

**BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS**

**DIA # 99ICRC-2**

**CP # 09-98-35865**

**LISA BRAMMER, Complainant,  
and  
IOWA CIVIL RIGHTS COMMISSION,**

**vs.**

**GLEN LINQUIST, Respondent,  
and  
HAZEL LINQUIST, Respondent.**

**SUMMARY**

This matter came before Iowa Civil Rights Commission on the Complaint filed by Lisa Brammer and her daughter, Amy Brammer, against the Respondents Glen Linquist and Hazel Linquist. The Brammers alleged race or color discrimination in housing.

Amy Brammer's complaint was subsequently voluntarily dismissed.

The Respondents and the Commission stipulated that the Respondents discriminated in housing and were liable for any damages to the Complainant, Lisa Brammer, a white female, because they refused to rent an apartment to her because she had a Black boyfriend.

The Respondents and the Commission stipulated that, due to the death of Respondent Hazel Linquist, the poor health of Respondent Glen Linquist, and the fact that Respondent Linquist is not likely to be engaged in the rental of property in Iowa in the future a civil penalty would not be justified in this case. The Commission specifically waived all rights to seek civil penalties, fees or costs due to this claim.

Since the Respondents and the Commission stipulated that the Respondents are liable for damages, the only remaining question is what amount, if any, of compensatory damages to which the Complainant is entitled.

A public hearing on the complaint was held on June 6, 2000 before the Honorable Donald W. Bohlken, Administrative Law Judge, at the City Council Chambers in the City Hall of Keokuk, Iowa. The Respondents Linquist were represented by John Loeschen, attorney. The Iowa Civil Rights Commission was represented by Rick Autry, Assistant Attorney General. The Complainant, Lisa Brammer, did appear, but was not represented by counsel.

The Commission and the Respondents both filed post hearing briefs on or about August 23, 2000. The record was held open until October 3, 2000 for reply briefs, but none were received.

After examination of all the evidence, the Administrative Law Judge concluded that the Complainant is entitled to compensatory damages in the amount of \$5000.00 for emotional distress, \$85.00 for out of pocket expenses, \$1220.00 for past rent differentials and also the payment of future rent differentials.

### **RULINGS ON OBJECTIONS:**

1. The Commission objected to admission of Respondents' Exhibit 1, a letter, dated April 2, 1999, from Civil Rights Specialist Sherry Williams to attorney Loeschen. The letter contains a settlement offer from the appellant. The Commission objected that admission of this letter would violate the following rule:

**40.17(9)** No evidence shall be received at any hearing concerning offers or counter-offers of adjustment during efforts to conciliate or settle an alleged unfair or discriminatory practice.

161 IAC 40.17(9).

2. Administrative rules and statutes are interpreted and construed under the same rules. Motor Club of Iowa v. Dept. of Transportation, 251 N.W.2d 510, 118 (Iowa 1977). "Where language is clear and plain, there is no room for construction." Iowa National Industrial Loan Co. v. Iowa State Dept. of Revenue, 224 N.W.2d at 440.

3. In this case, the language of the rule is clear and plain so no construction is required. See *id.* Given that this letter does concern "offers or counter-offers of adjustment", the objection to Respondents' Exhibit # 1 is sustained. This exhibit may not be considered as part of the evidence in the record.

4. Under the same reasoning, the Commission's counsel obtained a standing objection to all testimony concerning negotiations, offers and counteroffers, as the rule prohibits the entry of any evidence on such matters. (Tr. at 75). This objection is sustained on the basis that such testimony violates the rule cited above. See 161 IAC 40.17(9). All such testimony may not be considered as evidence in this case.

### **FINDINGS OF FACT:**

#### **I. PROCEDURE:**

1. On September 17, 1998, a date stipulated on the record (Tr. 99-100), Lisa Brammer filed the following complaint with the Iowa Civil Rights Commission on behalf of herself and her daughter, Amy Brammer:

In the Area of Housing, I believe that I have been discriminated against on the Basis of Race or Color.

I believe Race or Color was a factor in the following incidents:

My girlfriend was renting from this landlord and told me that she was going to be moving and suggested I call the landlord. I called and talked to Ms. Linquist around the first week in August, telling her it would be my daughter and myself. Ms. Linquist called me back in a couple days and told me I had the apartment. I accepted. I purchased a stove and refrigerator for the apartment, which were moved into the apartment. On September 04 [1998] I gave Ms. Linquist my money order for September's rent. We further discussed things that needed to be done in the apartment. She asked me to sit down and said she had something she needed to talk to me about and that she really didn't know how to go about saying it. She said, "I've received word that you have a Black boyfriend." I told her that was true. She said, "Well, the thing about it is we've never really had a mixed couple living in our apartment and I'm not sure how the tenants are going to react to that." She asked me if my boyfriend would be living with me and I said that he wouldn't be, but that we did spend a lot of time together and he will probably be at the apartment. Mr. Linquist walked in the door. Ms. Linquist told him "We were just now talking about her Black boyfriend." I asked her if my boyfriend and I got married, would we no longer be able to live in the apartment? She looked at her husband and asked him what he thought. Mr. Linquist turned and looked at me and said, "Well, I just think it would be better if you found somewhere else to live." I said, "That's your choice." Ms. Linquist returned my money order to me. I believe this to be a violation of both State and Federal law.

(Complaint-as amended).

2. The above complaint was amended on December 30, 1998 to make name corrections. Probable cause to credit the allegations in the complaint was found on August 30, 1999. (Stipulated on the record at Tr. at 99-100). Notice of hearing was issued on April 11, 2000. Amy Brammer was dismissed by voluntary dismissal on May 19, 2000.

## **II. STIPULATION AND WAIVER:**

3. The Commission and the Respondents entered into the following stipulations on May 25, 2000:

1. The Respondents discriminated in housing against Complainant Lisa Brammer when on or about September 4, 1998 they refused to rent to Brammer because of the race of her boyfriend who would from time to time be present at the rental unit in question. This discrimination was in violation of the Iowa Civil Rights Act. Respondents are liable for any legally cognizable damage to Complainant Lisa Brammer which is shown to have been proximately caused by this discrimination.

2. Because of the death of Respondent Hazel Linquist, the poor health of Respondent Glen Linquist, and the fact that neither Respondent is neither now nor in the future is likely to be engaged in the rental business in Iowa this case is not

an appropriate one for the levying of a civil penalty. No civil penalty is justified in this case.

(Stipulations and Waiver).

4. On the same date, the Iowa Civil Rights Commission entered into the following waiver:

3. In addition to agreeing to the above stipulations of fact the Iowa Civil Rights Commission hereby waives any and all rights to seek any civil penalties, fees, or costs arising out of the discrimination described in paragraph one. The Iowa Civil Rights Commission further waives the right to seek compensation for any fees or costs associated with the litigation of this claim.

(Stipulations and Waiver).

### **III. DAMAGES FOR OUT OF POCKET EXPENSES:**

5. The Complainant credibly testified that she expended \$45.00 for window blinds for the apartment she had rented from the Respondents, which she could no longer use. She also credibly testified that she expended \$40.00 to have a stove and refrigerator moved into the apartment. (Tr. at 11-12). The Complainant was never reimbursed by the Respondents for these amounts. While the Respondents suggest, on brief, that the Complainant could have sold the blinds, the Respondents have introduced no evidence that there was any market, either secondhand or salvage, for such blinds or what their value on such a market would be. (See Respondents' Brief at 8).

6. The Complainant is entitled to receive a total of \$85.00 in compensatory damages for out of pocket expenses.

7. At hearing, the Respondents seemed to suggest that the \$250.00 check which the Complainant received from the Respondents as payment for the stove and refrigerator she moved into the apartment was, somehow, a total settlement for all claims, including the discrimination claim. The Respondents have abandoned such an argument as it is not raised on brief. Furthermore, the \$250.00 check's notation indicates only that it is reimbursement for the cost of the stove and refrigerator. (See Tr. at 107, R. EX. 2).

### **IV. DAMAGES FOR DIFFERENCE IN RENT COSTS:**

8. Due to the Respondents' admitted and stipulated refusal to rent to the Complainant due to race or color, the Complainant had to return to her former apartment. This apartment's rent was higher than that of the Respondents' apartment. Therefore, the Complainant is entitled to the difference in rents as part of her compensatory damages. Based on the credible evidence in the record, the difference is as follows through August 2000:

Dates:	# of	Rent Paid	Rent at Respondents'	Difference	TOTAL
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	Months	By Complainant	Apartment	(Per Month)	
9/98-6/99	10	\$305.00/mo.	\$260.00/mo.	\$45.00	\$450.00
7/99-8/00	14	\$315.00/mo.	\$260.00/mo.	\$55.00	\$770.00
<b>TOTAL</b>					<b>\$1220.00</b>

9. The Respondents' son credibly testified that all of the Respondents' rental properties are now up for sale. He further testified that there were no new rentals, as he is trying to get the properties sold. (Tr. at 103). Although he suggested that the rental amounts could or should be higher, there is no evidence that rents have been raised or that the property sought by the Complainant has been sold. (Tr. at 103-111). Thus, the Complainant is entitled to continuing relief for the difference in monthly rents until the difference is paid in full or for so long as the differential persists, whichever occurs first. The methods by which this information shall be obtained shall be addressed in the order section of this decision.

**V. DAMAGES FOR EMOTIONAL DISTRESS:**

10. Many of the details of how the Complainant was informed by the Respondents that she would not be allowed to live in the Respondents' apartment because she had a Black boyfriend are accurately stated in the complaint. See Finding of Fact No. 1. The Complainant also testified that she was crying in response to being informed by Respondents that she would be rejected because she had a Black boyfriend. She was still crying at the time she arrived back at her home. She continued to cry as she talked with her boyfriend and, later, with her landlady. (Tr. at 20-21, 23). She also cried as she cashed in the money order she had obtained to pay the rent. (Tr. at 25). It may reasonably be inferred from the circumstances set forth therein that the Complainant would suffer emotional distress from the racially discriminatory treatment afforded her by the Respondents. These circumstances included an express statement of racial bias at the time she was denied the apartment.

11. Certain other circumstances should be considered. At the time she was informed she would not be allowed to rent the apartment, the Complainant had already packed, moved into and cleaned the apartment. After the rejection, she had to move her things back to her home and unpack and store them, which took approximately 12 to 13 hours. (Tr. at 55-59). She had, as previously noted, moved in a stove and refrigerator. She sustained out-of-pocket costs for these items and for window blinds. See Findings of Fact Nos. 5-6.

12. The Complainant had told her co-workers, relatives and friends, including her daughter Amy, that she was going to move into the Respondents' apartment. (Tr. at 13). That apartment would be closer to her thirteen and eleven year old children who live with their father. They would be

able to safely walk or bicycle a few blocks to the Respondents' apartment, which they could not do with respect to the apartment the Complainant was renting. (Tr. at 7, 10)..The Respondents' apartment was also larger than the one bedroom apartment being rented by the Complainant. (Tr. at 8, 10).

13. At that time, the Complainant had already informed her current landlord that she was moving. (Tr. at 22). She had no idea as to whether she would be able to continue in her present apartment or would have to locate a new one. (At the time, she erroneously thought her landlady had informed the Respondents that she had a Black boyfriend). (Tr. at 22-23). Even though she was allowed, after a little over two hours, to continue in her previous apartment, she did not immediately realize that was the case. (Tr. at 50-52, 59). The Complainant also sustained an additional economic loss through the differential in rental costs. See Findings of Fact Nos. 8-9.

14. The Complainant's daughter, Amy, has Down's Syndrome. Amy is 20 years old, but has the intellectual capacity of an eight to ten year old child. Amy was excited about the move. (Tr. at 13). Amy was upset by the news that they would not be moving. "She was stomping her foot on the floor and saying 'no' and talking about her room and stuff." (Tr. at 25). Amy's reaction had, of course, a distressing effect on her mother. Due to Amy's condition, the Complainant had to take the blame for the failed move as she felt it was best to not explain it to her daughter. (Tr. at 25, 27)

15. Because she had told friends and co-workers about her move, they asked her what had happened. It humiliated her to tell them why she was not moving. (Tr. 15, 27).

16. The impact of the rejection for the apartment has caused the Complainant to refrain from looking for another apartment due to fear of future discrimination. When she did look, the Complainant made phone calls from a pay phone because landlords with caller ID would be able to identify her and again discriminate. (Tr. at 28-29).

17. Throughout her testimony, the Complainant cried as she recalled the events surrounding her rejection for the Respondents' apartment. This was admitted by the Respondents on brief and is binding on the Respondents.. (Respondents' Brief at 2). The Complainant had to take a break during her testimony to compose herself. (Tr. at 19).

18. The Complainant credibly testified that she was upset and "humiliated" by these events. (Tr. at 24, 27). In addition, she sustained some distress from having to go through the investigation and litigation process to secure her rights. (Tr. at 91-95).

19. The Respondents noted that because the Complainant had lost some friends after she began to date a Black man, and that the Complainant displayed little emotional distress in her testimony concerning those friends. (Respondents' Brief at 3-4). (Tr. at 40-41). The Respondents suggest that this lack of emotional response with respect to the loss of friends indicates that the Complainant is not credible with respect to her emotional response to remarks made by the Respondents, who were strangers to her. (Respondents' Brief at 4).

20. There are three problems with this reasoning. First, as the Complainant explained, although this did upset her, "the way I looked at it was I guess they [the two or three friends who no longer called her] weren't my friends to begin with because I have a lot of people who stayed with me." (Tr. at 41, 42). Also, these "friends" did not openly display a hostility or aversion toward the Complainant because she was dating a Black man. Rather, they merely failed to call her after the dating relationship started. (Tr. at 40). Finally, there is nothing in the record indicating that the Complainant's friends ever tried to or even had the power to deny her a place to live. She "never thought I would be denied renting because I had a black boyfriend." (Tr. at 44-45).

21. The Respondents also suggest that the Complainant's emotional distress is ended because Respondent Hazel Linquist is no longer alive. The Respondent notes that the Complainant "will obviously not be encountering Mrs. Linquist in the City of Keokuk." (Respondent's Brief at 3). This suggestion makes no sense. It defies commonsense to suggest that the emotional distress sustained by a victim of discrimination evaporates or ceases on the death of one of the two perpetrators of the discrimination. The Respondents do not even argue that there is a basis in law for such a conclusion.

22. The Respondents also argued that, "Although [the Complainant] has stated that she would like to receive \$5,000.00 in compensation, even [the Complainant] could not justify or give a rational basis for requesting this amount." (Respondent's Brief at 8). Obviously, civil rights complainants are not expected to be experts in the law of damages or in measuring appropriate compensation for emotional distress. The complainant did note that the compensation was requested for her feelings, which is another way of stating her emotional distress. (Tr. at 77-78).

23. It is clear from the Complainant's demeanor and testimony that she will never forget this event which has caused her substantial and serious emotional distress. She recalls the event "[j]ust like it happened yesterday" and will never forget it. (Tr. at 14). She often thinks of the event and is upset by it. (Tr. at 30). For a month after the incident, she thought of it every day. (Tr. at 31). In light of the duration and severity of the emotional distress caused to the Complainant by the racially discriminatory denial of housing, she should be compensated for that distress in the amount of five thousand dollars (\$5000.00).

## **CONCLUSIONS OF LAW:**

### **I. PROCEDURE:**

#### 1. Stipulated Facts:

1. Certain facts in this case were stipulated. A "stipulation" is a "voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate [the] need for proof." BLACK'S LAW DICTIONARY 1269 (5th ed. 1979). See BALLANTINE'S LAW DICTIONARY 1217 (3rd ed. 1969). **Stipulations as to fact are binding on a court, commission or other adjudicative body** when, as in this case, there is an absence of proof that the stipulation was the result of fraud, wrongdoing, misrepresentation or was not in accord with

the intent of the parties. In Re Clark's Estate, 131 N.W.2d 138, 142 (Iowa 1970); Burnett v. Poage, 239 Iowa 31, 38, 29 N.W.2d 431 (1948).

## 2. Subject Matter Jurisdiction:

2. 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). Complainant Brammer's complaint is within the subject matter jurisdiction of the Commission as the allegation that the Respondent denied the Complainant rental of an apartment due to the race of her boyfriend falls within the statutory prohibitions against unfair housing practices which the Commission has the power to hear and determine. Iowa Code SS 216.8, .15.

## 3.

### 216.8 Unfair or discriminatory practices ---housing.

It shall be an unfair or discriminatory practice for any person, 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:

1. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny 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, disability, or familial status of such person.

2. To discriminate against any person because of the person's race, color, creed, sex, religion, national origin, disability, or familial status, 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 in the real property or housing accommodation or in the provision of services or facilities in connection with the real property or housing accommodation.

For purposes of this section, "person" means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

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, disability, or familial status 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.

Iowa Code section 216.8 (1999).

## II. COMPENSATORY DAMAGES IN GENERAL:

4. The Iowa Civil Rights Act was amended effective January 1, 1979 to allow the award of "actual damages." 1978 Iowa Acts, ch. 1179, S 16. It is beyond question that, since that time, the Commission has had the power to award "actual damages," which are synonymous with "compensatory damages," for the purpose of "making whole" the victims of discrimination for any losses suffered as a result of such discrimination. Iowa Code S 216.15(8)(a)(8) (1999); Chauffers, Teamsters and Helpers v. Iowa Civil Rights Commission, 394 N.W.2d 375, 382 (1986).

5. Damages which may be awarded include compensation for increased rental costs and other economic and non-economic losses. See Darrell Harvey, XII Iowa Civil Rights Commission Case Reports 65, 78 (1993-94); Dorene Polton XI Iowa Civil Rights Commission Case Reports 152, 165 (1992); Diane Humburd, X Iowa Civil Rights Commission Case Reports 1, 9 (1989); Belton, Remedies in Employment Discrimination Law 406-08 (1992).

6. The Commission has the option of either (a) retaining jurisdiction of the case in order to obtain the difference in rental amounts, calculate the amount of that difference for the period from August 2000 to the date of this order or some future date and issue a supplemental order stating that amount, or (b) ordering the parties to provide the information by affidavit, supplement the record by this means, and allow the district court on enforcement of the Commission's order to calculate this amount using the formula set forth in the Commission's order. City of Des Moines Police Department v. Iowa Civil Rights Commission, 343 N.W.2d 836, 839-40 (Iowa 1984). The Commission chooses the latter as the more practical alternative.

## III. COMPENSATORY DAMAGES FOR EMOTIONAL DISTRESS:

### A. Damages for Emotional Distress in Civil Rights Cases:

7. "[D]amages for emotional distress are recoverable under our civil rights statute." Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Commission, 453 N.W.2d 512, 525 (Iowa 1990). A victim of discrimination is to receive "a remedy for his or her complete injury," including damages for emotional distress. Id. at 525-26.

8. The Iowa Supreme Court's observations on the emotional distress resulting from wrongful discharge are equally applicable to the distress resulting from housing discrimination:

[Such action] offends standards of fair conduct . . . the [victim of discrimination] may suffer mentally. "Humiliation, wounded pride and the like may cause very acute mental anguish." [citations omitted]. We know of no logical reason why . . . damages should be limited to out-of-pocket loss of income, when the [victim] also suffers causally connected emotional harm. . . . We believe that fairness alone justifies the allowance of a full recovery in this type of tort.

Niblo v. Parr Mfg. Co., 445 N.W.2d 351, 355 (Iowa 1989).

9. The emotional distress sustained by the Complainant is substantial and serious. Since even mild emotional distress resulting from discrimination is to be compensated, it is obvious that compensation must be awarded here. Darrell Harvey, 11 Iowa Civil Rights Commission Case Reports 65, 79 (1994); Alice Peyton, 11 Iowa Civil Rights Commission Case Reports 98, 124 (1994); Tammy Collins, 11 Iowa Civil Rights Commission Case Reports 128, 137 (1994); Stacey Davies, 11 Iowa Civil Rights Commission Case Reports 143, 157 (1994); Rachel Helkenn, 10 Iowa Civil Rights Commission Case Reports 62, 73 (1990); Robert E. Swanson, 10 Iowa Civil Rights Commission Case Reports 36, 45 (1989); Ann Redies, 10 Iowa Civil Rights Commission Case Reports 17, 28 (1989). *See Hy Vee*, 453 N.W.2d at 525-26 (citing Niblo, 445 N.W.2d at 356-57) (adopting reasoning that because public policy requires that employee who is victim of discrimination is to be given a remedy for his complete injury, employee need not show distress is severe in order to be compensated for it)).

B. "Humiliation," "Wounded Pride," "Anger," "Hurt," "Frustration," "Discomfort," and "Upset" Are All Forms of Compensable Emotional Distress:

10. **Among the many forms of emotional distress which may be compensated are "anger," "upset," "hurt,"** Kentucky Commission on Human Rights v. Fraser, 625 S.W.2d 852, 856 (Ky. 1981); 2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 24-29 (1982) (citing Fraser and 121-129 Broadway Realty v. New York Division of Human Rights, 49 A.D.2d 422, 376 N.Y.S.2d 17 (1975)); *see also Gaudry v. Bureau of Labor & Industries*, 617 P.2d 668, 670-71 (Or. Ct. App. 1980); **"frustration,"** Gaudry, 617 P.2d at 670-71; *see also Boals v. Gray*, 577 F. Supp. 288, 296 (N.D. Ohio 1983); **"discomfort," id., "humiliation, wounded pride, and the like."** Niblo, 445 N.W.2d at 355. *See also Tallarico v. Trans World Airlines, Inc.*, 881 F.2d 566, 571 (8th Cir. 1989) (upset and hurt feelings); Phiffer v. Proud Parrot Motor Hotel, Inc., 648 F.2d 548, 550 (9th Cir. 1980) (upset).

C. Liberal Proof Requirements for Emotional Distress In Civil Rights Cases:

11. Emotional distress damages must be proven. Blessum v. Howard County Board of Supervisors, 295 N.W.2d 836, 845 (Iowa 1980); United States v. Balistrieri, 981 F.2d 916, 931 (7th Cir. 1992). These damages must be and have been proven here, as in any civil proceeding,

by a preponderance or "greater weight" of the evidence and not by any more stringent standard. Iowa R. App. Pro. 14(f)(6).

12. "Because of the difficulty of evaluating the emotional injuries which result from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries." Block v. R.H. Macy & Co., Inc., 712 F.2d 1241, 1245 (8th Cir. 1983). Tallarico v. Trans World Airlines, Inc., 881 F.2d 566, 570 (8th Cir. 1989); Phillips v. Hunter Trails Community Assn., 685 F.2d 184, 190 (7th Cir. 1982).

13. This reasoning is consistent with the holding of the Iowa Supreme Court:

[O]ur civil rights statute is to be liberally construed to eliminate unfair and discriminatory acts and practices. [Citation omitted]. We therefore hold a civil rights complainant may recover compensable damages for emotional distress without a showing of physical injury, severe distress, or outrageous conduct.

Hy-Vee, 453 N.W.2d at 526(emphasis added). It should be noted that the Respondent's suggestion that Northrup v. Farmland Industries, Inc., 372 N.W.2d 193 (Iowa 1985) stands for the proposition that "unpleasantries and hurt feelings . . . do not necessarily form a basis for the recovery for damages" is in error. (Respondent's Brief at 3). The Court in Northrup did not even consider the Appellant's allegations of violation of the Iowa Civil Rights Act because the Appellant failed to follow the proper procedure for pursuing remedies under the Act. Northrup at 197. The Court's holdings dealt with the element of "outrageous conduct" required to prove the cause of action of tortious infliction of emotional distress, not emotional distress considered as an item of damage in a case under the Iowa civil rights act. Northrup at 198-99. As the court held in Hy-Vee, a showing of outrageous conduct is not required in an action under the Iowa Civil Rights Act. Hy-Vee at 526. The Court has noted the need to make a distinction between the cause of action of intentional infliction of emotional distress and other causes of action where, as here, emotional distress is only an item of damage, not one of the elements of the cause of action. Dickerson v. Young, 332 N.W.2d 93, 98 (Iowa 1983)("Emotional distress is not the gravamen of the action; it is merely an item of damage").

D. Emotional Distress May Be Proven By Direct Evidence or Circumstantial Evidence:

14. Emotional distress may be proved by direct evidence. *E.g.* Tallarico v. Trans World Airlines, Inc., 881 F.2d 566, 571 (8th Cir. 1989)("[emotional distress] may be evidenced by one's conduct and observed by others."). *See* United States v. Balistreri, 981 F.2d 916, 932 (7th Cir. 1992)(plaintiff's testimony of humiliation cited as example of direct evidence of distress).

15. In this case there was direct evidence of the emotional distress caused Complainant by the housing discrimination inflicted on her by the Respondents. This evidence took the form of her testimony describing her distress and reactions to the discrimination. It was also provided by her testimony describing the act of discrimination itself. "The [complainants'] own testimony may be solely sufficient to establish humiliation or mental distress." Williams v. Trans World Airlines, Inc., 660 F.2d 1267, 1273, 27 Fair Empl. Prac. Cases 487, 491 (8th Cir. 1981). *See also* 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. Ill. 1981); Belton, Remedies in Employment Discrimination Law 415 (1992).

16. Emotional distress may also be established by circumstantial evidence. Tallarico v. Trans World Airlines, Inc., 881 F.2d at 571. *See* Howard v. Adkison, 887 F.2d 134, 139 (8th Cir. 1989)(damages may be proper because distress may be inferred from circumstantial evidence even where "the actual trial testimony contained no formal evidence of actual damage."); Sisneros v. Nix, 884 F. Supp. 1313, 1344 (S.D. Iowa 1995)(same). *See also* Phiffer v. Proud Parrot Motor Hotel, Inc., 648 F.2d at 552 (race discrimination against Black male--distress inferred solely from the circumstances).

17. Of course, both forms of evidence in this case must be weighed together when determining the existence, nature and extent of the emotional distress suffered by the complainant: "[Emotional distress] can be inferred from the circumstances as well as established by the testimony." Seaton v. Sky Realty, 491 F.2d 634, 636-37 (7th Cir. 1974)(quoted with approval in Blessum, 295 N.W.2d at 845 (Iowa 1980)). "[I]n determining whether the evidence of emotional distress is sufficient to support an award of damages, we must look at both the direct evidence of emotional distress and the circumstances of the act that allegedly caused that distress. . . . **The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action; consequently, somewhat more conclusory evidence of emotional distress will be acceptable to support an award for emotional distress.**" United States v. Balistreri, 981 F.2d at 932, 933 (emphasis added)(holding that distress damage awards to housing discrimination testers were justified despite the "somewhat general and conclusory nature" of their testimony because "racial discrimination . . . is the type of action that one could reasonably expect to humiliate or cause emotional distress to a person."). Since an express denial of rental property due to the race of one's boyfriend would be precisely that kind of inherently degrading or humiliating action from which distress may be inferred, the combination of those circumstances and somewhat conclusory testimony (weaker than the evidence in this case) will support an award of emotional distress damages. *See id.*

18. This approach is consistent with Iowa law, which provides that, even where "the express testimony of distress is not strong," Dickerson v. Young, 332 N.W.2d 93, 99 (Iowa 1983), the presence of other facts which "would inevitably have a strong impact on the emotions of an individual" are substantial evidence of emotional distress. Id.

19. The courts have also awarded damages for the distress to victims of discrimination who fight back "in a proper manner, in the courts" for the "the mental and nervous strain that litigants always undergo." Harrison v. Otto G. Heinzerth Mortgage Company, 430 F.Supp. 893, 898 (N.D. Ohio 1977). Obviously, this principle applies equally well to litigants in the administrative process. *See id.*; 2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 33 (1982).

E. Determining the Amount of Damages for Emotional Distress:

20.

[D]etermining the amount to be awarded for [emotional distress] 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.

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)).

21. Although awards in other cases have little value in determining the amount an award should be in another specific case, Lynch v. City of Des Moines, 454 N.W.2d 827, 836-37 (Iowa 1990), one source lists many examples of such awards, ranging from \$500 to \$150,000, for emotional distress in discrimination cases. *See e.g.* Belton, Remedies in Employment Discrimination Law 416 n.78 (1992)(listing awards in 19 cases; 17 of which were for \$10,000 or over; 12 of which were for \$20,000 or over). While any award should be tailored to the particular case, one commentator has noted that "a \$750 award for mental distress is 'chump change.' Awards must be made which are large enough to compensate the victim of discrimination adequately for the injury suffered." 2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 60-61 (1982).

22. Regardless of whether they are characterized as direct or circumstantial evidence, numerous facts have been identified which may indicate the presence and severity of emotional distress. *See e.g.* 2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 40-42 (1982). Undoubtedly, no complete listing of all such facts is possible. Nor could legal authority be found for each potentially relevant fact.

23. An award of damages for emotional distress may, however, 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). Nor need there be evidence of an effect on social activities. Marable v. Walker, 704 F.2d 1219, 1220 (11th Cir. 1983).

24. Nevertheless, the evidence of economic loss, crying, the discrimination's occurrence in the presence of others, the abusiveness of the actions and language directed toward the Complainant, and her feelings of humiliation are among those factors in this case which indicate the existence of serious and substantial emotional distress justifying an award of the magnitude made in this case. *See* Blessum, 295 N.W.2d at 845 (Iowa 1980)(economic loss); Fellows v. Iowa Civil Rights Commission, 236 N.W.2d 671, 676 (Iowa Ct. App. 1988)(economic loss); Dickerson v. Young, 332 N.W.2d 93, 98 (Iowa 1983)(crying); Tallarico v. Trans World Airlines, Inc., 881 F.2d at 571 (crying); Phiffer v. Proud Parrot Motor Hotel, Inc., 648 F.2d at 550, 552 (crying and economic loss); Dorothy Abbas, 12 Iowa Civil Rights Commission Case Reports 1, 15-16, 24 (1994)(crying, economic loss, fear of economic loss); Kentucky Comm'n On Human Rights v. Barbour, 587 S.W.2d 849, 852 (Ky. Ct. App. 1979)(number of persons exposed to discrimination; number of times complainant exposed to behavior inducing embarrassment or humiliation; whether the acts of humiliation occurred in presence of others or otherwise resulted

in public exposure; presence or absence of aggravating factors such as abusive language); 2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases at 40-42 (feelings of anger or frustration, effect on work, exposure to outrageous or abusive conduct; number of times complainant exposed to discrimination; whether discriminatory acts occurred in presence of others). Cf. Dobbs, Handbook on the Law of Remedies 530-31 & n.24 (1973)("The amount of the recovery is usually based on the severity of the actions and language used by the defendant.")(quoting Sutherland v. Kroger Co., 110 S.E.2d 716 (W.Va. 1959)).

25.

45. 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 S 905). [See also Restatement (Second) of Torts S 905 (comment i).]

Dorene Polton, 10 Iowa Civil Rights Commission Case Reports 152, 166 (1992). The severity and duration of distress, as well as other factors, were taken into account in making the damages award in this case.

#### IV. INTEREST:

##### A. Pre-Judgment Interest:

26. The Iowa Civil Rights Act allows an award of actual damages to persons injured by discriminatory practices. Iowa Code S 216.15(8)(a)(8). Pre-judgment 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 rent and out of pocket expenses due Complainant at any given time has been an ascertainable claim since the time she was rejected for the apartment, pre-judgment interest should be awarded on those items. Such interest should run from the date on which she was denied the apartment. The method of computing pre-judgment interest is left to the reasonable discretion of the Commission. Schei & 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).

##### B. Post-Judgment Interest:

27. 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:

1. The Respondent and the Commission stipulated to the following:

1. The Respondents discriminated in housing against Complainant Lisa Brammer when on or about September 4, 1998 they refused to rent to Brammer because of the race of her boyfriend who would from time to time be present at the rental unit in question. This discrimination was in violation of the Iowa Civil Rights Act. Respondents are liable for any legally cognizable damage to Complainant Lisa Brammer which is shown to have been proximately caused by this discrimination.

2. Because of the death of Respondent Hazel Linquist, the poor health of Respondent Glen Linquist, and the fact that neither Respondent is neither now nor in the future is likely to be engaged in the rental business in Iowa this case is not an appropriate one for the levying of a civil penalty. No civil penalty is justified in this case.

2. The Commission has made the following waiver:

In addition to agreeing to the above stipulations of fact the Iowa Civil Rights Commission hereby waives any and all rights to seek any civil penalties, fees, or costs arising out of the discrimination described in paragraph one. The Iowa Civil Rights Commission further waives the right to seek compensation for any fees or costs associated with the litigation of this claim.

3. Complainant Lisa Brammer is entitled to a judgment against the Respondents Linquist in the amounts of \$5000.00 for emotional distress, \$85.00 for out of pocket expenses, and \$1220.00 for past rent differentials through August 2000.

4. Complainant Lisa Brammer is also entitled to payment, of future rental differentials after August 2000, by the Respondents Linquist as follows:

a. On enforcement of the Commission's order, in district court, the Respondents shall provide, to the court, by affidavit, the following information: a. whether the Respondent's Franklin apartment is still being rented, b.. the last month for which rent was paid for the apartment, c. the rental payment amounts for all payments made for that apartment for months after August 2000, d. the dates of any periods after August 2000 during which the apartment was vacant, e. the amount of rent sought for the apartment for periods when it was vacant, f. whether the property has been sold, and g. date of sale, if it has been sold.

b. On enforcement of the Commission's order, in district court, the Complainant shall provide, to the court, by affidavit, the following information: a. the apartment rental amounts paid by her for each month after August 2000.

c. Formula to be followed by the court: On enforcement of the Commission's order, the court shall calculate the difference in rental amounts for each month after August 2000 in which the Complainant's rent exceeds the rent sought or paid for the Respondent's Franklin apartment. The total of such amounts, as of the date of the court's order, shall be awarded to the Complainant in addition to rental damages already awarded.

5. Complainant Brammer is also entitled to interest at the rate of ten percent per annum to be paid by Respondents Linquist for awards of out of pocket expenses and past rental differentials as set forth in paragraph 3 above commencing on September 4, 1998 and continuing until date of payment.

6. Complainant Brammer is also entitled to interest at the rate of ten percent per annum to be paid by Respondents Linquist for the award of emotional distress damages as set forth in paragraph 3 above commencing on the date this decision becomes final, either by Commission decision or by operation of law, and continuing until date of payment.

Signed on this the 13th day of November 2000.

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**DONALD W. BOHLKEN**  
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