STATE OF CONNECTICUT

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Johnmark Brown and Clarissa Brown, Complainants	:	CHRO Nos. 0750001, 0750002
v.	:	
Arlette Jackson, Respondent	:	November 17, 2008

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND

On July 7, 2006, Johnmark Brown and Clarissa Brown (Mr. Brown and Mrs. Brown or, jointly, the complainants) filed complaints of housing discrimination with the commission on human rights and opportunities (the commission) alleging that the respondent, Arlette Jackson, prevented Mr. Brown from obtaining and using a rental subsidy and harassed the complainants because of their desire to use such subsidy, in violation of General Statutes § 46a-64c (a) (2) and (9) (Cum. Sup. 2008).

A commission investigator found reasonable cause to believe that a discriminatory practice had occurred. On February 23, 2007, having failed to eliminate the discriminatory practice by conciliation, conference or persuasion, the investigator certified the complaints to public hearing in accordance with General Statutes § 46a-84 (a) (Cum. Sup. 2008).

I conducted a duly-noticed public hearing on January 23, 24 and 25, and February 6, 2008. Following the submission of post-hearing briefs, the record closed on August 29, 2008.

FINDINGS OF FACT

1. The respondent, Arlette Jackson, was the record owner of a three-family building at 1599 Chapel Street, New Haven, Connecticut during all of the actions alleged in the complaints and throughout the course of this proceeding. (Joint Stipulation of Facts [Stipulation] ¶ 2; see also ¶ 2 in each complaint, and the respondent's admission in ¶ 2 of her answer.)

2. In October 2005, Mrs. Brown worked at Bridges Community Support Systems (Bridges), a non-profit mental health facility, where she met the respondent's sister, Adrian Jackson. Upon learning that the complainants were looking for an apartment to rent, Jackson introduced Mrs. Brown to the respondent, who had a vacant apartment in her building. (Testimony of Clarissa Brown, Transcript pp. 17-19, 118-19, 206-07; Adrian Jackson, Transcript pp. 502-03; Exhibit [Ex.] C-12)[1] The respondent lived on the first floor of the building. (C. Brown, 21)

3. The complainants executed a one-year lease with the respondent for the third floor apartment, beginning November 1, 2005. The monthly rent was $1000; the complainants gave the respondent a security deposit in the amount of $700. (Stipulation ¶¶ 4 and 5; C. Brown, 20-22; Exhibit C-13)

4. The complainants' one-year old daughter and thirteen-year old son also resided in the apartment. (C. Brown, 22, 114)

5. The respondent never requested or required that the complainants identify their sources of income or any other financial information when renting the apartment. (C. Brown, 73, 193)

[1] Hereinafter, all references to testimony consist of the witness's name and the transcript page number(s). The four volumes of transcribed testimony are numbered consecutively. References to the exhibits offered jointly by the complainant and the commission bear the prefix "C," followed by a number. The respondent's exhibits bear the prefix "R," followed by a number.

6. The complainants and the respondent never developed a friendly relationship. (C. Brown, 202-03, 225). Almost from the start of the tenancy, the parties had minor disputes over unlocked doors, damaged walls in the hallway and loose trash, creating frequent tension. (Exs. C-10, C-12; Arlette Jackson, 387; Adrian Jackson, 504-06; Hampton, 182-83) The complainants often relied on counseling from their pastor to cope with the stress. (Hampton, 174-78, 189)

7. Throughout the course of their tenancy, Mrs. Brown remained employed at Bridges. Mr. Brown worked part-time until February 2006. He lost his job that month and remained unemployed for the remainder of the tenancy. (C. Brown, 23, 120-21,126-27; J. Brown, 234)

8. Mr. Brown, a convicted felon, was on parole throughout the entire tenancy. [2] The respondent was unaware of Mr. Brown's criminal record at the time she rented the apartment to the complainants. She learned of his parole status in January 2006, but erroneously believed that the conviction was for leaving his young daughter unattended in his car the previous month. (Ex. C-22; Arlette Jackson, 424-26) She maintained this belief at least through the time Mr. Brown sought rental assistance in late March 2006. (Arlette Jackson, 424-26)

9. In March 2006, Mr. Brown engaged the services of New Haven Family Alliance (NHFA), a non-profit social service agency whose mission was to "strengthen fragile families and improve outcomes for children." Mr. Brown's NHFA caseworker was Sherman Malone, Director of Case Management and Clinical Services. (Malone, 315-16, 318; C. Brown, 23-24; J. Brown, 230-34)

10. Upon Malone's recommendation, Mr. Brown applied to a program called Access to Recovery (ATR), funded by the Connecticut department of mental health and addiction services (DMHAS). One of ATR's missions was to assist present and, like Mr. Brown, former substance abusers in reestablishing

[2] Notwithstanding arguments by the respondent's attorney, Mr. Brown had never been convicted for using or selling drugs. (J. Brown, 229, 262)

themselves in society and in the workplace. Among the services it offered were rental assistance, sober housing, faith-based programs, transportation, vouchers for food and clothing, and vocational and educational services. Eligible individuals could obtain a rental subsidy for up to three months, along with money for a security deposit, if needed.[3] (C. Brown, 24-25; J. Brown, 232; Malone, 316-19, 336; Halsey, 556-57; Ex. C-20)

11. ATR personnel trained service providers (such as Malone) to assess a candidate's eligibility, and instructed the providers to recommend and submit applications only from individuals who would likely qualify. (Halsey, 563-64) While a trained individual could recognize and endorse an ostensibly eligible candidate, the ultimate determination of eligibility remained with the actual funding source, Advanced Behavioral Health (ABH), an agent for DMHAS. (Malone, 351-55; Halsey, 548, 560, 563)

12. Malone informally determined that Mr. Brown met the eligibility requirements for the ATR rental assistance program. (J. Brown, 237; Malone, 319-20, 324, 329-30, 351, 359) With Malone's assistance, Mr. Brown completed all of the necessary forms for the program. (Malone, 327; Exs. C-19, C-20)

13. The program also required a participating landlord to complete and return a "landlord verification form" and a W-9 form to the assigned liaison—in this case, to Malone at NHFA. Thus, Malone instructed Mr. Brown to bring the forms to the respondent for completion and submission to NHFA. Malone would then file the forms and her recommendation with ATR. Without receiving the complete set of paperwork, ATR would not process an application for rental assistance and therefore ABH would never be in a position to make the final determination of a

[3] The complainants had already given the respondent a security deposit and, despite the respondent's innuendos that Mr. Brown deceptively sought to receive more money than he needed, the complainants did not need and were not seeking money for a security deposit. (C. Brown, 221; J. Brown, 277; Halsey, 547-48)

candidate's eligibility. (Malone, 321, 325-27, 359; Halsey, 536, 549, 560-63; Exs. C-19, C-20)

14. Knowing that many landlords do not want to share their social security or business tax identification numbers with their tenants, Malone gave Mr. Brown her business card and self-addressed envelope along with the requisite forms so the respondent could return the forms directly to Malone or call her if she had questions or needed assistance in completing the forms. (Ex. C-20; Malone, 327; see also Arlette Jackson, 395, 398-99)

15. The landlord verification form itself contained the telephone number of ABH for landlords to call if they had any questions or needed assistance in completing the form. (Halsey, 554-55; Ex. C-20)

16. The respondent was unfamiliar with the ATR program, but she had rented to Section 8 tenants[4] in the past and was required to complete forms similar to the ones Mr. Brown gave her. She would never return the completed Section 8 forms directly to the tenants, but would send them to the administering authority. (Arlette Jackson, 383, 399, 422, 441; Ex. 22)

17. Although the eligibility requirements changed in the latter half of 2006, at the time Mr. Brown sought assistance, neither ATR nor ABH required information about his wife's income. The requisite forms likewise did not request such information. (C. Brown, 25-26; J. Brown, 236; Malone, 326, 337, 348, 352; Halsey, 536-37, 544; Ex. C-20)

18. On or about March 28, 2006, Mr. Brown went to the respondent's apartment to discuss his financial situation and to give the respondent the forms to complete. He also gave her Malone's business card and the envelope

[4] The Section 8 program is a federally operated rent supplement program under the aegis of the federal Department of Housing and Urban Development and administered locally by municipal housing authorities; the program is designed to assist qualified low-income persons pay their rental obligations. See 42 USCA § 1437f; *Commission on Human Rights & Opportunities ex rel. Colon v. Sullivan,* 2005 WL 2855540, *1 n.7 (Conn. Super.), rev'd on other grounds, 285 Conn. 208 (2008).

addressed to Malone, and told her that she could mail the forms to Malone. (C. Brown, 26; J. Brown, 312)

19. The respondent refused to sign or return the forms[5] and Mr. Brown consequently could not complete the process to obtain the rental subsidy. (Ex. C-20; C. Brown, 27; J. Brown, 239; Malone, 327-28, 330-31, 352; Halsey, 560)

20. Although the complainants and the respondent already had a strained relationship, after the respondent's refusal to sign the rental subsidy forms, the relationship deteriorated precipitously as the respondent began a two month period of constant harassment. (C. Brown, 38-44, 60, 79-80, 100-10, 225; J. Brown, 239-40; Tutrani, 144)

21. After the rental subsidy incident, the respondent's complaints about trash disposal increased in frequency. (C. Brown, 38-39) The respondent entered the complainants' apartment several times without notice, sometimes leaving behind indications of forced entry. The complainants also believed that the respondent took their barbecue grill and removed and opened their mail. (C. Brown, 69, 73-78; J. Brown, 241, 312-13)

22. On one occasion after the subsidy incident, while Mrs. Brown was in her living room, she overheard the respondent in the hallway complaining to the

[5] The parties disagree on the nature of their conversation and the disposition of the unsigned forms. According to Mr. Brown, he spoke with the respondent through the closed door of her apartment and slid the forms under her door at her request. She emerged a few minutes later, expressed disbelief that he could obtain such assistance, and told him she would not give out her social security and tax identification numbers as required by the form. (See Ex. C-22) He told her she could mail or fax the forms directly to his caseworker at NHFA, left the forms with her—along with Malone's business card and a pre-addressed envelope—and had no further discussions. (J. Brown, Tr. 237-39, 282, 292, 312) The respondent denies that Mr. Brown ever gave her the caseworker's business card or an envelope with the forms, and she asserts that several days later, after calling ATR (whose telephone number appeared on the form) and learning that it had no record of Mr. Brown, she returned the unsigned forms to Mr. Brown and informed him that he was not eligible for a rental subsidy. (Jackson, 394-98; 435-38) (Neither ABH nor ATR would have any record of Mr. Brown until NHFA sent in all the forms.) As discussed in detail below, while the credibility of the respondent and both complainants was questionable at times, I find the respondent to be less credible than Mr. Brown on this key incident and, in general, less credible than either complainant.

second floor tenant about working people getting rental assistance. (C. Brown, 41, 103) On another occasion, the second floor tenants opened up their door to the hallway when they heard the respondent loudly berating Mr. Brown. (J. Brown, 254)

23. After the subsidy incident, the respondent called Mrs. Brown at work and left a voice message accusing Mr. Brown of sexually molesting their daughter. (C. Brown, 47-48)

24. Shortly thereafter, the respondent reported Mr. Brown to the department of children and families (DCF) on several occasions, including once for the alleged molestation, and once for allegedly smoking marijuana in the apartment. The DCF investigators found these reports to be groundless, but required both complainants to take drug tests, which proved negative. (C. Brown, 42-49; J. Brown, 242-43) The DCF visits—and particularly the drug tests—were humiliating and they made Mrs. Brown feel like an unfit mother. (C. Brown, 53-54)

25. Someone from DCF informed Mrs. Brown that he had received additional calls from the respondent, but he did not intend to investigate any of these calls. (C. Brown, 47-48, 107)

26. Because the respondent knew that Mr. Brown was on parole for a felony conviction,[6] she hoped that her reports to DCF would lead to revocation of his parole. In fact, after the subsidy incident, Mrs. Brown overheard the respondent telling the second-floor tenant that she would do everything in her power to get Mr. Brown returned to jail. (C. Brown, 40-41, 60; Ex. C-18)

27. On April 7, 2006, the complainants discovered rocks and dirt in or on their car, the pile fashioned to resemble a grave. Mrs. Brown called the police and an

[6] At this point, the respondent still believed that Mr. Brown's conviction and parole were related to leaving his child unattended in a car in December 2005. (See Ex. C-22; Arlette Jackson, 424-26.)

officer came to investigate. The officer was unable to determine who was responsible, but he noted in his report that he was called back to the premises later in the day because Mrs. Brown and the respondent were engaged in a loud and intense shouting match. The respondent told the officer that Mrs. Brown was upset because she (the respondent) had denied Mr. Brown's request for rental assistance. (C. Brown, 63-64; Ex. C-16)

28. On April 13, 2006, the respondent called the police department and claimed that Mr. Brown had pushed her in the apartment's hallway and tried to burn her with a cigarette. Mr. Brown told the responding officer, Holly Tutrani, that his cigarette was unlit; he may have brushed against the respondent as she tried to block his exit. Mrs. Brown told Tutrani that since the subsidy incident the respondent was "constantly" trying to get Mr. Brown arrested for parole violations. (Ex. C-18; C. Brown, 65-69; J. Brown, 244-46)

29. The respondent told Tutrani that Mr. Brown was "on parole" and that parolees were ineligible for rental subsidies. The respondent insisted angrily that Tutrani arrest him for assault and inform his parole officer. (Tutrani, 142-46; Ex. C-18)

30. Tutrani determined that no assault occurred, but after she informed the respondent that the matter was closed, the respondent continued to call her in an attempt to persuade her to arrest Mr. Brown and inform his parole officer of a parole violation. Tutrani refused to engage in conversations with the respondent, so the respondent complained to Tutrani's supervisor. The supervisor discussed the matter with Tutrani and then told the respondent to stop her calls. (Tutrani, 141- 50; Ex. C-18)

31. People in the neighborhood saw the police arrive to investigate the April 13 incident. (C. Brown, 103-04; J. Brown, 255)

32. On one occasion, after a heated exchange with Mr. Brown, the respondent threatened to "sic" her boyfriend on him. (J. Brown, 245)

33. As Mr. Brown left and returned to the apartment each day, his wife would watch nervously from the top of the stairs, fearing that the respondent would confront and provoke him. (C. Brown, 39, 79-80)

34. Lacking sufficient income, and facing an untenable living situation, the complainants paid no rent after March 2006. (C. Brown, 30-31, 211-12, 227; Arlette Jackson, 401; Ex. C-12)

35. On or about April 11, 2006, the respondent served on the complainants a notice to quit possession of the apartment for nonpayment of rent. (Ex. C-22; C. Brown, 31) On May 23, 2006, the respondent and the complainants, with the assistance of a neutral "housing specialist," executed a stipulated agreement in the New Haven Housing Session, agreeing that the complainants would vacate the premises by May 30, 2006. (Ex. C-14; see also C. Brown, 29, 31-32; Stipulation ¶¶ 8-9) (The stipulated agreement contained no mention of any rent, reasonable use and occupancy, security deposit, or other monetary obligations.)

36. On or soon after April 13, 2006, the respondent contacted Mr. Brown's parole officer,[7] attempting—unsuccessfully—to persuade him to revoke Mr. Brown's parole because the complainants had ceased paying rent. (C. Brown, 58-59, 68-69; J. Brown, 247-48; Arlette Jackson, 407, 441-442; Ex. C-10) The complainants feared that their family would be "destroyed" if parole were revoked. (C. Brown, 59-60, 78, 80) Mr. Brown became convinced that the respondent was "digging for dirt to destroy me and my family." (J. Brown, 248)

37. In a May 8, 2006 letter to the complainants, the respondent stated, among other things, that "paying rent isn't handing your landlord an application for subsidy rent in the middle of the lease. I rented the third floor unit with the intentions of your [i.e., Clarissa Brown's] full time employment with Bridges. We

[7] None of the witnesses could satisfactorily explain how the respondent obtained the parole officer's name, but the complainants were indeed troubled by the respondent's efforts to do so.

never discuss[ed] the fact that you had to rely on government funds to pay your rent." (Ex. C-12; C. Brown, 71-72)

38. After the subsidy incident, the respondent's actions created constant tension for all four family members and put a strain on the complainants' marriage. The complainants worried about the impact on their children's emotional health. (C. Brown, 99, 108-11; J. Brown, 246-47, 257-59, 294; Hampton, 178)

39. Mrs. Brown developed hypertension and began to suffer from headaches and sleeplessness. She saw a physician for these health problems. (C. Brown, 81, 101, 195, 204) She began to sleep with a baseball bat near her bed because she feared that the respondent might break into their apartment. (C. Brown, 77, 102)

40. Mr. Brown suffered ongoing fear and anxiety, due primarily to the respondent's attempts to have his parole revoked. He experienced physical symptoms from the stress, sought mental health counseling and took prescribed medication. (C. Brown, 77-81, 101-02; J. Brown, 241-47, 287-90)

41. During the final month of their tenancy, the complainants and their children often ate dinner with their pastor or at the homes of relatives, simply to avoid contact with the respondent. (C. Brown, 40, 75)

42. The complainants vacated the apartment on May 30 or 31, 2006. The respondent retained their security deposit. (C. Brown, 32)

43. When the complainants moved to an apartment in Derby, Connecticut, they felt some relief being away from the respondent, but the harassment was still too fresh in their minds for them to relax. (Hampton, 179; C. Brown, 203; J. Brown, 259-60, 298-99) Because the complainants went to church in New Haven each Sunday, and because Mr. Brown was frequently in New Haven on weekdays doing volunteer work at the church, their discomfort did not abate entirely. (Hampton, 182) They always worried that they would encounter—or merely

see—the respondent in New Haven. Each time they saw her highly-recognizable yellow Hummer—or even another vehicle resembling hers—they felt anxious. (C. Brown, 81-82, 99-100; J. Brown, 259-60, 299)

44. After the complainants moved to Colorado in April 2007, Mrs. Brown's headaches, insomnia and nervousness ceased. (C. Brown, 204-06; J. Brown, 305) Although Mr. Brown's stress did not dissipate as quickly as his wife's, the complainants eventually felt significantly relieved and, in their pastor's words, the family returned to "normal, relaxed, enjoying life as one should." (Hampton, 179-80; C. Brown, 111; J. Brown, 260, 299-300, 306)

45. After vacating the apartment, the complainants paid $45 to rent a truck for their relocation to a new apartment in Derby. They also paid $40 to family members who helped them move. Rent for the new apartment was $950 per month, less than what they were paying in New Haven. The complainants also paid $950 for a security deposit, an amount they now seek to recover as consequential damages resulting from the respondent's discrimination. (C. Brown, 37-38)

46. The complainants incurred various expenses to attend this four-day hearing:

Flights (1/22/08, 1/26/08) ($218.48 x 3) [8]	$ 655.44
Connecticut Limo (1/22/08)	56.00
Taxi (undated; probably 1/22/08)	8.00
Super 8 Motel (1/22/08)	67.19
Taxi (1/23/08)	12.00
Bus fare, Hartford to New Haven (1/24/08)	22.10
Connecticut Limo (1/25/08)	56.00
Mrs. Brown's lost wages	744.00
TOTAL	$1620.73 [9]

[8] The third round-trip ticket was for their young daughter. The respondent did not contest this additional expense.

[9] The complainants also sought recovery for the cost of leaving their car at the Denver airport ($30), but submitted no documentary proof of this expense.

(Exs. C-23 through C-29; C. Brown, 82-98; remarks of Attorney Dumas Keuler, 371-73) Although the respondent did not concede the complainants' right to recover the travel expenses and lost wages, she acknowledged that she would not challenge the proffered amounts. (See C. Brown, 81-92, 96-97; representations of attorneys, 371-72.)

DISCUSSION AND CONCLUSIONS

A. All jurisdictional prerequisites have been satisfied and the commission has taken all of the proper procedural steps to bring this complaint to a public hearing before this tribunal.

B. General Statutes § 46a-64c (a) (2) prohibits discrimination "against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . lawful source of income . . ." Lawful source of income is defined as "income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance." (Emphasis added.) General Statutes § 46a-63 (3).

According to General Statutes § 46a-64c (a) (9), it is a discriminatory practice "[t]o coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this section."

The Connecticut housing anti-discrimination statutes are modeled directly upon the federal Fair Housing Act (FHA), Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3600-3620.[10] The FHA is a "comprehensive open

[10] The two comparable federal statutes are as follows:

According to 42 U.S.C. § 3604 (b), the model for General Statutes § 46a-64c (a) (2), it is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of

housing law"; *Jones v. Alfred H. Mayer Co*., 392 U.S. 409, 413 (1968); and its provisions are construed liberally. *Trafficante v. Metropolitan Life Insurance Co*., 409 U.S. 205, 211-12 (1972). When evaluating claims under Connecticut's fair housing statutes, one may properly seek guidance from the case law interpreting their federal counterparts; *Commission on Human Rights & Opportunities v. Savin Rock Condominium Ass'n, Inc*., 273 Conn. 373, 386 (2005); and the liberal construction of the federal law holds true for the fair housing provisions in the Connecticut statutes. *Commission on Human Rights & Opportunities v. Sullivan Associates***,** 250 Conn. 763, 782 (1999); *Commission on Human Rights & Opportunities ex rel. Little v. Clark,* 2000 WL 35575648 (CHRO No. 9810387, August 2, 2000). Even though the FHA does not include "source of income" as a protected class, the paradigmatic approach for other classes protected by the FHA still provides guidance in the interpretation and application of § 46a-64c. Cf. *Commission on Human Rights & Opportunities ex rel. Saksena v. State of Connecticut, Department of Revenue Services*, 2001 WL 36041438 (CHRO No. 9940089, August 9, 2001)(even though complainant's ADA claim was dismissed, federal precedent concerning the ADA still provided appropriate guidance for interpretation of comparable state statutes).

The evidentiary analyses for FHA discrimination cases—and thus Connecticut housing discrimination cases—generally follow the analyses used for Title VII employment discrimination cases. *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926, 934 (2nd Cir. 1988); *AvalonBay Communities v. Town of Orange*, 256 Conn. 557, 591 (2001); *Miko v. Commission on Human Rights & Opportunities*, 220 Conn. 192, 202 (1991). Both the "pretext" paradigm of

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sale or rental of a dwelling, or in the provision of services of facilities in connection therewith, because of race, color, religion, sex, familial status or national origin."

According to 42 U.S.C. § 3617, the model for General Statutes § 46a-64c (a) (9), "[i]t shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title."

McDonnell Douglas v. Green, 411 U.S. 792 (1973) and the "mixed-motive" (sometimes referred to as "direct evidence") approach of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) have been recognized by Connecticut courts and this tribunal as proper means of establishing housing discrimination based on protected class status. *AvalonBay v. Town of Orange*, supra, 592; *Miko v. Commission*, supra, 202; *Commission on Human Rights & Opportunities ex rel. Saddler v. Landry,* 2006 WL 4753474 (CHRO 0450057, May 23, 2006).

C. Source-of-income housing discrimination under § 46a-64c (a) (2)

The complainants and the commission contend that the respondent's refusal to complete the rental subsidy forms violates § 46a-64c (a) (2). To analyze this claim, I rely on the pretext model established in *McDonnell Douglas*; see, e.g., *Mitchell v. Shane*, 350 F.3d 39, 47 (2nd Cir 2003); *Miko v. Commission,* supra, 220 Conn. 203. Under that approach, the complainants must first establish a prima facie case, creating a rebuttable presumption of discrimination. The elements of a prima facie case are flexible and will vary depending upon the context and the unique circumstances of each case. *Miko v. Commission*, supra, 204; *Commission ex rel. Little v. Clark,* supra, 2000 WL 35575648, citing *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 253 n.6 (1981). The complainants' burden at this stage is often described as de minimis. *Weinstock v Columbia University*, 224 F.3d 33, 42 (2nd Cir. 2000) (Title VII); *Swinton v. Fazekas*, 2008 WL 723914, *4 (W.D.N.Y.) (Fair Housing Act); *AvalonBay v. Town of Orange*, supra, 256 Conn. 593-94.

In her opening remarks, the commission attorney posited, "[T]his is a very simple case. It's a failure to accept a rental subsidy." (Dumas Keuler, 11) Actually, this case features little in the way of simplicity. Normally, a landlord makes her decision to rent—or not to rent—at the time the prospective tenant applies for housing; the tenant's proffer of a rental subsidy likewise is a matter that typically occurs ab initio. Here, the circumstances differ significantly. The complainants did not need (or attempt to obtain) any rental assistance until Mr. Brown lost his

job three months into his tenancy. [11] Finding themselves in financial difficulty, the complainants had no immediate source of income beyond Mrs. Brown's salary. Consequently, Mr. Brown applied for a short-term rental subsidy from ATR, through the auspices of NHFA.

Complicating matters was the fact that although NHFA screened and recommended Mr. Brown for the subsidy program, ABH made no final determination of eligibility because the respondent refused to complete and return the necessary forms. The critical—and not particularly simple—issue, then, is whether the respondent's intentional refusal to complete the forms constitutes an unlawful refusal of a lawful source of income.

Recognizing the unique situation stemming from Mr. Brown's mid-lease job loss and subsequent attempt to obtain lawful rental assistance, I believe the prima facie case is best modeled—with appropriate adaptations—upon situations in which a landlord refuses a rental subsidy at the outset. Thus, the complainants must demonstrate, at the outset, (1) that they were members of a protected class; (2) that they attempted to obtain and use a rental subsidy, albeit mid-lease; (3) that the respondent rebuffed their attempts; and (4) that the respondent's action occurred under circumstances giving rise to an inference of discrimination. See, e.g., *Commission on Human Rights & Opportunities v. Sullivan*, 285 Conn. 208, 237 (2008). The first three criteria are interdependent and therefore I will address them collectively.

The primary issue, not only for this § 46a-64c (a) (2) claim but for all of the claims raised in this case, is whether the complainants were members of a protected class. The respondent argues that without the rental subsidy in hand, and

[11] Section 46a-64c, like its federal counterpart, "not only protects people seeking housing, but it also protects people from discrimination while living in their place of residence." *Gomes v. Casagmo Condominium Association, Inc*., 1999 WL 566862, *2 (Conn. Super.); see also *Lachira v. Sutton*, 2007 WL 1346913, *17 (D.Conn.); *Commission on Human Rights & Opportunities ex rel. McIntosh-Waller v. Vahlstrom*, 2008 WL 2683291 (CHRO No. 0750080, June 6, 2008).

lacking final approval of his application, Mr. Brown was not a member of a protected class—that is, he was not an individual using housing assistance (a "lawful source of income") to pay his rent. See General Statutes §§ 46a-64c (a) (2), 46a-63 (3). [12]

Because Mr. Brown had not been formally approved for the rental subsidy, the commission oversimplifies and mischaracterizes his status when it argues repeatedly that he was eligible for the subsidy or that the respondent rejected his attempt to use the subsidy. At best, his NHFA caseworker, Sherman Malone, recommended him for the subsidy; she was well versed in the subsidy program's requirements and, in her professional judgment, she was confident that he would receive the subsidy from ATR. But Malone herself was not authorized to approve an application; that power was vested solely with ABH. Thus, as the respondent argues, the commission errs in its insistence that the respondent "rejected" Mr. Brown's rental subsidy, simply because there was no subsidy at the time.

Indeed, a crabbed and technical reading of the statute certainly might support a conclusion that the complainants were not in a protected class because they did not actually have the subsidy in hand and, for that reason, the respondent did not literally refuse the subsidy itself. The fair housing statutes, however, are considered remedial in nature and thus must be construed liberally. They must not be construed in a manner that would thwart their intended purpose or yield absurd results. *Commission v. Sullivan*, supra, 250 Conn. 778-79, 782. As the Supreme Court recognized in the *Sullivan* case, the legislature did not intend "that landlords might avoid the statutory mandate by refusing to accede to a condition essential to its fulfillment." Id., 778. Although *Sullivan* concerned Section 8 housing assistance, this basic principle applies equally to other lawful sources of rental assistance. Allowing any landlord to refuse to complete the

[12] The respondent does not dispute that the rental subsidy offered by ATR is "housing assistance" and thus a lawful source of income. She merely argues that Mr. Brown had not actually obtained the subsidy, nor was he even eligible.

requisite forms in order to prevent a tenant from applying for assistance would undermine the broad, remedial purposes of the statute.

The respondent's refusal to sign the forms doomed Mr. Brown's application to inevitable failure and thus allowed her to avoid what appeared to be the undesirable situation of dealing with subsidized tenants. The respondent's machinations are reminiscent of those of the landlord in *Commission on Human Rights & Opportunities ex rel. Thompson v. Pennino*, 2007 WL 2619110 (CHRO No. 0450008, March 2, 2007), where the landlord refused to allow the requisite Section 8 inspection and then claimed he could not rent to a Section 8 recipient because the premises had not been formally inspected. In that situation, the human rights referee found no merit to the landlord's disingenuous assertion.

The unique circumstances of this case, liberally assessed under the anti-discrimination statutes, warrant the conclusion that Mr. Brown, in attempting to obtain (and then offer to the respondent) a rental subsidy, was protected by the statute and that he suffered an adverse action when the respondent refused to complete the requisite paperwork, thwarting his attempts. The respondent's refusal strongly implies both an unwillingness to accept rental assistance and a deliberate attempt to prevent Brown from obtaining such assistance. Thus, Mr. Brown has established the first three prima facie criteria.

According to the respondent, Mrs. Brown was not a member of a protected class because the record lacked any evidence that "this was a family program or that Clarissa Brown as a family member was in any way eligible for inclusion in the protected class and there is clearly no factual basis whatsoever upon which a finding can be made that Clarissa Brown was a member of a protected class." (Respondent's August 29, 2008 memorandum of law, p. 3) The respondent provides no legal authority in support of its assertion and, as a matter of both law and fact, she is incorrect.

As a co-tenant and co-lessee, Mrs. Brown bore the same responsibilities and enjoyed the same rights as her husband. The respondent's refusal to help Mr. Brown obtain a rental subsidy or to accept such funding would have the same deleterious effect on both complainants. Unquestionably, Mrs. Brown, even though she was not the individual seeking the rental subsidy, suffered injuries as a result of the respondent's actions directed at her husband. Although the Connecticut fair housing statutes do not define "aggrieved person," the analogous FHA offers guidance by defining such person as one "who . . . claims to have been injured by a discriminatory practice." 42 U.S.C. § 3602 (i) (1). Furthermore, with an eye toward the hostile housing claims discussed below, "it is obvious that creating a hostile housing environment . . . for one member of the household may create a hostile housing environment for all members of the household." *Commission on Human Rights & Opportunities ex rel. McIntosh-Waller v. Vahlstrom*, 2008 WL 2683291 (CHRO No. 0750080, June 6, 2008) For these reasons, I find that Mrs. Brown is accorded the same protected class status as her husband.

To satisfy the final element of the prima facie case, the complainants must demonstrate that the respondent's actions occurred under circumstances raising an inference of discrimination. Given the de minimis nature of the complainants' burden, a few examples suffice.

Mrs. Brown testified, without dispute, that shortly after the subsidy incident, she overheard the respondent complaining to the second-floor tenant about working people relying on rental assistance. In her May 8, 2006 letter to the complainants, the respondent noted that "paying rent isn't handing your landlord an application for subsidy rent in the middle of the lease. . . We never discuss[ed] the fact that you had to rely on government funds to pay your rent." When interviewed by the police officers responding to the April 6 and April 13, 2006 calls, the respondent attempted to blame the acrimony on the complainants, who were angry after the respondent had, in her words, "denied" Mr. Brown's request. Given the low threshold for a prima facie case, the respondent's clear antipathy

toward recipients of rental assistance in general, and toward the complainants in particular, satisfies the final prima facie criterion.

Thus, I conclude that the respondent's refusal to execute her portions of Mr. Brown's application for rental assistance, at least for the purpose of the prima facie case, is tantamount to discriminatory rejection of a lawful source of income, in violation of § 46a-64c (a) (2).

Once the complainants have made out a prima facie case, the burden of production shifts to the respondent to articulate (but not prove) a legitimate, non-discriminatory reason for her actions. Should she meet this burden, the presumption disappears and the complainants must then prove that the proffered reason was false or was a pretext for an unlawful reason. At all times, the complainants bear the ultimate burden of proving that the respondent intentionally discriminated against them because of their protected class status. *Regional Economic Community Action Program, Inc. v. City of Middletown,* 294 F.2d 35, 49 (2nd Cir. 2002), citing *Reeves v. Sanderson Plumbing Products, Inc*., 530 U.S. 133, 143 (2000); see *Commission on Human Rights ex rel. Cooper v. Gorski*, 2001 WL 35829088 (CHRO Nos. 9710196, 9710197, January 5, 2001) (shifting burdens articulated in *Reeves* apply to § 46a-64c housing discrimination cases).

The respondent offered myriad reasons, some at the time of Mr. Brown's request and others for the first time at the hearing, some through her own sworn assertions and others through argument of counsel. At first blush, several of the proffered reasons appear to satisfy her burden. Further scrutiny, however, casts doubt on their veracity. Moreover, the sheer number of proffered reasons, some patently inconsistent with others, hurts her credibility and compromises her defense. I will address her proffered reasons individually, along with the complainants' rebuttal thereof.

The respondent initially claimed that she would not give out private information (such as her social security number) to a tenant, and that she never did so in the

past with Section 8 tenants. One might initially appreciate such concern, but the respondent herself undercut the argument when she explained that she would mail this type of information directly to the administrators of the Section 8 program. This was precisely the common problem Sherman Malone anticipated, and was the reason she had Mr. Brown give her business card and a pre-addressed envelope to the respondent. Although the respondent denies receiving this card and envelope, I find her to be less credible than Mr. Brown, whose version of the event comports with the instructions he received from his very credible caseworker. Thus, this proffered defense fails.

In his opening statement, the respondent's attorney indicated that the respondent did not want to give her social security number and other tax related information to Mr. Brown because he was a convicted drug dealer. The respondent herself undercut this rationale by testifying that at the time of the subsidy incident she believed only that he was on parole for leaving his young child unattended in a car. In fact, the attorney's characterization of Mr. Brown was inaccurate, as he had never been convicted of selling drugs.

The respondent contended that because of Mrs. Brown's income, Mr. Brown was not eligible to receive rental assistance and, therefore, her refusal to sign the forms made no difference. This argument fails for two reasons. First, the respondent argued vociferously and frequently that Mrs. Brown was earning approximately $50,000 per year at Bridges and that the complainants could, therefore, afford the rent even without Mr. Brown's salary. The purported basis for her calculation is dubious. Exhibit R-1, which the respondent obtained during discovery, is a letter from Bridges indicating that Mrs. Brown's salary was $4379 in March 2006, $2919 in April and $2919 in May. One might logically conclude that the $50,000 figure stems from extrapolation of her March salary, yet the April and May income imply far less per annum. Further confusing matters, in her May 8, 2006 letter (Ex. C-12), the respondent referred to Mrs. Brown's $1100 biweekly salary. Ultimately, this defense fails because the respondent clearly did not know Mrs. Brown's salary at the time of the subsidy incident and thus she

had no basis for concluding that the complainants did not need the additional monies. Moreover, ABH, not the respondent, determined eligibility.

Second, despite the respondent's repeated arguments, the program did not consider a spouse's income in determining an applicant's eligibility. Had the respondent signed the requisite forms, the appropriate determination—favorable or not—could have been made. Again, it was not the respondent's place to make that determination on her own.

In an attempt to salvage these arguments, the respondent testified to a conversation she had with ATR's William Halsey, wherein Halsey told her there were, in fact, income requirements (including consideration of a spouse's income) for the subsidy program. This testimony is also misleading. The respondent spoke with Halsey in or after July 2006, too late to claim that what she learned from him affected her actions at the end of March 2006. Halsey himself put this argument to final rest when he testified credibly that he told the respondent the additional income requirements were not applicable before July 2006. The respondent's argument is both incorrect and deceptive.

According to the respondent's attorney, the complainants also were attempting to "perpetrat[e] a fraud on the State of Connecticut and the U.S. government" because they knew Mr. Brown was ineligible. The attorney bases his accusation on the fact that the respondent called ATR or ABH and discovered there was no record of Mr. Brown. His accusation is peculiar, since the respondent herself never suggested the complainants were attempting to defraud a government agency and, in fact, she unintentionally provided a perfectly plausible reason why the administering agencies had no record of Mr. Brown: because she did not complete the requisite paperwork, Mr. Brown's application would have gotten no farther than Sherman Malone's desk. Had the respondent contacted Malone, she would have obtained accurate information and an explanation of the absence of any ATR/ABH file on Brown.

On April 13, 2006, when the respondent summoned the police to the apartment, she told Officer Tutrani that Mr. Brown was "on parole" and insisted that parolees were ineligible for rental subsidies. The respondent offers no legal support for her contention and, more important, her words and actions at the time of the subsidy incident two weeks earlier demonstrate that this explanation had not yet occurred to her.

The respondent also testified that she would not complete the form because Mr. Brown had not filled out his "portion" of the form. She did not share this concern with Brown when he sought her assistance; rather, this appears to be an excuse fabricated after she received copies of blank forms during the discovery process. (Only a blank form, but not the actual document Mr. Brown had given to the respondent, is in evidence.) The items on the blank form to which she referred were simply the applicant's name, the address of the apartment, and the rental amount. Mr. Brown's signature was not required, so the respondent could have completed those three items herself, or Malone or Mr. Brown could have done so after the respondent returned the form to Malone. I find this excuse to be nothing more than a petty attempt, after the fact, to justify her actions.

The determination of credibility lies within the province of the fact-finder. *Heritage Square, LLC v. Eoanou*, 61 Conn. App. 329, 333 (2001); *Commission on Human Rights and Opportunities ex rel. Szydlo v EDAC Technologies Corporation*, 2007 WL 4258347 (CHRO No. 0510366, November 19, 2007), modified on reconsideration, 2007 WL 4623072 (December 27, 2007) "[N]othing in our law is more elementary than that the trier [of fact] is the final judge of the credibility of witnesses and the weight to be accorded to their testimony." (Citation omitted; internal quotation marks omitted.) *Toffolon v. Avon*, 173 Conn. 525, 530 (1977) Credibility must be assessed "not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude." *Commission v. Sullivan*, supra, 285 Conn. 233. Having observed the parties during four days of hearing, I find the complainants' testimony to be more

credible than that of the respondent. The respondent's memory lapses, inconsistent statements and evasive demeanor while testifying, along with the ever-shifting justifications for her action, diminish her trustworthiness. In addition to the matters discussed above, the following also underscore her lack of credibility:

1. In her sworn response to the complaints, the respondent stated under oath, that she had evicted three tenants in the past. (Ex. C-22) Nonetheless, in her April 19, 2006 letter to the complainants (Ex. C-10), the respondent claimed that she had never had to evict anyone before serving the complainants with a notice to quit.

2. In the same April 19 letter, the respondent also wrote that "[Mr. Brown] has a dangerous background and my tenants don't feel safe" as if to offer further reason why she would not complete the paperwork for the rental subsidy. Upon examination by the commission attorney, however, she admitted that she was "just putting [her] own spin" on matters she had learned from Mrs. Brown. (Arlette Jackson, 427) In fact, the respondent never heard about Mr. Brown's purported violent past until after the complainants vacated the apartment. (Id., 424)

3. In her sworn answer to the complaint, the respondent stated that she got the idea to evict the complainants from her discussion with a police officer (Ex. C-22, corroborated by respondent's testimony at 403), yet that discussion transpired on April 13, 2006, two days after she served the notice to quit. (See Ex. C-18.) At best, this inconsistency reflects poorly on her ability to reconstruct events from memory; at worst, it underscores a tendency to fabricate.

4. The respondent incorrectly testified that she believed the two visits from the police predated the rental subsidy confrontation. (Arlette Jackson, 428-29)

5. Although the respondent originally testified that Mr. Brown had given her a one-page document to complete (Id., 4431-32), she later testified that there were several pages of forms for both landlord and tenant. (Id., 434) The latter testimony rings false, as she bases it upon material she received from Halsey after the complaint had been filed and after the July 2006 changes to the subsidy program's requirement.

Moreover, while the parties were all motivated by self-interest, the complainants were able to corroborate their case with credible and convincing testimony from

disinterested third parties such as their pastor, Mr. Brown's caseworker, a police officer who investigated a complaint at the premises, and the project director of the ATR program. The respondent relied predominantly on her own recollections, which were often undercut by faulty memory and self-contradictions, as well as on the testimony of her sister, who likewise did not present herself as a convincing witness.

The complainants have demonstrated that the respondent's actions reflect a deliberate attempt to avoid a rental relationship with tenants predicated on a rental subsidy, even though such subsidy was a lawful source of income. Given the respondent's poor credibility and the surfeit of inconsistent evidence, the complainants have revealed her proffered reasons to be a pretext for her true, discriminatory motivation. I conclude that the respondent has violated General Statutes § 46a-64c (a) (2) by preventing Mr. Brown from obtaining—and then using—a rental subsidy.

D. Hostile Housing Environment under § 46a-64c (a) (2)

Although the complainants and commission did not explicitly articulate it as such, the record also reveals this claim to be one of "hostile housing environment" in violation of § 46a-64c (a) (2), the state counterpart of § 3604 (b) of the FHA. While service of the notice to quit terminated the lease and rendered the complainants mere tenants-at-sufferance, it did not extinguish the landlord-tenant relationship or relieve the respondent of her statutory obligations. *Housing Authority of the Town of East Hartford v. Hird*, 13 Conn. Spp. 150, 157 (1988); *Rivera v. Santiago*, 4 Conn. App. 608, 610 (1985) ("statutory obligations of the landlord and tenant continue even when there is no longer a rental agreement between them"). Such duties include those set forth in the fair housing laws; furthermore, a landlord "may not wantonly or willfully injure" tenants merely because they are on the premises at the sufferance of the landlord. *In re Masterworks, Inc*., 94 Bankruptcy Rptr. 262, 267 (Bkrtcy. D. Conn. 1988)

Like a hostile work environment, a hostile housing environment is a form of unlawful discrimination that gives rise to a cognizable cause of action, whether under the Connecticut fair housing statutes or their various federal equivalents. The analysis of a hostile housing environment follows the analysis used for hostile work environment claims set forth in the leading case of *Harris v. Forklift Systems, Inc*., 510 U.S. 17, 21 (1993); see, e.g., *Williams v. Poretsky Management, Inc*., 955 F. Sup. 490, 496 (D. Md. 1996). Although hostile housing environment claims often involve sexual harassment; e.g., *DiCenso v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996); *Rich v. Lubin*, 2004 WL 1124662 (S.D.N.Y.); they also arise when the tenant is in a different protected class. See, e.g., *Reeves v. Carrollsburg Condominium Owners Assoc.*, 1997 WL 1877201 (D.D.C.) (recognizing hostile housing claim based on the sex "or other protected characteristic" [e.g., race] of the plaintiff"); *Wilstein v. San Tropai Condominium Master Association*, 1999 WL 262145 (N.D. Ill.) (hostile housing claim based on complainant's disability and religion); *Schroeder v. DeBertolo*, 879 F.Sup. 173 (D. Puerto Rico 1995) (hostile housing claim based on mental disability). Thus, I adapt the well-established formulae for analyzing hostile housing environment claims in an array of protected classes to the situation before me, where the complainants' alleged protected class is established by their reliance on housing assistance.

To establish a case of hostile housing environment, the complainants must demonstrate that they were subjected to unwelcome harassment motivated by their protected class status, and the harassment was sufficiently severe or pervasive to alter their living conditions and create an abusive environment. See, e.g., *Reeves v. Carrollsburg*, supra, 1997 WL 1877201, *7; *Williams v. Poretsky,* supra, 955 F.Sup. 496 n.2; *Rich v. Lubin*, supra, 2004 WL 1124662, *4; *Commission ex rel. Little v. Clark*, supra, 2000 WL 35575648.

Undertaking this analysis, the tribunal must consider all of the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, rather than merely offensive; and whether it

unreasonably interferes with the complainants' use and enjoyment of their residence. *Neudecker v. Boisclair* Corp., 351 F.3d 361, 364 (8th Cir. 2003); *DiCenso v. Cisneros*, supra, 96 F.3d 1008-09; *Krieman v. Crystal Lake Apartments Limited Partnership*, 2006 WL 1519320, *11-12 (N.D. Illinois); *Wilstein v. San Tropai*, supra, 1999 WL 262145, *11; *Commission ex rel. Little v. Clark*, supra, 2000 WL 35575648. The severity and pervasiveness must be assessed both from an objective, "reasonable person" perspective and from the complainants' subjective point of view. *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998) (Title VII case); *Williams v. Poretsky*, supra, 955 F.Sup. 497; *Commission ex rel. McIntosh-Waller v. Vahlstrom*, supra, 2008 WL 2683291; *Commission ex rel. Little v. Clark*, supra.

A generally constant and pervasive hostility underlay the final two months of the complainants' tenancy. In addition to specific actions described herein, the respondent was highly volatile, frequent yelling at the complainants about minor problems in and around the apartment building. Her irritation with the complainants became so palpable that they vigilantly tried to avoid her, to the point of dining away from the apartment as much as possible.

The record abounds with specific examples of a legally cognizable hostile environment. Shortly after the subsidy incident, the respondent placed dirt and rocks in the complainants' automobile, and fabricated—or, at a minimum, grossly exaggerated—an incident in the hallway that ultimately required police investigation. Her unannounced entries into the complainants' apartment led them to fear for their safety and their privacy. All of these incidents were malicious, emotionally damaging to the complainants, and detrimental to their peaceful enjoyment of their dwelling.

The respondent kept the complainants on edge with innuendos of parole revocation. She tried to make good on her threats when she insisted that Officer Tutrani, who responded to the April 13 incident, arrest Mr. Brown, or take other actions likely to jeopardize his parole. She also complained to DCF several

times about Brown's alleged drug use and molestation of his daughter until the DCF representative wearied of her incessant calls and ceased responding. When the Brown's failed to pay their April rent, the respondent contacted the parole officer himself, hoping that nonpayment of rent was a basis for parole revocation.

Even threats that are not carried out may still be considered in a hostile environment action. *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 754 (1998). On one occasion after the subsidy incident, the respondent threatened the complainants with physical harm at the hands of her boyfriend; another time, Mrs. Brown overheard the respondent telling a neighbor that she would do anything to have Mr. Brown's parole revoked.

Viewing all of the respondent's ongoing hostile actions collectively, I conclude (1) that such actions were sufficiently severe and pervasive, both objectively and subjectively, to constitute a hostile housing environment; and (2) that the respondent's behavior was motivated by Mr. Brown's attempt to obtain a short-term rental subsidy. In short, the respondent discriminated against the complainants by creating a hostile housing environment in violation of § 46a-64c (a) (2).

E. Hostile housing environment under § 46a-64c (a) (9)

Under federal cases, housing harassment or creation of a hostile housing environment may violate 42 U.S.C. § 3617 in addition to—or even in lieu of—§ 3604 (b). See, e.g., *DiCenso v. Cisneros*, supra, 96 F.3d 1008; *Reeves v. Carrollsburg,* supra, 1997 WL 1877201, *5; *Richards v. Bono*, 2005 WL 1065141, *6 (M.D. Fla. 2005); *Walton v. Claybridge Homeowners Association, Inc.*, 2004 WL 192106, *5 n.1 (S.D. Ind.) Following the federal case law, an individual may maintain a hostile environment claim under § 46a-64c (a) (9) in addition to—or in lieu of—§ 46a-64c (a) (2); *Commission ex rel. McIntosh-Waller v. Vahlstrom*, supra, 2008 WL 2683291.

General Statutes § 46a-64c (a) (9), like its federal prototype, safeguards tenants who have exercised or enjoyed a right granted or protected by other fair housing statutes. See *Lynn v. Village of Pomona*, 212 Fed. Appx. 38, 41 (2nd Cir. 2007); *Russo v. Commission on Human Rights & Opportunities*, 1991 WL 58483, *1 (Conn. Super.). According to the Connecticut statute, it is a discriminatory practice "[t]o coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this section."

Federal regulation has given a broad interpretation to § 3617 by proscribing "[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the [protected class status] of such persons, or of visitors or associates of such persons . . ." 24 C.F.R. § 100.400 (c) (2). Thus, the federal statute safeguards a protected class tenant not only in his affirmative exercise of a protected activity, but also in the basic right of peaceful enjoyment of his dwelling. [13] See, e.g., *DiCenso v. Cisneros*, supra, 96 F.3d 1008. As the state statute was written to mirror the federal, it, too, must be accorded the same breadth of interpretation.

Because § 3617—and, by implication, General Statutes § 46a-64c (a) (9)—is generally recognized as an anti-retaliation statute, the complainants must prove that (1) they engaged in a protected activity by exercising a right protected by

[13] Although both of these rights are at issue here—the right to peaceful enjoyment of one's residence and the right to engage in the protected activity of obtaining, or attempting to obtain, a rental subsidy—under the particular circumstances of this case, the distinctions between the two are blurred because the complainants did not become members of the protected class until Mr. Brown engaged in the protected activity. Cf. *Kreiman v. Crystal Lake Apartments Limited Partnership*, 2006 WL 1519320, *8-9 (N.D. Ill.) (a claim of general interference with enjoyment of the property and a claim that the interference was retaliatory because plaintiffs engaged in a protected activity call for "substantially similar" analyses).

46a-64c; (2) the respondent was aware of the protected activity; (3) the respondent coerced, intimidated, threatened or interfered with the complainants' enjoyment of their dwelling; and (4) a causal connection existed between the protected activity and the adverse action. *Regional Economic Community Action v. Middletown,* supra, 294 F.3d 54; *Lachira v. Sutton*, 2007 WL 1346913, *18 (D.Conn.); *Marks v. BLDG Management Co., Inc*., 2002 WL 764473, *9 (S.D.N.Y.).

The evidence substantiating the complainants' § 46a-64c (a) (2) claim supports a § 46a-64c (a) (9) claim as well. As determined above, Mr. Brown exercised a housing right by applying for a rental subsidy (a "lawful source of income"), intending to use that assistance for the three months after he lost his job. He discussed his intentions with the respondent, thus putting her on notice. After refusing to provide the standard information needed from landlords, effectively dooming Mr. Brown's expectations of obtaining assistance, the respondent began a two-month period of constant and severe harassment that was sufficiently egregious as to violate both § 46a-64c (a) (2) and § 46a-64c (a) (9).

Many of the reported cases under FHA § 3617 involve allegations of force or violence, often intended to drive the tenants from their dwelling. See, e.g., *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327, 328-30 (7th Cir. 2004); *Stackhouse v. DeSitter*, 620 F.Sup. 208, 211(D.C. Ill. 1985). Other decisions, pointing to the plain language of the statute (specifically to the word "interference"), do not require a showing of such magnitude, although they recognize that mere quarrels, even continuing ones, between landlords and tenants do not rise to an actionable level. *Michigan Protection and Advocacy Services, Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir. 1994); *Lachira v. Sutton*, supra, 2007 WL 1346913, *20; *Marks v. BLDG*, supra, 2002 WL 764473, *9 (collecting cases); *Commission ex rel. McIntosh-Waller v. Vahlstrom*, supra, 2008 WL 2683291 (definition of 'interference' is broader in scope and has a lower threshold than the other statutory terms, which imply actual or imminent violence).

Following the cases that require only the lower threshold for "interference," the complainants must prove that the respondent interfered with their use and enjoyment of the apartment. They have easily and conclusively shown this to be the case. In fact, the record also demonstrates that for two months the respondent did more than just "interfere" with the complainants' use and enjoyment. As described in detail above, she threatened and intimidated them with her attempts to get Mr. Brown's parole revoked, humiliated them with vindictive calls to DCF, provoked them in hallway encounters, entered their apartment without permission, called the police several times, and threatened violence at the hands of her boyfriend.

As in any retaliation claim under the Connecticut or federal employment discrimination and fair housing statutes, close temporal proximity is a strong indication of a causal nexus. *Lovejoy-Wilson v. NOCO Motor Fuel, Inc*., 263 F.3d 208, 224 (2nd Cir.2001); *Gooden v. Department of Correction*, 2008 WL 2746002, *7 (Conn. Super.). Here, the immediacy of the otherwise inexplicable change in the respondent's treatment of the complainants supports a finding of causality.

The commission can also establish causation through evidence of retaliatory animus directed against the complainants by the respondent. *Gordon v. New York City Board of Education*, 232 F.3d 111, 117 (2nd Cir. 2000); *Commission on Human Rights & Opportunities ex rel. Blinkoff v. City of Torrington***,** 2008 WL 4111818 (CHRO No. 9530406, August 25, 2008). The respondent's May 8, 2006 letter to the complainants, her negative comments about subsidized tenants, and her various threats all corroborate the causal nexus between Mr. Brown's March 28, 2006 request and the subsequent hostilities.

The complainants are entitled to enjoy their apartment free from interference, threats, or intimidation because of their protected class and because they have exercised a right protected by the fair housing statutes. This right begins at the inception of the tenancy and continues throughout. (See footnote 11.) Although

the respondent proffered myriad reasons—none particularly credible—for refusing to complete paperwork for Mr. Brown's rental subsidy, she provided no cogent reason whatsoever to justify her subsequent actions. By creating a hostile housing environment in retaliation for Mr. Brown's attempt to obtain a rental subsidy, the respondent has violated General Statutes § 46a-64c (a) (9).

F. Res judicata and collateral estoppel

The respondent argues that this action is barred by the doctrines of res judicata and collateral estoppel, allegedly because the issue of discrimination was addressed in the summary process action in May 2006.

Both res judicata and collateral estoppel must be raised as special, or affirmative, defenses; *Andross v. Town of West Hartford*, 2006 WL 6906651, *4 (Conn. Super.); but the respondent has not done so here. For this reason alone, I reject these arguments. Nonetheless, even if the respondent had properly pleaded these defenses, they would be unavailing.

The doctrine of collateral estoppel, or issue preclusion, serves the "dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy, and of promoting judicial economy by preventing needless litigation." (Emphasis added.) *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). The doctrine prevents the relitigation of factual or legal issues decided in a prior proceeding and essential to that prior judgment. *Montana v. United States*, 440 U.S. 147, 153 (1979). The issue of source-of-income discrimination (that is, the respondent's refusal to complete the forms Mr. Brown needed for his subsidy application) was not actually litigated in the summary process action brought by the respondent, because the matter was mediated successfully by a housing specialist. In fact, there is no evidence whatsoever, whether in the settlement agreement or elsewhere, that the complainants even raised housing discrimination as a defense to their eviction. Even had the issue been raised and litigated, the narrow scope of a summary process action would

still have precluded any analysis of (or award of) the complainants' potential damages. Even more obvious, the claim of hostile housing environment would not pertain to, and did not arise in, the summary process action. Accordingly, the doctrine of collateral estoppel does not affect these claims and the alleged housing discrimination and hostile housing environment remain viable issues appropriate for adjudication in this case. See *Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 288 (2nd Cir. 2002); *Lachira v. Sutton*, supra, 2007 WL 1346913, *13-14.

The doctrine of res judicata, or claim preclusion, mandates that a final judgment rendered on the merits serves as an absolute bar to a subsequent action between the same parties, or those in privity with them, upon the same claim. *Cumberland Farms v. Town of Groton*, 262 Conn. 45, 58 (2001); *Cabrera v. Department of Social Services*, 2002 WL 31124658, *2-3 (Conn. Super.). The legal tenets of res judicata are not implicated here because neither the discrimination claims nor the hostile environment claims were raised in the prior action. *Upjohn Co. v. Planning & Zoning Commission*, 224 Conn. 82, 89 (1992). The summary process action was not decided on its merits and thus cannot bar this action.

Moreover, even if that matter had been fully adjudicated, the issues and claims in the present action differ from those that might have been raised in the Housing Session. The summary process case would have been limited to the issue of possession of the premises—not an issue in the present case—and would have afforded the complainants no opportunity to address the hostile housing environment allegations or the liability and damages claimed under the various statutes invoked in this case. In *Ansonia Acquisition I. LLC v. Francis*, 1999 WL 1076142 (Conn. Super.), the Superior Court addressed the use of race discrimination as a defense to an eviction action. The landlord filed a summary process action seeking possession of the tenant's dwelling unit. The tenant, in turn, filed an affirmative defense of race discrimination in violation of General

Statutes § 46a-64c.[14] Although the court acknowledged that discrimination could be a viable defense, the relief available was nonetheless limited "to the right to possession, whereas in an independent action, the tenant would be afforded a panoply of relief under the fair housing statute." Id., *5. See also *Glover v. Jones*, 522 F.Sup.2d 496, 505 (W.D.N.Y. 2007) (res judicata does not bar subsequent litigation when the court in the prior action could not have awarded the relief requested in the subsequent action). Given the limitations of the prior summary process action, the claim of res judicata must fail.

G. Damages

The presiding officer, upon a finding of a discriminatory practice prohibited by § 46a-64c, has the authority to award monetary damages, including but not limited to "the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by [her] as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs." General Statutes § 46a-86 (c). The complainants are entitled to recover $85 for the expenses associated with their move to Derby.

The complainants are also entitled to recover the travel expenses associated with attendance at this public hearing: airfare ($655.44), ground transportation ($154.10) and lodging ($67.19). Mrs. Brown's lost wages ($744) are also compensable. Although the respondent did not concede the complainants' right to recover the travel expenses and lost wages, she did not challenge the proffered amounts. (See C. Brown, 81-92, 96-97; representations of attorneys,

[14] According to General Statutes § 47a-33a, "[i]n any action of summary process under [Chapter 832], the tenant may present any affirmative legal, equitable or constitutional defense that the tenant may have."

371-72.) These expenses would have been unnecessary but for the respondent's discrimination and this consequential legal action. See, e.g., *Commission on Human Rights & Opportunities ex rel. McNeal-Morris v. Gnat,* CHRO No. 9950108, 6 (January 4, 2000), citing *Commission on Human Rights & Opportunities ex rel. Pihl v. Musbak*, CHRO No. 9640106 (May 20, 1998). Despite her protestations during the hearing, the respondent provided no legal authority to challenge the complainants' right to recover these losses and, in fact, did not address the issue at all in her legal memoranda.

In its post-hearing brief, the commission seeks recovery of $700, the amount of the security deposit that ATR allegedly would have provided to Mr. Brown as part of its assistance program. This claim lacks any merit. Nothing in the record indicates that the ATR subsidy program was designed to reimburse a tenant for monetary obligations already satisfied. Subsidizing a security deposit was generally a means to help prospective tenants obtain new housing. Here, the complainants already paid their security deposit when they moved into the apartment and, in fact, they testified that they were not seeking reimbursement for this expense.

The complainants normally might be entitled to recover the security deposit for their new residence in Derby ($950), as that expense would have been unnecessary had Mr. Brown obtained a rental subsidy and the complainants remained in their New Haven apartment. Nevertheless, when the complainants subsequently moved to Colorado, their security deposit should have been returned or used to offset any damages to the Derby apartment. Absent evidence that the Derby landlord withheld the security deposit, I will assume it was returned at the end of that brief tenancy and I will award no damages for that expense.

The complainants also seek to recover the sum of $3000, representing the amount of rental subsidy they would have received from ATR had the respondent signed the necessary paperwork. Absent evidence that the complainants relied

upon their own resources to pay any use and occupancy for April and May, they are not entitled to monies that, in any event, were due to the respondent.

This tribunal's broad authority to award damages under General Statutes § 46a-86 (c) includes the discretion to award damages for emotional distress or other non-economic harm. *Fulk v. Lee,* 2002 WL 316325, *3 (Conn. Super.); *Commission on Human Rights & Opportunities ex rel. Peoples v. Estate of Eva Belinsky,* 1988 WL 492460, *5 (Conn. Super.); *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433, 12-14 (June 13, 1985). The public policy considerations in support of emotional distress damages in housing discrimination cases are extensively discussed in *Commission ex rel. Harrison v. Greco*, supra. For example, awarding humiliation and mental distress damages deters discrimination and encourages filing complaints, particularly in housing matters, where actual out-of-pocket damages are often small. Id.; see also *Commission ex rel Peoples v. Belinsky*, supra, *5.

Each complainant seeks $40,000 in emotional distress damages. When assessing damages for emotional distress, this tribunal must consider (1) the subjective internal emotional reaction of the complainants; (2) the public nature of the respondent's actions; and (3) the degree of offensiveness of the discrimination and its impact on the complainants. *Commission ex rel. Peoples v. Belinsky,* supra, 1988 WL 492460, *6; *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli***,** 2000 WL 35575655 (CHRO No. 9850105, January 14, 2000); *Commission ex rel. Harrison v. Greco,* supra, CHRO No. 7930433, 15-17. The complainants need not present medical testimony to establish their internal emotional response to the harassment; their own testimony may suffice. See, e.g., *Schanzer v. United Technologies Corp*., 140 F.Sup.2d 200, 219 (D.Conn. 2000); *Berry v. Loiseau,* 223 Conn. 786, 811 (1992); *Commission on Human Rights & Opportunities ex rel. Pinto v. Englehard,* 2007 WL 2619095 (CHRO No. 0550113, May 3, 2007). Medical testimony, however, may strengthen a case; *Busche v. Burkee,* 649 F.2d 509, 519 (7th Cir. 1981); just as the testimony of relatives, friends and business associates may

also provide insight into a complainant's emotional state; *Blackburn v. Martin,* 982 F.2d 125, 132 (4th Cir. 1992); *Commission ex rel. Saddler v. Landry,* supra, 2006 WL 4753474.

The complainants offered no medical evidence, but provided unchallenged, believable testimony, corroborated cogently by their pastor, about their emotional reactions to the untenable situation at 1599 Chapel Street after the subsidy incident. On a daily basis they struggled with the travails of their living conditions, constantly anxious, and ever-vigilant for the appearance of their volatile landlord. Mrs. Brown would stand nervously at the top of the stairs to watch her husband leave each day, just to ensure that the respondent did not confront and provoke him. The complainants and their children avoided their apartment at dinner time, choosing to eat with their pastor or other family members rather than risk confrontation with the respondent.

The presence of the police was specifically embarrassing, especially because it was observed by neighbors. Mrs. Brown found the DCF investigation so humiliating that she became wracked with self-doubt about her worth as a parent. She became so distraught and fearful that the respondent might enter their apartment unannounced that she slept with a baseball bat near her bed. Cf. *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, 2006 WL 4753467 (CHRO No. 0550116, October 26, 2006) (complainant was so afraid of landlord's harassment that she slept with a baseball bat at her bedside); *Commission ex rel. Little v. Clark*, supra, 2000 WL 35575648 (constant harassment by teenagers in the neighborhood led complainant to keep a gun near his bed). Mrs. Brown was particularly worried about the respondent's threats to have her husband's parole revoked. As a result of the respondent's ongoing harassment, she had difficulty sleeping and suffered migraine headaches; her hypertension was aggravated by the stress.

Mr. Brown was the primary focus of the respondent's wrath and consequently suffered even more than his wife. The respondent thoroughly intimidated him

with threats and contrived attempts to have his parole revoked. When she finally contacted Mr. Brown's parole officer, Mr. Brown was nearly in a state of panic, because parole revocation would have meant returning to prison, removing him from his family and negating his diligent efforts to take control of his life. He sought mental health counseling and took prescribed medications for his anxiety and its physical symptoms.

Although the Brown children themselves cannot recover damages for their own emotional distress (because they are not parties to these complaints), the complainants' distress from watching their children suffer is compensable. See *Commission on Human Rights & Opportunities ex rel. Scott v. Jemison*, 2000 WL 35575662 (CHRO No. 9950020, March 20, 2000) (the landlord's threats toward tenant's children upset the tenant and made her cry); see also *Commission ex rel. McIntosh-Waller v. Vahlstrom*, supra, 2008 WL 268329. The dearth of evidence on the children's emotional state, however, prevents this particular stressor from significantly augmenting the overall damage award.

When discriminatory actions are observed by others, the victim may be further humiliated, thus justifying a higher award for emotional distress. See, e.g., *Commission ex rel. Thomas v. Mills*, supra, CHRO No. 9510409, 7-8; *Commission on Human Rights & Opportunities ex rel. Cohen v. Menillo,* CHRO No. 9420047 (June 21, 1995). Conversely, the absence of a public display of discrimination militates against a substantial award. *Commission ex rel. Peoples v. Belinsky,* supra, 1988 WL 492460, *6; *Commission ex rel. McNeal-Morris v. Gnat,* supra, CHRO No. 9950108, 7-8) On at least one occasion, the second floor tenant observed the respondent loudly berating Mr. Brown; another time, Mrs. Brown overheard the respondent expressing to that tenant her antipathy toward tenants who rely on rental assistance. The police were summoned several times, and on at least one occasion neighbors observed their appearance. The DCF investigation into alleged drug use and child molestation was particularly humiliating. The respondent's telephone calls to Mr. Brown's parole officer unnerved both complainants, who feared that Mr. Brown's parole

might be revoked. In this case, the public nature of the harassment and the extensive involvement of public officials must augment any emotional distress award.

The degree of offensiveness of the respondent's conduct, along with its overall impact on the complainants, is another factor to consider when assessing emotional distress damages. The respondent's decision not to complete the forms was accompanied by little discussion. While the parties describe the incident far differently (see footnote 5), it is clear that no argument ensued and that the respondent used no derogatory or offensive language.

The same cannot be said for what transpired after the subsidy incident. For two months, the respondent taunted, harassed and threatened the complainants, with little respite, because of the subsidy issue, causing constant fear of unwarranted entry in their apartment, physical harm, arrest, parole revocation Cf. *Commission ex rel. Thomas v. Mills,* supra, CHRO No. 9510408 (during the course of several months, the respondent repeatedly—and publicly—taunted, harassed, and threatened the complainant because of her disability and sexual orientation, causing her to live in fear that the respondent would seriously harm her); *Commission ex rel. Scott v. Jemison,* supra, 2000 WL 35575662 (landlord's persistent racial slurs and physical threats over a two and one-half year period led to complainant's depression, anxiety attacks, and premature contractions during pregnancy). Although the incidents at issue here did not persist as long as those in *Jemison,* they certainly rose to the magnitude of the incidents and the threats in both *Jemison* and *Mills,* and caused the complainants significant emotional harm.

The complainants' emotional distress, however severe and debilitating in April and May, 2006, appears not to be permanent. By all accounts, when they moved to nearby Derby their distress diminished, albeit more slowly for Mr. Brown. Not until they left Connecticut ten months later could they free themselves of their bad memories, ongoing anxiety, and fears of reprisal. See *Commission on*

Human Rights and Opportunities ex rel. Banks and Hansberry v. Eckhaus, 2003 WL 25592786 (CHRO Nos. 0250114 and 0250115, May 23, 2003). After the complainants moved to Colorado, their lives, in the words of their pastor, returned to "normal, relaxed, enjoying life as one should." And as the commission stated in its post-hearing memorandum, "Finally, they were able to live at peace."

In light of the applicable factors for determining emotional distress awards, and in recognition of the various awards order by this tribunal, awards which have tended to increase during the past decade, I conclude that reasonable awards for emotional distress would be $12,000 for Mr. Brown and $10,000 for Mrs. Brown.

FINAL DECISION AND ORDER

1. The respondent shall pay to the complainants damages in the amount of $23,705.73, based on the following:

Economic losses (lost wages; moving; travel)	$ 1,705.73
Emotional distress damages (Mr. Brown)	$12,000
Emotional distress damages (Mrs. Brown)	$10,000
TOTAL ……	$23,705.73

2. Pursuant to General Statutes §37-3a, post-judgment simple interest shall accrue on this award at the rate of 10% per annum, from the date payment is due.

3. The respondent shall immediately cease and desist from refusing to rent any residential property to which the provisions of §46a-64c apply, from refusing to negotiate to rent such property, and from refusing to make such property available for rental to any person because of that person's lawful source of income, except as otherwise may be permitted by Chapter 814c of the General Statutes.

4. The respondent shall immediately cease and desist from taking any actions with respect to the rental of a residential property that indicate any preference, limitation or discrimination based on a prospective tenant's lawful source of income, except as otherwise may be permitted by Chapter 814c of the General Statutes.

5. The respondent shall cease and desist from all other acts of housing discrimination prohibited by state or federal law, and shall provide a nondiscriminatory housing environment in accordance with state and federal law.

6. The respondent shall not retaliate against the complainants or any person who participated in this proceeding.

So ordered this 17th day of November, 2008.

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David S. Knishkowy
Human Rights Referee

PARTY LIST

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