STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CH1177
	)	ALS NO.: 09-0117
SYLVIA HAYDE,	)	HUD NO.: 05090688
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2009CH1177, Sylvia Hayde, Complainant, and Shirley & Fred Bandaly, Respondents; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Complainant's Reply, and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

(1) The dismissal of the Complainant's charge is **VACATED** on the ground that the Commission finds that there is **SUBSTANTIAL EVIDENCE** of discrimination; and
(2) The Complainant's charge is **REINSTATED** and **REMANDED** to the Department for further Processing of the Charge in accordance and consistent with this Order and the Act.

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant is an African American real estate agent. Prior to June 1, 2008, her services as a real estate agent were retained by Murdies Hall, an African American woman. Hall had decided to purchase a single-family home in predominantly white Villa Park, Illinois (the "Subject Property").

2. In June of 2008, Hall made an offer to purchase the Subject Property. On June 1, 2008, the Complainant and her husband accompanied Hall and some of her family members, when they all drove to Villa Park in order to view the Subject Property for a second time. All of these individuals were African American.

3. Shirley Bandaly and Fred Bandaly (Bandalys), who are white, owned a home that was located directly across the street from the Subject Property. On June 1, 2008, several people were on the Bandalys' front yard, including at least one white female. There was also an American flag hanging in front of the Bandalys' home.

4. On June 1, 2008, when the Complainant, Hall, and their companions arrived at the Subject Property, the Complainant heard a female shout from the direction of the Bandalys' property, "Oh hell, no niggers!"

5. When she turned in the direction of the Bandalys' home, she saw a white female go into the Bandalys' home and return outside with a confederate flag. The white female then removed the American flag and replaced it with the confederate flag. The Complainant later identified Shirley Bandaly as the white female who had replaced the American flag with the confederate flag. Fred Bandaly denies any involvement in these activities.

6. As a result of the June 1, 2008, incident, Hall and her family became frightened, and Hall decided that she no longer wanted to purchase the Subject Property. As a result, the Complainant lost any commission that she may have realized from the real estate sales transaction.

7. The Complainant filed federal housing discrimination complaints, initially with the U.S. Department of Housing and Urban Development (HUD). Subsequently, her complaints were referred to the Department. The Complainant filed a two-count charge of discrimination with the Department. In Count A, she alleged a violation of § 3-102(F) of the Illinois Human Rights Act (the "Act"), which provides:

> *It is a civil rights violation for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of unlawful discrimination or familial status, to..*
>
> *……*

> *… Print, circulate, post, mail, publish or cause to be published a written or oral statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which expresses any limitation founded upon, or indicates, directly or indirectly, an intent to engage in unlawful discrimination.*
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> *See* 775 ILCS 5/3-102(F) (West 2009)

8. In Count B of the charge, she alleged a violation of §3-105.1 of the Act, which provides:

> *It is a civil rights violation 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, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article 3.*
>
> *See* 775 ILCS 5/3-105.1 (West 2009)

9. The language of § 3-105.1 of the Act mirrors the language of § 3617 of the Fair Housing Act (FHA), 42 U.S.C.A. § 3617. There is no Illinois caselaw that interprets § 3-105.1 of the Act. Therefore, it is proper and instructive to look to federal law for some guidance in interpreting the Act. *See* Szkoda v. Illinois Human Rights Commission, et al., 302 Ill.App.3d 532, 706 N.E.2d 962 (1st Dist. 1988). However, the Commission need not apply in "lockstep" fashion federal court interpretations of § 3617 to § 3-105.1 of the Act. *See* Trayling v. Board of Fire and Police Com'rs of Village, 273 Ill.App.3d 1, 11, 652 N.E.2d 386, 393 (2nd Dist. 1995). It is appropriate to recall that the Act is remedial legislation, and thus should be liberally construed in order to effectuate its purposes. *See* Arlington Park Race Track Corp. v. Human Rights Com'n, 199 Ill.App.3d 698, 703-704, 557 N.E.2d 517, 520 (1st. Dist. 1990).

10. After an investigation, the Department dismissed both counts of the charge based on lack of substantial evidence of discrimination. Under the Act, substantial evidence is evidence… "which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." *See* 775 ILCS 5/7A-102(D)(2) (West 2009).

11. As to Count A, regarding § 3-102(F) of the Act, the Department found that there was no substantial evidence of discrimination because there was no evidence that the Respondents made any statements while engaging in the sale of the Subject Property, or that the racially derogatory statement conveyed that the Subject Property was unavailable because of the Complainant's protected

class, or that her statement expressed a preference for or a limitation on the Complainant because of her protected class.

12. As to Count B, the Department concluded that the single June 1, 2008 incident failed to rise to the level of a violation of § 3-105.1 of the Act. In coming to this conclusion, the Department relied on certain federal court cases that construed § 3617 of the FHA. The Department took the position that § 3-105.1 of the Act should be construed in the same manner as § 3617 of the FHA, and found that based on the federal decisions, there was not substantial evidence that the Respondents had coerced, intimidated, threatened, or interfered with the Complainant in the exercise of any right protected or granted by Article III of the Act.

13. The Complainant filed a Request for Review of the Department's dismissal of the charge. In her Request, the Complainant argues that the Department failed to consider relevant evidence, that the Department ignored the "commonly accepted symbolism of the confederate flag as an expression of white supremacy and racial hatred," and that the Department applied an incorrect legal standard when it found no substantial evidence. The Complainant argues that a single act of coercion, intimidation, or interference based on race is a violation of § 3-105.1 of the Act.

14. In its Response to the Complainant's Request, the Department states that it resolved all ambiguities and conflicts concerning the disputed facts in favor of the Complainant. Having done so, as to Count A, the Department argues that there was no evidence that the Respondents made any discriminatory statements in connection with a prospective real estate transaction.

15. As to Count B, regarding § 3-105.1 of the Act, the Department argues that in cases involving neighbors or private citizens, federal courts limited their application of § 3617 of the FHA to situations that involved egregious conduct, such as threats of force or duress, or a pattern of pervasive and invidious harassment. The Department cites various federal cases, such as Gourlay v. Forest Lake Estates Civil Association of Port Richey, Inc., 276 F.Supp.2d 1222 (M.D.FL 2003)(vacated upon joint motion to withdraw and vacate order of summary judgment due to settlement); Michigan Protection and Advocacy Service, Inc. v. Babin, 799 F. Supp. 695 (E.D. Mich. 1992); Halprin v. Prairie Single Family Homes of Dearborn Park Association, 388 F.3d 327 (7th Cir. 2004), and Walton v. Claybridge Homeowners Association, Inc., 191 Fed.Appx.446 (7th Cir. 2006)(not selected for publication in the Federal Reporter).

16. Based on these and certain other federal cases, the Department argues that in order to show substantial evidence of a violation of § 3-105.1 of the Act, the allegations must have shown either (1) violence, threats of violence, or physical or economic duress, or (2) a pattern of pervasive and invidious harassment.

17. In her Reply, the Complainant argues that the Department ignores the plain language of § 3-105.1 of the Act, and the purpose of Article III of the Act. The Complainant also takes exception to the cases relied upon by the Department in its Response.

18. In particular, the Complainant correctly points out that Gourlay lacks precedential value because that order was vacated. *See* Cohen v. Illinois Institute of Technology, 524 F.2d 818, 829-30, n.33 (7th Cir. 1975), *cert. denied*, 425 U.S. 943, 96 S.Ct. 1683, 48 L.Ed.2d 187 (1976); *see also* Gilmore Steel Corp. v. United States, 585 F.Supp. 670, 674, n.3 (C.I.T. 1984).

19. The Complainant also correctly points out that Michigan Protection and Advocacy Service, Inc. v. Babin, 799 F. Supp. 695 (E.D. Mich. 1992), which was relied upon by the Department, was subsequently appealed to Sixth Circuit Court of Appeals, resulting in the decision of Michigan Protection and Advocacy Services, Inc. v. Babin, 8 F.3d 337 (6th Cir. 1994), where the lower court was affirmed on other grounds. Regarding the scope of § 3617, the Sixth Circuit stated:

> *Section 3617 is not limited to those who used some sort of "potent force or duress," but extends to other actors who are in a position directly to disrupt the exercise or enjoyment of a protected right and exercise their powers with discriminatory animus. Under this standard, the language "interfere with" encompasses such overt acts as racially-motivated firebombings…sending threatening notes…and less obvious, but equally illegal, practices such as exclusionary zoning…deflating appraisals because of discriminatory animus....and insurance redlining.*
>
> *See* Michigan Protection, 8 F.3d 337, 347(internal citations omitted)

20. After reviewing the file and pertinent authority, the Commission concludes that the Complainant has met her burden of showing substantial evidence of discrimination as to both Counts of the charge.

21. As to Count A, at the investigatory stage, the Complainant need not prove her case, but must merely present substantial evidence from which a reasonable person could conclude there was a violation of the Act. There was no authority that was either presented by the Department or located by the Commission which would cause the Commission to determine that a reasonable person could not conclude that the Respondents violated § 3-102(F) of the Act based on the facts currently presented.

22. As to Count B, the Commission declines to adopt the Department's unduly restrictive interpretation of § 3-105.1 of the Act. Even assuming that the Commission was inclined to apply federal law "lockstep" to resolve this issue, the cases cited by the Department do not support its contention that a single act can never rise to the level of a violation of § 3-105.1 of the Act, or that the act has to be violent, pervasive, or display a show of force.

23. In fact, federal courts, such as the court in Michigan Protection, 8 F.3d 337, 347, already previously quoted in this Order, acknowledge that § 3617 of the FHA should receive a broad application. *See e.g.*, Nevels v. Western World Insurance Co., 359 F.Supp.2d 1110, 1122, *quoting* Walker v. City of Lakewood, 272 F.3d 1114, 1128 ("Section 3617 does not require a showing of force or violence for coercion, interference, intimidation, or threats to give rise to liability.").

24. Furthermore, the Commission believes that the interpretation of § 3-105.1 of the Act pressed by the Department would conflict with the Commission's obligation to interpret the Act liberally so as to fully effectuate the Act's broad remedial purposes.

25. In this case, the Complainant has alleged facts demonstrating an explicitly racially motivated and intimidating act, one which communicated to her that she or her client were not wanted in a predominantly white community because of their race, African American. As a direct result of this racially motivated act, the Complainant's client ceased in the exercise of her right to purchase real estate in a community of her choice. The facts alleged also demonstrate an interference with the Complainant's right and ability to assist her African American client in exercising and enjoying the rights guaranteed to her client by Article III of the Act because of race. This is the very sort of ill that Article III of the Act was designed to remedy. The Complainant's Request is persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Commission finds that there is **SUBSTANTIAL EVIDENCE** of discrimination as to both Count A and Count B of the Complainant's charge; and,

(2) The Department's dismissal of the Complainant's charge is therefore **VACATED,** and the charge is **REINSTATED** and **REMANDED** to the Department for further Processing consistent with this Order and the Act.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 23rd day of June 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini