STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. H10 HAO 617 HUD No. 01-10-0054-8

In the matter of

Salvador I. Pellerano, Ivonne Martinez,
Ivonne Torres and Adalberto Torres
Complainants

v. DECISION AND ORDER

Oleg E. Kuznetsov
Respondent

INTRODUCTION

On October 28, 2009, Salvador I. Pellerano, Ivonne Martinez and Ivonne Torres filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against Oleg Kuznetsov (hereafter referred to as the Respondent). On October 29, 2009, Adalberto Torres joined in the charge against the Respondent. Salvador I. Pellerano, Ivonne Martinez, Ivonne Torres and Adalberto Torres are hereafter referred to as the Complainants. The amended charge alleges that the Respondent discriminated against the Complainants with respect to harassment and intimidation because of their ancestral origin in violation of the Rhode Island Fair Housing Practices Act, Title 34, Chapter 37 of the General Laws of Rhode Island (hereafter referred to as the FHPA). The amended charge was investigated. On December 4, 2009, Preliminary Investigating Commissioner Nancy Kolman Ventrone assessed the information gathered by a staff investigator and ruled that there was probable cause to believe that the Respondent violated the FHPA as alleged.

On February 9, 2010, a Notice of Hearing and Complaint issued. The Complaint alleged that the Respondent discriminated against the Complainants with respect to harassment, coercion, intimidation and threats on the basis of their ancestral origin and that this interfered with the exercise of their rights under the FHPA in violation of R.I.G.L. Section 34-37-5.1. Hearings on the Complaint were held before Commissioner John Susa on July 13, 2010 and September 8, 2010.[1] The Civil Prosecutor presented evidence in support of the complaint. The Respondent represented himself. On September 8, 2010, the Respondent submitted a document entitled "Statement" which the Commission treats as an argument. On December 7, 2010, the Respondent submitted a

[1] The transcript from the hearing of July 13, 2010 will be referred to as Trans. Vol. 1, the transcript of the hearing of September 8, 2010 will be referred to as Trans. Vol. 2.

document entitled "Conclusion" which the Commission treats as a Memorandum. On December 8, 2010, the Civil Prosecutor submitted a document entitled "Memorandum" which the Commission treats as a memorandum.

JURISDICTION

The Respondent is alleged to have interfered with the Complainants' right to own, enjoy and utilize their property free from discrimination based on their ancestral origin and thus is subject to the FHPA and the jurisdiction of the Commission.

FINDINGS OF FACT

1. Complainant Ivonne Martinez is the mother of Complainants Salvador I. Pellerano, Ivonne Torres and Adalberto Torres. Complainant Martinez and Complainant Pellerano own the condominium unit located at 322 Veazie Street, Unit 3C, Providence, Rhode Island. They purchased the unit in September 2004.

2. Complainants Ivonne Torres and Adalberto Torres moved into 322 Veazie Street, Unit 3C subsequent to its purchase.

3. The Complainants are Hispanic, of Puerto Rican ancestral origin. The Respondent is not Hispanic.

4. The Respondent owns the condominium adjacent to the condominium unit owned by Complainants Martinez and Pellerano at 322 Veazie Street.

5. Complainant Pellerano at one point was a Board member of the Condominium Association for the Veazie Street condominiums. He had not served as the President of the Association as of the date of the hearings. He was never responsible for collecting funds from the other condominium owners. The management company of the Condominium Association was responsible for collecting condominium fees from the condominium owners and paying the bills.

6. At one point, Complainant Pellerano, Complainant Ivonne Torres and the Respondent were present at a condominium meeting. Complainant Pellerano was reading a letter when Complainant Ivonne Torres heard the Respondent say to Complainant Pellerano – "Oh, you know how to read English?".

7. At one point in 2007 or 2008, Complainant Pellerano and Complainant Ivonne Torres were shoveling snow outside of the unit at 322 Veazie Street after a large snowstorm. A red dot from a laser light, coming from one of Respondent's windows, was centered on the chest, and then the head of Complainant Ivonne Torres, and then on Complainant Pellerano. Complainant Pellerano was terrified because he did not know if the laser light was coming

from a toy or a gun.

8. On January 5, 2008, the Respondent filed a false police report which alleged that Complainant Pellerano broke into the Respondent's apartment, stood in front of the Respondent and then left. The Respondent took a picture of Complainant Pellerano's car in front of the house on that date. Although the Respondent had video cameras which recorded the views in the front of and in the back of his condominium, he did not have a video recording of the alleged break-in.

9. In the evening of January 5, 2008, Complainant Martinez was visiting her son, Complainant Pellerano. At that point, while Complainant Pellerano was still an owner of the condominium at Veazie Street, he did not live there. Complainant Martinez' car had a flat tire. Complainant Pellerano asked her to take his car home and he would fix her flat tire in the morning. While Complainant Martinez proceeded to her condominium on Veazie Street in Complainant Pellerano's car, Complainant Pellerano proceeded to work with a student at his home. During the time period when the Respondent alleged that Complainant Pellerano had broken into the Respondent's unit, Complainant Pellerano was at home working with a student.

10. Complainant Pellerano talked to the police detective assigned to the case and presented his evidence that he was not at 322 Veazie Street at the time of the alleged incident. The detective did not proceed with the case. Complainant Pellerano felt very frustrated and discouraged when he was charged with a crime. Prior to this incident, Complainant Pellerano had never been charged with a crime. Because he works with high school students, a criminal charge affects him professionally, as well as personally.

11. In March 2008, Complainant Martinez had surgery and Complainant Pellerano accompanied her home to 322 Veazie Street. The Respondent called the police to report that Complainant Pellerano was at 322 Veazie Street and that there was a warrant out for his arrest. The Respondent had previously been asked by a police officer to call the police department if he saw Complainant Pellerano. While the warrant for Complainant Pellerano's arrest had been withdrawn, the communication of that withdrawal was not communicated to all sections of the Police Department. When the police came to 322 Veazie Street, they put handcuffs on Complainant Pellerano and put him in the back of the police car while they called the detective who had investigated the Respondent's previous allegations. Complainant Martinez got out of bed and rushed down the stairs because she was worried about Complainant Pellerano. Complainant Martinez' rush down the stairs was against the orders of her doctor with respect to her recovery from surgery and it caused her pain. Complainant Ivonne Torres talked to the police as the Respondent tried to interrupt her with his version of events. The police officers asked the Respondent to get into his house; that they would get to him when they were done, but the Respondent ignored them. After 30 to 45 minutes, Complainant Pellerano was released. This incident left Complainant Pellerano frustrated, angry, hurt and embarrassed. It was very disturbing for Complainant Pellerano to see his mother so upset and in pain without being able to help her, and also to see his sister trying to calm his mother and talk to the police. Complainant

Martinez was very hurt that the Respondent involved Complainant Pellerano with the police. Complainant Ivonne Torres was very uncomfortable when this happened because she was worried about her mother's health and because she believes that her brother is a good person to whom this should not have happened.

12. Complainant Pellerano filed a complaint with the Providence Police Department on March 25, 2008, reporting that he was being harassed by the Respondent and that the Respondent made false reports against him. Complainant Pellerano filed the complaint because he was afraid for his life.

13. The Respondent sent numerous faxes to the Complainant Pellerano's workplace, the Metropolitan Regional Career and Technical Center (the MET). The faxes were directed to the Complainant or to one of the Complainant's supervisors. The Respondent sent approximately 15 faxes to the MET. As of the date of the hearings, Complainant Pellerano was a Partnership Coordinator at the MET.

14. One of the Respondent's faxes, dated October 19, 2009, was directed to the "MET Director" and stated in relevant part:

> Sal:
>
> Again, your Unit and/or the tenants along with an illegal alien residing here stink as a [*sic*] raw sewage. Considering your yesterday's visit to the aforementioned property and my previous FAX submissions you should be aware about this problem personally. No references on the national food fragrance will be accepted. Please fix it A.S.A.P.
>
> Very truly yours, your Unit
> Oleg Kuznetsov, M.D.
>
> NOTE:
>
> THE ENCLOSED MATERIAL ALONG WITH PREVIOUS SUBMISSIONS IS INTENDED FOR THE COURT COMPLAINT AS AN [*sic*] EVIDENCE OF NEGLIGENT MAINTANANCE [*sic*] OF THE <u>UNIT C, 322 VEAZIE STREET, PROV. RI</u> BY ITS LEGAL OWNER – MR. SALVADOR I RELLERANO [*sic*].

Complainant's Exhibit 2, p. 1. [Emphasis in original.] As of the date of the fax, all of the residents of 322 Veazie Street, Unit 3C were U.S. citizens.

15. Another fax, dated December 15, 2008, was directed to Ms. Nancy Diaz, MET Co-Director with an "Attention" to Complainant Pellerano, entitled "Absence of response on primary

submission". The fax contained the following statements:

> Dear Ms. Diaz:
>
> This information is provided to the Metropolitan Regional Career and Technical School Co-Director for identification purpose of indicated above intendment [*sic*] FAX recipient (if any).
>
> Mr. Salvador I Pellerano is from 22 to 26 y.o., white hispanic male, recently implicated in the PPD Breaking and Entering criminal case CCR # 08-1954 as a prime suspect, owner of the Honda Accord (RI reg. 746-669), used different addresses under different occasions, claiming position as a Learning Specialist within your school and frequently used fax machine 401/752-2682 behalf of the MET.
>
> Regards,
>
> Oleg Kuznetsov, M.D.

Complainant's Exhibit 3, p. 1.

16. The fax machine at Complainant Pellerano's workplace was open to a number of employees and the public. Complainant Pellerano's supervisor asked him to take time off from work to resolve the issue created by the faxes. Complainant Pellerano was told that the faxes needed to stop. Complainant Pellerano was very embarrassed and frustrated by the Respondent's faxes. He felt powerless and diminished. Complainant Pellerano showed the October 19, 2009 fax to Complainants Martinez and Ivonne Torres.

17. On July 13, 2009, the Respondent wrote to Frank Garguilo, whom he addressed as the Accountant for the Veazie Street Condominium Association. In his letter, he makes the following statement:

> … Salvadore I Pellerano (Latinos [*sic*] male, date of birth …) is a crook with a criminal past; see the case CCR# 08-1954 where even Warrant for his Arrest has been issued by the Honorable RI Judge. Sal somehow bought his way out of the jail, but only for a while until next crime will be committed.

Complainant's Exhibit 11, p. 1.

18. When Complainant Martinez lived at 322 Veazie Street, Unit 3C, she would often cook with the screen door open. She generally cooked food with rice, beans, meat and spices. The Respondent would complain that the unit smelled like raw sewage.

19. On one occasion when Complainant Martinez was drinking coffee in her kitchen, the Respondent took a picture of her through her sliding door. Complainant Martinez

considered this an invasion of her privacy. On another occasion, when Complainant Martinez and the Respondent were at an Association meeting, the Respondent showed a picture of Complainant Martinez picking something up from the floor. Complainant Martinez found this picture to be indecent.

20. Complainant Martinez was afraid of the Respondent. She thinks often of how hard she worked to obtain her condominium and now she is unable to live in it.

21. The Respondent took pictures of the license plates of visiting cars when people came to visit the Complainants. Complainant Ivonne Torres' boyfriend told her that he would park one or two blocks away from the Veazie Street condominium to avoid having pictures taken of his car and license plate.

22. Complainant Ivonne Torres knew directly or was informed of the actions which the Respondent had taken against her family. She worried about how the Respondent would treat Complainant Adalberto Torres.

23. The Respondent frequently took actions to harass the Complainants. When it snowed, he buried Complainant Martinez' car with snow. He blew trash onto the property of Complainants Pellerano and Martinez. In the fall of 2009, while Complainant Martinez was leaving her condominium, the Respondent would sound his house alarm and when she was returning home, he would sound his house alarm until she was in the unit

24. The Respondent called Adalberto Torres, a U.S. citizen, an illegal immigrant.

25. In or around March 2010, the Respondent filed a complaint with the City of Providence concerning what he alleged were problems with a raw sewage smell caused by conditions in the condominium that was owned by Complainants Pellerano and Martinez, Unit 3C. Rocco Quattrocchi, a renewal inspector from the Providence Department of Inspections and Standards, inspected Unit 3C on March 31, 2010 along with another inspector. Mr. Quattrocchi found that there was no smell of raw sewage or any other sign of raw sewage. Mr. Quattrocchi's report specifically states that the Respondent's "complaint is not justified, Unit C is not cause of raw sewage smell". Respondent's Exhibit E, p.1.

26. None of the Complainants lived at 322 Veazie Street as of the date of the hearings. Complainants Pellerano, Martinez and Ivonne Torres vacated the property as a result of the Respondent's constant harassing and intimidating actions. Complainant Pellerano moved out in September 2007. Complainant Pellerano married in July 2008; he would not have lived at Veazie Street after that time. Complainant Ivonne Torres moved out around October of 2009. Complainant Martinez moved out at the end of 2009. Complainants Martinez and Ivonne Torres would have continued living at 322 Veazie Street if it was not for the Respondent's harassment.

27. After Complainant Pellerano moved from Veazie Street, he paid $750 per month in rent that he would not have paid if he had continued living at 322 Veazie Street. Complainant

Martinez paid $1,200 in monthly rent for her new apartment. Complainant Ivonne Torres paid $800 per month in rent and approximately $60 in utilities for her new apartment. She had not paid rent previously at Veazie Street, although she helped her mother occasionally. Complainants Pellerano and Martinez rented their condominium at 322 Veazie Street to tenants at a rent of $850 per month. The mortgage payment for the condominium was $878 and the condominium dues were $185 per month.

CONCLUSIONS OF LAW

Complainants Pellerano and Martinez proved that the Respondent discriminated against them because of their ancestral origin in violation of R.I.G.L. Section 34-37-5.1, with respect to coercion, intimidation, threats and interference with their rights to own, enjoy and utilize a housing accommodation.

Complainant Ivonne Torres proved that the Respondent discriminated against her because of her ancestral origin, in violation of R.I.G.L. Section 34-37-5.1, with respect to coercion, intimidation, threats and interference with her right to enjoy and utilize a housing accommodation.

Complainant Adalberto Torres did not prove by a preponderance of the evidence that the Respondent discriminated against him as alleged in the complaint.

DISCUSSION

STANDARDS FOR EVALUATING THE EVIDENCE OF DISCRIMINATION

The FHPA prohibits discrimination on the basis of ancestral origin with respect to housing accommodations. R.I.G.L. Section 34-37-2 provides that: "The right of all individuals in the state to equal housing opportunities and regardless of race, color, …country of ancestral origin, … is hereby recognized as, and declared to be, a civil right…." It is unlawful to interfere with that civil right. R.I.G.L. Section 34-37-5.1 provides in relevant part that: "It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, … any right granted or protected by this chapter".

R.I.G.L. 34-37-5.1 is virtually identical to a section of the federal Fair Housing Act, 42 U.S.C. §3617 which provides that:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

The Rhode Island Supreme Court has held that when interpreting state civil rights laws, it will look to cases interpreting federal civil rights laws as a guideline. "In construing these provisions [of the Fair Employment Practices Act], we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See* Newport Shipyard, Inc., 484 A.2d at 897-98." Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 685 (R.I. 1998).

Federal courts have found a violation of 42 U.S.C. §3617 when discriminatory conduct of a neighbor is "severe (i.e. violence or threats of violence) and/or pervasive similar to the discriminatory conduct necessary under Title VII to support a hostile work environment claim." [Footnote omitted.] Gourlay v. Forest Lake Estates Civic Ass'n of Port Richey, Inc., 276 F.Supp.2d 1222, 1236 (D. Fla. 2003). *See also* DiCenso v. Cisneros, 96 F.3d 1004 (7th Cir. 1996) (determination of whether the plaintiff's evidence of harassment in housing was sufficient to find a violation of the Fair Housing Act assessed using the standards for determining whether harassment in employment constitutes a violation of Title VII of the Civil Rights Act of 1964). Therefore, the Commission must assess the actions of the Respondent to determine if they were severe and/or pervasive and whether they were motivated by discrimination based on the Complainants' ancestral origin.

With respect to proof of sexual harassment in employment, a Complainant must prove, by a preponderance of the evidence as follows:

> (1) that she (or he) is a member of a protected class; (2) that she was subjected to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) that sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for employer liability has been established.

O'Rourke v. City of Providence, 235 F.3d 713, 728 (1st Cir. 2001) (citing Faragher v. City of Boca Raton, 524 U.S. 775, 787-89, 118 S. Ct. 2275, 141 L.Ed.2d 662 (1998); Harris v. Forklift Sys., Inc., 510 U.S. 17, 20-23; 114 S. Ct. 367, 126 L.Ed.2d 295 (1993); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 65-73, 106 S. Ct. 2399, 91 L.Ed.2d 49 (1986)).

Adapting that to fair housing claims, the Complainants must prove: (1) that they are members of a protected class; (2) that they were subjected to unwelcome harassment; (3) that the harassment was based upon their protected class; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of their housing and create an abusive housing environment; (5) that objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that the harassment intimidated, threatened, or interfered with the Complainants in their right to fair housing.

COMPLAINANTS PELLERANO, MARTINEZ AND IVONNE TORRES PROVED THAT THE RESPONDENT DISCRIMINATED AGAINST THEM IN VIOLATION OF THE FHPA

THE COMPLAINANTS ARE MEMBERS OF A PROTECTED CLASS AND PROVED THAT RESPONDENT'S ACTIONS WERE MOTIVATED BY THEIR ANCESTRAL ORIGIN

The Complainants are members of a protected class; they are Hispanic.

Complainants Pellerano, Martinez and Ivonne Torres were subjected to unwelcome harassment based on their protected class. The Commission finds that the evidence demonstrated that the Respondent was animated by discrimination based on ancestral origin when he took his harassing actions against the Complainants. The Respondent made a number of comments which demonstrated that he looked at Hispanics disparagingly. When Complainant Pellerano was reading a document at a Condominium Association meeting, the Respondent said: "Oh, you know how to read English?" Trans. Vol. 1, p. 113. The Respondent described Complainant Adalberto Torres, a U.S. Citizen, an "illegal alien". He belittles the Complainants as follows: "your Unit and/or the tenants along with an illegal alien residing here stink as a raw sewage". See Complainants' Exhibit 2. The Respondent brought up that Complainant Pellerano was Hispanic or Latino in correspondence to others. See Complainants' Exhibits 3 and 11.

Although the Respondent does not testify to this directly (Trans. Vols. 1 and 2 *passim*), the Respondent appears to indicate that he had issues with the Complainants because he believed that a flaw in the Complainants' unit caused the Respondent's unit to smell like sewage. See Trans. Vol. 2, p. 37, 78, 79, 84 and Respondent's Conclusion and Statement, accepted as memoranda. The Respondent complained of a smell when the Complainants cooked. Trans. Vol. 1, pp. 16, 18, 22. There is objective evidence that the Complainant's unit was not the source of any problem, if there was a problem with smell at all. The City Inspector, who came to inspect the Complainants' unit after the Respondent complained that the Complainants' Unit was the source of raw sewage smell, reported that: "This complaint is not justified, Unit C is not cause of raw sewage smell". Respondent's Exhibit E.

The Commission finds that the Respondent fixated on the Complainants' unit as the cause of whatever odor there was in his unit because of his animosity to their ancestral origin. His disparaging comments and frequent references to their ancestral origin demonstrate that their ancestral origin was a motivating factor in his harassment of them. *See* Robinson v. 12 Lofts Realty, Inc., 610 F.2d 1032 (2nd Cir. 1979) (Discrimination in housing violates the Fair Housing Act if the plaintiff's protected class was one of the motivating factors for the defendant's actions). The Commission finds that the Respondent treated Complainants Pellerano, Martinez and Ivonne Torres in an abusive way because they are Hispanic.

COMPLAINANTS PELLERANO, MARTINEZ AND IVONNE TORRES PROVED THAT THE RESPONDENT'S HARASSMENT AGAINST THEM CREATED AN ABUSIVE HOUSING ENVIRONMENT WHICH THEY FOUND TO BE HOSTILE AND OFFENSIVE AND WHICH A REASONABLE PERSON WOULD FIND TO BE HOSTILE AND OFFENSIVE

The next question is to determine whether the Respondent's actions subjected the Complainants to severe and/or pervasive unwelcome harassment that created an abusive housing environment. In order to prove unlawful discrimination, the Complainants must prove both that they found the conduct to be hostile or offensive and that a reasonable person would also find it hostile or offensive.

The Respondent's harassment of Complainants Pellerano, Martinez and Ivonne Torres was severe and pervasive.

Respondent's actions against Complainant Pellerano

With respect to Complainant Pellerano, the Respondent targeted a laser light on him. Complainant Pellerano also witnessed the Respondent target a laser light on his sister's head and chest. Complainant Pellerano also knew about, and was affected by, the actions that the Respondent took against his mother and sister (discussed below).

Some of the actions taken by the Respondent must be evaluated to determine if they are protected by the First Amendment

The Respondent filed a false police report against Complainant Pellerano, called the Police to report the location of Complainant Pellerano and sent a defamatory fax to the supervisor of Complainant Pellerano. One consideration, when evaluating the discriminatory speech or government petitioning of individuals not involved in a commercial transaction[2], is whether their actions are protected by the First Amendment to the U.S. Constitution. The First Amendment provides that the government "shall make no law … abridging the freedom of speech, … or the right of the people … to petition the government for a redress of grievances".

Generally, an individual's petition to a government agency for redress is protected by the First Amendment. *See* Empress LLC v. City and County of San Francisco, 419 F.3d 1052, 1056 (9th Cir. 2005) (The portion of a hotel's lawsuit which alleged that an individual had violated their civil rights by lobbying for denial of zoning was dismissed because the First Amendment protected the individual's communications with a zoning official; the hotel did not establish that

[2] A landlord or realtor discriminating in his/her business dealings would not have the level of First Amendment protection afforded to a neighbor because commercial speech does not have the same level of protection as non-commercial speech. Campbell v. Robb, 162 Fed. Appx. 460 (6th Cir. 2006) (landlord's discriminatory statements to an applicant for an apartment constituted unlawful commercial speech that was not protected by the First Amendment).

the individual was using the zoning process as a sham to injure the hotel).

In evaluating whether petitioning activity is protected by the First Amendment, Rhode Island courts have adopted the Noerr-Pennington doctrine, explained as follows in Hometown Properties, Inc. v. Fleming, 680 A.2d 56, 60-61 (R.I. 1996):

> The United States Supreme Court developed the Noerr-Pennington doctrine in the context of antitrust litigation in order to protect the legitimate exercise of the constitutional right to petition the government after retributive civil claims were brought by parties harmed by petitioning activity. [Cites omitted.]
>
> This Court has adopted the Noerr-Pennington premise and has applied its protection to common-law tort claims…. *see also* Pound Hill Corp., Inc. v. Perl, 668 A.2d 1260, 1263 (R.I. 1996) ("[a]lthough the [Noerr-Pennington] doctrine arose in a context of application of the antitrust statutes, it is based upon the First Amendment right to petition the government for redress of grievances").
>
> We have also adopted the Supreme Court's position that petitioning activity that amounts to "a mere sham" is not immune under Noerr-Pennington. [Cite omitted.] Consequently, sham petitioning activities that "are not genuinely aimed at procuring favorable government action" but constitute inappropriate uses of governmental *process*, are not protected under the doctrine. Pound Hill, 668 A.2d at 1263. We assess whether the petitioning activity constitutes a sham under Noerr-Pennington by determining whether the activity is "objectively baseless in the sense that no reasonable [petitioning activist] could realistically expect success on the merits." Cove Road, 674 A.2d at 1238 (quoting Professional Real Estate Investors, Inc., 508 U.S. at 60, 113 S. Ct. at 1928, 123 L.Ed.2d at 624). If and only if we find the petitioning activity to be objectively baseless, shall we then examine the subjective motivation behind the activity. *Id.*

Although it is not clear whether the Noerr-Pennington doctrine applies in the same manner to violations of statutes as it does to tort claims, it is clear that First Amendment protection of petitioning activities does apply in the context of a statutory violation. *See* BE & K Const. Co. v. N.L.R.B., 536 U.S. 516, 122 S. Ct. 2390 (U.S. 2002) (National Labor Relation Board's [NLRB's] decision that an employer's unsuccessful lawsuit against a union constituted retaliation for protected activities reversed and remanded; NLRB's standard, that all unsuccessful lawsuits filed with a retaliatory motive violated the National Labor Relations Act, reached into areas protected by the First Amendment; unsuccessful lawsuits which were not objectively baseless may be entitled to First Amendment protection).

The Respondent's filing of a charge with the Police Department and subsequent call to the Police Department fall within the scope of petitioning the government.[3] Whether these activities are

[3] "Certainly the right to petition extends to all departments of the Government". California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S. Ct. 609, 612 (1972).

protected by the First Amendment depends on whether these activities were objectively baseless. If the Noerr-Pennington doctrine applies here, then it must also be determined whether the Respondent's actions were aimed, not at procuring favorable governmental action, but at inappropriately using the government process.

The Commission finds the Respondent's filing of a charge with the Police Department against Complainant Pellerano to be baseless. Complainant Pellerano credibly testified that while his car was on Veazie Street on the night in question, he himself was not present at the Veazie Street location but instead was with a student in his new apartment at a separate location. Trans. Vol. 1, pp. 26-29. Upon hearing Complainant Pellerano's explanation, the detective responsible for investigating this charge decided not to proceed with the case. The Respondent, who had a camera in the back of the house, where the incident allegedly occurred, did not have photographs of the break-in. The Respondent did not testify, under oath, at the Commission hearing that the alleged incident occurred. Given this evidence, the Commission finds that the Respondent filed a false police report.

The Respondent used the process of filing the police report to harass Complainant Pellerano. After this incident, in subsequent correspondence, the Respondent used the process of filing the charge, instead of the result, to disparage Complainant Pellerano. See, for example, the fax dated December 15, 2008 to Complainant Pellerano's supervisor stating that Complainant Pellerano was "recently implicated in the PPD Breaking and Entering criminal case CCR # 08-1954 as a prime suspect" (Complainant's Exhibit 3). Additionally, in the letter to Frank Garguilo, who is apparently the accountant for the Veazie Street Condominium Association, the Respondent describes Complainant Pellerano as "a crook with a criminal past; see the case CCR# 08-1954 where even Warrant for his Arrest has been issued by the Honorable RI Judge". (Complainant's Exhibit 11). The Respondent used the system for filing police reports for the purpose of harassing Complainant Pellerano.

Because the Respondent's police report was baseless and because he used the police reporting process to harass Complainant Pellerano, the Respondent's filing of the police report was a sham and unprotected petitioning activity under the Noerr-Pennington doctrine. Therefore, this incident may be considered as part of the evidence in evaluating whether the Respondent unlawfully harassed Complainant Pellerano.

There is a similar logic in finding that the Respondent's subsequent call to the Police Department, which told the Police that Complainant Pellerano was at the Veazie Street Apartment and was the subject of an arrest warrant, was also not protected by the First Amendment. This call was the fruit of the Respondent's false police report. This call came after the detective in the case decided not to pursue allegations against Complainant Pellerano. However, the Commission has taken into consideration the Respondent's knowledge at that time, and has decided that the act does not constitute unlawful harassment. There is no evidence that the Respondent knew at that point that the detective had decided not to pursue the allegations against Complainant Pellerano or that the arrest warrant had been revoked. Further, the Respondent's credible testimony at hearing was that he had previously been asked by a police

officer to call the police department if he saw Complainant Pellerano. Trans. Vol. 1, p. 157. Because the Respondent was following the directive of a public official when making the telephone call to the police to inform them that Complainant Pellerano was at Veazie Street, the Commission will not deem such action as unlawful harassment.

Another incident that should be evaluated to determine if there are First Amendment implications is the Respondent's fax to Complainant Pellerano's workplace dated December 15, 2008. The Respondent sent numerous faxes to Complainant Pellerano's place of employment. While the Respondent appeared to be arguing that these were just private letters between condominium owners (see Trans. Vol. 1, pp. 150-151), in fact the Respondent addressed the December 15, 2008 fax to Complainant Pellerano's supervisor, "Ms. Nancy Diaz, MET Co-Director". This fax states that Complainant Pellerano is "recently implicated in the PPD Breaking and Entering criminal case CCR # 08-1954 as a prime suspect, … used different addresses on different occasions, claiming position as a Learning Specialist within your school and frequently used fax machine 401/752-2682 behalf of MET". Complainants' Exhibit 3. This fax is a clear attempt to cause trouble between Complainant Pellerano and his supervisors. Because the Respondent knew before the date of this fax that the arrest warrant for Complainant Pellerano had been revoked, the fax raises false accusations. The respondent's failed attempt to get Complainant Pellerano arrested took place in March 2008. On March 25, 2008, the Respondent faxed a communication to the Providence Chief of Police asking for information as to the name of the person who recalled the arrest warrant for Complainant Pellerano. Respondent's Exhibit H. The Respondent knew that his criminal complaint against the Complainant was false. (See the discussion above.) The Respondent was falsely stating that Complainant Pellerano was a prime suspect in a criminal case when he clearly knew that the Providence Police Department was not pursuing action against Complainant Pellerano.

Since this fax raises false and defamatory statements, the First Amendment does not prohibit consideration of this conduct. Under Rhode Island law:

> "To succeed in an action for defamation, the plaintiff must prove: (1) the utterance of a false and defamatory statement concerning another; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence; and (4) damages." Kevorkian v. Glass, 913 A.2d 1043, 1047 (R.I. 2007) (quoting Mills v. C.H.I.L.D., Inc., 837 A.2d 714, 720 (R.I. 2003)).

Avilla v. Newport Grand Jai Alai LLC, 935 A.2d 91, 95 (R.I. 2007). As discussed above, the statement that Complainant Pellerano was "recently implicated in the PPD Breaking and Entering criminal case CCR # 08-1954 as a prime suspect" is false. The statement is defamatory. It was directed to a third party. It was not privileged. In Kevorkian v. Glass, 913 A.2d 1043, 1048 (R.I. 2007) the Court described qualified privilege as follows:

> Generally, under the judicially created doctrine of qualified privilege,
> "[a] qualified privilege exists if the publisher makes the statements in good faith and 'reasonably believes that he has a legal, moral or social duty to speak out, or that to speak out is necessary to protect either his own interests, or those of third

> person[s], or certain interests of the public.' " Mills, 837 A.2d at 720 (quoting Ponticelli v. Mine Safety Appliance Co., 104 R.I. 549, 551, 247 A.2d 303, 305-06 (1968)).

In this case, there is no evidence that the Respondent believed that he had a legal, moral or social duty to speak out with respect to his false allegation that the Complainant was the prime suspect in a crime, or that speaking out was necessary to protect his own interests, the interests of a third party or the public interest. There is also no evidence that an absolute privilege was involved in this instance.

The Respondent's actions were not done by mistake, he was maliciously trying to cause trouble between Complainant Pellerano and his employer. Further, Complainant suffered damages in that his supervisor told him to take time off work to resolve the issues raised by the faxes. Accordingly, the Respondent's actions in making false statements to Complainant Pellerano's employer meet the standards for defamation.

In addition, these allegations did not concern a public figure and did not relate to public issues. The Respondent himself does not claim that this fax related to a public issue, Instead, he appears to characterize his communications about Complainant Pellerano as a "communication between two people, two private people". Trans. Vol. 1, p 150. The First Amendment does not prohibit states from holding individuals liable for defamatory statements of fact that do not relate to public figures or public issues. Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 105 S. Ct. 2939 (1985). Therefore, the Commission will consider as part of the evidence of harassment, the Respondent's defamatory fax to Complainant Pellerano's supervisor. The lack of First Amendment protection for Respondent's defamatory language is clear.

Respondent's actions against Complainant Martinez

With respect to Complainant Martinez, she knew of the actions that the Respondent took against Complainant Pellerano and Complainant Ivonne Torres. Complainant Martinez also was subjected to the Respondent's complaints that her Unit smelled like raw sewage when she was cooking. The Respondent took pictures of her when she was inside her home. The Respondent took a picture of her bending down, which she found to be indecent, and showed it at a condominium meeting. Additionally, the Respondent buried her car in snow when it snowed and also blew trash onto her property. The respondent sounded his house alarm when she was outside her condominium on the way out or in.

Respondent's actions against Complainant Ivonne Torres

With respect to Complainant Ivonne Torres, she knew of the actions that the Respondent took against Complainant Pellerano and Complainant Martinez and they affected her. In addition, Respondent was taking pictures of the license plates of cars which came to their house. As a result, the boyfriend of Complainant Ivonne Torres told her that he parked several blocks away in

order to avoid having his car photographed. The Respondent also targeted a laser light on her head and chest.

The Respondent's actions against Complainants Pellerano, Martinez and Ivonne Torres created a hostile housing environment

The Respondent's actions were so serious and pervasive, that he caused Complainants Pellerano, Martinez and Ivonne Torres to leave the condominium at Veazie Street. The Respondent constructively evicted them, motivated at least in part by their ancestral origin. The Respondent's harassment was severe and pervasive, Complainants Pellerano, Martinez and Ivonne Torres found it to be abusive and a reasonable person would also find that the Respondent's conduct was abusive and created intolerable living conditions. The Respondent subjected Complainants Pellerano, Martinez and Ivonne Torres to threats of harm (by shining laser lights on Complainants Pellerano and Ivonne Torres); to threats of loss of liberty (by making a false police report against Complainant Pellerano); to invasion of privacy (by taking pictures of Complainant Martinez inside her home and by showing a picture of her in an embarrassing posture at a condominium meeting); to threats of interference with employment (by sending a false and defamatory statement about Complainant Pellerano to his supervisor); and to general interference with the peaceful enjoyment of their housing (by photographing license plates of visitors, burying Complainant Martinez' car with snow, blowing trash onto their property and sounding his house alarm when Complainant Martinez was outside of her house). *See* Sofarelli v. Pinellas County, 931 F.2d 718 (11th Cir. 1991). In that case, the Court of Appeals held that plaintiff's case could proceed to trial on his allegations of a violation of 42 U.S.C. § 3617. The plaintiff was attempting to move a house into a neighborhood and the white neighbors believed that that the house would be sold to black individuals. The Court held that allegations that the white neighbors' actions, leaving a note "threatening 'to break [Sofarelli] in half' if he did not get out of the neighborhood and running up to one of Sofarelli's trucks, hitting it, shouting obscenities and spitting at Sofarelli … would clearly constitute coercion and intimidation under § 3617". 931 F.2d at 722. In Bloch v. Frischholz, 587 F.3d 771 (7th Cir. 2009), the Court of Appeals held that the plaintiffs' case should go to a jury on their claims that the condominium association and its president violated the federal Fair Housing Act by interfering with plaintiffs' enjoyment of their fair housing rights in their condominium because the plaintiffs were Jewish. The plaintiffs had alleged that the defendants had re-interpreted condominium rules to disallow the placement of a mezuzah[4] on the doorpost, had repeatedly torn down the mezuzah, even on the occasion of a

[4] A mezuzah is:

> a little rectangular box, about six inches tall, one inch wide, and one inch deep, which houses a small scroll of parchment inscribed with passages from the Torah, the holiest of texts in Judaism. The scroll is called a mezuzah…. Though small in size, the mezuzah is a central aspect of the Jewish religious tradition-many Jews believe they are commanded by God to affix mezuzot on the exterior doorposts of their dwelling ….

Bloch v. Frischholz, 587 F.3d at 772. [Footnote omitted.]

funeral, had encouraged other tenants not to vote for the plaintiffs as Board members, had told the plaintiffs to get out if they did not like the rules and had scheduled meetings for Friday evenings when they knew that the plaintiffs had religious obligations. In King v. Metcalf 56 Homes Ass'n, Inc., 385 F.Supp.2d 1137 (D. Kan. 2005), the Court found that summary judgment should be denied to a defendant in a Fair Housing case. The plaintiff's allegations that the defendant neighbor "kept a diary, wrote down license plate numbers, and took photographs of plaintiff and her guests… reported plaintiff to the JCHA in an effort to get her Section 8 funding cut off and also complained about her to [the landlord]", (385 F.Supp.2d at 1144) were sufficient to proceed to trial on a claim of threatening, intimidating or interfering with the enjoyment of the plaintiff's dwelling. *See also* HUD regulation, 24 CFR 100.400 - Prohibited interference, coercion or intimidation, which provides that:

> (a) This subpart provides the Department's interpretation of the conduct that is unlawful under section 818 of the Fair Housing Act.
>
> (b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.
>
> (c) Conduct made unlawful under this section includes, but is not limited to, the following:
>
> ….
>
> (2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons. …

Complainants Pellerano, Martinez and Ivonne Torres proved by a preponderance of the evidence that the Respondent discriminated against them with respect to threatening, intimidating and interfering with their enjoyment of their dwelling because of their ancestral origin.

COMPLAINANT ADALBERTO TORRES DID NOT PROVE THAT THE RESPONDENT DISCRIMINATED AGAINST HIM IN VIOLATION OF THE FHPA

The Commission found that Complainant Adalberto Torres did not prove by a preponderance of the evidence that the Respondent unlawfully harassed him. There was no testimony from him that he knew of and was affected by the harassment of his family members. There was sparse evidence that Respondent's harassment was observed by him. He gave no testimony that he found the Respondent's harassment to be hostile and abusive. Complainant Adalberto Torres did not establish that the Respondent unlawfully harassed him because of his ancestral origin and therefore the Commission dismisses the complaint with respect to his allegations of unlawful discrimination.

THE COMMMISSION DID NOT TAKE THE TESTIMONY OF ANGELA LOVEGROVE INTO ACCOUNT IN MAKING ITS DETERMINATION

The Commission notes that it excluded the testimony of Angela Lovegrove from consideration in determining the case. Ms. Lovegrove gave an opinion based not on the evidence in the record, but instead on evidence that was gathered during investigation. Trans. Vol. 1, pp. 129-131. The Commission's task is to evaluate the evidence in the record, not unspecified investigative materials. *See* R.I.G.L. Section 42-35-9(e and g). Further, it would be inappropriate to accept opinion evidence in these circumstances because Ms. Lovegrove's opinion was based on her assessment of the credibility of the witnesses. *See* State v. Castore, 435 A.2d 321, 326 (R.I. 1981) (an expert's opinion based on the credibility of a witness should have been excluded because determination of the credibility of witnesses is within the sole authority of the factfinder). Ms. Lovegrove's opinion was not utilized by the Commission in determining the case.

DAMAGES

R.I.G.L. Section 34-37-5(h) sets forth the remedies which the Commission can award after it finds a violation. It provides, in relevant part, as follows:

> (h) If upon all the testimony taken the commission shall determine that the respondent has engaged in or is engaging in unlawful housing practices, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful housing practices, and to take such further affirmative or other action as will effectuate the purposes of this chapter.
>
> (2) The commission may also order the respondent to pay the complainant damages sustained thereby; costs, including reasonable attorney's fees incurred at any time in connection with the commission of the unlawful act, and civil penalties, any amounts awarded to be deposited in the state treasury. The civil penalty shall be (i) an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior discriminatory housing practice;.… When determining the amount of civil penalties, the commission shall consider as a mitigating factor whether the respondent has acted in good faith and whether the respondent has actively engaged in regular antidiscrimination educational programs. …

The Commission has awarded compensatory damages for pain and suffering in previous cases. The Commission has indicated that it will be guided by federal cases interpreting federal civil rights laws and by state case law on damages for pain and suffering.

The federal Equal Employment Opportunity Commission (EEOC) has issued Policy Guidance on "Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of

1991", 1992 WL 1364354 (EEOC Guidance 1992) (hereafter referred to as the Enforcement Guidance). The Enforcement Guidance relates to employment discrimination cases, but the principles can be applied to fair housing cases. The Enforcement Guidance provides that it is EEOC's interpretation that compensatory damages are available for pecuniary and non-pecuniary losses caused by discriminatory acts. Non-pecuniary losses include damages for pain and suffering, inconvenience and loss of enjoyment in life. "Emotional harm may manifest itself, for example, as sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self esteem, excessive fatigue, or a nervous breakdown." Enforcement Guidance, p. 5. While "there are no definitive rules governing the amounts to be awarded," the severity of the harm and the time that the harm has been suffered are factors to be considered. Enforcement Guidance, pp. 7, 8.

In Rhode Island, the determination of the appropriate amount of compensatory damages should not be influenced by sympathy for the injured party nor should the damages be punitive. Soares v. Ann & Hope of R.I., Inc., 637 A.2d 339 (R.I. 1994). The decision makers should determine the damages for pain and suffering by the exercise of judgment, the application of experience in the affairs of life and the knowledge of social and economic matters. Kelaghan v. Roberts, 433 A.2d 226 (R.I. 1981).

Damages for the pain and suffering which result from discrimination fall within a wide range. *See* Snyder v. Bazargani, 241 Fed. Appx. 20 (3rd Cir. 2007) (Award of compensatory damages of $40,000 to the two plaintiffs in a housing discrimination case was affirmed; the agent friend of the landlord asked the prospective tenant plaintiffs about their religion and the landlord denied them the opportunity to rent on the basis of their religion); Matarese v. Archstone Pentagon City, 795 F. Supp.2d 402 (E.D. Va. 2011) *affirmed in part, vacated in part on other grounds by* Matarese v. Archstone Communities, LLC, 2012 WL 626460 (4th Cir. 2012) ($50,000 in compensatory damages for pain and suffering awarded to primary plaintiff; the landlord had refused to renew the lease once he concluded that the plaintiff had a disability, put the plaintiff on a month-to-month lease at a much higher rent, failed to renew the lease of plaintiff's mother, for whom the plaintiff provided care, and took unexpected steps such as posting notices on plaintiff's door in the middle of the night; the unexpected nature of the landlord's actions and its failure to respond to the plaintiff's complaints, caused the plaintiff stress and anxiety which warranted the damages for pain and suffering); St. Clair v. Vermont Human Rights Com'n, 2006 WL 5837522 (Vt. Sup. Ct. 2006) (Award of $20,000 for emotional distress to one plaintiff and $15,000 to another plaintiff upheld, there was sufficient evidence to justify the award of damages caused by the landlord's harassment of the plaintiffs based on their disabilities).

THE DAMAGES OF COMPLAINANT PELLERANO

Complainant Pellerano was constructively evicted from his Veazie Street condominium in September 2007. His rent at his new apartment was $750 per month. The Respondent is liable for that monthly rental from the end of September 2007 until July 2008, when Complainant Pellerano

married[5]. That amount comes to $6750 ($750 x 9).

Starting in or around January 2010, Complainants Pellerano and Martinez rented their condominium at Veazie Street for $850 per month. The mortgage payment was $878 and the condominium dues were $185 per month. Therefore, Complainants Pellerano and Martinez had a loss of $213 per month. The loss for renting the unit instead of living in it, from January 2010 to the end of March 2012, is $5,751 ($213 x 27 months). Complainant Pellerano's share of that loss is $2,876.

In the circumstances of the instant case, the Commission finds that $15,000 compensates Complainant Pellerano for his pain and suffering. Complainant Pellerano did not testify to physical manifestations of his suffering, nor did he testify that he had counseling at the time of the event. However, he was forced to leave his home because of Respondent's actions. Trans. Vol. 1, p. 35. The Respondent also succeeded in disrupting Complainant Pellerano's employment since Complainant Pellerano's supervisor told him to take time off to resolve the issue of the faxes. Additionally, the Respondent's false police report endangered the employment, reputation and liberty of Complainant Pellerano. Complainant Pellerano further credibly testified that the Respondent's actions caused him to feel afraid for his life, embarrassed and frustrated him, and made him feel powerless and diminished. Trans. Vol. 1, pp. 21, 49. It is the Commission's decision that Respondent's acts caused Complainant Pellerano substantial pain, suffering and inconvenience and that $15,000 is the proper amount to compensate him for those harms.

THE DAMAGES OF COMPLAINANT MARTINEZ

Complainant Martinez was constructively evicted from her Veazie Street condominium in or around the end of 2009. Her rent at her new apartment was $1,200 per month. Starting in or around January 2010, Complainants Pellerano and Martinez rented their condominium at Veazie Street for $850 per month. The Respondent is liable for Complainant Martinez' monthly rental at her new apartment, minus the rent from the Veazie Street condominium, from January 2010 to the end of March 2012. That amount comes to $9,450 ({$1,200 - $850} x 27 months).

The mortgage payment was $878 and the condominium dues were $185 per month. Therefore, with the rental income being $850 per month, Complainants Pellerano and Martinez had a loss of $213 per month. The loss for renting the unit instead of living in it, from January 2010 to the end of March 2012, is $5,751 ($213 x 27 months). Complainant Martinez' share of that loss is $2,876.

In the circumstances of the instant case, the Commission finds that $5,000 compensates Complainant Martinez for her pain and suffering. Complainant Martinez credibly testified that she was scared of the Respondent. Trans. Vol. 1, p. 81. Although Complainant Martinez did not testify that she had counseling at the time of the event, she left her home because of

[5] Complainant Pellerano testified that he would not necessarily want to move back to Veazie Street as of the date of the hearing, even if Respondent's harassment ceased, because he was married and had his own house. Trans. Vol. 1, p. 36.

Respondent's actions. Trans. Vol. 1, p. 82. She found one instance in which Respondent photographed her in her home to be an invasion of privacy. Trans. Vol. 1, p. 83. She found a photograph which he took of her and showed at a condominium meeting to be indecent. Trans. Vol. 1, pp. 83-84. She testified that it hurts her that her son has been hurt by the Respondent. Trans. Vol. 1, p. 85. Additionally, she testified that she often thinks about how hard she worked to buy her home and now she cannot live in it. Trans. Vol. 1, p 86. It is the Commission's decision that Respondent's acts caused Complainant Martinez pain, suffering and inconvenience and that $5,000 is the proper amount to compensate her for those harms.

THE DAMAGES OF COMPLAINANT IVONNE TORRES

Complainant Ivonne Torres was constructively evicted from the Veazie Street condominium in October 2009. Her rent at her new apartment was $800 per month and she paid approximately $60 in utilities per month. She had not paid rent for the Veazie Street condominium. The Commission will award Complainant Ivonne Torres the cost of her rent from October 2009 to January 1, 2010. As of January 2010, Complainant Martinez was living in a new apartment away from Veazie Street. The Commission finds that it would be unfair to order the Respondent to pay for more than one alternate housing accommodation at a time. The Respondent is liable to Complainant Torres for rental costs of $2,580 ($860 x 3 months).

In the circumstances of the instant case, the Commission finds that $2,500 compensates Complainant Ivonne Torres for her pain and suffering. Complainant Ivonne Torres did not testify to physical manifestations of her suffering nor did she testify that she had counseling at the time of the event. She left her home because of Respondent's actions. Trans. Vol. 1, p.113. On one occasion, the Respondent centered a laser light on Complainant Ivonne Torres' head and chest. The boyfriend of Complainant Ivonne Torres told her that he parked several blocks away when he visited as he did not want his license plate to be photographed. The Respondent photographed the license plates of the cars of other visitors. Complainant Ivonne Torres worried about how the Respondent would treat her brother. Trans. Vol. 1, p. 115. Complainant Ivonne Torres was aware of the Respondent's actions towards Complainants Pellerano and Martinez. It is the Commission's decision that Respondent's acts caused Complainant Ivonne Torres pain, suffering and inconvenience and that $2,500 is the proper amount to compensate her for those harms.

INTEREST

The Commission awards interest consistently with the rate used for tort judgments. *See* R.I.G.L. Section 9-21-10(a):

> In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued, which shall be included in the judgment entered therein…. [Emphasis added.]

In cases of on-going harassment, it is difficult to determine the exact date when the cause of action

accrued. Therefore, the Commission will use the date of one year before the charge was filed as the date that the cause of action accrued.

CIVIL PENALTY

The Commission also orders that the Respondent pay a civil penalty. The FHPA provides that:

> the commission may … order the respondent to pay … civil penalties, any amounts awarded to be deposited in the state treasury. The civil penalty shall be (i) an amount not to exceed ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior discriminatory housing practice …. When determining the amount of civil penalties, the commission shall consider as a mitigating factor whether the respondent has acted in good faith and whether the respondent has actively engaged in regular antidiscrimination educational programs. R.I.G.L. § 34-37-5(h)(2).

Administrative law judges assessing civil penalties under the federal Fair Housing Act consider the following factors under 24 C.F.R. §180.671(c)(1):

> (1) In determining the amount of the civil penalty to be assessed against any respondent for each separate and distinct discriminatory housing practice the respondent committed, the ALJ shall consider the following six (6) factors:
> (i) Whether that respondent has previously been adjudged to have committed unlawful housing discrimination;
> (ii) That respondent's financial resources;
> (iii) The nature and circumstances of the violation;
> (iv) The degree of that respondent's culpability;
> (v) The goal of deterrence; and
> (vi) Other matters as justice may require.

In determining the penalty, the Commission has considered that the Respondent's actions resulted in the constructive eviction of a family from their home. The statutorily enunciated mitigating factors are not present in this case. There is no evidence that the Respondent ever participated in an antidiscrimination educational program. There is no evidence that the Respondent was acting in good faith. There is no evidence that the Respondent was previously determined to have engaged in discrimination in housing. The Respondent's financial resources are unknown. There is no evidence that the Respondent is a housing professional or that he owns or operates any housing-related business. The Commission has determined that $3,000 is the appropriate amount for a civil penalty. That amount should be sufficient to deter the Respondent's unlawful conduct in the future.

ORDER

I. With respect to Complainant Adalberto Torres, having reviewed the evidence presented on July 13, 2010 and September 8, 2010, the Commission, with the authority granted it under R.I.G.L. Section 34-37-5(i), finds that he has failed to prove the allegations of the Complaint with respect to his claim and hereby dismisses the Complaint with prejudice with respect to the allegations that the Respondent violated the FHPA with respect to him.

II. With respect to Complainants Pellerano, Martinez and Ivonne Torres, violations of R.I.G.L. Section 34-37-5.1 having been found, the Commission hereby orders:

A. That the Respondent cease and desist from all unlawful housing practices under Title 34, Chapter 37 of the General Laws of Rhode Island;

B. That the Respondent cease sending faxes to Complainant Pellerano at the telephone number of the MET school;

C. That the Respondent receive training on the fair housing laws on or before two months from the date of this decision, and that he send the Commission a certification of when he was trained, who the trainer was and the syllabus of the training on or before 3 months from the date of this decision;

D. That the Respondent pay Complainant Pellerano $24,626 in compensatory damages together with statutory annual interest of 12% from the date the cause of action accrued, October 29, 2008, until paid;

E. That the Respondent pay Complainant Martinez $17,326 in compensatory damages together with statutory annual interest of 12% from the date the cause of action accrued, October 29, 2008, until paid;

F. That the Respondent pay Complainant Ivonne Torres $5,080 in compensatory damages together with statutory annual interest of 12% from the date the cause of action accrued, October 29, 2008, until paid;

G. That the Respondent submit to the Commission proof of payment to Complainants Pellerano, Martinez and Ivonne Torres, in accordance with Paragraph II (D, E and F), within 75 days of the date of this Decision and Order;

H. That the Respondent send to the Commission a check made payable to the State of Rhode Island Treasury in the amount of $3,000 as a civil penalty within forty-five (45) days of the date of this Order.

Entered this [24th] day of [May], 2012

/S/
_____

John B. Susa
Hearing Officer

I have read the record and concur in the judgment.

/S/
_____

Alton W. Wiley, Jr.
Commissioner

OPINION OF COMMISSIONER ALBERTO APONTE CARDONA, JOINING IN PART AND DISSENTING IN PART

I join the portion of the Commission's opinion that finds that the Respondent discriminated against Complainants Pellerano, Martinez and Ivonne Torres.

I dissent from the Commission's finding that Complainant Adalberto Torres did not prove by a preponderance of the evidence that the Respondent discriminated against him. The Respondent's unlawful discriminatory conduct towards Complainants Pellerano, Martinez and Ivonne Torres also affected Adalberto Torres and his use and enjoyment of the condominium at Veazie Street. Among other things, the Respondent called Adalberto Torres an illegal immigrant and Adalberto Torres knew of that comment.

I join the relief ordered by the Commission except that I would find that the Respondent should be required to pay a civil penalty of $10,000, instead of $3,000, because of the egregious discriminatory acts which he committed against the Complainants.

/S/	[May 24, 2012]
_____	_____
Alberto Aponte Cardona Commissioner	Date