



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Toni Gray
Complainant,
v.

Lawrence Scott
Respondents.

Case No.: 06-H-10

Date of Ruling: April 20, 2011

Date Mailed: April 29, 2011

TO:

Kelly J. Keating, Supervising Attorney
John Marshall Law School Fair Housing Legal Clinic
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Chicago, IL 60604

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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on April 20, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Fair Housing Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent:

1. To pay to Complainant compensatory damages in the amount of \$5,000, plus interest on that amount from February 6, 2006, in accordance with Commission Regulation 240.700.
2. To pay a fine to the City of Chicago in the amount of \$500.¹
3. To pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing 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 fee proceedings are now

¹**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to Complainant. **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 this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

pending, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Attorney Fee Procedure

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **May 27, 2011**. Any response to such petition must be filed and served on or before **June 10, 2011**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630 (b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner



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FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

Complainant Toni Gray filed a *pro se* complaint on March 16, 2006, alleging that she was subjected to sexual harassment as well as discrimination based on age, race (African-American), marital status, source of income, color, religion, and disability while she was a tenant of Respondent Lawrence Scott. On April 26, 2006, Respondent, represented by counsel, filed his Verified Response denying that he discriminated against Complainant on any basis. Subsequently, Gray filed an Amended Complaint on May 24, 2006, to add allegations of retaliation and gender identity discrimination along with other factual allegations.

On May 29, 2008, the Commission found substantial evidence that Respondent violated the Chicago Fair Housing Ordinance with respect to Gray's claims of race and sex discrimination. The Commission found no substantial evidence on Gray's claims that Respondent failed to renew her lease based on marital status, source of income, age, color, or religion and her claim that Respondent failed to accommodate her disabilities, and dismissed those claims.

During the pre-hearing process, the hearing officer denied Complainant's motions to amend her Complaint for a second time and to default Respondent for tardy filing of his Pre-Hearing Memorandum. The Commission ultimately granted Complainant's motion for a continuance of the administrative hearing and, after receiving attorney appearances on her behalf, granted her motion to subpoena three witnesses (only one of whom appeared and testified).

On November 3 and 4, 2009, the administrative hearing was held. Thereafter the parties submitted post-hearing briefs. The hearing officer issued her Recommended Ruling on February 8, 2011. Neither party submitted objections to the Recommended Ruling. The Board of Commissioners now enters this Final Ruling, finding in favor of Complainant on the claim of sexual harassment and finding in favor of Respondent on the claim of race discrimination.

II. FINDINGS OF FACT

A. Testimony

1. Complainant, Toni Gray, rented the second floor apartment of the building located at 7828 S. Cregier, Chicago, Illinois 60649. Administrative Hearing Transcript (hereafter cited as "Tr. ___"), 22-23. At all times relevant to the Complaint, the building was owned by Respondent, Lawrence Scott, African-American. Tr. 195. Scott also lived in the building in the first floor unit.

Tr. 28, 195. Scott sold the building on or about May 19, 2006. Scott had no other tenants during the relevant time period. Complainant continued to reside in the building after the sale.

2. There was no dispute that Scott was an owner within the meaning of the Chicago Fair Housing Ordinance.

3. On February 15, 2005, the parties executed a standard Chicago Apartment Lease for the period beginning February 15, 2005, and ending February 28, 2006 (Jt. Exh. 1); thereafter, a second lease was signed on April 15, 2005, for the period beginning May 1, 2005 and ending April 31, 2006, (Jt. Exh. 2)¹ It was not clear why Gray did not move into the apartment in February 2005; however, when Scott told Gray that he was planning to sell the building, she asked for a longer rental period and the parties agreed to extend the lease to April 2006. Tr. 27-28. Scott acknowledged that he was aware that Gray was not working and that she received disability benefits. Tr. 210.

4. Gray stated that she decided to live in the apartment because the apartment was huge, she knew lots of people in the neighborhood including her grandfather, and she was within walking distance from the housing unit where her grandfather lived. Tr. 23-24.

5. Gray testified that within days of moving into the apartment, Scott came into her locked apartment, unannounced and uninvited, and stood in front of her bathroom doorway as Gray was getting out of the shower. Tr. 45-47. Gray felt shocked, confused, upset and unable to sleep. Tr. 46-48, 51-52. Gray stated that she believed that Scott's appearance in the apartment was not accidental. Gray's witness, Joe Harris, testified that you could hear the water running when the person in the other unit was using it; and Scott admitted that as well. Tr. 177, 212.

6. Gray testified that she was so upset over this incident that she even told Harris about it. Tr. 45-54, 138, 170-72. As a result of this incident, Harris later changed the locks on Gray's door so that Scott would not have access. Tr. 45-54, 138, 170-72.

7. Gray also claimed that Scott attempted to condition making needed repairs to Gray's unit on her performing sexual favors for him. Tr. 37-38. Gray testified that when Scott would come to fix a problem in Gray's apartment, he would tell her that she was "not nice to [him]," which Gray took to mean her having sex with him or performing other sexual acts with him. Tr. 37-38, 71. Gray testified that many of the problems she had with the apartment were never fixed. Tr. 60.

8. Approximately two weeks after the shower incident, Scott came to Gray's apartment to replace the showerhead. Tr. 56-58. During this visit, Mr. Scott told the Complainant that he might have to come back to finish fixing the problem. Tr. 58. While discussing finishing of the repair, Scott told Gray that she was "not nice to [him]." Tr. 59. Gray said that she did not react to his statement, and that Scott then pointed to Gray's vaginal area and asked her, "When are you going to give me some of that"? Tr. 60-64. In response, Gray told Scott that she would not have sex with him. Tr. 61. Scott then left the apartment. Tr. 61-62. Gray testified that Scott's behavior upset her and caused her to feel weak and have a headache. Tr. 64.

9. A few days after this incident, Scott came to Gray's apartment to address the problem

¹ Both leases are in the name of Anita Gray. Although it was unclear when Gray began using the name "Toni" Gray as she did when the original complaint was filed, it was undisputed that Complainant Toni Gray was the lessee.

to have sex with him, Scott said, "Oh, you're finally coming around, huh?" Tr. 100. Gray stated that she ran back to her apartment, felt extremely upset, paced around her unit, and cried for half an hour and rocked back and forth on her knees on the floor of her prayer closet. Tr. 104-06. She also told Harris about this incident, as it was so upsetting to her. Tr. 184, 187.

18. Complainant's witness, Joe Harris, testified that he knew Gray from the neighborhood when they were children, up until about the time he was 18 years old and moved away. However, Harris and Gray stayed in touch. They attended the same church, and Harris also testified that he would speak with Gray by telephone every week or so, and sometimes took her grocery shopping. Tr. 166.

19. Harris acknowledged that he never directly observed any interaction between Gray and Scott. Tr. 166-68. Harris testified that he saw a change in Gray's demeanor after she moved into the apartment. Harris believed that Gray was normally a carefree person, but during the time she was living with Scott, she was sad and upset. Tr. 175-76, 183-88. Moreover, Gray's hair, which was long and full before she moved into the apartment on Cregier, started thinning and falling out. Tr. 172-75, 188-89. Harris helped Gray change the locks in her apartment after the shower incident.

B. Credibility

The Commission's findings regarding the conduct and words of the parties turn on the credibility of the respective witnesses. In determining credibility of testimony, the Commission considers a number of factors including (1) the demeanor of the witness, (2) the clarity, certainty, and plausibility of the testimony, (3) whether the testimony has been impeached or contradicted by other testimony or documentary evidence, (4) whether the testimony has been corroborated by other testimony and documentary evidence, and (5) the interest or disinterest of the witness in the outcome of the proceedings. See, e.g., *Hodges v. Hua and Chao*, CCHR Case No. 06-H-11, at 4 (May 21, 2008). The fact that the testimony of a witness is not credible as to one point "does not necessarily discredit the remainder of his testimony." *Fox v. Hinojosa*, CCHR Case No. 99-H-116 (June 16, 1994). With these principles in mind, the Commission accepts and adopts the following recommended findings of the hearing officer regarding the credibility of Complainant and Respondent:

a. The Commission credits Gray's testimony that Scott asked on a number of occasions "why aren't you nice to me" while pointing to her vagina. Gray's testimony is consistent with the allegations of her initial complaint, which she filed in March 2006. The Commission does not credit Scott's denials that he made the offensive statements and gestures. It is unreasonable to believe that Scott's statements of "why aren't you nice to me" and "why won't you be nice to me" were made simply about Gray's conduct, given Gray's credible testimony that Scott's conduct caused her to feel discomfort and fear, caused her to lose hair, and also made her feel it was necessary to change the locks on her apartment to limit his access.

b. Complainant's testimony was less credible regarding the reason(s) Respondent threatened her with eviction. It should be noted that during the hearing, both parties were evasive on several points. It was unclear from Complainant's testimony what work Scott actually did in her apartment, although it appeared that he made some (but not all) of the repairs that needed to be done. In turn, Respondent was less than candid about his financial circumstances. In particular, he seemed reluctant to admit that he changed the gas meter to help save money in February, causing Gray to receive a large gas bill even though he admitted he did pay that bill. It seemed clear that Respondent

was experiencing financial difficulties and had a difficult time paying for the maintenance on the building. Bearing in mind the dire circumstances (the heat cut off for a period of time to the whole building) and that after that point Scott was very concerned with showing the building, it is more reasonable to credit Scott's testimony that the reason for the threatened eviction was that Gray was not permitting potential buyers access to the apartment.

c. The Commission finds Scott's testimony denying that he made obscene gestures or comments not credible. Scott testified clearly that he did not expressly ask Gray for sexual favors. However, while he did not expressly condition Gray's tenancy on her submission to sexual favors, the hearing officer did not find credible Scott's general denials of making the unwelcome sexual gestures and comments to Gray.

d. The Commission finds not credible Gray's testimony that Scott said, "If you were white, I wouldn't have done it" in relation to changing the gas from his meter to her apartment's meter. In light of the testimony from both parties regarding the lack of heat, it is hard to believe that Scott switched the gas line to Gray's meter because of her race. Scott testified credibly that although he and Gray spoke about racial matters, he did not make the statement she reported.

III. CONCLUSIONS OF LAW

1. This case arises under Section 5-8-030 of the Chicago Fair Housing Ordinance, which makes it illegal 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, ... sex,...of [the] tenant thereof."

2. Respondent Scott is a covered entity under the Fair Housing Ordinance in that he was a property owner who rented an apartment to Gray.

A. Sexual Harassment

3. It is well established that the Chicago Fair Housing Ordinance prohibits sexual harassment. *Sellers v. Outland*, CCHR No. 02-H-37 (Oct. 15, 2003), aff'd in part & vacated in part, Cir. Ct. Cook Co. No. 04 1 060429 (Sep. 22, 2004), aff'd in part & vacated in part, Ill. App. Ct. No. 1-04-3599 (Sep. 15, 2008); CCHR Regs. Sections 420.170 (a) and 410 (6). In order to prevail on her claim of sexual harassment, Complainant must show that she was subjected to "unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's housing; or (b) submission to or rejection of such conduct by an individual is used as the basis for any housing decision affecting the individual; or (c) such conduct has the purpose or effect of substantially interfering with an individual's housing rights or creating an intimidating, hostile or offensive housing environment." *Boyd v. Williams*, CCHR No. 92-H-72 (June 16, 1993).

To establish a *prima facie* case of hostile environment sexual harassment, a complainant must establish by a preponderance of evidence that the "respondent made unwelcome sexual advances or requests for favors or carried out conduct of a sexual nature and that conduct created an intimidating, hostile or offensive situation." *Id.*

4. Regarding Complainant's hostile environment sexual harassment claim,

Complainant met her burden of proof that Respondent subjected her to a hostile environment based on sex. The evidence established that Respondent's conduct was of a sexual nature, was unwelcome, and created an intimidating, hostile or offensive situation.

5. Complainant argues that Respondent required Complainant to submit to sexual advances or that such submission was made a term and condition of her leasing the apartment and also that Respondent created an intimidating, hostile sexual environment. Complainant's Post Hearing Brief, at pp. 5-8.

6. Gray was subjected to conduct by Respondent that was sexual in nature. Gray testified credibly that Scott told her on several occasions that she was "not nice to [him]" and asked her "[w]hen are you going to give me some of that?" while pointing to Ms. Gray's vaginal area. Tr. 60-64, 74. These comments and gestures must be understood as sexual propositions.

7. Gray's testimony was credible that these comments were made when Scott met with Gray to discuss repairs to her apartment (e.g., when Gray asked for repairs to her shower head and tub (Tr. 36-37), or complained that there was no heat in the apartment (Tr. 59-64, 74)). Gray's testimony regarding these comments supports a determination that the comments and gestures were sexual, unwelcome, and offensive and, because the only residents in the building were Gray and Scott, a reasonable woman would experience these comments as offensive and as sexual harassment.

8. The hearing officer found credible Gray's testimony that Scott's sexually harassing conduct began from the start of her tenancy and continued until the building was sold.² Complainant's claims that Scott frequently made comments such as "you're not nice to me," or "be nice to me" while making offensive gestures are sufficient to show that the conduct was both severe and pervasive.³ Moreover, from Gray's testimony and demeanor at hearing, the hearing officer found her testimony on this conduct credible. Tr. 38. Because the evidence shows that Scott's conduct was offensive, unwelcome, and pervasive, Gray has met her burden of proof that Scott subjected her to sexual harassment in the form of a hostile housing environment. These facts are similar to those in *Salwierak v. MRI of Chicago, Inc., and Baranski*, CCHR No. 99-E-107 (July 16, 2003), an employment discrimination case in which the Board of Commissioners found that the complainant was subjected to sexual harassment in the form of a hostile work environment where she was required to retrieve objects from the floor and plug in wires so her supervisor could remark that she is "on her knees," and was also subjected to offensive remarks about her body and clothes.

² Although the Commission accepts the finding that Gray's testimony about Scott's conduct was credible, it does modify this finding with respect to the starting point of the harassing conduct, as discussed below in connection with the award of pre- and post-judgment interest.

³ Respondent contends that Complainant's testimony regarding the shower incident was not credible because she did not include the incident in her complaint (nor is it specifically referenced in Complainant's Pre-Hearing Memorandum), and because she did not report it to the police. Respondent's Post Hearing Brief, at pp. 4-5. If Complainant's hostile environment claim was based *solely* on this incident, Respondent's argument might have merit. However, a Complainant is not required to file a police report before she can complain of sexual harassment. Moreover, the hearing officer found Complainant's testimony on this point to be credible and Complainant testified credibly that she complained to her friend, Joe Harris, about the incident, and then asked for his help to change the locks. Complainant also provided other evidence to show that she was subjected to other conduct that when considered together created a sexually hostile environment.

9. Complainant also argues that she was subjected to “unwelcome sexual advances or requests for sexual favors” and that Scott made her submission to such conduct either “a term or condition of” her lease or a basis “for any housing decision affecting” Complainant. Complainant’s Post-Hearing Brief, at pp. 8-9. This is an effort to argue that Complainant was subjected to what is familiarly referred to as *quid pro quo* sexual harassment. The hearing officer did not recommend a finding of *quid pro quo* sexual harassment, stating that this is not a case where Respondent made Complainant’s submission to unwelcome sexual conduct a condition of her tenancy. The hearing officer found Complainant’s testimony that Scott threatened her with eviction unless she submitted to his sexual advances not credible. Nor did the hearing officer believe Complainant offered credible evidence that Scott conditioned the repairs in her apartment upon such submission. Even though the hearing officer found credible Gray’s testimony that many of the repairs were not done, the hearing officer found it far more likely that the failure to make timely repairs was due to non-discriminatory reasons (primarily financial) than to sexual harassment. Although it is clear that Scott subjected Gray to a hostile and intimidating environment and Gray’s emotional distress because of this conduct was reasonable and understandable, the Commission agrees with the hearing officer that it is less clear based on the evidence in this case that Scott made Gray’s continued tenancy or the maintenance of the building contingent on her acceding to his demands for sexual favors. *Sellers, supra*, does not require a different finding. In that case, the landlord repeatedly demanded sexual favors from the complainant, explicitly offered to reduce her security deposit in return for sex, sexually assaulted her, and then, in retaliation for resisting his sexual advances, attempted to evict the complainant and her children. The *quid pro quo* nature of the sexual harassment in that case was well-established. This is a closer case, and although Commission does not find *quid pro quo* sexual harassment, nevertheless Complainant has proved that she was subjected to sexual harassment in the form of a hostile environment, which included repeated sexual propositions often associated with Complainant’s requests for repairs.

B. Race Discrimination

10. Under the Chicago Fair Housing Ordinance, it is illegal 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, or occupancy of any real estate used for residential purposes in the City of Chicago... predicated upon the ...race... of [the] tenant thereof.” Section 5-8-030, Chicago Municipal Code. Race discrimination may be proved “through direct evidence which is credible and which has resulted in an actionable claim” (*Nash and Demby, supra* at 16), or through the more familiar burden-shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1979) and employed by the Commission in housing discrimination cases. *Sanders v. Onnezi*, CCHR No. 93-H-32 (March 16, 1994).

11. Under either method, Complainant has failed to establish that she was subjected to race discrimination. Gray’s claim hangs upon the slim thread that during what clearly was a bitter exchange between Gray and Scott about the heat (in that Gray believed Scott had caused the bill for the entire building to be added to her bill), Scott said that if she were white, he wouldn’t have done that to her. Tr. 139-140.

12. Complainant failed to establish even a *prima facie* case of race discrimination. It should be noted that both Complainant and Respondent are African-American. Complainant offered no other evidence that suggested any of Scott’s conduct might even remotely have been related to Gray’s race. There is no evidence that Scott treated any non-African-American more

favorably (or would have treated one more favorably) than Gray in similar circumstances. The sole statement that arguably is race-based was made in the course of an after-the-fact argument about the lack of heat. Without any other race-based evidence, this is insufficient to show direct evidence of discriminatory intent in connection with Scott's handling of the heat. At most, this is a stray, out-of-context remark arising from an angry argument. Because Gray failed to adduce sufficient evidence either directly or indirectly to prove race discrimination in connection with Scott's conduct, Complainant's race discrimination claim fails.

V. REMEDIES

13. Upon determining that a violation of the Chicago Fair Housing Ordinance has occurred, the Commission may award relief as set forth in Section 2-120-510 (1) of the Chicago Municipal Code:

[T]o 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 admit the complainant to a public accommodation; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, 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 back pay 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 Chapter 2-160 and Chapter 5-8.

14. It is a complainant's burden to prove by a preponderance of the evidence that he or she is entitled to the damages claimed. See, e.g., *Carter v. CV Snack Shop*, CCHR Case No. 98-PA-3, at 5 (Nov. 18, 1998). In her Amended Pre-Hearing Memorandum, Complainant requested an award of \$30,000 in compensatory damages plus \$40,000 in punitive damages. See also Complainant's Post Hearing Brief, pp. 10-12. Complainant also seeks an award of injunctive relief, specifically that Scott should be ordered to cease and desist his practice of sexual harassment of tenants, subjected to periodic testing and monitoring, and required to receive training in fair housing. Complainant further requests that Respondent be fined pursuant to Section 5-8-130 of the Fair Housing Ordinance and ordered to pay Gray's reasonable costs and attorneys' fees. We address each element of relief separately.

A. Emotional Distress Damages

15. "Emotional distress damages are awarded in order to fully compensate a complainant for emotional distress, humiliation, shame, embarrassment, and mental anguish resulting from a respondent's unlawful conduct. *Winter v. Chicago Park District, et al.*, CCHR Case No. 97-PA-55 (Oct. 18, 2000). Complainant need not present medical evidence or expert testimony to establish such damages. *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 93-E-139 at 13-14 (July 23, 1991). A complainant's testimony alone may be sufficient to establish that she suffered emotional distress. *Id.* at 14-15. The Commission has observed that "[p]utting a value on emotional distress

and suffering is unavoidably subjective and difficult.” *Id.* at 14.

16. In general, the size of the emotional distress damages award is determined by (1) the egregiousness of the respondent’s behavior and (2) the complainant’s reaction to the discriminatory conduct. The Commission considers factors such as the length of time the complainant has experienced emotional distress, the severity of the mental distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998) at 13-14; *Nash and Demby v. Sallas and Sallas Realty*, 92-H-128 (May 18, 1995); *Steward v. Campbell’s Cleaning Svcs, et al*, CCHR No. 96-E-170 (June 18, 1997). See also, *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

17. Complainant cites *Nash and Demby, supra*, to justify her request of an award of \$30,000 in emotional distress damages. Complainant’s Post Hearing Brief, p. 10. In that decision, the Commission noted that “the size of the award is determined by the egregiousness of the respondent’s behavior and the complainant’s reaction to the discriminatory conduct.” *Id.* at 21. The Commission observed that housing discrimination awards range from “[m]odest damages awards (typically under \$5,000)” to cases where “damages in excess of \$10,000 have been awarded.” *Id.* at 22-23.

18. Here, the evidence supports a the hearing officer’s recommended award of \$5,000. Complainant was vulnerable due to her low income and disability status, and because she was a single woman living alone. She testified credibly that she felt afraid, had difficulty sleeping, lost hair, and was sad, all of which she attributed to Scott’s conduct. Moreover, during Complainant’s testimony, as she recalled specific incidents, Complainant became visibly distressed and tearful and unable to continue her testimony, making it clear that she still was distressed by Scott’s conduct that she perceived as sexually offensive. Although Complainant failed to offer evidence of medical or psychiatric treatment, her own testimony was credible as to the emotional distress she experienced.

19. The fact that Gray experienced emotional distress due to the sexual harassment was corroborated by the testimony of her long-time friend, who testified credibly that her demeanor changed after she moved into the apartment and that she told him she felt afraid, had difficulty sleeping, and lost hair.

20. In determining the amount to award Complainant, her demand is not dispositive. The Commission finds that an award of \$5,000 is appropriate, commensurate with the testimony adduced at hearing, and consistent with other recent cases involving similar types of housing discrimination. See, e.g., the Commission’s discussion in *Brennan v. Zeman*, CCHR No. 00-H-5 (Feb. 19, 2003), awarding \$5,000 in emotional distress damages in a case of sexual orientation discrimination against an existing tenant who was subjected to derogatory slurs and whose lease was not renewed. See also *Rogers and Slomba v. Diaz*, CCHR No. 01-H-33/34 (Apr. 17, 2002), awarding \$1,500 to each complainant in a case of national origin and ancestry discrimination by a property owner who subjected Polish tenants to derogatory slurs and stated he would try to remove Polish tenants from the building, where the evidence of emotional distress was more limited in scope showing no physical manifestations or unusual vulnerability. By contrast, *Sellers, supra*, where the Commission awarded \$40,000 in emotional distress damages for sexual harassment of a tenant, involved considerably more egregious conduct than that in the present case as well as more extensive emotional consequences to the complainant.

B. Punitive Damages

21. Punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra.*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "The purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also *Castro v. Georgeopoulos*, CCHR No. 91-H-6 (Dec. 18, 1991); *Akangbe v. 1428 W. Fargo Condo. Assn.*, 91-H-7 (Mar. 25, 1992); and *Restatement (Second) of Torts* §908(1) (1979).

22. Complainant asserts that Scott's conduct justifies an award of \$40,000 in punitive damages. Complainant's Post Hearing Brief at p. 9. The Commission disagrees. In this case, while it is clear that Scott's conduct was sexually harassing, it fails to rise to the level sufficient to justify punitive damages. It should be noted that Respondent took the Commission's proceedings seriously and participated in good faith in his own defense during the administrative hearing. Respondent was renting out the apartment in an attempt to help with maintenance costs on the building and did not appear to be a sophisticated or experienced landlord. Respondent's conduct did not appear to be willful in that he did not have the knowledge, training, or experience to suggest that he knew his comments and gestures would amount to sexual harassment in violation of the law.

23. The Commission agrees with the hearing officer that punitive damages are not warranted to make Complainant whole in this case. The compensatory damages award of \$5,000 is adequate to compensate Complainant for the harm she established.

C. Interest on Damages

24. Section 2-120-510 (1), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the Chicago Fair Housing Ordinance. Pursuant to CCHR Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of the violation and compounded annually from the date of violation. The hearing officer recommended that the Commission award pre- and post-judgment interest on the emotional distress damages awarded in this case starting from April 15, 2005, the date that Complainant moved into Respondent's apartment. The Commission agrees with the recommendation to award interest but has determined that the interest shall be calculated starting from February 6, 2006. The circumstances of this case are similar to those in *Salwierak, supra.*, where the Commission found hostile environment sexual harassment based on a series of incidents which the complainant often could not pinpoint in time, making it difficult to fix the date when the Ordinance was first violated in that the environment became "intimidating, hostile or offensive." Therefore, in *Salwierak*, the Commission chose the first specifically-identified date from which it was clear from the record that the harassment had become pervasive. In this case, although Complainant testified to earlier incidents beginning within a few days of moving into the apartment around April 15, 2005, and continuing over the next several weeks, she struggled in both direct and cross examination to provide any specificity about when these incidents actually occurred. The first date Complainant was able to pinpoint in her testimony was February 6, 2006, when the gas company shut off the heat to the building and Scott again told her she was "not nice to him" (Finding of Fact #10.) By this time, the initial shower incident (Finding of Fact #5) had occurred along with three more incidents where Scott sought sexual contact with Complainant speaking of

her “not being nice to him” and pointing to her vagina. (Findings of Fact ##7-9). The gas shutoff on February 6, 2006, triggered additional incidents of these sexual propositions (Findings of Fact ##10 and 13). By this point Respondent’s sexually harassing conduct had become pervasive and a continuing violation, with these incidents occurring within the timely 180-day filing period. Accordingly, the Commission modifies the hearing officer’s recommendation as to this aspect of relief and awards pre- and post-judgment interest on the damages commencing February 6, 2006.

D. Fine

25. Section 5-8-130 of the Chicago Fair Housing Ordinance provides that any covered party found in violation shall be punished by a fine not exceeding \$500 per violation to the City of Chicago. The Commission accordingly imposes a fine in the amount of \$500, the amount recommended by the hearing officer.⁴

E. Attorney Fees and Costs

26. Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to order a respondent to pay all or part of a prevailing complainant’s reasonable attorneys fees and associated costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to such an order, and the hearing officer recommended it in this case. *Hall v. Becovic*, CCHR No. 94-H-39 (Jan. 10, 1996), aff’d *Becovic v. City of Chicago et al.*, 296 Ill. App. 3d 236, 694 N. E. 2d 1044 (1st Dist. 1998); *Soria v. Kern*, CCHR No. 95-H-13 (July 18, 1996), at 19. Therefore, Pursuant to Commission Regulation 240.630, Complainant may serve and file a petition for attorney’s fees and/or costs, supported by arguments and affidavits, no later than 28 days from the mailing of this Final Ruling on Liability and Relief. The supporting documentation shall include the following:

1. A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work.
2. A statement of the hourly rate customarily charged by each individual for whom compensation is sought.
3. Documentation of costs for which reimbursement is sought.

VI. SUMMARY AND CONCLUSION

The Commission on Human Relations finds Respondent Lawrence Scott liable for sex discrimination in the form of sexual harassment in violation of the Chicago Fair Housing Ordinance and orders the following relief:

⁴ Complainant also requested injunctive relief including an order that Respondent cease and desist his practice of sexual harassment of any of his tenants, that Respondent be subjected to periodic testing and monitoring to ensure compliance with the cease and desist order, and that Respondent be required to receive training in fair housing. Complainant’s Post Hearing Brief at p. 12. Complainant adduced no evidence at hearing that would warrant such an imposition of injunctive relief. Indeed, there was no evidence that Scott has continued to own or manage rental property after he sold the building in question. Thus the merit of injunctive relief in this case is not supported by the record.

1. Payment to the City of Chicago of a fine of \$500.
2. Payment to Complainant Toni Gray of emotional distress damages of \$5,000.
3. Payment to Complainant Toni Gray of interest on the foregoing damages from the date of violation of February 6, 2006;
4. Payment of Complainant's reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

The Commission finds Respondent not liable for race discrimination, as explained above. Accordingly, Complainant's race discrimination claim is dismissed.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: 

Dana V. Starks, Chair and Commissioner
Entered: April 20, 2011