

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION)
AGAINST DISCRIMINATION and)
INDYA PORTLOCK)
Complainants)
)
v.)
)
XIAOBING XIN)
Respondent)

DOCKET NO. 19-BPR-01855

Appearances: Ethan Crawford, Commission Counsel
Xiaobing Xin, *pro se*

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On June 26, 2019, Complainant, Indya Portlock (“Ms. Portlock”) filed a Complaint with the Massachusetts Commission Against Discrimination (“Commission”) charging Respondent Xiaobing Xin (“Ms. Xin”) with discrimination on the basis of children, violation of the lead paint laws and race discrimination. On March 6, 2024, the Investigating Commissioner certified the following issues to public hearing: (1) Whether Ms. Xin is liable for discrimination against Ms. Portlock in the rental of a dwelling on the basis of familial status (children), in violation of M.G.L. c. 151B, § 4(11); (2) Whether Ms. Xin is liable for discrimination against Ms. Portlock in the rental of a dwelling because such premises did or may have contained lead in violation of M.G.L. c. 111, § 199A; (3) What, if any, damages did Ms. Portlock suffer as a result of discrimination alleged in violation of M.G.L. c. 151B, § 4(11) and M.G.L. c. 111, § 199A.¹

¹ The race discrimination claim was not certified to public hearing.

On October 7-9, 2024, I conducted a public hearing (“hearing”). Two witnesses (Ms. Portlock and Ms. Xin) testified, and twenty (20) exhibits were entered.² On November 26 and 27, 2024, the parties filed post-hearing briefs.³ Having reviewed the record of the proceedings, I make the following Findings of Fact and Conclusions of Law and issue the following decision.

II. FINDINGS OF FACT

1. Ms. Portlock has two adult children and received a GED from Roxbury Community College. (Portlock I).
2. From August 2012 to July 2019, Ms. Xin owned a 3-unit property at 56 Goodale Road, Mattapan, Massachusetts (“56 Goodale”). (Portlock I; Xin III).
3. Before she purchased 56 Goodale, Ms. Xin took a course related to real estate and learned about Massachusetts’ regulation of lead paint hazards at residential properties and Ms. Xin’s duties as a landlord. Ms. Xin is not licensed as a real estate agent or broker in Massachusetts. (Xin III).
4. Ms. Xin did not live at 56 Goodale at any time. (Portlock I).
5. In October 2014, Ms. Portlock called Ms. Xin to inquire about renting Apartment 3 (“Apartment 3”) at 56 Goodale. Ms. Xin told Ms. Portlock that Apartment 3 was available and made an appointment for Ms. Portlock to meet with Mr. Ivy. (Portlock I).
6. On or about November 6, 2014, Ms. Portlock met Mr. Ivy, who gave her a tour of Apartment 3. Ms. Portlock had concerns about the condition of Apartment 3, including that the floors

² The audio recording of the hearing is the official record.

³ 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. Citations to testimony include witness name and day(s) on which the testimony occurred.

needed to be sanded, and the stove and bathtub needed to be repaired or replaced. Ms. Xin told Ms. Portlock that she could rent Apartment 3. (Portlock I).

7. Ms. Portlock then contacted Boston Housing Authority (“BHA”) and asked BHA for a relocation packet to permit her to relocate to 56 Goodale and use her Section 8 voucher. (Portlock I; Exhibit 1). Ms. Portlock picked up a “Relocation Package – Request for Tenant Approval” (“RFTA”) from BHA. The RFTA was used by the BHA “to determine if the family is eligible, if the unit is eligible, and if the lease complies with program and statutory requirements” under Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437(f)). (Exhibit 1).
8. On November 11, 2014, Ms. Portlock filled out the RFTA and stated that she had no children under age 6. (Portlock I; Exhibit 1).
9. The RFTA includes a “lead-based paint disclosure” for the owner to select from various options as follows: (1) Presence of lead-based paint hazards: Known lead-based paint and/or lead-based paint hazards are present in the housing; (2) Owner has no knowledge of lead-based paint and/or lead-based paint hazards in the housing; Records and reports available to the owner; (3) Owner has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing; and (4) Owner has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing. On or about November 11, 2014, Ms. Xin checked the box under the third option (owner has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing) and wrote: “Apartment Number 3, interior has been de-leaded. It has pre-occupancy certificate. Will get compliance letter later after winter.” (Portlock I; Xin III; Exhibit 1).

10. Based on Ms. Xin's statement on the RFTA, Ms. Portlock's understanding was that Apartment 3 had been de-leaded. (Portlock II).
11. On December 24, 2014, Ms. Portlock signed a Section 8 lease subsidized by the BHA for Apartment 3 (the "Lease"). (Portlock I; Exhibits 8 & 9). The Lease was signed by "TP" (Taylor Pascal), who was a representative of Real Property Management Boston ("Real Property Management"), a property management company authorized by Ms. Xin to sign leases on her behalf. (Exhibit 9; Xin III).
12. Before Ms. Portlock moved into Apartment 3, BHA and Real Property Management worked together and BHA conducted an inspection of 56 Goodale. (Xin III).
13. The Lease began on December 24, 2014 and continued month to month until terminated by the owner, the tenant or the BHA. The Lease states that: (1) the owner is leasing the unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program of the United States Department of Housing and Urban Development ("HUD"); (2) the owner has entered into a Housing Assistance Payments contract with the Public Housing Authority ("PHA") under the voucher program and (3) the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner. (Exhibit 9).
14. The Lease states that the tenant agrees to obtain "prior written permission from the Owner to add any person as an authorized member of the Household except in the case of birth of a child, or adoption or court-awarded custody of a child or an adult." (Exhibit 9; Xin III).
15. At the beginning of the tenancy, Ms. Portlock lived in Apartment 3 with her son ("Son") and her daughter, who were, at the time, approximately 32 and 16 years old, respectively. (Portlock I).

16. The rent to be paid by Ms. Portlock for Apartment 3 was \$1,750/month from December 24, 2014 to April 30, 2017, and \$1,850/month from May 1, 2017 to June 30, 2019. (Exhibit 8).

De-Leading History at 56 Goodale

17. When Ms. Xin bought 56 Goodale in 2012, some de-leading work had to be done on the property. (Xin III). The tenant who lived in Apartment 3 prior to Ms. Portlock had a child under the age of 6, and Ms. Xin communicated with the prior tenant's attorney regarding the process of de-leading Apartment 3 and obtaining a de-leading certificate. (Xin III).
18. On January 4, 2014, prior to the commencement of Ms. Portlock's tenancy, a lead inspector issued a Letter of Lead Paint (Re)Inspection Certification for Apartment 3 which stated that "all applicable interior dwelling unit surfaces met the conditions for (re)occupancy set (sic) in 105 CMR 460.760(A) of the Regulations for Lead Poisoning Prevention and Control. This notice does not constitute full de-leading or interim control compliance. **This letter does not mean there are no lead hazards inside the dwelling unit.** . . . This is **ONLY** notification that the conditions for (re)occupancy have been met. Dust samples were taken and found to be within acceptable limits. No Letter of Full Compliance or Letter of Interim Control will be issued until all applicable interior and common area surfaces have been delead or brought under interim control in accordance with 105 CMR 460.00 and 454 CMR 22.00." (Exhibit 12) (emphasis in original). I do not credit Ms. Xin's testimony that the Letter of Lead Paint (Re)Inspection Certification was a de-leading certificate, that it stated that "there was no lead" in Apartment 3 or that it meant that "a child under age six [could] live in" Apartment 3 because that contradicts the plain language in the Letter of Lead Paint (Re)Inspection Certification and the subsequent statement Ms. Xin made on the RFTA in November 2014

that Apartment 3 “has [a] pre-occupancy certificate. Will get compliance letter later after winter.” (Xin III; Exhibits 1, 12).

19. Throughout the time she owned 56 Goodale, Ms. Xin did not obtain a Letter of Full Compliance for Apartment 3 because she did not have the money to do so. (Xin III; Exhibit 2).
20. I do not credit Ms. Xin’s testimony that at some point during the time that she owned 56 Goodale, Ms. Xin received documentation from the Commonwealth of Massachusetts stating that there was no lead in Apartment 3; and that she did not bring the documentation to the hearing because her “computer died” in 2016 and she could not retrieve the documentation. (Xin III). First, had Ms. Xin received documentation that there was no lead in Apartment 3, such as a de-leading certificate,⁴ she undoubtedly would have obtained it from the Commonwealth of Massachusetts at some point during the seven or eight years between the alleged computer issue and the hearing in this case. Second, Ms. Xin’s explanation that she did not attempt to get copies of such documentation from the Commonwealth because she had a Letter of Lead Paint (Re)Inspection Certification is not persuasive or credible. The Letter of Lead Paint (Re)Inspection Certification states that this “letter does not mean there are no lead hazards inside the dwelling unit” and that no “Letter of Full Compliance or Letter of Interim Control will be issued until all applicable interior and common area surfaces have been delead or brought under interim control.” (Exhibit 12). Third, Ms. Xin’s testimony that her “computer died” is inconsistent with her testimony that she did not obtain a Letter of Full Compliance for Apartment 3 because she did not have the money to do so. (Xin III).

⁴ The terms “de-leading certificate” and “certificate of de-leading” are used interchangeably.

Ms. Portlock's Tenancy at Apartment 3

21. Based on the following, I credit Ms. Xin's testimony that Ms. Portlock was generally argumentative, difficult to communicate with, and that the relationship between Ms. Xin and Ms. Portlock was strained during the time that Ms. Xin was the owner of 56 Goodale and Ms. Portlock lived in Apartment 3: (1) Ms. Xin's credible testimony on this topic; (2) findings of the Housing Court that Ms. Portlock "had been verbally combative with the BHA inspector on [] three prior inspections" of Apartment 3; and (3) Ms. Portlock's January 16, 2018 email in which she described a conflict with a neighbor, her call to the police and her intent to file harassment charges against her neighbor. (Xin III; Exhibits 8, 11).
22. Ms. Portlock's Son moved out of Apartment 3 on October 1, 2015, and her daughter moved out on or about December 1, 2017. (Exhibit 14). At the time her Son moved out, Ms. Portlock formally requested that BHA remove her Son from the Lease. (Portlock II).
23. Between October 2015 and November 2017, Ms. Portlock did not seek to have her Son added back onto the Lease. (Portlock II).

November 2017 Request to Add Son and Grandson to Lease

24. In October 2017, Ms. Portlock's Son and his son ("Grandson") were victims of domestic violence. From October 2017 to March 2019, the Son had physical custody of the Grandson.⁵ In late October/early November 2017, Ms. Portlock's Son and Grandson moved into Apartment 3 with Ms. Portlock and lived there until July 2018. Ms. Xin was aware that the Son and Grandson were living in Apartment 3 during this period. (Portlock I & II; Xin III; Exhibit 11).

⁵ There was insufficient evidence to determine if, or when, the Son had legal custody of the Grandson.

25. On November 20, 2017, Ms. Portlock sent an email to Ms. Xin and Jessica Rojas (“Ms. Rojas”), a caseworker at the BHA, stating that her Son and Grandson were living with her at 56 Goodale Road as of November 17, 2017, and that she intended to come to BHA the following day to add the Son and Grandson to the Lease. (Portlock I; Exhibit 2).
26. In response, Ms. Rojas sent an email dated November 20, 2017, which stated: “[i]n order for us to begin the screening process for your son, we will need written permission from your landlord for him to reside in the unit. Without permission in writing, we are not able to begin screening to add them to the family composition.” Ms. Rojas also wrote that the landlord’s response by email would suffice and that upon receipt of the landlord’s permission, Ms. Rojas would schedule a time and date for Ms. Portlock and her Son to come in to BHA. (Exhibit 2). I do not credit Ms. Xin’s assertions that a tenant seeking to add an individual to a BHA lease must first obtain BHA’s permission before obtaining the landlord’s permission and that Ms. Rojas misinformed Ms. Portlock. (Xin II & III; Exhibit 10). These assertions are contrary to the Lease which states that the tenant agrees to “obtain written permission from the Owner to add any person as an authorized member of the Household except in the case of birth of a child, or adoption or court-awarded custody of a child or an adult.” (Exhibit 9).
27. Later on November 20, 2017, Ms. Portlock sent an email to Ms. Rojas and Ms. Xin stating: “Your text ask (sic) how old is my grandson. My grandson is [] months old. As stated below from Jessica at [BHA], your [meaning, Ms. Xin’s] written notice and permission is needed to start my son’s screening, and put him back on my lease.” (Exhibit 2). I infer from Ms. Portlock’s reference to “[y]our text ask[ing] how old is my grandson,” that after receiving Portlock’s first email of November 20, 2017 asking her to add Ms. Portlock’s Son and

Grandson to the Lease, Ms. Xin privately texted Ms. Portlock asking Ms. Portlock the age of her Grandson.

28. Shortly thereafter, on November 20, 2017, Ms. Portlock sent an email to Ms. Xin and Ms. Rojas asking Ms. Xin to send written permission allowing the addition of her Son and Grandson to the Lease. (Exhibit 2; Xin III).
29. Later that same day, Ms. Xin responded by sending an email to Ms. Portlock and Ms. Rojas stating: “Sorry, Indya. I can’t put your grandson in the lease as the apartment can’t (sic) be rented to the kids under 6 years old according to the law as there is no Deleading certificate. You should get owner acknowledged (sic) before they moved in.” (“No De-leading Certificate Email”). (Exhibit 2).
30. Upon receipt of the No De-leading Certificate Email, Ms. Portlock told her Son that there was a problem with lead at Apartment 3 and that she could not get a Certificate of De-leading from Ms. Xin. (Portlock I).

2018

31. Ms. Portlock’s Son wanted to see a Certificate of De-leading to remain at Apartment 3. In early January 2018, Ms. Portlock’s Son began reporting to the Department of Community and Housing Development (“DCHD”) that there was lead in Apartment 3. According to Ms. Portlock, her Son notified DCHD because the Son wanted to move out of Apartment 3 with the Grandson due to Ms. Portlock’s inability to obtain a response from Ms. Xin regarding the issue of lead, and her continued inability to get Ms. Xin to add the Son and Grandson to the Lease. The Son wanted to see a certificate of de-leading to remain in Apartment 3, but Ms. Portlock was unable to get one from Ms. Xin. (Portlock I; Exhibit 7).

32. Beginning in January 2018, Ms. Portlock's Son reported to the family court that Apartment 3 had lead. Ms. Portlock did not want the Son and Grandson to move out and told her Son that she believed that Apartment 3 had been de-leaded and that he should "stop telling people that the house has lead." (Portlock II).
33. In July 2018, Ms. Portlock and her Son had an argument based on the Son's concern that the Grandson had recently started to walk and the Son's understanding that there was lead in Apartment 3. Ms. Portlock assured her Son that there was no lead in Apartment 3, but he did not believe it. Ms. Portlock called 911 because she "did not want [her Son] to leave." When the police came, the Son told the police that there was lead in Apartment 3. Ms. Portlock explained to the police "what was going on" and was told "he's an adult. He knows what he wants to do." At that time, Ms. Portlock had, to date, refused to write a letter explaining that there was an emergency requiring the Son and Grandson's placement in a shelter. (Portlock I).
34. On July 15, 2018, Ms. Portlock wrote a letter "to whom it may concern" stating that her "apartment listed with Boston Housing as (sic) being non-deleaded. There for (sic) not allowing my [Son and Grandson] to be added to my lease at 56 Goodale Road, apt. 3, Mattapan, MA. This being the main factor, my apartment for my grandson [who is] [] months and walking is no longer safe living here anymore. This letter sadly is to ask the department of Family Shelter of Boston to place my .. [Son and Grandson] .. as an emergency in a family shelter unit." (Exhibit 3).
35. It is Ms. Portlock's understanding that after receiving a request for placement in a shelter, DCHD contacts the Department of Children and Families ("DCF") who then makes a home visit to "see if they could resolve the issue before approving the shelter." (Portlock I).

36. In July 2018, a DCF social worker came to Apartment 3, and the Son told the social worker that there was a concern about the presence of lead in Apartment 3. The social worker told Ms. Portlock that it was the landlord's responsibility to take care of the lead. (Portlock I).
37. In or about July 2018, Ms. Portlock's Son and Grandson moved out of Apartment 3 and into a shelter. (Portlock I). I do not credit Ms. Xin's testimony that the Son and Grandson remained in Apartment 3, and did not move into a shelter, which she based on the following: (1) a conversation that Ms. Xin testified she had with DCHD; (2) Ms. Xin's personal experience which led her to believe that it was not DCHD's practice to place people in a shelter that was a distance from the home they were leaving; and (3) the Son and Grandson's placement in a shelter a distance from 56 Goodale. (Xin III). Ms. Xin's testimony on this point was vague and speculative while Ms. Portlock's testimony did not have such deficiencies and was corroborated by documentation showing that the Son requested to leave the specific shelter at issue in March 2019. (Portlock I & II; Xin III; Exhibit 4).
38. On August 29, 2018, Ms. Portlock wrote a letter to Ms. Xin, copying Ms. Rojas ("August 29th letter"), stating that she was attaching a Tenant Lead Law Notification and attached a document titled "lead 2018.doc." (Exhibit 5). In the August 29th letter, Ms. Portlock stated that "once notified a child under six is living in the apartment. You refuse to invest in my family['s] safety" and have "caused me so much stress, put my family in harms way by inciting to riot where a police report was filed and put my grandson in a shelter when he should be safe at home with his father and grandmother." (Exhibit 5) (emphasis in original). Reviewed in the context of Ms. Portlock's numerous requests that Ms. Xin provide a De-leading Certificate and give her written permisison to add Ms. Portlock's Son and Grandson to the Lease, I draw the inference that the August 29th letter was a threat of legal action

against Ms. Xin in an effort to obtain from Ms. Xin a statement that there was no lead in Apartment 3, and an agreement to permit the Son and Grandson to be added to the Lease.

39. On September 7, 2018, Ms. Xin issued to Ms. Portlock a 14 day Notice to Quit for Non-Payment of Rent. (Exhibit 8).

Removal of Grandson from Son's Physical Custody

40. On or about March 15, 2019, the Grandson was removed from the Son's physical custody. (Portlock II; Exhibit 4). Ms. Portlock's Son sought to leave the shelter and move back into Apartment 3 for one month, from March 15, 2019 to April 15, 2019. (Exhibit 4).⁶ The Son moved back into Apartment 3 at this time. After March 15, 2019, Ms. Portlock's Son did not re-gain physical custody of the Grandson. (Portlock I).

2019 Efforts to Obtain Information about Lead in Apartment 3 and Add Son and Grandson to Lease

41. After March 2019, Ms. Portlock continued to ask Ms. Xin to put her Son and Grandson on the Lease. Ms. Xin responded in an inconsistent manner by telling Ms. Portlock that there was no lead in Apartment 3, but that it was "illegal" for Ms. Portlock's Grandson to have been living in Apartment 3. (Portlock I).
42. On May 8, 2019, Ms. Portlock initiated an action in housing court against Ms. Xin, by signing a Statement of Material Facts form from the Boston Housing Court. The Statement of Material Facts stated, inter alia, that: (1) there was lead paint in Apartment 3; (2) Ms. Portlock had been "trying to have [her under age 6 years old] grandson live with [her] since 2017 and the landlord told [her] he cannot move in because there is lead paint in the unit";

⁶ I infer from the Temporary Emergency Shelter Interruption Request Form completed by the Son that individuals who live in the shelter may interrupt their stay for "no more than 30 days" and as such, the Son requested permission to leave the shelter temporarily to live at Apartment 3 from March 15, 2019 to April 15, 2019. (Exhibit 4).

(3) “the landlord is refusing to provide me proof of the absence or existence of lead paint in my unit, which I need in order to move my grandson in”; (4) Ms. Portlock asked that the Court add her daughter, Son and Grandson to the Lease; and (5) Ms. Portlock sought an order requiring Ms. Xin to make repairs to Apartment 3. (Exhibit 7, Portlock I). The housing court proceeding was resolved by an Agreement in which Ms. Xin agreed to make repairs and Ms. Portlock agreed to pay monies for use and occupancy. (Exhibit 7). The Housing Court judge said that she could not force Ms. Xin to provide Ms. Portlock with a de-leading certificate, nor could she force Ms. Xin to add the Son and Grandson to the Lease. (Portlock II). I infer from the filing of this action that Ms. Xin continued to refuse to add Ms. Portlock’s Son and Grandson to the Lease and continued to refuse to provide proof as to the presence or absence of lead in Apartment 3 through May 7, 2019.

43. Ms. Portlock and her Son “were working with the housing court to try to get -- to figure out how we were going to get the baby back. Their suggestion was that my son put my grandson in my custody. My son didn't want to do that. So we had a little issue for a little while. We were fighting back and forth.” (Portlock II).

44. On May 10, 2019, Ms. Xin issued a second 14 Day Notice to Quit for Non-Payment of Rent to Ms. Portlock. (Exhibit 8).

45. While Ms. Xin told Ms. Portlock that she would evict her and issued two notices to quit, Ms. Xin never initiated a court proceeding to evict Ms. Portlock. (Xin III).

46. At some point after Ms. Xin sold 56 Goodale in July 2019, Ms. Xin initiated a small claims action against Ms. Portlock for overdue rent, which Ms. Portlock appealed to the Trial Court (Housing Court Department). (Xin III; Exhibit 8).

**Reason for Ms. Xin's Refusal to Provide Information about Lead and Refusal to Permit
Son and Grandson to be Added to the Lease**

47. Ms. Xin refused to add Ms. Portlock's Son and Grandson to the Lease because there was no de-leading certificate for Apartment 3, Ms. Xin did not have the money to obtain a letter of full compliance as to lead, the Grandson was under the age of six, and I infer that Ms. Xin was concerned there was, or could be, dangerous levels of lead in Apartment 3 and believed she would run afoul of Massachusetts lead laws if she added the Grandson to the Lease. In making these findings, I recognize Ms. Xin was not satisfied with Ms. Portlock as a tenant and that there were times that Ms. Portlock owed rent to Ms. Xin. (Exhibits 13, 16). Further, in making these findings, I have considered the evidence in the following paragraph, but as detailed below, I do not find it credible.
48. Ms. Xin testified that she made a false statement in the No De-Leading Certificate Email when she stated that the reason that she could not put Ms. Portlock's Son and Grandson on the Lease was because Apartment 3 could not be rented to children under six years old as there was no de-leading certificate. (Xin III). Ms. Xin testified that the real reason she declined to add the Son and Grandson to the Lease in November 2017 was that she did not want to add tenants to the Lease because she was planning to evict Ms. Portlock because she was overdue with rent, failed to pay rent for certain months; viewed Ms. Portlock as responsible for a fire⁷ in Apartment 3; and considered Ms. Portlock to be a difficult tenant. (Xin III; Exhibits 8, 13, 16). I do not credit either Ms. Xin's recantation of her statement in the No De-Leading Certificate Email or her testimony that the real reason for not permitting

⁷ In December 2016, there was an incident at Apartment 3 that resulted in a call to the fire department. Ms. Xin alleged that Ms. Portlock failed to turn off the gas on the stove, resulting in a call to the fire department. (Xin III).

the Son and Grandson to be added to the Lease was because Ms. Xin was planning on evicting Ms. Portlock. I make this finding based on the following: (1) Ms. Xin's statement in the No De-Leading Certificate Email as to the reason for not adding the Son and Grandson to the Lease was made contemporaneously with the pertinent events, while her recantation was made years later, at hearing; (2) Ms. Xin admitted that she did not get a letter reflecting full compliance with the lead laws (Portlock I; Xin III; Exhibit 1); (3) if the real reason Ms. Xin declined to add the Son and Grandson to the Lease was that she wanted to evict Ms. Portlock because of overdue or nonpayment of rent and other issues, it would be reasonable to expect her to have initiated eviction proceedings around the time she initially declined to add them to the Lease (November 20, 2017), but she did not; (4) in response to Ms. Portlock's first email to Ms. Rojas and Ms. Xin on November 20, 2017, seeking to add the Son and Grandson to the Lease, Ms. Xin texted Ms. Portlock privately to ask her the age of her Grandson (rather than responding to the group by email), supporting an inference, which I draw, that Ms. Xin at least initially wanted to hide from Ms. Rojas her concern about the age of Ms. Portlock's Grandson, which she thought would trigger her obligations under Massachusetts lead laws; (5) Ms. Xin's argument that eviction would have posed a more significant challenge had more persons been on the Lease is not persuasive considering the absence of any evidence that Ms. Xin's posture in an eviction proceeding would have differed had the Son and Grandson been on the Lease; and (6) while Ms. Portlock owed Ms. Xin rent at times during her tenancy, as a general practice, Ms. Xin permitted her tenants to be overdue on rent. (Xin III).

Emotional Distress

49. Ms. Portlock was extremely frustrated with Ms. Xin's explanation in the No De-leading Certificate Email; Ms. Xin's continued refusal to provide information about lead in Apartment 3; and Ms. Xin's continued refusal to add the Son and Grandson to the Lease. This level of frustration increased when the Grandson was removed from the Son's physical custody and continued up until the time of hearing. (Portlock I & II).
50. Ms. Xin's refusal to tell Ms. Portlock whether Apartment 3 had lead paint in it and needed to be de-leaded or that it was safe for a child under age six to live in the unit, caused Ms. Portlock significant anger and a strong feeling of hopelessness, feelings that she still experienced as of the time of hearing. (Portlock I).
51. Ms. Xin's evasiveness regarding the status of lead in Apartment 3 resulted in significant discord between Ms. Portlock and her Son, who was trying to ensure that the Grandson, who was beginning to walk, would not be exposed to lead. (Portlock II).
52. Ms. Portlock's experience with Ms. Xin led Ms. Portlock to feel a degree of insensitivity and callousness in Ms. Portlock's response to people around her and led her to "turn to Bible studies [2-4 hours a day] just to remind me what my responsibilities are." (Portlock I).
53. Ms. Portlock had other stressors in her life including the distress resulting from her Son and Grandson experiencing domestic violence, Ms. Portlock's financial and personal issues, and the ongoing custody dispute between the Son and his former partner over Ms. Portlock's Grandson. (Portlock I & II).
54. I do not credit Ms. Portlock's testimony that the Son lost custody of the Grandson because of Ms. Xin's actions, as there was not sufficient evidence to support this assertion. (Portlock II).

III. CONCLUSIONS OF LAW

A. DISCRIMINATION ON THE BASIS OF FAMILIAL STATUS

Among its prohibitions, M.G.L. c. 151B, § 4(11) (“Section 4(11)”) makes it unlawful for the owner of a multiple dwelling⁸ to “refuse to rent or lease... or otherwise to deny to or withhold from any person such accommodation because such person has a child or children who shall occupy the premises with such person, or to discriminate against any person in the terms, conditions, or privileges of such accommodations or the acquisition thereof ... because such person has a child or children who occupy or shall occupy the premises with such person” M.G.L. c. 151B, § 4(11). Section 4(11) applies because: (1) Ms. Xin was the owner of 56 Goodale; (2) 56 Goodale was a multiple dwelling as it had 3 units inhabited by families living independently of one another, and (3) the potential exemptions to Section 4(11) are inapplicable.⁹

The next question is whether Ms. Portlock “had a child or children” for purpose of Section 4(11).¹⁰ While there is no definition of what it means to “ha[ve] a child or children” in M.G.L. c. 151B, this term must be construed liberally to effectuate the purposes of Chapter 151B. M.G.L. c. 151B, § 9. In 1992, the Commission issued a regulation stating that Section 4(11) protects

⁸ A multiple dwelling is defined as “a dwelling which is usually occupied for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other.” M.G.L. c. 151B, § 1(11).

⁹ The exemptions to Section 4(11), described generally, are: (1) dwellings containing three apartments or less, one of which is occupied by an elderly or infirm person for whom the presence of children would constitute a hardship; (2) the temporary leasing or temporary subleasing of a single family dwelling, a single apartment, or a single unit of a condominium or housing cooperative, and (3) the leasing of an owner-occupied 2 family dwelling. M.G.L. c. 151B, § 4(11).

¹⁰ The Commission has traditionally required a showing that the housing at issue was “available.” Jones v. Bass River Rentals, 21 MDLR 210, 211 (1999). Here, Apartment 3 was available for additional tenants as evidenced by Ms. Portlock’s daughter and Son’s tenancy in Apartment 3 prior to 2017.

individuals in the following scenarios: parent-child, person who is pregnant, and person who is in the process of securing legal custody of a child. 804 CMR 2.02 (1992). The Commission's regulation and the mandatory liberal construction of Chapter 151B warrant inclusion of the following six groups within the protection of Section 4(11): (1) a person who has a child through birth; (2) a person who has a child through adoption; (3) a person who is pregnant with a child; (4) a person who has obtained legal custody of a child; (5) a person who has commenced a process seeking legal custody of a child even if the process is in its most preliminary stages, and (6) arguably, a step-parent, grandparent or other person, who through actions, has a de-facto parental relationship with the child supporting a conclusion that a quasi-legal custodial relationship exists.¹¹

Ms. Portlock does not fall within any of these six categories relative to her Grandson. He is not her child through birth or adoption. She did not obtain legal custody of the Grandson, nor was she at any time during the facts at issue, in the process of securing legal custody of her Grandson. Indeed, there was evidence that the Son rejected the Housing Court's suggestion that Ms. Portlock take steps to secure custody of the Grandson. The evidence in this case did not support the conclusion that Ms. Portlock had a de-facto parental relationship with the Grandson such that a quasi-legal custodial relationship existed. Based on these facts, it cannot be found that Ms. Portlock "had a child" for purposes of Section 4(11). As such, she cannot prevail on her

¹¹ For a flexible interpretation regarding a familial status discrimination claim, see the Fair Housing Act ("FHA"), which prohibits familial status discrimination. 42 U.S.C. § 3604(b). Under the FHA, familial status includes a parent-child relationship, a legal custodian-child relationship, and situations in which a parent or a person with legal custody has designated an individual in writing as the custodian. 42 U.S.C. § 3602(k) (defining familial status as "one or more individuals (who have not attained the age of 18 years) being domiciled with-- (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.").

claim under Section 4(11). Under these circumstances, I dismiss the claim that Ms. Xin violated M.G.L. c. 151B, § 4(11).

B. DISCRIMINATION ON THE BASIS OF LEAD PAINT

1. Distinction Between Familial Discrimination and Lead Paint Discrimination

It is an unlawful practice under M.G.L. c. 151B for an owner of any premises “to refuse to sell, rent, lease or otherwise deny to or withhold from any person or to discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of such premises, because such premises do or may contain paint, plaster or accessible structural materials containing dangerous levels of lead, or because the sale, rental or lease would trigger duties under sections [189A to 199B of Chapter 111] inclusive, or regulations promulgated thereunder, or because a person chooses to exercise any right under said sections [189A to 199B], inclusive, or regulations promulgated thereunder.” M.G.L. c. 111, § 199A (“Section 199A”).

The prohibitions against discriminating against a person who has children, Section 4(11), discussed above, and discriminating against a person under Section 199A are significantly textually different and arise out of distinct legislative concerns. Section 4(11) was created in 1971 by “An Act Prohibiting Discrimination in the Leasing of Certain Residential Real Property Because of Children and Prohibiting Discrimination in Bonding and in the Granting of Mortgage Loans Because of Sex.” M.G.L. c. 151B, § 4(11), inserted by St. 1971, c. 874. In contrast, Section 199A was promulgated in 1987, as part of comprehensive lead poisoning legislation. M.G.L. c. 111, §199A, inserted by St. 1987, c. 773, § 9.

Unlike Section 4(11), Section 199A does not require that one has a child or limit its application to particular people, but instead, protects “any person.” M.G.L. c. 111, § 199A. The obligations of owners of premises in which any paint, plaster or other accessible structural

material contains dangerous levels of lead are triggered when there is a child under six years of age, see M.G.L. c. 111, § 197, and as such, many cases brought under Section 199A involve families with children under the age of six. However, there is no requirement in Section 199A that the person aggrieved have a child under the age of six living on the premises. Rather, Section 199A bars an owner from, among other things, discriminating against a person in the terms, conditions and privileges of the lease of the premises because the premises do or may contain dangerous levels of lead or because renting to a person would trigger obligations under M.G.L. c. 111, § 189A -199B.

The distinction between Section 4(11) and Section 199A “is not mere hair-splitting.” McFadden v. Moll, Mass. Super. Ct., No. 03-2319, 2003 WL 21341728, at *2 n. 2 (May 28, 2003). “The owner of an apartment with lead paint has an economic disincentive to renting to families with young children, which would require the owner to abate the lead hazard. The Legislature recognized the potential impact of this fact on the housing stock available to such families, and so in section 199A, prohibited discrimination motivated by the landlord's desire not to abate.” Id. Section 199A prohibits adverse conduct by a landlord toward a tenant because the landlord wants to avoid abating the lead in the premises. This is distinguishable from Section 4(11), which prohibits landlords from discriminating against a tenant because he has a child. With these principles in mind, I address the timeliness of Ms. Portlock’s Section 199A claim, and whether Ms. Xin violated Section 199A.

2. Timeliness of Section 199A Claim

Pursuant to M.G.L. c. 151B, § 5, Ms. Portlock had 300 days after a discriminatory act to file a Complaint with the Commission. Ms. Portlock filed her Complaint on June 26, 2019. Accordingly, claims for discriminatory acts occurring after August 30, 2018, are timely, but

claims for discriminatory acts occurring on or before August 30, 2018, are untimely unless the continuing violation doctrine applies. Ms. Xin's refusal to add Ms. Portlock's Son and Grandson to the Lease because of her concern that Apartment 3 did, or may have contained dangerous levels of lead, continued over an approximately 18 month period: from November 20, 2017, when Ms. Xin first refused to add Ms. Portlock's Son and Grandson to the Lease because Apartment 3 could not "be rented to the kids under 6 years old according to the law as there is no Deleading certificate" through May 8, 2019, when Ms. Xin's refusals caused Ms. Portlock to initiate a housing court action against Ms. Xin for refusing to provide proof of the absence or existence of lead paint in Apartment 3, which Ms. Portlock "need[ed] in order to move [her] grandson in." (Exhibit 7). Thus, Ms. Xin's Section 199A case involves both timely claims and untimely claims of alleged discrimination.

The question of whether Ms. Portlock may receive a remedy for the untimely claims requires a determination of whether the discriminatory conduct represents a continuing violation. Cuddy v. Stop & Shop Supermarket Co., 434 Mass. 521, 531-533 (2001) (when linked together, the seemingly disparate incidents may show a prolonged and compelling pattern of mistreatment). To invoke the continuing violation doctrine, Ms. Portlock must establish a timely incident that anchors the related but untimely incidents, thereby "making the entirety of the claim for discriminatory conduct timely." Id. at 533; 804 CMR 1.04 (4)(b) (2020) (when facts are alleged which indicate unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside of the statutory filing period so long as the last discriminatory act in the pattern occurred within the statutory filing period). To recover for discriminatory conduct outside the limitations period, Ms. Portlock must show that: (1) at least one discriminatory act occurred within the limitations period; (2) the timely act has a

substantial relationship to the untimely acts; and (3) the untimely acts did not trigger her “awareness and duty” to assert her rights by filing a complaint with the Commission within 300 days thereafter. Ocean Spray Cranberries, Inc. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 632, 643 (2004).

The first two elements are easily met. In this case, the timely and untimely allegations of discriminatory acts were fundamentally the same and bore a substantial relationship to one another. During the untimely and timely period, Ms. Xin’s continued to refuse to add the Son and Grandson to the Lease because Apartment 3 contained or may have contained dangerous levels of lead or because it might trigger duties under M.G.L. c. 111, § 189A-199B.

As to the final element of the continuing violation doctrine, the inquiry is whether the situation was unlikely to improve so that a reasonable person in Ms. Portlock’s position would have filed a complaint with the Commission within 300 days thereafter. Cuddy v. Stop & Shop Supermarket Co., 434 Mass. 521, 541 (2001). In July 2018, a social worker told Ms. Portlock that it was the landlord’s responsibility to take care of the lead, and on August 29, 2018, Ms. Portlock wrote Ms. Xin that she had an obligation to “invest” in her family’s safety by abating the lead. I inferred that this letter was a threat of legal action to obtain a statement from Ms. Xin regarding the presence or absence of lead in Apartment 3 and an agreement to permit the Son and Grandson to be added to the Lease. This letter reflects that as of August 29, 2018 (a day or two beyond the limitation period), Ms. Portlock believed that Ms. Xin’s refusal to answer the question about lead in Apartment 3 and to add the Son and the Grandson to the Lease violated Ms. Portlock’s legal rights. However, Ms. Portlock was entitled to a period in which to assess whether her threat of litigation would improve the situation (i.e. change Ms. Xin’s position) and negate any need for litigation. There is no evidence that Ms. Xin conveyed a change in her

position to Ms. Portlock on August 29 or 30, 2018. Three hundred days after August 30, 2018, Ms. Portlock filed the Complaint with the Commission.¹² As such, I determine it is appropriate to apply the continuing violation doctrine and Ms. Portlock is entitled to seek a remedy for all the refusals by Ms. Xin to add the Son and Grandson to the Lease based on Ms. Xin's concern that Apartment 3 had, or may have had, dangerous levels of lead or would trigger obligations under M.G.L. c. 111, § 189A-199B.

3. Liability for Violation of Section 199A

Ms. Portlock prevails on her Section 199A claim if she proves that: (1) Ms. Xin refused to rent or lease, otherwise denied to or withheld from Ms. Portlock, or discriminated against Ms. Portlock in the terms, conditions or privileges of the rental or lease of the premises; (2) because such premises do or may contain paint, plaster or accessible structural materials containing dangerous levels of lead, or because the rental or lease would trigger duties under 189A-199B, inclusive, or regulations promulgated thereunder, or because a person chooses to exercise any right under said sections 189A-199B, or regulations promulgated thereunder. Section 199A.

By refusing to enter into a revised lease with Ms. Portlock which added the Son and Grandson to the Lease, Ms. Xin discriminated against Ms. Portlock in the terms, conditions and privileges of the Lease of Apartment 3. Moreover, the reason for Ms. Xin's refusal to add the Son and Grandson to the Lease was Ms. Xin's concern that there was, or might be, dangerous levels of lead at Apartment 3, in addition to her concern that she did not have, or intend to obtain, a letter of full compliance and believed she would run afoul of Massachusetts lead laws if she added the Son and Grandson to the Lease. Thus, Ms. Xin refused to add the Son and Grandson to the Lease because of concerns that the premises did or may have contained dangerous levels of

¹² I need not determine exactly how long a person may reasonably wait for a response to a threat of litigation before the 300-day limitations clock commences.

lead and that adding the Son and Grandson to the Lease would trigger duties under Massachusetts lead laws, M.G.L. c. 111, § 189A-199B. As such, Ms. Xin is liable to Ms. Portlock for violating M.G.L. c. 111, § 199A.

IV. REMEDIES

A. EMOTIONAL DISTRESS DAMAGES

Applying the principles enunciated in Stonehill Coll. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549, 575-576 (2004), I find **\$45,000** is a fair, reasonable and proportionate award of emotional distress damages for the prolonged, negative impact that Ms. Xin's actions had on Ms. Portlock's well-being. I have considered the nature, character and severity of the harm suffered by Ms. Portlock, in addition to the length of time she suffered and Ms. Portlock's attempts to mitigate the harm through Bible study. Ms. Xin's No De-leading Certificate Email, and her continued refusal to provide Ms. Portlock with accurate information about lead with regard to Apartment 3, in addition to her continued refusal to allow the addition of the Son and Grandson to the Lease, caused Ms. Portlock great frustration, anger, and feelings of hopelessness, all of which lasted until the time of hearing. I observed Ms. Portlock to convey a sense of desperation and deep disappointment. In addition, Ms. Xin's actions led to serious tensions in Ms. Portlock's relationship with her Son, and a change in Ms. Portlock's level of sensitivity towards others.¹³ Given the length of time Ms. Portlock suffered, the degree of distress that Ms. Portlock experienced and Ms. Portlock's efforts to seek solace and improve her mental state with Bible study, I award Ms. Portlock \$45,000 in emotional distress damages.

¹³ I have considered the other stressors that impacted Ms. Portlock including the domestic violence experienced by Ms. Portlock's Son and Grandson, Ms. Portlock's financial and personal issues and the effect that the Son's custody dispute had on Ms. Portlock. I have not awarded damages for these stressors. Stonehill, 441 Mass. at 575-576.

V. ORDER

For the reasons detailed above, and pursuant to the authority granted me under M.G.L. c.

151B, § 5, I order the following:

1. **Cease and Desist**: Respondent Xiaobing Xin shall immediately cease and desist from refusing to sell, rent, lease or otherwise deny to or withhold from any person or to discriminate against any person because premises do or may contain paint, plaster or accessible structural materials containing dangerous levels of lead, or because the sale, rental or lease would trigger duties under Sections 189A to 199B of M.G.L. c. 111, or regulations promulgated thereunder, or because a person chooses to exercise any right under said sections, or regulations promulgated thereunder.
2. **Emotional Distress Damages**: Respondent Xiaobing Xin shall pay Indya Portlock emotional distress damages in the amount of **\$45,000**, 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.
3. **Training**: Within 60 days of receipt of this Decision, Ms. Xin shall contact the Commission's Director of Training to register for the Commission's Housing Discrimination 101, which shall be held within 120 days of receipt of this Decision and attended by Ms. Xin.

VI. 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 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 for Commission Counsel 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.¹⁴ Respondent Xiaobing Xin may 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 2nd day of April, 2025.

Simone Liebman

Simone R. Liebman
Hearing Officer

¹⁴ The petition should 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.