

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

VINCENT LEWIS, Complainant, and IOWA CIVIL RIGHTS COMMISSION,

vs.

HURL KNIGHT, Respondent.

CP # 04-90-19820

**Course of Proceedings**

This matter came before the Iowa Civil Rights Commission on the Complaint filed by Vincent Lewis against the Respondent Hurl Knight alleging discrimination on the basis of race with respect to housing.

Through his complaint, which was amended without objection prior to hearing, Complainant Lewis alleges that the Respondent Hurl Knight either rejected his offer to buy a property (a house) due to his race or compelled or coerced another to reject his offer because of his race.

A public hearing on this complaint was held on January 8, 1992 before the Honorable Donald W. Bohlken, Administrative Law Judge, at the Conference Room of the Iowa Civil Rights Commission in Des Moines, Iowa. The last brief in this case was filed on March 10, 1992.

The Respondent, Hurl Knight, is represented by Jeffrey Flagg, Attorney at Law. The Iowa Civil Rights Commission was represented by Rick Autry, Assistant Attorney General. The Complainant, Vincent Lewis, is not represented by counsel. The findings of fact and conclusions of law are incorporated in this contested case decision in accordance with Iowa Code *S* 17A.16(1) (1993). 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(1).

The Iowa Civil Rights Act requires that the existence of race discrimination be determined in light of the record as a whole. *See* Iowa Code *S* 216.601A.15(8) (1993)(formerly *S* 601A.15(8)). Therefore, all the 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.

**RULING ON OBJECTION TO EVIDENCE:**

1. Respondent objected to the admission of Complainant's Exhibit number 3, which is a listing of repairs performed on a house Complainant Lewis bought after his rejection by Respondent Knight. The grounds for Respondent's objection were relevancy and materiality. Since Complainant Lewis testified that he intended to make no repairs to the Knight property if he had been able to buy it, and incurred these costs on the property he bought after his rejection by the Knights, it is clear that this exhibit was offered as evidence of additional costs incurred by the complainant due to alleged discrimination for which Complainant Lewis seeks compensation.

2. The objection made by the Knights, to the effect that this exhibit should not be admitted because all real property is unique, goes to its weight and not to its relevancy or materiality. This exhibit tends to "make the existence of [a] fact that is of consequence to the determination of the [contested case][i.e. the damages sustained by Complainant] more or less probable than it would be without the evidence." Iowa R. Evid. 401 (definition of relevant evidence). The exhibit is also material as it is pertinent to the issue of damages, which is in dispute. BLACK'S LAW DICTIONARY 881 (5th ed. 1979)(citing Vine Street Corp. v. City of Council Bluffs, Iowa, 220 N.W.2d 860, 863) (definition of "material evidence").

## **FINDINGS OF FACT:**

### **A. Jurisdictional and Procedural Facts:**

1. On April 24, 1990, Complainant Vincent Lewis filed his complaint, CP # 04-90-19820, alleging race discrimination in housing which is prohibited by Iowa Code section 601A.8 (now 216.8). The date of the alleged discriminatory refusal to sell the house in question is given as March 28, 1990. (Complaint). Official notice is taken that April 24, 1990 is twenty-seven days after March 28, 1990. Fairness to the parties does not require that they be given the opportunity to contest this fact.

2. The complaint was investigated. After probable cause of race discrimination was found, conciliation was attempted and failed. Notice of Hearing was issued on June 19, 1991. (Notice of Hearing). The notice of hearing was amended without objection effective November 26, 1991. (Prehearing Conference Order). The amendment stated, in part:

Complainant alleges that Respondent violated Section 601A.8 and section 601A.11(1) (by compelling or coercing another to violate *S* 601A.8) through his actions as stated in the complaint.

(Commission's First Amendment to the Notice of Hearing) (emphasis in original).

3. This is an administrative proceeding to consider alleged violations of the Iowa Civil Rights Act's prohibitions against housing discrimination and compelling or coercing another to violate the Act. (Notice of Hearing; Commission's Motion for Leave to Amend; Prehearing Conference Order). It is not an action to enforce a real estate contract.

4. Respondent Hurl Knight is an "individual." He is also the owner of rights to real property or housing as set forth in findings of fact number 5 through 7 below.

5. Respondent Hurl Knight, and his wife, are the legal title holders to the real property in question, which was being sold by Knight and his wife, Virginia Knight, on an installment real estate contract to Phylip and Juanita Watson. (R. EX. C; Tr. at 85-86, 128-29, 137). As admitted on brief, his status as vendor under this contract gives him an interest in the property in question, "the right to collect the purchase price." (Respondent's Brief at 12-13).

6. In addition, due to the forfeiture clause in the contract, if the Watsons were to fail to make their payments, the Knights would have the right to enforce a forfeiture whereby the Knights would recover the property without any obligation to reimburse the Watsons for payments made. (R. EX. C \_ 12).

7. The contract, which was signed by the Watsons and the Knights on January 11, 1989, had a "special provision" which stated "[t]he contract may be assigned and the property sold with prior approval of the seller." (R. EX. C). As indicated by this provision, and admitted by Respondent Knight in his testimony and on brief, he had the right to refuse to permit the Watsons' assignment of the contract or sale of the property to a new purchaser. (R. EX. C; Tr. at 160-61). Respondent's Brief at 3-4. Thus, Knight was also the owner of this contract right to housing or real property, i.e. a right of prior approval to the assignment of the contract or to the sale of the property.

#### B. Background:

##### *Complainant Lewis's Background:*

8. Complainant Lewis, an African-American male, is employed as a high school principal in the city of Des Moines. (Tr. at 5-6, 73). He is married with four minor children. (Tr. at 5).

9. Complainant Lewis decided to look for a second house for rental property. He did this with the intention of securing the long-term financial future and welfare of his children by purchasing a house for each one. (Tr. at 7, 66). He had hoped that, by the time his children had finished high school, college or trade school, they would be given the properties to either live in, rent, or sell, as "a step up in starting life." (Tr. at 29).

10. To meet these goals, Complainant Lewis decided to search for a house which he could buy by assuming the contract. He wished to do this because he believed (a) it would be more difficult to obtain a loan for a home which he would not be living in; and, (b) the down payment required on an assumption would be smaller. He wanted a home with a price of approximately \$30,000. He gave this criteria to Ed Harris, a real estate broker, who assisted him in his search. (Tr. at 7-8, 66-67).

11. The first house Complainant Lewis viewed was the property the Watsons were buying on contract from the Knights. (Tr. at 9). This house was a small, well-kept 2 bedroom bungalow

located at 1535 - 33rd Street in Des Moines. This area was close enough to Drake University to assure the Complainant that renters would be available. (CP. EX. 4; Tr. at 9).

*Respondent Knight's and the Watsons' Background:*

12. In April of 1990, Respondent Hurl Knight was approximately 65 years old. (Tr. at 134, 138). He and his wife, Virginia, had lived at the home at 1535 - 33rd Street for 42 years until moving out in 1988. (Tr. at 135). After leaving, the house was on the market for six months until it was sold on contract to Phylip and Juanita Watson in January of 1989. (R. EX. C; Tr. at 85-86, 137).

13. The primary reason why the Watsons bought the house was to rent it to their daughter. (Tr. at 125-26). The house was utilized as a residence by the Watsons' daughter until January 2, 1990, when she left. (Tr. at 125). The Watsons' daughter moved out because she felt the Knights' inspections of the property, which were permitted under the contract every 60 days, were too frequent and violated her privacy. (R. EX. C; Tr. at 111, 112). After trying without success to rent the property, the Watsons listed it for sale in late January of 1990. (Tr. at 127-28). The listing gave the Watsons as the owners. (CP. EX. 4). After fifty or sixty days on the market, offers began to come in to the Watsons. (Tr. at 128).

*Other Offers on the Property:*

14. Initial written offers on the property were made to the Watsons. If they found the offer acceptable, the Watsons would refer the offer to the Knights, through the Watsons' listing agent, Marilyn Bourdonris. (Tr. at 114, 116, 119-20, 153-54). Due to the Knights' right of prior approval under the contract, they had the final authority on whether or not an offer would be accepted. (R. EX. C; Tr. at 113, 160- 61). There was another offer on the property at the time Lewis presented his offer. The timing of these offers will be discussed in detail with respect to the "pretext" issue.

*Absence of Direct Evidence of Discrimination:*

15. There is no direct evidence in the record of discrimination, such as the use of racial slurs or any statements by Respondent Hurl Knight to the effect that the complainant was not permitted to purchase the property because of his race. (Tr. at 57, 105-06).

**C. Complainant Lewis Established a Prima Facie Case of Race Discrimination In Housing:**

*Complainant Lewis Is a Member of a Racial Minority:*

16. Complainant Lewis is an African-American. (Tr. at 5).

*Complainant Lewis Applied for and Was Qualified to Purchase the Housing Unit Involved:*

17. Complainant Lewis made a written offer to purchase the property. (CP. EX. # 1, 2; Tr. at 10, 12-14, 69-70, 115). Lewis's original offer, Complainant's Exhibit # 1, was accepted as a "backup offer" by the Watsons. (CP. EX. # 1; Tr. at 70, 99, 115). This means that, if a prior offer, already

accepted by the Watsons and then under consideration by the Knights, was rejected by the Knights, then the Lewis offer would be "another offer that we would have already in hand to start with our negotiations on . . . that purchase offer." (Tr. at 70, 115).

18. Lewis was qualified in the sense that he had the money to live up to his offer. (Tr. at 99). Complainant's real estate broker, Ed Harris, also prepared an amendment, Complainant's Exhibit # 2, to the initial offer in order to meet requirements set forth by Respondent Knight in a telephone conversation. The conversation occurred prior to the time on March 27th when Knight showed the house to Harris and Complainant Lewis. (CP. EX. # 2; Tr. at 12, 14, 71- 73, 75-76, 99, 148). This also demonstrates that Lewis was a "qualified" purchaser, i.e. one who met the minimum expressed objective requirements of the seller or, in this case, of the person whose prior approval was required before a sale could be effected.

*Complainant Lewis's Offer was Rejected By Respondent Knight:*

19. On March 28, 1990, the day after Complainant Lewis and Ed Harris were shown the house by Respondent Knight, Knight telephoned Lewis and informed him that he was not going to sell the property to Lewis, but was going with another offer. (Tr. at 14, 17, 150, 154-55, 163-64). Complainant Lewis informed Ed Harris of Respondent Knight's rejection. (Tr. at 81-82). Under the terms of the contract between Watson and Knight, because of Knight's rejection of the Lewis offer, Watson was compelled to forego assigning his contract or selling the property to Lewis. (R. EX. C).

*The Housing Opportunity Remained Available After Respondent Knights' Rejection of Complainant Lewis's Offer:*

20. As previously noted, Respondent Knight's statement to Lewis on March 28th indicated he was going to accept another offer. (Tr. at 17, 150, 163-64). This would tend to indicate that, at time of the rejection of Lewis's offer, Knight had not yet accepted the other offer although he was aware of it and was planning on accepting it. Therefore, the housing opportunity remained available after the rejection of Complainant Lewis's offer.

*Respondent Hurl Knight Was Aware that Complainant Lewis Was Black at the Time of the Rejection:*

21. On March 27, 1990, prior to the rejection of Complainant Lewis offer, Respondent Hurl Knight met with Lewis and Ed Harris to show them the property. (Tr. at 12, 14, 148). That Complainant Lewis can readily be visually ascertained to be a Black person is demonstrated not only by the observation of the Complainant by the administrative law judge, but also by Lewis's testimony to the effect that, after his rejection he considered sending his wife, who is Caucasian, to look at properties so he would not be denied a property due to his race. (Tr. at 28, 30). It may be reasonably inferred, and is inferred, that Respondent Knight knew Complainant Lewis was Black at the time Knight rejected his offer.

22. For reasons set forth in the conclusions of law, findings of fact numbers 16 through 20 above are sufficient to establish prima facie cases of race discrimination in housing and of compelling

or coercing a person to discriminate in housing. Prima facie cases of these violations were also established through an alternative method whereby findings of fact numbers 16 through 19 and number 21 are sufficient to establish prima facie cases. See Conclusions of Law Nos. 12-13.

D. Respondent Knight Rebutted the Prima Facie Case Through the Introduction of Evidence Setting Forth Legitimate Non- Discriminatory Reasons for His Rejection of Complainant Lewis's Offer:

23. Respondent Knight offered evidence, through his testimony, of legitimate non-discriminatory reasons for his rejection of Complainant Lewis's offer. These reasons were: (1) that he wanted the property to be sold to a person that would either occupy it or have it occupied by a close relative for whom it was bought, i.e. he did not want to sell it to another owner that would use it as rental property, and (2) he had a better offer with a balloon payment provision which would pay off the balance of the principal at the end of five years as opposed to the 30 years allowed under the contract he had with the Watsons or the 15 years allowed under the contract proposed by Complainant Lewis. (Tr. at 147, 155-56, 160-61).

24. On brief, Respondent Knight suggested a third reason: that he rejected Complainant Lewis's proposal, which relieved the Watsons of future liability, because he wanted to maintain the Watsons' liability for any remaining payments under any future contract of sale because they had been very regular in making their payments. Respondent's Brief at 5. The Respondent, however, introduced no evidence in the record where this was specifically articulated as a reason for rejection of the Lewis offer. There is credible testimony by Knight to the effect that the Watsons were regular in their payments, and by other witnesses that such could have constituted a reason for rejecting Lewis's offer. Phylip Watson, for example, credibly testified that, at the time he mentioned to Knight that he wanted to put the property up for sale, Knight indicated he wanted to keep Watson involved because Watson was a good quality buyer who made his payments. But, there is no testimonial or other evidence, and particularly no evidence set forth by someone with authority to speak for the Respondent, to the effect that this actually was one of the Respondent's reasons for rejecting Lewis's offer. (Tr. at 43, 63, 91, 129, 138).

E. Respondent Knight's Preference for Selling the Property to Someone Who Would Either Occupy the Property or Have It Occupied by a Close Relative Has Not Been Shown to Be a Pretext for Discrimination:

*Respondent Knight's Concern About the Risks of Rental Property:*

25. Respondent Knight's course of conduct from the time of the original sale of his house has reflected a strong concern about selling the house to someone who would rent the property. Based on his belief that there was less risk of damage to the property if it were owner occupied rather than rented, he would have preferred to sell the house to an owner occupier. (Tr. at 139, 147, 155-56, 160-61). It was sold to the Watsons, however, as rental property, on terms that were not completely to the Knight's satisfaction, due to the length of time the house was on the market. (Tr. at 137-38, 139, 160-61).

26. The fact that the Knights were willing to sell the house as rental property to the Watsons at a time when market conditions were poor and they had no income from the property does not mean the Knights were required to give their approval to sell the property as rental property once the Watsons wanted to sell. The past sale to the Watsons under different conditions does not demonstrate that the preference to sell to an owner-occupier is a pretext for discrimination. The preponderance of the evidence in the record also does not indicate that Respondent Knight's reluctance to approve the sale of the property as rental property applied only to Black potential owners.

27. Respondent Knight's concern was based on "horror stories" he had heard while working as accountant at U.S. Homes. One of his co-workers, who owned 30-40 rental properties, had told him about his tenants not paying rent, leaving in the middle of the night and knocking holes in the wall, and stealing appliances. The co-worker had also informed him of how much these misdeeds had cost him. Respondent Knight was "very leery" of renting out the property. (Tr. at 134, 139).

*Respondent Knight's Past Actions With Respect to Protecting His Property:*

28. To protect the condition of the property when he sold it on contract to the Watsons, Respondent Knight included the following "special provision":

A. Seller reserves the right to inspect the property every 60 days at the renters convenience and with 24 hour notice.

(R. EX. C; Tr. at 110). After the Watsons' daughter moved in, Respondent Knight conducted frequent and thorough inspections of the property, during which he discovered some damage to the property caused by her. (Tr. at 139, 158). As previously noted, these inspections were so frequent and so thorough that the daughter left because of them. (Tr. at 71, 111-12, 138).

*Respondent Knight's Understanding of Complainant Lewis's Purpose in Offering to Purchase the Real Estate:*

29. Prior to meeting with Complainant Lewis and Ed Harris at the property on March 27th, Respondent Knight had been informed, when he received Complainant Lewis's initial offer, that Lewis was buying the property for a relative. Respondent Knight had received the erroneous impression that either Complainant Lewis or a relative would be occupying the property. (CP. EX. # 5; Tr. at 82-83, 104, 161). He viewed the latter as being the same as "owner occupied" insofar as risk to the property was concerned. (Tr. at 161). It is clear Knight did not understand that Lewis was interested in the property so that it could be rented and later given to one of Lewis's children, the eldest of whom was then approximately 13 years old, after the child's graduation from school. (Tr. at 5, 66, 161). If Respondent Knight's initial misunderstanding had been correct, the situation presented by Complainant Lewis's offer would have been similar to that he initially had with the Watsons, i.e. the property would be occupied by a child of the owner.

30. The first time that Respondent Knight understood that Complainant Lewis wished to purchase the property for rental purposes was at the meeting on March 27th. (Tr. at 104). Knight showed Lewis the house, including items that had been damaged by the Watson's daughter, such as the latch on the front door. (Tr. at 15). Respondent Knight made comments and asked questions expressing a concern about future tenants damaging the property. Lewis interpreted these questions and comments as reflecting a racial stereotype, i.e. that Blacks are more likely to damage the property. (Tr. at 57-58). In light of the Knights' past experience and concerns with the risks of rental property, it seems more likely that these comments reflected Respondent Knight's longstanding concern with the risks attendant to rental property and his reaction to the new information that Lewis intended to rent the property.

*Complainant's Broker Acknowledges Distinction Between Owner Occupied and Rental Property With Respect to Security of the Seller:*

31. The Complainant's real estate broker, Ed Harris, acknowledged that there is greater security for the seller with a property being owner occupied as opposed to renter occupied. It is widely believed that owners occupying a property will take more pride in the property and give it better care than tenants. (Tr. at 93).

*Complainant Lewis Acknowledges that Respondent Knight Informed Him that Knight Was Not Selling to Him Due to Rental Property Concerns and that Such Reason Constitutes a Legitimate Business Criteria for the Rejection:*

32. Complainant Lewis admitted that Respondent Knight had informed him that he did not wish to sell the house to him because Lewis was going to rent it as opposed to living on the property. (Tr. at 18, 37). Although Lewis initially indicated serious doubt about the concept, he ultimately acknowledged that preferring to sell to someone who would be occupying the property, as opposed to someone who would rent the property to others, was a legitimate business criteria for making a real estate sales decision. (Tr. at 37, 63). Also, when Complainant Lewis initiated his search for property, he understood that it would be more difficult to obtain a loan for a house which he would not be living in than it would if he were occupying the property. (Tr. at 7).

*The Offer Ultimately Considered Superior to Complainant Lewis's by Respondent Knight Was From Buyers Who Wished to Occupy the Property:*

33. The final offer of Barton and Richards, discussed in greater detail below, was considered by Respondent Knight to be superior to Complainant Lewis's offer because it was an offer which could ultimately lead to purchase of the property for the purpose of living in it. These potential buyers would first occupy the property as renters and then, if they exercised their option to buy, as owner-occupants. (Tr. at 147, 154, 161).

*F. Respondent's Balloon Payment Reason Has Not Been Shown to Be a Pretext for Discrimination:*

*Balloon Payment Offer Chronology:*

34. The balloon payment provision that was offered the Knights came about through their negotiations with two women, Ms. Richards and Ms. Barton. Barton and Richards had originally made a written offer dated March 7, 1990, whereby they would have rented the house until September 1, 1990. On that date, an option would go into effect, for which they would have paid \$500.00, whereby they would assume the Watsons' contract with the Knights under the same terms as the Watsons. (R. EX. A; C; Tr. at 112-13, 114-15). This original offer of Barton and Richards had no balloon payment provision. (R. EX. A; Tr. at 167). This was the offer to which the Lewis offer was accepted as a back-up offer by the Watsons. (Tr. at 115).

35. Respondent Knight did not recall whether he saw the initial written offer submitted by Barton and Richards, but he had been informed of its contents by Marlys Watson, Barton's and Richards's broker. (Tr. at 141-42). He ultimately refused to give his approval to this initial offer of Barton and Richards because he and his wife thought they could get a better offer from them. (Tr. at 143).

36. The Knights continued to negotiate with the real estate agents of the Watsons and Barton and Richards. Through these negotiations, they came up with an amendment to Barton's and Richards's original offer which would include a five year balloon payment. (R. EX. B; Tr. at 143). The final offer of Barton and Richards provided for a period of rental until July 1, 1990 followed by an option for a new contract between the Knights and Barton and Richards with the five year balloon payment provision requiring the payment of all of the remaining principal on August 1, 1995. (R. EX. B).

37. While the negotiations were going on with Barton and Richards, the Knights were also dealing with Complainant Lewis. Respondent Hurl Knight showed the house to Lewis on the 27th because there was always the possibility that the Barton and Richards deal might not go through. This activity also seemed to be a reasonable way to help the Watsons sell the house. (Tr. at 145-46).

38. Although these negotiations were continuous, the final offer of Barton and Richards was not reduced to writing and submitted to the Watsons until March 28th, and not signed until the 29th, after Complainant Lewis was informed by Respondent Knight of the rejection. (R. EX. B; Tr. at 17, 81-82, 143, 150). But, Knight was aware of the substance of the offer before it had been reduced to writing. (Tr. at 143).

39. In September of 1990, Barton and Richards, after an extension of the rental period by the Watsons, choose not to exercise the option and paid \$500.00 to the Watsons in order to be released from the contract. (Tr. at 121-22).

*Significance of the Balloon Payment Provision for the Knights:*

40. The greater weight of the evidence shows that the balloon payment offer was of significance to the Knights. When the Knights entered into their original contract with the Watsons, they were not satisfied because it was a 30 year contract. (Tr. at 137). At the time they entered into the contract, the Knights were approximately 64 years old. They would have preferred a "cash deal" or shorter term contract if they could get it. (Tr. at 137-38). This concern remained at the time of

Complainant Lewis's interest in the property. (Tr. at 157). Therefore, they felt the balloon payment offer was superior to the offer of Complainant Lewis as they would have a chance of recovering their money in five years, as opposed to the 15 years offered through Lewis's amended offer. (Tr. at 147, 161-62).

41. Real estate broker Ed Harris acknowledged that a five year balloon payment provision could be important to the Knights. He acknowledged that the five year balloon provision in Barton and Richards final offer was superior to any offer made by Lewis. (Tr. at 99-100).

*Respondent Knight Give His Approval to the Barton and Richards Balloon Payment Offer:*

42. Sometime after his rejection of Complainant Lewis's offer, Respondent Knight gave his approval to the second Barton and Richards' offer in the sense of verbally telling Watson that offer was "the one that I wanted to go along with." (Tr. at 146-47). See Finding of Fact No. 20. Certainly, Phylip Watson understood this to be an acceptance or approval of Barton and Richards' offer. (Tr. at 120). Barton and Richards were permitted to rent the property based on this understanding. (Tr. at 112). Based on his expectation that Barton and Richards would exercise their option and purchase the property, Knight clearly believed that Barton and Richards had the power to exercise the option, that the option was valid, and that it would have been effective if exercised. (Tr. at 160). Respondent Knight stood ready to enter into a written contract for sale to Barton and Richards in the event they exercised their option to buy and came up with the down payment. (Tr. at 147-48). Respondent Knight understood that he "took the best deal, as far as I was concerned, for my interest." (Tr. at 151).

43. There is some testimony by Respondent Knight, and a position set forth in Knight's brief, to the effect that Knight actually accepted no offer. Both the testimony and the brief position seem to be based on the fact that the Knights had not yet entered into a signed written contract with Barton and Richards. (Respondent's Brief at 8, 11, 12; Tr. at 146-7). (Tr. at 146-147). But, under the terms of Barton and Richards offer to the Watsons, this event would not happen until Barton and Richards exercised their option to buy. (R. EX. B). Thus, the question of whether the Knights gave their approval to the transaction between the Watsons and Barton and Richards, as required by the contract between the Knights and the Watsons, should not be confused with the question of whether the Knights had entered into a written contract with Barton and Richards. For reasons set forth in Finding of Fact number 42, it is clear that Respondent Hurl Knight did give his approval to the transaction between the Watsons and Barton and Richards.

*Commission's Position on Pretext is Not Supported by the Evidence:*

44. On brief, the Commission identifies several propositions which it believes demonstrate that the balloon payment reason is a pretext for discrimination. Commission's Brief at 11-12. These propositions may be summarized as follows:

- a. Because Watson normally saw written offers before Respondent Knight, and did not see the written balloon payment offer until after Complainant Lewis was rejected, Knight could not have known about any balloon payment offer at the time of Lewis's rejection.

b. The second argument is based on the premise that the Knights would not have engaged in negotiations with Lewis if they were engaged in serious negotiations with Barton and Richards with respect to a balloon payment offer. Since the facts indicate that, prior to meeting Complainant Lewis, Respondent Knight was seriously negotiating with Lewis, "the balloon payment offer could not have been important to Mr. Knight."

c. Because Knight told Watson he was going to choose Lewis's offer over an offer of Barton and Richards, Knight's ultimate selection of Barton's and Richards's balloon payment offer must have been due to Knight's becoming aware of Lewis's race.

d. If Respondent Knight had been negotiating a balloon payment, he would have mentioned it to the Watsons and Complainant Lewis. Since Barton and Richards were having problems coming up with their initial down payment, it is doubtful that they could come up with over \$20,000 five years later. A balloon payment offer from Lewis, however, would have had substance. The failure to mention a balloon payment alternative to Complainant Lewis indicates he was not given the chance to make such an offer due to his race.

45. The first proposition is not valid because although the preponderance of the evidence shows that *initial written* offers were first given to Watson and then to Respondent Knight, it does not follow that the Watsons were necessarily informed of further offers or amended offers, either written or unwritten, resulting from negotiation with the Knights before the Knights were so informed. (Tr. at 119-20, 153- 54). The record in this case demonstrates that there were two amended offers which resulted from direct negotiations between potential buyers and the Knights. One such offer, which had not been reduced to writing at the time Knight was first informed of it, was the five year balloon payment offer of Barton and Richards. (R. EX. B; Tr. at 143-45). The other such offer was the written amended offer made by Complainant Lewis after his real estate broker, Ed Harris, had negotiated directly with Respondent Knight. (CP. EX. # 2; Tr. at 12, 14, 71-73, 75-76, 99, 148).

46. The second proposition is not valid because it rests on the premise that serious negotiations concerning the sale of the house could not simultaneously take place between the Knights and two or more potential buyers. There is no evidence in the record indicating why the Knights could not seriously negotiate simultaneously with more than one party. The Complainant's real estate broker, Ed Harris, acknowledged that it is a frequent occurrence in the real estate business for deals, which were thought to be final, to fall through because a better offer comes in from another party with whom the seller is negotiating. (Tr. at 94-95). Also, the evidence demonstrates that the point where serious continuing consideration was being given to Lewis's offer was prior to the time that Knight became aware that Lewis would be renting out the house and that neither Lewis nor a close relative would be occupying the house. Once the Knights became aware of this on March 27th, they lost interest in the Lewis offer and ultimately chose to reject it. (CP. EX. # 5; Tr. at 18, 37, 82-83, 104, 160-61).

47. The third proposition is also not valid. It is true that, with respect to the first offer of Barton and Richards, which had no balloon payment provision, Respondent Knight did indicate to Phylip Watson that Complainant Lewis's offer was preferable. (Tr. at 116-17, 123-24, 165-67).

This does not mean that Complainant Lewis's offer was better than Barton's and Richards's second offer with the balloon payment provision. (Tr. at 166-67).

48. The fourth proposition is not valid for several reasons. There is no evidence which directly shows why Respondent Knight did not mention the balloon payment offer to the Watsons or Lewis or give Lewis a chance to make such an offer. However, the previously discussed evidence shows that, once Respondent Knight was aware that neither Complainant Lewis nor a close relative would be occupying the property, Knight saw no reason for further negotiations because he preferred to sell to an owner-occupant. See Findings of Fact Nos. 25-33.

49. It is true that Barton and Richards were having difficulty making the down payment. The reason they requested an initial rental period was so they could use their income tax refunds to make the down payment. (Tr. at 115, 147). To conclude that this shows Barton and Richards would not have been able to make the balloon payment in 1995 relies on the assumption that Barton and Richards would be making that payment out of their own pockets without obtaining new financing.

50. Balloon payment financing is not unusual for home buyers who, like Barton and Richards, may have difficulty making a down payment or in obtaining conventional financing. Official notice is taken of the following facts based on the Commission's specialized expertise with respect to housing. Fairness to the parties does not require that they be given the opportunity to contest these facts:

a. A "balloon payment" usually refers to the final payment of principal under a financing instrument, whereby the final payment is much larger than the preceding periodic payments and usually consists of all the remaining principal. See Conclusion of Law No. 24.

b. Such "balloon payments" are usually incorporated in mortgages in times of high interest rates as a device to permit potential buyers, who are not able to obtain conventional financing, to buy a home. The underlying assumption, which applies equally well to land contracts, is that, there will be a change in circumstances, such as a decline in interest rates, before the time the balloon payment is due. Because of this change, the buyers will be able to obtain a conventional mortgage or other financing to enable them to make the final payment. Of course, the risk to the buyer is that he or she may not be able to obtain such financing and lose the home due to inability to make the balloon payment. See Conclusion of Law No. 25.

51. The potential advantages to the vendors, the Knights, in the second Barton and Richards offer were great. First, if Barton and Richards exercised their option, the Knights would have the assurance, during the five years of the contract preceding the balloon payment, that the building was being occupied by the owners and not by tenants. See Findings of Fact Nos. 33, 36.

52. Second, in the event Barton and Richards were able to obtain conventional financing, such as a mortgage, to pay off the balloon payment, which would constitute all the remaining principal, the Knights would receive the full purchase price in exchange for giving up legal title to the property. The contract would be completed. The Knights would have their money and would be

free of any future concerns with respect to the property. See Finding of Fact No. 36. See Conclusion of Law No. 24-25.

53. Third, in the event Barton and Richards were not able to pay off the balloon payment, and a forfeiture clause were included in the installment contract, the Knights would be able to work a forfeiture which would restore their rights to the property while allowing them to keep the payments that had been made. See Conclusion of Law No. 8.

54. There is no offer which would be absolutely risk free to the Knights except, perhaps, a cash payment for the property. The Knights were free to weigh the potential risks and benefits of the Barton and Richards offer and the Complainant Lewis offer. While there was a potential risk that Barton and Richards would not take the option or, if taken, would not obtain financing to make the balloon payment, there were also the potential benefits of owner occupancy and completion of payments within five years. It was not racially discriminatory for Respondent Knight to select this package of potential risks and benefits over the potential risks and benefits inherent in selling the property to an owner, Complainant Lewis, who would be renting it out and whose payments would take fifteen years to complete.

*Misunderstandings Reflected by the Complaint:*

55. There are two misunderstandings reflected in the complaint with respect to Barton and Richards second offer which may have played a role in leading Complainant Lewis to believe that his race was a factor in his rejection. The misunderstandings are that the down payment offered by Barton and Richards was less than that offered by Complainant Lewis and that the Barton and Richards second offer was "less than my offer." (Notice of Hearing-Complaint; Tr. at 36).

56. Neither of these is true. The down payment offered in the second offer by Barton and Richards was \$3300.00. (R. EX. B). The down payment offered by Complainant Lewis was \$2900.00. (CP. EX. # 1). This was not changed by the Complainant's amended offer. (CP. EX. # 2). The price offered by Barton and Richards was \$26500.00. (R. EX. B; Tr. at 49). The price initially offered by Lewis was \$26311.00. (CP. EX. # 1; Tr. at 47). The new contract price was left blank on Complainant Lewis amended offer because he wanted to buy out the Watson's interest and he did not know the exact balance. (CP. EX. # 2; Tr. at 73). The Barton and Richards offer had 15 year amortization with a five year balloon payment while Lewis had a 15 year amortization with no balloon payment. (R. EX. B; CP. EX. # 2).

57. The Commission and Complainant Lewis have not established by a preponderance of the evidence that the legitimate, non-discriminatory reasons given by Respondent Knight for failing to give his prior approval of the proposed sale to Lewis are pretexts for discrimination.

*G. Credibility Findings:*

58. All the witnesses, including Complainant Vincent Lewis, Respondent Hurl Knight, Edward Harris, and Phylip Watson told the truth as they understood it at this hearing. None of the witnesses gave willfully false testimony. As previously discussed, there were some honest

misunderstandings by both Complainant Lewis and Respondent Knight with respect to various points in their negotiations on sale of the property. See Findings of Fact Nos. 29, 30, 55-56. The conclusion reached by the Complainant and Ed Harris, to the effect that Complainant Lewis was denied housing due to racial discrimination, is rejected due to lack of supporting evidence, either direct or circumstantial. Their belief that Complainant Lewis was denied housing due to his race is no doubt sincere, and understandable in light of the still widespread existence of racial discrimination in our society, but must be rejected as this belief is not supported by the greater weight of the evidence.

## **CONCLUSIONS OF LAW:**

### **A. Jurisdiction and Procedure:**

1. Vincent Lewis' complaint was timely filed within one hundred eighty days of the alleged discriminatory practice. Iowa Code *S* 601A.15(11) (now *S* 216.15(11)) (1989). See Finding of Fact No. 1. All the statutory prerequisites for hearing have been met, i.e. investigation, finding of probable cause, attempted conciliation, and issuance of Notice of Hearing. Iowa Code *S* 216.15 (1993). See Finding of Fact No. 2.

2. Iowa Code section 601A.8(1)(2)(1989) states, in part:

It shall be an unfair or discriminatory practice for any owner, or person acting for an owner, of rights to housing or real property, with or without compensation, . . .

1. To refuse to sell, . . . assign . . . any real property or housing accommodation or part, portion, or interest therein, to any person because of the race . . . of such person.

2. To discriminate against any person because of the person's race . . . in the terms, conditions, or privileges of the sale . . . of any real property or housing accommodation, or any . . . interest therein.

Iowa Code section 601A.8(1)(2) (1989)(now renumbered to section 216.8(1)(2)(emphasis added).

3. Iowa Code section 601A.11(1) states:

It shall be an unfair or discriminatory practice for:

1. Any person to intentionally . . . compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

Iowa Code section 601A.11(1) (1989)(now renumbered to section 216.11(1)(emphasis added).

4. Subject matter jurisdiction ordinarily means the authority of a tribunal to hear and determine cases of the general class to which the proceedings in question belong. *Tombergs v. City of*

Eldridge, 433 N.W.2d 731, 733 (Iowa 1988). Vincent Lewis' complaint is within the subject matter jurisdiction of the Commission as the allegations that the Respondent refused to sell a house or coerced another to refuse to sell to Complainant Lewis because of his race are within the class of cases which the Commission has the power to hear and determine. Iowa Code SS 601A.8, .11 (now SS 216.8, .11).

5. There is no requirement in the statute that there be an enforceable real estate contract in existence between a prospective purchaser alleging discrimination and a seller or a person who must give consent to the sale of the property in order for the prospective purchaser's rights under the Iowa Civil Rights Act to be enforced. For example, if an owner of real property admitted that he refused to sell the property to a person because of that person's race, a violation of Iowa Code section 601A.8 would be established despite the absence of any contractual relationship between the prospective purchaser and the owner. *See* Iowa Code S 601A.8 (now 216.8).

6. Respondent Knight is covered by section 601A.8 because he is the "owner . . . of rights to housing or real property." Iowa Code S 601A.8(now 216.8). *See* Findings of Facts Nos. 5, 6. "[A] 'right' is well defined as 'a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.'" BLACK'S LAW DICTIONARY 1189 (5th ed. 1979).

7. Respondent Knight and his wife had entered into a real estate contract with the Watsons whereby the Watsons were purchasing the property from the Knights. Subsequent to entering this contract, the Watsons placed the house on the market. *See* Findings of Fact Nos. 5, 12-13. The general rule describing the legal relationship of the seller and the purchaser with respect to the property under such a contract is that:

[A] contract for the purchase of real estate works an equitable conversion. The contract vendee [i.e. purchaser] becomes the equitable owner; the contract vendor [i.e. seller] holds [legal] title as trustee for his purchaser. . . . The seller has effectively divested himself of all interest in the property except the right to collect the purchase price.

*Fellmer v. Gruber*, 261 N.W.2d 173, 174 (Iowa 1978)(emphasis added).

8. The seller may, however, by agreement with the purchaser, retain a greater interest in the property than the right to collect the purchase price provided by the general rule. *See Fellmer v. Gruber*, 261 N.W.2d 173, 174 (Iowa 1978); The seller, for example, may, by agreement with the purchaser, retain a right to the proceeds from insurance policies covering the property. *See id.* Or, as in this case, the purchaser and seller may reach an agreement to limit the right the purchaser would otherwise have to assign his interest to a third party. *United Central Bank of Des Moines v. Kruse*, 439 N.W.2d 849, 853 (Iowa 1989). They may also, as in this case, include a forfeiture clause in the contract, which would be a typical feature of such an installment contract. *See Westercamp v. Smith*, 239 Iowa 705, 715, 31 N.W.2d 347 (1948); Only if such clause is in the contract may a forfeiture be worked through failure of the purchaser to pay the vendor whereby the purchaser must relinquish his interest in the property without receiving reimbursement for monies previously paid. *See id.*

9. In the instant case, the sellers, the Knights, not only have the right to collect the purchase price from the purchasers, the Watsons, provided by the general rule governing the operation of real estate contracts, but have, by agreement with the purchaser, secured the specific contract right to prior approval over assignment of the contract and sale of the property and have included a forfeiture clause with its attendant rights. See Findings of Facts Nos. 6 and 7. There is no question that these rights give Respondent Knight "a capacity . . . of controlling, with the assent and assistance of the state [through the availability of a civil action to enforce the contract], the actions of others, [i.e. the Watsons]." See Conclusion of Law No. 7. Respondent Knight is clearly the owner of rights to real property or housing.

10. Respondent Knight is also covered by Iowa Code section 601A.11(1) as he is a "person" subject to the prohibitions of that section. Iowa Code *S* 601A.11(1) (1989). Under this statute, a "[p]erson' means one or more individuals." Iowa Code *S* 601A.2(2) (1989). See Finding of Fact No. 4.

#### B. Complainant Lewis Established a Prima Facie Case of Race Discrimination In Housing:

11. There is no direct evidence of racial discrimination in this case. See Finding of Fact No. 15. Therefore, the circumstantial evidence method of proof must be relied upon by the Commission in order to prove discrimination. *See Landals v. Rolfes Co.*, 454 N.W.2d 891, 893-94 (Iowa 1990); R. Schwemm, *Housing Discrimination Law and Litigation S* 10.2 n.16 (1993)(looseleaf)(direct evidence rarely available).

12. A prima facie case of discrimination under the circumstantial evidence method may be established by proof that:

- (1) [Complainant] is a member of a racial minority or other protected class.
- (2) [Complainant] applied for and was qualified to . . . purchase the unit involved;
- (3) [Complainant] was rejected by the [Respondent]; and,
- (4) the housing opportunity remained available thereafter.

R. Schwemm, *Housing Discrimination Law and Litigation S* 10.2 & n.27 (1993)(looseleaf). An alternative method of establishing a prima facie case is to omit the fourth element and require that the Respondent be aware of the complainant's membership in a protected class. *Id.* at n.27. A prima facie case of discrimination was established under both alternatives. See Findings of Fact Nos. 16-22.

13. It is also alleged that Respondent Knight compelled or coerced another (i.e. the Watsons) to reject Complainant Lewis offer because of his race. A prima facie case of this violation was also established by facts which were the same as or similar to those which established the prima facie case of discrimination:

- (1) [Complainant] is a member of a racial minority or other protected class.
- (2) [Complainant] applied for and was qualified to . . . purchase the unit involved;
- (3) [Complainant] was rejected because the [Respondent failed to give approval for assignment of the contract to him]; and,
- (4) the housing opportunity remained available thereafter.

*Cf.* R. Schwemm, *Housing Discrimination Law and Litigation* S 10.2 & n.27 (1993)(looseleaf)(modification of elements of prima facie case of discrimination in housing). A prima facie case was also established through an alternative method whereby the fourth element is omitted and the Respondent is shown to be aware of the complainant's membership in a protected class. *See Id.* at n.27.

C. Respondent Knight Rebutted the Prima Facie Case of Discrimination in Housing By Producing Evidence of Legitimate Non-Discriminatory Reasons for His Rejection of Complainant Knight:

14. The Complainant has met his 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.*, 907 F.2d 1447, *Fair Hous. Fair Lend. (Looseleaf)* § 15638 at p. 16274 (4th Cir. 1990).

15. The burden of production then shifts to the Respondent, i.e. the Respondent is required to produce evidence that shows a legitimate, non-discriminatory reason for its action. *Id.*; *Linn Co-operative 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 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).

16. 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 Co-operative Oil Company v. Quigley*, 305 N.W.2d 728, 733 (Iowa 1981). The Respondent need not persuade the finder of fact that it was actually motivated by the proffered reasons. *Id.* At this stage of the circumstantial evidence analysis no assessment is made of whether the evidence produced is credible or persuasive. *See St. Mary's Honor Center v. Hicks*, \_\_\_ U.S. \_\_\_, 62 Fair Empl. Prac. Cas. 96, 100 (1993).

17. Respondent Knight met this burden of production by introducing evidence of two reasons for failing to approve the sale to Complainant Lewis: (1) Lewis intended to rent the property and not to occupy it or have it occupied by a close relative and (2) Knight had received an offer from

Barton and Richards which included a balloon payment provision which would result in complete payment of the purchase price of the property within five years, as opposed to the fifteen year period contemplated by the Lewis offer. See Finding of Fact No. 23

18. A third reason was suggested on brief by Respondent: that the Lewis offer was rejected because Respondent Knight wished to keep the Watsons liable for any remaining payments, because of their regular payment record, and this would not be possible if Lewis entered into a new contract with the Knights, as set forth in his offer, which would relieve the Watsons of liability. See Finding of Fact No. 24. This was not sufficient to meet Respondent's burden of production because Respondent offered no evidence articulating this as a reason for the rejection of Lewis's offer. See Finding of Fact No. 24. Respondent's burden of production cannot be met "merely through an answer to the complaint or through argument of counsel." *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 255, 101 S.Ct. 1089, 67 L.Ed.2d 207, 216 n.9 (1981).

19. Nor can this burden be met, with respect to this third reason, by inferring that it was a reason based on Respondent Knight's general comment to Phylip Watson that he would like to keep Watson involved after the sale because Watson was a good buyer who made his payments. This comment to Watson does not specifically identify this factor as a reason for not approving Lewis's offer and thus fails to "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).

20. In addition, reliance on such statements from a decisionmaker to a witness would constitute reliance on a witness who had no personal knowledge of the actual Respondent reasons for the rejection. Reliance on what someone reported to a witness is not sufficient to meet Respondent's burden, *John Mack Burton*, XI Iowa Civil Rights Commission's Case Reports 1, 9 (1990)(citing *Gruener v. City of City Falls*, 189 N.W.2d 577, 580 (Iowa 1971)), which requires that the evidence produced must be 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). Likewise, the conclusory statements of others not involved in the Respondent's decisionmaking process are not sufficient to meet this burden of production. *See John Mack Burton* at 9.

Complainant Lewis Failed to Show that Respondent Knight's Reasons for Refusing to Approve or Accept Complainant Lewis's Offer Were Pretexts for Discrimination:

21. 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.10 (1981)).

22. With respect to the latter method, the finder of fact is permitted, but not required, to determine that its "disbelief of the reasons put forward by the defendant . . . together with the elements of the prima facie case suffice to show intentional discrimination." *St. Mary's Honor Center v. Hicks*, \_\_\_ U.S. \_\_\_, 62 Fair Empl. Prac. Cas. 96, 100 (1993). *See Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 255, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207, 216 n.10 (1981)(Complainant's initial evidence and inferences drawn therefrom may be considered on the issue of pretext).

23. There are a variety of ways to show that a Respondent's reason for an action is a pretext for discrimination. *See La Montagne v. American Convenience Products, Inc.*, 750 F.2d 1405, 1409, 36 Fair Empl. Prac. Cas. 913, 922 n.6 (7th Cir. 1984). Reasons articulated for a challenged action may, for example, be proved to be a pretext for discrimination by evidence showing:

(1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate the [challenged action], or (3) that the proffered reasons were insufficient to motivate the [challenged action].

*Bechold v. IGW Systems, Inc.*, 817 F.2d 1282, 43 Fair Empl. Prac. Cas. 1512, 1515 (7th Cir. 1987). The Commission set forth several arguments asserting that Respondent's reasons were pretexts for discrimination. These arguments were considered and rejected in the findings of fact. *See Findings of Fact Nos. 25-57.*

#### Balloon Payment Financing:

23A. In the discussion of whether the balloon payment reason was a pretext for discrimination in the findings of fact, official notice was taken of several facts with respect to balloon payment financing. *See Finding of Fact No. 50.* Official notice of these facts was proper because these are facts which are within the specialized knowledge of the agency, i.e. its specialized expertise with respect to housing. *Iowa Code S 17A.14(4)* (1991).

24. The facts of which official notice was taken have also been noted in various legal authorities. A "balloon payment" is defined as "the final payment of principal under a balloon note; commonly represents essentially the entire principal." *BLACK'S LAW DICTIONARY* 130 (5th ed. 1979). A balloon note "commonly calls for minimum payments of principal, if any, and payments of interest at regular intervals, but which requires a substantial payment of principal at the end of the term; the final payment frequently representing all the remaining principal." *Id.* Similarly, a "balloon mortgage" is defined as "a mortgage providing for specific payments at stated regular intervals with the final payment considerably more than any of the periodic payments." *Id.* Often this amount is the full balance due. *Note, Alternative Mortgage Instruments, the Oklahoma Experience*, 8 *Okla. City U. L. Rev.* 121, 124 (1983).

25. The use of balloon payment provisions in financing instruments as a device to permit potential buyers, who are not able to obtain conventional financing, such as a standard thirty year mortgage, to buy a home has also been noted in various sources discussing "creative financing" of private housing. *See P. Rohan, Vol. 4 Part 2 Real Estate Transactions: Real Estate Financing SS3B.01-3B.02* (1987); *Epley and Rabianski, The Components of Creative Financing*, 11 *Real*

Estate L.J. 223, 229 (1983). The underlying assumption in such transactions is that there will be a change in circumstances, such as a reduction in interest rates, whereby the buyer will be able to obtain conventional financing in time to pay off the balloon payment. *Cf.* Hiller, Mortgage Loan Costs: The Impact of Variable Interest Rates and Negotiability, 18 Real Estate L.J. 259, 268 (1990); *See* P. Rohan, Vol. 4 Part 2 Real Estate Transactions: Real Estate Financing S 3B.01 (1987); Epley and Rabianski, The Components of Creative Financing, 11 Real Estate L.J. 223, 223 (1983)(all noting that one result of the high interest rates of the 1980s was the use of various creative financing devices instead of conventional financing). The procedure, in other words, "allows the buyer a predetermined amount of time to raise financial resources to discharge the debt." Epley and Rabianski, The Components of Creative Financing, 11 Real Estate L.J. 223, 229 (1983). The risk is that the buyer may not be able to obtain new financing and thus lose the house. *See* P. Rohan, Vol. 4 Part 2 Real Estate Transactions: Real Estate Financing SS 3B.01-3B.02 (1987).

#### Credibility and Testimony:

26. 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 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).

27. Furthermore, the ultimate determination of the finder of fact "is not dependent on the number of witnesses. The weight of the testimony is the important factor." *Wiese v. Hoffman*, 249 Iowa 416, 424, 86 N.W.2d 861, 867 (1957). In determining the credibility of a witness and what weight is to be given to testimony, the factfinder may consider the witness' "conduct and demeanor. . . [including] the frankness, or lack thereof, and the general demeanor of witnesses," *In Re Moffatt*, 279 N.W.2d 15, 17-18 (Iowa 1979); *Wiese v. Hoffman*, 249 Iowa 416, 424, 86 N.W.2d 861, 867 (1957), as well as "the plausibility of the evidence. The [factfinder] may use its good judgment as to the details of the occurrence . . . and all proper and reasonable deductions to be drawn from the evidence." *Wiese v. Hoffman*, 249 Iowa 416, 424-25, 86 N.W.2d 861 (1957).

28.

Evidence on an issue of fact is not necessarily in equilibrium because the witnesses who testify to the existence of the fact are directly contradicted by the same number of witnesses, even though there is but a single witness on each side and their testimony is in direct conflict.

. . .

Numerical preponderance of the witnesses does not necessarily constitute a preponderance of the evidence so as to require a contested question of fact to be decided in accordance therewith. . . . [T]he intelligence, fairness, and means of observation of the witnesses, and various other recognized factors in determining the weight of the evidence . . . should be taken into consideration. . . . It is, of course, well recognized that the preponderance of the evidence does not depend upon the number of witnesses.

Id., 249 Iowa at 425, 86 N.W.2d 861.

## **DECISION AND ORDER**

IT IS ORDERED, ADJUDGED, AND DECREED that:

A. The Complainant Vincent Lewis and the Iowa Civil Rights Commission have failed to prove, by the greater weight of the evidence, Complainant Lewis's allegations that Respondent Hurl Knight either rejected Lewis's offer to buy a property (a house) due to Lewis's race or compelled or coerced another to reject his offer because of his race.

B. Therefore, this complaint is DISMISSED. Signed this the 18th day of November 1993.

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