COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

Massachusetts Commission Against Discrimination,
Joshua Fortin and Nicole Evangelista,
Complainants

v. DOCKET NO.17 WPR 00664

Marty Green Properties, LLC,
Martin Green, and Hang Ngo a/k/a Ngo Hang
Respondents

For the Complainants: Commission Counsel (Peter Mimmo, Esq. and Elizabeth Caiazzi, Esq.)
For the Respondents: Daniel Ryan, Jr., Esq.

DECISION OF THE HEARING OFFICER

This case involves, among other things, alleged disability discrimination in the housing context. On March 24, 2017, Complainants Nicole Evangelista ("Evangelista") and Joshua Fortin ("Fortin") filed a complaint with the Commission against the owner, property management company and property manager of the subject property alleging disability discrimination based on denial of the request for a reasonable accommodation ("Complaint"). The Investigating Commissioner issued a probable cause finding. On April 14, 2020, the Investigating Commissioner certified the matter for a public hearing. The claims for the public hearing were set forth in a Corrected Supplement to the Certification Order issued on April 4, 2022.

In summary, I must address the following alleged claims: (1) whether Fortin incurred disparate treatment based on his handicap[1] in violation of Section 4(6) of G.L. c. 151B; (2) whether

[1]The terms "handicapped" and "disabled" mean the same in this decision. The preferred term is "disabled" but G.L. c. 151B uses the term "handicapped."

Evangelista incurred disparate treatment, based on her association with Fortin, based on his handicap in violation of Section 4(6) of G.L. c. 151B; (3) whether Respondents discriminated against Fortin in violation of Sections 4(6) and/or 4(7A)(2) of G.L. c. 151B by failing to provide a reasonable accommodation relative to Fortin's handicap; (4) whether Respondents discriminated against Evangelista in violation of Sections 4(6) and/or 4(7A)(2) of G.L. c. 151B, based on her association with Fortin, by failing to provide a reasonable accommodation relative to Fortin's handicap; (5) whether Respondents retaliated against Fortin and/or Evangelista in violation of Section 4(4) of G.L. c. 151B; and (5) whether Respondent Green is liable to Fortin and/or Evangelista pursuant to Section 4(4A) of G.L. c. 151B.

I presided over the public hearing on June 22-24, 2022 and July 13, 2022 by Zoom video conference due to the COVID-19 pandemic. Seven persons testified and there were forty one joint exhibits. The stenographic record is the official record. The parties filed post-hearing briefs. In this decision, *unless stated otherwise*, where testimony is cited, I find such testimony credible and reliable, and where an exhibit is cited, I find such exhibit reliable to the extent cited.

I. FINDINGS OF FACT

1. The properties located at 2-24 D Street, Whitinsville (Northbridge), Massachusetts shall be referred to as the D Street Properties. They consist of two adjacent buildings each containing six units. The buildings share a driveway and backyard. (Evangelista at 380; Fortin at 99-100)
2. Carol Clarke has lived at the D Street Properties for many years and was property manager for a period. (Clarke at 533, 535)
3. Brett LeBlanc succeeded Clarke as the property manager. (LeBlanc at 621)

4. Starting on or about December 31, 2015, Respondent Marty Green Properties, LLC ("MGP") became responsible for management of the D Street Properties acting as agent for the new owner, Respondent Hang Ngo a/k/a Ngo Hang ("Ngo").[2] Respondent Martin Green was owner and principal of MGP and succeeded LeBlanc as property manager. (Joint Exhibit 3; Green at 649-650; LeBlanc at 641)
5. Since October 2014, Evangelista has resided at 24 D Street. She has three children. Her brother lived at 24 D Street for a period. (Evangelista at 377, 379-381, 389)
6. Evangelista's mother, Mary Evangelista ("Mary"), has resided at 24 D Street since October 2015. (Mary at 272)
7. In the summer of 2015, Evangelista met Fortin when he was visiting tenants at the D Street Properties. After they started dating, Fortin began to stay overnight at 24 D Street with the frequency increasing over time. (Evangelista at 396-397, 402-403; Fortin at 79-80, 82) By some point during June to September 2016, Fortin had moved into 24 D Street. (Fortin at 91; Evangelista at 407-408)
8. Fortin has Type 1 insulin dependent diabetes. He manages his diabetes by taking insulin and monitoring his blood sugar level ("BSL"). If the BSL is too high or too low, he can suffer severe consequences. Effects of a drop in the BSL range from feeling shaky, sweating, to cramping and to losing consciousness. In 2009, Fortin purchased a female

[2]During this proceeding, with respect to the owner, the parties have used two different names - "Hang Ngo" and "Ngo Hang". Compare Joint Exhibit 32 (MCAD Complaint referencing Ngo Hang); Joint Exhibit 3 (stipulations - referencing Ngo Hang in the caption, but referencing Hang Ngo in the actual stipulations); and December 14, 2022 email of Respondents' Counsel that "[u]pon information and belief, her name is Hang Ngo") In light of this variance, on December 15, 2022, I *sua sponte* revised the caption to refer to the owner as Hang Ngo a/k/a Ngo Hang.

puppy American Staffordshire terrier named Samantha ("Sam"). Some people incorrectly described Sam as a pit bull. Fortin trained Sam on basic commands, including as examples, sit, stay and bark, through positive reinforcement. Sam passed away in 2020. (Fortin at 50-51, 55-60)

A. Did Sam Detect Drops in Fortin's BSL?

9. Fortin testified as follows that Sam assisted him with his diabetes by detecting drops in his BSL. When Sam was a puppy, Fortin noticed that Sam at times acted abnormally and nudged Fortin nonstop. Fortin noticed that Sam's abnormal action coincided with Fortin having symptoms consistent with a low BSL, so Fortin would check his BSL, and noticed that it was dropping. Initially, Sam was able to detect three or four out of every five drops, but from the age of two to three onward was able to detect almost every single drop in Fortin's BSL. Sam did not react to spikes in Fortin's BSL. (Fortin at 60-66, 174) Sam slept with Fortin 99% of the time. Fortin relied upon Sam to detect drops in his BSL when he was sleeping. When Fortin's BSL dropped when he was sleeping, Sam would nudge Fortin's arms and chest and "bop" his head or face and whimper and whine. (Fortin at 70-72, 76)

10. Clarke understood that Sam was a "medical dog" and indicated that she had learned that through a conversation with the owner before Ngo. (Clarke at 547-548) LeBlanc believes there was a discussion when he first met Sam that Sam was "some kind of service dog." (LeBlanc at 625)

11. At the suggestion of the Department of Housing and Urban Development ("HUD"), Fortin spoke to the doctor treating his diabetes seeking a letter regarding Sam's status. Fortin's doctor issued a letter dated March 9, 2017 stating that it was medically necessary

that Fortin have his registered service dog with him at all times as the dog alerts Fortin to low blood sugar prior to Fortin feeling its effects ("Doctor Letter"). (Fortin at 145-147; Joint Exhibit 14)

12. Sher Ann Rossi has worked with service dogs since 1998. For the past five years, she has owned a company that trains service dogs including diabetic alert dogs and seizure alert dogs. To Rossi, a service animal, which she also refers to as an assistance animal, includes three types of dogs: service dogs, hearing assistance dogs, and guide dogs for people with seeing disability. (Rossi at 787-788, 829-830) For Rossi, certification or registration of a service or assistance animal means that the dog was properly trained in obedience, was properly trained to do the applicable service tasks, is able to perform such tasks in public, and has been certified by a trainer that the dog had been trained and was fully ready for service work. Rossi follows training criteria established by organizations for what the dog should be able to do and works with a company that provides the badging for the dogs she trains. (Rossi at 821-822, 845-846) Rossi defines a diabetic alert dog as a dog that is trained to alert a person with diabetes to a high or to a low BSL by training the dog to smell the blood sugar on the person's skin or breath – the scent. Her training of diabetic alert dogs includes the following. She trains the dog to have proper manners. Then, she trains the dog relative to the diabetic work. The dog is shown items including one containing a blood sugar sample. The dog is trained to choose the item with the sample 100% of the time. Ultimately, the dog is trained that when the dog smells this BSL, this is the action for the dog to take. (Rossi at 793-798) Based on her experience, I found Rossi qualified as an expert relative to service dogs and to opine as to whether Sam assisted Fortin with his diabetes. In making this finding, I took into account that Rossi

never met Sam or Fortin, and Rossi's knowledge relative to them was based on the public hearing testimony that she heard and the depositions that she read. (Rossi at 831-832) Rossi was present throughout the hearing.

13. Rossi agreed that: there is no one size fits all training of dogs to help disabled persons; it is possible that without the help of a trainer an owner can train a dog to help manage the owner's diabetes; and a dog does not have to be certified by a trainer to provide a service to a person. (Rossi at 822-823, 835-836, 842, 845-846) However, she has never heard of a dog spontaneously alerting its owner regarding the owner's diabetic condition without training and has never heard of a dog being born a diabetic alert dog. (Rossi at 810-811)
14. Rossi opined that Sam was not a diabetic alert dog, and may have helped Fortin, but not as a service dog. (Rossi at 820-821, 831) I found Rossi to be a highly credible witness notwithstanding that she was paid for her services. I find these opinions credible and reliable. Based on Rossi's opinions and the following: (a) I find that Sam provided emotional support to Fortin as Fortin believed that Sam could detect drops in his BSL; but (b) I find <u>not</u> credible, all testimony that Sam actually detected drops in Fortin's BSL or actually alerted Fortin to such.
    a. The record is devoid of evidence that Sam was trained by anyone to detect BSL. Fortin acknowledged that he did not train Sam to help him with his diabetes and claimed that Sam's ability to detect his low BSL came naturally. (Fortin at 64, 148, 169)
    b. Service dogs are generally trained to be with their handler (owner) twenty four hours a day, seven days a week, because one can never tell when an episode (e.g. seizure, etc.) may occur. (Rossi at 812-813) Sam only accompanied Fortin to

work at times. Although Fortin testified that he did not believe that there was a need to bring Sam to work because he was awake and could feel when his BSL was dropping, Fortin admitted that he had a "diabetic attack" at work. (Fortin at 78, 155-156)

c. There is no reason for a diabetic alert dog to be "off leash" in public. (Rossi at 815) Sam was not on a leash in public. (Evangelista at 594)

d. Re-scenting of a diabetic alert dog is important. (Rossi at 798-799) Regarding how Sam detected changes in Fortin's BSL, Fortin believes "it's a difference in the scent of sweat, but honestly, [doesn't] know." Fortin did not "re-scent" Sam, and did not even know what "re-scent" meant. (Fortin at 172)

e. Fortin acknowledged that all of Sam's actions that Fortin described to notify him that his BSL dropped are common actions that most puppies perform and acknowledged that it was his interpretation that Sam's actions were telling him that his BSL was low. (Fortin at 174-175)

f. Fortin's testimony at the hearing of Sam's actions when Fortin's BSL was dropping was not consistent with his deposition testimony. Fortin testified at the hearing that Sam did not lick his face to alert Fortin when he was sleeping that his BSL was low. At his deposition, Fortin testified that "when I'm sleeping, she'll wake me up by nudging me, head butting me, licking me at my face." (Fortin at 160-163)

g. Regarding whether Sam actually detected drops in Fortin's BSL, I give the Doctor Letter little weight. There is nothing in the record suggesting that the doctor had personal knowledge of Sam detecting a drop in Fortin's BSL or alerting Fortin to

such. Also, the letter contained a significant inaccuracy. It was not a true statement that Fortin needed Sam at all times, because even under Fortin's account, he just needed Sam for sleeping. (Fortin at 186) I similarly give little weight to Clark and LeBlanc's respective vague references to Sam being a "medical dog" or "some kind of service dog."

h. Rossi acknowledged that Sam may have helped Fortin (just not as a service dog) and was more of an emotional support animal which she defined as an animal that provides emotional support for people who have, for example, anxiety or depression. (Rossi at 791-792, 831)

i. I have taken into account that the parties stipulated that as a result of his disabling condition, Fortin required the use of an assistance animal. (Stipulation at Joint Exhibit 3; Stipulation amended at Transcript at p. 42) However, the parties did not define that term in their stipulation and did not stipulate that Sam was an assistance animal.

B. Policy Regarding Dogs at The D Street Properties

15. Based on the following, I find that from the time Evangelista moved into 24 D Street in 2014 until sometime after the filing of the Complaint with the Commission on March 24, 2017, there was a no-dogs policy at the D Street Properties that was generally enforced.

a. The tenancy agreement which Evangelista and her brother had entered into in November 2014 for 24 D Street stated that they were not allowed to bring any live animal, bird, reptile or pet into the premises or permit any to remain without written permission of the landlord, except as permitted by state or federal anti-

discrimination laws. (Joint Exhibit 5) Although the word "dog" is not expressly written into that agreement, it clearly falls within the terms "animal" or "pet."

b. During the period when LeBlanc was the property manager, there was a no pets policy. Regarding its enforcement, LeBlanc was stricter as to dogs than cats. If a tenant wanted to have a dog and discussed it with LeBlanc, he would consider the request on a case by case basis, but while he was property manager, "[n]obody had dogs. The first dog was Nicole who lived in 24 D." (LeBlanc at 622-623, 636) In light of LeBlanc's testimony, I do not credit Clarke's testimony that during the six months before Green became property manager, there was not a "no dogs" policy. (Clarke at 536)

c. Ngo's policy on dogs was consistent with the tenancy agreements – no dogs. (Green at 671) In light of LeBlanc's and Green's testimony, I do not credit Evangelista's testimony that the no-dogs policy had never been strictly enforced. (Evangelista at 468)

d. In July 2016, Green submitted to Evangelista a proposed new tenancy agreement (that never became effective) for 24 D Street which would have made more explicit the "no dog" policy. The language regarding animals and pets in the proposed agreement was identical to the November 2014 tenancy agreement except that the following was handwritten by Green – "No dogs. Tenant has a cat, hamster and fish" - based on a conversation that Green had with Evangelista. (Joint Exhibit 8; Green at 733-734, 736) Green wrote "no dogs" because that was the policy. (Green at 738) Sam was not the reason that Green wrote "no dogs" because Green proposed the new tenancy agreement on or before July 25, 2016,

(Joint Exhibit 38), and Green did not know about Fortin's dog until after a July 27, 2016 incident discussed in the next section.

e. At some point after Fortin and Evangelista filed the Complaint with the Commission, Ngo changed position regarding dogs which "opened a door for dogs to be on the property." (Green at 695-696, 771)

C. July 27, 2016 Incident and Its Effect

16. On July 28, 2016, Laura Coy, whose family were tenants at 16 D Street, (Evangelista at 426-428), emailed Green describing as follows an event that allegedly occurred the prior evening. Coy's daughter came home and had to park in a certain spot because another tenant had parked in the wrong place. The neighbors and roommates of 22 D Street and 24 D Street yelled at her and threatened to "sic" their dog, Sam, at her. (Joint Exhibit 21)

17. Based on the following, I find that no one sought to have Sam "sic" or attack or threaten Coy's daughter and find that Sam did not "sic" or attack or threaten her.

a. I found credible the following depiction by Fortin. Evangelista, Fortin and some tenants including Jeanine Sherman ("Sherman") were in the backyard around a fire. Coy's daughter parked a car. Sherman had a verbal argument with the daughter regarding where she had parked. Sam was whimpering and whining because someone new had arrived. Sherman told Sam "Who is that? Kind of amping Sam up. And then she said, well, go get her. But not in an aggressive type way at all. It was … just well, go see who it is, go get her." Sam ran towards Coy's daughter. Fortin called Sam back and Sam returned. Sam was no closer

than thirty feet from the daughter. Fortin called Sam back because of a previous dispute with the Coys.[3] (Fortin at 122-123, 127-129, 236)

b. Evangelista described the incident as follows. Sherman, her husband and son and other resident(s) were with Fortin and Evangelista outside sitting by a fire at night and having some drinks. A car drove into the parking lot and parked. The car was associated with the Coys. Sam whimpered and whined whenever a car pulled into the driveway or saw somebody. Sherman told Sam to "go say hi, go see who it is. Like … stop whining, just go say hi." Sam was trotting towards the car and was not barking or growling. (Evangelista at 442-447) While Evangelista's account differs in part from Fortin's (notably, her account does not include the argument between Sherman and Coy's daughter), I find it is sufficiently credible and corroborating of Fortin's.

c. Neither Laura Coy nor her daughter testified.[4]

18. After receiving Laura Coy's July 28, 2016 email, Green contacted Evangelista and Sherman to determine what happened. Green did not know whose dog was involved and believes that was the first time that he learned of Sam. (Green at 668, 670)

19. Green told Evangelista that he had received a call about an incident with the dog and that the dog was not allowed on the property. (Evangelista at 450) Based on that conversation, Evangelista understood that if Sam did not leave the property, Evangelista was likely to receive a notice to leave the property. (Evangelista at 458)

[3]At some point during the late spring of 2016 to July 2016, Laura Coy, Fortin and Evangelista had a heated verbal altercation. (Evangelista at 434-440; Fortin 111-112)

[4]The July 28 2016 email from Laura Coy to Green expressed that her daughter had seen two dogs. (Joint Exhibit 21) Neither Fortin's nor Evangelista's account of the incident referenced a second dog. Coy's daughter did not testify. In light of these points, I do not find reliable and do not credit the email's reference to a second dog.

20. Fortin remembers that Evangelista "was catching hell" from Green over Fortin's and Sam's presence. (Fortin at 132) Subsequently, in 2016, Fortin moved out of 24 D Street for a month or two and took Sam with him. (Evangelista at 452) During that period, he was living at friends' couches and in his car; felt cast out; and was emotionally upset. (Fortin at 133, 142-143)

D. Fortin Returns and Obtain a Certificate Listing Sam as a Service Dog

21. At some point in late 2016, Fortin returned with Sam to 24 D Street. Evangelista allowed them to return because other tenants had dogs, and she believed that if Green was not going to enforce the rule on them, then she was not going to follow the rule. As of the time of her conversation with Green in late July 2016, the residents of 20 D Street had a Pug and the residents of 12 D Street had a Black Lab and those dogs had remained on the property. (Evangelista at 451-454) Green did not learn about the Pug until the late spring or early summer of 2017 or 2018. (Clarke at 552-554) The record does not indicate when Green learned, if at all, of the Black Lab.

22. In January 2017, Fortin went on-line to a web site, filled out paperwork, paid fees and received a certificate dated January 24, 2017 listing Sam as a service dog and Fortin as Sam's handler. (Fortin at 135-136; Joint Exhibit 11)

23. Fortin believed that showing Green the certificate would alleviate the pressure that Green was putting on Evangelista. However, Fortin never showed the certificate to Green or told Green the alleged status of Sam verbally or in writing. (Fortin at 137-138, 182, 191) Green did not see the certificate until two to three years ago during the Commission case. (Green at 689-690)

E. Evangelista's and Green's Communications Regarding Sam

24. On February 21 or 22, 2017, Green received a phone call from a tenant complaining about an interaction with Fortin and his dog. (Green at 691-692)

25. On February 22, 2017, Green emailed Evangelista that he had been told that her boyfriend was bringing his dog onto the property; that he had been clear (in July 2016) that the dog was not allowed; and instructed her to vacate 24 D Street. Green wrote that he was sorry, but the decision was final. (Joint Exhibit 12) During the hearing, Green explained that he wrote "sorry" because an eviction was unpleasant, but he had to be consistent with the no-dogs policy. (Green at 692)

26. In the morning of February 23, 2017, Evangelista emailed Green that Sam was a registered service animal. (Joint Exhibit 12)

27. Within minutes, Green emailed Evangelista that there was a no-dogs policy. Within minutes, Evangelista emailed Green that service animals were allowed regardless of pet policies. (Joint Exhibit 12) In that email, Evangelista told Green that Sam was not on the property before becoming a registered service animal. That was false. Sam was on the property before January 2017. (Evangelista at 498; Fortin at 181)

28. Within minutes, Green emailed Evangelista with what he described as federal guidelines and referenced a "Joint Statement on Reasonable Accommodations." Green ended that email repeating that the decision was final. Green then emailed Evangelista that he had sent information demonstrating that landlords can have a no-dogs policy and that he was not going to argue. (Joint Exhibit 12)

29. Subsequently that morning, Green attempted to call Evangelista. Evangelista then emailed Green that she had been told that he had called and notified Green that she

preferred any conversations regarding rent or the dog "go through email." (Joint Exhibit 12; Green at 700) Evangelista wanted anything regarding rent or Sam to be written down to avoid disputes over what was said. (Evangelista at 471-472)

30. Subsequently, on February 23, 2017, Green hand-delivered a Notice to Terminate Tenancy at Will ("February Notice"). Pursuant to the February Notice, Evangelista was to vacate 24 D Street by March 31, 2017. On February 24, 2017, Green emailed a copy of the February Notice to Evangelista. On February 26, 2017, Green emailed Evangelista that he had sent two emails "as you requested I not contact you by phone" but she had not responded so he went to 24 D Street to talk but there was no answer. Green expressed that if he did not receive confirmation of receipt of the February Notice, he would engage a sheriff to serve it. Within minutes, Evangelista emailed Green that she had received the emails. (Joint Exhibits 12-13)
31. Green issued the February Notice because of Sam. Green testified that Evangelista was in violation of her tenancy agreement and Sam "was presenting a health and safety concern for other tenants." (Green at 749, 770)
32. During the February 22-26, 2017 communications between Evangelista and Green regarding Sam, Green did not ask what kind of help Sam gave to Fortin, or why Fortin needed Sam's help, or why Evangelista identified Sam as a service dog, or for any documentation showing Sam was needed to help Fortin. (Evangelista at 479-480) Green testified that there was no request for a reasonable accommodation even though he was "giving her the opportunity to say those words." (Green at 704-705)

33. Green did not talk to Fortin about whether he needed to have Sam with him, or ask Fortin what Sam does for Fortin, or ask whether Fortin was disabled, or ask whether Fortin needed help with his disability. (Fortin at 141-142; Green at 746)

34. None of the emails between Evangelista and Green from February 27, 2017 onward regarded Fortin, Fortin's disability, or Sam. (Joint Exhibit 3) Green admits that he did not have further discussions with Evangelista about Sam. Green testified that Evangelista "wouldn't meet with me; she wouldn't return my phone calls." (Green at 703, 747) Evangelista testified that she was not ending all communications with Green but was ending phone conversations with Green regarding Sam. (Evangelista at 472-473)

35. Green never gave Evangelista permission to have Sam on the property. (Evangelista at 481) However, Evangelista (and Sam and Fortin) remained at 24 D Street after March 31, 2017. Sam resided there until she passed away in 2020. Fortin resided there until 2021. Evangelista continues to reside there. (Fortin at 58; Evangelista at 379, 606-607; Mary at 271) I find they remained at 24 D Street beyond March 31, 2017 because Fortin and Evangelista filed the Complaint with the Commission on March 24, 2017. (Joint Exhibit 32) Green explained that the Complaint was the reason for allowing Evangelista to remain at 24 D Street after March 31, 2017 and that after the Complaint, Ngo changed position regarding dogs which "opened a door for dogs to be on the property." (Green at 695-696, 771)

36. In the spring of 2017, Evangelista filed an action in Housing Court to evict her mother. (Joint Exhibit 41) Green drove Evangelista's mother, Mary, to court for that proceeding. During the ride, Green asked Mary if she would help him "get rid of the dog" and find

out if the dog was a genuine service animal. Mary stated that she could not do that. (Mary at 354, 363-366)

F. Green's Practice Regarding Rent Owed for 24 D Street

37. Based on the following, I find that commencing in June 2017 and continuing into October 2017, Green's practice relative to addressing rent owed by Evangelista and Mary for 24 D Street changed from a conciliatory approach to an adversarial approach.

    a. On or about December 7, 2016, Green issued to Evangelista and her mother a Notice to Pay Rent or Vacate stating they were in default of rent of $ 2,195 and had to pay owed rent or vacate. On or about January 9, 2017, Green issued to Evangelista and her mother a Notice to Pay Rent or Vacate stating they were in default of rent of $ 1,715 and had to pay owed rent or vacate. Each notice cautioned that failure to do so could result in collection and eviction proceedings but stated that it was not an eviction notice. (Joint Exhibits 10, 33)

    b. Although the amount of rent owed by Evangelista and her mother in the June-September 2017 period was comparable to that owed in the December 2016-January 2017 period, starting in June 2017 and continuing into October 2017, Green issued documents to Evangelista and Mary stating that the landlord was seeking eviction, and Green commenced two eviction actions in Housing Court. Green issued to Evangelista and her mother a Fourteen Day Notice to Quit for Non-Payment of Rent ("14 Day Notice") dated June 8, 2017 to vacate for failure to pay rent of $ 1,175. Green issued to them a 14 Day Notice dated July 5, 2017 to vacate for failure to pay rent of $ 2,425. (Joint Exhibits 15, 34) On July 31, 2017, a complaint in Housing Court was filed for their eviction for nonpayment of rent

("July Action"). The July Action was dismissed in August 2017 pursuant to an alternative dispute resolution. (Green at 750-752) Green issued to Evangelista and her mother a 14 Day Notice dated August 31, 2017 to vacate for failure to pay rent of $ 2,015. Green issued to them a 14 Day Notice dated September 16, 2017 to vacate for failure to pay rent of $ 2,028. (Joint Exhibits 35-36) In October 2017, a complaint in Housing Court was filed seeking their eviction for non-payment of rent ($2,075) ("October Action"). (Joint Exhibit 26; Green at 753) The June-September 2017 14 Day Notices each stated that "[l]andlord seeks your eviction from the premises."

c. Evangelista's 2014 tenancy agreement stated that rent was due the first day of the month, but Green had allowed the tenants of 24 D Street to make rental payment over the course of the month via two or even three payments. (Evangelista at 604-605, 419-420; Joint Exhibit 5) There had been occasions when Green had disputes with Evangelista and her mother regarding what rent had been paid, and they would meet and examine receipts to resolve the dispute. (Evangelista at 424-425; 486-487; Mary at 301-302) In their Answer to the complaint in the October Action, Evangelista and Mary stated that they believed that the eviction was unnecessary elaborating that in the past, they had met with Green "to go over what deposits [of rent] had been made so that we all end-up on the same page" but "[w]e have asked him to come by and collect the rent so we don't have to go through this [but] he's refused." (Joint Exhibit 27) The change in Green's practice regarding late rental payments was echoed in Evangelista's testimony. (Evangelista at 486-488) I find the cited language within the Answer reliable and

credible and find Evangelista's testimony on this point credible. I also credit Mary's description that Green had been accepting multiple rental payments per month and "all of a sudden" he issued the 14 day Notices despite knowing that they could not pay the full amount of rent on the first day of the month. (Mary at 322)

d. I find the following insufficient to alter my finding that Green's approach towards owed rent by Evangelista and Mary changed in June 2017. Ngo wanted Green to use all practical and legal approaches to get people to pay the rent in full. (Green at 673, 721) When Green notified the residents that he was the new property manager, he wrote that late rental payments could lead to service of a "14 day notice, the first step in the eviction process." (Joint Exhibit 6) Green had a policy of sending out 14 day Notices for late rental payment. (Mary at 24)[5]

G. Resolution of October Action

38. Evangelista and her mother entered into an agreement with MGP, on behalf of Ngo, regarding 24 D Street dated November 9, 2017 ("Parties Agreement"). Terms of that agreement included the following. "Landlord will cooperate with tenant in applying for financial assistance to pay rent." "Joshua Fortin is not an occupant nor tenant. (Joint Exhibit 17) Regarding why the "Fortin is not an occupant nor tenant" language was in the Parties Agreement, Green credibility explained as follow. Evangelista had told him that Fortin was no longer living at 24 D Street. Because Fortin was not a tenant, Evangelista

[5]Evangelista testified that before February 2017, Green had taken her to court for nonpayment of rent. Yet, she also testified that she had been taken to court by Green "only twice", (Evangelista at 484-485), presumably referring to the July Action and the October Action. In light of no other evidence that Green had issued a Housing Court complaint against 24 D Street before July 2017, I do not credit her testimony of a prior court action and infer that she misunderstood the question.

did not have to make him a part of the application for financial assistance. If Fortin was part of the tenancy, he would have had to be part of the application and that could impact whether Evangelista remained eligible for financial assistance. (Green at 721, 757-758)

39. Later that same day (November 9, 2017), Evangelista, her mother and MGP entered into a written agreement also signed by the Housing Court Justice. ("Court Agreement") The Court Agreement included the following language. "Plaintiff has signed and executed necessary CMHA documents for [Evangelista] to receive assistance through CMHA." CMHA would pay an amount towards owed rent.[6] Evangelista/her mother would pay the remainder. If they complied with their obligations, then the October Action would be dismissed as of December 31, 2017. (Joint Exhibit 29)

H. Complaints against Sam

40. As noted, on February 21 or 22, 2017, Green received a phone call from a tenant complaining about an interaction with Fortin and his dog. Green did not recall who the tenant was and explained that he lacked that knowledge because he had been asked by the tenant to not share his/her name. Green elaborated that starting around mid-summer 2016, he received on average one complaint per month regarding Fortin's dog but did not keep records of the complaints because tenants would ask Green not to share their identity

[6]Regarding the financial assistance program, the applicant, Evangelista, would seek revenue from Central Massachusetts Health Alliance ("CMHA") through the "RAFT" program funded through the Massachusetts Department of Housing and Community Development. The funds would go from CMHA to the landlord who in exchange would agree to a new lease or tenancy with the applicant. (Green at 706-707)

I find that Green delayed signing the CMHA paperwork. It took Green at least two months to sign it. (Evangelista at 611; Mary at 360) I am cognizant that after Green received the paperwork, he called the program seeking clarification because only Evangelista was the applicant but her mother was also a tenant and part of the eviction action. Green also asked if Fortin's name would be on the application because he understood that to impact the amount of assistance that could be received. (Green at 711-712) I recognize Green's efforts for clarification would take some time, but I find that an insufficient reason for it taking Green at least two months to sign the paperwork.

because they were intimidated by how Fortin and Evangelista would respond. (Green at 665, 687, 692, 697, 723, 742)

41. Based on the following, I find not credible Green's testimony that starting around mid-summer 2016 he received on average one complaint per month regarding Sam, and I find not credible Green's testimony that he did not keep records of any complaints regarding Sam because the complaining tenants asked him not to share their identities. In light of his rebuke of Evangelista regarding the July 2016 incident with Coy's daughter and his communication with Evangelista regarding the February 21 or 22, 2017 incident involving Sam, Green surely would have found a way to communicate his displeasure to Evangelista regarding Sam without disclosing the complaining tenants' names if he had received other complaints about Sam, let alone the amount he claims. It defies common sense that Green would never have talked to Fortin about his dog and may never have seen Sam until the Commission proceeding, (Green at 716, 724), if Green was receiving such frequent complaints. Green testified that he was worried about the residents' safety because of Sam, but admitted that he never went to the D Street Properties to investigate and merely contacted Evangelista. (Green at 726, 728) Green's contention that he did not keep records of complaints regarding Sam because the complaining tenants asked him not to share their identities is too self-serving to be credible. Finally, the record contains glowing descriptions of Sam. Mary described Sam as quiet, friendly, well-trained, and well-mannered; Evangelista described Sam as mellow, laid back and calm; Clarke described Sam as a little old lady with a heart of gold; and Leblanc described Sam as a nice and friendly dog and very well behaved. (LeBlanc at 624-625; Mary at 296; Evangelista at 399; Clarke at 539)

I. Impact of Potential Eviction

42. The February Notice impacted Fortin because he felt that Evangelista's tenancy was yet another thing that his diabetes "had screwed up in my life." He was depressed, angry and disappointed. The February Notice caused Evangelista "to freak out" because she would need to find a place for herself and her children to live. (Fortin at 143, 148-149, 193)
43. The June 2017-November 2017 eviction processes impacted Evangelista. It was very stressful. She felt singled out because she believed that other tenants had dogs and were falling behind in rent but they were not being evicted. Every day, she was "walking on eggshells, not knowing what is going to happen" next. She was constantly worrying. Her children were going over to her foster mother's house because Evangelista was aggravated and did not want to take it out on them. The situation caused her to argue with her mother, with Fortin, and other tenants. The aggravation lasted "until we had gone to court for eviction and then even after that" although it is "not currently happening." Evangelista sought treatment for the stress. (Evangelista at 489, 491-493)
44. On July 21, 2017, Evangelista met with a nurse practitioner whose notes described her present illness as follows. She had a history of anxiety and depression. She was seeking to restart some medications used in the past. She was under a lot of stress. She was currently not working because of a back injury. Her boyfriend was not helping a lot around the house. She was living with her mother. The plan was for her to take medication for depression and anxiety with a dosage of 10 MG per day. (Joint Exhibit 16) On August 22, 2017, the dosage was increased to 20 MG per day. (Joint Exhibit 16)

II. LEGAL CONCLUSIONS

A. MGP and Ngo are Liable for any Violation of Chapter 151B by Green

Ngo is liable to Evangelista and Fortin to the extent that Green violated their rights under G.L. c. 151B through Ngo's relationship with MGP. As property owner, Ngo cannot delegate to MGP her duty to comply with fair housing laws. As property owner, Ngo's obligation to obey G.L. c. 151B extends beyond her own actions to those to whom she entrusts the management of the property. Taylor Bryan and Elijah Bryan and Massachusetts Commission Against Discrimination v. Bergantino Realty Trust, Pauline M. & Angelo Bergantino, Trustees & John Federico, 33 MDLR 161, 165 (2011) (Hearing Officer); Maryluz Rodriguez and Marta Perez and Massachusetts Commission Against Discrimination v. Michael Price & Gloria Lombardi, 32 MDLR 119, 121 (2010) (Hearing Officer)

Independently, as property owner, Ngo is liable for violations of G.L. c. 151B committed by her agent (MGP) within the agent's scope of authority under an agency theory. Melissa Derusha and Massachusetts Commission Against Discrimination v. Federal Square Properties & Pacific Land, LLC, 34 MDLR 76, 78 (2012) (Hearing Officer); Melissa Derusha and Massachusetts Commission Against Discrimination v. Federal Square Properties & Pacific Land, LLC, Respondents, October 2018 WL 5311480, at *4 40 MDLR 112, 114 (2018) (Full Commission) Green's conduct at issue regarded property management of the D Street Properties, thus falling within MGP's scope of authority as property managing agent of the D Street Properties.

MGP is vicariously liable to Evangelista and Fortin to the extent Green violated their rights under G.L. c. 151B. See Coll.-Town, Div. of Interco, Inc. v. Massachusetts Comm'n Against

Discrimination, 400 Mass. 156, 165 (1987) ("College-Town is, in this case, vicariously liable for the acts of its agents—its supervisory personnel")[7]

B. Disparate Treatment Claims

Section 4(6)(b) of G.L. c. 151B provides in pertinent part that it shall be an unlawful practice for "the owner … or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations…. (b) to discriminate against any person … because such person is blind, or hearing impaired or has any other handicap in the terms, conditions or privileges of such accommodations…." The parties stipulated that the D Street Properties are publicly assisted or multiple dwelling or contiguously located housing accommodations. (Stipulation in transcript at pp. 9-10)

1. Fortin Has Standing to Bring a Disparate Treatment Claim

Fortin was neither a tenant nor lessee at 24 D Street nor had any contractual or property based relationship with Ngo or MGP. However, based on the "plain meaning" of Section 4(6)(b), I conclude that Fortin may bring a claim of disparate treatment under Section 4(6)(b).

Section 4(6)(b) addresses discrimination "against any person." Section 4(6)(b) does not expressly require that Fortin be a tenant or lessee or have a relationship with the owner/managing agent to cloak him within its protection and "it would be an error to imply such a limitation

[7]Compare Lev v. Beverly Enterprises-Massachusetts, Inc., 457 Mass. 234, 238 (2010) ("Under the doctrine of respondeat superior, 'an employer, or master, should be held vicariously liable for the torts of its employee, or servant, committed within the scope of employment.' *Dias v. Brigham Med. Assocs., Inc.,* 438 Mass. 317, 319–320 (2002)"); Stonehill Coll. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549, 560 (2004) ("Although a violation of G.L. c. 151B is not a tort, we have, on many occasions, identified tort-like aspects of a G.L. c. 151B discrimination claim brought in the Superior Court.")

where the statutory language does not require it." See Psy-Ed Corp. v. Klein, 459 Mass. 697, 708 (2011)

In reaching my conclusion, I find instructive by analogy the following reasoning of the Supreme Judicial Court in Psy-Ed Corp. relative to whom G.L. c. 151B protects from retaliation.

> … confusion has arisen as to whether conduct challenged as retaliatory must target a current employee in order to fall afoul of [G.L. c. 151B] § 4(4) and (4A). We conclude that under the plain meaning of these sections, it need not. Section 4(4) addresses action taken by "any person" against "any person," while § 4(4A) concerns actions taken by "any person" against "another person." In neither case does the statute expressly require that an employer-employee relationship exist at the time of the wrongful conduct, or at any other time. In light of c. 151B's broad remedial purposes, it would be an error to imply such a limitation where the statutory language does not require it. See G.L. c. 151B, § 9 (G.L. c. 151B to be "construed liberally for the accomplishment of its purposes").

Psy-Ed Corp., 459 Mass. at 708 Having concluded that Fortin may bring a disparate treatment claim under Section 4(6)(b), I address the merits of his claim of disparate treatment.

2. Merits of Fortin's Disparate Treatment Claim

To prevail on his disparate treatment claim, Fortin must demonstrate the following: he is a member of a protected class; he was subject to an adverse action; Green had discriminatory animus; and the discriminatory animus was the reason for the action. Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016); Lipchitz v. Raytheon Co., 434 Mass. 493, 502 (2001) As Fortin seeks to prove disparate treatment through indirect or circumstantial evidence, the following burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and adopted and amplified in Wheelock College v. Massachusetts Comm'n Against Discrimination, 371 Mass. 130, 137–39 (1976) is utilized.[8]

[8]Although Wheelock involved a claim of employment discrimination, that framework is applicable to housing discrimination claims. Mayda Pacheco v. Francisco Cannella, 21 MDLR 151, 152 (1999) (Hearing Commissioner); James Snelders and Camille Snelders v. Boston Housing Authority, 23 MDLR 339, 341 (2001) (Hearing Officer)

Fortin bears the burden of establishing a prima facie case. If Fortin is successful, then unlawful discrimination is presumed. Respondents must then articulate a legitimate, nondiscriminatory reason for the challenged action and produce supporting credible evidence. If Respondents meet the burden of production, the presumption vanishes and the burden returns to Fortin to prove pretext. Fortin bears the burden of persuasion on the ultimate issue of discrimination. Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 127–28 (1997)

The elements of a prima facie case of discrimination will vary in different cases depending upon the facts and circumstances of the alleged discrimination. In the circumstances of this case, a prima facie case of an eviction action would be established by Fortin showing that (a) he is a member of a protected class; (b) he was meeting the objective requirements of someone living at the D Street Properties; and (c) he was in the process of being, evicted. See Donna Derosa v. Wood Ridge Homes, Inc. & Barkan Management, 27 MDLR 327, 329 (2005) (Hearing Officer)

Fortin has established a prima facie case. He is member of a protected class. The parties stipulated that he is disabled as a result of his diabetes. He was living, generally without incident, at 24 D Street for a number of months (with a break in between). Respondents subjected Fortin to potential eviction through the February Notice when they threatened to evict Evangelista, because given their association, her eviction meant Fortin would be displaced.

Respondents have articulate a legitimate, nondiscriminatory reason for the February Notice with supporting credible evidence. Green testified that Evangelista was in violation of her tenancy agreement by having Sam reside there and that he had to be consistent with the no-dogs policy.

Commission Counsel is correct that one of the most probative means to establish pretext is to demonstrate that Fortin was treated differently than similarly situated persons. But the evidence does not support any of the proffered differential treatment arguments.

First, Commission Counsel argues that Green knew of at least two dogs at the D Street Properties when Laura Coy emailed him of such on July 28, 2016, yet he never enforced the no-dogs policy as to the other dog. But, I found that such reference to two dogs was not reliable. Second, Commission Counsel argues that residents at 12 D Street and 20 D Street owned a Black Lab and a Pub respectively but neither suffered any consequences unlike Evangelista and Fortin. But, I found that as of the time of the February Notice, Green was not aware of the Pug, and the record does not contain evidence that Green was aware of the Black Lab as of the time of the February 23 Notice. Third, Commission Counsel argues that Green's testimony that he never evicted a tenant of the D Street Properties because of a dog, (Green at 762-763), means that Evangelista - and thus Fortin - is the only tenant of the D Street Properties that Green ever sought to evict because of a dog. But this does not evidence any differential treatment relative to the February Notice, because I found that as of the time of the February Notice, Green was not aware of the Pug, and the record does not contain evidence that Green was aware of the Black Lab as of that time. Fourth, Commission Counsel's contention that Evangelista was the only D Street Properties resident associated with a disabled resident was not established during the hearing.[9]

[9]In an effort to establish pretext relative to the disparate treatment claims, Commission Counsel argues that Green departed from his usual policy of working with tenants to avoid eviction and threatened Evangelista with eviction on three occasions (February Notice, July Action and October Action) The gravamen of the disability based disparate treatment claim is the February Notice as demonstrated by the following references to such in the disparate treatment section of Complainants' Post Hearing Brief (at p. 22) ("Respondents subjected Mr. Fortin to an adverse action when in February 2017, they, through Green, threatened to evict Ms. Evangelista because of Sam's presence"; "Green asserted that he sought to evict Ms. Evangelista in February 2017, and thus Mr. Fortin, because he was enforcing the Owner's unwritten and loosely enforced 'no dog' policy.") Accordingly, the July Action and October Action are not material to the disparate treatment claims.

Finally, the February Notice itself does not evidence pretext because Green notified Evangelista that he wanted her to vacate 24 D Street *before* he was told that Sam was an alleged service animal.

Fortin has failed to establish pretext, and thus the requisite discriminatory animus. For this reason, his disparate treatment claim under Section 4(6) of G.L. c. 151B *is dismissed*.

3. Evangelista Has Standing to Bring a Disparate Treatment Claim

Evangelista's claim of disability based disparate treatment is based on her association with Fortin. Based on the following, I conclude that Evangelista may bring an associational discrimination disability claim of disparate treatment under Section 4(6)(b) of Chapter 151B. The Commission has long recognized an associational discrimination disability claim. See Hamer v. Cambridge School Dept., 21 MDLR 152, 156 (1999) (Hearing Officer) (employment context) The Commission has recognized associational discrimination in the housing context. See Eric Grzych and Massachusetts Commission Against Discrimination v. American Reclamation Corp. & Vincent Iuliano, 37 MDLR 19, 20 (2015) (Full Commission) The Supreme Judicial Court has recognized associational disability discrimination. In Flagg v. AliMed, Inc., 466 Mass. 23,(2013) (employment context), the Court defined associational discrimination as a claim that a person, although not a member of a protected class, is the victim of discriminatory animus directed toward a third person who is a member of the protected class and with whom the person associates. Id. at 27 The Court reasoned that interpreting Section 4(16) of G.L. c. 151B to encompass a claim of associational discrimination "finds support in the language and purpose of that section and c. 151B more generally [and] in the longstanding and consistent interpretation given to the statute by the Massachusetts Commission Against Discrimination [], and in the analogous provisions of Federal antidiscrimination statutes." Id. Evangelista's dating relationship

with Fortin is sufficient to evoke a claim of associational discrimination. See Persson v. Bos. Univ., 2019 WL 917205, at *11 (D. Mass. Feb. 25, 2019), aff'd (Sept. 9, 2020) (regarding Title VII, although association is not typically defined, most cases involve familial connections or romantic relationships)

4. Merits of Evangelista's Disparate Treatment Claim

Having concluded that Evangelista may bring an associational discrimination disability claim of disparate treatment under Section 4(6)(b) of G.L. c. 151B based on her association with Fortin, I now address the merits of that claim.

Evangelista has proven her prima facie case. She was associated with a disabled person (Fortin). She was a "qualified tenant" as stipulated by the parties. (Joint Exhibit 3) She was in the process of being evicted via the February Notice.

Respondents articulated a legitimate, nondiscriminatory reason for the February Notice and produced supporting credible evidence. Green testified that Evangelista was in violation of her tenancy agreement and that he had to be consistent with the no-dogs policy.

Commission Counsel argues that the disparate treatment analysis used in Fortin's claim applies to Evangelista's claim "with equal force." I agree. For the reasons stated in Fortin's disparate treatment analysis, Evangelista has failed to prove pretext and thus discriminatory animus. Evangelista's disparate treatment claim under Section 4(6) of G.L. c. 151B *is dismissed*.

C. Lack of Reasonable Accommodations/Interactive Dialogue

Section 4(7A) of G.L. c. 151B pertinently states that for purposes of subsections 6 and 7 of G.L. c. 151B "discrimination on the basis of handicap shall include but not be limited to…. (2) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling."

1. Fortin Has Standing to Bring a Lack of Reasonable Accommodation Claim

Fortin was neither a tenant nor lessee at 24 D Street nor had any contractual or property based relationship with Ngo or MGP. However, based on the "plain meaning" of Section 4(7A)(2) of G.L. c. 151B, I conclude that Fortin may bring a lack of reasonable accommodation claim under Sections 4(6) and 4(7A)(2) of G.L. c. 151B. Section 4(7A)(2) addresses actions regarding a "handicapped person." Like Section 4(6)(b), Section 4(7A)(2), does not expressly require that Fortin be a tenant or lessee or have a relationship with the owner/managing agent to cloak him within its protection and "it would be an error to imply such a limitation where the statutory language does not require it." Psy-Ed Corp., 459 Mass. at 708 (2011)

2. Merits of Fortin's Lack of Reasonable Accommodation Claim

Having concluded that Fortin may bring a lack of reasonable accommodation claim under Sections 4(6) and 4(7A)(2) of G.L. c. 151B. I address the substantive elements of such a claim.

To establish a lack of reasonable accommodation claim pursuant to Sections 4(6) and 4(7A)(2) of G.L. c. 151B, Fortin must establish that (1) he has a handicap; (2) Green was aware of the handicap or could have reasonably been aware of it; (3) the accommodation sought is reasonably necessary to afford Fortin an equal opportunity to use or enjoy the premises; and

(4) Green refused to make the accommodation. See Melinda E Clark and Massachusetts Commission Against Discrimination, v. New Bedford Housing Authority, 41 MDLR 13, 13 (2019) (Full Commission)[10]

Fortin is disabled because of his diabetic condition. The parties stipulated to that. (Joint Exhibit 3)

Green on February 23, 2017 became aware that Fortin was disabled or at least could have reasonably been aware of that. On February 22, 2017, Green emailed Evangelista that he had been told that her boyfriend (Fortin) was bringing his dog (Sam) onto the property. In response, on February 23, 2017, Evangelista emailed Green that the dog was a registered service animal. In response, Green emailed Evangelista that day with what he described as federal guidelines from HUD and referenced a "Joint Statement on Reasonable Accommodations." In light of these emails, any contention that Green as of February 23, 2017 was not aware, or could not have reasonably been aware, that Fortin was disabled is rejected.

The next element is whether a reasonable accommodation was sought that was reasonably necessary to afford Fortin an equal opportunity to use or enjoy the premises. This element has three parts. A request for a reasonable accommodation must be made. The requested

[10]Commission Counsel describes these elements as part of a prima facie case and not as the ultimate elements of the lack of reasonable accommodation claim and suggests that the McDonnell Douglas burden shifting analysis applies. See Complainants Post-Hearing Brief at pp. 25, 30 There is language in the Clarke case referencing these elements in the context of a prima facie case. Other Commission precedent similarly references these elements in the context of a prima facie case. MCAD and Jennifer Martin and the Massachusetts Commission Against Discrimination, v. Barbara Pepin, 41 MDLR 119, 123 (2019) (Hearing Officer) In contrast, Commission decisions in the employment context evidence that such burden shifting is not necessary and that these are the ultimate elements to prove. See e.g. Gary Cooper and Massachusetts Commission Against Discrimination v. Raytheon Company, 42 MDLR 104, 106 (2020) WL 9257136, at *4 (Full Commission) In light of the lack of an apparent reason for applying a different framework in the housing context than in the employment context for a claim of lack of reasonable accommodation, I shall treat the stated elements as the ultimate elements.

accommodation must be necessary to afford Fortin an equal opportunity to use or enjoy the premises. The requested accommodation must be reasonable. I address each separately.

Evangelista never used the words "reasonable accommodation" in her correspondence with Green regarding Sam. The law does not require that. To make a reasonable accommodation request, no magic words are required. All that is required is that the request be made in a manner that a reasonable person could understand it to be a request for an exception, change, or adjustment to a rule, policy, practice or service because of a disability. See Bos. Hous. Auth. v. Bridgewaters, 452 Mass. 833, 847–848 (2009) It is clear that a request for a reasonable accommodation – an exception to the no-dogs policy – was made by Evangelista on February 23, 2017. On that date, Evangelista emailed Green that Fortin's dog was a registered service animal and that service animals were allowed regardless of pet policies. In response, Green emailed Evangelista referencing a "Joint Statement on Reasonable Accommodations." Green has remarkably admitted that he was giving Evangelista the opportunity "to say those [magic] words." Under these circumstances, it is incredulous to argue that there was no request for a reasonable accommodation made by Evangelista on behalf of Fortin regarding Sam on February 23, 2017.[11]

Establishing that a requested accommodation is necessary "requires at a minimum, a showing that the desired accommodation will affirmatively enhance a disabled tenant's quality of life by ameliorating the effects of the disability." Richard M. Blake and Massachusetts Commission Against Discrimination v. Brighton Gardens Apartments, LP, The Lombardi Corporation and Michael J. Lombardi, Respondents, 33 MDLR 48, 51 (2011) (Hearing Officer) (quoted case

[11]In making this determination, I have taken into account that Green never saw the January 2017 certificate regarding Sam until two to three years ago during the Commission case.

omitted) I conclude that the necessity requirement has been met. Although Sam did not actually detect drops in Fortin's BSL or actually alert Fortin to such, Fortin believed that Sam did and relied upon Sam to do that while Fortin was sleeping. Albeit in a placebo like manner, Sam provided emotional support to Fortin relative to his diabetes. Sam's presence while Fortin was sleeping provided Fortin with comfort that ameliorated the emotional effects of the disability and enhanced Fortin's quality of life.

An accommodation is reasonable if it would not impose an undue hardship or burden on Respondents. Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 608 (1994) (addressing cognate provision in Fair Housing Amendments Act of 1988 to Section 4(7A)(2) of G.L. c. 151B); Melinda E Clark and Massachusetts Commission Against Discrimination v. New Bedford Housing Authority, 41 MDLR 13, 13 (2019) (Full Commission) Determining whether an accommodation is reasonable involves a case specific balancing of the overall costs and benefits of the proposed accommodation. See Whittier Terrace Associates v. Hampshire, 26 Mass. App. Ct. 1020, 1020 (1989) (rescript); Richard M. Blake and Massachusetts Commission Against Discrimination v. Brighton Gardens Apartments, LP, The Lombardi Corporation and Michael J. Lombardi, Respondents, 33 MDLR 48, 52 (2011) (Hearing Officer); Clark, 41 MDLR at 13 Allowing Sam to remain with Fortin at 24 D Street benefitted Fortin as previously discussed. The costs or burdens of allowing Sam to remain with Fortin at 24 D Street were not established. I rejected the testimony that Sam was told to sic or threaten the Coy's daughter. I rejected the testimony that Green for a period was receiving monthly complaints about Fortin and his dog. There was no credible evidence that Sam posed a health or safety risk to the residents of the D Street Properties. I conclude that the reasonableness requirement has been established.

The final element is whether Green refused to make the accommodation – to allow Sam to remain at 24 D Street notwithstanding the no-dogs policy. Pursuant to the February Notice, Evangelista (and thus Fortin and Sam) were to leave 24 D Street by March 31, 2017. I recognize they remained, but for the following reasons, I conclude that Green refused to grant the requested accommodation. Green never gave Evangelista permission to have Sam on the property. (Evangelista at 481) Green's emails to Evangelista during February 22-23, 2017 reflected that his decision that Sam had to leave was final. The reason that Evangelista (and thus Sam and Fortin) remained at 24 D Street was because Fortin and Evangelista filed the Complaint with the Commission before March 31, 2017 – not because of any newly found largesse of Green.[12]

Because Fortin has proven the elements of his lack of a reasonable accommodation claim, for this reason alone, Ngo and MGP are liable to Fortin pursuant to Sections 4(6) and 4(7A)(2) of G.L. c. 151B.

Ngo and MGP are liable to Fortin pursuant to Sections 4(6) and 4(7A)(2) of G.L. c. 151B for an independent reason - Green's failure to engage in an interactive dialogue process. The Supreme Judicial Court has made clear that in addition to providing a reasonable accommodation, an employer must participate in the interactive dialogue process once initiated. Ocean Spray Cranberries, Inc. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 632,

[12]I find the reasoning in the following Commission decision helpful in determining that Green did not grant the request for a reasonable accommodation. In Jennifer Martin and Massachusetts Commission Against Discrimination, v. Barbara Pepin, 41 MDLR 119, 123-124 (2019) (Hearing Officer), Complainant's son sent Respondent a "Request for Reasonable Accommodation" on behalf of his mother, describing Complainant as having a disability and requesting that Respondent contact him by telephone or text rather than knocking on Complainant's apartment door except basically for emergencies. Respondent asserted that she consented in her deeds, if not by her words to the request. That argument was rejected based on the following reasoning. The "consented in her deeds, if not by her words" assertion rings hollow in light of the landlord's refusal to engage in meaningful communications with Complainant or her representatives. Complainant sought clarity as to whether her accommodation requests would be honored and an opportunity to discuss areas of disagreement. Complainant received neither an affirmative or negative response to her requests. Respondent may have given verbal assurance that she would provide what she deemed to be "reasonable" notice before entering, but in the absence of an agreement as to what "reasonable notice" meant, such a representation was wholly inadequate.

644 (2004) This requirement applies no less in a housing context precluding a landlord or property manager from declining to discuss potential accommodations based on a unilateral determination that such a conversation is unnecessary. Andover Hous. Auth. v. Shkolnik, 443 Mass. 300, 308–309 (2005) (Although there is no language in the federal Fair Housing Act or implementing regulations that imposes an obligation on landlords and tenants to engage in an interactive process "such a process is the optimal way for a landlord and tenant to explore the scope of the tenant's alleged handicap as well as the availability and feasibility of various accommodations"); Martin, 41 MDLR at 124 (2019) (requirement to engage in an interactive dialogue applies no less in a housing context than it does in an employer/employee relationship)

It is the initial request for an accommodation which triggers the obligation to participate in the interactive process. Ocean Spray Cranberries, Inc., 441 Mass. at 644 Based on the following, I conclude that Green failed to engage in an interactive dialogue when presented with a request for a reasonable accommodations regarding Sam. In response to Evangelista's email that Sam was a registered service animal, Green emailed her a "Joint Statement on Reasonable Accommodations" and concluded that email by stating that the decision was final. Shortly thereafter, Green emailed Evangelista that he had sent information demonstrating that landlords can have a no-dogs policy and that he was not going to argue. At no point during the February 22-26, 2017 communications between Evangelista and Green regarding Sam, did Green indicate any willingness to engage in discussions towards seeking a resolution. Green did not ask what kind of help Sam gave to Fortin, or why Fortin needed Sam's help, or why Evangelista identified Sam as a service dog, or for any documentation showing Sam was needed to help Fortin. Also, Green did not talk to Fortin about whether he needed to have Sam with him, or ask Fortin what

Sam does for Fortin, or ask whether Fortin was disabled, or ask whether Fortin needed help with his disability. Further, none of the emails between Evangelista and Green from February 27, 2017 onward regarded Fortin, Fortin's disability, or Sam.

In making my determination that Green did not engage in the required interactive dialogue, I have taken into account the following. Green attempted to call Evangelista on February 23, 2017. Evangelista responded by email that she preferred any conversations regarding rent or the dog "go through email." On February 26, 2017, Green emailed Evangelista that he had sent two emails "as you requested I not contact you by phone" but that she had not responded so he went to 24 D Street to talk but there was no answer. This evidences that Evangelista was not overly communicative with Green on the subject and was limiting the method of communication. But that is different than Evangelista shutting down all communication with Green about Sam. The record does not support a finding that Evangelista did that. Nothing prevented Green from further emailing Evangelista about Sam. But instead of doing that, Green asked Mary if she would help him "get rid of the dog" and find out if the dog was a genuine service animal.

3. Evangelista Has Standing to Bring a Lack of Reasonable Accommodation Claim

I now address whether Evangelista may bring a lack of reasonable accommodation claim pursuant to Sections 4(7A)(2) and 4(6) of G.L. c. 151B based on her association with Fortin. The Supreme Judicial Court has not decided whether a non-disabled person may assert a claim of a lack of reasonable accommodation based on an association with a disabled person. While the concurrence of two Justices in Flagg expressed that an employer's failure to provide a reasonable accommodation to an employee who is not himself handicapped to allow the employee to attend to important family matters is not handicap discrimination under Section 4(16) of G.L. c. 151B, Flagg, 466 Mass. at 42, the majority in Flagg stated "we have no occasion to consider whether an

employee with a handicapped spouse himself is entitled to reasonable accommodation on account of his spouse's condition; that issue is not raised." Flagg, 466 Mass. at 32, n. 18

Thus, consistent with the Commission's role as the primary interpreter of G.L. c. 151B, I am tasked with making the determination. I conclude that Evangelista may bring a lack of reasonable accommodation claim under Sections 4(7A)(2) and 4(6) of G.L. c. 151B based on her association with Fortin. I reason as follows.

First, this conclusion "is consistent with the broad remedial purposes underlying this Commonwealth's antidiscrimination statutes, which [the Supreme Judicial Court has] repeatedly emphasized in construing G.L. c. 151B." Gasior v. Massachusetts Gen. Hosp., 446 Mass. 645, 655 (2006)

Second, a contrary interpretation would create two absurd or unreasonable consequences. The non-tenant would have greater rights than the tenant. Lowery v. Klemm, 446 Mass. 572, 578–79 (2006) ("we will not adopt a construction of a statute that creates 'absurd or unreasonable' consequences. *Attorney Gen. v. School Comm. of Essex,* 387 Mass. 326, 336 (1982). The plaintiff's interpretation of G.L. c. 214, § 1C, would result in a statutory scheme that gives volunteers greater rights than employees.")

Further, the right of a disabled occupant, who is not a tenant or lessor or otherwise in relationship with the owner, to a reasonable accommodation pursuant to Sections 4(7A)(2) and 4(6) of G.L. c. 151B from policy would be made meaningless if the tenant or lessor with whom the disabled person associates did not also have such a right. Otherwise, the landlord would be able to evict with impunity the tenant or lessor for violation of the policy which would lead necessarily to the displacement of the disabled person.

Third, in 1988, Congress amended Title VIII of the Civil Rights Act of 1968 - the Fair Housing Act - by enacting the Fair Housing Amendments Act of 1988 ("FHAA") to expand the list of protected classes to include those with physical and mental disabilities. In 1989, our Legislature amended G.L. c. 151B to comply with the FHAA, because the FHAA required states to amend their housing discrimination statutes to be substantially equivalent with the FHAA in order to continue to receive federal funds. Pertinently, the reasonable accommodation claim language of 42 U.S.C. 3604(f)(3)(B) of the FHAA and G. L. c. 151B, § 4 (7A)(2) are the same. Crossing Over, Inc. v. City of Fitchburg, 98 Mass. App. Ct. 822, 831, 834, notes 13 and 17 (2020), review denied, 486 Mass. 1114 (2021) In light of the relationship between the housing provisions within G.L. c. 151B and the FHAA, I find the analysis regarding "standing" in the following alleged lack of reasonable accommodation case involving, among other statutes, the FHAA to be instructive.

A fairly recent federal court decision bestowed standing upon a non-disabled plaintiff who alleged injury from the denial of a request for a reasonable accommodation by a disabled person with whom that plaintiff resided and associated. Pinckney v. Carroll, 2019 WL 6619484 (S.D.N.Y. Dec. 4, 2019) The pertinent allegations follow. The plaintiff lived with her mother who was participating in the housing assistance program of Section 8 of the United States Housing Act of 1937 ("Section 8"). A medical condition caused the mother to be unable to comply with the recertification requirements to maintain her Section 8 subsidy. Then, a hospitalization prevented the mother from timely requesting a hearing to contest the impending termination of the Section 8 subsidy. The disabled mother explained the circumstances and requested permission to submit belatedly the documentation, but her request for a reasonable accommodation was denied by the applicable agency. The landlord then filed an eviction

proceeding alleging that the mother had violated her lease by failing to maintain her Section 8 subsidy. The mother passed away.

Among other relief, the plaintiff sought monetary damages for herself allegedly resulting from the failure to accommodate her mother's disability pursuant to various laws including the FHAA. The court denied a motion to dismiss for lack of standing as to the request for monetary relief. The court noted that pursuant to the FHAA, "any 'aggrieved person,' which includes anyone who 'claims to have been injured by a discriminatory housing practice,' has standing to bring a discrimination claim" and that an "'aggrieved person' need not be the direct target of discrimination in order to have standing under the FHA[A]." The court concluded that the plaintiff had adequately alleged independent injuries resulting from the alleged failure to accommodate her mother's disability. Plaintiff's allegations of injury included that because she lived with her mother, she was wrongfully denied the benefit of the subsidy for two years and experienced emotional distress and anxiety surrounding the threat of eviction. Pinckney v. Carroll, 2019 WL 6619484, at *1–4 (S.D.N.Y. 2019)

The Pinckney court's reliance upon the "any aggrieved person" provision of the FHAA is analogous to the reliance by the Supreme Judicial Court in Flagg upon the "any aggrieved person" provision within Section 5 of G.L. c. 151B. Flagg, 466 Mass. at 30 ("Significantly, c. 151B expressly gives standing to seek relief to '*[a]ny* person claiming to be aggrieved' by practices made unlawful by the statute (emphasis added). G. L. c. 151B, § 5") The alleged anxiety surrounding the threat of eviction to the non-disabled plaintiff in Pinckney is analogous to the actual injury/harm that Evangelista incurred when Green refused to provide a reasonable

accommodation to Fortin, and Evangelista was facing her eviction from 24 D Street pursuant to the February Notice.[13]

4. Merits of Evangelista's Lack of Reasonable Accommodation Claim

Having concluded that Evangelista may bring a lack of reasonable accommodation claim under Sections 4(7A)(2) and 4(6) of G.L. c. 151B based on her association with Fortin, I address the merits of that claim. The analysis as to Fortin's claim of lack of reasonable accommodation applies with equal force to Evangelista's claim of lack of reasonable accommodation. The analysis regarding the failure to engage in the interactive dialogue addressed above similarly applies.

Thus, Evangelista has proven the elements of her lack of a reasonable accommodation claim, and has also proven a failure to engage in the initial dialogue process. For these two independent reasons, Ngo and MGP are liable to Evangelista pursuant to Sections 4(6) and 4(7A)(2) of G.L. c. 151B.

D. Retaliation Claims (Fortin and Evangelista)

To prevail on the retaliation claim, Fortin and Evangelista must prove four elements: (a) they reasonably and in good faith believed that Green was engaged in wrongful discrimination; (b) they acted reasonably in response to that belief through acts meant to protest or oppose such discrimination (protected conduct); (c) Green took adverse action against them; and (d) the

[13]Since Flagg, three District Courts for the District of Massachusetts have alluded to this issue in the employment context with each adhering with the concurring opinion in Flagg. Fenn v. Mansfield Bank, 2015 WL 628560, at *3 (D. Mass. 2015); Knidel v. T.N.Z., Inc., 211 F. Supp. 3d 382, 396 (D. Mass. 2016); Lin v. CGIT Sys., Inc., 2021 WL 4295863, at *5 (D. Mass. Sept. 21, 2021) I do not find these decisions applicable to the circumstances of this case.

adverse action was in response to the protected conduct (forbidden motive). Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405–06 (2016)[14]

Fortin and Evangelista have proven that they reasonably and in good faith believed that Green was engaged in wrongful discrimination. Evangelista on behalf of Fortin made a request for a reasonable accommodation on February 23, 2017, but the request was not granted, and Green failed to engage in the interactive dialogue process. Believing that they had incurred disability discrimination, they filed the March 24, 2017 Complaint with the Commission alleging disability discrimination based on denial of a request for a reasonable accommodation.

Fortin and Evangelista acted reasonably in response to their belief through acts meant to protest or oppose such alleged discrimination by filing the Complaint with the Commission.

Fortin and Evangelista have proven that Green subsequently took the following adverse actions against Evangelista (and indirectly Fortin). During June-October 2017, Evangelista and her mother received four 14 Day Notices and had the July Action and October Action commenced against them.

Regarding the final element, forbidden motive, I apply the burden-shifting paradigm. Fortin and Evangelista have established a prima facie case. Evangelista on behalf of Fortin requested a reasonable accommodation regarding Sam on February 23, 2017. Evangelista and Fortin filed a Complaint with the Commission on March 24, 2017. Each action satisfies the protected conduct

[14]Fortin and Evangelista may prove forbidden motive using the following burden-shifting paradigm similar to the one set forth in McDonnell Douglas. At the prima facie stage, they must show that: they engaged in protected conduct; Respondents were aware of that; they suffered adverse action; and there was a causal connection between the protected conduct and the adverse action. If the prima facie is established, Respondents must articulate a legitimate, non-retaliatory reason for the adverse action with credible supporting evidence. If they do, Fortin and Evangelista must prove pretext which would allow one to infer retaliatory motivation. Verdrager, 474 Mass. at 406

requirement. Donnalyn Sullivan and Massachusetts Commission Against Discrimination v. Middlesex Sheriffs Office, 37 MDLR 101, 107 (2015) (Full Commission); James Earl Halstead and Massachusetts Commission Against Discrimination v. Leidos, Inc. and Francis Kerrigan, 41 MDLR 38, 46 (2019) (Hearing Officer) Green was aware that a request for a reasonable accommodation was made on February 23, 2017, as detailed above, and aware of the Complaint. Evangelista and (indirectly) Fortin[15] suffered adverse actions commencing in June 2017 and continually each month into October 2017 via the June, July, August, and September 2017 14 Day Notices and the July Action and the October Action. This series of adverse actions is sufficiently close in time to the February 23, 2017 request for a reasonable accommodation and the March 24, 2017 filing with the Commission to allow for the inference, which I draw, that they were in response to the protected conduct. Compare Mole v. University of Massachusetts, 442 Mass. 582, 592-593 (2004)

Respondents have articulated a legitimate, non-retaliatory reason for the adverse actions with credible supporting evidence - Evangelista and her mother owed rent. I next address pretext.

Deviation from usual policy or practice can evidence pretext. The June-September 2017 14 Day notices and associated two Housing Court eviction proceedings reflect (as detailed more fully above) a notable change in Green's practice relative to rent owed by Evangelista and Mary. Although the amount of rent owed by them in the June-September 2017 period was comparable to that owed in the December 2016-January 2017 period, starting in June 2017 and continuing into October 2017, Green issued documents to Evangelista and Mary stating that the landlord was seeking eviction and commenced two actions in Housing Court seeking their eviction. As

[15]Although Fortin was not issued a 14 Day Notice or a party to a Housing Court Action, he indirectly incurred such adverse actions, because eviction of Evangelista and her mother meant that he and Sam would be displaced.

Mary described, "all of a sudden" Green issued the 14 day notices despite knowing that they could not pay the full amount of rent on the first day of the month. Although the October Action was ultimately resolved, based on this notable change in practice by Green relative to addressing owed rent by Evangelista and her mother, I find that Evangelista and Fortin have established pretext, and I infer the requisite forbidden retaliatory motive.

Evangelista and Fortin have proven their claim of retaliation. As a result, Ngo and MGP are liable for Green's action to Fortin and Evangelista pursuant to Section 4 of G.L. c. 151B.

E. Green - Individual Liability

Section 4(4A) of G.L. c. 151B makes it unlawful for any person to coerce, intimidate, threaten or interfere with another person in the exercise or enjoyment of any right granted or protected by G.L. c. 151B.

To impose liability upon Green under Section 4(4A) in this case dependent upon circumstantial evidence, Fortin and Evangelista must establish that: (1) Green had the authority or the duty to act on behalf of the owner; (2) Green's action or failure to act implicated their rights under G.L. c. 151B; and (3) there is evidence that the action or failure to act was in deliberate disregard of their rights, allowing the inference to be drawn that there was intent by Green to discriminate or interfere with their exercise of rights. See Robert Lazaris and Massachusetts Commission Against Discrimination v. Massachusetts Human Resources Division, 41 MDLR 117, 117-118 (Full Commission)

For the following two independent reasons, Green is individually liable to Evangelista and Fortin pursuant to Section 4(4A) of G.L. c. 151B.

I start with Green's involvement relative to the request for a reasonable accommodation. First, as the property manager of the D Street Properties, Green had the authority and duty to make an

exception to the no-dog policy as a reasonable accommodation and to engage in the interactive dialogue process regarding Sam. Second, as detailed above, Green refused to provide a reasonable accommodation and did not engage in the interactive dialogue. His failure implicated Fortin and Evangelista's rights under Sections 4(6) and 4(7A)(2) of G.L. c. 151B. Third, I conclude that Green's actions were in deliberate disregard of these rights, and I infer that Green had the requisite intent to discriminate or interfere with such rights. It was clear that a request for a reasonable accommodation – an exception to the no-dogs policy regarding Sam – was made on February 23, 2017 – and understood by Green as such. He responded to Evangelista's "registered service dog" email by referencing a "Joint Statement on Reasonable Accommodations." Green even admitted that he was giving Evangelista the opportunity "to say those words [reasonable accommodation]." Green did not engage in an interactive dialogue or provide a reasonable accommodation. Instead, Green notified Evangelista that his decision was final and that he was not going to argue and subsequently even asked Mary if she would help him get rid of the dog and find out if the dog was a genuine service animal.

I next address Green's involvement regarding Evangelista's and Fortin's retaliation claims. First, as property manager of the D Street Properties, Green had the authority and duty to address owed rent by Evangelista and her mother. Second, within four months of the request for a reasonable accommodation and within three months of the filing of the Complaint with the Commission, Green commenced a series of 14 Day Notices and two Housing Court actions seeking eviction of Evangelista and her mother in departure from his practice regarding owed rent for 24 D Street which implicated Evangelista's and indirectly Fortin's rights under Section 4 of G.L. c. 151B to not be retaliated against in response to engaging in protected conduct. Third, I conclude Green's actions were in deliberate disregard of Fortin's and Evangelista's right to be

free from retaliation for engaging in protected conduct, and I infer that Green had the requisite intent to discriminate or interfere with such rights. Although Evangelista's 2014 tenancy agreement stated that rent was due the first day of the month, Green had allowed the tenants of 24 D Street to make rental payment over the course of the month via two or even three payments. But within months of the request for a reasonable accommodation and the filing of the Complaint with the Commission, and although the amount of rent owed was comparable to that owed in the December 2016-January 2017 period, starting in June 2017 and continuing into October 2017, Green issued documents to Evangelista and Mary stating that the landlord was seeking eviction and commenced two actions in Housing Court seeking their eviction. As Mary noted, "all of a sudden" he issued the 14 day notices despite knowing that they could not pay the full amount of rent on the first day of the month. Further, Green delayed in signing the CMHA paperwork.

III. REMEDY

Section 5 of G.L. c. 151B empowers the Commission to award emotional distress damages that are fair and reasonable and proportionate to the distress suffered. Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549, 576 (2004) "An award must rest on substantial evidence and its factual basis must be made clear on the record. Some factors that should be considered 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; and (4) whether the complainant has attempted to mitigate the harm (e.g., by counseling or by taking medication). [Citation omitted] In addition, complainants must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress." Stonehill

College, 441 Mass. at 576 The Commission may also impose civil penalties and impose training requirements.

A. **Emotional Distress Damages**

1. Evangelista

The lack of granting an exception to the no-dogs policy or engaging in an interactive dialogue meant that Evangelista had the threat of being evicted by March 31, 2017 hanging over her head. Fortin described that Evangelista "freak[ed] out" as a result, because she would need to find a place for herself and her children to live. Although March 31, 2017 passed without Evangelista having to vacate 24 D Street, within a few months she faced the gauntlet of the June 2017 to October 2017 period of eviction threats reflected in the series of 14 Day Notices and two Housing Court Actions. The June - October 2017 process was very stressful. Every day, she was "walking on eggshells, not knowing what is going to happen" next. She was constantly worrying. Her children were going over to her foster mother's house because Evangelista was aggravated and did not want to take it out on them. The situation caused her to argue with her mother, with Fortin, and other tenants. The aggravation lasted "until we had gone to court for eviction and then even after that" although it is "not currently happening."[16] Evangelista sought treatment for the stress. On July 21, 2017, Evangelista visited a nurse practitioner. The treatment plan was for

[16]Regarding when the aggravation/stress ended, Evangelista did not expand upon her testimony that it lasted "until we had gone to court for eviction and then even after that." By the terms of the Court Agreement, the October Action would be dismissed by December 31, 2017 if all obligations were met. There is nothing in the record to suggest that obligations were not met. Based on this, and recognizing Evangelista has the burden of establishing the period of the emotional distress, I believe it fair and reasonable to draw, which I do, an inference that the period of aggravation/stress lasted for a few months after the conclusion of the October Action, which I shall approximate as March 1, 2018.

her to take medication for depression and anxiety. On August 22, 2017, the dosage was increased.

I may only award damages for emotional distress caused by Respondents' unlawful actions. Evangelista had a history of anxiety and depression. The July 21, 2017 notes of the nurse practitioner indicate that Evangelista was also having stress from other sources. She was not working because of a back injury. Fortin was not helping much around the apartment. She was living with her mother - who as detailed above - she had sought to evict only months earlier.

Applying the mandates of Stonehill to the circumstances of this case, I find that it is fair and reasonable and proportionate to the distress suffered by Evangelista because of Respondents' unlawful acts to award Evangelista $ 20,000 in emotional distress damages.

2. Fortin

The lack of granting an exception to the no-dogs policy or engaging in an interactive dialogue meant that Fortin had the threat of being displaced from 24 D Street by March 31, 2017 hanging over his head because of his relationship with Evangelista. Fortin felt that Evangelista's tenancy was another thing that his diabetes "had screwed up." He was depressed, angry and disappointed.

The record does not contain any evidence regarding how the July - October 2017 eviction processes impacted Fortin, but there is no reason to believe that Fortin would be impacted differently than he had been regarding the earlier threat of displacement.

Applying the mandates of Stonehill to the circumstances of this case, I find that it is fair and reasonable and proportionate to the distress suffered by Fortin because of Respondents' unlawful acts to award Fortin $ 10,000 in emotional distress damages.

B. Civil Penalties

Section 5 of G.L. c. 151B authorizes me to impose a civil penalty against the Respondent(s) in addition to any other action which I may order. Under the circumstances of this case - failure to provide a reasonable accommodation/engage in an interactive dialogue coupled with retaliatory eviction proceedings - it is appropriate to impose a civil penalty against each Respondent. Pursuant to Section 5, the civil penalty must not exceed $ 10,000 if the applicable Respondent has not been adjudged to have committed any prior discriminatory practice. The record is devoid of any evidence of any prior discriminatory practice by any of the Respondents.

For the above reasons, and in my discretion, I impose: a civil penalty of $ 7,500 against Green; a civil penalty of $ 5,000 against Ngo; and a civil penalty of $ 5,000 against MGP - each payable to the Commonwealth of Massachusetts within 60 calendar days of receipt of this decision.

C. Training

This case illustrates how important it is for property owners, managing agents and property managers to know and to follow disability law requirements. Within 30 calendar days of receipt of this decision, the Respondents (separately or jointly) shall contact the Commission's Director of Training to obtain a list of trainers approved by the Commission on disability law. Within 30 days of receipt of that list, the Respondents (separately or jointly) shall select an approved trainer and within 60 days of receipt of that list, the Respondents (separately or jointly) shall attend such a training. The training session must be at least four (4) hours in length. Within 30 calendar days after the completion of the training, each Respondent shall submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic, the

names of the persons required[17] to attend the training, the names of the persons who attended the training, and the date and time of the training session. For purposes of enforcement, the Commission shall retain jurisdiction over training requirements.

IV. ORDER

For the reasons detailed above, and pursuant to the authority granted me under Section 5 of Chapter 151B, I order the following.

1. Each Respondent is *jointly and severally* liable to pay Fortin, as an emotional distress damage award, $ 10,000 - plus interest thereon at the rate of 12% per annum from the date of the filing of the Complaint with the Commission until paid or until this order is reduced to a court judgment and post judgment interest begins to accrue.

2. Each Respondent is *jointly and severally* liable to pay Evangelista, as an emotional distress damage award, $ 20,000 - plus interest thereon at the rate of 12% per annum from the date of the filing of the Complaint with the Commission until paid or until this order is reduced to a court judgment and post judgment interest begins to accrue

3. Each Respondent shall pay a civil penalty as detailed above.

4. Each Respondent shall attend a training as detailed above.

5. Any petition for reasonable attorney's fees and costs for Commission Counsel shall be submitted to the Clerk of the Commission within 15 days of receipt of this decision.

[17]Required attendees of MGP shall be all its owners, principals, officers, supervisors, and managers.

Pursuant to 804 CMR 1.12 (19) (2020), such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit. Each Respondent may file a written opposition within 15 days of receipt of said petition.

V. NOTICE OF APPEAL

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal with the Clerk of the Commission within 10 days of receipt of this decision and submit a Petition for Review within 30 days of receipt of this Decision. 804 CMR 1.23 (2020)

So ordered this 19th day of December 2022.

Jason B Barshak

Jason Barshak
Senior Hearing Officer