

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

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In the Matter of the Complaint of :
EDWARD LEE BACA, :
Complainant, :
- against - :
119-121 EAST 97TH STREET CORP., :
DOROTHEA ROSASCO and LOUIS ROSASCO, :
Respondents. :
- - - - - X

Complaint No.
AH-92-0280

RECOMMENDED
DECISION AND ORDER

BEFORE: Steven E. Presberg
Administrative Law Judge
Hearing Division

APPEARANCES: For the Commission
— Rolando T. Acosta, Esq.
Deputy Commissioner for
Law Enforcement
Commission on Human Rights
40 Rector Street, 9th Floor
New York, N.Y. 10006

By: Andre Gamrasni, Esq.
Of Counsel

For the Respondents

Mujica and Goodman
103 West 86th Street
New York, N.Y. 10024

By: Jacob J. Goodman, Esq.

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COMPLAINT AND HEARING

On December 20, 1991, Edward Lee Baca ("Complainant") filed a verified complaint with the New York City Commission on Human Rights ("Commission") charging Respondents Dorothea and Louis Rosasco with unlawful discriminatory practices relating to housing. The complaint avers that by their words and actions, Respondents harassed Complainant, a residential tenant of their multiple-dwelling housing accommodation. This harassment is alleged to have been based upon Complainant's sexual orientation (gay) and perceived disability (AIDS). Complainant asserts that he is gay and HIV antibody-positive.

An amended verified complaint was filed on January 27, 1992 adding a charge of retaliation based upon the filing of the original complaint. A second amended complaint was filed on March 5, 1992 adding 119-121 East 97th Street Corp. as a Respondent. The complaint, as amended, accuses Respondents of various actions constituting discrimination in housing: refusal to rent (denial of a renewal lease) and withholding of equal

terms, conditions or privileges of the rental of apartment 1E as evidenced by numerous incidents of harassment.

Respondents filed an unverified answer dated January 15, 1992 denying any knowledge of Complainant's HIV status, denying individual ownership of the premises in question and asserting that a corporate entity, 119-121 East 97th Street is the owner, and generally denying any violation of the Administrative Code of the City of New York ("Code"). A subsequent unverified, and undated answer, apparently signed by Respondent Dorothea Rosasco, was received by the Hearings Division on June 11, 1992. In this "answer" Respondents again deny any Code violation and attach copies of letters from assertedly gay individuals, all attesting to the "character and integrity" of Respondents.

A public hearing was held before Administrative Law Judge Steven E. Presberg on September 9, 10, 11 and 23, 1992. For the reasons stated below, this tribunal finds that Respondents discriminated against Complainant (1) in the terms, conditions and privileges of his rental housing accommodation; (2) by refusing to offer a renewal lease; and (3) by retaliating against him as a result of the filing of the original complaint, and subjecting him to various forms of harassment.

This tribunal finds ample justification to recommend (1) an award of substantial compensatory damages to Complainant for severe mental anguish; (2) comprehensive affirmative relief to the Commission, to permit monitoring of Respondents' future conduct with respect to their ownership of rental housing; (3) an order to Respondents to grant a renewal lease to Complainant in

accordance with the Rent Stabilization Code for rent stabilized residential apartments in New York City; and, (4) the imposition of a civil penalty to vindicate the public interest, as a consequence of Respondents' willful, wanton and malicious conduct.

SUMMARY OF THE PARTIES' CONTENTIONS

Complainant

Complainant accuses Respondents of discriminatory and unlawful conduct as follows: commissioning someone or acting themselves to burglarize Complainant's apartment; breaking Complainant's lock; turning off his electricity; refusing to accept rent checks and commencing eviction proceedings; refusing to offer a lease renewal; verbally accosting him by publicly calling him a "faggot punk"; telling him that he has AIDS and hoping he will die; distributing a notice to tenants at 121 East 97th Street (his residence) that informs the reader of his Human Rights complaint, his HIV positive status, and warns against anyone cooperating with him; leaving threatening messages on his telephone answering machine; allegedly utilizing a hospital computer to investigate Mr. Baca's HIV status; telephoning or importuning someone else to call Mr. Baca's employer and divulge his HIV status; and, on more than one occasion physically assaulting Mr. Baca.

Respondents

Respondents defend against the complaint by asserting that Complainant is a commercial, not residential tenant of their premises, thereby depriving the Commission of jurisdiction to hear the complaint. Alternatively they argue that at the heart of the dispute is simply a soured landlord-tenant relationship, owing to Complainant's late rent payments. Finally, they deny virtually all of the acts of bias, hate and harassment alleged by Complainant.

ISSUES

1. Did Respondents violate Code Section 8-107(5)(a)(1) by refusing to renew Edward Baca's lease, because of his disability and/or sexual orientation?
2. Did Respondents violate Code Section 8-107(5)(a)(2) by discriminating against Edward Baca in the terms, conditions or privileges of his rental of apartment 1-E, because of his disability and/or sexual orientation?
3. Did Respondents violate code Section 8-107(5)(a)(3) by declaring statements expressing discrimination as to sexual orientation with respect to Edward Baca?
4. Did Respondents violate Code Section 8-107(7) by retaliating against Edward Baca, because he filed a complaint with the Commission?
5. Does Respondents' conduct warrant the imposition of comprehensive affirmative relief on behalf of the Commission, in order to permit the monitoring of Respondents' future

conduct with respect to their ownership and operation of rental housing?

6. Does Respondents' conduct warrant the imposition of a civil penalty, in addition to the award of compensatory damages to Complainant?

I.

FINDINGS OF FACT

1. Complainant Edward L. Baca has resided at 121 East 97th Street, Apartment 1E, since September 1, 1989. He signed a two-year lease with Respondent Louis Rosasco, providing for an agreed rent of \$650 per month. As of September 1, 1991, he began paying \$750 per month (T. 24-26).¹
2. The apartment building known as 121 East 97th Street, as well as its adjoining neighbor 119 East 97th Street, are owned by Respondent 119-121 East 97th Street Corporation. The sole shareholders of the corporation are individual Respondents Louis and Dorothea Rosasco. The latter is also the managing agent for the premises which are comprised of a total of 50 units (T. 25, 299, 300, 304, 322, 330).
3. The apartment occupied by Mr. Baca, 1E, is a four-room apartment containing a living room, bedroom, kitchen and bathroom. There are two entrances: one which is directly accessible from the street, and another which requires

¹Numbers in parenthesis preceded by "T." refer to pages in the hearing transcript; numbers and letters preceded by Cx., Rx. and

entering the main entrance into the lobby of the building (T. 26-30; Cx. 4A-4H).

4. Having asked for a residential apartment and viewing 1E, Mr. Baca was given only the signature page of a lease to sign. The lease was labeled "commercial" but Louis Rosasco informed him that was because he was "all out" of residential lease forms. Not having the opportunity to review the entire lease, but assured by Mr. Rosasco that he would receive a copy later, Mr. Baca signed and moved in. He paid \$1,300.00 in order to prepay the rent for September, 1989, and a one-month security deposit. A week later, he received a complete copy of the lease and rider (T. 176-179, 251, 252, 264, 265, 269; Cx. 8).
5. Mr. Baca's relationship with Respondents was uneventful for the first 18 months of the 24 month lease. In March of 1991 this situation changed drastically. Mr. Baca was attempting to assist an elderly neighbor, one Lila Carruego, who was having numerous landlord/tenant problems, including electricity cut-offs. Upon her receipt of an eviction notice, Baca helped refer her to a Legal Aid Society attorney for court assistance. Complainant Edward Baca and Lila Carruego both received eviction notices around the end of April, 1991 (T. 30-33).
6. Mr. Baca's eviction proceeding was dismissed in his favor, in Housing Court, when the Rosascos failed to appear. However, neighbor Lila Carreugo, after repeated eviction notices,

Hx. refer, respectively to the exhibits received in evidence from the Complainant, Respondents and the tribunal.

became tired and subsequently vacated her apartment (T. 32, 33).

7. In July 1991, Mr. Baca began experiencing periodic "turn-offs" of his electricity. The superintendent ("super") of the building would not respond to his knocks at the door, but did respond if Baca called the police. The super would then go to an area in the basement to turn Baca's electricity back on. This area was closed off by a locked gate, with only the super and the Rosascos in possession of the key (T. 34, 35, 253).
8. Approximately one week later, Mr. Baca returned home late at night to find the lock to one of his entrance doors jammed. A metal object had been placed in the lock, blocking a key from going in. After responding only when the police were called, the super drilled out the lock. The super charged Baca \$30 for the lock and \$5 to restore his electricity from the prior incident (T. 36, 37).
9. The last week in July, Mr. Baca's apartment was burglarized. The entrance door which leads to the street entrance had been broken into. Because he did not customarily use that door, Baca didn't notice the damage until the following morning. Upon inspection, Baca discovered that various articles including cash, clothing and stereo equipment had been taken. In addition, he saw that his personal medical files had been gone through, as well as various business records. Some of these records included paperwork and research materials on AIDS in connection with a contract entered into by Mr. Baca and the Commission on AIDS. Finally, he noticed that the

intruder(s) had gone through the medicine cabinet in the bathroom (T. 36-42).

10. Edward Baca's sexual orientation is "gay." He is medically diagnosed as HIV seropositive (T. 40, 62, 63; Cx. 1).

11. In August 1991, Mr. Baca experienced harassment in the form of doorbell ringing and telephone calls and hang-ups. These incidents would occur numerous times throughout the day and night, and continued in September and October. On one occasion, Baca recognized the person ringing his doorbell as an employee of the Rosascos. In addition, Mr. Baca arose one morning in August to again find his electricity turned off. An inquiry to Con Edison indicated no reason, according to their records, for his electric service to be interrupted. The super went to the basement, restored Baca's electricity, and told him that a fuse had blown out overnight (T. 42-46, 207, 208, 271, 272).

12. In August, after attempting to remit his rent payment, Mr. Baca's check was returned to him by the super who placed it in his mailbox. In September Mr. Baca's rent check was again returned to him, and again in October it was not accepted (T. 42, 46, 49).

13. As his lease had expired and his rent checks were not being accepted, Mr. Baca went to see Mr. Rosasco who maintained an office in Apartment GW of 119 East 97th Street, the adjacent building. After inquiring as to why his rent checks were being returned, Rosasco informed Baca in an angry and hostile manner that no lease renewal was to be offered and that he had to

move out. Baca indicated that he did not intend to move out (T. 46-48).

14. In September, Baca encountered one of Respondents' former employees, ex-superintendent John McGhee. McGhee volunteered information that he had been asked by the Rosascos to commit various acts of harassment against Baca. These acts included going through his mail and trash, breaking into his apartment, turning off his electricity and tampering with his lock. Mr. McGhee was employed by the Rosascos for approximately nine months in 1991, covering the time period in which Mr. Baca suffered the above noted incidents (T. 48, 49, 145-149, 156-158, 192-195).
15. The first week in November, tired of the constant harassment, Mr. Baca informed the super that he planned to move out. He located an apartment at 1515 Lexington Avenue and advanced the first month's rent and security. However, due to serious illness that necessitated an overnight emergency room visit at Mount Sinai Hospital, Baca did not move out of 121 East 97th Street. His alternate plans to move out in early December were stymied when his employer was served with an income execution by the Rosascos on his salary (T. 50-55, 211-221).
16. In early December, Mr. Baca encountered Mr. Rosasco and the new superintendent, Pablo Rosado outside the building. When Baca asked about the reason for the income execution, Rosasco replied "you faggot punk, just get out." After repeating this expression several times in a loud, angry voice, Rosasco walked away laughing. Former super McGhee indicated that the

Rosascos routinely referred to Baca as "that faggot" (T. 5557, 63, 151).

17. Mr. Baca appeared in court on December 16 in a landlord/tenant matter. Also in attendance was former super John McGhee, Mrs. Rosasco, and Milton Tingling, Esq., Counsel for the Rosascos. After the proceedings, Mrs. Rosasco began shouting at Baca that he had AIDS and she hoped he would die (T. 57-60, 150).
18. On December 20, 1991, Mr. Baca filed a verified complaint with the Commission alleging discrimination based on sexual orientation and perceived disability, and recounting the various incidents related above (Hx. 1).
19. The first week of January, 1992, Mrs. Rosasco telephoned Mr. Baca and in a menacing, hateful voice called him a "sicko" and stated that they were going to get all his money and he would be out in the street (T. 64, 65).
20. The following week, Mrs. Rosasco again telephoned Baca and swore that she would see to it that he would never get another job and would never be able to pay rent of any kind (T. 66).
21. During that same month, Mrs. Rosasco made several telephone calls to Mr. Baca's employer in order to make uninvited references to his health, character and court matters (T. 68).
22. Also during January, Mr. Baca noticed on one occasion that Mr. Rosasco and an employee were watching his apartment in a suspicious manner. As Baca left the apartment, the employee carefully watched the keys that he used. Mr. Baca walked down the street, out of view of Rosasco and said employee. The employee was close to the building entrance, and Mr. Rosasco

appeared to be looking in all directions as though concerned about witnesses. As Baca suspected that a break-in was about to take place, he ran back toward the two of them. This apparently adjourned any plans for a burglary. However, Baca went to find a Police Officer and reported these events to one P.O. Chinicello of the 21st Precinct who advised him not to leave his apartment (T. 69-71).

23. Respondents Dorothea and Louis Rosasco filed an unverified answer to the complaint, signed by them and dated January 15, 1992. In it they state that they "know and still know absolutely nothing as to Complainant, Edward Lee Baca's health status." They repeat in a separately listed response that they "are not aware of Complainant, Edward Lee Baca's health status." In conclusory fashion the answer also states that "THIS IS A COMMERCIAL PREMISES" (presumably referring not to the entire multiple dwelling structure, but to Complainant's apartment) and further states that "Complainant does not reside at 121 East 97th Street. He resides at 1515 Lexington Avenue, Apartment No. 5-B." Respondents also specifically deny ownership of 121 East 97th Street, indicating that it is owned by 119-121 East 97th Street Corporation (Hx. 2).

24. Respondents also in their answer charge Mr. Baca with fraud, dishonesty and assault. Specifically, they state that Baca issued "an invalid check to Milton A. Tingling, Esq.(their counsel), threatened Respondent, Dorothea Rosasco saying that he would kill her," and that on "January 7, 1992, Complainant, Edward Lee Baca, accosted both the Respondent Louis Rosasco

and the Porter, in 119 East 97th Street. First he took pictures of them and then tried to scare Louis Rosasco by going into his face and calling him names. The Porter is Christobal Tirado and he is available as a witness, if necessary." Respondents go on to assert that Complainant "accosted" an Officer Cianculli from the 23rd Precinct "alleging that there was a burglary in progress and that Respondent Louis Rosasco was the perpetrator. Upon discovering this was a lie the Officer advised Mr. Rosasco that he thinks the Complainant's mental capacity is diminished." Respondents' answer goes on to accuse Baca of harassing other tenants in the building, and they specifically deny the accusation in the original complaint that on December 16, 1991, Dorothea Rosasco told Complainant that he has AIDS and that she wants him to die (Hx. 2).

25. On or about January 17, 1992, a notice was posted and given to all tenants in the subject premises from Louis Rosasco. It states, in part:

"RE: NOTICES FROM EDWARD L. BACA
IT HAS COME TO MY ATTENTION THAT YOU HAVE RECEIVED
SEVERAL COMMUNICATIONS FROM THE ABOVE CAPTIONED
COMMERCIAL TENANT. (FUNDS UNDER RESTRAINING ORDER)
ANYONE WHO GIVES THEM SERIOUS CONSIDERATION SHALL
ONLY INCUR HARDSHIP AND EXPENSES ON THEMSELVES"

Said notice goes on to accuse Baca of being in "DEFAULT" and residing not at subject premises, but at 1515 Lexington Avenue. The notice further accuses Baca of various acts of fraud and goes on to state:

"HE HAS NOW RESORTED TO HUMAN RIGHTS COMMISSION

ADVISING HE IS HIV POSITIVE AND MY WIFE AND I ARE ANTI-GAY."

The notice also states that the building is attended by a superintendent 24 hours a day, seven days a week (Cx. 2).

26. On January 18, Mr. Baca returned home to find the following message on his telephone answering machine: "Faggot, if you don't move out of the building at once you're dead. If you spread AIDS in the building you're dead. You hear me, faggot? Move out." Baca recognized the voice as one of the handymen employed-by the Rosascos (T. 82-86, 271, 272; Cx. 3).

27. After another court appearance on January 23, in a public hallway Mrs. Rosasco started shouting, referring to Mr. Baca, "this guy is HIV positive, this guy has AIDS..." that he was probably lying about having HIV, and that you cannot have HIV and AIDS at the same time (T. 71, 72).

28. On January 27, Mr. Baca filed a verified amended complaint, adding a charge that Respondents retaliated against him for having filed the original complaint, by publishing the notice to all tenants dated January 17 (described in paragraph no. 25, above). On March 5, Baca filed a verified second amended complaint listing 119-121 East 97th Street Corporation as the owner of subject premises and adding the entity as a corporate Respondent (Hx. 3, 4).

29. On February 26, Mr. Baca and Mrs. Rosasco, along with their attorneys Martha S. Jones, Esq. and Milton A. Tingling, Esq., respectively, entered into a Stipulation of Settlement before the Honorable Wilfred R. O'Connor, Judge, Civil Court, Housing

Court Part 52, New York County. The Stipulation resolved the issue of rent arrears and provided a schedule for payment. It also provided that if Baca defaulted on any payments, the Rosascos could reapply to the Judge for a warrant of eviction on five days written notice to Baca's attorney (Rx. 1).

30. On March 9, Mr. Baca filed a complaint of harassment against the Rosascos with the State Division of Housing and Community Renewal ("DHCR"). The complaint alleged that the Rosascos have intentionally withheld services from him (Rx. 2).

31. On or about March 9, Mrs. Rosasco addressed a letter to Human Rights Commissioner Dennis deLeon, Investigator Humberto Derveniadis and Complainant's personal attorney, Martha Jones. The letter reads as follows:

Re: Edward L. Baca - AIDS/HIV

This is to advise you that after a thorough investigation it has been ascertained that Mr. Edward L. Baca of 1515 Lexington Avenue Apt. No. 5-B, New York, New York 10029, with an office at 121 East 97th Street, New York 10029 has been fraudulently using the services of both of your Agencies.

The New York Cornell Hospital via its "Registration" Computer which Computer lists all of the AIDS/HIV patients and the "Find Out" Computer which contains all laboratory tested "Positive" HIV and Aids patients Edward L. Baca's name is not among them. (in N.Y.S.)

There are only two (2) laboratories permitted to do Aids and HIV testing they are, namely:

(a) Scully-Walton

(B) Keefe

Additionally, we have been advised that if a person is tested positive he/she must have a Certificate in order to obtain medication such as Cat Saline, etc. a prescription alone is not satisfactory.

Therefore, I am under the impression that you have been duped by Mr.

misuse of public funds.

The "Find Out" Computer is comprised of both Laboratories (a) and (b). (Cx. 5).²

32. Upon referral of the complaint to the Hearings Division, this tribunal scheduled a pre-hearing conference for May 15. In attendance at the conference were Complainant Edward Baca, Law Enforcement Bureau ("Bureau") Attorney Andre Gamrasni, Esq., and Respondent Dorothea Rosasco. After the parties were advised of the schedule for the hearing and pre-hearing matters, Mrs. Rosasco repeatedly inquired as to how the schedule in the case would be affected should Complainant die. The repeated reference to Mr. Baca and the hypothetical impact of his death prior to the hearing was viewed by this tribunal as an intentional and calculated attempt to intimidate and harass him (Hx. 5).

33. On May 29, Mr. Baca received a telephone call from his mother who resides in California. She was crying and very upset due to a call she had just received. A woman called and asked her if she knew that her son was dying of AIDS, and also inquired as to various Baca family members. When asked to identify herself the caller said that she was from a city department, and what she was doing was confidential and that she couldn't

²The emphasis, punctuation and apparent cut-off sentences appear here exactly as in the actual exhibit.

release her name. When asked at the hearing by her counsel whether she had ever made such telephone calls to Mr. Baca's mother, Mrs. Rosasco replied, "His mother? I didn't even know he had one. Of course not." However, in late April or May, Mr. Baca had submitted copies of his telephone bills to DHCR. This was done in connection with proceedings involving his tenancy and the Rosascos before that agency. Mr. Baca ascertained that the Rosascos had obtained copies of the material (phone bills) he submitted to DHCR (T. 92-97, 238, 351).

34. Also on May 29, Mr. Baca received a telephone call from a Mrs. Rivera of New York Telephone. Rivera informed Baca that a woman identifying herself as Mrs. Baca had called and requested that their telephone be disconnected and moved to another location. After assuring her that there was no Mrs. Baca and that he did not wish any change in service, Baca suggested that Rivera call Dorothea Rosasco to determine if that was who made the call and placed the order. Shortly thereafter, Rivera called Baca and informed him that upon dialing Mrs. Rosasco, the woman answering the phone was the same as the one who had called earlier claiming to be Mrs. Baca (T. 98, 99).
35. Several days later, Mr. Baca's doorbell rang at 9:00 a.m., and looking through the "peephole" he saw several men including Mr. Rosasco, the super, and a man with a blue Con Edison hat. Baca did not open the door but inquired as to what they wanted. The man with the Con Edison hat said he needed to talk

with Baca about his electric bill. However, when Baca called the offices of Con Edison, they informed him that no representative was sent nor was there any reason for a representative to make a visit (T. 99, 100).

36. One day later, Mr. Baca received a telephone call from Mrs. Rosasco, in which she accused him of being a male whore, running a male prostitution ring and having men come to his apartment (T. 101).

37. On or about June 6, Mr. Baca returned home to find the following message left on his answering machine by Mrs. Rosasco:

Mr. Baca, I have witnesses that you called me and you threatened me. You never leave a message on the machine and you threatened my life. If you come near me, so help me God, I will blind you. Not only will you be a corpse, you will be a blind corpse. Aggravated harassment. I'll see you in court and I'll see you dead, you bastard. (T. 102-104, 161-169, 389, 390; Cx. 7).

38. At a court appearance later that summer, Mrs. Rosasco again verbally accosted Mr. Baca in public. When she noticed Baca in the courtroom, she began yelling that she hopes he will die from AIDS, and that she wants it to be a slow and painful death (T. 104, 105).

39. Martha S. Jones, Esq. is an attorney who represented Edward Baca in a landlord/tenant proceeding against the Rosascos. In a courthouse elevator in August, Mrs. Rosasco began to shout at Attorney Jones, calling her "a bitch, a slut, a whore" and indicating she would have her disbarred for representing Baca.

Rosasco further accused Jones of misusing public funds, and stated in reference to Baca, "I hope your client dies. I will walk on his grave." Besides Rosasco and Jones, several other persons were present in the elevator to witness this outburst, including Rosasco's (then) attorney Robert Grimble who later apologized to Jones (T. 138-144).

40. In July and August, phone calls were made to Mr. Baca's place of business, by a woman refusing to identify herself. The caller asked various questions about Baca, his HIV positive status, his business arrangements and other matters. Baca's employer took one of these calls herself, in which the caller warned her about Baca's HIV positive status (T. 106, 107, 112, 113, 257-264, 524-529, 532-536).

41. Bethsaida Colon was a candidate for the State Assembly in the 1992 primary election, and she retained Mr. Baca on a consultant basis to serve as campaign manager. Colon had known Baca for a few years as a result of their service as members of Community Planning Board No.11 in Manhattan. She was Baca's employer when the anonymous phone calls were made during the summer. In addition, in August she received in the mail a photocopy of the Second Amended Complaint filed at the Commission. Typewritten at the top of the first page was the following:

this man is dangerous & vicious.

Check his residences: 302 E.93rd St.
1449 Lexington Avenue & 1515 Lexington Ave.
He will do the same to you given the chance.

NO FRIENDS

no legit. references
In NY 7 Yrs. & Cheating everyone.

(T. 106-112, 522-52'4, 527, 528; Cx. 6).³

42. As was announced at the scheduling conference on May 15, 1992, and in the Notice of Hearing dated May 19, a discovery status conference was held on August 13. Andre Gamrasni, Esq. appeared for the Bureau. Neither Respondents nor anyone on their behalf appeared, or informed this tribunal of their unavailability. Mr. Gamrasni indicated that Respondents had essentially ignored the Bureau's timely served discovery demands, and requested an order compelling Respondents to comply (Hx. 5).
43. On August 18, this tribunal received from Respondent Dorothea Rosasco a document labeled "Notice of Motion to Dismiss Complaint with Supporting Affidavit & Exhibits." The document, dated July 30, failed to address any issue of outstanding discovery in the case. Mrs. Rosasco did however accuse Complainant of "perjury by making false allegations" in the instant proceeding and "in two Court Stipulations." She further stated "Upon information and belief Claimant is not on any medication whatsoever..." and again recites her insistence that Baca is a "commercial" tenant and thereby outside the jurisdiction of the Commission (Hx. 7).
44. On August 18, this tribunal noted that no request had been received from Respondents for any extension of discovery

³The emphasis, spelling and punctuation appear here exactly as in Exhibit No. 6.

deadlines. The Bureau's request for an order compelling Respondents to answer interrogatories, produce documents and appear for depositions was granted (Hx. 6).

45. Despite the order, Respondents failed to comply with any of the Bureau's discovery demands, and failed to appear for depositions. No notice or explanation was given either to the Bureau or this tribunal. As a consequence, the Bureau moved on September 2 to preclude Respondents at the Hearing from calling witnesses or presenting documentary evidence. The Bureau also sought the establishment of certain presumptions against Respondents. This tribunal directed Respondents to comply with all discovery demands as expeditiously as possible, and to indicate why they had thus far ignored the discovery schedule in the case (Hx. 10, 11, 12, 13).

46. This tribunal received an unsigned letter from Respondents on September 14 (dated September 4) which (a) labels the Complaint a "witchhunt" (b) insists once again that the subject premises are "commercial" and consequently outside the jurisdiction of the Commission (c) indicates that "Respondents will not be available for any Hearings presently and are contemplating obtaining representation as per your Learned Judge's advice, and needless to say this will take time since most attorneys will not appear before your tribunal since they do not approve of its demeanor and tactics" (d) fails to address their apparently intentional ignoring of all discovery deadlines in the case (Hx. 14).

47. On September 9, the day the hearing was scheduled to commence, neither Mr. or Mrs. Rosasco appeared. Jacob J. Goodman, Esq., having been retained less than 24 hours prior to the start of the hearing, appeared on behalf of Respondents. In order to accommodate Mr. Goodman's schedule and afford him additional time to review the materials in the case, the hearing was adjourned after the Bureau's opening statement and direct examination of Complainant. The next day's morning session was canceled, with the hearing to resume at 1:30 p.m. In addition, the Bureau's renewal of their motion for various discovery related sanctions of preclusion was not granted (T. 3-17).

II.

ANALYSIS OF EVIDENCE AND CONCLUSIONS OF LAW

_____ Code Section 8-107(5) provides that:

- (a) It shall be an unlawful discriminatory practice for the owner, ... or managing agent of, ... a housing accommodation, ...
- (1) To refuse to... rent, lease,... such a housing accommodation... because of the actual or perceived... disability, sexual orientation...
 - (2) To discriminate against any person because of such person's actual or perceived... disability, sexual orientation,... in the terms, conditions or privileges of the... rental or lease of any such housing accommodation...
 - (3) To declare, print or circulate or cause to be declared, printed or circulated any statement,... which expresses, directly or indirectly, any limitation, specification or discrimination as to... disability, sexual orientation...

Code Section 8-107(7) provides that:

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any

manner against any person because such person has... (ii) filed a complaint,...

A. Credibility

The initial task facing this or any other finder of fact is to evaluate the credibility of the witnesses, most importantly the litigants themselves.

1. Edward Baca

Complainant Baca is obviously an "interested" party in this proceeding. Nevertheless, after evaluating his testimony in its entirety, in conjunction with that of other witnesses and the exhibits received in evidence, I find him to be a highly credible witness.

First, Mr. Baca on both direct and (thorough) cross-examination, answered the questions put to him by both counsel in a very clear, candid and unembellished manner. He held nothing back and genuinely sought to give direct and responsive answers, even if opposing counsel appeared to present a question in order to draw an adverse inference. Mr. Baca did not present as "facts" matters in which he could only offer an opinion.

For example, with respect to the litany of criminal acts of harassment he suffered, Baca conceded that he never personally saw Respondents either commit such acts or instruct others to do so. He acknowledged that his belief in the Rosascos responsibility is based on his conversation with the former super (T. 188-202). It is also noteworthy that at no time in this

proceeding, either pre-hearing or during his testimony, did Edward Baca attempt to impugn the character of anyone, or to make unsubstantiated accusations. Despite the clearly tormenting nature of the incidents he has suffered, Mr. Baca has sought at all times to present his case in a dignified, unemotional and orderly fashion.

Baca's credibility is bolstered by the fact that other highly credible witnesses corroborated his allegations. Attorney Martha Jones lent credibility to the assertion that Dorothea Rosasco on more than one occasion verbally accosted both her and Baca in public; cursing, screaming that she hoped Baca would die a slow and painful death, and calling Jones a "bitch, slut and whore." Attorney Jones testified that the Rosascos' (prior) attorney apologized to Jones for Mrs. Rosasco's conduct. Significantly, the attorney in question was not called as a witness to either refute or clarify the incident.

Bethsaida Colon, a community activist who serves on the Community Planning Board and was a candidate for public office was also a highly credible witness. Ms. Colon testified about telephone calls received by her office (one of which she took herself). These calls by an unidentified woman fit the same pattern as that received by another employer of Mr. Baca, and by his mother.

John McGhee was also a highly credible witness. As the super for several months at 119-121 East 97th Street, he testified that the Rosascos routinely referred to Mr. Baca as "that faggot." This is corroborative of Baca's description of

various encounters between himself and the Rosascos. In addition, McGhee indicated that the Rosascos wanted him to commit various criminal acts - amounting to the same kinds of incidents Baca testified actually occurred. Although McGhee specifically denied carrying out any of the Rosascos' requests, on cross-examination counsel for Respondent sought to portray his clients' former employee as a thief and burglar, whom they fired after a rash of burglaries and thefts of their building's equipment.

It is undisputed that the Rosascos did indeed fire McGhee approximately one year prior to the hearing. Respondents argue that McGhee's testimony is untruthful, and motivated one year later by a desire for revenge against the Rosascos for firing him. As McGhee is presently employed as super at another location, and absent any evidence of the Rosascos' being any more desirable than other building owners in terms of salary or benefits, it does not appear that being fired by the Rosascos has caused McGhee any major injury. Consequently, it is far more believable that McGhee was fired for his refusal to do the Rosasco's bidding (as McGhee so testified).

2. Dorothea and Louis Rosasco

Respondents have demonstrated repeatedly, both before the hearing and during their testimony that their credibility is poor.

Respondents have taken the position that they did not commit any of the acts alleged which are not independently verifiable (such as phone calls to Mr. Baca's employer and his mother, the

criminal acts of burglary and property destruction, and the sending of various materials through the mail). With respect to evidence which is corroborated (such as outbursts in public courtrooms, posting of notices warning tenants not to cooperate with Baca, and a message left on Mr. Baca's answering machine), Respondents seek to explain it away as merely a reaction to something Baca supposedly did or said. Virtually none of it rings true.

Dorothea Rosasco's first appearance before this tribunal was at the scheduling conference held on May 15, 1992. Even at this preliminary and very informal session, held simply to establish pre-trial procedures and set dates, Mrs. Rosasco sought to intimidate and harass Complainant by repeatedly inquiring as to how the schedule would be affected should he (Baca) die.

Respondents essentially ignored all discovery timely and properly demanded of them, including requests for documents, answers to interrogatories and notices to appear for depositions. However, they apparently found plenty of time to submit numerous papers, variously labeled as answers or motions. These papers also ignored all matters relating to discovery. They simply reiterated the assertion - without any support - that the premises in question are "commercial" and beyond the jurisdiction of the Commission. In addition, Respondents lodge various accusations at Complainant: that he has lied to government agencies about his residential address, lied about his HIV status, committed fraud and harassed tenants in the building. Significantly, at the hearing not a single witness or exhibit was

presented to substantiate any of these accusations. Apparently, Respondents chose to defend the action brought by the Commission not by responding directly and candidly to each of the allegations in the complaint, but rather, to re-double their illegal campaign of terror against Edward Baca, and to fabricate outrageous, libelous and wholly insupportable accusations against him.

Some additional examples serve to illustrate Respondents' total lack of credibility. Both Respondents, and their counsel have urged that problems collecting rent, rather than any illegal bias, motivate them to seek Complainant's removal from their building. In fact, Louis Rosasco testified that with the exception of Baca's first payment, he "had problems with his rent all the time, problems the whole time he was there (T. 307)." However, not a single document such as a bank statement, or rent receipt record, was offered to substantiate this assertion. Baca himself conceded that on two or three occasions his rent check bounced (T. 181-183). Nevertheless, Respondent took absolutely no action for the first 18 months of his tenancy. This is not consistent with a chronic "non-payment" situation.

The question of the lease being labeled "commercial" is another example. Respondents assert that Baca wanted a "commercial" lease. This is completely illogical. Even if he were intending to engage in some business activity from home, there is no imaginable reason why he would specifically ask for such a lease. While Mr. Rosasco's version of events culminating in the lease signing are at variance with Baca's, logic and

common sense, not to mention a review of the lease itself, support Baca's testimony. Mr. Rosasco's assertions simply collapsed under the Bureau's cross-examination. Drawing Rosasco's attention to various provisions in this lease, Bureau Counsel Gamrasni asked whether it was customary for him to prohibit water beds in commercial leases; Rosasco replied: "I think so. If it's here, it's got to be. Any rules that are here, that's what he's supposed to follow (T. 313)." Further cross-examination included the following exchanges:

Q. (Mr. Gamrasni) Is it customary for you to prohibit commercial tenants from having domestic animals in a commercial lease?

A. (Mr. Rosasco) I don't know. I don't think he should. If it's here, I go according to this.

Q. I'm asking whether it is customary - -

A. I am not a lawyer, I am not a doctor. This was made up and they know what they are making.

* * *

Q. Mr. Rosasco, who prepared this rider?

A. I think she did.

THE WITNESS: Did you prepare this rider?

Q. I'm asking you to your best knowledge, sir.

A. Yes. As far as I know, my wife did.

Q. Once again, Mr. Rosasco, I ask you whether it is customary to prohibit commercial tenants from having washing machines, dryers and dishwashers in commercial premises?

A. Yes. I don't know about the other commercial premises, but what we have, we don't need it, because we have to supply the water. It goes with the contract.

Q. Once again, I ask you whether it is customary

- -

A. I don't know whether it is customary. I only know about my property. My property is customary. I don't think it should be there.

Q. In a commercial lease?

A. I don't know anything about it. In this lease, they are not there and they shouldn't be there. This is a rider. We go according to this. Anything else has to do with the lease is not in here.

Q. I draw your attention to paragraph 43, and ask you whether it's customary for you to prohibit welfare recipients as commercial tenants?

A. If they pay their rent.

Q. I'm asking you - - if I may just ask a question. Isn't it true that paragraph 43 prohibits welfare recipients from remaining in the subject premises? Yes or no?

A. According to this.

* * *

Q. Now, I ask you to look at the first page of the lease. And I would like you to look at the typed portion, other than the printed portions, to look at the typed portions here, and I ask you whether the typed portions have been typed with your type-writer?

A. I don't do no typing. I don't want to hear about type-writing. You want to ask type-writing, ask somebody else. Don't ask me because I don't know anything about it. Don't go no further. She is right there. I don't know anything about a type-writer. I don't type. I just do my own work, and that's it. What else? Anything else? You looking for trouble, you find all kinds of trouble here.

(T. 313-318)

With Mr. Rosasco's version of events wholly discredited, a review of other exhibits leads to a more logical explanation for the Rosascos' insistence that Baca sign such a lease. Respondents may have sought to evade the requirements of Rent Stabilization in order to charge an illegal rent and to be able to refrain from offering renewal leases. In an attempt to persuade the Commission during its investigation that Mr. Baca's apartment was not residential, Respondents submitted a photocopy of a Certificate of Occupancy ("C of O"). The document indicates that the 1st Story has "Two (2) apartments and Two (2) offices." Written in by hand, although the document itself indicates it will be void upon any alteration or addition, is "(1-E & 1-W Offices)." However, a C of O obtained by the Bureau on August 25, 1992, (and certified as a true copy) states "Four (4) apartments and Two (2) stores." No mention is made of "offices" and in any event, no specific mention is made of the status of apartment 1E, wherein Baca resides (Cx. 10, 11).

More significantly, computer records of DHCR indicate that apartment 1E has in fact been occupied previously by rent

stabilized tenants. Annual registrations reveal that the legal, rent stabilized rent amount for apartment 1E was \$374.50 for a lease ending on 2/28/86. A renewal of the same tenant's lease (listed as Mary Morris) for a two year period ending on 2/28/88 is listed, with a legal rent amount of \$398.84 per month. Suddenly for 1987, the registration lists the apartment status as "exempt" and "professional" rather than rent stabilized. The tenant listed is James B. Jensen. The following year, 1988, Jensen remains listed as the tenant, with the apartment status reverting to "rent stabilized" and a "legal rent amount" of \$618.00 per month. In 1989 Jensen is still listed as the tenant. However, the apartment status/reason now states "exempt; commercial/professional." In 1990, Edward Baca is listed as tenant but no rent amount appears. In 1991, no tenant or rent amount is given (Cx. 12).

Dorothea Rosasco also presented testimony that was not candid, frequently evasive and at times defiant. Conceding that she had left the outrageous message on Baca's answering machine, she insisted that she did it because she was "terrified" of Baca. This explanation defies all logic. A person who is terrified of another, who truly believes that the other person is vicious and dangerous, does not leave a message on that person's answering machine saying "I will blind you... you will be a blind corpse... I'll see you dead, you bastard" (T. 358; Cx. 7).

Mrs. Rosasco testified that Baca assaulted Mr. Rosasco, requiring him to seek medical advice. However, no medical personnel testified or submitted any affidavit to that effect.

Nor was there any corroboration of Mrs. Rosasco's testimony that a police report had been filed, or that a police officer "thought his (Baca's) mental facilities were diminished" (T. 356; Cx. 2). However, in testimony patently tailored to obvious demands of his employers, current super Pablo Rosado testified that he saw Baca punch Mr. Rosasco in the face. On cross-examination, reference was made to Rosado's deposition wherein he testified that he was sitting in the bathroom when the melee occurred (T. 480, 502).

Mrs. Rosasco testified that she never investigated Baca. However, she admits sending a March 9, 1992 memo which states that "a thorough investigation" has been undertaken into Baca's HIV status (T. 377, 378; Cx. 5).

The notice posted in the building and distributed to all tenants is not denied by Respondents. Yet, when asked by Mr. Gamrasni whether she had in fact revealed Baca's HIV status to other tenants, she replied: "No darling. That's in public record. He went shouting over the court, 'I have AIDS.'" Of course, the only testimony of public shouting attributes such behavior to Mrs. Rosasco (T. 385). Asked simply to admit that she dislikes Mr. Baca, Mrs. Rosasco replied:

No. I have no feeling, about him at all. I'm just upset that he could do this to me and to my husband who make everything nice. We have been nice, generous, kind, considerate. That's what I'm upset about. I have no time to dislike him. I worked too hard. I'm old and too tired and I don't have room in my heart for that kind of animosity. All I want is the rent.

* * *

I don't care if he lives or dies. I'm not interested in him, his health or sexual habits or friends, if he has any. I'm not interested in the man. I could care less.

Q. Mrs. Rosasco you indicated a few moments ago that you did not dislike Mr. Baca; is that right?

A. I'm not interested in him. You are not going to put any words in my mouth and distort my manners and morals and you are not going to deceive me. It's not going to happen it. Do you understand that? I care nothing about him but I am going to protect me and I am going to protect my husband. Do you understand that? And I am going to try to protect my livelihood. Do you understand that? If there is something wrong with that, then I'm guilty (T. 388-391). Apparently, Mrs. Rosasco believes that an appropriate means of vindicating her rights is to engage in vile, inhuman and discriminatory behavior.

B. The "Commercial Lease"

I have already indicated my finding that although Edward Baca sought a residential apartment and lease, Respondents required him to sign a form lease labeled "commercial" in order for Respondents to avoid the requirement of issuing a renewal lease. Some additional observations on this issue are warranted. Respondents, both in testimony and in writing, in virtually every document prepared by them, have argued that Edward Baca does not reside at 121 East 97th Street. Other than this bare assertion, repeated ad infinitum and ad nauseum, not a single witness or a single document was presented in support thereof. Even current

super Rosado admitted, during his deposition, that Baca resided at subject premises (Cx. 13).

Additionally, Respondents voluntarily entered into a stipulation in Civil Court wherein their warrant of eviction was vacated. They could have chosen to have the Court decide the merits, including whether Baca was using the premises improperly or in violation of his lease (Rx. 1).

Finally, Respondents fail to understand that Code Section 8-107(5)(b) extends all of the protections against discriminatory practices that apply to residential housing accommodations, to the use and occupancy of land and commercial space. Hence, this defense is rejected.

C. Respondents' Other Defenses

Aside from the jurisdictional ("commercial lease") defense, Respondents argue that actions taken by them were not bias-motivated, but were in response to alleged provocations by Mr. Baca. A review of the acts in question compels the rejection of this defense.

As noted previously, Respondents assert that non-payment or chronic late payment of rent caused them to seek Complainant's eviction. However, as already indicated, they presented not a single document to bolster this claim. In fact, their own witness and tenant Mr. Khan testified that he has paid his rent late consistently without suffering any consequences (T. 473). With respect to the notice to tenants warning against anyone cooperating with Baca, and discussing his HIV positive status and

sexual orientation, Counsel argues that it was a fair response to a notice sent by Baca seeking to organize tenants (T. 231-233; Cx. 2).⁴ Counsel asks too much. While Respondents might not wish tenants to organize, might be offended at allegations of poor service, and might be angry or concerned about discussions of rent strikes, none of the above justifies the distribution of such libel, harassment and intimidation as seen in Exhibit No. 2. Respondents' remedy for a rent strike is an action in Housing Court. Their remedy for libel, if they believe they have been so victimized, is an action in Civil Court or Supreme Court. Apparently Respondents are of the opinion that they may dispense with such legal remedies, and simply strike out in a vicious attack upon a tenant who dares to help another tenant, or who complains about conditions.

Finally, the argument that Mrs. Rosasco's telephone message was a fair reply to anything, is without merit. As noted above, the appropriate response to a provocation, real or imagined, is to take legal recourse. This does not include telling someone that you will blind him, and saying you will see him dead.

D. Respondents' Actions Clearly Violated the Code

1. Respondents have violated Code Section 8-107(5)(a)(1) by refusing to renew Baca's lease

⁴Interestingly enough, Complainant's Exhibit No. 2, which Respondents distributed to all tenants, brags about the building being "fully attended by a superintendent 24 hours 7 days a week." Yet, Respondents insisted in their testimony that their super never lived in the building.

Respondents have brought repeated court actions to evict Mr. Baca. Most importantly, their unrelenting efforts to interfere with his personal and professional life are all bound together with Respondents' use of Baca's sexual orientation and HIV positive status as weapons to batter him into submission and to vacate his apartment.

2. Respondents have violated Code Section 8-107(5)(a)(2) by discriminating against Baca in the terms, conditions and privileges of his rental

When someone must live under the conditions that Edward Baca has faced, where bias is present, this section of the Code is violated.⁵ Tampering with the locks on his door, breaking in or having someone else break in to his apartment, ringing the doorbell and telephone, leaving threatening messages on his answering machine, turning off his electricity, and posting a notice to tenants about Baca's HIV status and sexual orientation are actions by Respondents that constitute discrimination in the terms, conditions or privileges of his rental. Had Mr. Baca chosen to vacate the apartment, this tribunal would find that the evidence would overwhelmingly sustain a finding of constructive eviction.

3. Respondents were not proven to have violated Code Section 8-107(5)(a)(3) by declaring statements which expressed discrimination

⁵ See generally Davies and Summers v. Vigna, Dec. & Order NYCCHR Compl. Nos. 165285 & 129086 (January 8, 1992); Rodriguez et al. v. Vizentinis, Dec. & Order NYCCHR Compl. No. FH020020988 (June 28, 1991), affirmed Matter of Vizentinis v. deLeon, (Sup. Ct. Queens Co., NYLJ Dec. 11, 1991, p.26); Valazquez v. Salinas Realty Corp. et al., Rec. Dec. & Order NYCCHR Compl. No. GA-00299061190-H (January 31, 1992), affirmed Dec. & Order (April 8, 1992).

Respondents have indeed made numerous despicable statements. These include calling Mr. Baca a faggot punk, and male whore. Mrs. Rosasco has also in public, said that she hopes Baca will die of AIDS, and that it will be a slow and painful death. They have also called his employers and his mother, and caused great emotional harm by purporting to "warn" of Baca's health status.

However, in my view Respondents' actions are more particularly proscribed by Section 8-107(5)(a)(2), respecting "the terms, conditions or privileges" of his rental. Section (3) speaks of proscribing "any limitation" as to disability or sexual orientation. This would seem to apply to advertisements or memoranda that could evince a prior refusal to rent, sell, etc. as being bias-motivated. Since Respondents' actions are clearly violative of Sections (1) and (2), to find them in violation of Section (3) would be redundant at most, and possibly stretching the Code's reach beyond where it was intended. Therefore, I decline to do so.

4. Respondents retaliated against Baca after he filed a complaint, in violation of Code Section 8-107(7)

Since the evidence demonstrates that Respondents intensified their campaign of harassment upon the filing of his complaint, and that the filing of two amended complaints was also met with still further abuse, I find that Respondents have retaliated against Mr. Baca. It is not necessary to restate the numerous incidents that occurred.

III.

DAMAGES

Pursuant to Code Section 8-109(2)(c), the Commission is given broad discretion to "take such affirmative action, including... the extension of full, equal... accommodations, advantages, facilities and privileges to all persons,... payment of compensatory damages to the person aggrieved... and including a requirement for report of the manner of compliance."

A. Affirmative Relief

The Respondents are ordered to cease and desist from their discriminatory practices. They are further ordered to post a sign at 119 and 121 East 97th Street, supplied by the Commission, that advises tenants of their right to fair housing and indicates where complaints may be filed.

As the evidence indicates, Respondents' actions were rife with bias and hate, and no justifiable reason was established for refusing to rent (via a renewal lease) to Mr. Baca. In addition, the evidence established that apartment 1E had previously been registered as residential and rent stabilized. Therefore, Respondents are ordered to tender a residential renewal lease.

Respondents shall also report to the Law Enforcement Bureau, every thirty (30) days, by letter, of all actions taken by them to remove any tenant from occupancy, including the reasons for such actions and the names and telephone numbers of the tenants sought to be removed, and also including copies of all court

documents or other notices served on such tenants. This reporting requirement shall be in effect for a period of three (3) years, beginning on the date of the Final Decision and Order in this case.

B. Compensatory Damages

1. Mental Anguish

Where mental anguish has been sufficiently demonstrated by credible evidence, it is the practice of this Commission to order payment of an appropriate monetary award as compensation.⁶

Damages may be awarded on a sufficient showing of the existence and extent of such injury and the evidence must be sufficient to support a determination that a reasonable person of average sensibilities could fairly be expected to suffer mental anguish from the incident.⁷ Mental injury may be proved by the Complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct.⁸

A review of the findings of fact requires the conclusion that any reasonable person of average sensibilities would have suffered severe mental anguish as a consequence of Respondents'

⁶ See Cruz v. Zwar, Rec. Dec. & Order NYCCHR Compl. No. 153884 (Mar. 31, 1987), aff'd sub nom NYC Comm. on Human Rights v. Zwar, Index No. 10548/87 (Sup. Ct. Queens Co., Sept. 15, 1987), \$15,000 awarded for severe mental anguish associated with one incident of housing discrimination; Davies, supra \$35,000 award for mental anguish resulting from harassment based on creed; Rodriguez, supra \$25,000 awarded to complainants subjected to assault, threats and racial and ethnic intimidation.

⁷ Batavia Lodge No. 196, Loyal Order of Moose v. New York State Div. of Human Rights, 35 N.Y.2d 243 (1974).

acts. Mr. Baca's testimony revealed a growing anger, sense of outrage and horror at the incidents.

After being informed that the Rosascos were responsible for his electricity interruptions, break-in, doorbell and telephone harassment, Baca "was extremely angry" and "tired" of having such "a negative place to live at" (T. 49-51). During this time, when Louis Rosasco called him a "faggot punk" and telling him to "get out," and Dorothea Rosasco called him a "sicko" and told him he would be out in the street, Baca "was feeling sick at the time, so it just felt worse... I just felt real depressed" (T. 57). Subsequently, when Mrs. Rosasco shouted at Baca in court, in public, that she hoped he would die from AIDS, he testified as to his reaction:

There was already a lot going on with me in terms of my own health. I really just didn't need to hear this. I was very angry (T. 60).

During a hospitalization, Baca stated that "her voice just kept coming back, that she hopes that I would die from AIDS and I really thought that that was what was happening" (T. 61). Shortly thereafter, when Mrs. Rosasco called and told Baca she would see to it that he never worked again, he "felt threatened by it. I felt she was going to try to stop me in every way possible" (T. 67).

Regarding the notice posted by the Rosascos in the building (Cx. 2), Baca felt it was "a violation of matters that should be very personal. I don't socialize with the tenants in the

⁸New York City Transit Authority v. State Division of Human Rights and Nash, 78 N.Y.2d 207 (1991).

building. I couldn't tell you that much about my neighbors, but my neighbors now can tell a lot about me to anybody else" (his HIV status, sexual orientation, and legal disputes with the Rosascos; T. 75).

After hearing the first threatening message left on his answering machine, Baca said he feared for his personal safety especially in and around his own residence (T. 87, 88). He felt "outrage" when he received a copy of Respondents' letter to the Commission, where she claims to have investigated Baca's HIV status (T. 90, 91). Receiving a telephone call from Mrs. Rosasco in which she called him a "male whore" Baca felt it derogatory and became "very upset one more time" (T. 102).

Subsequently, during another public outburst by Mrs. Rosasco in which she told Baca she wanted him to die a slow and painful death, Baca testified as to how he felt:

I just know that that will be what will happen, so it does play with your worst fears with this disease. And, of course, there is just a lot of anger when somebody says that to you. You feel like there is evil presence that comes from this woman when she says these things, but I know that deep in her heart that's really what she wants. That's exactly what she wants (T. 105, 106).

Confronted with the fact that the Rosascos mailed his employer a copy of his complaint filed with the Commission, with the information contained therein that he is gay and HIV positive, and added notations calling him dangerous and vicious, Baca describes his reaction:

Rage. I just thought it was a most outrageous thing. There's just no limits I mean absolutely no

limits. Her conduct can't be controlled by anybody (T. 111).

Baca also related how this act impacted his relationship with his employer:

A lot of our work used to be done out of her personal home. That doesn't take place anymore. At least I'm not invited to it. There used to always be just a lot of hugging and stuff like that. There's just a lot of distance now. You notice when there are children in the place, which there always are, that they (his employers) are just a lot more cautious. * * *

The worst part is you feel forced into a situation to have to explain personal stuff to people that other people aren't being required to do. You also just know that people do treat you at arm's length, and you do feel like you are being treated less than the type of respect that you should get for your work or just less human. You feel like you are just dirty and you are going to spread something by your mere presence (T. 113-115).

Upon hearing Mrs. Rosasco's next message left on his answering machine on June 6, 1992, wherein she said she would blind him and see him dead, Baca related his reaction:

She is going to kill me. I just know this. She wants me dead. I know she said it enough that at some point she is going to, and especially if she loses, she is 43 really going to follow through with that threat in that message. She is going to kill me (T. 166).

Although the circumstances of Respondents' acts are, by themselves, sufficient to infer great mental anguish resulting, and while Mr. Baca's testimony permits a more personal understanding of his torment, there is additional corroborative testimony on this issue. Regarding the phone calls and mailing

that the Rosasco's targeted at her, Bethsaida Colon testified as to its impact on Baca:

...he was very upset. He was disturbed. He couldn't concentrate too much on his -- the work that he had to do for me, and he was obsessed with this document, very upset (T. 523, 524).

* * *

[he was] very nervous, very disoriented, disturbed, just very upset (T. 536).

The only case comparable to this one in terms of horrendous abuse in a housing discrimination context is Velazquez, supra. In Velazquez, the Respondent landlord referred to the Complainant and his life partner as "faggots" and threatened to throw the "faggot out into the street." Respondents also referred to Complainant as "dirty queer" and lamented that despite his having AIDS, he would "last" a while. Requests for repairs were met with the response "go to hell" and numerous insults and menacing comments were made by Respondents in public such as at a local store. Velazquez was awarded \$75,000 as compensation for his mental anguish.

The instant case presents every bit as outrageous, discriminatory and hurtful a series of incidents, and worse. Mr. Baca had to live under an unrelenting series of abuses designed to make him fearful for his safety, and scare him out. In addition Respondents have violated the sanctity of his family, and have sought to destroy him in his business and professional endeavors. Such circumstances in their totality, unlike any previous case brought before this tribunal in a housing context,

call for an award of \$100,000 as compensation for aggravated mental anguish.

2. Actual Damages

The facts in this case are sufficient to have established a constructive eviction, had Complainant vacated. Baca testified that he did decide to move but did not actually do so owing to illness and an income execution served by the Rosascos. He also testified that he paid a security deposit at a prospective new apartment, but never obtained a refund. Since there is no evidence as to the amount of this payment or the steps taken by Baca to recover it, I will decline to award it as damages against these Respondents.

Counsel also argues for an award of a "rent differential representing the difference from what Complainant has actually paid in rent and what Complainant's apartment is worth given the level of harassment" suffered by Baca (T. 573). This tribunal has in fact awarded such damages where a prevailing Complainant was forced to expend additional money and/or accept inferior accommodations.⁹ However, in this case, Complainant's suffering was not attributable to his apartment, or his neighborhood. The harm he suffered was personal, and intentionally directed at him by Respondents. Baca has no complaint with respect to his apartment, or 121 East 97th Street. His complaint is as to the

⁹See Carrera v. Pi, Compl. No. FH-264092288, NYCCHR Rec. Dec. & Order (February 25, 1991), affirmed Dec. & Order (July 25, 1991); Childs v. Milman, Compl. No. FH167052489DH, NYCCHR Rec.

intentional harm to his life, caused by two individuals. As such, his damages are more appropriately considered an infliction of emotional distress, rather than being measured as a portion of his rent payments.

C. Civil Penalty

Code Section 8-126 provides that in addition to the compensatory relief afforded Complainant and affirmative/reporting relief afforded the Bureau:

Where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest, impose a civil penalty of not more than fifty thousand dollars. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act, the commission may, to vindicate the public interest, impose a civil penalty of no more than one hundred thousand dollars.

This section was added to the Code by the enactment of Local Law No. 39 of 1991, to take effect ninety days thereafter and apply to the violations committed on or after such effective date. Local Law 39 was passed by the Council on June 5, 1991, by a vote of 34-1. It was approved by the Mayor on June 18, 1991, making it effective on September 18, 1991.

Respondents' acts committed on or after September 18, 1991 include the most willful, wanton and malicious conduct ever scrutinized by this tribunal. It is not necessary to repeat each of the violations of law and human decency committed by Respondents. Suffice to reflect upon this: what more evidence

could there be that Respondents' unlawful discriminatory conduct was willful, wanton and malicious, than to telephone the mother of an HIV positive person and tell that mother that her son is dying of AIDS?

As this is the first case to proceed to hearing under the new provision for civil penalties, some discussion is warranted as to the considerations in determining such a sanction. The law itself is unambiguous. A civil penalty in a case of unlawful discrimination may not exceed \$50,000; where willful, wanton or malicious acts have been found, the penalty may be as much as \$100,000.

The first consideration must be the nature of Respondents' conduct. In this case, they clearly meet any standard of maliciousness thereby invoking the penalty range of up to \$100,000. Another consideration is Respondents' virtual flouting of the law, by continuing to engage in their illegal conduct even as this case was pending in the Hearings Division. Most of the vicious actions taken by them occurred after the filing of the complaint. In her very first appearance before this tribunal, Respondent Dorothea Rosasco could not restrain her desire to hurt, harass and intimidate Edward Baca. And Mr. Rosasco, in a very revealing moment during cross-examination, actually appeared to threaten Bureau counsel Gamrasni by telling him "You looking for trouble, you find all kinds of trouble here (T. 318)." This is the attitude of thugs who find it unpleasant to be questioned about their unlawful behavior.

Respondents own 50 units of rental housing. This may be a relevant consideration, since the public interest of the City of New York is implicated more by owners such as these, than the owner of a lesser number of units. The public interest could be greater in the case of an owner with many more than 50 units. The simple reason for this is that the greater the number of units, the greater the number of persons who may be affected by unlawful discriminatory conduct.

An additional consideration may be whether there have been any previous findings of discrimination. In this case, none have been stated. Also relevant is the number of people affected by the conduct that is the subject of the instant complaint. In this case, there is only one Complainant. However, other people were unfortunately affected as well. Baca's mother had to endure an outrageous intrusion into her family's personal privacy. Bethsaida Colon, along with her husband and other campaign staff also had to endure unnecessary and despicable phone calls.

A determination of a civil penalty to be imposed under the Human Rights Law necessarily requires a case by case analysis of all relevant considerations. In addition to the considerations discussed above, there is this weighty consideration: Respondents engaged in their unlawful conduct over a period of at least eighteen months through the dates of the hearing. The filing and tendency of the complaints had no effect in terms of restraining their conduct.

Considering all of the circumstances, I recommend the imposition of a civil penalty of \$75,000 which is less than the

maximum allowable. The only mitigating circumstance is the absence of other complaints filed against Respondents. As stated by Mayor David N. Dinkins upon his signing of the Human Rights Law revisions, "discriminators now face much more serious consequences for their acts."¹⁰

PROPOSED ORDER¹¹

IT IS HEREBY ORDERED THAT:

1. Respondents shall cease and desist from engaging in any discriminatory practices.
2. Respondents shall post a sign at 119 and at 121 East 97th Street, supplied by the Commission, that advises tenants of their right to fair housing and indicates where complaints may be filed.
3. Respondents shall tender to Edward Baca a residential renewal lease.
4. Respondents shall, for a period of three (3) years, report to the Commission every thirty (30) days, by letter of all actions taken by them to remove any tenant from occupancy, including the reasons for such actions and the names and telephone numbers of the tenants sought to be removed, and also including copies of all court documents or other notices served on such tenants.

¹⁰Remarks by Mayor David N. Dinkins, June 18, 1991, Release No. S 420-91.

¹¹This Recommended Decision and Order must be read in conjunction with the Commission's Final Decision and Order in this case.

5. Respondents shall pay Complainant Edward Baca one hundred thousand dollars (\$100,000.00) as compensation for their intentional infliction of severe mental anguish.

6. Respondents shall pay a civil penalty to the City of New York, for their willful, wanton and malicious conduct, in order to vindicate the public interest, in the amount of seventy-five thousand dollars (\$75,000.00).

DATED: February 10, 1993

SO ORDERED

Steven E. Presberg
Administrative Law Judge
Hearings Division