



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:

Sherbie Draft  
**Complainant,**  
v.

Jerald and Sheila Jercich  
**Respondents.**

**Case No.:** 05-H-20

**Date Mailed:** August 22, 2008

TO:

Sherbie Draft  
1133 West 101st Street  
Chicago, IL 60643

Jerald & Sheila Jercich  
9842 South Damen, #1  
Chicago, IL 60643

**FINAL ORDER**

YOU ARE HEREBY NOTIFIED that, on July 16, 2008, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, Respondents are hereby ORDERED to pay damages to Complainant in the amount of \$5,000 plus interest from April 20, 2005, and to pay the City of Chicago a fine of \$500.<sup>1</sup>

Pursuant to Commission Regulations 100(15) and 250.150, to seek review of this order, parties may file 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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<sup>1</sup>**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

**Payments of damages and interest** are to be made directly to the Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

**Interest on damages** is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.



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**Case No.:** 05-H-20

**Date of Ruling:** July 16, 2008

**FINAL RULING ON LIABILITY AND RELIEF**

**I. PROCEDURAL HISTORY**

Complainant Sherbie Draft, a Section 8 Housing Choice Voucher recipient, filed this Complaint alleging housing discrimination on the basis of source of income. Upon receipt of the Complaint, the Commission sent a Respondent Notification to Respondents which ordered them to file a Verified Response to the Complaint, and also notified Respondents of their continuing obligation to provide the Commission updated contact information should that information change during the pendency of the case. Respondents responded to the Notification by filing a Verified Response on June 9, 2005, in which they denied the allegations of discrimination.

On September 24, 2007, the Commission mailed to the parties the Order Finding Substantial Evidence and Setting Conciliation Conference. On October 25, 2007, the mailing sent to Respondents was returned by the United States Postal Service marked undeliverable, with a notice that the forwarding address had expired. At no time did Respondents notify the Commission that their contact information had changed. The Commission staff then placed two telephone calls to the number earlier confirmed by Respondents to be their contact number and left messages that important mail was returned. Respondents were asked to call the Commission but failed to do so.

On November 6, 2007, the Commission mailed a Notice of Potential Default to Respondents by certified and regular mail. The basis for the default was Respondents' failure to keep the Commission informed of current contact information. Both mailings were returned to the Commission by the United States Postal Service as undeliverable and unable to be forwarded.

On December 14, 2007, the Commission mailed an Order of Default and an Order Setting Administrative Hearing and Pre-Hearing Conference to Respondents. Again the mailings were returned to the Commission by the United States Postal Service as undeliverable and unable to be forwarded.

Because Respondents failed to respond to the Notice of Potential Default, an Order of Default was entered against them. As such, Respondents were deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations of that Complaint, including defenses concerning the Complaint's sufficiency. Therefore, the Administrative Hearing ordered in this case was held only for the purpose of allowing the Commission to determine whether Complainant established a *prima facie* case of housing discrimination based on her source of income and, if the Complainant did establish a *prima facie* case, to determine the appropriate relief, including injunctive relief, damages, fines and any attorneys fees and/or costs. *Horn v. A-Aero 24 Hour Locksmith*, CCHR No. 99-PA-32

(July 20, 2000) and CCHR Reg. 215.240 (where a respondent is defaulted, the Commission takes factual allegations of the complaint as true; the complainant must then establish a *prima facie* case in order to be awarded relief). See also *Barnett v. T.E.M.R. Realty & Jackson*, CCHR No. 97-H-31 (Dec. 6, 2000), and *Godard v. McConnell*, CCHR No. 97-H-64 (Jan. 17, 2001).

On March 12, 2008, a Pre-Hearing Conference was held. Complainant appeared but neither Respondent appeared, nor did Respondents contact the Commission to provide good cause for their failure to attend. On March 26, 2008, the Administrative Hearing was held. Again Complainant appeared but neither Respondent appeared, nor did Respondents contact the Commission to provide good cause for their failure to attend.

On April 14, 2008, this Hearing Officer issued the First Recommended Decision Regarding Liability and Damages. Copies were sent to all parties. Again the mailings directed to Respondents were returned by the United States Postal Service as undeliverable and unable to be forwarded. The parties were required to submit any objections to the First Recommended Decision in writing to the Hearing Officer and the Commission by May 14, 2008. No objections were received.

## II FINDINGS OF FACT<sup>1</sup>

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

1. Complainant is an adult female with two children, a boy age 13 and a girl age 5. (C, Tr. 5)
1. Complainant has a Section 8 voucher to assist her in paying rent for herself and her children. (C, Tr. 4)
2. On Tuesday, April 19, 2005, Complainant saw an advertisement in a local newspaper for a three-bedroom apartment at 9842 S. Damen, Chicago, Illinois. (C, Tr. 3) Complainant called the number listed in the advertisement and spoke to Respondent Sheila Jercich on the telephone. (C, Tr. 3) Jerald and Sheila Jercich are owners of 9842 S. Damen, Chicago, Illinois. (C, Tr. 2) Complainant arranged to see the apartment the following day. (C, Tr. 3)
3. Complainant's Section 8 voucher had been upgraded from a two-bedroom apartment to a three-bedroom and she was specifically looking for a three-bedroom apartment. (Tr. 5)
4. Complainant went to see the apartment at 9842 S. Damen on April 20, 2005. (C, Tr. 3) Respondent Sheila Jercich walked her through the apartment. (C, Tr. 3) The apartment had a foyer, living room, separate dining room, kitchen, and three bedrooms. (Tr. 9) There was a balcony. (C) The backyard was fenced. (Tr. 9)
5. After viewing the apartment, Complainant and Respondent Sheila Jercich discussed the security deposit, application and application fee. (C)

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<sup>1</sup>Findings of Fact that originate from the allegations of the Complaint admitted by Respondents due to their default are labeled "C" to denote Complaint. Findings of Fact that originate from the testimony at the Hearing are labeled "Tr. [page number]" to denote the transcript of the hearing held in this matter.

6. At this point, Complainant asked Respondent Sheila Jercich if she would accept a Section 8 voucher for payment of rent. (C, Tr. 3) Respondent Sheila Jercich said she and her husband were not accepting Section 8 vouchers because using the vouchers was “too much of a hassle” and “not worth their time.” (C, Tr. 3)
7. Respondent Jercich said she was surprised that Complainant had a Section 8 voucher because Complainant was employed as a pharmacy technician. (Tr. 3) Complainant had informed Respondent Jercich about her employment because the apartment was so close to her place of employment. (Tr. 4)
8. This conversation was the last conversation that Complainant had with Respondent Sheila Jercich. (Tr. 5)
9. Complainant wanted a three-bedroom apartment so that she and her daughter would no longer have to sleep together. (Tr. 9) She has continued to look for a three-bedroom apartment since April 20, 2005. (Tr. 8) She has put in applications but has not been successful, either because the owners would not accept Section 8 or because other things do not go right with the process. (Tr. 8) She and her two children are still currently living in a two-bedroom apartment. (Tr. 5)
10. Complainant liked the three-bedroom apartment offered for lease by Respondents. It was spacious. (Tr. 5, 9) It had a decent-sized backyard that was fenced in. (Tr. 10) Everybody in her family would have had “their own little space.” (Tr. 10) It was five minutes closer to her job than her current location. (Tr. 5)
11. Complainant also liked the location of the apartment. She believed it was in a better neighborhood with better schools and was in a neighborhood she had been seeking to live in. (Tr. 5) When she was not able to move into that neighborhood, she took her son out of his current neighborhood school and put him in a charter school five miles away from her current location. (Tr. 6)
12. The rent for Respondents’ three-bedroom apartment was about \$1,300. Complainant is currently renting a two-bedroom apartment with a monthly rent of \$850. (Tr. 7) Complainant pays a portion of the monthly rent; Section 8 funds pay the remainder. (Tr. 7)
13. Finding a three-bedroom apartment has been physically and emotionally draining on Complainant. (Tr. 9) She looks for a three-bedroom apartment during the day when her children are in school; she works in the evenings. (Tr. 9) She is very busy working, taking care of her children, and attending sports events and other activities with her children. (Tr. 9) She is “just tired.” (Tr. 10)
14. Complainant finds it very aggravating that Respondents have not appeared for any of the scheduled matters at the Commission. She has attended everything and it aggravates her when she attends and Respondents are no-shows. (Tr. 10)

### **III DISCUSSION**

Section 5-08-030(c) of the Chicago Fair Housing Ordinance provides in relevant part that “it shall be an unfair housing practice and unlawful for any owner . . . having the right to sell, rent, lease or sublease any housing accommodation within the City of Chicago to refuse to sell, lease or rent any

real estate for residential purposes within the City of Chicago because of the . . . source of income of the proposed buyer or renter.”

Complainant has the burden of proving her case by a preponderance of the evidence using either direct or indirect evidence. *Chimpoulis and Richardson v. J. & O. Corp., et al.*, CCHR No. 97-E-123/127 (Sept. 20, 2000); *McGavock v. Burchett*, CCHR No. 95-H-22 (July 18, 1996). Under the direct evidence method in a fair housing case, a complainant may meet her burden of proof by a preponderance of the evidence by establishing with credible evidence that the respondent directly stated or otherwise indicated that she would not offer housing to a person due to being a member of a protected class, such as someone with a Section 8 voucher. See *Torres v. Gonzales*, CCHR No. 01-H-46 (Jan. 18, 2006); *McGavock, supra*.

The legal conclusions reasonably drawn from the factual allegations of Complainant’s complaint and her testimony were sufficient to establish a *prima facie* case of housing discrimination based on source of income. See *Torres, supra*. If the facts alleged in the complaint are sufficient to show a *prima facie* case, no further proof of liability is necessary. The Commission may award relief based on those factual allegations, which Respondents are deemed to have admitted by virtue of the Order of Default for failure to comply with the procedures of the Commission. *Godard v. McConnell*, CCHR No. 97-H-64 (Jan. 17, 2001).

A victim of housing discrimination may be entitled to the following: an order to cease the illegal conduct complained of; actual damages as reasonably determined by the Commission for injury or loss; and any action as may be necessary to make him or her whole including, but not limited to, awards of interest on the complainant’s actual damages from the date of the civil rights violation. Chicago Municipal Code §2-120-510(1).

In addition to the relief listed above, victims of housing discrimination may be entitled to damages for emotional distress. The Commission has repeatedly held that damages for emotional harm can be awarded as part of an award of actual damages. See, e.g., *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004) and *Nash and Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). The amount of the award for emotional distress depends on several factors, including but not limited to the vulnerability of the complainant, the egregiousness of the discrimination, the severity of the mental distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment, and the duration of the discriminatory conduct and the effect of the distress. *Steward v. Campbell’s Cleaning et al.*, CCHR No. 96-E-170 (June 18, 1997) at 13.

In *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000), the Commission noted that emotional distress awards of less than \$5,000 were appropriate when: (a) There was negligible or merely conclusory testimony concerning mental distress; (b) the discriminatory conduct consisted of discrete acts which took place over a brief period of time; (c) there were no prolonged effects of the discriminatory conduct; (d) there was no medical treatment and/or a paucity of physical symptoms; (e) the discriminatory conduct was not so egregious that one would expect a reasonable person to experience severe emotional distress; (f) the complainant was not unusually fragile due to past experiences or pre-existing condition; or, (g) the conduct involved refusal to rent, rather than harassment or an attempt to evict or refusal to sell. *Griffiths*, at 34, citing *Sheppard v. Jacobs*, CCHR No. 94-H-162 at 21-22 (July 16, 1997), quoting *Nash and Demby* at 21-22.

Punitive damages may also be awarded against a respondent to punish the wrongdoer and deter that party and others from committing similar acts in the future. *Nash and Demby, supra*. The

Commission will award such damages when the discriminatory conduct is blatant and motivated by ill will. See, e.g., *Castro v. Georgeopoulos*, CCHR No. 91-FHO-91 (Dec. 8, 1991)) (where respondent engaged in repeated acts of discrimination, including physical threats and intimidation); *Collins & Ali v. Magdenovski*, CCHR No. 91-FHO-70-5655 (Sept. 16, 1992) (where the respondent was shown to have a history of repeatedly discriminating against protected classes). Where the respondent's conduct was found not to be egregious, the single fact that the respondent defaulted is not enough to warrant the imposition of punitive damages. *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 21, 2001).

#### IV CONCLUSIONS OF LAW AND REMEDIES

Complainant has the burden of both establishing the elements of her case of discrimination and of supporting her request for relief. In this case, the allegations of Complainant's Complaint, as further buttressed by her testimony, are sufficient to support a finding of a *prima facie* case. Complainant established that she was looking for an apartment, that Respondents' apartment was available, and that Respondent Sheila Jercich showed her the apartment and told her that the apartment was available. The statements of Respondent Sheila Jercich that they would not rent to Section 8 recipients must be taken as true because Respondents defaulted. Therefore, the only issue to resolve is the issue of relief.

It is Complainant's burden to support her request for damages. The Hearing Officer determines the admissibility of any testimonial evidence and is not bound by the strict rules of evidence applicable in courts of law or equity. CCHR Reg. 240.314. The Hearing Officer and the Commission may determine the weight and probity of evidence which may not be admissible under those rules in courts of law or equity. *McGee v. Simms*, CCHR No. 94-H-131 (May 23, 1995).

The Commission has broad powers to order relief to compensate Complainant and to make her whole. Chgo. Muni. Code §2-120-510(1). To accomplish that goal and to punish Respondents' discriminatory conduct in this case, the Commission orders the following remedies:

Complainant has asked for damages for the discriminatory act itself and the emotional distress it caused her. She testified credibly that since Respondents refused to rent to her due to her source of income, she has sought to find a three-bedroom apartment for years without success. Despite her efforts, she is still living in a two-bedroom apartment and sleeping in the same room as her five year-old daughter. She was not able to move to what she perceives to be a more desirable neighborhood with better schools; as a result, she felt forced to enroll her son not in the neighborhood school, but in a charter school five miles away. She has expended considerable energy both looking for a three-bedroom apartment and in pursuing this litigation; none of these activities would have been required had Respondents rented to Complainant.

Complainant testified credibly that she is tired, emotionally and physically. There is no testimony or evidence that Complainant had resulting medical or emotional conditions for which she sought treatment. However, given that Complainant credibly testified that Respondent Sheila Jercich told her she was surprised that Complainant had a Section 8 voucher because Complainant was employed as a pharmacy technician, and that dealing with a Section 8 voucher recipient was not worth their time, the Commission finds that an award of \$5,000 is appropriate in order to compensate Complainant for the discrimination and the emotional distress it caused her. The Commission believes it is appropriate to increase this award from the \$3,000 recommended by the Hearing Officer in view of the persuasive description by Complainant of the emotional impact not only of the direct discriminatory statements of Respondent Sheila Jercich but also of the impact on Complainant's ability to achieve her hopes that her Section 8 voucher would enable her to live in a better neighborhood closer

to her employment and send her children to better schools in that neighborhood--all goals the Section 8 voucher program was designed to achieve. This higher award is consistent with that recently ordered in another case of refusal to rent to a Section 8 voucher recipient who was a single mother attempting to provide a better life for her children through better housing arrangements, and whose personal challenges and stress levels were exacerbated as a result of the discrimination. *Torres v. Gonzales*, CCHR No. 01-H-47 (Jan. 18, 2006).

Complainant did not testify about any out-of-pocket damages or any increased cost of rent caused by the discrimination. Therefore, no such damages are awarded. Also, no punitive damages will be recommended, as there is no evidence that Respondents engaged in similar conduct toward anyone else or that Respondents demonstrated ill will toward Complainant.

Because Respondents failed to respond to any of the Commission's requests or appear at any of the Commission's scheduled hearings, they will be assessed a fine payable to the Commission in the amount of \$500 for violating the Chicago Human Rights Ordinance and for failing to respond to Commission orders. See *Walters and Leadership Council for Metropolitan Open Communities v. Koumbis*, CCHR No. 93-H-25 (May 18, 1994), *Reed v. Strange*, CCHR No. 92-H-139 (Oct. 19, 1994); *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002); *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004); *Edwards v. Larkin*, CCHR No. 01-H-35 (Feb. 16, 2005); *Torres v. Gonzales*, CCHR No. 01-H-46 (Jan. 18, 2006); *Marshall v. Borouch*, CCHR No. 05-H-39 (Aug. 16, 2006); *Maat v. Villareal Agencia de Viajes*, CCHR No. 05-P-28 (Aug. 16, 2006); and *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), all cases where \$500 fines were based in part on the respondents' disregard of Commission orders and procedure.

In order to make complainants whole, §2-120-500(l) of the Chicago Municipal Code authorizes awards of pre- and post-judgment interest on Complainant's actual damages including damages for emotional distress. Such interest is hereby awarded. The interest shall be calculated from the date of the discriminatory act, April 20, 2005, until all damages are paid. As set forth in CCHR Reg. 240.700, the interest is awarded at the bank prime loan rate, adjusted quarterly and compounded annually.

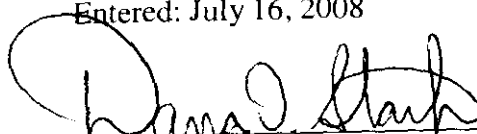
## V CONCLUSION

For all of the above reasons, the Commission finds in favor of Complainant Sherbie Draft and against Respondents Jerald and Sheila Jercich on Complainant's source of income discrimination claim. The Commission awards the following relief:

- A fine of \$500.
- Emotional distress damages of \$5,000.
- Interest on the damages from April 20, 2005.

Responsibility for payment for the foregoing relief shall be joint and several.

CHICAGO COMMISSION ON HUMAN RELATIONS  
Entered: July 16, 2008



Dana V. Starks, Chair/Commissioner