

Commissioner Douglas T. Schwartz amended the complaint to include Nadim Khoury as a Respondent because he is a co-owner of the subject property. (Joint Exhibit 2).

Attempts to conciliate this matter were unsuccessful. On July 23, 2001, Commissioner Dorca I. Gomez certified this case for a public hearing.

I held a public hearing on July 1 and August 30, 2002. Complainant and Respondents Beth Khoury, David Khoury and Nadim Khoury, by their attorneys, filed proposed findings of fact, conclusions of law and remedies with the Commission on November 15, 2002.

I have carefully reviewed and considered the entire record before me, including the testimony, all exhibits, proposed findings of fact, conclusions of law, and supporting argument. To the extent the proposed findings and conclusions of law are not in accord with my findings and conclusions, they are rejected. I have omitted certain proposed findings and conclusions of law as not relevant or unnecessary to a proper determination of the material issues presented. I have modified other findings and conclusions of law to render them acceptable. Based on the credible evidence in the public hearing record and reasonable inferences therefrom, I make the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. Complainant, Margorie Rachel Goldman (Yapanoglu), currently resides at 248 Elliot Street, Newton Upper Falls,

Massachusetts. Complainant has lived at 248 Elliott Street for the past three years.

2. David C. Khoury lives at 75 Woodland Road, Jamaica Plain, Massachusetts. Mr. Khoury is a U.S. citizen who was born and raised in the West Bank, Palestine. Respondent David Khoury operates a microbrewery and owns apartments in Palestine. He also teaches in the business and economics departments at a university near Jerusalem. During the last three years, Mr. Khoury has lived approximately six months of each year in Jerusalem.

3. Since 1986, Respondent David Khoury has owned and operated a liquor store in Brookline, Massachusetts, known as "Foley's Liquors." Mr. Khoury owns two rental properties in Brookline that have six units, including the apartment at issue in the instant complaint. He also rents his brother and sister's homes in Massachusetts when they are out of the country for an extended period.

4. At all times relevant to this complaint, Respondents David Khoury and Nadim Khoury were the owners of record for a three-family rental property located at 77 Walnut Street, Brookline, Massachusetts. (Joint Stipulation No. 1).

5. Nadim Khoury is Respondents Beth Khoury and David Khoury's brother. At all times relevant to this complaint, Respondent Nadim Khoury has lived in the West Bank, Palestine.¹

6. Respondent Beth Khoury is David Khoury and Nadim Khoury's sister. Ms. Khoury is an American citizen who has lived in

¹Nadim Khoury did not appear or testify at the public hearing.

Taybeh Ramallah, West Bank, Palestine, since 1990. She is an independent film director and producer. When David Khoury travels to Palestine, Ms. Khoury frequently comes to the United States and lives in his home.

7. Rawan Barakat is the niece of Respondents David Khoury, Beth Khoury and Nadim Khoury. Ms. Barakat was born and raised in Palestine. She is an American citizen who has lived in the United States for almost nine years. Ms. Barakat has lived in West Roxbury, Massachusetts for the approximately three and one-half years. During the prior five years, Ms. Barakat lived with Respondent David Khoury and his family at 75 Woodland Road.

8. When Respondent David Khoury is in Palestine, Ms. Khoury and Ms. Barakat occasionally "help out" with the operation of Foley's Liquor and assist with management of Mr. Khoury's rental properties. While Respondent David Khoury makes the final decision regarding apartment rentals, Ms. Khoury and Ms. Barakat show apartments to prospective tenants, handle inquiries regarding the apartments, commence the rental application process and conduct an initial screening of applicants on his behalf. Ms. Khoury and Ms. Barakat both testified that they had not shown any of Mr. Khoury's rental properties to prospective tenants prior to April 19, 1998.

9. On April 19, 1998, Ms. Khoury acted as Respondents David Khoury and Nadim Khoury's agent for the purpose of showing the apartment at 77 Walnut Street to prospective tenants. (Joint Stipulation No. 2).

Complainant's Section 8 Status

10. Prior to September 1995, Complainant lived in New York City with her two children (Nadiya and Julie) and her first husband who subjected her to mental and physical abuse. On September 9, 1995, Complainant "fled" from her abusive husband and moved with her two daughters to a battered woman's residential shelter in Framingham, Massachusetts. During the next eight and one-half months, Complainant lived with her children in two battered women's shelters in Framingham. While living in the shelters, Complainant took childcare courses to become a licensed family day care provider.

11. During this period, Complainant repeatedly sought to obtain a Section 8 housing assistance voucher so that she could move her family out of the shelters. In addition, Complainant searched for two-bedroom apartments by looking in local newspapers and asking various individuals. Complainant viewed apartments in Framingham and Natick, Massachusetts. She did not like the apartments she found in these areas and she wanted her children to attend schools in Brookline where she grew up².

12. On February 14, 1996, Complainant obtained a Section 8 housing voucher from the Brookline Housing Authority (BHA). Under the Section 8 program, the BHA agreed to make monthly housing (rental) assistance payments on Complainant's behalf directly to a qualified owner of rental property. Complainant's share of monthly rent (up to 35%) is calculated based on her income, with the remainder paid by the BHA.

² Complainant testified that she graduated from Brookline High School in 1972.

Complainant believed she could continue her Section 8 voucher or subsidy provided her income did not exceed certain BHA guidelines.

13. Complainant testified credibly that she maintained her Section 8 eligibility throughout the period relevant to the instant discrimination complaint. Complainant produced documentation showing her continuing eligibility for the BHA Section 8 housing voucher program as of October 1, 1999. (Complainant's Exhibit 2).

14. After conducting a search for six weeks, Complainant found a second floor apartment at 771 Boylston Street, Brookline, Massachusetts. The rent was \$1100 @ month. This was the first apartment Complainant found in Brookline for which she qualified as a Section 8 recipient. The apartment was located across the street from where Complainant grew up.

15. Complainant lived at 771 Boylston Street for approximately two and one-half years. During this period, Complainant's children attended the Heath Grade School, a Brookline public school serving the district. Complainant also operated a licensed family day care business in her apartment.

16. In April 1998, Complainant learned that the owners of 771 Boylston Street planned to convert her apartment into a condominium. Complainant immediately began to search for a new apartment by looking in newspapers, speaking with neighbors and mail carriers, looking at bulletin boards, answering advertisements and searching for empty apartments. Complainant did not use real estate brokers because she could not afford their fees. Complainant confined her apartment search

to Brookline because she wanted "stability for [her] girls since they had gone through so much" when they were homeless and she hoped to keep them in the Heath School district.

17. As Complainant began her search for an apartment, she was concerned because she believed the BHA could revoke her Section 8 housing voucher if she did not use it within 90 days of re-issuance and she "would have been left with nothing." Complainant feared that she "would have ended up back in the shelter" if she did not use the housing voucher within the BHA time limits and she "wasn't going to let it happen."

Rental of 77 Walnut Street

18. Sometime prior to April 1998, Ms. Khoury learned that a tenant at 77 Walnut Street planned to move. She called Respondent David Khoury who instructed her to place signs "around the neighborhood," contact real estate brokers, use word of mouth and place a listing in the Boston Sunday Globe to advertise the apartment.

19. Ms. Khoury testified that she placed an advertisement in the Boston Sunday Globe on April 12 and 19, 1998, and included a description of the apartment provided by Respondent David Khoury. Prior to rental of the subject apartment, Ms. Khoury had not placed a rental advertisement in the Boston Globe.

20. On April 12, 1998, the Boston Sunday Globe rental section for Brookline did not include a listing for 77 Walnut Street. (Complainant's Exhibit 4).

21. On April 19, 1998, an advertisement for the subject apartment was listed in the Boston Sunday Globe. The listing described a two-bedroom apartment with a living room, kitchen and bath but did not specify a monthly rental amount. It erroneously stated that the subject apartment included off-street parking. The listing included a telephone number to call for information. (Parties' Stipulation). The subject apartment was available on or after June 1, 1998.

22. Ms. Khoury testified that she received many telephone calls after the Boston Globe advertisement in which prospective tenants asked about the rent, the availability of parking and made appointments to view the apartment. Ms. Khoury also testified that she showed the subject apartment several times during the week of April 12, 1998. She testified that several individuals who looked at the subject apartment during this period indicated an interest in the apartment but did not get back to her. Ms. Khoury also testified that she was frustrated because she showed the apartment and answered many telephone calls without any success. David Khoury testified that if a prospective tenant called back to express an interest in the apartment, he usually asked the individual to fill out an application and submit one month's rent and/or a security deposit.

23. Ms. Khoury testified that she received telephone calls during the week of April 12, 1998 from two or three real estate agents who were interested in serving as a broker for the subject apartment.

24. Ms. Barakat testified that Ms. Khoury showed the subject apartment several times during the week immediately prior to April 19, 1998.

25. On April 19, 1998, Complainant saw the Boston Sunday Globe listing in the classified rentals that described the subject apartment at 77 Walnut Street. The subject apartment was located in the Heath School District.

26. Complainant called the telephone number in the advertisement and spoke to Ms. Khoury who told her that the monthly rent was \$1200. Complainant immediately made an appointment with Ms. Khoury to view the subject apartment at 12:00 o'clock noon on April 19, 1998. (Joint Stipulation No. 3).

27. On April 19, 1998, Ms. Khoury scheduled six appointments to show the subject apartment. The appointments began at 9:30 or 10:00 a.m. and were scheduled at one-half hour intervals. Ms. Khoury's first appointment was with a couple who liked the apartment but did not show any interest in renting it. Her second appointment was with a doctor who told her that he liked the apartment very much. The doctor told Ms. Khoury that he needed to talk with his spouse who was out of town and that he would get back to her. Ms. Khoury's third appointment was with an Asian or Japanese couple who expressed a lot of interest and told her that they would call back. Her fourth appointment was with Complainant.

28. Complainant met Ms. Khoury and Ms. Barakat at the scheduled appointment time and viewed the subject apartment together. Complainant's tour of the apartment took no more

than four to five minutes to complete. Complainant testified that the apartment was very nice and well maintained but was cluttered with furniture. Complainant asked Ms. Khoury when the apartment was available and what was included in the rent. Ms. Khoury told her that the monthly rent included gas heat.

29. Complainant did not discuss the possibility of operating her family day care business in the subject apartment because she was uncertain whether she would continue to run it.

30. After viewing the apartment, Ms. Khoury and Complainant went downstairs and talked while standing in front of 77 Walnut Street. Complainant told Ms. Khoury that "she liked the apartment" and "would take it." Ms. Khoury told Complainant that she was waiting to hear back from two prospective tenants who viewed the apartment before her and had expressed an interest in renting it. Ms. Khoury also told Complainant that she promised each individual priority regarding the subject apartment until the next day, i.e., April 20, 1998. Ms. Khoury then told Complainant that she would give her priority after the two prospective tenants and that she would call Complainant if the prospective tenants told her that they were no longer interested in the subject apartment. Ms. Khoury also told Complainant that she had to consult with Respondent David Khoury because it was not her final decision. (Complainant's Exhibit 3).

31. Complainant then asked Ms. Khoury if she would take a Section 8 housing voucher. Ms. Khoury told Complainant that she did not understand what Complainant meant by a Section 8 housing voucher. Complainant then told Ms. Khoury that, under a Section 8 voucher, the "government" pays or "guarantees" the

monthly rent to her landlord or owner. Ms. Khoury then told Complainant that she had promised to wait until she received confirmation from the two other prospective tenants and she would get back to Complainant if the subject apartment was still available.

32. Complainant testified that Ms. Khoury took her name and telephone number but did not offer her an application. Ms. Khoury denied that she took Complainant's telephone number.

33. Since Complainant's appointment was the last one in the morning, Ms. Khoury and Ms. Barakat left 77 Walnut Street for lunch. Later that afternoon, they returned to 77 Walnut Street and showed the apartment to two additional appointments.

34. After viewing the subject apartment, Complainant continued to look for vacant apartments in Brookline. At approximately 4:00 p.m. on April 19, 1998, Complainant drove past 77 Walnut Street "to see if [Beth] was still there" and "to see if she had rented the [apartment]." When Complainant saw Ms. Khoury standing in front of 77 Walnut Street, she pulled her car over to the curb, rolled down her window and talked with Ms. Khoury through her open car window.

35. During this conversation, Complainant asked Ms. Khoury whether she was still showing the subject apartment. Ms. Khoury replied affirmatively and told Complainant that she had appointments that she had scheduled earlier that morning. Complainant again told Ms. Khoury that she was interested in the apartment. Ms. Khoury reminded Complainant that she had given priority to the two individuals who had viewed the

subject apartment before her on that morning. Ms. Khoury also told Complainant that she had to wait until the next day and she would let Complainant know. (Complainant's Exhibit 3).

36. During their meeting, Complainant also asked Ms. Khoury whether she was going to rent the apartment to her. Complainant testified that Ms. Khoury replied by telling her that, "I know who's right for the apartment when I see them." Ms. Khoury also told Complainant that she would let her know and that she had to inform Respondent David Khoury. Ms. Khoury denied making these statements.

37. Complainant called Ms. Khoury "around dinner time" on April 19, 1998. Complainant testified that Ms. Khoury told her that she had not yet spoken to her brother and she would get back to Complainant. Ms. Khoury denied that Complainant called her on April 19, 1998.

38. In the evening of April 19, 1998, Ms. Khoury called Respondent David Khoury to update him on her rental activities for the subject apartment. Ms. Khoury told him that she felt overwhelmed by the rental process since she had never previously rented an apartment. She also told Mr. Khoury that her rental activities were interfering with her responsibilities at Foley's Liquor. Respondent David Khoury told Ms. Khoury to call a real estate broker to handle the rental process. Ms. Khoury testified that she did not tell him about Complainant or the other prospective tenants who viewed the subject apartment on April 19, 1998.

39. Respondent David Khoury testified that Ms. Khoury told him during their conversation on April 19, 1998³ about the Asian or Japanese couple who was interested in the apartment and told Ms. Khoury that they would get back to her on the following day.

40. Ms. Khoury contacted Bay Realty Group who immediately set up appointments to view the subject apartment. On April 20, 1998, Ms. Khoury accompanied an agent for Bay Realty Group when he showed the subject apartment to two prospective tenants, including the parties who ultimately rented it.

41. Sometime during the morning of April 20, 1998, Complainant called Ms. Khoury, reached her telephone answering machine but did not leave a message. Complainant again called Ms. Khoury during the evening on April 20, 1998. Ms. Khoury told Complainant that Respondent David Khoury was arriving in the United States on the following Wednesday.

42. Complainant called Ms. Khoury on April 22, 1998 (Wednesday) who told her that she had rented the subject apartment. Ms. Khoury did not tell Complainant why she did not rent it to her. Ms. Khoury denies that Complainant called her at any time after April 19, 1998.

43. Other than Complainant, none of the prospective tenants who viewed the subject apartment on April 19, 1998 called Ms. Khoury to express their interest in it.

³ At the time of this conversation, David Khoury was in the Palestine. Since Palestine is seven hours ahead, David Khoury was talking with Ms. Khoury in the morning on April 20, 1998, Palestine time.

44. Respondents Beth Khoury and David Khoury did not give Complainant an opportunity to apply for the apartment at 77 Walnut Street. They did not enter a lease with Complainant for the subject apartment. (Joint Stipulation No. 4).

45. On April 23, 1998, Susan Gordona and Christine Sweeny submitted rental applications with Bay Realty Group for the subject apartment at 77 Walnut Street. (Joint Exhibit 2).

46. On April 28, 1998, Ms. Gordona and Sweeny executed a 12 month lease and an addendum to the lease for the subject apartment. The lease commenced on June 1, 1998. The monthly rent on the lease was \$1200.00. (Joint Exhibit 2 and Joint Stipulation No. 5).

47. Neither Ms. Gordona nor Ms. Sweeny received public assistance for their rental payments at the subject apartment. (Joint Stipulation No. 6).

48. Respondents Beth Khoury and David Khoury denied discriminating against Complainant based on her status as a Section 8 recipient. Respondent David Khoury testified that he has rented his apartments since 1991 to individuals from all races, color and religions.

49. Respondent David Khoury testified that he first learned about Section 8 vouchers in 1991. Mr. Khoury has never rented an apartment to a recipient of a Section 8 housing voucher or subsidy.

50. Respondent David Khoury testified that Respondent Nadim Khoury had no role or involvement in the rental of the subject apartment in or about April 1998.

51. After failing to rent the subject apartment, Complainant continued her efforts to locate a suitable apartment in Brookline. A few weeks after April 19, 1998, Complainant found a five-room apartment at 104 Franklin Street, Brookline, Massachusetts. Even though a Brookline building inspector and a board of health official determined that the Franklin Street apartment was not "habitable," Complainant signed a lease. Complainant understood that the BHA Section 8 program required a rental property to be habitable for an owner to receive Section 8 rental payments. Complainant testified that the Brookline Board of Health and Building Inspection gave Complainant a certain (unspecified) time to have the apartment habitable before the BHA would begin to pay rent. She believed the BHA withheld rental payments at 105 Franklin Street for approximately one year.

52. To render the Franklin Street apartment habitable, Complainant made significant repairs, including installation of carpeting in bedrooms, a kitchen sink, cabinets, countertops, a back door and tiles in the bathroom. Complainant also painted, sanded some of the floors, fixed the ceiling in the bathroom where a toilet from an upstairs apartment had overflowed and installed a bathroom mirror, sink and toilet.

53. Complainant testified credibly that these repairs cost her approximately \$4000. Complainant did not seek or receive reimbursement from the landlord or owner for the repairs she made at the Franklin Street apartment because she was

"desperate" and "did everything [she] could to get an apartment."

54. Because of the required repairs, Complainant was unable to move into 104 Franklin Street until June 1, 1998. Complainant and her family lived at 104 Franklin Street for one and one-half years. The rent at 104 Franklin Street was \$1450 per month.

55. Complainant operated a family day care business in her Franklin Street apartment where she was licensed to enroll a maximum of six full-time children.

56. The Franklin Street apartment was not within the Heath School district. Complainant's children enrolled in and attended the Lincoln School until Complainant moved to 248 Elliott Street.

57. Complainant does not recall the number of apartments she viewed or applied for during the period she was seeking an apartment immediately prior to her lease of 104 Franklin Street. Complainant testified that she did not receive an offer to rent another apartment during this period nor did she reject an apartment.

58. In or about October 3, 2001, Complainant moved to 248 Elliot Street because it is an 11-room house that she rented for less money than her Franklin Street apartment and she has a longer lease. Complainant continued to operate her family day care business at 248 Elliot Street after re-inspection by the Massachusetts Office for Children.

59. After Complainant learned that Respondents Beth Khoury and David Khoury had rented the apartment at 77 Walnut Street, she became very angry and upset. Complainant testified that she began to experience increased stress. Complainant also testified that she was very nervous, on edge and scared because she knew she had to "fill" the Section 8 voucher within a certain time period. Complainant testified that she "had to find a place to live" and was afraid that if she didn't fill the voucher quickly that "she would end up back in the shelter."

60. Complainant began weekly individual counseling sessions shortly after she left the last battered woman's shelter in April 1996. Complainant received counseling at the Brookline Center for a period of four years.

61. During some of her individual therapy sessions after April 19, 1998, Complainant talked to her therapist about the fact that she was "frantic" and needed a place to live. Complainant also discussed her concerns about her housing situation during joint counseling sessions with her daughters who "knew what was going on [because] they knew we needed a place to live."

62. Complainant continued her counseling sessions for approximately one and one-half years after April 19, 1998.

63. Complainant did not receive medication or seek psychiatric services because of Respondent Beth Khoury and David Khoury's refusal to rent the subject apartment to her on April 19, 1998.

III. CONCLUSIONS OF LAW

G.L. c. 151B, §4(10) makes it unlawful for any person "furnishing rental accommodations to discriminate against anyone who is a recipient of federal, state or local housing subsidies . . . including rental assistance or rental subsidies because such individual is such a recipient or because of any requirement of such...rental assistance or housing subsidy program." Complainant can establish that Respondents Beth Khoury, David Khoury and Nadim Khoury discriminated against her based on her receipt of a rental assistance subsidy either by direct or indirect evidence. Attorney General v. Brown, 400 Mass. 130 (1976). To establish a prima facie case of unlawful housing discrimination, Complainant must show that (1) she is a member of a protected class; (2) she was seeking to rent an apartment and met the objective criteria for rental; (3) Respondents Beth Khoury, David Khoury and Nadim Khoury denied her an opportunity to rent an apartment and, after the denial, they continued to advertise the subject apartment for rent. Barrett and Graham v. Realty/World/Danca Realty, 17 MDLR 1665 (1995); Suttles v. Shapiro, 15 MDLR 1771, 1777 (1993); Luna v. Lynch et. al, 7 MDLR 1699, 1725 (1985).

Complainant can establish a prima facie case of disparate treatment in the application process for the subject apartment by showing that (1) she was a member of a protected class or was associated with a member of a protected class; (2) she inquired about or attempted to apply for the subject apartment; (3) in connection with her inquiry, she was denied or deterred from seeking the subject apartment or otherwise applying under circumstances that give rise to an inference of

unlawful discrimination, e.g., that she was treated differently because of her membership in a protected class.⁴ Watson v. A&C Realty, 19 MDLR 65 (1996); Barrett v. Realty World/Danca Realty, supra. at 1675 (1995); Luna v. Lynch, supra. at 1725.

I find that Complainant has established a prima facie case of housing discrimination based on her status as a recipient of a housing subsidy. Complainant is a member of a protected class within the meaning of G.L. c. 151B, §4(10) because she was a recipient of a Section 8 housing voucher or subsidy on April 19, 1998. There is no dispute that Complainant inquired about an available apartment at 77 Walnut Street on April 19, 1998 and Respondent Beth Khoury showed it to her on the same day. Complainant clearly expressed her interest in renting the subject apartment to Ms. Khoury at least twice on April 19, 1998: immediately after Ms. Khoury showed her the apartment and later that afternoon in front of 77 Walnut Street. Complainant also called Ms. Khoury on April 19 and 20, 1998 to confirm her interest in the subject apartment and determine whether it was still available.

Prior to Complainant's disclosure about her status as a Section 8 recipient, Respondent Beth Khoury agreed to give her priority for the subject apartment after the two prospective tenants who viewed it before Complainant and expressed an interest in renting it. I also credit Complainant's testimony that Ms. Khoury told her that she would call Complainant if the two prospective tenants did not confirm their interest by April 20, 1998.

⁴ There is no evidence that Complainant's Section 8 voucher or subsidy was not sufficient to cover the \$1200.00 monthly rent at the subject apartment.

Following Complainant's disclosure of her status as a Section 8 recipient, Ms. Khoury's actions establish that she changed her position and reneged on her promise of priority consideration for the subject apartment. Despite Ms. Khoury's oral assurance before Complainant's Section 8 disclosure, she failed to contact Complainant after she concluded that the two prospective tenants with priority over Complainant were no longer interested in the subject apartment. Second, Ms. Khoury did not offer Complainant a rental application or solicit a rental/security deposit despite her repeated statements of interest in the subject apartment and the lack of interest by the other prospective tenants. Third, Ms. Khoury did not mention or refer to Complainant in her telephone conversation with Respondent David Khoury on April 19, 1998 although she discussed another prospective tenant who viewed the apartment on the same day. Finally, Ms. Khoury arranged for a realtor to show the subject apartment one day after showing it to Complainant and learning about her interest in it. On April 23, 1998, Respondents Beth Khoury and David Khoury rented the apartment to two individuals who were not recipients of Section 8 vouchers or subsidies.

I also credit Complainant's testimony that Ms. Khoury told her that she would "know who's right for the apartment when [she sees] them." When viewed in the totality of circumstances surrounding Complainant's attempted rental, Ms. Khoury's statement is consistent with her equivocation or change in her willingness to consider Complainant as a potential tenant immediately after learning about Complainant's status as a Section 8 recipient. Accordingly, I find that Complainant has established by credible evidence that she was deterred from applying for the subject apartment

under circumstances that clearly show a discriminatory animus based on her status as a recipient of a Section 8 voucher or subsidy. Watson v. A&C Realty, supra.; Barrett and Graham v. Realty/World/Danca Realty, supra.

Once Complainant establishes a prima facie case, the burden shifts to Respondents Beth Khoury, David Khoury and Nadim Khoury to produce evidence of their non-discriminatory reasons for not giving her an opportunity to rent the apartment at issue. The burden then shifts back to Complainant to prove by a preponderance of the evidence that they acted with a discriminatory intent, motive or state of mind. See Abramian v. Weber v. Community Teamwork, Inc., 434 Mass. 761, 775-776 (2001); Lipchitz v. Raytheon Company, 434 Mass. 493, 501-502 (2001); Blare v. Husky, 419 Mass. 437, 443 (1995).

Respondents contend that Respondent Beth Khoury did not discuss Complainant with Respondent David Khoury because Complainant's interest in the subject apartment was "lack-luster" and that she did not demonstrate any "enthusiasm" or "excitement" about renting the apartment. They assert that Complainant's failure to seek an application or make a rental deposit and her failure to discuss her potential operation of a day-care center in the subject apartment are illustrative of her lack of interest.

There is no support in the record for Respondents' contention that Complainant was not interested in the subject apartment. I find that Ms. Khoury's testimony regarding her interaction and discussion with Complainant about the subject apartment was inconsistent, contradictory and not credible. However, Complainant's testimony clearly establishes that she

was unequivocal in her actions and statements to Ms. Khoury on April 19 and 20, 1998 about her interest in and desire to rent the subject apartment. In addition, Respondents' contention about Complainant's alleged lack of interest is contrary to their admission that Ms. Khoury initially promised Complainant priority for the apartment after the two earlier prospective tenants. Given Complainant's credible testimony about her anxiety over potentially losing her Section 8 certificate and becoming homeless if she did not find an apartment, it is highly unlikely that she would acted in the manner alleged by Respondents when she viewed an otherwise suitable apartment that was available within her children's school district.

I find that Complainant had no reason on April 19, 1998 to fill out a rental application or discuss her potential but undetermined need to operate a day care center. She certainly could have reasonably relied on Ms. Khoury's statements that Complainant was third in priority among the prospective tenants and that Ms. Khoury would call Complainant if they were not interested in renting the apartment. For all the reasons discussed above, I conclude that Respondent Beth Khoury discriminated against Complainant based on her status as a Section 8 recipient in violation of G.L. c. 151B, §4(10).

As co-owners, Respondents David Khoury and Nadim Khoury cannot avoid liability under Chapter 151B by merely delegating the task of finding a tenant for their apartment to Respondent Beth Khoury. They have a non-delegable duty under G.L. Chapter 151B to ensure that any individual is considered for a tenancy without regard to his or membership in a protected class. Baker v. Collazo, 4 MDLR 1421, 1434 (1982). Respondents David Khoury and Nadim Khoury are liable as co-

owners for the unlawful acts committed by Respondent Beth Khoury even if they did not deal personally with Complainant or were not entrusted with final authority to make rental decisions as in the case of Respondent Nadim Khoury. Williams v. Everett and Hunt, 21 MDLR 84 (1999); Luna v. Lynch et. al, supra. I conclude therefore that Respondents David Khoury and Nadim Khoury discriminated against Complainant because of her Section 8 subsidy in violation of G.L. c. 151B, §4(10). I also conclude that Respondents David Khoury and Nadim Khoury are individually and jointly liable with Respondent Beth Khoury for the unlawful discrimination established under the facts of this case.

Upon a finding of discrimination, the Commission is authorized to award damages resulting from Respondents' unlawful discrimination, including Complainant's out-of-pocket costs or expenses and her emotional distress. G.L. c. 151B, §5. See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997); Bournewood v. Massachusetts Commission Against Discrimination, 371 Mass. 303, 315-16 (1976).

Out-of-Pocket Costs or Expenses

Complainant seeks damages in the amount of \$8500.00 which represents the difference between the rent Complainant purportedly paid during her tenancy at 104 Franklin Street and the rent she would have paid at 77 Walnut Street calculated as follows: \$1450 - \$1,200 x 34 months. I decline to award such damages because Complainant submitted no evidence to establish the amount of monthly rent she paid under her Section 8 voucher at 104 Franklin Street and what she would have paid at 77 Walnut Street during the relevant period. In addition,

Complainant's part of the rent under the BHA Section 8 program was based solely on her income and would not have been affected by the total rent paid by the BHA to the owner. Robbs v. Haslam, 18 MDLR 100 (1996). I conclude therefore that Complainant has not shown that her part of the monthly rent under her Section 8 voucher was higher at 104 Franklin Street than what she would have paid at 77 Walnut Street.

Complainant also seeks \$4,000 for the costs of the repairs she made or caused to be made at 104 Franklin Street to render it habitable for her occupancy. I conclude that Complainant reasonably incurred these costs in an effort to secure suitable housing after Respondents unlawfully deterred her from renting the apartment at 77 Walnut Street in April 1998. I find no evidence in the record that Complainant received reimbursement for any portion of the monies she spent on the required repairs.

Emotional Distress Damages

An award of monetary damages is appropriate to compensate Complainant for the emotional distress she suffered as a victim of the Respondent's unlawful discrimination. See e.g., Baldelli v. Town of Southboro Police Dept., 17 MDLR 1541 (1995). A finding of discrimination, by itself, permits an inference of emotional distress as a normal adjunct of such discrimination. Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824, quoting Buckley Nursing Home, Inc. v. Massachusetts Commission Against Discrimination, 20 Mass. App. Ct. 172, 182 (1985). Expert testimony is not necessary to prove emotional distress damages. College-Town, Division of Interco v. Massachusetts Commission of Discrimination, supra. at 169

(1987); Franklin Publishing v. Massachusetts Commission Against Discrimination, 25 Mass. App. Ct. 947 (1988). Permissible considerations to measure and compensate for emotional distress include such factors as the nature, severity, and duration of Complainant's emotional distress. See Baldelli v. Town of Southboro Police Dept., 18 MDLR 167, 169 (1996).

I conclude that Complainant is entitled to damages for emotional distress resulting from the Respondents' unlawful discrimination based on her status as a Section 8 recipient. Complainant testified credibly regarding how Respondents' unlawful conduct affected her mentally and physically. Complainant testified that she was frantic, very angry and upset when she learned that she would not have an opportunity to apply for the subject apartment. She also credibly testified that she experienced increased stress and was on edge due to her concerns about becoming homeless again. During her individual and family therapy sessions after April 19, 1998, Complainant discussed her concerns and fears with her therapist and family members.

While there may have been other stressors in Complainant's life that contributed to her emotional state during the relevant period, I am persuaded that Complainant's emotional harm was a direct result of Respondents Beth Khoury, David Khoury and Nadim Khoury's unlawful acts. Robinson v. Haffner's Service Stations, Inc., 23 MDLR 283 (2001); Sverck v. American Health Care, et. al., 22 MDLR 50 (2000). Based on the relative severity and duration of Complainant's emotional distress, I award Complainant \$7,500 to compensate her for the emotional harm she suffered.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, I hereby issue the following order:

1. Respondents Beth Khoury, David Khoury and Nadim Khoury shall cease and desist from discriminating in housing against recipients of rental assistance in violation of G.L. c. 151B, §4(10), relative to any rental property they own.

2. Respondents Beth Khoury, David Khoury and Nadim Khoury shall pay Complainant the sum of \$4,000 in out-of-pocket expenses and \$7,500 in emotional distress damages plus interest thereon at the statutory rate of 12% pr annum from the date of filing the complaint until such date as the payment is made or this obligation is reduced to a court judgment and post-judgment interest begins to run. Respondents Beth Khoury, David Khoury and Nadim Khoury shall pay these sums to Complainant within 60 days of their receipt of this decision.

3. The parties shall immediately notify the Clerk of the Commission when Respondents Beth Khoury, David Khoury and Nadim Khoury make the ordered payments.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten (10) days of receipt of this order and a Petition of Review with the Full Commission within thirty (30) days of receipt of this Order.

SO ORDERED this 16th day of January, 2003.

KENNETH B. GROOMS

Hearing Officer