properly issued subpoena.

E. Attorney's Fees and Costs

23. Section 1-120-510(l) of the Commission's Enabling Ordinance provides that the Commission has the power to order Respondent Keller Williams to pay all or part of the Complainant's costs, including reasonable attorney's fees and costs. The Commission has routinely found that prevailing complainants are entitled to an award of their reasonable attorney's fees and costs. *See, e.g., Shipp v. Wagner and Wagner, supra,* at 10 (citing cases). Therefore, the Commission awards Complainant her reasonable attorney's fees and costs to be determined in accordance with Commission Rule 240.630.

V. CONCLUSION

For all of the above reasons, the Commission finds in favor of Complainant Kimberly Shipp and against Respondent Chicago Realty Consulting Group LLC on Complainant's claim of source of income discrimination. The Commission hereby orders the following relief:

1. Payment to the City of Chicago of fines of $1,000 by Respondent Keller Williams, and $500 by Mr. Ezekiel Morris to the City of Chicago;

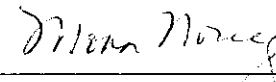
2. Payment to Complainant of emotional distress damage in the amount of $750;

3. Payment to Complainant of punitive damages in the amount of $5,000;

4. Payment of interest on the foregoing damage awards from the date of violation on April 22, 2012, as set forth in Rule 240.700; and

5. Complainant is awarded her reasonable attorney's fees and costs in an amount to be determined in accordance with Commission Rule 240.630.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: 

Mona Noriega, Chair and Commissioner
Entered: January 10, 2019