



Attempts to conciliate this matter were unsuccessful. On December 11, 2003, Investigating Commissioner Walter J. Sullivan, Jr., certified this case for a public hearing.

I held a public hearing on March 29, 2004. On April 14, 2004, Respondents filed a post-hearing memorandum with the Commission. On April 15, 2004, Complainant filed proposed findings of fact, rulings of law and a post-hearing memorandum with the Commission.

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 drawn therefrom, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Complainant, Tara Marie Leary<sup>1</sup>, currently resides in Onset, Massachusetts, with her four children: Rachelle, Alan, Ciara and Rylie (ages 15, 11, 9 and 18 months, respectively). Ciara has spina bifida and learning disabilities. Ciara also

---

<sup>1</sup>During the hearing, Complainant was also referred to as "Tara Fortes," her married name.

requires extensive daily care. Complainant's oldest child, Dustin (age 18), does not live with her in Onset.

2. Complainant has suffered from severe rheumatoid arthritis and degenerative disc disease for the past 9 years and walks with great difficulty. During the period relevant to this complaint, Complainant was unable to work because of her physical conditions.

3. Since 1972, Respondents James F. Braden and Jane G. Braden<sup>2</sup> have owned a single-family, four-bedroom home located at 11 Crooks Way, Mattapoisett, Massachusetts (hereafter: the rental property). (Complainant's Exhibit No. 9). From 1972 until 1984, Respondents lived in the rental property as their primary residence and raised five children.

4. Sometime in 1984, Mr. Braden's then employer, Continental Screw Company, transferred him to Chicago, Illinois. Respondents have lived continuously in Illinois since 1984 and currently live in Olympic Fields, Illinois. From 1984 through 2002, Respondents visited the rental property no more than once or twice each year.

5. In 1984, Respondents hired a real estate agent who helped them lease the rental property to several tenants between 1984 and 2002. Respondents executed one-year leases with these tenants and routinely extended their leases for at least an additional one-year period. Mr. Braden testified that the period of time during which the rental property was unoccupied between leases was generally less than six months.

---

<sup>2</sup>Mrs. Braden was present during the public hearing but did not testify.

6. In or about August 2000, Complainant separated from her former spouse. Upon her separation, Complainant's four oldest children began to live with her estranged spouse. In August 2000, Complainant began to search for a four-bedroom apartment so that she could regain physical custody of her children.

7. In August 2000, Complainant submitted a pre-application for rental assistance with the South Shore Housing Development Corporation (SSHDC) pursuant to the DHCD's Section 8 Housing Choice Voucher Program. (Complainant's Exhibit No. 1).

8. On or about August 29, 2000, the SSHDC informed Complainant, in writing, that it added her name to the Section 8 housing list maintained for Plymouth and Bristol counties. The SSHDC letter also advised Complainant that she was Number 1553 on the waiting list and that her waiting period was likely to be more than two years. (Complainant's Exhibit No. 2).

9. On May 3, 2002, Complainant and her then fiancé, Stephan Curt, signed a one-year lease for the rental property at a monthly amount of \$1,350.00. The lease included Complainant, Mr. Curt and two of Complainant's minor children.<sup>3</sup> The lease also covered the period from June 1, 2002 to May 31, 2003 and did not include a provision for an extension. (Respondent's Exhibit No. 1). When Complainant signed the lease, she was pregnant with Rylie, Mr. Curt's child. Immediately prior to leasing the rental property, Complainant lived in a rented

---

<sup>3</sup>When Complainant signed the lease, her two children identified in the lease were living with their father.

one-room basement apartment with Mr. Curt but not her children.

10. Mr. Braden testified that he planned, in 2002, to retire in the summer of 2003 at the age of 70 and return to live in the rental property. Mr. Braden did not discuss his purported intention to retire in 2003 with Complainant at any time during the negotiation of her one-year lease for the rental property.

11. Complainant testified that Mr. Braden told her that Respondents were interested in Complainant remaining as a tenant for four to five years. Complainant denied that Mr. Braden told her that he did not want to extend the lease beyond one year because Respondents wanted to move back from Illinois. Complainant testified that the Respondents told her that they wanted to eventually return to the rental property in several years. I credit Complainant's testimony.

12. Upon signing the lease, Complainant gave one month's security deposit and her last month's rent (total: \$2,700.00) to Respondents. Complainant testified that she and Mr. Curt also agreed to complete certain repairs on the rental property, including painting, in lieu of their first month's rent payment. Mr. Braden testified that he retained the option of crediting Complainant's first or last month's rent for the repairs she and Mr. Curt completed in May 2002. I credit Complainant's testimony regarding application of the services credit to her first month's rent.

13. When Complainant signed the lease for the rental property, she did not discuss her Section 8 eligibility with

Respondents because she believed she could be on the SSHDC waiting list for years. Complainant testified that she and Mr. Curt were prepared to pay the monthly rent amount when they signed the lease for the rental property without benefit of a housing assistance voucher.

14. After executing their lease, Complainant and Mr. Curt began to make certain repairs and improvements to the leased property, e.g., painting, in preparation for moving into the rental property.

15. On or about May 17, 2002, the SSHDC informed Complainant that her name was nearing the top of the Section 8 Housing Choice Voucher Program waiting list. The SSHDC letter also requested that Complainant complete and return, by June 7, 2002, various forms to document her income, housing status and preference eligibility. (Complainant's Exhibit No. 3).

16. Shortly after receiving the SSDHC's letter, Complainant met with Respondents who were inspecting the rental property. Complainant testified that she told Mr. Braden that she had just received a letter from the SSHDC informing her that she was nearing the top of the waiting list for a Section 8 housing voucher although she did not know how long her final approval would take. Complainant also testified that she asked Mr. Braden whether she could use a Section 8 housing certificate to subsidize her rent payments. Complainant testified that Mr. Braden replied, "absolutely not" and told her that his wife would "never go along with it." I credit Complainant's testimony.

17. Complainant testified that, while they were still inspecting the rental property, Mr. Braden told Mrs. Braden about Complainant's imminent approval for a Section 8 housing voucher. Complainant also testified that Mrs. Braden told her that "she worked in that field, knew all about those government programs and that she did not believe in any government programs." I credit Complainant's testimony. In their signed position statement, dated February 13, 2003, Respondents stated that they told Complainant that they "did not want to participate in any government program." (Complainant's Exhibit No. 10).

18. Complainant testified that Respondents then offered to terminate her lease and return her last month's rent and security deposit if she did not want to go forward with her lease in the absence of her Section 8 voucher but she declined their offer. Complainant also testified that she told Respondents that it could take more than one year for her to move to the top of the Section 8 voucher list and that she needed a suitable apartment in the interim so that she could regain physical custody of her four children. I credit Complainant's testimony.

19. Mr. Braden testified that Complainant made an "off-hand comment," sometime in mid-May 2002, that indicated to him that she had applied for some form of "government assistance" and that she could be on a waiting list for years. Mr. Braden also testified that there was no further discussion about Complainant's eligibility for a Section 8 housing subsidy until late December 2002. Mr. Braden denied that Complainant asked Respondents sometime in May 2002 whether they would

accept a Section 8 housing voucher. I do not credit Mr. Braden's testimony.

20. Mr. Braden testified that he knew, in May 2002, about the Section 8 housing voucher program although he did not recall how he learned about the program. Mr. Braden also testified that he knew, in May 2002, that the rental property had to be inspected prior to approval for a Section 8 tenant to ensure compliance with minimum habitability standards. Mr. Braden testified that his real estate agent never gave him any information about the Section 8 housing program, his responsibilities as a Section 8 landlord or the Massachusetts fair housing law.

21. Complainant and Mr. Curt moved into the rental property at the end of May 2002, approximately one week after Complainant told Respondents about her imminent approval for a Section 8 housing voucher. Complainant testified that she decided not move her children into the rental property in May 2002 because she did not want to uproot and move them again if she located suitable housing outside of Mattapoisit that accepted her Section 8 housing voucher. Complainant also testified that she did not want to move her children into the rental property because she realized that she would have to look for other housing based on Respondents' unequivocal rejection of her Section 8 housing voucher. I credit Complainant's testimony.

22. On or about July 5, 2002, the SSHDC informed Complainant that she was eligible to participate in the Housing Choice Voucher program. (Complainant's Exhibit No. 4).

23. On or about July 11, 2002, the SSHDC issued a Section 8 housing voucher to Complainant for a four-bedroom apartment. The Section 8 housing voucher had an expiration date of November 8, 2002. (Complainant's Exhibit No. 5). When Complainant received her Section 8 voucher in July 2002, she did not tell Respondents and nor did she again request that they accept it. Despite her Section 8 approval, Complainant continued to use her own funds to make her rent payments because of Respondents' "absolute" refusal to accept her Section 8 voucher.

24. On August 30, 2002, Complainant gave birth to her daughter, Rylie Curt. During the last three months of her pregnancy, Complainant was bedridden due to her health and pregnancy complications. During this period, Complainant was physically unable to look for a suitable apartment for which she could use her Section 8 voucher.

25. Complainant testified that she began having difficulty in the fall of 2002 making her rent payments to the Respondents and was sometimes two weeks late on her payments. Complainant testified that she began to look for other housing in or about October 2002 because of her ongoing financial difficulties, her inability to timely pay Respondents and their refusal to accept her section 8 voucher. Complainant also testified that she wanted to find suitable housing to reunite and bring stability to her family. I credit Complainant's testimony.

26. On November 8, 2002, the SSHDC extended Complainant's Section 8 housing voucher until January 7, 2003. (Complainant's Exhibit No. 6).

27. Mr. Curt moved out of the rental property sometime before December 2002. Complainant continued to have financial difficulties through December 2002 and had additional problems with her arthritis.

28. On or about December 5, 2002, Complainant and her stepmother called Respondents and told them that Complainant had received her Section 8 voucher as discussed during their meeting in May 2002. Complainant testified that she asked Respondents to reconsider their decision not to accept her Section 8 voucher. Complainant testified that Mr. Braden told her, for the second time, that they would "absolutely not" accept her Section 8 voucher. Complainant also testified that she then told Mr. Brady that it was "discrimination" for them to refuse to accept her Section 8 voucher. Mr. Braden laughed and told Complainant that he "discriminated against people who don't pay their rent." Complainant testified that Mr. Braden also told her that Respondents did not believe in Section 8 housing and that he did not have to accept Section 8 housing for his rental property because it was "his house." I credit Complainant's testimony.

29. Mr. Braden testified that he told Complainant that he did not want to extend her lease beyond one year because he was planning to return to the rental property in the summer of 2003. Mr. Braden could not recall whether he told Complainant about his unwillingness to extend her lease in May 2002 or December 2002 when they discussed her eligibility for a Section 8 voucher. I do not credit Mr. Braden's testimony.

30. Mr. Braden also testified that he told Complainant that the rental property needed extensive repairs prior to a

Section 8 housing inspection. I do not credit Mr. Braden's testimony. Mr. Braden also testified that, during Complainant's tenancy, the only significant repair he completed at the rental property was to replace the furnace. Mr. Braden did not recall when the furnace was replaced.

31. Mr. Braden testified that he "heard" that, if he accepted Complainant's Section 8 voucher in December 2002, he would have been required to negotiate an extension of Complainant's lease to include an additional period of at least six months to one-year. Mr. Braden did not contact the SSHDC to determine if his understanding was correct. Mr. Braden did not offer to accept Complainant's Section 8 voucher for the remainder of her lease.

32. Complainant denied that Respondents told her that they did not want to extend the lease beyond one year. Complainant also denied that Respondents told her that they did not want to make "expensive" repairs until after they returned to live in the rental property. I credit Complainant's testimony.

33. Mr. Braden testified that he called Complainant in December 2002 regarding her late rent payment. Mr. Braden testified that Complainant never made the rent payment for December 2002. Complainant could not remember whether she made her rent payment for December 2002. I credit Mr. Braden's testimony about Complainant's failure to pay rent in December 2002.

34. Complainant did not pay rent to Respondents for January 2003 and February 2003. Complainant testified that Respondents used her last month's rent and security deposit

for the payments that were due in January 2003 and February 2003. I credit Complainant's testimony.

35. On December 30, 2002, the SSHDC granted an additional extension to Complainant's Section 8 housing voucher until April 7, 2003. (Complainant's Exhibit No. 7).

36. In early January 2003, Complainant contacted the Commission and mailed a complaint on the same day. The Commission later requested that Complainant send an additional complaint because it purportedly misplaced her initial complaint. Complainant mailed the instant complaint on or about January 16, 2003. (Complainant's Exhibit No. 8).

37. In January 2003, Respondents initiated an eviction proceeding against Complainant and Mr. Curt for non-payment of rent in December 2002. On or about January 8, 2003<sup>4</sup>, Respondents caused a notice to quit for nonpayment of rent to be served on Complainant and Mr. Curt. (Respondent's Exhibit No. 2). Mr. Braden testified that he did not know about the instant discrimination complaint when he initiated Complainant's eviction notice. Complainant testified that she never discussed the eviction notice with Respondents.

38. Shortly before March 1, 2003, Complainant located a three-bedroom apartment in Onset, Massachusetts, and moved out of the rental property with the assistance of her family members. Complainant chose this apartment because she wanted to keep her children in the same school district and she could use her Section 8 housing voucher. Complainant testified that

---

<sup>4</sup> The parties agreed that the constable's notice erroneously refers to the date of service as January 8, 2002. (Respondent's Exhibit No. 2).

her current apartment is "crammed" and requires her three daughters to sleep in one bedroom. Complainant's monthly rent payment of \$1,400.00 for the Onset apartment is fully subsidized through her Section 8 rental assistance voucher. Complainant paid a one-month security deposit for her Onset apartment.<sup>5</sup>

39. Mr. Braden testified that the rental property has been vacant since Complainant moved out in March 2003.

40. Respondents did not return to live in the rental property in the summer of 2003 although Mr. Braden testified that they still intend to return to the rental property at an unspecified future date. Mr. Braden testified that his current employer reorganized its upper management and asked him to continue working for a "while." Mr. Braden also testified that he does not now know when he will retire.

41. Between 1984 and 2002, Respondents did not lease their rental property to a tenant who held a Section 8 housing voucher.

### III. CONCLUSIONS OF LAW

General Laws, Chapter 151B, §4(10) makes it unlawful for any person furnishing rental accommodations "to discriminate against any individual who is a recipient of federal, state or local housing subsidies . . . including rental assistance or rental supplements, because such individual is such a recipient, or because of any requirement of such. . . rental

---

<sup>5</sup>Complainant presented no evidence that she has to pay additional out-of-pocket monies to rent her Onset apartment.

assistance or housing subsidy program." Illegal discrimination based on Complainant's status as a Section 8 recipient can include a refusal to rent available housing, the imposition of disparate terms and conditions once a tenancy is established and eviction. See Massachusetts Commission Against Discrimination & Goldman v. Khoury et. al., 25 MDLR 24 (2003); Baez v. Unaegbu & Onukwagwa, 25 MDLR 243 (2003); Pacheco v. Cannella, 21 MDLR 152 (1999); Curry & Hayes v. Alessio, 21 MDLR 247 (1999).

Complainant has the burden of proving a violation of General Laws, Chapter 151B. Mohammed & Ibrahim v. Leone et. al., 25 MDLR 110 (2003). The analytical framework for determining whether unlawful discrimination has occurred is set forth in Wheelock College v. Massachusetts Commission Against Discrimination, 371 Mass. 130 (1976) and its progeny. See also Abramian v. President and Fellows of Harvard, 432 Mass. 107 (2000); Weber v. Community Teamwork, Inc. v. 434 Mass. 761, 775-776; Lipchitz v. Raytheon Company, 434 Mass. 493, 501-502 (2001). Although Wheelock College was a case of employment discrimination, the Commission has consistently applied the standard set forth therein in housing discrimination cases. See Snelders v. Boston Housing Authority, 23 MDLR 399 (2001); Pacheco v. Canella, *supra*.

Complainant can establish that Respondents discriminated against her based on her Section 8 housing assistance subsidy by direct or indirect evidence. Attorney General v. Brown, 400 Mass. 130 (1976); Williams v. Everett & Hunt, 21 MDLR 84 (1999). In a direct evidence case, as in this complaint, Complainant does not have to adhere to the three-stage burden-shifting paradigm because she will not need to establish an

inference of discrimination. Complainant's initial burden is to prove by direct or strong evidence that discrimination was a motivating factor in Respondents' challenged actions or decision. Connolly et. al. v. Suffolk County Sheriff's Department, \_\_\_ App. Ct. \_\_\_ (September 30, 2004); Lipchitz v. Raytheon Co., supra.; Fountas v. Medford Public Schools, 22 MDLR 264, 269 (2000). "Direct evidence" of discrimination is evidence that "if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present . . ." See Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655, 665 (2000), quoting Johansen v. NCR Comten, Inc., 30 Mass App. Ct. 294, 300 (1991). See also Chief Justice for Administration and Management of the Trial Court (CJAM) v. Massachusetts Commission Against Discrimination, 439 Mass. 729, 732 n.11 (2003).

Complainant has shown by credible evidence that that she was a member of a protected class within the meaning of General Laws, Chapter 151B, §4(10) based on her status as a Section 8 recipient during the period relevant to this complaint. It is undisputed that the SSHDC approved Complainant, on July 11, 2002, for a Section 8 housing voucher or subsidy for a four-bedroom apartment. On November 8, 2002 and December 30, 2002, the SSHDC extended Complainant's Section 8 voucher until April 7, 2003. (Complainant's Exhibit Nos. 5 and 7). Complainant also met the objective requirements of the rental property because her Section 8

housing voucher was sufficient to enable her to pay the monthly rent required by Respondents for the rental property.<sup>6</sup>

Complainant has also presented credible direct evidence, based on testimony in the record, that Respondents unlawfully deterred Complainant from using her Section 8 voucher during her lease and that they unlawfully refused to accept her Section 8 voucher in December 2002. I credit Complainant's testimony that Respondents told her, after she signed the lease but before she moved into the rental property, that they were unwilling to consider or accept her pending Section 8 voucher because they did not want to participate in any "government programs." There is no dispute in the record that, prior to Complainant's disclosure in May 2002 that she had reached the top of the SSHDC's Section 8 voucher program, Respondents treated Complainant as a suitable tenant as shown by their execution of her one-year lease for the rental property. However, immediately after Complainant's disclosure to Respondents of the SSHDC's imminent approval of her for a Section 8 voucher, Respondents offered to terminate her lease and return her last month's rent and security deposit in a thinly disguised attempt to avoid renting to Complainant as a Section 8 tenant.

Respondents' actions and statements in mid-May 2002 unequivocally showed that they treated Complainant as an acceptable tenant as long as she continued to pay her rent through her out-of-pocket monies but not if she intended to use a "government rental assistance program." See e.g., Pacheco v. Cannella, 21 MDLR 151 (1999)(the landlord

---

<sup>6</sup>While Complainant did not testify regarding the dollar amount of her Section 8 voucher, I note that it was sufficient to enable her to rent her Onset apartment at \$1,400.00 @ month.

unlawfully discriminated against the complainant because of her national origin when he attempted to revoke her lease and bar her from taking possession of the rental property by changing the locks and shutting off the hot water and electricity once he learned that she was Puerto Rican). Accordingly, I find that Complainant has established by direct credible evidence that Respondents deterred her, in May 2002, from using her Section 8 voucher under her existing lease because it was a "government program." Accordingly, I conclude that Respondents deterred Complainant, in May 2002, from using her Section 8 housing voucher under circumstances that clearly showed an unlawful discriminatory animus based on her status as a Section 8 recipient. Williams v. Everett & Hunt, 21 MDLR 84 (1999); Watson v. A&C Realty, supra.; Barrett and Graham v. Realty/World/Danca Realty, supra.

I also credit Complainant's testimony that Respondents unequivocally told her, in December 2002, that they would not accept her Section 8 housing voucher during any part of the remainder of her lease or as part of a new lease. Respondents' non-acceptance of Complainant's Section 8 voucher was clearly based on their stated unwillingness to "participate in any government program." I also find that Respondents refused to accept Complainant's Section 8 voucher although they knew that she was late paying her rent during the fall of 2002 and did not make her rent payment in December 2002. Rather than accepting Complainant's Section 8 housing voucher and resolving Complainant's payment issues, Respondents initiated an eviction proceeding against her. This credible direct evidence is certainly more than sufficient to establish that Respondents discriminated against Complainant based on her status as a Section 8 housing

recipient when they unequivocally told her, in December 2002, that they would not accept her Section 8 housing voucher.

Since Complainant has produced credible direct evidence of discrimination based on her status as a Section 8 recipient, the burden of persuasion shifts to Respondents who "may avoid a finding of liability only by proving that it would have" taken the same action even without the illegitimate or unlawful motive. Connelly et. al. v, Suffolk County Sheriff's Department, supra.; Wynn & Wynn P.C., 431 Mass. at 670, citing Price Waterhouse v. Hopkins, 490 U.S. 228, 244-245 (1989). The appropriate question is whether Respondents' proffered "legitimate reasons also motivated [their actions], and if so to what extent." Id. at 670. Once Complainant meets her initial burden of persuasion by showing that an impermissible motive played a part in Respondents' refusal to accept her Section 8 voucher, they "must show that [their] legitimate reasons, standing alone, would have induced [them] to make the same decision[s]," i.e., they deterred Complainant from using her Section 8 voucher in May 2002 and refused to accept it in December 2002 based on legitimate, non-discriminatory reasons. Id.; Fountas, 22 MDLR at 269. The determination of whether Respondents met their burden of proving that another legitimate nondiscriminatory reason actually lead them to refuse to accept Complainant's Section 8 housing voucher is normally for the finder of fact to decide. Wynn & Wynn P.C., supra. at 670.

As discussed below, I find that Respondents failed to meet their burden to establish that they had legitimate non-discriminatory reasons, standing alone, that led them to deter Complainant from using her Section 8 voucher and ultimately to

their refusal to accept it. During the hearing, Respondents offered two reasons for refusing to accept Complainant's Section 8 voucher:<sup>7</sup> (1) they knew that the rental property required extensive repairs to meet the requirements of the Section 8 program and they were unwilling to complete such repairs until they returned to live permanently in the rental property upon Mr. Braden's retirement in the summer of 2003; (2) acceptance of Complainant's Section 8 voucher would require them to negotiate an extension of her lease, up to an additional one-year, and thereby prevent Respondents from moving back to the rental property when Mr. Braden retired. Based on the totality of the evidence in the record, I conclude that Respondents' reasons for their refusal to accept Complainant's Section 8 voucher in 2002 are false, inconsistent and not credible.

First, Respondents did not include the cost of repairs in their position statement as their reason for not accepting Complainant's Section 8 voucher. (Complainant's Exhibit No. 10). In addition, Respondents presented no credible evidence that the rental property needed extensive repairs during Complainant's lease. To the contrary, Mr. Braden testified that the rental property was in "good condition" after the prior tenants moved out in March 2002. The only "major" repair Respondents identified and completed during Complainant's tenancy was installation of a new furnace.

Even if Respondents proved by credible evidence that the rental property required costly repairs immediately prior to and during Complainant's tenancy, the Full Commission has held

---

<sup>7</sup>While I find that Respondents' purported non-discriminatory reasons are inconsistent with the reasons offered in their position statement, I will continue with my analysis and findings.

that a refusal to rent to a Section 8 recipient due to the cost of repairs as required by the Commonwealth's health code is not a defense to a discrimination claim under Chapter 151B, §4(10). See Attorney General v. Brown, 400 Mass. 826 (1987); Portis v. Paul, 25 MDLR 344 (September 25, 2003)(Full Commission decision); Whitford v. Ford, 13 MDLR 1001 (1991). Accordingly, Respondents' frustration or dissatisfaction with the Section 8 program's inspection requirement does not relieve them of their obligation to comply with Chapter 151B's prohibition against discrimination based on Complainant's receipt of a housing subsidy. See Massachusetts Commission Against Discrimination & Williams v. Hardy, 23 MDLR 292 (Chapter 151B makes it an unlawful practice to discriminate, not only because of the complainant's receipt of a housing subsidy but also because of any requirement of the program itself).

I am also not persuaded, based on the totality of evidence in the record, that Mr. Braden intended, in 2002, to retire and move back to the rental property during the summer of 2003. First, I do not place any significance on the fact that Respondents negotiated a one-year lease with Complainant in May 2002 because they executed initial leases of the same length with their prior tenants and negotiated extensions, as necessary, over an 18-year period. Second, I find that Respondents did not discuss their alleged intention to return to the rental property in the summer of 2003 with Complainant when they negotiated and executed her lease. Based on Mr. Braden's demeanor while testifying, I also do not believe his testimony that he discussed his intention to retire with Complainant when Respondents refused to accept her Section 8 housing subsidy in May or December 2002. If Mr. Braden had

discussed his intention with Complainant in May or December 2002, it is highly unlikely that Respondents would not have included it in their position statement that they prepared in February 2003. I also find that the evidence in the hearing record is inconsistent with Mr. Braden's contention that he had a proposed retirement date sometime during the summer of 2003. The evidence established that, as recent as March 29, 2004, Mr. Braden did not have a planned retirement date or a proposed date for returning permanently to Massachusetts.

Finally, Respondents contend that General Laws Chapter 151B, §4(10) does not apply in the instant case because Complainant had already executed her lease before the SSHDC granted her Section 8 voucher. They assert that Section 4(10) does not require them to accept a Section 8 housing voucher from an existing tenant where such action would otherwise require them to extend the existing one-year lease. I summarily reject Respondents' contention and find that their interpretation is disingenuous and is contrary to the language and underlying purposes of General Laws Chapter 151B, §4(10).

Respondents provided no credible, objective evidence that the SSHDC's Section 8 housing program would require them to extend Complainant's existing lease or enter into a new lease. In addition, by its express terms, the protections of Section 4(10) applies to a "tenant receiving federal, state, or local housing subsidies, including rental assistance, . . . or because of any requirement of such . . . rental assistance, or housing subsidy program." The statutory language is not expressly limited to prospective tenants, i.e., those looking for suitable housing, and certainly can be reasonably interpreted to also include individuals who already have

leases. To hold otherwise could achieve an anomalous result where it is unlawful for a landlord to refuse to accept a housing voucher from a prospective tenant while it is lawful for the same landlord to refuse to accept a housing voucher from an existing tenant. See, e.g., Massachusetts Commission Against Discrimination & Williams v. Hardy, 25 MDLR 17 (Full Commission decision) (January 14, 2003) ("the legislative intent of the law clearly extends to prospective tenants in possession of section 8 vouchers; otherwise prospective landlords while prohibited against discriminating against individuals with whom they have signed leases, could nonetheless freely discriminate against individuals seeking to sign a lease. Such a result was neither intended nor contemplated by the statutory provisions of Chapter 151B").

I also decline to interpret Chapter 151B in a manner that would force an otherwise suitable tenant who experiences financial hardship, like Complainant, to vacate an existing apartment in order to use a housing subsidy. To allow Respondents to unlawfully refuse to accept Complainant's Section 8 voucher because she is already a tenant and then terminate her lease for non-payment of rent while acknowledging her financial difficulties is clearly contrary to a primary purpose of Chapter 151B—to ensure housing stability for needy Massachusetts families.

For all the reasons discussed above, I find that Respondents' articulated reasons for their actions are false and are not supported by credible evidence. I am not persuaded that Respondents had legitimate non-discriminatory reasons for deterring Complainant from using her Section 8 voucher or for refusing to accept her voucher or that such reasons, standing

alone, would have resulted in their same actions. Accordingly, I conclude that Respondents discriminated against Complainant when they unlawfully deterred her, in May 2002, from using her Section 8 voucher and unequivocally refused to accept her Section 8 voucher in December 2002 in violation of General Laws Chapter 151B, §4(10).

In her complaint, Complainant named both James F. Braden and Joan G. Braden as individual respondents. The Commission has long recognized and imposed individual liability under G.L. c. 151B. See Woodason v. Town of Norton School Committee et. al., 25 MDLR 62 (2003)(Full Commission decision); Beaupre v. Cliff Smith & Associates, 50 Mass. App. Ct. 480, 491 (2000). Based on my findings, I conclude that Respondents James F. Braden and Joan G. Braden are individually and jointly liable for the unlawful discrimination established under the facts of this case.

#### IV. REMEDY

Upon a finding of discrimination, the Commission is authorized to impose a remedy that will make Complainant whole and eliminate the discriminatory practice. The remedies include awarding 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 Expenses

Based on the evidence and testimony, I find that Complainant sustained out-of-pocket losses in the amount of \$8,100.00 as a result of Respondents' discriminatory actions, calculated as follows. First, I award Complainant \$5,400.00 which represents the four monthly rent payments (\$1,350.00 x 4) that Complainant was forced to make from her personal funds in August 2002 through November 2002 after Respondents deterred her from using her Section 8 housing voucher. I also find that Complainant is entitled to recover \$2,700.00 which represents the amounts Complainant paid to Respondents in May 2002 for her last month's rent and her security deposit. The evidence in the record established that Respondents retained these monies after they unlawfully refused to accept Complainant's Section 8 housing voucher and applied them to Complainant's rental payments for January and February 2003. Complainant did not seek nor produce credible evidence relating to any out-of-pocket expenses she incurred during her move to her Onset apartment.

### Emotional Distress Damages

An award of monetary damages is appropriate to compensate Complainant for the emotional distress she suffered as a victim of Respondents' discrimination. See e.g., Baldelli v. Town of Southboro Police Dept., 17 MDLR 1541 (1995). A finding of discrimination or retaliation, by itself, does not permit an inference of or a presumption of emotional distress as a normal adjunct of such discrimination. See Stonehill College v. Massachusetts Commission Against Discrimination, 441 Mass. 549,

576 (2004), modifying, in part, 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)(reaffirms the Commission's authority to award emotional distress damages proportionate to the distress suffered). While an award of emotional distress damages can be sustained even in the absence of physical injury or psychiatric consultation, it must be based on substantial evidence. Stonehill College, supra.; Franklin Publishing v. Massachusetts Commission Against Discrimination, 25 Mass. App. Ct. 947 (1988).

Emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill College, supra. at 576. Some of the permissible factors to measure emotional distress damages include: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; (4) whether the complainant has attempted to mitigate the harm, e.g., by counseling or taking medication. Stonehill College, supra.; Baldelli v. Town of Southboro Police Dept., 18 MDLR 167, 169 (1996). In addition, Complainant must show a sufficient casual connection between Respondents' unlawful acts and her emotional distress. Emotional distress that arises from circumstances other than Respondents' unlawful actions or from a pre-existing condition is not compensable. Stonehill College, supra.

I conclude that Complainant is entitled to damages for emotional distress she suffered as a direct and probable result of Respondents' unlawful discrimination. Complainant testified credibly and persuasively that she was harmed

because Respondents' conduct forced her to continue to look for a suitable apartment after May 2002 and seek extensions of her Section 8 certificate immediately after the birth of her last child<sup>8</sup>. Complainant also testified credibly that Respondents' actions harmed her because they prevented her from regaining physical custody of her children in May or June 2002 rather than in March 2003 and forced her to move into an apartment with three bedrooms that is less suitable for her entire family than the rental property. While there may have been other stressors in Complainant's life that contributed to her emotional state during the relevant period, i.e., her pregnancy and the stress of addressing her disabled daughter's daily needs, I am persuaded that Complainant's emotional harm was a direct and probable result of Respondents' unlawful acts. Robinson v. Haffner's Service Stations, Inc., 23 MDLR 283 (2001); Sverck v. American Health Care, et. al., 22 MDLR 50 (2000). Accordingly, I award Complainant \$5000.00 to compensate her for the emotional harm she suffered.

Massachusetts General laws, Chapter 151B, §5 states, in part, "If, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against the respondent: (a) in an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice." Having found that Respondents unlawfully discriminated against Complainant based on her status as a Section 8 recipient, I conclude that a civil penalty in the amount of \$10,000 is warranted.

---

<sup>8</sup>Complainant's submission failed to include a detailed description of the damages Complainant allegedly suffered as a result of Respondents' discriminatory conduct.

#### IV. ORDER

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

1. Respondents James F. Braden and Joan G. Braden shall cease and desist from discriminating in housing against recipients of housing or rental assistance in violation of G.L. c. 151B, §4(10).

2. Respondents shall pay Complainant the sum of \$8,100.00 in out-of-pocket expenses and \$5,000.00 in emotional distress damages plus interest thereon at the statutory rate of 12% per 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 shall pay these sums to Complainant within 60 days of their receipt of this decision.

3. Within 60 days of their receipt of this decision, Respondents shall pay a civil penalty in the amount of \$10,000.00 to the Commonwealth of Massachusetts. Respondents shall forward their civil penalty payment to the Clerk of the Commission.

4. The parties shall immediately notify the Clerk of the Commission when Respondents make the ordered payments. If Respondents fail to comply with the terms of this Order within the time periods allotted, Complainant shall immediately notify the Clerk of the Commission.

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 4th day of October, 2004.

---

KENNETH B. GROOMS  
Hearing Officer