

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**

69 West Washington, Suite 3040

Chicago, Illinois 60602

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LaFayette MOORE, Complainant	)	
	)	
v.	)	Case No. 2010H002
	)	
EAST LAKE MANAGEMENT GROUP, INC.,	)	Entered: March 24, 2014
Respondent	)	
	)	

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**ORDER**

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On November 12, 2010, Complainant LaFayette Moore (“Complainant” or “Moore”) filed a complaint against a rental property manager, Respondent East Lake Management Group, Inc. (“Respondent” or “East Lake Management”). This complaint alleges source-of-income discrimination in a housing transaction in violation of Section 42-38(b) of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). At the time of his complaint, Moore was partially reliant on unemployment benefits as a source of income. Moore’s claim arises out of the rejection of his rental application for a two-bedroom apartment in Calumet City after the property manager was unable to confirm that Moore’s unemployment benefits would be extended to cover the entire term of a twelve-month lease.

The Cook County Commission on Human Rights (“Commission”) investigated Moore’s complaint and found substantial evidence of a violation on October 18, 2011. After attempts at conciliation failed, the Commission set the matter for an administrative hearing on the merits before Hearing Officer David L. Lee. Hearing Officer Lee held this hearing on July 31, 2012, and issued a proposed initial decision to the parties on or about June 25, 2013. Pursuant to Commission Rule 470.100, the parties submitted their responses to the proposed initial decision. Then, on or about November 23, 2013, Hearing Officer Lee issued a proposed final decision (Attachment A) to the parties and the Commission. Subject to the modifications set out in this Order, the Commission now adopts the proposed final decision finding that East Lake Management violated the Human Rights Ordinance and ordering appropriate relief.

## Background<sup>1</sup>

East Lake Management provides property owners in and around the Chicago area with property management services such as day-to-day operations, maintenance, and lease approvals. Finding of Fact ("FF") 4. Included in its portfolio (at least in the summer/fall of 2010) was an apartment complex with 71 units at 1265 Cunningham Drive in Calumet City, Illinois ("Cunningham Place").<sup>2</sup> FF 1, 6-7.

In July 2010, with his current lease set to expire, Moore was in the market for an apartment closer to his family and friends. FF 5. That month, Joya Turner ("Turner"), the East Lake Management property manager for Cunningham Place, showed Moore the available rentals in the building, and, on September 1, 2010, Moore applied to East Lake Management to rent a two-bedroom unit on a twelve-month term.<sup>3</sup> FF 1, 6-8. At the time, the rent for a two-bedroom unit at Cunningham Place was \$750/month. FF 15.

East Lake Management would not approve the rental application of any tenant unless he or she had a monthly income that was at least one-and-a-half times the monthly rent. FF 9. But East Lake Management's rental application suggested a broad definition of income, even admonishing potential tenants to:

Be sure to include[] all sources of income which may include, but not be limited to, wages, Social Security, SSI, SSDI, veterans benefits, other pensions, AFDC, general relief, aid to the blind, alimony, child support, unemployment compensation and workers compensation.

FF 10. The East Lake Management rental application further represented that East Lake Management does not discriminate against persons based on source of income. FF 11.

At the time of his application, Moore had a part-time job, working approximately 20 hours per week at Penske Truck Rental. FF 12. This job paid Moore approximately \$250/week. FF 14. In addition, Moore had been continuously receiving unemployment benefits since approximately June 2009. FF 13. The value of these benefits was approximately \$500/week. FF 14. Combining his wages and unemployment benefits, Moore's then-current monthly income was approximately \$3,000. FF 14.

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<sup>1</sup> The Commission does not find that any of Hearing Officer Lee's proposed findings of fact are against the manifest weight of the evidence. Pursuant to Commission Rule 470.105(B), the Commission adopts all of Hearing Officer Lee's proposed findings of facts, including those not explicitly mentioned in this Order. To the extent that conclusions of law in this Order differ from those proposed by Hearing Officer Lee, the conclusions of law as adopted by the Commission in this Order control.

<sup>2</sup> East Lake Management is no longer the property manager for Cunningham Place. FF 48.

<sup>3</sup> East Lake Management did not offer six-month leases. FF 8.

East Lake Management also required income verification. FF 24. The verification portion of the rental application did not inquire about *future* employment or income, but rather inquired only about *current* employment and income. FF 24. Turner informed Moore that he would need to provide documentation to substantiate his income. FF 17. In particular, East Lake Management required six pay stubs per source of income for verification. FF 18.

Moore was able to provide East Lake Management with at least six past pay stubs from his employer Penske Truck Rental, but submitted only two stubs for his unemployment benefits. FF 19. Instead, Moore obtained a copy of his unemployment benefits statement from the Illinois Department of Employment Security ("IDES") and provided it to Turner. FF 20. This documentation indicated that the year-end date for Moore's then-current unemployment benefits was May 23, 2011, *i.e.* approximately half-way through the twelve-month lease for which Moore had applied at Cunningham Place. FF 26-27.

Unemployment benefits are extendable. FF 28. But in the normal course, a recipient (Moore included) would not receive notice of such an extension until two to four weeks before the end of his or her current benefit year. FF 28. As a result, in the fall of 2010, Moore could not produce documentation to East Lake Management from IDES showing that his unemployment benefits would continue past May 23, 2011. FF 29. Similarly, East Lake Management could not obtain this information for itself. Both Turner and her Oversight Manager for East Lake Management contacted IDES on at least two occasions to try to verify that Moore's unemployment benefits would continue beyond May 23, 2011. FF 30, 32. Turner received the response that nobody could know that at that time, and IDES told the East Lake Management Oversight Manager that there was no guarantee that Moore would receive an extension. FF 30, 32.

On November 5, 2010, East Lake Management rejected Moore's rental application for the two-bedroom unit in Cunningham Place for "insufficient income." FF 21. Although Moore's combined monthly income of \$3,000 greatly exceeded one-and-a-half times the monthly rent on the unit of \$750 (*i.e.* \$1,125), East Lake Management based its rejection on the fact that Moore could not verify that his unemployment benefits would last for the full twelve-month term of the lease. FF 16, 31.

Although East Lake Management's rental application for Cunningham Place stated that it was a preliminary application and did not guarantee housing or bind East Lake Management to reserve or assign an apartment to the applicant, Moore did not look for any other apartments between putting in his rental application for Cunningham Place on September 1, 2010, and learning that his application had been rejected some two months later. FF 37-38. Based on his conversations with Turner, Moore assumed that he would qualify for the unit in Cunningham Place. FF 39. When Moore learned that this assumption was incorrect, he became distraught with fear of losing visitation with his young daughter for lack of a suitable place to live. FF 40. Moore, however, did not seek any medical or psychological care for this emotional distress. FF 43. And within a few days, Moore found a substitute apartment, albeit one that was less conveniently located than Cunningham Place with respect to his daughter, family and friends and the mall and church he frequented. FF 41-42. For whatever reason, Moore did not look for this substitute apartment in Calumet City or any of the immediately adjacent suburbs. FF 45.

## Discussion

### A. Violation of the Human Rights Ordinance

The Human Rights Ordinance prohibits the managing agent of a property from “mak[ing] any distinction, discrimination, or restriction in the price, terms, conditions, or privileges of any real estate transaction, on the basis of unlawful discrimination.” Cook County Code of Ordinances (“County Code”), § 42-38(b)(1). As used in the Human Rights Ordinance, “unlawful discrimination” includes “discrimination against a person because . . . of that person’s . . . source of income.” *Id.* at § 42-31 (defining “source of income” broadly to mean “the lawful manner by which an individual supports himself or herself and his or her dependents”). There is no question that denial of a rental application is a change in the term, condition or privilege of a real estate transaction as those terms are used in the Human Rights Ordinance. *See id.* at § 42-38(a) (defining “real estate transaction”). And so, the central inquiry is what role Moore’s source of income played in East Lake Management’s decision.

Moore contends that East Lake Management violated the Human Rights Ordinance by failing to take into account a legal source of income (*i.e.* his unemployment benefits) when it rejected his rental application for Cunningham Place. East Lake Management responds that it did take Moore’s unemployment benefits into account, and, on this point, the Commission agrees with Respondent. East Lake Management did consider Moore’s unemployment benefits in determining whether he had sufficient income to rent the two-bedroom in Cunningham Place. FF 23. Hearing Officer Lee determined that Moore’s testimony was not credible where he asserted that various representatives of East Lake Management told him that the company did not view his unemployment benefits as income. FF 23. This finding is not against the manifest weight of the evidence. To the contrary, it is corroborated by the evidence showing repeated attempts by East Lake Management employees to verify the amount and duration of Moore’s unemployment benefits. FF 20, 30, 32.

Where the Commission parts company from Respondent is that in taking account of Moore’s unemployment benefits, the Commission finds that East Lake Management impermissibly treated this particular source of income differently than the way it treated other legal sources of income. FF 34. Moore’s reliance on two different types of income demonstrates why.

Moore included his present income from his part-time job on his rental application. East Lake Management verified Moore’s present wages by reference to documentation of his past earnings at that job. FF 17-19, 24, 34. East Lake Management did not attempt to verify that Moore would continue to earn those wages into the future throughout the entire term of the twelve-month lease at Cunningham Place. Indeed, doing so would have been incredibly difficult. Neither East Lake Management, nor employers generally can see the future. FF 25. And Illinois is an “at-will” jurisdiction where employees without a contract can be terminated at any time for any reason or no reason at all.<sup>4</sup> *See Shawe & Rosenthal LLP, Employment Law*

<sup>4</sup> As Hearing Officer Lee notes, even employees terminated unlawfully have only recourse to an uncertain legal claim rather than a guaranteed future stream of income. FF 36.

*Deskbook*, § 16.02 (1999). Had Turner or her Oversight Manager called Penske Truck Rental to determine if Moore would continue to have his part-time job and earn the same or better wages for the next year, it is certainly possible that Moore's employer would have been as equivocal as IDES was.

In comparison, when Moore included his present income from unemployment benefits on his rental application, East Lake Management required verification of future earnings for this source of income. When East Lake Management attempted to verify that Moore would continue to receive these benefits into the future throughout the entire term of the twelve-month lease at Cunningham Place, not surprisingly, it could not do so.

The problem with requiring the verification of a future stream of income for one inherently speculative source of income and not another (aside from being categorically prohibited by the Human Rights Ordinance) is that it systematically disadvantages persons who rely on the more heavily scrutinized source of income. Requiring verification of a twelve-month future stream of income will, in every practical instance, eliminate anyone who relies on unemployment benefits as a potential tenant.<sup>5</sup> FF 35. Without extensions, unemployment benefits last less than twelve months. In better economic times, unemployment benefits in Illinois lasted only six months. East Lake Management did not offer six-month leases at Cunningham Place. FF 8. And presumably East Lake Management would reject anyone relying on standard Illinois unemployment benefits for a twelve-month lease because the extension of the unemployment benefits by IDES midway into the lease is not guaranteed at the time of the application. Yet even with the assistance of extraordinary federal programs to lengthen the standard unemployment benefit terms beyond six months, the recipient of a twelve-month term of unemployment benefits would still not pass muster. So long as the rental application process was anything slower than instantaneous, even a tenant with perfect timing as between the start of her unemployment benefits and her rental application would still need to obtain an inherently uncertain extension of unemployment benefits in her last weeks of the lease. FF 35.

Requiring similar verification of a twelve-month future stream of income for all at-will employees would have a similar effect of virtually eliminating any tenant who relied on that source of income to pay the rent at Cunningham Place. An at-will employer who is paying a worker a wage today has no obligation to continue doing so for a given twelve-month term. Whether the employer will do so is as speculative as whether IDES will extend lapsing unemployment benefits, perhaps more so.

All this is not to suggest that the verification of future income for any source of income is categorically improper. The Human Rights Ordinance does not dictate whether or not landlords and property managers should verify rental applicants' incomes. That choice is left to the market participants in the particular housing transaction. Instead, the Human Rights Ordinance

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<sup>5</sup> This raises serious economic concerns about undermining the effectiveness of government assistance programs generally. If market participants do not treat a dollar of unemployment benefits the same way as a dollar of wages, then the dollar of government assistance is not actually worth a dollar. Widespread discrimination against unemployment beneficiaries or Housing Choice voucher holders on the basis of their source of income, reduces the salutary impact of government assistance while driving up the cost to achieve ever more modest results.

only establishes a nondiscrimination principle. Based on that nondiscrimination principle then and in light of its verification requirements for unemployment beneficiaries, East Lake Management was free to deny the rental applications of any wage earner who could not establish that he or she would continue to earn those same or greater wages over the course of an entire lease. The Commission suspects that the reason East Lake Management did not avail itself of this legal opportunity under the Human Rights Ordinance is that Cunningham Place might have been very difficult to fill had Respondent applied the same rigor to applicants with at-will employment as a source of income as it did to applicants with unemployment benefits as a source of income. And so having made the sensible business decision to ignore the speculative nature of future wages during the course of a twelve-month lease, all the Human Rights Ordinance requires is that East Lake Management even handedly ignore the equally speculative nature of an extension of unemployment benefits during that same term. Preferring, based solely on the source of income, a tenant who cannot guarantee that he will have the same monthly income during the entire life of a lease ahead of another tenant who also cannot make that guarantee, as East Lake Management did here, violates the Human Rights Ordinance and renders East Lake Management liable for relief.<sup>6</sup>

#### B. Relief for Violation

The Human Rights Ordinance gives the Commission broad leeway to shape an appropriate remedy. *See* County Code, § 42-34(c)(1). Ordering East Lake Management to rent Moore the two-bedroom unit in Cunningham Place he was unlawfully denied would go a long ways towards remedying the violation of the Human Rights Ordinance. Unfortunately, that is not possible because East Lake Management is no longer the property manager at Cunningham Place and Moore has long since found a substitute apartment. FF 41, 48. The Commission, however, can craft an order of relief that would allow East Lake Management to give and Moore to take a comparable apartment in a more convenient location for Moore if such an apartment is available and Moore prefers it to his current living arrangements.

Given the *ex post* positions of the parties, Moore's remaining damages then can be divided into two categories: first, any injury he suffered while securing a substitute apartment and second, any provable injuries arising from residing in the substitute apartment as opposed to Cunningham Place. With respect to the first category, Hearing Officer Lee found that as a result of the rejection of Moore's rental application, he suffered reasonably significant emotional distress (though not so significant that he sought medical or psychological care) for a few days related to losing visitation rights with his daughter. FF 43-44. This reasonably significant distress lasted until he found the substitute apartment. FF 44. From there, and in the second

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<sup>6</sup> This order should not be read to endorse the position that landlords must ignore the known end date of a source of income in all instances. A landlord may consider a tenant's at-will employment with an announced or knowable end date, such as employment that is of a seasonal, temporary or contractual nature, employment in a factory that has publicly announced its impending closure, or employment on the part of someone who has declared an intention to retire in three months. But that is not the case before the Commission. Instead, the known end date of unemployment compensation at the time of the facts of this case lacked the level of certainty of these hypotheticals and was subject to renewal as a matter of course.

category, his emotional distress related to the inconvenience of the substitute apartment, but this faded within a few months. *Id.* Hearing Officer Lee's valuation of the sum total of both types of emotional distress at \$1,450 is not against the manifest weight of the evidence. *See* Response to Respondent's Exceptions to the Proposed Initial Decision, pp. 4-5.

This leaves Moore's additional out of pocket expenses from being in the substitute apartment. Again, although Moore could not produce specific dates on which he had to travel farther to see family or go to work or produce gas receipts quantifying these expenses, Hearing Officer Lee determined that the evidence supported the fact that Moore had some out-of-pocket expenses based on the greater inconvenience of the substitute apartment and valued these expenses as \$1,050. FF46-47; *see also* Response to Respondent's Exceptions to the Proposed Initial Decision, pp. 4-5. Again, the Commission cannot say that this valuation is against the manifest weight of the evidence.

### Conclusion

For the foregoing reasons, the Commission hereby finds that East Lake Management VIOLATED Section 42-38(b) of the Human Rights Ordinance and ORDERS RELIEF on complaint 2010H002 as follows:

1. East Lake Management must provide Moore or counsel for Moore (as directed by counsel for Moore) with written monthly notification at an email or mailing address designated for the purpose of any available two-bedroom rental units under its management in Cook County, Illinois, until the sooner of the following two events: a) Moore rents one of these units or b) fourteen months after the entry of this Order;
2. East Lake Management must waive or pay any rental application fees that Moore incurs if he chooses to apply to rent any available two-bedroom rental units under its management in Cook County, Illinois, until the sooner of the following two events: a) Moore rents one of these units or b) fourteen months after the entry of this Order;
3. East Lake Management must entertain any rental application submitted by Moore and review it in a manner not inconsistent with this Order, including by a) not considering that Moore filed and prevailed on this Complaint of Discrimination and b) considering unemployment-compensation benefits the same as it considers other legal sources of income and requiring verification of future unemployment-compensation benefits only to the same extent that those applications require verification of other future sources of legal income;
4. East Lake Management must pay Moore his actual damages (including emotional distress) of \$2,500 on or before 45 days from this Order;
5. East Lake Management must pay Moore's reasonable attorney's fees, if any, and duplicating costs incurred in pursuing the complaint before the

Commission or at any stage of judicial review and submitted in accordance with Commission Rule 470.110;

6. East Lake Management must file with the Commission a report as to the manner of its compliance with this Order between fourteen and fifteen months after the entry of this Order; and
7. Counsel for Moore must provide East Lake Management an email or mailing address at which Moore wishes to be contacted by East Lake Management and be responsible for keeping this email or mailing address current until the sooner of the following two events: a) Moore rents any available two-bedroom rental units under the management of East Lake Management in Cook County, Illinois or b) fourteen months after the entry of this Order.

Any party may request reconsideration of this Order within 30 days of receipt pursuant to the procedures set out in Commission Rule 480.100(C).

March 24, 2014

COOK COUNTY COMMISSION ON  
HUMAN RIGHTS:

A handwritten signature in black ink, appearing to read 'Kenneth A. Gunn', is written over a horizontal line. The signature is stylized and somewhat cursive.

Kenneth A. Gunn,  
Chairperson

# Exhibit A

***In the Cook County Commission on Human Rights***

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LaFayette Moore,

Complainant,

and

East Lake Management Group,

Respondent.

**No. 2010 H 002**

Hearing Officer David L. Lee

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**Hearing Officer's Final Proposed Decision**

This action was brought under the Cook County Human Rights Ordinance. The Hearing was held on July 31, 2012. On June 25, 2013, following my receipt and consideration of the parties' post-hearing briefs, I issued the Initial Proposed Decision, which found for Complainant and ordered relief. Respondent filed Exceptions to the Initial Proposed Decision that went only to the relief ordered. This Matter is thus now ready for the Final Proposed Decision.

**Contentions of the Parties**

Complainant contends that Respondent refused and failed to take into account a legal source of income (unemployment compensation) when it rejected for alleged insufficient income his application to rent an apartment. Complainant contends that such a failure to take into account a legal source of income violates the Cook County Human Rights Ordinance's prohibition of, among other things, discrimination on the basis of legal source of income in the rental of property for residential purposes. See Cook County Human Rights Ordinance at §42-31(S) (defining "source of income"), §42-31(T) (defining "unlawful discrimination"), §42-38(A)(2) (defining "real estate

transaction”), and §42-38(B)(1) (prohibiting discrimination in real estate transactions on the basis of unlawful discrimination).

Respondent contends that it did take into account Complainant’s unemployment compensation. Respondent also contends that it had a justifiable business reason to inquire whether Complainant’s unemployment compensation would be extended in that Complainant’s unemployment compensation was scheduled to expire before the end of the rental term, which would leave Complainant insufficient income to meet Respondent’s guidelines for renting an apartment. Respondent contends that when it was deciding whether or not to approve Complainant’s rental application, the extension of Complainant’s unemployment compensation was speculative and uncertain.

### **Summary of the Initial Proposed Decision, Respondent’s Exceptions, and reasons for accepting, rejecting, or modifying those Exceptions**

This section of the Final Proposed Decision summarizes the various rulings of the Initial Proposed Decision, Respondent’s Exceptions, and my reasons for accepting Respondent’s Exceptions.

The Initial Proposed Decision found that in deciding whether to accept or reject Complainant’s rental application, Respondent had violated the Cook County Human Rights Ordinance’s prohibition on discrimination by legal source of income by treating Complainant’s unemployment compensation (a legal source of income) different than it had treated other legal sources of income. Specifically, Respondent required verification of future unemployment-compensation benefits, but did not require verification of other future legal income, including some that seemed inherently as speculative and uncertain

as unemployment compensation, such as commission income. (Not to mention that in the economic climate when Complainant submitted his rental application, ordinary wage income was also "speculative and uncertain".) The Initial Proposed Decision noted that Respondent treated unemployment compensation as a source of income in determining whether or not Complainant met the income guidelines to rent the apartment for which he had applied and that the difference in Respondent's treatment of unemployment compensation was limited to Respondent's requiring verification of future income.

On damages, the Initial Proposed Decision proposed that Respondent: 1) Lease to Complainant at the normal rental a vacant two-bedroom apartment of Complainant's choice comparable to the Cunningham Place apartment upon the expiration or termination (whether voluntary or involuntary) of Complainant's current lease on his current apartment; 2) Pay Complainant actual damages (including emotional distress) of \$2,500; 3) Pay Complainant his reasonable attorney's fees and duplicating costs incurred in pursuing the complaint before the Commission or at any stage of judicial review; and 4) File with the Commission a report as to the manner of compliance with the Commission's Order. The Initial Proposed Decision specifically found that neither a fine nor a report to the Department of Professional Regulation would be appropriate because Respondent generally considered unemployment compensation as a source of income and because this case appeared to be one of first impression on whether or not a legal source of income could be taken into account but nonetheless be treated different than other legal sources of income.

Complainant did not file Exceptions. Respondent's Exceptions went only to the proposed relief and were:

- Respondent took Exception to being ordered to lease to Complainant at the normal rental a vacant two-bedroom apartment of Complainant's chose an apartment comparable to the Cunningham Place apartment upon the expiration or termination (whether voluntary or involuntary) of Complainant's current lease on his current apartment. Respondent's support for that Exception was that Respondent was bound by its contracts with the property owners for whom it managed the property as to the qualifications, etc., of rental applicants, that no apartment might be available, and that the time during which Respondent's obligation ran was vague.
- Respondent took Exception to the report of compliance having no date.

I am persuaded that Respondent's Exceptions are valid points that I did not adequately account for in the Initial Proposed Decision, so I have rewritten Conclusion of Law 5 and the proposed relief to incorporate the points raised by Respondent's Exceptions.

### **Other changes to the Initial Proposed Decision**

In addition to the changes noted above that were made in response to the Respondent's Exceptions, I also added a new Conclusion of Law (#6 in this Final Proposed Decision) that Respondent's rental applications require verification of future unemployment-compensation benefits only in the same manner and to the same extent that those applications require verification of other future sources of legal income and

put the reporting requirement into a new Conclusion of Law #7. Old Conclusion of Law #6 was re-numbered to be Conclusion of Law #8. Also, a time-limit was entered for Respondent's payment and various typographical errors were corrected.

## **Findings of Fact and Conclusions of Law<sup>1</sup>**

### **Jurisdiction**

Finding of Fact 1:                On September 1, 2010, Complainant LaFayette Moore applied with Respondent East Lake Management Group to rent an apartment at Cunningham Place, an apartment complex with 71 units at of 1265 Cunningham Drive in Calumet City, Illinois.

[Turner cross at Tr. 127-128, 132; Smith direct at Tr. 184.]

Finding of Fact 2:                Calumet City is in Cook County, Illinois. [The Hearing Officer takes judicial notice of this fact.]

Finding of Fact 3:                On November 12,<sup>2</sup> Mr. Moore filed with the Cook County Commission on Human Rights a Complaint about East Lake Management's denial of his rental application earlier that month.

[Moore direct at Tr. 39-40; Complaint.]

Conclusion of Law 1:                Mr. Moore timely filed his Complaint. See,  
Cook County Human Rights Ordinance at

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<sup>1</sup>        The Findings of Fact and Conclusions of Law are organized in what is hoped is a helpful fashion, with a Conclusion of Law immediately following the Findings of Fact from which the Conclusion is derived. If a Finding of Fact or Conclusion of Law needs some explication, then a Discussion immediately follows that Finding or Conclusion.

<sup>2</sup>        Unless otherwise indicated, all dates in these Findings of Fact and Conclusions of Law refer to 2010.

§42-34(b)(1) (Complaints to be filed within 180 days of the violation).

**Conclusion of Law 2:**

The Cook County Commission on Human Rights has jurisdiction over Mr. Moore's Complaint. See, Cook County Human Rights Ordinance at §42-31(S) (defining "source of income"), §42-31(T) (defining "unlawful discrimination"), §42-38(A)(2) (defining "real estate transaction"), §42-38(B)(1) (prohibiting unlawful discrimination in real estate transactions), and §42-34(b)(1) (Complaints to be filed within 180 days of the violation).

**East Lake rejects Mr. Moore's application to rent an apartment**

**Finding of Fact 4:** East Lake Management provides property owners in and around the Chicago area with property management services such as day-to-day operations, maintenance, and lease approvals. [Turner direct at Tr. 126; Smith direct at Tr. 183; Rathey direct at Tr. 201-202.]

**Finding of Fact 5:** In July, Mr. Moore's lease was about to be up and he was seeking an apartment closer to his family and friends. [Moore direct at Tr. 27-28.]

**Finding of Fact 6:** That month, Mr. Moore was shown the rental property at Cunningham Place by Joya Turner, the property manager. [Moore direct at Tr. 29-30; Turner direct at Tr. 127, 137.]

Finding of Fact 7: Mr. Moore liked the rental property at Cunningham Place, returned on September 1, and applied to rent a two-bedroom apartment. [Moore direct at Tr. 30; Turner direct at Tr. 138.]

Finding of Fact 8: East Lake Management offered only twelve-month leases; it did not offer six-month leases. [Moore cross at Tr. 79; Turner direct at Tr. 136.]

Finding of Fact 9: East Lake Management required monthly income of one-and-a-half times the monthly rent to approve an application to rent an apartment. [Turner direct at Tr. 136.]

Finding of Fact 10: East Lake Management's rental application stated "Be sure to include all sources of income which may include, but not be limited to, wages, Social Security, SSI, SSDI, veterans benefits, other pensions, AFDC, general relief, aid to the blind, alimony, child support, unemployment compensation and workers compensation". [Respondent Ex. 6 (rental application); see also, Moore cross at Tr. 57, Turner direct at Tr. 132-133.]

Finding of Fact 11: The rental application also stated that East Lake Management does not discriminate against persons based on source of income. [Respondent Ex. 6 (rental application); see also, Moore cross at Tr. 61, Turner direct at Tr. 135.]

Finding of Fact 12: When Mr. Moore applied to rent the two-bedroom apartment at Cunningham Place, he had a part-time job, working

approximately 20 hours per week at Penske Truck Rental. [Moore direct at Tr. 25.]

Finding of Fact 13: Mr. Moore had also been continually receiving unemployment benefits since approximately June 2009. [Moore direct at Tr. 25-26.]

Finding of Fact 14: When Mr. Moore applied for the rental property at Cunningham Place, his income was approximately \$250/week from his part-time job and approximately \$500/week from unemployment, which produced a monthly income of approximately \$3,000. [Moore direct at Tr. 31; Turner direct at Tr. 148-149.]

Finding of Fact 15: At that time, a two-bedroom apartment at Cunningham Place rented for \$750/month. [Turner direct at Tr. 136.]

Finding of Fact 16: Mr. Moore's monthly unemployment benefits were more than were sufficient to have met East Lake's income requirement. [Turner cross at Tr. 171; calculation from evidence.]

Finding of Fact 17: When Mr. Moore applied for the rental property at Cunningham Place, Joya Turner told him that pay stubs were needed to substantiate his part-time employment and documents were needed to substantiate his unemployment income. [Moore cross at Tr. 64.]

Finding of Fact 18: East Lake Management required six pay stubs per source of income to verify income, regardless of how long the pay-period was.

[Turner direct at Tr. 140; Turner exam by Hearing Officer at Tr. 179.]

Finding of Fact 19: Mr. Moore submitted sufficient pay-stubs for his part-time job at Penske Truck Rentals, but submitted only two stubs for unemployment. [Turner direct at Tr. 140.]

Finding of Fact 20: From time to time, Mr. Moore would return to Cunningham Place to check on the status of his rental application and would be told by Joya Turner that he needed to give East Lake Management more information about his unemployment compensation. Mr. Moore would thereupon go to the unemployment office, get his unemployment benefit statement, and give a copy of the unemployment benefit statement to Joya Turner. [Moore direct at Tr. 31-32, 36-37; Moore cross at Tr. 62-63, 65.]

Finding of Fact 21: On November 5, Joya Turner signed and mailed a letter to Mr. Moore saying that his application for the apartment at Cunningham Place was being rejected for "insufficient income". [Turner direct at Tr. 150-152; Rp. Ex. 6 (rejection letter).]

Finding of Fact 22: Joya Turner did not check whether or not Mr. Moore's income from his part-time job would be sufficient for a one-bedroom apartment nor did Mr. Moore ask about that. [Turner exam by Hearing Officer at Tr. 180.]

Finding of Fact 23: In general, East Lake Management considered unemployment in determining whether or not an applicant had

sufficient income to rent an apartment. [Turner direct at Tr. 153; Smith direct at Tr. 189-190; Rathey direct at Tr. 208-209; Rathey re-cross at Tr. 215.]

Discussion: Mr. Moore testified that two of East Lake Management's representatives (Joya Turner and Lolita Smith, who was East Lake Management's Oversight Manager) told him that East Lake did not view his unemployment compensation as income. [Moore direct at Tr. 37-39.] Both Joya Turner and Lolita Smith denied having said that. [Turner direct at Tr. 153; Smith direct at Tr. 189-190.] I credit Ms. Turner's and Ms. Smith's denials because East Lake Management's asking Mr. Moore for more information about his unemployment compensation and East Lake Management's general policy corroborate that East Lake did treat unemployment compensation as income. However, that does not end the inquiry, because there is a factual issue of whether East Lake Management treated Mr. Moore's unemployment compensation different than it treated other legal sources of income and a legal issue of whether any such differential treatment of different sources of legal income would be discrimination on the basis of income in violation of the Cook County Human Rights Ordinance.

**Comparative treatment of unemployment compensation and other income**

Finding of Fact 24: East Lake Management's verification form for current employment income did not inquire about future employment or

about future income; the form just inquired about current employment and current income. [Turner cross at Tr. 168-169; Rp. Ex. 6 (rental application).]

**Finding of Fact 25:** Joya Turner had no way to verify the future income of rental applicants who were currently employed; she is not clairvoyant and cannot read into the future nor can employers look into the future either. [Turner cross at Tr. 167; Turner re-direct at Tr. 173-174.]

**Finding of Fact 26:** The unemployment-compensation documents that Mr. Moore gave Joya Turner to verify his unemployment compensation stated that his unemployment compensation had a year-end date of May 23, 2011. [Moore cross at Tr. 67; Turner direct at Tr. 145; Turner re-direct at Tr. 172-173.]

**Finding of Fact 27:** Mr. Moore's end-date for his unemployment compensation, i.e., May 23, 2011, was approximately half-way through the 12-month term of the lease that Mr. Moore applied for on the apartment at Cunningham Place. [Turner re-direct at Tr. 173; calculation from evidence.]

**Finding of Fact 28:** In the normal course, Mr. Moore would receive notice of the extension of his unemployment compensation approximately two to four weeks before the end of his current benefit year, so Mr. Moore would not have learned until approximately late April 2011 whether or not his unemployment benefits were being extended past May 23, 2011. [Moore cross at Tr. 72-73.]

**Finding of Fact 29:** Therefore, when Mr. Moore was applying for the apartment at Cunningham Place, he was unable to produce any information from the Illinois Department of Employment Security that his unemployment compensation would be continued past May 23, 2011. [Moore cross at Tr. 69.]

**Finding of Fact 30:** Joya Turner called the Illinois Department of Employment Security to try to verify that Mr. Moore's unemployment compensation would be continued past May 23, 2011, and received the response that nobody could know at that time. [Turner cross at Tr. 165.]

**Finding of Fact 31:** Lolita Smith, who was an Oversight Manager for East Lake Management when Mr. Moore's rental application was rejected (and still holds that position), reviewed Joya Turner's rejection of Mr. Moore's rental application and agreed with that rejection because Mr. Moore could not verify that his unemployment compensation would last for the full 12-month lease term. [Smith direct at Tr. 183-187; Smith cross at Tr. 191-192.]

**Finding of Fact 32:** When Lolita Smith was reviewing Joya Turner's rejection of Mr. Moore's rental application, she called the Illinois Department of Employment Security and was told that there was no guarantee that Mr. Moore's unemployment would be extended beyond the then-current May 23, 2011, end date. [Smith direct at Tr. 188; Smith cross at Tr. 195-197.]

**Finding of Fact 33:** Joya Turner rejected a rental application for applicant B.M., whose income was social-security SSI (Supplemental Security Income) benefits and commissions from insurance sales (even though she was not working at the time). Joya Turner accepted a 1099 as verifying this applicant's commission income and a social-security annual statement as verifying this applicant's social-security SSI income. B.M.'s application was rejected due to insufficient income. [Turner direct at Tr. 154- 159; Turner cross at Tr. 169-171; Rp. Ex. 12 (Rental application of B.M., admitted into evidence at Tr. 160).]

**Finding of Fact 34:** East Lake Management treated Mr. Moore's unemployment compensation different than it treated other legal sources of income. [Inference from evidence.]

**Discussion:** Joya Turner and Lolita Smith required Mr. Moore to verify that his unemployment compensation would continue through entire 12-month lease period, but did not require such a verification from other legal sources of income. East Lake Management's form application inquired only about current employment and current income, not about future income. Similarly, East Lake Management accepted a 1099 (which only goes to prior-year income) as verification of applicant B.M.'s commission income.

**Finding of Fact 35:** East Lake Management's requiring unemployment compensation to be verified for the entire 12-month period of the

lease meant that, as a practical matter, unemployment compensation could never count toward renting an apartment from East Lake. [Inference from evidence.]

Discussion: Without extensions, unemployment lasts less than twelve months. In better economic times, unemployment lasts only six months. East Lake Management does not rent apartments on a six-month basis; rather, it only rents apartments for twelve months. Considering that the rental application takes some time, a rental applicant, even one with the most fortuitous timing, would never be able to use unemployment compensation as part or all of the income supporting the ability to rent, because the unemployment benefits would always expire before the end of the twelve-month rental period.

**Finding of Fact 36:** East Lake Management had no business necessity for the differential treatment of unemployment compensation and other types of legal income. [Inference from evidence.]

Discussion: Although the extension of Mr. Moore's unemployment compensation depended on what Congress did, and, therefore, was not certain by any means, unemployment compensation does not seem significantly more uncertain than other types of income. As Joya Turner testified, neither she nor an employer could see into the future. Nevertheless, East Lake Management did not require verification of future wages. Nor did East Lake Management

require verification of other future legal sources of income that it accepted, even though such sources of income could be equally uncertain. For example, part of applicant B.M.'s income was commissions, which can be inherently uncertain, but there was no evidence that East Lake Management required B.M. to verify the future commissions. Similarly, another part of applicant B.M.'s income was SSI, which can also be inherently uncertain (for example, should the recipient improve medically and no longer qualify for SSI), but there was no evidence that East Lake Management required B.M. to verify her future SSI income. Other types of legal income that East Lake Management's policy considers are also inherently uncertain. For example, child support and maintenance (alimony) could expire by terms of the Marital Settlement Agreement or Judgment of Dissolution of Marriage, could be reduced if the payor received a modification due to unemployment, etc., or could simply not be paid regardless of the legalities. However, there is no evidence that East Lake Management required verification of such future uncertain income.

Indeed, in the uncertain economic times when Mr. Moore was applying for the apartment, when unemployment was routinely being extended and firings were a common occurrence, unemployment compensation was in some senses more certain than income from a job. Unemployment carries various legal rights,

including a hearing on the record and legal standards as to qualification and maintenance of benefits, but an "at-will" job can be terminated at any time for any reason or no reason at all. Even if the termination was for an illegal reason, the employee has a legal claim or lawsuit, which is inherently uncertain, rather than a stream of income.

Therefore, East Lake Management had no business necessity for the differential treatment of unemployment compensation and other types of legal income.

Conclusion of Law 3: East Lake Management discriminated against Mr. Moore in the rental of the Cunningham Place apartment on the basis of legal source of income in violation of §42-38(B)(1) of the Cook County Human Rights Ordinance.

Discussion: The Hearing Officer requested the parties to brief the legal issue of whether a landlord's taking a legal source of income into account but nonetheless treating that legal source of income different from the way the landlord treated other legal sources of income would be discrimination on the basis of income in violation of the Cook County Human Rights Ordinance; the Hearing Officer also conducted his

own independent legal research of that question.<sup>3</sup> Neither the parties nor the Hearing Officer were able to find anything directly on point. As far as the research discloses, to date the law of “source-of-income” discrimination has focused on whether or not something was “income” and whether or not such “income” was totally ignored; not on the issue presented in this case: whether a legal source of income could be taken into account but nonetheless be treated different than other legal sources of income.

The issue in this case thus appears to be one of first impression. As such, the analysis should start with the basics.<sup>4</sup> The Cook County Human Rights Ordinance prohibits making “any distinction .... in the price, terms, conditions, or privileges of any real estate transaction, including the decision to engage in or renew any real estate

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<sup>3</sup> The Hearing Officer’s research included researching housing-discrimination cases, researching law review articles on “source-of-income” discrimination, and researching the similar provision of the Federal Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, making unlawful any discrimination against any applicant for credit “because all or part of the applicant’s income derives from any public assistance program”. 15 U.S.C. § 1691(a)(2).

<sup>4</sup> Respondent East Lake Management stated in its Post-Hearing Brief (at p. 27) that the Cook County Human Rights Ordinance’s prohibition of discrimination on the basis of legal source of income implied an affirmative duty to treat all legal sources of income equally. Nevertheless, the Hearing Officer does not rest his legal conclusion on that concession, but, rather, on the legal analysis in the text.

transaction, on the basis of” among other things, legal-source-of-income discrimination. See Cook County Human Rights Ordinance at §42-38(B)(1) (prohibiting discrimination in real estate transactions on the basis of unlawful discrimination). See also, Cook County Human Rights Ordinance at §42-31(T) (defining “unlawful discrimination” to include “source of income” discrimination) and at §42-38(A)(2) (defining “real estate transaction”). In Mr. Moore’s situation, East Lake Management treated Mr. Moore’s unemployment compensation different from the way it treated other income, by requiring verification of future receipt of the income. That differing treatment certainly seems to be a “distinction .... in the ... terms [or] conditions [of] the decision to engage in ... any real estate transaction”, which makes such treatment illegal under the Cook County Human Rights Ordinance.

This conclusion is bolstered by the Human Rights Ordinance’s command that the Ordinance “be liberally construed for the accomplishment of its purpose”. See Cook County Human Rights Ordinance at §42-32. Were differing treatment of various legal sources of income not outlawed, discriminating on the basis of source of legal income would

be all too easy. For example, as noted above, were landlords permitted to require verification of future receipt of unemployment compensation but not require verification of future receipt of other legal sources of income, then unemployment compensation would, in effect, never count toward an income requirement of any lease of sufficient duration, due to the limited time that unemployment is available.

Nothing in this decision means that landlords cannot require verification of income – it just means that all legal sources of income must be verified equally. Nor does it mean that landlords cannot require verification (to the extent reasonably possible) of future income. Credit applications, for example, often ask the applicant and/or employers to verify that the applicant's income is not likely to be reduced. See, e.g., Federal Reserve System Regulation B under the Equal Credit Opportunity Act, 12 C.F.R. Appendix B to Part 202, Model Application Forms, which contain questions such as "Is any income listed in this Section likely to be reduced in the next two years? Yes (Explain in detail on a separate sheet) No." (Model Credit Application form for open-end, unsecured credit) and "Is any income listed in this Section likely to be reduced before the credit requested is paid off?"

Yes (Explain in detail on a separate sheet) No.” (Model Credit Application form for close-end, secured credit). So long as landlords in Cook County verify future receipt of all legal sources of income equally, they are in compliance with the Ordinance on that issue.

Conclusion of Law 4: East Lake Management is liable to Mr. Moore for relief under the Cook County Human Rights Ordinance.

### Damages

Finding of Fact 37: Mr. Moore’s rental application for Cunningham Place stated that it was a preliminary application, that it did not guarantee housing, that further income and verification may be necessary to complete the application process, and that the application did not in any way bind East Lake Management to reserve or assign an apartment to the applicant. [Respondent Ex. 6 (rental application); see also, Moore cross at Tr. 59-60; Turner direct at Tr. 133, 134.]

Finding of Fact 38: Mr. Moore did not look for other apartments between putting in his application at Cunningham Place and learning that his application had been rejected. [Moore direct at Tr. 40.]

Finding of Fact 39: The reason that Mr. Moore did not look for other apartments during that time was that Mr. Moore assumed he would get the apartment at Cunningham Place based on his conversations with Joya Turner. [Moore direct at Tr. 40.]

**Finding of Fact 40:** When Mr. Moore discovered that his rental application had been rejected, he was afraid of losing visitation with his nine-year-old daughter Hannah for lack of a suitable place to live. That fear made Mr. Moore distraught. [Moore direct at Tr. 40; Moore exam by Hearing Officer at Tr. 103-104.]

**Finding of Fact 41:** After Mr. Moore learned that his application for the apartment at Cunningham Place had been rejected, it took him a couple of days or a week to find a substitute apartment. [Moore direct at Tr. 42.]

**Finding of Fact 42:** The substitute apartment Mr. Moore found was less convenient for him in that it was farther from his daughter, from his family and friends, from the mall that he frequented, and from his church. [Moore direct at Tr. 42-44; 51-52.]

**Finding of Fact 43:** Mr. Moore did not seek any medical or psychological care for the emotional distress he suffered as a result of his rental application for Cunningham Place having been rejected. [Moore cross at Tr. 92.]

**Finding of Fact 44:** As a result of the rejection of Mr. Moore's rental application, he suffered emotional distress, which, until he found a substitute apartment a few days or a week later, was based on his fear of losing visitation with his nine-year-old daughter and was reasonably significant. Once Mr. Moore rented a substitute apartment and no longer feared losing visitation with his nine-year-old daughter, the

only emotional distress he felt was from the inconvenience of the substitute apartment. This subsequent emotional distress was nearly as acute and faded within a few months. [Inference from evidence.]

Discussion: The Hearing Officer accepts that Mr. Moore's testimony that he suffered feelings of distress over possibly losing visitation with his daughter, but rejects Mr. Moore's testimony that those feelings lasted a couple of months [Moore direct at Tr. 40; Moore exam by Hearing Officer at Tr. 103-104] as being inconsistent with the evidence that Mr. Moore found a new apartment within a few days or a week and as being inconsistent with Mr. Moore's demeanor at the Hearing. The Hearing Officer accepts that the greater inconvenience of the substitute apartment caused Mr. Moore a minor amount of emotional distress, which faded within the "couple of months" that Mr. Moore testified to. Id.

Finding of Fact 45: After Mr. Moore learned that his application for the apartment at Cunningham Place had been rejected, he did not look for a substitute apartment in suburbs near 1265 Cunningham. [Moore cross at Tr. 77-78.]

Finding of Fact 46: Mr. Moore did not recall the specific days that he needed to drive farther due to the location of the substitute apartment nor was

he able to produce receipts for the gas he bought. [Moore cross at Tr. 82-88.]

Finding of Fact 47: Mr. Moore incurred actual out-of-pocket expenses based on the greater inconvenience of the substitute apartment. [Inference from evidence.]

Finding of Fact 48: East Lake Management is no longer the property manager for Cunningham Place. [Turner direct at Tr. 128.]

Conclusion of Law 5:

East Lake Management should provide

Mr. Moore with the following relief:

1. Each month for twelve consecutive months beginning the month after the Cook County Commission on Human Rights' final decision in this matter, inform Mr. Moore in writing delivered by U.S. Mail or e-mail to either Mr. Moore or his counsel (whichever counsel for Mr. Moore may, from time-to-time direct in the absence of any direction from Mr. Moore's counsel, as East Lake Management may choose) of all two-bedroom apartments in Cook County, Illinois, for which East Lake Management is accepting rental applications and instruct Mr. Moore how he may apply to rent each such apartment;

2. Consider any future rental application from Mr. Moore without regard to his having filed and prevailed on this Complaint of Discrimination.
3. In any such future rental application from Mr. Moore, consider unemployment-compensation benefits the same as it considers other legal sources of income and require verification of future unemployment-compensation benefits only in the same manner and to the same extent that those applications require verification of other future sources of legal income.
4. Pay Mr. Moore actual damages (including emotional distress) of \$2,500, such payment to be made within forty-five calendar days after the Cook County Commission on Human Rights' final decision in this matter; and
5. Pay Mr. Moore his reasonable attorney's fees and duplicating costs incurred in pursuing the complaint before the Commission or at any stage of judicial review.

**Conclusion of Law 6:** In any future rental application for a property located in Cook County, Illinois, East Lake Management must consider unemployment-compensation benefits the same as it considers other legal sources of income and require verification of future unemployment-compensation benefits only in the same manner and to the same extent that those applications require verification of other future sources of legal income.

**Conclusion of Law 7:** Between thirteen and fourteen months after the Cook County Commission on Human Rights' final decision in this matter, file with the Commission a report as to the manner of compliance with the Commission's Order.

**Discussion:** See Cook County Human Rights Ordinance §42-34(c)(1). As East Lake Management pointed out in its Exceptions, the relief ordered should take into account its contracts with the property owners for whom it managed the property as to the qualifications, etc., of rental applicants and that no apartment might be available. East Lake Management also pointed out that the time during which its obligation ran and the time when it had to report on its compliance were vague. This Conclusion of Law has be re-written to take those Exceptions into account.

## **Relief and Attorneys' Fees**

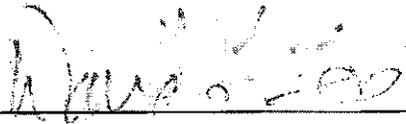
For these reasons, the Initial Proposed Order is that Respondent East Lake Management Group each month for twelve consecutive months beginning the month after the Cook County Commission on Human Rights' final decision in this matter inform Complainant LaFayette Moore in writing delivered by U.S. Mail or e-mail to either Complainant or his counsel (whichever Complainant's counsel may, from time-to-time direct – in the absence of any direction from Complainant's counsel, as Respondent may choose) of all two-bedroom apartments in Cook County, Illinois, for which Respondent is accepting rental applications and instruct Complainant how he may apply to rent each such apartment; that Respondent consider any future rental application from Complainant without regard to Complainant's having filed and prevailed on this Complaint of Discrimination; that in any such future rental application from Complainant, Respondent consider unemployment-compensation benefits the same as it considers other legal sources of income and require verification of future unemployment-compensation benefits only in the same manner and to the same extent that those applications require verification of other future sources of legal income; that Respondent pay Complainant actual damages (including emotional distress) of \$2,500 within forty-five days after the Cook County Commission on Human Rights' final decision in this matter; that Respondent pay Mr. Moore his reasonable attorney's fees and duplicating costs incurred in pursuing the complaint before the Commission or at any stage of judicial review; and that between thirteen and fourteen months after the

Cook County Commission on Human Rights' final decision in this matter, Respondent file with the Commission a report as to the manner of compliance with the Commission's Order. A fine will not be assessed nor a report made to the Department of Professional Regulation.

Cook County Commission on Human Rights

By:   
David L. Lee, Hearing Officer  
November 23, 2013

Proof of Service: David L. Lee, an attorney and a Hearing Officer of the Cook County Commission on Human Rights, certifies that he served this Final Proposed Decision on November 23, 2013, by e-mailing a copy to Complainant's lawyers at ayoun@jmls.edu and dortiz@jmls.edu and to Respondent's lawyer at mlowe@eastlakemgmt.com.

  
David L. Lee

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