EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Richard O Midstokke
1649 Vernon St Apt 8
Stoughton WI 53589

Complainant

vs.

Southridge Village Apts
1914 Post Rd
Madison WI 53713

Respondent

COMMISSION'S DECISION AND FINAL ORDER

CASE NO. 20071119

BACKGROUND

On June 28, 2007, the Complainant, Richard Midstokke, filed a complaint of discrimination with the Madison Equal Opportunities Commission, now the Madison Department of Civil Rights. Midstokke charged that the Respondent, Southridge Village Apartments, denied him housing on the basis of his conviction record. The Respondent denied that it discriminated against the Complainant and asserted that the Complainant's credit history provided the basis for its decision to reject his application for tenancy.

The complaint was assigned to a Commission Investigator/Conciliator, who after investigation issued an Initial Determination concluding that there was no probable cause to believe that the Respondent had discriminated against the Complainant in the provision of housing on the bases of his conviction record. The Complainant appealed the finding of no probable cause to the Hearing Examiner. On March 10, 2009, the Hearing Examiner issued a Decision and Order reversing the Initial Determination's conclusion that there was no probable cause to believe that the Respondent had discriminated against the Complainant and ordered that the complaint be transferred to conciliation. Conciliation proved unsuccessful.

The complaint was returned to the Hearing Examiner for a hearing on the merits of the complaint. A hearing was held on November 19, 2009.

On February 27, 2012, the Hearing Examiner issued Recommended Findings of Fact, Conclusions of Law and Order concluding that the Respondent had discriminated against the Complainant on the basis of his conviction record. The Hearing Examiner ordered that the Respondent process the Complainant's application for housing without regard to the Complainant's conviction record. Additionally, the Hearing Examiner recommended that the Respondent pay the Complainant $10,000.00 for his emotional distress and to pay the Complainant's costs and fees connected with the bringing of his complaint including a

reasonable attorney's fee. Further, the Hearing Examiner ordered the Respondent not to retaliate against the Complainant for his bringing of this complaint.

The Respondent timely appealed the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order to the Equal Opportunities Commission. The appeal was forwarded to the Appeals Committee for a determination.

The parties were provided with an opportunity to submit briefs and arguments with respect to the appeal of this matter. On July 26, 2012, the Appeals Committee of the Equal Opportunities Commission met to decide the Respondent's appeal. Participating in the Committee's deliberations were Commissioners Cramer Walsh, Fetty and Saiz.

DECISION

Based upon its review of the record and after consideration of the arguments of the parties, the Appeals Committee affirms and adopts and incorporates by reference the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order dated February 27, 2012. The Appeals Committee finds that the record supports the Hearing Examiner's findings and order.

While the Respondent presented a legitimate, non-discriminatory explanation for its denial of the Complainant's application, i.e. that the Complainant's credit record did not meet the Respondent's standards, the check mark indicating that the Respondent also relied on the Complainant's conviction record cast sufficient doubt on the Respondent's credibility for the Complainant to have rebutted the Respondent's proffered explanation. Ultimately, if an illegal reason plays at least some motivating part of a decision, it casts doubt on the decision as a whole and provides a basis for finding discrimination.

In the present case, the failure to explain how the check mark indicating that the Complainant's conviction record played a part in the decision to deny his application along with the notation of the details of the Complainant's conviction record cast doubt on the Respondent's explanation that it was an innocent mistake. The Committee cannot ignore the clear presence of the unexplained check mark and hand written notations detailing the Complainant's conviction as evidence demonstrating that the Complainant's conviction played, at least a part, in the Respondent's decision to deny his application for tenancy.

The Committee also finds that the record, though somewhat spare on the issue of damages, is adequately supported by the testimony. The Hearing Examiner's explanation of how he arrived at the amount for the award of emotional distress damages follows a logical and reasonable method for setting the award.

ORDER

The Appeals Committee affirms the Recommended Findings of Fact, Conclusions of Law and Order of the Hearing Examiner dated February 27, 2012. The Recommended Findings of Fact, Conclusions of Law and Order is adopted and incorporated by reference as if set forth herein and it constitutes the order of the Commission.

Joining in this decision are Commissioners Cramer Walsh and Fetty. Dissenting from this decision is Commissioner Saiz.

Signed and dated this 13th day of August, 2012.

EQUAL OPPORTUNITIES COMMISSION

Katherine Cramer Walsh
Appeals Committee, Chair

cc: Timothy M Scheffler
Steven C Zach

EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Richard O Midstokke 1649 Vernon St Apt 8 Stoughton WI 53589 Complainant vs. Southridge Village Apts 1914 Post Rd Madison WI 53713 Respondent	HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CASE NO. 20071119

This matter came on for a public hearing on the merits of the complaint before Commission Hearing Examiner, Clifford E. Blackwell, III, on November 19, 2009 in Room LL-120 of the Madison Municipal Building, 215 Martin Luther King, Jr. Blvd. The Complainant Richard Midstokke, appeared in person and by his attorneys, Stix Law Offices by Andrea Sumpter and Timothy Sheffler. The Respondent, Southridge Village Apartments, appeared by its Program Manager, Pam Taylor, and its attorneys the Boardman Law Firm by Steven Zach.

Based upon the record of these proceedings, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order as follows:

RECOMMENDED FINDINGS OF FACT

1. The Complainant is Richard Midstokke, an individual with a conviction record currently residing in Stoughton, WI.

2. The Respondent, Southridge Village Apartments, is a provider of housing within the City of Madison. Southridge Apartments was, in 2006, owned by the Wisconsin Housing Preservation Corporation and was managed by Flad Development.

3. In 2006, the Complainant lived in low income housing in a complex located at 755 Braxton Place in Madison, WI. In the late spring or early summer, he became concerned for his personal safety in the Braxton Place complex as a result of two fires in the apartment located next to his. He began searching for alternative low income housing.

4. The Complainant identified the Respondent as an apartment complex in which he would like to live. On or about July 24, 2006, the Complainant submitted an initial application for housing under the Section 8 Program operated by the Respondent. On this application the

Complainant, in response to a question on the application, indicated that he had a conviction for drug related offenses.

5. The Complainant's initial application demonstrated that he met the basic criteria for housing in the Respondent's complex. However, there were no available units at that time and the Complainant was placed on a waiting list.

6. At some point in August, the Complainant was informed that he could make an application for an apartment in the Respondent's complex as he had moved to the top of the waiting list. On August 23, 2006, the Complainant submitted a more detailed application including the specifics of his conviction record and other litigation history.

7. Upon receipt of the Complainant's application, Sherry Walker, the Respondent's Resident Manager for Southridge Village Apartments, conducted a search of the Complainant's criminal record on the Circuit Court Access Program (CCAP). She printed out the results of this search. At that time, Walker did not find that the Complainant's conviction record precluded further processing of his application.

8. On August 25, 2006, Walker requested a credit history search for the Complainant. The search indicated that the Complainant's credit record was insufficient to support his application for housing.

9. On August 30, 2006, Walker prepared and issued a letter denying the Complainant's application for housing. On this denial, she checked two boxes, one relating to the problems with the Complainant's credit history and the other relating to his conviction record. Walker also handwrote notes specifying the Complainant's conviction record on the same form. Attached to this form was an additional form relating to the Complainant's credit history.

10. The Complainant could have appealed the denial of his application for housing, but did not do so believing that an appeal would do no good.

11. The Complainant remained fearful for his safety while remaining at his Braxton Place apartment. He did make efforts to sleep away from the apartment whenever possible while he sought a different apartment. The search for a new apartment took approximately one month.

12. In the period subsequent to his denial by the Respondent and until he found new housing in Stoughton, the Complainant was more depressed and anxious than usual. The Complainant has a history of emotional or mental illness including depression and general anxiety.

13. The Complainant remained in the same apartment complex in Stoughton until the time of hearing. The Complainant's request to move from a second floor apartment to a ground floor apartment was honored by the landlord.

14. The Complainant is unhappy living in Stoughton and wishes to move to Madison. However, the Complainant has made no substantial effort to find alternative housing.

15. In 2009, the Complainant was twice hospitalized for different conditions. There is no indication of how these conditions might relate to the Respondent's denial of the Complainant's housing application nearly three years earlier.

16. The Respondent's denial of the Complainant's application for housing did not result in any demonstrated additional expense to the Complainant.

CONCLUSIONS of LAW

1. The Complainant is an individual with a conviction record. The convictions of which there is a record fall outside of the two year period during which a housing provider might consider them under the ordinance.

2. The Respondent is a housing provider located within the City of Madison as that term is used in the ordinance.

3. The Respondent denied the Complainant rental housing, at least in part, because of his conviction record in violation of M.G.O. § 39.03(4).

4. The Complainant is entitled to economic and non-economic damages, if any, to redress the discrimination and to make him whole again.

5. The Complainant is entitled to the reasonable costs and fees of this action including a reasonable attorney's fee.

ORDER

1. The Respondent is ordered to accept the Complainant's application for housing and to process it without regard to his conviction record. Should the Complainant meet the Respondent's other rental criteria, the Respondent shall offer the Complainant the first available rental unit.

2. No later than thirty (30) days of this order's becoming final, the Respondent shall pay to the Complainant $10,000.00 for his emotional distress connected with the denial of his rental application.

3. The Respondent is ordered not to retaliate against the Complainant for his bringing of this complaint.

4. No later than forty-five (45) days of this order's becoming final, the Complainant shall file a petition for the costs and fees associated with pursuit of this complaint including a reasonable attorney's fee.

5. The Respondent may file an objection to the Complainant's petition within fifteen (15) days of its receipt. Further proceedings may be held.

MEMORANDUM DECISION

The issue of liability in this matter turns on why a single box was checked on a form used by the Respondent along with a note written by the Respondent's Property Manager, Sherry Walker. The Complainant contends that this check mark denotes recognition of an illegal animus for the decision not to rent an apartment to him. The Respondent argues that the check mark was a mistake and does not reflect a discriminatory intention when viewed in the context of the whole transaction.

As in all claims of discrimination, the Complainant in the present matter bears the burden of proving discrimination by the greater weight of the evidence or as it is more commonly known, the preponderance of the evidence. Proof of discrimination may be made by either the indirect method as set forth in McDonnell Douglas v. Green, 411 U.S. 792 (1973) or by analysis of direct evidence of discrimination. Given the record in this matter, the Hearing Examiner will utilize the direct evidence approach. In this approach, the Hearing Examiner will determine whether the facts as adduced at hearing and without relying on inference demonstrate discrimination.

Madison General Ordinance section 39.03(4)(d) provides that a landlord may not consider a prospective tenant's conviction record unless it relates directly to the terms and conditions of tenancy and is no more than two years old. The ordinance at subsection 4(d)(1) provides a list of the types of convictions that might adversely affect one's suitability as a tenant.

In the present matter, there is no question that the Complainant possessed a record of convictions for activities that a landlord might legitimately consider. However, there is equally no question that these convictions all fall outside of the two year period during which they might be appropriately considered by a landlord within the City of Madison.

Similarly, as a participant in the federal government's Section 8 housing voucher program, the Respondent was obligated to screen prospective tenants for certain types of conviction records especially those relating to the use of physical violence or to the possession, manufacture or sale of controlled substances. According to Housing and Urban Development (HUD) guidelines, a landlord such as the Respondent should screen for a period of three years prior to an individual's application. The HUD guidelines are to be incorporated into a tenant screening process and that process is to be written and distributed to prospective tenants.

The testimony of Pam Taylor and Sherry Walker indicates that the Respondent complied with these requirements. Walker, at the time of hearing, no longer was employed by the Respondent. Both Taylor and Walker testified as to the Respondent's adoption and compliance with HUD policies concerning the screening of tenants and asserted that those procedures were followed in the case of the Complainant's application.

In the spring and summer of 2006, the Complainant lived in Section 8 housing at 755 Braxton Place. Over the period of his tenancy, he had become increasingly concerned for his personal safety at the Braxton Place apartment. These concerns reached their apex in the summer of 2006 as a result of two fires in the apartment immediately adjacent to the Complainant's. In order to reduce the anxiety he was experiencing from his tenancy at Braxton Place, the Complainant sought other low income housing. On July 24, 2006, the Complainant submitted an application for housing under the Section 8 program at the Respondent's South

Ridge Village Apartment complex. This complex is located south of the "Beltline" and north of the City of Fitchburg.

The application submitted by the Complainant was to be placed on the Respondent's waiting list. The demand for low income housing under the Section 8 program is such that the Respondent must first screen potential applicants to determine whether they meet the requirements for housing in the section 8 program.

Review of the Complainant's initial application dated July 24, 2006 (Resp. Ex. C) indicated that he met the Section 8 criteria based upon his income and the fact of disability. In the initial application, an applicant is asked if he or she has had any drug related arrest/convictions. The Complainant indicated that he had such a conviction history, but was not required to specify the offenses. The Respondent did not eliminate the Complainant from further consideration based upon his answer nor did it seek additional information about the timing or nature of the convictions. The Complainant was placed on the Respondent's waiting list for apartments subject to the Section 8 program.

In August 2006, the Respondent contacted the Complainant and requested that he submit a preliminary application for tenancy. The Complainant submitted his application on August 23, 2006. The Respondent, upon receipt of the Complainant's application, performed a search of the Complainant's conviction history on the Circuit Court Access Program (CCAP). (Resp. Ex. H) Both Taylor and Walker testified that the Respondent first performed the CCAP screen because there is currently no charge for such a screening. If the CCAP review revealed convictions or other information that would eliminate the Complainant from further consideration, his application could be rejected prior to performing other screenings for which there is an expense, such as the credit screening.

In the present matter, despite the CCAP's result listing significant court activity, the Respondent did not immediately reject the Complainant's application. Instead, the Respondent, on August 25, 2006, conducted a credit check for which it was charged a fee.

Though the fee for an individual credit check is minimal at $4.50, the Respondent receives a sufficient volume of applications such that performing credit checks on all applications would represent a significant financial burden. It is to avoid this expense that the Respondent performs other screens such as the conviction record screen before conducting a credit history screen.

The Complainant's credit history screen resulted in the lowest possible credit score and listed seven items subject to collection. Though four of the seven items were considered medically related debt and not to be considered, the remaining items involved payment of utility type bills and were sufficient to cause rejection of the Complainant's application.

The Respondent asserts that it was only the results of the Complainant's credit screening that led to the rejection of the Complainant's application. The Respondent also points out that the Complainant did not pursue his appeal options. Taylor testified that had the Complainant contacted the Respondent pursuant to his appeal rights, a payment plan might have been established to permit the Complainant to resubmit his application. Pursuit of an appeal might also have clarified to the Complainant the exact reasons for the rejection of his application. On the other hand, the Complainant testified that he did not appeal because he

believed that it would do no good. It is not clear whether this attitude on the part of the Complainant resulted from experience, the nature of his disabilities or a lack of confidence in the Respondent.

Upon determining that the Complainant's application was insufficient, Walker prepared a "rejection letter" (Resp. Ex. F) (also labeled either Compl. Ex. 1 or F) and a form informing the Complainant of the decision accompanied by a Fair Credit Reporting form. (Resp. Exs. F and G).

Exhibit F clearly indicates by two check marks that the Complainant's application was being rejected because of deficiencies in his credit report and separately because of his record of convictions for drug related and violent offenses. In addition to the check marks appearing on the form, there is a hand written note indicating that the Complainant had a history of drug related offenses from 1985 to 2000.

In Exhibit G, the Respondent references only the Complainant's doubtful credit record. Though, Exhibit G appears to be a standard Fair Credit Reporting form and contains no place to indicate other specific problems, Walker testified that if other problems existed such as a problematic conviction history, she would note such on Exhibit G in the "other" field.

The testimony of Taylor and Walker is long on what usually happens and what should have happened, but fails to explain what actually did happen. It is clear that the Complainant was told in Exhibit F that one of the reasons for his rejection for tenancy was his conviction record for offenses that fall outside of the period permitted to be considered by the ordinance. Walker testified that she has no recollection of why she might have checked the box for convictions on Exhibit F and avers that to have done so was a mistake. Taylor testified that the check mark on Exhibit F for conviction records must have been placed there in error, because to have rejected the Complainant's tenancy for that reason was contrary to the Respondent's policies and practice, not to mention being a violation of the ordinance and HUD policy.

While the Hearing Examiner is willing to concede that mistakes do occur, the record in this matter does not convince the Hearing Examiner that the appearance of the check mark in this case was undoubtedly a mistake.

On one hand, the Respondent's explanations that it did not eliminate the Complainant when his initial application (Resp. Ex. C) indicated that he had convictions for drug related offenses and that it continued to process the Complainant's application after conducting a CCAP screening on August 23, 2006 (Res. Ex. H) support the claim of mistake. On the other hand, such statements are exactly what one who has been caught discriminating against a potential tenant might say. Also, the Respondent's explanation fails to take into account that it had knowledge of the Complainant's conviction record and that it specifically noted the convictions in his rejection letter. Thus, it appears that the Respondent acted upon that knowledge in rejecting the Complainant's application.

Given the record as a whole, the Hearing Examiner finds that the Respondent denied the Complainant rental housing, at least in part, because of his conviction record that occurred outside of the two year period during which the Respondent could have considered that record. The Respondent clearly knew of the Complainant's conviction record at the time it made its rental decision. The document setting forth the Respondent's reasons for denying the

Complainant's application for housing unequivocally indicate that the Complainant's conviction record was a reason for denying the Complainant's application. In addition to the check mark on the denial letter, the Respondent specifically noted the details of the Complainant's conviction record. In combination, these facts establish a violation of the ordinance.

The Respondent fails to adequately counter the Complainant's demonstration of discrimination. While the Respondent's witnesses, Taylor and Walker, appeared to be nice people, they failed to present anything but speculation. Taylor's explanations of how things are supposed to work in the application process do not explain how or why they did not work in the present matter. The Respondent's explanations are precisely what one might utilize to avoid the consequences of a discriminatory decision. As such, the testimony of Taylor and Walker, though sincerely provided, lack credibility. Walker's statement that it is hard to do everything perfectly, while true, fails to convince the Hearing Examiner that the check mark in combination with the written details of the Complainant's conviction history represent a mistake rather than considered action. Had there not been the written notes of the Complainant's conviction record, the Hearing Examiner might have more readily accepted the Respondent's claim of mistake.

Finding that the Complainant has established discrimination, the Hearing Examiner now turns to the issue of damages. In a claim of housing discrimination, a prevailing Complainant might be able to demonstrate both economic and non-economic damages. An entitlement to damages is a burden placed upon the Complainant in the same manner as the burden to establish liability.

The record in this matter fails to establish any economic damages. In a claim of housing discrimination, economic damages might be demonstrated where the Complainant has to spend additional funds to find housing subsequent to a discriminatory denial or where the Complainant has to pay more for substantially similar housing than the Complainant would have had to spend had the denial not occurred. Should there be additional expenses related to housing subsequent to a discriminatory denial, such as higher transportation costs or utility costs, those could be awarded as economic damages.

There was no testimony concerning any additional moving costs or a higher amount of rent to be paid by the Complainant at the place where he now resides in Stoughton. Though the Complainant testified at length about the additional expenses that living in Stoughton placed upon him for transportation and entertainment, there is nothing in the record to allow the Hearing Examiner to quantify those expenses. The Hearing Examiner cannot and will not speculate as to the amount of any economic damages. It is the Complainant's burden to establish those amounts and he has failed to do so.

Next the Hearing Examiner will turn to the question of non-economic damages. In discrimination cases, such an award of damages is intended to compensate the prevailing Complainant for the emotional distress, embarrassment and humiliation of discrimination. It is the Complainant's burden to establish that he has experienced such injuries and the extent of those injuries. Fixing an amount of damages to properly redress the discrimination is more of an art than a straight forward calculation. In this regard, the testimony in this complaint is complicated by the fact of the Complainant's pre-existing emotional disabilities, depression and general anxiety.

The Complainant sought to demonstrate a significant and substantial impact on him from the Respondent's discrimination through his own testimony and that of his sister, Rosalie Roy. In this regard Ms. Roy's testimony was most helpful.

In 2006, the Complainant was living in low income housing on Braxton Place. He had a lengthy history of mental health issues including depression and general anxiety. During the early summer months of 2006, the Complainant became increasingly concerned over his personal safety due to two fires in the complex in which he was living. He sought voluntarily to move from Braxton Place. The testimony of the Complainant's sister confirms the Complainant's increased concerns for his safety. Ms. Roy indicated that the Complainant became markedly more paranoid while living at the Braxton Place complex.

For purposes of establishing the Complainant's claim for emotional distress damages, it is important to understand the factors that either caused or increased the Complainant's level of distress. In this regard, the Complainant was already experiencing a high level of stress at the time that the Respondent denied his application for tenancy on August 30, 2006. The Complainant and his sister both testified that immediately after the denial of his application, the Complainant's depression was made substantially worse. The Complainant testified that this heightened level of depression and anxiety continued for a substantial length of time and remains at present. However, the testimony of the Complainant's sister indicates that, while initially the Complainant's distress was greater, it was much reduced when he moved into his apartment in Stoughton. Ms. Roy indicates that the improvement in her brother's outlook did not last and he is once again experiencing a high level of paranoia. Unfortunately, the record is silent on how long after August 30, 2006 it was until the Complainant moved into his current apartment complex. From the Complainant's cross-examination, it appears that this period was relatively short, perhaps a week or a month or slightly more. Given the record it is the Complainant's emotional distress during this period that provides the focus for the Hearing Examiner.

The Complainant spent much time in his testimony attempting to demonstrate that his current housing was substantially less desirable than that at the Respondent's complex. This testimony, presumably, is intended to demonstrate that the emotional distress of the Respondent's denial of his housing application continues to the present and is deserving of compensation. However, the Hearing Examiner finds much of this testimony to lack credibility or foundation and to represent speculation rather than actual proof.

When the Complainant first moved to his existing apartment complex, his apartment was on the second floor of a building that lacked an elevator. At Braxton Place, the Complainant lived on some floor above ground level, but had an elevator. There was no testimony of how the apartments at the Respondent's complex are configured. There is no way to know whether the Complainant would have had a similar upstairs apartment or a ground floor apartment had he been given an apartment with the Respondent. It is during this period of time that the Complainant's sister indicated his depression and other illnesses had improved albeit temporarily.

The Complainant found the second floor apartment to be inconvenient or difficult and his current landlord allowed him to move to a ground floor apartment. The Complainant is now unhappy with his ground floor unit indicating that he has been the victim of break-ins and theft.

However, the Complainant produced no records of police calls or other documentation to support this testimony.

The Complainant's testimony concerning his current housing situation, in part, dealt with the undesirability, from his perspective, of living in Stoughton. In this regard, he finds Stoughton to not afford him the type of entertainment options found in Madison and that the distance makes it difficult for him to visit friends in Madison and acts as a deterrent to his friends visiting him. It must be noted that the Respondent's Southridge Village complex is south of the Beltline close to Madison's border with Fitchburg. There was no real testimony to demonstrate that the Respondent's complex would be any less isolating for the Complainant.

The Complainant testified that because of the distance to Stoughton, he often had to use a car for transportation as opposed to taking a bus or being able to walk or ride a bicycle. However, the Complainant owned a car while a tenant living at Braxton Place and would presumably have had to utilize a car living at the Respondent's complex.

The Complainant complains of the type of tenants living in his current complex as being drug users or of a criminal type. However, he testified on cross examination that he had heard that there were similar problems at the Respondent's complex.

Finally, the Complainant attempted to demonstrate that his current housing option has led to adverse health consequences, including two hospital stays, one for blood clots and the other for a mental health issue. The Complainant sought to support his testimony with medical records. These records were excluded from evidence because some records dealt with a condition that occurred years before the dates in question and that the other records lacked any means of authenticating them. Specifically, there was no doctor or other treating physician called to identify or to explain the contents of the offered exhibit. The Complainant attributed his health conditions to his more sedentary lifestyle imposed upon him by his isolation in Stoughton. The Hearing Examiner finds that such testimony lacks any reasonable foundation and represents the rankest speculation.

Additionally, the Complainant is obligated to attempt to mitigate his damages including those resulting from emotional distress. The record is clear that the Complainant has taken virtually no steps to redress his concerns over living in Stoughton until shortly before the hearing in this matter. If the Complainant found living outside of Madison so undesirable, it was incumbent upon him to attempt to redress that by seeking housing opportunities back in an area closer to where he wished to live. Similarly, if as the Complainant asserts, he was forced into a less active lifestyle, he should have taken steps to gain more exercise or other opportunities. Instead, it appears that he simply did little or nothing. It is possible that the Complainant's failure to help himself is symptomatic of his mental illnesses. However, the record lacks any foundation for such a finding.

The Respondent through Taylor testified that, had the Complainant exercised his rights to appeal the denial of his application, it could have made it clear what the Complainant would have had to do to gain tenancy. It would have also given the Respondent the opportunity to make clear the basis for its decision to deny his application.

The Complainant made clear that he did not believe that appealing would do any good. Given the indication that it was in part his conviction record from prior to 2000 that formed the

basis of his denial, the Complainant's position is not unreasonable. While he might have been able to correct his credit problems, there was nothing that he could have done to change his conviction history.

This brings the Hearing Examiner back to that period of time immediately after the Respondent's denial of the Complainant's rental application. The record indicates that the Complainant had a legitimate concern for his safety at the Braxton Place complex. There had been two fires in the apartment next to his in the weeks preceding his application. The Complainant testified of his concern and his despair that his conviction record would follow him forever and might result in his eventual homelessness. Once the Respondent denied his application, he was compelled to remain for some time in the complex where he felt threatened. These expressions of the Complainant's distress demonstrate the type of emotional distress injury that is compensable under the ordinance. While it is tempting to assert that this distress is merely a manifestation of the Complainant's pre-existing emotional illness, the testimony of the Complainant's sister clearly indicates that there was something more than the Complainant's usual level of distress at work.

The Hearing Examiner must recommend a damage award sufficient to redress the Complainant's emotional distress during that period of time from the Respondent's denial of the Complainant's application to when his symptoms of distress returned to a more normal condition with his move to his complex in Stoughton.

The Hearing Examiner normally looks at the facts of the matter presently before him and compares them to the facts and awards made in other complaints decided by the Hearing Examiner, the Commission and other jurisdictions. In this regard, the decisions of the Commission and the Hearing Examiner are most persuasive. It is these decisions that reflect the local concerns presented in the ordinance.

The Commission has few housing cases from which to seek guidance. Most notably are the decisions in Williams and Oden v. Sinha et al., MEOC Case No. 1605 (Comm. Dec. 07/25/96, Ex. Dec. 12/23/96) and Ossia v. Rush, MEOC Case No. 1377 (Ex. Dec. 06/07/88. In Williams and Oden, the Hearing Examiner awarded each of the named Complainants $7,500.00 in emotional distress damages. In doing so, the Hearing Examiner found that much of the emotional distress claimed by the Complainants was more likely attributable to their status as homeless, but that the Complainants had experienced significant distress attributable to the Respondents' discriminatory actions. In Ossia, the Hearing Examiner awarded the prevailing Complainant, $475.00 in economic damages relating to a security deposit and payments for counseling, $1,500.00 for his emotional distress and $1,000,00 in punitive damages. Since the decision in the Ossia complaint, the ordinance has been amended to make clear that the Commission lacks authority to award punitive damages.

The most recent housing case is that of Williams and Oden. Some of the facts in that case seem similar to those in the present case. In Williams and Oden, the Hearing Examiner found that the Complainants were denied the opportunity to apply for an apartment. Despite that denial, it appeared to the Hearing Examiner unlikely that the Complainants would have qualified for housing with the Respondents. Similarly, the Complainant in the present matter would have failed to qualify for housing with the Respondent due to his credit history. However, it is clear from the testimony of Taylor that the Complainant would have been able to overcome that impediment in a relatively short period of time.

Another similarity between the Williams and Oden case and the present one is that the Complainants had substantial stressors in their lives. In Williams and Oden, the Complainants were homeless and had little in the way of prospects for ending that status. In the present matter, the Complainant has a long standing history of mental illness in the form of depression and general anxiety which seems to create a negative view of all aspects of his life.

The one factor that is different in the two cases is the corroboration of the Complainant's additional depression from his sister. In this regard, a somewhat higher award of damages than that in Williams and Oden seems justified. Ms. Roy indicated that the Complainant's level of distress and paranoia increased while he lived at Braxton Place. She additionally testified that the Complainant's level of distress increased dramatically when he was denied housing by the Respondent. This higher level of distress was reduced when the Complainant moved to Stoughton. Despite this initial reduction, the Complainant's level of distress once again increased over time as he became less happy with his living arrangements in Stoughton.

The Ossia case does not really seem relevant in the present situation. In Ossia, the Hearing Examiner found an intentionally intrusive relationship between the Complainant and the Respondent justifying the application of punitive damages. The distance in time perhaps explains the relatively low award for emotional distress damages along with a somewhat less robust record.

The fact that the Complainant's distress was of a relatively short period of time, perhaps two months, also mediates in favor of a somewhat limited award. In Jackson v. U-Haul, MEOC Case No. 20093107 (Ex. Dec. 02/08/2012), the Complainant experienced a somewhat longer period of intense distress, approximately six months. In that case, the Complainant was awarded $15,000.00 in emotional distress damages. Equally, the Complainants in Laitinen-Schultz v. TLC Wisconsin Laser Center, MEOC Case No. 19982001 (Ex. Dec. 07/01/2003) and Carver-Thomas v. Genesis Behavioral Services, Inc., MEOC Case Nos. 19992224 and 20002185 (Ex. Dec. 01/25/2006) experienced fairly intense feelings of distress including medical treatment for slightly longer periods of time than the record demonstrates in the present matter. It should be noted that the Complainant's alleged medical treatment in the present case occurred three years after the act of discrimination and does not appear to be temporally linked with the discrimination. In Carver-Thomas, the Complainant was awarded $20,000.00 for her emotional damages and in Laitinen-Schultz, the Complainant was awarded $15,000.00.

Given the record in this matter demonstrating a significant distress for a comparatively short period of time, the Hearing Examiner finds that $10,000.00 will compensate the Complainant for his emotional damages experienced as a result of the Respondent's discrimination. The Hearing Examiner does not mean to trivialize the impact of this situation upon the Complainant. However, much of the record on damages appears to not truly be attributable to the actual discrimination, but is rather more on account of the Complainant's general dissatisfaction with his life. The observation of the Complainant's sister that the Complainant's distress and dissatisfaction increased after an initial period of more normal feelings is evidence of this.

In addition to the award of emotional distress damages, the Hearing Examiner is ordering the Respondent to process the Complainant's application for housing. This could permit the Complainant to achieve that which he has claimed to want from the beginning. As the

Respondent asserts that the Complainant's conviction record should not have disqualified him from housing in the first place, it should not have a problem applying its usual standards to the Complainant. Since one of the goals of the ordinance is to place the Complainant in the same position he would be in absent the act of discrimination, the Complainant and the Respondent should be given the opportunity to let the process move forward as if the discrimination had not occurred. This does not guarantee the Complainant housing with the Respondent, but does permit him the opportunity to be considered without the stigma of his conviction record.

Finally, the Hearing Examiner awards the Complainant the costs and fees including a reasonable attorney's fee associated with the prosecution of this action. The Commission has long recognized the importance of an award of cost and fees to a prevailing Complainant. Nelson v. Weight Loss Clinics of America, Inc., et al., MEOC Case No. 20684 (Ex. Dec. 09/29/89), Harris v. Paragon Restaurant Group, Inc., et al., MEOC Case No. 20947 (on atty. Fees Comm. Dec. 02/27/95, Ex. Dec. 08/08/94). Without such an award, the Complainant would likely be at a net loss after bringing such an action to enforce his legal rights. Given the ordinance's goal of making the Complainant whole, awards of costs and fees including a reasonable attorney's fee are essential.

Signed and dated this 21st day of February, 2012.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Timothy M Scheffler
Steven C Zach