



6. Respondent shall use the phrase "Equal Opportunity Renter" in any rental advertisements for five years and maintain a record to prove compliance with MCHR's order.
7. Respondent shall file a report with MCHR within 60 days of the date of this order, summarizing the efforts by Respondent to ensure compliance with the Missouri Human Rights Act.

<u>James B. Buford</u> 4/11/12	<u>Michael Dierkes</u> 4/19/12
James Buford	Michael Dierkes
Commissioner	Commissioner
Agree <input checked="" type="checkbox"/>	Agree <input checked="" type="checkbox"/>
Disagree _____	Disagree _____

Herman W. Elmore 4/24/12  
Herman Elmore Date  
Presiding Commissioner  
Agree   
Disagree \_\_\_\_\_

**FILED**  
**APR 26 2012**  
MISSOURI COMMISSION  
ON HUMAN RIGHTS

Before the  
Commission on Human Rights  
State of Missouri



STATE EX REL. TAMMELA SARKAR,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10-0008 HRC
	)	
NINO VALENTI,	)	
	)	
Respondent.	)	

**RECOMMENDED DECISION UPON EXCEPTIONS**

The Administrative Hearing Commission (“the Hearing Examiner”) recommends that the Missouri Commission on Human Rights (“MCHR”) order Nino Valenti (“Valenti”) to pay Tammela Shannon Maxwell Sarkar (“Sarkar”) \$125,000 in actual damages for humiliation and emotional distress, \$37,500 in actual damages for violation of her civil rights, and pre-judgment interest at the rate of 3.25 percent. The Hearing Examiner further recommends that MCHR assess a civil penalty in the amount of \$2,000 against Valenti for the purpose of vindicating the public interest.

Valenti harassed Sarkar and also discriminated against her on the basis of her son’s skin color. The Hearing Examiner recommends that MCHR order Valenti to cease and desist from further discriminatory practices that involve using race or other prohibited factors in renting or selling real estate; post a “Discrimination in housing” poster at each of his rental properties;

include the phrase “Equal Opportunity Renter” in any rental advertisements for five years; and maintain a record to prove compliance with MCHR’s order for five years. The Hearing Examiner also recommends that MCHR order Valenti to file a report with MCHR, within 60 days of the date of MCHR’s order adopting this recommended decision, summarizing efforts made by Valenti to ensure compliance with the Missouri Human Rights Act (“MHRA”) and this order.

### **Procedure**

Sarkar filed a timely complaint with MCHR alleging housing discrimination on the basis of race and race association on January 13, 2010. The complaint was amended on January 25, 2010, and again on April 5, 2010. After completing and reviewing its investigation of the complaint, MCHR entered a finding of probable cause on May 13, 2010. MCHR received an Affidavit of Failure of Conciliation Efforts on September 15, 2010. MCHR appointed the hearing officer on October 7, 2010.

The Attorney General, on behalf of the State of Missouri, filed an amended complaint in Sarkar’s name on July 22, 2011. Sarkar did not intervene in the proceedings. On October 26, 2011, the Hearing Examiner convened a hearing on the amended complaint. Vanessa Howard Ellis, with the Missouri Attorney General’s Office, represented MCHR. Nino Valenti represented himself.

### **Findings of Fact**

#### Sarkar’s skin color, ethnic origins, family status, and associations

1. Sarkar is a Native American, Caucasian female who identifies herself as white. She has trouble reading and writing. She has a number of adult children that do not live with her.

Sarkar is a victim and survivor of a serious assault. She was recuperating from related surgeries at all relevant times.

2. Sarkar's two roommates are male and named James Ballard and Shawn Spillman. Sarkar has three children with Ballard, but was in a relationship with Spillman that spanned four years. Spillman is Native American.

3. Torrey Maxville ("Torrey") is Sarkar's son. Torrey's father is African-American. At all relevant times he visited her, he was 23 years old.

4. Sarkar was associated with her son Torrey.

#### Valenti

5. Valenti is a Caucasian male.

6. Valenti lives alone with his dog at 1936 S. Sterling Ave. ("1936 Sterling"), Independence, Missouri.

7. Valenti's home is a duplex. He owns and manages the rental of 1938 South Sterling Ave., Independence, Missouri ("1938 Sterling"), which is the other half of the duplex.

8. Valenti owns thirty or more pieces of real estate in the state of Missouri.

9. Valenti attended the University of Miami and majored in accounting, but spent his career as an entertainer.

#### Sarkar's Residence at 1938 South Sterling Avenue

10. Sarkar met Valenti while visiting her sister.

11. Valenti rented 1938 Sterling to Sarkar and her roommates.

12. Sarkar moved in to 1938 Sterling on May 21, 2009.

13. Valenti agreed with Sarkar and her two roommates that they would clean 1938 Sterling in exchange for \$1,300 to be taken off the rent.

14. After Sarkar and her roommates moved in, they initially had a good relationship with Valenti.

15. Sarkar prepared meals for Valenti, invited Valenti to dinner at 1938 Sterling, and took dinner to him next door.

16. Sarkar and Valenti shared a driveway attached to the duplex they occupied.

17. Sarkar and her roommates assisted Valenti by mowing the lawn on occasion.

18. Sarkar and her roommates painted both units (1936 and 1938 Sterling) and in 1938 Sterling put down new linoleum; removed truckloads of trash, rotting food and debris; and exterminated vermin and insects.

19. Despite the agreement to waive \$1,300 of rent in recognition of the work done at the residence, Valenti required Sarkar to pay the full amount of the rent and deposit.

20. Rent was \$650 a month. The deposit was \$650.

21. Sarkar did not receive a written rental contract from Valenti, but was promised one.

22. Valenti failed to provide a receipt for rent on numerous occasions, but often promised to do so.

#### Valenti's discriminatory references to Sarkar's Son at the hearing

23. "Boy" is a demeaning term when addressed in reference to an African-American man. Both historically and currently, "boy" suggests inferiority by disregarding age, experience, intellect, and only accounts for the objectified person's status as an African-American.

24. Valenti continuously referred to Torrey, a 23-year-old man, as "boy" throughout the hearing.

#### Valenti's harassing and discriminatory conduct

25. On October 22, 2009, Sarkar was hosting a family birthday party with her children and grandchildren in attendance. Sarkar's oldest son Torrey drove away from her home in a car

that was parked in the driveway. Valenti was outside at the time and observed Sarkar's son. Valenti went over and told her "I told you I didn't want any niggers on my property, I'm warning you." Sarkar grew angry and instructed him to address her son Torrey by his name and went into her house.

26. After that, Valenti walked around Sarkar's portion of the duplex with a gas can while looking in Sarkar's car and mumbling. As he did it, he repeatedly called Spillman a "Nazi Jew."

27. On October 31, 2009, Sarkar had another family gathering with her children and grandchildren preparing to celebrate Halloween by trick or treating. After the kids left in their costumes to trick or treat, Valenti approached Sarkar in a vicious manner and instructed her "I told you I don't want any niggers on my property. I want you to move out of here. I'm not going to deal with this!" Sarkar argued with Valenti about his reference to her son as a nigger. Sarkar argued that human beings need to be respected as people and that as a Christian, Valenti should not have such nasty behavior.

28. Torrey visited Sarkar infrequently at 1938 Sterling and Sarkar considered it "lucky" that Torrey did not hear Valenti call him a "nigger." She did not inform Torrey that Valenti was calling him a nigger.

29. Valenti began harassing and discriminating against Sarkar and her roommates after learning that Torrey was Sarkar's son.

30. Valenti entered Sarkar's residence unannounced, uninvited, and without knocking on numerous occasions when the front door was open and the screen door closed.

31. Valenti entered Sarkar's residence unannounced, uninvited, and without knocking on numerous occasions when the front door was closed and locked by using his key to the residence.

32. The first time Valenti entered her residence without knocking or being invited, on July 28, 2009, Sarkar called the Independence Police Department. Valenti opened the screen and walked in and “just started going off.” Valenti caused a commotion. Sarkar asked him to leave and he did not. She called the police and he ran out the door and away.

33. On November 10, 2009, Valenti entered Sarkar’s residence. He assaulted Sarkar’s mentally handicapped daughter by kicking her and Sarkar’s sister by pulling on her. Sarkar was not home at the time.

34. On November 20, 2009, Valenti viciously called Sarkar’s son a “nigger” again after Torrey visited Sarkar in preparation for the Thanksgiving holiday. Sarkar grew irritated and lectured Valenti on manners. Valenti threatened to shoot her with a shotgun. She was fearful and told her roommates about the threat. She went into her house and locked the doors. She called the police.

35. Sarkar prepared Thanksgiving dinner and shared it with Valenti.

36. On November 30, 2009, Valenti placed a 24-hour notice of eviction in Sarkar’s mailbox.

37. In January 2010, after receiving the January rent, Valenti served Sarkar and her roommates with written notice of eviction. Valenti then sued Spillman for rent. Spillman was served with a summons by the sheriff that was signed for by Sarkar, but they went to the hearing, produced receipts for rent and the deposit paid, and the judge dismissed the case.

38. Valenti sued Spillman as a result of animus Valenti held toward Spillman under the belief that Spillman was Jewish and his desire to harass Sarkar for having and associating with her biracial son.

39. In February of 2010, Sarkar and her roommates, having had enough, attempted to find another place to live. They secured their new home with a \$1,200 deposit and provided the prospective landlord with Valenti's address so that he could check her reference. After the prospective landlord spoke with Valenti, he returned the \$1,200 and refused to rent to her. Then Valenti once again entered her residence and yelled profanities at her. She told him to leave and then called the police. He refused to leave until law enforcement was called, but then ran away. Valenti was located by the police, detained by the officers, transported back to his home in the squad car, and instructed to not enter Sarkar's residence. Valenti admitted to telling the prospective landlord that Sarkar and her roommates did not pay rent.

40. Valenti's inaccurate negative reference kept Sarkar from moving for two months.

41. Sarkar extended emotional distress because Valenti prevented her from finding a new residence and moving away from him.

42. Sarkar later found another residence to move to and paid \$85 less each month than at Valenti's place.

43. Valenti did not return Sarkar's \$650 security deposit.

#### Results of Valenti's Harassing Conduct

44. Valenti's actions caused Sarkar and her roommates to be fearful.

45. Sarkar felt devastated, depressed, and confused by Valenti's conduct. She was afraid that he was going to burn her house down while she was in it or shoot her. Spillman was also afraid.

46. Valenti's angry, racially derogatory comments about Torrey made Sarkar fearful when her grandchildren were present. She worried that Valenti might kill one of the children or set the house on fire while the children were in the home. She worried about herself and her

family's safety. She hid in her own home afraid that Valenti would enter at any time. She believes that he entered her home while she was in the shower or bathroom and felt “creeped out.” She spent many months at home alone recuperating from surgeries and would at times barricade herself in the bedroom reinforcing curtains so that Valenti could not tell she was home alone. She refused to come out of her room until her roommates returned home.

47. Sarkar felt humiliated by Valenti’s numerous references to her son as a “nigger.”

#### Complaint and Damages

48. Sarkar and her roommate performed valuable services to Valenti, but were not compensated in any way.

### **Conclusions of Law**

#### I. Credibility

The Hearing Examiner must judge the credibility of witnesses, and has the discretion to believe all, part, or none of the testimony of any witness.<sup>1</sup> The “credibility of a witness’s testimony is for the fact finder to determine.”<sup>2</sup> “Credibility means capacity for being believed or credited.”<sup>3</sup> Anything that sheds light on the accuracy, truthfulness, and sincerity of a witness, which by necessity includes facts and circumstances, is proper for determining the credibility of a witness.<sup>4</sup> Because the Hearing Examiner has had the opportunity to observe the demeanor of the witnesses, the Hearing Examiner recommends that MCHR adopt its determination as to the credibility of witnesses.

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<sup>1</sup>*Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

<sup>2</sup>*Clark v. Reeves*, 854 S.W.2d 28, 30 (Mo. App., W.D. 1993).

<sup>3</sup>*Marvin E. Nieberg Real Estate Co. v. Taylor-Morley-Simon, Inc.*, 867 S.W.2d 618, 626 (Mo. App., E.D. 1993).

<sup>4</sup>*Roberts v. Emerson Elec. Mfg. Co.*, 362 S.W.2d 579, 584 (Mo. 1962).

Sarkar was a credible witness. Her demeanor showed that she was severely affected by Valenti's conduct, even to the extent that during the hearing she became visibly shaken, and she cried and worked to compose herself. Sarkar's account of the events that occurred during the time she and her roommates rented from Valenti has remained consistent throughout her complaint to MCHR, her statements to MCHR investigators, her deposition in this proceeding, and her testimony at the hearing.

Sarkar's account of the events was corroborated by other witnesses. Spillman's testimony corroborated Sarkar's. Spillman lived at 1938 Sterling and observed much of Valenti's conduct. Evidence admitted at the hearing included the investigative file from MCHR. In it are numerous statements taken during the investigation. The Hearing Examiner assigns the great weight to the extent that they confirm the alleged conduct, are all consistent, and are numerous.

Valenti's testimony also supported Sarkar's allegations. He admitted the following:

- he entered her residence uninvited on occasion,
- he was present at each occurrence reported to the police and complained of by Sarkar,
- he ran out of and away from Sarkar's home only after she called the police on two occasions,
- when he saw "black" people at her residence, he inquired as to who the "boy" was, referring to Torrey,
- he did not know Sarkar had a black son when he rented to her,
- he called Spillman a "Jew" but not a Nazi,
- he tried to evict Sarkar and her roommates despite Sarkar paying rent,
- that Sarkar cleaned the residence as they had agreed,

- he told a potential landlord that Sarkar had not paid rent to prevent her from moving, and
- he walked around the exterior of her home and car with a gas can.

Despite Valenti's numerous admissions against interests, much of his testimony was inconsistent, combative, purposefully obtuse, and untruthful. At the hearing, Valenti testified and then impeached his own testimony as follows:

I never been to a courtroom before this.<sup>[5]</sup>

But he later testified that he previously went to the court<sup>6</sup> and sued a black man for money and admitted suing other people.<sup>7</sup> Similarly:

I never said a word to her. I didn't know the boy. I didn't know she had a boy.<sup>[8]</sup>

And later:

I never talked to him.<sup>[9]</sup>

But he readily admits talking to Sarkar on numerous occasions in and out of her home before and after he saw Torrey on the property. And he later admitted seeing Torrey in his driveway and noted that he had seen black people at Sarkar's residence. Further, prior to the first harassment he questioned people to determine who they were and whether Torrey was Sarkar's son.

I own two duplexes and only own one house. I lost that one because he lied.<sup>[10]</sup>

Valenti later admitted that he had thirty pieces of property. In all, Valenti's attempted explanation of the events is simply not credible.

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<sup>5</sup>Tr. at 8.

<sup>6</sup>Tr. at 12-13.

<sup>7</sup>Tr. at 13.

<sup>8</sup>Tr. at 10-11.

<sup>9</sup>Tr. at 11.

<sup>10</sup>Tr. at 12.

Valenti's denials as to his use of the vile and racially derogatory terms "nigger" and "Nazi Jew" are not credible, in light of inconsistencies in his own testimony and his divergence with Sarkar's and Spillman's convincing testimony and other evidence admitted without objection. His use of the word "boy" when testifying that he did not call Torrey a "nigger" made his testimony particularly unconvincing. Courts have found that "boy" is a distinctive racial epithet and often interchangeable with "nigger" when directed at an African-American man.<sup>11</sup>

Valenti offered several bizarre, mean-spirited, and patronizing attempts to explain away his alleged bigotry. Specifically, his allegations of "I have black friends," "I always help them (referring to African-Americans)," and relating stories about how he helped blacks that later ended up stealing, engaging in fraud, and damaging his property. He went on to describe how he sued some blacks and alluded to pursuing their criminal prosecution and later incarceration. These stories Valenti told are more indicative of his harboring racial animus than his alleged benevolence and friendship. His comments are better indicative of deep-seated prejudice, which gives credence to Sarkar's allegations of harassment and discrimination. This prejudice supports the allegations that he utilized derogatory language as alleged by Sarkar.

The name calling and threats were used to identify, isolate, and demean Torrey and Sarkar as his mother for producing a child with an African-American man. Valenti's calling Torrey a "nigger" on multiple occasions and in conjunction with his attempted exclusion of him

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<sup>11</sup>See, e.g., *Williams v. Consolidated Edison Corp. of N.Y.*, 255 F. App'x 546, 549 (2d Cir. 2007) (declining to differentiate between "nigger" and "boy"); *McKenzie v. Citation Corp.*, 2007 WL 1424555, at \*12 (S.D. Ala. May 11, 2007); see also MICHELE NORRIS, *THE GRACE OF SILENCE* 52 (2010) (observing "[t]hey called my grandfather 'boy' and 'nigrah,' which was supposed to be slightly less offensive and confrontational than nigger. Slightly.") BETRAM WILBUR DOYLE, *THE ETIQUETTE OF RACE RELATIONS IN THE SOUTH: A STUDY IN SOCIAL CONTROL* 143 (1937) ("Even 'nigger' is occasionally used, though Moton remarks that the term is rarely heard in public on the lips of white people. This term does not strictly conform to what is accepted, for Negroes resent it occasionally. Where these terms are not used, the ubiquitous 'Jack' and—as on Pullman cars—'George' and 'boy' are in good form.").

from the residence belittled Sarkar and was used purposefully in the same manner that a schoolyard bully punishes others for his amusement.

Valenti's attitude and acts of discrimination were clarified at the hearing by his own testimony wherein he called Torrey "boy" more than 24 times in the hearing that took approximately four hours. As discussed in our section on credibility, we believe this is evidence of prejudice. American history and literature are filled with examples of Caucasians addressing African-American men as "Boy" to insult or demean them.<sup>12</sup> The term "boy" as applied to African-American men is a centuries old custom of discrimination and often preceded violence. Dr. Martin Luther King, Jr., wrote in *Letters from a Birmingham Jail* that "boy" is a significant vehicle for racial discrimination, degradation and oppression and later he explained that "...when your first name becomes 'nigger,' your middle name becomes 'boy' (however old you are) and your last name becomes 'John'...then you will understand why we find it difficult to wait."<sup>13</sup> American literature also picked up the custom of discrimination in as much as "boy" is a racially coded reference that encapsulates oppression, discrimination, and how Jim Crow era laws even now dictate how people communicate.<sup>14</sup> Additionally, recent cases reflect how "boy" just as "nigger" is commonly understood to be racially discriminatory.<sup>15</sup>

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<sup>12</sup>In Frederick Douglass' autobiography, he related how a slaveholder saw an African-American man walking. As observed by Douglass, the slaveholder "addressed him in the usual manner of speaking to colored people on the public highways of the south: 'Well, boy, whom do you belong to?'" See FREDERICK DOUGLASS, *NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE* 61 (1845).

<sup>13</sup>MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 69 (1964).

<sup>14</sup>See HARPER LEE, *TO KILL A MOCKINGBIRD* 196–98 (1960); RICHARD WRIGHT, *NATIVE SON* 154, 213, 268–69 (1998) (originally published in 1940); RICHARD WRIGHT, *BLACK BOY* 180–82 (2006) (originally published in 1944); CARSON McCULLERS, *THE HEART IS A LONELY HUNTER* 72 (1967) (originally published in 1947); JOHN HOWARD GRIFFIN, *BLACK LIKE ME* 61, 62, 70 (1989) (originally published 1960); HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN* 478 (Harvard Univ. Press 1962).

<sup>15</sup>See *Alexander v. Opelika City Schools*, 352 F. App'x 390, 393 (11th Cir. 2009); *McCann v. Tillman*, 526 F.3d 1370, 1379 (11th Cir. 2008); *Washington v. Kroger Co.*, 218 F. App'x 822, 825 (11th Cir. 2007).

“Boy” as a racial epithet, creates in and of itself triable jury questions on racial discrimination claims.<sup>16</sup> In so doing, the Eighth Circuit Court of Appeals used “boy” as a litmus test when a litigant suggested that another term should be seen as a racial epithet.<sup>17</sup> At least one federal district court has taken “judicial notice” that “boy” historically has been used “from the time of slavery” to refer to African-American men in a “demeaning, insulting manner.”<sup>18</sup> Because it is commonly known and easily ascertainable that “nigger” and “boy” have been used interchangeably – derogatory and demeaning terms – to African-American males, the Administrative Hearing Commission as Hearing Examiner takes administrative notice that “nigger” and “boy” are demeaning, derogatory and insulting terms.

It is not credible that Valenti, who was educated in the South at the University of Miami and now lives in Missouri, would not understand this meaning. Even when asked if he was using the term “boy” to refer to Torrey, Valenti assured the Hearing Examiner that he was.

In *Conway v. Missouri Comm’n on Human Rights*,<sup>19</sup> the court stated:

In this case, the Commission expressly found that Employer’s testimony concerning its proffered reasons was internally inconsistent, inconsistent with undisputed facts, incredible, uncorroborated and unsupported by documentation. The disparity in pre-promotional training coupled with Employer’s failure to produce documentation Supervisor claimed to have complied were further found to give rise to a “suspicion of mendacity” on the part

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<sup>16</sup>See *Armstrong v. Whirlpool Corp.*, 363 F. App’x 317, 322 (6th Cir. 2010) (supervisor’s reference to African-American men as “boys” supports hostile environment claim); *Betts v. Costco Wholesale Corp.*, 558 F.3d 461, 470 (6<sup>th</sup> Cir. 2009) (concluding that white supervisor’s reference to African-American plaintiff as “Phil’s Boy,” was “racially loaded” and evidence of racial hostility); *Williams*, 255 F. App’x at 549 (describing “boy” as “racially offensive” and indicative of racial animus); *McKenzie v. Citation Corp.*, 2007 WL 1424555, at \*12 (S.D. Ala. May 11, 2007) (observing that “using words like ‘boy’ or ‘nigger’ to refer to African-American employees, is clearly race-related”); *White v. BFI Waste Servs., LLC*, 375 F.3d 288, 297 (4th Cir. 2004) (reversing summary judgment on hostile environment claim based on defendant’s use of “boy,” among other racially offensive language); cf. *Peal v. Cuomo*, 2000 WL 1902182, at \*7 (S.D. Ind. Nov. 20, 2000) (indicating that racially neutral words should be considered in its context and not simply judged on face value).

<sup>17</sup>*Twymon v. Wells Fargo*, 462 F.3d 925, 934 n.5 (8th Cir. 2006) (observing that certain facially neutral phrases are “materially different from the historically racially disparaging but facially-neutral term ‘boy’ recently deemed potentially probative of racial animus...”).

<sup>18</sup>*Bailey v. USF Holland*, 2007 WL 470439, at \*10 (M.D. Tenn. Feb. 8, 2007).

<sup>19</sup>7 S.W.3d 571 (Mo. App., E.D. 1999).

of Employer. Based on our careful review of the record, and with due regard to the Commission's superior opportunity to evaluate the credibility of the witnesses, we cannot say that the inferences drawn by the Commission are unsupported by substantial evidence.<sup>[20]</sup>

Similarly, in this case we find by a preponderance of the evidence that Valenti's testimony is incredible and mendacious.<sup>21</sup>

Valenti's demeanor while on the stand and throughout the proceeding was edgy, physically threatening, evasive, and he asserted that he did not understand even the most simple of terms while answering straightforward questions on cross-examination. His verbal utterances and racial expressions and answers while on cross and observing the direct examination of other witnesses were insulting, boisterous, rude, and flippant.

## II. Housing Discrimination Based on Race

"Missouri law seeks to eradicate discrimination in housing."<sup>22</sup> Claims of housing discrimination based on race under the MHRA have been determined using the same analysis as Title VII<sup>23</sup> and 42 U.S.C. § 1981.<sup>24</sup> Section 213.010(16)<sup>25</sup> states: "**Rent**" includes to lease, to let and otherwise to grant for consideration the right to occupy premises not owned by the occupant[.]" Section 213.040.1(2), which is part of the MHRA, provides:

It shall be an unlawful housing practice:

\* \* \*

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race,

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<sup>20</sup>*Id.* at 575.

<sup>21</sup>"[G]iven to or characterized by deception or falsehood or divergence from absolute truth." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 774 (11<sup>th</sup> ed. 2004).

<sup>22</sup>*Van den Berk v. Missouri Comm'n on Human Rights*, 26 S.W.3d 406, 412 (Mo. App., E.D. 2000).

<sup>23</sup>Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000E et seq.

<sup>24</sup>*Evans v. Siegel-Robert, Inc.*, 139 F.Supp.2d 1120 (E.D. Mo. 2001), *aff'd*, 22 Fed. Appx. 688, 2001 WL 1562835.

<sup>25</sup>Statutory references are to RSMo 2000, unless otherwise noted.

color, religion, national origin, ancestry, sex, disability, or familial status[.]

Section 213.070(4) prohibits discrimination by declaring it an unlawful practice “[t]o discriminate in any manner against any other person because of such person’s association with any person protected by [Chapter 213, RSMo].”

Sarkar presented a prima facie claim of housing discrimination in violation of 213.040.1(2) and 213.070 (4) in that:

1. Sarkar, a Native American Caucasian female, is the mother of an African-American son. She is protected by the statute by virtue of 213.070(4) resulting from her relationship to her son.
2. The landlord Valenti discriminated against her in the terms and conditions, privileges and provision of services related to her rental of half of his duplex located at 1938 Sterling after he learned that Sarkar had an African-American son.
3. Her son’s race was a factor in his discriminatory conduct inasmuch as Valenti called him a “nigger” on numerous occasions, unlawfully entered her home to harass her, threatened to shoot her with a shotgun, demanded that she move, tried to evict her for failure to pay rent when the rent was paid, and then lied to a potential landlord so that she could not move.<sup>26</sup>

The use of the racially derogatory terms was blatant, commonplace, and severe. Valenti physically threatened Sarkar on numerous occasions, invaded her home, and called Sarkar’s African American son a “nigger” while instructing that he could not visit the property she rented and later demanding that she move out due to her association with her son. Valenti engaged in

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<sup>26</sup>See *Biggs v. Missouri Commission on Human Rights*, 830 S.W.2d 512, 517 (Mo. App., E.D. 1992.)

unlawful housing practices as enumerated herein and did so based on racial animus -- specifically the fact that his renter was the mother of a bi-racial son of Caucasian and African-American heritage.

“Nigger” was directed at Sarkar based on her son’s race, and the terms were also directed at other minorities in her presence. The use of the term interfered with Sarkar’s peaceable enjoyment of her tenancy because she suffered severe emotional effects. She legitimately feared for her safety. She complained to roommates about the conduct, pretended not to be home, hid in her room, and was deeply concerned about the safety of her family and in particular her grandchildren. Her home was permeated with discriminatory intimidation that was sufficiently severe or pervasive to alter the conditions of her rental agreement and make her want to abandon a home she had a legal right to inhabit. Sarkar told Valenti that she did not approve of his demeaning and dehumanizing use of the term nigger in relation to her and her family – and specifically her son. Valenti, however, escalated the level of threats and sought to use the courts as a sword to sever her tenancy when he had no legal basis to do so. Even so, when Sarkar and her roommates decided that their safety and peace of mind necessitated their departure, Valenti purposefully and admittedly sabotaged their attempts to move by lying to the potential landlord saying that they did not pay rent.

Sarkar suffered from harassment and discrimination in the terms and condition of housing rented from Valenti on the basis of her African-American son’s brown skin – more often denoted as race – in violation of § 213.040.1(2) and 213.070(4).

### III. Damages

Section 213.075.11 provides in part:

The panel shall state its findings of fact and conclusions of law, and if, upon all the evidence at the hearing, the panel finds:

(1) That a respondent has engaged in an unlawful discriminatory practice as defined in this chapter, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action, as in the panel's judgment will implement the purposes of this chapter, including, but not limited to, payment of back pay; hiring; reinstatement or upgrading; . . . [and] payment of actual damages[.]

*Cease and Desist Order*

In this case, Sarkar no longer rents from Valenti. However, the Hearing Examiner recommends that MCHR issue a cease and desist order so that future renters do not suffer from the same discriminatory practices and order Valenti to post the "Discrimination in housing" poster, and use the words "Equal Opportunity Renter" in advertisements for his rental properties for a period of five years and maintain records to prove compliance.

*Prejudgment Interest*

An award of prejudgment interest is also appropriate in cases under the MHRA.<sup>27</sup> The purpose of anti-discrimination laws is to provide "make whole relief," and prejudgment interest is included in this concept.<sup>28</sup> Section 408.040.3 awards prejudgment interest equal to the applicable Federal Funds rate, plus three percent. The federal funds rate, as of October 28, 2010, is 0.25 percent.<sup>29</sup> We allow interest at the rate of 3.25%.<sup>30</sup>

*Actual Damages for Humiliation and Emotional Distress*

Actual damages in a Missouri civil rights case may also include amounts for humiliation and emotional distress.<sup>31</sup> MCHR may award damages for emotional distress even without a

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<sup>27</sup>11 S.W.3d at 770.

<sup>28</sup>*Id.*

<sup>29</sup>Federal Reserve Bank of New York, "Federal Funds Rate," <http://www.ny.frb.org/markets/omo/dmm/fedfundsdata.cfm>.

<sup>30</sup>Section 408.040 RSMo Supp. 2011.

<sup>31</sup>*Conway*, 7 S.W.3d at 575.

medical diagnosis.<sup>32</sup> Damages may be established by testimony or inferred, and courts must consider the severity in making damages determinations.<sup>33</sup> Sarkar did not enter any medical records into evidence. Sarkar testified about hiding in her home, pretending not to be home, and being fearful of violence after Valenti's threats and the effect that had on her emotional distress. It is clear that the discriminatory conduct caused great emotional distress to Sarkar, and this was exacerbated by Valenti's deliberate acts in continuously calling her son a "nigger," banning him from the property, walking around her house with a gas can, and threatening to shoot her with a shotgun. This, combined with racially motivated discrimination and intense use of legal process against a person who has a hard time reading and writing, made Sarkar feel unsafe and victimized. Sarkar kept the abuse from her son. In doing so, she distanced herself from him and did so likely to protect Valenti from the wrath of man who had been demeaned by being called a "nigger" even as his own mother was being threatened with death for her association with him. Sarkar was supposed to be recuperating at home following a violent attack that necessitated medical care, but instead was made a prisoner in her home, afraid for her family's safety, and relying on peace officers to assist her when Valenti unlawfully entered her home.

An award of damages for humiliation and emotional distress is well justified in this case. Valenti's behavior was extreme, including the pervasive use of terms such as: "nigger" on multiple occasions and "boy" at the hearing. There is little doubt that the use of the term "nigger" was directly used to hurt Sarkar as she was the mother of an African American son being objectified and dehumanized by the term.

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<sup>32</sup>7 S.W.3d at 575.

<sup>33</sup>*Missouri Comm'n on Human Rights v. Red Dragon Restaurant*, 991 S.W.2d 161, 171 (Mo. App., W.D. 1999).

The extensive and pervasive nature of the discriminatory conduct shows that damages for emotional distress are well justified. The conduct made her insecure in her own home, afraid to use the restroom or sleep, and it showed a purposeful intent to intimidate her in her home with the ultimate risk to her life if she continued her association with her son. Further, Sarkar experienced ongoing physical and psychological effects.

In *Kientzy v. McDonnell Douglas Corp.*,<sup>34</sup> the court affirmed the jury's award of \$125,000 for mental anguish and suffering. In that case, an employee was terminated for stopping at home for lunch without her supervisor's permission, and the jury found that her sex was a motivating factor in the employer's decision.

*Stern John v. Kriesler*<sup>35</sup> is similar in that the plaintiffs in that case also experienced discrimination while renting. They included unwarranted eviction actions, threats against the plaintiffs, the African-American family being called "nigger," the family being compelled to move, and the landlord providing false, negative references that resulted in the rejection of their rental application to live in another place. That case was resolved for \$1,050,000 to plaintiffs without an award for punitive damages.

Similarly, a Missouri federal court in *USA v. Moulton Enterprises*<sup>36</sup> issued a verdict of \$1,200,000 for plaintiff, who was denied housing when she was pregnant because the landlord had a policy against children.

Housing discrimination cases such as this involve multiple incidents of discriminating conduct, threats, intentional misuse of the court system for evictions and the provision of false information that kept the complaining party of obtaining new housing where they were free from

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<sup>34</sup>990 F.2d 1051 (8<sup>th</sup> Cir. 1993).

<sup>35</sup>238 F.Supp.2d 1104 (D. Minn. 2003).

<sup>36</sup>XI JVRS 46-18 (E.D. Mo), 1995 WL 17007849.

abuse and threats based on their race. Moreover, juries and judges have spoken very clearly on this issue – housing discrimination based on race that involves multiple types of harassment will not be tolerated in civil society.

A violation of the Human Rights Act is akin to the tort of intentional infliction of emotional distress, for which medically documented damages need not be proven with mathematical precision.<sup>37</sup> This method of proof for MHRA cases means a renter that has been discriminated against will have difficulty establishing a precise dollar figure for emotional distress. We address this issue by comparing the evidence of emotional distress suffered by Sarkar to that suffered by similarly situated litigants. A comparable case to Sarkar’s case is *Eich v. Board of Regents*,<sup>38</sup> where the employee’s damages arose from a pattern of sexual harassment perpetrated on plaintiff by various employees of defendant.<sup>39</sup> She was awarded \$200,000 in compensatory damages, all arising from emotional distress.<sup>40</sup> We find that the victims’ symptoms and the duration of the period in which they suffered them to be comparable.

The Hearing Examiner recommends that MCHR award Sarkar \$125,000 in actual damages for humiliation and emotional distress.<sup>41</sup>

#### Actual Damages for Violation of Civil Rights

In *Conway*,<sup>42</sup> the court awarded actual damages for violation of civil rights in the amount of one third of the amount of the damages for humiliation and emotional distress. In this case, Valenti’s violation of Sarkar’s civil rights on the basis of her son’s race was pervasive and extreme. The Hearing Examiner recommends that MCHR award Sarkar \$37,500 in actual

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<sup>37</sup>*State ex rel. Dean v. Cunningham*, 182 S.W.3d 561, 566 n.4 (Mo. banc 2006).

<sup>38</sup>350 F.3d 752 (8<sup>th</sup> Cir. 2003).

<sup>39</sup>*Id.* at 755-56.

<sup>40</sup>*Id.* at 762.

<sup>41</sup>*See Lynn v. TNT Logistics North America, Inc.*, 275 S.W.3d 304 (Mo. App., W.D. 2008).

<sup>42</sup>7 S.W.3d 571 (Mo. App., E.D. 1999).

damages for violation of civil rights in reliance on the long time period over which the violations occurred, the high (and articulated) potential for physical harm to Sarkar in light of the extremely violent – arson and murder- threats made in conjunction with the aforementioned civil rights violations, and finally the clear nature of the violations. A higher award is justified on the facts of this case.

### Punitive Damages

Punitive damages may be awarded in a case under the MHRA.<sup>43</sup> Although we find no cases addressing the pleading requirements for punitive damages in a case under the MHRA, as a general proposition the statutes, case law, and rules are clear that “[p]unitive damages must be pleaded and proved.”<sup>44</sup> Because MCHR’s complaint does not plead for an award of punitive damages, we do not address whether they are warranted in this case, but it is unclear why they were not pled given that the intent of punitive damages is to deter similar conduct in the future.

### Report

In this case, Valenti’s conduct is so egregious that the Hearing Examiner recommends that MCHR order him to prepare a report summarizing his efforts to ensure compliance with the MHRA, and that he file this report with MCHR within 180 days of its order adopting this recommended decision.

### **Summary**

The Hearing Examiner recommends that MCHR order Valenti to:

1. pay Sarkar \$125,000 in actual damages for humiliation and emotional distress,
2. pay Sarkar \$37,500 in actual damages for violation of civil rights,

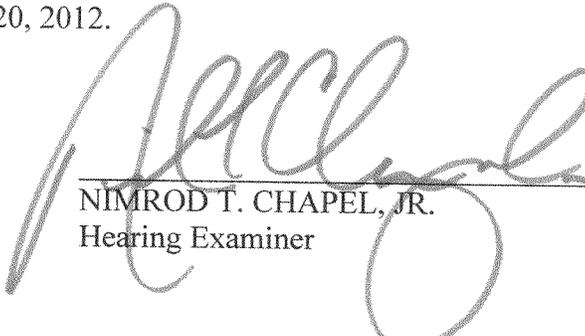
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<sup>43</sup>*Kientzy*, 990 F.2d at 1062.

<sup>44</sup>*Benson v. Jim Maddox Northwest Imports, Inc.*, 728 S.W.2d 668, 669 (Mo. App., E.D. 1987).

3. pay Sarkar pre-judgment interest at the rate of 3.25 percent,
4. pay to the Human Rights Fund a civil penalty in the amount of \$2,000,
5. cease and desist from further discriminatory practices,
6. post antidiscrimination posters at his rental properties for five years,
7. provide the words "equal Opportunity Renter" in any advertisements for five years, and
8. file a report with MCHR, within 60 days of the date of MCHR's order adopting this recommended decision upon exceptions, summarizing efforts made by Valenti to ensure compliance with MHRA, and keep records that show compliance with MHRA for five years.

SO RECOMMENDED on March 20, 2012.



NIMROD T. CHAPEL, JR.  
Hearing Examiner