City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60610
(312) 744-4111 (Voice), (312) 744-1081 (Fax) (312) 744-1088 (TTY/TDD)

IN THE MATTER OF	)	
	)	
Cezary Lapa	)	
COMPLAINANT	)	
and	)	CCHR No. 01-PA-27
	)	
Polish Army Veterans Association, Henryk Zygmunt, Stanislaw Jarosz, Krzysztof Pawlowski, and Marian Prusek	)	Date of Order: March 21, 2007 Date Mailed: April 3, 2007
RESPONDENTS	)	

FINAL ORDER ON LIABILITY AND RELIEF

TO: Urszula Czuba-Kaminski
Urszula Czuba-Kaminski & Associates, PC
7015 Archer Ave.
Chicago, IL 60638

Martin Y. Joseph
Attorney at Law
1541 W. Chicago Ave.
Chicago, IL 60622

YOU ARE HEREBY NOTIFIED that, on March 21, 2007, the Chicago Commission on Human Relations issued a ruling in favor of Complainant Cezary Lapa The Commission ordered Respondents to do the following:

1. Pay to Complainant a total of $6,400 in damages, assessed as follows:
   a. $3,000 by Respondent Henryk Zygmunt
   b. $1,500 by Respondent Polish American Veterans Association
   c. $1,100 by Respondent Stanislaw Jarosz
   d. $700 by Respondent Krzysztof Pawlowski
   e. $100 by Respondent Marian Prusek

2. Each Respondent to pay to Complainant pre-and post-judgment interest on the damages assessed against that Respondent, pursuant to Reg. 240.700, dated from November 30, 2006.

3. Pay to the City of Chicago a total of $1,600 in fines, assessed as follows:
   a. $500 by Respondent Henryk Zygmunt
   b. $500 by Respondent Polish American Veterans Association
   c. $250 by Respondent Stanislaw Jarosz
   d. $250 by Respondent Krzysztof Pawlowski
   e. $100 by Respondent Marian Prusek

The findings of fact and specific terms of the ruling are enclosed. Compliance with this Final Order shall occur no later than 31 days from the later of the date of this order or the date of any Final Order

concerning attorney fees.[1] Reg. 250.210.

Pursuant to Commission Regulations 100(14) and 250.150, to seek review of this order, parties may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law; however, because attorney fees proceedings in this matter are now pending at the Commission, then such a petition cannot be filed until after the issuance of the Final Order concerning those fees.

Complainant submitted a petition for attorney fees and costs on March 19, 2007. Pursuant to Reg. 240.630, Complainant is ordered to file with the Commission and serve on the other parties and the Hearing Officer any amendment or supplement to his initial statement of fees and/or costs, supported by argument and affidavits, no later than 24 days after the date of mailing of this Ruling to the parties, that is, on or before **April 27, 2007.** Any response to such statement (initial, amended, or supplemental) shall be filed with the Commission and served on the other parties and the Hearing Officer within 14 days of the filing of any amended or supplemental statement, or **May 11, 2007**, whichever date occurs earlier. Any reply brief by Complainant shall be filed and served no more than 10 days after the filing of any response. A party may request additional time to file and serve any of the above items pursuant to the provisions of Reg. 270.130.

CHICAGO COMMISSION ON HUMAN RELATIONS
Clarence N. Wood, Chair/Commissioner

[1] Payments of fines are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to the case name and number. Payments of damages and interest are to be made directly to the Complainant. See Reg. 250.220 for information on seeking enforcement of an award of relief.

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(312) 744-4111 (Voice), , 312-744-1081 (Fax), (312) 744-1088 (TDD)

IN THE MATTER OF:	)	
	)	
Cezary Lapa,	)	
Complainant,	)	Case No.: 02-PA-27
vs.	)	
	)	Date of Ruling: March 21, 2007
Polish Army Veterans Association,	)	
Henryk Zygmunt, Stanislaw Jarosz,	)	
Krzysztof Pawlowski, and Marian Prusek,	)	
Respondents.	)	

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant Cezary Lapa ("Lapa") contends that Respondents Post 90, Polish Army Veterans Associations ("PAVA"), Henryk Zygmunt ("Zygmunt"), Stanislaw Jarosz ("Jarosz"), Krzysztof Pawlowski ("Pawlowski"), and Marian Prusek ("Prusek")(collectively referred to as "Respondents") discriminated against him because of his sexual orientation (gay or bi-sexual) by harassing him and evicting him from his office space. Lapa claims that Respondents Zygmunt, Jarosz, Pawlowski, and Prusek, all officers of the Respondent PAVA, harassed him and tried to force him to vacate his office space by calling him "faggot" and "homo," physically attacking him, locking him out of his office space, and burglarizing his office. Lapa claims that the Respondents' actions are a violation of Chapter 2-160 of the Chicago Municipal Code because they limited his full enjoyment of a public accommodation because of his sexual orientation.

II. PROCEDURAL HISTORY

On April 3, 2002, Lapa filed a Complaint with the City of Chicago Commission on Human Relations ("Commission") alleging that PAVA, Zygmunt, Jarosz, Pawlowski, and Prusek violated Chapter 2-160 of the Chicago Municipal Code by discriminating against him for the reasons described above. On April 19, 2002, Lapa amended his Complaint to allege that Respondents had denied him membership in PAVA and that Zygmunt made disparaging remarks and continued to harass him based upon his sexual orientation and in retaliation for filing his complaint. PAVA, Zygmunt, Jarosz, Pawlowski, and Prusek filed their Answer to Complaint and Answer to Amended Complaint on June 4, 2002, denying direct knowledge as to Lapa's sexual orientation and denying that they otherwise limited Lapa's full enjoyment of a public accommodation because of his sexual orientation.

After an investigation, an Order Finding Substantial Evidence and Setting Conciliation Conference was issued by the Commission on February 24, 2005, determining that there was

substantial evidence of violation of the Chicago Human Rights Ordinance with respect to Lapa's initial claim of sexual orientation discrimination. The additional allegations of the Amended Complaint were voluntarily withdrawn and dismissed. Thereafter, on June 30, 2005, the Commission issued an Order of Default with respect to Pawlowski and Prusek. The Order of Default as to Prusek was subsequently vacated by the Commission on August 11, 2005. A second Order of Default was issued by the Commission on September 8, 2005 with respect to Jarosz. Accordingly, as to Pawlowski and Jarosz, Lapa was required only to establish a *prima facie* case of a violation and to establish damages. Those Respondents were deemed to have waived any defenses to the Complaint allegations.

After conciliation failed, this matter was scheduled for an Administrative Hearing before Hearing Officer Lawrence M. Cohen. The Hearing took place on February 16-17, 2006, April 13, 2006, June 2, 2006, and June 5, 2006. Respondents submitted a timely post-hearing brief. Because Complainant's post-hearing brief was not timely filed and no good cause was demonstrated for the late filing, Respondents' Motion to Strike Complainant's Post-Trial Memorandum was granted.[1]

The Hearing Officer's First Recommended Decision Regarding Liability ("FRD") was issued and served on the parties by certified mail and regular mail on December 9, 2006. On January 8, 2007, Lapa filed a timely objection to the FRD pursuant to Reg. 240.610(g) of the Commission's Rules and Regulations. Respondents did not file any objection.

Lapa does not object to the Findings of Fact contained in the FRD. Lapa objects that the evidence does not support the Hearing Officer's conclusion that the Respondents would have evicted him even if he was not homosexual. Comp. Obj., p. 2. Lapa argues (1) that Zygmunt and Prusek's testimony that Lapa was a problem tenant was not credible; (2) that Lapa did for the most part make timely rent payments; (3) that any rent payments not timely made by Lapa were paid at a later date; (4) that on occasion Lapa's efforts to make timely rent payments were impaired by various members of PAVA; (5) that Lapa's delinquency in his rent payments was simply a pretext used to end his tenancy; and (6) that other tenants were behind in their rental payments but no evictions were ever filed against them. Respondents filed a response to Lapa's objections on January 29, 2007. Lapa's objections will be discussed below.

III. FINDINGS OF FACT[2]

1. During the relevant time period of 1995 through 2002, Lapa was either homosexual or bisexual. 1Tr. 42-43.[3]

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[1] See September 8, 2006 Order Granting Respondents' Motion to Strike Complainant's Post-Trial Memorandum.

[2] Only those facts relevant to this opinion are cited.

[3] The Transcript will be referenced as follows:

1) The February 16, 2006 transcript will be referenced as 1Tr. _;
2) The February 17, 2006 transcript will be referenced as 2Tr._;
3) The April 13, 2006 transcript will be referenced as 3Tr. _;
4) The June 2, 2006 transcript will be referenced as 4Tr. _; and
5) The June 5, 2006 transcript will be referenced as 5Tr. _.

2. PAVA is a membership organization consisting of approximately 45 members that owns a building located at 6005 W. Irving Park Rd. in Chicago. See Complaint, par. 2; Answer to Complaint, par. 2.

3. In 1995, Lapa began renting a room from PAVA in the 6005 W. Irving Park Rd. building, which he used as the office for his business, the Polish Yellow Pages ("the office space"). 1Tr. 30. Lapa continued renting the office space until he was ordered to move out for non-payment of rent in 2002. 2Tr. 35.

4. Three eviction lawsuits were filed against Lapa for non-payment of rent. 2Tr. 129-130. The first eviction lawsuit was filed in September 2001 after Lapa had been attempting to make rent payments using checks from a closed bank account. 2Tr. 51.

5. The second eviction lawsuit was filed on September 11, 2001, because Lapa had not paid rent for approximately 11 months. 2Tr. 159. Prior to the second eviction lawsuit, Lapa's rent checks had all been returned NSF because of insufficient funds in Lapa's bank account. Lapa thereafter entered into an agreement to deposit the back rent payments directly into PAVA's bank account, which he did, and the order of possession entered against him as a result of the second eviction lawsuit was vacated. 2Tr. 158.

6. The third eviction lawsuit was filed in 2002 because Lapa again had not paid his rent. Lapa was ordered to pay the back rent, but he did not make the payments. As a result, Lapa voluntarily moved out of the building. 2Tr. 133.

7. When Lapa signed a document to surrender the possession of the office space to PAVA, the agreement stated that Lapa could come back within a certain period of time to remove his belongings from the office space. 2Tr. 164.

8. When Lapa returned to the office space the day after he surrendered possession of it to PAVA, the locks had been changed and Zygmunt was inside the office space. 2Tr. 165. When Zygmunt saw Lapa, he said to him "finally the faggots are thrown away—got rid of." 2Tr. 166.

9. When Lapa returned to the office space later that same day, the security cameras Lapa had installed in the office space had been torn down, the antique desks were upside down and broken, and decorations on the wall had all been torn down. At that time, Zygmunt was again in the office space and he said to Lapa, "You faggot, they let you out again. One more time and I will call the police, and they will take you away." 2Tr. 167.

10. Jarosz called Lapa a "pedal" (a Polish term) on many occasions. 2Tr. 138. Jarosz also called Lapa a "fucking son of a bitches" and told him to "get out of here." 2Tr. 139. At the time he made the comments, Jarosz was the Treasurer of PAVA.

11. Lapa complained to the commandant of PAVA, Mr. Biel, and to other members of PAVA, about what Jarosz said. 2Tr. 140.

12. Zygmunt also called Lapa a "pedal" and a "son of a bitch" approximately three to four times a week. 2Tr. 140-141. At the time he made the comments, Zygmunt was the manager of the building.

13. Lapa complained to the main PAVA committee in New York and to Mr. Wiecinski, from the regional PAVA committee, about what Zygmunt said. 2Tr. 142.

14. Lapa also heard Pawlowski say that Lapa is "a faggot and [he has] to be removed." 2Tr. 146. At the time Pawlowski made the comment, he was the Commandant of PAVA. 2Tr. 142.

15. Other individuals also heard some of the Respondents call Lapa a "pedal" and refer to him as homosexual. Jan Marszalek, a PAVA member who attended nearly every meeting, heard Zygmunt say that Lapa is a "faggot" and a homosexual. 3Tr. 206.

16. Marszalek also heard Pawlowski say that, in his opinion as a doctor, he is a homosexual. 3Tr. 207.

17. In 2001, Celina Plucinska, a tenant of the PAVA building, heard Zygmunt say that Lapa cannot be a member of PAVA because he is a "faggot." 3Tr. 237. On multiple other occasions in 2001, Plucinska also heard Zygmunt call Lapa a "son of a bitch" and a "faggot," and say that he cannot be a tenant because he is a "faggot." 3Tr. 241-244.

18. Jergy Darski, a PAVA Post 90 member between 2001 and 2003, heard Zygmunt say in a meeting that Lapa is a homosexual and they needed to get rid of him. 4Tr. 319-320. Darski also testified that Zygmunt said in the meetings that Lapa did not pay his rent and they needed to get rid of him for that reason. 4Tr. 322. Darski was also present when Lapa returned to the office space to pick up his belongings and he heard Zygmunt say that he will "kick the son of a bitch faggot out." 4Tr. 328.

19. Boleslaw Strzlecki, a PAVA Post 90 in the years 2000 through 2002, heard Zygmunt call Lapa a "pedal."

IV. DISCUSSION

Section 2-160-070 of the Chicago Human Rights Ordinance makes it unlawful for a person that "owns, leases, rents, operates, manages or in any manner controls a public accommodation [to]...discriminate concerning the full use of such public accommodation by any individual because of the individual's ...sexual orientation..."

Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination concerning the full use of a public accommodation. Section 520.110 of the Commission's Rules states that:

> "Full use" of a public accommodation means that all parts of the premises open for public use shall be available to persons who are members of one of the protected classes at all times and under the same conditions as the premises are available to all other persons, and that the services offered to

persons who are members of one of the protected classes shall be offered under the same terms and conditions as are applied to all other persons.

The Chicago Human Rights Ordinance defines a public accommodation as 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..." Section 2-160-020. The PAVA building located at 6005 W. Irving Park Rd. in Chicago is a public accommodation covered by Section 2-160-070 to the extent that it is a business establishment that leases space to the general public.

To prevail, the Commission requires Lapa first to present evidence at the hearing to establish a *prima facie* case of discrimination. *Bell v. 7-Eleven Convenience Store*, CCHR No. 97-PA-68/70/72 (July 28, 1999). Once Lapa has established a *prima facie* case, the burden shifts to the Respondents (except for defaulted Respondents Pawlowski and Jarosz) to articulate a legitimate non-discriminatory reason for the denial or limitation of use of the public accommodation. *Id.* Lapa then has the burden to prove that the Respondents' reason is a pretext for discrimination. *Id.*

In a public accommodations discrimination case, a complainant establishes a *prima facie* case by proving: (1) that he or she is a member of a protected class; (2) that there was a request to use the accommodations at a time that the accommodations were open to the public; (3) that all objective non-discriminatory qualifications were met for use of the public accommodations; and (4) that the complainant was denied use of the accommodations or that the use was curtailed or limited. *Brown v. Emil Denemark Cadillac*, CCHR No. 96-PA-76 (Nov. 18, 1998); *Jenkins v. Artists' Restaurant*, CCHR No. 90-PA-14 (Aug. 14, 1991). A complainant's burden is to establish "by a preponderance of the evidence that sufficient facts exist to imply discrimination in the absence of a credible, non-discriminatory explanation for the Respondent's actions." *Bell v. 7-Eleven Convenience Store, supra.*

Respondents argue that Lapa did not prove a *prima facie* case. They argue that (1) Lapa was not either shown to be or perceived to be a member of a protected group (homosexuals) because he was married and was considered by various PAVA members to have a propensity to "chase women"; (2) that the terms the individual Respondents used to refer to him were not derogatory or otherwise sufficient to have created a prohibited hostile environment; and (3) that with respect to Lapa's evictions and their consequences, Respondents acted pursuant to a legitimate non-discriminatory reason – Lapa's repeated failure to pay his rent – which was not shown to be pretextual. Accordingly, Respondents argue that when they denied Lapa continued occupancy, all non-discriminatory qualifications, *i.e.* the timely payment of rent, had not been met. There was, they alternatively argue, a legitimate non-discriminatory reason for the denial of Lapa's continued tenancy.

A. Lapa Was or Was Perceived as Homosexual or Bisexual

Lapa testified, without contradiction, that during the relevant time period he was either homosexual or bisexual. Respondents argue that this was not their perception; they claim they thought him to be only heterosexual because he was married . However, Lapa's marriage has no bearing on his claim, as Lapa credibly testified that he had sexual tendencies toward both men

and women. It is also certainly possible for a person to be married or "chase women" and still be homosexual. Wholly apart from Lapa's own testimony regarding his sexual tendencies, it is also clear from the testimony of Lapa, corroborated by other witnesses, that, regardless of his marriage, Respondents perceived Lapa as being homosexual in light of the many comments they made that referred, in both neutral and derogatory terms, to his gay sexual orientation.

B. The Hostile Environment Claim

1. The Names Lapa Was Called Are Pejorative and Vulgar

Although the parties disagreed as to how the Polish word "pedal" should be translated, the word is, in fact, pejorative and vulgar, and will be regarded as such in this decision. In *A Learner's Polish-English Dictionary, First Preliminary Edition, CD and Web Version*, Swan, Oscar E., http://polish.slavic.pitt.edu/dictionary.pdf, "pedal" is defined as "*pej vulg* homosexual" where "*pej*" is the abbreviation for "pejorative" and "*vulg*" is the abbreviation for "vulgar." The introduction to that dictionary states that it is "intended primarily for the use of the English-speaking reader of Polish, interested in arriving at the *central or commonest meaning of a word...*" [emphasis added] This definition indicates that the most common meaning of the word "pedal" is both pejorative and derogatory.

Other sources from an internet search also indicate that "pedal" is both pejorative and derogatory. In *Poland's Criminal Probe of Gays: With State Homophobia Deepening, Violence Threatens Saturday's Warsaw Pride March*, Ireland, Doug, www.gaycitynews.com/gcn523/polandscriminalprobe.html, the author states that "...the word pedal's colloquial Polish meaning is as a homophobic epithet." Additionally, an entry titled *Term for Gay in Different Languages*, from the on-line encyclopedia Wikipedia, states that the style of the word "pedal" is derogatory. See http://en.wikipedia.org/wiki/ Term_for_gay_in_different_languages. Finally, the derogatory usage of the term "pedal" is confirmed by the repeated invocation by Zygmunt of the equivalent derogatory English term "faggot" to describe Lapa. For example, Marszalek testified he heard Zygmunt call Lapa a "faggot" and Darski testified he was present when Zygmunt said that he would kick the "son of a bitch faggot out."

2. There Was Credible Evidence that Respondents Used Vulgar and Pejorative Terms to Refer to Lapa

Respondents argue that the Complainant's witnesses were biased and that the Respondents' denial of the use of any derogatory terms should be credited. Lapa testified that Jarosz, Zygmunt, and Pawlowski called him a "pedal" on multiple occasions, that Zygmunt said they need to get rid of the "pedal," and that Pawlowski, when referring to Lapa, said that they must remove the "pedal." Although Respondents argue that Lapa is not a credible witness, Lapa presented four different witnesses, Marszalek, Plucinska, Darski, and Strzelecki, that corroborated his testimony and testified that they also heard individual Respondents refer to Lapa as a "pedal" or a "faggot" or, in more neutral terms, simply a "homosexual." Although Respondents also attack the credibility of Plucinska, her testimony is in line with the testimony of Marszalek, Darski, and Strzelecki, all PAVA Post 90 members or former members, who were credible witnesses who had no bias. Conversely, other than Respondents themselves, who clearly had an interest in the outcome of the case, Respondents produced no witnesses or evidence to refute the testimony that Lapa was frequently referred to by vulgar and pejorative terms.

3. Repeatedly Calling Lapa "Faggot" and "Pedal" Was Discriminatory

The Commission has noted that the term "faggot" often has the purpose and effect of belittling and automatically "separating the person addressed from other non-heterosexual persons," as does the use of the term "nigger," the use of which has been held to be "discrimination *per se*." *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995).[4] The Polish term "pedal" has a similar demeaning purpose and effect. By having these terms directed to him frequently and in a hostile manner, Lapa was treated differently from other members of the public who rented space from PAVA because of his sexual orientation. Consequently, he was subjected to a hostile environment which discriminated against his full use of a public accommodation within the meaning of the CHRO. In *Craig*, even a single instance of harassment by a commercial enterprise was found sufficient to create a hostile environment under the CHRO in a public accommodation context. Here, Respondents' use of these slurs was far more frequent and egregious and clearly compromised Lapa's use of the office space.

C. The Eviction Claim

Lapa asserts that the reason his tenancy was terminated was because he was perceived to be homosexual. There is certainly ample record evidence to show that Lapa's sexual orientation "played a motivating part" in PAVA's decision to end Lapa's lease. Respondents argue, nevertheless, that, even if there was a discriminatory motive, they may still avoid a liability because PAVA "would have made the same [lease termination] decision even if it had not allowed [Lapa's sexual orientation] to play such a role." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 244-45 (1989). Respondents argue that there were three different occasions when it had to file eviction cases against Lapa for non-payment of rent; that, as Respondents state in their post-hearing brief, the evidence in this case is "clear that Lapa was a problem tenant for a long time, and admittedly had not paid his rent timely. This is more than enough to approve Respondents' actions, even if some of the members were critical of Lapa's lifestyle."

The critical inquiry in this mixed motive case, consequently, is whether, even if Lapa has demonstrated that Respondents considered his sexual orientation in making their eviction decisions, Respondents would have reached the same decisions had they not considered that impermissible factor. See e.g., *Pudelek/Weinman v. Bridgeview Garden Condo Assn. et al.*, CCHR No. 99-H-39/53 (Apr. 18, 2001); *Chicago Housing Authority v. The Human Rights Comm.*, 325 Ill. App. 3d 1115, 1124 (1st Dist. 2001). The evidence in this case, even as presented by Complainant to meet his burden to establish a *prima facie* case, clearly shows that he was not meeting his key obligation as a tenant to pay his rent on time and in full. See, e.g.,

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[4] In this section of the discussion, the Commission uses language somewhat different from that of the Hearing Officer, who stated in his Recommended Decisions, "Use of the term "faggot," and by extension its Polish counterpart "pedal," is discriminatory *per se*." This is done to avoid conveying the impression that *any* single use of a slur like "faggot" or "pedal" constitutes an Ordinance violation entitling a complainant to relief. In a claim of public accommodation discrimination based on a single encounter, as in *Craig* where a restaurant patron was called "damn faggot" by a server after complaining about poor service, a single incident of such verbal abuse *can* indeed be sufficient to constitute a violation of the CHRO. But the Commission also stated clearly in *Craig* that "not every insult or derogatory comment will necessarily rise to the level of a violation" and even noted that the use of the term "faggot" on a second occasion in that case, when the complainant heard a restaurant employee describe the offending incident to another employee, did not constitute a violation because the term was not used to insult the complainant. Also, as pointed out in *Craig* and other cases, a single, isolated name-calling incident within a longer-term relationship may not be sufficiently severe or pervasive to create a hostile environment.

McDuffy v. Jarrett, CCHR No. 92-FHO-28-5778 (May 19, 1993), where a landlord was held not liable for evicting a complainant from a housing unit because he would have evicted her for failure to pay rent even absent the impermissible motive, which in that case was rejection of his sexual advances.

Despite Lapa's objection to the contrary (Comp. Obj., p. 2), there was ample evidence, including Lapa's own testimony, that Lapa consistently did not pay his rent on time and was not a good tenant. Lapa testified that at the time of the first eviction lawsuit, his rent had not been paid because of a bank error, but that the Respondents allowed him to pay the back rent and that at the time of his second eviction lawsuit, he was eleven months behind in his rent.

The Respondents presented evidence that Lapa's rent checks had been returned NSF because he did not have sufficient funds in his bank account to cover the rent payments. The parties also stipulated that as a result of the third eviction lawsuit, Lapa was ordered to pay back rent, that he was unable to make those payments because he did not have the money to do so, and that he voluntarily surrendered possession of the office space to PAVA as a result. Finally, there is evidence that the Respondents discussed Lapa's non-payment of rent as a reason for evicting Lapa from the office space. Darski and Strzlecki both also testified that it was discussed at the PAVA meetings that Lapa had not paid his rent and that his rent checks had been returned for insufficient funds.

It is also significant that PAVA did not seize upon the first or even the second instance of non-payment of rent by Lapa to terminate his tenancy. In March 2001, after PAVA had obtained an order of possession and during a period when Lapa claimed he was consistently being harassed, Lapa was still allowed to remain a tenant. Lapa was also allowed to keep some of his possessions in his rental space and to stay additional time after PAVA obtained a second order of possession. Lapa's possessions were removed from the premises only after permission was obtained from the Sheriff. All of these facts buttress the conclusion that Respondents would have still terminated Lapa's tenancy even if there were no impermissible motive. A preponderance of the evidence demonstrates that Respondents would have proceeded in the same manner even if they had not taken Lapa's sexual orientation into account.

Lapa's objection that evidence presented in the testimony of Zygmunt and Prusek should be disregarded because their testimony was not credible, even if accepted, would not affect the conclusion that Respondents would have evicted Lapa even if he was not homosexual. As discussed above, there was ample evidence that Lapa was not a good tenant, including Lapa's own testimony and the testimony of two witnesses called by Complainant, Darski and Strzlecki, that Lapa was behind, frequently by many months, in his rent payments. Indeed, Lapa's objection (Comp. Obj., p. 4) acknowledges that "Lapa's testimony clearly showed that the fact that he was on occasion behind in his rental payment . . ." Lapa's assertion that this non-payment of rent, estimated to have occurred approximately 30% of the time rent payments were due, was somehow the fault of PAVA or his bank is specious. The eventual payment of any unpaid balance, often under court order, also does not show he was a satisfactory tenant.

Lapa's further objection that the fact that the first two eviction actions against Lapa were dismissed and Lapa was allowed to continue his tenancy indicates that he did pay his rent is also without merit. As discussed above, that Lapa was allowed to remain a tenant even though PAVA had obtained two orders of possession against him militates against any pretext condition.

Lapa's objection does not dispute that the testimony established that the third eviction lawsuit was filed because Lapa again had not paid his rent, that Lapa was ordered to pay the back rent but he did not make the payments, and that as a result, Lapa voluntarily moved out of the building.

Finally, Lapa's objection that his non-payment of rent was a pretext because there were other tenants who were behind in their rental payments but had not had eviction actions filed against them is also without merit. The other tenant referenced by Lapa is Zygmunt who, as Respondents note in their response to Lapa's objections (pp. 4-5), was, unlike Lapa, a member of PAVA and later one of its officers and who did not cause "other problems or issue numerous returned checks." Moreover, "Plucinska was evicted at the same time [as Lapa] under similar circumstances, and she has never claimed to be anything but a heterosexual female." Respondents proved they would have evicted Lapa for non-payment of rent even if they had not considered his sexual orientation.

V. REMEDIES

Under the Chicago Municipal Code, Section 2-120-510(l), the Commission may award a prevailing Complainant the following forms of relief:

> [A]n order: ... to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; ... 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 ...; 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 ... These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

A. Compensatory Damages

1. Out-of-Pocket Loss

Lapa presented evidence of out-of-pocket losses that he suffered as a result of his eviction from the PAVA building. However, Lapa did not prevail on his discrimination claim stemming from his eviction. Lapa did not present evidence that any of these losses were suffered because of the hostile environment. Lapa will not be awarded any damages for out-of-pocket losses.

2. Emotional Distress Damages

The Commission stated in *Nash & Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995), that "the amount of compensatory damages that may be awarded is not limited to out-of-pocket losses, but includes damages for the embarrassment, humiliation, and emotional distress caused by the discrimination." See also *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (May 21, 1997). To be entitled to such damages, the complainant must present evidence at the administrative hearing to prove the distress was caused or exacerbated by the discrimination, and also to establish the proper amount to be awarded. See, e.g. *Griffiths v.*

DePaul University, CCHR No. 95-E-224 (Apr. 19, 2000) and *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000). Lapa did not present any expert testimony at the hearing that would have aided in determining whether he suffered emotional distress. However, Lapa's testimony is sufficient to establish an emotional injury. *Craig v. New Crystal Restaurant, supra.*

Emotional distress damages have been awarded where homophobic or racial epithets have been used without resulting physical or permanent emotional damage. See *Craig v. New Crystal Restaurant, supra.* ($750 award to complainant who only put on slight evidence of emotional distress caused by a single use of the word "faggot"); *Jenkins v. Artists' Restaurant*, CCHR No. 90-PA-14 (Aug. 14, 1991)($1,000 award to complainant who put on "slim" evidence of harm caused by single use of racial epithet); *Pryor/Boney v. Echevarria*, CCHR No. 92-PA-62/63 (Oct. 19, 1994)($500 and $1,000 awards for complainants who had been called "niggers" by store owner); *Miller v. Drain Experts & Earl Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998)($1,250 awarded to complainant for emotional distress when complainant only presented "slim" evidence of emotional distress). In determining the amount, the Commission considers the severity and duration of the discrimination, the severity and duration of the complainant's response to it, and the complainant's vulnerability. *Nash/Demby v. Sallas Realty & Sallas, CCHR No. 92-H-128 (May 17, 1995)*; *Griffiths, supra*; *Rogers/Slomba v. Diaz, CCHR No. 01-H-33/34 (Apr. 17, 2002)*, and other cases.

The record in this case is replete with testimony that individual Respondents used homophobic epithets toward Lapa, frequently in the presence of others, which created a hostile and offensive environment. As already noted, these slurs included such inflammatory terms as "faggot," "pedal," and "son of a bitch." While the Respondents' conduct was particularly repulsive and was repeated, Lapa presented little, if any, evidence of emotional distress. When asked if he complained, Lapa testified that "at first I was shy, ashamed, and later I talked." 2Tr. 139. Lapa did not claim he suffered any particular psychological or physical injury. There was no evidence he sought any medical counseling. There was no evidence that Lapa was particularly susceptible to distress because of prior experiences. Lapa also testified that after the Respondents began calling him names, he considered moving away from the building, but because he had already invested a lot of money into his property, he decided not to do so. 2Tr. 147. As a result, he continued his tenancy notwithstanding the frequent slurs. The severity and duration of the hostile environment were more than slim; Lapa's response, however, did not demonstrate that there was severe or prolonged distress. In these circumstances, the Hearing Officer recommended an award of $2,400 in emotional injury damages apportioned, on the general basis of who inflicted the damage, as follows: $1,000 against Zygmunt; $500 against Jarosz, $500 against PAVA as an institution, $300 against Pawlowski and $100 against Prusek. The Commission agrees with and adopts this recommendation.

B. Punitive Damages

The Commission has repeatedly held that punitive damages may be awarded when a respondent's actions were willful, wanton or taken in reckless disregard of a complainant's rights. Further, the Commission has regularly held that the purpose of punitive damages is to punish the violator and to deter the violator from taking similar, discriminatory actions in the future. *Castro v. Georgeopoulos*, CCHR No. 91-FHO-6-5592 (Dec. 18, 1991); *Akangbe v. 1428 W. Fargo Condominium Assoc.*; CCHR No. 91-FHO-7-5595 (Mar. 25, 1992) and many ensuing cases.

In public accommodation cases, where actual damages are often not high, punitive damages may be particularly necessary to ensure a meaningful deterrent. *Miller v. Drain Experts & Earl Derkits, supra.* Where there have been direct racist comments, the Commission has awarded substantial damages.[5] Homophobic comments, such as those used here, are similar in nature and effect.

These factors compel an award of punitive damages in this case. Most importantly, Respondents' behavior is easily characterized as willful, wanton and in reckless disregard of Lapa's rights. Zygmunt, Jarosz, and Pawlowski repeatedly used homophobic epithets to Lapa as part of providing services to him. They also made threatening comments to Lapa involving his sexual orientation. PAVA, as an organization, although aware of the misconduct of its officers and representatives, did nothing to terminate that misconduct.

There is no record evidence of Respondents' income and assets. Nor is there any evidence of a history of discrimination by Respondents or a reason to assume that Respondents will repeat their discriminatory conduct if not punished. However, based on the degree of reckless and callous disregard of Lapa's rights, the Hearing Officer recommended an award of punitive damages to Lapa in the amount of $2,000 to be apportioned as follows: $1,000 against Zygmunt, $500 against PAVA as an institution, $300 against Jarosz, and $200 against Pawlowski. The Commission agrees with the Hearing Officer's reasoning but believes that the amount of punitive damages recommended is too small in light of the relatively low amount of other relief awarded and Respondents' relatively high level of disregard for Lapa's right to occupy his rented office space without being subjected to egregious slurs about his sexual orientation. The Commission thus doubles the punitive damages award to $4,000 to be apportioned consistent with the Hearing Officer's recommendation: $2,000 against Zygmunt, $1,000 against PAVA, $600 against Jarosz, and $400 against Pawlowski. This is consistent with punitive damages awards in other recent cases involving sexual orientation harassment. *Arellano & Alvarez v. Plastic Recovery Technologies*, CCHR No. 03-E-37/44 (July 21, 2004) ($2,000 to each of two complainants against business respondent); *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Sep. 25, 2002) ($3,000 against individual respondent); *Fox v. Hinojosa*, CCHR No. 99-H-116 (June 16, 2004) ($2,000 against individual respondent).

The Commission agrees with the Hearing Officer that punitive damages against Prusek are not warranted because he did not actively engage in harassing Complainant but only condoned this discriminatory conduct.

C. Fines

Section 2-160-120 of the Chicago Human Rights Ordinance provides for a fine to be assessed against a party who violates the Ordinance, in an amount of not less than $100 and not more than $500. A fine is typically imposed where, after a hearing, a respondent is found to have violated the CHRO. The Hearing Officer recommended a fine of $200 against Zygmunt, $200 against PAVA as an institution, and $100 each against the other Respondents. As for

[5] See e.g., *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997)(awarding $10,000 in punitive damages where the landlord and her companion made racial comments to a neutral apartment broker and a tester and refused to rent to complainant once she learned he was black); *Soria v. Kern*, CCHR No. 95-H-13 (Oct. 16, 1996)(awarding $10,000 in punitive damages against defaulted respondent who refused to rent to complainant due to her race, made racist comments to her and to a tester, and disregarded Commission procedures).

punitive damages, the Commission believes these fines are too low given the level of reckless disregard shown for Complainant's rights to be free from harassment based on sexual orientation. The Commission imposes fines of $500 each on Zygmunt and PAVA, $250 each on Jarosz and Pawlowski, and $100 on Prusek. See, e.g. *Rogers/Slomba v. Diaz*, supra., where respondents were fined $500 for each case of harassing two tenants explicitly because they are Polish.

D. Interest

Commission Regulation 240.700 provides for pre- and post-judgment interest at the prime rate, adjusted quarterly, compounded annually starting at the date of the violation. The Commission "routinely awards [such] interest on damage awards" *(Figueroa, supra),* and the Hearing Officer recommend that Respondents pay such pre-judgment and post-judgment interest on the emotional distress damages ($2,400) awarded Lapa, calculated as provided in Regulation 240.700. As the Commission routinely awards pre- and post-judgment interest on all damages including punitive damages, the Commission corrects the Hearing Officer's apparently-inadvertent oversight and awards such interest on the total damages of $6,400. See, e.g., *Steward v. Campbell's Cleaning Services & Campbell*, CCHR No. 96-E-170 (June 18, 1997), awarding pre-judgment interest on all damages except front pay and post-judgment interest on all damages.

Under Reg. 240.700, pre-judgment interest accrues from the date of the violation, but the Hearing Officer did not recommend a specific date from which interest should begin to accrue. Determining the date of a violation based on harassment can be challenging because it is necessary to assess when a series of incidents which may not be individually severe cumulate to create a hostile environment. In *Shontz v. Milosavljevic*, CCHR No. 94-H-1 (Sep. 17, 1997), the Commission used the mid-point of the harassment as the date of injury.

In reviewing the portions of the transcripts detailing the harassing incidents, Complainant specifically described only a few incidents of homophobic name-calling prior to 2001, with the first such incident in July 1998 (2Tr. 52), another in August or September of 1998 (2Tr. 55), and another in July or August of 1999 (2Tr. 59, 62). However, after Respondent Zygmunt became business manager in March 2001 (4Tr. 432), the incidents increased in intensity. It was in November of 2001 that Zygmunt declared to Complainant at a meeting that he wanted to evict him because he is a "pedal" (2Tr. 64-65), after which the name-calling occurred frequently if not daily. 2Tr. 69. This date in November 2001 appears most reasonable as the point when the name-calling ripened into harassment. As Complainant could not pinpoint the date, the Commission awards pre- and post-judgment interest on the total damages from November 30, 2001.

E. Attorney Fees

The Commission has the authority under the Chicago Municipal Code, Section 2-120-510(l), to award a complainant's costs including his reasonable attorney fees and "routinely awards such fees and costs to a prevailing Complainant." *Figueroa, supra.* Because Lapa has only prevailed in part, attorney fees are awarded only as to that claim where Lapa prevailed. Lapa may petition for an award of reasonable attorney's fees and related costs as to that claim pursuant to Commission Regulation 240.630. Complainant is to serve on the Hearing Officer

and on Respondents, and is to file with the Commission (two copies), a statement of his attorney fees and costs, supported by arguments and affidavits, no later than 24 days after the mailing of the Commission's Order.[6] The supporting documentation must include the following:

1. The number of hours for which compensation is sought, itemized according to the work that was performed and the individual who performed the work;

2. The hourly rate customarily charged by each individual for whom compensation is sought; and

3. Documentation of costs for which Complainant seeks reimbursement.

Respondents shall file any responses or objections to the statement of fees and costs within 14 days after the filing of such statement. They must serve such response upon the Administrative Hearing Officer and Complainant, and file it with the Commission (two copies). Complainant may submit a reply brief within ten days after filing of the response. The recommendation and ruling process shall then proceed as set forth in Reg. 240.630.

VI. CONCLUSIONS OF LAW

1. Lapa has proved by a preponderance of the evidence that he was subjected to a hostile environment by Respondents concerning his full use of a public accommodation based on his sexual orientation in violation of the CHRO. As to defaulted Respondents Pawlowski and Jarosz, Lapa has established a *prima facie* case of such violation.

2. Lapa has not established a *prima facie* case or proved by a preponderance of the evidence that he was evicted from his rental premises by Respondents in violation of the CHRO. Even if his sexual orientation played a motivating part in the termination of his tenancy, Respondents would have made the same decision even if it had not allowed his sexual orientation to play such a role.

3. Damages are awarded as set forth in Part V of this Ruling.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Clarence N. Wood, Chair/Commissioner

[6] In the First Recommended Decision on Liability and Damages, issued on December 7, 2006, the Hearing Officer mistakenly stated that the statement of attorney's fees and costs was to be filed by January 2, 2007, 24 days following the date of the First Recommended Decision. The parties should supplement their submissions, if necessary, and re-file them in accordance with this Ruling and Order.