

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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| JONATHAN BLAINE, | : | |
| Complainant | : | |
| | : | |
| v. | : | PHRC CASE NO. 201500434 |
| | : | HUD CASE NO. 03-15-0445-8 |
| DENNISTON FAMILY LIMITED | : | |
| PARTNERSHIP, d/b/a VILLAGE | : | |
| REALTY ASSOCIATES, LTD, | : | |
| Respondent | : | |

FINDINGS OF FACTS

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACTS *

1. The Complainant herein is Jonathan Blaine, (hereinafter "Blaine"). (N.T. 11)
2. Blaine is an employee of E&E IT Consulting, a company that performs contract work for Pennsylvania's Department of Labor and Industry in Harrisburg. (N.T. 45, 65)
3. The Respondent herein is Denniston Family Limited Partnership, d/b/a Village Realty Associates, LTD, (hereinafter Village Realty).
4. With her Father, Bridget McAuliffe, (hereinafter "McAuliffe) owns Village Realty. (N.T. 84)
5. Village Realty owns apartment complexes at multiple locations. (N.T. 62)
6. Some of the Village Realty apartment complexes are animal-friendly and others have no-animal policies. (N.T. 13)
7. On or about May 30, 2014, Blaine moved into a Village Realty apartment complex located at 25 North Liverpool Street, Apartment D, Manchester, PA 17345 (N.T. 12-13, 42; R.E. 1)
8. Blaine entered into a year lease for a one bedroom apartment at the Village Realty apartment complex. (N.T. 22; R.E. 1)
9. The term of the lease was from June 1, 2014 through May 31, 2015 and at the end of the lease period, the lease would become a month to month lease. (N.T. 22, 43, 100; R.E. 1)

* To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Facts for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
R.E. Respondent Exhibit

10. In January 2015, Blaine's therapist prescribed an emotional support animal for Blaine. (N.T. 13)
11. Blaine called Village Realty to request to have an emotional support animal and that he would soon be getting a puppy. (N.T. 13-14, 45)
12. Village Realty told Blaine to just send Village Realty the prescription for the emotional support animal and everything would be fine. (N.T. 14, 85)
13. Blaine provided Village Realty with the prescription. (N.T. 85)
14. Blaine then purchased a Siberian Husky puppy. (N.T. 36)
15. When Blaine was not working from home, he would leave for work between 6:00 a.m. and 9:30 a.m. (N.T. 45)
16. While not at home, Blaine's dog was kept in a dog crate. (N.T. 45)
17. When home, Blaine's dog had freedom in the apartment. (N.T. 46)
18. Village Realty did not charge Blaine a pet fee. (N.T. 41)
19. From an office approximately 25 minutes away, McAuliffe ran the apartment complex where Blaine lived and had an onsite manager, Dana Switzer, (hereinafter "Switzer").
20. When Switzer received a complaint from a resident, she was to notify Village Realty's main office. (N.T. 86)
21. When the main office would be notified of a complaint, the main office generated a letter directed to the resident about which the complaint had been made. (N.T. 87)
22. In or around March 2015, the apartment manager came to Blaine's apartment to inform him that he could either vacate the apartment within 30 days or remove the dog he had purchased. (N.T. 14)
23. Blaine then filed a PHRC Complaint alleging that Village Realty was not allowing him to have an emotional support animal. (N.T. 109)
24. On April 22, 2015, Village Realty signed an agreement settling Blaine's PHRC Complaint. (N.T. 16; C.E. 1)

25. Blaine signed the agreement on April 24, 2015. (N.T. 16; C.E. 1)
26. Pursuant to the agreement, Blaine was allowed to have an emotional support animal in the apartment he was renting. (N.T. 17)
27. Between January 2015, the time Blaine purchased his dog and just before April 14, 2015, Village Realty had received no complaints about Blaine's emotional support dog. (N.T. 112, 119, 120)
28. By letter to Blaine from McAuliffe dated April 14, 2015, Village Realty requested that Blaine immediately clean up dog waste from the yard and properly dispose of it. (N.T. 18; C.E. 2; R.E. 3)
29. The April 14, 2015 letter asked Blaine to contact the Village Realty office in writing by April 20, 2017 with his intention to comply. (N.T. 94; C.E. 2; R.E. 3)
30. On April 15, 2015, Blaine called the Village Realty office to leave a message in response to the April 14, 2015 letter. (N.T. 20; C.E. 6)
31. Blaine was informed that someone would call him, however, no one did. (N.T. 21)
32. McAuliffe's next letter to Blaine was dated April 16, 2015 instructing Blaine not to place dog waste bags outside the apartment building and to, instead, immediately remove such items to the dumpster. (N.T. 21; C.E. 3; R.E. 4)
33. Blaine testified that he would momentarily leave waste bags outside on the porch in the morning and take them to the dumpster when he left for work. (N.T. 55)
34. On April 20, 2015, Blaine again called Village Realty leaving a message to call him, however, no one called him back. (N.T. 46; C.E. 6)
35. On April 29, 2015, McAuliffe again wrote Blaine suggesting this was the third and final letter about cleaning up dog waste. (R.E. 5)

36. The April 29, 2015 letter instructed Blaine to contact the office in writing by May 7, 2015. (R.E. 5)
37. Blaine testified that no neighbor had ever complained to him and that he had gone to his neighbors to ask whether they had complaints about his dog but no one did. (N.T. 24-25, 58)
38. Blaine directed a letter to Village Realty dated May 1, 2015 explaining that he had attempted to call Village Realty to discuss the issue of alleged dog waste. (N.T. 47-48; C.E. 6)
39. Village Realty did not respond to Blaine's letter. (N.T. 47-48)
40. By letter dated May 13, 2015, McAuliffe wrote Blaine advising him that Village Realty had received a complaint about his dog barking and crying all day. (N.T. 98; R.E. 6)
41. On May 21, 2015, Blaine directed a second letter to Village Realty in which Blaine referenced the purported complaint about his dog barking and crying all day. (N.T. 48; C.E. 6)
42. Once again, Village Realty did not respond to Blaine's letter. (N.T. 47-48)
43. By letter dated May 27, 2015, McAuliffe again notified Blaine that he must clean up dog waste and properly dispose of it. (N.T. 99; R.E. 7)
44. By letter dated June 16, 2015, McAuliffe notified Blaine not to place dog waste bags outside by the porch. (R.E. 8)
45. Village Realty had not received any written complaints about Blaine's emotional support dog. (N.T. 81, 115-116)
46. Blaine's next door neighbor, Jerry Conrad, testified that he had contacted Switzer at least 3 times about dog waste and brown spots in the yard where a dog had gone. (N.T. 78, 106)
47. Over a year after Blaine moved from Village Realty, Conrad wrote a "to whom it may concern" letter saying that he had contacted Dana "a few times" about dog waste in the yard. (N.T. 78; R.E. 12)

48. By letter dated July 1, 2015, McAuliffe wrote to Blaine giving him 60 days notice that Village Realty intended to take possession of Blaine's apartment unit on August 31, 2015. (N.T. 23; C.E. 4; R.E. 9)
49. Nothing about Blaine's dog was mentioned in the July 1, 2015 notice. (C.E. 4; R.E. 9)
50. When Blaine received the July 1, 2015 notice, he made two telephone calls to Village Realty and during one of the telephone calls, the person with whom Blaine spoke told him that Village Realty was not obligated to renew his lease. (N.T. 23-24; C.E. 6)
51. Blaine testified that he informed the individual with whom he spoke that he would be leaving his apartment prior to the August date. (N.T. 49)
52. Blaine's telephone calls to Village Realty were not returned. (N.T. 23)
53. On July 30 or 31, 2015, Blaine moved out of his apartment. (N.T. 27, 39)
54. While living at the Village Realty apartment, Blaine's dog had chewed through several carpets and scratched the interior wall and door. (N.T. 50, 88; R.E. 11)
55. Additionally, Blaine had stopped payment on his June 30, 2015 check in the amount of \$595.00 for July 2015's rent. (R.E. 14)
56. After Blaine moved, Village Realty informed Blaine that his security deposit would not be returned. (N.T. 49, 103)
57. Blaine testified that he felt shattered when Village Realty did not renew his lease. (N.T. 35)
58. Blaine further testified that being evicted caused him to lose 63 pounds due to the stress and anxiety. (N.T. 36)
59. Blaine testified that he contemplated getting rid of his emotional support dog because the situation had made him more depressed

and socially reclusive and the entire situation had become a hassle and painful instead of emotionally supporting. (N.T. 36-37)

60. Blaine had looked for an apartment that allowed pets and located an apartment in East York called Suburban Park Apartments. (N.T. 24, 39, 52)
61. Blaine paid an application fee of \$36.88 at Suburban Park. (N.T. 30)
62. The Suburban Park apartment Blaine rented was a two bedroom unit that rented for \$895.00 per month. (N.T. 24, 27-28, 40)
63. Blaine's first month rent at Suburban Park was prorated to \$877.95 because he moved in on August 3, 2015. (N.T. 31; C.E. 5)
64. Blaine paid a pet fee of \$255.00 at Suburban Park. (N.T. 40, 64; C.E. 5)
65. Blaine rented a U-Haul to move from the Village Realty apartment to the Suburban Park apartment at a cost of \$52.67. (N.T. 32)
66. Gas for the U-Haul cost Blaine an additional \$64.00. (N.T. 31)
67. Blaine was a resident at Suburban Park from August 3, 2015 until May 16, 2106. (N.T. 68)
68. Blaine broke his lease with Suburban Park and moved to Hagerstown, Maryland for a short period then moved to Mechanicsburg, Pennsylvania. (N.T. 40, 51, 52, 68)
69. Blaine drove from Hagerstown to Harrisburg to attend a conciliation conference and paid \$6.00 for parking. (N.T. 33)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and the subject matter of these consolidated cases.
2. The parties have fully complied with the procedural prerequisites to a Public Hearing in this case.
3. Jonathan Blaine, (hereinafter "Blaine"). is an individual within the meaning of the PHRA.
4. Denniston Family Limited Partnership d/b/a Village Realty Associates, LTD, (hereinafter "Village Realty"), is a housing provider within the meaning of the PHRA.
5. To establish a *prima facie* case of a retaliatory eviction, Blaine must show:
 - a. That he participated in a protected activity;
 - b. That Village Realty was aware of Blaine's participation in a protected activity;
 - c. That subsequent to Blaine's participation in a protected activity, Blaine, suffered an adverse action; and
 - d. That a causal connection exists between the protected activity and the adverse action.
6. Filing a Complaint with the PHRC is a protected activity under the PHRA.

7. Blaine has established a prima facie case of retaliation.
8. Village Realty offered a legitimate non-discriminatory reason for failing to renew Blaine's lease.
9. Blaine has proven that Village Realty's reason for failing to renew his lease is a pretext for unlawful retaliation.

OPINION

This case arose on a complaint filed by Jonathan Blaine (hereinafter "Blaine") against Denniston Family Limited Partnership d/b/a Village Realty Associates, LTD, (hereinafter "Village Realty"). Blaine's PHRC Complaint was verified on August 12, 2015, at PHRC Case Number 201500434. Generally, Blaine alleges that Village Realty refused to renew his lease in retaliation for Blaine having filed a prior PHRC Complaint. Blaine's retaliation claim alleges a violation of Section 5(d) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 *et seq.* (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation of Blaine's Complaint and found probable cause to credit Blaine's retaliation allegation. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. The efforts were unsuccessful, and this case was approved for a public hearing. The public hearing was held on July 7, 2017, in York, Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner. The state's interest in Blaine's allegation was presented at the Public Hearing by Stephanie M. Chapman, Esquire. Kurt A. Blake, Esquire represented Village Realty. Post-Hearing briefs were submitted by the parties on September 18, 2017.

The PHRC issued a Final Order on November 27, 2017 finding that the Respondent had retaliated against Blaine because Blaine had filed a PHRC Complaint. Subsequently, Vintage Realty appealed the PHRC's decision to the Commonwealth Court.

On December 21, 2018, the Pa. Commonwealth Court issued an opinion that remanded the case back to the PHRC. The Commonwealth Court focused on the fourth element of the requisite *prima facie* showing in a retaliation claim. The fourth element of a *prima facie* showing in a retaliation claim requires a Complainant to establish "that there is a causal connection between participation in the protected activity and the adverse action." In effect, the Commonwealth Court instructed the PHRC to use a legal standard arising out of the 3rd Circuit. The Court instructed that this legal standard requires Blaine "to produce evidence showing that Village Realty refused to renew the lease *because of* (or in response to) Blaine filing the March complaint with the Commission."

The PHRC's November 27, 2017 Final Order is hereby modified consistent with the Commonwealth Court's instructions.

Section 5(d) of the PHRA provides in relevant part:

"[i]t shall be an unlawful discriminatory practice...[f]or any person...to discriminate in any manner against any individual because such individual has...made a charge...under this act."

Absent direct evidence, to establish a *prima facie* case of retaliation under the PHRA, it is appropriate to use the three-step, burden shifting analysis set forth in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). The three steps begin with a Complainant attempting to prove a *prima facie* case. The second step occurs once a Complainant does set forth the requisite *prima facie* showing. In the second step, the Respondent merely has a production burden to articulate a legitimate non-discriminatory reason for taking the alleged adverse action. The third step arises when a legitimate reason has been sufficiently articulated. At this third step, the Complainant is provided with an opportunity to prove that the articulated reason is a pretext for discrimination.

With an allegation of retaliation, to establish a *prima facie* case, a Complainant must prove that: (1) he engage in protected activity; (2) the Respondent was aware of the Complainant's protected activity; (3) subsequent to engaging in protected activity, the Complainant suffered an adverse action; and (4) there is a causal connection between the protected activity and the adverse action. *Spanish Council of York v. Pa. Human Relations Commission*, 879 A.2d 391, 399 (Pa. Cmwlt. Ct. 2005).

Before analyzing whether Blaine sufficiently established a *prima facie* case of retaliation, we note that there are noteworthy issues of credibility that permeate this case. In every case, issues of credibility present themselves.

Here, a review of the entire record reveals that portions of the varied evidence offered by both Blaine and Village Realty are less than credible.

Blaine's erosion of credibility begins with Blaine testifying that he did not stop payment on the check he issued for the July rent for the Village Realty apartment. Evidence was presented clearly establishing that Blaine did stop payment on this check. (N.T. 45; R.E. 14) Next, Blaine offered that the rent he paid to Village Realty included electric and gas. Blaine also offered that these services were not included at the apartment he rented at Suburban Park Apartments. On this point, the evidence shows that the apartment at Village Realty did not have gas service and that Blaine paid for electric services. Next, there is a serious question regarding how long Blaine had contracted for the U-Haul he used to move from the Village Realty apartment to the Suburban Park apartment and how long it took him to move. Blaine offered that it took him a week or a week and a half to move but this is unlikely when compared to the amount he paid to use the U-Haul. (N.T. 31-32, 54) Finally, Blaine testified that he worked 40 hours per week at \$28.70 per hour which equals a weekly total of \$1,148.00. When Blaine applied to lease an apartment with Village Realty, he declared his income was \$800.00 per week. (N.T. 34; R.E. 1)

Village Realty's credibility is equally suspect. For instance, the biggest problem Village Realty has with respect to credibility is found in comparing statements provided in Village Realty's answer to Blaine's Complaint with the evidence received during the public hearing. In paragraphs 6, 11, 12 and 13 of

Village Realty's answer, Village Realty refers to "complaints of noise from neighboring units." The evidence presented failed to confirm that anyone ever complained of noise. Here, the only evidence offered regarding complaints was that one neighbor purportedly complained about dog waste in the yard. Further, at paragraph 19 of Village Realty's answer, Village Realty again submitted that Vintage Realty received a complaint from "other tenants" about Blaine's emotional support animal barking and crying all day. Again, Village Realty's answer makes it seem that more than one neighbor complained about barking and crying. Similarly, paragraph 22 of Village Realty's answer suggests that Village Realty was attempting to "resolve complaints of other tenants." Again, there was no evidence offered suggesting that more than one tenant had said anything about Blaine's dog.

Next, Village Realty acknowledged that Blaine "may have called" after notices were sent to him. (N.T. 115) The evidence shows that Blaine called four times and that Village Realty did not call Blaine back. While Village Realty accepted oral complaints, they argue that they required written responses to the notices that were sent to Blaine. (N.T. 115) In paragraphs 22 and 29 of Village Realty's answer, Village Realty asserts that Blaine blatantly refused to discuss the asserted violations and did not even try to communicate about the issues. The record shows that Blaine did attempt to call and that, in addition, after not being called back, he sent 2 letters to Village Realty. While Village Realty maintains that Blaine did not respond in writing, the record not only

supports that he made a number of telephone calls, he also wrote to Village Realty twice.

Another aspect of the evidence provided by Village Realty that slightly erodes credibility is the portion of McAuliffe's testimony regarding how often Blaine was given a demand letter to pick up dog waste from the yard. McAuliffe testified that R.E. 5, a letter to Blaine dated April 29, 2015, was the third letter to Blaine regarding picking up dog waste from the yard, however, the second letter to Blaine dated April 16, 2015 spoke about placing bags outside, not cleaning up. (N.T. 96) Accordingly, the April 29, 2015 letter was the second, not third, letter to Blaine about picking up dog waste from the yard.

The next discrepancy in Village Realty's evidence deals with R.E. 2, 39 photographs. As correctly observed in the PHRC's post-hearing brief, the photographs were barely identified. There is no indication where, or when the photographs were taken and the individual who purportedly took the photos did not testify. Further, there was no evidence offered that the dog waste in the photographs was made by Blaine's emotional support animal. This is certainly a problem, however, the problem is further exacerbated when one looks carefully at the photographs. The photographs of dog waste on page 12 is identical to the photograph on page 15. Again, this further erodes Village Realty's credibility.

As for credibility, both sides have issues that place in question their versions of events. With this in mind, we turn to whether Blaine established a

prima facie case. Clearly by filing an earlier PHRC Complaint at PHRC Case No. 201403261, Blaine participated under the PHRA thereby engaging in protected activity. Equally clear is the fact that Village Realty knew that Blaine had filed the PHRC Complaint at Case No. 201403261. On April 22, 2015, Village Realty signed a settlement agreement resolving Blaine's earlier filed PHRC Complaint. This satisfies the requirement to show that Village Realty knew of Blaine's protected activity. Of course, subsequent to the filing of the PHRC Complaint, Village Realty subjected Blaine to an adverse action by terminating his lease.

This brings us to the fourth element of a claim of retaliation which requires a showing that there is a causal connection between the protected activity and the adverse action. On this point, the Commonwealth Court remand points to several 3rd Circuit cases including: *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007); *Krouse v. American Sterilizer Co.*, 126 F.3d 494 (3rd cir. 1997); *Quiroga v. Hasboro, Inc.*, 934 F.2d 497 (3rd Cir. 1991); and *Farrell v. Planters Lifesavers Co.*, 260 F.3d 271 (3rd Cir. 2000).

In the case of *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007), the court reviewed the question of whether there was a causal relationship between protected activity and an alleged adverse action. The court declared that "to establish the requisite causal connection a plaintiff usually must prove either (1) an unusually suggestive temporal proximity between the protected activity and the alleged retaliatory action, or (2) a pattern of antagonism coupled with timing to establish a causal link." *Citing Krouse v. American Sterilizer Co.* 126

F.3d 494 (3rd Cir. 1997) and *Woodson v. Scott Paper Co.* 109 F.3d 913 (3rd Cir. 1997). The court also declared that “in the absence of that proof the plaintiff must show that from the ‘evidence gleaned from the record as a whole’ the trier of fact should infer causation.” *Citing Farrell v. Planters Lifesavers Co.* 206 F.3d 271 (3rd Cir. 2000).

In *Krouse*, the court observed that there is a question of whether timing alone can establish a causal link between protected activity and adverse action. Despite this question, the *Krouse* court declared that “even if timing alone could ever be sufficient to establish a causal link, we believe that the timing of the alleged retaliatory action must be ‘unusually suggestive’ of retaliatory motive.” *Citing Robinson v. City of Pittsburgh*, 120 F.3d 1286 (3rd Cir. 1997). The court went on to say that where temporal proximity is missing, courts may look to the intervening period for other evidence of retaliatory animus or antagonism.

In the case of *Farrell v. Planters Lifesavers Co.*, 260 F.3d 271 (3rd Cir. 2000), the court concluded that the lower court had erred by narrowly requiring that the causal connection be supported by a pattern of antagonism, retaliation or hostility. The *Farrell* court observed that the scope and nature or conduct and circumstances that could support an inference of causation should include a wide lens analysis of all facts and events that are potentially probative of causation. The court declared that “each case must be considered with a careful eye to the specific facts and circumstances encountered,” and decided on the context of particular circumstances. Indeed, the *Farrell* court found an

inference of a causal relationship by combining facts regarding the timing of the adverse action combined with other evidence of a causal relationship gleaned from the entire record.

Importantly, the *Farrell* court declared that the character of “other” evidence along with timing does not have to be evidence of a pattern of antagonism. The *Farrell* court indicated several ways a causal connection can be established. For example, evidence that can substantiate a causal connection for the purpose of establishing a *prima facie* showing can be evidence that a Respondent gave inconsistent reasons for the adverse action. See *Waddell v. Small Tube Products, Inc.*, 799 F.2d 69 (3rd Cir. 1986). Also, in *EEOC v. L.B. Foster Co.*, 123 F.3d 746 (3rd Cir. 1997), temporal proximity and inconsistencies in a Respondent’s testimony, certain conduct towards others, and refusals to provide a reference for the Complainant establishes the requisite causal relationship. The *Farrell* court declared that there is “no limits on what we have been willing to consider.”

The PHRC post-hearing brief on behalf of the state’s interest in Blaine’s allegation submits that a causal connection can be established by showing that there was temporal proximity between the protected activity and the adverse action. The argument is made that the temporal proximity found here is “unduly suggestive’ of a retaliatory motive. *Farrell v. Planters Lifesavers Co.* 206 F.3d 271 (3rd Cir. 2000).

However, in the present case, a causal connection is established by more than temporal proximity. A contextual analysis, *See Kachmar v. Sungard Data Systems Inc. et al*, 73 FEP Cases 707 (3rd Cir. 1997), of what occurred after the filing of the earlier Complaint and the termination of Blaine's lease reveals numerous things. First, the fact that Blaine had to file a PHRC claim was that in March 2015, he was told he had to either vacate the premises or remove his dog. This led to a settlement agreement between Blaine and Vintage Realty in the later part of April 2015. The evidence in this case reveals that shortly before Blaine's PHRC case was settled, Vintage Realty began to claim that Blaine's emotional support animal began to cause problems. In context, Vintage Realty was about to settle the earlier filing which would result in Vintage Realty being required to permit Blaine's emotional support animal to remain. In context, suddenly, circumstances surrounding Blaine's dog purportedly became a problem. From the moment Blaine brought his emotional support animal home to his apartment in January 2015 until mid-April 2015, there had been no problem.

Added to this circumstance, we find that each time Vintage Realty wrote Blaine a letter, Vintage Realty required Blaine to contact Vintage Realty's office in writing. After the first Vintage Realty letter, Blaine called Vintage Realty and was told that someone would call him. No one did. After Vintage Realty's second letter, Blaine again called Vintage Realty leaving the message to call him. Again, no one did. After Vintage Realty's third letter in which Vintage

Realty asked Blaine to contact Vintage Realty in writing by May 7, 2015, Blaine did write to Vintage Realty on May 1st saying he had called them previously to discuss the purported situation. Vintage Realty did not respond to Blaine's letter. After Vintage Realty's fourth letter, Blaine again sends Vintage Realty a letter. Again, Vintage Realty did not respond. Four times, Blaine attempted to communicate with Vintage Realty, however, Vintage Realty failed to discuss with Blaine the purported issues. In context, Vintage Realty's failure in this regard is a consideration on the question of whether Blaine can establish a causal connection.

Added to Vintage Realty's failure to return Blaine's calls or respond to his letters is the simple fact that Vintage Realty offered that Blaine had not communicated with them. Clearly, Blaine's evidence was credible on this issue and Vintage Realty's was not.

Next, Vintage Realty's letters prompted Blaine to ask his neighbors whether any of them had complained. Blaine offered that he was told that none of his neighbors had complained. This point is added to the evidence that a neighbor who had purportedly complained informed a PHRC investigator that he had not complained about Blaine's dog. (N.T. 18). Further, the neighbor in question wrote a letter to Vintage Realty a year after Blaine left saying he had contacted Vintage Realty a "few times" about waste in the yard. One must question why no written complaints had been given to Vintage Realty at the time of the alleged incidents with Blaine's dog, and why a neighbor's letter to

Vintage Realty waited a year to be written did not include either the purported issue of Blaine's dog barking and crying or that bags of waste were being left outside the building.

Next, there is support for finding a causal connection in the fact that when Vintage Realty wrote to Blaine on July 1, 2015 to say that he had 60 days to leave, there was no mention of any issues with Blaine's dog. Further, after receiving this letter, Blaine called Vintage Realty twice. Again these calls were not returned. Additionally, on one of the calls, Blaine was told that Vintage Realty was not obligated to renew his lease. Nothing was said at that time about the dog.

Finally, there was a glaring discrepancy with the photographs of purported dog waste that Vintage Realty offered. In R.E. 2, the photographs found on pages 12 and 15 are identical although purportedly of different incidents. Collectively, the evidence adds up to a finding that Blaine has established the fourth element of the requisite *prima facie* showing.

Blaine having satisfied the requirement to establish a *prima facie* case, the burden of production shifts to Village Realty to articulate a legitimate non-discriminatory reason for terminating Blaine's lease. Here, Village Realty contends that Village Realty has no objection to emotional support animals and that Village Realty has several other emotional support animals in apartments other than where Blaine lived. Additionally, Village Realty submits one of Blaine's neighbors complained that Blaine failed to clean up after his emotional

support animal. Village Realty also contends that when Blaine did clean up after his dog, he left bags of waste outside his apartment building. Finally, Village Realty contends that Blaine failed to communicate with Village Realty when requested to do so.

These articulated reasons sufficiently meet Village Realty's production burden. Accordingly, a burden of proof shifts to Blaine to prove that Village Realty's articulated reasons are a pretext for retaliation. To meet this burden of proof, Blain must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in Vintage Realty's proffered reasons for its actions that a reasonable factfinder could find them 'unworthy of credence.'" *Krouse, citing Fuentes v. Perskie*, 32 F.3d 759 (3rd Cir. 1994).

Considering the record in the case as a whole, we find that Blaine has established that the reasons offered by Village Realty are a pretext for retaliation. First, Blaine brought home a puppy in January 2015. Village Realty offers that dog waste problems did not begin until mid-April, 2015, approximately 3 months later. Also, we note that Blaine had brought a PHRC Complaint because of perceived problems Village Realty was giving him because he now had an emotional support animal at an apartment complex that does not have dogs. Of the apartment complexes owned by Village Realty, there are dog friendly complexes, however, Blaine brought a dog into a dog free complex. This resulted in Village Realty settling Blaine's allegation and permitting the emotional support animal.

Of course, as to the reality of being required to allow a dog in the complex, Village Realty began a campaign of documenting purported issues with dog waste, bags of dog waste left near the building, and barking and crying. The problem Village Realty has in this regard is that Village Realty purportedly only ever had one neighbor complaint but stated that there were complaints by neighbors. Village Realty offered the testimony of Jerry Conrad in support of the contention that Village Realty had received complaints. On this point, not only did Blaine testify that he personally asked Conrad if he had issues with his dog and purportedly Conrad said no, there is also the testimony of a PHRC investigator who spoke with Conrad over the telephone in March 2016. The PHRC investigator offered that when she asked Conrad if he had complained to the manager on site, he said no and further, he answered no when asked if Blaine failed to clean up after his dog. (N.T. 132)

Another interesting thing about Jerry Conrad is that, allegedly, he was the source of complaints between April 2015 and when Blaine's lease was terminated in July 2015, his "to whom it may concern" letter was not written until over a year later on August 8, 2016. He did not recall complaining when he spoke with the PHRC investigator in March 2016 but did recall in August 2016. One has to wonder what actually prompted the August 8, 2016 letter by Conrad. Clearly, there had been no written complaints made previously.

Another telling situation regarding a showing of pretext is Village Realty's purported requirement that any response to their letter had to be in writing.

Clearly, Blaine called Village Realty 4 times and wrote twice, yet, Village Realty offers that there had been a “blatant FAILURE to communicate” on Blaine’s part. The failure to communicate was not Blaine’s failure, the failure was Village Realty’s failure. What appears to have happened is that Village Realty was on a mission to make it appear that Blaine’s emotional support animal had become such a problem that Blaine’s lease had to be terminated.

Considered as a whole, Blaine has established by a preponderance of the evidence that Village Realty simply wanted to continue to have that complex be a complex without dogs and took unjustified measures to make it appear that Blaine and his dog had become a problem. Accordingly, a finding of retaliation is appropriate.

We thus turn to the issue of appropriate damages.

Section 9(f)(1) of the PHRA provides in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to reimbursement of certifiable travel expenses in matters involving the complaint, ...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(h)...the Commission may award actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

Section 9(f)(2) of the PHRA provides in pertinent part:

Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Sections 5(h) or 5.3 of this act: (i) in an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice...

The function of the remedy in a housing discrimination case is not to punish the Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which he would have been, absent the discriminatory practice. *See Albermarle Paper Co. v. Moody*, 422 U.S. 405, 10 FEP Cases 1181 (1975); *PHRC v. Alto-Reste Park Cemetery Association.*, 306 A.2d 881 (Pa. S. Ct. 1973).

The first aspect we must consider regarding making Blaine whole is the issue of the extent of verifiable reasonable out of pocket expenses suffered. Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. *See Green v. USX Corp.*, 46 FEP Cases 720 (3rd Cir. 1988).

In this case, Blaine claims the following moving costs:

| | |
|-------------------------|----------------|
| U-Haul rental..... | \$52.67 |
| Gas for the U-Haul..... | <u>\$64.00</u> |
| Total..... | \$116.67 |

Blaine also claims the following costs associated with moving into an apartment at Suburban Park:

| | |
|-----------------------|----------|
| Application fee..... | \$36.88 |
| Security Deposit..... | \$300.00 |

| | |
|--------------|-----------------|
| Pet fee..... | <u>\$225.00</u> |
| Total..... | \$561.88 |

Blaine claims that there was a difference in the rent paid while a Village Realty renter, (\$595.00 per month), and the rent paid at Suburban Park (\$895.00 per month). The difference in rent was approximately \$300.00 per month. Blaine claims the following additional rent for the period Blaine lived at Suburban Park:

| | |
|----------------------------------|-------------------|
| August 2015 – rent prorated..... | \$282.95 |
| September 2015 – June 2016..... | <u>\$3,000.00</u> |
| Total..... | \$3,282.95 |

Blaine seeks recovery for loss of pay during the period Blaine claims he took to move from Village Realty to Suburban Park. This amount is as follows:

| | |
|------------------|------------|
| Loss of pay..... | \$1,148.00 |
|------------------|------------|

In connection with this case, Blaine attended a conciliation conference and to attend, Blaine traveled from Hagerstown, Maryland to Harrisburg, Pennsylvania. In this regard Blaine claims the following:

| | |
|--------------|----------------|
| Parking..... | \$6.00 |
| Gas | <u>\$31.64</u> |
| Total..... | \$37.64 |

The total of these claims is \$5,147.14.

In response to Blaine’s claims, Village Realty submits that any award given to Blaine should be deducted as follows:

Failure to pay August 2015 rent –
Blaine had stopped Payment
on the July rent check so Blaine’s
security deposit was used for the

| | |
|------------------------------------|----------------|
| July 2015 rent | \$595.00 |
| Stop payment charge..... | \$35.00 |
| August late fee..... | \$54.00 |
| Damages to the apartment..... | \$1,105.00 |
| Materials and labor..... | \$159.00 |
| Cleaning Charges..... | \$350.00 |
| Trash and personal items removal.. | \$180.00 |
| Security Deposit..... | <u>\$99.00</u> |
| Total..... | \$2,220.00 |

Additionally, Village Realty observes that Blaine’s rental unit with Village Realty was a one bedroom, while the rental unit at Suburban was a 2 bedroom.

First, since Blaine moved from Suburban Park in May 2016, he was only there less than 10 months not just less than 11 months. On this account, Blaine should receive ½ of the difference between the rental with Village Realty and Suburban Park. This equals: \$1,491.48.

Next, Blaine should receive the full amount he expended for the U-Haul and gas. This equals: \$116.67

Next, with respect to costs associated with moving into Suburban Park, Blaine's security deposit would have been returned had he not moved out early. Accordingly, he should receive \$261.88 in this regard.

Next, Blaine claims loss of pay as he took time off to move. In this regard, Blaine should recover for 2 days lost wages. Since in Blaine's application to move into Village Realty, Blaine indicated his wages were \$800 per week, two days lost wages equals \$320.00.

This brings us to whether to deduct any or all of the amounts listed by Village Realty. Clearly, Blaine's dog damaged carpets which cost money to replace and install and Blaine stopped payment on the July 2015 rent check with associated costs. This amounts to \$1,894.00 as the amount to deduct from any award given to Blaine.

Accordingly, Blaine's award for out of pocket expensed equals the following:

| | |
|--------------------------------------|-----------------|
| Difference in rent..... | \$1,491.48 |
| U-Haul and gas..... | \$116.67 |
| Move in costs..... | \$261.88 |
| Attending conciliation conference... | \$37.64 |
| Lost wages..... | <u>\$320.00</u> |
| Total..... | \$2,227.67 |

| | |
|---------------------------------------|-------------------|
| From this amount we deduct | <u>\$1,894.00</u> |
| Award for out of pocket expenses..... | \$333.67 |

In the post-hearing brief on behalf of the state's interest in the allegation, the amount of \$5,000.00 is requested to pay for Blaine's embarrassment and humiliation. Additionally, the post-hearing brief seeks a civil penalty in the amount of \$3,000.00. These amount are deemed reasonable and appropriate.

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JONATHAN BLAINE, :
Complainant :
 :
v. : **PHRC CASE NO. 201500434**
 : **HUD CASE NO. 03-15-0445-8**
DENNISTON FAMILY LIMITED :
PARTNERSHIP, d/b/a VILLAGE :
REALTY ASSOCIATES, LTD, :
Respondent :

RECOMMENDATION OF PERMANENT HEARING EXAMINER

On remand, upon consideration of the entire record in the above-captioned matter, I find that Blaine suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, I further recommend issuance of the attached Final Order

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Date

By: _____
Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

| | | |
|-----------------------------------|---|----------------------------------|
| JONATHAN BLAINE, | : | |
| Complainant | : | |
| | : | |
| v. | : | PHRC CASE NO. 201500434 |
| | : | HUD CASE NO. 03-15-0445-8 |
| DENNISTON FAMILY LIMITED | : | |
| PARTNERSHIP, d/b/a VILLAGE | : | |
| REALTY ASSOCIATES, LTD, | : | |
| Respondent | : | |

FINAL ORDER

AND NOW, this _____ day of _____, 2019 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby.

ORDERS

1. That Village Realty shall cease and desist from retaliating against anyone who engages in protected activity under the PHRA.
2. That, within 30 days of the effective date of this Order, Village Realty shall pay Blaine the lump sum of \$333.67 which amount represents reasonable out of pocket expenses incurred by Blaine.
3. That, within 30 days of the effective date of this Order, Village Realty shall pay Blaine \$5,000.00 in compensatory damages, which amount represents the embarrassment and humiliation Blaine suffered and which is directly attributable to Village Realty's discriminatory retaliatory actions.
4. That, within 30 days of the effective date of this Order, Village Realty shall deliver to PHRC Assistant Chief Counsel Stephanie M. Chapman, a check payable to the Commonwealth of Pennsylvania, in the amount of \$3,000.00, which amount represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.
5. That, within thirty days of the effective date of this Order, Village Realty shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Stephanie M. Chapman, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 333 Market Street, 8th floor, Harrisburg, PA. 17101.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____
M. Joel Bolstein
Chairman

Attest:

Dr. Raquel O. Yiengst
Vice Chairperson