

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

Massachusetts Commission Against
Discrimination and Miguel A. Medina Santiago,
Complainants

v.

DOCKET NO. 16-WPR-02288

Chu Yi Li aka Li Chu Yi and
Michael Cheng aka Tai A. Cheng,
Respondents

Appearances: Yanneth Bermudez Camp, Esq., for Complainants

DECISION OF THE HEARING COMMISSIONER

I. INTRODUCTION

On August 25, 2016, Complainant Miguel Medina (“Medina”) filed a complaint (“Complaint”) with the Massachusetts Commission Against Discrimination (“Commission”) alleging discrimination in housing based on his national origin and disability. Subsequently, the Investigating Commissioner issued an order amending the Complaint to add an additional respondent. On February 23, 2021, the Investigating Commissioner certified the case to public hearing. On October 24, 2022, I amended the Complaint to include additional claims and to clarify the names of the Respondents. The Respondents are Chu Yi Li also known as (“aka”) Li Chu Yi (“Li”) and Michael Cheng aka Tai A. Cheng (“Cheng”). On February 8, 2023, I held a public hearing in this matter. At the commencement of the public hearing, I determined that Medina’s full name was Miguel A. Medina Santiago, and upon motion by Medina’s counsel, ordered that the caption be revised to reflect Medina’s full name. After Respondents failed to appear for the hearing, despite being duly notified, I entered an Order of Default on the record pursuant to 804 CMR 1.12(10) (2020), and conducted an in-person default hearing addressing the following issues: 1) whether Respondents subjected Medina to disparate treatment based on his national origin and/or disability in violation of M.G.L. c. 151B, § 4(6); 2) whether Respondents subjected Medina to a hostile living environment based on his national origin and/or disability in violation of c. 151B, § 4(6);

3) whether Respondents violated c. 151B, § 4(4A); and 4) whether Cheng violated c. 151B, § 4(5).

Medina was the only witness, and there were thirteen (13) exhibits, including a video.¹

After reviewing the evidence presented at the February 8, 2023 hearing, I determined that, in the interest of justice, two additional issues should be certified to public hearing and that the hearing should be reopened for the limited purpose of addressing the following issues: 1) whether Respondents refused to make a reasonable accommodation necessary to afford Medina an equal opportunity to use and enjoy his dwelling in violation of M.G.L. c. 151B, §§ 4(6) and 4(7A); and 2) whether Respondents discriminated against Medina because of his need for a reasonable accommodation in violation of c. 151B, §§ 4(6) and 4(7A). On March 22, 2023, I issued an order re-opening the hearing and vacating the February 8, 2023 entry of default. On June 6, 2023, the public hearing continued and addressed the two new issues. After Respondents failed to appear for the public hearing, despite being duly notified, I entered an Order of Default on the record pursuant to 804 CMR 1.12(10) (2020) and conducted a remote default hearing. Medina was the only witness, and two additional exhibits were entered into evidence.

The audio recording is the official record of the two-day hearing. The services of a Spanish interpreter were utilized on both days of the hearing. Medina filed a post-hearing brief, and Respondents did not file a post-hearing brief.

¹ During the pre-hearing stage, Medina submitted documents from the City of Worcester Inspectional Services (“Worcester documents”) as proposed exhibits 5, 6, 8, 9 and 10. At the hearing on February 8, 2023, Medina’s counsel submitted Worcester documents that I entered into evidence as Exhibits 7-9, with the understanding that these documents were identical to the Worcester documents submitted during the pre-hearing stage. In writing this Decision, I noted differences between the Worcester documents submitted in the pre-hearing stage and those submitted at the hearing. This does not affect this Decision. I used the Worcester documents submitted as proposed exhibits in writing this Decision. Medina’s proposed exhibit 5 is Exhibit 7; Medina’s proposed exhibit 6 is Exhibit 8; and Medina’s proposed exhibits 8-10 are Exhibit 9.

In this decision, unless stated otherwise, where testimony is cited, I found it credible and reliable, and where an exhibit is cited, I found it reliable to the extent cited. Medina's testimony is cited as "(Medina Day(s) ___)." Having duly considered the record of the public hearing in this matter, I issue the following Decision.

II. FINDINGS OF FACT

A. Introduction

1. Medina was born in Massachusetts and grew up in Puerto Rico. He identifies his national origin as American, and his primary language is Spanish. (Medina Day 1).
2. In 2013, Medina began residing at 7 Bluff Street in Worcester, Massachusetts ("Property"). For about one year, he lived in a unit on the second floor. For the remainder of his residence at the Property, he lived in a unit on the third floor ("Unit") with his roommate, Maria Lemos ("Lemos"). He rented a room from Lemos. The rent for the Unit was \$800 per month, which they evenly split. While residing at the Property, Medina was not working and used Social Security Disability Income ("SSDI") to pay his share of the rent. There was also a unit on the first floor. I infer that the three units were rented separately based on Medina's testimony and Cheng's description of the units during an incident with Medina on August 17, 2016, which is described below. (Medina Day 1; Exhibits 3, 7, and 13; Findings of Fact, Paragraph 31).
3. Li was the owner of the Property, as evidenced by letters from the City of Worcester, Department of Inspectional Services ("Inspectional Services") addressed to him stating, "according to the records of the Assessor's Department this dwelling [7 Bluff Street] is owned by you." (Exhibits 8, 9). Further, Li's daughter ("Lauren") collected the rent for the Unit from Lemos while Medina resided there. (Medina Day 1).
4. Cheng was the manager of the Property while Medina was residing there. (Medina Day 1).

B. Medina's Medical Conditions

5. At all material times, Medina suffered from numerous medical conditions including sleep apnea, chronic asthma, anxiety, depression, allergies, sinusitis, bipolar disorder, obsessive-compulsive

disorder, schizoaffective disorder, fear of heights, obesity, back and leg pain, feet swelling, chronic degenerative disc disorder, chronic bilateral plantar fasciitis, and hypertension. (Medina Days 1 and 2; Exhibits 2-3, 5-6, 11 and 15).

6. While I credit that Medina had sleep apnea, I do not credit his characterizations of the sleep apnea as “chronic” and “severe”, (Medina Days 1 and 2), because none of the medical documentation submitted into evidence references his sleep apnea. (Exhibits 3, 5-6, 11 and 15).
7. At the time Medina resided at the Property, his anxiety and depression were “chronic” based on his testimony and the following letters from his providers: 1) in 2004, his psychiatrist noted that Medina suffered from anxiety and depression and noted that to “avoid exacerbation of his condition it is essential that he remain stable in all areas of his life;” 2) in 2007, his psychiatrist referenced continuing treatment for anxiety and depression; 3) in June 2016, his psychiatrist referenced a “chronic mental illness including both mood and thought disorders” and stated that he was being treated for “schizoaffective disorder, depressed type with prominent paranoia, emotional dysregulation;” and 4) in May 2023, Medina’s primary care physician noted that he had “severe obsessive compulsive disorder as well as depression and anxiety which are very impairing” and described these conditions as chronic. He also took medication to treat his anxiety. (Medina Days 1 and 2; Exhibits 3, 5, 6 and 15).

C. Medina’s Requests to Cheng for Accommodations and First Complaint to Inspectional Services

8. On January 4, 2016, Medina began using a “CPAP” machine at night for sleep apnea. Whenever he used the machine, the electrical breakers for his Unit would shut off and he would have to go to the basement to restart the breakers so that he could continue his respiratory therapy. In or about February 2016, Medina told Cheng about the electrical problems impacting his use of the CPAP machine and his need to go to the basement to restart the breakers. Cheng stated that he would fix the problem but failed to do so. (Medina Days 1 and 2).
9. In or about January 2016, Medina requested that Cheng make several repairs in the Unit and on the Property, including 1) the “filthiness” on the Property, which included a mice and insects

problem in the Unit, mold in the Unit's bathroom, and holes in the walls on the Property and 2) a broken fan. The "filthiness" caused Medina to sneeze "a lot" because of his asthma and caused his nose to bleed when he sneezed because of his sinusitis. The mold in the bathroom of the Unit "elevated [Medina's] respiratory issues" because of his asthma. During this conversation, he disclosed to Cheng that he had asthma and that the mice and insects problem in the Unit, mold in the Unit's bathroom, and holes in the walls on the Property were affecting his asthma. (Medina Days 1 and 2).

10. When Cheng failed to resolve the issues that Medina raised to him, Medina contacted Inspectional Services on February 23, 2016, and placed a complaint regarding the condition of the Property. Medina's complaint alleged that "[h]e has no heat in his apartment. Bathroom floor falling apart, bathroom ceiling fan broken. Holes in wall, basement & garage has full of trash.... There are no vent in bathroom." That same day, Inspectional Services inspected the Property and found sanitary code violations, including the following in the Unit: missing receptacle plate covers, bathroom ventilation fan not working, loose floor tiles in the bathroom, and openings that needed to be sealed under the sink and throughout the Unit to prevent rodents² and insects from entering. (Medina Day 1; Exhibits 7 and 8).
11. On February 25, 2016, Inspectional Services notified Li of the sanitary code violations and ordered Li to correct them within fourteen days. On March 4, 2016, Inspectional Services re-inspected the Property and determined that the broken fan in the Unit's bathroom had been repaired, and that the openings under the sink and elsewhere in the Unit that served as entry points for rodents and insects had been abated. Inspectional Services found, however, that the loose floor tiles in the Unit's bathroom and the holes in the basement and front common area stairway had not been abated. (Exhibits 7, 8).

² Inspectional Services used the term "rodents" while Medina used the term "mice."

12. On March 24, 2016, Medina asked Inspectional Services not to re-inspect the Property, stating that the “tenant who is on the lease and who he rents a room from,” who I infer was Lemos, was afraid that they “might lo[se] their tenancy.” The inspector determined that the more urgent issues had been addressed and decided to close the case. (Exhibit 7).
13. At some point after March 24, 2016, Cheng repaired the hole in the shower wall that was full of mold, the leak in the shower, and the problem with the wood on the floor. (Medina Day 2).
14. Although the openings under the sink and elsewhere in the Unit that served as entry points for mice and insects had been sealed, the problems with mice and insects in the Unit continued. (Medina Day 2; Exhibit 7).
15. At some point before May 2016, Medina told Cheng that a piece of rotted wood had fallen from the Property’s roof and hit him on his face. During that conversation, Medina reiterated that there was a problem with mice and insects in the Unit and told Cheng that this problem was affecting his anxiety and depression. Cheng told him that he would fix the problem but failed to do so. (Medina Day 1; Exhibits 11 and 13).
16. I do not credit Medina’s testimony to the extent he states that he told Cheng about his medical conditions other than asthma, sleep apnea, anxiety and depression. My finding is based on Medina’s inability throughout the hearing to reliably testify about any conversation in which he claims he discussed his other medical conditions with Cheng. (Medina Days 1 and 2).

D. Medina Seeks Alternative Housing

17. Medina was seeking alternative housing as early as March 2016. (Exhibit 11).
18. In a letter dated June 9, 2016, Medina’s psychiatrist asked the Worcester Housing Authority to provide emergency housing for him because he was residing on the third floor at the Property and had a history of a fear of heights when “elevated above 1 floor” and had “great difficulty managing the climb due to his” physical issues. In the letter, Medina’s psychiatrist noted that he “has a chronic mental illness including both mood and thought disorders,” is “generally well-managed on his medications,” and is being treated for “[s]chizoaffective disorder, depressed type

with prominent paranoia, emotional dysregulation and, at times he will quickly escalate into verbal rage.” (Exhibit 3).

19. In a letter dated July 12, 2016, Medina’s primary care physician wrote in support of Medina’s continued efforts to obtain emergency housing, stating that he has “psychiatric illnesses that are greatly impacted by psychological stress.” The physician further wrote that his “current housing situation is a hazard to his health” noting, that “Medina’s allergies and asthma necessitate an environment free of dust, smoke and mold. The ... rats in his apartment are undoubtedly harming his respiratory status” and that he “needs stable, safe, clean housing.” The physician also wrote that the “refusal of the landlord to respond [and a restraining order] have had a very negative effect upon his mental health.” (Medina Day 1; Exhibit 11).

E. Medina’s Second Complaint to Inspectional Services

20. On July 12, 2016, Medina made a second complaint to Inspectional Services regarding the conditions in the Unit and on the Property, saying that there were “housing code violations, unregistered vehicles and someone living in second floor front porch.” The same day, Inspectional Services examined the Unit and the Property and found several sanitary code violations in the Unit, including the bathroom tub, which was sealed with material that was not easily cleanable, was unclean and needed to be replaced; one outlet plug cover was missing in the kitchen; and all windows in the Unit were missing screens. (Exhibit 9).
21. On July 18, 2016, Inspectional Services ordered Li to correct the violations within seven days. (Exhibit 9).
22. On July 22, 2016, Inspectional Services re-inspected the Property and found the violations had not been corrected and found additional violations, including evidence of live cockroaches in the kitchen drawers of the Unit, and ordered Li to professionally exterminate the Property and seal all points of entry. (Exhibit 9).
23. On August 17, 2016, Inspectional Services re-inspected the Property and found that some, but not all, of the violations were abated. Specifically, the inspector found that the violations inside the

Unit were not corrected and that live cockroaches continued to be observed in the kitchen drawers. (Exhibit 9).

24. On August 19, 2016, and August 25, 2016, Inspectional Services performed additional inspections of the Property and found that the violations inside the Unit had not been corrected and referred the matter to Housing Court. (Exhibit 9).

F. Incident

25. After Inspectional Services' re-inspection of the Unit and Property on August 17, 2016, Cheng went to the Unit and confronted Medina about his complaints to Inspectional Services and a heated argument ensued between Cheng and Medina ("Incident"). Medina recorded the Incident using his cellular phone and later made a copy of the recording on a disc and wrote the following on the outside of the disc – "Evidence of Landlord Mike of 7 Bluff Street apt 3 kicking me out my apt because of His Health code violation of the apt made by Cedric Richardson³ on 8/17/16." I find the video recording of the Incident to be authentic. (Exhibit 13). The Incident lasted approximately twelve minutes. During the Incident, Medina, Cheng, Lauren, Lemos, and a person named Vincente were in the Unit, while Li was in the stairway. (Exhibits 10 and 13; Medina Day 1).
26. Paragraphs 26-33 contain my findings regarding what transpired during the Incident. During the Incident, Cheng called Medina multiple expletives and derogatory names such as "asshole," "fucking pussy," "fucking idiot," "moron," "fucking stupid," "fucking loser," "scary fucking, mother-fucking evil fuck," "sick bastard," "faggot," and "devil." (Exhibit 13).
27. When Cheng asked Medina about a personal situation in his life, Medina responded, "What are you going to do [about it]?" Cheng responded angrily and challenged Medina to a knife fight, saying "what the fuck should I do?" "If you want to resolve it, I'll give you a knife. Let's go at it,

³ Cedric Richardson was an inspector from Inspectional Services. (Exhibit 9).

me and you, how's that?" "I was in the fucking army before, I deal with shit like you...." Medina did not accept Cheng's challenge to fight. (Exhibit 13).

28. Cheng later stated to Medina, "you tell me that I'm fucking not American? You're not a fucking American. If you were a real American, you wouldn't do shit like this [which I infer meant Medina contacting Inspectional Services].... You're a shame to this country." Subsequently, Cheng said that he is "more American than [Medina]. I served in the US Army." Later, Cheng stated, "I'm more American than you... I pay my fucking taxes. Not like you, you live off of the government." (Exhibit 13).
29. Cheng then questioned Medina about whether he was working. Medina responded, "I'm a disabled person." Cheng retorted, "Disabled? [How] are you disabled?" Medina responded, "that is not your business, sir." Cheng replied, "... You don't look disabled to me." At various times during the Incident, Cheng told Medina, "you're not even fucking disabled." At one point, Medina asked Cheng if he was a doctor and referenced medications that he was taking, to which Cheng stated, among other things, and in a mocking manner, "... Oh yeah, you have mental problems that's why you act like that, right?" (Exhibit 13).
30. Medina then asked Cheng why he came to the Unit. Cheng replied that he was confronting Medina "like a man" about him calling the "City", in other words, Inspectional Services. Cheng said Medina disrespected him by calling the City. When Medina denied calling the City and stated that the City had called him, Cheng became even more irate, because he believed that Medina was lying. When asked during the hearing, why Medina believed Cheng was so angry, he connected Cheng's anger to his involvement with Inspectional Services, stating "Because the inspector was doing his job. He called me for me to be there when he got there and I opened the door for him." (Medina Day 1; Exhibit 13).
31. Cheng said that he did not usually behave this way, and that he was usually "patient" and treated people with "respect." He told Medina, however, that "I will never fucking give you my respect because you don't deserve my respect." Cheng asked Lemos and Vincente whether he usually

treated people with respect. Vincente agreed with him. Lemos's response was inaudible. Cheng further contended that the people in the first and second floor units would also say that he was respectful. Medina did not dispute that Cheng was usually patient or respectful towards people. (Exhibit 13).

32. When Medina confronted Cheng about not fixing the problems on the Property, Cheng responded that he needed more time. (Exhibit 13).

33. Near the end of the Incident, Cheng questioned Medina about why he had not moved out if he did not like living at the Property. Medina replied that he "tried to move" and promised that if Cheng gave him a letter saying that he wanted him to leave the Property, then Medina would leave. Medina stated that he needed the letter to "show it to housing." Cheng expressed doubt that Medina would leave but shook Medina's hand and agreed to write the letter. The Incident ended with Cheng and Lauren leaving the Unit and going down the stairs with Li. (Medina Day 1; Exhibit 13).

34. During the Incident, Medina was "embarrassed," had "palpitations," did not know if Cheng was about to start fighting him and felt like the "most unhappy person in the world." He found Cheng's statements to be offensive and humiliating and believed that Cheng made the offensive statements and called him the derogatory names to make Medina feel inferior to him. (Medina, Day 1).

35. Additionally, Cheng's statements during the Incident caused Medina to feel like he was having a "panic attack." (Medina Day 1). The continuing impact of the Incident upon Medina was reflected at the hearing when the video of the Incident was about to be played, and Medina stated, "I don't even want to remember because I don't wish that on anyone." (Medina Day 1).

G. Medina Moves Out of the Property

36. Either the same day as, or within days of the Incident, Medina moved out of the Property. He decided to move out when he did because 1) of the agreement that he made with Cheng during the Incident, 2) his fear that Cheng would become violent if he did not move, and 3) Lemos asked

him to move because she was afraid that Cheng would become violent if he did not move. Based on Medina citing the agreement as a reason for moving out, I infer that before he moved out of the Property, Cheng provided him with the letter that he requested during the Incident. (Medina Day 1).

37. I find that Medina would not have moved out of the Property on the date that he moved out if the Incident had not occurred. However, I do not credit Medina's testimony to the extent that he implies that, absent the Incident, he would have remained at the Property indefinitely. Medina was seeking alternative housing as early as March 2016, and he told Cheng, during the Incident, that he had been trying to move out of the Property and needed a letter from Cheng in support of moving out. (Medina Day 1; Exhibits 3, 11 and 13).
38. Although Medina was seeking emergency housing in June 2016, in part, because of his fear of heights, (Exhibit 3), based on the urgency expressed in his physician's letter dated July 12, 2016, regarding Medina's need for stable and clean housing, and the negative impact that the "refusal of the landlord to respond" to Medina's requests had on his mental health, (Exhibit 11), and that Medina made a second complaint to Inspectional Services on the same day (July 12, 2016), I infer the unabated mice and insects problem in the Unit would likely have led to Medina moving out of the Property once he found alternative housing.
39. When Medina moved out of the Property, he discarded most of his clothing and all of his furniture. There was no evidence presented regarding the valuation, type, number, description, or condition of the discarded clothing. He testified that the discarded furniture was worth at least \$7,000. I do not credit that valuation because there was no evidence presented regarding the number, type, description or condition of the furniture, nor documentation of its value. (Medina Day 1).
40. After Medina moved out of the Property, he was homeless for approximately two weeks. During this period, he slept in his car. He was not able to use the CPAP machine in his car and feared that

he would die if he slept at night without using it based on stories he heard about “a lot of people having that condition” passing away “while not using the machine.” (Medina Day 1).

41. During the approximate two-week period in which he was homeless, Medina incurred total expenses of \$200-\$300 per week for food and increased gasoline costs. I do not credit Medina’s testimony that his cholesterol, blood pressure, and weight increased while he was homeless, in the absence of documentation or other testimony evidencing these alleged changes. (Medina Day 1).
42. By September 6, 2016, Medina had moved to 152 Chandler Street in Worcester, Massachusetts (“Chandler Street”) where he was renting a room and paying \$100 more in rent per month than he had paid at the Property. I infer that Medina was paying \$500 per month in rent at Chandler Street.⁴ He lived at Chandler Street for approximately three years. (Medina Day 1; Exhibit 12).

H. Other Facts

43. The litigation of this case has caused Medina stress. At the hearing, he stated that his “heart gets accelerated because of this case that has been going on for years that has caused me stress.... So I would like this to stop today because my health comes first.” (Medina Day 2).
44. In 2021, Medina suffered a stroke which limited his ability to recall matters, especially specific dates. Medina acknowledged his limitations numerous times during the hearing. (Medina Days 1 and 2; Exhibit 15). My above findings of fact have taken this into account.

III. CONCLUSIONS OF LAW

A. Failure to Provide A Reasonable Accommodation pursuant to M.G.L. c. 151B, § 4(7A)(2)

Pursuant to M.G.L. c. 151B, § 4(7A)(2), discrimination on the basis of disability⁵ includes a refusal to make reasonable accommodations in services, “when such accommodations may be necessary to afford a

⁴ Medina testified that at some point the rent that he paid at Chandler Street was increased by \$150. The record is unclear as to whether the \$150 was the amount that Medina’s rent at Chandler Street increased (i.e. \$500 to \$650 per month) or whether the Chandler Street rent became \$550 per month, which would have been \$150 more than Medina had been paying in rent each month at the Property.

⁵ Chapter 151B uses the word “handicap.” The preferred term is “disabled” or “person with a disability” and is utilized in this decision.

disabled person equal opportunity to use and enjoy a dwelling.”⁶ In order to prevail on this claim, Medina must prove the following elements: (1) he was disabled; (2) Cheng was aware of the disability or could have reasonably been aware of it; (3) the accommodation sought was reasonably necessary to afford Medina an equal opportunity to use and enjoy the Property; and (4) Cheng refused to make the accommodation. Melinda E. Clark and Massachusetts Commission Against Discrimination, v. New Bedford Housing Authority, 41 MDLR 13, 13 (2019); Joshua Fortin, Nicole Evangelista and Massachusetts Commission Against Discrimination v. Marty Green Properties, LLC, Martin Green, and Hang Ngo a/k/a Ngo Hang., 44 MDLR 47, 55 (2022).⁷

1. Medina was disabled

A person has a disability if the person has a physical or mental impairment which substantially limits one or more major life activities of the person. M.G.L. c. 151B, § 1(17).⁸ Whether an impairment substantially limits a major life activity does “not demand extensive analysis.” 29 C.F.R. § 1630.2 (j) (1)(iii) (regulations to American with Disabilities Act); Massasoit Industrial Corporation v. Massachusetts Commission Against Discrimination, 91 Mass. App. Ct. 208, 213, n. 6 (2017) (noting amendments to the Americans with Disabilities Act (broadened the definition of “substantially limits”)). Certain conditions will “virtually always be found to impose a substantial limitation on a major life activity.” 29 C.F.R. § 1630.2 (j) (3)(ii).⁹

⁶ Whether Medina was a tenant or not at the Property is immaterial because in either event he has standing to bring a claim under M.G.L. c. 151B, § 4(7A)(2). That provision protects a disabled “person” and does not expressly require one to be a tenant. It “would be an error to imply such a limitation where the statutory language does not require it.” See Psy-Ed Corp. v. Klein, 459 Mass. 69, 708 (2011) (interpreting c. 151B, §§ 4(4) and 4(4A)); Joshua Fortin, Nicole Evangelista and Massachusetts Commission Against Discrimination v. Marty Green Properties, LLC, Martin Green, and Hang Ngo a/k/a Ngo Hang., 44 MDLR 47, 53, 55 (2022) (interpreting c. 151B §§ 6 and 7(A)).

⁷ The Property was a multiple dwelling. See Section III (C).

⁸ The term “major life activities” means functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. M.G.L. c. 151B, § 1(20). This list is not exhaustive.

⁹ 29 C.F.R. § 1630.2 (j) (3)(iii) (“[It] should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: Deafness substantially limits hearing; blindness substantially limits seeing;.... and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function.”)

A complainant who seeks to establish that he is disabled needs to provide evidence of how the impairment affects a particular major life activity. A description of the impairment, such as whether it is debilitating, impactful, or merely annoying, etc., should be provided. In addition, evidence of the “difficulty, effort, or time required to perform a major life activity ... and/or the way an impairment affects the operation of” the major life activity is useful evidence in assessing whether the impairment is a disability. 29 C.F.R. § 1630.2 (j) (4)(i) and (ii). Further, multiple impairments that combine to substantially limit one or more of an individual's major life activities constitute a disability. Barbuto v. Advantage Sales and Marketing, LLC, 477 Mass. 456, 461–462 (2017) (Crohn's disease combined with irritable bowel syndrome). See also 29 C.F.R. § Pt. 1630, App.

Medina had numerous physical and mental impairments. This case raises the question of which of his impairments are relevant to the assessment of whether such impairments substantially limits a major life activity of Medina. For a failure to provide a reasonable accommodation claim, the question is not whether a person has *any* disability but whether the person has a disability for which that person is seeking a reasonable accommodation to mitigate the limitations of that disability. See Boston Housing Authority v. Bridgewaters, 452 Mass. 833, 848 (2009) (referencing “disability for which the accommodation is requested”). Therefore, an examination of all of Medina’s impairments is unnecessary because he only sought accommodations for his anxiety, depression, asthma and sleep apnea.

Medina proved that his combined anxiety and depression were a disability. His physicians generally referred to his anxiety and depression together. His anxiety and depression were chronic impairments for which he had been receiving treatment since 2004. He was taking medication for his anxiety. The anxiety and depression were severe enough that in 2004, Medina’s psychiatrist, in referencing them, noted that to “avoid exacerbation of his condition it is essential that he remain stable in all areas of his life,” and in May 2023, his physician noted that he has “depression and anxiety which are very impairing.”¹⁰ In

¹⁰ I recognize these two letters were respectively written years before and after 2016 but find they collectively - and in combination with the June 2016 and July 2016 provider letters - provide an accurate picture of Medina’s conditions in 2016.

addition, the June 2016 letter from his psychiatrist states that he is being treated for “[s]chizoaffective disorder, *depressed type* with prominent paranoia, emotional dysregulation.” (Emphasis added).¹¹

Furthermore, Medina told Cheng that he was not working because he was “disabled.” He received SSDI.

In most cases, a recipient of SSDI is deemed disabled, with working being the affected major life activity.

Bridgewaters, 452 Mass. at 844–845; Richard M. Blake and Massachusetts Commission Against Discrimination v. Brighton Gardens Apartments, LP, the Lombardi Corporation and Michael J. Lombardi,

33 MDLR 48, 51 (2011). Based on these facts, I determine that Medina’s combined anxiety and depression substantially limited his major life activity of working and were a disability for purpose of M.G.L. c. 151B, § 4(7A)(2).¹²

Medina failed to prove that his asthma was a disability. The total evidence relative to Medina’s asthma is one letter from his primary care physician dated July 12, 2016, that states that his “allergies and asthma necessitate an environment free of dust, smoke, and mold. The ... rats in his apartment are undoubtedly harming his respiratory status,” and Medina’s testimony that the “filthiness” in the Property was affecting his respiratory issues because of his chronic asthma. Despite the physician’s sweeping assertion that Medina’s environment was “undoubtedly harming his respiratory status,” the record is insufficient to determine the severity of Medina’s asthma. The “filthiness” of the Property caused him to sneeze “a lot” because of his asthma. However, Medina failed to provide any testimony or other documentation about

¹¹ It is immaterial that Medina never disclosed to Cheng his schizoaffective disorder. Considering that Chapter 151B is to be construed liberally to effectuate its purpose, M.G.L. c. 151B, § 9, and that the Commission interprets the definition of disability broadly, William Anderson, Jr. and Massachusetts Commission Against Discrimination v. United Parcel Service, 35 MDLR 187, 188 (2013), it is appropriate to consider the combined effect of multiple impairments, even if some of those impairments, were not disclosed.

¹² Paul Pereira and Massachusetts Commission Against Discrimination v. JS International Inc. d/b/a JSI Cabinetry, 42 MDLR 1, 5 (2020) (“member of a protected class by virtue of a longstanding diagnosis of depression”); Blake, 33 MDLR at 51 (“Complainant’s treating physician for ten years testified that ... he is also disabled as a result of depression and anxiety”); Amanda Lapete and Massachusetts Commission Against Discrimination v. Country Bank For Savings, 39 MDLR 24, 27 (2017) (“Complainant suffered from post-partum depression that substantially limited a number of major life activities, including working.... was prescribed an anti-depressant. Her mental health was sufficiently impaired that she sought a further leave of absence from her job beyond the initial expiration of her FMLA leave....”).

the severity of the asthma. For example, he did not testify that his asthma caused fatigue, wheezing, coughing, chest tightness, shortness of breath, or that he had “asthma attacks”, or used an inhaler, or needed immediate medical treatment for his asthma, or any other indicator of the severity of his asthma.

Comparing the limited evidence in this case with the evidence of the impact of an asthmatic condition in the following cases, illustrates that Medina has not proven that his asthma was a disability. Donnalyn Sullivan and Massachusetts Commission Against Discrimination v. Middlesex Sheriff’s Office, 34 MDLR 118, 128 (2012) (“asthma, when uncontrolled, causes chest tightness, wheezing, and difficulty breathing;” “was hospitalized in 1994, 1995, and 1996 for asthma-related problems”); Veronica Bergman v. Town of Burlington School Department, 24 MDLR 42, 42 (2002) (asthma causing “fatigue, wheezing, coughing and experienced shortness of breath during the workday and that she was sometimes absent from work or unable to complete paperwork... because of these symptoms”); Delphia A. Figueroa v. Springfield Transit Management, 23 MDLR 17, 20 (2001) (“difficulty breathing, tightening in her chest, fatigue, loss of concentration, loss of oxygen, headaches, and difficulty sleeping through the night during ‘asthma attacks’;” “asthma has been severe enough at times” to require a visit to the emergency room for treatment; “treated regularly by a doctor who prescribes medicine... to take during asthma attacks”).¹³ Based on the facts in this case, Medina’s asthma was not a disability.

Medina failed to prove that his sleep apnea was a disability. The total evidence relative to Medina’s sleep apnea is his testimony that he used a CPAP machine at night for respiratory therapy for sleep apnea and that he feared he would die if he slept without the machine, based on stories that he heard about other people with sleep apnea passing away when sleeping without using a CPAP machine. None of the medical documentation references sleep apnea, and there is no sleep study or other evidence detailing the impact of his sleep apnea on a major life activity.

¹³ See also Andira Ferraz v. Boston Public Schools, 29 MDLR 57, 61 (2007) (beyond doctor’s “sweeping assertions, the record is devoid of any diagnostic tests, office notes, or history of treatment supporting a claim of handicap status. Dr. [] fails to describe the seriousness of the condition, i.e., whether it is debilitating or merely annoying, and fails to identify which, if any, major life activity Complainant is prevented from performing as a result of having asthma”).

Medina's fear of sleeping without the CPAP machine is not a substitute for actual evidence of how his sleep apnea affected a major life activity. Comparing the limited evidence in this case with the evidence regarding the description and impact of sleep apnea in the following cases, illustrates that Medina failed to prove that his sleep apnea was a disability. Edwards v. Dart, 2022 WL 3543474, at *3 (N.D. Ill. Aug. 17, 2022) (diagnosed with "severe sleep apnea;" "when he tries to sleep without a CPAP machine, he...stops breathing, fears for life, and experiences pain and discomfort;" sleep study shows that "without a CPAP machine, he stopped breathing about 58 times per hour - an average of almost once every minute"); Hafermann v. Wisconsin Department of Corrections, 2016 WL 206484, at *4 (W.D. Wis. Jan. 15, 2016) ("plaintiff's sleep apnea can disrupt both his sleeping and breathing as many as 30 times an hour"); Peklun v. Tierra Del Mar Condominium. Association, Inc., 2015 WL 8029840, at *9 (S.D. Fla. Dec. 7, 2015) ("In 2011, Dr. [] clearly noted that, as a result of Peklun's sleep apnea, 'there is the danger of respiratory arrest and respiratory failure' and, '[f]or this reason, he requires 24 [hour] monitoring.'" "In 2013, Dr. [] again noted the danger Peklun's sleep apnea posed, informing TDM that Peklun's issue was not only 'chronic,' but also caused Peklun to have difficulty ambulating.")¹⁴ Based on the facts in this case, Medina's sleep apnea was not a disability.

2. Cheng was aware of Medina's anxiety and depression

Having found that Medina failed to prove that his asthma and sleep apnea were disabilities, I focus my analysis on whether Cheng knew or could have reasonably been aware of Medina's anxiety and depression. At some point before May 2016, Medina told Cheng that he had anxiety and depression and that the mice and insects in his Unit were affecting his anxiety and depression. Cheng was therefore aware of Medina's anxiety and depression.

3. Medina made a request for a reasonable accommodation regarding his anxiety and depression

At some point before May 2016, Medina reiterated to Cheng that there was a problem with mice and insects in the Unit and told Cheng that this problem was affecting his anxiety and depression. He never

¹⁴ I do not find Sowell v. McDonough, 2022 WL 575168, at *2 (Vet. App. Feb. 25, 2022), ("based on his on-going use of a CPAP machine, the Board conceded that he has a current disability") sufficient to alter the conclusion.

used the words “accommodation” or “accommodate” with Cheng, but the law does not require that such words be used when making a request for an accommodation. 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 service because of a disability. See Bridgewater, 452 Mass at 847–848. Medina’s request that Cheng abate the mice and insects problem, to alleviate its impact upon his anxiety and depression, qualifies as a request for an accommodation.

Medina’s request was necessary. Establishing that a requested accommodation is necessary “requires at a minimum, a showing that the desired accommodation will affirmatively enhance a disabled [person’s] quality of life by ameliorating the effects of the disability.” Blake, 33 MDLR at 51 (quoted case omitted). The mice and insects problem in the Unit negatively affected Medina’s anxiety and depression. Fixing this problem would have removed this adverse impact on Medina’s anxiety and depression and enhanced his quality of life. Therefore, Medina’s request was necessary.

Medina’s request for Cheng to address the mice and insects problem was reasonable. An Accommodation is reasonable if it would not impose an undue hardship or burden on Respondents. See 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 M.G.L. c. 151B); Clark, 41 MDLR at 13. A case specific balancing of the overall costs and benefits of the proposed accommodation is required. See Whittier Terrace Associates v. Hampshire, 26 Mass. App. Ct. 1020, 1020 (1989) (rescript); Blake, 33 MDLR at 52. The benefit to Medina of the removal of the mice and insects has been established. The record contains no evidence that removing the mice and insects would have burdened Respondents. Therefore, Medina’s request was reasonable.

4. Cheng denied Medina’s request for a reasonable accommodation

Cheng denied Medina’s request to abate the mice and insects problem that was affecting Medina’s anxiety and depression when he failed to remediate the problem. At some point before May 2016, Medina reiterated that there was a problem with mice and insects in the Unit and told Cheng that this problem was affecting his anxiety and depression. Cheng told Medina that he would fix the problem but failed to do so.

On July 22, 2016, Inspectional Services found evidence of live cockroaches in the kitchen drawers of the Unit and ordered Li to professionally exterminate the Property and seal all points of entry. On August 17, 2016, Inspectional Services re-inspected the Property and found live cockroaches in the kitchen drawers of the Unit. On August 19, 2016, the Inspector found that the violations inside the Unit had not been corrected and referred the matter to Housing Court. On August 25, 2016, Inspectional Services re-inspected the Property and found that the violations in the Unit had still not been corrected. Based on this record, Cheng failed to provide Medina with the requested accommodation.

5. Cheng and Li are both liable to Medina for the failure to provide a reasonable accommodation

Medina has proven that Cheng failed to provide him with a reasonable accommodation for his anxiety and depression in violation of M.G.L. c. 151B, § 4(7A)(2). Li is also liable to Medina for the violation of c. 151B, § 4(7A)(2). As property owner, Li cannot delegate to Cheng his duty to comply with fair housing laws. Li's obligation to obey c. 151B extends beyond his own actions to those to whom he entrusts the management of the property.¹⁵ Independently, as owner, Li is liable for violations of c. 151B committed by its agent, Cheng, within the agent's scope of authority under an agency theory.¹⁶ Cheng's conduct (failure to provide Medina with a reasonable accommodation) fell within his scope of authority, as managing agent of the Property.

B. Claim under M.G.L. c. 151B, § 4(7A)(3)

Pursuant to M.G.L. c. 151B, § 4(7A)(3), discrimination on the basis of disability, includes "discrimination against or a refusal to rent to a person because of such person's need for reasonable ...

¹⁵ Taylor Bryan, Elijah Bryan and Massachusetts Commission Against Discrimination v. Bergantino Realty Trust, Pauline M. and Angelo Bergantino, Trustees and John Federico, 33 MDLR 161, 165 (2011); Maryluz Rodriguez, Marta Perez and Massachusetts Commission Against Discrimination v. Michael Price and Gloria Lombardi, 32 MDLR 119, 121 (2010).

¹⁶ Melissa Derusha and Massachusetts Commission Against Discrimination v. Federal Square Properties & Pacific Land, LLC, 34 MDLR 76, 78 (2012); Melissa Derusha and Massachusetts Commission Against Discrimination v. Federal Square Properties and Pacific Land, LLC, 40 MDLR 112, 114 (2018).

accommodation.”¹⁷ To prove a claim under c. 151B, § 4(7A)(3), Medina must prove that: (1) he was disabled; (2) an accommodation was reasonably necessary to afford Medina an equal opportunity to use and enjoy the Property; (3) Cheng was aware of Medina’s need for a reasonable accommodation or should have been aware of such need; and (4) Cheng discriminated against Medina or refused to rent to him because of Medina’s need for a reasonable accommodation.^{18 19}

The first three elements were established in Section III (A). Medina was a person with a disability because of his chronic depression and chronic anxiety. An accommodation (abating the mice and insects problem in his Unit) was reasonably necessary to afford Medina an equal opportunity to use and enjoy the Property. Cheng was aware of Medina’s need for a reasonable accommodation. The remaining issue is whether Cheng discriminated²⁰ against Medina because of Medina’s need for a reasonable accommodation.

Cheng treated Medina with extreme disrespect during the Incident, and it was atypical for Cheng to treat residents, including Medina, in that manner. Medina lived at the Property for three years. Prior to the Incident, there is no evidence that Medina and Cheng had any negative interactions, other than Cheng’s unfulfilled promises to fix problems in the Unit and on the Property. During the Incident, Cheng stated that he never behaved the way that he was behaving towards Medina and that he was usually very

¹⁷ Because M.G.L. c. 151B, § 4(7A)(3) protects “persons” as opposed to a tenant, I determine Medina has standing to bring a claim under c. 151B, § 4(7A)(3) regardless of whether he was a tenant, in similar fashion to my analysis regarding standing under M.G.L. c. 151B, §4(7A)(2). See Section III (A).

¹⁸ In the housing context, to “discriminate against” a person means treating that person worse than similarly situated persons in the terms, conditions or privileges of accommodations or land or the acquisition thereof, or in the furnishing of facilities and services in the connection therewith. See M.G.L. c. 151B, §§ 4(6) and 4(7). Compare Bostock v. Clayton County, Georgia, 590 U.S. 644, 657–58 (2020) (employment context). The discrimination under M.G.L. c. 151B, § 4(7A)(3) must be separate from the failure to provide a reasonable accommodation. Otherwise, c. 151B, § 4(7A)(3) would be redundant of c. 151B, § 4(7A)(2).

¹⁹ Unlike a claim under M.G.L. c. 151B, § 4(7A)(2), an actual request for accommodation is not necessary to prevail on a claim under c. 151B, § 4(7A)(3). Otherwise, the two provisions would be redundant.

²⁰ I focus on the “discrimination” scenario, because the refusal to rent scenario is not applicable in this case and because the order reopening the hearing and adding a claim under M.G.L. c. 151B, § 4(7A)(3) addressed discrimination.

“patient” and treated people with “respect.” Vicente agreed with this statement, and Medina did not dispute it. During the Incident, Cheng challenged Medina to a knife fight and used many expletives and derogatory names towards Medina. Even assuming for the sake of argument that Cheng’s display of disrespect towards Medina, during the Incident, could constitute discrimination, nevertheless, for the reasons now detailed, Medina has failed to demonstrate that the discrimination was caused by his need for a reasonable accommodation.

By its plain language, the causative element in M.G.L. c. 151B, § 4(7A)(3) does not require a showing of hostility or other negative impulse. Considering the absence of such language, and that Chapter 151B must be liberally construed, c. 151B, § 9, I decline to read into the statute such a requirement. The causative element under c. 151B, § 4(7A)(3) is satisfied upon showing that the motivating force or determinative cause of the discrimination was the need for a reasonable accommodation.²¹ Cheng behaved inappropriately during the Incident because Medina contacted Inspectional Services. Cheng’s anger escalated as Medina lied about contacting the “City.” Believing that Medina went behind his back, Cheng acted extremely improper towards Medina, acknowledging that “I will never fucking give you my respect because you don’t deserve my respect.” There was no evidence that Cheng’s behavior during the Incident was based on Medina’s need for a reasonable accommodation. On the contrary, Medina wrote on the disc containing the video of the Incident that Cheng was “kicking me out my apt because of His Health code violation of the apt made by” the inspector. Further, when asked during the hearing, why Medina believed Cheng was so angry, he connected Cheng’s anger to his involvement with Inspectional Services, stating “Because the inspector was doing his job. He called me for me to be there when he got

²¹ Compare Andy Nom and Massachusetts Commission Against Discrimination, v. Acton Auto Body, Sonia Trinh, Jose Mourato, 46 MDLR 61 (2024), in which the Hearing Officer determined that in “claims brought pursuant to M.G.L. c. 151B, § 4(4), the causation inquiry is simple: was the adverse action a response to the protected conduct, or stated otherwise, but for the employee's complaint (or participation in a discrimination case), would the employer have taken the adverse action? The employer's lack of hostility, animosity, and ill intent is irrelevant.”

there and I opened the door for him.” The causative element is not met.²² The claim under M.G.L. c. 151B, § 4(7A)(3) is dismissed.

C. Hostile Living Environment Claims

It is unlawful for a managing agent of a multiple dwelling to discriminate against a person²³ because of disability or national origin. M.G.L. c. 151B, § 4(6). As the property manager, Cheng was a managing agent. The Property had three units that were separately rented. Nothing in the record suggests that the residents of one unit were related to the residents of another unit. As a result, the Property was a multiple dwelling because it was usually occupied for permanent residence and rented to be occupied as the residence or home of three or more families living independently. M.G.L. c. 151B, § 1(11).²⁴

To prevail on a hostile living environment claim based on national origin under M.G.L. c. 151B, 4(6), Medina must prove that he was subjected to unsolicited conduct based on his national origin and that the conduct made the “tenancy” significantly less desirable to a reasonable person in his position. See Gnerre v. Massachusetts Commission Against Discrimination, 402 Mass. 502, 507 (1988). There is no evidence in the record that, prior to the Incident, Cheng subjected Medina to any conduct based on his national origin. The Incident itself was highly inappropriate, unprofessional, and offensive behavior by Cheng, especially as the property manager, and is not to be condoned. However, the Incident was not

²² There may be instances where a disabled person’s complaint to a local agency may be viewed as an extension of a person’s attempts to obtain a reasonable accommodation from a landlord. This is not that case. Medina’s complaints to Inspectional Services cannot be reasonably considered in furtherance of efforts to obtain accommodation for the mice and insects problem affecting his anxiety and depression. Medina never referenced any disability or an issue with mice and insects in his complaints to Inspectional Services. When Medina complained to Inspectional Services in February 2016, he reported “[h]e has no heat in his apartment. Bathroom floor falling apart, bathroom ceiling fan broken. Holes in wall, basement & garage has full of trash.... There are no vent in bathroom.” His complaint in July 2016 was for “housing code violations, unregistered vehicles and someone living in second floor front porch.” As a result, his complaints to Inspectional Services cannot be viewed as an extension of his attempts to obtain a reasonable accommodation.

²³ Regardless of whether Medina was a tenant, he has standing to bring a claim under M.G.L. c. 151B, § 4(6) because that provision prohibits discrimination “against any person” and does not expressly require one be a tenant. It “would be an error to imply such a limitation where the statutory language does not require it.” See Psy-Ed Corp., 459 Mass. at 708 (interpreting c. 151B, §§ 4(4) and 4(4A)); Fortin, 44 MDLR at 53, 55 (interpreting c. 151B §§ 6 and 7(A)).

²⁴ See Findings of Fact, paragraph 2.

related to Medina's national origin, with the evidence merely supporting a determination that Cheng thought he was a better American than Medina. For this reason, the national origin based hostile living environment claim is dismissed.

A hostile living environment claim based on disability is actionable under M.G.L. c. 151B, § 4(6). Jennifer Martin and Massachusetts Commission Against Discrimination v. Barbara Pepin, 41 MDLR 119, 125 (2019). See also Gnerre, 402 Mass. at 507 (addressing hostile living environment based on sexual harassment under c. 151B, § 4(6)). In assessing the merits of a hostile living environment claim based on disability under M.G.L. c. 151B, § 4(6), I apply the elements stated in Gnerre. Medina must prove that he was subjected to unsolicited conduct based on his disability and that Cheng's conduct made the "tenancy" significantly less desirable to a reasonable person in his position. See Gnerre, 402 Mass. at 507.

Cheng's refusal to provide Medina with a reasonable accommodation negatively impacted Medina's living environment (see Section III (A)) and Cheng's repeated questioning – in expletive fashion – whether Medina was disabled during the Incident, and stated in a mocking manner - "... Oh yeah, you have mental problems that's why you act like that, right?," also negatively impacted Medina's living environment. Considering the totality of this evidence, I determine that Medina was subjected to unsolicited conduct based on his disability, and that a reasonable person in Medina's position would have considered the "tenancy" to have become substantially less desirable.²⁵ Medina has established that Cheng subjected him to a hostile living environment based on his disability in violation of M.G.L. c.

²⁵ A denial of a reasonable accommodation, combined with evidence of disability-based harassment, can constitute a hostile environment, in some cases, with the other evidence augmenting the weight of the denial by suggesting discriminatory animus. The following employment cases demonstrate this point by analogy. See Moore v. Hayden, 2021 WL 11629829 at *14 ("hostile work environment can also be found premised on the denial of Mr. Moore's accommodation request when considered in conjunction with the other incidents..."); Webster v. United States Department of Energy, 443 F. Supp. 3d 67, 81 (D.D.C. 2020) ("Failure to accommodate may underlie hostile work environment claims in circumstances wherein 'the jury can weigh a wrongful denial of accommodation alongside evidence of other harassment, and that other evidence can augment the weight of the denial by suggesting discriminatory animus.'") (quoted case omitted); Anderson v. School Board of Gloucester County, Virginia, 2020 WL 2832475 at *26, n. 39; Floyd v. Lee, 85 F. Supp. 3d 482, 517-518, n. 54 (D.D.C. 2015).

151B, § 4(6). For the reasons stated in Section III (A), Li is also liable to Medina for this violation of c. 151B, § 4(6).

D. Disparate Treatment Claims

To prove disparate treatment, Medina must show that he is a member of a protected class; was subjected to an adverse housing action; Cheng bore discriminatory animus in taking that action; and such animus was the reason for the action. See Adams v. Schneider Electric USA, 492 Mass. 271, 280 (2023) (employment context).

There is no evidence that Cheng treated Medina worse than Cheng treated persons who were not American. The record does not disclose the national origin of any persons except Medina and Cheng who were both American. As to the Incident, the evidence merely supports a determination that Cheng thought he was a better American than Medina. Under the circumstances, the record does not support a determination of disparate treatment based on national origin, and that claim is dismissed.

Medina was disabled as described in Section III (A), and he was subjected to adverse housing actions when Cheng unlawfully failed to provide him with a reasonable accommodation and when Cheng created a hostile living environment based on his disability. However, discriminatory causation is absent. Based on the Inspectional Services reports, repairs were needed throughout the Property, but often not made. There is no evidence that Cheng addressed requests for repairs from residents who were not disabled in a more satisfactory or effective manner than his response to Medina's request for repairs. Although Cheng berated Medina regarding whether he was disabled during the Incident, the motivation behind Cheng's anger was based on Medina contacting Inspectional Services. Under the circumstances, the record does not support a determination of disparate treatment based on disability, and such claim is dismissed.

E. Claim Under M.G.L. c. 151B, § 4(4A)

It is unlawful for a person to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of a right granted by Chapter 151B. M.G.L. c. 151B, § 4(4A).

A violation of M.G.L. c. 151B, § 4(4A) may be proven by establishing interference with one's right under c. 151B. Unlawful interference can be established by proof that a person acted in deliberate

disregard of one's right under c. 151B. See Mary-Ann Woodason v. Town of Norton School Committee, Maurice Splaine and Irene Stanovich, 25 MDLR 62, 64 (2003). Cheng's prolonged failure of remedying the mice and insects problem in the Unit suffices to demonstrate Cheng's deliberate disregard of Medina's rights under Chapter 151B to a reasonable accommodation. Under these circumstances, I find that Cheng unlawfully interfered with Medina's right to a reasonable accommodation under c. 151B and is liable to Medina for violating M.G.L. c. 151B, § 4(4A). For the reason stated in Section III (A), Li is also liable to Medina for this violation.²⁶

F. Cheng is Not Liable for Aiding and Abetting

To prevail under M.G.L. c. 151B, § 4(5) against Cheng, Medina must demonstrate: (a) that Cheng committed an individual and distinct wrong separate from the main claim or principal offense; (b) while sharing an intent to discriminate not unlike that of the principal offender; and (c) with knowledge of the supporting role in an enterprise designed to deprive him of a right under c. 151B. Lopez v. Commonwealth, 463 Mass. 696, 713 (2012). The first prong reflects that Cheng cannot aid and abet himself. As a result, Cheng cannot be held liable under c. 151B, § 4(5) for aiding and abetting his own failure to provide a reasonable accommodation and creation of a hostile living environment based on disability. This claim is dismissed.²⁷

IV. REMEDIES

A. Emotional Distress Damages

After a public hearing held pursuant to M.G.L. c. 151B, § 5, the Commission may award damages for emotional distress resulting from Respondents' unlawful discriminatory conduct. Stonehill College v. Massachusetts Commission Against Discrimination, 441 Mass. 549, 575-576 576 (2004). In Stonehill

²⁶ Medina was intimidated by Cheng during the Incident. However, the right Medina exercised that led to the Incident was Medina's right to contact a local authority to complain about sanitary code violations of the Property. That right is not protected or granted by Chapter 151B and cannot be a basis for finding a violation of M.G.L. c. 151B, § 4(4A).

²⁷ Medina's post hearing brief alleged violations of various laws that were not certified to public hearing - M.G.L. c. 272, §§ 92A, 98, 98A; M.G.L. c. 186, § 18; and Title VII of the 1964 Civil Rights Act. Those issues were not part of the public hearing and are not addressed in this decision.

College, the Supreme Judicial Court emphasized “that emotional distress damages should not be improperly considered, or awarded, as a substitute for punitive damages. Emotional distress damage awards, when made, should be fair and reasonable, and proportionate to the distress suffered.” Stonehill College, 441 Mass. at 575–576. Applying those principles to the findings of fact in the present case, I find Respondents are jointly and severally liable to Medina for compensation in the amount of **\$25,000** for the emotional distress that he suffered caused by Respondents’ denial of his request for a reasonable accommodation, Respondents’ creation of a hostile living environment based on Medina’s disability, and Respondents’ interference with his right to a reasonable accommodation under M.G.L. c. 151B.²⁸

At some point before May 2016, Medina notified Cheng that a mice and insects problem was affecting his anxiety and depression and asked him to remediate the problem. Despite this request, at no point before Medina moved out of the Property, did Cheng abate the problem to comply with Medina’s request for a reasonable accommodation. For a period approaching four months (i.e. no later than April 30, 2016, to at least August 25, 2016), Medina was subjected to a condition in his Unit that negatively impacted his disability. The adverse impact of the failure to provide Medina with a reasonable accommodation was substantial, based on the following: 1) Medina was looking for alternative housing as evidenced by the June 2016 and July 2016 provider letters; 2) Medina complained to Inspectional Services on July 12, 2016 about the conditions of the Property; and (3) his primary care physician warned in July 2016 that Medina’s “current housing situation is a hazard to his health,” “rats in his apartment are undoubtedly harming his respiratory status, his “psychiatric illnesses [] are greatly impacted by psychological stress,” and the “refusal of the landlord to respond” to his requests is negatively contributing to his mental health.

Furthermore, during the Incident, Cheng repeatedly questioned – in expletive fashion – whether Medina was disabled, and mockingly stated – “Oh yeah, you have mental problems that’s why you act like that, right?” Medina was greatly impacted by the Incident. I recognize much of the Incident was not

²⁸ I do not compensate Medina for distress caused by his other medical conditions, this litigation or the restraining order. Stonehill College, 441 Mass. at 575–576; Hoyt v. LR Properties, LLC, 98 Mass. App. Ct. 1110, n. 9 (2020) (Rule 23.0 case); Zimmerman v. Direct Fed. Credit Union, 262 F.3d 70, 79 (1st Cir. 2001).

related to comments about disability. However, as Cheng engaged in making comments relative to disability during the Incident, I find that it would be unfair to Medina – let alone infeasible – to assess each moment of the Incident and consider only certain parts when assessing the emotional distress damages caused by the Incident. Medina testified compellingly that during the Incident, he was “embarrassed”, had “palpitations,” and felt like the “most unhappy person in the world.” Medina found Cheng’s statements offensive and humiliating. The continuing impact of the Incident was reflected at the hearing, when the video was about to be played, and Medina stated, “I don’t even want to remember because I don’t wish that on anyone.”

B. Damages for Housing Related Costs

Pursuant to M.G.L. c. 151B, § 5, upon finding an unlawful housing practice, I may award damages for expenses incurred for obtaining alternative housing or space, for storage of goods and effects, for moving and for other costs actually incurred because of such unlawful practice. Based on Respondents’ failure to provide reasonable accommodation regarding the mice and insects problem in the Unit, and the impact that such failure had on his mental health, it was likely that Medina would have moved out of the Property once he found alternative housing. Medina found alternative housing by September 6, 2016, at Chandler Street. Medina remained at Chandler Street for three years and paid \$100 more in rent per month than he did in rent at the Property. I am awarding Medina **\$3,600**²⁹ in compensatory damages for the alternative housing costs (the increased rent) incurred because of the failure to provide him a reasonable accommodation.³⁰

²⁹ Medina testified that the rent that he paid at Chandler Street increased by \$150. The record is unclear whether the \$150 was the amount that Medina’s rent at Chandler Street increased (i.e. \$500 to \$650 per month) or whether the Chandler Street rent became \$550 per month, which would have been \$150 more than Medina had been paying in rent each month at the Property. There is no evidence when the increase in rent at Chandler Street occurred. For these reasons, I do not award any compensation for the alleged increase of \$150.

³⁰ Medina seeks costs for the clothing and furniture he discarded when he moved out of the Property without securing alternative housing, and for increased food and gasoline costs while he was homeless. Medina incurred these costs because the Incident caused Medina to move out of the Property before he had obtained alternative housing. These costs were not incurred because of Respondents’ failure to accommodate Medina’s request for a reasonable accommodation or Respondents’ creation of a hostile living environment. For these reasons, such costs are not compensable.

C. Civil Penalty

M.G.L. c. 151B, § 5 authorizes me to impose a civil penalty in addition to any other actions which I may order. Based on the combination of Cheng's prolonged failure to provide Medina with a reasonable accommodation after Medina notified Cheng that the mice and insects problem was affecting his anxiety and depression, and Cheng's repeated expletive filled accusations that Medina was not disabled and his mocking of Medina having "mental health problems," I impose against Cheng a civil penalty of **\$5,000**.³¹

V. ORDER

Based on the findings of fact and conclusions of law detailed above, and pursuant to the authority granted to me under M.G.L. c. 151B, § 5, I hereby order the following:

1. **CEASE AND DESIST**: Chu Yi Li aka Li Chu Yi and Michael Cheng aka Tai A. Cheng shall immediately cease and desist from failing to provide a reasonable accommodation in housing and creating a hostile living environment.
2. **TRAINING**:³² Within 60 days of receipt of this decision, Chu Yi Li aka Li Chu Yi and Michael Cheng aka Tai A. Cheng shall contact the Commission's Director of Training to schedule the training entitled MCAD Housing Discrimination 101 which shall be held within 90 days of receipt of this decision and attended by and paid for by each of them.
3. **CREATION AND IMPLEMENTATION OF A REASONABLE ACCOMMODATION POLICY**: Chu Yi Li aka Li Chu Yi and/or Michael Cheng aka Tai A. Cheng shall establish and implement a policy and procedure for administering reasonable accommodations requests from

³¹ Medina seeks punitive damages. Respondents' unlawful conduct, even taken in its entirety, does not warrant imposition of punitive damages, Haddad v. Wal-Mart Stores, Inc., 455 Mass. 91, 109–111 (2009), even assuming for the sake of argument that the Commission has authority to impose punitive damages after a public hearing held pursuant to M.G.L. c. 151B, § 5, a question which I do not address, but note that the Commission has traditionally taken the position that it does not have such authority.

³² For purposes of enforcement, the Commission shall retain jurisdiction over training requirements.

persons with disabilities for every property that each owns or manages. The policy shall include the criteria for reviewing such requests, documentation required when making such requests, and the protocols for discussing and considering such requests. The policy shall be submitted to the Commission's Director of Training for review and approval.

4. **EMOTIONAL DISTRESS DAMAGES:** Chu Yi Li aka Li Chu Yi and Michael Cheng aka Tai A. Cheng are jointly and severally liable to pay Miguel A. Medina Santiago emotional distress damages in the amount of **\$25,000** with interest thereon at the rate of 12% per annum from the date the Complaint was filed with the Commission until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.
5. **DAMAGES FOR HOUSING RELATED COSTS:** Chu Yi Li aka Li Chu Yi and Michael Cheng aka Tai A. Cheng are jointly and severally liable to pay Miguel A. Medina Santiago for housing related costs in the amount of **\$3,600** with interest thereon at the rate of 12% per annum from the date the Complaint was filed with the Commission until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.
6. **CIVIL PENALTY:** Michael Cheng aka Tai A. Cheng shall pay a civil penalty of **\$5,000** within 60 days of receipt of this decision, delivered to the Commission, and payable to the Commonwealth of Massachusetts.

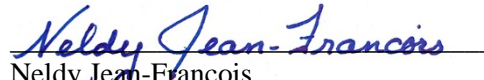
VI. NOTICE OF APPEAL

This decision represents the Final Order of the Hearing Commissioner. Any party aggrieved by this Final Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other parties have the right to file a Notice of Intervention within 10 days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23 (2020). All filings referenced in this paragraph shall be made with the Clerk of the Commission, with a copy served on the other parties.

VII. PETITION FOR ATTORNEYS' FEES AND COSTS

Any petition for attorneys' fees and costs by **Miguel A. Medina Santiago** shall be submitted to the Clerk of the Commission within 15 days of receipt of this decision. Pursuant to 804 CMR 1.12 (19) (2020), such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit.³³ Upon receipt of Medina's petition for attorney's fees and costs, **Chu Yi Li aka Li Chu Yi and Michael Cheng aka Tai A. Cheng** may each file a written opposition within 15 days of receipt of said petition. All filings referenced in this paragraph shall be made with the Clerk of the Commission, with a copy served on the other parties.

So ordered this 1st day of April 2025


Neldy Jean-Francois
Hearing Commissioner

³³ Best practice would have the petition include specific information about average hourly rates for attorneys with similar years of experience who conducted similar work at the times the services in this case were provided and who worked in the same or similar community. A non-exhaustive list of sources of data are model fee charts; market surveys from courts, legal services, or private entities such as Wolters Kluwer Real Rate Reports or Massachusetts Lawyers Weekly; Commission decisions awarding attorneys' fees; and affidavits from other attorneys with knowledge of hourly rates charged by attorneys in the same or similar community with similar years of experience performing similar work in a similar period.