COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Kevin Harris, on behalf of himself and all other similarly situated persons, and SKINTIGHT LOUNGE, INC. Complainants	:	
v.	:	PHRC CASE NO. 200405223
GIRARD FINANCE COMPANY, INC. and Thomas Richter, Respondents	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT

1. The Complainant herein is Kevin Harris, an adult African American (hereinafter "Complainant Harris"). (N.T. V1 49)

2. The Respondent herein is Girard Finance Company, Inc. (hereinafter "Respondent Girard"). (N.T. V1 5)

3. Respondent Thomas Richter (hereinafter "Respondent Richter") an adult Caucasian male, is the President and sole shareholder of Respondent Girard. (N.T. V6 146)

4. Respondent Girard is a tavern finance company that provides loans of money to corporations and individuals that are buying or operating taverns. (N.T. V6 147)

5. Respondent Girard uses the same terms and conditions in nearly all of its loan transactions. (N.T. V6 148)

6. Respondent Girard uses the same standard set of documents for all of its loan transactions. (N.T. V6 147)

7. Respondent Girard charges a standard 20 percent add-on interest for virtually all of its loans. (N.T. V6 149, N.T. V7 260)

8. Respondent Girard in actuality charges an amount of interest equal to 100 percent of the principal. (N.T. V6 151)

9. Respondent Girard calculates the 20 percent rate by dividing 100 percent by five years. (N.T. V6 151)

10. If a particular loan and interest paid back on that loan are calculated with a standard simple interest amortization schedule, Respondent Girard's effective interest rate is 34 percent. (N.T. V2 37-38)

11. A typical business loan utilizes the simple interest method of calculating interest with interest charges based on the amount of money borrowed for the length of time it is outstanding. (C.E. 12)

12. Interest rates on typical business loans are usually floating or variable rates based on or tied to an index such as the Prime Rate which is published in newspapers. (C.E. 12)

*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 Fact for reference purposes:

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

13. An interest rate of prime plus three percent was an appropriate rate that a lender would normally charge for a loan to a bar or restaurant. (N.T. V2 37; C.E. 12)

14. Respondent Girard's interest rate of 34 percent was over four times higher or prime plus approximately 27 – 29 percent. (N.T. V2 140)

15. Respondent Girard uses the Rule of 78 for its amortization method which front loads interest payments and effectively acts as a prepayment penalty if the loan is paid off early. (N.T. V6 149)

16. In addition, Respondent Girard's loans include an explicit prepayment penalty consisting of a payment of six months interest payments and effectively acts as a prepayment penalty if the loan is paid off early. (N.T. V6 152)

17. Respondent Girard charges a late penalty of five percent of the weekly payment assessed at the end of the month that equates to a monthly late fee of 21.65%. (N.T. V2 38-39)

18. Such a fee is excessive and not typical of a commercial lender. (N.T. V2 39)

19. Respondent Girard "resets" or refinances its loans from borrowers. (N.T. V6 258)

20. In reviewing the testimony of seven persons who received loans from Respondent Girard, five persons had their loans flipped with a "reset" on at least one occasion and some on multiple occasions. (C.E. 32-42)

21. On each occasion, the "reset" resulted in an increase in the size of the loan and included additional charges such as late fees. (C.E. 32-42)

22. Respondent Girard uses balloon payments as a term and condition of its loans. (N.T. V6 264)

23. When processing a loan, Respondent Girard requires its borrowers to sign an undated letter providing for their resignation from their own corporation. (C.E. 3)

24. Respondent Girard requires the borrower to nominate either Respondent Richter or his wife, Victoria Richter or other Respondent employee to the Board of Directors of the borrower's corporation. (N.T. V6 152-53)

25. Respondent Girard specifically limits the membership of the Board of Directors of the borrower's corporation to three members. (N.T. V6 153)

26. Since Respondent Girard has a majority membership on the Board of Directors, it may gain effective control over the borrower's corporation if the borrower defaults on the loan. (N.T. V6 153-54)

27. The structuring of loans to provide Respondent Girard with effective control over the borrower's corporation creates a conflict of interest. (C.E. 12)

28. Respondent Richter admits that he has no written documentation of Respondent Girard's due diligence in evaluating a potential borrower. (N.T. V6 174-75)

29. Respondent Richter stated that prior to loaning money he would obtain most of his information from verbal conversations with the borrower. (N.T. V6 161)

30. Respondent Richter testified that he has never run a credit check on a potential borrower. (N.T. V6 159)

31. Respondent Richter does not conduct an extensive search into a prospective borrower's personal finances and he does "not really" review any bank statements from a borrower. N.T. V6 160)

32. Respondent Girard does not require a review of financial assets during the course of its underwriting practices. (N.T. V6 160)

33. When assessing the financial structure of an establishment, Respondent Richter testified that the records maintained by a tavern owner were of "no value" to him. (N.T. V6 164)

34. Specifically, Respondent Richter stated that he does not even look at tax returns, machinery or equipment lists, sales journals, sales receipt history, balance sheets, or depreciation schedules with regard to the establishment. (N.T. V6 166-167)

35. Respondent Richter does not conduct any type of cash flow analysis based upon corporate books or tax returns. (N.T. V6 178)

36. Respondent Richter stated that "bar brokers," whom he referred to as "crazy street guys" were one of his most important resources in ascertaining whether to originate a loan. (N.T. V6 173)

37. Steven Butler, the Commission's expert witness, stated that commercial lenders exercise due diligence and practice underwriting by examining the five C's of credit – character, capacity, collateral, capital and conditions. (N.T. V1 378)

38. Butler offered that, in assessing the character factor, a lender typically would review the borrower's financial history, including: repayment history, credit report and overall relationship with lenders. (N.T. V1 378)

39. The capacity aspect relates to cash flow and any attempts to measure the borrower's ability to repay in light of cash flow. (N.T. V1 378)

40. The collateral factor relates to a secondary source of repaying the loan in the event that cash flow is insufficient. (N.T. V1 378)

41. The capital aspect refers to the borrowers overall financial strength. (N.T. V1 379)

42. The conditions aspect is focused on external factors that may impact the borrower and the ability to repay. (N.T. V1 379-80)

43. Butler further offered that in the practice of underwriting, lenders seek to assess the borrower's net worth and the value of assets other than collateral to provide an additional cushion should the borrower experience difficulty in repaying the loan. (N.T. V1 379)

44. In a typical loan situation, the lender will require personal financial statements, business financial statements, personal credit reports, cash flow information, corporate operating history, inventory, accounts receivable information, personal and corporate tax returns, collateral appraisals, and business plans. (N.T. V1 385-88)

45. After amassing the aforementioned information, the lender would analyze the information and determine whether to approve the loan to a borrower and then determine the appropriate terms and conditions for the loan. (N.T. V1 385-86)

46. John Hoopes, Respondent's expert witness, testified that he had never made a loan without reviewing any documents nor has he ever made a loan based solely on the verbal representations of a borrower. (N.T. V9 54-56)

47. Mr. Hooper further testified that any potential loan is underwritten on an individual basis and contains terms and conditions specifically tailored to that loan. (N.T. V9 58)

48. Penn Business, an asset based lender, requires numerous documents in order to underwrite a loan. (N.T. V9 53-54)

49. Respondent Girard's loans to the Complainants herein contained numerous predatory terms and conditions such as high interest rates, pre-payment penalties, high up-front fees and high late fees. (N.T. V1 49; C.E. 1-11)

50. Respondent Girard's loan to Complainant Kevin Harris (hereinafter "Harris") was structured in a manner to provide Respondents with control over Skintight Lounge, Inc. (C.E. 1-11)

51. Harris testified that he had no understanding of the terms and conditions of the loan. (N.T. V1 34-349; C.E. 1-11)

52. The Respondents did not perform due diligence to determine whether Harris had any ability to repay his loan. (N.T. V1 49)

53. Respondent Girard's loans to Bernadette Biggers, Earl Marable, Raquel Smith, Israel Colon, William Davis and Johnnie Roach contained predatory terms and conditions. (N.T. V2 8)

54. Respondent Girard's loans to Bigger, Marable, Smith, Colon, Davis and Roach were structured to give Respondents nearly complete control over their corporations. (N.T. V2 8)

55. None of the similarly situated persons had any understanding of the terms and conditions of their loans.

56. Joseph Shannon was employed by the Pennsylvania Human Relations Commission as a Human Relations Representative at all times relevant to this complaint. (N.T. V5 229)

57. Mr. Shannon was the investigator responsible for the Commission's investigation of the instant complaint. (N.T. V5 229)

58. During the course of his investigation, Respondents provided Mr. Shannon with a list of its loan activity during the time period from June 1, 2001 to June 30, 2002. (N.T. V5 233)

59. A review of the documents establish that the Respondents originated thirty-two loans during that time period for the purchase or refinance of taverns. (C.E. 65)

60. Mr. Shannon testified that he asked Respondent Richter the race of the operator of each establishment on the list that received a loan for the purchase or refinance of a tavern. (N.T. V5 241-243)

61. Mr. Shannon testified that of the thirty-two (32) loans, twenty-four (24) were to African Americans, four (4) were to Hispanics, two (2) were to Multi-Racial persons, and two (2) were to Caucasians. (N.T. V5 247-248)

62. Hugh Irving was identified by Respondent Richter as a Multi-Racial person. (C.E. 66)

63. Mr. Irving testified at the public hearing that his race was African American. (N.T. V8 99)

64. Over seventy-eight (78) percent of Respondent's loans for the purchase or refinance of taverns went to Blacks/African Americans. (N.T. V5 247-248)

65. Almost ninety-four (94) percent of Respondent's loans went to minorities in general. (N.T. V5 247-248)

66. Mr. Shannon conducted a statistical analysis of the location of each property in relation to the census tract information. (N.T. V5 249-50)

67. Mr. Shannon concluded that the average racial composition of the population where the loan properties were located was seventy-nine (79) percent Black/African American and eighty-seven (87) percent minority. (N.T. V5 251-252)

68. Mr. Colon testified that his establishment, Two Street Café, Inc., was located in a predominately Hispanic neighborhood. (N.T. V4 13)

69. Mr. Davis testified that his establishment, On the Rox, Inc., was located in a neighborhood that is ninety (90) percent Black/African American. (N.T. V3 8-9)

70. Ms. Smith testified that her establishment was located in a neighborhood that was Black/African American. (N.T. V4 197)

71. Grace Marable testified that her husband's establishment, Casino #1, Inc., was located in a neighborhood that was 75 to 80 percent Black/African American. (N.T. V2 360)

72. Mr. Roach testified that his establishments, 1200 Hotel and Restaurant and 53 Basin Street, were located in predominantly Black/African American neighborhoods. (N.T. V5 36-37)

73. The Commission and the Respondents offered testimony of persons who borrowed money from the Respondent during time periods outside the scope of Mr. Shannon's analysis. (N.T. V4 12)

74. The Commission presented the testimony of William Davis (African American), Johnnie Roach (African American), Raquel Smith (African American) and Israel Colon (Hispanic). (N.T. V4 2, 196; V3 6)

75. The Respondent offered the testimony of persons that it loaned money to, including: Ken McCoy (African American), Arthur Thomas (African American), Kim Graves (African American), Maurice Mapp (African American), Mary Ann Byrd (African American), Keary Willis (African American), Chappell McDonald (African American), and Iris Melendez (Hispanic). (N.T. V7 23; V8 54, 92, 99, 128, 135)

76. Overall, there were forty-four (44) persons who received loans for the purchase or refinance of taverns.

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "Commission") has jurisdiction over the parties and the subject matter of the complaint under the Pennsylvania Human Relations Act (hereinafter "Act").

2. The parties and the Commission have fully complied with the procedural prerequisites to convene a public hearing.

3. The Complainants and Respondents are persons within the meaning of Section 5(a) of the Act.

4. The complaint and amended complaint filed in this matter satisfy the Section 9 filing requirements of the Act.

5. Section 5(h)(8)(1) of the Act, *inter alia,* prohibits any person from discriminating against persons in the terms and conditions of a real-estate related transaction because of race and/or national origin.

6. Section 5(h)(4) of the Act, *inter alia*, prohibits any person from discriminating against persons in the terms and conditions of any loan of money because of race and/or national origin.

7. The Complainants herein have established by a preponderance of the evidence that the Respondent unlawfully discriminated against them because of their race, Black/African American and racial composition of their neighborhood, race, Black/African American, in violation of Section 5(h) of the Act.

8. Whenever the Commission concludes that a Respondent has engaged in an unlawful practice, the Commission may issue a cease and desist order and it may order such affirmative action as in its judgment will effectuate the purposes of the Act.

OPINION

On or about January 9, 2006, Kevin Harris (hereinafter "Complainant") filed a verified complaint on behalf of himself and all other similarly situated persons with the Pennsylvania Human Relations Commission (hereinafter "Commission") at PHRC Case No. 200405223. Complainant alleged that the Girard Finance Company, Inc. (hereinafter "Respondent Girard") unlawfully discriminated against him and other similarly situated persons in the terms and conditions of loans of money and in the terms and conditions of real-estate related transactions because of their race, Hispanic, Black/African American. On or about March 2, 2006, Respondent Girard filed an Answer in response to the Complaint.

In correspondence dated February 15, 2006, Commission staff notified the Complainant and Respondent Girard that probable cause exited to credit the allegations found in the complaint. Subsequent to the determination of probable cause, Commission staff and the parties attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but were unable to do so. On or about June 1, 2006, Complainant filed an Amended Complaint to add Skintight Lounge, Inc. (hereinafter "Complainant Skintight") as a named Complainant. On or about July 17, 2006, Respondent Girard filed an answer in response to Complainants' Amended Complaint. In subsequent correspondence, Commission staff notified the Complainants and Respondent Girard that a public hearing had been approved.

After a Pre-Hearing Conference, on or about November 9, 2006, Commission Counsel served on Respondent Girard a First Request For Admissions. On or about December 11, 2006, the Commission Counsel filed a Motion To Have Commission's

First Request For Admissions Be Deemed Admitted. On or about December 14, 2006, an Interlocutory Order was issued that granted the Commission's Motion and deemed the admissions admitted.

On or about January 12, 2007, Commission Counsel filed Confirmation Of Intention To Seek Relief For Persons Other Than The Named Complainants pursuant to 16 Pa. Code Section 42.36. During the course of discovery prior to the public hearing, the Commission affirmatively identified Complainant and six other persons on whose behalf it intended to seek relief due to Respondent Girard's alleged acts of unlawful discrimination, including: Bernadette Biggers, Earl Marable, Raquel Smith, Israel Colon, William Davis, and Johnnie Roach. Following identification of each of the purported similarly situated persons, Respondent Girard engaged in discovery efforts with regards to each person, including depositions and document requests.

On or about January 15, 2008, Commission Counsel filed a Request For Leave to Amend Complaint to add Thomas Richter as a named Respondent. On or about January 25, 2008, Respondent Girard filed a Response to Request for Leave to Amend Complaint. On or about February 12, 2008, an Interlocutory Order was issued granting the Commission's Motion to Amend Complaint. On or about April 7, 2008, Complainants filed an Amended Complaint that added Thomas Richter as a named Respondent (hereinafter "Respondent Richter").

On or about February 22, 2008, the Respondents filed a Motion for Summary Judgment. On or about March 12, 2008, the Commission filed a Reply to the Respondents' Motion for Summary Judgment. On or about April 10, 2008, an Interlocutory Order was issued denying Respondents' Motion for Summary Judgment.

Subsequently, a public hearing in this matter was convened on April 23-25, April 30, May 1, June 4, and July 14-16, 2008. Phillip Ayers, Permanent Hearing Examiner, presided over the public hearing. Testimony was taken, exhibits introduced, and the hearing concluded on July 16, 2008. Commission Counsel and Respondent Counsel filed post-hearing briefs in support of their respective positions. On May 27, 2011, an additional day of hearing was held by Permanent Hearing Examiner Ayers.

In the instant case, the Complainant and the purportedly similarly situated persons specifically allege that the Respondents unlawfully discriminated against them because of their race, Hispanic, Black/African American and the racial composition of their neighborhood. The Complainants further allege that the Respondents engaged in reverse redlining. While redlining is the practice of denying the extension of credit to specific geographic areas due to income, race, or ethnicity of its residents, reverse redlining is the practice of extending credit on unfair terms to those same communities. United Companies Lending Corp. v Sargeant, 20 F.Supp. 2d 192 (D. Mass. 1998) The practice of redlining and reverse redlining create an atmosphere where unscrupulous lenders may prey on a community. Sargeant at 202

An important case on the issue of reverse redlining is Hargraves v. Capital City Mortgage Corp., 140 F.Supp. 2d 7 (D.D.C. 2000). The court in Hargraves set forth a two pronged analytical basis for establishing a reverse redlining claim under the Fair Housing Act. Initially a plaintiff must show that "the defendants' lending practices and loan terms were "unfair and predatory." Id Secondly, a plaintiff must establish that the "defendants either intentionally targeted on the basis of race, or that there is a disparate impact on the basis of race." Id In regard to the first prong of the model, the court

identified numerous activities which it defined as "predatory" lending practices. These activities included: exorbitant interest rates, lending based on the value of the asset securing the loan rather than a borrower's ability to repay (equity stripping, in other words issuing a loan 'designed to fail' and profiting by acquiring the property through default rather than by receiving loan payments), repeated foreclosures, and loan servicing procedures in which excessive fees are charged." Id at 20-21

The second prong of the model is whether the "defendants either intentionally *targeted on the basis of race, or that there is a disparate impact on the basis of race."* Id at 20. The plaintiff in Hargraves alleged that the defendants' predatory lending practices had a disparate impact on African Americans. The court noted that the plaintiffs had produced statistical documentation which, established that the District of Columbia was historically segregated in its housing market. The plaintiffs then produced statistical evidence which showed that the defendant made a greater percentage of its loans in majority African American census tracts than other sub-prime lenders in the District of Columbia. The court concluded that the evidence was sufficient to establish a *prima facie* case of disparate impact. Recent case law in Pennsylvania has provided direction on the establishment of a *prima facie* case of reverse redlining. McGlawn v. Pennsylvania Human Relations Commission, 891 A.2d 757 (Pa. Cmwlth. 2006) In McGlawn, two experts testified regarding the definition of predatory lending. One expert testified as to the loan features that are characteristic of predatory lending, including: "high interest rates, paying off a low interest mortgage with a high interest mortgage, payment of points, yield spread premiums, high broker fees, undisclosed fees, balloon payments, pre-payment penalties, arbitration clauses and

fraud." Id at 769. The second expert added, "flipping (successive refinancing of the same loan); hiding critical terms; establishing loan terms the borrower cannot meet; packing (including unnecessary products such as insurance policies); charging improper fees for items outside the settlement sheet; creation of false documents; and failing to advise borrowers of their rescission rights." Id at 770. The court in McGlawn explained, that "one of the clearest indicators of a predatory and unfair loan is one which exceeds the borrower's needs and repayment capacity." The court also concluded that there was substantial evidence of intentional targeting as well as disparate impact because of race. The clear evidence of targeting was shown by the mortgage broker's extensive advertising specifically directed to African American audiences on radio and television and in newspapers and the yellow pages. The court also reviewed the statistical evidence regarding the mortgage brokering activity of the defendant by examining the race of each mortgage loan applicant as well as the geographic location of the various loans at issue. Id at 773

The decisions in Hargraves and McGlawn serve to establish basic legal principles in pursuing a predatory lending claim under the PHRA. These court decisions clearly show that predatory lending in the form of reverse redlining may violate the Fair Housing Act and the PHRA. Also these cases provide for a concise two prong analytical model for the purpose of evaluating reverse redlining allegations. The plaintiff must show that the lending practice or loan transaction was unfair and/or "predatory." Then the plaintiff must show whether the defendant either intentionally targeted individuals on the basis of race or there was a disparate impact based on race. Consequently, applying the analytical model developed from those cases, we must

determine whether the Respondents herein unlawfully discriminated against the Complainant and six other similar situated persons by engaging in reverse redlining on the basis of race, Hispanic, Black/African American and on the racial composition of their neighborhood, Black/African American.

In the instant case, Respondent Richter is the President and sole shareholder of Respondent Girard. (N.T. V6 146) Respondent Girard is a tavern finance company that provides loans of money to corporations and individuals who are buying or operating taverns. (N.T. V6 147) It is not disputed that Respondent Girard uses the same terms and conditions in nearly all of its loans and that Respondent Girard utilizes the same standard set of documents for all of its loan transactions. (N.T. V6 147-148) Therefore we must review the specifics of the loan to the Complainant and the six similarly situated persons to determine whether the loans reflect predatory lending practices. Both Respondent Counsel and Commission Counsel presented witnesses who testified as to the indicators of predatory lending practices. These practices are associated with the loans in this case. Both federal and Pennsylvania law recognize that an excessive interest rate may be characteristic of a predatory loan. McGlawn, 891 A.2d at 769; Hargraves, 140 F.Supp. 2d at 21 In McGlawn, a Commission expert testified that an interest rate that is greater than three percentage points above prime may be indicative of a predatory loan. In the instant case, Steven Butler, Commission's expert witness, testified that a high interest rate is a red flag or indicia of a predatory loan. (N.T. V2 18)

Respondent Girard charged a standard twenty (20) percent add-on interest on virtually all of its loans. (N.T. V6 149) In fact, Respondent Richter stated that the interest rate is always the same for every borrower. However, testimony elicited at the

public hearing indicated that the borrower is paying back much more than 20 percent. Mr. Butler explained the add-on interest as follows: ". . . you have a loan amount. You take the same amount and double it and add that onto the loan, and then you make the payments over a period of time."(N.T. V2 32) Mr. Butler further provided an example – if a person borrows $10,000 to be paid back over a five year period at a rate of 20 percent add-on interest, the borrower is required to repay a total amount of $20,000. (N.T. V6 151) Consequently the amount of interest added to the principal is 100 percent of the principal. Respondent Girard calculates the 20 percent rate by dividing 100 percent (total interest) by five years. (N.T. V6 151)

The Respondent Girard also uses the Rule of 78 for its amortization method. Once again, Mr. Butler testified that the Rule of 78 is by definition predatory. (N.T. V2 140) Mr. Butler stated

> "Under the Rule of 78s, the higher amount of interest is taken first. So by the time you get halfway through the loan, you haven't even paid half the interest yet. So you have the bulk of your principal left to pay plus some more interest. So you're pre-paying your interest."(N.T. V2 33)

Under Respondent Girard's practices, if the loan and interest paid back is calculated with a standard simple interest amortization schedule, Respondent Girard's effective interest rate is 34 percent. (N.T. V2 37-38; C.E. 12)

In contrast to the method used by Respondent Girard, Mr. Butler testified that typical commercial or business loans utilize the simple interest method of calculating interest which charges interest based on the amount of money borrowed for the length of time it is outstanding. The testimony of both Respondent and Commission experts agreed that commercial loans normally utilize a simple interest rate that is tied to an index such as a prime rate. The testimony by all of the experts reveals that none of the

interest rate charges suggested by the experts were comparable to Respondent Girard's exorbitant charges. Also none of the experts who testified utilized the Rule of 78. Clearly, Respondent Girard's interest rate charge is a characteristic of a predatory loan.

Another indicia of a predatory loan may be the points charged on a loan. Points are fees that are paid up front and often financed in the cost of the loan. See United States Department of Housing and Urban Development, Curbing Predatory Home Mortgage Lending, 96 (June 20, 2006). Typically one point represents one percent of the net amount of the loan. Respondent Richter indicated that Respondent Girard charges three points on its loans, or, in other words, three percent of the net amount of the loan. (N.T. V6 155, 158) Respondent Girard added the points to the principal of the loan and financed them with the accompanying interest rate charge. Respondent Richter asserted that the charge was necessary for the "legwork" he performed on the loan. The "legwork" consists of making phone calls, taking photographs, preparing the place of business and clearing up the title. This legwork does not justify a fee in the amount of three percent of the total amount of the loan. The points charged by Respondent Girard are indicative of a predatory loan.

The next indicator of a predatory loan is the practice of loan flipping. Loan flipping is the practice of repeatedly refinancing a mortgage loan without a benefit to the borrower in order to obtain additional monies while steadily eroding the borrower's equity in the property. See HUD, Curbing Predatory Home Mortgage Lending, at 5. Respondent Richter testified that a "reset" was Respondent Girard's term for refinance or flipping a loan. Several of the similarly situated persons testified regarding their loans

with Respondent Girard had their loans flipped with a "reset" on at least one occasion and some on multiple occasions. (N.T. V6 258) One borrower had his loan flipped and reset on five different occasions. With each borrower, the reset resulted in an increase in the size of the loan and included additional charges such as late fees. Respondent Girard's use of loan flipping is another characteristic of a predatory loan.

Another element of a predatory loan is the balloon payment which occur at the end of a fixed rate loan term when the regular monthly payments do not fully amortize the principal of the loan. See HUD, Curbing Predatory Home Mortgage Lending, at 93. This practice becomes predatory when a borrower has to refinance at the end of a term to cover a balloon payment or risk default on the loan. The evidence at the public hearing demonstrated that Respondent Girard utilized balloon payments as a term and condition on some of its loans. (N.T. V6 264) Once again, this use and practice of Respondent Girard indicates a characteristic of a predatory loan.

Pre-payment penalties are another indicator of predatory loans. A pre-payment penalty is a fee assessed against a borrower who repays his or her loan before the end of a loan term. See HUD, Curbing Predatory Home Mortgage Lending at 89. Respondent Girard's loans contained two pre-payment penalties. Firstly, the method of amortization utilized by Respondent Girard "front-loads" interest payments and effectively acts as a pre-payment penalty if the loan is paid off prior to maturity. (N.T. V9 86) Secondly, Respondent Girard's loans contain a specific pre-payment penalty. (N.T. V6 152) The pre-payment penalty was a payment of six months interest if the loan was paid in full at anytime within the first six months of the term of the loan. (N.T. V6 152) Mr. Butler, Commission's expert witness, testified that he had never in his career seen

two pre-payment penalties in the same loan. Respondent Girard's practice of utilizing multiple pre-payment penalties is another indicia of a predatory loan.

Respondent Girard also incorporated other unique requirements in the terms and conditions of its loans. One of these requirements is the formation of the Board of Directors of the borrower's corporation. Respondent Girard requires its borrowers to sign an undated letter providing for the borrower's resignation from their own corporation. Respondent Girard then required the borrower to nominate either Respondent Richter or his wife, Victoria Richter, or another Respondent Girard employee to the Board of Directors of the borrower's corporation. (N.T. V6 152-53) The loan documents specifically limited the membership of the Board of Directors to three members. (N.T. V6 153) Clearly, this requirement gave Respondent Girard a majority membership on the Board and control over the corporation in the event of a default. This particular structuring created an obvious conflict of interest. Indeed, both expert witnesses, Mr. Butler and Mr. Hoopes, Respondent's expert, agreed that such a situation created a conflict of interest. As Mr. Hoopes noted, the primary objective of the lender is to be repaid whereas the primary objective of the borrower and his/her corporation is to make money and a profit. (N.T. V9 109-110) In providing the loan and then sitting on the Board of Directors of the borrower's corporation, the Respondents created a conflict of interest which is another characteristic of a predatory loan.

Lastly "one of the clearest indicators of a predatory and unfair loan is one which exceeds the borrower's needs and repayment capacity." McGlawn 891 A.2d at 774. When a loan is originated with no real concern or analysis of the borrower's ability to repay, a predatory loan exists. Normally any lender should make an assessment of the

ability to repay during the course of underwriting a loan. Mr. Butler testified as follows: "In other words, when a bank reviews a loan request, it determines whether the loan is – how risky the loan is, if they even want to make the loan in the first place. And once they determine the risk involved, they can structure the loan to avoid some of that risk or at least – not avoid it, protect the bank against some of that risk."(N.T. V2 11) Therefore, we must look at the question of whether Respondent Girard made any efforts to determine whether a borrower has the ability to repay a loan. More precisely, the question is whether Respondent Girard or Respondent Richter conducted any due diligence before entering into a loan agreement. Respondent Richter testified that he had no written evidence of Respondent Girard's due diligence. (N.T. V6 174) He stated that he receives most of his information from "verbal conversations with the borrower." Respondent Richter stated that these conversations typically are an hour or more with a potential borrower. (N.T. V6 159) Respondent Richter neither requires a written business plan from a potential borrower nor does he run a credit check on the borrower. (N.T. V6 159, 161) Interestingly, Respondent Girard does not require a review of financial assets during the course of its underwriting practice. (N.T. V6 160) Respondent Richter testified, "I get very limited documents from the prospective buyer because I'm often not looking at the borrower as much to repay the loan as I am looking at that location which is so important."(N.T. V6 168) Furthermore Respondent Richter testified that the records maintained by a tavern owner were of "no value" to him in his lending practice. (N.T. V6 164) He did not review tax returns, machinery or equipment lists, sales logs or journals, sales receipts or history of sales receipts, balance sheets or depreciation schedules in regard to a tavern seeking a loan. (N.T. V6 166) As noted

before, Richter relies on verbal conversations with outside sources such as "bar brokers" and others that Respondent Richter testified he considers to be valuable resources.

Based on Respondent Girard's underwriting practice, or lack thereof, we must review the normal principles of underwriting practices in regard to commercial loans, including loans to bars. Mr. Butler testified as to the due diligence exercised by reputable lenders and the five C's of credit – character, capacity, collateral, capital, and conditions. (N.T. V1 378) The character element relates to the borrower's character. In the assessment of this aspect, a lender will review the borrower's financial history, including repayment history, credit report, and overall relationship with lenders. (N.T. V1 378) The next aspect is the capacity element which relates to cash flow and attempts to measure the borrower's ability to repay a loan in light of cash flow. (N.T. V1 378) The collateral aspect relates to a secondary source of repayment of the loan in the event that cash flow is insufficient. (N.T. V1 379) The capital aspect relates to the borrower's overall financial strength. It is necessary for a lender to know the borrower's net worth and the value of any assets besides collateral should the borrower default in repaying the loan. (N.T. V1 379) Lastly the conditions aspect is concerned with external factors that may impact the borrower's ability to repay the loan.

Once again, both experts were in agreement that a lender should require certain documents as part of the underwriting process. These documents include: personal financial statements, business financial statements, personal credit report, business credit report, cash flow information, corporate operating history, inventory, accounts receivable information, personal tax returns, corporate tax returns, collateral appraisals

and business plans. (N.T. V1 385-388) The evidence adduced at the public hearing reveals that neither Respondent Richter nor Respondent Girard made any attempt to assess a prospective borrower's ability to repay a loan. Mr. Butler and Mr. Hoopes testified to the process employed by commercial lenders in determining whether a borrower has the ability to repay. There is a stark difference between the process utilized by reputable commercial lenders and the Respondents. This difference is yet another characteristic of a predatory lending practice.

Since it is now clearly established what practices are considered indicators of a predatory loan, we must review the Complainant's loan as well as those of the purportedly similarly situated persons to determine whether their loans were unfair and predatory.

Kevin Harris (hereinafter "Complainant Harris")

In February of 2001, Complainant Harris observed a "for sale" sign with a telephone number posted on Skintight Lounge, a restaurant and bar located at 4452 North 15th Street, Philadelphia. (N.T. V1 50) Complainant Harris, who had four to five years experience working in the restaurant and bar industry, decided to call the posted number. (N.T. V1 50-51) Upon calling the number, Complainant Harris scheduled a meeting with Respondent Richter. After this initial meeting, Complainant Harris agreed to lease the above establishment from Respondent Girard at a cost of $300 per week plus an additional one-time payment of $5,000. (N.T. V1 54, 59) Pursuant to the agreement, Respondent Richter provided Complainant Harris with a letter that granted Complainant Harris the right and responsibility to secure the corporately owned property

of Skintight Lounge. After leasing the establishment for several months, Complainant Harris agreed to purchase it from Respondent Girard.

On or about July 25, 2001, Respondent Girard originated a loan to Complainant Harris as President of Complainant Skintight to finance the purchase of the bar and restaurant. The loan documents clearly reflect many of the aspects of a predatory and unfair loan. Respondent Girard loaned Complainant Harris $45,000. (C.E. 3) The loan term was for five years with weekly payments of $363 with an additional $100 a week to be escrowed for taxes. In addition, the loan terms included legal fees that totaled $1,250 and a service charge of $1,000. These fees were then financed into the loan for a principal amount of $47,250. The loan provided for an interest charge in the amount of $47,250 and a total loan payback figure of $94,500. (C.E. 3) Even though the loan documents stated that the interest rate was 20 percent add-on interest pursuant to the Rule of 78, when calculated at a simple interest rate, the rate would equal 34 percent. (N.T. V2 37-38)

The loan also contained an additional pre-payment penalty consisting of a payment of six months interest if the loan was paid in full at any time within the first six months of its term. (C.E. 3) Also the loan documents provided for a late penalty of five percent of the weekly payment that equaled a monthly late fee of 21.65%. (C.E. 3, 12) Lastly, loan documents required that Complainant Harris place Respondent Richter and his wife, Victoria Richter, on the Board of Directors of Complainant Skintight, thereby giving control of Complainant Skintight to Respondent Girard.

As part of the process of selling the restaurant and bar to Complainant Harris, a title search was conducted. The title search revealed that there were five outstanding

judgments incurred by the previous operators of the establishment. (N.T. V6 225-227) Respondent Richter agreed to indemnify Complainant Harris for the judgments on the property at the time of the sale. Subsequent to the sale, Complainant Harris determined that there were eight additional liens and/or judgments totaling over $17,179 that were not discovered and/or disclosed at the time of the sale. (C.E. 11) Complainant Harris had in fact purchased property with eight pre-existing judgments/liens that he had no knowledge of when he agreed to the purchase.

The above information and Complainant Harris's testimony at the hearing shows that he had very little understanding of the terms and conditions of the loan with Respondent. In fact, the only condition that he really understood was the amount of his weekly payment. Complainant Harris testified he did not understand the meaning of a pre-payment penalty, a confession of judgment, late fees, legal fees, or service charges. (N.T. V1 62) He had little to no understanding of what the Rule of 78 was and the concept of add-on interest. Complainant Harris testified that Respondent Richter did not provide any assistance to him. Respondent Richter simply advised him where he should sign the documents. (N.T. V1 64) Certainly Complainant Harris has some responsibility in reviewing these documents, but, as he testified, he believed in Respondent Richter. (N.T. V1 64-65)

The record reflects that the Respondent Richter did not conduct any due diligence prior to processing the loan to Complainant Harris and made no assessment of his ability to repay the loan. Complainant Harris testified he was not asked to produce personal tax returns. He was not asked about his credit report or his credit score. (N.T. V1 65) There were no questions regarding Complainant Harris' personal

financial situation. Even Respondent Richter's testimony indicates a complete lack of due diligence. Specifically, Respondent Richter had a two hour conversation with Complainant Harris and spoke with a vendor, a broker, and one of Complainant Harris' customers. (N.T. V6 204) Respondent confirmed that he had not reviewed "any written printed financial forms on Mr. Harris" before making the loan to him. (N.T. V6 206) Also Respondent Richter testified that he never ran a credit check because he personally did not believe credit scores had any relevance in assessing whether a borrower could repay a loan.

It is interesting to note Respondent Richter's knowledge of the Skintight Lounge. Respondent Girard had loaned money to two previous owners – Ernie Ellison and Juanita Askew. Both of these individuals are African American. Respondent Richter contended that he "knew what the bar could do" with a good operator and that it had performed "reasonably well" under previous owners. (N.T. V6 203, 207) However testimony at the hearing revealed that, during the time Respondent Richter was considering the loan to Complainant Harris, Respondent Girard was a "Lender in Possession" of the Skintight Lounge, Inc. Respondent Richter clearly testified that Respondent Girard only becomes a "Lender in Possession" either through foreclosure or when the borrower relinquishes the keys to the property. (N.T. V6 200) Indeed, there were at least twelve judgments and/or liens on the property during the ownership of Mr. Ellison and Ms. Askew. (C.E. 11) This evidence clearly contradicts Respondent Richter's assertion that Skintight Lounge had done reasonably well with previous owners. Also the reason for Respondent Girard becoming a "Lender-in-Possession" was that this particular establishment had a long history of problems.

Over the next several years, Complainant Harris, after struggling to make the weekly payments, made several attempts to sell the establishment. The first attempt to sell was in June of 2003. Complainant Harris executed an Agreement of Sale to Roxann Harris for $100,000. (C.E. 7) After a period of time, the sale to Ms. Harris fell through. (N.T. V1 86-87) Respondent Richter asserted that Complainant Harris was responsible for the collapse of the sale. However, the evidence reveals that the collapse was due to Respondent Girard's failure to sign the loan commitment and Ms. Harris' failure to complete the requirement to transfer the liquor license. Complainant Harris then contacted another prospective buyer, Dennis Okooboh. In March of 2004, Complainant Harris executed an Agreement of Sale to Mr. Okooboh in the amount of $65,000. (N.T. V1 88; C.E. 9) At the settlement of the sale of the establishment, Respondent Girard received $37,203.27 as a payoff on Complainant Harris's loan. In addition, the loan ledger reflects that Complainant Harris paid Respondent Girard a total of $37,165 in interest charges for payments totaling $74,368.27. (C.E. 4, 10, 12) Since the original principal of the loan was $45,000, Respondent Girard made over a sixty percent return on the loan to Complainant Harris.

Finally, there were eight outstanding judgments and/or liens on the property when Respondents Richter and Girard sold the establishment to Complainant Harris. Respondents Richter and Girard refused to resolve those judgments and/or liens. As a result, Complainant Harris was forced to pay the City of Philadelphia $16,521.48 to resolve the outstanding judgments and/or liens on the property. (N.T. V6 231-35; C.E. 10, 77) Even though Complainant Harris was the President of Skintight Lounge, Inc., he was not involved in the determination of the amount to be paid to the City of

Philadelphia. Respondent Richter, while admitting that the City of Philadelphia may take a lesser amount, testified that Complainant Harris was not "capable of negotiating," explaining that negotiating was "a little beyond his ability." As a result of all of Respondents' actions, Complainant Harris, at the end of the sale, received $5,000. (N.T. V1 91-2)

The evidence produced at public hearing is abundantly clear that Respondent Girard's loan to Complainant Harris was predatory. The loan contained predatory terms such as: high interest rate, pre-payment penalties, high up-front fees and high late fees. Complainant Harris did not understand the terms and conditions of the loan and the loan was structured to give Respondent Girard control over Skintight Lounge, Inc. Respondent Richter did not conduct any underwriting to determine whether Complainant Harris was able to repay the loan. As, Mr. Butler testified, it was a "win-win" for Respondent Girard and Respondent Richter. Either the loan gets repaid with all of the interest or the loan gets partially repaid followed by default. The default allows the Respondents to take back the establishment and resell it to someone else. (N.T. V2 175-76) The evidence shows that the loan to Complainant Harris was predatory.

We now move to the alleged similarly situated persons that Respondents loaned money to and the circumstances of those loans.

William Davis (hereinafter "Mr. Davis")

Mr. Davis, an African American male, suffered a broken spine as a result of an accident. Mr. Davis received a substantial amount of cash as a settlement of his legal claim. (N.T. V3 7) Prior to and after his injury, Mr. Davis worked at a bar and restaurant,

Black Rock Lounge, as a manager. Even though he was employed as a manager, Mr. Davis testified that he had no experience as a business owner nor was he ever involved in the financial aspects of the bar and restaurant. (N.T. V3 10) On or about February 13, 2002, Mr. Davis purchased the Black Rock Lounge for $125,000. Mr. Davis changed the name of the establishment from Black Rock Lounge to On The Rox Lounge. (N.T. V3 10) He paid for the bar with cash and, as a result, owned the bar free and clear without a mortgage. (N.T. V3 82) The establishment consisted of a bar and restaurant on the ground floor and an apartment above the bar. (N.T. V3 9) Mr. Davis also moved his residence to the apartment. (N.T. V3 9) In February 2003, Mr. Davis encountered some financial difficulties and was being forced to close the establishment because the electricity was stopped for failure to pay an outstanding bill. (N.T. V3 13, 96) At that time, Mr. Davis approached a representative from Apple Vending to discuss a loan to resolve the outstanding utility bills. Apple Vending was the company that supplied the bar with vending machines such as cigarette machines, pool tables and poker machines. The representative directed Mr. Davis to Respondent Richter and Respondent Girard. (N.T. V3 102-03) After several meetings, Respondent Richter and Respondent Girard agreed to provide Mr. Davis with a loan not only to pay the electric bill but several other outstanding utility bills.

On or about May 12, 2003, Mr. Davis met with Respondent Richter and signed the loan documents. (C.E. 25) The loan documents for Mr. Davis were virtually the same as the loan documents for Complainant Harris. Respondent Girard loaned $22,000 to Mr. Davis and On the Rox, Inc. The loan consisted of: weekly payments of $189.00; legal fees in the amount of $1,250.00 and a service charge of $600.00. These

fees were financed into the loan for a total principal of $21,850.00. (C.E. 25) The loan documents also provided for an interest charge in the amount of $17,480 for a total loan payback of $39,330.00. While the loan states the interest rate was 20 percent add-on interest pursuant to the Rule of 78, the actual effective interest rate was slightly over 35 percent. (N.T. V2 37-38; C.E. 12) In addition to the pre-payment established by the Rule of 78, the loan documents contained another pre-payment penalty consisting of six months interest if the loan was paid in full at any time within the first six months of the term of the loan. (C.E. 25) The loan documents also provided for an irrevocable limited power of attorney and a confession of judgment that gave Respondent Girard effective control over On the Rox, Inc. in the event of a default. Furthermore Respondent Girard required that Mr. Davis sign an undated letter of resignation from his corporation at the signing of the loan documents. (C.E. 25) There was a late penalty of five percent of the weekly payment. In addition, any late fee was assessed at the end of the month and deducted from any loan payments made during the following month. (C.E. 25) The terms and conditions of Mr. Davis' loan certainly contain characteristics of a predatory loan.

Mr. Davis' testimony at the public hearing indicated that the only term of the loan he truly understood was the weekly payment. (N.T. V3 20) Specifically, he did not understand the meaning or effect of a pre-payment penalty, a confession of judgment, an irrevocable power of attorney or an undated resignation letter. (N.T. V3 22) Surprisingly, Mr. Davis testified that he did not even know that the loan was a mortgage. (N.T. V3 21) At the loan settlement, Mr. Davis testified that Respondent Richter did not review the loan documents but rather simply indicated where to sign the documents.

Mr. Davis trusted Respondent Richter and did not closely review the loan documents. (N.T. V3 188)

Respondents Richter and Girard, for their part in the loan process, did not conduct any due diligence in making the loan and did not assess whether Mr. Davis had the ability to repay the loan. There was no discussion with Mr. Davis regarding his credit score or his credit report. He was not asked to produce corporate or personal tax returns nor any personal or corporate financial documents. (N.T. V3 16-17) Respondent Richter testified that he conducted his "usual due diligence" that consisted of verbal conversations with a friend of Mr. Davis, a vendor, and a broker. (N.T. V9 270-71)

Subsequent to Respondent Girard's initial loan to Mr. Davis, Respondent Girard flipped Mr. Davis' first loan to a larger second loan. Approximately seven months after the first loan, on or about January 14, 2004, Respondent Girard processed a second loan to Mr. Davis and On the Rox, Inc. with a total principal of $41,785. (C.E. 29, 30) The Respondents characterized the second loan as a "reset" of the first loan. (C.E. 30) A review of the terms of the second loan reveals that it consisted of $14,254 to "pay bills, LCB fines and get open" plus an additional $27,004 which Respondent Girard claims was the remaining balance from the first loan. However, the original loan principal was only $21,850. (C.E. 30) As a result, the Respondents rolled the entire principal of the first loan into the second loan. In addition, the second loan included additional legal fees in the amount of $100 and points in the amount of $400 that were financed into the loan. (C.E. 30) The second loan provided for interest charges in the

amount of $41,785 for a total amount of payback of $83,570, and five years of weekly payments of $321. (C.E. 25)

As with the original loan, the Respondents did not conduct any due diligence. There was no discussion regarding personal or corporate finances and Mr. Davis was never asked to produce any documents. (N.T. V3 33) In fact, Mr. Davis testified that the *entire second loan was "a big surprise" to him.* (N.T. V3 147) The only documentation of the second loan was a one page note and a one page certified copy of a corporate resolution generated by Respondent Girard. (C.E. 29) Furthermore, the record reflects that Respondent Girard, after the loan was processed, did not disburse any funds directly to Mr. Davis. (N.T. V3 25) When Mr. Davis needed work completed or bills paid, he would contact Respondent Richter who would proceed to write a check from the loan proceeds. (N.T. V3 24-25) Respondent Richter, on several occasions, would advance small amounts of money to pay utility bills, a roof repair bill, ice bills, and an alarm system bill. (C.E. 27) Because of difficulties with contractors and the payment of bills, Mr. Davis fell behind in payments to Respondent Girard. (N.T. V3 35)

The next step in this "process" proved itself to be very surprising, if not shocking, to Mr. Davis. In April or May of 2004, an individual named Ed Smith knocked on Mr. Davis' door and informed him that he (Mr. Davis) needed to get out of the establishment because Mr. Smith had just bought the bar from Respondent Richter. (N.T. V3 37, 158) Mr. Davis had never met nor even spoken to Mr. Smith. Mr. Davis called Respondent Richter and was informed by Respondent Richter that "Ed Smith had the bar now."(N.T. V3 162) Mr. Davis had not received any type of notification or any document whatsoever indicating the sale of the bar to Mr. Smith.

In fact, the evidence reveals that Respondent Richter and Respondent Girard negotiated the sale without consulting Mr. Davis. On March 25 and March 29, 2004, Respondent Girard accepted a total of $20,000 in deposits from Mr. Smith for the sale of Mr. Davis' establishment. (N.T. V6 276) Even after Respondent Girard had accepted Mr. Smith's deposit, it still made loan advances to Mr. Davis on March 31 and April 8, 2004. (C.E. 27)

Mr. Davis testified that he resisted Mr. Smith's efforts to evict him. (N.T. V3 38) After calling the police, Mr. Davis was forced to leave the premises without his personal possessions. When he obtained access to retrieve the items, Mr. *Smith* told him that all of his personal effects and property were thrown in the trash. (N.T. V3 163) Ultimately Mr. Davis attended a settlement to formalize the sale to Mr. Smith for a total of $150,000. It is important to note that Mr. Davis was not involved in any of the negotiations of the sale and more precisely, Mr. Davis did not want to sell the establishment. On the day of the settlement, Mr. Davis received $1,100.53. (C.E. 31) The settlement also provided for a Seller Take Back in the amount of $71,000; Mr. Davis only understood that Mr. Smith was to pay him monthly. Mr. Davis testified that Mr. Smith only paid him $350 as a result of the Seller Take Back. (N.T. V3 43)

According to the final Settlement Sheet, Respondent Girard received $57,244 as a pay off of Mr. Davis' loan. The actual principal on the original loan was $20,000 and the principal on the second loan was $14,000. (C.E. 25, 28) Respondent Richter made over fifty-five percent in return in eighteen months. Mr. Davis' was charged $15,000 in consulting fees and had to pay an additional $18,971.82 in bills outside of the closing. (C.E. 31)

The evidence presented at public hearing clearly establishes that Respondent Girard's loans to Mr. Davis contained predatory terms and conditions. The terms gave Respondents complete control and said control was exercised in the sale to Mr. Smith without consulting Mr. Davis. The Respondents did not conduct due diligence to determine whether Mr. Davis had the ability to repay. This is a classic example of a predatory loan as identified by the applicable precedents.

Raquel Smith (hereinafter "Ms. Smith)

Ms. Smith, an African American female, was contacted by her brother-in-law, Khalid Wilson, Mr. Wilson told her that a bar and restaurant located at 1348 South 33rd Street in Philadelphia was available. The bar was known as the Hideaway. (N.T. V4 196) Ms. Smith visited the bar and told Mr. Wilson she was interested in the bar and restaurant. (N.T. V4 198) It is important to note that Ms. Smith was an unemployed student who had no experience in bar business and had never owned any type of business. (N.T. V4 199) Irrespective of her inexperience, a meeting was arranged by Mr. Wilson with Respondent Richter. (N.T. V4 199) Subsequent to the meeting, Ms. Smith agreed to rent the establishment from Respondent Girard for $350 per week for a period of four to six months. Pursuant to the agreement, Respondent Girard, operating as "Lender in Possession," provided Ms. Smith with a letter granting her the right to take the necessary steps to secure the corporately owned property of R&R Hideaway, Inc. (C.E. 14) Upon receipt of this letter; Ms. Smith went to the location and discovered that the bar was still in operation. (N.T. V4 212-15) Furthermore the previous owners were "outraged" that she was attempting to operate the establishment. This certainly created

a dangerous situation for Ms. Smith. After several attempts and extremely uncomfortable situations, the previous owners removed their belongings and vacated the premises. (N.T. V4 214)

On March 26, 2004, Ms. Smith entered into an agreement with Respondent Girard to purchase the establishment. (N.T. V4 219) A review of the loan documents reveals that Respondent Girard loaned $35,000 to Ms. Smith. (C.E. 16) The loan terms consisted of four years of weekly payments of $321 with an additional $100 to be escrowed for taxes. (C.E. 16) The loan provided for interest charges in the amount of $29,640, resulting in a total payback of $66,690. (C.E. 17) Consequently the actual effective interest rate on the loan was slightly above 34 percent. (N.T. V2 37-38) Respondent Girard also provided Ms. Smith with a settlement loan for $4,302.

The record reflects that the loan to Ms. Smith contained some of the same terms in the aforementioned loans to Complainant Harris and Mr. Davis. These terms included: two pre-payment penalties, confession of judgment, an irrevocable limited power of attorney ceding control to Respondent Girard, and an undated letter signed by Ms. Smith that effectively resigned her position with the corporation at the inception of the loan. (C.E. 12, 16) In addition, Ms. Smith was required to place Respondent Richter and Barbara Leonarski, a Respondent employee, on the Board of Directors of the establishment. It is abundantly clear that the terms of the loan to Ms. Smith contained numerous indicia of a predatory loan.

Ms. Smith testified that she had little to no understanding regarding the terms of the loan. Also, as with the loans to Complainant and Mr. Davis, Respondent Richter and Respondent Girard conducted no due diligence in making the loan and made no

assessment as to her ability to repay the loan. In fact, Respondent Richter assured Ms. Smith that the bar was in a good area and made a lot of money. (N.T. V4 226) At the time Respondent Richter made this "assurance," Respondent Girard was a "Lender in Possession" of the establishment. Respondent Richter repeatedly testified that "Lender in Possession" only occurs through foreclosure or when the borrower relinquishes the keys to the establishment. In this case, Respondent Richter testified that the previous owner, Ms. Ransom, was "seriously in default."(N.T. V6 248) He further testified that Ms. Ransom's daughters operated the establishment and that "they did not like to pay their bills and they liked to party."(N.T. V6 249)

Respondent Richter's knowledge that the previous owner was in serious default clearly contradicts the assurance he gave Ms. Smith that the bar was making a lot of money. Respondent Richter could not produce any evidence that the establishment had performed well or even had the potential to perform well in the future. It is somewhat baffling to wonder why Respondent Girard or Respondent Richter would make a loan to a student with no job and no money for the purchase of an establishment that had a history of poor performance and management.

Subsequent to the first loan, Respondent Richter and Respondent Girard then proceeded to flip Ms. Smith's loan into a second loan. This transaction took place approximately five months after the original loan and had a total principal of $41,723. (C.E. 19, 20) The Respondents characterized the second loan as a "reset" to satisfy a delinquency and to repay the $4,302 settlement loan. (C.E. 20) The Respondents rolled the entire principal of the first loan - $37,167 – plus the $4,302 into the second loan. The loan provided for an interest charge of $41,723 for a total amount of payback of

$83,446. (C.E. 20) Lastly the loan term consisted of five years with weekly payments of $275 with a final balloon payment at the end of the loan of $12,221. Certainly, the final balloon payment is yet another characteristic of a predatory loan.

Subsequent to Respondents processing the second loan to Ms. Smith, an individual was shot in the establishment. At this point, Ms. Smith contacted Respondent Richter and told him she no longer wanted to be involved with the bar. (N.T. V4 241-242) Respondent Richter told her he already had a buyer in mind. He further requested that she bring him the keys to the establishment. When Ms. Smith went to the establishment to retrieve her personal belongings, a man and a woman were already in the bar and told her she could not enter the premises. (N.T. V4 243) It was several weeks before Respondent Richter permitted her access to the bar in order to retrieve her personal belongings. (N.T. V4 245, 247) It was several months later when Ms. Smith learned that another brother-in-law of hers, Saleem Wilson, was running the establishment. Ms. Smith testified that she had not given authorization to placing Saleem Wilson in charge of the bar and she had received no notice from Respondents that he was now in charge. This occurred despite the fact that Ms. Smith was still President of the corporation. (N.T. V4 249)

Subsequent to Respondent Richter turning the establishment over to Saleem Wilson, Respondent Girard processed yet another loan, a second "reset," to Ms. Smith's corporate entity. This loan was processed on April 22, 2005 without Ms. Smith's knowledge. (C.E. 22) The second reset loan consisted of a consolidation of the previous two loans with a total principal of $94,515 and an interest charge of $38,676 for a total payback amount of $133,191. In addition, this loan included a final balloon

payment of $50,000. (C.E. 22) Respondent Richter acknowledged in his testimony that this second reset was a loan to Saleem Wilson despite the fact that Ms. Smith was still President of the corporation. When the establishment was finally sold, Ms. Smith was not involved in the sale of the establishment nor did she receive any of the monies. (N.T. V4 249-50) When Ms. Smith met with Respondent Richter, he informed her that she would not receive any money because of bills incurred under not only her management but also bills incurred by Saleem Wilson. At the settlement, Respondent Girard received $77,586.44 and Ms. Smith did not receive any money.

The record clearly establishes that Respondent Girard's loans to Ms. Smith contained predatory conditions such as prepayment penalties, high interest rates, loan flipping (resets), and balloon payments. Ms. Smith had no ability to repay any of the loans and Respondent Richter did not conduct any assessment of her ability to repay. Furthermore, Respondent Girard and Respondent Richter made several resets of the original loan without consulting Ms. Smith. Accordingly, reviewing the facts in the context of law, as established by case precedent, the loans to Ms. Smith were predatory.

Israel Colon (hereinafter "Mr. Colon")

Mr. Colon, a Puerto Rican male, was contacted by a friend, Carmello Rivera, who was interested in selling his bar and restaurant. The bar and restaurant was called Two Street Café, Inc. (N.T. V4 13) Subsequent to that initial conversation, Mr. Colon and his partner, Daniel Quintana, a Puerto Rican male, decided to purchase the bar and restaurant from Mr. Rivera. (N.T. V4 15) The parties then determined that Mr. Colon's

interest in the establishment would be 90 percent and Mr. Quintana's share would be 10 percent. (N.T. V4 64) Mr. Colon secured an investor, James Farley, to provide capital for this venture.

On or about May 8, 2001, Mr. Colon and Mr. Quintana purchased the stock of the establishment from Mr. Rivera for $250,000. The sale documents were executed by Mr. Quintana. Mr. Colon and Mr. Quintana were given the impression that only one person could sign the sales documents. (N.T. V5 11) The SPA (Stock Purchase Agreement) provided for cash payments totaling $100,000 at settlement with the remainder of the purchase financed with an installment contract note between Colon, Quintana and Mr. Rivera. (C.E. 68) The terms of the installment contract provided for sixty monthly payments of $3,000 at an interest rate of 7.4 percent. James Farley advanced the $100,000 cash payment to Mr. Colon and Mr. Quintana as an investment. All of the above transactions occurred at Respondent Girard's offices since Mr. Rivera still had an outstanding loan with Respondent Girard. (N.T. V4 24) Subsequent to May 8, 2001, Respondent Girard purchased the installment note from Mr. Rivera. (N.T. V7 49) Respondent Richter told Mr. Colon that the payments should be then forwarded to Respondent Girard. (N.T. V4 25-26) Soon thereafter, James Farley, on behalf of Two Street Café, Inc., paid off the note held by Respondent Girard; and Mr. Colon paid James Farley the monthly $3,000 to satisfy the obligation. (N.T. V4 32)

It is at this point, late December 2004, that Mr. Colon and Mr. Quintana met with Respondent Richter. The purpose of the contact was to inquire regarding a loan to pay some bills and make improvements in the establishment. (N.T. V4 32) On or about

January 10, 2005, Respondent Girard originated a loan to Mr. Colon, Mr. Quintana and Two Street Café, Inc. in the amount of $35,000. (C.E. 70) The specifics of the loan reflect similar terms and conditions of the previous loans in the instant case. The loan terms consisted of four years with weekly payments of $318 plus an additional $100 per week to be escrowed for taxes. (C.E. 71) The loan terms included legal fees and points which were financed into the loan for a total principal of $36,800. The loan further provided for an interest charge in the amount of $29,440 which resulted in a total payback of $66,240. (C.E. 71) Consequently, as with the other loans, while the loan documents state it was 20 percent add-on interest, the actual interest rate was slightly over 34 percent. (N.T. V2 37-38)

In essence, the loan to Mr. Colon mirrored the other loans in this case. There were two pre-payment penalties built into the loan and the loan provided for a confession of judgment and an irrevocable power of attorney. There were terms and conditions that provided Respondent Girard with control over Two Street Café, Inc. in the event of a default. (C.E. 70) Lastly, the loan documents provided for a late penalty of five percent of the weekly payment that equated to a monthly late fee of 21.65 percent.

A review of the testimony at the public hearing clearly shows that neither Mr. Colon nor Mr. Quintana had any understanding of the terms of the loan agreement. Both men testified that they did not understand the interest rate, prepayment penalty or irrevocable power of attorney. Mr. Colon and Mr. Quintana trusted Respondent Richter. (N.T. V4 187) On his part, Respondent Richter did not conduct any due diligence in making this loan. There was no attempt to assess Mr. Colon or Mr. Quintana's ability to

repay the loan. Respondent Richter did not request credit scores, personal tax returns, corporate tax returns or any other financial document.

Subsequent to the loan, Mr. Colon and Mr. Quintana were delinquent in payments to Respondent Girard. (C.E. 71) What transpired next was a scenario that has occurred several times in regard to Respondent Girard and Respondent Richter's business practices. One morning, Mr. Colon observed an individual, later identified as Marvin Kilgore, and a locksmith attempting to gain access to his establishment. (N.T. V4 38) When Mr. Colon spoke to Mr. Kilgore, Mr. Kilgore told him that Respondent Richter owned the place and he would be "taking it over." Subsequently James Farley called Mr. Colon and told him that Mr. Kilgore was the new owner of the bar. More importantly, Mr. Colon had never received any notice regarding a sale or foreclosure proceedings nor did Mr. Colon have any involvement in the sale of the establishment. (N.T. V4 40)

On or about August 25, 2009, the Two Street Café, Inc. was sold to 2 Street Love, Inc., which is owned by Mr. Kilgore. (C.E. 73) During the process of the sale, Respondent Richter identified himself as the Lender-in-Possession of Two Street Café, Inc. (N.T. V7 54) After the sale, Respondent Girard received a loan payoff in the amount of $53,109.09. According to the loan ledger, that amount represented a loan payoff in the amount of $45,355, late fees in the amount of $6,607 and yet another payoff in the amount of $1,075. (C.E. 71) As a result of the sale and Mr. Colon's and Quintana's loan, Respondent Girard, in a year and eight months, made a total of $65,405.09 on a $35,000 loan.

The evidence produced at the public hearing clearly shows that Respondent Girard's loan to Mr. Colon and Mr. Quintana contained several predatory terms and conditions such as: two pre-payment penalties, high interest rates and high late fees. Also, the loan was structured to provide Respondents with control over the corporation. That control was exercised when; unknown to Mr. Colon and Mr. Quintana, Respondent Girard sold the corporation to Mr. Kilgore. Neither Mr. Colon nor Mr. Quintana had any real understanding of the terms and conditions of the loan. Therefore, using the analysis developed by case precedent, the Respondents' loan to Mr. Colon was predatory.

Bernadette Biggers (hereinafter "Ms. Biggers")

Ms. Biggers, an African American female, worked at a bar and restaurant called West Oak Lane Inn as a bar maid. (N.T. V6 7) This particular establishment was owned by Maxine Jefferson, an African American female, who was Ms. Biggers' aunt. The establishment included the bar and restaurant as well as several apartments. (N.T. V6 9-10) In 1997, Ms. Jefferson sold the establishment to Ms. Biggers. When Ms. Biggers purchased the establishment, she changed the name to Nicky's Spot. During the same time period, Ms. Biggers moved into an apartment located above the bar. (N.T. V6 7-8, 10)

When Ms. Biggers purchased the establishment, she borrowed money from Respondent Girard. Specifically, Respondent Girard originated a loan to Ms. Biggers in the amount of $32,150. The loan term consisted of four years of weekly payments of $278 with an additional $100 per week to be escrowed for taxes. The loan fees

included legal fees in the amount of $1,250 and a service charge of $900. (C.E. 79) Both fees were financed into the loan for a total principal of $34,300. The loan terms provided for an interest charge of $25,720 and a total loan payback of $57,870. (C.E. 79) As with the other loans, the actual effective interest rate on the loan was slightly over 34 percent. (C.E. 12; N.T. V 2 37)

Ms. Biggers creditably testified at the public hearing that she had little to no understanding of the terms and conditions of the loan. The only aspect she understood was the amount of her weekly payment. (N.T. V6 16) Ms. Biggers further testified that she did not know anything about pre-payment penalties, add-on interest or the interest rate charged by Respondent Girard. Incredibly, Ms. Biggers testified that she was unaware that the loan was a mortgage. (N.T. V4 313) Respondents Richter and Girard did not conduct any due diligence prior to making the loan to Ms. Biggers. Respondents made no assessment in regard to Ms. Biggers' ability to repay the loan. In fact, Ms. Biggers testified that she was never asked any questions regarding her credit score or her personal tax returns.

Ms. Biggers made her required payments for three and a half years before Respondent Girard reset her loan on or about May 14, 2001. The second loan refinanced the balance of the first loan in the amount of $10,844, another loan payoff in the amount of $5,115 and late fees in the amount of $2,114. (C.E. 79,80) In August of 2001, Respondent Girard reset Ms. Biggers' loan a second time to purportedly pay $5,000 for payment of taxes and a vendor bill. (C.E. 80) Subsequently, Respondent Girard then originated a third loan to Ms. Biggers in the amount of $47,639. This loan term provided for $350 per week with an additional $100 per week to be escrowed for

taxes. The third loan included: a balloon payment of $4,294, an interest charge of $48,005 and a total payback amount of $95,644. (C.E. 80) The actual interest rate on the loan, instead of the 20 percent add-on interest, was slightly over 34 percent. (C.E. 12)

At some point after the second reset, Respondent Richter told Ms. Biggers he did not think she could handle the bar anymore. (N.T. V6 64) He also told her since she was behind in mortgage payments she was in danger of foreclosure. (N.T. V6 116) Interestingly, Respondent Richter said he had a buyer for the establishment. Ms. Biggers, though not wanting to sell, agreed to give up the bar. (N.T. V6 29) On December 2, 2004, Respondent Girard sold Nicky's Spot, Inc. to 1945 Little Spot, Inc. (C.E. 76) Respondent Richter testified that he was involved in setting the terms for the sale of the corporation. (N.T. V7 60) Ms. Biggers creditably testified that she had nothing to do with the negotiations of the setting of the terms of the sale. At the conclusion of the sale, Respondent Girard received three separate loan payoffs, in the amounts of $49,032, $1,789 and $9,437, for a total of $60,258. (C.E. 80) In addition, Ms. Biggers paid a total of $46,801 on the original loan prior to refinancing it and $33,809 on the final loan for a total of $80,610. While Respondent Girard only disbursed $74,989 to Ms. Biggers, Respondent Girard received a total of $140,868 in payments. Consequently, as Commission Counsel notes, Respondent Girard nearly doubled its money during the course of the loan transactions with Ms. Biggers. Lastly, the Settlement Statement in this sale indicates that Ms. Biggers received a Seller Take-Back in the amount of $60,000. (C.E. 76) Firstly, Ms. Biggers testified she did not even know the meaning of a Seller Take-Back. Furthermore she testified that Respondent

Richter told her she would be paid $500 a week until the debt was satisfied. (N.T. V6 31, 123, 140) Ms. Biggers has never received any of the payments. (N.T. V6 32)

Clearly the evidence presented at the public hearing shows that Respondent Girard's loans to Ms. Biggers contained predatory conditions such as high interest rates, prepayment penalties, resets of loans, balloon payments and high late fees. The loans were structured to give Respondents nearly complete control over the corporation, and the evidence is clear that Respondents forced Ms. Biggers to sell her corporation. The evidence does establish that the loans to Ms. Biggers were predatory.

Earl Marable (hereinafter "Mr. Marable")

When the public hearing in this matter commenced, Mr. Marable, race/black, was in poor physical condition and had a limited ability to remember things and events. (N.T. V2 297) During the course of the proceedings, Mr. Marable passed away. (N.T. V7 7) His wife, Grace Marable, race/black, testified regarding her husband's dealings with Respondent Girard and Respondent Richter. (N.T. V2 297)

In 1986, Mr. Marable and his corporation, Casino #1, Inc. acquired a bar and restaurant located at 4691 Hawthorne Street, Philadelphia. (C.E. 32) On February 9, 1990, Respondent Girard originated a loan to Mr. Marable and his corporation to expand the establishment. On April 4, 1991 Respondent Girard refinanced the first loan into a second loan with a principal balance of $ 49,889. (C.E. 35) Subsequently, on July 3, 1992, Mr. Marable paid off the balance of the loan and a mortgage satisfaction was executed by Respondent Gerard. (N.T. V2 309; C.E. 36)

Later, on February 3, 1994, a loan was executed between Respondent Girard and Mr. Marable and Casino #1, Inc, with Mrs. Marable's participation. The specific loan term consisted of two years with weekly payments of $221.00 with an additional payment of $100.00 per week for taxes. (C.E. 37) All fees and charges were financed into the loan for a total principle of $16,450. The loan also provided for interest charges in the amount of $6,580.00 and a total payback of $23,030. (C.E. 37) As with other Respondents' loans, the actual effective interest rate was slightly over 34 percent.

This loan contained an explicit prepayment penalty consisting of a payment of six months interest if the loan was paid in full at any time within the final six months of the loan. Mr. Marable was also required to sign an undated letter providing for his resignation from his corporation at the inception of the loan. (C.E. 27) In addition, Mr. and Mrs. Marable were required to place Respondent Richter and his wife on the Board of Directors of the corporation. Clearly since the Board of Director had three members, Respondent Girard always had effective control over the establishment.

Over the next several years, Respondent Girard reset the original loan to Mr. Marable and Casino #1, Inc. several times. First, on November 7, 1994, the loan principal increased to $38,394. This figure included the balance of the original loan in the amount of $12,407.00, a late payoff charge of $122.00 and the remainder in other monies. (C.E. 38, 39) Approximately nine months later, the loan was flipped or reset for the second time. This time the loan principal increased to $40,127, including the balance of the previous loan in the amount of $37,912, a late charge of $426.00 and the remainder consisting of additional monies. (C.E. 38) Both of the resets were subject to the same terms and conditions of the original loan.

On December 3, 1999, Respondent Girard reset the loan for a third time. This time, the principal of the new loan was $19,456 which represented the balance of the previous loan ($18,454.00) plus a late payoff in the amount of $952.00. (C.E. 41) Eight months later, on July 25, 2000, Respondent Girard reset the loan for a fourth time. The principal of this loan was $29,079 which represented the balance of the previous loan ($19,625.00) plus additional monies. (C.E. 42, 43, 44) Subsequently, less than a year later, Respondent Girard reset the loan for a fifth time. The principal of the new loan was $34,699 which represented the balance of the previous loan ($33,338.00) plus a late payoff of $1,251.00. (C.E. 44, 45)

Mrs. Marable's testimony at the public hearing clearly established that both she and her husband had a limited understanding of the loans and condition of the loans and the resets of the loans. She only understood the amount of the weekly payments to Respondent Girard. (N.T. V2 327-28) Respondents Girard and Richter did not conduct any due diligence prior to making these loans and did not make any assessment of the Mr. Marable's ability to repay the loans. Respondent Richter did not review any tax returns, sales receipts or records of the establishment. There was no discussion regarding the personal finances of Mr. Marable. (N.T. V2 317-18)

Ultimately, Mr. Marable made the decision to close the establishment because he had exhausted his financial resources. (N.T. V2 338-39) When Mr. Marable contacted Respondent Richter, Respondent Richter indicated a desire to sell the establishment. On February 3, 2004, the establishment was sold to Maurice Mapp (race, Black), and Escape Lounge, Inc. for $90,000. The Marable's received $15,826.47 and Respondent Girard received $39,237 as a result of the sale. (N.T. V2 342, C.E. 48)

A review of the evidence clearly shows that Respondents' loans to the Mr. Marable contained predatory terms and conditions such as high interest rates, pre-payment penalties, high up-front and late fees, and loan flipping or resets. The terms and conditions of the loans gave Respondent Girard nearly complete control over the corporation. The evidence also shows that Respondent Richter conducted virtually no underwriting or due diligence to determine the Mr. Marable's ability to repay the loans. For these reasons, the Respondents' loans to the Mr. Marable were predatory.

Johnnie Roach (hereinafter "Mr. Roach")

In January, 1993, Johnnie Roach, (race, Black/African American) purchased 1260 Hotel and Restaurant for $133,000. In November, 1994, Mr. Roach and a partner, John Brock, purchased 53 Basin Street for $90,000. Within several years, Mr. Roach paid off the debt on each property and owned each property free and clear of any mortgage. (N.T. V5 35, 41) Mr. Roach then approached Respondent Richter to inquire about a loan to pay off tax obligations and to buy out Mr. Brock's interest. (N.T. V7 28) Soon thereafter Respondent Richter originated a loan in the amount of $25,000 to Mr. Roach and 53 Basin Street. (C.E. 53, 54) The loan terms included four years of weekly payments in the amount of $233.00 and an additional $100.00 for taxes. Also, the loan terms included legal fees ($1,200) and charges for points ($750). The total principal of the loan was $26,950. Lastly, the loan provided for interest charges in the amount of $21,560 and a total payback of $48,510 the effective interest rate on the loan was just over 34 percent. (N.T. V2 37-38)

On March 1, 2003, Respondent Girard originated a second loan to Mr. Roach and 1260 Hotel and Restaurant Corp. (C.E. 51, 52) The terms and conditions of the second loan were similar to the first loan. Each of the loans contained pre-payment penalties, an irrevocable limited power of attorney, confession of judgment and other terms that essentially provided Respondent with control over Mr. Roach in the event of a default. (C.E. 51) In addition, Mr. Roach was required to sign undated recognition letters for each corporation at the beginning of each loan. (C.E. 51) Mr. Roach was required to place Respondent Richter and Barbara Leonarski, an employee of Respondent Girard, on the Board of Director of both corporations, 1260 Hotel and Restaurant and 53 Basin Street. This move effectively gave Respondent Girard control over both corporations in the event of a default on the loans.

Mr. Roach testified that he had an extremely limited understanding of the terms of the loans with Respondent Girard. The only term Mr. Roach understood was the amount of his weekly payment on the loans. (N.T. V5 47-48) He did not understand pre-payment penalty, irrevocable power of attorney or confession of judgment. As with other loans, Respondent Girard did not conduct any due diligence in making the loans to Mr. Roach.

On April 17, 2003, Respondent Girard made additional loans to both corporations in the amount of $5000 with an add-on interest rate of 20%. (C.E. 55-58) The loans also provided for an interest charge of $4,200 which resulted in a payback amount of $9,450. At the public hearing, Mr. Roach testified that he had no recollection of either loan. As a result of these loans, Mr. Roach fell behind in both loans to the two corporations. On November 26, 2006, Respondent Girard reset the loans to Mr. Roach

and his corporations. Specifically Respondent Girard originated a new loan to 53 Basin Street, Inc. with a new principal amount of $38,100 and originated a new loan to 1260 Hotel and Restaurant Inc., for the same principal amount of $38,100. The two loans provided for interest charges in the amount of $30,480 and a payback amount of $68,580. Each of the loans required weekly payments of $282 for a four year period and a final balloon payment for $10,000. (C.E. 59, 60)

Both of Mr. Roach's establishments were closed because of citations over a period of time. During that time, Mr. Roach once again fell behind in his payments on the loan. (N.T. V5 60-61) Respondent Richter suggested that Mr. Roach sell 1260 Hotel and Restaurant Inc. This suggestion was made because outstanding citations could have resulted in the revocation of the establishment's liquor license. (N.T. V5 61) In response to this apprehension, Mr. Roach sold the establishment on April 2, 2007. (N.T. V5 63) Respondent Girard received $50,026 which represented loan payoffs of $49,153 and $873. (C.E 60) Mr. Roach did not receive any money as a result of this sale.

On April 20, 2007, Respondent Girard forwarded a letter to Mr. Roach informing him that Respondent Girard was the Lender-in-Possession of 53 Basin Street, Inc. (C.E. 62) The letter further informed Mr. Roach that he was removed from his duties as President of 53 Basin Street, Inc. because of non-performance. (C.E. 62) Soon thereafter, Respondent Girard changed the locks at the establishment. (N.T. V5 68) On July 2, 2007, Respondent Richter sold 53 Basin Street, Inc to Girard Holding LLC and, on the same day, transferred the deed to Girard Holding LLC. (N.T. V7 44) The evidence presented at the public hearing indicates that Respondent Richter is the

President of Girard Holding, LLC. (N.T. V7 44) As a result of the sale, Respondent Girard received a mortgage payoff of $24,751.30 and Respondent Richter gained ownership of the property previously owned by Mr. Roach and 53 Basin Street, Inc. (C.E. 64) Mr. Roach did not receive any money from the above transaction. It is extremely disheartening that Mr. Roach went from owning the establishments free and clear to losing both establishments with no money from either sale.

Upon review of the evidence presented at public hearing, it is abundantly clear that Respondent Girard's loans to Mr. Roach contained predatory terms such as balloon payments, high interest rates, pre-payment penalties, loan flipping (resets) and high late fees. These predatory terms operated to give Respondent Girard nearly complete control over Mr. Roach's two corporations. This control was apparent when the Respondent Girard proceeded to sell Mr. Roach's corporation without his participation. Also, the evidence established that the Respondents conducted no due diligence to ascertain whether Mr. Roach had any ability to repay his loans. The evidence is clear that Respondents loans to Mr. Roach were predatory.

Having shown that the loans at issue were predatory and unfair, the next step in the process of establishing a prima facie case of reverse redlining is that the complaining, party must show that the Respondent either intentionally targeted persons on the basis of their race or that there was a disparate impact on persons on the basis of their race. McGlawn, 891 A.2d at 772. In McGlawn, Commonwealth Court provided that disparate impact may be established by statistical evidence in reference to a lender or broker's business activities. In the McGlawn case, the mortgage broker prepared sixty-six mortgage loan applications that identified race in the mortgage documents.

Sixty-five of the sixty-six applicants were race, African American. Furthermore, nine of the eleven properties were located in areas that were ninety percent African Americans. After reviewing those statistics, Commonwealth Court affirmed the Commission's determination that the "broker's business activities had a disparate impact on African Americans and African American's neighborhoods." Therefore in the instant case, there must be an examination of the Respondents' business activities to assess whether there is a disparate impact based on race.

Upon review of the evidence in this matter, it's clear that the Respondents' business is almost exclusively with African Americans and other minorities and in predominantly African American and minority neighborhoods. During the investigation of the instant case, the Respondents provided a list of Respondent Girard's loan activity from June 1, 2001 to June 30, 2002. (N.T. V5 233) This list was provided to Joseph Shannon, Human Relations Representative for the Commission. Mr. Shannon was the investigator assigned to this matter. (N.T. V5, 229, 232) The document reveals that the Respondents originated thirty-two loans during that time period for the purchase or refinance of taverns in the Philadelphia area. (C.E. 65) Mr. Shannon testified that he questioned Respondent Richter regarding the race of the operator of each establishment on the list that received a loan for the purchase or refinance of a tavern. (N.T. V5 241-243) Mr. Shannon further testified that of the thirty-two loans, twenty-four went to Black /African Americans, four went to Hispanics, two went to Multi Racial persons, and two went to Caucasians. (N.T. V5 247-48) Hugh Irving, one of the persons identified by Respondent Richter as Multi-Racial, testified that his race was Black/African American. (C.E. 66) Ultimately, over 78 percent of Respondents' loans for

the purchase and/or refinance of a tavern went to Black/African Americans. The overall figure is that almost ninety-four percent of the Respondents' loans went to minorities.

Statistical evidence was also presented at the public hearing that related to the location and racial composition of the neighborhoods where the taverns were located. The average racial composition in the neighborhoods where the properties were located was seventy-nine percent Black/African American and eighty-seven percent minorities. Several witnesses, including Mr. Davis, Ms. Smith and Mr. Roach, testified that their establishments were located in predominantly Black neighborhoods. (N.T. V3 8-9; N.T. V4 197; N.T. V5 36-37)

Both the Commission and the Respondents proffered the testimony of others who borrowed money from Respondent Girard outside the time period delineated by Mr. Shannon. There were twelve additional people who testified at the public hearing. Ten of the twelve were Black/African Americans and the other two individuals were race, Hispanic.

Specifically the evidence produced at public hearing revealed that there were forty-four people who received loans from Respondent. Seventy-nine percent were to African Americans and other minority individuals. This fact indicates that Respondents practices had a disparate impact on Black/African Americans and other minority individuals.

When analyzing a reverse redlining case, the next step in the analysis is to determine whether a financial institution can avoid liability by a showing that its practices were legitimate. McGlawn, 891 A.2d 773. In the matter before the Commission, Respondent Richter asserted several business and market reasons for the

particular lending practices of Respondent Girard. Specifically Respondent Richter asserted that lending to bars and restaurants is a highly specialized area in the financial arena since traditional bank and finance companies typically don't make loans to bars and restaurants. Respondent Richter further asserted that the traditional principles of underwriting do not apply with regard to lending to bars and restaurants. Given the position taken by Respondents, it is necessary to review the business necessity defense asserted by Respondent Richter. Respondent Richter testified that no conventional lender would ever make a loan to these types of establishments, i.e. corner bars and restaurants. (N.T. V7 252) Respondent Richter further testified that he was providing borrowers with a great opportunity that they would not otherwise have but for Respondent Girard. (N.T. V8 9) However, a review of the evidence presented at the public hearing indicates that a number of lenders in fact do make loans to bars and restaurants in Philadelphia. Mr. Hoopes' creditably testified that both Penn Business and United Valley made loans to bars and restaurants. (N.T. V9 71) Both of these entities are traditional commercial lenders in the Philadelphia area. (N.T. V9 64-65) Mr. McCreesh, a liquor license lawyer in Philadelphia, testified that a number of lenders provided loans to bars and restaurants in the Philadelphia area, including Commerce Bank, Royal Bank, Beneficial Bank and Alliance Bank. (McCreesh Public Hearing Deposition 57-58) In addition, Mr. Butler testified that he certainly had seen commercial loans originated to bars and restaurants in the Philadelphia area. (N.T. V2 11) Clearly there is additional optional financing, other than Respondent Girard, that is available to bars and restaurants in Philadelphia. This additional financing was also illustrated by the number of liquor licenses in Philadelphia County. (C.E.) At the time of the public

hearing, there were 1,959 liquor licenses of which 1,400 were designated "R" for restaurants and bars in Philadelphia County. (N.T. V2 234-235; C.E. 81) The Respondent Girard, from June 1, 2001 through June 30, 2002, originated thirty-two loans for the purchase or refinance of taverns. (C.E. 65) Certainly the evidence indicates that there were financing options other than Respondent Girard. Therefore, Respondents' assertion that other lenders would not make loans to bars and restaurants is without merit.

Next, Respondents take the position that since loans to bars and restaurants are unique, the traditional rules of underwriting are not applicable. The Respondents take this position even though Respondent Richter stated at the public hearing that a tavern is a business that has the same objectives and responsibilities as other small businesses. (N.T. V7 241) At the public hearing, Respondent's own expert witness, Mr. Hoopes testified that a corner tavern is typically a small business consisting of a small bar and restaurant operation that sits on a corner. (N.T. V9 151) Mr. Hoopes further testified that regardless of whether it is a small or large establishment, the same basic underwriting principles apply when considering whether to provide a loan to an establishment. (N.T. V9 151) In addition, Mr. Butler testified that the process in determining whether to approve or grant a loan to a bar and restaurant is no different than any other type of commercial loan. (N.T. V2 11) Mr. Butler agreed with Mr. Hoopes in stating that a bank in Philadelphia would underwrite a loan application from a bar just like it would for any loan application from a commercial business. (N.T. V2 249)

Next Respondent Richter asserted that there is a group of lenders in the Philadelphia area that provides loans exclusively to bars and restaurants using the

same terms and conditions as Respondent Girard. However, even Respondent Richter admitted that from 2001 through 2004, Respondent Girard was clearly the major lender in the Philadelphia area making loans exclusively to bars and restaurants. (N.T. V7 290) Upon questioning at the public hearing, Respondent Richter was "not sure" as to the existence of other tavern lenders in Philadelphia. He mentioned Plymouth Finance may have been another company but he was unable to offer any specifics about their lending practices. Respondent Richter also identified Gem Finance as a company engaged in strictly tavern financing but was not sure if they were still in existence. (N.T. V7 64)

The asserted defenses in this matter were presented by Respondent Richter who testified extensively regarding Respondent Girard's policies and practices. Respondent Richter also testified regarding the specific loans made to the aforementioned persons in this public hearing. While it is necessary to examine the credibility of all of the witnesses herein, Respondent Richter's testimony is extremely important in any analysis of the evidence presented at the public hearing.

Any judgment of credibility is a responsibility entrusted to the tier of fact. Carr v. Com. State Board of Pharmacy, 49 Pa Cmwlth, 330, 409 A.2d 941 (1980); Boughter v. Com. Dept. of Public Welfare, 55 Pa. Cmwlth 521, 423 A.2d 806 (1980) In assessing credibility, consideration is given to a witness's motive and state of mind, strength of memory and demeanor while on the witness stand. Consideration is also given to whether the witness's testimony is contradicted and the bias, prejudice and interest, if any, of that witness. In the matter before the Commission, Respondent Richter's testimony was inconsistent and, at times, not credible at all.

One of the areas of Respondent Richter's testimony that was particularly puzzling was his response to questioning regarding the race of his borrowers. As aforementioned, Joseph Shannon was the investigator responsible for the Commission's investigation of the compliant in this matter. During the investigation of this matter, Mr. Shannon asked Respondent Richter whether he knew the race and/or national origin of the thirty-two persons who received loans from Respondent Girard. (N.T. V5 241) At a meeting with Mr. Shannon, Respondent Richter provided the race and/or national origin of each borrower. (N.T. V5 242)

However, at the public hearing, Respondent Richter gave inconsistent answers when questioned about the race and/or national origin of individuals who received loans from Respondent Girard. For example, at the public hearing, Respondent Richter was asked to identify the race of Freddy Chisholm, an individual who received a loan from Respondent Girard, and Mr. Richter responded he was African American. (N.T. V5 229) At a deposition several months earlier, Respondent Richter was asked the same question. His response was: "I think he just passed away, nice little fellow. I don't know what his race is. He just seemed American to me." (N.T. V7 198) On another occasion at the public hearing, Respondent Richter was asked to identify the race of Basil Jackman and Lenny Mitchell, two individuals who had loans with Respondent Girard. He replied that Mr. Jackman was African American. However, at a deposition, Respondent Richter gave a different response. His response was: "I don't remember. Basil had a toupee and Lenny has passed away, but as far as their race, I don't keep records on that stuff. Let's say I'm sort of blind to it". (N.T. V7 190) Another example of this inconsistency is Respondent Richter's testimony regarding Earl Marable. At the

public hearing, he identified Mr. Marable as African American. However, at his deposition, Respondent Richter said he did not remember Mr. Marable's race. In explaining this discrepancy, Respondent Richter testified he saw Mr. Marable two weeks before the public hearing and that had refreshed his memory. The evidence introduced at the public hearing showed that Mr. Marable was a customer of Respondent Girard for over fourteen years. (N.T. V7 24) Even more revealing is that Respondent Richter testified that "more often than not" Mr. Marable would hand deliver his weekly payment and they would "chat". It is simply not believable that Respondent Richter would "forget" Mr. Marable's race at his deposition.

It is interesting to note that Respondent Richter tried to explain his confusing testimony by stating that he "was uncomfortable identifying the race of someone". (N.T. V7 186) When confronted with his earlier identifications of the borrowers, Respondent Richter testified that he answered Mr. Shannon's questions "as if that customer were standing in front of Mr. Shannon and what Mr. Shannon would think that person was." (N.T. V7 187) Furthermore, Respondent Richter testified that everyone was from "the race of man" and to some degree Respondent Richter felt he was simply blind to race. (N.T. V6 192) This confusing testimony by Respondent Richter is an indication of his lack of credibility.

Next, on the issue of credibility, Respondent Richter continually testified to his absolute lack of knowledge regarding basic banking principles. Respondent Richter testified that he never ran a credit check on a prospective borrower. (N.T. 06 205) He stated that he did not believe a credit score was an important part of assessing whether a borrower had the ability to repay a loan. Even Respondent's expert witness, Mr.

Hoopes testified that credit scores are generally accepted in the financial industry as a reliable indicator if a person's ability to repay a loan. (N.T. V9 68-69) Another purpose of a credit score is to "determine how an individual has handled their payment requirements in the past on a personal basis." (N.T. 09 68) This testimony shows that Respondent Richter was not interested in a borrower's ability to repay a loan. Respondent Richter's alleged complete lack of knowledge regarding basic banking principles is, once again, simply not credible.

The reasons set forth by the Respondents as business necessities are clearly contradicted by the evidence presented in this case. It is also important to note that the contradictory evidence was not only presented by the complainants witness but also Respondents own witnesses, including their expert witness. A review of the record clearly demonstrates that the complainant and the six similarly situated persons received predatory and unfair loans from Respondents Girard and Richter.

Having found that the Complainant and the similarly situated persons have proven their circumstances amount to predatory lending, we now move to the issue of remedy. We must first briefly review the Commission's authority to award relief. The Commission has broad discretion in fashioning an award to effectuate the purposes of the PHRA. Murphy v. Comwlth, PA Human Relations Commission 4886 A.2d 388 (1985). Any remedy awarded under the PHRA has two purposes. The first purpose accomplished by a cease and desist order. The second purpose is to not only restore the injured party to pre-injury status and make him whole but also to deter future discrimination. Williamsburg Community School District v. Pennsylvania Human

Relations Commission, 512 A.2d, 339 (1986). The Commission's specific authority to award relief is found in Section 9 of the PHRA that provides, in pertinent part:

> (f)(1) 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 findings 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...services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations or commercial property, upon such equal terms and conditions to any person discriminated against or all persons, and other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those case, alleging a violation of Section 5(h) or 5.3, the Commission may award actual damages, including damages caused by humiliation and embarrassment, as, in judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. 43 P.S. δ959 (f)(1)

The Commission also has the authority in assess a civil penalty for violations of Sections 5(h) or 5(3) of the Act. P.S. δ959 (f)(2). The Section further provides that the amount of the civil penalty is:

> (i) in an amount not exceeding ten thousand dollars ($10,000.00) if the respondent has not been adjudged to have committed any prior discriminatory practice;
> (ii) in an amount not exceeding twenty-five thousand dollars ($25,000.00) if the respondent has been adjudged to have committed one other discriminatory practice during the five-year period ending on the date of this order; or
> (iii) in an amount not exceeding fifty thousand dollars ($50,000.00) if the respondent has been adjudged to have committed more than one other discriminatory practice during the seven-year period ending on the date of this order. Id.

In the matter before the Commission any remedy may include individuals not specifically named in the complaint. The Pennsylvania Supreme Court has held that the Commission does have authority to award relief to individuals not specifically named in a complaint. Pennsylvania Human Relations Commission v. Freeport Area School District, 359 A.2d 724 (1976). Id. There is a two-prong test that was developed to ensure due process to a respondent in this type of situation. First a complainant must allege that the other persons have been affected by the alleged discriminatory practice. Commission regulations directly address this point: "whenever a person seeks relief for

unnamed persons, other than a cease and desist order, the complaint shall include an allegation to the effect that the complaint is made on behalf of other persons who have been affected by the alleged unlawful discriminatory practice." 16 Pa. Code δ42, 35(a) Secondly, the other persons entitled to relief must be described with specificity. Freeport, 359 A.2d at 728.

Therefore we must review whether this two pronged test has been met in this case. The Complainant specifically filed not only his complaint but also an amended complaint on behalf of himself and all other similarly situated persons. The complaint and amended complaint included the phrase: "such allegations are made on behalf of himself and all other persons who have been affected by the above mentioned discriminatory practices". The first prong of the model has been met because Respondents were clearly notified that the Commission would seek relief on behalf of other possible complainants. Secondly, on January 12, 2007, Commission Counsel filed a Confirmation of Intention to Seek Relief for Persons Other than the Named Complainant, pursuant to 16 Pa. Code 142.36 and furthermore, identified the additional persons. The Commission clearly identified the Complainant and six other persons on whose behalf it intended to seek relief, including: Bernadette Biggers, Earl Marable, Raquel Smith, Israel Colon, William Davis and Johnnie Roach. The Commission identified the six similarly situated persons based on information provided by the Respondents. The Commission requested and received from Respondents documents regarding each person. Lastly each of the six similarly situated persons appeared at and testified at the public hearing regarding the Respondents' conduct. The Respondents had every opportunity to confront these individuals at the public hearing.

As a result of this evidence, the Commission has the authority to order affirmative relief on behalf of the Complainant and the six similarly situated persons.

Alternatively, the Respondents assert that the Commission should be excluded from seeking relief for the similarly situated persons because their involvement with the Respondent ended before the 180 days prior to the filing of Complainant's complaint. In the instant case, the Complainant's complaint was clearly filed in a timely manner. The complaint alleges that the Respondents' actions were of a continuing nature. Jensen v. Franks, 912 F.2d 517 (1st Cir. 1990) Under the continuing violation analysis, since the Complainant's complaint is timely, it is appropriate for the Commission to seek relief for persons other than even if they were harmed before the 180 days prior to the fling of the Complainant's complaint. Accordingly, the Commission has the authority to award relief under the theory of a continuing violation and can award relief to the six similarly situated persons.

The Respondents herein also argue that the similarly situated persons lack standing to bring an action in this matter. Specifically the Respondents assert that the loans were originated for bars owned by corporate entities and not to individuals. First, it is clear that the complainant herein filed his complaint "on behalf of himself and all other similar situated persons." The Pennsylvania Human Relations Act defines person to include "one or more individuals, partnerships, associations, organizations, corporations, legal representation, trustees in bankruptcy or receivers." The clear reading of the provision is that similar situated persons would include individuals and corporations. Next the evidence presented in this matter establishes that the loans were made to the corporations as well as the individuals. As an example, the loan

agreement between Respondent and Casino #1 also stated that Earl Marable, a similarly situated person, warranted and guaranteed the payment of $82,940. (C.E. 33) *In fact, Respondent Richter testified that personal guarantees were standard documents* in his loan transactions. (N.T. V6 148)

In the instant case, the Complainant and the six similarly situated persons are entitled to individual relief. This award of relief shall include an award for actual damages and an award for embarrassment and humiliation damages. In determining an award for embarrassment and humiliation, courts have long recognized that the types of actions involved in this case are actions that one could reasonably "expect to humiliate or cause emotional distress to a person. Seaton v. Sky Realty Co., 491 F.2d 634, 636 (7th Cir. 1974). When determining damages for humiliation and embarrassment, any evaluation must include "both direct evidence of emotional distress and the circumstances of the act causing the distress." United States v. Balistrieri, 981 F.2d 916 (7th Cir. 1992). Furthermore, in housing cases, courts have awarded damages for intangible injuries based on the Complainant's own testimony. See Rakovich v. Wade, 819 F.2d 1393 n.6 (7th Cir. 1987), vacated on other grounds, 850 F.2d 1180 (1988). See also Allison v. PHRC, 716 A.2d 689 (Pa Cmwlth Ct. 1988).

It is therefore necessary to determine the actual damages and the embarrassment and humiliation damages of the Complainant and the similarly situated persons *in this matter. In determining damages, we must look at the circumstances* involving each borrower. This determination is certainly made more difficult by the practices utilized by the Respondents herein. There were no financial statements or reports required by the Respondents of the borrowers before the loans were finalized.

For that reason, any calculation of actual damages cannot be absolutely precise. First we turn to Kevin Harris, the named Complainant in this matter. As aforementioned, the Complainant had little to no understanding of the loan transactions with Respondents. The original loan between Complainant and Respondents was for $45,000 at allegedly 20% interest with $47,250 in interest charges. In actuality the interest rate was just below 32%. The total payback for the Complainant was $94,500. However the 20% interest rate would have resulted in Complainant Harris paying $20,533.27, not $47,250, in interest charges for the loan. The difference in interest charges is $26,716.73. After struggling to make the payments for several years, Complainant Harris sold the establishment for $65,000. At the settlement, Respondent Girard received $37,203.27 as a payoff of Complainant's original loan. Furthermore Complainant Harris paid $37,165 in interest charges for payments totaling $74,368.27. At the end of the sale, Complainant Harris only received $5,000 from Respondents. Accordingly, it is appropriate that Harris should be awarded the difference in the interest rate ($26,716.73) charged by the Respondent minus the cash ($5,000) received at the end of the sale. That amount is $21,716.73 in actual damages.

The Complainant also testified as to how his experience with Respondent affected him emotionally and physically. (N.T. V1 101) Complainant Harris testified that he was depressed and would just "sit there not doing anything". (N.T. V1 101) He also testified that his experience negatively impacted his family because he had no way to provide for them. (N.T. V1 103) Complainant Harris also explained that it caused him stress to go from being a business owner to "end up with nothing". (N.T. V1 102) Lastly, Complainant Harris testified, on a scale of one to ten, he would rate the embarrassment

and humiliation as an eleven. (N.T. V1 104) An appropriate award for the Complainant's embarrassment and humiliation is $15,000. Complainant Harris should be awarded $36,716.73 for actual damages as well as embarrassment and humiliation.

The first similarly situated person is Raquel Smith. The original loan between Ms. Smith and the Respondents was for $35,000, with interest charges of $29,640 and a total payback of $66,690. The documents stated that the interest rate was 20% on the loan. However the interest charges, at 20%, would have resulted in Ms. Smith paying $16,123.01, not $29,640.00. The difference in interest charges is $13,516.99. However, there was testimony at the public hearing that impacts on additional actual damages in this matter. In purchasing the establishment, Ms. Smith gave Respondent Richter $20,000. (N.T. V4 244-45) When the establishment was sold, Respondent Richter informed Ms. Smith that she would get the $20,000 returned to her less any expenses. (N.T. V4 250) At the time of the sale, Ms. Smith did not receive any money from Respondent nor did the Respondents produce any evidence of expenses. (N.T. V4 250) Accordingly, the actual damages for Ms. Smith should be increased to $33,516.99.

Ms. Smith provided moving testimony as to how the experience with Respondent impacted her "tremendously" and caused her stress and depression. (N.T. V4 252) She testified regarding the impact on herself and her seven children and the ensuing financial hardship. When Ms. Smith left the bar, she did not have a job or any money. (N.T. V4 252) As a result she was forced to leave where she was living and move herself and her family in with a friend. (N.T. V4 252) An additional negative impact on Ms. Smith was that she was forced to drop out of college and delay her career development. (N.T. V4 253) Eventually, Ms. Smith obtained her degree in behavioral

health in 2006. Ms. Smith testified that on a scale of one to ten, she rated the embarrassment and humiliation she suffered as over ten. Therefore it is appropriate to award $20,000 as appropriate for the embarrassment and humiliation suffered by Ms. Smith. Ms. Smith should be awarded a total of $53,516.99 for the actual damages and the embarrassment and humiliation.

We now move to Israel Colon. Mr. Colon's original loan was for $35,000, $29,440 in interest charges and a total payback of $66,240. The interest charge was allegedly based on 20% interest. However, at 20% interest, Mr. Colon would have paid $16,123.01 in interest charges, not $29,440. The interest charge in the loan package is closer to 34% not 20%. Therefore Mr. Colon should be awarded the difference in the interest charges which is $13,316.99.

In addition to the above actual damages, Mr. Colon testified that he lost over $10,000 *in personal belongings as a result of Respondent's conduct.* (N.T. V4 44) The personal belongings included a personal weapon, boxing memorabilia's, computers and equipment used for construction. (N.T. V4 43-44) Mr. Colon's testimony in regard to his personal belongings was certainly credible. Accordingly, he is entitled to an additional award of $10,000 for his personal belongings which results in a total of $23,316.99.

Mr. Colon then testified as to the embarrassment and humiliation he suffered as a result of Respondents conduct in this matter. He testified that his experience with Respondents was a "horrifying experience". He was unable to sleep and woke up with cold sweats. (N.T. V4 43, 45, 46) The experience caused him stress and such depression that he nearly lost his home and put his marriage in jeopardy. (N.T. V4 45-46) As a result of this embarrassment and humiliation, an award of $20,000 is

appropriate for Mr. Colon. Therefore Mr. Colon should be awarded a total of $43,316.99 for actual damages and damages caused by the embarrassment and humiliation he suffered.

The next similarly situated person is Bernadette Biggers. Ms. Biggers' original loan with Respondents was for $34,300, with $25,720 in interest charges and a total payback figure of $57,870. The interest figure was allegedly based on a 20% interest rate. However the interest rate was actually closer to 34%. At a 20% interest rate, the interest charge on Ms. Biggers' loan would be $15,800.55. The difference is $9,919.45. Ms. Biggers' loan with the Respondents was reset two times. The last reset resulted in a four year loan, at allegedly 20%, for $47,639, with interest charges of $48,005 and a total payback of $95,644. The actual interest charge at 20% would be $21,945.26. As with the other loans, the interest rate was a little over 34%. The difference in the interest charges is $26,059.74. Accordingly, Ms. Biggers' actual damages are in the amount of $35,979.19($26,059.74 plus $9,919.45).

Ms. Biggers further testified that her experiences with Respondent caused her "a whole lot of embarrassment", stress as well as anxiety. (N.T. V6 33-35) She also feels that specifically Respondent Richter betrayed her trust and she no longer trusts anyone. (N.T. V6 35) Ms. Biggers testified that, on a scale of one to ten, she rated her embarrassment and humiliation as a ten. (N.T. V6 36) An award of $20,000 is appropriate based upon the embarrassment and humiliation suffered by Ms. Biggers. Ms. Biggers should be awarded a total of $55,979.19 for not only actual damages but also for embarrassment and humiliation damages.

The next similarly situated person is William Davis. Mr. Davis is an individual who owned his establishment free and clear of any mortgage debt prior to engaging in a loan transactions with the Respondents. Mr. Davis originally purchased his establishment on February 13, 2002. (N.T. V3 8; C.E. 24) Subsequently, Mr. Davis received two loans from Respondents. The principal of the initial loan was $20,000 and the additional principal on the second loan was $14,000 of which $11,546 was disbursed on behalf of Mr. Davis. (C.E. 25, 29, 30) At this point, Mr. Davis received $31,546 from Respondents and he had made payments totaling $6,687 to Respondents. Therefore, Mr. Davis received a net figure of $24,859 from Respondent Girard. On or about November 18, 2004 Respondent Richter sold the property to Edward Smith for $160,000 and Mr. Davis received $1,100.53 from the sale proceeds. (C.E. 31) Accordingly, an appropriate award for actual damages is $124,040.47. That figure represents $160,000 less $25,959.53. (C.E. 31)

Mr. Davis testified that this experience with Respondents made him angry and caused him stress in his life. (N.T. V3 48-49) He further testified that the experience impacted his social life to such an extent that he has no social life to speak of. (N.T. V3 49) Mr. Davis testified that this experience would stay with him as long as he lives. (N.T. V3 51) On a scale of one to ten, Mr. Davis rated his embarrassment and humiliation as an eleven. (N.T. V3 52-53) An appropriate award for the embarrassment and humiliation suffered by Mr. Davis is $15,000. Mr. Davis should be awarded a total of $139,040.47 for his actual damages as well as for the embarrassment and humiliation he suffered.

We now move to the estate of Earl Marable. The record reflects that in 1986, Mr. Marable and his corporation Casino #1, Inc. purchased an establishment located at 4691 Hawthorne Street, Philadelphia. (N.T. V2 297-98) In 1990, Respondent Girard originated a loan with Mr. Marable for the purpose of expanding the establishment. (N.T. V2 302) On April 4, 1991, Respondent Girard refinanced the first loan into a second loan with a principal balance of $49,889. (C.E. 35) On July 3, 1992, Mr. Marable paid off the balance on the loan and a mortgage satisfaction document was executed by Respondent Girard. (C.E. 36) As of that date, Mr. Marable owned the establishment free and clear.

Over the next several years, Mr. and Mrs. Marable received six loans from the Respondents. (C.E. 38, 39, 40, 42, 44, 46) In receiving the loans, Mr. and Mrs. Marable received approximately $52,805 from the Respondents. However, during the course of the loans, Mr. and Mrs. Marable paid approximately $114, 036 to the Respondents. (C.E. 38-46) In fact, Respondent Girard received $61,231 more than it actually loaned to the Marables. On February 3, 2004, Respondent Richter sold the establishment for $85,000. (C.E. 48) After the sale, the Marables received $15,826.47 from the proceeds that will be deducted from their award. Accordingly, an award for actual damages for $130,404.53 ($85,000 plus $61,231 less $15,826.47) is appropriate.

Grace Marable appeared at the public hearing and testified as to the embarrassment and humiliation suffered as a result of the Respondents' conduct. She testified as to the negative impact the financial circumstances had on Mr. Marable and that his health started to decline after the establishment was sold. (N.T. V2 345) Ultimately the Marables had to file for bankruptcy. On a scale of one to ten, Mrs.

Marable rated the embarrassment and humiliation as over ten. (N.T. V2 347) As a result of this embarrassment and humiliation, an award of $15,000 is appropriate. Accordingly, the estate of Mr. Marable should be awarded a total of $145,404.53 for actual damages as well as for embarrassment and humiliation.

Lastly we move to Johnnie Roach. Mr. Roach, in January 1993, purchased 1260 Hotel and Restaurant for $133,000. (N.T. V5 35) On November 14, 1994, Mr. Roach and a partner purchased 53 Basin Street for $90,000. (N.T. V5 35) Subsequently, Mr. Roach was able to pay off the debt on each establishment and owned each property free and clear of any mortgage. (N.T. V5 35)

Mr. Roach received loans from Respondents for each establishment. First, in regard to 1260 Hotel and Restaurant, the first loan principal was $25,000 and the second loan principal was $5,000. (C.E. 52, 58) There was a third loan with a total principal of $38,100 of which $31,494 paid off the first two loans. (C.E. 52, 58, 60) Mr. Roach received approximately $36,406 from Respondent. Mr. Roach paid $20,382 to the Respondents for the loans. The net amount received by Mr. Roach from Respondent Girard was $16,024. Mr. Roach then, upon the advice of Respondent Richter, sold the establishment for $150,000. Mr. Roach did not receive any money as a result of this sale. Therefore in regard to 1260 Hotel and Restaurant, an award of $133,976 ($150,000 less $16,024) is appropriate.

Next we move to the 53 Basin Street establishment. The first loan principal was $25,000 and the second loan principal was $5,000. (C.E. 54) Later, a third loan was originated with a principal of $38,100 of which $31,467 paid off the first two loans. In regards to all of the loans related to 53 Basin Street, Mr. Roach received $36,663 from

Respondents. During the relevant time period, Mr. Roach paid approximately $30,140 to Respondents for the three loans. (C.E. 54, 56) The next amount for Mr. Roach was $6,523. Subsequently, Respondent Richter sold 53 Basin Street to Girard Holding, LLC for $40,000. However, Respondent Richter, in the relevant loan documents, placed the value of the establishment at $80,000. Mr. Roach did not receive any money from the sale of 53 Basin Street. (N.T. V5 63, 78) Therefore, an award for actual damages in the amount of $40,000 is appropriate.

Mr. Roach testified as to the embarrassment and humiliation he suffered as a result of Respondent's conduct. He testified that "when you work half of your life for something and you wind up coming out with zero and zero...that is stress." (N.T. V5 86) He also believes that this stress negatively impacted on his high blood pressure and aggravated his diabetic condition. (N.T. V5 79) Mr. Roach was ultimately forced to file for personal bankruptcy. (N.T. V5 83) On a scale of one to ten, he rated the embarrassment and humiliation as a fifteen. An award of $15,000 is appropriate for the embarrassment and humiliation suffered by Mr. Roach. Accordingly Mr. Roach should be awarded a total of $194,976 for actual damages as well as for the embarrassment and humiliation.

When the full record is reviewed in this matter, it is readily apparent, by not only the testimony but also the demeanor of the above individuals, that they have been negatively affected both physically and mentally. There is no doubt that the evidence shows that the embarrassment and humiliation was, and continues to be, part of their lives. Furthermore, the aforementioned damages are wholly supported by the evidence on record before the Commission.

Any remedy that is fashioned by the Commission must also include injunctive relief in the form of a cease and desist order. Accordingly Respondents should be ordered to cease and desist from unlawfully discriminatory against individuals because of their race and/or national origins. Next there will be a civil penalty assessed against Respondent Richter and Respondent Girard for their actions. There are a number of factors to consider when determining the amount of civil penalty, including: (1) nature of the violation; (2) degree of culpability; (3) Respondent's financial resources; (4) goal of deterrence; and (5) other matters as justice may require. HUD v. Weber, P-11; Fair Housing-Fair Lending Reporter, δ25,041 (HUD ALI, 1993)

In the case before the Commission, the nature of the violations is particularly egregious. The degree of culpability is high in that the Respondents are directly responsible for the predatory terms and conditions of the loans. Furthermore, the Commission certainly has a strong interest in deterring the conduct illustrated in this case where there is a pattern of unlawful discrimination. Therefore Respondent Richter and Respondent Girard shall each be assessed a civil penalty in the amount of $10,000. The Commission may also require affirmative measures to prevent any further discrimination. In order to achieve such a goal, Respondent Girard shall provide training to all of its employees, including management, which is designed to educate such employees regarding their responsibility to insure that all customers are treated in a non-discriminatory manner consistent within the provisions found in the Pennsylvania Human Relations Act. Respondent Girard shall develop and implement a record-recording system designed to accurately record data related its loan transactions, including the amount and type of loan and any fees attached to said loan. Respondent

Girard shall submit such data to the Pennsylvania Human Relations Commission for review on bi-annual basis for a period of three years.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Kevin Harris, on behalf of himself and all other similarly situated persons, and SKINTIGHT LOUNGE, INC.	:	
Complainants	:	
v.	:	**PHRC CASE NO. 200405223**
GIRARD FINANCE COMPANY, INC. and Thomas Richter,	:	
Respondents	:	

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon review of the entire record, the Permanent Hearing Examiner finds that the Complainant and all other similarly situated persons have proven discrimination in violation of Section 5(h)(*)(1) and Section 5(h)(4) of the Pennsylvania Human Relations Act. Accordingly, it is therefore, the Permanent Hearing Examiner's Recommendation that the attached Findings of Fact, Conclusion of Law and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

August 15, 2011
Date

Phillip A. Ayers
Phillip A. Ayers
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Kevin Harris, on behalf of himself and all other similarly situated persons, and SKINTIGHT LOUNGE, INC. **Complainants**	:	
v.	:	**PHRC CASE NO. 200405223**
GIRARD FINANCE COMPANY, INC. and Thomas Richter, **Respondents**	:	

FINAL ORDER

AND NOW, this 24th day of October, 2011 after 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 Hearing Panel. Further, the Commission adopts said Findings of Fact, Conclusions of Law and Opinion as its own finding in this matter and incorporates the 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. Respondent Girard and Respondent Richter shall cease and desist from discriminating against the Complainant and other persons because of their race and/or national origin.

2. Respondent Girard and Respondent Richter, jointly and severally, shall pay actual damages and embarrassment and humiliation damages to each named person in the amount totaling as follows:

    a. Complainant- $36,716.73

    b. Raquel Smith- $53,516.99

    c. Israel Colon- $43,316.99

    d. Bernadette Biggers- $55,979.19

    e. William Davis- $139,040.47

    f. The Estate of Earl Marable- $145,404.53

    g. Johnnie Roach- $194,976.00

3. Respondent Girard and Respondent Richter shall each pay a civil penalty to the Commonwealth of Pennsylvania in the amount of $10,000.

4. Respondent Girard shall provide to all of its employees, training that is designed to educate such employees regarding their responsibility to insure that all customers are treated in a non-discriminatory manner consistent with the provisions found in the Pennsylvania Human Relations Act.

5. Respondent, Girard shall develop and implement a record-recording system designed to accurately record data regarding its mortgage loan transactions, including: the amount and type of loan and any fees paid. Respondent, Girard

shall submit such data to the Commission for review on a bi-annual basis for a period of three years.

6. Respondents shall report the means by which it will comply with the order, in writing, to Charles L. Nier, III, Assistant Chief Counsel within thirty days of the date of this order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: ______________________

Gerald Robinson, Esquire

Attest:

____

Daniel D. Yun, Secretary

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Kevin Harris, on behalf of himself and all other similarly situated persons, and SKINTIGHT LOUNGE, INC. **Complainants**	:	
v.	:	**PHRC CASE NO. 200405223**
GIRARD FINANCE COMPANY, INC. and Thomas Richter, **Respondents**	:	

DISSENTING OPINION

Commissioner M. Joel Bolstein files this dissenting Opinion with the concurrence of Commissioner Gerald S. Robinson, Chairman. Contrary to the majority decision's findings, the Pennsylvania Human Relations Commission does not have legal authority over loans made to tavern owners.

In claiming jurisdiction, the majority contends that loans to tavern owners are similar to loans made to homeowners, where the Commission has taken jurisdiction to oppose predatory lending. Homeowners who are victims of predatory lending, however, are very different from tavern owners and the comparison is faulty. Tavern owners are responsible for running a business. Presumably, they are required to obtain licenses from various levels of government before they can sell any alcohol. They must make

decisions regarding purchases for those businesses, including routinely signing contracts for the purchase of goods and services. They have employees, and are responsible for understanding the labor and employment laws applicable to running a business. They receive cash payments and earn profits and are responsible for collecting sales taxes and making payments to the state and local jurisdictions. For obvious reasons, running a tavern is a highly regulated business. There are laws that effect the sale of liquor and those business owners are required to possess the knowledge necessary to comply with those laws. A tavern owner, therefore, must be held to a higher standard of knowledge than a homeowner when applying for a loan. In applying for a loan, a tavern owner, as a business person, should know to have an attorney review the terms of that loan. If they do not, then they are not acting as a reasonable business person acting in similar circumstances, and they are acting negligently and the consequences of signing that loan without consulting with counsel are highly foreseeable. A tavern owner shouldn't be allowed to run to the PHRC after agreeing to loan terms that they would have otherwise rejected had they obtained counsel. If the loan's terms are unacceptable, the tavern owner can do what any other business person does, which is to apply for another loan with another lender. If they can find no lenders willing to offer a loan, then it may be due to the risky nature of running a tavern, but it is not predatory, and such loan transactions should not be subject to the jurisdiction of the PHRC. While the majority relies on Sections 5(h)(8)(1) and 5(h)(4) of the PHRA to justify its claim of jurisdiction, there are no cases directly on point, and the Commission has never sought to regulate this area before. It is more than a "reach," it is carving out a new area of jurisdiction where none previously

existed. That might be acceptable if the PHRC had the skill, knowledge and expertise to review business loans. The problem is that the PHRC has absolutely no in-house expertise when it comes to reviewing the terms and conditions of business loans in order to judge them as predatory or non-predatory. The PHRC has no one on staff who is a qualified loan reviewer. Moreover, it has no clear and articulated standards for reviewing such business loans. Simply put, it is not a banking agency. If a tavern owner has a complaint about a loan or lender, the proper place for that complaint in the Commonwealth of Pennsylvania is the Department of Banking, which presumably has staff capable of providing advice regarding the terms of business loans. If fraudulent activity is alleged, those allegations can and should be directed to the District Attorneys Office of the appropriate local jurisdiction. For all of the reasons set forth above, I believe that the PHRC is not the proper forum for regulating loans to tavern owners, and I dissent from the majority holding that the PHRC has jurisdiction over such loans.