



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:**

Martha Diaz  
**Complainant,**  
v.  
Jan Wykurz, Jozepha Wykurz, and Jane  
Locascio  
**Respondents.**

**Case No.:** 07-H-28

**Date of Ruling:** December 16, 2009

**Date Mailed:** January 7, 2010

**TO:**

Aaron Rosenblatt and Paul Bernstein  
Lawyers Committee for Better Housing  
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Chicago, IL 60603

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**FINAL ORDER ON LIABILITY AND RELIEF**

YOU ARE HEREBY NOTIFIED that, on December 16, 2009, 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 to take the following actions:

1. To pay to Complainant compensatory damages in the amount of \$2,500, plus interest on that amount from June 16, 2007, in accordance with Commission Regulation 240.700.
2. To pay a fine to the City of Chicago in the amount of \$250.<sup>1</sup>
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, parties seeking a review of this decision

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<sup>1</sup>**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.

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 fee proceedings are now pending at the Commission, 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 **March 4, 2010**. Any response to such petition must be filed and served on or before **March 18, 2010**. 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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**Respondents.**

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## **FINAL RULING ON LIABILITY AND RELIEF**

### **I. INTRODUCTION AND PROCEDURAL HISTORY**

Complainant, Martha Diaz, filed a complaint against Respondent Jan Wykurz on August 14, 2007, alleging a violation of the Chicago Fair Housing Ordinance ("CFHO"), Ch 5-8 of the Chicago Municipal Code. Complainant claimed discrimination based on source of income because Respondent allegedly refused to rent a housing unit to her after discovering that she a participant in the federal "Section 8" Housing Choice Voucher program.

There was some confusion regarding who engaged in the alleged discriminatory conduct and the name of the proper Respondent. Based on the allegations in the Complaint, Complainant and her counsel apparently believed that "Jan Wykurz" was female and that Complainant had spoken to "Jan Wykurz" in attempting to rent the property. This was not the case. As discussed more fully in the Findings of Fact, "Jan Wykurz" is male and never had any interaction or conversation with Complainant. Complainant spoke to Mrs. Jozepha Wykurz, the wife of Jan Wykurz, and to Jane Locascio, the daughter of Mr. and Mrs. Wykurz, regarding the property.

Mr. Wykurz filed a Verified Response to the Complaint on December 5, 2007, denying all allegations of discrimination. On November 14, 2008, the Commission issued an Order Finding Substantial Evidence of a violation of the CFHO.

The administrative hearing commenced on June 25, 2009. At that time, Complainant appeared with counsel from the Lawyers' Committee for Better Housing. Locascio, who is not an attorney, appeared for Respondent Jan Wykurz. Because Mr. Wykurz is elderly and does not speak English fluidly, Locascio has handled the entire administrative process (including the Commission's investigation and the pre-hearing conference) on his behalf. However, while Locascio could appear as a witness in the proceeding, the Commission's regulations state that only "parties" may offer documents or other evidence for inclusion in the record of proceedings." Reg. 240.314. In addition, the Complaint alleges that Mrs. Wykurz engaged in certain discriminatory conduct. However, she was not present at the hearing on June 25, 2009. Further, during the first day of the hearing, the hearing officer and counsel for the Complainant learned for the first time that Mr. and Mrs. Wykurz as well as Jane Locascio are all owners of the

property at issue. Accordingly, the hearing was continued to July 20, 2009, so that all relevant parties and witnesses could be present and could present evidence.<sup>1</sup>

On the second day of the hearing and based on their joint ownership of the property at issue and allegations that Mrs. Wykurz and Ms. Locascio engaged in the alleged discriminatory conduct, the hearing officer allowed Complainant to amend the complaint to add Mrs. Wykurz and Locascio as Respondents pursuant to Commission Regulation 210.160(b)(2)<sup>2</sup> Mrs. Wykurz and Ms. Locascio did not object to the amendment.

The hearing officer issued her Recommended Ruling on Liability and Damages on September 18, 2009. Respondent Locascio, appearing by counsel for the first time, filed objections on October 16, 2009. Complainant did not file any objections.

## **II. FINDINGS OF FACT**

### **A. The Section 8 Voucher Program**

1. Tenant-based housing choice or "Section 8" vouchers are a form of housing assistance for low income families. Compl. ¶4. Established under the United States Housing Act, the voucher program's purpose is to aid low-income families to obtain a decent place to live and to promote economically mixed housing.
2. Families who receive vouchers pay a share of the rent. This share is 30 percent of the family's adjusted income or ten percent of their total income, whichever is higher. Compl. ¶6. The local public housing agency pays the remainder of the rent directly to the housing provider or landlord. *Id.*

### **B. Complainant Attempts to Rent the Property**

3. Mr. and Mrs. Wykurz are Polish immigrants who came to this country from Europe decades ago. (July Tr. 41)<sup>3</sup> They own the property at issue in this case, which is a single

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<sup>1</sup> On June 25, 2009, the hearing officer advised Locascio that the Commission would provide an interpreter for Mr. Wykurz at the hearing, if necessary, upon request and with proper notice. See Reg. 270.410. Neither the hearing officer nor the Commission received a request.

<sup>2</sup> It is unclear why Complainant and her counsel did not determine the issue of ownership early on in this case, as well as the names of the proper parties or the names of the individuals with whom Complainant spoke. It does not appear that the parties engaged in any discovery after the finding of substantial evidence despite being given an opportunity to do so. Nevertheless, both Locascio and Mrs. Wykurz knew or should have known of the Complaint and these proceedings because they are identified in the allegations of the Complaint; Locascio participated extensively in the Commission's investigation of the Complaint, and Locascio appeared at the pre-hearing conference held on March 19, 2009. On May 18, 2009, Locascio also filed a motion to extend the hearing date, which was granted *sua sponte* because Locascio was not an official party to the case at that time; see May 19, 2009 Order. The Complainant, Order Finding Substantial Evidence, and all of the hearing officer's pre-hearing orders were mailed directly to Mrs. Wykurz's home address and were not returned. Further, at the pre-hearing conference, Locascio represented that she kept Mr. and Mrs. Wykurz informed of the Complaint, the Commission's investigation, and the pre-hearing proceedings. Moreover, at no time during the hearing did Mrs. Wykurz ever state that she knew nothing about the Complaint, the investigation, or these proceedings.

<sup>3</sup> The administrative hearing was held on two separate days and there are two separate transcripts that are not sequentially numbered. Accordingly the transcripts will be cited as "June Tr." and "July Tr."

- family home located at 3244 North Osceola in Chicago, Illinois (“the property”). (June Tr. 7-8, July Tr. 15) Their daughter, Jane Locascio, is also an owner. (June Tr. 12) Because Locascio speaks English more fluently than her parents, she handles the Wykurzs’ business affairs. *Id.*
4. Before June 2007, a Chicago police officer had rented the property for over twenty years. (June Tr. 15) After he moved out, the Wykurz’s fixed the property up—installing new windows, a roof, flooring, and siding. After these extensive repairs, they put the property up for rent. *Id.*
  5. In mid-June 2007, Complainant saw an advertisement in a newspaper to rent the property. (June Tr. 8) She called the number listed in the ad and spoke to Jane Locascio. She asked if Locascio would accept a Section 8 voucher for payment of the rent. (July Tr. 15) Locascio said that she did not think they accepted Section 8; that she knew of the program but didn’t know the details of how it worked. (June Tr. 15, July Tr. 19-20) When Complainant called, Locascio was busy preparing for her daughter’s wedding, which was to take place on July 7, 2007. Because of this, Locascio admitted, she “kind of didn’t want the hassle” of dealing with Complainant and “just wanted to push [thing] off on [her] mom,” so she told Complainant to call Mrs. Wykurz to see if she would accept the Section 8 voucher. (July Tr. 21-22)
  6. Complainant followed up with Mrs. Wykurz and made an appointment to see the house. (June Tr. 8) Mr. and Mrs. Wykurz drove from Barrington, Illinois, which is approximately 50 miles away, to show the property to Complainant. While Complainant saw Mr. Wykurz, she did not meet him and did not speak with him at the time that she viewed the home. (July Tr. 9) Nor did she ever speak with Mr. Wykurz by phone. *Id.*
  7. After viewing the property, Mrs. Wykurz gave Complainant a rental application. She told Complainant that someone else was also coming to see the house the same day. (June Tr. 23) At that point, Complainant told Mrs. Wykurz that she had a Section 8 voucher and asked if Mrs. Wykurz would accept it. (July Tr. 42) Mrs. Wykurz explained that she did not understand what Section 8 was and never had a tenant that used the Section 8 voucher. Mrs. Wykurz suggested that Complainant follow up with Locascio regarding the Section 8 issue. *Id.*
  8. On June 19, 2007, shortly after Complainant viewed the property, Mrs. Wykurz showed it to another potential renter—Martha Garcia. Garcia liked the house and gave Mrs. Wykurz a check for \$1,300 as a deposit on the same day. (July Tr. 23, Resp. Ex. 1) However, sometime between June 20 and June 22, 2007, Garcia put a stop-payment order on the check. *Id.*
  9. Mrs. Wykurz testified that after she discovered the stop-payment, she called Complainant’s home and left a message with Complainant’s sister about renting the house. (July Tr. 23) She testified that no one returned her call. (July Tr. 24)
  10. To support her claim that she called Complainant about the property after Garcia reneged on renting it, Respondents offered a copy of Mr. and Mrs. Wykurz’s phone bill, which shows a call placed to Complainant’s home on June 19, 2007, at 5:15 p.m. and lasting approximately two minutes. (Resp. Ex. 2)
  11. Complainant testified that she never got a message from her sister regarding Mrs. Wykurz’s call and that she believed her sister would have given her such a message

because she knew Complainant went to see the property and was interested in renting it, and also because her sister was planning to move into the home with Complainant. (July Tr. 34)

12. Complainant testified that after viewing the property and talking to Mrs. Wykurz, she called Locascio again to ask whether they would accept her Section 8 voucher. (July Tr. 34) Locascio told her that they did not take Section 8.<sup>4</sup>
13. Three weeks later, Richard and Lisa Orsi entered into a two-year lease with Locascio and Mrs. Wykurz to rent the home. (See Resp. Ex. 3) The names of Mrs. Wykurz and Locascio appear on the lease as “lessors.” *Id.*
14. Complainant testified that she preferred to rent a house instead of an apartment because she has anxiety issues and living in a house would have been better for her health. (June Tr. 9, July Tr. 35) When she was unable to rent the property, and after looking for some time, she ultimately rented an apartment in October 2007.
15. Between June 2007 and October 2007, when she found the apartment, Complainant was forced to live in a house with no gas. She and her daughter had to use an electric stove for heat and to warm water for bathing. (July Tr. 38)
16. Complainant was angry about being turned down for the Wykurz property and had bouts of depression, anxiety and sleeplessness because, upon subsequent attempts to find housing, other potential landlords had also rejected her Section 8 voucher. (July Tr. 38) Complainant takes medication for her depression and to sleep.

### III. CONCLUSIONS OF LAW AND ANALYSIS

The Chicago Fair Housing Ordinance provides, in relevant part, that it is an unfair housing practice and unlawful for any owner to refuse to lease or rent any real estate for residential purposes within the City of Chicago because of the source of income of the proposed renter. §5-8-030(C), Chgo. Muni. Code; *Lopez v. Arias*, CCHR No. 99-H-12 (Sept. 21, 2000). The Commission has long held and the Illinois Appellate Court has affirmed that a Section 8 voucher is a “source of income” under the CFHO. *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (July 18, 2001), *aff’d Godinez v. Sullivan-Lackey*, 352 Ill.App.3d 87 (1<sup>st</sup> Dist. 2004); see also *Smith et al v. Wilmette Real Estate & Mgmt. Co.*, CCHR Nos 95-H-159 & 98-H-44/63 (Apr. 13, 1999); *Huff v. American Management & Rental Service*, CCHR No. 97-H-187 (Jan. 20, 1999); *Hoskins v. Campbell*, CCHR No. 01-H-101 (Apr. 16, 2003); *Torres v. Gonzales*, CCHR

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<sup>4</sup> Complainant also testified that Locascio said “we don’t take Section 8 because they don’t pay,” and that Locascio insinuated that she had had problems with prior Section 8 tenants. (July Tr. 35) The hearing officer found that this testimony lacked credibility. First, the hearing officer noted that it is inconsistent with the allegations in the Complaint, which state only that “on several occasions, [Locascio] explained to Ms. Diaz she could not rent the apartment because they did not accept Section 8 vouchers.” (Compl. ¶8) Second, the hearing officer found it inconsistent with Complainant’s testimony on the first day of the hearing. There she testified that after viewing the property and calling Locascio, she was only told “we don’t take no Section 8” (June Tr. 9) Finally, the hearing officer noted that there is no evidence Locascio or her parents ever rented the house to a prior tenant who used a Section 8 voucher to pay the rent. Indeed, the evidence showed that for more than 20 years, the home was rented to a Chicago police officer. (June Tr. 15) Given those facts, the Commission agrees that it is implausible that Locascio told Complainant she had problems with Section 8 tenants when she had never had such tenants before.

No. 01-H-47 (Jan. 18, 2006); and *Draft v. Jercich*, CCHR No. 05-H-20 (July 16, 2008). Thus a landlord's refusal to consider potential tenants because they have a Section 8 voucher constitutes unlawful discrimination under the CFHO. *Lopez, supra* at 19; *Marshall v. Gleason*, CCHR No. 00-H-1 (Apr. 23, 2004).

Complainant has the burden of proving her claim of discrimination by a preponderance of the evidence using either the direct or indirect evidence method. See *Marshall, Jones, and Torres, supra*. Under the direct evidence method in a housing discrimination case, a complainant may meet her burden of proof through credible evidence that the respondent directly stated or otherwise indicated that s/he would not offer housing to a person due to being a member of a protected class, such as a person having and intending to use a Section 8 voucher. *Jones, supra* at 8.

In acting on the recommended ruling of a hearing officer, the Commission proceeds according to §2-120-510(1) of the Chicago Municipal Code, that is: "The commission may adopt, 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 findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing."

**A. Complainant Did Not Prove That Mr. and Mrs. Wykurz Personally Engaged in Discriminatory Conduct**

The evidence establishes that Mr. Wykurz is a co-owner of the property. However, Complainant concedes that, although she saw him when she went to view the property in June of 2007, she did not speak to him at that time. Indeed, she admitted that she never spoke to Mr. Wykurz regarding renting the property. Accordingly, there is no evidence that Mr. Wykurz engaged in discrimination against Complainant through his own personal conduct.

Regarding Mrs. Wykurz, the evidence shows that she spoke to Complainant and showed her the property in June of 2007. She also accepted Complainant's application. However, when Complainant informed her that she wanted to use a Section 8 voucher to assist in payment of the rent, the evidence shows that Mrs. Wykurz did not refuse to rent to her based on the Section 8 voucher. She merely explained that she did not know how the Section 8 program worked and she suggested that Complainant contact Locascio to discuss the matter further.

More importantly, Mrs. Wykurz testified credibly that she called Complainant's home after she discovered Garcia's stop-payment on the check for her security department, speaking to Complainant's sister and leaving a message. Mrs. Wykurz would not have known that Complainant had a sister who lived with her if she had not in fact made the call, spoken with the sister, and left the message for Complainant. Complainant's contrary testimony and speculation that her sister would have told her about Mrs. Wykurz's call is not enough to overcome Mrs. Wykurz's credible testimony, supplemented by the documentary evidence confirming that a two-minute call was made from Mrs. Wykurz's phone number to Complainant's phone number. There could be many plausible reasons why Complainant did not receive the message—such as that her sister had simply forgotten. Notably, Complainant's sister did not testify at the hearing and there is no other evidence to establish that Mrs. Wykurz never called. Therefore, the evidence shows that Mrs. Wykurz did not discriminate against Complainant in violation of the CFHO through her own personal conduct.

As discussed below, the real issue is whether Locascio's conduct can be imputed to Mr. and Mrs. Wykurz based on an agency theory of liability.

## **B. Complainant Proved That Jane Locascio Violated the CFHO**

By contrast, Complainant's testimony and Jane Locascio's admissions establish that she refused to rent the property to Complainant because of her Section 8 voucher, in violation of the CFHO. Locascio admitted (1) that she "didn't want the hassle" of dealing with Complainant after discovering her intent to use the Section 8 voucher; (2) that she initially told Complainant she did not think they would accept a Section 8 voucher but to ask Mrs. Wykurz about it; (3) that she "just wanted to push [things] off on [her] mom" because she was busy planning her daughter's wedding; and (4) that after Complainant looked at the property and called Locascio back, she told Complainant outright that they did not accept Section 8 vouchers.

Locascio's statements to Complainant that she would not accept the Section 8 voucher are direct evidence of discrimination in violation of the CFHO. See *Sullivan-Lackey v. Godinez, supra*, finding a violation of the CFHO based on directed evidence that the respondent stated he did not accept Section 8; as well as *Huff, supra*, finding a violation of the CFHO based on direct evidence that the respondent's employee told the complainant she could not use her Section 8 voucher to pay rent.

Locascio's defense was that liability should not attach because, like her mother, she did not know anything about the Section 8 program. However, the hearing officer found her testimony not credible on this point. First, Locascio's testimony was inconsistent. Although she testified at one point that she "didn't know anything about it," she also testified that she "kind of kn[e]w what it was" and then later admitted that she knew "it had something to do with the government." Secondly, she apparently knew enough about the program to decide that she "didn't want the hassle" of dealing with it. Third, Locascio appeared to the hearing officer to be far more business-savvy than Mrs. Wykurz, who noted that Locascio speaks English fluidly and has taken on the responsibility of handling her parents' business affairs. Fourth, she deftly managed the Commission's administrative procedures including the investigation, pre-hearing conference, settlement negotiations, filing of a motion for continuance, and participating in the hearing. Further, Locascio is not a new property owner. She has owned the property along with her parents for more than twenty years. Given all of these factors, the hearing officer found it hard to believe that she knew nothing about the Section 8 program and the Commission agrees.

Moreover, even if true, allowing "lack of knowledge" about Section 8 vouchers to be a defense to liability under the CFHO would completely undercut one of the purposes of the ordinance—to prohibit and protect people from discrimination based on source of income.<sup>5</sup> In addition, it would encourage property owners to intentionally avoid educating themselves about the program. As in other areas, lack of knowledge about an applicable law is not a defense.

In her objections to the Recommended Ruling, Locascio has argued that her statements were "equivocal" and should not have been found discriminatory. The Commission disagrees; there is nothing equivocal about telling a prospective tenant that her Section 8 voucher will not be accepted, and the hearing officer found credible Complainant's testimony that Locascio ultimately said that to her after Complainant viewed the property with Mrs. Wykurz and contacted Locascio as Mrs. Wykurz suggested. It was reasonable for Complainant to infer from being directly told by Locascio that a Section 8 voucher would not be accepted that she was being rejected as a tenant and that it would be futile to pursue this prospective rental further.

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<sup>5</sup> It is not Mrs. Wykurz's lack of knowledge about the Section 8 program which saves her from a finding of liability, but the fact that she did not directly or vicariously reject Complainant because of her Section 8 voucher.



Whatever may have happened previously including Locascio's more ambiguous (but hardly encouraging) initial statement about not knowing whether they would accept a Section 8 voucher, the taking of an application, and even an unsuccessful effort by Mrs. Wykurz to contact Complainant, ultimately Locascio told Complainant plainly that her Section 8 voucher would not be accepted. In the face of this evidence, Complainant never "chose" not to accept an offer to lease, because there is no evidence that such an offer was ever actually communicated to her. Nor was Complainant's testimony about this direct evidence hearsay; Complainant credibly testified that Locascio directly told her that her Section 8 voucher would not be accepted. Nothing in Locascio's objections persuades the Commission that Jane Locascio should not be held liable on this evidence.

Accordingly, the Commission finds Locascio liable for refusing to rent to Complainant based on her source of income in violation of the CFHO.

**C. Mr. and Mrs. Wykurz are Not Liable Under a Theory of Agency**

A final issue regarding liability is whether Mr. and Mrs. Wykurz can be held personally liable on an agency theory given Locascio's discriminatory conduct and the fact that they are co-owners of the property with Locascio. Based on the unique circumstances of this case and the Commission's recent analysis of applicable agency principles in *Warren et al. v. Lofton & Lofton Management et al.*, CCHR No. 07-P-62/63/92 (July 15, 2009), the Commission agrees with the hearing officer that a finding of liability against Mr. Wykurz or Mrs. Wykurz is not warranted.

In *Warren*, the Commission recently clarified the definition of an agency relationship for purposes of vicarious liability and the applicable legal standards used to determine whether such a relationship exists. The Commission held:

The agency relationship is a consensual, fiduciary one...where the principal has the right to control the conduct of the agent and the agent has the power to affect the legal relations of the principal....

*Id.* At 19, citing *Taylor v. Kohli*, 162 Ill.2d 91, 95-96, 642 N.W.2d 457, 468-69 (1994). The Commission explained that the most important consideration is the right to control the manner in which the work is done, and this is true regardless of whether the principal actually exercises that right to control. *Id.* Further, "it is the actual nature of the relationship between the two parties—and not the label that the parties attach to their relationship—that controls whether an agency relationship exists." *Id.*, citing *Wargel v. First Natl. Bank of Harrisburg*, 121 Ill.App.3d 730, 736, 460 N.E.2d 331, 334 (5 Dist. 1984). Analyzing these legal standards against the unique facts of this case, an agency relationship does not exist.

It is undisputed that Mr. and Mrs. Wykurz and Jane Locascio are co-owners of the property. The evidence shows that Mr. Wykurz speaks little English and Mrs. Wykurz speaks broken English. They are an elderly couple who rely heavily on their daughter to handle their business affairs. The hearing officer found it clear based on the testimony at the hearing and Locascio's significant participation in the Commission's administrative proceedings that she is the person "in charge." Thus Mr. and Mrs. Wykurz did not have the "right to control" Locascio's conduct. If anything, she was the principal who controlled them.

The interaction between Complainant and Respondents is instructive. Although present at the showing, Complainant and Mr. Wykurz never spoke and apparently were not even introduced. Mrs. Wykurz handled all of the conversation and the showing of the property. When Complainant asked Mrs. Wykurz about whether her Section 8 voucher would be accepted,

Mrs. Wykurz stated only that she did not know anything about Section 8, that they had never had a Section 8 tenant, and that Complainant should speak with Locascio about it. Mrs. Wykurz gave Complainant an application form and allowed her to apply, but Mrs. Wykurz did not represent in any way that Complainant would be accepted as a tenant and in fact explained that there was another prospective tenant.

The evidence establishes that Complainant did initiate contact to Locascio (not to Mrs. Wykurz) after the showing, and that resulted in Locascio stating definitively to Complainant that she would not take a Section 8 voucher. There was no evidence that Locascio did anything to encourage Complainant to pursue her application to rent notwithstanding that she would not be allowed to use a Section 8 voucher. Despite the evidence of Mrs. Wykurz's effort to contact Complainant after the initially-selected tenant backed out of the transaction, when Locascio told Complainant that her Section 8 voucher would not be accepted, that clearly ended the prospective tenant relationship. Locascio made and communicated this decision. Mrs. Wykurz did nothing further.

This is not an instance in which Mr. and Mrs. Wykurz, as principals, delegated authority regarding the property to Locascio as their agent. Locascio was the principal who delegated authority (such as showing the property, giving out an application form, and receiving a completed application) to Mrs. Wykurz in particular. Locascio asked her mother to show the property because she was busy preparing for her daughter's wedding.

The Commission recognizes that it has decided some cases holding non-acting property owners vicariously liable for the discriminatory conduct of a co-owner "agent." See, e.g., *Hall v. Becovic*, CCHR No. 94-H-39 (June 22, 1995) and *Rogers and Slomba v. Diaz*, CCHR No. 01-H-33/34 (Apr. 17, 2002). However, these cases assumed an agency relationship without any analysis and they were decided well before *Warren*, which clarified the factors that establish an agency relationship. In addition, these cases do not involve the unusual circumstances here, in which the person who engaged in the discriminatory conduct has been found to be the principal rather than an agent acting on behalf of an owner-principal.

The evidence in this case shows that Locascio was the ultimate decision-maker, especially regarding whether a Section 8 voucher would be accepted. Thus, under these specific circumstances and consistent with *Warren*, there was no agency relationship because Mr. and Mrs. Wykurz did not control Locascio.<sup>6</sup> Absent an agency relationship, Mr. and Mrs. Wykurz cannot be held vicariously liable for Locascio's discriminatory conduct.<sup>7</sup>

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<sup>6</sup> During the hearing, Locascio agreed with Complainant's counsel that she could be considered her parents' "agent" because she handles their business affairs. (June Tr. 13, 14) However, a lay person's understanding of that term is different from the legal definition, and the hearing officer correctly disregarded Locascio's statement on this point for purposes of legal analysis.

<sup>7</sup> There are also issues of fundamental fairness and due process regarding Mr. Wykurz. It was not clear to the hearing officer until the second day of the hearing, when he appeared in person, that Mr. Wykurz spoke very little English. Although Locascio was informed that an interpreter could be made available for Mr. Wykurz, one was never requested. These issues are moot at this point, however, given that Mr. Wykurz is not being found liable.

#### IV. RELIEF

Pursuant to §2-120-510(1) of the Chicago Municipal Code, along with the authority to impose a fine for each ordinance violation, the Commission may order additional relief as appropriate under the circumstances determined at the administrative hearing. This additional relief may include but is not limited to injunctive relief, actual damages for injury or loss suffered by the complainant, interest on the damages, and complainant's costs including reasonable attorney fees.

##### A. Emotional Distress Damages

Complainant seeks \$5,000 in damages for emotional distress.<sup>8</sup> She has the burden to prove by a preponderance of the evidence that she is entitled to the damages claimed. See *Warren, supra* at 25. The Commission awards emotional distress damages 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*, CCHR No. 97-PA-55 (Oct. 18, 2000). The Commission does not require "precise proof" of damages for emotional distress. *Nash & Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998).

Complainant testified that she experienced anger, depression, anxiety, and sleeplessness as a result of Locascio's reluctance and ultimate refusal to accept her as a tenant because of her Section 8 voucher. She also testified that she takes medication for depression and sleeplessness. However, as the hearing officer pointed out, not all of this emotional distress can be attributed to Locascio's conduct. Indeed, Complainant testified that she had anxiety problems and other health issues before she sought to rent the property. There was no evidence that Locascio's conduct exacerbated these underlying health issues. In addition, Complainant testified that some of her distress was the result of subsequent unsuccessful attempts to find housing because of purported source of income discrimination by other potential landlords. She also apparently had some difficulties with her prior landlord regarding adequate heat for the house she rented, which also may have contributed to her overall distress but cannot be attributed to Locascio's conduct. Moreover, as the hearing officer noted, the discriminatory conduct involved a refusal to rent rather than harassment over a period of time. Locascio's conduct toward Complainant was not particularly egregious; it did not involve malice or the uttering of derogatory epithets and it consisted, at most, of two discrete acts. See *Godinez, supra* at 14, citing to *Nash & Demby, supra*. For these reasons, the hearing officer did not believe Complainant is entitled to the \$5,000 she seeks and recommended \$2,500 in emotional distress damages. The Commission accepts and approves this recommended amount. It is consistent with the emotional distress damages awarded in *Sullivan-Lackey v. Godinez, supra*, a similar case of a single, non-egregious refusal to rent to an individual with a Section 8 voucher who showed she suffered emotional distress but did not document medical treatment or provide other evidence sufficient to show more specifically how the discrimination exacerbated her ongoing medical conditions. See also *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004), where \$3,000 was awarded for emotional distress on similar evidence. By contrast, in *Draft and Torres, supra*, recent decisions

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<sup>8</sup> Complainant has not requested damages for out-of-pocket losses, punitive damages, or any other category of damages.

awarding \$5,000 in emotional distress damages on findings of refusal to rent to a Section 8 voucher holder, the complainants detailed more specific and disruptive effects of the discrimination than Complainant did in this case—which included being forced to move the family over 100 miles away and move children from their school to avoid homelessness (*Torres*) and having to search for years for other suitable housing while living in overcrowded conditions, again in a situation requiring a child to change schools (*Draft*).

In her objections to the Recommended Ruling, Locascio argues that the emotional distress damages should be \$750, consistent with the Commission's award in another case of refusal to rent to a Section 8 voucher holder, *Hoskins v. Campbell*, CCHR No. 01-H-101 (Apr. 16, 2003). However, *Hoskins* is distinguishable; in that case, the complainant provided almost no evidence to show how the particular violation affected her compared with many similar claimed violations by others. Here, although Complainant did testify that other landlords also told her "no Section 8," she also detailed that when she responded to the advertisement for this property, she was looking for new housing because her current landlord was providing no gas service and there was no hot water, requiring her family to buy an electric stove. She was especially looking for a house because it was better for her in light of her anxiety issues, but because she was unable to rent the Wykurz-Locascio property and could not find another house to rent, she had to move to an apartment in October of 2007. She was angry and became depressed over her situation, for which she took medication. Her new housing required her to tolerate smoking by fellow tenants, affecting her health and that of her daughter, who is troubled by asthma and bronchitis. (July Tr. 35-40). The Commission finds that the award of \$2,500 strikes an appropriate balance within the range of Commission decisions in similar cases; it addresses the emotional impact of losing an improved housing opportunity on this vulnerable, low income Complainant while taking into account that Complainant's overall emotional distress was caused by other factors as well.

#### **B. Pre- and Post-Judgment Interest**

Commission Regulation 240.700 provides for pre- and post-judgment interest on damages at the prime rate, adjusted quarterly and compounded annually starting from the date of the violation. Such interest is routinely awarded by the Commission. *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (June 17, 2009). The hearing officer recommended that Locascio pay such interest starting from June 16, 2007.<sup>9</sup> The recommendation is approved and adopted.

#### **C. Fine**

Section 5-08-130 of the Chicago Fair Housing Ordinance provides for a maximum fine of \$500 for each offense. The hearing officer recommended a fine of \$250 against Locascio. In view of the finding that Locascio's personal conduct toward Complainant was not egregious and taking into account that she has made diligent efforts to follow Commission procedures and assist her parents after the filing of the Complaint, the Commission finds the hearing officer's recommendation appropriate to the circumstances of the case and so adopts it.

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<sup>9</sup> In her recommended ruling, the hearing officer inadvertently stated this date as both June 15 and June 16. The Commission has adopted the latter date of June 16 stated in her final summary of recommended relief, as reflecting the mid-point of the month in which Complainant's interaction with Respondent Locascio began.

#### **D. Attorney Fees**

The Commission has routinely awarded reasonable attorney fees and associated costs to prevailing complainants. *Godinez, supra* at 16; *Pudelek & Weinmann v. Bridgeview Garden Condo. Assoc.*, CCHR No. 99-H-39/53 (Apr. 19, 2001); *Godard v. McConnell*, CCHR No. 97-H-64 (Jan. 18, 2001). The hearing officer recommended that Locascio pay Complainant's reasonable attorney fees and costs, and the Commission approves and adopts the recommendation.

Pursuant to Reg. 240.630, Complainant may serve on the hearing officer and Respondent Locascio, and file with the Commission, a petition for attorney fees and/or costs including the information specified in Reg. 240.630, no later than 28 days from the date of mailing of this Board of Commissioners ruling. Respondent Locascio may respond and the Commission will proceed as provided in Reg. 240.630.

#### **IV. SUMMARY AND CONCLUSION**

For the reasons set forth above, the Commission finds Respondent Jane Locascio liable for source of income discrimination in violation of the Chicago Fair Housing Ordinance. The Commission finds Respondents Jan Wykurz and Jozepha Wykurz not liable. Respondent Locascio is ordered to pay the following amounts as relief:

1. Emotional distress damages to Complainant in the amount of \$2,500 plus pre- and post-judgment interest dating from June 16, 2007.
2. A fine of \$250 to the City of Chicago.
3. Attorney fees and costs to Complainant, subject to the procedures described above.

CHICAGO COMMISSION ON HUMAN RELATIONS

  
By: Dana V. Starks, Chair and Commissioner  
Entered: December 16, 2009