THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & NAYSI ORTEGA,
Complainants

v. DOCKET NO. 11-BPR-01351

CHARLES PAPALIA,
Respondent

Appearances:
Caitlin Sheehan, Esq., Commission Counsel
Charles Papalia, pro se

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about May 26, 2011, Naysi Ortega filed a complaint with this Commission charging Respondent Charles Papalia with discrimination on the basis of receipt of public assistance in violation of M.G.L. c.151B, §4¶10. Ortega, a Section 8 subsidy recipient, charged Respondent with denying her the opportunity to rent an apartment because of his refusal to comply with Section 8's voucher program rules. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on April 12, 2013.[1] After careful consideration of the entire record and the post-hearing submission of Commission Counsel[2], I make the following findings of fact, conclusions of law and order.

[1] At the public hearing, a Spanish interpreter translated the proceedings.
[2] Respondent did not file a post-hearing brief.

II. FINDINGS OF FACT

1. Complainant Naysi Ortega resides in Andover, Massachusetts. At the time of the incidents alleged in her complainant, Complainant's daughter resided with her. At all times relevant to this matter, Complainant received a Section 8 housing subsidy administered by Community Teamwork, Inc. in Lowell, Massachusetts.

2. Respondent Charles Papalia, who resides in North Andover, MA, is the owner of a two-family house located at 64 Summer Street, Andover, Massachusetts. In April 2011, Respondent advertised the second floor unit for rent.

3. From 2000 to 2011, Complainant lived in a multi-unit building at 800 Bullfinch Drive, Andover. In 2011, all of the building's Section 8 recipients were forced to leave their apartments because of the expiration of tax credits received by the builders in exchange for renting a certain number of units to low income tenants.

4. By April 2010, Complainant had been looking for a new apartment for several months. She and her daughter had been scheduled to vacate the Bullfinch apartment by June 2010 and the owners had begun eviction proceedings against them. Complainant testified that she was desperate to find another residence and told her daughter that they might have to move to another town, because of the difficulty in finding apartments in Andover. Complainant was one of the last tenants to move out. She had witnessed some of her neighbors move to undesirable locations and she feared she would end up in a similar situation.

5. In April 2010, Complainant saw an advertisement that Respondent had placed for an apartment in North Andover. She called Respondent to inquire about the North Andover apartment and in the course of the conversation he told her that he had an available apartment at

64 Summer Street in Andover. Complainant testified credibly that when Respondent told her about the apartment in Andover, she felt as if "the sky opened up" and it was like a "miracle."

6. Complainant was seeking a spacious two bed-room apartment with storage and had a strong desire to remain living in Andover because she did not want to uproot her daughter, who had always attended Andover schools.

7. On April 1, 2011, Complainant and her daughter viewed the second floor apartment at 64 Summer Street, Andover. Complainant liked the apartment because it was spacious, had storage in the attic and she liked its location. In addition, she could afford the apartment with her Section 8 voucher.

8. Complainant decided that she wanted to rent the apartment. She completed all of the forms required by the Section 8 program in order to rent the unit and submitted her application to Respondent on or about April 4, 2011. Respondent testified that he liked Complainant and thought she would be a great fit for the unit. He told Complainant that, pending a Section 8 inspection of the property, he would rent her the unit.

9. On April 27, 2011 John Coggin of Community Teamwork, Inc. inspected the 64 Summer Street property with Respondent, beginning with the exterior.

10. As Coggin and Respondent walked from the parking lot to the house on a cement walkway, Coggin told Respondent that there was a crack in the sidewalk that had to be repaired. (Testimony of Respondent)

11. Coggin then told Respondent that there was a missing railing for the three step incline on the cement walkway leading from the street to the front porch. Respondent told Coggin that there had never been a railing there and thus it was not missing. (Testimony of Respondent)

12. Coggin told Respondent that a decayed sill in a basement window needed replacing. Respondent testified that he then stopped the inspection, telling Coggin that if he had already found three deficiencies before even going inside, there was no sense in continuing the inspection. Respondent testified that there was no point in continuing with further inspection of the property because he was not going to make the repairs required by the Section 8 program. (Testimony of Respondent)

13. There were other items needing repair, according to Coggin's report including a loose soffit and the chimney. (Ex. C-2)

14. Coggin informed Respondent that the property failed inspection and that Section 8 funds would not be allocated to Complainant for rental of the unit. As a result of the failed inspection, Respondent did not rent the unit to Complainant.

15. During this time period, Complainant had been calling Respondent repeatedly because she urgently needed to move. Complainant testified credibly that she called Respondent the day of the inspection and he claimed that the unit had not yet been inspected. Complainant then went to the Community Teamwork office in Lowell, where Coggin showed her the paperwork for the inspection and told her that Respondent had refused to make the repairs. She then realized that Respondent had lied to her. I credit her testimony.

16. Complainant testified that she called Respondent again about the apartment and he told her that he was going to rent the unit to someone else.

17. Complainant was very upset to hear that Respondent would not be renting her the apartment. Respondent also told her that the property was no longer for rent, but she and her daughter drove by the house and observed a "for rent" sign on the property.

18. Complainant testified that she was very disillusioned, sad and disappointed and worried about her daughter who had difficulty understanding what had happened. I credit her testimony.

19. After being denied the opportunity to rent Respondent's apartment, Complainant did not immediately look for another unit, because her daughter was pressuring her to move to Respondent's unit because it was close to a friend's home. Complainant's daughter blamed Complainant for failing to get the apartment. I credit her testimony.

20. In June 2011, Complainant secured a new apartment in Andover, and her daughter was able to remain in the same school. Complainant was happy that her daughter would graduate from Andover High school.

III. CONCLUSIONS OF LAW

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

In order to establish a prima facie case of housing discrimination, under §4(10) Complainant must show that (1) she was a member of a protected class at the time of the alleged discriminatory act, (2) she sought housing that was available for rent, (3) she was objectively qualified to rent the housing, and (4) she was deterred from renting and ultimately refused tenancy because of her protected class. See Wheelock College v. MCAD, 371 Mass. 130 (1976); MCAD & Teresa Smith v. Thiet V. Cao, 29 MDLR179, 180 (2007); MCAD & Belinda Williams

v. Melvin Lee Hardy, 23 MDLR 292,295 (2001); Garay v. Soumas, 13 MDLR 1065, 1081-82 (1991); French v. Krajewski, 12 MDLR 1056 (1990)

Complainant may establish a violation of the statute by direct or indirect evidence. In this case, Complainant has presented direct evidence of discrimination against her because of the requirements of the s. 8 voucher program. Complainant possessed a valid Section 8 voucher, was qualified to rent the unit, and was accepted by Respondent as a tenant, subject to the property passing the Section 8 inspection. Therefore, I conclude that Complainant has established a prima facie case of housing discrimination pursuant to M.G.L.c.151B §4(10).

Once Complainant establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its action. See Wheelock College v. MCAD, 371 Mass. 130 at 136 (1976). Respondent acknowledged that he did not rent the apartment to Complainant because he did not want to make repairs to the property as required by the Section 8 program. This is not a legitimate non-discriminatory reason pursuant to established law, because it contravenes the plain language of the statute, which clearly manifests the intent of the legislature on an issue of public policy with respect to affordable housing. In decisions construing the language of the statute, the Supreme Judicial Court and the Commission have affirmed that refusal to accept tenants with Section 8 subsidies because of concerns about the requirements of the program is not a valid defense to a discrimination claim. DiLiddo v. Oxford Street Realty, Inc., 450 Mass. 66 (2007), MCAD & Smith v. Thiet v. Cao, 29 MDLR 179 (2007); Portis v. Paul, 25 MDLR 344 (2003) (Full Comm'n reversed Hearing Officer's conclusion that failure to make repairs for financial reasons did not violate s.4(10) of statute) The Supreme Judicial Court has held as a matter of policy in DiLiddo that "where the Legislature has exercised its authority to set the balance between the protection of landlords' interests and the need for

affordable housing," a landlord's refusal to agree to a provision that is required by a government sponsored housing subsidy program, "violates the strictures of G. L. c. 151B, s. 4 (10)." DiLiddo at 68. I conclude that because compliance with the Section 8 inspection is a requirement of participating in the program, Respondent has failed to articulate a legitimate, non-discriminatory reason his rejection of Complainant as a Section 8 tenant and thus engaged in unlawful discrimination pursuant to M.G.L.c.151B §4(10).

IV. DAMAGES

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies to effectuate the purpose of M.G.L. c.151B and to make the Complainant whole. Bournewood Hospital v. MCAD, 371 Mass. 303, 315-6 (1976). This includes an award of damages to Complainant for emotional distress suffered as a direct and probable consequence of her unlawful treatment by Respondent. Stonehill College vs. Massachusetts Commission Against Discrimination, et al., 441 Mass. 549 (2004). Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997) Bowen v. Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital, supra. Complainant testified that after Respondent told her that he would not accept her as a tenant because of the Section 8 inspection, she was very upset, sad and disappointed. She was desperate to find an apartment as evidenced by her repeated calls to Respondent and the fact that she was already in eviction proceedings. Her daughter blamed her for not getting the unit.

An award of emotional distress "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)." In addition,

complainants must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. Stonehill College, supra. "Emotional distress existing from circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable." Id. Complainant testified credibly that she was very disillusioned and disappointed and especially worried about her daughter who had difficulty understanding why they had been rejected for the subject apartment. The fact that she was facing eviction made her situation more desperate and anxiety provoking. I conclude that Complainant was upset, disillusioned and anxious as a result of having been unlawfully denied an apartment by Respondent and is entitled to an award of $5,000.00 for emotional distress suffered as a direct result of Respondent's unlawful conduct.

V. ORDER

For the reasons stated above, it is hereby ORDERED that:

1. Respondent shall cease and desist from discriminating against prospective tenants who possess Section 8 subsidies and shall undergo training to learn about the requirements of the Section 8 program and how they relate to c. 151B, as outlined in the training order below.

2. Respondent shall pay to Complainant Naysi Ortega the sum of $5,000.00 in damages for emotional distress, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3. Within 10 days of receipt of this order, Respondent shall consult with the M.C.A.D. Director of Training regarding the scheduling of anti-discrimination in housing training with an M.C.A.D. trainer. Respondent shall complete said training within 90 days of receipt of this

order. For purposes of enforcement, the Commission shall retain jurisdiction over this training requirement.

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 of this decision with the Clerk of the Commission within 10 days after the receipt of this Order and a Petition for Review within 30 days of receipt of this Order.

SO ORDERED, this 28th day of June, 2013

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JUDITH E. KAPLAN,
Hearing Officer