



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:

Raymond C. Rivera

Complainant,

v.

Albert Pera, Diana Pera, and Susan
Haroutiounian

Respondents.

Case No.: 08-H-13

Date of Order: June 15, 2011

Date Mailed: June 23, 2011

TO:

Raymond C. Rivera
3600 N. Lake Shore Drive, #1506
Chicago, IL 60613

Albert and Diana Pera
6328 N. Karlov
Chicago, IL 60646

Susan Haroutiounian
6328 N. Karlov
Chicago, IL 60646

FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on June 15, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Respondents in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a 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.

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: June 15, 2011

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

IN THE MATTER OF:

Raymond C. Rivera

Complainant,

v.

Albert Pera, Diana Pera, and Susan

Haroutiounian

Respondents.

Case No.: 08-H-13

Date of Ruling: June 15, 2011

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant Raymond C. Rivera filed this Complaint against Respondents Albert Pera, Diana Pera, and Susan Haroutiounian on March 12, 2008. Rivera amended his complaint on April 10, 2008. He alleged that Respondents denied him the opportunity to rent an apartment because of his race and ancestry in violation of the Chicago Fair Housing Ordinance ("CFHO"). Respondents filed a response on May 19, 2008, denying any violation of the CFHO.

The Commission investigated the Complaint and on June 18, 2009, found substantial evidence that a violation of the CFHO occurred. It ordered mediation which proved unsuccessful. As a result, the case was assigned to a hearing officer, and an administrative hearing was held on April 20, 2010. The hearing officer mailed his recommended ruling to the parties on May 19, 2011. No objections to the recommended ruling have been filed.¹

II. FINDINGS OF FACT

1. Complainant Raymond Rivera currently lives on Lake Shore Drive in Chicago, Illinois with his family and is 63 years old. His ancestry is Puerto Rican and black and white mixtures. [Tr. 134]. He is employed by the Chicago Board of Education as a disciplinarian and has been so employed for 15 years. [Tr. 135]. He also has owned and operated, from before 2007 to the date of the hearing, a real estate and insurance business, buying and selling commercial and residential real estate. [Tr. 137]. His wife is of Cuban ancestry (Tr. 141).

2. Previously, in October 2007 and before, Mr. Rivera had been living in Round Lake but he desired to move back to the city due to work and school scheduling. [Tr. 167]. Although he owned a two flat apartment building on Melrose and one on Lake Shore Drive, they were rented at the time he determined that he needed to move. [Tr. 136-37].

3. Albert Pera was the owner of the two flat building at 6023 N. Sauganash ("the Sauganash building") in Chicago in which Mr. Rivera attempted to rent an apartment in October 2007. Mr. Pera had owned the property since June or July of 2007 and had not rented either of

¹ Certain abbreviations are used in this ruling: Tr. means transcript. R. Ex. means Respondent's Exhibit. FOF means Finding of Fact.

the units to anyone prior to September or October of 2007. Mr. Pera is of Iraqi national descent. [Tr. 105-06]. He was generally aware of local, state, and federal fair housing laws. [Tr. 32].

4. Respondent Diana Pera is the spouse of Albert Pera. She helps her husband by showing units they are offering for rent. She is of Iraqi ancestry. [Tr. 12-22].

5 Respondent Susan Haroutiouian was not mentioned at the hearing in this case. No evidence was offered connecting her to any of the allegations made.

6. Mr. Pera also had a condominium unit at 2639 W. Farragut in Chicago that he rented to a woman named Ruiz in July 2008. Mr. Pera believed her to be of Hispanic ancestry. [Tr. 78-81]. He rented to her first in 2007. [Tr. 81-2].

7. In September 2008, Mr. Pera rented one of the apartments at 6023 N. Sauganash to a woman whom he believed to be Native American. The lease contains a provision that rental payments made after the due date are assessed a \$25 late fee. The amount of the fee is handwritten on the lease. [Tr. 82-3; R.Ex. 3].

8. In July 2009, Mr. Pera also rented one of the units at Sauganash to a family he believed to be of Filipino ancestry. As of the date of the hearing, that family still resided in that unit. The lease contains a handwritten late payment provision assessing a \$25 late fee. [Tr. 84-5; R. Ex. 4].

9. Mr. Pera also rented an apartment at 2639 W. Farragut in July 2009 to tenants he believed to be of Russian ancestry. The lease for that rental also contains a handwritten late fee amount of \$25. [Tr. 88-90; R. Ex. 6]. The Farragut unit is at Foster, Lincoln and Farragut in Chicago. All parties agreed that this unit was not in Humboldt Park. [Tr. 88-90].

10. Mr. Pera rented one of the units in the Sauganash building that was shown to Mr. Rivera in October 2007 to a family he believed to be of Asian ancestry. He also rented the other unit at Sauganash to the Filipino family. [Tr. 92-3]. The Asian family stayed only one year and then was replaced by the woman Mr. Pera believed to be Native American. [Tr. 82-3, 93, R. Ex. 3]. Thus he has had three different tenants in the two units at the Sauganash since he first bought it. [Tr. 93].

11. Mr. Pera had one other rental unit, located at 2444 W. Berwyn, in 2007. He rented it to a woman he believed to be of Hispanic ancestry. [Tr. 94-6].

12. In October 2007, Mr. Rivera saw an advertisement for a three bedroom apartment for rent for \$1,200. He called the contact number listed in the ad and was told by Mrs. Pera that she would meet him at a specific date and time in early October to show him both units, which were vacant at the time. Mrs. Pera did meet Mr. Rivera, his wife, and his son at the Sauganash building, showed them both units, and discussed the amount of rent, which was \$1,200. [Tr. 12-6, 20-1, 138-39]. She also told Mr. Rivera the security deposit would be one month's rent and the late fee would be \$25. [Tr. 21].²

² Mr. Rivera testified that Mrs. Pera told him when he first saw the Sauganash units that she would fax him an application. [Tr. 143]. He also said that he knows how persons rent apartments and use applications. [Tr. 143]. Mrs. Pera has denied ever stating she would fax him an application and Mr. Pera has said he does not use applications for rental purposes. [Tr. 120]. The Hearing Officer recommended that Mr. and Mrs. Pera be credited when there is a difference between their testimony and that of Mr. Rivera for reasons discussed below. The Commission accepts this recommendation.

13. Mrs. Pera did not know the national origin or ancestry of Mr. Rivera's wife. When Mr. Pera returned home that night from work, Mrs. Pera told him that she met Mr. Rivera and he seemed like a nice guy with a wife and son. Mrs. Pera and Mr. Rivera talked the night he had seen the apartment or the next morning, and she said her husband would meet Mr. Rivera and give him the lease. Mrs. Pera did not tell Mr. Rivera in that conversation that she would fax him the lease agreement. It is her husband who has dealt with leases and completing them in renting a unit, not she.³ [Tr. 12-6, 27, 97; R. Exs. 3,4 6].

14. Mr. Pera met with Mr. Rivera at the Sauganash building at around 7:30-8:00 p.m. on October 8, the night after Mrs. Pera showed him the units. Mr. Pera gave Mr. Rivera a copy of the lease he proposed to have them both sign. Mr. Rivera questioned the amount of the late fee in the lease. The amount of the late fee written in the lease was \$25, not \$250 as Mr. Rivera has contended. Mr. Pera testified that it would have been ridiculous for him to put down \$250 as a late fee amount. They had an argument over the late fee, with Mr. Rivera saying the amount was excessive and Mr. Pera should reduce it to \$5. Mr. Rivera kept arguing about the late fee, claiming that this was the first time he had seen \$25 as the late fee charge. He asked Mr. Pera whether, if his rent check bounced, he would be charged \$25 every month. Mr. Pera believed that at this point, Mr. Rivera became arrogant and his demeanor changed. Previously credit reports had been tendered by Mr. Rivera. There had been a discussion about whether Mr. Rivera could move in on October 15. It did not make sense to Mr. Pera that Mr. Rivera made \$100,000 a year as he had claimed but was arguing about a \$25 late fee.⁴ [Tr. 25-40, 58-60, 64].

15. As the new owner of this building, Mr. Pera's purpose was to make sure he had the right tenants in there, and the issue of the late fee and manner in which it was raised created serious concerns for him about whether Mr. Rivera would be a good tenant, including whether he would be confrontational as a tenant. [Tr. 25-40, 58-60, 64].

16. At the October 8 meeting, Mr. Rivera gave Mr. Pera a copy of the credit report for himself and his wife. He may have told Mr. Pera that he had sold his house in Round Lake. Mr. Pera found it very strange for someone who said he was a professional to have a confrontational argument over a late fee charge. [Tr. 41-43].

17. Mr. Pera remembers Mr. Rivera may have wanted to offer him something like a security deposit, which Mr. Pera did not accept. He wanted to think about what he wanted to do

³ Mr. Rivera testified that he later called Mrs. Pera. about not receiving a fax of the application and she told him that they were having trouble sending faxes. [Tr.145-46]]. See footnote 2 *supra*.

⁴ Mr. Rivera contends they met earlier than 7:30 and that when they met, it was still light outside. Mr. Pera was sure 7:30 was the time due to his work schedule. Mr. Rivera contends that the amount of the late payment on the document was \$250, the document was an application not a lease, and that he was not allowed to have it in his hands alone. [Tr.147-51]. Mr. Rivera also testified that when he complained about the amount of the late fee, Mr. Pera crossed it out and they both initialed the change. But then, according to Mr. Rivera, Mr. Pera would not take a check, signaling to Mr. Rivera that something was wrong. [Tr. 158-59, 199]. Inconsistently Mr. Rivera also testified that at this meeting, he and Mr. Pera set a date for Mr. Rivera and his family to move in even though no lease was signed and Mr. Pera would not take a check from him. Mr. Rivera testified that he then made arrangements for a moving truck. [Tr. 160-61, 204-08]. There was no documentary evidence offered, e.g. a credit card receipt, to corroborate that Mr. Rivera had made arrangements for a moving truck on October 8. [Tr. 161-62]. See the further discussion below on credibility and the resolution of factual disputes between Mr. Rivera and Respondents.

because he was alarmed and conflicted. He wanted to rent the apartment so he could pay the mortgage but he did not want a tenant who would be paying late and was a difficult person to deal with. If he would have decided to proceed with Mr. Rivera as a tenant, he would have done his own credit check. [Tr. 44-6, 63, 111-12].

18. The next day, Mr. Pera and Mr. Rivera had a telephone conversation when Mr. Pera was at home. Mr. Rivera said that Mr. Pera was obligated to rent to him, while Mr. Pera expressed concerns about whether he would be the best candidate given the dispute over the late payment. Mr. Rivera also made a comment about consulting his lawyer. Mr. Pera told Mr. Rivera that he was hotheaded. Mr. Rivera's attitude, his rage over the phone, and his screaming at Mr. Rivera all raised flags about whether he wanted Mr. Rivera as a tenant. Mr. Pera told him he would not rent him the apartment. [Tr. 52-5, 66-8, 110].

19. Given Mr. Pera's concerns about Mr. Rivera, he chose a tenant who agreed to everything on the lease [Tr. 47]. Mr. Rivera was the only person Mr. Pera has refused to rent an apartment to. [Tr. 119].

20. Mr. Rivera testified to his knowledge about Chicago, various neighborhoods, and housing discrimination in those neighborhoods. He stated:

I have been in the people business for 25 years as an insurance broker and the last 15 years as a real estate broker. It is my business to know people, personalities, what they do, what they can't do, to watch them and so forth as a real estate broker and even as a person that's savvy with the City of Chicago.

Chicago is broken down into neighborhoods, ethnic groups and so forth, just like Humboldt Park, Pilsen, and so forth. We know the demographics, we know the income level, and in certain incidences, we know the attitude and so forth.

With that mind, had I been representing a client, I would have had reservations. I would have been alert for certain things, ingrown. I live in Chicago and it's a part of Chicago. So, with that in mind, I just knew there was going to be some kind of a hitch. And when the application didn't come, I wasn't surprised.

[Tr. 144-45].

21. Later, in explaining why Mr. Pera had acted the way Mr. Rivera claimed that he had, Mr. Rivera stated:

Well again, this is Sauganash, you get any person here that is savvy with the neighborhoods in Chicago and they happen to be ethnic, and when I say ethnic, I mean of Spanish and black descent. What I mean by that is the darker, un-straight hair type of black and Hispanic.

[Tr. 152-53]. He went on to say that he thought Sauganash would be on "the top list." It was his view that there were hardly any blacks, Puerto Ricans, or Mexicans living in Sauganash in 2007 but he had no evidence to back that assertion up. [Tr. 154].

22. When asked why he wasn't surprised to see a \$250 late fee for an apartment in Sauganash, Mr. Rivera stated:

Okay I have rented apartments before on my own. There have been tenants that I really didn't want to rent to which were black and maybe even Hispanic.

Well, if I really don't want to rent to them, I have to find some way, something, a credit report, amount you earn how many children you have, your past references, supply me with four references. There is a way if really want to get it done.

[Tr. 155].

23. A week after Mr. Pera told Mr. Rivera he would not rent to him, Mr. Rivera rented a two bedroom apartment at 3854 N. Francisco for \$900 per month and lived there for one year. [Tr. 166]. Then he moved to the apartment he owned on Lake Shore Drive. [Tr. 166-67].

24. Mr. Rivera testified that there was no direct evidence of discrimination by the Peras, i.e. being told he was not being rented to because of his race or ancestry. [Tr. 168].

25. Mr. Rivera testified he had been the victim of race discrimination in housing ten years before the incident in this case. He had signed a lease for an apartment near Irving Park and Austin but then someone else appeared and the woman who was renting him the apartment said that this person had said that if blacks moved in, he was moving out. He was angry about being told that but not upset. [Tr. 169-70].

26. Mr. Rivera was angry when Mr. Pera said over the telephone that he would not rent to him. He testified that "[h]is blood is boiling to this day" and that "this will live with me for the rest of my life." [Tr. 171].⁵ Mr. Rivera said being denied an apartment by the Peras "caused a lot of anxiety, emotional distress on me and my family." He testified that he is still suffering. [Tr. 175-76].

IV. CONCLUSIONS OF LAW

1. Section 5-08-030 of the Chicago Fair Housing Ordinance provides in relevant part as follows:

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

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

C) To refuse to sell, lease or rent any real estate for residential purposes within the City of Chicago because of the race, color, sex, age, religion, disability, national

⁵ At that moment in the testimony, Mr. Rivera angrily began pointing at Mr. Pera, who was seated about 5 feet from him across a table. After being admonished, Mr. Rivera continued with an angry diatribe at the hearing officer. [Tr. 171-75].

origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.

2. Commission Regulation 420.130 further interprets the Chicago Fair Housing Ordinance as follows:

It is a violation of the FHO for a person to refuse to sell, rent or lease a dwelling to a person or to refuse to negotiate with a person for the sale, rental or leasing of a dwelling because of that person's membership in a Protected Class....Such prohibited actions include, but are not limited to:

(a) Failing to accept or consider a person's offer because of that person's membership in a Protected Class;

(b) Failing to sell, rent or lease a dwelling to, or failing to negotiate for the sale, rental or leasing of a dwelling with any person because of the person's membership in a Protected Class.

3. Complainants have the burden of proving unlawful discrimination by a preponderance of the evidence. They can satisfy this burden by presenting either direct or circumstantial evidence of disparate treatment. *Castro v. Georgeopoulos*, CCHR No. 91-H-6 (Dec. 18, 1991) and numerous ensuing cases.

4. The Commission has adopted a method by which a complainant, such as Mr. Rivera, can prove housing discrimination in the form of refusal to rent through circumstantial evidence by first establishing a *prima facie* case through proof of the following elements: (1) the complainant is a member of a protected class and the respondent knew that fact; (2) the person was interested in renting the housing in question; (3) the landlord knew of the complainant's interest in renting the housing in question; and (4) the landlord refused to deal with the prospective tenant or rejected the person while the property remained available. *Id.*; *Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (Jan. 17, 2001).

5. To meet a complainant's *prima facie* case, the burden shifts to the respondent to come forward with evidence sufficient to establish a non-discriminatory basis for the treatment of the complainant. This is a burden of production, not proof. That is, the evidence must be sufficient to create a genuine issue of fact. *Sanders v. Onnezi et al.*, CCHR No. 93-H-32 (March 16, 1994). A respondent can satisfy the burden by articulating one or more legitimate, non-discriminatory reasons explaining its action. *Thomas v. Prudential Biros Real Estate et al.*, CCHR No. 97-H-59/60 (Feb. 18, 2004).

6. If the respondent meets this burden of production, a complainant may still prevail by proving that the proffered reason for the adverse action is pretextual. A complainant may prove pretext by directly proving that a discriminatory intent motivated the respondent or by indirectly showing that the proffered defense is unworthy of credence or belief. *Crenshaw v. Harvey*, CCHR No. 95-H-83 (May 21, 1997); *Thomas*, *supra*.

7. As further explained below, Mr. Rivera proved a *prima facie* case under the standard enunciated above. But the Peras countered with credible evidence sufficient to prove that the reasons for their actions were legitimate and non-discriminatory. Mr. Rivera failed to prove that the Peras' reasons for including a late fee in the lease and ultimately refusing to rent to Mr. Rivera after a dispute about the late fee were pretextual.

V. DISCUSSION

This is not a case where there is direct evidence of discriminatory intent. That is, there is no evidence that either of the Peras told Complainant they would not rent to him because of his race or ancestry. Complainant acknowledges this, and there is no evidence that Complainant's race or ancestry was ever mentioned in their conversations. [FOF #24]. Therefore, the claim of race and ancestry discrimination must be analyzed using the indirect or circumstantial evidence method described above.

Clearly Complainant provided sufficient evidence to prove a *prima facie* case against the Peras under the indirect method, including that Complainant met the basic qualifications to rent the housing unit in question. The Commission agrees with the hearing officer's analysis, namely that only proof of minimal qualification is required to establish a *prima facie* case. That Respondents proceeded from a showing of the housing unit to a lease-signing meeting establishes that they considered Complainant at least minimally qualified to move to the next step in the rental process. Complainant's surname is sufficient to make the Peras aware of the likelihood that Complainant is of Hispanic ancestry, which is minimally sufficient to prove that Respondents regarded him as such (although there is no evidence that they specifically knew him to be Puerto Rican). It is undisputed that the Peras knew Complainant wanted to rent the housing unit in question, but that Complainant was ultimately rejected as a tenant while the unit in question remained available to rent. There is additional evidence of possible discriminatory intent in the fact that the rental process was moving forward toward the signing of a lease until Complainant met with Mr. Pera and saw the requirement of a late fee in the proposed lease, at which point events quickly cascaded toward the refusal by Mr. Pera to enter into a lease with Complainant. See *Smith, Torres & Walker v. Wilmette Real Estate and Management Co.*, CCHR Case Nos. 95-H-159 and 98-H-44/63, (Oct. 6, 2000), holding that abrupt cessation of a rental process supports reasonable inferences of discrimination.

As previously noted, no evidence was presented at the hearing implicating Respondent Susan Haroutiounian in any aspect of the events leading to the refusal to rent to Complainant. Thus no *prima facie* case has been established as to her.

Complainant's proof of a *prima facie* case shifted the burden to the Peras to present a legitimate, non-discriminatory basis for their requirement of a late fee and their ultimate refusal to rent to Complainant. They met this burden and even exceeded it by producing evidence found credible by the hearing officer that (1) the late fee they were requiring of Complainant was \$25, not \$250; (2) they regularly included a provision for a \$25 late fee in their leases with both Hispanic and non-Hispanic tenants; and (3) Mr. Pera decided not to rent to Complainant because of Complainant's contentious conduct about the late fee in their lease-signing meeting, which led Mr. Pera to believe that a Mr. Rivera would be a bad risk as a tenant. [FOF ##14-19].

The Peras having met their burden to present a legitimate, non-discriminatory basis for their conduct, the burden shifted back to Complainant to prove that their stated reasons were pretextual. Complainant could have met this burden by credible evidence proving that the proffered reasons are unworthy of credence (which can support an inference of discriminatory intent), or by other persuasive evidence that discriminatory intent more than likely motivated the Peras' refusal to rent to him.

Mr. Rivera has not proved that the Peras' articulated non-discriminatory reasons were pretextual. Indeed, the hearing officer believed that the evidence overwhelmingly supported the Peras' principal contentions, that Mr. Rivera was a combative individual whose focus on a \$25 late fee was the reason Mr. Pera did not want to rent to him, not Mr. Rivera's race or ancestry.

In making this determination, the hearing officer found that the factual issues in dispute should all be resolved in favor of the Peras. Those factual issues were listed by the hearing officer as follows: (1) whether Ms. Pera said she would fax Mr. Rivera an application after she showed him the apartment (or in fact whether the Peras even used applications as opposed to just having tenants sign leases); (2) whether Mr. Pera presented Mr. Rivera with an application or a lease on the day he met with him; (3) whether the document presented had a handwritten late fee of \$250, later crossed out to be \$25, or whether \$25 was written in as the late fee amount; (4) whether Mr. Pera agreed to rent the apartment to Mr. Rivera on the day he met with him, causing Mr. Pera to arrange for movers. [FOF##12-19].

The hearing officer made factual findings in favor of the Peras on the above-stated issues and concluded that Mr. Rivera failed to prove pretext. The hearing officer cited several reasons as the basis for these factual findings. First, on the issue of credibility, Respondents testified in a forthright, consistent manner. The hearing officer found that their demeanor and their stated responses to questions were consistent with their past rental history of renting to persons of different races and ancestry and consistent with the leases that were admitted as exhibits. Their credibility is an important factor in the hearing officer's factual conclusion that the Peras refusal to rent to Mr. Rivera was not discrimination in violation of the Fair Housing Ordinance.

In contrast, the hearing officer found Mr. Rivera's testimony not credible and found that his demeanor in the hearing process often displayed exactly the kind of combative, argumentative behavior that in part made Mr. Pera wary of renting to him. [FOF ##17-19]. A reasonable belief regarding such behavior is a legitimate, non-discriminatory basis for the decision not to rent. See *Chan v. Advocate Health Care et al.*, CCHR No. 99-E-58 (July 3, 2003).

More importantly, the hearing officer found Mr. Rivera's testimony inherently self-contradictory. On the one hand, Mr. Rivera testified that Mr. Pera's conduct at their meeting in handwriting a \$250 late fee amount in the document he was presenting to him, refusing to let him hold the lease document by himself, and refusing to accept a security deposit made Mr. Rivera think that Mr. Pera was not going to rent the apartment to him. On the other hand, Mr. Rivera testified that, promptly after he had met with Mr. Pera, he was so confident that Mr. Pera was going to rent him the apartment that he arranged to hire a moving truck and employ movers for the next week to move into the apartment in the Sauganash building. [FOF #14]. These contradictions severely undercut the plausibility of Mr. Rivera's testimony and were an important basis for the hearing officer's finding that Mr. Rivera's testimony on these issues was not credible.

The hearing officer also took into account, in assessing Mr. Rivera's credibility, that his anger at Mr. Pera was significantly out of proportion to his actual interactions with Mr. Pera back in 2007, even if what Mr. Rivera described had really happened. Mr. Rivera was clear in his acknowledgement that there were no racial or other derogatory slurs directed to him by Mr. Pera and nothing was done to humiliate him in front of his family. (There was no evidence that his race or ancestry were even mentioned by the Peras.) Indeed, Mr. Rivera found another apartment for less rent the week after Mr. Pera refused to rent to him and lived in that apartment for one year before moving to his condominium unit on Lake Shore Drive where he currently lives. Yet he testified that "[h]is blood is boiling to this day" and that "this will live with me for the rest of my life." [FOF #26].

People who believe they have been discriminated against often have strong reactions to the discrimination. That is quite understandable. But here the hearing officer found that, given the factual scenario in this case, the level of anger and hostility expressed by Mr. Rivera was seriously out of proportion to the factual allegations that Mr. Rivera claimed justified a finding of discrimination.⁶ That impaired his credibility although, as stated above and below, there are other significant reasons why the hearing officer chose to credit the Peras' testimony and not credit Mr. Rivera's on the material factual issues.

An additional factor that negatively impacted Mr. Rivera's credibility in the view of the hearing officer is that he, alone among the three witnesses who testified, was the one who expressed that he knew what to do to do to further a discriminatory motive. He testified that if there were black or Hispanic tenants that he as a real estate professional did not want to rent to, he knew he could find a way: "a credit report, amount you earn, how many children you have, your past references," although he later said that he had never actually discriminated against a prospective tenant. [FOF #22]. Neither Mr. nor Ms. Pera gave any indication that they thought in those kinds of terms.

The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l), Chicago Municipal Code, which provides in pertinent part: "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." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission thus will not re-weigh a hearing officer's recommendation as to witness credibility unless it is against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996). Nor will the Commission set aside proposed findings of fact merely because another interpretation is plausible. *Wiles v. The Woodlawn Organization & McNeal*, CCHR No. 96-H-1 (Mar. 17, 1999).

Thus in this case the Commission accepts and adopts the hearing officer's recommended findings of fact including his recommended resolution of the credibility issues, and accepts his proposed conclusions of law regarding liability flowing from these findings. There is no basis to hold that the recommended findings are against the manifest weight of the evidence.

In addition to the credibility issues discussed above, several other facts undercut Mr. Rivera's discrimination claim. First, Mr. Pera, while a small landlord in terms of number of units he had for rent and length of time he had been a landlord, had rented to a broad range of persons across lines of ancestry, race, national origin, and gender. Specifically, he rented the two units in the Sauganash building to an Asian family, a Filipino family, and a Native American woman. [FOF ##7-8, 10]. He rented the unit he owned at Farragut, Lincoln, and Foster (which Mr. Rivera first tried to claim was in Humboldt Park but then acknowledged that it was not) to someone named Ruiz in 2007, whom Mr. Pera believed to be of Hispanic ancestry, and later to someone of Russian ancestry. [FOF ##6, 9]. Mr. Pera also rented another unit he owned at 2444 W. Berwyn to someone he believed to be of Hispanic ancestry. [FOF #10]. This history shows

⁶ In contrast, Mr. Rivera recounted an incident long ago when he was denied an apartment after he had signed a lease and given a security deposit explicitly because a neighbor told the landlord that he would move out if blacks moved in. Mr. Rivera said he was momentarily angry about that but not upset. [FOF #25].

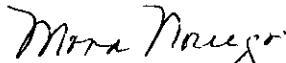
Mr. Pera to be a landlord who has rented apartments to people of different races and ancestral backgrounds. It is evidence that undercuts a discriminatory motive. See *Thomas, supra*, at 36.

Second, three leases were introduced for some of the other tenants to whom Mr. Pera has rented apartments. None of them were applications. None of them were faxed copies. All of them had a handwritten late fee amount of \$25. None of them were faxed or signed by Mrs. Pera; all were signed by Mr. Pera. This is consistent with Mrs. Pera's testimony that Mr. Pera was the one who prepared and signed leases, not Mrs. Pera. [FOF #13, R.Ex. 3-4, 6]. This documentary evidence corroborates Mr. Pera's testimony about the process he followed in renting apartments (written lease agreements signed and negotiated by him and including the amount of the late fee he charged). This evidence further undercuts the story Mr. Rivera presented to show that Mr. Pera was discriminating against him based on race and ancestry by not faxing him an application and by using a high late fee amount to discourage him from attempting to rent the apartment.

VII. CONCLUSION

Accordingly, the Commission finds in favor of Respondents and specifically finds that Complainant Raymond C. Rivera has not proved his allegations of race or ancestry discrimination against Respondents Albert Pera, Diana Pera, or Susan Haroutiounian. Accordingly, this Complaint is DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Mona Noriega, Chair and Commissioner
Entered: June 15, 2011