

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
SOUTHCOST FAIR HOUSING CENTER, INC.

Complainants

v.

DOCKET NO. 20-NPR-00872

KRISHNA PRIYA INC. and
SUSHMA CHOPRA, aka SUSAN CHOPRA
Respondents

Appearances: Brittany Perdigao, Esq. for Complainants

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On January 6, 2020, Complainant, Southcoast Fair Housing Center, Inc. (“SCFH”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”) charging Respondents Krishna Priya, Inc. and Sushma Chopra, aka Susan Chopra (collectively referred to as “Respondents”) with housing discrimination. The complaint was based on testing data collected by SCFH through four testers and alleged that Respondents discriminated against the SCFH testers on the basis of familial status, sex, gender identity and status as a recipient of public assistance. On October 17, 2022, the Investigating Commissioner certified three issues: (1) whether SCFH testers were discriminated against when Respondents refused to rent to the SCFH testers and their child under the age of six in violation of lead paint laws of the Commonwealth’s anti-discriminations laws; (2) whether SCFH testers were discriminated against when Respondents refused to rent to SCFH testers after they disclosed that they are recipients of Section 8 vouchers in violation of the Commonwealth’s anti-discriminations laws; and (3) whether SCFH testers were discriminated against when Respondents refused to rent to an SCFH tester after requesting whether the tester’s roommate was male or female in violation of the Commonwealth’s anti-discriminations laws.

On July 19, 2023, I conducted a public hearing (“hearing”). Respondents did not appear at the hearing, nor did counsel or a duly authorized representative representing either Respondent appear at the hearing. A default was entered on the record at the hearing, and a default hearing was held pursuant to 804 CMR § 1.12 (10) (2020). SCFH called one witness, Kristina da Fonseca, and eight (8) exhibits were marked. On July 20, 2023, the Commission sent Notice of Entry of Default Against Respondent Krishna Priya, Inc. and Respondent Sushma Chopra, aka Susan Chopra (“Notice of Default”).¹ On July 20, 2023, I issued an order requiring SCFH to file an Affidavit of Kristina da Fonseca (“Affidavit”) by August 4, 2023. The order required the Affidavit to include: (a) the date that Ms. da Fonseca reviewed SCFH’s electronic database and/or cloud based storage system (“electronic filing system”) for purpose of complying with the order; (b) the date that each of the Rental Test Report Forms, entered as Exhibits 5, 6, 7 and 8 at hearing, were first entered into the electronic filing system; and (c) electronic confirmation of the same. SCFH did not submit the Affidavit until September 29, 2023. I accept the Affidavit despite its late filing. Also on September 29, 2023, SCFH filed a post-hearing brief. To date, no post-hearing brief has been received from either Respondent.

Unless stated otherwise, where testimony is cited, I find the testimony credible and reliable, and where an exhibit is cited, I find it reliable to the extent it is cited. Having reviewed the record of the proceedings, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

SCFH

1. The Complainant, SCFH, was founded in 2012 with a mission to eliminate housing discrimination and increase equal housing opportunities in its service area. (Testimony of da Fonseca)
2. In 2019, SCFH’s service area was Plymouth and Bristol Counties in Massachusetts, and Rhode Island (“service area”). (Testimony of da Fonseca)

¹ The Notice of Default stated that a default was entered on the record against each of the Respondents for failure to appear; that a default hearing was held and that liability would be determined and that, where appropriate, damages and/or other relief would be ordered. The Notice of Default stated that each Respondent had ten (10) calendar days from receipt of the Notice of Default to petition the Commission to remove the entry of default and reopen the case for good cause shown. 804 CMR 1.12 § 10(d) (2020). The Commission has not received a petition from either Respondent seeking to vacate the entry of default or reopen the case.

3. Kristina da Fonseca (“Ms. da Fonseca”) was a member of the founding board of directors of SCFH and in 2014 or 2015, she transitioned from the SCFH board of directors to the role of Executive Director, a position Ms. da Fonseca held at the time of hearing. (Testimony of da Fonseca)
4. In 2019, SCFH received funding from the United States Department of Housing and Urban Development to perform enforcement work in the state of Rhode Island, and in Bristol County in Massachusetts. (Testimony of da Fonseca)
5. In 2019, SCFH employed three methods to achieve its goals of eliminating housing discrimination and increasing equal housing opportunities in its service area. They were: (1) Education and Outreach; (2) Policy/Advocacy; and (3) Investigations/Case Advocacy. Education and Outreach involved educating the public about its rights and obligations under fair housing laws and attending community events, providing training and/or interacting in other ways with other organizations to offer information about the fair housing assistance available through SCFH. Policy/Advocacy involved working with non-profit organizations and state governmental entities to identify policies that may be creating barriers to opportunities for fair housing, and advocating for policy change that aims to eliminate these barriers. Investigations/Case Advocacy included fair housing testing, such as the testing conducted in this case. (Testimony of da Fonseca)

SCFH TESTING

6. The testing project at SCFH entailed hiring testers who would be given a testing assignment. Generally, the test assignment involved contacting a realtor, landlord or housing provider. The testers would follow instructions provided by SCFH, write a report about their experience during the test, and debrief with the SCFH Testing Coordinator. SCFH would then review the test reports to determine whether there was evidence of discrimination. (Testimony of da Fonseca)
7. From 2018 to the time of hearing, SCFH employed a Testing Coordinator named Carmen Torres (“Ms. Torres”). (Testimony of da Fonseca)
8. At all relevant times, Ms. Torres reported directly to the Executive Director, Ms. da Fonseca, and in 2019, Ms. Torres and Ms. da Fonseca met between one and three times per week. (Testimony of da Fonseca)

9. In calendar year 2019, SCFH testers collectively completed approximately one hundred (100) Rental Test Report Forms. (Testimony of da Fonseca)
10. Within forty-eight (48) hours of completing a test, the tester was required to complete and sign a Rental Test Report Form (“test report”). (Testimony of da Fonseca)
11. SCFH also required that within forty-eight (48) hours of the completion of the test report, the Testing Coordinator would meet with the tester, debrief about the test, review the test report completed by the tester and ensure that the test report did not need to be modified. (Testimony of da Fonseca)
12. When Ms. Torres accepted a test report, she would upload it to SCFH’s electronic filing system. (Affidavit; Testimony of da Fonseca)
13. The test reports were uploaded to SCFH’s electronic filing system “around the time” that the tester submitted the test report to the Testing Coordinator. (Testimony of da Fonseca)

SCFH TESTER TRAINING

14. In 2019, SCFH trained its testers using training videos, a testing manual and a practice test. The video shown to testers as part of SCFH’s tester training in 2019 depicted testers engaging in the testing process, explained why testing was used, and showed interviews of testers after the testing had been conducted. (Testimony of da Fonseca)
15. As part of SCFH’s tester training, testers were required to read a testing manual (“SCFH Testing Manual”) which included basic information about fair housing laws, an explanation of the tester’s role, and the importance of testing in SCFH’s work. (Testimony of da Fonseca)
16. The SCFH Testing Manual emphasized the importance of accurate reporting and accurate test reports and discussed the importance of preparing the testing reports as soon after the testers’ experiences as possible. The SCFH Testing Manual described the process that the Testing Coordinator used to debrief the testers, and the process testers were to use in providing the test reports to the Testing Coordinator. (Testimony of da Fonseca)
17. SCFH’s tester training also included a practicum in which testers conducted a practice test. The practice test required the testers to receive a testing assignment, complete a test, prepare a test report and debrief with the Testing Coordinator. (Testimony of da Fonseca)
18. Once SCFH’s tester training (video, SCFH Testing Manual, and practice test) was completed, it was SCFH’s practice to meet with the potential tester to “see how they feel

about doing this work” and decide whether SCFH would keep them on their list of available testers. (Testimony of da Fonseca)

TESTING PROJECT

19. In 2019, SCFH engaged in a testing project which included investigating rental property advertisements which contained indicia of potential fair housing law violations including language that indicated there was lead paint on the rental property. As part of this testing project, Ms. Torres reviewed and evaluated advertisements for available rental properties in SCFH’s service area. (Testimony of da Fonseca)
20. Ms. da Fonseca was aware of the scope of the overall project. (Testimony of da Fonseca)
21. On or about June 12, 2019, WickedLocal.com listed an apartment for rent at the location of 147 18th Street, Fall River, Massachusetts (“the subject property”). The subject property had six units. (Testimony of da Fonseca; Exhibit 4)
22. WickedLocal.com posted an advertisement for an apartment at the subject property (referred to herein as “the Wicked Local ad”) and listed it as a two-bedroom, one bathroom, 650 square foot apartment; built in 1900; with a rent of \$950/month. (Exhibit 4) The Wicked Local ad states that it was updated on June 12, 2019, that it is “courtesy of Primus Realty”, and that the listing agent was Susan Chopra at (781) 888-1991. (Exhibit 4)
23. Respondent Sushma Chopra, aka Susan Chopra (“Ms. Chopra”), is a Massachusetts licensed real estate agent or broker. (Testimony of da Fonseca)
24. The description of the subject property in the Wicked Local ad states:
Vacant Now! This is a Second floor apartment. This apartment has double parlor living room, dining room, two bedrooms or could be used as three bedrooms, one kitchen and one bathroom. All hardwood floors. It has gas heat with space heater. Good quiet neighborhood. There is no laundry in the building. This is a cozy apartment on the first floor. The apartment is in a six family house. Tenant pays Electricity and gas heat. **There is no lead paint certificate in hand for this apartment.** Please call for showings. (Exhibit 4) (Emphasis added).
25. Ms. Torres identified the subject property and the Wicked Local ad as meeting the criteria of the testing project because the Wicked Local ad stated that there was “no lead paint certificate in hand” for the subject property. (Exhibit 4; Testimony of da Fonseca)
26. In 2019, SCFH’s practice was to save advertisements that met its testing project criteria as a PDF file on SCFH’s electronic filing system. (Testimony of da Fonseca)

27. On June 12, 2019, SCFH saved a copy of the Wicked Local ad on its electronic filing system. (Testimony of da Fonseca; Exhibit 4)
28. Ms. da Fonseca reviewed material from the Bristol County Registry of Deeds (“Registry”) and concluded that the owner of the subject property at material times was Respondent Krishna Priya, Inc. (Testimony of da Fonseca). Ms. da Fonseca testified vaguely that Ms. Chopra “is either an owner or otherwise related to Krishna Priya, Inc.” (Testimony of da Fonseca) SCFH did not submit any documents from the Registry, nor was there any indication in the Wicked Local ad or any of the Rental Test Report Forms (or attachments thereto), indicating that Krishna Priya, Inc. owned the subject property during the relevant time-period. While I credit Ms. da Fonseca’s testimony that she conducted research at the Registry, under the circumstances in this case, Ms. da Fonseca’s testimony alone is not sufficient to establish that Krishna Priya, Inc. owned the subject property or that Ms. Chopra had an ownership interest in or agency relationship with Krishna Priya, Inc.

TESTING OF THE SUBJECT PROPERTY

29. Based on the Wicked Local ad, SCFH conducted four tests of the subject property (Tests 1, 2, 3 and 4) which respectively involved Testers 1, 2, 3 and 4. Testers 1, 2, 3 and 4 underwent SCFH tester training prior to conducting Tests 1, 2, 3, and 4. (Testimony of da Fonseca)²
30. Testers 1, 2, 3 and 4 were paid by SCFH and did not work for SCFH in any other capacity. (Testimony of da Fonseca)
31. Testers 1, 2, 3 and 4 each completed a test report and submitted it to the Testing Coordinator, Ms. Torres, who uploaded it to SCFH’s electronic filing system. (Testimony of da Fonseca; Affidavit)
32. Tester 1 completed a Rental Test Report Form referred to herein as Test Report 1. (Exhibit 6)
Tester 2 completed a Rental Test Report Form referred to herein as Test Report 2. (Exhibit 7)
Tester 3 completed a Rental Test Report Form referred to herein as Test Report 3. (Exhibit 8)
Tester 4 completed a Rental Test Report Form referred to herein as Test Report 4. (Exhibit 5)
33. In assessing the reliability of Test Reports 1, 2, 3, and 4, I have taken into account the following: Each test report was signed but there was no place on the test report to indicate the

² Ms. da Fonseca did not participate in designing or administering the tests of the subject property. She was not aware of which testers would be assigned, when the assignment was issued, or when the testers would conduct the tests of that property. (Testimony of da Fonseca)

date that it was signed and/or completed. (Exhibits 5-8) For each test report, there was no evidence: (a) which reflected the date on which the test report was completed and signed; (b) which showed whether the test report was completed within 48 hours of the completion date of the test; and (c) of whether or when the applicable tester debriefed with the Testing Coordinator. None of the four testers testified. Their names were not referenced at the hearing and were redacted from the test reports (Exhibits 5-8) pursuant to a protective order.

TEST 1

34. Prior to the hearing, Ms. da Fonseca was ordered to, and did review the unredacted Test Report 1. At hearing, Ms. da Fonseca confirmed that she knew the identity of Tester 1, and previously reviewed the signature of Tester 1. (Exhibit 6; Testimony of da Fonseca)
35. Test Report 1 identifies Tester 1 as a white female, and the date of the contact between Tester 1 and an individual who identified herself as Susan Chopra as June 15, 2019. (Exhibit 6)
36. SCFH uploaded Test Report 1 to SCFH's electronic filing system on June 24, 2019, nine (9) days after Tester 1's last contact with Susan Chopra. (Exhibit 6; Affidavit)
37. I find Test Report 1 reliable and credit the following account depicted in this and the next paragraph: On June 15, 2019, at 11:31 a.m., Tester 1 contacted Ms. Chopra by telephone at 781-888-1991. Tester 1 confirmed that she was speaking to Susan Chopra. Tester 1 asked, and Ms. Chopra confirmed that the advertised apartment at the subject property was available. Tester 1 told Ms. Chopra that she was interested in the apartment and would like to view it. When Ms. Chopra asked Tester 1 how many people would live in the apartment, Tester 1 stated, "two." Ms. Chopra asked Tester 1 who would be living at the apartment, and Tester 1 responded: "My daughter." Ms. Chopra asked how old Tester 1's daughter was, and Tester 1 responded: "Two years old." Ms. Chopra responded: "the apartment is not de-leaded. I'm sorry." Tester 1 said, "Okay, thank you" and the call ended. (Exhibit 6)
38. A little over an hour later, at 12:44 p.m. on June 15, 2019, Tester 1 called 781-888-1991 a second time, and a person who confirmed that she was Ms. Chopra answered the phone. Tester 1 stated that she liked the apartment and that Ms. Chopra "had mentioned that it was not de-leaded but I wonder if, perhaps, the landlord is in the process of de-leading the apartment?" Ms. Chopra responded: "No, the landlord won't de-lead the apartment – it's too expensive." Tester 1 asked to schedule a visit to view the apartment, and Ms. Chopra

responded: “No, there’s no way to rent the apartment – it’s a waste of your time.” Tester 1 said, “Oh, okay” and the call was discontinued. (Exhibit 6)

39. In finding Test Report 1 reliable, I have relied on the following: Test Report 1 does not contain language evidencing any lack of memory or recollection by Tester 1 regarding the interactions with Ms. Chopra. SCFH uploaded Test Report 1 to SCFH’s electronic filing system within a relatively short period - nine (9) days - after Tester 1’s last contact with Susan Chopra. Test Report 1 does not contain any internal inconsistencies.³ (Exhibit 6; Affidavit)

TEST 2

40. Prior to the hearing, Ms. da Fonseca was ordered to, and did review the unredacted Test Report 2. At hearing, Ms. da Fonseca confirmed that she knew the identity of Tester 2, and previously reviewed the signature of Tester 2. (Exhibit 7; Testimony of da Fonseca)
41. Test Report 2 identifies Tester 2 as a Caucasian female, and the dates of contact as June 15, 17 and 22, 2019. (Exhibit 7)
42. Test Report 2 lists the address of the subject property as 147 18th St, Fall River, MA. (Exhibit 7)
43. I find Test Report 2 reliable and credit the following account set forth herein in ¶¶ 44-53.
44. On June 15, 2019, Tester 2 called and left a voice message asking “Susan” to return Tester 2’s call regarding renting an apartment at 147 18th Street in Fall River. (Exhibit 7)
45. Later, on June 15, 2019, Tester 2 received a call from 781-888-1991 but was unable to pick up the call and one minute later, received a text from 781-888-1991, asking Tester 2 to call regarding the rental at 147 18th Street in Fall River. (Exhibit 7)
46. On June 15, 2019, at 1:38 p.m., Tester 2 called 781-888-1991 and confirmed that she was speaking with Ms. Chopra. Tester 2 then asked if “the 2-bedroom at 147 18th Street” in Fall River was still available, and the woman who identified herself as Susan Chopra, confirmed that both the first and second floor apartments were available. (Exhibit 7)
47. During this phone call on June 15, 2019, Tester 2 asked if she could see the first and second floor apartments. The woman who identified herself as Susan Chopra asked Tester 2 how

³At one point, Test Report 1 states the subject property was in NB, which I infer was New Bedford. (Exhibit 6) Based on my review of Test Report 1 in its entirety, I have concluded that the reference to NB was inadvertent and does not constitute an internal inconsistency.

many people would be living in the apartment. When Tester 2 said that there would be two people, the woman who identified herself as Susan Chopra asked Tester 2 who they were, and Tester 2 replied that they were Tester 2 and Tester 2's grandson. The woman asked Tester 2 how old the grandson was, and Tester 2 said five (5) years old. The woman told Tester 2 that there was no lead certificate for the apartments and said that "the landlord wanted her to tell people that." Tester 2 asked what that meant. The woman said that the apartments are not de-leaded and there needs to be a certificate for any child under age 7 living there, and then restated "that there is no certificate." The woman stated that Tester 2 could see the apartment and fill out an application, but there is no certificate. Tester 2 stated that she did not want to waste anyone's time by looking at the apartment if she would not be able to rent it. The woman stated that Tester 2 "could come see it, but there is no certificate." Tester 2 thanked the woman and the call ended. (Exhibit 7)

48. On June 15, 2019, at 1:53 p.m., Tester 2 called 781-888-1991 again, confirmed that the woman who answered was "Susan",⁴ stated Tester 2's name and asked to view the apartment at the subject property. The woman who identified herself as Susan asked Tester 2 when she wanted to see it and Tester 2 said, "this coming Monday." When the woman asked what time, Tester 2 proposed 1:30 or 2:00 p.m. The woman said, "I can't be there at that time." Tester 2 said that she was flexible and asked what time would be convenient for her. The woman said, "Let me call you back." Tester 2 said "ok", and the call ended. (Exhibit 7)
49. Tester 2 did not receive a call back from the woman who identified herself as Susan and on June 17, 2019, Tester 2 called 781-888-1991 and left a message stating her name and phone number, and asking if Susan would call her back to schedule a viewing of the subject property. (Exhibit 7)
50. As of June 22, 2019, Tester 2 had not received a call back from the woman who identified herself as Susan. (Exhibit 7)
51. On June 22, 2019, Tester 2 called 781-888-1991 and received a voice message stating the mailbox was full. Tester 2 could not leave a message. (Exhibit 7)
52. As of June 24, 2019, Tester 2 had not received a call back from the woman who identified herself as Susan. (Exhibit 7)

⁴ Based on paragraph 47, I infer that the "Susan" referenced in paragraph 48 was Susan Chopra.

53. SCFH uploaded Test Report 2 to SCFH's electronic filing system on June 28, 2019, four (4) days after Tester 2 last recorded that she had not received a call back from Ms. Chopra (June 24, 2019). (Affidavit; Exhibit 7)
54. In finding Test Report 2 reliable, I have relied on the following: Test Report 2 does not contain any internal inconsistencies. Test Report 2 does not contain language which indicates that Tester 2 questioned her memory or recollection of the interactions with Ms. Chopra. SCFH uploaded Test Report 2 to SCFH's electronic filing system within four (4) days after Tester 2 last recorded that she had not received a call back from Ms. Chopra. Prior to conducting Test 2, Tester 2 had performed approximately 50 tests for SCFH. (Testimony of da Fonseca)

TEST 3

55. Prior to the hearing, Ms. da Fonseca was ordered to, and did review the unredacted Test Report 3. At hearing, Ms. Da Fonseca confirmed that she knew the identity of Tester 3, and previously reviewed the signature of Tester 3. (Exhibit 8; Testimony of da Fonseca)
56. Test Report 3 identifies Tester 3 as a white female, and the dates of contact between Tester 3 and the woman with whom she had contact as June 21, 22 and 23, 2019. (Exhibit 8)
57. Test Report 3 lists the address of the property as 147 18th Street, Fall River, MA. (Exhibit 8)
58. Tester 3 was known to Ms. da Fonseca and had worked as a tester for SCFH at least twenty (20) times prior to completing Test 3. (Testimony of da Fonseca)
59. Test Report 3 states that it was completed by Tester 3, and that on June 21, 2019, Tester 3 called 781-888-1991. Test Report 3 states that on June 21, 2019, a woman answered the phone, but this entry does not state the woman's name or whether Tester 3 asked the woman for her name. (Exhibit 8).
60. Under the heading "On Friday, June 21, 2019", Test Report 3 states: "This is a reconstruction of our conversation as best as I can remember it." (Exhibit 8) Test Report 3 recounts a conversation during which Tester 3 identified herself as a potential renter who would be living with her 18-year-old daughter, had no pets, worked at Southcoast Health, and was currently living in Somerset and paying \$950/month for rent. Test Report 3 recounts that Tester 3 and the woman who answered the phone arranged to meet the next day at the property. (Exhibit 8)

61. Test Report 3 states that on June 22, 2019, Tester 3 went to the subject property, waited for ten minutes, and then texted the landlord. Tester 3 did not include in the June 22, 2019 entry of Test Report 3 the telephone number she texted, or the name of the person Tester 3 texted. (Exhibit 8)
62. Test Report 3 states that on June 23, 2019, Tester 3 went to the subject property. Test Report 3 states as follows:
- At 9:55am, the landlady (I didn't get her name) met me and took me to a 2d floor apartment at the back of the building to show me. She showed me each of the rooms. **The following is part of our conversation as best as I can remember it.** Me: I do work but I have a housing voucher that pays part of it and helps me pay. Her: Oh, how much is it Me: \$300. I pay the rest. Her: You said you work? Me: Yes, at Southcoast Health. Her: How much do you make? Me: about \$1200 a month. Her: Then you can make \$650. What program is your voucher? Me: Section 8. Her: Oh, I don't think it's going to work out. They inspect places. I went through this once before. Then she took me to the back porch and said that they told her she had to get the back porch fixed and the garage. She showed me the back porch and she pointed to the garage and said I don't think it's going to work out. I said thank you anyway and she replied by saying sorry. (Exhibit 8) (emphasis added)
63. Test Report 3 was uploaded to SCFH's electronic filing system on July 9, 2019, sixteen (16) days after Tester 3 recorded her last contact with "the landlady." (Exhibit 8; Affidavit)
64. I do not credit Test Report 3 because I find it lacking in reliability based on internal fallibilities within Test Report 3 and evidence that Test Report 3 substantially diverged from SCFH's practices. First, Tester 3 did not ask for, and record in the test report, the identity of the individual to whom she was speaking. SCFH's training program trained the testers to ask for, and record in the test report, the identity of the person to whom they were speaking. (Testimony of da Fonseca) In contrast to her training, Tester 3 stated that a "woman" answered the phone on June 21, 2019, did not identify the name of the "landlord" whom Tester 3 texted on June 22, 2019, and stated that on June 23, 2019 she met "the landlady (I didn't get her name). . ." (Exhibit 8) Identifying the subject of a test is a critical component of testing and this lapse is noteworthy. Secondly, Tester 3 twice indicated in Test Report 3 that she had concerns about her ability to remember the conversations she had during the test. In describing her conversation with the woman who answered the phone on June 21, 2019, Tester 3 stated: "This is a reconstruction of our conversation as best I can remember it." When Tester 3 went to the subject property on June 23, 2019, Test Report 3 states "The

following is part of our conversation as best as I can remember it.” (Exhibit 8) Tester 3’s statements reflect her uncertainty about her memory of the conversations she had with the woman. This could be Tester 3’s writing style, but I cannot draw a reasonable inference that these statements were simply a manner of speech, without testimony from Tester 3 or other evidence to that effect. Third, Test Report 3 was not uploaded to SCFH’s electronic filing system until 16 days after the last contact referenced in Test Report 3 in significant contrast to SCFH’s practice to upload test reports to the electronic filing system in four, or slightly more than four, days. Taking this substantial departure from SCFH practice relative to uploading test reports in conjunction with Tester 3’s own stated concerns about her ability to reconstruct conversations and her failure to record the subject contact’s name, I do not find Test Report 3, or the contents thereof reliable. In making this determination, I have considered the fact that Tester 3 worked as a tester for SCFH at least twenty (20) times prior to completing Test 3.

TEST 4

65. Prior to the hearing, Ms. da Fonseca was ordered to and did review the unredacted Test Report 4 and confirmed the identity of Tester 4. (Exhibit 5; Testimony of da Fonseca)
66. Test Report 4 identifies Tester 4 as white and “Transmasculine/Genderfluid,” and the dates of the contacts between Tester 4 and the individual who identified herself as “Susan”, were June 18, 19, 20, 21 and 22, 2019. (Exhibit 5)
67. Test Report 4 lists the address of the subject property as 147 18th St, Fall River, MA 02723. (Exhibit 5)
68. Test Report 4 was uploaded to SCFH’s electronic filing system on July 3, 2019, eleven (11) days after Tester 4 recorded her last contact with the woman who identified herself as “Susan.” (Exhibit 5; Affidavit)
69. I find Test Report 4 reliable and credit the account described herein at ¶¶ 70-74.
70. On June 18, 2019, Tester 4 called 781-888-1991 and confirmed that the woman who answered was “Susan.”⁵ Tester 4 answered “a long series of questions” from Susan including if her roommate was a boy or girl. Tester 4 responded girl. Tester 4 was asked if Tester 4 and

⁵ Based on Test Report 1 and Test Report 2 and the Wicked Local ad, I infer that the person referenced as “Susan” in paragraphs 66, 68, 70 and 73 was Susan Chopra.

her roommate were working. Tester 4 confirmed that they were working, and Susan said, “Okay, I’ll show it to you.” (Exhibit 5)

71. On June 19, 2019, Tester 4 received a voicemail from 781-888-1991 which said, “Hi, I’m calling you regarding the rental at 147 18th St. Please call me back. Thank you.” (Exhibit 5)
72. On June 19, 2019, Tester 4 received a text message from 781-888-1991 that read, “Please call me regarding the rental at 147 Eighteen St Fall River. Thanks.” Tester 4 called back and arranged to see the apartment the following day, on June 20, 2019. (Exhibit 5)
73. On June 20, 2019, Tester 4 arrived at the subject property and called Susan who told her that the door to the apartment was open and that she should go up to the third floor of the subject property. Tester 4 viewed the third floor of the subject property and took photographs, which were attached to Test Report 4. Tester 4 then called Susan, who said she was not going to be able to make it, and that she had another unit, Apartment 1, that Tester 4 could view. Tester 4 went to Apartment 1 in the subject property and took photographs, which were attached to Test Report 4. (Exhibit 5)
74. On June 21, 2019, Tester 4 texted 781-888-1991, which appears as Primus Realty on the text exchange attached to Test Report 4, to confirm the rental amount. On June 22, 2019, Tester 4 received confirmation from 781-888-1991 confirming that the rent for the apartment at the subject property was \$950. (Exhibit 5)

DAMAGES

75. Based on the testing results regarding the subject property, Ms. da Fonseca concluded that a licensed real estate professional in SCFH’s service area was preventing families with children from renting property in SCFH’s service area. To counteract what Ms. da Fonseca viewed as unlawful conduct by a licensed real estate professional, SCFH expanded its educational outreach efforts directed toward licensed real estate professionals. (Testimony of da Fonseca) The outreach focused on re-training real estate brokers and agents on fair housing laws and emphasizing the anti-discrimination laws that pertain to the presence of lead paint/a child under age 6. (Testimony of da Fonseca)
76. SCFH incurred costs of “almost \$250” in terms of this directed outreach to real estate agents and brokers. (Testimony of da Fonseca)
77. SCFH incurred total costs of paying Testers 1, 2, 3, and 4 regarding the subject property of “at least \$270.” (Testimony of da Fonseca)

78. Ms. da Fonseca's time "to work with our Testing Coordinator and review the public records and review the overall testing files [for the subject property] was at least \$1,000." (Testimony of da Fonseca)
79. The cost of the Testing Coordinator's time to test the subject property was \$750. The "Testing Coordinator provided [Ms. da Fonseca with] an estimate of the time she spent on this investigation," and Ms. da Fonseca used the Testing Coordinator's hourly wages at the time of the tests to calculate the cost to SCFH of the Testing Coordinator's time regarding the test the subject property. (Testimony of da Fonseca)⁶
80. Based on paragraphs 75-79, I find that SCFH incurred costs of \$250, \$270, \$1,000, and \$750 (\$2,270 in total) as a result of its testing of the subject property.

III. CONCLUSIONS OF LAW

SCFH alleges that Respondents Krishna Priya Inc. and Ms. Chopra discriminated against SCFH testers on three bases: (1) refusing to rent to SCFH testers who had a child under the age of six; (2) refusing to rent to SCFH testers after they disclosed they are recipients of Section 8 public assistance; and (3) refusing to rent to SCFH testers after requesting whether the tester's roommate was male or female.

A. Standing

For over 30 years, the Commission has issued decisions in cases in which testing evidence has been entered to prove housing discrimination violations. This is the first housing testing case that this Hearing Officer is aware of, tried at the Commission and filed solely by a legal services organization (and not with an individual victim of discrimination, such as a tester or a renter, filing as a charging party) alleging injury suffered by the legal services organization as a result of the discriminatory conduct uncovered while conducting discrimination testing.⁷ SCFH is an

⁶ I base this finding on Ms. da Fonseca's testimony that she reviewed SCFH's records in advance of hearing to arrive at these figures. Best practice would have been for SCFH to have provided contemporaneously kept documentation of these expenditures, evidence of the 2019 hourly, annual and/or, or per project compensation rate for Ms. da Fonseca, Ms. Torres and the testers, and evidence of the number of hours that any of them performed relative to the testing of the subject property.

⁷ With the exception of a case filed solely by the MCAD, which had conducted housing discrimination testing in the mid-1980s, MCAD v. Willard D. Hoyt and Cape Home Finders, 11 MDLR 1095 (1989), housing discrimination cases with testing evidence have been brought by individual victims of discrimination at the MCAD. These claims were supported by testing evidence, including testimony by testers. White v. Cosmopolitan Real Estate, Inc., 37 MDLR 137 (2015); MCAD & DeRusha v. Federal Square Properties & Pacific Land LLC, 34 MDLR 76 (2012); MCAD & Gardner v. A-Team Realty, Inc. & Williams, 33 MDLR 139 (2011); Gardner v. Pianka, 28 MDLR 189 (2006); Leveille v. Cherry Hill

incorporated legal services organization with a mission to eradicate housing discrimination and to increase equal housing opportunities. M.G.L. c. 151B expressly gives standing to seek relief to “[a]ny person claiming to be aggrieved” by practices made unlawful by the statute. M.G.L. c. 151B, § 5 (emphasis added). M.G.L. c. 151B defines “person” to include “one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and the commonwealth and all political subdivisions, boards, and commissions thereof.” M.G.L. c. 151B, § 1(1). As a corporation, SCFH is a “person” under M.G.L. c. 151B.

As to the question of whether SCFH is “aggrieved”, the Commission has recognized the right to bring a housing discrimination case even when the party seeking to establish that they were “aggrieved” was not personally seeking housing. Willis v. DeFazio, 33 MDLR 146 (2011). In Willis, a landlord made racially discriminatory statements to a broker who was seeking to list, but not rent, the property. The Commission concluded that the broker was “aggrieved” by the landlord’s discriminatory statements based on the critical role that brokers play in determining the availability of housing rentals, connecting landlords with potential renters, and ensuring that landlords comply with anti-discrimination laws. In addition, the Commission concluded that as a member of a protected class, the broker herself suffered damages resulting from the landlord’s racially discriminatory statements.

Testers are similarly “aggrieved” due to their role evaluating the availability of housing, ensuring that the law is complied with and in some cases, incurring damages or suffering injury flowing from discriminatory conduct. Barrett and Graham v. Realty World/Dana Realty, 17 MDLR 1665, 1678 (1995), citing Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1981) (white tester awarded emotional distress damages based on evidence that she felt humiliated, was surprised that “there really was discrimination out there”, and became less trusting of people). SCFH, a legal services corporation that hires testers to ensure that brokers, agents, and owners do not discriminatorily deny housing to qualified applicants in its service area, plays a critical part in rooting out discriminatory conduct that may not be identified without testers. SCFH diverted the time of its Testing Coordinator and Executive Director and paid testers in an effort to identify

Estates Condominium et. al, 25 MDLR 191 (2003); Barrett & Graham v. Realty World/Danca Realty, 17 MDLR 1665 (1994) (awarding damages for emotional distress to both the actual prospective tenant and the tester engaged by a civil rights advocacy group)

and address any discriminatory conduct. After it concluded that a real estate agent or broker in its service area was engaging in discriminatory conduct, it devoted more resources to expanding educational efforts to licensed real estate professionals in its service area. Under these circumstances, SCFH is “aggrieved” and has standing in this action.

B. Refusing to Rent to Person with a Child

SCFH alleges that its testers were discriminated against when Respondents refused to allow Testers 1 and 2 to view or rent the subject property because Testers 1 and 2 intended to live there with their children under the age of six. This claim implicates two anti-discrimination statutes: M.G.L. c. 151B, § 4(11) (“Section 4(11)”) and M.G.L. c. 111, § 199A (“Section 199A”).

Section 4(11) prohibits owners, agents and real estate brokers of “publicly assisted or multiple dwelling or contiguously located housing accommodations or other covered housing accommodations” from refusing to rent or otherwise to deny or withhold from any person accommodations because such person has a child or children who shall occupy the premises with them. It further prohibits discrimination 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. Section 199A makes it “an unlawful practice for purposes of M.G.L. c. 151B for the owner . . . real estate broker, assignee, or managing agent 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 [lead paint].” M.G.L. c. 111, § 199A(a).

SCFH must first prove that these statutes apply to the Respondents and the subject property. Section § 4(11) applies to a broad range of persons and organizations including but not limited to owners, real estate brokers and agents of “publicly assisted or multiple dwelling or contiguously located housing accommodations or other covered housing accommodations.” Multiple dwellings include dwellings 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). The subject property is a six-family house, which falls under the definition of “multiple dwelling.” There was no evidence that any of the three exclusions from coverage in Section 4(11) applied in this case.⁸ Section 4(11) applies to

⁸ The subject property was not the temporary leasing or subleasing of a single-family dwelling; did not consist of a dwelling with three apartments or less occupied by an elderly or infirm person for whom the

Ms. Chopra, as a real estate broker or agent of a multiple dwelling. Similarly, Section 199A applies to Ms. Chopra, as a real estate broker “of any premises.”

As set forth in Finding of Fact 28, SCFH did not establish that Krishna Priya, Inc. was an owner of the subject property. As a result, the claims against Krishna Priya Inc. under Section 4(11) and Section 199A are **dismissed**.

Having found Section 4(11) and Section 199A applicable to Ms. Chopra, I also find that the facts support a finding of liability against Ms. Chopra pursuant to these statutes. Test Reports 1 and 2 are credible, reliable and persuasive. When Tester 1 told Ms. Chopra that she had a daughter who would be living with her, Ms. Chopra asked how old the daughter was, and when Tester 1 told Ms. Chopra that the daughter was two years old, Ms. Chopra stated: “the apartment is not de-leaded. I’m sorry.” Tester 1 called back to ask if the landlord was in the process of de-leading the apartment. Ms. Chopra responded: “No, the landlord won’t de-lead the apartment – it’s too expensive.” When Tester 1 asked to schedule a visit to view the apartment, Ms. Chopra said: “No, there’s no way to rent the apartment – it’s a waste of your time.” Less than an hour after Ms. Chopra stated that to Tester 1, Tester 2 contacted Ms. Chopra. When Tester 2 told Ms. Chopra that her five-year-old grandson would be living with her, Ms. Chopra told Tester 2 that there was no lead certificate for the apartments and that “the landlord wanted her to tell people that.” When Tester 2 asked what that meant, Ms. Chopra said that the apartments are not de-leaded and there needs to be a certificate for any child under age 7 who was living there. Ms. Chopra re-iterated that “there is no certificate” and told Tester 2 that she could see the apartment and fill out an application “but there is no certificate.” Ms. Chopra said she was not available at the time Tester 2 proposed to view the apartment, and when Tester 2 said she was flexible and asked Ms. Chopra what time would be convenient for her, Ms. Chopra said she would call Tester 2 back. Ms. Chopra did not call Tester 2 back. Tester 2 called Ms. Chopra two days later and left a message requesting an appointment to view the subject property. Ms. Chopra never called Tester 2 back to arrange for Tester 2 to view the subject property.

Despite Ms. Chopra’s statement that Tester 2 could view the apartment, I find that Ms. Chopra had no intention of arranging an opportunity for Tester 2 to view the property based on her failure to do so or to respond to Tester 2’s message. Within an hour of flatly refusing to rent

presence of children would constitute a hardship; or a single dwelling unit in an owner-occupied 2 family dwelling. M.G.L. c. 151B, § 4(11)

to Tester 1 because the landlord “would not de-lead the apartment” and viewing the apartment was “a waste of [her] time,” Ms. Chopra told Tester 2 that the apartment she sought was not de-lead and there was no lead certificate. Ms. Chopra did not schedule a time for Tester 2 to view the apartment even when Tester 2 told Ms. Chopra that she was flexible. While Ms. Chopra told Tester 2 that she would call her back, Ms. Chopra never did so. Even when Tester 2 left a voice mail message, Ms. Chopra did not return her call. Further, three days after Ms. Chopra told Tester 2 that she would call her back with a time to view the apartment, Ms. Chopra scheduled a time for Tester 4, who did not disclose an intention to live with children, to view an apartment in the subject property. Ms. Chopra subsequently arranged for Tester 4 to see the property and engaged in texting with her about renting an apartment at the property. Based on these facts, I do not believe Ms. Chopra intended to show the property to Tester 2.

I find that the reason Ms. Chopra refused to show – and thus refused to rent - an apartment at the subject property to Testers 1 and 2 was because Testers 1 and 2 intended to live in an apartment with a two-year-old daughter and a five-year-old grandson, respectively. I base this conclusion on the facts evidenced by Tests 1 and 2, as set forth herein, and the Wicked Local ad stating there is “no lead paint certificate in hand for this apartment.” Ms. Chopra’s conduct and statements in both Test 1 and Test 2 constitute direct evidence of Ms. Chopra refusing to show and thus rent to potential renters (Testers 1 and 2) because they would be occupying the premises with a child and because of the potential of lead paint in the subject property. As the agent or broker for the subject property, Ms. Chopra is liable for violating M.G.L. c. 151B, § 4(11) and M.G.L. c. 111, § 199A. Based on the findings of fact, SCFH incurred compensatory damages of \$2,270 relating to its work regarding the subject property, and as such, Ms. Chopra is liable to SCFH in the amount of \$2,270.

C. Refusing to Rent to Recipient of Section 8

Test Report 3 was offered by SCFH in support of a claim that Respondents Ms. Chopra and Krishna Priya Inc. violated M.G.L. c. 151B, § 4(10) by refusing to rent to Tester 3 based on her receipt of public benefits. The only evidence in support of this claim was Test Report 3. I do not credit Test Report 3 because, as described in the Findings of Fact, I find Test Report 3 lacking in

reliability. In the absence of credible evidence in support of this claim, I dismiss the claim that Respondents discriminated against a SCFH tester based on her receipt of Section 8 benefits.⁹

D. Refusing to Rent to SCFH Tester Who Disclosed Gender of Roommate

SCFH offers Test Report 4 in support of a claim that Ms. Chopra and Krishna Priya Inc. violated M.G.L. c. 151B, § 4(6) by refusing to rent to Tester 4 based on her sex/gender identity. The only evidence offered in support of this claim was Test Report 4. Nothing in Test Report 4 suggests that there was a refusal to rent to Tester 4. On the contrary, Test Report 4 supports the conclusion that Ms. Chopra was ready and willing to rent to Tester 4.¹⁰ Based on this, I dismiss the claim that Respondents refused to rent to an SCFH tester based on sex or gender identity.

⁹ I take this opportunity to make some general observations about best practices in testing cases. First, a testing organization should consider naming a tester as a complaining party and/or calling a tester or testers as witnesses. Even without naming a tester as a complaining party, SCFH could have, but did not, call any testers as witnesses to testify as to the nature of the interaction with the testing subject, answer questions about their testing report, and/or provide the date that their report was completed. Testimony from a tester permits a better understanding of the facts set forth in the test report and information regarding consequential damages. It also permits the accused party to cross-examine and test the accuracy and veracity of the tester. Second, particularly in cases where testers are not called as witnesses, the Testing Coordinator should testify. The Testing Coordinator in this case was employed by SCFH at the time of the hearing, but, inexplicably, did not testify which she could have done, upon request, from a remote location. The Testing Coordinator could have verified the training background of the testers, provided detailed information about how the test was designed and how each tester was trained, testified about the debriefing meeting including discussions about the test reports, and provided information about the Testing Coordinator's prior experiences with the specific testers, including their general reliability and reporting capabilities. Third, SCFH provided no training materials, such as the SCFH Training Manual or the training video, to show how their testers were trained. While I appreciate that these materials may contain confidential information, SCFH could have sought to redact the SCFH Training Manual or moved to submit these materials *in camera*. Fourth, Ms. da Fonseca did not explain why the test reports were undated and testified that SCFH test report forms do not contain a line to date the reports. Testers should date and sign all completed test report forms on the date that the form is completed. Dating the test report, assuming it is dated shortly after the test is conducted, bolsters the reliability of the test report. Here, some concerns about some of the test reports' reliability were addressed by a post-hearing affidavit by SCFH's Executive Director that clarified when the test reports were uploaded into SCFH's electronic filing system. The better practice is to require testers to date test reports.

¹⁰ After reviewing Test Report 4, Ms. da Fonseca did not believe there was a sufficient basis to conclude that Tester 4 was denied the opportunity to rent an apartment at the subject property based on sex or gender identity. (Testimony of da Fonseca) Ms. da Fonseca testified that it was her view that Test Report 4 reflects a violation of M.G.L. c. 151B's prohibition on inquiries related to sex or gender identity. See M.G.L. c. 151B, § 4 (6)(c) Prior to hearing, SCFH was given the opportunity to seek to amend the certified issues to include whether Respondents made any written or oral inquiry or record concerning sex or gender identity. At the hearing, Complainants initially requested to amend the certified issues to

IV. CIVIL PENALTY

M.G.L. c. 151B, § 5 provides that in the event the Commission finds that a Respondent has engaged in unlawful conduct prohibited by this chapter, "it may, in addition to any other action which it may take ... assess a civil penalty." A civil penalty is appropriate in this case against Ms. Chopra. She is a licensed Massachusetts real estate agent or broker who exhibited blatant disregard for Massachusetts law which prohibits denying the opportunity to rent because a family has a child and/or because the property may contain lead. Based on this, a civil penalty of \$10,000 shall be assessed against Ms. Chopra. M.G.L. c. 151B, § 5

V. ORDER

For the reasons detailed above, and pursuant to the authority granted to me under M.G.L. c. 151B, §5, I order the following.

1. As to Respondent Krishna Priya Inc., the complaint is **dismissed**.
2. Cease and Desist: Respondent Sushma Chopra, aka Susan Chopra, shall immediately cease and desist from discrimination in housing based on the presence or potential presence of lead paint and/or children.
3. Consequential Damages to SCFH: Respondent Sushma Chopra, aka Susan Chopra, is ordered to pay to SCFH \$2,270 in consequential damages 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.
4. Civil Penalty: Respondent Sushma Chopra, aka Susan Chopra, shall pay a civil penalty of \$10,000 to the Commonwealth of Massachusetts within sixty (60) days of receipt of this Decision.
5. Required Language in Future Advertisements: For any advertisement of property to which M.G.L. c. 151B, § 4(11) applies and which is placed by or on behalf of Respondent Sushma Chopra, aka Susan Chopra, or her agents, in any newsprint or on any platform, including an on-line platform, newspaper, circular or other written advertisement, shall include the following language: *Families welcome*. This requirement shall remain in effect until January 1, 2026.
6. Training: Within thirty (30) days of receipt of this Decision, Respondent Sushma Chopra, aka Susan Chopra, shall contact the Commission's Director of Training to enroll in Housing Discrimination 101: <https://www.mass.gov/info-details/mcad-housing->

include that issue, but ultimately, withdrew their request to amend the certification order to include a claim based on written or oral inquiry or record concerning sex or gender identity.

community-trainings. Within sixty (60) days of this Decision, Ms. Chopra shall attend Housing Discrimination 101. For purposes of enforcement, the Commission shall retain jurisdiction over training requirements.

7. Notice: Pursuant to M.G.L. c. 151B, § 4(11), a copy of this Decision will be forwarded to Director: Childhood Lead Poisoning Prevention Program, 250 Washington Street, Boston, MA 02108.

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 ten (10) days of receipt of this Decision and must file a Petition for Review within thirty (30) days of receipt of this Decision. 804 CMR 1.23(1) (2020) If a party files a Petition for Review, each of the other parties may intervene in the appeal. To do so, such party must file a Notice of Intervention within ten (10) days of receipt of the Petition for Review and must file a brief in reply to the Petition for Review within thirty (30) days of receipt of the Petition for Review. 804 CMR 1.23(2) (2020) All filings referenced in this section shall be made with the Clerk of the Commission in the Boston office, with a copy served on all of the other parties.

VII. PETITION FOR ATTORNEYS' FEES AND COSTS

Any petition for attorney's fees and costs for Complainants' Counsel shall be submitted 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. Respondents may file a written opposition within 15 days of receipt of said petition. All filings referenced in this section shall be made with the Clerk of the Commission in the Boston office, with a copy served on all of the other parties.

So ordered this 1st day of December, 2023.

Simone R. Liebman _____
Simone R. Liebman
Hearing Officer