BEFORE THE IOWA CIVIL RIGHTS COMMISSION

DORENE POLTON, Complainant, and IOWA CIVIL RIGHTS COMMISSION,

VS.

FRANK ROMAN and JOHN ABELN, Respondents.

CP # 01-90-19507

COURSE OF PROCEEDINGS

This matter came before the Iowa Civil Rights Commission on the Complaint filed by Dorene Polton against the Respondents Frank Roman and John Abeln alleging discrimination on the basis of race in housing.

Ms. Polton alleges that the Respondents indicated blacks were not welcome as renters and subjected her to harassment because a black person, one Jack High, was a regular visitor to the apartment she rented from Mr. Roman.

A public hearing on this complaint was held on April 15, 1991 before the Honorable Donald W. Bohlken, Administrative Law Judge, at the Linn County Courthouse in Cedar Rapids, Iowa. The Iowa Civil Rights Commission was represented by Teresa Baustian, Assistant Attorney General. The Complainant and the Respondents were not represented by counsel.

The findings of fact and conclusions of law are incorporated in this contested case decision in accordance with Iowa Code § 17A.16(i) (1991). The findings of fact are required to be based solely on evidence in the record and on matters officially noticed in the record. Id at 17A.12(8). Each conclusion of law must be supported by legal authority or reasoned opinion. Id. at 17A.16(l).

The Iowa Civil Rights Act requires that the existence of housing discrimination be determined in light of the record as a whole. See Iowa Code § 601A.15(8) (1991). Therefore, all evidence in the record and matters officially noticed have been carefully reviewed. The use of supporting transcript and exhibit references should not be interpreted to mean that contrary evidence has been overlooked or ignored.

In considering witness credibility, the Administrative Law Judge has carefully scrutinized all testimony, the circumstances under which it was given, and the evidence bolstering or detracting from the believability of each witness. Due consideration has been given to the state of mind and demeanor of each witness while testifying, his or her opportunity to observe and accurately relate the matters discussed, the basis for any opinions given by the witness, whether the testimony has in any meaningful or significant way been supported or contradicted by other testimony or documentary evidence, any bias or prejudice of each witness toward the case, and the manner in which each witness will be affected by a particular decision in the case.

FINDINGS OF FACT

Jurisdictional and Procedural Facts:

1. The Complainant, Dorene Polton, filed her complaint CP # 01-90-19507 alleging race discrimination in housing, which is prohibited by Iowa Code section 601A.8, on December 29, 1989. The dates of alleged discrimination stated in the complaint are "on or about November 1989 and continuing." The first specific date mentioned in the complaint is November 20, 1989. Official Notice is taken that December 29, 1989 is thirty-nine days after November 20, 1989. Fairness to the parties does not require that they be given the opportunity to contest the facts noticed in Findings of Fact No. 1 and 2.

2. The complaint was amended on August 19,1990 to add Bernice Roman, Frank Roman's daughter, as a respondent. Official Notice is taken of the documents in the file which indicate that the Notice of Hearing sent by certified mail to Ms. Roman's former address was returned with markings on the envelope stating that she had been notified of the letter on two occasions, January 18th and 25th, 1991, but had not claimed the letter. Normally, this would be sufficient to show that Ms. Roman had constructive notice of the hearing. See Conclusions of Law Nos. 4-8. In this case, however, Ms. Roman credibly testified that the Postal Service had either failed to deliver or had otherwise mishandled her mail throughout the month of January 1991. She had moved in late December and did not receive notice of any certified mail. (Tr. at 27-29). Therefore, the case against Ms. Roman was dismissed without prejudice. (Tr. at 31).

3. This complaint was investigated. After probable cause was found, conciliation was attempted and failed. (Respondent's Exhibit A; Notice of Hearing). Notice of Hearing was issued on January 16, 1991. (Notice of Hearing).

Background:

4. Complainant Polton, a white female, occupied Apartment # 2 at 1852 "A" Avenue N.E. in Cedar Rapids, Iowa from on or about November 15, 1989 to on or about May 31, 1990. This apartment was rented to her for the use of her and her minor daughter, Brandy Polton, by Respondent Frank Roman, the owner. (Complaint; CP. EX. # 2, 7; Tr. at 36, 65, 71, 73, 76, 149). Throughout the entire period of her tenancy, the Building Manager was Respondent John Abeln. (Tr. at 154-55, 158).

5. Complainant Polton initiated the search which led to this apartment shortly after receiving notice from the City of Cedar Rapids Housing Authority that she could obtain housing assistance payments through the "leased housing" program. Ms. Polton's income at this time was through Aid to Dependent Children (ADC) payments. She had been on the waiting list for leased housing for four years. (CP. EX. # 2; Tr. at 66-67). She inspected the apartment on or about November 13,1989. (Tr. at 35). She moved in on or about November 15, 1989. (Tr. at 36, 71).

6. Respondent Frank Roman relied on Respondent Abeln and Bernice Roman to manage his properties for him. (Tr. at 150). Mr. Abeln was, therefore, an agent of Mr. Roman. Mr. Abeln's duties included, but were not limited to, taking applications for rentals and passing them on to

Ms. Roman, maintaining the apartments, collecting rent, and keeping the driveways cleaned. (Tr. at 158). He also dealt with complaints from tenants and issued warnings and eviction notices. (CP. EX. # 3, 4, 5, 6; Tr. at 167, 169). Mr. Abeln was building manager from approximately July of 1989 to November of 1990. (Tr. at 155, 158).

7. The building at 1852 "A" Avenue N.E. is a four plex. The two apartments on the bottom floor were occupied by John Abeln (Apt. # 1) and Dorene Polton (Apt. # 2). (Tr. at 37, 173). The other two apartments are on the second floor and are located directly above the bottom apartments. Entrance into the apartment is through a security door which was to remain locked. There was no buzzer or similar system which could be used to notify tenants that visitors had arrived. (Tr. at 37).

Racial Discrimination Alleged in the Complaint:

8. In addition to his statement indicating that blacks were unwelcome as renters, the complaint provides several specific examples of racial harassment alleged to have been committed by John Abeln against Complainant Polton. Evidence on other such instances was introduced during the hearing.

9. Instances of harassment alleged included:

a. Complainant Polton being informed by John Abeln, on November 30, 1989, that if Jack High or any other visitor were in her apartment after 10:00 p.m., "he would run them off with a 12-gauge shotgun." Complainant Polton was told, in effect, that she could not have visitors after 10:00 P.M.

b. On that same date, Complainant Polton's sister-in-law, Sonia Polton, was informed by John Abeln, that for Jack High (a black male who was Brandy Polton's boyfriend) to visit the apartment was a violation of the lease and that Mr. Abeln did not want him there.

c. Complainant Polton being informed that she would have to get permission from Abeln if she wished to have any overnight guest in her apartment.

d. On December 12, 1989, Bernice Roman, upon giving Mrs. Polton a written notice indicating she was not complying with the terms of her lease, verbally informed her that they were watching her, and if there were any guests in her apartment after 11:00 p.m., she would be subject to eviction.

10. Evidence was introduced on additional instances of alleged racial harassment:

a. John Abeln gave Complainant Polton a warning because Jack High and Brandy requested permission to, and did, use his phone to call police because of trouble at Jack High's apartment two blocks away.

b. Dorene and Brandy Polton were repeatedly blamed by John Abeln for excessive noise when they did not generate excessive noise.

c. Dorene and Brandy Polton were repeatedly blamed by John Abeln for failure to lock the security door when they had not failed to lock the door.

d. John Abeln objected to Sonia Polton parking in the space designated for Dorene Polton's apartment.

e. Laundry rules were changed to limit the hours during which Complainant Polton could do her laundry. On more than one occasion, her laundry was taken out of the washer or dryer and placed on top of the machine prior to the washing or drying being concluded.

The allegations specifically mentioned in the complaint will be discussed first.

Respondent Abeln's Statement Indicating Blacks Were Unwelcome as Tenants:

11. When Complainant Polton and Sonia Polton arrived to view apartment # 2 on November 13, 1989, Mr. Abeln was working on the upstairs apartments. He met them and introduced himself as the building manager. (Tr. at 34, 69). When they discussed leased housing, Abeln urged Complainant Polton to get the lease set up with the agency as soon as possible as there had been "niggers" living in the apartment prior to her, he did not want to rent to them, and there were some blacks looking at the apartment at that time. (Tr. at 35, 70).

Respondent Abeln's Statements and Actions Concerning Complainant Polton's Visitors and Guests:

Complainant Polton's Visitors and Guests:

12. Complainant Polton's visitors included her brother, her sister-in-law, Sonia Polton (a white female); a friend, Melvin Malone (a white male); and Jack High, the boyfriend of the Complainant's daughter, Brandy. (Tr. at 38, 41, 42, 121). Jack High was black. (Tr. at 72). His father, Edward High, who was also black, helped the Complainant move in and would also stop by when he was looking for Jack. (Tr. at 36, 42, 72).

13. The most frequent visitors to Complainant Polton's apartment were Sonia Polton and Jack High. They visited the apartment an approximately equal number of times during Complainant Polton's tenancy. (Tr. at 42). Sonia Polton would visit from 9:00 A.M. until noon or 1:00 p.m. and from 3:00 p.m. to 4:00 p.m. She would also stop by to take Complainant Polton shopping or to appointments or lunch, as the Complainant owned no car. She was usually not at Complainant Polton's in the evening. (Tr. at 78-79).

14. On a typical day, Jack High would drive Brandy to school in the morning. (Tr. at 77, 131). After sleep and other activities, he would return to the apartment later in the day and visit with Dorene Polton until 3:30 p.m., when he would go to school and take Brandy to her home. (Tr. at 122, 131-32). Five days a week, he would visit at the apartment until he would leave for work at Night Hawk Security which began at 1 0:00 p.m. or 11:00 p.m.. (Tr. at 76, 77, 130-31). After he

finished work at 5:00 a.m. or 6:00 a.m., he would go to the apartment to take Brandy to school at the appropriate time. (Tr. at 122, 131).

15. Melvin Malone, a white male friend of the Complainant's, would visit the complainant's apartment approximately three days a week. (Tr. at 41, 145, 147). At times, he would stay overnight, but would not stay three consecutive days. (Tr. at 41, 147-48).

Direct Evidence that Abeln's Statements and Actions Concerning Complainant Polton's Visitors Were Due to the Race of Jack High:

16. When Melvin Malone was visiting Dorene Polton, he met Respondent Abeln. (Tr. at 146). Abeln treated Malone well. (Tr. at 146-47). Malone, who drove 55 miles from Aurora to Cedar Rapids for regular medical treatments lasting from twenty minutes to one hour, informed Abeln that he was tired from the trip and the treatment and was going to take a nap. (Tr. at 146). Abeln replied, "You're welcome to stay here anytime you want to. I don't care if you stay here, you know, like once in a while, like if you're tired, but that nigger guy, I just can't stand them." (Tr. at 146). Mr. Malone's impression was that Abeln did not want to have black persons around. (Tr. at 147).

17. The construction of the apartment building is such that conversations near the back door, in the upstairs apartments, and in Abeln's apartment can sometimes be heard in the bedroom occupied by Brandy Polton. Conversations in Abeln's apartment could also be heard in the laundry. (CP. Ex 3; Tr. at 135,141-42). From these areas, Jack High overheard Respondent Abeln refer to him as "nigger"; to Brandy as a "nigger lover"; and to his (High's) father as a "pure fucking nigger," while Abeln was in his apartment or upstairs drinking and talking with the other tenants. (Tr. at 135). Respondent Roman was not aware of any of Respondent Abeln's statements concerning blacks. (Tr. at 151-52).

Respondent Abeln's Objections to Polton's Visitors:

18. on November 30, 1989, during the course of a discussion in which Respondent Abeln complained to Complainant Polton about guests being present after 10:00 p.m., Abeln stated that he was going to use a shotgun on anybody who came in the driveway after 10:00 p.m. (Tr. at 40, 79, 80). Complainant Polton explained that, if her mother came to visit, it would be after 10:00 p.m. She then asked whether Abeln's threat included her mother. He responded that, even if it were Complainant Polton's mother, he would take a 12 gauge shotgun to her. (Tr. at 80).

19. Respondent Abeln's threat to use a shotgun on Polton's mother left her in tears. (Tr. at 80). She walked to Sonia Polton's residence and informed her and an individual named Don (the father of Sonia Polton's children) about the shotgun threat. Sonia Polton and Don went back to Polton's apartment building in order to talk to John Abeln. (Tr. at 40, 80). When Sonia Polton asked Abeln whether there was a problem, he answered, "Well Jack can't be around here as much as he is." (Tr. at 40, 42).

20. Sonia Polton responded that, in accordance with the written rules posted in the building, Abeln could not dictate how long Jack High visited as long as he was quiet. (Tr. at 40). The rules

at one time had stated, "No guest after the time of 10:00 p.m." Abeln had scratched out the word "No" and altered the rule to "Guest after the time of 10:00 p.m. are required to be quiet. No loud talking are (sic) any noise permitted." (CP. EX. # 1; Tr. at 40. 43-44). Respondent Abeln's reaction to this argument was, "Well, whether it's Jack or it's any of Dorene's relatives, I'll use a 12 gauge." (Tr. at 40). Don responded to this threat by stating, "if you're going to pull a 12 gauge, you better use it because otherwise it's going up your behind." (Tr. at 41).

21. Respondent Abeln told Jack High that he was tired of seeing him there twenty-four hours a day and that he did not want to see High's father there. High was also aware of the shotgun threat and that it was linked, at least in part, to his visits to the Poltons. (Tr. at 126). One or two days after Abeln's shotgun threat, Jack High and Brandy Polton saw, through the window of Abeln's apartment, Abeln carrying a shotgun in his kitchen. (Tr. at 129).

22. There is no evidence in the record to support the allegation that Respondent Abeln told Complainant Polton that she would have to obtain his permission if she wished to have any overnight guests in her apartment.

23. In addition to the shotgun incident, Complainant Polton and others were repeatedly informed that Respondent Abeln objected to there being too many visitors in general and to the presence of Jack High in particular. (Tr. at 41, 77-78, 124). There is, however, no evidence in the record to support the allegation that Bernice Roman told Complainant Roman that she was being watched and would be subject to eviction if visitors were there past 11:00 p.m.

24. Respondent Abeln asserted that Jack High was living at the Poltons' apartment. He demanded that High, who had an apartment located two blocks away from the Poltons, provide proof that he was not living with the Poltons. (Tr. at 42, 78, 126). High did so by showing Abeln a rental receipt. (42, 126). Abeln also falsely told the City of Cedar Rapids Housing Authority that Jack High was living at the Poltons' apartment. It was necessary for Complainant Polton to assure the Housing Authority and Abeln that he was not. (Tr. at 78). Complainant Polton was informed by the Housing Authority that Abeln repeatedly telephoned their office asking how he could justify evicting her from the apartment and what section of the lease he could use for that purpose. (Tr. at 94).

25. Given Respondent Abeln's previously quoted statements reflecting (a) his reluctance to let blacks rent the apartment; (b) his prejudice against Jack High due to his race and against the Poltons for associating with him; and (c) his willingness to let a white guest (Malone) visit while contemporaneously noting his antagonism toward black visitors, it is clear that his concerns with the Poltons having too many visitors, with having Jack High as a visitor, and with threatening the use of a 12 gauge shotgun against visitors after 10:00 p.m. are racially motivated. See Findings of Fact Nos. 15-17.

Respondents' Warning About Calling Police to the Apartments:

26. On December 7,1989, Brandy Polton was visiting Jack High at his apartment. His neighbor, who was inebriated and carrying a knife, began making some inappropriate comments. Therefore, Mr. High and Brandy Polton fled High's apartment and ran to the apartments where

Brandy lived. (Tr. at 86,128). While there, they asked and received permission from Respondent Abeln to use his telephone to call the police so they could come to Complainant Polton's apartment and discuss the matter. (Jack High did not have a telephone at his apartment). (Tr. at 42, 86,128). The police did come to Complainant Polton's apartment and did discuss the matter. (Tr. at 87). The next day, Complainant Polton was verbally informed by Abeln that he did not give Jack High and Brandy Polton permission to call the police on his phone. Abeln's statement was false. She was warned that if the police were called again the lease would be terminated. (Tr. at 86-87, 129).

27. Complainant Polton also received a written warning, dated December 8, 1989 and signed by Respondent Abeln and Bernice Roman, which stated, in part:

> This notice is to inform you that you are not complying to your Lease in Section M of your Lease.
>
> Sec. M on Lease.
>
> ["]To conduct him/herself and cause other persons who are on the premises with his/ herself to conduct themself (sic) in a manner which will not interfere with nor diminish his/ her neighbors peaceful enjoyment of there (s;c) accommodations and which is conducive to maintaining the premises in a decent, safe, and sanitary condition.["]
>
> On December 7th 1989 Brandy Polton and her boy friend Jack had trouble elsewhere. They brought these troubles back to 1852 A Ave. N.E. They called police from this apt. instead of where trouble started. This disturbed other tenants & neighbors about their safety and well being.

(C P. EX. # 3; Tr. at- 83).

28. The Respondents' rationale for the issuance of this warning is that, when Brandy Polton and Jack High reported potential criminal activity two blocks away to the police and discussed this with the police at the Poltons' apartment, they thereby (1) "brought ... troubles back to 1852 A Ave. N.E.", (2) "disturbed other tenants about their safety and well being," and (3) failed to act "in a manner which will not interfere with ... his/her neighbors peaceful enjoyment of there (sic) accommodations and which is conducive to maintaining the premises in a ... safe ... condition." The Respondents' position could be summarized as asserting that when a tenant calls the police to the premises to discuss potential criminal activity at a nearby location, the tenant thereby threatens other tenants' safety or well-being. This explanation for the warning is so idiosyncratic, questionable, and absurd as to be unworthy of belief. Given Abeln's previously noted expressions of racial animus, and this incredible explanation, it is more likely than not that these verbal and written warnings to Complainant Polton were actually motivated by racial prejudice.

Respondents' Warnings About Complainant Polton and Visitors to Her Apartment Generating Too Much Noise:

29. Respondent Abeln repeatedly complained to Complainant Polton about noise which he stated was coming from her apartment. (Tr. at 81). He also issued written warnings about noise which included a notice that the lease was being terminated. (CP. EX. # 4, 5, 6; Tr. at 88, 89, 91, 124,167,169). Mrs. Abeln made reference to Jack High's race, i.e. "I thought you was a mulatto," during the course of a discussion, initiated by Respondent Abeln, about Jack High visiting too much and about too much noise. Respondent Abeln, Mrs. Abeln, Complainant Polton, and Jack High were present at this discussion. (Tr. at 124, 125).

30. Complainant Polton received a written warning, dated December 13, 1989, written by Respondent Abeln, which stated:

> December 13th 1989 to Dorene Polton. 11:08 p.m. at this date Brandy Malone Polton and Jack her boy friend disturbed my wife and I and tenenants (sic) at 1852 A Ave. N.E. by slamming doors at that time of night. House Rules states all tenants and guest will be quite (sic) at 10:00 p.m. Again violations of Section M have been violiated (sic) of section M under lease code. Also Section D of lease code M. Quote (']to use the premises solely as a r)rivaty (sic) dwelling for lessee and lessee's (sic) as specified, and not to use or permit its use for any other purpose.[']
>
> 2nd Notice within 10 days. Lessee can't control her daughter.
> Manager
> John Abeln

(CP. EX. # 4; Tr. at 88) (emphasis added).

31. Paragraph 7 of the lease provides:

> The Lessee agrees not to use or permit the use of the dwelling unit for any purpose other than as a private dwelling solely for Lessee and his/her family and/or dependents. This provision does not exclude reasonable accommodation of Lessee's guests or visitors whose visit is less than fifteen (15) days provided Lessor is provided written notice for such visits.

(CP. EX. # 2). Reference to the first sentence of this section of the lease was made by Respondent Roman in his testimony in attempting to explain the Respondents' concern with Jack High and others who visited the Poltons. (Tr. at 150).

32. In light of this written warning's reference to this lease provision, it is clear that the warning not only addresses the alleged noise problems, but again reflects Respondent Abeln's concern with visitors, and particularly with Jack High. (CP. EX. # 4). This is a concern which has already been found to be racially motivated. See Finding of Fact No. 25. The warning also makes reference to the December 8th warning ("2nd notice within 6 days.") which has already been found to be racially motivated. See Finding of Fact No. 28.

33. The warning, in effect, links the noise concern with Respondent Abeln's racial prejudice against Jack High and his presence as a visitor to the Poltons. High is specifically mentioned, along with Brandy Polton, as one of those involved in the alleged door slamming. The warning also identifies Jack High as Brandy Polton's boyfriend and concludes, "Lessee can't control her daughter." (CP. EX. # 4). I n light of Abeln's characterization of Brandy Polton as a "nigger lover," it is more likely than not that the reference to "control" expresses not only Respondent Abeln's surface concern with door slamming but also his underlying racially motivated opposition to Jack High's visits to Dorene and Brandy Polton. See Finding of Fact No. 17.

34. A written notice given to Complainant Polton, dated December 28, 1989 and signed by Respondent Abeln and Bernice Roman, indicated that the lease was being terminated effective February 1, 1990. The Notice states in part:

> You as Lessee have violated your lease on numerous occasions.
>
> #1 Section 1 1-M ["]To conduct him/herself and cause other persons who are on the premises with his/her consent to conduct themself (sic) in a manner which will not interfere with nor diminish his/her neighbor's peaceful enjoyment of their accommodations and which is conducive to maintaining the premises in a decent safe, and sanitary condition.["]
>
> #2 Section 14-E ["]A Lessee (Tenant family) history of disturbance of neighbors.["] Other tenants have informed me they will not tolerate this anymore.

(Cp. EX. # 5).

35. When this notice of the termination of the lease was given to Complainant Polton, she was verbally informed by Bernice Roman that her lease was being terminated because of too much noise, not obeying the rules, and too much company. (Tr. at 89, 91). There is no evidence in the record of any specific instances of any of these alleged violations being given as reasons for this notice.

36. On January 1, 1990, the last written warning was given to Complainant Polton. This warning, also authored by Respondent Abeln, states, in part:

> Again you violated your lease section M. At 1:40 A.M. I was disturbed from sleep by security door opening & closing by guest. at apt. 2 1852 A. Ave. N.E. Again the same night at around 2:30 a.m. I was disturbed of sleep by security door opening & closing. I got out of bed looked out of my window and you were getting into Century Cab # 13.... You again and still are violating apt. rules. This is harassment to me my wife & other tennants (sic) in this building.

(CP. EX. # 6). The portion of the warning dealing with noise is based, as it states, solely on the sound of the security door opening and closing on two occasions on the morning following New Years' Eve. No other sounds are mentioned. (CP. EX. # 6).

37. Complainant Polton did not open and close the security door in order to harass Respondent Abeln and his wife. Rather, she went to a Bingo Club that night and returned at approximately 2:15 a.m. She then left by cab at approximately 2:30 a.m. in response to a call indicating her father was ill and requesting her to deliver his paper route. (Tr. at 50). Respondent Abeln could have heard the security door opening and closing because of the close proximity of his bed to his apartment door, which is only six feet from the security door. (Tr. at 50).

38. Official notice is taken of the fact that New Year's Eve is a holiday which by custom is celebrated until the early morning hours. Fairness to the parties does not require that they be given the opportunity to contest this fact.

39. Given the reference to "a guest at apt. 2" opening and closing the security door at 1:40 a.m., it is reasonable to infer that this warning is, in part, due to the same racially based concern about visitors to the Poltons' apartment which resulted in other warnings.

40. Also, a warning based, in part, on the sound generated by the mere opening and closing of a door on two occasions, during the morning of a holiday which is traditionally celebrated until the wee hours, is so patently absurd that it is difficult to believe the noise generated reflects the true motive for the warning. Given the previously noted statements of Respondent Abeln, his hostility toward the Poltons because of their having Jack High as a guest in their home is the most likely motive for this warning.

41. The conclusion that these warnings concerning noise were motivated by racial animus is reinforced in light of the Poltons' actual conduct and of the response made to the Poltons' complaints about noise from other tenants. The Poltons were not noisy tenants. (Tr. at 102). When Jack High was not visiting, Complainant Polton and Brandy Polton were usually in bed by 10:00 p.m. (Tr. at 81). In any event, Complainant Polton was often in bed by 11:00 p.m. (Tr. at 91). At other times, Complainant Polton might be out playing bingo. On these occasions, Brandy Polton and Jack, High would also be gone. (Tr. at 102). When Brandy Polton and Jack High were there, they were directed by Complainant Polton to keep the television and radio down. (Tr. at 115). Complainant Polton, Brandy Polton, and Jack High did nothing to generate excessive noise. (Tr. at 125).

42. Complainant Polton informed Respondent Abeln and Bernice Roman that the noise was not coming from her apartment. (Tr. at 91). The noise came from other tenants and their visitors. Starting about 10:00 p.m., the upstairs tenants in Apartment # 4 would play their radios and stereos at full volume. (Tr. at 100, 115,125). They would stomp up and down the stairs and slam doors. (Tr. at 117, 125). The upstairs tenants would come home drunk and then drink and talk with Respondent Abeln. (Tr. at 125). It was not unusual for visitors to the upstairs apartments to pound on the door until Complainant Polton got tired of hearing it and answered the door. (Tr. at 39). At one time, a large man, who had apparently been drinking, came in at night. He began yelling for his friend and stomped upstairs. He then turned on the music and yelled for more friends. (Tr. at 117). Such events occurred throughout the week and during the weekend. (Tr. at 116-17).

43. Complainant Polton complained at least two times to Respondent Abeln about noise from the tenants upstairs. On one occasion, Abeln said he would go upstairs. (Tr. at 117). On another occasion, however, Complainant Polton complained to Abeln about a noise, made by the upstairs tenants, which was similar to the sound made by someone jumping on the floor. The noise woke Brandy Polton, who had been sleeping in her bedroom immediately below the sound. (Tr. at 115). When Abeln went upstairs and told the tenants about Polton's noise complaint, they started calling Complainant Polton names. Abeln responded by expressing his agreement with the epithets directed against Polton. (Tr. at 116).

44. This last incident may be the one mentioned in the written warning given to Complainant Polton on December 8, 1989, which concludes:

> Tenant Dorine (sic) apt. 2 complains of tenants running water and walking to (sic) hard above her. This was 9:P.M. 11/29/89. This is normal and building is not sound proof. This complaint was against tenants in apt. # 4 above her at 1852 A Ave. N.E.

(CP. EX. # 3).

Respondents' Warnings to Complainant Polton About Leaving the Security Door Unlocked:

45. Respondent Abeln repeatedly accused Complainant Polton and Jack High of leaving the security doors unlocked although he admittedly did not know who left them unlocked. (Tr. at 49, 127, 168). In fact, children of the upstairs tenants, in apartment # 3, and not Complainant Polton or Jack High, were usually to blame for leaving the door unlocked. (Tr. at 49, 163). The one exception reflected in the record may be the alleged failure of Complainant Polton to lock the security door on New Year's Eve which is mentioned in the January 1, 1990 warning, which states in part:

> I got out of bed looked out of my window and you were getting into cab # 13. 1 dressed and opened the door to my apt. # 1. I found security door unlocked after you left.

(CP. EX. # 6).

46. This failure to lock the door, if it occurred, may be explained by Complainant Polton's hurry to respond to her father's call and deliver his paper route. The failure would be inadvertent and not the attempt to engage in "harassment to me, my wife & other tenants in this building" which is stated in Abeln's warning of January lst. (CP. EX. # 6; Tr. at 50, 57).

47. In any event, this one instance does not explain Respondent Abeln's ready willingness to believe that the Poltons and Jack High were to blame for the unlocked security doors in those instances when he had no reason to assign the blame to them. His explanation that the security doors were found unlocked on weekends when the upstairs tenants were usually gone is simply not believable in light of more credible evidence indicating that the upstairs tenants were not only present on weekends, but were generating substantial amounts of noise at that time. See

Finding of Fact No. 42. In light of these circumstances, and Abeln's previously quoted expressions of racial animus towards Jack High, it is more likely than not that many, if not all, of the criticisms of Complainant Polton and Jack High concerning unlocked security doors were racially motivated.

Respondent Abeln's Objections to Sonia Polton Parking in the Space Designated for Complainant Polton's Apartment.

48. Complainant Polton had no car. (Tr. at 46). Therefore, she would often rely on Sonia Polton to drive her places. (Tr. at 34, 36). Sonia Polton would park in the parking space designated for the Complainant's apartment. Respondent Abeln objected to her parking there as the parking spaces were not to be used by anyone not actually living at the apartments. At one time, he threatened to tow her car away. (Tr. at 46-47).

49. The apartment rules state:

> 5. Only cars belonging to tenants or management are allowed in the parking lot. Violators will be towed away immediately at the violators own expense.

(CP. EX. # 1).

50. Sonia Polton attempted to draw a comparison between her treatment and the treatment of persons living at another apartment building next door, where tenants parked in the driveway without being towed away. (Tr. at 47). That apartment building, however, was not owned by Respondent Roman. (Tr. at 15253).

51. Jack High parked at the Complainant's building and encountered no problems. (Tr. at 130).

52. The complainant has failed to establish that Respondent Abeln's objection to Sonia Polton's parking in the space reserved for Complainant Polton's apartment was racially motivated. Given the parking rules, the treatment of Jack High, and the absence of evidence linking this treatment of Sonia Polton to Abeln's opposition to Jack High's visits to the Poltons, it must be concluded that these actions toward the Poltons were not based on race.

Respondent Abeln's Change of Laundry Rules:

53. Complainant Polton inadvertently left her clothes in the washer of the apartment laundry, which consists of one dryer and one washer, for an entire day due to an emergency. (Tr. at 54, 81). Because of this incident, Respondent Abeln informed her that he would have to change the laundry rules. (Tr. at 110). A few days later, there appeared a sign in the laundry indicating that persons who were not employed during the day would be expected to do their laundry between 9:00 a.m. and 5:00 p.m. (Tr. at 48, 81). This rule was established in order to ensure that everybody had a fair opportunity to use the washer and dryer. (Tr. at 54, 163).

54. At times, Complainant Polton's laundry was taken out of the washer or dryer and left, soaking wet, on top of one of the two machines. (Tr. at 48, 56, 81-83). There were no witnesses

who saw who did this. Complainant Polton testified that she thought it was someone from upstairs who did this. (Tr. at 82). Respondent Abeln lived downstairs. (Tr. at 37).

55. Under these facts and circumstances, Complainant Polton has not shown that the change in laundry rules, or the removal of her laundry from her machines, was based on Abeln's racial prejudice against Jack High or against the Poltons for having him as a visitor.

Summary of Findings on Alleged Actions of Racial Harassment:

56. The greater weight of the evidence supported findings that Respondent Abeln's threat to run off persons visiting Complainant Polton after 10:00 p.m. with a shotgun, his complaints and warnings about the visits of Jack High and about there being too many visitors, the Respondents' verbal and written warnings of December 8, 1989 about calling the police to the apartment, Respondents' complaints about excessive noise (including the warning about slamming doors of December 13, 1989, the notice of termination of lease of December 28, 1989, and the warning about opening and closing security doors of January 1, 1990), and the Respondents' complaints about failing to lock security doors were all motivated by Respondent Abeln's racially based opposition to the visits that Jack High made to the Poltons.

57. The greater weight of the evidence did not support the allegations that Complainant Polton was informed she would have to get Abeln's permission if she wished to have an overnight guest, that Bernice Roman told Complainant Polton on December 12, 1989 that she was being watched and would be evicted if there were any visitors after 11:00 p.m., that Respondent Abeln's objection to Sonia Polton's parking in the space assigned to Apartment # 2 was racially motivated, and that the laundry rule changes and handling of her laundry were racially motivated acts of Respondent Abeln.

Constructive Eviction:

58. As previously noted, Respondents attempted to evict Complainant Polton from the apartment. See Findings of Fact Nos. 34-35. When a hearing was held on the eviction, the court ruled in favor.of Complainant Polton. (Tr. at 95). The strain from the shotgun threat and other racial harassment was so great on Complainant Polton, however, that she gave her own notice to Respondents that she was quitting the apartment effective May 30,1990. Complainant Polton was subjected to conditions that were so difficult and unpleasant that a reasonable person would feel compelled to vacate the premises. (CP. EX. # 7; Tr. at 91, 95, 1 00).

Credibility Findings:

59. Complainant Polton's demeanor, the internal consistency of her testimony, and the congruence of her testimony with the greater weight of the credible evidence demonstrates that she is a credible witness.

60. When their testimony is examined in the light of these factors, Sonia Polton, Melvin Malone, and Jack High are also found to be credible witnesses. Melvin Malone's testimony concerning racially derogatory statements made by John Abeln was especially credible because he had no

conflicts with John Abeln, had been well treated by him, and considered him to be a "nice guy." (Tr. at 146-47).

61. Frank Roman was essentially a credible witness. In evaluating his testimony, however, it must be borne in mind that he often did not have direct knowledge of the facts and had to rely on John Abeln's reports of difficulties with the Romans.

62. John Abeln was not a credible witness. His testimony was often in conflict with that of Dorene Polton, Sonia Polton, Jack High and Melvin Malone, which constituted the greater weight of the credible evidence. For example, Abeln denied making racial remarks to Dorene Polton, although both Dorene and Sonia Polton testified that he referred to former black tenants as "niggers." (Tr. at 35, 70, 159) The conclusion that he did make such remarks to them is supported by evidence indicating that he made similar or worse remarks which were overheard by Jack High and made directly to Melvin Malone. (Tr. at 135, 146).

63. Also, Abeln's memory of the discussions concerning his threat to use a 12 gauge shotgun to scare off visitors after 10:00 p.m. is not as clear as that of other witnesses. (Tr. at 160-61). Also, some of the reasons offered for his actions against the Poltons are so absurd as to be unworthy of credence. See Findings of Fact Nos. 28, 40.

Damages for Increased Rental and Other Costs:

64. Under paragraphs 2 and 14(c) and (h) of the lease with the Romans, rent on Complainant Polton's apartment could not be increased until December 1, 1990. Under paragraph 3(b) of this Assisted Lease Agreement, the portion of the rent paid by Complainant Polton was $55.00 per month. Complainant Polton also paid gas and electric utilities. (CP. EX. # 2).

65. When Complainant Polton left the Respondents' apartments, she was unable to find subsidized housing and had to rent housing for approximately four months at the cost of $495.00 per month. (Tr. at 98, 99). Part of this sum was loaned to her by her brother-in-law. (Tr. at 98). Utilities were not included in the rent. (Tr. at 99).

66. At the end of this four month period, she was able to find leased housing. Her portion of the rent is $96.00 per month, which includes utilities. (Tr. at 99). Given that she separately paid gas and electric utilities at the Respondents' apartments, this is probably equivalent to the total rent and utilities she paid there. Therefore, her compensation for increased rental costs should be limited to compensation for the four month period during which her rent was $495.00 per month.

67. Complainant Polton's increased rental costs, therefore, are: ($495.00 per month - $55.00 per month) X 4 months = $1760.00.

68. Complainant Polton also sought an additional one thousand dollars ($1,000.00) for additional expenses associated with moving from the Respondent's apartments, i.e. utility deposits, security deposits with her new landlord, first and last month's rent, and U-Haul rent. (Tr. at 99- 100). However, the first and last month's rent are already accounted for above, and the security deposits and utility deposits would usually be returned. There is, in any event, no evidence in the

record showing the specific cost of the utility and security deposits, the cleaning supplies, or the U-Haul rent. Under these circumstances, no damages for additional expenses should be awarded.

Damages for Emotional Distress:

69. The discrimination inflicted on Complainant Polton caused her severe emotional distress. Respondent Abeln's threat to use a 12 gauge shotgun on her mother or other visitors left her in tears. She worried about this threat. (Tr. at 53, 80). She never knew whether the threat was a real or idle one. At times, Complainant Polton became hysterical about this and would come to Sonia Polton's house where Sonia would try to calm her down. (Tr. at 53).

70. The complaints and warnings and other acts of discrimination against Complainant Polton by or on behalf of the Respondents often left her in tears from the strain. (Tr. at 80, 91, 95). She was constantly upset and could not sleep at night without taking medication. (Tr. at 91). The strain became so bad that she was forced to leave her apartment. (Tr. at 95). Even after she notified Respondents of her intention to leave, she was pressured by them to leave as soon as possible. (Tr. at 98). She still has nightmares about her experiences there. (Tr. at 1 00).

71. As set forth above, Complainant Polton suffered substantial economic loss from Respondents' discriminatory conduct in the form of increased rental payments. See Findings of Fact Nos. 64-68. She still has not been able to pay off her brother-in-law's loan of rent money. (Tr. at 100).

72. In light of the severity and duration of the emotional distress sustained by Complainant Polton, due to the racial harassment and the constructive eviction from her apartment, an award of ten thousand dollars ($10,000) would be full, reasonable, and appropriate compensation.

CONCLUSIONS OF LAW

Jurisdiction:

1. Dorene Polton's complaint was timely filed within one hundred eighty days of the alleged discriminatory practice. Iowa Code § 601A.15(11) (1989). See Finding of Fact No. 1. All the statutory prequisites for hearing have been met with regard to Respondents Frank Roman and John Abeln, i.e. investigation, finding of probable cause, attempted conciliation, and issuance of Notice of Hearing. Iowa Code § 601A.15 (1989). See Finding of Fact No. 3.

2. Ms. Polton's complaint is also within the subject matter jurisdiction of the Commission as the allegations that the Respondents Frank Roman and John Abeln (a) indicated that blacks were unwelcome as tenants and (b) racially harassed, issued warnings, attempted to evict, and constructively evicted Complainant Polton fall within the statutory prohibition against unfair housing practices. Iowa Code § 601A.8 (1989).

3.

> It shall be a..... discriminatory practice for any owner or person acting for an owner, of rights to housing..... including but not limited to . . . agents:
>
> ...
>
> 3. To directly or. indirectly advertise or in any other manner indicate that the rental.
> . . of any housing accommodation by persons of any particular race is unwelcome, objectionable, not acceptable, or not solicited.
>
> 4. To discriminate against the lessee ... of any housing accommodation because of the race of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee as friends, guests, visitors, relatives or in any similar capacity.

Id.

Failure to Provide Notice of Hearing to Bernice Roman:

4. Iowa Code section 17A.12 provides in part:

> (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested..... Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

Iowa Code § 17A.12(i) (1989)(emphasis added).

5. As noted in the findings of fact, the Notice of Hearing was issued on January 16, 1991 and mailed to Bernice Roman by certified mail. The notice of hearing and envelope were returned with markings indicating that the postal service had notified her on two occasions of the certified mail. See Finding of Fact No. 2. These written notices would have been mandated by federal regulation. Domestic Mail Manual Issue 38 (2-24-91) §§ 912.51-.52.

6. As quoted above, the Iowa Administrative Procedures Act requires "delivery" of the Notice of Hearing by certified mail. Iowa Code § 17A.12(l). "Delivery," however, is a word which has acquired a peculiar and appropriate meaning in the law and this meaning controls when determining the legal effect of the statutory requirement for delivery. Iowa Code § 4.1(2). "Delivery" is "the act by which the [thing] or substance thereof is placed within the actual or constructive possession of another." BLACK'S LAW DICTIONARY 385-86 (5th ed. 1979) (emphasis added). "A constructive delivery of [a thing] takes place when [it] is set apart and notice given to the person to whom [it is] to be delivered." Id.

7. The concept of "constructive notice" yields a similar result. "Constructive notice is a legal fiction. . . . It is the law's substitute for actual notice. . . . It is based on the premise that a person

has no right to shut his eyes or ears to avoid information and then say he had no notice." 58 AM. JUR. 2D Notice § 8 (1989). "[C]onstructive notice [is] chargeable to one who willfully avoids actual notice by refusing to accept [or deliberately ignoring] a notice by certified mail, return receipt requested." Id. at § 33.

8. If the greater weight of the evidence had shown that Bernice Roman had received either of these written notices, the Commission would have effected a constructive delivery of the Notice of Hearing and also given her constructive notice of the hearing. The evidence did not demonstrate this and therefore the case against Ms. Roman was dismissed without prejudice. See Finding of Fact No. 2.

Notice of New Issues Raised at Hearing:

9. As noted in the Findings of Fact, there were several issues that were tried although not specifically mentioned in the complaint. See Finding of Fact No. 10. Although these issues were not mentioned in the complaint, sufficient notice on these issues, all of which were closely related to allegations set forth in the complaint, was given when evidence on them was introduced at the hearing:

> [T]he individual is given actual notice of the new issues when evidence on them is introduced at the hearing. "Actuality of notice there must be, but the actuality, not the technicality, must govern."
>
> ...
>
> If [the individual]-does not request [a continuance to meet the new issues] and elects instead to proceed with the hearing, he waives the claim of surprise. He may not subsequently challenge issues actually litigated; actual notice and adequate opportunity to cure surprise (by requesting a continuance] are all he is entitled to.

B. Schwartz, Administrative Law 285-86 § 6.5 (1984).

Official Notice:

10. Official notice may be taken of all facts of which judicial notice may be taken and of matters within the specialized knowledge of the agency. Iowa Code § 17A.14(4). Judicial notice may be taken of matters which are "common knowledge or capable of certain verification." In Re Tresnak, 297 N.W.2d 109,112 (Iowa 1980). Official notice of documents reflecting mailing of the notice of hearing is proper because judicial notice may be taken of "all the ... jurisdictional papers in a case on trial and the same need not be introduced in evidence." Searls v. Knapp, 5 S.D. 325, 327, 58 N.W. 807, 808 (1894)(taking judicial notice of summons and pleading), quoted in In Re Williams Estate, 90 S.D. 173,240 N.W.2d 74,76 (S.D. 1976); see Slater v. Roche, 148 Iowa 413, 126 N.W. 121 (1910)(taking judicial notice of writ of attachment and return of service as papers properly filed or returned). See Findings of Fact Nos. 1, 2, 38.

Order and Allocation of Proof in Housing Discrimination Cases Under the Disparate Treatment Theory:

11. The same orders and allocations of proof utilized in disparate treatment employment discrimination cases are also utilized in housing discrimination cases under the disparate treatment theory. R. Schwemm, Housing Discrimination.Law 405 (1983); Pinchback v. Armistead Homes Corp., Fair Hous. Fair Lend. (Looseleaf) § 15638 at p. 16273- 74 (4th Cir. 1990). Disparate treatment theory focuses on whether the Complainant has been "intentionally singled out for adverse treatment on the basis of a prohibited criterion.".Henson v. City of Dundee, 682 F.2d at 903.

12. Disparate treatment is shown when:

> The employer [or landlord in housing cases] . . . treats some people less favorably than others because of their race [or the race of those they associate with]. Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment.

Teamsters v. United States, 431 U.S. 324, 335-36 n.15 (1977).

Order and Allocation of Proof Where Complainant Relies on Direct Evidence of Discrimination:

13. "Direct evidence" is that "evidence, which if believed, proves existence of [the] fact in issue without inference or presumption." It is "that means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact, and is distinguished from circumstantial evidence, which is often called "indirect". BLACK'S LAW DICTIONARY 413-14 (1979).

14. Direct evidence that a protected class status, such as race, is a motivating factor in housing policies and practices concerning tenants or guests of tenants and actions of those persons would include comments by decision makers expressing either a preference for or an aversion to tenants or their guests who are members of a particular protected class. C.f. Buckley v. Hospital Corporation of America, 758 F.2d 1525, 1530 (llth Cir. 1985)(supervisor's statements of surprise-at longevity of staff members, of need for "new blood," of intent to recruit younger employees, and comment on plaintiff's "advanced age" causing stress was direct evidence of age discriminatory intent in discharge); Miles v. M.N.C. Corp., 750 F.2d 867, 36 Fair Empl. Prac. Cas. 1289, 1294-96 (llth Cir. 1985)(hiring official's statement that he had no black employees because they "weren't worth a sh-" was direct evidence of discrimination in failure to recall from layoff); Jackson v. Wakula Springs & Lodge, 33 Fair Empl. Prac. Cas. 1301, 1307 (N.D. Fla. 1983)(use of racial slurs by individual responsible for discharge is direct evidence of racial animus in termination); Schlei & Grossman, Employment Discrimination Law: Five Year Cumulative Supplement 477-78 2nd ed. 1989)(Either policies which on their face call for consideration of a prohibited factor or statements by relevant managers reflecting bias constitute direct evidence of discrimination).

15. The proper analytical approach in a case with direct evidence of discrimination is, first, to note the presence of such evidence; second, to make the finding, if the evidence is sufficiently probative, that the challenged practice discriminates against the Complainant because of the prohibited basis; third, to consider any affirmative defenses of the Respondent; and,fourth, to then conclude whether or not i I legal discrimination has occurred. See Trans World Airlines v. Thurston, 469 U.S. 111, 121-22, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533, 535 (1985)(Age Discrimination in Employment Act). With the presence of such direct evidence, the analytical framework, involving shifting burdens of production, which was originally set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 207 (1973), and subsequently adopted by the Iowa Supreme Court, e.g. Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 296 (Iowa 1982); Consolidated Freightways v. Cedar Rapids Civil Rights Commission, 366 N.W.2d 522,530 (Iowa 1985), is inapplicable. Landals v. Rolfes Co., 454 N.W.2d 891, 893-94 (Iowa 1990); Price-Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268, 301 (1989) (O'Connor, J.concurring); Trans World Airlines v. Thurston, 469 U.S. 11 1, 121, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533 (1985); Pinchback v. Armistead Homes Corp., Fair Hous. Fair Lend. (Looseleaf) § 15638 at p. 16274-75 (4th Cir. 1990)(housing discrimination case).

16. The reason why the McDonnell Douglas order and allocation of proof is not applicable where there is direct evidence of-discrimination, and why the Respondent's defenses are then treated as affirmative defenses, i.e. the Respondent has a burden of persuasion and not just of production, is because:

> [T]he entire purpose of the McDonnell Douglas prima facie case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by. That the (Respondent's] burden in rebutting such an inferential case of discrimination is only one of production does not mean that the scales should be weighted in the same manner where there is direct evidence of intentional discrimination.

Price-Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268, 301 (1989)(O'Connor, J. concurring). *See also* Landals v. Rolfes Co., 454 N.W.2d 891, 893-94 (Iowa 1990).

Violation of Iowa Code § 601A.8(3)[Indication that Owner or His Agent Objected to Rental of Housing Accommodation By Blacks]:

17. In this case, there is direct evidence in the record that the Respondent Abeln, while "acting for" Respondent Roman, Vindicated .. that the ... rental. . . of any ... housing accommodation ... by persons of [a] particular race [i.e. blacks] [was] unwelcome, objectionable, not acceptable, or not solicited." Iowa Code § 601A.8(3). See Findings of Fact Nos. 6, 11. The inquiry, however, does not end there, for the affirmative defenses of the Respondent must be examined. Trans World Airlines v. Thurston, 469 U.S. 111, 121, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533 (1985).

18. The only defense offered by Respondents (other than a denial of the statements which was found to not be credible) is that Abeln's speech is protected by the First Amendment to the Constitution of the United States. (Respondent Roman's Letter In Lieu of a Brief Received on June 28, 1991) (hereinafter "Respondent's Letter"). See Finding of Fact No. 62. Since Iowa Code section 601A.8(3) does prohibit Abeln's speech indicating that he did not wish to rent to blacks, this defense amounts to an argument that this section is unconstitutional. Since no administrative agency has the legal authority to rule on the constitutionality of its enabling statute, the Commission must decline to rule on this issue. Salsbury Laboratories v. Iowa Department of Environmental Quality, 276 N.W.2d 830, 836 (Iowa 1979). Violation of Iowa Code section 601A.8(3) has, therefore, been established. Cf. United States v. L & H Land Corp., Inc., 407 F. Supp. 576, 579-80 (S.D. Fla. 1976)(Statements to effect that black persons not allowed at apartments indicates violation of Federal fair housing laws).

Violation of Iowa Code Section 601A.8(4)(Housing Discrimination on the Basis of the Race of a Guest or Visitor) as Shown by Direct Evidence.

19. As noted in the Findings of Fact, there was direct evidence in the record indicating Respondent Abeln's hostility to blacks as tenants in general, and toward Jack High and, to a lesser extent, his father, as black guests of the Poltons. See Findings of Fact Nos. 11, 16-17. This hostility manifested itself in the forms of a threat of physical violence, complaints, and warnings concerning too many visitors; complaints and warnings concerning too much noise, calling the police, and unlocked security doors; an eviction notice, and, ultimately, Complainant's constructive eviction from the apartment. See Findings of Fact Nos. 25, 28, 33, 40-41, 47, 56, 58.

20. The Respondents failed to meet their burden of persuasion with respect to any of the defenses proffered for these actions. In this instance, their First Amendment defense seems to be directed not at the constitutionality of the statute per se, but at the use of Respondent Abeln's statements as evidence of discriminatory intent. The Commission, therefore, has the power to rule on this issue. Despite First Amendment concerns, "there is little doubt that a racial statement may at least be used as evidence of the Defendant's motive in [housing discrimination cases]." R. Schwemm, ' Housing Discrimination Law 418 (1983). "Resort to epithets or personal abuse . . . is not in any proper sense communication of information or opinion safeguarded by the Constitution." In Re Welfare of R.A.V., 464 N.W.2d 507, 511 (Minn. 1991)(quoting Cantwell v. Connecticut, 310 U.S. 296, 309-10 (1940)).

21. Furthermore, acts of housing discrimination may be compared to acts of invidious discrimination in public accommodations which, "like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact are entitled to no constitutional protection." Roberts v. United States Jacyees, 468 U.S. 609, 628, 82 L. Ed. 2d 462,478,104 S.Ct. 3244 (1984). Cf. Hishon v. King & Spalding, 467 U.S. 69, 78, 81 L. Ed. 2d 59, 68-69, 104 S. Ct. 2229 (1984)("[i]nvidious private discrimination [in employment] may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections.").

22. All of these acts were in violation of the Act's prohibition against "any owner or person acting for an owner to discriminate against the lessee . . . because of the race of persons who may . . . be present in or on the lessee's premises . . . as friends, guests, visitors Iowa Code § 601A.8(4).

Ruling in the Alternative: Showing of Iowa Code Section 601A.8(4) Violation Under Order and Allocation of Proof Where Complainant Relies on Circumstantial Evidence of Discrimination:

23. The "burden of persuasion" in any proceeding is on the party which has the burden of persuading the finder of fact that the elements of his case have been proven. BLACK'S LAW DICTIONARY 178 (5th ed. 1979). The burden of proof in this proceeding was on the Complainant to persuade the finder of fact that the elements of each allegation of discrimination and retaliation have been proven. Linn Co-operative Oil Company v. Mary Quigley, 305 N.W.2d 728,733 (Iowa 1981). Of course, in discrimination cases, as in all civil cases, the burden of persuasion is "measured by the test of preponderance of the evidence," Iowa R. App. Pro. 14(f)(6).

24. The burden of persuasion must be distinguished from what is known as "the burden of production" or the "burden of going forward." The burden of production refers to the obligation of a party to introduce evidence sufficient to avoid a ruling against him or her on an issue. BLACK'S LAW DICTIONARY 178 (5th ed. 1979).

25. In the typical discrimination case, in which the Complainant uses circumstantial evidence to prove disparate treatment on a prohibited basis, the burdens of production, but not of persuasion, shifts. Iowa Civil Rights Commission v. Woodbury County Community Action Agency, 304 N.W.2d 443, 448 (Iowa Ct. App. 1981). These shifting burdens of production "are *designed to assure that the [Complainant has] his day in court* despite the unavailability of direct evidence. " Trans World Airlines v. Thurston, 469 U.S. 111, 121, 105 S. Ct. 613, 83 L. Ed. 2d 523, 533 (1985)(emphasis added).

26. The Complainant has the initial burden of proving a prima facie case of discrimination by a preponderance of the evidence. Trobaugh v. Hy-Vee Food Stores Inc., 392 N.W.2d 154, 156 (Iowa 1986). This showing is not the equivalent of an ultimate factual finding of discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 579 (1978). Once a prima facie case is established, a presumption of discrimination arises. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154, .156 (Iowa 1986); Pinchback v. Armistead Homes Corp., Fair Hous. Fair Lend. (Looseleaf) § 15638 at p. 16274 (4th Cir. 1990).

27. The burden of production then shifts to the Respondent, i.e. the Respondent is required to produce evidence that shows a legitimate, nondiscriminatory reason for its action. Id.; Linn Cooperative Oil Company v. Quigley, 305 N.W.2d 728, 733 (Iowa 1981); Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175, 178 (Iowa Ct. App. 1988). If the Respondent does nothing in the face of the presumption of discrimination which arises from the establishment of a prima facie case, judgment must be entered for Complainant as no issue of fact remains. Hamilton v. First Baptist Elderly Housing Foundation, 436 N.W.2d 336, 338 (Iowa 1989). If Respondent does produce evidence of a legitimate non-discriminatory reason for its actions, the. presumption

of discrimination drops from the case. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154,156 (Iowa 1986).

28. Once the Respondent has produced evidence in support of such reasons, the burden of production then shifts back to the Complainant to show that the reasons given are pretextual. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154, 157 (Iowa 1986); Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175,178 (Iowa Ct. App. 1988). Pretext may be shown by "persuading the [finder of fact] that a discriminatory reason more likely motivated the [Respondent] or indirectly by showing that the [Respondent's] proffered explanation is unworthy of credence." Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175,178 (Iowa Ct. App. 1988) (quoting Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207, 216 & n. 1 0 (1 981)).

29. This burden of production may be met through the introduction of evidence or by cross-examination. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 255, 1 01 S. Ct. 1089, 1095, 67 L. Ed. 2d 207, 216 & n.10 (1981). The Complainant's initial evidence and inferences drawn therefrom may be considered on the issue of pretext. Id. at n.10. This burden of production merges with the Complainant's ultimate burden of persuasion, i.e. the burden of persuading the finder of fact that intentional discrimination occurred. Id. 450 U.S. at 256, 101 S. Ct. at 1 67 L. Ed. 2d at 217. When the Complainant demonstrates that the Respondent's reasons are pretextual, the Complainant must prevail. United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 717-18 (1983) (Blackmun, J. concurring).

Prima Facie Case of Discrimination:

30. The burden of establishing a prima facie case of discrimination under the disparate treatment theory is not onerous. Texas Dep't. of Community Affairs v. Burdine, 450 U.S. 248,253 (1981). **The Complainant is merely required to produce enough evidence to permit the trier of fact to infer that the Respondent's action was taken for a discriminatory or retaliatory reason.** Id. at 254 n.7. A primafacie case may be shown in a variety of ways as there will be different factual circumstances present in each case. Teamsters v. United States, 431 U.S. 324, 358 (1977)(citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 n.13 (1973)).

31. While a prima facie case of racial discrimination may be established through evidence demonstrating that similarly situated black and white individuals were treated differently, it may also be established through a "showing of treatment so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation." City of Minneapolis v. Richardson, 239 N.W.2d l97, 202 (Minn. 1976).

32. An example of the latter, a prima facie case of disparate treatment in hiring, is established by proof that: (1) Complainant is member of a protected class, e.g. a racial minority, (2) Complainant applied and was qualified for position for which employer seeking applicants, (3) Despite qualifications, Complainant is rejected, and (4) Employer continues to seek applicants of Complainant's qualifications. Schlei & Grossman, Employment Discrimination Law 1298 (1983)(citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)). The presumption of illegal discrimination under this formula arises not because of any showing of different

treatment of black and white applicants, but "because it eliminates the most likely legitimate causes for the employer's adverse action-a lack of minimum qualifications and the absence of a job opening. If these are not the causes, it is presumed that the employer's actions, unless otherwise explained, are more likely than not based on discrimination." Schlei & Grossman, Employment Discrimination Law at 1299.

33. Prima facie cases of discrimination were established in regard to the allegations in this case through three different methods. The first method of establishing a prima facie case applies to all the Respondent actions listed in Finding of Fact No. 56. A prima facie case was established by evidence showing:

> (1) that Respondent Abeln had authority to act on behalf of Respondent Roman and to enforce rules by warning tenants, both verbally and in writing;
>
> (2) that Respondent Abeln verbally expressed a racial animus toward blacks in general, toward Jack High as a black who visited the Poltons, and toward the Poltons for having blacks as visitors; and
>
> (3) that Respondent Abeln's actions were identified either with a concern about too many visitors, about Jack High visiting too often, or about acts committed by Jack High or unnamed guests.

34. A prima facie case of discrimination was also established by a second method, i.e. a showing of different treatment of the Poltons with respect to the Respondents' complaints and warnings to the Poltons concerning excessive noise and the security doors being left unlocked. See Findings of Fact Nos. 4144, 45-47. See Conclusion of Law No. 31.

35. Third, and finally, a prima facie case of discrimination was shown with regard to the 12 gauge shotgun threat, and the warnings given the Poltons with respect to their calling the police concerning potential criminal activity, and the noise made by twice opening and closing the security door on New Year's Eve. These actions were so at variance with what normally would be expected absent discrimination that discrimination is the probable explanation. See Findings of Fact Nos. 18-20, 26-28, 36-40. See Conclusion of Law No. 31.

36. Complainant Polton did not establish a prima facie case with respect to any of the allegations identified in Finding of Fact No. 57.

Respondent's Evidence of Legitimate Non Discriminatory Reasons and Complainant's Showing of Pretext:

37. In order to rebut the Complainant's prima facie case, the -Respondent must introduce admissible evidence which would allow the finder of fact to rationally conclude that the challenged decision was not motivated by discriminatory animus. Linn Cooperative Oil Company v. Quigley, 305 N.W.2d 728, 733 (Iowa 1981). Respondents' did not produce evidence articulating any legitimate non-discriminatory reason for the 12 gauge shotgun threat. A flat denial which is not credible is not a legitimate nondiscriminatory reason for an act. Therefore,

with regard to this allegation, Respondents have failed to rebut the Complainant's prima facie case. Discrimination is established. See Conclusion of Law No. 27.

38. Respondents also failed to provide evidence of specific instances of the "too much noise, not obeying the rules, and too much company" reasons for issuance of the notice of termination of lease. See Finding of Fact No. 35. Respondents were required to produce evidence sufficient to raise "a genuine issue of material fact as to whether Respondent discriminated against the Complainant." Hamilton v. First Baptist Elderly Housing Foundation, 436 N.W.2d 336, 338 (Iowa 1989). The nondiscriminatory reason proffered "must be specific and clear enough for the [Complainant] to address and legally sufficient to justify judgment for the (Respondent]." Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175,178 (Iowa Ct. App. 1988).

39. Statements describing conclusions and beliefs are not sufficient to establish the existence of a genuine issue of material fact. See ' Gruener v. City of Cedar Falls, 189 N.W.2d 577,580 (Iowa 1971). Also, what evidence there is of these conclusions and beliefs is based on what Bernice Roman reported to Complainant Polton. Such evidence is not sufficient to show the existence of genuine issue of material fact. Id. When, as here, a Respondent fails to state a sufficient reason to meet its burden of production, the Complainant "need only prove the elements of the prima facie case to win." Loeb v. Textron, 600 F.2d 1003,1018, 20 Fair Empl. Prac. Cases 29, 40 n.20 (lst Cir. 1979). This has been done here. See Conclusion of Law No. 33.

40. There is evidence in the record of legitimate non- discriminatory reasons, i.e. specific instances of rule violations, for other actions of Respondents. All of these reasons were shown to be pretextual either because discrimination was the more likely motive for these actions or because the explanations were not worthy of belief, or both. See Findings of Fact Nos. 25, 28, 32-33, 39-41, 47. See Conclusion of Law No. 28.

Constructive Eviction:

41. The constructive discharge standards in employment discrimination cases, may, by analogy, provide guidance with respect to the standards required to show a constructive eviction in housing discrimination cases.

42. Constructive eviction exists when the owner, or one acting on his behalf, deliberately makes a lessee's living conditions so intolerable that the lessee is forced into an involuntary termination of her lease. Cf. First Judicial District Department of Correctional Services v. Iowa Civil Rights Commission, 315 N.W.2d 83, 87 (Iowa 1982)(citing e.g. Young v. Southwestern Savings and Loan Association, 509 F.2d 140,144 (5th Cir. 1975)(constructive discharge cases). An objective standard may be stated for determining when a constructive eviction has occurred: "To find constructive [eviction], the fact finder must conclude that, "[living] conditions would have been so difficult or so unpleasant" that a reasonable person [in the lessee's position] would be compelled to [terminate her lease]." Cf. Id. (citing Bourque v. Powell Electrical Manufacturing Company, 617 F.2d 61, 65 (5th Cir. 1980))(constructive discharge cases). It is not necessary to show that intolerable living conditions were imposed by the owner or one acting for him for the purpose of forcing the lessee to quit the premises. Cf. Bourque v. Powell Electrical Manufacturing Company, 617 F.2d 61, 65 (5th Cir. 1980)(explaining Young v. Southwestern

Savings and Loan Association, 509 F.2d 140, 144 (5th Cir. 1975)(constructive discharge cases)). It is sufficient to show that the owner or one acting on his behalf knowingly allowed such intolerable conditions to occur. Cf. Goss v. Exxon Off ice Systems Co., 747 F.2d 885, 888 (3rd Cir. 1984)(constructive discharge case).

43. In accordance with this objective standard, a case of constructive eviction may be completely established by showing:

> (1) that a reasonable person in the [complainant's] position would have found the [living] conditions intolerable;
>
> (2) that conduct which constituted a[n] [Iowa Civil Rights Act] violation against the [complainant] created the intolerable [living] conditions; and
>
> (3) that [complainant's] involuntary [termination of lease] resulted from the intolerable [living] conditions.

Cf. Schlei & Grossman, Employment Discrimination Law: Five Year Cumulative-Supplement 269 (2nd ed. 1989)(constructive discharge standards). All three of these factors have been established by a preponderance of the evidence.

Agency:

44. Not only is Respondent Abeln liable for his discriminatory actions, as "a person acting for an owner," Iowa Code section 601A.8, but Respondent Roman is also liable for Abeln's actions. This is so because, Respondent Abeln, in his capacity as building manager, was Respondent Roman's agent. An agent is "one who undertakes to transact some business, or to manage some affair, for another, by the authority of and on account of the latter, and render an account of it. One who acts for or in place of another by authority from him." BLACK'S LAW DICTIONARY 59 (5th ed. 1979). The owners of rental property are liable for the illegal discriminatory actions of their employees and managing agents "under the doctrine of *respondeat superior and* because the duty to obey the law is non delegable" even if they were unaware of their employees' or agents' actions. United States v. L & H Land Corp., Inc., 407 F. Supp. 576, 578-79, 580 (S.D. Fla. 1976)(citing e.g. Marr v. Rife, 503 F.2d 735 (6th Cir. 1974); United States v. Robbins, P.H.E.O.H. Rptr. Para 1365.5 (S.D. Fla 1974).

Credibility and Testimony:

45. In addition to the factors mentioned in the section entitled "Course of Proceedings" and in the findings on credibility in the Findings of Fact, the Administrative Law Judge has been guided by the following two principles: First, "[w]hen the trier of fact ... finds that any witness has willfully testified falsely to any material matter, it.should take that fact into consideration in determining what credit, if any, is to be given to the rest of his testimony." Arthur Elevator Company v. Grove, 236 N.W.2d 383,388 (Iowa 1975). "[I]n the determination of litigated facts, the testimony of one who has been found unreliable as to one issue may properly be accorded little weight as to the next." NLRB. v. Pittsburgh Steamship Company, 337 U.S. 656, 659 (1949) (rejecting

proposition that consistently crediting witnesses of one party and discrediting those of the other indicates bias). Second, "[t]he trier of facts may not totally disregard evidence but it has the duty to weigh the evidence and determine the credibility of witnesses. Stated otherwise, the trier of facts ... is not bound to accept testimony as true because it is not contradicted. In Re Boyd, 200 N.W.2d 845, 851-52 (Iowa 1972).

Remedies:

46. Violation of Iowa Code section 601A.8 having been established, the Commission has the duty to issue a cease and desist order and to carry out other necessary remedial action. Iowa Code § 601A.15(8) (1989). In formulating these measures, the Commission does not merely provide a remedy for this specific dispute, but corrects broader patterns of behavior which constitute the practice of discrimination: Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 770 (Iowa 1971). "An appropriate remedial order should close off 'untraveled roads' to the illicit end and not 'only the worn one.'" Id. at 771.

Compensatory Damages for Increased Rental Costs:

47. The Iowa Civil Right Commission has the statutory authority to award actual damages which are intended to compensate the victims of discrimination for losses incurred resulting from the discriminatory acts. Iowa Code § 601A..15(8). See Chauffeurs Local Union 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 382-83 (Iowa 1986). Since Complainant Polton had to pay an increased rent as a result of her constructive eviction, she should be compensated for the loss.

Damages for Emotional Distress:

48. The Iowa Civil Rights Commission has the power to award damages as compensation for emotional distress sustained due to discrimination. Chauffeurs Local Union 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 383 (Iowa 1986)(interpreting Iowa Code § 601A.15(8)). The following principles were applied in determining whether an award of damages for emotional distress should be made and the amount of such award.

Proof of Emotional Distress:

49. "[A] civil rights complainant may recover compensable damages for emotional distress without a showing of physical injury, severe distress, or outrageous conduct." Hy Vee Food Stores, Inc. v. Iowa Civil Rights Commission, 453 N.W.2d 512, 526 (Iowa 1990). "Humiliation can be inferred from the circumstances as well as established by the testimony." Seaton v. Sky Realty, 491 F.2d at 636 (quoted with approval in Blessum v. Howard County Board, 245 N.W.2d 836, 845 (Iowa 1980)).

50. Even slight testimony of emotional distress, when combined with evidence of circumstances which would be expected to result in emotional distress, can be sufficient to show the existence of distress. See Dickerson v. Young, 332 N.W.2d 93,98-99 (Iowa 1983). Testimony of the complainant alone may be sufficient to prove emotional distress damages in discrimination cases. See Crumble v. Blumthal, 549 F.2d 462, 467 (7th Cir. 1977; Smith v. Anchor Building

Corp., 536 F.2d 231, 236 (8th Cir. 1976); Phillips v. Butler, 3 Eq. Opp. Hous. Cas. § 15388 (N.D. 111. 1981).

51. In discrimination cases, an award of damages for emotional distress can be made in the absence of "evidence of economic or financial loss, or medical evidence of mental or emotional impairment." Seaton v. Sky Realty, 491 F.2d 634, 636 (7th Cir. 1974). Nonetheless, such evidence in the record may be considered when assessing the existence or extent of emotional distress. See Fellows v. Iowa Civil Rights Commission, 236 N.W.2d 671, 676 (Iowa 'Ct. App. 1988).

Determining the Amount of Damages for Emotional Distress:

52.

> Because compensatory damage awards for mental distress are designed to compensate a victim of discrimination for an intangible injury, determining the amount to be awarded for that injury is a difficult task. As one court has suggested, "compensation for damages on account of injuries of this nature is, of course, incapable of yardstick measurement. It is impossible to lay down any definite rule for measuring such damages."
>
> ...
>
> Computing the dollar amount to be awarded is a function of the finder of fact. Juries and judges have been making such decisions for years without minimums or maximums, based on the facts of the case [and] the evidence presented on the issue of mental distress.

2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 24-29 (1982)(quoting Randall v. Cowlitz Amusements, 76 P.2d 1017 (Wash. 1938)).

53. The two primary determinants of the amount awarded for damages for emotional distress,-, are the severity of the distress and the duration of the distress. Bean v. Best, 93 N.W.2d 403, 408(S.D. 1958)(citing Restatement of Torts§ 905). "'In determining this, all relevant circumstances are considered, including sex, age, condition of life, and any other fact indicating the susceptibility of the injured person to this type of harm.' And continuing 'The extent and duration of emotional distress produced by the tortious conduct depend upon the sensitiveness of the injured person.'" Id. (quoting Restatement of Torts § 905).

Interest:

Pre-Judgment Interest:

54. The Iowa Civil Rights Act allows an award of actual damages to persons injured by discriminatory practices. Iowa Code § 601A.15(8)(a)(8). Prejudgment interest is a form of

damages. Dobbs, Hornbook on Remedies 164 (1973). It "is allowed to repay the lost value of the use of the money awarded and to prevent persons obligated to pay money to another from profiting through delay in litigation." Landals v. Rolfes Company, 454 N.W.2d 891, 898 (Iowa 1990). Pre-judgment interest is properly awarded on an ascertainable claim. Dobbs, Hornbook on Remedies 166-67 (1973). Because the amount of increased rental due the Complainant at any given time has been an ascertainable claim since the time of her constructive eviction, pre-judgment interest should be awarded on the increased rental costs. Such interest should run from the date on which Complainant's rental payments would have been made if there were no discrimination. Cf. Hunter v. Allis Chalmers Corp., 797 F.2d 1417, 1425-26 (7th Cir. 1986)(interest on back pay - common law rule). The method of computing pre-judgment interest is left to the reasonable discretion of the Commission. Schlei & Grossman, Employment Discrimination Law: Five Year Cumulative Supplement 543 (2nd ed. 1989). No pre-judgment interest is awarded on emotional distress damages because these are not ascertainable before a final judgment. See Dobbs, Hornbook on Remedies 165 (1973).

Post-Judgment Interest.

55. Post-judgment interest is usually awarded upon almost all money judgments, including judgments for emotional distress damages. Dobbs, Hornbook on Remedies 164 (1973).

DECISION AND ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that:

A. The Complainant, Dorene Polton, is entitled to judgment because she has established that the Respondents John Abeln and Frank Roman are liable for (a) indicating that blacks were unwelcome, objectionable, not acceptable or not solicited as tenants in violation of Iowa Code section 601A.8(3); and (b) discrimination against her as a lessee, because she had blacks as friends, guests or visitors in her apartment, in violation of Iowa Code section 601 A.8 (4).

B. Complainant Polton is entitled to a judgment of one thousand seven hundred sixty dollars ($1,760.00) in compensatory damages from the Respondents for the loss-resulting from increased rental payments after her constructive eviction from Respondent Roman's apartments.

C. Complainant Polton is entitled to a judgment of ten thousand dollars ($10,000.00) in compensatory damages from the Respondents for the emotional distress she sustained as a result of the housing discrimination practiced by them.

D. Interest at the rate of ten percent per annum shall be paid by the Respondents to Complainant Polton on her award of increased rental commencing on the dates rental payments would have been made, as indicated by the lease, if Complainant had remained in Respondent's apartments and continuing until date of payment of the interest.

E. Interest at the rate of ten percent per annum shall be paid by the Respondents to Complainant Polton on the above award of emotional distress damages commencing on the date this decision

becomes final, whether by Commission decision or by operation of law, and continuing until date of payment.

F. Respondent Frank Roman, and, in the event he should return to employment with Respondent Roman, Respondent John Abeln are hereby ordered to cease and desist from any further practices of race discrimination in housing. This order prohibits all conduct by Respondents, their employees, agents, officers, successors and all persons acting in concert with any of them, which either denies equal housing opportunity to any person or indicates that any person is unwelcome or objectionable because of the race or color of such person or of his or her guests, visitors, friends, or associates.

G. Respondent Frank Roman shall post, within 60 days of the date this order becomes final, in conspicuous places at each of his apartment buildings in Iowa, including but not limited to the location at 1852 "A" Avenue, N.E., Cedar Rapids, Iowa, in areas readily accessible to and frequented by tenants, at least two copies per building of the poster, entitled "Fair Housing Opportunity" which is available from the Commission.

H. In any future advertising of rental properties for housing by Respondent Roman, by whatever means, the advertising shall prominently state "Equal Housing Opportunity." If the advertisement is in print, the phrase shall be printed in letters at least as large as the rest of the lettering in the advertisement. Respondent Frank Roman shall review the publication "Fair Housing Advertising in Iowa" which is available from the Commission.

I. Respondent Frank Roman, and all of his apartment management personnel who are responsible for showing apartments or enforcing apartment rules, shall review the publication "Iowa Fair Housing Guide 1990" which is available from the Commission. In addition, all such management personnel shall be informed by Frank Roman that the race of prospective tenants or their guests shall not be a factor in making decisions concerning whether to rent to such persons. Frank Roman shall also inform them that the race of tenants or their guests shall not be taken into consideration in enforcing apartment or lease rules.

J. Respondent Frank Roman shall file a written report with the Commission, within 120 calendar days of the date this order becomes final, detailing what steps he has taken to comply with paragraphs A through I inclusive of this order.

Signed this the 4th day of February, 1992.

DONALD W. BOHLKEN
Administrative Law Judge
Iowa Civil Rights Commission
211 **E.** Maple
Des Moines, Iowa 50319
515-281-4480

FINAL DECISION AND ORDER

1. On this date, the Iowa Civil Rights Commission, at its regular meeting, unanimously adopted the Administrative Law Judge's proposed decision and order which is hereby incorporated in its entirety as if fully set forth herein.

IT IS SO ORDERED.
Signed this the 24th day of April, 1992.
Orlando Ray Dial
Chairperson
Iowa Civil Rights Commission
211 E. Maple
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