

55220A

No. 01-02-2101  
IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

<b>JULIO GODINEZ &amp; CARLOS GODINEZ,</b>	)	
<b>Plaintiffs-Appellees,</b>	)	
	1	
v.	)	<b>Appeal from the Circuit Court</b>
	)	<b>of Cook County, Blinois, County</b>
	)	<b>Department, Chancery Division</b>
	1	
<b>CHICAGO COMMISSION ON HUMAN</b>	1	<b>No. 01 CH 19272</b>
<b>RELATIONS &amp; JUNE E. SULLIVAN LACKEY)</b>	)	<b>The Honorable</b>
<b>Defendant-Appellant )</b>	)	<b>Bernetta D. Bush</b>
	1	<b>Judge Presiding</b>

NOTICE OF FILING

L"O, & y /

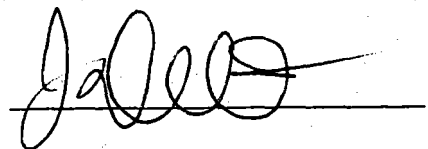
TO: FRED M. CAPLAN AND  
DOUGLAS W. GRAHAM  
29 South LaSalle Street  
Suite 330  
Chicago, Illinois 60603

MARA S. GEORGES  
CORPORATION COUNSEL " ' 2 /  
JULIAN HENRIQUES,  
ASST. CORPORATION COUNSEL  
30 North LaSalle Street, Room 700  
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on March 25,2003, we filed with the Clerk of the appellate Court Illinois, 160 North LaSalle St., Chicago, Illinois, we filed Appellant's-Brief, a copy of which is attached hereto and served upon you.

CERTIFICATE OF SERVICE

I, J. Damian Ortiz, an attorney certify, under penalties provided by law pursuant to Section 1 - 109 of the Code of Civil Procedure, that I served the above named persons with a copy of the within Notice of Filing and Notice of Appeal by placing copies in a properly addressed envelope with sufficient postage, from, 28 E. Jackson Boulevard, Suite 500, Chicago, Illinois, on March 25,2003.



J. DAMIAN ORTIZ  
John Marshall Law School Fair Housing  
Legal Clinic  
28 East Jackson Boulevard, Suite 500  
Chicago, Illinois 60604  
(3 12) 786-2267

No. 1-02-2101

ILLINOIS APPELLATE COURT  
1ST DIST.

2003 MAR 25 AM 9:42

---

**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

---

STEVEN M. RAVID  
CLERK OF COURT

JULIO GODINEZ & CARLOS GODINEZ,

Plaintiffs-Appellees,

THE CHICAGO COMMISSION ON  
HUMAN RELATIONS and JUNE E.  
SULLIVAN-LACKEY,

Defendants-Appellants. \_

---

Appeal from the Circuit Court of Cook County, Illinois  
County Department, Chancery Division  
No. 01 CH 19272  
The Honorable Bernetta D. Bush, Judge Presiding

---

BRIEF OF DEFENDANT-APPELLANT  
JUNE E. SULLIVAN-LACKEY

---

COPY

J. Damian Ortiz  
Zachary Hotle (Senior Law Student)  
The John Marshall Law School  
Fair Housing Legal Clinic  
28 E. Jackson Boulevard, Suite 500  
Chicago, Illinois 60604  
(312) 786-2267

---

ORAL ARGUMENT REQUESTED

---

No. 1-02-2101

---

**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

---

JULIO GODIN-EZ & CARLOS GODINEZ,

Plaintiffs-Appellees,

THE CHICAGO COMMISSION ON  
HUMAN RELATIONS and JUNE E:  
SULLIVAN-LACKEY,

Defendants-Appellants.

---

Appeal from the Circuit Court of Cook County, Illinois  
County Department, Chancery Division  
No. 01 CH 19272  
The Honorable Bernetta D. Bush, Judge Presiding

---

**BRIEF OF DEFENDANT-APPELLANT  
‘JUNE E. SULLIVAN-LACKEY**

---

**POINTS AND AUTHORITIES**

---

**Page:**

STANDARD OF REVIEW ..... 11

735 ILCS 5/3-110 (West2000). ..... 11

*Board of Ed. of Round Lake Area Schools v. State Bd. of Ed.*,  
292 Ill. App. 3d 101,109; 685 N.E.2d 412 (2nd Dist. 1997). ..... 11

*Heatie v. Chicago School Reform Bd. Of Trustees*,  
322 Ill. App. 3d 467,475,749 N.E.2d 411,418 (1<sup>st</sup> Dist. 2001) ..... 11

I. SECTION 8 RENT ASSISTANCE IS A “SOURCE OF INCOME” UNDER  
THE CHICAGO FAIR HOUSING ORDINANCE.

A. The Commission has the power to interpret the City’s ordinances, here the  
Commission has determined that Section 8 assistance is a “Source of Income.”

42 U.S.C. 6 1437f(t)(1)(B). ..... 6

*CHAC Inc. Report on Program Operations-Feb. 2003* ..... 6

735 ILCS 5/3-110 (West2001). ..... i..... 11

*Page v. The City of Chicago Commission on Human Relations,  
and Patricia Barnes*, 299 Ill.App.3d 450,463; 701 N.E.2d 218;  
(1<sup>st</sup> Dist. 1998). ..... 11,12

*City of Decatur v. American Federation of State, County & Municip&I  
Employees, Local 268*. 122 Ill.2d 353;361; 522 N.E.2d 1219 (1988). ..... 11

*Bloom Twp. High School Dist. 206 v. Ill. Labor Relations Bd.*,  
312 Ill. App. 3d 943,955; 728 N.E.2d 612 (1<sup>st</sup> Dist. 2000) ..... 11

*The Board of Education of Community High School District No. 155  
v. Illinois Educational Labor Relations Board*,  
247 Ill. App. 3d 337, 344,617 N.E.2d 269 (1<sup>st</sup> Dist. 1993). ..... 12

*Smith v. Wilmette Real Estate Mgt. Co.*, CCHR No. 95-H-159 &  
98-H-44/63,1999 WL 308207 (Apr. 13,1999). ..... 12-13

*Lopez v. Arias*, CCHR No. 99-H-12,2000 WL 2001023 (Sept. 20,2000) . . . . 12

*Smith v. Goodchild*, CCHR No. 98-H-177 (Apr. 13,1999) ..... 12

<i>McGee v. Sims, Case No. 94-H-13 1,1995 WL 907555 (Oct. 18,1995)</i> . . . . .	12
<i>Cooper v. Park-view Realty, Case No. 91-FHO-48-5633,1992 WL 792873 (Aug. 26,1992)</i> . . . . .	12
<i>Huflv. American Management &amp; Rental Service, CCHR No. 97-H-187, 1999 wL 160528 (Jan. 20, 1999)</i> . . . . .	12
<i>Cooper &amp; Ashmon v. Parkview Realty, Case No. 91-FHO-48-5633, at 3,1992 WL 792873 (Sept. 8, 1992)</i> . . . . .	12
<i>McCutchen v. Robinson, CCHR No. 95-H-84, at 4,1998 WL 307864 (May 20,1998)</i> . . . . .	12
<b>B. <u>Knapp v. Eagle River Proaertv Management Corp., 54 F.3d 1272 (7<sup>th</sup> Cir. 1995) does not hold that Section 8 funds cannot be a “source of income”, and does not control the internretation of the Chicago Fair Housing Ordinance.</u></b>	
<i>Knapp v. Eagle River Property Management Corp., 54 F.3d 1272 (7<sup>th</sup> Cir. 1995)</i> . . . . .	13-18
<i>People ex rel. SpeigeZ v. Lyons, 1 Ill. 2d 409,414, 115 N.E.2d 895 (1953)</i> . . .	13
42U.S.C. 3 1437f(t)(l)(B). . . . .	13-14
<i>Commission on Human Rights and Opporhtnities v. Sullivan Associates, 250Conn.763,774;739A.2d238(1999)</i> . . . . .	14,19
<i>Franklin Tower One, LLC v. NM., 157 N.J. 602,622; 725 A.2d 1104 (1999)</i> . . . . .	14,18-19
<i>Weiland v. Telectronics Pacing Systems, 188 Ill. 2d 415,423 (1999)</i> . . . . .	14
<i>Attorney General v. Brown, 400 Mass. 826; 5 11 N.E.2d 1103, 1106 (1987)</i> . . .	14
Wisconsin Open Housing Act, Wis. Stat. § 101.22(6) . . . . .	15
Chicago Mun. Code (IL) 0 2-160-020(m), 59 5-8-040; Regulation 100 (32) . . . . .	15
WisconsinAdmin. Code 6 IND 89.01(8). . . . .	15
<b>C. <u>Including Section 8 vouchers as a “source of income” is consistent with the puroose of the Ordinance.</u></b>	

Chicago Fair Housing Ordinance. (IL) 6 5-08-030 . . . . . *passim*

*CEUC Inc. Report on Program Operations-Feb. 2003* . . . . . 18

D. The prevailing view in similarly worded statutes from other cities and states indicates that Section 8 subsidies are a source of income.

*Franklin Tower One, LLC v. N.M.*, 157 N.J. 602,622;  
 — 725 A.2d1104(1999).....~..... 18

N.J.S.A. 6 C.10:5-4 (2003). . . . .18  
 i

N.J.S.A. 2A: 42-100.. . . . 18

*N.J. Assembly Commerce, Industry and Professions Committee, Statement to A.*  
 994(May1,1980) . . . . .18

Office of the Governor of N.J., News Release at 1  
 (Dec. 9,1981). . . . . -19

*Commission on Human Rights and Opportunities v. Sullivan Associates*, 250  
 Corm. 763,774; 739A.2d238 (1999). . . . . 19

Connecticut Gen. Stat. 6 46a-64c (a)( 1) . . . . ., . . . 19

Connecticut Gen. Stat. 3 46a-63(3) . . . . .19 ,

II. **THE CHICAGO COMMISSION ON HUMAN RELATIONS’  
 DETERMINATION THAT THE GODINEZES’ DISCRJMINATED AGAINST  
 MRS. LACKEY BASED ON HER SOURCE OF INCOME WAS NOT  
 AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.**

735 ILCS 5/3-110 (West 2001). . . . . -20

*Jackson v. Retirement Board of the Policemen ‘s Annuity & Benefit Fund*,  
 293 Ill.App.3d 694,698; 688 N.E.2d 782; 228 Ill.Dec. 84 (1 Dist. 1997) . . . . . 20

*Page v. The City of Chicago, The City of Chicago*, 299 Ill.App.3d 450,464;  
 702 N.E.2d 218; 702 N.E.2d 218 (1<sup>st</sup> Dist. 1998) . . . . . -21-22

*Raintree Health Care Ctr. v. Illinois Human Rights Comm it*, 173 Ill. 2d 469, 479;  
 672 N.E.2d 1136,1141 (1996). . . . . 22

*Becotic v. The City of Chicago*, 296 Ill. App. 3d 236,494,  
 694 N.E.2d 1044 (1<sup>st</sup> Dist. 1998). . . . . 22-23

**III. THE CHICAGO COMMISSION’S AWARD OF ATTORNEY’S FEES AND COSTS TO THE APPELLANT’S WAS NOT AN ABUSE OF DISCRETION.**

*Brewington v. Illinois Dept. of Corrections*, 161 Ill.App.3d 54, 65;  
513 N.E.2d 1056 (1<sup>st</sup> Dist. 1987).....22

## NATURE OF THE CASE

June E. Sullivan-Lackey (“Mrs. Lackey” or “Defendant”) through her attorneys of The John Marshall Law School Fair Housing Legal Clinic seeks reversal of the Circuit Court of Cook County, Chancery Division’s decision which reversed the Chicago Commission on Human Relation’s (“Commission”) final decision based on source of income discrimination against Ms. Lackey. After a full hearing, the Commission found that Julio and Carlos Godinez (“Julio”, “Carlos” or collectively “Godinezes” or “Plaintiffs”)’ intentionally discriminated against Mrs. Lackey on the basis of her source of income. The Godinezes refused to rent Mrs. Lackey an apartment because she intended to pay for a portion of the rent with her Section 8 funding. The Commission ordered the Godinezes to pay Mrs. Lackey \$5,610.00 in compensatory damages, costs, and attorney fees. The Godinezes appealed to the Circuit Court of Cook County, where the Honorable Bernetta D. Bush presiding, entered a final Order holding that Section 8 vouchers were not included in the City of Chicago’s Fair Housing Ordinance prohibitions of discrimination based on source of income. There are no questions raised on the pleadings.

Mrs. Lackey appeals to this Court for reversal of the circuit court’s decision. Mrs. Lackey respectfully requests that the award of damages and attorneys’ fees by the Commission be upheld and that the Godinezes be ordered to pay attorneys’ fees and costs incurred during the appeal in an amount to be determined.

---

I Pursuant to S. Ct. Rule 341(c), June E. Sullivan-Lackey, the Petitioner at the Commission and the Defendant in the circuit court shall be referred as (“Mrs. Lackey or Defendant”), herein. Julio and Carlos Godinez, the Respondents at the Commission and Plaintiffs in the circuit court shall be referred as the (“Godinezes or Plaintiffs”).

## ISSUES PRESENTED FOR REVIEW

---

- I.) Whether Section 8 rental assistance is a “Source of Income” under the Chicago Fair Housing Ordinance.
- II.) Whether the Chicago Commission on Human Relations’ determination that the Godinezes discriminated against June E. Sullivan-Lackey based on her “Source of Income” was supported by the manifest weight of the evidence.
- III.) Whether the Chicago Commission on Human Relations’ award of fees and costs to Defendant was an abuse of discretion.

## JURISDICTION

---

On July 16,2002, Mrs. Lackey filed a timely Notice of Appeal from a judgment entered by the Circuit Court of Cook County which reversed the judgment in favor of the City and Mrs. Lackey by the City of Chicago Human Relations Commission.’ C. 434. The Commission filed a notice of appeal on July 15,2002. C. 431-33.

This Court has proper jurisdiction pursuant to Supreme Court Rule 301. There are no questions raised on the pleadings.

---

’ The Clerk of Circuit Court prepared three volumes and a supplemental record consisting of one volume. The first and second volumes of the original record are numbered sequentially, and we refer to those pages as “C. .“. We refer to the supplemental record as “S.R. -“, hereinafter- The appendix is “Bates” stamped and we referred to those pages as “A. -“.

## STATUTES INVOLVED

---

*City of Chicago Municipal Code and the Chicago Commission On Human Relations Chicago Fair Housing Ordinance (as amended):*

The Chicago Fair Housing Ordinance provides in relevant part:

It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent lease or sublease any housing accommodation, within the city of Chicago, or any agent of any of these, or any real estate broker licensed as such:

- A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or *source of income* of the prospective or actual buyer or tenant thereof.

\* \* \*

- C. To refuse to sell, lease or rent, any real estate for residential purposes within the city of Chicago because of the race, color, sex, age, religion, disability, national origin ancestry, sexual orientation, marital status, parental status, military discharge status or *source of income* of the proposed buyer or renter.

*Chicago Municipal Code* j 5-08-030 (1999)(emphasis added). See A-047. C. 4 17-4 19.

Section 5-8-040 Definitions provides:

Wherever used in this chapter, the terms “age,” “religion,” “disability,” “sexual orientation,” “marital status,” “parental status,” “military discharge status,” and “*source of income*” shall have the same meanings as described in Chapter 2-160 of this code.

*Chicago Municipal Code* §5-08-040 (1999)(emphasis added). See A.047. C. 417-419.

Section 2-1 60-020 Definitions:

(m) “Source of income” means the lawful manner by which an individual supports himself and his or her dependents.

*Chicago Municipal Code J 2-160-020(m) (1999). See A.059 C.417-4 19.*<sup>3</sup>

5-8-020 Discrimination Prohibits:

It is further declared to be the policy of the City of Chicago that no owner. . . should refuse to sell, rent, lease, or otherwise deny to or withhold from any person or group of persons such housing accommodations because of his race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status *or source of income* of such person or persons or discriminate against any person because of his race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status *or source of income in the terms, conditions, or privileges* or the sale, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith.

*Chicago Municipal Code §5-08-020 (1999)(emphasis added). See A.047. C. 417-419.*

---

<sup>3</sup> The Ordinance was amended November 6, 2002, to include a new subsection "(j)", which moved section (m) to section (n). The text of (m), now (n) remains the same. A. 059.

## STATEMENT OF FACTS

---

### A. Section 8 Voucher Tenant-Based Assistance Program

Congress created the Section 8 program “[Q]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing.” (42 U.S.C. 1437f(a)). Under the program, the United States Department of Housing and Urban Development (“HUD”) enters into an annual contributions contract (“ACC”) with a public housing agency (“PHA”). Pursuant to the terms of this contract the PHA agrees to administer the program,<sup>4</sup> and HUD agrees to provide the necessary funds for a specified period of time. (24 C.F.R. 982.151).

The PHA receives applications from prospective tenants and issues vouchers to those found eligible to participate in the program.<sup>5</sup> Once the tenant receives a voucher, the tenant can enter the private market in search of suitable housing. (24 C.F.R. 982.302). The tenant must find a suitable unit before the voucher expires<sup>6</sup> Since the objective of the program is to provide affordable, decent, safe and sanitary housing, the PHA inspects the unit to make sure it complies with housing quality standards, as set forth in 24 C.F.R. 982.401, and it has market rent. (24 C.F.R. 982.305(a)(1) and (a)(4)).

If the unit passes inspection, the tenant and the landlord enter into a lease agreement, and

---

<sup>4</sup> The Chicago Housing Authority (“CHA”) administered the program until December 1, 1995, when it assigned responsibility for this task to a private sub-contractor called WAC, Inc. “The federal regulations define PHA to include any “private entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or PHA) on October 21, 1998.” (24 C.F.R. 982.4).

<sup>5</sup> Section 8 assistance is available to “very low income” and “low income” families. (24 C.F.R. 982.201(b)). A “very low income” family receives no more than 50% of the area median income. (42 U.S.C. 1437 a(a)). A “low income family” receives no more than 80% of the area median income. (MJ)

<sup>6</sup> The initial term of the voucher lasts sixty days and may be extended one or more times at the PHA’s discretion. (24 C.F.R. 982.303).

the landlord and the PHA enter a housing assistance payments (“HAP”) contract. (24 C.F.R. 982.308 (b) and 305(c)). The lease agreement must include a HUD-prescribed tenancy addendum and have an initial term lasting at least one year. (24 C.F.R. 982.309(a)). During the initial or any successive term, the landlord or the tenant may terminate the tenancy with cause. (24 C.F.R. 982.310 and 983.314(b)).

The tenant’s share of the rent is equal to no less than 30% and no more than 40% of his or her adjusted gross monthly income. (24 C.F.R. 982. 1 (a) (4) (i i)). Pursuant to the HAP contract the PHA sends the landlord monthly payments equal to the difference between the tenant’s contribution and the total rent. (24 C.F.R. 982.311(a) and 982.505@)). The PHA, however, may reduce or abate these payments (or even terminate the HAP contract) if the landlord violates its contractual obligations. (24 C.F.R. 982.453). Termination of the HAP contract terminates the lease, and vice versa. (24 C.F.R. 982.309@)(2)(i)). Also, both the HAP contract and the lease terminate if the PHA terminates the tenant’s rental assistance. (24 C.F.R. 982.309 (b)(Z)(iii)). (See also C. 358-386, for an overview of the Section 8 program).

As of February 28,2003, there were 95,3 10 Chicago residents using Section 8 vouchers to pay portions of their rent. ( CHAC Inc. Report on Program Operations-February 2003). There are an additional 23,382 Chicago residents waiting to receive their Section 8 vouchers. (Id.).

B. The Case at Bar:

In April 1999, Mrs. Lackey was forced to move Tom her home located at 3600 West Polk Street, Chicago. A. 032. C. 402. Mrs. Lackey received Section 8 assistance while living at this address. A. 032. C. 402. As part of the program, her unit was re-inspected at the end of her lease to determine whether it met the standards required by the Section 8 program for renewal of the lease. A. 032. C. 402. The unit failed the inspection and Mrs. Lackey was required to move.

*Id.* Mrs. Lackey was given a few short weeks to locate a new residence, as her Section 8 voucher would expire on May 10, 1999. A.032. C. 402. If Mrs. Lackey were unable to locate a unit before the Section 8 voucher's expiration date, she would lose her rights to the assistance afforded by the program. A.032. C. 402. Mrs. Lackey then learned that an apartment was available in the apartment complex where her daughter, Kesha Lackey, resided. A.033. C.403. This apartment complex is owned by Respondent, Julio Godinez and managed by Carlos Godinez, his son. A. 033. C. 403.

Mrs. Lackey applied to rent the apartment in the Godinezes' complex for several reasons. First, the apartment was located on the first floor; this was of particular importance because Mrs. Lackey has trouble climbing stairs due to her numerous medical conditions, including diabetes, hypertension, and kidney failure. A. 034. C. 278-79. Secondly, this apartment would enable her to baby-sit her grandchildren while her daughter Kesha Lackey worked, as they would both be living in the same building. A. 033. C. 280. On April 23, 1999, Mrs. Lackey and her daughter went to the apartment complex's office, where they met with Carlos, in order to view and apply for the available apartment. A. 033. C. 280. After viewing the apartment Mrs. Lackey decided to apply for the unit. Mrs. Lackey and her daughter returned to the rental office where she completed the rental application. A. 033. C. 280. Mrs. Lackey then submitted the rental application to Carlos, along with the required \$25.00 application fee, and Carlos gave Mrs. Lackey a receipt. A. 033. C. 280.

Upon Carlos' review of the information contained on Mrs. Lackey's rental application, he asked Mrs. Lackey how she intended to pay for the apartment. A. 033. C. 280. Mrs. Lackey responded that she had a Section 8 voucher. A. 033. C. 280. Carlos indicated that he did not accept Section 8 assistance payments. A. 033. C. 280. Carlos indicated that Mrs. Lackey could

only have the apartment if she paid \$600 in *cash* per month for rent and a one-month deposit.

A.033. C. 280. All of the factual details occurring on April 23, 1999, were confirmed and testified to by Kesha Lackey. A. 034. C. 322. Mrs. Lackey also stated that Carlos asserted that he did not accept Section 8 because he did not want to be audited by the I.R.S. A-033. C. 286.

A few days after viewing of the unit on April 23,1999, Kesha Lackey found a tom section of her mother's rental application on the floor of her building near the mailboxes. A. 034. C. 284. Ms. Lackey testified that this is near the outside door to her apartment and that this is also the way the garbage is taken out of the building. A. 034. C. 323. Immediately after Ms. Lackey saw this, she called her mother and subsequently gave her mother the tom portion of the application. A-034. C. 284. (see Exhibit at C. 351). After Mrs. Lackey realized that Carlos would not rent her the apartment of her choice, she looked for other apartments in that same neighborhood. A. 034. C. 297. However, there were no other apartments available in that area that would accept her Section 8 voucher. A. 034. C. 297. As a result, her Section 8 voucher expired and she was forced to move to alternative housing. A. 034. C. 297.

During this time, Mrs. Lackey's overall medical conditions worsened and she was hospitalized. A. 034. C. 288-92. Prior to the denial of the unit, by Carlos Godinez, Mrs. Lackey was taking three types of medication for her hypertension. A. 034. C. 288. After the discrimination, she was prescribed two additional forms of medication for the hypertension. A. 034. C. 288. Additionally, after the discrimination, Mrs. Lackey's dialysis increased from three times to five times per day. A. 034. C. 278.

Subsequent to the Godinezes' refusal to rent to Mrs. Lackey the Godinezes were tested for housing discrimination. A. 004. C. 246. Carlos Godinez, when contacted by two different fair housing testers, he stated that he did not accept Section 8 vouchers. A. 004. C. 246.

On August 11,1999, Mrs. Lackey filed a complaint with the City of Chicago Commission on Human Relations alleging that Respondents violated Section 5-08-030 of the City of Chicago's Fair Housing Ordinance by discriminating against her on the basis of her source of income when they refused to rent her the available apartment. A. 034. C. 017. On December 16, 1999, the Commission issued an Order Ending that the discrimination did in fact occur. A. 035. C. 27. On April 30,2001, the Commission, in it's Final Recommended Decision, found that Respondents violated Section 5-08-030 of the City of Chicago's Fair Housing Ordinance when they refused to rent Mrs. Lackey an apartment because she intended to use her Section 8 voucher to pay a portion of her rent. A. 005. C. 130. The Commission ordered Respondents to pay \$5,6 10.00 in compensatory damages and \$250.00 fine to the Commission. A. 016. C. 202. That Order became final on July 18,2001. A. 002. C. 202. On April 12,2001, Ms. Lackey filed a request for attorneys' fees, as required by statute. A. 020. C. 16 1. On May 10, 200 1, Plaintiffs filed a two-sentence objection to the request for attorneys' fees. C. 22 1. On October 17,2001, the Commission awarded Mrs. Lackey \$16,284 in attorneys' fees. A. 019. C. 235.

On November 15, 2001, Respondents filed a tit of *certiorari* in the Circuit Court of Cook County, Chancery Division, appealing the Commission's rulings. C. 271. On June 17, 2002, The Honorable Bernetta D. Bush, presiding Judge, reversed the Commission's Order and held that Section 8 benefits are not a "source of income" within the meaning of the City of Chicago's Fair Housing Ordinance. On July 16, 2002, Ms. Lackey filed a timely Notice of Appeal to this Court.

## ARGUMENT

---

### **Standard of Review**

Under the Administrative Review Act the scope of judicial review extends to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110 (West 2000). The Appellate Court's role is to review the administrative decision, not the trial court's determination. *Board of Educ. of Round Lake Area Schools v. State Bd of Educ.*, 292 Ill. App. 3d 101, 109,685 N.E.2d 412,417 (2<sup>ed</sup> Dist. 1997). On issues of statutory construction, this Court reviews the lower court's decision de nova. *Heame v. Chicago School Reform Bd., of Trustees*, 322 Ill. App. 3d 467,475, 749 N.E.2d 411,418 (1<sup>st</sup> Dist. 2001).

### I.

#### **SECTION 8 RENTAL ASSISTANCE IS A "SOURCE OF INCOME" UNDER THE CHICAGO FAIR HOUSING ORDINANCE.**

- A. The Commission has the uower to interpret the Citv's ordinances: here the Commission has determined that Section 8 assistance is a "Source of Income."

The primary issue in this case, whether Section 8 is a "Source of Income" under the Chicago Fair Housing Ordinance, has already been decided. The Illinois Supreme Court has mandated, and this Court has held that "courts will defer to an agency's interpretation of the statute that it is charged to enforce." *Page v. The City of Chicago Comm 'n on Human Relations, and Patricia Barnes*, 299 Ill. App. 3d 450,463, 701 N.E.2d 18 (1<sup>st</sup> Dist. 1998), *citing Cig of Decatur v. American Federation of Stare, County & Mun. Employees, Local 268*, 122 Ill.2d 353, 361,522 N.E.2d 1219 (1988). *See also, Bloom Twp. High School Dist. 206 v. Illinois Labor ReZations Bd*, 312 Ill. App. 3d 943, 955, 728 N.E.2d 612 (1<sup>st</sup> Dist. 2000) ("Courts will defer to an agency's construction of the statutes it administer unless the agency's interpretation is

unreasonable or erroneous.” quoting *The Board of Education of Community High School District No. 155 v. Illinois Educational Labor Relations Board*, 247 Ill. App.3d 337,344,617 N.E.2d 269 (1<sup>st</sup> Dist. 1993). This deference extends to City ordinances and statutes. Page at 299 Ill. App. 3d 450.

The Chicago Commission on Human Relations, the organization charged with interpreting and enforcing the Chicago Fair Housing Ordinance, has unequivocally determined that Section 8 is a “source of income” for the purposes of the Ordinance. (See *Smith v. Wilmette Real Estate & Mgt. Co.*, CCHR Nos. 95-H-159 & 98-H-44/63,1999 WL 308207, (April 13, 1999); *Smith v. Wilmette Real Estate & Mgt. Co.*, CCHR Nos. 95-H-159 & 98-H-44/63,2000 WL 33143681, (October 6,2000); *Smith v. Goodchild*, CCHR No. 98-H-177, 1999 WL 308193, (April 13, 1999); *Lopez v. Arias*, CCHR No. 99-H-12,2000 WL 2001023 (Sept. 20,2000); *McGee v. Sims*, Case No. 94-H-13 1,1995 WL 907555, (October 18,1995); *Hufv. American Management & Rental Service*, CCHR No. 97-H-1 87, 1999 WL 160528, (January 20,1999). Similarly, the Commission has allowed source of income claims for persons who receive other forms of government assistance. (*Cooper v. Parkview Realty*, CCHR 91 -FHO-48-5633,1992 WL 792873, (Sept. 8,1992) (Supplemental Security Income, Public Aid Assistance); *McCutchen v. Robinson*, CCHX No. 95-H-84,1998 WL 307864, (May 20,1998) (Food Stamps and Public Aid Assistance)). Therefore, if food stamps, public aid and other forms of government assistance are considered a “source of income” then a Section 8 voucher, which is used to pay for housing, is a also source of income.

Since 1995, the Commission has constantly and continually interpreted the Ordinance to include Section 8 as a source of income. *McGee* CCHR 94-H-13 1 at 8. The leading case dealing with Section 8 income under the Ordinance is *Smith v. Wilmerre Real Estate & Management Co.*,

CCHRN<sup>o</sup>. 95-H-159 & 98-H-44/63, 1999 WL 308207 (Apr. 13, 1999).<sup>3</sup> A. 082. C. 208. In *Smith*, the Commission was asked to determine whether or not Section 8 was a “source of income” under the Chicago Fair Housing Ordinance. *Id.* The Respondent contended that Section 8 was not a source of income under the Ordinance. However, this contention was rejected by the Commission. *Id.* In denying the Respondent’s motion to dismiss, the Commission examined the Ordinance in detail and found that Section 8 was a source of income for the purposes of the Chicago Fair Housing Ordinance and that this was fully consistent with the aims of the federal law. *Smith supra.* A. 082.

Therefore, it is clear that the agency charged with interpreting and enforcing the Chicago Fair Housing Ordinance has, after careful analysis, determined that Section 8 funds are considered a “source of income” under the Ordinance.

B. *Knapp v. Eagle River Property Management Corp.*, 54 F.3d 1272 (7<sup>th</sup> Cir. 1995) does not hold that Section 8 funds cannot be a “source of income,” and does not control the interpretation of the Chicago Fair Housing Ordinance.

The lower court’s ruling in the present case relied heavily upon *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (7<sup>th</sup> Cir. 1995). C. 430. *Knapp* does not control this case. *Knapp* was an appeal by a plaintiff who had alleged racial discrimination, violation of the “take one, take all” rule, and a pendent state claim of lawful source of income discrimination. *Id.* The plaintiff in *Knapp* was a Section 8 recipient who sought to rent a unit from defendant Eagle Property Management Corporation and was twice told that the building *did* accept Section 8 voucher holders. After she completed the application, the defendant’s agent *did not* accept tenants *with* Section 8 vouchers. *Knapp*, 54 F.3d at 1275. A jury in the Federal District Court of the Eastern District of Wisconsin found that the defendants violated 42 US. C. J 1437f((t)(l)@)

---

<sup>3</sup> The administrative agency’s consistent interpretation and holding is entitled to deference. See *People ex rel. Spiegel v. Lyons*, 1 Ill. 2d 409,414 (1953).

by refusing to accept a Section 8 participant. The jury found the defendants liable and awarded the denied Section 8 recipient \$95,000 in compensatory damages. *Knapp*, 54 F.3d at 1276. This award was eventually reduced and summary judgment was granted in favor of the defendant on several of the counts. *Id.* The Seventh Circuit Court of Appeals, when reviewing the post-trial judgments, declined to include Section 8 as a source of income under the Wisconsin statute, stating: ‘While this form of assistance could arguably be included within the Wisconsin Act, we decline to ascribe such an intent to the state legislature.. .’ *Id.* at 1282.

Godinezes’ and the circuit court’s reliance on *Knapp* is misplaced. First, the language in *Knapp*, suggests that a state may not make the Section 8 program mandatory: “It seems questionable, however, to allow a state to make a voluntary federal program mandatory”. *Id.* This is not the holding of the case. *The Kizapp court* recognized that under the existing case law, state statutes banning discrimination against Section 8 recipients were not preempted by the federal law. See *Attorney General v. Brown*, 400 Mass. 826, 511 N.E.2d 1103, 1106 (1987) (“state law banning housing discrimination on the basis of housing subsidies, including rental assistance, making the acceptance of section 8 voucher essentially mandatory, not preempted by 1437(f).”) *Knapp* 54 F.3d at 1282.’ Under the Chicago Ordinance, and the Commission’s cases interpreting it, landlords are not required to rent to every Section 8 participants in every situation.

---

’ See also: *Comm i? On Human Rights and Oppomnities v. Sullivan Associates*, 250 Conn. 763, 774, 739 A.2d 238 (1999); *Franklin Tower One, UC v. N.M.*, 157 N.J. 602, 622, 725 A.2d 1104 (1999), (both deciding that 42 U.S.C. § 1437(f) does not preempt state housing discrimination laws’ inclusion of Section 8 as a source of income.), and; “Nothing in Part 982 is intended to preempt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher holder.” 24 CFR 982.53(d). See also, *Weiland v. TeZectronics Pacing Systems*, 188 Ill. 2d 415, 423 (1999). Mrs. Lackey fully briefed the circuit court on preemption, however, the Godinezes’ did not argue, nor did the circuit court address preemption in its decision. (Nevertheless, Mrs. Lackey’s full discussion of preemption can be found at C. 408-09 in the record),

S.R. 016. What landlords are required to do is give Section 8 recipients an opportunity to rent by taking and fairly evaluating their application and submitting the unit, if necessary, to an inspection. If the tenant is not otherwise qualified, for example due to poor credit, the landlord may abstain from leasing the unit. Also, if the unit fails the inspection, the public housing agency will not enter into an agreement with the landlord. S.RO16. The PI-IA will provide a list of necessary repairs to the landlord, but the landlord can choose not to make them, and, at this point, the parties can go their separate ways. See the Godinezes expert testimony at C.308-09. This is the situation that occurred with Mrs. Lackey's previous landlord and she properly did not file a complaint against him. A. 032. C. 402.

*Knapp* is a Seventh Circuit opinion, interpreting Wisconsin law, not Illinois law, and“ therefore, it is not binding in the case at bar. The holding in *Knapp* addresses whether Section 8 can be considered a source of income under the Wisconsin Open Housing Act, *Wis. Stat. j* 10 1.22(6), and the court, while acknowledging that Section 8 “could arguably be included within the Wisconsin Act”, determined that it did not want to “ascribe such an intent to the state legislature.. .” *Knapp* 54 F.3d at 1282. The Chicago Ordinance is broader than the Wisconsin Statute construed in *Knapp*. Specifically, the Chicago Ordinance does not list or exclude any specific sources of income. The Municipal Code of Chicago, 0 5-g-030 & 92-1 60-020(m), broadly prohibits discrimination, based on “source of income,” and defines “source of income” as “the lawful manner by which an individual supports himself and his or her dependents.” (*Chicago Municipal Code 2-I 60-020 (m), J-8-040; Regulation 1 OO(32)*). The Wisconsin Statute, *Wis. Stat.* §101.22(6), prohibits discrimination based on a “lawful source of income.” However, the *Vis. Admin. Code j* IND 89.01(8) limits this provision and instructs that a “lawful source of income [includes] but is . . . not limited to lawful compensation or lawful remuneration

in exchange for goods or services provided, profit from financial investments, any negotiable draft, coupon, or voucher representing monetary value such as food stamps, social security, public assistance or unemployment compensation benefits.”. Id.

“Source of income” as defined by the Chicago Municipal Code is “the lawful manner by which an individual supports himself and his or her dependents.” (Chicago *Municipal Code* § Z-160-020(m), §5-8-040; Regulation 1 OO(32)). All of the words in the definition of “source of income” have plain and clearly applicable meanings. The only qualification of “support” is that it be “lawful.” No legitimate argument can be made that Section 8 funds do not provide “support” or that the vouchers are unlawful. Thus, Section 8 vouchers are clearly included under the Ordinance’s definition of “source of income.”

C. Including Section 8 vouchers as a “source of income” is consistent with the purpose of the Ordinance.

The prohibition against “source of income” serves a number of very important interests to the City of Chicago. First, HUD has approved demolition of over 100,000 dilapidated public housing units by 2003 and will replace a majority of those units with Section 8 vouchers. (U.S. Dept. of Housing & Urban Development, *A New HUD: Opportunity for All*, 1997 Consolidated Report 53 (1998)). Also, legislative action has vastly increased the allotments of Section 8 vouchers since 1999, with 200,000 additional vouchers provided for each year for the years of 1999, 2000 and 2001. (*Pub. L. 105-276, 105th Cong., 2d Sess.* (Oct. 21, 1998)). As the demand for Section 8 vouchers increases, so does the demand for Section 8 housing.

Second, the Chicago Housing Authority (“CHA”) owns 38,000 public housing units, “which are some of the worst housing in America.” (*Plan for Transformation*, January 6, 2000, available at <http://www.thecha.org>, (last visited Aug. 14, 2002)). To improve the public housing

situation in Chicago, the CHA will raze approximately 18,000 units, which will push approximately 6,000 families into the private market - that is, 6000 families added to the list of Section 8 program participants. This, of course, includes neither already existing Section 8 program participants (95,310 as of Feb. 28, 2003) nor new participants (23,382 citizens were on the waiting list for Section 8 vouchers as of Feb. 28, 2003) that did not, or are not now, living in the soon-to-be or already demolished public housing *units*. (*CHAC Inc. Report on Program Operations-February 2003.*)

Finally, the City of Chicago Fair Housing Plan for 2000-2004, a plan of action to combat housing discrimination, expressly indicates that the city is relying on the Commission's continued interpretation of the Ordinance to include Section 8 vouchers within the definition of "source of income." *City of Chicago Fair Housing Plan 2000-2004*, p. 35. In fact, the City's Fair Housing Plan points out that source of income discrimination was the "most frequent basis for fair housing complaints" and then lists four actions that will be taken in the future to eliminate such *discrimination* - all of which are employed by the Commission. *Id.* 35-36. Therefore, to interpret "source of income" as not encompassing Section 8 vouchers would render Chicago's 2000-2004 plan worthless and take away the Commission's and the City's most important weapon in the fight to end housing discrimination.

In light of the legislative intent of the Section 8 program and the Chicago Fair-Housing Ordinance, the lower court's ruling in the present case would wholly defeat the purpose of the Section 8 program as a deterrent to discrimination and segregated communities. To construe the Ordinance to exclude Section 8 vouchers as sources of income will effectively clump all Section 8 participants into the relatively few buildings that do accept the Section 8 funds in low-income areas of the city.

D. The prevailing view in similarly worded statutes from other cities and states indicates that Section 8 subsidies are a source of income.

After the federal court of appeals examined the plain language of the Wisconsin statute in *Knapp*, the Supreme Court of New Jersey looked to the goals of the Section 8 program to conclude that Section 8 subsidies are a “source of income” in *Franklin Tower One, L.L. C. v. NM.*, 725 A.2d 1104 (1997). In *Franklin*, a tenant living without Section 8 assistance in an apartment for five years was eventually accepted into the Section 8 program. When she attempted to inform her landlord of her rent subsidy, the landlord refused to accept the Section 8 voucher. *Id.* at 1107. Focusing on the goals of the Section 8 program, the Supreme Court of New Jersey held that the landlord was discriminating against her by denying her an opportunity to rent solely because she would be paying rent with her Section 8 voucher. *Id.* at 1114. The Court, although recognizing that the statute did not specifically protect Section 8 vouchers as a source of income, determined that doing so advances the goals of the Section 8 program. *Id.* Subsequent to this decision, the New Jersey Legislature, showing its approval of the court’s interpretation, repealed the statute in question and added an amendment to N.J. Stat. Ann. 5 c.10: 5-4 statute which specifically includes Section 8 as a “source of income”. It defined “source of income” as all lawful income “used for rental or mortgage payments.” See *NJ. Stat. Ann. §2A: 42-100 (repealed September 1<sup>st</sup> 2002)* *NJ. Stat. Ann. 6 C. 10:5-4 (2003)*.

Just as the Chicago legislature created the Housing Ordinance to protect against discrimination for the “lawful manner by which an individual supports himself and his or her dependents,” New Jersey similarly intended its statute to “prohibit a landlord from refusing to rent to a person merely because of objections to the source of the person’s lawful income.” *N.J. Assembly Commerce, Industry and Professions Committee, Statement to A. 994 (May 1, 1980)*.

The governor of the state, after helping to enact the New Jersey statute, announced that its purpose was “to protect from housing discrimination [against] welfare recipients, spouses dependent on alimony and child support payments and tenants receiving governmental rental assistance.” *Office of the Governor of NJ., News Release* at 1 (Dec. 9, 1981). The New Jersey statute specifies “source of income” as “any lawful income received by the person or the source of any lawful rent payment to be paid for the house or apartment” and the intention of the New Jersey legislation is essentially identical to that of the Chicago City Council: helping to integrate low-income tenants throughout the state. *N.J.S.A. 2A: 42-100*. The New Jersey Supreme Court concluded, “The plain language of the statute, the legislative history, and our state’s important policy of providing protection for low-income tenants all support the conclusion that the statute encompasses Section 8 vouchers.” *Franklin*, 725 A.2d at 1112. *See, N.J. Stat. Ann. § 17:27 (2003)*.

Two years after *Franklin*, the Supreme Court of Connecticut agreed that including Section 8 subsidies as a source of income furthers the state’s goals of prohibiting discrimination in *Commission on Human Rights and Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999). In *Sullivan*, the defendant landlord had a standard policy in renting its properties that prevented Section 8 recipients from ever being considered as tenants because of their source of income. *Id.* at 242. Connecticut’s anti-discrimination statute prevented the refusal of a rental unit due to an applicant’s “lawful source of income.” Since Section 8 subsidies are considered a “lawful source of income,” the Supreme Court of Connecticut reversed the lower court’s ruling held that the defendant landlord could not discriminate against Section 8 recipients. *Id.* at 247.

The Connecticut statute is written similarly to the Chicago Ordinance, prohibiting discrimination against a person’s “lawful source of income.” *Connecticut General Statutes §*

46a-64c (a)(1). Though portions of the Connecticut statute clarify “lawful source of income” to include “income derived from social security, supplemental security income, housing assistance, child support, alimony or public or general assistance,” the thrust of the definition and intent of the statute is identical to *Chicago’s* liberally phrased ordinance. *Connecticut General statutes § 46a-63 (3)*. The intent of both statutes, as well as similar statutes in other states and cities, is to protect discrimination against a person’s “lawful source of income.” The only difference lies in the respective state’s legislation enumerating the various sources of income.<sup>4</sup> The City of Chicago’s requires the regulation to be applied liberally to prevent even the least detectable forms of discrimination. The Chicago Ordinance differs from Connecticut’s only in that it does not list examples of sources of income.

As other jurisdictions pass statutes that include discrimination because of source of income, it indicates that housing issues are local and more susceptible to regulation by local governments. Therefore, the Chicago Fair Housing Ordinance does not allow a landlord to refuse to permit a Section 8 participant Tom applying for the rental of the unit solely because that individual’s source of income. If Section 8 funds are held to be a “source of income,” then landlords cannot refuse to allow a Section 8 participant to apply for the unit solely because they intend to pay a portion of their rent with Section 8 funding. Instead, the landlord must make a good-faith effort and give a potential tenant the opportunity to apply under the Section 8 program-

---

<sup>4</sup> There are other states and cities besides New Jersey, Massachusetts and Connecticut that have acted to prohibit discrimination in rental housing based on the source of income of the tenant: Maine, Minnesota, North Carolina, Utah, Vermont, District of Columbia, City of Seattle, Washington and City of Champaign, Illinois to name a few.

## II.

**THE CHICAGO COMMISSION ON HUMAN RELATIONS' DETERMINATION THAT THE GODINEZS' DISCRIMINATED AGAINST MRS. LACKEY BASED ON HER SOURCE OF INCOME WAS NOT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.**

An agency's findings of fact are held prima facie true and correct on appeal. 735 ILCS 5/3-110 (*FVt* 2001). "Judgment is against the manifest weight of the evidence only if the opposite conclusion is clearly evident, or when the finding appears to be unreasonable, arbitrary, or not based upon the evidence." *Jackson v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 293 Ill. App. 3d 694,698,688 N.E.2d 782 (1<sup>st</sup> Dist. 1997). If the record supports the Commission's decision and is well reasoned and proper, then its ruling cannot be held against the manifest weight of the evidence. *Page v. The City of Chicago*, 299 Ill. App. 3d 450,464, 466,702 N.E.2d 218 (1<sup>st</sup> Dist. 1998). The reviewing court cannot reweigh the evidence and the agency's decision must be sustained if a review of the record reveals any evidence to support the decision. *Id* When an Illinois court reviews a decision by a commission, the commission's factual findings and conclusions on questions of fact are held to be prima facie true and correct. *Raintree Health Care Ctr. v. Illinois Human Rights Commission*, 173 Ill.2d 469,479; 672 N.E.2d 1136, 1141 (1996).

In the instant case, it is clear that the Commission evaluated all the evidence, and heard testimony from representatives for both sides before rendering its decision. In fact, even the circuit court did not question the Commission's findings of fact, and only questioned whether Section 8 is a source of income under the Chicago Fair Housing Ordinance. A. 047. C. 417-19. As set forth above, it is clear that under any reasonable method of interpretation, and certainly from the intent and purpose of the Ordinance and the Commission's interpretation of the Chicago Fair Housing Ordinance as a whole, that Section 8 is considered a "Source of income" under the

Ordinance. Therefore, the Commission's ruling that the Godinezes violated the Ordinance when they denied Ms. Lackey an opportunity to obtain housing based on her use of Section 8 funds to pay for such housing is not against the manifest weight of the evidence and the Commission's decision should be affirmed with costs and fees to Defendants.

### III.

#### **THE CHICAGO COMMISSION'S AWARD OF ATTORNEY'S FEES AND COSTS TO THE DEFENDANT WAS NOT AN ABUSE OF DISCRETION.**

The Appellate Court has clearly decided that the Chicago Commission has the authority to award punitive damages, compensatory damages, and attorney's fees and costs to a prevailing party in an action for discrimination. *See Page v. The City of Chicago*, 299 Ill. App. 3d 450,469, 702 N.E.2d 218 (1<sup>st</sup> Dist. 1998) and *Becovic v. The City of Chicago*, 296 Ill. App. 3d 236,694 N.E.2d 1044 (1<sup>st</sup> Dist. 1998). The inquiry of whether the amount of the award is proper is reviewed under an abuse of discretion standard. *Id.* 494,649 N.E.2d 1044 (1<sup>st</sup> Dist. 1998) *citing Raintree v. Ill. Human Rights Comm 'n* 173 111.2d 469,494 (1996). In *Becovic*, "the very size of the record on appeal indicat[ed] considerable work was apparently done in pursuing [the] suit," because, "depositions were taken, a conciliation conference and a pretrial hearing was held, and eventually a 111 hearing was conducted." *Id. at 24 1.*

In the instant case, the amount in damages awarded of \$5,610.00 to Mrs. Lackey and \$16,284.00 in attorneys' fees is commensurate with the injury and legal work done in the case to redress that injury. Further, these amounts are particularly reasonable under an abuse of discretion standard in light of controlling case law. (See *Page*, 299 Ill. App. 3d at 230-3 1, approving a award of \$6,000 in damages and \$35,052.02 in fees and costs; *Becovic*, 296 Ill. App. 3d at 241-43, approving a award of \$2,500 in damages and \$14,630 in fees and costs; *Brewington v. Illinois Dep 't of Corrections*, 16 1 Ill. App.3d 54, 65, (1<sup>st</sup> dist. 1987), approving an

award of \$12,669 in attorney's fees even when no damages were awarded citing the important issue of vindication of civil rights.) Accordingly, the damages awarded to Mrs. Lackey in this case cannot be classified as an abuse of discretion. Furthermore, as the analysis conducted in *Becovic*, here too, the size of the record on appeal indicates considerable work was done, as Defendant conducted depositions, participated in a conciliation hearing, and after settlement attempts failed, handled all aspects of pre and post hearing matters.

Accordingly, the record in this case indicates that the Commission's award of fees to the Defendant was not an abuse of discretion.

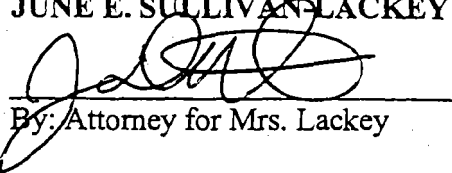
#### CONCLUSION

---

For the reasons set forth in this brief, the Judgment of the lower court should be reversed, the decision of the Chicago Commission on Human Relations should be amended, and the case should be remanded for determination of reasonable attorney's fees for this appeal.

Respectfully Submitted,

**JUNE E. SULLIVAN-LACKEY**

  
By: Attorney for Mrs. Lackey

J. Damian Ortiz  
Zachary Hotle (Senior Law Student)  
The John Marshall Law School  
Fair Housing Legal Clinic  
28 E. Jackson Blvd.  
Suite 500  
Chicago, Illinois 60604  
(312) 786-2267

Date: March 24, 2003

**TABLE OF CONTENTS  
APPENDIX**

---

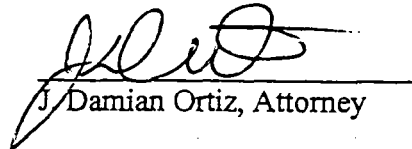
<b><u>Document</u></b>	<b><u>Page:</u></b>
Commission's Final Decision on Damages	A. 001
Commission's Final Decision on Attorney's fees	A. 019
Petitioners Brief to Writ of Certiorari	A. 024
Respondent's Brief in Support of The Administrative Decision	A. 032
Chicago Fair Housing Ordinance/Regulation S-8-01 0, <i>et seq.</i>	A. 047
Declaration of the City Policy 2-160-010 (m)	A. 059
Circuit Court of Cook County, Chancery Division hearing transcript dated June, 17,2002	A. 063
Circuit Court of Cook County, Chancery Division Order	A. 079
.Notice of Appeal entered July 16,2002	A. 080
<i>Smith v. Wilmette Real Estate &amp; Mgt. Co.</i> , CCHR No. 95-H-159 & 98-H-44/63 April 13,1999	A. 082
<i>Smith v. Wilmette Real Estate &amp; Mgt. ,Co.</i> , CCHR No. 95-H- 159 & 98-H-44163 October 6,2000	A. 100

0

0

CERTIFICATE OF SERVICE

I certify that I served the foregoing Brief of Defendant-Appellant by causing three copies of it to be placed in an envelope, with proper first-class postage affixed, directed to the persons named below at the indicated address, and causing that envelope to be deposited in the United States mail at 28 E. Jackson, Chicago, Illinois on 24\* day of March, 2003.

  
J. Damian Ortiz, Attorney

Persons served:

Douglas Graham  
**Komfeld & Caplan**  
29 S. LaSalle, Suite 330  
Chicago, Illinois 60603



City of Chicago  
COMMISSION ON HUMAN RELATIONS  
740 North Sedgwick, 3<sup>rd</sup> Floor  
Chicago, Illinois 606 10  
(3 12) 744-41 11 (Voice)/ (3 12) 744-1088 (TTY)

INTHEMATTEROF: >  
>  
J-U-NE E. SULLIVAN-LACKEY, >  
>  
Complainant, >  
>  
and >  
>  
Case Nd. 99-H-89  
>  
>  
JULIO and CARLOS GODINEZ, >  
>  
Respondents. >

FINAL RULING ON LIABILITY AND DAMAGES

On August 11, 1999, Complainant June E. Sullivan-Lackey filed a complaint with the City of Chicago Commission on Human Relations (“Commission”) alleging that Respondents Julio Godinez and Carlos -Godinez violated Section j-08-030 of the City of Chicago’s Fair Housing Ordinance (“FHO”) by discriminating against her on the basis of her source of income when they refused to rent her an apartment. Specifically, Complainant alleges that Respondents were unwilling to rent her an apartment because she intended to use a Section 8 voucher to pay a portion of the rent.

On December 16, 1999, the Commission issued an order finding that there was substantial evidence of the alleged violation. After the case did not settle at the Conciliation Conference, an Administrative Hearing in this matter was held on August 29, 2000. The parties subsequently filed post-hearing briefs. Based upon the evidence adduced at the hearing, and having carefully considered the arguments set forth in the parties’ briefs, the Hearing Officer issued his first Recommended Decision. Respondent’s objected to that Recommendation and Complainant responded to the objections. The Hearing Officer then issued his Final Recommended Decision.

The Commission's Board of Commissioners, having reviewed the evidence and arguments, hereby rules as follows.

I. FINDINGS OF FACT

In April 1999, Complainant was required to search for a new apartment. She had a Section 8 voucher and her then-current apartment had failed its Section 8 inspection.<sup>1</sup> Complainant needed to move quickly because her voucher was set to expire on May 10, 1999. If she did not vacate her apartment and move into a new apartment before May 10, she stood to lose her Section 8 eligibility (Tr. 16)

Complainant's daughter encouraged her mother to apply for an apartment in the building where the daughter resided. An apartment on the first floor of the building was then vacant. (Tr. 16) The building was owned by Respondent Julio Godinez and managed by him and his son, Respondent Carlos Godinez. (Tr. 98, 133)

On April 23, 1999, Carlos Godinez showed Complainant and her daughter the vacant first-floor apartment. (Tr. 17, 8 1) Complainant liked the apartment because it would permit her to live in the same building as her daughter (and grandchildren) and because it was on the first floor, obviating the need for her to climb any stairs, which was hard for her because of a medical condition. (Tr. 16-18, 86)

---

<sup>1</sup> A Section 8 voucher is a form of assistance provided by the federal government "[f]or the purpose of aiding low-income families in obtaining a decent place to live and, of promoting economically mixed housing." 42 U.S.C.S. §1437f(a). Under the Section 8 voucher program, tenants pay in rent an amount not exceeding 30% of their income and the local public housing authority pays the landlord the remainder of the market rent. 42 U.S.C.S. 5 1437f(o).

After viewing the apartment, Complainant and her daughter went to the building office where Carlos Godinez gave Complainant an application to complete. She did so, and handed the completed application back to him together with the required \$25.00 fee. Carlos Godinez then issued Complainant a receipt. (Tr. 17- 18,20-2 1,26, 8 I)

Carlos Godinez also reviewed the application at that time. In light of the fact that Complainant appeared not to be employed, he inquired as to how she intended to pay the rent. Complainant responded that she had a Section 8 voucher. Godinez then stated that he did not accept Section 8 vouchers because he did not want to be “audited” and that she could only have the apartment if she agreed to pay the \$600 monthly rent in cash. (Tr. 17-18,28-29,82, 102)

Within the next couple of days, Complainant’s daughter found a torn piece of her mother’s application lying on the floor in the common area of the building on the route which one would follow to take out the garbage. (Tr. 103-05, 109, Ex. 4)

Complainant ultimately lost her Section 8 voucher and was forced to find alternative housing in early May 1999. (Tr. 5 1-54) She stayed with her sister-in-law, cousin and daughter for varying periods between May and August 1999, when she rented an apartment in Country Club Hills, Illinois. (Tr. 19)

Subsequent to Carlos Godinez’ refusal to rent Complainant the vacant apartment in their building, two law students serving as testers for the John Marshall Law School Fair Housing Legal Clinic, telephoned Julio Godinez to inquire about apartments in the building. In each of those instances, Julio Godinez stated that he did not accept Section 8 vouchers. (Tr. 92- 95) It is not disputed that Respondents have never had a Section 8 tenant in their building.

While conceding that they had shown Complainant the apartment at issue and given her an application, Respondents denied that they refused to rent it to her. They testified, instead, that Complainant left with the application and never returned it. The Commission adopts the finding that this testimony was utterly incredible. To accept Respondents' version of what happened would require concluding that Complainant, who was desperate to move, paid Respondents \$25.00 and then chose never to follow up on an apartment which met her needs in a building where her daughter already lived, culminating in the loss of her Section 8 voucher. Moreover, Respondents did not offer any explanation for how Complainant's daughter came to recover a completed portion of her mother's allegedly unsubmitted application on the floor in a common area of the building.

Respondents also denied that they ever said that they would not accept Section 8 vouchers. The Commission agrees that those denials, too, were unconvincing. Complainant, her daughter and the two student testers all testified that Respondents had made such statements to them at various times. The students' testimony in that regard, wholly unclouded by any pecuniary stake in the outcome of the case, was particularly compelling.

Accordingly, the Commission concludes that Respondents refused to rent Complainant an apartment because she intended to use her Section 8 voucher to pay the rent.

## II. CONCLUSIONS OF LAW

Section 5-08-030 of the FHO provides in part:

It shall be an unfair housing practice and unlawful . . . .

- A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago . . . predicated upon the . . . source of income of the prospective or actual buyer or tenant thereof.

The Chicago Human Rights Ordinance and the Commission's Regulations in turn define the term "source of income" as "the lawful manner by which an individual supports himself or herself and his or her dependents." Chicago Municipal Code §2-160-020(m), §5-08-040; Regulation 1 OO(32).

Thus, in light of the Commission's factual finding that Respondents refused to rent Complainant an apartment because she intended to use a Section 8 voucher, if a Section 8 voucher constitutes a source of income within the meaning of the Ordinance and Regulations, then Respondents' action was unlawful.

Respondents insist that a Section 8 voucher cannot be held to constitute a source of income under the FHO. If it does, they maintain, then every landlord approached by a prospective tenant wishing to use a Section 8 voucher would perforce be required "involuntarily" to subject himself to the requirements of the Section 8 program. In particular, such an interpretation would require Respondents, whose apartment is not currently Section 8 "certified," to seek such "certification," even if they do not otherwise wish to do so. Nor is there any certainty, they argue, that the apartment would pass the necessary inspection or that the rent they wished to charge would fall within the Section 8 guidelines. According to Respondents, then, because there is no legal requirement that they participate in the Section 8 program, the Commission cannot compel them to participate by, in effect, finding them liable for discrimination if they refuse.

Respondents' argument is not convincing *or* supported. The Commission has previously held "that a complainant can prove source of income discrimination by showing that they were denied a rental opportunity because they intended to make use of Section 8 funding." Smith. et al. v. Wilmette Real Estate & Management Co., CCHRNo. 95-H-159 & 98-H-44/63, at 8 (April 13,1999) ("Smith 1"); see also Smith v. Goodchild, CCHRNo. 98-H-177 (April 13,1999); Huff v. American

Management & Rental Service, CCHR No. 97-H-1 87 (Jan. 20, 1999); McGee v. Sims, CCHR No. 94-H-13 1 at 8 (Oct. 18, 1995). In Smith I, *sup-a*, in particular, the Commission exhaustively considered and rejected the argument that a landlord's refusal to accept a Section 8 voucher was not a potential violation of the CFHO.

Although Respondents do not cast their position in precisely the same terms, their argument is, in reality, the same argument that the respondents (more artfully) made in Smith I Federal law that creates the Section 8 program, the Housing and Community Development Act of 1974, 42 U.S.C. S. §1437f, preempts the Fair Housing Ordinance insofar as the Ordinance has the effect of rendering a landlord's participation in the otherwise voluntary Section 8 program mandatory. Put differently, they claim that a landlord has a federal "right" not to participate in the Section 8 program, which a local ordinance may not deprive him of.

The Commission squarely rejected this view in Smith I *supra*. In Smith I examining the Housing and Community Development Act of 1974, Congress did not, the Commission held, intend to preempt state laws and local ordinances like the FHO. Smith I examined each of the possible circumstances in which a finding of preemption would be warranted and found them lacking. Thus, the Commission held that the federal statute did not expressly preempt local regulation, that Congress had not intended exclusively to occupy the field, and that there was no actual conflict between federal law and the FHO because it was possible to comply with both. Smith I, at pp. 13-30. In reaching this conclusion, the Commission stated explicitly that "[n]othing in the [federal] statute ... mandates that landlord participation be voluntary, nor is there any provision that prohibits states from mandating participation." Smith I, at p. 19 (quoting Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 619-20, 701 A.2d 1104, 1135 (1999)).

The Commission finds it unnecessary to reprise at length the reasoning in Smith I, which is fully applicable here. Respondents' attorneys have not seen fit even to mention Smith I or the Commission's other decisions in this area, let alone attempt to distinguish them.?

Accordingly, the Commission affirms and adopts herein our prior reasoning and holdings that a landlord's refusal to rent an apartment because of the prospective tenant's intention to make use of a Section 8 voucher may constitute source of income discrimination. E.g., Smith I, supra.

It follows, therefore, that a landlord who is approached by a prospective Section 8 tenant has a duty to seek approval to accept Section 8 for the unit in question. Ordinarily, fulfilling this duty should not prove burdensome. Respondents' own expert witness testified that the necessary

---

? The Commission, like the Hearing Officer, is troubled by the conduct of Respondents' attorneys in this regard. They assert in footnote 1 of their brief that it "is highly unlikely that a court of law would find a Section 8 subsidy to be a 'source of income.'" But, as described above, the Commission has clearly and repeatedly so found. Respondents' assertion, accordingly, can only mean one of three things: (1) they are unaware of our prior decisions; (2) they have deliberately chosen to ignore the decisions; or (3) they do not believe the decisions have any precedential weight (presumably because they were rendered by the Commission and not by a "court of law"). As to the first possibility, particularly in light of the fact that Complainant cited the Commission's relevant authority both at the hearing and in her brief, ignorance of the decisions is inexcusable. As to the second possibility, if Respondents' attorneys deliberately ignored the authority, then they violated the duty they owe to this tribunal to discuss all relevant precedent. Finally, if Respondents' attorneys thought the authority is not entitled to respect, whether because the Commission is not a court or otherwise, they are just wrong. Commission Regulation 240.620(d) states explicitly that "[a]ll decisions of the Commission shall have precedential value."

Moreover, Respondents' claim that a "court of law" would not hold that a Section 8 subsidy constitutes a source of income is not true in any event. Courts from other jurisdictions have already so held, in judicial decisions which Respondents also ignore. See, e-p., Franklin Tower One L.L.C. v. N.M., 157 N.J. 602, 701 A. 2d 1104 (1999); Commission on Human Rights and Opportunities v. Sullivan, 250 Conn. 763, 739 A.2d 238 (1999). It is true, as Respondents point out, that the Seventh Circuit held in Knaon v. Eagle Prooerty Management Corp., 54 F. 3d 1272 (7th Cir. 1995), that the term "source of income" in the Wisconsin Open Housing Act, Wis. Stat. 4 IO 1.22(6), should not be read to include a Section 8 voucher. However, the Commission discussed Knanu at ler@h in Smith I, and found it distinguishable. The Commission reaffirms that reasoning here.

requirements to obtain Section 8 approval are usually easily satisfied. (Tr. 7 I-73); accord Franklin Tower One, 157 NJ. at 621 (remarking that the Section 8 program requirements are not “overly burdensome”). The Commission now holds that a landlord must make at least a good faith effort to comply with the requirements. Respondents’ assertion that any attempt they might have made to obtain Section 8 approval might have proved futile -- because their building might not have passed inspection -- \*LS beside the point. The mere possibility that a property may not be approved cannot excuse a refusal to seek the necessary approval in the first place.<sup>3</sup> And again, in the instant case, the evidence conclusively demonstrated that Respondents were unwilling to rent to a prospective tenant who wished to use Section 8 funds under any circumstances.’

---

<sup>x</sup> Respondents point out that the reason Complainant had to move was because her former residence failed its annual Section 8 re-inspection, a circumstance which they describe as the “primary cause of Complainant’s lack of Section 8 housing.” The implication of Respondents’ observation is not clear. Respondents may be suggesting that the fact that Complainant’s former building failed its re-inspection is evidence that complying with the requirements of the Section 8 program is not as straightforward as the testimony (of Respondents’ own expert) at the hearing indicated that it is. Because Respondents did not offer any evidence as to why Complainant’s building may have failed its inspection, however, the Commission has no basis upon which to draw such an inference. Alternatively, Respondents may be seeking to shift the blame for their own unlawful conduct onto Complainant’s prior landlord. That won’t work. Irrespective of what Complainant’s former landlord may or may not have done, or whether Complainant might have had a cause of action against him, Respondents are responsible for their own refusal to consider Complainant for a tenant.

<sup>4</sup> This opinion should not be read entirely to foreclose the possibility that a landlord might be able to demonstrate that, in individualized circumstances, renting to a Section 8 recipient would be so burdensome as to constitute a legitimate, nondiscriminatory reason for rejecting the applicant. Cf. Attorney General v. Brown, 400 Mass. 826, 511 N.E. 2d 1103 (Mass. 1987) (observing, without deciding, that a substantial loss of revenue might constitute such a nondiscriminatory reason). Similarly, a landlord’s refusal to accept a Section 8 voucher might be justified where doing so would require the midterm modification of an existing lease for an apartment already promised to someone else as it was in Lopez v. Arias, CCHR No. 99-H-12 (Sep. 12, 1999). As we noted in Smith et al. v. Wilmette Real Estate & Mgt Co., CCHR Nos. 95-H-159 & 98-H-44/63 (Oct. 6, 2000) (“Smith II”), however, “[t]he circumstances under which the burden created by the Section 8 program

Accordingly, the Commission concludes that Respondents violated Section 5-08-030 of the Fair Housing Ordinance when they refused to rent Complainant an apartment because of her desire to use her Section 8 voucher to pay a portion of the rent.

### III. DAMAGES, FINES & FEES

Complainant seeks damages to compensate her: (1) for the economic losses she suffered; (2) for her emotional distress; and (3) to punish Respondents for their unlawful conduct. The Commission considers each of the requested types of damages in turn. It also addresses interest on the damages, the fine for violating the Ordinance, and Complainant's attorneys' fees.

#### A) Economic Losses

Complainant first asks that she be awarded compensatory damages for the higher housing costs she was forced to incur as a consequence of Respondents' discrimination and for the money she spent to temporarily store her goods. She also seeks the return of her application fee.

It is settled law that a prevailing complainant is entitled to recover the difference between the rent she was forced to pay and the rent she would have paid but for the unlawful discrimination visited upon her. E.e, Huff v. American Management & Rental Service; CCHR No. 97-H-1 87

---

requirements will rise to the level sufficient to excuse a landlord's participation are limited." Smith II, at 22-23. In order for a landlord to demonstrate that the purported burdens created by the Section 8 program constitute a legitimate, nondiscriminatory reason justifying his or her refusal to participate, he or she must make a particularized showing that the burdens would be substantial in him or her. A general or speculative assertion that a building might fail inspection, or that the desired rent might not be approved, such as advanced by Respondents here, is not sufficient. Smith II, supra and Lopez, supra.

(January 20, 1999); McCutchen v. Robinson, CCHR No. 95-H-84 (May 20, 1998). For her original apartment, Complainant was paying \$362.00 per month (out of a total monthly rent of \$678.00, with the balance being paid by Section 8). (Tr. 12) Presumably, her share of the rent for the apartment in Respondents' building would have been the same, or perhaps even a bit less, as Respondents' apartment rented for \$600.00. After Respondents discriminated against her, Complainant secured a new apartment at a rent of \$809.00 per month. (Tr. 5 1) She was forced to pay this entire amount herself because she had lost her Section 8 voucher in the interim. Thus, she claims damages for the difference between the \$362.00 per month she would have paid to Respondents and the \$809.00 per month she paid instead, i.e. \$447.00 per month. She seeks this differential for the five-month period between August 1999 and January 2000. The total she seeks, then, is, \$2,235.00.'

Respondents argue that Complainant's rent differential damages are not recoverable because she could have found an apartment before her Section 8 voucher expired and because the apartment she ultimately chose to rent was unnecessarily expensive. Respondents failed to provide persuasive evidence to support this affirmative defense. While Respondents' assert in their brief that there likely was other available Section 8 housing reasonably near their building, they did not offer any evidence to that effect at the hearing. On the contrary, the sole evidence addressed to that point was Complainant's testimony that there were no suitable Section 8 apartments to be found. Thus, on the record, there is no basis to conclude that Complainant could have secured alternative Section 8 housing before her voucher expired or that her efforts in that regard were not diligent. Nor, on the facts presented, is there occasion to find fault with her decision to rent a somewhat more expensive

---

' \$809 less \$362 is \$447, not \$437 as stated in the Recommendations. Five months of paying \$447 in additional rent is a total of \$2,235.00, the amount awarded here.

apartment, especially for only five months. Although there might be circumstances in which the extra expense of a higher rent might be deemed excessive, the additional rent Complainant paid was not unconscionable and, again, Respondents did not offer any evidence as to what a reasonable rent for the neighborhood would have been. Failure to mitigate damages, which is essentially what Respondents accuse Complainant of here, is an affirmative defense and so Respondent's burden to prove. E.n., Griffiths v. DePaul Univ., CCHR No. 95-E-224 (April 19,2000) and cases cited therein. Respondents simply failed to introduce evidence sufficient ,to sustain their burden.

Complainant is also entitled to recover the costs she incurred for temporarily having to store her possessions. Because Complainant ultimately could not afford the higher rent she was forced to pay, she was forced to move once again and to store her possessions for an additional five months, at a cost of S 170.00 per month, or a total of \$850.00. (Tr. 43) Such ancillary expenses stemming from adiscriminatory act are compensable. See, e.g., Hussian v. Decker, CCI+RNo. 93-H-13 (Nov. 15, 1999) (allowing the recovery of moving costs). Respondents maintain that they are not liable for the storage charges Complainant incurred when she was unable to afford the rent on her new apartment. In their view, Complainant should have rented their apartment for \$600.00 per month, .even if she had to pay cash, because it still would have been cheaper than paying the \$809.00 she ultimately did.

There are two problems with this argument. First, there is no evidence that Complainant knew or should have known at the time she was discriminated against that she would ultimately be forced to pay a higher rent than Respondents were charging. Second, there is no evidence that, over an extended period of time, Complainant could have afforded even the lesser rent for Respondents\* apartment, if she was forced to pay in cash. It is not clear, therefore, that Complainant would not have incurred the storage charges at issue even had she moved into Respondents' building.

We also note in passing that the storage charge for which Complainant seeks reimbursement, i.e. \$ 170.00 per month, is StibstantialIy less than the monthly rent differential of \$447.06 to which the Commission holds Complainani is entitled for the period she was actually living in her new apartment;. From that perspective, Respondents are getting off cheaper than they otherwise would; had Complainant had the means to remain in her apartment, they would have continued to be liable for the full \$447.00 rent differential rather than just the S 170.00 storage charge.

Complainant is also entitled to the return of her \$25.00 application fee, which Respondents do not dispute. Accordingly, Cdmpainant is entitled to compensatory damages for the economic losses she suffered, in the total amount of \$3,110.00.

#### B. Emotional Distress Damages

Complainant next seeks to recover damages for her emotional distress. In a proper case, emotional distress damages are recoverable under the FHO. E.g., Chicago Municipal Code, 92- 120- 51 O(I); Figuroa v. Fell, CCHR No. 97-H-5 (Oct. 21, 1998); McDufi v. Janet-t, CCHR No. 92- - FHO-28-5778 (May 19,1993). Complainant testified that, as a consequence OfRespondents' refusal to rent her the apartment, she felt degraded and angry, and became depressed. (Tr. 29-30). Complainant also testified that her diabetes, hypertension, angina and kidney disease were exacerbated by stress resulting from being denied the apartment, which led to her being hospitalized. (Tr. 13-14,3541)

Respondents maintain that, under Illinois law, unless a person is exposed to actual physical danger, emotional distress damages may only be recovered where they flow from an intentional act. Because they "wanted" to rent to Complainant (if she paid cash) and did not do so only because they

declined to enter into a contract under Section 8, Respondents contend that their acts were, somehow, not intentional.

The Commission finds this argument is nonsensical. Assuming, argue&co, that intent is a necessary element of a claim for emotional distress damages<sup>6</sup> Respondents clearly acted with the requisite intent here. Their *refusal to accept* Complainant's Section 8 voucher was anything but accidental. It was, rather, a deliberate act on their part. The fact that they were willing to rent her the apartment if she paid cash is irrelevant. The unlawful act they are charged with, and intentionally committed, was refusing to accept a Section 8 voucher.

Nevertheless, the Commission does not believe that Complainant is entitled to the full extent of emotional distress damages which she seeks. She is entitled to the damages which are attributable to the wrongful refusal to rent. E.g., Bamett v. T.E.M.R. Jackson Rental. et al., CCHR No. 97-H-3 1 (Dec. 6, 2000). This includes compensation for the anger, degradation and depression she testified that she felt due to the discrimination.

Her claim that her pre-existing diseases were exacerbated by Respondents' discrimination, however, is too attenuated to permit recovery. For example, Complainant testified that her need for dialysis treatments increased from three times per day before the discrimination to five times per day

---

<sup>6</sup> The authority that Respondents cite for this proposition, Adams v. Sussman & Hertzberg 292 IL App.3d 30, 684 N.E.2d 935 (1997), deals with the elements of the tort of intentional infliction of emotional distress under Illinois common law. It says nothing about the circumstances under which damages for emotional distress are recoverable in any other type of action. Further, the Commission has repeatedly set forth the factors it was to determine the amount of emotional distress damages it awards for violations of the FHO. & Fieuroa v. Fell, supra; Nash/Demby v. Sallas Realty & Sallas, CCHR No. 92-H-128 (May 17, 1995). In any event, because, as discussed below, Respondents acted intentionally here, there is no need to address this issue any further.

afterward. (Tr. 33) She also testified that she began to take additional medicines. (Tr. 33-34) She did not offer any medical evidence, however, linking the deterioration in her health to the acts of Respondents. And, in the absence of such testimony, the Commission is not in a position to find that her worsening health was attributable to anything other than the normal progression of the underlying diseases from which she already suffered.

In Nash/Demby, *supra*, the Commission articulated its standards for awarding emotional distress damages. Without repeating the lengthy list of factors articulated there in its entirety, the facts in this case suggest that an award of less than \$5,000.00 is appropriate. The Commission notes, in particular, that the discriminatory conduct consisted of a single, discrete act; it involved a refusal to rent rather than harassment; it was not particularly egregious; it did not involve malice or the uttering of epithets; and Complainant's physical symptoms identified were not clearly linked to it. In light of the foregoing, and based upon the entire record adduced at trial, the Commission finds that an award of \$2,500.00 is warranted.

### C. Punitive Damages

Finally, Complainant has requested that punitive damages be assessed against Respondents. Although the Commission is empowered to award punitive damages for a violation of the FHO, *e.g.*, Page v. City of Chicago, 299 Ill. App. 3d 450, 701 N.E.2d 218, 228 (1st Dist. 1998); Castro v. Geoxeououlos, CCHR No. 9 1 -FHO-6-559 1 (Dec. 18, 1991), the Commission finds that punitive damages should not be assessed against Respondents here. While Respondents wilfully refused to rent Complainant an apartment because she wanted to use her Section 8 voucher, the Commission finds that Respondents were operating under a good faith belief that they were not legally obligated

to participate in the Section 8 program. While that good faith belief does not excuse their violation of the law, or their responsibility for the damages they caused, it does militate against an award of punitive damages. See Pudelek/Weinmann v. Bridgeview Garden Condo. Assoc. et al., CCHR-No. 99-H-39/53 (Apr. 19,2001); McCuthen v. Robinson, CCHR No. 95-H-84 (May 20, 1998)

This is not to say that there might not be circumstances in which an award of punitive damages predicated upon a refusal to rent to a Section 8 tenant would be warranted. Nor does the Commission mean to suggest that a good faith belief in the lawfulness of one's conduct will necessarily bar a punitive damage award. The Commission cannot imagine, for example, that a belief in the lawfulness of racial discrimination, even if sincerely held, could operate as such a bar. Nevertheless, on the facts of this particular case, the Commission finds that punitive damages are not warranted.

#### D. Fine

The Chicago Fair Housing Ordinance requires that Respondents who are found liable be ordered to pay a fine to the City of Chicago. Chicago Municipal Code, §5-08-130. Accordingly, the Commission orders Respondents to pay the City a fine of \$250.00.

#### E. Pri- and Post-Judgement Interest

Pursuant to Chicago Municipal Code §2-120-510(1) and Commission Regulation 240.700, Complainant is entitled to interest on her damages at the prime rate, adjusted quarterly, compounded annually, starting on April 23, 1999, the date when Respondents refused to rent her the apartment, until payment is made.

F. Attorneys' Fees

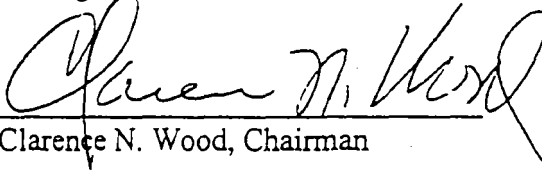
The Commission regularly awards prevailing complainants their reasonable attorneys' fees. Chicago Mun. Code, 92-120-510(1); Becovic v. City of Chicago, 296 Ill. App. 3d 236,694 N.E.2d 1044 (1st Dist. 1998); PudeleWeinmann v. Bridgeview Garden Condo. Assoc. et al., CCHR No. 99-H-39153 (Apr. 19,2001). Accordingly, Respondents are ordered to pay Complainant's attorneys' fees and costs which are to be determined as follows.

Although not required to do so, the parties have already filed all the documents necessary for the Hearing Officer to make a recommendation about attorneys' fees. That is, Complainant has already filed her petition for attorneys' fees and costs; Respondents have already filed their response to it; and Complainant filed her reply. Therefore, the Hearing Officer shall issue his first recommended decision about attorneys' fees and costs in thirty days, on or before August 20,2001. Then, in accordance Regulation 240.630, the parties shall then be allowed to file objections and responses, the Hearing Officer shall issue his final recommended decision concerning attorneys' fees and costs, and the Commission shall issue a final ruling.

IV. CONCLUSION

In summary, the Commission finds that Respondents committed source of income discrimination in violation of the Chicago Fair Housing Ordinance and it finds them jointly and severally liable for the damages awarded. It awards Complainant a total of \$5,610.00 in damages (~3,110.00 in out-of-pocket damages plus \$2,500.00 for her emotional distress). It declines to award punitive damages. Respondents are to pay pre- and post-judgment interest on those damages as set forth above. Respondents must also pay the City of Chicago a fine of \$250. Finally, Complainant is entitled to her reasonable attorney's fees and costs to be determined as set forth above.

For: Chicago Commission on Human Relations

By:   
Clarence N. Wood, Chairman

Dated: July 18, 2001

City of Chicago  
COMMISSION ON HUMAN RELATIONS  
740 N. Sedgwick, Third Floor  
Chicago, IL 606 10  
(312) 744-4111 voice]  
(3 12) 744- 108 1 [Facsimile] / (3 12) 744- 1088 [TTY]

IN THE MATTER OF )  
 )  
June E. Sullivan-Lackey )  
COMPLAINANT, ) 1  
A N D ) Case No. 99-H-89  
 )  
Julio & Carlos Godinez )  
RESPONDENT. )  
)

FINAL ORDER

To: J. Damian Ortiz, Esq.  
John Marshall Law School  
Fair Housing Legal Clinic  
25 E. Jackson Blvd., Ste. 500  
Chicago, IL 60604

Fred Caplan, Esq.  
Komfield & Caplan  
29 S<sub>1</sub> LaSalle St., Ste. 330  
Chicago, IL 60603

YOU ARE HEREBY NOTIFIED that, on October 17, 2001, the Chicago Commission on Human Relations awarded Complainant \$16,284.00 in attorney's fees and no costs in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed.

Pursuant to Commission Regulations 100( 14) and 250.150, parties may file a petition for a common law *writ of certiorari*, concerning this ruling and/or the prior liability ruling, with the Chancery Division of the Circuit Court of Cook County according to applicable law. Compliance with this Final Order shall occur no later than 3 1 days after the date of this order. Reg. 250.2 10.

By:- CLARENCE N. WOOD, Chairman  
for: CHICAGO COMMISSION ON HUMAN RELATIONS  
Date Mailed: October 19, 2001

City of Chicago  
 COMMISSION ON HUMAN RELATIONS  
 740 North Sedgwick, 3rd Floor  
 Chicago, Illinois 606 10  
 (312) 744-4111 [Voice]  
 (312) 744-1081 (Facsimile) / (312) 744-1088 [TTY]

I-N THE MATTER OF:	>	
	>	
JUNE E. SULLIVAN-LACKEY,	-1	
Complainant	>	Case No. <u>99-H-89</u>
	>	
and	>	
	>	
JULIO GODINEZ and CARLO-S GODINEZ,	)	
Respondents.	1	

FINAL RULING ON ATTORNEYS' FEES

On July 18, 2001, the Commission entered its decision in favor of Complainant June E. Sullivan-Lackey against Respondents Julio Godinez and Carlos Godinez. Sullivan-Lackey v. Godinez, CCHR No. 99-H-89 (July 18, 2001). The decision included an order that Respondents pay Complainant's reasonable attorneys' fees and costs.

Although not required to do so, the parties had already filed the documents necessary to determine the appropriate amount of a fee award prior to the Commission's decision on the merits. Based upon the parties' submissions and the hearing officer's recommendations, the Commission makes the following ruling.

Complainant seeks an award of fees in the total amount of \$18,423.00. In support of her request, Complainant relies upon the affidavits of attorney J. Damian Ortiz and law students Elizabeth Snyder, Baltazar Mendoza and Tracie Coleman respectively. Each of the affidavits is accompanied by a detailed summary of the hours expended by the affiant, the tasks performed and the relevant billing rate. This is in keeping with the Commission's practice of awarding fees based

upon the lodestar method, i.e. multiplying the hours reasonably expended by each attorney on the case by the hourly rate appropriate for an attorney of that level of experience. & Moulden v. Frontier Communications, et al., CCHR No. 97-E-1 56 (January 2 1, 1999).

Respondents filed a three-sentence objection to the fee request. While contending that the fee petition is “excessive, repetitive and far beyond any reasonable fee amount,” Respondents do not take issue with any particular time entry or point out any specific instance of work that was repetitive or unreasonable. Respondents’ vague, unsupported challenge to the fee request is not well taken and is deemed a waiver of specific arguments. Nevertheless, the Commission has undertaken independently to review the request in detail.

Mr. Ortiz attests that he spent a total of 52.4 hours on the case. He further attests that he is a staff attorney at the John Marshall Law School Fair Housing Legal Clinic who was admitted to practice law in 1997. His billing rate is \$1 50.00 per hour. His requested fees thus total \$7,860.00.

A rate of \$150.00 per hour for the work performed by Mr. Ortiz is reasonable. Complainant has submitted an affidavit from Thomas M. Morsch, an associate clinical professor at Northwestern University. Professor Morsch states that, based upon his experience, \$ 150.00 per hour is the market rate in the Chicago area for an attorney of Mr. Ortiz’ experience. The Commission notes as well that it previously awarded Mr. Oxtiz a rate of \$140.00 per hour in Huff v. American Ms. & Rental SW, CCHR No. 97-H-187 (June 16, 1999). Because that award was made over two years ago, an increase to \$150.00 per hour at this time is warranted.

A few of Mr. Ortiz’ time entries, however, appear to be duplicative. There appear to be dual (repeated) entries referencing the same activities on each of July 5,2000 (.4 hours), on July 7 (.3 hours) and on August 23 (3.5 hours). The Commission disallows these duplicative entries and thus

reduce Mr. Ortiz' time by a total of 4.2 hours. Multiplying the 48.2 hours which the Commission finds properly expended on the case by \$150.00 per hour yields a total award for time expended by Mr. Ortiz of \$7,230.00.

Law students Snyder, Mendoza and Coleman attest that they spent 101.9, 29.7 and 19.3 hours, respectively, working on the case. Each has a billing rate of \$70.00 per hour. Their requested fees thus total \$7,133.00, \$2,079.00 and \$1,351.00, respectively.

The Commission has previously awarded law students the rate of \$50.00 per hour. E.g., Huff, supra; Leadershiu Council for Metro. Ooen Communities v. Souchet, CCHR No. 98-H- 107 (May 16, 2001). Professor Morsch states in his affidavit that \$70.00 per' hour is reasonable. Respondents do not offer any argument or evidence that it is not. Further, the Commission notes that, in this particular case, the law students did much of the essential work. They presented and cross-examined witnesses at the hearing, offered argument and participated in drafting the briefs.

However, in Huff, supra, and in McCutchen v. Robinson, CCHR No. 95-H-84 (Oct. 21, 1998), the Commission declined to award law students from the John Marshall Law School Fair Housing Clinic the rate of \$60 per hour and instead awarded fees based on a rate of \$50 per hour. It has awarded \$50 per hour for law student time as recently as May of this year. Leadershin Council, supra. The Commission does not believe that Complainant has demonstrated that an increase of \$20 per hour is warranted. It recognizes, nonetheless, that an increase in the hourly rate for law students may be warranted since it first awarded \$50 per hour in 1995. Further, as noted above, the law students in this case did much of the significant work in this case. Thus, pursuant to its authority to adopt, reject or modify recommended decisions, Chicago Muni. Code, §2-120-5 IO(1), the Commission hereby awa&Complainant attorney's fees for the work of the three third-year law students at the rate of \$60 per hour.

The Commission has reviewed the time records submitted by the students and find that the entries therein reflect time reasonably expended. For the most part, the students worked on the case at different times and their efforts were not duplicative of each other. Accordingly, the Commission awards Complainant \$9,054 for the work of the law students (150.9 hours at \$60 per hour).

Thus, the Commission rules that Complainant is entitled to attorneys' fees from Respondents in the amount of \$16,284.00 (57,230.00 for the work of Mr. Ortiz and \$9,054 for the law students' work).

for: CHICAGO COMMISSION ON HUMAN RELATIONS

by:

  
Clarerke N. Wood, Chairman

Dated: October 17, 2001

0000023

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS  
COUNTY DEPARTMENT--CHANCERY DIVISION

~~JULIO GODINEZ~~ and CARLOS  
~~GODINEZ~~

Petitioners

v.

CHICAGO COMMISSION ON HUMAN  
RELATIONS and JUNE E. SULLIVAN-LACKEY  
LACKEY

Respondents

3309

STATE OF PETITIONERS

01 CH 19272  
Calendar  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.  
CLERK  
03 APR - 8 PM 4: 32

FILED-3

Facts

June Sullivan-Lackey, the Complainant, filed a complaint with the Chicago Commission on Human Relations, an administrative body established under ordinances of the City of Chicago. She alleged housing discrimination, complaining that on April 23, 1999 she was refused the rental of an apartment by the Respondents due to her source of income. R004-5.

Chicago ordinance 5-08-030 provides in part:

It shall be an unfair housing practice and unlawful . . . .

To make any distinction, **discrimination** or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, **rental, lease or occupancy** of any real estate used for residential purposes in the City of Chicago . . . predicated upon the . . . **source of income** of the prospective or actual buyer or tenant thereof. (emphasis added).

In particular, she alleged that she applied for rental of an apartment in Respondents' apartment building at 1160 S. Mason in Chicago, and that she intended to pay her rent in part with a "Section 8 Certificate". She alleged that Carlos Godinez told her that he could not accept a Section 8 certificate, but that he would still rent to her if she would pay in cash. R004-05.

The matter was called for trial on August 29, 2000 before Steven Greenberger, an attorney appointed by the City of Chicago to hear the evidence. Ms. Sullivan-Lackey testified, generally, that she was in poor physical health and had been for some time. In April of 1999, she received a rent subsidy under the "Section 8" program. Before April 23, 1999, she lived at 3600 W. Polk Street, Chicago, but the landlord there failed his Section 8 inspections and her participation was terminated.

COB 3912

Ms. Sullivan-Lackey therefore needed to find either Section 8 rental quickly in order not to lose her Section 8 benefits. R268-273. Her daughter lived in Respondents' building, and suggested that Ms. Sullivan-Lackey rent an apartment there which was available. Ms. Sullivan-Lackey was shown the apartment by Respondent Carlos Godinez, and liked it. Mr. Godinez told her the rent for the apartment was \$600. When she said she was unemployed, he asked how she would pay the rent; she stated that she had Section 8 benefits to pay part of it. Mr. Godinez said he could not accept Section 8 vouchers. R273. However, he said if she would pay the \$600 in cash, she could have the apartment; that if she brought him \$600 that day, he would hold the apartment for her. R274.

She then seriously considered paying cash for the rent, but when she talked to her Section 8 counselor, she was told that "You cannot do that", that "that's considered discrimination" and that she should contact the Commission, R338; that payment of cash is "in violation of the Section 8 program." R339.

She wanted to live there because she would watch her daughter's children when her daughter was at work; but because she didn't get the apartment, she moved to Country Club Hills. There she paid \$809 in rent, with no Section 8 benefits, and commuted by train to her daughter's apartment in Chicago. R274-75; R307. After awhile, she could no longer afford to pay the \$809 rent, and moved out. In moving out, she had to store some of her personal property, because she had no storage space. R301. This cost her \$170 per month. R41.7.

Kenneth Coles testified that he is the manager of the "intake" department at CHACr, which is the local entity that administers the Section 8 program for the City of Chicago. "Section 8" is a federal program for the subsidy of rent. R311-12. In April of 1999, there was an 8-step process for renting an apartment to a Section 8 participant. The building itself must pass an inspection by CHAC, R328, and the rent charged must be approved. The owner must sign a "housing assistance payment" contract with CHAC. After that, CHAC will begin paying the housing assistance payment, but the unit must be recertified each year, which includes re-inspection. R331 If the owner requests a rent increase, CHAC must approve it. R332-33.

Julio Godinez testified that he is the owner of the building, that his son (Respondent/Plaintiff Carlos) works with him in the management of the building. The building has never been Section 8 qualified. R389.

---

<sup>1</sup> "CHAC" was originally but an acronym for "Chicago Housing Assistance Corporation". However, the State of Illinois refused to allow a not-for-profit corporation to use a name with "housing" in it, so the corporation incorporated under the name of the acronym itself instead, and is now "WAC" R312.

The Commissions awarded Ms. Sullivan-Lackey c.; ipensatory damages in the amount of \$5,610, \$3,110 in out-of-pocket expenses (for rent in Olympia Fields and property storage later), and \$2,500 for "emotional distress". Refusing the Plaintiffs' request for a hearing on the amount and reasonableness of the attorneys' fees .claimed, the Commission then awarded an additional amount of \$16,284 for fees.

There was no 'Discrimination" am.inst Ms. Sullivan-Lackey

Contrary to the language of the Commission, at R202, the unlawful act charged against the Respondents is not their refusal of the Complainant's voucher, but rather their failure to contractually submit their property to the rent controls and condition standards required by the federal government in order that they could accept the voucher. The Decision characterizes the Plaintiffs' failure to apply for Section 8 licensure as a "deliberate" act, "intentionally committed", and sufficient to allow Ms. Sullivan-Lackey's recovery for "emotional distress". But these characterizations cannot alone support the decision without proof of facts.

The Commission's decision articulates a mandate far in excess of the express requirements of any statute, or of the Chicago Fair Housing Ordinance itself: at page 7 (R197) the decision states: -"[A] landlord who is approached by a prospective Section 8 tenant and whose building is not Section 8 approved has a duty to seek Section 8 certification". But such an infringement of the landlord's right to contract (or not to contract) cannot be read so casually into an anti-discrimination ordinance, particularly one worded as generally as the one at issue.

To hold that any and every Chicago landlord must accommodate holders of Section 8 vouchers or certificates upon their request would cause an effect never intended by any legislative body. It would mean that each Chicago landlord, upon being approached by a prospective Section 8 tenant, must involuntarily subject himself to CHAC rent controls and inspections. Property not passing CHAC's initial inspections would require expenditures of funds by the landlords in order to meet whatever specifications the CHAC might determine, and must be paid in order to avoid being charged with a civil rights violation by any prospective Section 8 tenant. No statute or ordinance makes such a requirement, and the Chicago Commission cannot simply imply such a mandate under the concept of avoiding discrimination against renters because of their "source of income".

"Discrimination", as defined in Black's Law Dictionary (4th ed.), is "a failure to treat all equally; favoritism". The definition which appears in the

Random House Dictionary is "treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class or category to which that person or thing belongs rather than on individual merit". No evidence of any of this was produced before the Commission; to the contrary, the evidence showed that Ms. Sullivan-Lackey was welcome, as a tenant, on the same basis as all the other tenants of Plaintiffs' building.

The difference in this case is that the Plaintiffs had no authority to accept Ms. Sullivan-Lackey's Section 8 vouchers. There is no evidence in the record indicating that they would have been accepted into the program even if they had applied. In her own testimony, Ms. Sullivan-Lackey stated that if she had wished to pay the rent without the Section 8 voucher, she could have moved in the same day. However, she was told by others, erroneously, that she could not do that. Whatever it was that kept Ms. Sullivan-Lackey from becoming a tenant in Plaintiffs' building, it was not "discrimination".

Section 8 Vouchers are not's "Source of Income"

The Seventh Circuit Court of Appeals has had occasion to consider whether a Section 8 rent voucher may be considered a "source of income" in the discrimination context. See *Knapp v Eagle*, 54 F.3d 1272 (7th Cir. 1995). In that case the court considered a Wisconsin statute which prohibited discrimination in housing based on "lawful source of income". The statute itself defined "lawful source of income" very broadly, to include:

any negotiable draft, coupon, or voucher representing monetary value such as food stamps, social security, public assistance or unemployment benefits.

The trial court held that Section 8 vouchers are more analogous to subsidies than income. The Court of Appeals observed that the voucher is most analogous to food stamps, but unlike food stamps, Section 8 vouchers do not have a monetary value independent of the voucher holder and the rental property sought. 54 F.3d at 1282. The court observed that while state law could arguably include Section 8 vouchers within its definition of "source of income", there were potential problems in doing so. The first problem is the situation the Commission urges in the present case: that all owners are held liable for rejections on the basis of the vouchers. The court further observed "It seems questionable, however, to allow a state to make a voluntary federal program mandatory" p. 1282. The court concluded: "These apparent problems, together with the absence of language

clearly including such assistance, lead us to affirm the district court's conclusion that section 8 vouchers do not constitute a lawful source of income." p.1283.

In *Salute u Stratford*, 136 F.3d 293,301(2d Cir. 1998), the court observed that participation in the Section 8 program places burdens on the landlord with respect to financial audits, inspections of premises and maintenance requirements; that a landlord is "not required to articulate any justification for a policy of refusing Section 8 certificates;" that "under the Act, that refusal is a landlord's prerogative." p.301. The *Knapp* court's opinion reminds the reader that "Owner participation in the section 8 program is voluntary and non-participating owners routinely reject section 8 voucher holders. 54 F.3d 1272, 1280. The issue in this case, therefore, is whether the Commission's interpretation of its ordinance can make failure to comply with a voluntary federal program a statutory tort, subjecting the landowner to economic damages, emotional distress damages and attorneys' fees. Clearly, the Seventh Circuit Court of Appeals would not allow it, and neither should this court.

The Damaires Awarded were Unsummted by Credible Evidence

The Complainant was awarded compensatory damages in the amount of \$5,610: \$3,110 in out-of-pocket expenses (for rent in Olympia Fields and property storage later), and \$2,500 for "emotional distress". She testified at trial that there was no other Section 8 housing available anywhere else reasonably near her daughter's apartment which would be as convenient for her purposes, or apparently anywhere in Chicago. This is indeed a doubtful contention, but one impossible for the Respondents to disprove.

But in any event, by her testimony, when she discovered that the Respondents could not accept a Section 8 voucher she moved all the way to Country Club Hills to pay \$809 rent per month in cash. Now this is far more than the \$600 the Respondents asked for the apartment she says she truly wanted, and Country Club Hills is many, many miles from 1160 South Mason Street in Chicago. Her choice to live in the suburbs cannot be considered as damages in this action, nor should the expense be assessed against the Respondents.

Complainant's claim of storage charges defies explanation. Apparently the Complainant could not pay the \$809 per month rent she had agreed to pay in Country Club Hills and had to move and put her belongings into storage at \$170 per month. Had she simply paid the \$600 the respondents would have charged her, she would not have needed storage facilities and would have saved \$209 per

month in addition. Responsibility for her storage problem can hardly be ascribed to the Respondents.

Damages for infliction of emotional distress require intentional acts, see *Adams v Sussman*, 292 Ill.App.3d 30, 38-39, unless the victim is exposed to actual physical danger, *Siemieniec v Lutheran General*, 117 Ill.2d 230. In the present case there was no evidence of any intentional act by the Respondents. To the contrary, respondents *wanted* to rent to Ms. Sullivan-Lackey but could not, according to her testimony, because their property was not Section 8 qualified. These are not the facts to support an emotional distress claim.

#### Attorneys' Fees were Improperly Awarded

No evidence of attorneys' fees was presented at trial. Fee billing data was submitted to the hearing officer by written request afterward, with only affidavits of the attorneys and law students. Plaintiffs objected to this procedure, and requested a hearing to establish whether or not the charges were reasonable. R208-09. The request was ignored, and fees awarded. A party requesting an evidentiary hearing on attorneys' fees must be given one; 6334 N. *Sheridan v Ruehle*, 157 Ill.App.3d 829, 834. There the court stated:

It is well settled that the primary factors involved in any award of fees is the attorney's ability, the amount of time expended, and the nature and complexity of the work performed. (citation). The reasonableness of fees is a matter of proof and the party sought to be charged therewith should be afforded an evidentiary hearing and ample opportunity to cross-examine as to the reasonableness of the amounts claimed and to present evidence in rebuttal. (citations)

The refusal of such a hearing deprived the Respondents of due process of law.

#### The Chicago Commission on Human Relations has no Jurisdiction to Award Civil Damages

<sup>a</sup> Actions for damages resulting from illegal discrimination in Illinois are limited to proceedings under the Illinois Human Rights Act, 775 ILCS 95/1-101 et seq. In *Williams v Naylor*, 147 Ill.App.3d 258, the Complainant attempted to rent an apartment, but was refused because she was a single woman. She filed a complaint with the City of Chicago alleging, as here, a violation of the Fair Housing ordinance. She sought both compensatory and punitive damages.

Affirming the dismissal of the claim, the court referred to *Mein u Masonite*, 109 Ill.2d 1, 7 where the Supreme Court stated that “It is clear that the legislature intended the (Illinois Human Rights) Act, with its comprehensive scheme of remedies and administrative procedures to be the exclusive source for redress of alleged human rights violations.”

Nor does the existence of the statute on Fair Housing Ordinances allow a different result.. That statute provides:

(65 ILCS) 5/11-11.1-1

The corporate authorities of any municipality may enact ordinances prescribing fair housing practices defining unfair housing practices, establishing Fair Housing or Human Relations Commissions and standards for the operation of such Commissions in the administering and enforcement of such ordinances, prohibiting discrimination based on race, color, religion, sex, creed, ancestry, national origin or physical or mental handicap in the . . . lease... of real property for the purpose of the residential occupancy thereof, and prescribing penalties for violations of such ordinances.

The Chicago Fair Housing Ordinance was enacted pursuant to this statutory authority, *Williams u iVayZor*, 147 Ill.App.3d 258, 261, and therefore cannot exceed it by providing civil remedies as in courts of law or equity. 5/11-11.1-1 merely ‘authorizes municipalities to regulate housing practices within their territorial boundaries in accordance with the Illinois Constitution by ordinances such as the Chicago ordinance, and to impose penalties. *Williams u Naylor* expressly stands for the proposition that there is no private right of action under the ordinance. Indeed, the principal Chicago ordinance itself provides only for fines, limited to \$500 for each offense. 52-160-120. It is the Commission on Human Relations Enabling Ordinance, 992-120-480 *et seq.* which provides that such a commission may grant such civil remedies a court of law might. Such powers are wholly unauthorized by law, at least since the 1964 Judicial Article amended the State Constitution. The Illinois Constitution expressly vests the judicial power in Illinois in “a Supreme Court, an Appellate Court and Circuits (sic) Courts”. Art. VI, §1. Municipalities cannot, therefore, set up their own mini-judicial systems by ordinance within their discretion alone.

The Illinois Appellate Court, however, in *Akins u Chicago*, 281 Ill.App.3d 10662, found statutory basis for the Chicago ordinance in the Illinois Human Rights Act, 775 ILCS 5/7-108(A), specifically:

<sup>2</sup> Followed by *Eecouic u Chicago*, 296 Ill.App.3d 236, but with n lvsis of this issue.  
7 C.G'< L p -

A political subdivision . . . may create a local Department or commission as it or they see fit to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision . . . freedom from unlawful discrimination.

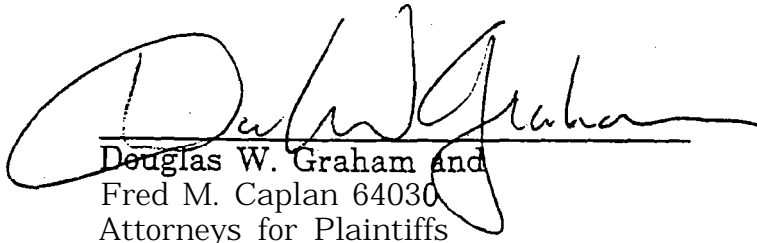
However, what is missing is an express grant of authority from the legislature to these municipalities to set up their own administrative law tribunals, "hear evidence, and award civil damages and attorneys' fees. Such powers cannot be merely implied by language as general as that quoted above. "In *Balmoral v. Illinois*, 151 Ill.2d 367, 291, the Supreme Court stated: "The legislature vests discretionary authority within an administrative agency, if enforceable standards must be provided to guide the officer in the exercise of his discretion." (citation). Failure to determine such standards renders the statute void. (citation)".

### **Conclusion**

Ms. Sullivan-Lackey was welcome as a tenant, but her Section 8 coupons were not - this being because the Plaintiffs had no lawful power to accept them. The City argued that upon Ms. Sullivan-Lackey's application, the Plaintiffs had a duty to *get* lawful power to accept the certificates, but, first, there was no showing that the Plaintiffs' rent rates or building condition would satisfy the Section 8 authorities, even if they desired to submit to rent controls, audits and building inspections.

The Commission's opinion would make Section 8 contracts mandatory for landlords at the option of Section 8 tenant applicants. Not even the Chicago ordinances go this far. There was therefore no notice to the Plaintiffs that their failure to apply for and obtain Section 8 qualification could subject them to civil damages, penalties and attorneys' fees.

The Commission's ruling in this case is unsupported by facts or law and must be reversed by this court.



Douglas W. Graham and  
Fred M. Caplan 64030  
Attorneys for Plaintiffs  
29 South LaSalle St. 330  
Chicago, Illinois 60603  
(312) 236-2931

IN THE JUDICIAL CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

# 33789

JULIO GODINEZ & CARLOS GODINEZ, )  
Petitioners, )

v. )

JUNE E. SULLIVAN-LACKEY and )  
THE CHICAGO COMMISSION ON )  
HUMAN RELATIONS, )  
Respondents. )

Case No. 01 CH 19272

The Honorable Bernetta D. Bush

3309  
3004

RESPONDENTS' BRIEF IN SUPPORT OF THE ADMINISTRATIVE DECISION

Respondent June E. Sullivan-Lackey, by and through her attorneys, J. Damian Ortiz of The John Marshall Law School Fair Housing Legal Clinic, submits this brief in support of the g&\$&o \$&mr&ion on Human Relations' Order

FILED  
JUN 11 2001  
CLERK OF COURT  
JULIO GODINEZ & CARLOS GODINEZ  
JUNE E. SULLIVAN-LACKEY & THE CHICAGO COMMISSION ON HUMAN RELATIONS

STANDARD OF REVIEW

The Administrative Review Act, 735 ILCS S/3- 10 1, limits the scope of judicial review of an administrative decision by the Court as to whether the findings and orders of the administrative agency are against the manifest weight of the evidence and whether the agency acted arbitrarily or in clear abuse of its discretion. *Leong v. Village of Schaumburg*, 194 Ill. App. 3d 60 (1990). In addition, it is well established that findings of fact by an administrative agency are prima facie true and correct and a reviewing court may set aside such findings only if they are against the manifest weight of the evidence. *Spiros Lounge, Inc. v. Local Liquor Commission*, 98 Ill. App. 3d 280 (1981); see also *Middleton v. License Appeal Commission*, 20 Ill. App. 3d 534,536 (1974).

STATEMENT OF FACTS

On April 1999, Mrs. Lackey was forced to move from her home located at 3600 Polk St, Chicago. Mrs. Lackey was receiving Section 8 assistance while living at this address. As part of the program, her unit was re-inspected to determine whether it met the standards required by the Section 8 program R- 272 (hereinafter "R-272). The unit failed the inspection and Mrs. Lackey was then required to move. *Id.* Mrs. Lackey was given a few short weeks to locate a new residence, as her Section 8 voucher would expone

KbSr&.a~

0  
&  
T 1 157: Q  
y: z-

May 10, 1999. R-272. If Mxsc ,ckey was unable to locate an apartment 'the voucher's expiration date, she would lose her rights to the assistance afforded by the program. R-272. Mrs. Lackey was informed that an apartment was available in the apartment complex where her daughter, Kesha Lackey, resided R-272. This apartment complex is owned by the Respondent, Julio Godinez ("Julio") and managed by Carlos Godinez ("Carlos"), his son

Mrs. Lackey decided to apply for the ap&ent in this complex. It appealed to her for several reasons. First the apartment was located on the first floor, this was of particular importance because Mrs. Lackey has trouble climbing stairs due to her vtious medical conditions. R-272. Mrs. Lackey suffers from diabetes, hypertension, angina, and kidney failure. R- 270. Secondly, this apartment would qble her to baby-sit her grandchildren while her daughter worked, as they would both be living in the same building. R-274. On April 23, 1999, Mrs. Lackey and her daughter went to the apartment complex's office, where they met with Carlos, in order to view and apply for the available apartment R-273. After viewing the apartment, Mrs. Lackey decided to apply for the unit h4i-s. Lackey and her daughter went back to the rental office where she completed the rental application given to her by Carlos. R-273. This rental application contained a section for personal references. In this section, Mrs. Lackey wrote the names of three references, her daughter, her adopted son, and her cousin. The application was then submitted to Carlos, along with the required \$25.00 application fee. Carlos gave Mrs. Lackey a receipt for \$25.00 fee. R-273.

Upon Carlos' *review* of the information cotained on Mrs. Lackey's rental application, Carlos asked Mrs. Lackey how she intended to pay for the apartment. R-273. Mrs. Lackey informed Carlos that she had a Section 8 voucher, he responded that they did not accept Section 8 assistance payments. R-273. However, he told her that she could have the apartment if she would pay \$600.00 *in cash* per month for rent and a one-month deposit R-274. (Emphasis added). Carlos did not ask to see Mrs. Lackey's Section 8 paperwork, nor did he tell her that he would look into the program and have the apartment inspected to see ifit would qualify for Section 8. All of the factual details occurring on April 23, 1999, were confirmed and testified to by Kesha Lackey. R-358. Kesha also stated that Carlos asserted that he did not accept Section 8 because he *was afraid the I.R.S would audit* them. *Id.* (Emphasis added). \$, , 32

A few days after the April 23, 1999, viewing of the unit, Kesha Lackey found a torn section of her mother's rental application on the floor of her building near the mailboxes. Id. Kesha Lackey testified that this is near the outside door to her apartment; she stated that this is also the way the garbage is taken out of the building. R-359. Kesha Lackey testified that she was drawn to the piece of paper lying on the floor because she noticed the name of one of her relatives on it R-360. This was a name that her mother put on the reference section of the application *Id.* Immediately after Kesha saw this she called her mother and subsequently gave her mother the torn portion of the application (See Exhibit in R-41 1) After Ms. Lackey realized that she was definitely not getting the apartment of her choice, Mrs. Lackey looked for other apartments in that same neighborhood; however, there were no other apartments available that would accept her Section 8 payment assistance. As a result her Section 8 voucher expired and she was forced to move to an available unit in Country Club Hills. The alternative housing that she was able to obtain was more expensive than Petitioner's apartment referenced above. After some time, Mrs. Lackey was unable to afford this apartment and was forced to move once again. She incurred the expense of having to store her possessions and moving expenses. During this time, Mrs. Lackey's overall medical conditions worsened and she was hospitalized. Before the denial of the unit, Mrs. Lackey was taking three types of medication for her hypertension. After the discrimination, she was prescribed two additional forms of medication for the hypertension. R-270. Additionally, after the discrimination, Mrs. Lackey's dialysis increased from three times to five times per day. R-270.

On August 11, 1999, Mrs. Lackey, filed a complaint with the City of Chicago Commission on Human Relations ("Commission") alleging that Respondents, Julio and Carlos Godinez violated Section 5-08-030 of the City of Chicago's Fair Housing Ordinance by discriminating against her on the basis of her *source of income* when they refused to rent her the available apartment R-4. On December 16, 1999, the Commission issued an Order finding that the discrimination did in fact occur. R-14. On April 30, 2001, the Commission, in its Final Recommended Decision, found that the Respondents violated Section 5-08-030 of the City of Chicago's Fair Housing Ordinance when they refused to rent Complainant an apartment because she intended to use her Section 8 voucher to pay a portion of her rent. R-177. The Commission

ordered the Petitioners-Respondents to pay \$2500.00 in emotional distress fees, \$3,110.00 for her economic loss for a total of \$5,610.00 in compensatory damages. R-185,187, 189. This Order became final on July 18,2001. R-189. In addition, on April 12,2001, the Complainant filed a request for attorney fees, as required by statute. R-148. On May 10,2001, the Respondents filed a two-sentence objection to the request for attorney's fees. R-208. On October 17,2001, the Commission awarded the Complainant \$16,284 in attorney's fees. R-222. Finally, on November 15,2001, Respondents filed a writ of certiorari in this court appealing the Commission's Rulings against them R-256.

### ARGUMENT

#### I. AN INDIVIDUAL'S "SOURCE OF INCOME" IS PROTECTED UNDER THE CHICAGO FAIR HOUSING ORDINANCE.

Under the Chicago Fair Housing Ordinance, a landlord cannot refuse to rent to an individual based on that individual's source of income. (See Exhibit A.) The Chicago Fair Housing Ordinance defines "source of income" as "the lawful manner by which an individual supports himself and his or her dependents." *Chicago Municipal Code j 2-160-020(m). J S-8-040; Regulation I 00(32)*. The Commission has held on several occasions that this unqualified "source of income" includes Section 8 vouchers and certificates. *Smith v. Wilmette Real Estate & Mgmt. Co., CCHR No. 95-H-159 & 98-H-44163* (April 13, 1999) (*hereinafter "Wilmette"*); *Smith v. Goodchild, CCHR No. 98-H-177* (April 13,1999); *Lopez v. Arias, CCHR No. 99-H-12* (September 8,1999). Section 8 is a program designed to "aid lower-income families in obtaining a decent place to live and promote economically mixed housing." 42 U.S.C. 1437 (f) (1985). The program provides recipients with a set amount of income each month either through "certificates" or "housing vouchers," to be paid toward housing costs. See R 418-443 for an overview of the Section 8

#### **Prograia**

Petitioners rely on *Knapp v. Eagle Property Management, 54 F.3d 1272* (7th Cir. 1995), where the 7<sup>th</sup> Circuit interpreted Wisconsin State Law. However, the definition of "source of income" in *Knapp* falls under the Wisconsin Open Housing Act, and is "significantly different from the definition that is incorporated within the [Chicago Fair Housing] Ordinance." *FTXmette, CCFNo. 95-H-159*, at 6; see

\$ Q i "W

*Knapp*, at 1276. In addition, Lee the legislative policy regarding the Wisconsin Open Housing Act the legislative policy respecting the Chicago Fair Housing Ordinance is clear in that “all residents” of the city should be able to obtain housing without suffering discrimination *Smith, C&IX No. 95-H-159*, at 6. In *Knapp*, a case of first impression, the court declined to read Section 8 into the definition in the statute ‘only in deference to the Wisconsin state legislature. *Knapp*, at 1282-83. In Chicago, however, the Commission has already ruled with respect to the language of the Ordinance. In *Smith. v. Wilmette Real Estate & Management Company*, the Commission declined “to read into the Ordinance a restriction that was not intended by its drafters” when “[t]he Ordinance’s broad definition of ‘source of income’ refer[red] to ‘the lawful manner’ - without any qualification - by which an individual supports him- or herself.” *Id.* at 4.

Under the Chicago Fair Housing Ordinance, landlords must accept Section 8 vouchers as a source of income. *Chicago Municipal Code §5-08-030*. The Commission has explicitly stated that “ [n]othing in the [federal] statute. . . mandates that landlord participation be voluntary, nor is there any provision that prohibits states from mandating participation. ’ ” *Wilmette, CCHR No. 95-H-159*, at 10 (quoting *Franklin Tower One, L.L. C. v. NM*, 725 A.2d 1104,1113 ,(1999)). A landlord who is approached by a prospective Section 8 tenant therefore has a duty to seek approval to accept Section 8 for the unit in question. The mere possibility that a property may not be approved cannot excuse a refusal to seek the necessary approval in the first place. “[A] landlord must make at least a good faith effort to comply with the requirements[ 1” of the Section 8 program. R-238. “The mere possibility that a property may not be approved cannot excuse a refusal to seek the necessary approval in the first place.” *Id.* Otherwise, Chicago landlords could nullify the anticipated benefits of the Fair Housing Ordinance by simply refusing to conform

The Commission has previously held “that a complainant can prove source of income **d i s h**on by showing that they were denied a rental opportunity because they intended to make use of Section 8 funding.” *Wilmette, CCHR No. 95-H-159*, at 8. Ms. Lackey has proven, through direct evidence, discrimination. Direct evidence in a discrimination case is “evidence which if believed by the trier of fact, will prove the particular fact in question without reliance on inference or presumption.” *Walker v. Glicbnan*, 241 F.3d 884 (7th Cir. 2001). In a case using direct evidence, the pr@~\$&s is the

credibility of the evidence. *Chicago Hous. Auth. v. Human Rights Comm.*, 325 Ill. App. 3d 1115, 1127 (2001). In the instant case, the Commission concluded that the “Respondents [here Petitioners] refused to rent Complainant an apartment because she intended to use her Section 8 voucher to pay the rent R-234. In this case, the Commission found the Respondents (here Petitioners) allegations “utterly incredible.” *Id.* To the contrary, the Commission adopted Ms. Lackey’s version of events and concluded that the “[Petitioners]-Respondents refused to rent Complainant an apartment because she intended to use her Section 8 voucher to pay the rent” *Id.*

The Commission found that Ms. Lackey completed an application and submitted the application to Carlos Godinez, along with the required \$25.00 application fee. *Id.* at 1. Carlos inquired as to how Ms. Lackey intended to pay the rent, given that she was not employed *Id.* at 2. Ms. Lackey told Carlos that she intended to use a Section 8 voucher. *Id.* Carlos then refused to accept the voucher, stating that he did not want to be “audited,” and offered Ms. Lackey the apartment only if she paid the \$600 rent in cash and one month deposit *Id.* A few days later, Ms. Lackey’s daughter recovered a piece of her mother’s application from the floor in the common area; the same route one would use to take out the garbage. *Id.* Two law students from The John Marshall Law School Fair Housing Legal Clinic later served as testers and telephoned Julio Godinez regarding apartments in the building. *Id.* “Testers are individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence [of discrimination].” *Havens Realg Corp. v. Coleman*, 455 U.S. 363, 372 (1982). On both occasions, Julio told the testers “that he did not accept Section 8 vouchers.” *Id.*

In addition, Ms. Lackey has introduced sufficient evidence to establish a prima facie case of disparate treatment based on her source of income. A prima facie case in fair housing cases may have four elements: (1) that a complainant is a member of a protected class under the Ordinance; (2) that she desired to rent an apartment and was qualified to do so; (3) that the respondent did not rent the apartment to her, and (4) that the apartment remained vacant for some time thereafter. *Crenshaw v. Harvey*, CCHR No. 95-H-82, at 9-10 (May 21, 1997); *Castro v. Georgeopoulos*, CCHR No. 91-H-6-5591, at 4 (Dec. 18, 1991). Ms. Lackey satisfies the first element because she is a member of a protected class because she receives

**O**

**O**

Section 8 housing assistance 4 ihers. The Commission, as previously ‘( %ssed, has held that “source of income” includes the use of Section 8 vouchers. As for the second element, Ms. Lackey clearly wanted the apartment, as she filled out the application and submitted the \$25 application fee for which she was given a receipt R-197. Ms. Lackey was also able, with her Section 8 voucher, to pay for the apartment Ms. Lackey did not receive the apartment, as required under the third element because of her source of income. Finally, it is not contradicted that the apartment remained open after Ms. Lackey was denied the apartment

IL THE CHICAGO FAIR HOUSING ORDINANCE IS NOT PREEMPTED BY THE FAIR HOUSING ACT.

Petitioners contend that the Commission cannot interpret its ordinance to make failure to comply with a voluntary federal program a statutory tort that will thus subject the landlord to ‘economic damages, emotional distress damages, and attorneys’ fees. Petitioner’s Brief, at 5. While Respondents agree that participation in the Section 8 program is voluntary under federal law, the Chicago Commission on Human Relations has the power to prevent housing discrimination. *Becovic v. CiQ of Chicago*, 296 Ill. App. 3d 236,238 (1998). This does not mean that the Chicago Fair Housing Ordinance mandates participation in the Section 8 program; rather, the Ordinance merely requires that laridlords not discriminate against potential tenants based on their participation in the Section 8 program- In addition, it is well established that within the City of Chicago, “landlords who lease apartments that fall within the Section 8 fair-market rents must rent to Section 8 voucher holders or face *civil liability*.” *Wilmette, CCHX No. 95-H-159*, at 7.

Federal preemption has its roots in the Supremacy clause. U.S. CONST. art VI, cl. 2; *SD. Mining Ass ‘n v. Lawrence Couny*, 977 F. Supp. 1396,1401 (D.S.D. 1997). To determine whether a federal statute preempts a state statute, a court must look to the federal law as a whole and the objective and policy behind the law. *Id. Citing Pilot L\$z Ins. Co. v. Dedeaq* 481 U.S. 41 (1987). Federal preemption is not to be lightly assumed and the two schemes (federal and local) should be interpreted to allow both to operate. *Rowe v. Pierce*, 622 F. Supp. 1030,1033 (D.D.C. 1985). There are three ways in which a federal statute may preempt a state statute: (1) the federal statute may expressly state that it preempts the state statute (express preemption); (2) the federal statute so pervasively encompasses the field of law so that it is

reasonable to conclude that Congress intended for regulation to be excluded by that of the federal government (field preemption); or (3) the state statute conflicts with the federal statute so that it is impossible for to comply with both the state statute and the federal statute, or the state statute conflicts with the purposes and objectives of Congress (conflict preemption). *Wis. Cent. Ltd. v. City of Marshfield*, 160 F. Supp. 2d 1009, 1012-15 (E.D. Wq. 2000); *FElmetfe, CCHR No. 95-H-159*, at 8.

The Fair Housing Act, however, does not preempt the Chicago Fair Housing Ordinance. First, Congress has not expressly stated that the Act preempts state and local fair housing laws. The police powers of the state are presumed not to be superseded unless Congress has a clear and manifest purpose, and such purpose should be ascertained from the plain language on *the face of the statute*. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218,230 (1947). The federal Fair Housing Act, on the contrary, requires the support of state and local authorities to implement the Section 8 statute, by “enter(ing) into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this *section*.” 42 U.S.C. § 1437(f) (b) (2001).

Next, the fact that Congress provided for voluntary participation in the Section 8 program indicates that Congress did not provide for pervasive federal regulation; therefore, state and local governments are not barred from **mandating** participation. The federal Fair Housing Act, through local housing authorities, creates the framework and establishes guidelines for the funding and execution of the program by the United States Secretary of Housing and Urban Development *Attorney General v. Brown*, 511 N.E.2d 1103, 1106 (1987). The federal act therefore creates a minimum standard, which state and local law should not fall below in providing accessibility to low-income housing.

Finally, there is no “actual conflict” between the Chicago Fair Housing Ordinance and the United States Fair Housing Act as the ordinance does not require action rendered illegal by the Act, or vice versa. In fact, the ordinance furthers the objective of Congress; that is, to “provid[e] decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments... .” 42 U.S.C. 1437 (a)(4). Like the federal government, the City of Chicago has a special and unique interest in

seeing that its residents have "safe, decent, and sanitary" housing. On this issue, the federal and local interests coincide. Therefore, the Chicago Housing Ordinance is not preempted by the Fair Housing Act

III. TEIE DAMAGES AWARDED WERE SUPPORTED BY CREDIBLE EVIDENCE.

Mrs. Lackey was awarded compensatory damages in the form of emotional distress and out-of-pocket expenses. Each award was supported by sufficient evidence. First we look to the issue of the award of emotional distress damages. To prove a cause of action for intentional infliction of emotional distress, the plaintiff must establish three elements: (1) extreme and outrageous conduct; (2) intent or knowledge by the actor that there is at least a high probability that his or her conduct will inflict severe emotional distress and reckless disregard of that probability; and (3) severe and emotional distress. *Adams v. Sussumm*, 292 Ill. App. 3d 30,38 (1st Dist 1997). Extreme and outrageous conduct sufficient to create liability for intentional infliction of emotional distress is defined as conduct that exceeds all bounds of human decency and that is regarded as intolerable in a civilized community. *Adam*, at 38. The intensity and the duration of the distress are factors to be considered in determining its severity. *Id*

In this case, Mrs. Lackey testified that the Petitioners stated that they would not accept Mrs. Lackey's Section 8 voucher, because they were afraid of being audited. This denial of housing that would have been available to Mrs. Lackey had it not been for her source of *income can* not be described as anything other than extreme and outrageous. The Petitioners ripped her application and never return her application fee. It is doubtful that the respondent's were not aware that this denial of housing would have caused an emotional hardship on Mrs., Lackey. The Petitioners were aware that Mrs. Lackey needed the apartment and she wanted to be close to her daughter, Kesha They also knew of Mrs. Lackey's various medical conditions and physical impairment Finally, Mrs. Lackey's distress was intense and lasted for an extended period of time.

In addition to looking to the elements needed to support an award of emotional distress damages, one must look to both the direct evidence of emotional distress and the circumstances of the act that allegedly caused the distress. *Krueger v. Cuomo*, 115 F.3d 487,492 (7th Cir. 1997). Distress is customarily proven by showing *the* nature and *the* circumstances of *the* wrong and its effect on *the* plaintiff. *United*

*States v. Balirrieri*, 981 F.2d 932 (7<sup>th</sup> Cir. 1992). In housing discrimination cases, the court has generally upheld awards for emotional distress despite the lack of detailed description of that distress. *Id.* 932. In some cases, an injured person's testimony can be sufficient by itself, or in conjunction with the circumstances of the particular case, to establish damages for emotional distress. *Id.* Therefore, in the case at hand, Mrs. Lackey's testimony regarding the emotional distress that she has experienced as a result of this denial of housing is sufficient to support her claim of emotional distress.

Mrs. Lackey also produced evidence of out-of-pocket expenses attributable to Petitioners' discrimination. After the Petitioners denied Mrs. Lackey housing, she lost her right to Section 8 funding and was forced to pay her rent from her Social Security Income. After sometime, Mrs. Lackey was unable to afford her rent and was forced to move and store her belongings. The Petitioners' discrimination caused harm and inconvenience to Mrs. Lackey. Therefore, the damages awarded were appropriate.

Complainants may recover for ancillary expenses incurred when a respondent refused to rent to them. Past cases have awarded expenses for lost wages when a complainant had to miss work to find another apartment *Rushing v. Jasniowski*, CCHR No. 92-157 (May 18, 1994); *extm* moving costs, *Hussian v. Decker*, CCHR No. 93-H-13 (November 15, 1995); added utility payments, *Matias v. Zacariah*, CCHR No. 95-H-1 10 (September 18, 1996); and *cab* fare expenses, *Puryear v. Hank*, CCEIR No. 98-H-139. The Petitioners state that had Mrs. Lackey simply paid them \$600 *in cmh* she would not have encountered storage fees. First, the Section 8 program instructed Ms. Lackey that she could not pay cash for this apartment, otherwise she would lose her funding. The Petitioners' denial of the unit caused Ms. Lackey to lose her possibility of receiving Section 8 assistance. The Petitioners are responsible for her incurred expenses, damages, and her health problems that arose as a result of the discrimination.

#### IV. THE CHICAGO COMMISSION ON HUMAN RELATIONS HAS JURISDICTION TO AWARD CIVIL DAMAGES.

"Actions for damages resulting from illegal discrimination in Illinois are limited to proceedings under the Illinois Human Rights Act ("hereinafter "MRA"), 775 LLCS §.5/1-101." See Petitioner's Brief, 6. The petitioner's ask *this coti* to refer to *the* holding in *Mein v. Masonite*, 109 Ill.2d 1, which stated that

“It is clear that the legislature intended the Act, with its comprehensive scheme of remedies and administrative procedures to be the exclusive source for redress of alleged human rights violations.” *Id.* at 7. 775 ILCS 5/7-108(A). The Illinois Human Rights Act seeks to delegate authority to municipalities. (See Exhibit B.) The Act grants broad authority for the establishment and conduct of the Chicago Commission on Human Relations.

“It seems evident that The [Illinois Human Rights] Act seeks to give political subdivisions the same powers held by the state commission.” *Atkins v. City of Chicago Commission on Human Relations*, 281 Ill. App. 3d 1066,1077 (1996). In *Atkins*, the Chicago Commission on Human Relations determined that the petitioner, Atkins, a landlord who refused to rent an apartment to Ms. Lawrence, had discriminated against Ms. Lawrence based on her race. Atkins contested the Commission’s ruling and contested their authority to award attorney’s fees to a complainant. In concluding that DORA granted the Commission the same statutory authority that the IHRA had in preventing and remedying discrimination, the court noted, “the Act provides a remedy of attorney fees in suits based on discrimination in real estate transactions. It also provides that local municipalities may set up their own commissions to promote the purpose of the Act. One purpose of the Act would logically include remedying the evil done by discrimination, i.e., awarding damages, including attorney fees, to the victim.” *Id.*

The petitioner contends that the IHU fails to expressly grant the authority to municipalities “to set up their own administrative law tribunals, hear evidence, and award civil damages and attorneys’ fees” This is precisely what 775 ILCS 5/7-108(A) does, as was concluded in *Atkins*. The petitioner also contends that the 1964 Judicial Article within the State Constitution precludes the Commission from performing these functions. The separation of powers clause provides that “[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.” Ill. Const Of 1970, art 2, §1. The independent judiciary clause provides that “[t]he judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.” Ill. Const of 1970, art 6, Q 1. Neither of the provisions contained in the independent judiciary clause of the Illinois Constitution have been interpreted to preclude an administrative body from awarding civil damages. Petitioner’s assertion to the contrary runs

in conflict with the Illinois Supreme Court's decision in *Civ of Waukegan v. Pollution Control Board*, 57 Ill.2d 170 (1974). There, the court upheld the imposition of civil penalties by the state agency, expressly rejecting the argument that the delegation of power to the agency to impose penalties was an unconstitutional delegation of judicial power in violation of section 1, article 2. See *id.* at 172, 182-84.

The court catalogued the variety of circumstances in which it had upheld the delegation of the power to administrative agencies to impose civil penalties and sanctions that operated as civil penalties. See *id.* at 179-81. As the court recognized, "[the] separation of powers does not forbid every exercise of functions by one branch of government which conventionally is exercised by another branch." *Id.* at 174-75. Rather, the "real thrust of the separation of powers philosophy is that each department of government must be kept free from the control or coercive influence of the other departments." *Id.* at 175. Therefore, the Judicial Article does not preclude the Commission from setting up their own "mini-judicial system"

The Commission's authority to enforce laws prohibiting discrimination against persons within the City of Chicago's powers as a home rule unit. The City's status as a home rule unit under the Illinois Constitution cannot be questioned. See Ill. Const. of 1970, art. VII, § 6(a) (any municipality exceeding 25,000 inhabitants is a home rule unit). As a home rule unit, the City has independent power under the Illinois constitution to legislate on any matter pertaining to its "government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare . . ." *Id.* There is a subsequent subsection, in the Illinois Constitution art. VII, § 6(i), which provides that the State and home rule units may share certain powers. (See Exhibit C.) These powers and functions "shall be construed liberally." *Id.* art. VII, § 6(m).

As section 6(i) suggests, the Illinois Constitution also permits the General Assembly to "provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit." Ill. Const. of 1970, art. VII § 6(h); see *id.* art. VII § 6(g) (three-fifths vote required in General Assembly). To limit home rule powers, however, the General Assembly must pass legislation containing explicit language indicating that home rule powers over a particular subject matter are limited or excluded. *Wage of Bolingbrook v. Citizens Utilities Co.*, 158 Ill. 2d 133, 138 (1994); *City of Evanston v. Create, Inc.*, 85

111.2d 101, 108 (1981). Absen<sup>c</sup> "sch express legislative intent, home ml<sup>6</sup> .lits may exercise their powers and functions concurrently with the State. See Ill. Const Of 1970, art VII, 0 6(i); see also *Create*, 85 Ill. 2d at108. The authority to enforce laws against discrimination falls well within the home rule author-iv granted to the City of Chicago.

Section 5-8-010 of the Chicago Fair Housing Ordinance lays out the city's policy concerning fair housing. (See Exhibit A.) In an effort to enforce this policy, the city established the Chicago Commission on Human Relations. Section 5-8-070 describes the complaint procedure to be used when a violation of &5-S-010 has occurred "Any person aggrieved in any manner by any violation of this chapter may file a written complaint with the Commission on Human Relations." The Chicago Human fights Ordinance also directs the victims of discrimination to turn to the Chicago Commission for relief. (See Exhibit D.)

Section 2-120-490 establishes the Commission and §2-120-510 describes the powers and duties of the Commission. Section 2-120-510(e) grants the power to "initiate, receive and investigate complaints of alleged violations of Chapters 2-160 and 5-8 of the Municipal code." And § 2-120-510(g) grants the Commission authority to "conduct hearings on complaints under subsection (e)" conducted by "the Commission, a member thereof, or a hearing officer appointed for that purpose." Section 2-120-510(l) grants further powers to the Commission. (See Exhibit I?), and finally, §2-120-510(m) grants the Commission authority to "seek judicial enforcement of its subpoenas, orders and decisions." These sections demonstrate the City of Chicago's policy towards prohibiting discrimination. The Chicago Commission on Human Relations has jurisdiction to award civil damages under 775 LCS 5/7-108(A), and it can clearly be seen that the Commission has all the powers the City of Chicago sees fit to grant it under Chicago's authority as a home rule unit

V. THE AWARD OF ATTORNEY'S FEES WAS PROPER

The petitioner's filed a two sentence motion with the Commission contesting the award of attorney's fees and contending that the denial of their request constituted a deprivation of due process. R-208. The Illinois Administrative Code leaves the decision of whether to conduct a hearing concerning attorney's fees at the hands of the Commission. 56 IL ADC 5300.765. Section 5300.765 lays out the

procedure that a commission i. I use in awarding attorney's fees. (See Exhibit F.) Petitioners cite to 6334 *iv Sheridan v. Ruehle*, 157 Ill. App. 3d 829,834, as holding that a party requesting an evidentiary hearing on attorneys' fees must be given one. The *Sheridan* case is distinguishable from this case. Most importantly, *Sheridan* was a forcible entry and detainer action against the defendant brought in the Circuit Court of Cook County, which operates under different rules of procedure than the several commissions established within the State of Illinois. "The Human Rights Commission's rules governing petitions for attorney fees and costs impose no requirements that a hearing be conducted to resolve contested issues regarding claims for fees." *Raintree Health Care Center v. Illinois Human Rights Com'n*, 173 Ill.2d 469, 494 (1996). In *Raintree*, the petitioner claimed that it was entitled to an evidentiary hearing on attorney's fees because the respondent's petition for fees raised many issues. The court held that "as long as the [Administrative Law Judge] is, able to determine what amount would be a reasonable award of attorney fees, from evidence presented in the petition and the answer, such a determination should not be disturbed on review." *Id.* (emphasis added).

In *Bank of America Nat. Trust and Sav. Ass'n v. Schulson*, 714 N.E.2d 20 (1999), the court did not follow *Raintree*. In *Bank of America*, the defendant's contested the fact that the Circuit Court, not a commission, did not hold a hearing on attorney's fees and the plaintiff cited *Raintree* as authority that such a hearing was not a requirement. The court held that-

*'Raintree is not on point In Raintree, our Supreme Court reviewed attorney fees awarded by an administrative law judge for the Human Rights Commission. The court acknowledged that, under some circumstances, attorney fees may be calculated without an evidentiary hearing. But the issue in Raintree was governed by the Commission's rules, which did not require an evidentiary hearing.'*

*Id. at 470.* The court recognized the distinction between proceedings under the Commission's rules of procedure and proceedings under the Circuit Court's rules and procedure.

Such is the case at hand, where the petition for attorney's fees is governed by the Chicago Commission on Human Relations rules of procedure. The Commission's rules of procedure concerning an award of attorney's fees, and what is required for the determination of such an award, are laid out in Regulation 240.630(a)(1) of the Commission's regulations. (See Exhibit E.) The respondent may then file a

O

O  
f,

response to these statements d in fourteen days of the receipt of these L' erments. Reg. 240.630 (a)(2).

The regulation then goes on to describe the course of conduct that the hearing officer is to file in determining attorney's fees and in rendering this decision. (See Exhibit F.) This process concludes with a ruling by the Board of Commissioners. Nowhere in this process is the requirement of a hearing established. A hearing on attorney's fees is totally at the discretion of the Chicago Commission. See *Sib& v. Rlinois Human Rights Com'n*, 236 Ill. Dec. 88 (holding that such a hearing is entirely discretionary with the IJXRC).

All the requirements of petitioning for attorney's fees laid out under Regulation 240.630 of the Chicago Commission on Human Relations were followed by Ms. Lackey and The John Marshall Law School Fair Housing Legal Clinic. The number of hours spent on the case by all attorney's and law students involved was submitted to the Commission, along with the customary hourly rate for the services provided and documentation regarding all expenses for which compensation was sought. The Commission, after careful review, reduced the requested attorney's fees. The Petition= had an opportunity to fully and legally object to the attorneys fee petition and affidavits filed by the Clinic. Alternatively, Pe&oners- Respondents opted to file a two-sentence objection. Therefore, the award of attorney's fees was proper.

**C O N C L U S I O N**

WHEREFORE, Respondent respectfully requests that this Court affirms the Chicago Commission on Human Relations Orders.

Respectfully submitted,

One of the Attorneys for Defendant

J. Darnian Or&, Esq.  
Matthew R Schuerman, Senior Law Student  
Michelle Litavetz, Senior Law Student  
Nicole ChaviS, Senior Law Student  
The John Marshall Law School  
Fair Housing Legal Clinic  
28 East Jackson Boulevard, Suite 500  
Chicago, DL 60604  
Tel: 3 12.786.2267  
Firm #33789

Q000046

C004

## Chapter 5-8

CHICAGO FAIR HOUSING  
REGULATIONS

## Sections:

5-s-010	City policy generally.
5-S-020	Discrimination prohibited.
J-s-030	Unfair housing practices.
33-040	Definitions.
5-s-050	Exemptions.
J-8-060	Applicability.
58-070	Complaint procedure.
5-S-120	Severability.
3-s-130	Violation-Penalty.
5-s-140	Notice of conviction.

## 58-010 City policy generally.

It is hereby declared the policy of the city of Chicago to assure full and equal opportunity to all residents of the city to obtain fair and adequate housing for themselves and their families in the city of Chicago without discrimination against them because of their race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income. (Prior code §198.7B-1; Amend. Coun. J. 12-21-88, p. 23.526)

## j-8020 Discrimination prohibited.

It is further declared to be the policy of the city of Chicago that no owner, lessee, sublessee, assignee, managing agent or other person, firm or corporation having the right to sell, rent or lease any housing accommodation, within the city of Chicago, or any agent of any of these, should refuse to sell, rent, lease, or otherwise deny to or withhold from any person or group of persons such housing accommodations because of his race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of such person or persons or discriminate against any person because of his race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income in the term, conditions, or privileges of the sale, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith (Prior code §198.7B-2; Amend. COWL I. 12-21-88, p. 23526)

## 58-030 Unfair housing practices.

It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent or other person, firm or corporation having the right to sell, rent, lease or sublease any housing accommodation,

within the city of Chicago by any agent of any of these, or any real estate broker, entered as such:

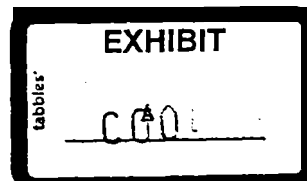
A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the city of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the prospective or actual buyer or tenant thereof.

B. To publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, sign or other writing of any kind relating to the sale, rental or leasing of any residential real property within the city of Chicago which will indicate or express any limitation or discrimination in the sale, rental or leasing of such residential real estate, predicated upon the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of any prospective buyer, lessee or renter of such property.

C. To refuse to sell, lease or rent any real estate for residential purposes within the city of Chicago because of the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.

D. To discriminate or to participate in discrimination in connection with borrowing or lending money, making loans, accepting mortgages or otherwise obtaining or making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any residential housing unit or housing accommodation in the city of Chicago because of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

E. To solicit for sale, lease or listing for or lease, residential real estate within the city of Chicago on the ground of loss of value due to the present or prospective entry into any neighborhood of any person or persons of any particular race, color, sex,



00000q~

age, religion disability, ratio+ xi& anc\$uy, sesuai orienmion marital Stan .parental starus, miiitap discharge sums or souse of income.

E To disrioure or cause to be distributed, tirten material or statements dtigned to induce any owner of residential real estate in the city of Chicago to sell or lease his propary because of any present or pro-speaive change in the raq color, sex, age, rdigioS disahilirry, national or& ancesrry, sexual orienta-doqmariIalstanrs, parentalxanqmilitarydis-charge status or. source of income of perrions in the neighborhood.

G. To debberateiy and Imowi~&y refuse examination of any li&g of residential rnal estate within the ciry of Chicago to any person beuuse of race, color, se& age, religion d&D&), national origis ancesry, sexuai olienraKio4 mari?al SfaNs, parental status, milirary d.idarge szrtrus or source of income.

H. To co- placq maintain or install a 'For Sale' sign or 'sold' sign of any shaw size or form on premises located in Residerial Diszricq zoned RI through R8 under Tirie 17 of\*this code. For purposes of this subsection, the usigns" abovementioned are hereby de&teted to mean any strncrue, and ail parts composing tie same, together .with the frame, background or supports m&or which are used for advertising or display purposes, or any sra~uary saxipnue, moiding or casting used for advertising or display purposes, or any flags, bunting or nazial used for display or advertising purpose **inching but not tired IO**, plagrds, car& saucmres or areas carrying the following or similar words 'For Saio" Sold" Y&en Ho%" 'New How" 'Home Inqxrion," 'Viitors Invited," 'Wed by," or 'Built by." (Prior code 4 198-T&3'; /imend Coun J. 12-21-88, p- 23526)

#### 5a-040 Definitions.

- Wherever used in this chapter, the terms 3ge," 'reiigijo~" 'disability," -Lsexualorienario~" 'marital sraruq" "parental stan4" 'military dixharge sams," and source of income" shall have the same meanings as described in Chapter 2-160 of this code (R-ior code 4 198-W; AIXXL Coun J. 12-21-88, p. **23526**)

#### 5-i%osl Exemptions.

No provision of this chapter shatl be consmA to prohiiiiir any of the following

(a) Resuitig rental or sale of a housing accom-m&don Lo a person of a C- age group (1) when such housing accommodation is authorized, approved Enaxed or subsidized in whole or in pan for the benefit of that age group by a unit of state,

locaI or federal gy "hens or (2) when the du.Iy recorded initi d. ararion of a condominium of communis, associiion limits such housing accom-modations to persons above the age of 50; provided, tbar a person or the immediate fb.mily of a person owning or renting a unit in such housing accomme-dation prior to the recording of the initial deciam-tion shall not be defmed to be in viotion of the age nxrition as long as the person or the pezxon's immediare fiunily wntiue m own or reside in the housing accommodation.

(b) A religious org3niza7ion, association or SO& cry, or any not-for-profit ins&ion or oqa&a.tion operaed, supervised or conuo&tr.i by or in conjunc-don with a religious organiiatios association or s&ety, from limitig the sale, rental or occupancy of a dweiiing which it owns or operates for other than a commercial purpose to persons of the m.me religion, or km giving preference to such persons of the same reiigion, or &om giving **preface** to such persons, unless membership in such religion is resaid on account of racq color or national ori- Es=

(c) Rem-k&g the rental of rooms in a housing aaommodarion to persons of one sex (Prior code 5 198.7EM.l; .h~end Coun. J. 12-21-88, p. 23526)

#### 5-8-060 **Applicability.**

Any owner, lessee, sublessee, assignee, managing agent or other persoq firm or corporation having tie right ro sell. rent or lease any housing accomm~ciarion within the dry of Chicago who shaU exercise any funcnion ofselling, rencin~ king or subleasing 'any housing accommodation within the city of Cbi-ugo shall be dmed subject to all applicable provi-sions hereof- Any real estate broker who shall exmk any fun&on of a real eswe bmker within tie city of Chicago shall be subject to all applicable provisions hereof (Prior code 4 198.7B-5)

#### s&o70 **Complaint** procedure.

.tiy person aggrieved in any manner by any vio-liuion of this chanter may Ee a tirten compiainr with tie commission on human reladonr The com-&aim shall include the name and adk of the complainant and of every person against whom the 'complaint is made. and sbal.I se: out me f&s giving rise t.3 tie compkiinr No person shall ref&e or fail to comply with any subpoena order or decision issued in the course of or as a result of an i.nve5rig3tion of a complainr (Prior code 3 198.7E6; Added COUL 1. 3-21-90, p- 13523)

58-1.30 Severddity.

If ylll tioa, sukxhisioA w FL sentence or ckwse of ti ordinance is for an. --aon 10 be invalid or unconsrirurio~ such de&ion shall nor afkt any remaining potion, section or part rhere~i. (Prior code 5 198-S-II)

**5-8-130 Violation—Penalty.**

**Any** owner, kzssc subl~ assignee, maqing agent or other person, fir4 wqxrztrio~ or real essare bmker,whoshallvioiareor~~ocompiyPrith any of the provisions of &is ordinanc: shall be .punished by a fine in any sum not exce&ing

**1500.00. N0ch.i** ereip contied shall be con- trued so as LO prechd 'ny aggrieved person E-on puzuing suck other a.& hrtkr legal and guitable reiiief 10 which he may be entided (Prior code f 1 9 8 . 7 E i 2 )

s 1 4 0 **Notice of aYnvidon**

Tine corporation counsel shaU file witi the Dipannem of Professional Regxlation of the size of Illinois a notic2 of tie convicdon of any i.ic=nsed real esra~ broker'or salesprson found guilty of vie- king this chapter, (Prior code 4 198.7B-13; .hmmi Coun. J. Z-21-90,13523)

0000049

000419

(775 ILCS 5/7-106) (frk-'Ch. 68, par. 7-106)

Sec. 7-106. Recruitment; Research; Public Communication) For the purpose of promoting equal employment and housing opportunities and eliminating unlawful discrimination, sexual harassment in employment and sexual harassment in higher education, the Department shall have authority to:

(A) Recruitment. Cooperate with public and private organizations, as well as the Department of Central Management Services, in encouraging individuals in underrepresented classifications to seek employment in state government.

(B) Publications; Research. Issue publications, conduct research, and make surveys as it deems necessary.

(C) Public Hearings. Hold public hearings to obtain information from the general public on the effectiveness of the state's equal employment opportunity program and the protection against unlawful discrimination, sexual harassment in employment and sexual harassment in higher education afforded by this Act and to accept public recommendations concerning changes in the program and the Act for inclusion in its annual report.

(D) Promotion of Communication and Goodwill. Establish a program to cooperate with civic, religious and educational organizations in order to improve human communication and understanding, foster equal opportunities in employment and housing, and promote and encourage communication, goodwill and interfaith and interracial harmony.

(Source: P.A. 85-1229; 86-1343.)

Section 7-107 Advisory COUNCILS

(775 ILCS S/7-107)(from Ch. 68, par. 7-107)

Sec. 7-107. Advisory Councils. The Department shall have authority, as the need requires, to create local or statewide advisory councils to aid in effectuating the purposes of this

Act, to limit the duration of a council's existence, and to empower a council to:

(A) study. Study and report on problems of unlawful discrimination and equal employment opportunity.

(B) Goodwill. Foster through community effort or otherwise goodwill among the groups and segments of the population of Illinois.

(C) Recommendations. Make recommendations to the Department for the development of policies and practices that will aid in carrying out the purposes of this Act.

(D) support Services. Receive technical and clerical assistance and reimbursement of actual expenses from the Department.

(Source: P.A. 81-1216.)

Section 7-108 Local Departments Commissions

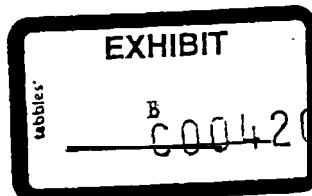
(775 ILCS S/7-108)(from Ch. 68, par. 7-108)

Sec. 7-108. Local Departments, Commissions.

(A) Authority. A political subdivision, or two or more political subdivisions acting jointly, may create a local department or commission as it or they see fit to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from unlawful discrimination, sexual harassment in employment and sexual harassment in higher education. The provisions of any ordinance enacted by any municipality or county which prohibits broader or different categories of discrimination than are prohibited by this Act are not invalidated or affected by this Act.

(B) Concurrent Jurisdiction. When the Department and a local department or commission have concurrent jurisdiction over a complaint, either may transfer the complaint to the other under regulations established by the Department.

(C) Exclusive Jurisdiction. When

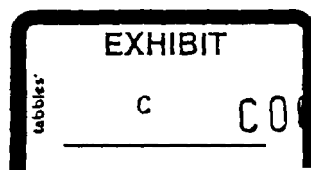


a  
i)

0  
,f l

Ill. Const Of 1970, art VII, 0 6 -

- (a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may *elect* by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.
- (b) A home rule unit by referendum may elect not to be a home rule unit.
- (c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.
- (d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.
- (e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.
- (f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.
- (g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.
- (h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (1) of this Section.
- (i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.
- (j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.
- (k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter



0000051

approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(L) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

0000052

C00472

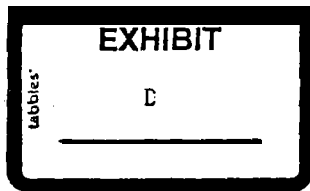
0 ! ,

a ('

Z-160-090 Violation - Investigation by Commission on Human Relations - Prosecution.

The Chicago Commission on Human Relations shall receive and investigate complaints of violations of this chapter, except where such duty is modified by intergovernmental agreement, and shall prepare and provide necessary forms for such complaints: No person shall refuse or fail to comply with any subpoena, order or decision issued in the course of or, as a result of an investigation.

-L  
,



000423

0000053

Z-120-510 Powers and Duties.

The Commission shall have the following powers and duties, in addition to those assigned by other provisions of the Municipal Code:

(a) To advise and consult with the mayor and the City Council on all matters involving prejudice or discrimination based on race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income or professional training or education from an accredited institution and recommend such legislative action as it may deem appropriate to effectuate the policy of this ordinance;

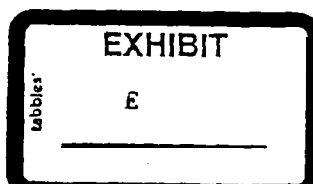
(b) To cooperate with the mayor, the City Council, officials, departments and agencies of the city government in securing equality of services to all citizens, and where the need is greater, in meeting that need with additional stices;

(c) To develop and implement programs to train city employees in methods of deahng with intergroup relations, in order to develop respect for equal rights and to achieve equality of keament regardless of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, milita.ry discharge status or source of income;

(d) To require the assistance of the various departments and agencies of the city government in identifying and eliminating dis&minatory activities. The head of every city depart-ment and agency shall provide to the Commission, at its request, information under control of the depaxknent or agency and relating to a pending complaint or matter under review by the Commission. Upon receipt of a recommendation from the Commission, the head of every depart-ment or agency shall submit to the Commission a written report indicating action on and disposition of the recommendation;

(e) To initiate, receive and investigate complaints of alleged violations of Chapters 2-160 and 5-8 of the Municipal Code. A complaint must be filed no later than 180 days after the alleged violation. The person against whom a complaint is made shall be given a copy thereof within 10 days after it is filed, and shall be allowed to be present and offer a defense at any hearing thereon. Any person who files a complaint or against whom a complaint is made may be represented by counsel at any stage of conciliation, investigation or hearing on the complaint. The.filing of a complaint pursuant to this section does not bar any person from seeking any other remedy that may be provided by law, except that in certain instances one or more intergovernmental agreements may specify before which governmental -agency or court a person may pursue his or her .complaint;

(f) To investigate complaints in order to determine whether there is substantial evidence that a violation of Chapter 2-160 or 5-8 has occurred, except where such complaints are handled by another governmental agency pursuant to an intergovernmental agreement, as authorized in subsection (q) below. The investigation shall be completed within 180 days



000424

0000054

after receipt of the complaint, unless it is impractical to do so within that time. Within 30 days after completion of the investigation, the Commission shall issue a written determination whether there is substantial evidence that a violation has occurred. If the Commission determines that there is not substantial evidence, it shall give written notification of the determination to the charging party and the person against whom the complaint was made. Neither the Commission nor its staff shall disclose, other than at a hearing as provided in subsection (g), any information obtained in the course of investigation or conciliation, except where otherwise required by law or intergovernmental agreement;

(g) To conduct hearings on complaints under subsection (e) of this section, if the Commission determines that there is substantial evidence that a violation has occurred. Hearings may be conducted by the Commission, a member thereof; or a hearing officer appointed for that purpose. A hearing must be commenced within 90 days after the determination of substantial evidence that a violation has occurred. All testimony shall be under oath, and shall be either recorded or transcribed;

(h) To appoint one or more hearing officers to conduct hearings authorized by subsection (g) of this section;

(i) To expedite proceedings under this section under the following circumstances. The Commission at the request of the complainant may at any time consider a request for expedited proceedings. If the Commission determines that the complainant is likely to die before the termination of the proceedings established in this section, it may order the proceedings expedited. When an order for expedited proceedings is issued, the processing of the complainant's charge by the Commission shall take precedence over all matters except other matters of the same expedite character. Where such order is issued, the Commission, or any hearing officer shall be authorized to shorten any time period, other than the 180 day charge filing period set by this act or by rule;

(j) To attempt to settle or adjust any complaint by conciliation at any time that the complaint is pending;

(k) To issue subpoena for the appearance of witnesses, the production of evidence, or both, in the course of investigations and hearings authorized under this section, if there is reason to believe that a violation has occurred and the testimony of the witness or the documents or items sought by the subpoena are relevant to the investigation. A subpoena shall be served in the same manner as subpoenas issued under the Rules of the Illinois Supreme Court to compel appearance of a deponent and subject to the same witness and mileage fees fixed by law for such subpoenas. A subpoena issued under this section shall identify the person to whom it is directed and the documents or other items sought thereby, if any, and the date, time and place for the appearance of the witness and production of the documents or other items described in the subpoena. In no event shall the date for examination or production be less than seven days after service of the subpoena. No later than the time for appearance or production required by the subpoena, the person to whom the subpoena is directed may object to the subpoena, in whole or in

i

00000SS

Coo42S

part. The objection shall be in writing, delivered to the Commission, and shall specify the grounds for the objection. For seven days after receipt of a timely objection to a subpoena, the Commission shall take no action to enforce the subpoena or to initiate prosecution of the person to whom the subpoena is directed. During this seven-day period the Commission, or the member or hearing officer conducting the hearing or investigation, shall consider the grounds for the objection and may attempt to resolve the objection through negotiation with the person to whom the subpoena is directed. The seven-day period may be extended by the Commission, the member or hearing officer conducting the hearing or investigation, in order to allow completion of any negotiations. The extension shall be in writing addressed to the person to whom the subpoena is directed, and shall specify the date on which the negotiation period will end. Negotiations may include such matters as the scope of the subpoena and the time, place and manner of response thereto. The filing of an objection to a subpoena, and negotiations pursuant to an objection, shall not constitute refusal to comply with the subpoena, or interference with or obstruction of an investigation.

Notwithstanding anything to the contrary contained herein, the Commission on Human Relations shall have no power or authority over any member of the City Council, any employee or staff person of any member of the City Council or any employee or staff person of any City Council committee, including, but not limited to the power of subpoena;

(1) To render a decision upon the conclusion of a hearing, or upon receipt of a hearing officer's recommendation at the conclusion of a hearing, including findings of fact relating to the complaint, and to order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to an order: to cease the illegal conduct complained of; to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; to hire, reinstate or upgrade the complainant with or without back pay or provide such tige benefits as the complainant may have been denied; to admit the complainant to a public accommodation; to extend to the complainant the till and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent; to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees, and duplicating costs, incurred in pursuing the complaint before the Commission or at any stage of judicial review; to take such action as may be necessary to make the individual complainant whole, including, but not limited to; awards of interest on the complainant's actual damages and backpay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violation of provisions of Chapters 2-1 60 and 5-8. If the hearing was conducted by a member of the Commission or by a hearing officer, the member or hearing officer shall submit written recommendations to the Commission, including recommended findings of fact and recommended relief. The Commission may adoptf reject or modify the recommendations, in whole or in part, or may remand for additional hearing on some or all of the issues presented. The Commission shall adopt the &dings of fact recommended by a hearing officer or Commission member if the recommended tidings are not contrary to the evidence presented at the hearing. Decisions of the

**000056**

C00426

Commission shall be in writing, and must be approved by a majority of the quorum of the Commission. Decisions of the Commission shall be subject to review in accordance with applicable law;

(m) To seek judicial enforcement of its subpoenas, orders and decisions;

(n) To render an annual report of the activities of the Commission and its advisory councils and make recommendations to the mayor and City Council. The report shall be published;

(o) To assist and advise the advisory councils in preparation of their respective rules of procedure for their meetings. Such procedural rules of the advisory councils shall be uniform to the extent practicable;

@) To issue such other rules and regulations as may be necessary to implement its powers, including rules for briefing and oral argument in conjunction with hearings, defaulting of parties and dismissal of complaints for failure of a party to cooperate with the Commission.

(s) To enter into intergovernmental agreements with any or all of the Cook County, State of Illinois and United States governmental entities which administer and enforce laws similar to the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance, for the purpose of more efficiently and effectively carrying out the goals of those ordinances. Such agreements may allow the Commission to transfer or coordinate the investigation of complaints filed with the Commission, and/or to decline jurisdiction, to defer the exercise of jurisdiction, or to dismiss a case which is proceeding in an alternate forum. The rights of persons to proceed under the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance shall be governed by any such intergovernmental agreements, but in no event may the Commission refuse to exercise jurisdiction where the complaint cannot be redressed in an alternate forum.

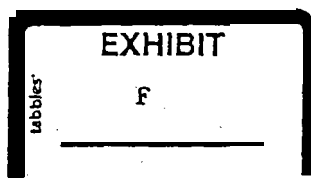
0000057

C00427

56 IL ADC 5300.765

5300.765 Petitions for Fees and/or Costs

- a) Within 21 days after the service of a Recommended Liability Determination pursuant to Section 5300.760(e)(1) or (e)(2) of this Part or pursuant to an Order entered after a hearing by the selected Administrative Law Judge in a case proceeding under the alternative hearing procedure, the Party or Parties designated therein may file with the Administrative Law Judge a petition for fees and/or costs, supported by argument and affidavits. Such supporting documentation shall include the following:
- 1) The number of hours for which compensation is sought, itemized according to the work that was performed, the date upon which the work was performed and the individual who performed such work;
  - 2) The hourly rate customarily charged by each individual for whom compensation is sought and appropriate documentary support for such claimed rate. In the case of a public law office which does not charge fees, or which charges fees at less than market rate, counsel may provide documentation of the rate prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise;
  - 3) Other factors that affect the computation of fees or costs, as determined by the courts of Illinois and the decisions of the Commission; and
  - 4) Documentation of costs for which the Party seeks reimbursement.
- b) Copies of such petitions and supporting documents shall be served by the petitioning Party on all other Parties at the time of filing with the Administrative Law Judge, and proof of service shall be provided. Neither fees nor costs will be awarded in the absence of proper petition therefor.
- c) Within 21 days after the service of the petition for an award of attorney's fees and/or costs, all other Parties may file written objections to the petition. Copies of such objections shall be served on all other Parties at the time of filing with the Administrative Law Judge, and proof of service shall be provided. Failure to file such objections shall be deemed a waiver of any objections to the award of fees. No reply in support of the petition or in response to objections may be filed except upon leave granted by the Administrative Law Judge upon motion and good cause shown.
- d) A Party may request additional time to file a pleading governed by this Section by written motion filed with the Administrative Law Judge stating the *reasons* therefor. Copies thereof shall be served at the same time on all other Parties. Such requests for extension of time shall be granted where good cause is shown.
- e) The Administrative Law Judge may convene a hearing to resolve contested issues and may take other steps to produce a complete record with regard to a claim for fees and/or costs.
- f) Following the submission of the petition for fees and/or costs and objections thereto and the completion of a hearing, if any, the Administrative Law Judge shall prepare a Recommended Order and Decision pursuant to Section 5300.760(f)(Z) of this Part or, in a case proceeding under the alternative hearing procedure, shall prepare a Final Order pursuant to Section 5300.762 of this Part.



000058

000428

(b) Whenever any Chicago Police officer has identified a victim of a possible hate crime committed within the City, the Chicago Police Department shall, to the extent known, supply the name, address and telephone number of the alleged victim to the chair of the Chicago Commission on Human Relations, together with other relevant information concerning the alleged crime.

The Police Department shall also, on at least a monthly basis, prepare a statistical summary concerning all criminal acts and ordinance violations committed within the City of Chicago during the previous month that are believed to be hate crimes. A copy of this summary shall be forwarded to the Chicago Commission on Human Relations. This summary shall be in a form approved by the Police Department and the chair of the Chicago Commission on Human Relations.

(c) Whenever the Chicago Police Department has provided information concerning a victim of a possible hate crime to the chair of the Chicago Commission on Human Relations, either the chair or a person designated by him shall make reasonable efforts to contact the victim for the purpose of offering to help the victim with the Police Department, prosecutors and any other interested agencies.

(d) The Chicago Police Department shall train both full-time and part-time new recruits and veteran personnel on an ongoing basis on the subject of hate crimes.

(e) The chair of the Chicago Commission on Human Relations shall keep statistics on hate crimes to determine if such crimes are part of a pattern or if, due to hate or hate-based tensions in the area where the crime was committed, further hate crimes or escalations of tensions are likely to occur if remedial action is not taken. The chair shall present the findings of his report to the Chicago Police Department.

(f) Upon recommendation of the chair, the Chicago Commission on Human Relations may call a hearing to address only perceived patterns of hate crimes or hate-based tensions. The Commission may employ a hearing examiner and other employees necessary for such purpose. For the purpose of such hearing, the Commission on Human Relations may:

(1) Receive evidence and hear testimony related to patterns of hate crimes and hate-based tensions; provided, however, that the Commission will not invite or suggest the attendance of a victim of or a witness to any matter in which there is an ongoing criminal investigation or prosecution, including any appeal or retrial;

(2) Issue and enforce subpoenas pursuant to Section 2-120-510 of this code to compel the attendance of witnesses and the production of evidence relevant to the matter in question; provided, however, that no subpoena shall be issued to compel the attendance of a victim of or witness to any matter in which there is an ongoing criminal investigation or prosecution, including any appeal or retrial;

(3) Issue findings and recommendations concerning ways in which hate crimes and hate-based tensions can be reduced in the affected area.

The Commission on Human Relations shall conduct such a hearing and issue and enforce any subpoena, in a manner that will avoid interference with any ongoing criminal investigation or prosecution.

(g) The Chicago Commission on Human Relations is hereby authorized to develop and initiate educational and other programs designed to reduce hate-based tensions and the incidence of hate crimes, either in particular areas or on a citywide basis.

## HUMAN RIGHTS ORDINANCE

### 2-160-010 Declaration of City Policy

It is the policy of the City of Chicago to assure that all persons within its jurisdiction shall have equal access to public services and shall be protected in the enjoyment of civil rights, and to promote mutual understanding and respect among all who live and work within this City.

The City Council of the City of Chicago hereby declares and affirms:

That prejudice, intolerance, bigotry and discrimination occasioned thereby threaten the rights and proper privileges of the City's inhabitants and menace the institutions and foundation of a free and democratic society; and

That behavior which denies equal treatment to any individual because of his or her race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income undermines civil order and deprives persons of the benefits of a free and open society.

Nothing in this ordinance shall be construed as supporting or advocating any particular lifestyle or religious view. To the contrary, it is the intention of this ordinance that all persons be treated fairly and equally and it is the express intent of this ordinance to guarantee to all of our citizens fair and equal treatment under law.

### 2-160-020 Definitions

Whenever used in this chapter:

(a) "Age" means chronological age of not less than 40 years.

(b) "Credit transaction" means the grant, denial, extension or termination of credit to an individual.

(c) "Disability" means:

(i) A determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder including, but not limited to, a determinable physical characteristic which necessitates a person's use of a guide, hearing or support dog; or

(ii) The history of such a characteristic; or

(iii) The perception of such a characteristic by the person complained against.

(d) "Employee" means an individual who is engaged to work in the City of Chicago for or under the direction and control of another for monetary or other valuable consideration.

(e) "Employment agency" means a person that undertakes to procure employee or opportunities to work for potential employees, either through interviews, referrals, advertising or any combination thereof.

(f) "Marital status" means the legal status of being single, married, divorced, separated or widowed.

(g) "Military discharge status" means the fact of discharge from military status and the reasons for such discharge.

(h) "Parental status" means the status of living with one or more dependent minor or disabled children.

(i) "Public accommodation" means a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public, regardless of ownership or operation (i) by a public body or agency; (ii) for or without regard to profit; or (iii) for a fee or not for a fee. An institution, club, association or other place of accommodation which has more than 400 members, and provides regular meal service and regularly receives payment for dues, fees, accommodations, facilities or services from or on behalf of nonmembers for the furtherance of trade or business shall be considered a place of public accommodation for purposes of this chapter.

(j) "Religion" means all aspects of religious observance and practice, as well as belief, except that with respect to employers "religion" has the meaning ascribed to it in Section 2-160-050.

(k) "Sexual orientation" means the actual or perceived state of heterosexuality, homosexuality or bisexuality.

(l) "Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision

affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(m) "Source of income" means the lawful manner by which an individual supports himself and his or her dependents

090  
**2-160-030 Discriminatory Practices—Employment**

No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income. No employment agency shall directly or indirectly discriminate against any individual in classification, processing, referral or recommendation for employment because of the individual's race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income. The prohibitions contained in this paragraph shall not apply to any of the following:

- (a) Use of an individual's unfavorable discharge from military service as a valid employment criterion where (i) authorized by federal law or regulation; or (ii) where the affected position of employment involves the exercise of fiduciary responsibilities and the reasons for the dishonorable discharge related to his or her fiduciary capacity;
- (b) Hiring or selecting between individuals for bona fide occupational qualifications;
- (c) Giving preferential treatment to veterans and their relatives as required by federal or state law or regulation.

**2-160-040 Sexual Harassment**

No employer, employee, agent of an employer, employment agency or labor organization shall engage in sexual harassment. An employer shall be liable for sexual harassment by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

**2-160-050 Religious Beliefs and Practices**

No employer shall refuse to make all reasonable efforts to accommodate the religious beliefs, observances and practices of employees or prospective employees unless the employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Reasonable efforts to accommodate include, but are not limited to allowing an employee: (i) to take a day of paid leave or vacation, where applicable under the

**2-160-020 Definitions.**

Whenever used in this chapter:

- (a) "Age" means chronological age of not less than 40 years.
- (b) "Credit transaction" means the grant, denial, extension or termination of credit to an individual.
- (c) "Disability" means:
  - (i) a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder including, but not limited to, a determinable physical characteristic which necessitates a persons's use of a guide, hearing or support dog; or
  - (ii) the history of such a characteristic; or
  - (iii) the perception of such a characteristic by the person complained against.
- (4) "Employee" means an individual who is engaged to work in the City of Chicago for or under the direction and control of another for monetary or other valuable consideration.
- (e) "Employment agency" means a person that undertakes to procure employees or opportunities to work for potential employees, either through interviews, referrals, advertising or any combination thereof.
- (f) "Gender identity" means the actual or perceived appearance, expression, identity or behavior, of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (g) "Marital status" means the legal status of being single, married, divorced, separated or widowed.
- U-4 "Military discharge status" means the fact of discharge from military status and the reasons for such discharge.
- N "Parental status" means the status of living with one or more dependent minor or disabled children.
  - (i) "Public accommodation" means a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public, regardless of ownership or operation (i) by a public body or agency; (ii) for or without regard to profit; or (iii) for a fee or not for a fee. An institution, club, association or other place of accommodation which has more than 400 members, and provides regular meal service and regularly receives payment for dues, fees, accommodations, facilities or services from or on behalf of nonmembers for the furtherance of trade or business shall be considered a place of public accommodation for purposes of this chapter.
- (k) "Religion" means all aspects of religious observance and practice, as well as belief, except that with respect to employers "religion" has the meaning ascribed to it in Section 2-1 60-050.
- o) "Sexual orientation" means the actual or perceived state of heterosexuality, homosexuality or bisexuality.
- (m) "Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- (n) "Source of income" means the lawful manner by which an individual supports himself and his or her dependents.

0000061

0

0

(Prior code Ej 199-Z; Added Coun. J. 12-21-88, p. 23526; Amend Coun. J. 1 I-6-02, p. 96031, § 3)

000062

STATE OF ILLINOIS )

COUNTY OF COOK )  
1 ss

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY  
DEPARTMENT-CHANCERY DIVISION

JULIO GODINEZ -and CARLO  
GODINEZ, )  
Plaintiffs, ) No. 01CH 19272

1

vs )

9

JUNE SULLIVAN-LACEKY and )  
CITY OF CHICAGO COMMISSION OF )  
HUMAN RELATIONS, )

10

Defendants. )

11

12

REPORT OF PROCEEDINGS, had at the hearing  
of the above-entitled cause before the Honorable  
EERNETTA BUSH, one of the Judges of said Court, on  
the 17th day of June, 2002.

15

PRESENT: *Graham* *D.G. 9/17/02*  
MR. DOUGLAS W  
Appeared on behalf of the Plaintiff.

16

17

18

*J. Damian*

MR. BRIAN NOLAN,  
~~MR. LAY~~ ORTIZ,

19

*D.G. 9/17/02*

MR. ALEXANDER TESIS,  
Appeared on behalf of the Defendants.

20

21

Rachel Smith  
Official Court Reporter  
Chancery Division

23

24

Godinez vs City of Chicago Commission

MR. GRANT: <sup>20091A</sup> Douglass? I represent  
Petitioner. This is 01 CH 19272.

MR. NOLAN: Brian Nolan on behalf of Responden:,  
law school graduate, licensed under Section 71.  
Supervising attorney is <sup>J3?sky</sup> Jq, wOrtiz. <sup>20091A</sup>

MR. TESIS: Alexander T-s-e-s-i-s .pn behalf of  
the Chicago Commission on Human Relations.

THE COURT: I am ready to hear argument on this.  
It was an interesting case

<sup>Graham 20091A</sup>  
MR. GRANT: May it please the Court, I am going  
to be very brief. We had a trial, in fact we're  
pretty straight forward. Very little in fact, there  
is really no fact issues at all, but what we have  
here is a question of law and what I am urging in at  
least\* a part of my approach to this/is that any  
court system that the City has is not  
constitutionally sustainable. They have set up a  
system to award civil damages under certain  
situations and they awarded civil damages in this  
case. Now, I have no quarrel with the City doing  
what it can to stop discrimination and housing  
discrimination. It is a worthy goal, your Honor, but

what they have here is not something sustainable under the law. They have no ordinance. They have no statute to work under.

What they have done is they are using a decision of their Commission on Human Relations as if there were an order and that decision says that if you are a landowner, renting housing and you're.. approached by someone that had a Section 8 subsidy, you have a duty to go get yourself or at least apply for Section 8 participation with the federal government. Since this mandate is only a subsentence in some administrative decision, it is not widely known and I had no idea it was even in there until I read the briefs when we were trying to -- trying this case in, the ~ ~ ; ~ he dc: \$ ? % \$ on, so I am suggesting first of all, we do not have a proper mandate here under which the -- to hold these people liable. I think this case would be a good test of this issue here and in the Appellate Court, except for the fact that we just certainly do not have discrimination in the first place.

The lady came to us, wanted to rent an apartment and we told her that rent was \$600 and we said, 'how are you going to pay the rent?' /she said,

1 well, I have Section 8 subsidy.\*..-We said\*we are not  
L.'  
2 Section 8 qualified: If you would like to, we would  
3 be glad to have you at the \$600, and they almost had  
4 a deal. Her Section 8 subsidy was running out. She  
5 had 17 days to find a Section 8 place. She had not  
6 been able to do so up to that point, so she was  
7 seriously considering paying the \$600. She wanted to  
8 live there because her daughter already lives there,  
9 and she, during the day, she would watch her  
10 daughters children. That was so her daughter could  
11 work. It would have been a good arrangement for her  
12 and my people wanted to have her in, but they were  
13 not Section 8 qualified and they had no idea  
14 wha.tsoever that they were -- had some '  
15 requirement to go out and get it. They do not want  
16 to be Section 8 qualified, your Honor, because if you  
17 are under <sup>the</sup> Section 8 program, they regulate your rent,  
18 they inspect your property, and they make you do  
19 things on your property that you may Or may not want  
20 to do. In fact this is<sup>a</sup> & <sup>i</sup> this lady was looking for  
21 another apartment, because her last place was Section  
22 8 qualified and they lost the Section 8  
23 qualification.

24 There is no discrimination here. That is

going to be I think evidenced when, I am assuming you have read this,

THE COURT: That is a correct assumption.

MR. GRANT: All right, so I think that is really about all I have to say.

THE COURT: All right. Counsel?

MR. NOLAN: First I would like to point out the standard review, where the administrative authority's ruling was against the manifest weight of the evidence, arbitrary and without cause, clear abuse and discretion. With that in mind, there is no review of the evidence or assessment of credibility, to find some confusion except what is true and correct. If there is any evidence supporting the Commission's other ruling, it is not the manifest weight of the evidence.

Beginning with the claim of discrimination, the thrust of Petitioner's claim is there is no duty for a landlord and owner to seek certification to participate in the Section 8 program. And if you -- as you have seen in Smith vs Woodchild, Smith v. Woodchild, it is the same thing. That the -- it is a voluntary federal program. The city and the state and local

1 organizations can compel or require that the owner at  
 2 least apply to get Section 8 certificatiofi, otherwise  
 3 the entire scheme would be a dead letter.

4 There is nothing that the Commission CHAC J.D.O. G.N.T.  
 5 imposes on Petitioner as, far as who they can or  
 6 cannot admit, so once the owner finds a plausible  
 7 tenant that is approvable and there is an open unit,  
 8 the tenant will have moving papers -as they're called  
 9 that the owner Will fill out basically the location  
 113 and a-n affidavit saying they own the building. That

114 is forwarded on to the Commission CHAC J.D.O. G.N.T.

115 The Commission CHAC J.D.O. G.N.T. then calls and-schedules  
 13 an inspection.

14 The inspection is simply to make sure  
 15 that it is habitable. It is not any kind of high  
 16 level inspection. Even in -- the unit is left empty  
 17 for a few months while inspection is going on. The  
 18 Commission CHAC J.D.O. G.N.T. will even back pay the rent to the time  
 19 while it was left vacant while being inspected. once

20 that is done the owner signs the contract with the  
 21 Commission CHAC J.D.O. G.N.T. which is no longer than the lease would be  
 22 with the tenant. It is a one-year contract saying  
 23 that they will abide by the rules with the tenant in  
 24 the lease, and that is the extent of the inspection

0

0

{

r

1 and the whole process.

As the cases point out, all the owner must do is just apply, a matter of filling out paperwork and sending it out. That is the only action it must take otherwise, they are discriminating unlawfully on this.

As far as the Commission's ability to award civil damages, the Illinois Human Rights Act which is cited in both briefs I believe, gives political subdivisions the same powers held by state commissions, and as that act was interpreted, it gives municipalities the authority to set up their own administrative law tribunals and award civil damages and attorneys fees. Beyond that, there's not much issue as to the authority of the Commission to award civil damages.

17 THE COURT: Anything else?,

18 MR. NOLAN: Once you concede the fact that the  
19 Commission has the authority to award damages and  
20 there was discrimination based on the facts that the  
21 complainant or tenant wanted to use Section 8  
22 certificates, there really is no issue in the  
23 administrative ruling is clearly supportable by the  
24 facts.

000013

0000069

0

0

1 /

1

THE COURT: All right.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

MR. TESIS: Your Honor, if I may just very briefly, judge, just very quickly the -- as to the constitutionality of awarding civil damages and the constitutionality of this administrative body that we have and the Commission on Human Relations, essentially Counsel is asking this Court to overturn a very longstanding precedent. There was a case from the Illinois Supreme Court, City of Waukegan which clearly says that administrative agencies are allowed to rule on civil damages, furthermore, the Illinois Statute 775 ILCS 5 7108 gives the powers to a ~%%\$Ju?~"!!\$\$\$\$is what the City is, the power to create such agencies to improve the quality of life, to make sure people have some sort of redress. Otherwise it becomes absurd. We can take a penalty, the maximum is \$500 but what about the aggrieved person?, We are not the only party that deserves something if there is discrimination. It is constitutional. It is something that protects human rights and we would pray that the Court finds that our procedures are constitutional.

&dI-Ak

*Handwritten signature*

MR. - : Could I make just a couple of

comments?

1 THE COURT: Sure.

2 MR. ~~GRANT~~ <sup>Graham JDO JVA</sup>: Well first of all, you heard a  
3 description of the nature of the inspection process  
4 and the nature of the rent control process. There is  
5 nothing about that in the hearing. All those  
6 comments were totally off the record. Now, they may  
7 be true, I don't know. I have no way of verifying  
8 that. I don't know what the answer is. I don't know  
9 how onerous the process is. I know it's onerous  
10 enough that this lady's previous landlord was unable  
11 to get himself certified. That is why she was in the  
12 housing market.

13 The other comment is that the City of  
14 Waukegan involves a fine and we do not quarrel with  
15 the ability of a municipality to use a fine as civil  
16 penalties. I mean that has been going on for 100  
17 years or more, but just to say as Counsel did, that  
18 there are individuals out there that need redress,  
19 it's not enough to say that to increase the power of  
20 municipalities, to give them the right to hear a  
21 civil case, award judgment against each other. That  
22 power is simply not included'. It can be included  
23 under some circumstances in some limited ways, but it  
24 is to be expressly spelled out, that is what the case

000015 0000071

law says. Here there is no statute, there is no spelling out of powers to award civil judgements, one party 'against another, such as what happened. on this case so we suggest to you the whole process is <sup>infirm DG. JNH</sup> ~~unaffirmed~~ on a constitutional basis.

THE COURT: All right.

MR. NOLAN: Your Honor, as far as the inspection process goes, there is the pamphlet, the Guide to the CHAC <sup>JNH</sup> ~~Commissions~~ Section 8 Process and the Petitioner had expert testimony also on that inspection process so it was part of the record,

THE COURT: What if they go through the process and they are found not to be qualified for Section a, what are they required to do?

MR. NOLAN: Nothing, your Honor.

THE COURT: So say for instance, they apply, the CHAC <sup>JNH</sup> ~~Commission~~ came out and inspected and found that their house would not meet their standard, the landlord is not compelled to bring his house up to standard for Section 83

MR. NOLAN: No, your Honor.

THE COURT: All right. I wanted to be clear on that.

<sup>Graham JNH</sup> MR. ~~Grant~~: There is nothing in this that says

000015 0000072

0

c -

tk3t

1 tk3t  
2 THE COURT: I wanted to know.

3 MR. ORTIZ: It is not the commission. It  
4 CHAC, independent from the Commission.

5 THE COURT: All right. I looked at this issue  
i in the City of Chicago. This is a compelling issue.  
I mean, with the reduction of public housing and the  
6 removal of persons from public housing the necessity  
7 for Section 8 has certainly become a compelling kind  
8 of thing for low income persons in the city of  
9 Chicago. I am extremely sensitive to that-; however,  
10 on the other hand, I also must look at what the law  
11 requires and I think you're absolutely correct that,  
12 in this case, that I don't believe this is a question  
13 of fact so it is not necessary for me to substitute  
14 my judgement or do a rehashing of the facts in this  
15 case in order to make a determination in this matter.

i a  
16 When I reviewed this matter I certainly  
17 went back, looked at all Commission cases and it  
18 seems that the Commission has been consistent in it's  
19 ruling regarding these issues In terms of how they  
20 view what is before it and what their authority is.  
21 There are 2 things that stuck out -- stuck out in my  
22 mind, requiring me to do an analysis.  
23  
24

0000073

000017

1 First of all, I do believe that the city  
 2 can -- has the authority to compel persons to seek  
 3 out ( to make a mandatory requirement that when a  
 4 landlord receives a certificate regarding Section 8,  
 5 they must go and respond to it, however I don't think  
 6 the ordinance directs them, I don't think the  
 7 ordinance says that. So I believe that the ordinance  
 8 is vague on that question, I believe the city has the  
 9 power. I do not believe this particular ordinance or  
 10 what is it, is it an ordinance or is it,

11 MR. ~~ORTIZ~~ <sup>Graham</sup> *J.P.O. J.N.H.*: They are relying on just the  
 12 Commission's decision.

13 MR. ORTIZ: <sup>And J.P.O. J.N.H.</sup> It is the city of Chicago's ordinance.

14 THE COURT: Ordinance. The Commission has  
 15 interpreted the ordinance and my review of the  
 16 ordinance indicates the ordinance does not make this  
 17 a mandatory process. Secondly, in looking at the  
 18 cases that were provided, particularly the Wisconsin  
 19 case, where the 7th Circuit Court considers the  
 20 statute, or the ordinance, or the statute is  
 21 similarly worded to this case. I read the analysis  
 22 of both Petitioner and the Respondent in this case.  
 23 In attempting to, distinguish the statutes, indicated  
 24 that the statute gave examples of the kinds of things

000018

0000074

7 that were included as sources of income. I believe  
that this statute is very similar to that statute and  
I do not **believe** that under the ruling of the 7th  
Circuit, **that** the voucher is considered a source of  
income.

I am not going to reach a decision  
whether the Commission had a right to impose  
t sanctions in this matter. I believe under their  
reading of the law that they have. I am not going to  
1c make a determination on that. I am going to find --  
11 I am going to overturn the ruling of the Commission  
12 based upon Number 1, I think that the statute does  
13 not specifically provide for relief, specifically,  
14 provides for relief that it is mandatory for a  
15 landlord to once, they receive a Section 8 voucher,  
16 they must comply. In looking at the cases that were  
17 cited, even in the Commission's own finding, the  
18 times they made it mandatory the person -- the  
19 persons who had the certification I believe that was  
20 the -- I can't remember the name of the case, but the  
21 gentleman who refused was previously Section 8  
22 qualified and he said he wanted to get out of the  
23 business -- I don't remember the name of the case, he  
24 wanted to get out of the business of taking Section 8

C00019

0000075

1 housing, therefore he refused to accept certification  
2 and the Commission found that he had a duty to accept  
3 this certificate. I think this case is different  
4 from that and for those reasons I don't think the  
5 city -- the ordinance directs the landlord once they  
6 present the Section 8, certificate to -- they have to  
7 go and apply for Section 8.

9 Section 8 is a voluntary program. I  
10 believe the City has the authority to do that, and I  
11 ; ; griJd" ordinance -- secondarily, under  
12 do not believe that the Section 8  
13 certificate is a source of income. This statute is  
14 similar to the statute that was articulated in the  
15 Wisconsin case and I do not believe that the argument  
16 by the Respondent distinguishing the cases are strong  
17 enough to override the clear language of the analysis  
18 given by the 7th Circuit in this particular case, so  
19 for those reasons I am going to overturn the decision  
20 of the commission. I think this is an excellent case  
21 Ear you to present to the Appellate Court and I think  
22 that given the -- I think it is something that needs  
23 to be clarified. I really do. I think that this is  
24 like a very needed area and I think that the -- in  
particular given the nature of these circumstances,

1 this is something that we are going to need to get a  
 2 definitive ruling on fromr\=he Appellate Court. That  
 3 is my ruling.

*Handwritten signature: JGD c/7 H*

4 &-CA rturr.  
 MR. GSBST: Thank you.

5  
6  
7  
8  
9  
10  
-11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
6  
s  
10  
11  
1  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF ILLINOIS )

COUNTY OF COOK            |        s s :  
                                  |

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS  
MUNICIPAL DEPARTMENT-CHANCERY DIVISION

I, Rachel N. Smith, Official Court Reporter  
of the Circuit Court of Cook County, Chancery  
Division, do hereby certify the hearing in the  
aforementioned cause; -that I thereafter caused the  
foregoing to be transcribed into typewriting, which I  
hereby certify to be a true and accurate transcript  
of the Report of Proceedings had before the Honorable  
BERNETTA BUSH, Judge-of said court.

*Rachel Smith*  
-----  
Official Court Reporter

Dated this 29th day of September, 2002

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Julio Gomez and Carlos Gomez

v.

No. 01 CH 19272

June E. Sullivan-Lackey et al

ENTERED

JUN 17 2002

8071

ORDER

JUDGE  
BERNETTA D. BUSH - 1587

This matter coming before the court for hearing and ruling, the court receiving briefs of counsel and hearing oral argument:

The court finds:

- ① The Chicago Ordinance do not provide an explicit requirement that landlords seek Section 8 certification despite the city's having the power and authority to do so
- ② Pursuant to Knapp v Eagle, 54 F3d 1272 this court finds that Section 8 benefits are not a "source of income" within the meaning of the Chicago anti-discrimination ordinance

IT IS ORDERED that the order of the Chicago Commission on Human Relations in this matter is reversed

Atty. No.: 64030

Name: Douglas W. Graham

Atty. for: Petitioners

Address: 29 S. LaSalle 330

City/State/Zip: Chicago 60603

Telephone: 312-236-2931

ENTER:

Bernetta D. Bush  
Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLIN- - - 0079

NJ

*file*

**APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
FROM THE CLRCUITCOURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CHANCERY DMSION**

JULIO GODINEZ AND CARLOS GODINEZ	)	Appeal from the
		Circuit Court of Cook County
Petitioners-Appellees,	>	Illinois, County Departmenf
	>	Chancery Division
vs.	>	
	>	No. 01 CH 19272
JUNE E. SULLIVAN-LACKEY AND	.I	
THE CHICAGO COMMISSION ON HUMAN	j	The Honorable
RELATIONS	>	<b>Bernetta D. Bush</b>
		Judge Presiding.
Respondents-Appellants.	)	

NOTICE OF APPEAL

**FILED'**

An appeal is taken Tom the Order of Judgment described below: JUL 1.6 N<sup>02</sup>

1. Names of Respondent-Appellant and addresses to which notices shall be sent:

**ROTHY BROWN**  
CLERK OF CIRCUIT COURT

J. DAMIAN ORTIZ  
The John Marshall Law School  
Fair Housing Legal Chnic  
28 E. Jackson Boulevard., Suite 500  
Chicago, Illinois 60604

MARA S. GEORGES,  
COPORATION COUNSEL  
ALEXANDER TESIS,  
ASST.CORI? COUNSEL  
30 N. LaSalle Street, Rm 700  
Chicago, Illinois 60602

2. Names and address of Petitioners-Appellees's attorney:

FRED M. CAPLAN AND  
- DOUGLAS W. GRAHAM  
29 South LaSalle Street  
Suite 330  
Chicago, Illinois 60603

3. Respondent-Appellant June E. Sullivan Lackey, by her attorneys, J. Damian Ortiz and John Marshall Law School Fair Housing Legal Clinic, hereby appeals to the Appellate Court of Illinois, First Judicial Districf from the Order of the Circuit Court of Cook County, Illinois, entered June

0

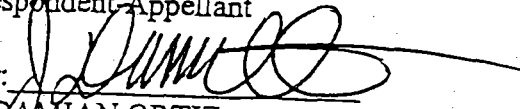
0

17,200i' reversing the order of the City of Chic&\$ Commission on Human Relations.

4. By this appeal, Respondent-Appellant, June E. Sullivan-Lackey will ask the appellate court to reverse the order of the circuit court, and grant such other relief as Respondent-Appellant June E. Sullivan-Lackey may be entitled to on this appeal.

Respectfully submitted,

June E. Sulliv&-Lackey  
Respondent-Appellant

By:   
J. DAMIAN ORTIZ  
ATTORNEY

John Marshall Law School Fair Housing Legal Clinic  
28 East Jackson Boulevard, Suite 500  
Chicago, Illinois 60604  
(3 12) 786-2267  
Attorney no.33789

C004550000081

Commission on Human Relations  
City of Chicago

● 1 IN THE MATTER OF  
WESLEY SMITH, DAVID TORRES, AND KIA WALKER, COMPLAINANTS  
AND  
WILMETTE REAL ESTATE & MANAGEMENT CO., RESPONDENT  
Case Nos. 95-H-159 and 98-H-44/63  
April 13, 1999

ORDER REGARDING RESPONDENT'S MOTION TO DISMISS

On December 14, 1995, Complainant Wesley Smith filed a Complaint with the Commission alleging that Respondent Wilmette Real Estate & Management Company ("Wilmette Real Estate") violated Section 5-08-030 of the City of Chicago's Fair Housing Ordinance by discriminating against him on the basis of his source of income when it denied him the opportunity to rent one of its apartments. Complainant David Torres (on March 27, 1998) and Complainant Xia Walker (on April 30, 1998) filed Complaints with the Commission similarly alleging that Wilmette Real Estate discriminated against them based on their source of **income when it** denied them an opportunity to rent two of its apartments. Specifically, Complainants allege that Respondent discriminated against them because they intended to make use of Section 8 housing vouchers to pay a portion of their rent. On June 11, 1998, the Commission entered an Order that "consolidated for all purposes" the cases of Complainants Smith, Torres, and Walker. On that same date, the Commission determined that there is substantial evidence to support **Complainants'** claims that Respondent discriminated against them based on their source of income.

On November 6, 1998, Respondent filed a motion to dismiss the Complaints of the three Complainants. In its motion, Respondent asserts that Complainants lack standing to sue under the Chicago Fair Housing Ordinance ("Ordinance"), that the Ordinance is preempted by federal law, and that the enforcement of the Ordinance would violate Respondent's rights under the United States Constitution. On December 7, 1998, Complainants Torres and Walker filed a response to Respondent's motion to dismiss. [FNI] On **January 15, 1999**, Respondent filed a reply in support of its motion to dismiss. This matter is now ripe for decision. For the reasons stated in this Order, the Commission denies Respondent's motion to dismiss.

I. COMPLAINANTS' FACTUAL ALLEGATIONS

When ruling on a motion to dismiss, the Commission must take all of the Complaints, allegations, together with reasonable inferences drawn from them, as true. E.g., **Leadership Council for Metropolitan Open Communities v. Carstea & Berzava, Case No. 98-H-76, at 2 (Aug. 19, 1998)**(and cases cited therein). Furthermore, a Complaint should not be dismissed unless it appears beyond doubt that the Complainant can prove no set of facts in support of his claim that would entitle him to relief. Id. Complainants' factual allegations are as follows.

Complainant Wesley Smith is a disabled veteran who receives Social Security benefits, Veterans' Assistance benefits, and a Section 8 voucher. Smith Complaint, PI. In late November 1995, Mr. Smith went to Respondent's rental office and completed an Introduction Form that required him to disclose personal information, including his source of income. Id., p2. Respondent's representative told Mr. Smith

that Respondent was not accepting Section 8 applicants at that time and that he should come back in a few weeks. Id. In December 1995, Mr. Smith returned to Respondent's rental office and again tried to rent an apartment. Id., p3. Respondent's representative asked Mr. Smith how he was going to pay his rent, and he responded that he had a Section 8 voucher. Id., p4. Respondent's representative then told Mr. Smith that Respondent did not want any more Section 8 tenants and that she was going to try to get rid of the Section 8 tenants that Respondent had. Id., ps.

● 2 Complainant David Torres has a Section 8 voucher. Torres Complaint, pl. In March 1998, Mr. Torres saw an apartment advertised in the newspaper, and he called to make an appointment to view the apartment. Id., p3. Respondent's representative showed Mr. Torres two apartments; he decided to rent one of them. Id., p4. Respondent's representative then gave Mr. Torres an application. Id., p5. As he was completing the application, Mr. Torres mentioned to Respondent's representative that his rent would be paid by Section 8. Id. Respondent's representative then informed Mr. Torres that Respondent did not accept Section 8 vouchers. Id.

Complainant Kia Walker relies on Section 8 as a source of her income. Walker Complaint, pl. In January 1998, Ms. walker was out-looking for an apartment when she noticed a sign on a building indicating that a two-bedroom apartment was for rent. Id., p3. Ms. Walker went inside the building and spoke with the on-site property manager who indicated that there were apartments for rent. Id., ~4-5. The manager was going to show Walker a vacant unit when Ms. Walker mentioned that she was a Section 8 recipient. Id., p5. The manager then stated that Respondent did not accept Section 8, and he refused to show Ms. Walker any apartments. Id., p6.

## II. RESPONDENT'S ARGUMENTS FOR DISMISSAL

Respondent moves to dismiss Complainants' Complaints for three reasons. First, Respondent contends that Complainants lack standing to sue under the Fair Housing Ordinance because the basis upon which they alleged discrimination (i.e., their reliance on Section 8 vouchers) does not constitute a "source of income" within the meaning of the Ordinance. [FN21 Second, Respondent contends that the Ordinance is preempted by the United States Housing Act of 1937, 42 U.S.C. 5 1437f, to the extent that it mandates that landlords participate in the Section 8 program. Finally, Respondent contends that the enforcement of the Ordinance would violate its rights under the due process and takings clauses of the Fifth and Fourteenth Amendments to the United States Constitution. As shown below, Respondent's arguments are without merit.

## III. ANALYSIS

### A: Section 8 Funding Is A "Source of Income" Within the Meaning of the Fair Housing Ordinance

Pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. 5 1437f, the federal government provides assistance payments "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. 5 1437f(a). Complainants are participants in the Section 8 rental voucher program. Under the Section 8 voucher program, tenants pay in rent an amount not exceeding 30% of their adjusted income and the local public housing authority pays to the landlords the remainder of the market rent. 42 U.S.C. 5 1437f(o). Persons must apply and be deemed eligible by the state or local housing agency to participate in the Section 8 program. See 24 C.F.R. § 982.201-207; see also 24 C.F.R. § 982.4(b)(defining "Applicant").

• 3 Respondent moves for dismissal on the ground that Complainants' reliance on Section 8 funding does not constitute a "source of income" within the meaning of the Ordinance. In consideration of the language and purpose of the Ordinance and prior rulings of the Commission, the Commission finds that Respondent's argument is without merit.

1. The Language and Purpose of the Ordinance Support the Conclusion That Section 8 Funding Is a Protected Source of Income

In construing the Chicago Fair Housing Ordinance, the Commission must look first to its **language**, giving words their popular, ordinary and plain meaning unless othenvisedefined. *Tires v. North State Astor Lake Shore Drive Association et al.*, CCHR No. 95-H-17, at 3 (Aug. 30, 1995). Furthermore, as a remedial statute, the Ordinance is to be liberally construed in light of the City of Chicago's stated policy of "assur[ing] full and equal opportunity to all residents of the city to obtain fair and adequate housing for themselves and their families in the city of Chicago without discrimination against them." Chicago Municipal Code 75-08-010; *McClinton v. Antioch Haven Homes/Haynes*, CCHR No. 91-FHO-42-5627, at 18 (Feb. 26, 1992) ; see *People v. Chicago Title and Trust Co.*, 75 Ill.2d 479, 389 N.E.Zd 540, 546 (1979) ("The words of a statute must be read in light of the purposes it seeks to serve"). Finally, the Commission has "a duty to avoid a construction of the [Ordinance] that would defeat the [Ordinance's] purpose or yield an absurd or unjust result." In re: A-P., 179 Ill.2d 184, 688 N.E.Zd 642, 648 (1997).

Section S-08-030 of the Ordinance provides in pertinent part that:

It shall be an unfair housing practice and unlawful . . . :

A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago . . . predicated upon the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income of the prospective or actual buyer or tenant thereof.

(Emphasis added). The Chicago Human Rights Ordinance and the Commission's Regulations define the term "source of **income**" as "mean[ing] the lawful manner by which an individual supports himself or herself and his or her dependents." Chicago Municipal Code § 2-160-020(m) & 0 S-08-040; Regulation 100(32).

Respondent contends that the plain language of the Ordinance precludes a finding that Complainants' reliance on Section 8 rent subsidies is a nsource of income" because:

the use of Section 8 certificates and vouchers is not a manner by which the recipient supports himself or herself. Rather the Section 8 certificate or voucher is the manner by which the recipient is supported by the federal government. Respondent's Reply ("Reply"), at 6. Thus, under Respondent's theory, the Ordinance would exclude from its definition of "source of income" all governmental payments to an individual and govxnmental, payments made to third parties on an individual's behalf. Indeed, extending Respondent's theory to its logical conclusion, the Ordinance would exclude from a person's source of income any payments to the person from a third party that were not earned by the person. This is so because such payments would be the means by which the third party supported the person, and not the means by which the person supported him or herself. Thus, neither alimony payments nor payments from a trust fund, for example, would be sources of income for the recipient.

\*4 The Commission finds that Respondent's narrow interpretation of the Ordinance- is at odds with its plain language and purpose. The Ordinance's broad definition of

"source of income" refers to "the lawful manner" -- without any qualification -- by which an individual supports him- or herself. One "lawful manner" by which an individual can support him or herself is through reliance on governmental assistance of one form or another. There is no indication within the text of the Ordinance that the City of Chicago's City Council intended to exclude individuals who rely on government assistance from protection against "source of income" discrimination. The Commission is not at liberty to read into the Ordinance a restriction that was not intended by its drafters. See, e.i., *Nottage v. Jeka*, 172 Ill.2d 386, 667 N.E.2d 91, 93 (1996) ("courts should not, under the guise of statutory construction, add requirements or impose limitations that are inconsistent with the plain meaning of the enactment"). LPN31

2.The Commission Has Previously Held That Section 8 Funding and Other Forms of Governmental Assistance Are Protected Sources of Income

The Commission has on at least two occasions endorsed the legal theory that a complainant can prove source of income discrimination by showing that they were denied a rental opportunity because they intended to make use of Section 8 funding. See *Huff v. American Management & Rental Service*, CCHR No. 97-H-187, at 5 (Jan. 20, 1999); *McGee v. Sims*, 94-H-131, at 8 (Oct. 18, 1995). In *Huff*, Complainant alleged that Respondent denied her the opportunity to rent an apartment because of her source of income (i.e., her intended use of a Section 8 voucher to pay part of her rent). Although the Commission entered a default judgment against Respondent, it nevertheless held that Complainant had to establish a prima facie case to recover any damages. *Huff*, at 5. Complainant proved a prima facie case of source of income discrimination, the Commission held, by "establish[ing] by a preponderance of the evidence that she was rejected as a potential tenant by [Respondent] because part of the income which she intended to use to rent an apartment came from her Section 8 voucher." *Id.* The Commission further held that "Respondent [was] liable for damages because of its refusal to rent to [Complainant] because of her source of income, which was in part, the Section 8 [voucher]." *Id.* The Commission never would have held that Complainant *Huff* proved a prima facie case of housing discrimination if, as Respondent contends, Section 8 funding was not a "source of income" within the meaning of the Ordinance.

Similarly, the Commission held in *McGee* that "[i]t would be a violation of the Ordinance for [Respondent] to refuse to rent the House to [Complainant] because Section 8 funding was her source of income for paying all or part of the rent." *McGee*, at 8. (PN41 In addition, the Commission has in two other cases allowed source of income claims for persons who received other forms of government assistance. *McCutchen v. Robinson*, CCHR No. 95-H-84, at 4 (May 20, 1998) (Complainant received food stamps and a supplement from Public Aid); *Cooper & Ashnon v. Parkview Realty*, Y1-FHO-48-5633, at 3 (Sept. 8, 1992) (Complainants received Supplemental Security Income; Aid to the Aged, Blind and Disabled; and Public Aid).

\*5 Respondent contends that these prior rulings of the Commission "have no precedential value here." Reply, at 6. Respondent is incorrect. Commission Regulation 240.620(d) states that "[a]ll decisions of the Commission shall have precedential value." Consequently, the Commission is not free to disregard its prior decisions, as Respondent urges. Respondent also seeks to downplay the Commission's decision in *McGee* because the issue of whether Section 8 is a source of income was not explicitly addressed. While this is true, the fact that the Commission has repeatedly interpreted the Ordinance to protect persons who receive Section 8 and other forms of government assistance from discrimination based on their source of income provides additional support for the conclusion that Section 8 is a protected source of income. If the Commission had determined that the receipt of government assistance was not a protected "source of income," it could

have sua sponte dismissed the above cases for lack of subject matter jurisdiction. See Regulation 210.330(a).

The parties have also directed the Commission's attention to decisions from other jurisdictions to support their respective positions on the question of whether Section 8 funding is a protected source of income under the Ordinance. "In interpreting the Ordinance, the Commission shall look to decisions interpreting other relevant laws for guidance." Regulation 270.510; McClinton, at 19 n-5. Several jurisdictions from around the country have passed anti-discrimination laws that offer protection against source of income discrimination. See, e.g., Hays v. City of Urbana, 104 F.3d 102, 103 (7th Cir.), cert. denied, 520 U.S. 1265 (1997) (discussing the City of Urbana's ordinance); Knapp v. Eagle Property Management Corp. I 54 F.3d 1272 (7th Cir. 1995) (discussing Wisconsin law); Commission On Human Rights v. Sullivan Associates, 1998 WL 395196 (Conn.Super.Ct. 1998) (&scussing Connecticut law); Franklin Tower One, L.L.C. v. N.M., 304 N.J.Super. 586, 701 A.2d 739, 740 (N.J.Super.Ct.App.Div. 1997), aff'd, 1999 WL 155956 (N.J. 1999) (discussing New Jersey law). Courts from some of these jurisdictions have had occasion to determine whether or not Section 8 funding is within the scope of their local anti-discrimination laws. The Commission will find these decisions are "instructive" only if the laws under consideration do not contain language that is "significantly different" from the text of the Ordinance. See, e.g., Holloway, et al. v. Chicago Police Department, CCHR Nos. 97-PA-15 et al., at 13 (Sept. 30, 1998).

Respondent relies on the Seventh Circuit Court of Appeals' decision in Knapp v. Eagle Property Management Corp., supra. [F'NSI In Knapp, the Seventh Circuit was determining whether a Section 8 voucher constitutes a "lawful source of income" under Wisconsin's Open Housing Act, which prohibits landlords from discriminating in housing on such a basis. Knapp, 54 F.3d at 1282. Under Wisconsin law, "lawful source of income" includes but is not limited to:

+6 lawful compensation or lawful remuneration in exchange for goods or services provided, profit from financial investments, any negotiable draft, coupon, or voucher representing voluntary value such as food stamps, social security, public assistance or unemployment compensation benefits.  
Knapp I 54 F.3d at 1282, quoting Wis.Admin.Code ? IND 89.01(8).

In determining whether Section 8 funding constitutes a "source of income" under this provision, the court first noted that the receipt of a Section 8 voucher "does not clearly equate to the other forms of aid specified in the statute." Id. Although the court nevertheless noted that "this form of assistance [i.e., Section 8] could arguably be included within the Wisconsin Act, [it] decline[d] to ascribe such an intent to the state legislature because of the potential problems in doing so." Id. Thus, it was the absence of legislative intent to include Section 8 within the statute along with "the absence of [statutory] language clearly including such assistance" that led the Seventh Circuit to conclude that Section 8 was not within the scope of the Wisconsin statute. [FN6] Id., at 1282-83.

The Seventh Circuit's decision in Knapp is inapposite for two reasons. First, the definition of "source of income" that is applicable to the Wisconsin statute is significantly different from the definition that is incorporated within the Ordinance. The Wisconsin definition explicitly lists several funding sources that constitute sources of income for purposes of that statute. Consistent with well-settled principles of statutory construction, [FN7] the Knapp court construed the statute as applying to non-listed sources of funding only if they could be "clearly equateid] i' to the forms of aid that were explicitly listed. Knapp, 54 F.3d at 1282. The Ordinance's general definition of "source of income," by contrast, is open-ended and contains no explicit list of covered funding sources. This type of statutory language is consistent with a legislative intent that the phrase "source of income" be broadly construed. See, e.g., People v. Scharlau, 142 Ill.2d 180, 565 N.E.2d 1319, 1325 (1990).

Second, unlike Knapp in which the legislature's intent regarding the statute's scope was unclear, Chicago's City Council clearly expressed its policy that "all residents" of the city should be able to obtain housing without suffering discrimination. Chicago Municipal Code, 5 S-08-010; supra, at 6. Interpreting the Ordinance to include Section 8 and other forms of governmental assistance as "sources of income" is consistent with the City Council's stated purpose of protecting all of the city's residents against housing discrimination. Moreover, Section 8 funding is within the plain language of the Ordinance's definition of "source of income." Supra, at Part III(A)(1). Had Chicago's City Council intended to exclude any particular sources of income from the coverage of the Ordinance, it certainly could have done so. [FN8] In sum: because Knapp is inapposite, it does not -- contrary to Respondent's contention -- dictate the result in this case.

#### B. The Ordinance Is Not Preempted by Federal Law

• 7 Under federal law, participation in the Section 8 program is voluntary. See, e.g., Hays, 104 F.3d at 102. Because the Chicago Fair Housing Ordinance protects persons who receive Section 8 funding from suffering discrimination on account of their "source of income," supra, Part III(A), Chicago landlords who lease apartments that fall within the Section 8 fair-market rents must rent to Section 8 voucher holders or face civil liability. In this sense, the city of Chicago has mandated that its landlords participate in the Section 8 program. See Hays, 104 F.3d at 102-03. Respondent contends that the Ordinance is preempted by provisions of federal law to the extent that the Ordinance deprives landlords of their "right" not to participate in the Section 8 program.

Under its constitutional authority, the federal government is empowered to preempt state or local laws to the extent it believes such action to be necessary. See Ophthalmic Mutual Insurance Co. v. Musser, 143 F.3d 1062, 1066 (7th Cir. 1998). However,

[c]ourts do not lightly attribute to Congress or to a federal agency the intent to preempt state or local laws. Indeed, when regulation is of a field traditionally occupied by the States, "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."

Dehart v. Town of Austin, 39 F.3d 718, 720 (7th Cir. 1994), quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (emphasis added by the Seventh Circuit); Cipollone v. Liggett Group, Inc., 505 U.S. 504, 518 (1992) (there is a "presumption against the pre-emption of state police power regulations"); Musser, 143 F.3d at 1066; see also Franklin Tower One, L.L.C. v. N-M., 1999 WL 155956 at • 7 07-J. 1999) (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 440 (1982)) ("states traditionally have had broad power to regulate housing conditions and relationships between landlord and tenants").

The Chicago Fair Housing Ordinance was passed through a proper exercise of the police power. See Chicago Real Estate Board v. City of Chicago, 36 Ill.2d 530, 224 N.E.2d 793, 801 (1967); see also Page v. City of Chicago Commission on Human Relations, No. 1-97-1621 (1st Dist., Sep. 30, 1998) (this is a published opinion, but reporter citations are not yet available) and Smith v. Goodchild, CCHR No. 98-H-177 (Apr. 13, 1999). Consequently, Respondent bears the arduous burden of showing that it was the "clear and manifest" purpose of Congress to preempt the Ordinance. Rice, 331 U.S. at 230; Musser, 143 F.3d at 1066; Dehart, 39 F.3d at 720; see Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 255 (1984) (placing the burden of establishing preemption on the party asserting it).

State laws and local ordinances are preempted under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, in three circumstances:

• 8 (1) where Congress has expressly preempted state law ('learpress preemption"); (2) where state law purports to regulate conduct in a field that Congress intended the federal government to occupy exclusively ("field preemption"); and (3) where state law actually conflicts with federal law in that it is either impossible for a private party to comply with both state and federal requirements or the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress ("conflict preemption"). English v. General Electric Co., 496 U.S. 72, 78 (1990); Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707, 713 (1985) (noting that the constitutionality of local ordinances is analyzed the same way as that of statewide laws for purposes of the Supremacy Clause). Respondent, to its credit, concedes that there has been no "express preemption" or "field preemption" of the Ordinance. Reply, at 15.

1. There Is No Actual Conflict between the Federal Statute and the Ordinance Because It Is Physically Possible to Comply with Both Laws

Respondent presents two reasons that there is an actual conflict between the federal law that created the Section 8 program (42 U.S.C. 5 1437f) and the Ordinance. First, Respondent asserts that it is impossible to simultaneously comply with the federal law and the Ordinance because the federal law makes participation in Section 8 program optional while the Ordinance mandates participation. Respondent is mistaken. "in actual conflict analysis should be narrow and precise, 'to prevent the diminution of the role Congress reserved to the States while at the same time preserving the federal role.'" Downhour v. Somani, 85 F.3d 261, 266 (6th Cir. 1996), quoting Northwest Central Pipeline Corp. v. State Corp. Commission, 489 U.S. 493, 515 (1989). The applicable standard is whether compliance with both federal and local law is a "physical impossibility," Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963), in that some action required by federal law is rendered illegal by local law. See, e.g., Coalition for Economic Equity v. Wilson, 946 F.Supp. 1480, 1512 (N.D.Cal. 1996), vacated on other grounds, 122 F.3d 692 (9th Cir.), as amended 122 F.3d 718 (9th Cir.), cert. denied, 118 S.Ct. 397 (1997) [FN91; Holliday v. Bell Helicopters Textron, Inc., 747 F. Supp. 1396, 1401 (D.Haw. 1990) ("Conflict preemption applies only where compliance with state law would prevent the defendant from following federal regulations.")

It is not "physically impossible" for Respondent to simultaneously comply with the federal law and the Ordinance. The federal law does not require Respondent to take any action that is rendered illegal by the Ordinance. Rather, the federal law permits -- but does not require -- action (i.e., participation in the Section 8 program) that the Ordinance requires. Under these circumstances, there is no "actual conflict" between the federal law and the Ordinance. See, e.g., Attorney General v. Brown, 400 Mass. 826, 511 N.E.2d 1103, 1106 (Mass. 1987). In Brown, the defendant landlord claimed that a Massachusetts law that prohibits landlords from discriminating against recipients of housing subsidies, including rental assistance, was preempted by 42 U.S.C. § 1437f(a), the law creating the Section 8 program, on the ground that the Massachusetts law mandated that landlords participate in a voluntary federal program. Id. The Massachusetts Supreme Judicial Court rejected defendant's preemption argument and found that "compliance with both statutes is not impossible." Id.

+9 Several other courts, including the United States Supreme Court, have similarly held that the fact that state law contains more stringent or demanding requirements than a federal law on the same subject does not mean that it is physically impossible to comply with both laws. See, e.g., California Federal Savings and Loan Association v. Guerra, 479 U.S. 272, 276, 290-91 (1987); Downhour, 85 F.3d at 265-68; Dehart, 39 F.3d at 720-22; Holliday, 747 F. Supp. at 1401; see also Franklin Tower, 1999 WL 155956 at • 8.

2. The Ordinance Is Consistent with the Purposes and Goals of the Section 8 Program

(Citeas: 1999WL308207(~~Cam.IIum.ReL))

Respondent also contends that an actual conflict exists between the Housing Act and the Ordinance because "[t]he Ordinance stands as an obstacle to the accomplishment and execution of the full purposes and objectives that Congress laid out in the Section 8 program." Reply, at 19. Respondent focuses on what it characterizes as the Housing Act's "voluntariness provision." Reply, at 12-13, 19-21. Respondent, which appropriated this terminology from the majority opinion in *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998), acknowledges that the text of the Housing Act does not actually **contain a "voluntariness provision."** Reply, at 12. Nevertheless, Respondent infers from the federal government treatment of the Section 8 program as voluntary for landlords that it has a "federal right" to "refuse Section 8 applications" that cannot be abridged by state and local governments. Reply, at 19-20. Consequently, according to Respondent, the Ordinance "necessarily stands as an obstacle to the federal Section 8 statute because the stricter standard of the Ordinance, requiring landlord participation, inevitably supplants Congressional intent." Reply, at 20-21.

Respondent's argument is multiply flawed. As an initial matter, an examination of the declarations of congressional policy and purpose within the text of the Housing Act, as amended through the Quality Housing and Work Responsibility Act of 1998, reveals that Congress intended the Section 8 program to address matters that **have** little if anything to do with accommodating the preferences of landlords. Section 2 of the Housing Act (42 U.S.C. §1437) states in pertinent part that:

(a) DECLARATION OF POLICY. -- It is the policy of the United States --

(1) to promote the general welfare of the nation by employing the funds and credit of the Nation, as provided in this Act --

(A) to assist the States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;

(B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and . . .

(4) that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private **citizens**, organizations, and the private sector.

● 10 Section 8 of the Housing Act (42 U.S.C. §1437f) further states:

(a) For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

Courts have similarly recognized that the goal of the Housing Act in general, and of the Section 8 program in particular, is to facilitate the provision of "affordable, decent housing for those of low income." *Brown*, 511 N.E.2d at 1106; see also *Franklin Tower*, 1999 WL 155956 at \*3; *Franklin Tower*, 701 A.2d at 741 ("The heart of 42 U.S.C.A. § 1437f is aiding low-income residents in obtaining affordable housing"); *v. Kentwood Construction Co.*, 278 N.J.Super. 346, 651 A.2d 101, 103 (N.J.Super.Ct.App.Div. 1994).

Contrary to Respondent's suggestion, "the voluntary nature of the Section 8 program is not at the heart of the federal scheme." *Franklin Tower*, 1999 WL 155956 at \*10; *Brown*, 511 N.E.2d at 1106. Thus, while Congress envisioned voluntary participation, "[n]othing in the statute . . . mandates that landlord participation be voluntary, nor is there any provision that prohibits states from mandating participation." *Franklin Tower*, 1999 WL 155956 at \*10. Furthermore, Congress has taken action in recent years to encourage further participation by landlords. For **example**, some of the alleged burdens experienced by participating landlords have been "altered or eliminated by the recent amendments to the Section 8 program." *Franklin Tower*, 1999 WL 155956 at \*10, 3. Congress has also repealed the "take one, take all" provision of the Housing Act, 42 U.S.C. § 1437f(t) (1) (A), which

"prohibited an owner who voluntarily accepted any Section 8 tenant from rejecting others by reason of their status as Section 0 participants." Salute, 136 F.3d at 295. This provision, which was initially enacted "to increase the availability of low-income housing[,l . . . was repealed only because it was having the unintended effect of discouraging landlords from joining the Section 8 program." Franklin Tower, .1999 WI, 155956 at ● 10, 4. [FNIO]

Respondent provides no explanation as to how the preservation of the voluntary nature of the Section 8 program is necessary to fulfill the congressional policy and purpose of increasing the availability of affordable and decent housing for low-income persons. Supra, at 17-18. Indeed, to the extent that the voluntary nature of the program facilitates discrimination against Section a participants, infra, it seemingly undermines the congressional goal of remedying the acute shortage of housing affordable to low-income families. 42 U.S.C. 5 1437. As the Franklin Tower court recognized, "Allowing landlords to deny housing to . . . individuals because their rent is subsidized by Section 8 vouchers will only exacerbate the existing need [for housing], and in all likelihood, greatly increase the homeless population." Franklin Tower, 701 A.2d at 742 n-2.

● 11 Thus, the Ordinance does not stand as an obstacle to the fulfillment of what Congress has identified as the purposes and objectives of the Section 8 program. See Franklin Tower, 1999 WL 155956 at \*10 (holding that the New Jersey "statute's anti-discrimination provision to protect tenants who are eligible to receive Section 8 vouchers will neither conflict with nor frustrate the objectives of Congress in enacting the Section 8 program"). On the contrary, there is no doubt that the Ordinance helps to further the provision of affordable and decent housing to low-income individuals in Chicago. Courts and commentators have recognized that:

Section a recipients often cannot find desirable apartments because many landlords simply refuse to rent to such individuals and that low-landlord participation is a serious, if not the most serious, problem with the Section 8 program.

Franklin Towers, 701 A.2d at 742 n-2, citing to M. Malaspina, "Demanding the Best: How to Restructure the Section 8 Household-Based Rental Assistance Program," 14 Yale Law and Policy Review 287, 288, 311 (1996); P. Beck, "Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier," 31 Harvard Civil Rights-Civil Liberties Law Review 155 ("Discrimination against rental subsidy holders seems to be as open and blatant today as was racial discrimination in the years preceding the enactment of the Fair Housing Act of 1968"), at 159 ("The Section 8 program's minimal success in promoting integration is attributable to the wide-spread discrimination against prospective Section 8 tenants by private landlords") (1996) (hereinafter cited as "Beck article"). [FN11] Consequently, the Ordinance -- by prohibiting discrimination against individuals who rely on Section 8 funding to finance their housing -- will expand the housing options available to low-income persons in Chicago and thereby further the goal of the Section 8 program. Courts have reached the same conclusion with respect to other statutes that bar discrimination against Section 8 recipients. See, e.g., Franklin Towers, 1999 WL 155956 at ● 11; Brown, 511 N.E.2d at 1106.

3. The Fact That Congress Provided for Voluntary Participation in the Section 8 Program Does Not Bar State and Local Governments from Mandating Participation

Respondent's primary contention is that the City of Chicago does not have the power to pass an ordinance that impinges on its "federal right" to refuse to accept Complainants' Section 8 applications. Reply, at 20-21, citing to Salute v. Stratford Greens Garden Apartments, 136 F.3d 293 (2d Cir. 1998) and Orman v. Charles Schwab & Co., Inc., 285 Ill.App.3d 927, 676 N.E.2d 241 (1st Dist. 1996), aff'd, 179 Ill.2d 282, 688 N.E.2d 620 (1997)). However, as the United States Supreme Court has held, \* 'Ordinarily, state causes of action are not preempted solely because they impose liability over and above that authorized by federal law.'" English v. General Electric Co., 496 U.S. 72, 89 (1990), quoting California v. ARC America Corp., 490 U.S. 93, 105 (1989); Fragassi v. Neiburger, 269

Ill.App.3d 633, 646 N.E.2d 315, 317 (2d Dist. 1995) (citing English); see also Franklin Tower, 1999 WL 155956 at \*8 (observing that "[f]ederal courts have permitted states to impose greater restrictions than those imposed by federal law" and citing cases). Where (as here) a party contends that a local ordinance that was passed pursuant to the historic police powers is preempted, the issue is whether Congress had a clear and manifest intent to preempt such state and local laws. *Supra*, at 13. If there is no evidence of a Congressional intent to preempt, the fact that the local law imposes burdens, duties, or liabilities that exceed those mandated by the federal law is immaterial.

+12 This principle was applied by the Seventh Circuit in *Dehart v. Town of Austin*, 39 F.3d 718 (7th Cir. 1994). In *Dehart*, the plaintiff, who bought, bred, raised, and sold exotic and wild animals, was licensed to engage in his business under both federal and state law. *Id.*, at 720. Defendant town passed an ordinance that prohibited businesses from possessing wild animals. Plaintiff alleged that the local ordinance was preempted by the applicable federal law under which he was licensed, and that the regulation by the town was "excessive because it amount[ed] to a total prohibition" of his business. *Id.*, at 722. After noting that the ordinance was passed pursuant to historic police powers and that the federal law contemplated state and local regulation of animals, the Seventh Circuit held that plaintiff had failed to establish a Congressional intent to preempt the ordinance. *Id.* Given this, there was no federal preemption notwithstanding the fact that the town's "[o]rldinance produce[d] onerous consequences for [plaintiff's] business." *Id.*; see also *Holliday*, 746 F. Supp. at 1401 (rejecting preemption argument notwithstanding the fact that the state law in question imposed "more stringent safety standards" than required by its federal counterpart].

There are many similarities between this case and *Dehart*. In both cases: (a) the local ordinance restricted the ability of a party to take some action that was permissible under federal law; (b) the local ordinances were passed pursuant to historic police powers (see *Chicago Real Estate Board*, 224 N.E.2d at 801; *Dehart*, 39 F.3d at 722); (c) the federal laws in question contemplated that state and local governments would be involved in obtaining the objectives of the federal statute (42 U.S.C. 5 1437; *Dehart*, 39 F.3d at 722); (d) there is no "express" or "field" preemption by the federal statute (*supra*, at 14; *Dehart*, 39 F.3d at 722); and (e) it is physically possible for the party asserting preemption to comply with both the federal and local laws (*supra*, at Part III(A) (e); *Dehart*, 39 F.3d at 722).

For all of these reasons, the Commission joins the other courts that have concluded that "[i]t does not follow that, merely because Congress provided for voluntary participation [in the Section 8 program], the States are precluded from mandating participation." *Brown*, 511 N.E.2d at 1106; *Franklin Tower*, 1999 WL 155956 at \*10; *Sullivan Associates*, 1998 WL 395196 at \* 9 ("This court agrees with the basic conclusion that nothing in the federal program prevents a state from mandating participation"); but see *Knapp*, 54 F.3d at 1282.

Respondent relies heavily on the Seventh Circuit's decision in *Knapp*. In that case, the Seventh Circuit opined that "[i]t seems questionable - . . . to allow a state to make a voluntary federal program mandatory." *Knapp*, 54 F.3d at 1282. However, the *Knapp* court did not discuss the preemptive scope of the Housing Act. Indeed, the parties have cited no federal case that has construed the preemptive scope of the Act. Cf. *Hays*, 104 F.3d at 102-03 (mentioning, but not resolving, the issue of whether the Housing Act preempted a local ordinance that required landlords to participate in the Section 8 program); see also *Schiffner v. Motorola, Inc.*, 297 Ill.App.3d 1099, 637 N.E.2d 868, 872 (1st Dist. 1998) ("since no federal court has yet construed the preemptive scope of the [federal] Act, we can seek no guidance there"). The above-quoted statement from *Knapp* was not a holding with respect to preemption (or any other issue for that matter). See, e.g., *Sullivan Associates*, 1998 WL 395196 at \* 7 (noting that the *Knapp* court "does question the wisdom of mandating participation in a voluntary federal program, but [it] does not

(Cite as: 1999 WL 308207 (Chi.Com.Hum.ReL))

base its decision on this"). Therefore, Rnapp does not bind the Commission in its preemption analysis. See, e.g., *Scholtens v. Schneider*, 173 Ill.2d 375, 671 N.E.2d 657, 667-68 (1996) (finding that the Illinois courts are not bound by a statement within a Seventh Circuit opinion regarding an issue that "was never raised or decided" on the ground that the statements were "pure dicta").

• 13 Respondent's reliance on the decisions in *Orman v. Charles Schwab & Co., Inc.* and *Salute v. Stratford Greens Garden Apartments* is similarly misplaced. In *Orman*, plaintiffs brought various Illinois state law claims seeking to impose liability on defendant stock brokers for engaging in a practice (i.e., the retention of order flow payments) that was permitted by federal regulation. *Orman*, 676 N.E.2d at 242-43. The Illinois Appellate Court noted that the majority of other state courts considering the issue had found that similar state laws were preempted. *Id.*, at 243. The court found these decisions to be persuasive and stated,

the securities industry is a national market which must be regulated uniformly. To allow plaintiffs' causes of action to survive in Illinois state courts, [would] cause the federal uniformity goal [to] be frustrated, if not destroyed. If different state disclosure requirements must be met by brokerage firms across the nation, uniformity will not exist. If uniformity is not to prevail, neither rule 10b-10 nor the SEC would serve any function or purpose in regulating disclosure. Accordingly, the goals of the federal government would be frustrated.

*Id.*, at 246. In affirming the Appellate Court's finding of preemption, the Supreme Court held that allowing plaintiffs' state law claims to advance would "obstruct the National Market System that Congress intended to foster in enacting the 1975 Amendments [to the Securities Exchange Act of 1934]." *Orman*, 688 N.E.2d at 626.

[.Fm21

In this case, unlike *Orman*, Respondent has made no showing that there is a federal interest in maintaining uniformity in a national market. See *Downhour*, 85 F.3d at 267; *Pennsylvania Medical Society v. Marconis*, 755 F. Supp. 1305, 1312-13 (W.D.Pa. 1991), *aff'd*, 942 F.2d 842 (3d Cir. 1991). To the contrary, the "markets" that are affected by the operation of the Section 8 program are local housing markets. See *Brown*, 511 N.E.2d at 1106 (suggesting that housing is an area of "local, rather than national, importance"). The federal government has accommodated the varied needs of local housing markets by providing that "a number of the Section 8 regulations defer to state or local law." *Franklin Tower*, 1999 WL 155956 at • 3 (examples). Moreover, "[t]he federal legislation and regulations explicitly contemplate that the states will work with the federal government to implement the Section 8 program," *id.*; *Brown*, 511 N.E.2d at 1105-06; and the Department of Housing and Urban Development distributes to Section 8 landlords a handbook that lists permitted tenant screening criteria and "requires Section 8 landlords to 'comply with all federal, state, and local fair housing and civil rights laws.'" *Franklin Tower*, 1999 WL 155956 at +4, quoting *Hill v. Group Three Housing Development Corp.*, 799 F.2d 385, 389 & n.5 (8th Cir. 1986). These facts greatly "reduc[e] the persuasiveness of [Respondent's] argument in favor of preemption." *Brown*, 511 N.E.2d at 1106.

• 14 In sum: the Housing Act contemplates a localized approach to providing decent and affordable housing for all citizens that would involve the efforts of all levels of government, private citizens, organizations, and the private sector. *Supra*, at 17-18. "[T]here is no particular 'theoretical or logical' reason for national uniformity in this context," nor is there any danger as there might be with other issues, such as transportation or the stock market, "that piecemeal state [or local] regulation will result in an unwieldy system." *Downhour*, 85 F.3d at 267.

It is not enough, as Respondent contends, that Congress envisioned that the Section 8 program would be a voluntary program on the federal level. The Commission finds instructive the Sixth Circuit's decision in *Downhour* and the other case law which considered whether states could enact legislation to ban physicians from

engaging in a practice known as "balance billing" [FTJ131 notwithstanding the fact that the practice is permitted by the federal Medicare Act, 42 U.S.C. § § 1395-13 95cc. In Downhour, the plaintiff healthcare practitioners claimed that "Congress has created an inviolable right to balance bill that the state cannot destroy . . . [because] an option to balance bill is necessary to effectuate congressional purposes of maintaining a delicate balance between the competing objectives of providing beneficiaries with medical services they can afford and allowing access to physicians who charge higher fees." Downhour, 85 F.3d at 267. The Sixth Circuit rejected plaintiffs' argument and held,

Showing a Congressional design to strike a particular balance . . . is not sufficient to shut states out of the process. The [plaintiffs] must show a need or an intent that the particular balance of cost and access be nationally uniform. Whether it is wise to stop the federal government from closing all ?safety valves? throughout the nation is, of course, an entirely different question from whether it is wise to prevent states from closing one safety valve where it would serve the local interest.

Id., quoting Marconis, 755 F. Supp. at 1312 (emphasis added by the Downhour court). As in Downhour (but unlike in Orman), there is no need for national uniformity with respect to the issue of whether landlord participation in the Section 8 program should be voluntary, q. Supra, at 24-25. Consequently, Orman is inapposite because the factor that caused the court to find preemption is not present here.

The Second Circuit's decision in Salute is inapposite for a different reason. Although Salute dealt with the Housing Act, the decision sheds no light on the question of whether the Housing Act preempts the Ordinance because the issue of preemption was not raised. See Franklin Tower, 1999 WL 155956 at \*5 ("Whether states are preempted from mandating landlord participation in Section 8 was not at issue in Salute"); see also Schiffner, 697 N.E.2d at 872 ("since no federal court has yet construed the preemptive scope of the [federal] Act, we can seek no guidance there"). Rather, the issue in 'Salute was whether defendants violated provisions of federal law by failing to rent apartments to two disabled plaintiffs who held Section 8 certificates. Salute, 136 F.3d at 295- 96. Plaintiffs brought claims under the now-repealed "take one, take all" provision of the Housing Act, and under the Fair Housing Act, 42 U.S.C. s § 3601- 3631. Plaintiffs alleged that defendants violated the Fair Housing Act when defendants refused to reasonably accommodate plaintiffs' disabilities by accepting their Section 8 certificates. The Second Circuit rejected plaintiffs' argument, and held that participation in the Section 8 program "should not be forced on landlords" as an accommodation for a disability in light of the voluntary nature of the Section 8 program. Salute, 136 F.3d at 300. [FH14]

\*15 However, whether the Fair Housing Act compels a landlord to participate in the Section 8 program as a reasonable accommodation for a disabled person is a fundamentally different inquiry from the question of whether the Housing Act preempts the Ordinance. The inquiry under the Fair Housing Act focuses on the nature of the proposed accommodation, i.e., does the accommodation pose an undue hardship or a substantial burden? Id., at 300-01. The preemption inquiry, by contrast, focuses on whether it was Congress' intent for the federal law to preempt state and local law on the same subject matter. If there is no evidence of an intent to preempt, the local law will be allowed to stand even if it produces "onerous consequences" for the business of the party that seeks preemption. See, e.g., Dehart, 39 F.3d at 722. Thus, the fact that it would not be a reasonable accommodation under the Fair Housing Act to force a landlord to participate in the Section 8 program does not mean, without more, that the Housing Act preempts the Ordinance.

In sum: no court that has expressly considered the issue of whether the Housing Act preempts a state or local law that mandates landlord participation in the Section 8 program has found preemption. Respondent in this case has similarly failed to meet its burden of showing that the Ordinance is preempted by the Housing

Act.

4. Complainant Smith's Complaint Is Not Subject to Dismissal Even If the Housing Act, In Its Present Form, Preempts the Ordinance

Respondent's motion to dismiss Complainant Smith's claim on the ground of preemption fails for an additional reason. Namely, at the time his claim accrued (December 1995), the now repealed "take one, take all" provision of the Housing Act, 42 U.S.C. 5 1437f(t) (1) (A), "prohibited an owner who voluntarily accepted any Section 8 tenant from rejecting others by reason of their status as Section 8 participants." *Salute*, 136 F.3d at 295. Complainant Smith alleges that after he told Respondent's representative that he was going to pay his rent with a Section 8 voucher, Respondent's representative denied him the opportunity to rent an apartment and told him that Respondent did not want any more Section 8 tenants. *Supra*, at 3. These allegations state a claim under both the Ordinance and the former "take one, take all" provision (repealed April 26, 1996). See, e.g., *Glover v. Crestwood Lake Section 1 Holding Corp.*, 746 F. Supp. 301, 309 (S.D.N.Y. 1990). Thus, even if Respondent is correct that there is an actual conflict between the Ordinance and the Housing Act in its present form, there was no conflict between the Ordinance and the Housing Act as it existed at the time Complainant Smith's claim arose insofar as both laws barred landlords who already rented to Section 8 tenants from discriminating against prospective tenants based on their status as Section 8 participants. Therefore, Respondent's effort to gain dismissal of Complainant Smith's claim based on the ground of preemption fails for this additional reason.

C. The Ordinance Does Not Violate Respondent's Procedural Due Process Rights

• 16 Respondent contends that the Ordinance violates its procedural due process rights. Reply, at 23-25. Respondent's argument in this regard is as follows:

Respondent is not complaining about the process being accorded it in this hearing. Rather, Respondent is complaining about the lack of process it will be accorded should Section 8 be construed as a 'source of income.' Under such construction, Respondent will have no choice but to participate in the program -- for Respondent would face legal sanction (as it does here) if it refused to participate. Such compelled participation, however, necessarily deprives Respondent of its property without due process of law.

Reply, at 25. Essentially, Respondent is contending that the passage of the Ordinance (presuming that its definition of "source of income" encompasses Section 8 funding) has deprived it of procedural due process.

The Illinois Supreme Court has previously considered the question of whether the City of Chicago's Fair Housing Ordinance denies due process to those persons governed by the law. See *Chicago Real Estate Board v. City of Chicago*, 36 Ill.2d 530, 224 N.E.2d 793, 801-802 (1967). [FN1] The court began by noting "that the concept of due process of law has never insulated a business from regulations deemed essential under the police power." *Id.*, at 801. The court then stated the applicable standard:

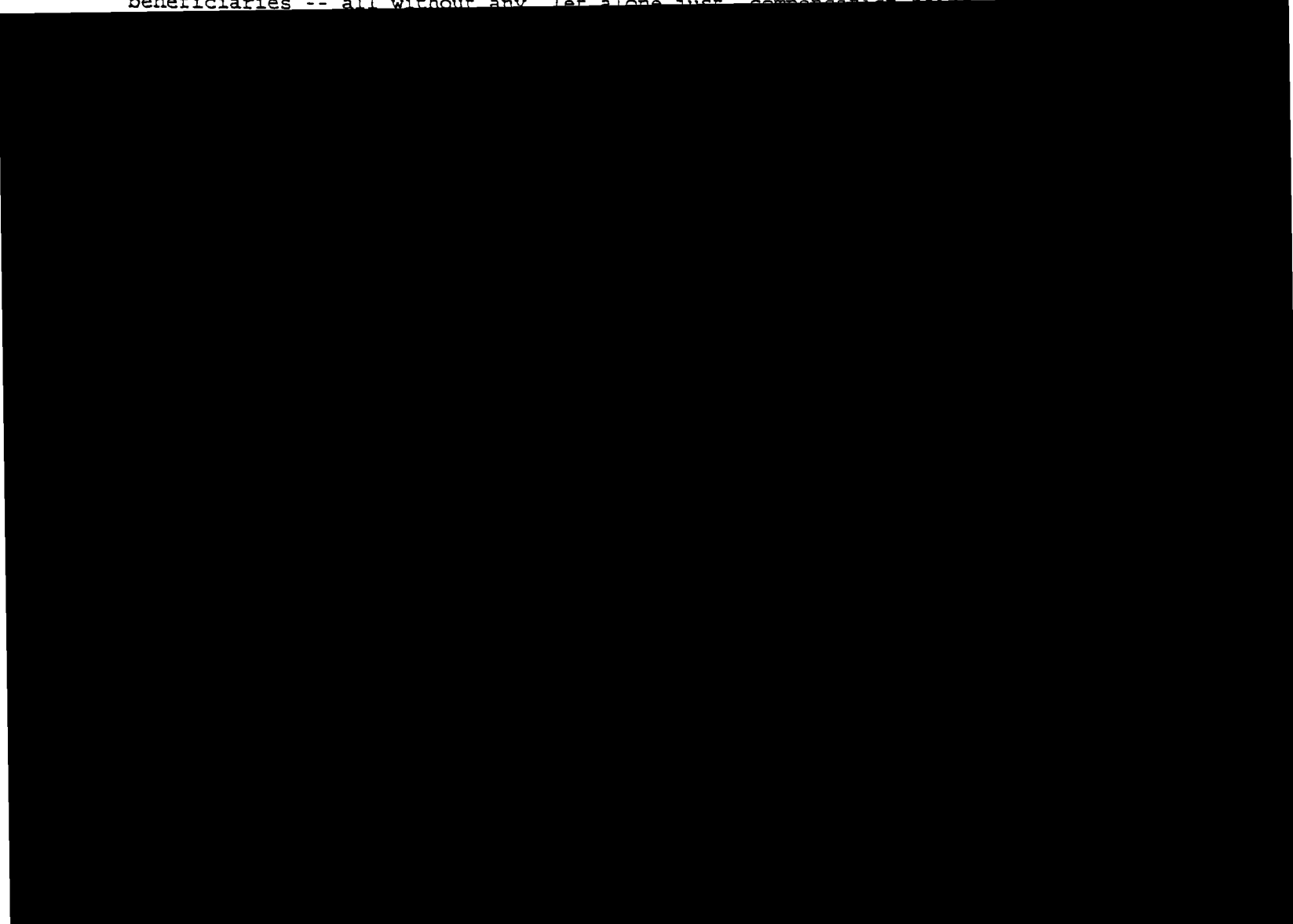
[t]he inquiry in due process cases has been whether the evil existed which affected the public, health, safety, morals or general welfare, and whether the legislative means chosen to counter that evil were reasonable. If so, there is a proper exercise of the 'elastic police power,' and no want of due process, despite interference with individual property and contract rights.  
*Id.*

There is no question that the "evil" to which the Ordinance is directed (namely, housing discrimination) has a deleterious impact on the public welfare. *Id.* (listing the adverse effects of housing discrimination); *Franklin Tower*, 701 A.2d at 742 n.2 (noting the adverse effects of discrimination against Section 8 voucher

holders). Moreover, it is well-settled that laws prohibiting discrimination in housing are reasonably calculated to counter the evil effects of such discrimination. Chicago Real Estate Board, 224 N.E.2d at 801. Consequently, "such laws have been repeatedly sustained as a proper exercise of the police power, and not an infringement of due process of law." Id., at 801-02 (and cases cited within). For these reasons, the Illinois Supreme Court held that the Ordinance "cannot be deemed a denial of property without due process of law, even though it may interfere with the rights of [those covered by the law] to contract with persons of their choice." Id., at 802. The Commission agrees with the above analysis, and it concludes that the Ordinance does not violate Respondent's right to due process of law.

#### D.The Ordinance Does Not Violate the Takings Clause of the Fifth Amendment

• 17 Respondent contends that the Ordinance (presuming that its definition of "gross annual income" encompasses Section 8 funding) violates the "takings" clause of the Fifth Amendment to the United States Constitution (as applied to the states through the Fourteenth Amendment). Reply, at 25-27. Specifically, Respondent asserts that the Ordinance -- by mandating Respondent's participation in the Section 8 program -- "would impose substantial burdens and costs on Respondent" that would inure to the benefit of Section 6 beneficiaries. Reply, at 26. As a result, according to Respondent, "the Ordinance would have the necessary effect of taking private property from Respondent and giving that property to Section 8 beneficiaries -- all without any, let alone just, compensation."



holders). Moreover, it is well-settled that laws prohibiting discrimination in housing are reasonably calculated to counter the evil effects of such discrimination. Chicago Real Estate Board, 224 N.E.2d at 801. Consequently, "such laws have been repeatedly sustained as a proper exercise of the police power, and not an infringement of due process of law." Id., at 801-02 (and cases cited within). For these reasons, the Illinois Supreme Court held that the Ordinance "cannot be deemed a denial of property without due process of law, even though it may interfere with the rights of [those covered by the law] to contract with persons of their choice." Id., at 802. The Commission agrees with the above analysis, and it concludes that the Ordinance does not violate Respondent's right to due process of law.

#### D.The Ordinance Does Not Violate the Takings Clause of the Fifth Amendment

\*I7 Respondent contends that the Ordinance (presuming that its definition of "source of income" encompasses Section 8 funding) violates the "takings" clause of the Fifth Amendment to the United States Constitution (as applied to the states through the Fourteenth Amendment). Reply, at 25-27. Specifically, Respondent asserts that the Ordinance -- by mandating Respondent's participation in the Section 8 program -- "would impose substantial burdens and costs on Respondent" that would inure to the benefit of Section 8 beneficiaries. Reply, at 26. As a result, according to Respondent, "the Ordinance would have the necessary effect of taking private property from Respondent and giving that property to Section 8 beneficiaries -- all without any, let alone just, compensation being paid to Respondent." Id.

Respondent's "takings" argument does not mandate the dismissal of the Complaints for two reasons. First, Respondent's "takings" claim is premature. As the United States Supreme Court has held:

a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has-reached a final decision regarding the application of the regulations to the property at issue. Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172, 186 (1985). The Commission has not rendered a final ruling as to Respondent's potential liability under the Ordinance. Therefore, Respondent's challenge is not ripe.

Second, and more fundamentally, Respondent has failed to demonstrate in its motion to dismiss the Complaints that a "taking" has (or will) occur if the Ordinance is construed to include Section 8 funding within its definition of "source of income." "[A] land use regulation does not effect a taking-if it substantially advances legitimate State interests and does not deny an owner economically viable use of his land." Northern Illinois Home Builders Association, Inc. v. County of DuPage, 165 Ill.2d 25, 649 N.E.2d 384, 389 (1995); see International College of Surgeons v. City of Chicago, 153 F.3d 356, 368 (7th Cir. 1998), quoting Forest Preserve District v. West Suburban Bank, 161 Ill.2d 448, 641 N.E.2d 493, 497 (1994) ("A taking of private property 'occurs where governmental regulation radically curtails a property owner's rights such that all economically beneficial or productive use of [the land] is denied"); Tim Thompson, Inc. v. Village of Hinsdale, 247 Ill.App.3d 863, 617 N.E.2d 1227, 1242 (2d Dist. 1993).

In this case, Respondent has utterly failed to demonstrate that an actionable "taking" would occur if the Ordinance is interpreted so that its "source of income" clause encompasses Section 8 funding. The Ordinance substantially advances a legitimate state interest (i.e., assuring that all city residents are able to obtain fair and adequate housing without suffering discrimination) by barring housing discrimination against low-income persons who rely on Section c funding to

pay their rent. Furthermore, the Complaints -- needless to say -- contain no allegation that Respondent would be deprived of all economically beneficial or productive use of its property if it is mandated by the Ordinance to participate in the Section 8 program.

\*18 Without such a showing, the Ordinance -- which was properly enacted pursuant to the police powers, supra, at 14 -- does not effect a "taking" notwithstanding the fact that it may, as Respondent contends, impose substantial burdens or costs on landlords. IF?7161 See, e.g., *Sherman-Reynolds, Inc. v. Mahin*, 47 Ill.2d 323, 265 N.E.2d 640, 643 (1970) ("Regulations imposed by a State in the exercise of its police power . . . are not rendered unconstitutional even though private property may be injured, interfered with, or damaged without the payment of compensation"); *Tim Thompson*, 617 N.E.2d at 1245 (rejecting "takings" claim despite the fact that plaintiff was deprived of "its optimally desired use of [its] property"); *Rothner v. City of Chicago*, 66 Ill.App.3d 428, 383 N.E.2d 1218, 1222-23 (1st Dist. 1978); *Greyhound Lines, Inc. v. City of Chicago*, 24 Ill.App.3d 718, 321 N.E.2d 293, 305-06 (1st Dist. 1974) (rejecting "takings" claim even though there was "no doubt that the property of the plaintiffs [was] adversely affected by the ordinance" in question); see also *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964) (summarily rejecting claim that federal civil rights statute which compelled motel owners to accept African-American patrons without discrimination was a "taking of property without just compensation.")

#### E. The Ordinance Does Not Improperly Infringe on Respondent's Freedom of Contract

Finally, Respondent contends that the Ordinance, by mandating its participation in the Section 8 program (which would entail entering into contracts with the federal government), infringes on its right to freedom of contract and to avoid being subjected to involuntary contracts. Reply, at 27- 30 (citing to *Salute*, 136 F.3d at 298). Respondent concedes that its right to freedom of contract is not absolute, and that "the freedom not to contract may legitimately be restricted by antidiscrimination statutes." Reply, at 29 (citing to *Blue Cross & Blue Shield Mutual of Ohio v. Blue Cross and Blue Shield Association*, 110 F.3d 318, 333 (6th Cir. 1997)). In *Blue Cross*, the Sixth Circuit stated that 1, [i]t is still hornbook law that the freedom of contract entails the freedom not to contract . . . except as restricted by anti-trust, antidiscrimination, and- other statutes." *Blue Cross*, 110 F.3d at 333; see also *Heart of Atlanta*, 379 U.S. at 258 (In the face of a properly enacted civil rights law, motel had "no 'right' to select its guests as it sees fit.))

Despite Respondent's acknowledgement of the "antidiscrimination exception" to the principle of freedom of contract and the fact that the Ordinance is unquestionably an antidiscrimination statute, Respondent contends that the exception does not apply here. In Respondent's view, "the issue here is whether the City of Chicago can force Respondent into an involuntary contract with the federal government." Reply, at 29 (emphasis in original). The Commission finds Respondent's argument to be without merit for the following reasons.

• The right of individuals to contract as they deem fit is grounded in the due process clause." *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill.2d 153, 692 N.E.2d 306, 314 (1998). Nevertheless, it has long been settled that:

neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right [to make contracts] is that of the public to regulate it in the common interest.

*Nebbia v. People of the State of New York*, 291 U.S. 502, 525 (1934). An otherwise constitutional law may restrict the freedom of contract without running afoul of

the due process clause so long as it has "a reasonable relation to a proper legislative purpose, and [it is] neither arbitrary nor discriminatory." Id., at 537; National Western Life Insurance Co. v. Commodore Care Improvement District, 678 F.2d 24, 26-27 & n-7 (5th Cir. 1982); People v. Patton, 57 Ill.2d 43, 309 N.E.2d 572, 544 (1974) (quoting Nebbia); R.W. Dunteman, 692 N.E.2d at 314.

In this case, the Ordinance has a reasonable relationship to a proper legislative purpose, supra, at 30, and it is neither arbitrary nor discriminatory. See, e.g., Chicago Real Estate Board, 224 N.E.2d at 801-02 (finding that the Ordinance complies with the requirements of the due process clause). Respondent makes no argument to the contrary. [FN171] Consequently, the Ordinance "cannot be deemed a denial of property without due process of law, even though it may interfere with the rights of [Respondent] to contract with persons of [its] choice." Id., at 802; see also Heart of Atlanta, 379 U.S. at 258; Nebbia, 291 U.S. at 539 ("The Constitution does not secure to any one the liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people").

#### Iv. CONCLUSION

For all of the above reasons, the Respondent's motion to dismiss is DENIED.

A PARTY MAY OBTAIN REVIEW OF THIS ORDER ONLY AFTER THE COMMISSION HAS ISSUED AN ORDER DISMISSING THE COMPLAINT OR RULING UPON AN ADMINISTRATIVE HEARING.

By:

Clarence N. Wood

Chair/Commissioner

FN1. Complainant Smith, who is proceeding pro se, did not file a response to Respondent's motion to dismiss. Respondent's arguments for dismissal, for the most part, apply with equal force to all three Complainants. Consequently, the Commission will treat the counter-arguments raised by Complainants Torres and Walker as applying to Complainant Smith as well.

FN2. The Commission will address this argument first because "It is preferable to determine whether the state law applies before reaching a determination that state law has been preempted." Natural Resources Defense Council v. Houston, 146 F.3d 1118, 1132 (9th Cir. 1998).

FN3. The Commission, therefore, declines to rest its decision on Black's Law Dictionary's definition of "income." cited by the parties. City Council's clear, and broad, definition of "source of income" is the proper focal point of this order.

FN4. While the Commission endorsed Complainant McGee's legal theory, it ultimately found that she failed to prove that she was discriminated against. McGee, at 11.

FNS. Complainants, for their part, cite to the New Jersey Superior Court's decision in Franklin Tower to support their position on this issue. However, Franklin Tower provides little assistance in interpreting the Ordinance because the New Jersey statute -- which prohibits discrimination based on "the source of any lawful rent payment to be paid for the house or apartment" -- uses language that is significantly different from the text of the Ordinance. Franklin Tower, 701 A.2d at 740; see also Holloway, CCHR Nos. 97-PA-15 et al., at 13.

FN6. The Commission reads Knapp to find that Section 8 funding is "arguably" (id., at 12821, although not "clearly" (id., at 12831, included within the scope of the Wisconsin statute.

FN7. As the Illinois Supreme Court has recognized, where a statute "specifically enumerates" several items that are within its coverage and states that other items may be covered as well, unspecified items will be included only if they are "not of a quality superior to or different from [I those specifically enumerated." People v. Capuzi, 20 Ill.2d 486, 170 N.E.2d 625, 629- 30 (1960).

FN8. For example, Cook County's Human Rights Ordinance bars "source of income" discrimination in housing and it uses the same definition of "source of income" as used by the Chicago City Council. Cook County Human Rights Ordinance, Art. II(R). However, the Cook County Board included within the County's Ordinance's housing coverage a provision that explicitly excludes Section 8 funding from the protection of the Ordinance. Cook County Human Rights Ordinance, Art. VI(C) (5).

FN9. In Wilson, the court held that to show an "actual conflict" by establishing that "an entity cannot simultaneously comply with both Title VII and Proposition 290, a plaintiff must 'demonstrate that some action required by Title VII simultaneously violates Proposition 209.'" 946 F. Supp. at 1512.

FN10. The Congressional Committee on Banking, Housing, and Urban Affairs, "in its report on the [Alct that repealed the 'take-one, take-all' provision, anticipated that the repeal would not 'adversely affect assisted households because protections will be continued under State . . . and local tenant laws.'" Franklin Tower, 1999 WL 155956 at ● 4, quoting S-Rep. No. 105-21, at 86 (1997).

FN11. The Section 8 program seems destined to take on an even greater role in the provision of housing for low-income individuals in light of federal budget cuts that have limited the construction of public housing and the federal policy that authorizes the demolition of dilapidated units of existing public housing. Franklin Towers, 701 A.2d at 742 n.2; Beck article, at 159-60.

FN12. State and local governments are also prohibited from enacting more stringent regulations than allowed under federal law where Congress expressly defines the preemptive scope of the federal law to bar any regulations that are not the same as the federal standard. See, e.g., Scurlock v. City of Lynn Haven, 858 F.2d 1521, 1524-25 (11th Cir. 1988). Congress has not, however, explicitly defined the preemptive scope of the Housing Act. See Brown, 511 N.E.2d at 1105.

FN13. "Balance billing" is the process by which a physician bills his or her patient for the portion of the cost of a medical service that is over and above the

amount by which the Medicare program reimburses the physician. See Downhour, 85 F.3d at 264.

FN14. The Second Circuit also held that the "take one, take all" provision is inapplicable where, as in that case, "a landlord's only Section '8 participation has been the acceptance of payments on behalf of existing tenants who became Section 8 certificate holders during their tenancy." *Id.*, at 298.

FN15. In 1967, when the Chicago Real Estate Board decision was issued, the Ordinance declared it "unlawful for real-estate brokers to discriminate on account of race, color, religion, national origin or ancestry in the sale, rental or financing of residential property in the city." Chicago Real Estate Board, 224 N.E.1d at 797. The ordinance was subsequently amended to reflect its current, broader scope.

FN16. Respondent patently exaggerates the adverse impact that participation in the Section 8 program may have on its operations when it contends that its property will be taken "without any" compensation. Reply, at 26. If it participates in the Section 8 program, Respondent will receive from its tenant and the federal government payment for each and every apartment that it rents to a Section 8 beneficiary. *Supra*, at 5. Furthermore, Congress recently amended the Section 8 program to alter or eliminate some of the alleged burdens experienced by participating landlords. Franklin Tower, 1999 WL 1.55956 at \*10, 3; *supra*, at 18-19.

FN17. Rather, Respondent relies on its contention that the Constitution prohibits the City of Chicago from forcing landlords to participate in the Section 8 program. Reply, at 29-30 (citing *Salute*, 136 F.3d at 298). However, as discussed above, the Commission has joined courts from three other jurisdictions in concluding that federal law does not prevent states from mandating participation in the Section 8 program, *supra*, at 16-20, 23-24, and it has found *Salute* to be inapposite. *Supra*, at 26-28.

1999 WL 308207 (Chi.Com.Hum.Rel.)

END OF DOCUMENT

Commission on Human Relations  
City of Chicago

• 1 IN THE MATTERS OF:  
WESLEY SMITH, DAVID TORRES, AND KIA WALKER,, COMPLAINANTS  
AND  
WILMETTE REAL ESTATE & MANAGEMENT CO.,, RESPONDENT  
Case Nos. 95-H-159 & 98-H-44/63  
October 6, 2000

ORDER REGARDING RESPONDENT'S THIRD MOTION TO DISMISS ,:

On December 14, 1995, Complainant Wesley Smith filed a Complaint with the Commission alleging that Respondent Wilmette Real Estate & Management Company ("Wilmette Real Estate") violated Section S-08-030 of the City of Chicago's Fair Housing Ordinance by discriminating against him on the basis of his source of income when it denied him the opportunity to rent one of its apartments. Complainant David Torres (on March 27, 1998) and Complainant Kia Walker (on April 30, 1998) filed Complaints with the Commission similarly alleging that Wilmette Real Estate discriminated against them based on their source of income when it denied each of them an opportunity to rent one of its apartments. Specifically, all Complainants allege that Respondent discriminated against them because they intended to make use of Section 8 housing vouchers to pay a portion of their rent.  
[FN1]

Presently before the Commission is Respondent's motion to dismiss. This is Respondent's third bite at the apple as it has previously filed two other motions to dismiss. In its first motion, Respondent contended for multiple reasons that the Commission lacks subject matter jurisdiction over Complainants' claims. In its second motion, Respondent targeted Complainant Smith and argued that the Commission lacked subject matter jurisdiction over his claims for additional reasons. The Commission, after exhaustively considering the arguments raised, denied Respondent's motions to dismiss. Smith et al. v. Wilmette Real Estate & Management co., CC% Nos. 95-H-159 & 98-H- 44/63 (April 13, 1999) ("Smith I"); Smith et al. v. Wilmette Real Estate & Management Co., CCHR Nos. 95-H-159 & 98-H-44/63 (September 9, 1999) ("Smith II").

This matter is fully briefed [FNZ] and the parties have submitted several exhibits in support of their respective positions. Respondent once again contends that the Commission lacks subject matter jurisdiction to hear Complainants' claims. In addition, Respondent contends, in reliance on the exhibits attached to its briefs, that it simply did not discriminate against Complainants based on their source of income. As explained below, Respondent's third attempt to obtain dismissal fares no better than its first two attempts and its motion is denied.

I. THE COMPLAINANTS' FACTUAL ALLEGATIONS

When ruling on a motion to dismiss, the Commission must take all of the complaints' allegations, together with reasonable inferences drawn from them, as true. E.g., Smith I, at 2; Leadership Council for Metropolitan Open Communities v. Carstea & Berzava, CCHR No. 98-H-76, at 2 (August 19, 1998) (and cases cited within). Furthermore, a complaint should not be dismissed unless it appears beyond doubt that the complainant can prove no set of facts in support of his or her claim that would entitle him to relief. Smith I, at 3; Leadership Council, at 2.

(Cite as: 2000 WL 33143681 (Chi.Com.Hum.ReL))

Complainants' factual allegations are as follows:

• 2 Complainant Wesley Smith is a disabled veteran who receives Social Security benefits, Veterans' Assistance benefits, and a Section 8 voucher. Smith Complaint, 1-1. In late November 1995, Mr. Smith went to Respondent's rental office and completed an Introduction Form that required him to disclose personal information including his source of income. Id., 1 2. Respondent's representative told Mr. Smith that Respondent was not accepting Section 8 applicants at that time and that he should come back in a few weeks. Id. In December 1995, Mr. Smith returned to Respondent's rental office and again tried to rent an apartment. Id., 7 3. Respondent's representative asked Mr. Smith how he was going to pay his rent and he responded by indicating that he had a Section 8 voucher. Id., 7 4. "Connie" (one of Respondent's agents):

then responded by stating they did not ♦◻◆ anymore Section 8 tenants. She claimed they ♦◻◻ not good tenants and she was going to try and get rid of the ones she had.

Id., 1 5. Mr. Smith left the building after hearing that his application had been rejected. Id.

Complainant David Torres has a Section 8 voucher. Torres Complaint, 1 1. In March 1998, Mr. Torres saw an apartment advertised in the newspaper and he called to make an appointment to view the apartment. Id., f 3. One of Respondent's agents showed Mr. Torres two apartments and he decided to rent one of them. Id., 1 4. Respondent's agent then gave Mr. Torres an application. Id., 1 5. As he was completing the application, Mr. Torres mentioned to Respondent's agent that his rent would be paid by Section 8. Id. Respondent's agent then brought "Connie" (one of Respondent's agents) over to where Mr. Torres was sitting. Id. Connie informed Mr. Torres that Respondent did not ,accept Section 8 vouchers. Id.

Complainant Kia Walker relies on Section 8 as a source of her income. Walker Complaint, 1 1. In January 1998, Ms. Walker was looking for an apartment when she noticed a sign on a building indicating that a two-bedroom apartment was for rent. Id., 1 3. Ms. Walker went inside the building and saw a Wilmette Real Estate sign. Id., 1 4. She then spoke with the on-site property manager who indicated that there were apartments for rent. Id., p q 4-5. The manager was going to show Ms. Walker a vacant unit when she mentioned that she was a Section 8 recipient. Id., 7 5. The manager stated, "We don't take Section 8 here," and he refused to show Ms. Walker the apartment. Id., 7 6. At Ms. Walker's request, Respondent's property manager prepared a written statement reiterating Respondent's position. Walker Complaint (attached exhibit).

## II. RESPONDENT'S ARGUMENTS FOR DISMISSAL

Respondent moves to dismiss Complainants' Complaints for two reasons. First, Respondent asserts that the Chicago Fair Housing Ordinance, for various reasons, cannot be construed to require landlords to participate in the Section 8 program. Second, Respondent contends that it did not lease to Complainants because of its -difficulty with the Section 8 program and not because of Complainants' "source of income." As shown below, Respondent's arguments are without merit.

## III. ANALYSIS

### A. The Fair Housing Ordinance Requires Landlords To Accept Otherwise Qualified Section 8 Recipients As Tenants

0000101

• 3 Respondent contends, based on its interpretation of the Fair Housing Ordinance, that the Commission lacks subject matter jurisdiction over the claims alleged in the Complainants' Complaints. In making this argument, Respondent recognizes and explicitly disagrees with the Commission's prior decisions that "read the prohibition against 'source of income' discrimination to cover the Section 8 program" and that require landlords renting qualifying [FIT31] property "to arrange with the federal government to accept Section 8 when requested (unless the applicant is not acceptable for a non-discriminatory reason) -<sup>0</sup> See Smith I, at 5-12; Smith v. Goodchild, CCHR No. 98-H-177, at 2 (April 13, 1999); [FW41] Brief, at 5. Non-discriminatory reasons for not accepting a prospective tenant who relies on Section 8 funding include "a poor rental history, poor references, or poor credit," as well as a history of II[dl rug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others." Sullivan Associates, 739 A.2d at 247; 24 C.F.R. § 982.307(a) (3).

In its brief, Respondent contends "that the Commission's construction of the Ordinance is an unconstitutional usurpation of the legislative function and is an attempt to improperly legislate what the Commission deems to be a socially desirable end." Respondent's Brief In Support of Its Motion To Dismiss ("Brief"), at 7. In particular, Respondent contends that the Fair Housing Ordinance cannot (or at least should not) be construed to require landlords to participate in the Section 8 program because (1) the City of Chicago, when it passed the Fair Housing Ordinance, "never intended to mandate landlord participation in Section 8" (Brief, at 7); (2) "the radical differences between Section 8's terms and well established landlord-tenant law require a construction of the Fair Housing Ordinance that allows landlord abstention from the program" (Id.); and (3) the Commission "lacks the authority to effect radical changes to well established landlord-tenant law" by construing the Ordinance to require landlords to participate in the Section 8 program (Id.). For the reasons explained below, the Commission rejects Respondent's contentions.

#### 1. Construing The Fair Housing Ordinance To Prohibit Discrimination Against Otherwise Qualified Section 8 Recipients Is Fully Consistent With The Intent Of The Ordinance

The parties dispute whether the City intended for the Fair Housing Ordinance's prohibition against "source of income" discrimination to effectively require landlords to participate in the Section 8 program. [FN5] In particular, Respondent contends that the Ordinance should be construed to provide a defense to a landlord charged with "source of income" discrimination against a Section 8 recipient if the landlord can show that it declined to rent to the prospective tenant based on its distaste for the required terms of the Section 8 program. Complainants, on the other hand, argue that such a defense would eviscerate the protection that the Ordinance offers to Section 8 recipients.

I '4 The Ordinance does not explicitly address this issue. It is therefore appropriate to turn to principles of statutory construction. See Crawford v. City of Chicago, 304 Ill.App.3d 818, 710 N.E.2d 91, 96 (1st Dist. 1999) ("The rules which govern the construction of statutes are also applied in the construction of municipal ordinances"). The parties agree that "[t]he cardinal rule of statutory construction is to ascertain and give effect to the true intent of the legislature." People v. Latona, 184 Ill.2d 260, 703 N.E.2d 901, 906 (1998); see Ragan v. Columbia Mutual Insurance Co., 183 Ill.2d 342, 701 N.E.2d 493, 497 (1998) (courts must "give effect to the intention of the legislature" when construing statutes); Bonaguro v. County Officers Electoral Board, 158 Ill.2d 391, 634 N.E.2d 712, 714 (1994) ("a court should ascertain and give effect to the intent of the legislature"); Complainants' Consolidated Response to Respondent's Motion To

(Cite as: 2000 WL 33143681 (Chi.Com.Hum.Rel.))

Dismiss ("Response"), at 7; Respondent's Reply Brief in support of its Motion to Dismiss ("Reply"), at 28-29.

Furthermore,

[t]he most reliable indicator of legislative intent is the language of the statute itself. In determining legislative intent, a court may consider the reason and necessity for the statute, the evils to remedied, and the objectives to be attained. In ascertaining the legislature's intent, th[e] court has a duty to avoid a construction of the statute that would defeat the statute's purpose or yield an absurd or unjust result.

Latona, 703 N.E.2d at 906 (citations omitted); see Ragan, 701 N.E.2d at 497. The starting point for construing the Ordinance is to consider the language of the Ordinance. See, e.g., Ragan, 701 N.E.2d at 497; Smith I, at 5; Tizes v. North State Astor Lake Shore Drive Association et al., CCHR No. 95-H-17, at 3 (August 30, 1995).

The City of Chicago made clear the policy underlying the Fair Housing Ordinance in the Ordinance's first section:

It is hereby declared the policy of the City of Chicago to assure full and equal opportunity to all residents of the city to obtain fair and adequate housing for themselves and their families in the city of Chicago without discrimination against them because of their race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

Chicago Municipal Code § S-08-010; see Smith I, at 5-6. The Ordinance, as a remedial statute, is to be liberally construed to effectuate the City's declared policy. See, e.g., S-N. Nielsen Co. v. Public Building Commission of Chicago, 81 Ill.2d 290, 410 N.E.2d 40, 44 (1980) ("remedial legislation should be construed liberally to effectuate its purposes"); Smith I, at 4-5 (and cases cited within). Consequently, whether the Ordinance should be construed to allow the type of defense urged by Respondent depends on whether doing so would effectuate the policy underlying the Ordinance.

• S As stated above, Respondent's proposed defense would allow a landlord to opt out of participating in the Section 8 program as a matter of law if the landlord did not like the program's regulations. A Section 8 recipient cannot use Section 8 funding as a "source of income" unless he/she does so in compliance with the regulations governing the Section 8 program. The Section 8 program's regulations require, among other things, that landlords which participate in the program use a lease that conforms with the program's requirements. See 42 C.F.R. 5 982.308. Because Section 8 funding is inextricably linked with the regulations of the Section 8 program, a landlord's simple rejection of the Section 8 program will inevitably result in its rejection as tenants of any persons who rely on Section 8 funding as a "source of income." In Respondent's view, however, this fact is of no consequence because:

refusing to contract on Section 8's terms constitutes nothing more than discrimination against a noninvidious characteristic which, admittedly, is unquestionably correlated with Complainants' source of income. Such discrimination against a noninvidious characteristic simply does not give rise to the requisite discriminatory intent.

Reply, at 32 (citing to Village of Bellwood v. Dwivedi, 895 F.2d 1521 (7th Cir. 1990)).

The Commission rejects this reasoning and agrees with Complainants that the creation of such an open-ended defense would be inconsistent with, and would in fact frustrate, the purpose of the Ordinance. Any landlord with biased views toward Section 8 recipients could avoid renting to them merely by professing an objection to a term of the Section 8 program. Two courts have expressly declined to recognize the type of defense that Respondent attempts to rely on here. Sullivan Associates,, 739 A.2d at 248; Glover v. Crestwood Lake Section 1 Holding Corps., 746 F. Supp.

**301, 308-09 (s.D.N.Y. 1990).**

In Sullivan Associates, the Connecticut Supreme Court rejected the argument that landlords could justify not accepting Section 8 recipients as tenants on account of their objection to the terms of a Section 8 lease:

The legislative history of [the statute] demonstrates that the legislature intended to prohibit landlords from denying rental opportunities to people whose source of income included federal or state housing assistance. Interpreting [the statute] as the trial court has, to allow an exception to its anti-discrimination provisions for those landlords who refuse to use the required section 8 lease, would eviscerate the basic protection envisioned by the statute. It would lead to the unreasonable result that while the legislature mandated that landlords may not reject tenants because their income included section 8 assistance, the legislature at the same time also intended that landlords might avoid the statutory mandate by refusing to accede to a condition essential to its fulfillment. Such a result is untenable.

\*6 Sullivan Associates, 739 A.2d at 248.

In Glover, as here, "defendants stated that their refusal to accept Section 8 voucher applicants stemmed from their reluctance to depart from their standard lease agreement." Glover, 746 F. Supp. at 308. The Glover court found defendants' contention to be unavailing and held that their

refusal to accept certain provisions of the HUD-mandated Section 8 voucher lease cannot be interpreted as anything but a refusal to rent an apartment to a Section 8 voucher holder as a result of that applicant's status as a Section 8 voucher holder.

Glover, 746 F. Supp. at 309.

The holdings in Sullivan Associates and Glover are consistent with the general admonition that entities "cannot be permitted to use a technically neutral classification as a proxy to evade the prohibition of intentional discrimination." *McWright v. Alexander*, 982 F.2d 222, 228 (7th Cir. 1992) (noting that "discrimination 'because of' handicap is frequently directed at an effect or manifestation of a handicap rather than being literally aimed at the handicap itself"); *Finnegan v. Trans World Airlines, Inc.*, 967 F.2d 1161, 1163 (7th Cir. 1992) ("an employer cannot be permitted to use a proxy for age, such as having gray hair, to evade the prohibition of intentional discrimination"); *Sullivan v. Vallejo City Unified School District*, 731 F. Supp. 947, 960 (E-D-Cal. 1990) (school's exclusion of a disabled student's service dog is discrimination "because of" a handicap in violation of the Rehabilitation Act, 29 U.S.C. § 794). [FN6]

The Commission finds the above line of authority, in particular the Connecticut Supreme Court's analysis in Sullivan Associates, [FN7] to be sufficiently persuasive to warrant denial of Respondent's motion to dismiss. The City of Chicago passed the Ordinance to ensure that "all" of its residents would have an equal opportunity to obtain housing without being victimized by discrimination. Adopting Respondent's position that its professed difficulties with the Section 8 program is sufficient as a matter of law would defeat this purpose. See, e.g., Sullivan Associates, 739 A.2d at 783-84. As a practical matter, the Ordinance's prohibition of "source of income" discrimination against Section 8 recipients would be severely undermined if not negated altogether if the Ordinance were construed to permit Respondent's proposed defense.

Respondent does not claim that the creation of its proposed defense would effectuate the purpose of the Ordinance. Rather, it contends that the Ordinance cannot be construed to achieve an "absurd" result and that treating a landlord's refusal to rent to a Section 8 recipient because of the strictures of the Section 8 program as "necessarily an objection to the status of Complainants as Section 8 recipients" would be absurd for two reasons. Brief, at 30-31.

First, Respondent asserts that construing the Ordinance in such a fashion would improperly grant one party to the contract (i.e., the tenant) "'totally unrestricted carte blanche.'" Brief, at 30, quoting Peyton v. Reynolds Associates, 955 F.2d 247, 253 (4th Cir. 1992). Respondent's reliance on Peyton, however, is misplaced. In that case, plaintiffs were tenants who had been renting from the defendant landlord under a different rent-relief program. The landlord decided to convert its participation from the original rent program to the Section 8 voucher program. The local agency administering Section 8 then required the landlord to enter into new one-year leases; the landlord, however, agreed to continue renting to the tenants only through their then-current lease period (less than a year). The tenants claimed that that refusal was discrimination based on their status as voucher holders. Peyton, 955 F.2d at 248-50. The---Peyton court held that the objection to the duration of the leases was a legitimate, non-discriminatory reason not to lease to plaintiffs<sup>M</sup> [s]ince neither the statutes, the regulations, nor HUD's (the Department of Housing and Urban Development) form contract mandates that the owner enter a housing voucher contract and leases for one-year terms." Id. at 251. Because the objectionable term was not mandated by the Section 8 program, the landlord's adverse action in reliance on it was not held to be discriminatory. Id. at 251-52. [FN8]

● 7 The Peyton court found that "[t]he objection to a unilateral extension of the lease terms beyond the terms in the existing leases had no connection to the Tenants' status as voucher holders; it could have been expected in the case of any tenants, voucher holders or not." Id. at 254; see also Lopez v. Arias, CCRR No. 99-H-12, at 19-20 (September 20, 2000) (finding no source of income discrimination where there was "no evidence that Respondent refused to consider [tenant] for or imposed upon her any 'price, terms, conditions or privileges of any kind' that he would have considered her for or would not have imposed on her had she not had a Section 8 voucher.") Consequently, because the refusal to extend the plaintiffs' leases beyond their termination dates did not run afoul of any legitimate terms of the Section 8 program, the landlord's actions were non-discriminatory and not a proxy for anti-voucher-holder sentiments. In sum: Peyton involves a much different situation from the facts alleged by Complainants in these cases.

Respondent's second argument is similarly without merit. It asserts that "[i]f Section 8's regulations are to be forced on landlords, then the Chicago City Council must do so explicitly," Brief, at 31 & 26 (citing to Commission on Human Rights v. Sullivan Associates, 1998 WL 395196 (Con.n.Super.Ct. 1998)). The Connecticut Supreme Court, however, reversed that Sullivan Associates trial court decision on the precise ground for which Respondent cites it. The Supreme Court held that the legislature could "require landlords to use section 8 leases" notwithstanding the fact that the statute in question did not contain an explicit mandate to this effect. Sullivan Associates, 739 A.2d at 247, 251. The Commission agrees with the rationale of the Sullivan court and holds that the City Council can require landlords with qualifying properties to use Section 8 leases when renting to Section 8 recipients notwithstanding the fact that the Ordinance does not explicitly mandate the landlords to do so.

## 2. The City of Chicago Has Home Rule Authority To Prohibit Landlords From Rejecting Otherwise Qualified Section 8 Recipients As Tenants

Respondent next argues that "the Fair Housing Ordinance must be construed in harmony with existing common and statutory law" and that "[s]uch construction requires that landlords not be compelled to participate in the Section 8 program." Brief, at 27 (emphasis added). This is so, according to Respondent, because many of the terms of the Section 8 program "differ radically from state and municipal laws regulating the landlord-tenant relationship." Brief, at 6-7. Respondent goes on at considerable length to outline the ways in which the terms of the Section 8 program

(in its view) "radically differ" from the dictates of the Illinois Forcible Entry and Detainer Act, 735 ILCS S/9-101 et seq., the City of Chicago's Residential Landlord and Tenant Ordinance, Chicago Municipal Code 5 S-12-010 et seq., and the common law. Brief, at 8-26; Reply, at 1-21. Complainants respond (again at length) by asserting that the terms of the Section 8 program "impose[] no undue hardship upon landlords and do[] not (in any meaningful way) change existing law." Response, at 9, 10-18.

• 8 Respondent's argument raises a preliminary question. Namely, whether the City of Chicago would have the legal authority to mandate by ordinance that landlords lease to tenants under the terms required by the Section 8 program even if those terms were more disadvantageous than those otherwise required by statutory and common law. If the City could lawfully pass such an ordinance, then the parties' dispute regarding the degree to which the terms of Section 8 diverge from statutory and common law need not be resolved to decide this motion. For the reasons stated below, the Commission finds that the City would have the authority to pass such an ordinance.

The City of Chicago is a home rule unit of local government under the 1970 Illinois Constitution. See, e.g., *City of Chicago v. Roman*, 184 Ill.2d 504, 705 N.E.2d 81, 86 (1998); *Reed v. Burns*, 238 Ill.App.3d 148, 606 N.E.2d 152, 155 (1st Dist. 1992) (citing to Ill.Const.1970, art. VII, § 6(a)). Under § 6(i) of the Constitution:

Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State exercise to be exclusive. Ill.Const.1970, art. VII, § 6(i). Moreover, "[p]owers and functions of home rule units shall be construed liberally." Ill.Const.1970, art. VII, § 6(m).

Pursuant to this constitutional authority, home rule units are given "broad powers to legislate" regarding matters "pertaining to their government and affairs, including regulation for the protection of the public health, safety, morals and welfare." *Page v. City of Chicago*, 299 Ill.App.3d 450, 701 N.E.2d 218, 225 (1st Dist. 1998) (concerning the Chicago Human Rights Ordinance). To this end, II [t]he Illinois Supreme Court has repeatedly held that an ordinance which is within a municipality's home-rule powers supersedes . . . a conflicting statute passed before the 1970 Constitution took effect." *Reed*, 606 N.E.2d at 154 (and cases cited within). This is true even where the state statute is "less stringent" than the municipality's ordinance. *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483, 470 N.E.2d 266, 275 (1984); *Roman*, 705 N.E.2d at 86-90; *People v. Jaudon*, 307 Ill.App.3d 427, 718 N.E.2d 647, 661 (1st Dist. 1999) (citing cases); *Page*, 701 N.E.2d at 225 passim (upholding the City of Chicago's power to regulate employees with fewer than 15 employees despite the equivalent state law's restriction to employers with 15 or more employees).

The City's home rule authority encompasses the power to mandate that landlords accept the terms of Section 8 so long as (1) the exercise of that power pertains to the City's government and affairs and (2) the state legislature has not preempted the exercise of the power. See, e.g., *Village of Bolingbrook v. Citizens Utilities Co.-of Illinois*, 158 Ill.2d 133, 632 N.E.2d 1000, 1001-02 (1994); *Page*, 701 N.E.2d at 225. Illinois courts have held that the regulation of housing discrimination is a proper exercise of police power (*Chicago Real Estate Board v. City of Chicago*, 36 Ill.2d 530, 224 N.E.2d 793, 801 (1967)), and that "allowing a home rule unit to control its unique problems regarding the relationship between landlord and tenant is consistent with the role of home rule." *City of Evanston v. Create, Inc.*, 85 Ill.2d 101, 421 N.E.2d 196, 201 (1981); see *Reed*, 606 N.E.2d at 155. Furthermore, the state legislature has not preempted the City from exercising its home rule power with respect to landlord-tenant relations in the manner specified by the Illinois Constitution. See *Page*, 701 N.E.2d at 225 (explaining methods of

preemption under the Ill.Const.1970, art. VII, § § 6(g), 6(h)); Goodchild, at 4.

• 9 Thus, the City has the home rule authority to pass an ordinance that prohibits source of income discrimination by requiring landlords to lease to otherwise qualified Section 8 recipients even if the terms of the Section 8 program differ from those that the landlords might otherwise prefer or from those set forth in other laws. Given this, Respondent's objection that the Fair Housing Ordinance - by requiring participation in the Section 8 program - imposes more specific limitations on landlords than are otherwise required by statutory and common law is unavailing.

In any case, neither the statutes (i.e., the Forcible Entry and Detainer Act and the Residential Landlord Tenant Ordinance) nor the common law cited by Respondent requires that the Ordinance be construed in the restrictive manner urged by Respondent. The Forcible Entry and Detainer Act does not address housing discrimination; rather, it has the "distinctive and limited purpose . . . [of] supply[ing] a speedy remedy to persons entitled to possession of lands to be restored thereto." *Rosewood v. Corp. v. Fisher*, 46 Ill.2d 249, 263 N.E.2d 833, 835 (1970), cert. denied, 401 U.S. 928 (1971). Moreover, it is well-settled that home rule units have the authority to pass ordinances that regulate the limited subject matter of the Act. See, e.g., *Reed*, 606 N.E.2d at 155 (finding that § 5-12-150 of Chicago's Residential Landlord and Tenant Ordinance "supercedes" a conflicting provision of the Forcible Entry and Detainer Act); *Landry v. Smith*, 66 Ill.App.3d 616, 384 N.E.2d 430, 431 (1st Dist. 1978) (holding that the Act "does not limit or deny the right of a home rule unit to enact legislation concerning the eviction process") ; see also *City of Evanston v. O'Leary*, 244 Ill.App.3d 190, 614 N.E.2d 114, 117, 118 (1st Dist. 1993) (noting that Evanston's ordinance "provides more specific limitations on landlords than those provided" by the Act).

Similarly, the City of Chicago's Residential Landlord and Tenant Ordinance does not purport to restrict the interpretation of the Fair Housing Ordinance. To the contrary, the Residential Landlord and Tenant Ordinance indicates that its terms will not apply to the extent that they conflict with the terms of the regulations applicable to federal housing programs:

This chapter applies specifically to rental agreements for dwelling units operated under subsidy programs of agencies of the United States and/or the state of Illinois, including specifically programs operated or subsidized by the Chicago Housing Authority and/or the Illinois Housing Development Authority to the extent that this chapter is not in direct conflict with statutory or regulatory provisions governing such programs. Chicago Municipal Code § 5-12-010 (emphasis added). Thus, the inter-ordinance "conflict" that Respondent envisions if the Fair Housing Ordinance is construed to require Section 8 participation will never arise because the terms of the Residential Landlord Tenant Ordinance yield to those of the Section 8 program.

• 10 Nor does the common law mandate a restrictive interpretation of the Ordinance. As a general matter, the state legislature "has the inherent power to repeal or change the common law, or do away with all or part of it." *People v. Gersch*, 135 Ill.2d 384, 553 N.E.2d 281, 286 (1990). The City of Chicago, as a home rule unit, has the same power to legislate for the protection of the health, safety, and welfare of its residents "as the sovereign except where such powers are limited by the General Assembly." *Triple A Services, Inc. v. Rice*, 131 Ill.2d 217, 545 N.E.2d, 706, 711 (1989); *City of Urbana v. Houser*, 67 Ill.2d 268, 367 N.E.2d 692, 694 (1977). Thus, because the state legislature has not limited the City's power in any pertinent respect (*supra*, at 15-171, the City was at liberty to pass the Ordinance even though it conflicts with the common law. Moreover, for the reasons stated above (*supra*, at Part III(A) (1)), a change in the common law is "warranted", or . . . necessarily implied from what is expressed" by the terms and stated purpose of the Ordinance. *West v. West*, 294 Ill.App.3d 356, 689 N.E.2d 1215, 1220 (5th Dist. 1998).

In addition to referencing the above statutes and common law, Respondent makes the assertion that "a statute should not be construed to effect a change in the settled law of the state unless its terms clearly require such construction." Brief, at 24 (citing cases) ; Reply, at 22-23 (citing cases). The cases that Respondent cites in support of this proposition, however, apply it under different circumstances. In the cited cases, the courts had either consistently interpreted a statute or applied the common law regarding a particular subject and the issue was how a newly passed (or amended) statute regarding that same subject should be interpreted. The courts presumed that the legislature was aware of the interpretative case law and therefore required a clear indication in the new statute before they would interpret the statute as deviating from precedent. [FN9] In this case, by contrast, there is no long-standing precedent interpreting "source of income" discrimination that predates the passage of the 1988 amendment to the Fair Housing Ordinance. Consequently, the Commission's construction of the Fair Housing Ordinance does not change any settled law of the state regarding "source of income discrimination."  
ma01

### 3. The Commission Has The Authority To Construe The Ordinance As Prohibiting Landlords From Rejecting Otherwise Qualified Section 8 Recipients As Tenants

Respondent contends that the Commission lacks the authority to construe the Fair Housing Ordinance in a manner that is inconsistent with well-settled landlord-tenant law, and that in doing so it is impermissibly legislating. Brief, at 27-28; Reply, at 34. Respondent's argument is without merit. The Commission is charged with the duty of enforcing the Fair Housing Ordinance. See Chicago Municipal Code S 2-120-510. The power to enforce the Ordinance necessarily includes the power to construe it. See, e.g., *Solar v. City Colleges of Chicago & Truman College*, CCHR No. 95-PA-16 (September 25, 1998) (construing the Chicago Human Rights Ordinance); see also *Gersch v. Illinois Department of Professional Regulation*, 308 IlliApp.3d 649, 720 N.E.2d 672, 680 (8th Dist. 1999) ("Express legislative grants of powers or duties to administrative agencies include the power to do all that is reasonably necessary to execute these powers or duties"); Page, 701 N.E.2d at 227-28 (deferring to the Commission's interpretation of the Ordinance with respect to the question of whether punitive damages may be awarded); *Tizes v. North State Astor Lake Shore Drive Assoc., et al.*, CCHR No. 95-H-17, at 3 (August 30, 1995).

'11 The Commission is not required to read the Fair Housing Ordinance "as coterminous with any other law." *Solar*, at 7 (same, with respect to the **Human** Rights Ordinance). Rather, the Commission is required to read the Ordinance in a "liberal fashion" consistent with principles of statutory construction. *Id.*; *Tizes*, at 3. By construing the Ordinance in this fashion (*supra*, Part III(A) (I)), the Commission has fulfilled its mandate and it has not acted outside of its jurisdiction as Respondent wrongly contends.

### B. Respondent Cannot Obtain Dismissal By Relying On Exhibits Attached To Its Briefs To Contradict The Substantive Allegations Of The Complaints

In support of its second argument for dismissal, Respondent cites to the exhibits it attaches to its briefs. In these exhibits, Respondent sets forth its "long history of problems with Section 8's regulations and administration." Brief, at 4 (citing Exhibit A). Among other things, Respondent claims that the Section 8 administrators have been slow to pay (if they have paid at all) and that their slow pace in doing inspections of rental units has kept the units off the market for an inordinate length of time. *Id.* These problems led Respondent to become so II [disgusted with Sections 8's administration] that it ceased altering its standard

renta> policies to accommodate Section 8. Id.

Complainants, who sought rental housing after the time of those problems, were denied the opportunity to rent because of Respondent's

unwillingness [to] deal with Section 8's administrative morass and on its unwillingness to accept Section 8's onerous and economically disadvantageous regulations.

Brief, at 4. Complainants, according to Respondent, have failed to state a claim because the above reason does not concern their "source of income." Brief, at 4.

Respondent claims that the facts asserted in its exhibits may be considered because they are "uncontested," see Brief, at 1 (citing to *Harris v. Chicago Board of Education*, CCHR No. 98-E-95 (December 22, 1998)); Reply, at 31, and that these facts entitle it to dismissal. Respondent's argument, which raises the legal question of whether taking adverse action toward a person based upon a reluctance to deal with the entity that provides that person's income could constitute a valid defense to a "source of income" discrimination claim, is for the most part directed toward providing an alternative explanation for Respondent's failure to rent to Complainants (namely, that the Section 8 program is too burdensome). [FN11] This argument does not warrant dismissal of the Complaints for three reasons.

First, even if the above argument were procedurally appropriate (and it is not, *infra*, at 24-25), it is directed to the merits and not to the validity of the Complaints. The evidence offered by Respondent, at best, raises an issue of fact as to whether it had a legitimate, non-discriminatory reason for taking adverse action toward Complainants. While Respondent would have the burden of producing credible evidence as to this issue once Complainants have raised an inference of discrimination by establishing their *prima facie* cases, see, e.g., *Sanders v. Onnezi*, CCHR No. 93-H-32, at 9 (March 16, 1994); *Castro v. Georgeopoulos*, CCHR No. 91-FHO-6-5591, at 9 (December 18, 1991), EN121 such evidence does not establish that the Complaints fail to state a claim upon which relief can be granted. Therefore, dismissal based upon such evidence is inappropriate.

• 12 Second, even if Respondent's evidence went to the sufficiency of the Complaints (and not to the merits), the legitimacy of Respondent's reasons for not renting to Complainants raises issues of fact that cannot be resolved on a motion to dismiss. The Commission recognizes that the specific requirements of the Section 8 program could create such a burden on a landlord that the onerous nature of the program requirements would constitute a legitimate, non-discriminatory reason for not renting to a Section 8 recipient. For example, the nature of the Section 8 program requirements might provide a landlord of modest means with a legitimate, nondiscriminatory reason for not renting to Section 8 recipients if the landlord presented credible evidence that the requirements caused a delay in receipt of rental payments which prevented the landlord from paying its mortgage in a timely fashion and resulted in the imposition of penalties that the landlord could not afford to pay. Cf. *Attorney General v. Brown*, 400 Mass. 826, 511 N.E.2d 1103, 1109 bldss. 1987). In *Brown*, the Massachusetts Supreme Judicial Court held that evidence that a landlord might lose a "substantial economic benefit" (i.e., "the cash flow engendered from his collecting, in advance, the last month's rent and a security deposit equal to one month's rent") if forced to comply with the requirements of the Section 8 program was sufficient to raise a genuine issue of material fact to preclude a grant of summary judgment in plaintiff's favor on its claim that the landlord discriminated against prospective tenants "solely" because of their status as Section 8 certificate holders. *Id.*; see also *Lopez*, at 17 (discussing *Brown*).

The circumstances under which the burden created by the Section 8 program requirements will rise to the level sufficient to excuse a landlord's participation are limited. II [Credible evidence" - and not mere generalizations or suppositions - is required to meet the landlord's burden of production. See, e.g., *Castro*, at 9. Moreover, simply presenting evidence that the program requirements create some added

burden will 'not suffice. Implicit in the Commission's decision in Smith I "is a consideration that entering into a contract with CHAC, [Inc. (the private subcontractor that administers the Section 8 program)] and receiving all or part of the rent from **CHAC** instead of the tenant is a de minimis formality necessary to facilitate use of the voucher," and not the type of burden sufficient to excuse a landlord's participation in the program. Lopez, at 16. Similarly, some of the alleged "burdens" cited by Respondent in its motion (e.g., such as the "burden" created by the program requirement that a landlord provide to the housing agency a copy of any eviction notice served on a Section 8 tenant) are facially insufficient to sustain a landlord's burden of production. Brief, at 18.

Ultimately, the 'determination as to whether the purported burdens created by the requirements of the Section 8 program rise to the requisite level is a fact-specific one that must be resolved on a case-by-case basis with consideration of the objected-to requirement(s) as well as the specific circumstances of the objecting landlord. Consequently, this matter cannot be resolved on a motion to dismiss.

• 13 Third, and finally, Respondent cannot rely on the facts stated within the exhibits attached to its briefs to refute the substantive allegations of the Complaints.

[The Commission has never decided a "motion to dismiss" which merely presented new facts to demonstrate that the complainant should lose the underlying claim. In fact, the Commission has explicitly denied such motions. E.g., Chow v. Lemen Sun et al., CCHR No. 97-E-251 (Nov. 4, 1997). Such motions are more properly considered summary judgment motions which the Commission has not and shall not consider.

Morris v. Chicago Department of Law, et al., CCHR No. 98-E-212, at 3 (March 19, 1999). [FN131 "The Commission shall not accept motions for summary judgment at any stage of the proceedings." Regulation 210.340, cited in Morris, at 2. Instead, the facts for purposes of this motion (along with all reasonable inferences to be drawn for them) must be drawn from the Complaints. Supra, at 3.

When the appropriate standard is applied (and Respondent's exhibits are not considered), it is clear that each of the three Complaints states a claim upon which relief can be granted. The pertinent factual allegations are as follows. Complainant Smith explicitly alleges that Respondent's agent denied him the opportunity to rent an apartment after telling him that persons who relied on Section 8 "were not good tenants" and that Respondent "did not want any more Section 8 tenants." Smith Complaint, f 5. The Commission can infer from this allegation that Respondent did not lease to Complainant Smith based on its sweeping derogatory generalization regarding Section 8 recipients. This is precisely the type of discrimination that the Fair Housing Ordinance was designed to combat. See Sullivan Associates, 739 A.2d at 247 (finding that the "target" of the anti-discrimination statutes is "the unspoken presumption that section 8 assistance recipients, by virtue only of their source of income, are undesirable tenants for a landlord's rental properties"). Complainant Smith clearly states a claim upon which relief can be granted.

Complainants Walker and Torres allege that they were either in the process of being shown a vacant apartment (Walker) or of completing an application to lease after seeing an apartment (Torres) when Respondent learned that they intended to rely on Section 8 funding and abruptly terminated the process. Supra, at 4. While these allegations are less direct than those made by Complainant Smith, the Commission can reasonably infer that Respondent ceased its dealings with Complainants Walker and Torres because it did not want to rent to Section 8 tenants. At a minimum, it cannot be said beyond doubt that Complainants Walker and Torres can prove no facts in support of their claim that would entitle them to relief. Courts have frequently inferred discriminatory intent from an abrupt, adverse change in the parties' course of dealings after the landlord discovers that

the tenant (or the tenant's significant other) is a member of a protected class. See, e.g., Littlefield v. McGuffey, 954 F.2d 1337, 1340-42 (7th Cir. 1992); Hamilton v. Svatik, 779 F.2d 383, 386-88 (7th Cir. 1985); Pollitt v. Bramel, 669 F. Supp. 172, 173-76 (S.D.Ohio 1987). For these reasons, dismissal of the Complaints of Torres and Walker is likewise inappropriate.

#### IV. CONCLUSION

• 14 For the reasons set forth above, the Commission DENIES Respondent's motion to dismiss.

PURSUANT TO REGULATION 250.120, A PARTY MAY OBTAIN FUZVIEW ~~By~~ THIS ORDER ONLY AFTER THE COMMISSION HAS ISSUED AN ORDER DISMISSING THE COMPLAINT OTHER THAN AFTER AN ADMINISTRATIVE HEARING OR AS PART OF OBJECTIONS TO A HEARING OFFICER'S FIRST RECOMMENDED DECISION AFTER AN ADMINISTRATIVE HEARING.

By:

Clarence N. Wood  
Chair/Commissioner

FN1. pn June 11, 1998, the Commission entered an Order that "consolidated for all purposes" the cases of Complainants Smith, Torres, and Walker. On that same date, the Commission determined that there is substantial evidence to support Complainants' claims that Respondent discriminated against them based on their source of income. After the conciliation process did not garner a settlement, the cases were assigned to Hearing Officer Jeffrey I. Cummings with whom it has been pending through now the third motion to dismiss.

FN2. The term "fully briefed" is an understatement. Respondent's opening brief and reply brief alone contain 68 pages of argument plus exhibits.

FN3. Section 8 housing assistance typically may be used only for units that rent for no more than 110 percent above the "fair market rental." Commission on Human Rights and Opportunities v. Sullivan Associates, 250 Corm. 763, 739 A.2d 238, 244 n-17 (1999) (citing to 42 U.S.C. 5 1437f(c) (1); 24 C.F.R. § 882.1061. Fair market rentals are calculated using several criteria, but generally are based on the forty-fifth percentile rent of standard quality rental housing in a particular metropolitan area. Sullivan Associates, 739 A.2d at 244 n. 17 (citing to 24 C.F.R. § 888.113).

FN4. The Commission's decision in Goodchild explicitly adopts the reasoning of Smith I (which was issued on the same day) with respect to "whether 'source of income' does and may include Section 8.a Goodchild, at 3 & 6. As a consequence, the Goodchild decision contains no independent substantive discussion of this particular issue.

FN5. In its first motion to dismiss, Respondent argued that Section 8 funding was not a "source of income" within the meaning of the Ordinance. The Commission

rejected this argument. smith I, at s-12.

FN6. Respondent's reliance on Village of Bellwood v. Dwivedi is misplaced. In that case, the court pointed out that the alleged discriminatory action (i.e., steering prospective African-American home purchasers toward integrated communities) could 'have resulted from a "noninvidious reason," namely, the preference of the African-American consumers themselves. Dwivedi, 895 F.2d at X30-31. By contrast, the alleged discrimination here'had nothing to do with the preferences of Complainants.

FN7. Respondent, which at one point described Sullivan Associates as "an action strikingly similar" to this case (Brief, at 26), attempts at another point to distinguish the decision by pointing out that there was (unlike here) legislative history to support the conclusion that the legislature intended to prohibit discrimination against persons whose source of income included Section 8 funding. Reply, at 30 n.68. This distinction is of no moment. The Commission relied on the plain meaning of the text of the Ordinance to conclude that Section 8 funding was an intended "source of income" within the meaning of the Ordinance. Smith I, at 5-7. It is a statute's text which provides the "most reliable indicator of legislative intent." Latona, 703 N.E.2d at 906. Consequently, where (as here) the legislative intent can be derived from the statute's text, resort to legislative history is unnecessary. See Continental Can Co., Inc. v. Chicago Truck Drivers, Helpers and Warehouse Workers Union, 916 F.2d 1154, 1157 (7th Cir. 1990) ("The text of the statute, and not the private intent of the legislature, is the law").

FN8. In light of its conclusion regarding this issue, the court did not assess the validity of the landlord's objection to another proposed contract term that was required by the Section 8 program. Peyton, 955 F.2d at 253.

FN9. See In re: May 1991 Will County Grand Jury, 152 111.2d 381, 604 N.E.Zd 929, 932-33 (1992); In re: Contest of the Election for the Offices of Governor and Lieutenant Governor, 93 111.2d 463, 444 N.E.Zd 170, 179 (1983); People v. Bernette, 30 111.2d 359, 197 N.E.2d 436, 445 (1964); Sternberg Dredging Co. v. Estate of Sternberg, 10 111.2d 328, 333-34, 140 N.E.Zd 125 (1957).

FN10. Even if it did, the Commission finds that the purpose of the Ordinance (namely, assuring that all Chicago residents have a full and equal opportunity to obtain housing without experiencing discrimination) clearly requires the interpretation of the Ordinance that the Commission has adopted. Supra, Part III(A) (1).

FN11. Respondent's argument on this score also challenges whether the City of Chicago has the authority to prohibit landlords from rejecting otherwise qualified Section 8 recipients as tenants (discussed in Part III(A)(Z) above).

FN12. Respondent's burden as to this issue is one of "production" and not one of "proof." See, e.g., Sanders, at 9 ("After Complainant presented her prima facie case, the Respondents had the burden of producing evidence that unlawful discrimination was not the cause of Complainant failing to view the Apartment. Respondents were not required to persuade the factfinder that it was motivated by the reasons given at the trial as long as the evidence raised a genuine issue of fact") \_ If Respondent meets its burden of production, Complainants can carry their ultimate burden of proof by showing that the reasons offered are pretextual. Id.,

at 10; Castro, at 9-10; see also Collier v. Budd, 66 F.3d 886, 892 (7th Cir. 1995) (describing methods of showing pretext).

F'N13. Uncontested facts alleged in exhibits to motions to dismiss may be considered only where notions to dismiss "argue that the Commission does not have authority to proceed with the case or which argue that the complaint is not legally sufficient." Morris, at 2-3 (citing cases); cf. Smith II, at 3-10 (discussing factual allegations and facts contained in documentation submitted in support of Respondent's motion to dismiss to determine whether the parties reached a settlement that barred Complainant Smith's lawsuit).

2000 WL 33143681 (Chi.Com.Hum.Rel.1

ENDOFDOCUMENT

0000113

INDEX TO RECORD ON APPEAL,

Volume One

	Page
Placita .....	C 1
Civil Action Cover Sheet .....	C 2
Petition for Writ of Certiorari, filed November 1&2002 .....	C 3
Summons, filed December 7,2001 .....	C 5
Certificate of Service of Summons .....	C 6
Appearance, filed December 12,2001 .....	C 7
Motion to file Amended Complaint, filed January 1o,2002 .....	C 9
Amended Petition for Writ of Certiorari, filed January 1o,2002 .....	C 10
Agreed Order, filed January IO,2002 .....	C 11
Defendant's Answer, filed January 28,2002 .....	c 13
<i>Record from Civ of Chicago Commission on Human Relations</i>	
Certification on Record .....	C 14
Hearing Document List .....	C 15
Complaint, filed August 11,1999 .....	C 17
Attorney Appearance (Caplan), filed October 6, 1999 .....	C 19
Verified Statement of Respondents .....	C 22'
Attorney Appearance (MahLman & Mendoza) .....	C 2.5
Order Finding Substantial Evidence and Notice of Conciliation Conference .....	C 27

Order Setting Administrative Hearing and Prehearing Conference .....	C	29
Standing Order Relating to Discovery, Pre-hearing Procedure, and Pre-hearing Memorandum .....	C	30
Witness List, filed May 1, 2000 .....	C	36
Complainant's Interrogatories and Request for Production, filed May 1, 2000 .....	C	38
Respondents' Motion for Leave to Take Depositions .....	C	49
Complainant's Objections to Respondents' Motions for Depositions, Continuance of Administrative Hearing and Extension of Time to Respond to Discovery .....	C	54
Reply to Complainant's Objections to Respondents' Motions for Depositions, Continuance of Administrative Hearing and Extension of Time to Respond to Discovery .....	C	58
Respondents' Pre-Hearing Memorandum .....	C	62
Statement of Complainant's Case .....	C	66
List of Witnesses Complainant Intends to Call .....	C	68
Documents Complainant Intends to Introduce .....	C	70
Complainant's Itemization of Damages .....	C	71
- Appearance of Attorney (Snyder)' .....	C	74
Complainant's Motion to Exclude Respondents' Expert Witnesses .....	C	77
Letter Re: Continuance .....	C	80
Letter Re: Motion to Request an Extension, filed September 20, 2000 .....	C	83
Complainant's Motion to Extend the Date for Filing the Post-Hearing Brief, filed September 27, 2000 .....	C	85
Complainant's Post-Hearing Brief in Support of the Complaint .....	C	91

Respondents' Post-Hearing Brief, filed November 28,2000 .....	c	119
Complainant's Post-Hearing Reply Brief, filed December 12,2000 .....	C	126
First Recommended Decision .....	c	134
Respondent's Objections to Decision, filed March 14,2001 .....	c	150
Complainant's Response to Respondent's Objection to First Recommended Decision .....	c	154
Complainant's Request for Attorney Fees and Costs, April 12,2001 ...*	C	161
Affidavit of Tracie Coleman ...*	C	164
Affidavit of Kirsten Mahhnan .....	C	167
Affidavit of Baltazar Mendoza .....	C	169
Affidavit of J. Damian Ortiz .....	c	174
Affidavit of Elizabeth Snyder .....	c	178
Affidavit of Attorney Thomas H. Morsch .....	C	182
Final Recommended Decision .....	C	187
Order .....	c	202
Final Ruling on Liability and Damages .....	C	204
Respondents' Response to Complainant's Request for Attorneys' Fees, filed May 10,2001 ..*	c	221
Complainant's Reply to Respondents Response to Request for Attorney's Fees .....	C	226
First Recommended Decision on Attorney's Fees .....	c	229
Final Recommended Decision on Attorney's Fees .....	C	232
Final Order .....	C	235

Final Ruling on Attorney’s Fees ..... C 236

Complainant’s Motion to Enforce Judgment filed on  
November 29,2001 .....\*..... C 241

Order ..... C 243

Final Ruling on Liability and Damages (continued in  
Volume Two) ..... c 244

**Volume Two**

Placita .....C 251

Final Ruling on Liability and Damages (continued  
from Volume One) ..... C 252

Final Order ..... C 263

Final Ruling on Attorney’s Fees .....c 264

Briefing Order Concerning Alleged Ruling Violation  
..... C 268

Response to Briefing Order ..... C 269

Briefing Order Concerning Alleged Ruling Violation  
..... C 270

Order ..... C 271

Transcript of August 29,2000 ..... C 272

Exhibits ..... c 345-357

WAC, Inc. Section 8, Owner Guidebook, filed January  
28,2002 ..... C 358

Appearance and Jury Demand, filed January 30,2002 .....C 387

Motion to Set Briefing Schedule, filed February 26,  
2002 .....C390

Order, filed February 26,2002 .....c 392

Order to Set Hearing and Briefing Schedule, filed March  
11,2002 ..... c 393