BEFORE THE IOWA CIVIL RIGHTS COMMISSION

SHARON N. TROUT, Complainant

VS.

AGNES CRUMBAUGH, BOB BIRMINGHAM, AGENT, Respondents.

CP# 08-87-16583

THIS MATTER, a complaint filed by SHARON N. TROUT (Complainant) with the Iowa Civil Rights Commission (Commission) charging AGNES CRUMBAUGH and BOB BIRMINGHAM (Respondents) with discrimination in housing on the basis of race, came on for Hearing in Davenport, Iowa, on July 6, 1988, before Ione G. Shadduck serving as Administrative Law Judge (ALJ). The case in support of the complaint was presented by Rick Autry, Assistant Attorney General. Respondents were represented by Patrick J. Kelly, Attorney at Law. Respondent Agnes Crumbaugh did not appear at the Hearing.

After reviewing the record, the following findings of fact, conclusions of law, recommended decision and order are proposed.[1]

FINDINGS OF FACT

1. The Complainant, Sharon N. Trout, timely filed verified complaint CP# 08-87-16583 with the Iowa Civil Rights Commission on August 17, 1987, alleging a violation of Iowa Code section 601A.8, discrimination in housing on the basis of race, by Respondents Agnes Crumbaugh and Bob Birmingham, Agent.

2. The complaint was investigated, probable cause found, conciliation attempted but failed. Notice of Hearing was issued on December 29, 1987.

3. In 1987, Sharon N. Trout was about 25 years of age with two children, one age two and a newborn. Trout is white. Her former boyfriend is Black.

4. Prior to July 1987, Trout was living in a big house with her parents. The house was located at 1528 West Eighth Street in Davenport, Iowa. With the permission of the owner, they were living in the house until foreclosure proceedings were completed. That was to occur sometime in July. Trout and her parents were looking for separate apartments and hoped to find something in the same area as they were then living.

5. Agnes Crumbaugh owned the duplex located at 1627-1629 West Eighth Street, Davenport, Iowa. Robert (Bob) Birmingham was her manager for about six rental units including the duplex

[1] References throughout this proposed decision shall be as follows:
To the transcript of the hearing "(Tr.);
to Complainant's exhibits "(C. Ex. __);
and to Respondent's exhibits "(R. Ex. ___);

at issue. Birmingham advertised vacancies by placing a card in a window with a number to be called. David (last name unknown) assisted Birmingham by showing the units to potential renters. He did not do the renting. (NOTE: Complainant's Exhibit 2 gives DAVID's last name as ROEDER).

6. Trout started to look for an apartment in June. She then had surgery and was unable to pursue it. On July 1, she and her parents received notice to move because of the foreclosure. Trout saw the "For Rent' sign in the window of the duplex at West Eighth and called the number given. She talked with Birmingham. He said she could look at the unit. David showed her the unit. She told David she wanted her parents to look at it and she did take her stepfather, Gary Skarda, to check out the heating, etc., of the unit.

7. Trout's stepfather and mother were also looking for a place to live and on the same day David showed them the duplex unit, he also had a house to show Trout's parents. Trout's mother picked up Trout and her stepfather at the duplex. They then followed David to see the house in which Trout's parents were interested. As they passed the house where they were then living, Trout's boyfriend called out to them. He was taking a big box out of his pharmacy truck. They stopped and Trout got out to see what he was carrying and went into the house with him. When the parents and David reached the house they were to look at, David asked Skarda "Is that your daughter's boyfriend?" Skarda said that it was.

8. Trout decided she wanted the duplex apartment. She called Birmingham and said she wanted to take the apartment and asked for the keys.

9. Trout alleges Birmingham asked whether her boyfriend was Black and that when she sad he was, Birmingham refused to rent her the apartment. Trout's sister, Helen Miranda, and Trout's friend, Lisa Burrall, witnessed Trout's end of the phone call and her reaction to the rejection. Trout said she felt like she had been called a dirty name and that she wasn't any good because she was going out with a Black man. One of her children was the son of the Black boyfriend. Birmingham denies making any comments about Trout's boyfriend being Black.

10. Trout had to begin looking for another apartment under the growing time pressure of being out of the foreclosed house. She finally found a place within the desired neighborhood, but only one bedroom and very small. The close quarters resulted in a stressful situation causing Trout and her boyfriend to fight all the time. They finally broke up.

11. Trout was on ADC at the time and receiving $381.00 a month. She felt she could afford $200.00 rent each month.

12. Jon Clarkson, employee of the Commission, talked on the phone with Birmingham after the filing of this complaint. He remembers that Birmingham was upset about a previous complaint where a mixed race couple had rented from him agreeing to do repairs and that they not only did not do the repairs, but left the place in a mess. Birmingham referred to the Black male as a 'big buck," a characterization Clarkson believed to be racially derogatory.

13. According to Birmingham, the rent on that duplex was $250.00 and the deposit was $250.00, and the reason he refused to rent to Trout was that she did not have the money for the rent and deposit. Birmingham denies using the characterization of "big buck" when he talked with Clarkson. He also said he rents to Black persons now and has in the past.

CONCLUSIONS OF LAW

1. The complaint, CP# 08-87-16583, was timely filed, processed, and the issues in the complaint are properly before the Administrative Law Judge and ultimately before the Commission.

2. The applicable statutory authority is Iowa Code section 601A.8:

> 601A.8 Unfair or discriminatory practices--housing. 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, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:
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> 1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin or disability of such person.
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> 2. To discriminate against any person because of the person's race, color, creed, sex, religion, national origin or disability, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.
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> 3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin or disability is unwelcome, objectionable, not acceptable or not solicited.
>
> 4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin 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 or owner as friends, guests, visitors, relatives or in any similar capacity.

3. Agnes Crumbaugh owned the duplex located at 1627-1629 West Eighth Street, Davenport, Iowa. Robert (Bob) Birmingham was the agent of Crumbaugh and acted on behalf of Crumbaugh in the rental process of advertising, authorizing rental units to be shown and making decisions as

to which applicants he would accept as renters. Therefore, Respondents are subject to section 601A.8 and do not fall under any of the exceptions found in section 601A. 12.

4. Sharon Trout is a white person. During the time at issue, Trout had a Black boyfriend. David, Birmingham's assistant, saw Trout momentarily as she walked in her house with her Black boyfriend. The only way Birmingham could have known that Trout had a Black boyfriend was if David had told him. There is no evidence that he did. The only evidence that he may have told Birmingham is Trout's testimony of her phone conversation with Birmingham. Birmingham denies that the Black boyfriend was the reason he refused to rent to Trout. David was not called as a witness. The evidence as to whether or not Trout's boyfriend was to share the apartment is in conflict. Skarda, Trout's stepfather, said that the boyfriend did move in with her in the apartment she later found, but he only stayed about three days because of the small quarters. Trout denies that she planned to live with her boyfriend. (Tr. 36). Trout's boyfriend was not called as a witness.

5. There is very little case law in the State of Iowa concerning the proper allocation of burden of production and persuasion in the housing discrimination area. Federal cases in the housing discrimination area have utilized by analogy the analysis applied in individual employment discrimination cases under McDonnell- Douglas Corp. v. Green, 411 U.S. 792 (1973). See Phillips v. Hunter Trails Community Association, 685 N.W.2d 184, 190 (7th Cir. 1982); Robinson v. 12 Lofts Realty, Inc., 601 F.2d 1032, 1038 (2nd Cir. 1979). Under this analysis a complainant is required, initially, to establish a prima facie case. The purpose of the prima facie case is the elimination of the most common non-discriminatory reasons for a complainant's rejection. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253-254 (1981). A showing of a prima facie case raises a presumption that the complainant was treated discriminatorily. See Burdine, 450 U.S. at 254. The prima facie case varies according to the elements of proof necessary in a particular case.

It has been established that Crumbaugh is the owner of the duplex at 1627-1629 West Eighth Street and that Birmingham was acting as agent for Crumbaugh when Trout requested to rent that duplex. Therefore, it would be an unfair or discriminatory practice under Iowa Code section 601A.8 for diem:

> 1 . To refuse to: rent ... any ... housing accommodation... to any person because of the race of such person. [Emphasis added]

It is clear that section I does not apply in this case since Trout is white and any refusal was not based on her race, but rather would have been based on the race of her boyfriend at that time who was Black.

> It would also be discriminatory for Crumbaugh/Birmingham:
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> 2. To discriminate against any person because of the person's race ... in the terms, conditions or privileges -Of the ... rental ... of any ... housing accommodation or any part, portion or interest therein. [Emphasis added]

Again it is clear that section 2 does not apply in this case because Trout is white and any discriminatory terms, conditions or privileges in the rental of the duplex would not have been based on her race, but again would have been based on the race of her boyfriend.

Although it is true section 601A.18 provides that Chapter 601A should be broadly construed to effectuate its purpose, well- established rules of statutory construction include the following:

> (1) In considering legislative enactments we should avoid strained, impractical or absurd results.
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> (2) Ordinarily, the usual and ordinary meaning to be given the language used but the manifest intent of the legislature will prevail over the literal import of the words used.
> (3) Where language is clear and plain, there is no room for construction.

Sommers v. Iowa Civil Rights Commission, 337 N.W.2d 470, 472- 73 (Iowa 1983). Sections 1 and 2 of 601A.8 are clear and plain and there is no basis to believe the intent of the legislature was other than as specifically stated, i.e., that the discriminatory acts against the person must be based on that person's race. The language does not include race by association. The fact that the legislature added the broader language of sections, 601A.8(3) and (4) confirm the interpretation given sections 60 IA. 8(l) and (2). Those sections provide that it is a discriminatory practice:

> 3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race,color, creed, sex, religion, national origin or disability is unwelcome, objectionable, not acceptable or not solicited.
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> 4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation,because of the race, color, creed, religion, sex, disability, age or national origin 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 or owner as friends, guests, visitors, relatives or in any similar capacity. [Emphasis added].

The evidence in the case at issue does not clearly point to which of the two sections, (3) or (4), Trout was attempting to prove.

6. The three-part burden of proof test established in McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed.2d 668 (1973), a Title VII employment discrimination case has been applied in housing claims. To be used, the prima facie case analogy with McDonnell-Douglas criteria must be based on the appropriate law to be enforced. A prima facie case for sections 601A.8(3) and (4) are not the same.

When a prima facie case is established, the burden then shifts to the owner/agent to produce evidence that the denial of rental privilege was motivated by legitimate non-racial considerations as explained in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254-55, 101 S. Ct. 1089, 1094, 67 L.Ed.2d 207 (1981):

> "The burden that shifts to the defendant, therefore, is the burden to rebut the presumption of discrimination by producing evidence that the plaintiff was rejected ... for a legitimate non-discriminatory reason.
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> To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reason for the plaintiff's rejection. The explanation provided must be legally sufficient to justify a judgment for the defendant. If the defendant carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity."

In the case at issue, Birmingham merely denied that race was the reason for Trout's rejection and that the reason was that she didn't have the required money. He did not offer any admissible evidence that at the time in issue the rent for the duplex was $250.00 a month plus $250.00 deposit. The fact that he was renting a different unit to a Black person about nine months later and that rent was $260.00, plus a deposit is not adequate evidence of what occurred in July 1987. (Tr. 81-82). Admissible evidence in the form of records of rent/deposit receipts from the prior renters of the same unit Trout had applied to rent, the other duplex unit at the same address, if comparable, and subsequent renters during the same time frame could have been offered to support Respondent's defense. No evidence was produced.

7. Neither party subpoenaed David (Roeder) as a witness in their behalf nor did they explain his absence. Testimony and demeanor of this potential witness would have been helpful to determine whether or not he saw Trout's Black boyfriend, whether he asked Skarda if the person he saw was Trout's boyfriend, and whether he told Birmingham that Trout had a Black boyfriend. Cornell Miller, Trout's Black boyfriend, could have provided evidence of his intent to live with or merely visit Trout. Furthermore, he could have testified whether or not he intended to contribute to the rental payments and rental deposit. He could also have testified as to the effect his association with Trout had on Trout in this situation. This is the type of evidence that should have been provided at this Hearing.

8. Based on the evidence that was presented, it is concluded that Trout is a member of the class protected under Iowa Code 60 IA. 8(3), that she did apply to rent a duplex unit at 1627-1629 West Eighth Street in Davenport, Iowa, from Birmingham, agent for Apes Crumbaugh who was owner of that duplex, and that she believed Birmingham indicated by his refusal to rent her that unit that her Black boyfriend was objectionable. In Furnco Construction Corp. v. Walters, 438 U.S. 567, 577, 98 S. Ct. 2943, 2949, 57 L.Ed.2d (1978) (cited with approval in Burdine, 405 U.S. at 254, 101 S. Ct. at 1094), the Court stated that the McDonnell-Douglas inference of discrimination is based on the common sense conclusion that an inadequately explained adverse action is more likely than not based on impermissible factors:

> "A prima facie case under McDonnell-Douglas raises an inference of discrimination only because we presume these acts, if otherwise unexplained are more likely than not based on the consideration of impermissible factors. See Teamsters v. UnitedStates, supra [431 U.S. 324] at 358 n. 44 [97 S. Ct. 1843, 1866 n. 44, 52 L. Ed.2d 396 (1977)]. And we are willing to presume this largely because we know from our experience that more often than not people do not act in a totally arbitrary manner, without any underlying reasons, especially in a business setting. Thus, when all legitimate reasons for rejecting an applicant have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, who we generally assume acts only with some reason, based his decision on an impermissible consideration such as nice. "

The reasons provided by Respondents must be considered remembering that the fair housing laws of the nation and this State "prohibit all forms of discrimination, sophisticated as well as simpleminded, and thus disparity of treatment" based on race "must receive short shrift from the courts. " McDonald v. Verble, 622 F.2d 1227, 1234 (6th Cir. 1980), quoting Williams v. Matthews Co., 499 F.2d 819, 826 (8th Cir.), cert. denied, 419 U.S. 1021, 95 S. Ct. 495, 42 L.Ed.2d 294 (1974). Racial animus need not be the sole reason for the refusal to rent. Respondents are liable so long as race played a part in their decision. Woods-Drake v. Lundy, 667 F.2d 1198, 1201 (5th Cir. 1982).

Based on the lack of meaningful evidence by Respondents, the denial of statements made to Clarkson and the fact that Clarkson was a credible witness, the contrast of what Birmingham remembered of his phone conversation with Trout at the Hearing and what he remembered when interviewed earlier in the case, it is concluded the Complainant has proven, by a preponderance of the evidence, that Respondents denied her the opportunity of renting the duplex unit because she had a Black boyfriend. Trout's testimony was corroborated by three witnesses, her stepfather, her sister and her friend. The emotional impact of the denial to rent her the duplex because her boyfriend was Black was witnessed by her sister, her friend, and her mother. Trout's demeanor while testifying about the loss of her boyfriend, the father of one of her children, supported the emotional impact of the situation. Therefore, it is concluded that Respondents Agnes Crumbaugh and Robert (Bob) Birmingham violated Iowa Code Chapter 601A.

Damages for emotional distress are appropriate in this case. The amount of damages involves a factual determination at the discretion and judgment of the fact finder who witnessed the demeanor of the witnesses. Smith v. Heath, 691 F.2d 220 at 226. "No formula exists to determine with precision compensatory damages.' Id. at 227. It is concluded that Complainant should be awarded $2,500.00 for emotional distress damages.

RECOMMENDED DECISION AND ORDER

1. Respondents Agnes Crumbaugh and Bob Birmingham, Agent, violated Iowa Code Chapter 601A.8, when they refused to rent the duplex unit to Complainant, Sharon Trout.

2. IT IS THEREFORE ORDERED that Respondents shall cease and desist from discriminatory practices in their business of renting housing accommodations.

3. IT IS FURTHER ORDERED that Respondents shall pay to Sharon Trout the amount of $2,500.00, for emotional distress damages, plus interest on that amount at the rate of 10% per beginning August 17, 1987, to continue until paid in full

Signed this 26th day of October 1988.

IONE G. SHADDUCK
ADMINISTRATIVE LAW JUDGE

DECISION AND ORDER

NOW on this 9th day of December 1988, the Iowa Civil Rights Commission adopted the Proposed Decision of the Administrative Law Judge, which was signed on October 26, 1988, as its own Decision and Order.

Issued this 7th day of January 1989.

RUBY ABEBE, CHAIRPERSON
IOWA CIVIL RIGHTS COMMISSION