

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Kathleen M Terry 2411 Tawhee Dr Apt 106 Madison WI 53711 <p style="text-align:center">Complainant</p> <p style="text-align:center">vs.</p> YWCA Madison 101 E Mifflin St Madison WI 53703 <p style="text-align:center">Respondent</p>	HEARING EXAMINER'S DECISION AND ORDER ON COMPLAINANT'S PETITION FOR COSTS AND FEES Case No. 20051011
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BACKGROUND

On January 24, 2005, the Complainant, Kathleen Terry, filed a complaint with the Madison Equal Opportunities Commission. The complaint alleged that the Respondent, the YWCA of Madison, discriminated against her with respect to her arrest and conviction records when it denied her housing in November of 2004. The Respondent denied that it discriminated against the Complainant and asserted that it had legitimate, nondiscriminatory reasons for denying the Complainant housing.

Subsequent to an investigation, a Commission Investigator/Conciliator issued an Initial Determination on August 3, 2005, concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant as alleged in her complaint. Efforts to conciliate the complaint were unsuccessful and the complaint was transferred to the Hearing Examiner for a public hearing on the merits of the complaint.

After protracted pre-hearing disputes and efforts on the part of both parties, a hearing was held on April 28, 2006. As part of that hearing, the Respondent admitted liability for discrimination against the Complainant on the bases of arrest record and conviction record. The Complainant also voluntarily limited the types of damages that she was seeking.

On October 8, 2007, the Hearing Examiner issued a Recommended Findings of Fact, Conclusions of Law and Order in this matter. The Hearing Examiner entered a finding of discrimination against the Respondent. However, despite the finding of discrimination, the Hearing Examiner did not award the Complainant any damages finding that the Complainant had failed to prove any damages that could be awarded by the Commission. The Hearing Examiner did, however, allow the Complainant to submit a petition for her costs and fees incurred in connection with pursuit of this complaint. The petition was to be filed no later than 15 days from the date upon which the Recommended Findings of Fact, Conclusions of Law and Order became final.

The Recommended Findings of Fact, Conclusions of Law and Order became final on or about October 26, 2007, as a result of neither party's appealing the recommended decision.

On October 22, 2007, the Commission received from Complainant a document that was somewhat confusing to the Hearing Examiner. The Hearing Examiner was not clear whether the document (actually dated October 18, 2007) was intended to be taken as an appeal of the Hearing Examiner's October 8, 2007 Recommended Findings of Fact, Conclusions of Law and Order or whether the October 18, 2007 document was intended to be a considered a Petition for Costs and Fees.

On October 23, 2007, the Hearing Examiner sent the parties a letter outlining his confusion and directing the Complainant to submit, by November 2, 2007, documentation of her costs and fees or a statement indicating that her October 18, 2007 letter was intended to be an appeal of the Hearing Examiner's order.

On November 2, 2007, the Commission received from Complainant a document setting forth her petition for costs and fees. In this document, the Complainant requests \$93 in costs and \$14,906 in fees calculated at 119.25 hours at \$125.00 per hour. Since issuance of his Recommended Findings of Fact, Conclusions of Law and Order, the Hearing Examiner has not received any communication from the Respondent.

DECISION

The Complainant has diligently pursued her complaint without representation. The Hearing Examiner acknowledges that the hearing and post-hearing procedures utilized by the Commission are not entirely "user" friendly, especially to the unrepresented.

The Hearing Examiner attempts to take into account these difficulties when imposing requirements upon the parties. While the Hearing Examiner has some degree of discretion with respects to the requirements imposed upon the parties, there are limits to this discretion. In other words, the Hearing Examiner may not exercise his discretion so as to favor one party over another. Equally, the Hearing Examiner may not dismiss requirements that protect the substantive, procedural, or due process rights of either party. It is with this background and these considerations that the Hearing Examiner addresses the Complainant's Petition for Costs and Fees.

The Complainant, on October 22, 2007, submitted a request for \$7,500.00 for costs and fees. That submission provided no documentation of how the Complainant derived this figure or the basis for the request of this particular amount beyond stating that it seemed typical for claims of discrimination. On November 2, 2007, the Complainant submitted what appears to be a revised calculation of her costs and fees. This submission requests an award of \$93 in costs and \$14,906 in fees. As with the October 22, 2007 submission, the November 2, 2007 petition lacks any explanation of how the amounts were calculated or any documentation of the amounts beyond a brief equation of hours and an hourly rate.

While the \$93 in costs is an objectively reasonable amount given the typical items for which costs can be awarded in a discrimination action, the Hearing Examiner is without a basis in the record for ordering the payment of these costs. It is impossible for the Hearing Examiner to determine whether the Complainant is seeking payment for the costs of copying documents submitted in this case or for some other reason legitimately connected with pursuit of this complaint or costs not associated with this complaint at all. It is possible that the Complainant seeks payment of costs that might otherwise be connected with this complaint, but are not reasonably awardable.

On this record, the Hearing Examiner would need to engage in the type of speculation that is the hallmark of arbitrary and capricious decision making which is prohibited by standards of due process and fairness to the parties. The absence of any documentation in the record as to the basis for the costs requested by the Complainant requires the Hearing Examiner to decline to make any award for costs.

Similarly, the record with respect to fees lacks the necessary documentation for an award. The Hearing Examiner and the Commission have addressed the issue of fees on several occasions. See, e.g., Chung v. Paisans, MEOC Case No. 21192 (Ex. Dec. Atty. Fees 7/29/93 and 9/23/93); Gardner v. WalMart Vision Center, MEOC Case No. 22637 (Ex. Dec. Atty. Fees 6/1/01); Sprague v. Rowe & Hacklander - Ready, MEOC Case No. 1462 (Comm. Dec. Atty. Fees 2/9/98). In order to support an award of fees, a prevailing Complainant must demonstrate that the hours expended are appropriately accounted for, that the rate of pay is reasonable, and that the work on which time was expended was reasonably necessary and not duplicative. Of course, there is the threshold question to whom are the fees owed.

On this record, there is no showing that the Complainant engaged the services of any attorney or professional to whom she paid compensable fees. While the Complainant undoubtedly spent many hours in pursuit of her complaint, she is not entitled to compensation for that time.

Even if the Complainant could receive compensation for her time under the general notion of "fees," the record lacks any basis for determining that the Complainant should be compensated at the rate of \$125.00 per hour. In the standard fee petition, an attorney or other professional's customary hourly rate is utilized. This amount is generally established by submission of an affidavit of the professional involved. The record lacks such documentation.

Additionally, in the usual fee petition, there is a summary of the contemporaneously maintained records of the time spent and indication of what work was performed during the time in furtherance of the complaint. Again, the record lacks this necessary component of documentation.

Given the lack of supporting documentation, the Hearing Examiner has no alternative but to dismiss the Complainant's petition for that lack of support. The Hearing Examiner cannot make any award of costs or fees in this matter without engaging in impermissible speculation or guesswork.

ORDER

For the foregoing reasons, the Hearing Examiner denies and dismisses the complainant's petition for costs and fees in the above-captioned matter.

Signed and dated this 19th day of September, 2008.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Paul F X Schwartz

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CITY OF MADISON
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<p>Kathleen M Terry 2411 Tawhee Dr Apt 106 Madison WI 53711</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>YWCA Madison 101 E Mifflin St Madison WI 53703</p> <p style="text-align: center;">Respondent</p>	<p>COMMISSION DECISION AND FINAL ORDER</p> <p>Case No. 20051011</p>
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BACKGROUND

On January 12, 2005, the Complainant, Kathleen Terry, filed a complaint with the Madison Equal Opportunities Commission (Commission) (now known as the Department of Civil Rights). The complaint charged that the Respondent, the YWCA, discriminated against the Complainant in housing on the bases of arrest record and conviction record when it declined to offer her housing in November of 2004. The Respondent denied discriminating against the Complainant.

Subsequent to an investigation, a Commission Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant as alleged in the complaint. Efforts at conciliation failed and the complaint was transferred to the Hearing Examiner for further proceedings.

After extensive pre-hearing proceedings, including discovery and disputes about discovery, a hearing was held on April 28, 2006. Prior to hearing and again at hearing, the Respondent stipulated to violation of the Equal

Opportunities ordinance. Given these stipulations, the hearing addressed the issue of damages alone. The parties also stipulated that the Complainant would not seek certain damages in order to avoid having to produce certain housing and medical records.

On October 8, 2007, the Hearing Examiner issued Recommended Findings of Fact, Conclusions of Law and Order concluding that the Complainant had failed to demonstrate that she experienced any injury for which the Commission could compensate her. The Hearing Examiner also ordered that the Complainant could petition the Commission for an order for her costs and fees incurred in bringing and pursuing the complaint.

On October 22, 2007, the Complainant submitted a document that the Hearing Examiner was uncertain as to whether it was an appeal of the decision not to award damages or a petition for her costs and fees. On October 23, 2007, the Hearing Examiner wrote the parties seeking to clarify the Complainant's intent. The Complainant clarified that her October 22, 2007 submission was intended not to be an appeal, but was rather a petition for her costs and fees.

On January 4, 2008, the Hearing Examiner issued a Decision and Order on Complainant's petition for costs and fees concluding that the Complainant had failed to properly prove or document her costs and fees. Accordingly, the Hearing Examiner determined that he could not make any award to the Complainant.

The Complainant timely appealed the Hearing Examiner's Decision and Order to the Commission. During the submission of arguments on the appeal, the Complainant further clarified her claim for costs. She specified that she had costs of \$93.00. In correspondence to the Commission, the Respondent's counsel represented that it would be willing to agree to pay those costs. It was not clear that the Complainant was interested in pursuing only the issue of the costs. The Director of the Department of Civil Rights informed the parties that without further clarification, the matter would proceed to the Commission for resolution.

On September 11, 2008, the Commission met to consider the Complainant's appeal of the Hearing Examiner's January 4, 2008, Decision and Order on Complainant's Petition for Costs and Fees. Participating in the Commission's consideration were Commissioners Bayrd, Braunginn, Enemuoh-Trammell, McDonell, Morrison, Walsh and Zipperer. Commissioners Benford, Solomon and Woods were not present and did not take part in the discussions.

DECISION

The Commission adopts and incorporates by reference as if fully set forth herein, the Hearing Examiner's Decision and Order dated January 4, 2008, except that the Commission enters a finding and order that the Respondent shall pay to the Complainant \$93.00 in costs.

Review of the record indicates that the Hearing Examiner properly found that the Complainant had not properly presented support for her petition for costs and fees as of the date of his Decision and Order. However, submissions made during the appeal properly clarified the Complainant's claim for her costs. In letters dated March 9, 2008 and April 14, 2008, Respondent indicates that the Respondent was willing to pay to the Complainant costs in the amount of \$93.00. The Commission understands this to be a form of stipulation and enters an order based upon it and the Commission's independent review of the record including materials submitted subsequent to the Hearing Examiner's Decision and Order of January 4, 2008.

The Complainant's costs of \$93.00 appear to be reasonable given the nature and length of this process. There is no question of duplication or unnecessary charges.

The Hearing Examiner's determination that no fees are appropriate given the Complainant's *pro se* status is correct. Nothing in the subsequent submissions affects the Hearing Examiner's conclusion in this regard.

It is not entirely clear to the Commission whether, in the end, the Complainant sought an award of actual damages in this matter. The Hearing Examiner's Recommended Findings of Fact, Conclusion of Law and Order dated October 8, 2007, addresses those issues and as there was no proper appeal of that decision, the question of damages is not properly before us.

ORDER

The Respondent shall pay to the Complainant the sum of \$93.00 no later than 30 days from the undersigned date to compensate her for the costs of bringing and maintaining this action. Once that amount is paid, the complaint will be dismissed.

Participating in the Commission's action are Commissioners Bayrd, Braunginn, Enemuoh-Trammell, McDonell, Morrison, Walsh and Zipperer. No Commissioners opposed the Commission action. Commissioners Benford, Solomon and Woods were excused from the meeting and took no part in the Commission action.

Signed and dated this 4th day of January, 2008.

EQUAL OPPORTUNITIES COMMISSION

Bert G. Zipperer
President

cc: Paul F X Schwartz

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<p>Kathleen M Terry 2411 Tawhee Dr Apt 106 Madison WI 53711</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>YWCA Madison 101 E Mifflin St Madison WI 53703</p> <p style="text-align: center;">Respondent</p>	<p>HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Case No. 20051011</p>
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This matter came before Madison Equal Opportunities Hearing Examiner, Clifford E. Blackwell, on April 28, 2006, in room LL-120 of the Madison Municipal Building, 215 Martin Luther King, Jr. Boulevard, Madison, Wisconsin. The Complainant, Kathleen Terry, appeared in person and without counsel. The Respondent, the YWCA, appeared by its representative, Gail Ilenfeld, and its attorney, Paul F. X. Schwartz.

Based upon the record of proceedings in this matter, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. At all times relevant to this complaint, the Complainant is or has been an adult resident of the City of Madison.
2. She has an arrest record.
3. She has a conviction record.
4. The Respondent is organized to provide various services to the public including, in some limited circumstances, housing. The Respondent's principle place of business or location is 101 East Mifflin Street, Madison, WI 53703.

5. On or about November 16, 2004, the Complainant submitted an application for tenancy to the Respondent.
6. The Respondent denied the Complainant's application for tenancy, at least in part, because of the Complainant's open charge for domestic violence.
7. At some point subsequent to November 16, 2004, and prior to January 22, 2005, the Complainant became a resident at a shelter for the homeless operated by the Salvation Army.
8. From on or about January 22, 2005, until at least March, 2005, the Complainant experienced living conditions that she viewed as harassing, demeaning and otherwise intolerable. These conditions or circumstances, included but were not limited to, disputes with other residents, disputes with shelter staff, denial of services, lost or stolen personal property and denial of access to her file.
9. The Complainant particularly objects to the failure of the Salvation Army to release to her a copy of the file it maintained about her residence at the shelter.

CONCLUSIONS OF LAW

1. The Complainant is a person with an arrest record and is entitled to the protection of the Madison Equal Opportunities Ordinance.
2. The Complainant is a person with a conviction record and is entitled to the protection of the Madison Equal Opportunities Ordinance.
3. The Respondent is a provider of housing within the meaning of the Madison Equal Opportunities Ordinance.
4. The Respondent violated the Madison Equal Opportunities Ordinance when it denied the Complainant housing, at least in part, because of the Complainant's arrest record.
5. The Respondent violated the Madison Equal Opportunities Ordinance when it denied the Complainant housing, at least in part, because of the Complainant's conviction record.
6. The Complainant has failed to establish a causal connection between the Respondent's discrimination and any damages she may have experienced.

ORDER

1. The Respondent shall cease and desist from any discrimination against the Complainant on the bases of arrest record or conviction record.
2. The Complainant shall submit a petition for her costs and fees in connection with bringing this complaint. Such petition shall be filed with the Commission and served upon the Respondent no later than fifteen (15) days from this order's becoming final.

MEMORANDUM DECISION

This complaint has a somewhat unusual procedural history. On August 3, 2005, a Commission Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant in the provision of housing on the bases of her arrest record and conviction records. The Complainant alleged in her complaint that the Respondent denied her housing because of an open charge relating to an incident of domestic violence.

The Respondent denied that it had violated the ordinance. It did concede that its Housing Counselor had, in part, considered the open charge pending against the Complainant among other reasons for denying her application for housing.

The Hearing Examiner notes two problems with the Initial Determination that do not affect the outcome of this matter. First, the Initial Determination recites that the Respondent is an employer within the meaning of the

ordinance. While this is undoubtedly true, it is irrelevant to a claim of discrimination in housing. The rest of the Initial Determination properly addresses itself to issues of housing discrimination. Second, the Initial Determination only addresses facts relating to an open charge pending against the Complainant. Nowhere in the Initial Determination is there an indication of how, if at all, this relates to the requirement not to discriminate against an individual because of that individual's conviction record. It is not clear from the Initial Determination that the Complainant has a conviction record upon which the Respondent may have acted.

These issues may have been sufficient reason to remand the Initial Determination for further findings consistent with the allegations of the complaint. However, the subsequent actions of the parties, especially the Respondent, make such a remand unnecessary.

After issuance of the Initial Determination, the parties were given the opportunity to conciliate the complaint. Those efforts proved unsuccessful. The complaint was then transferred to the Hearing Examiner for a public hearing on the allegations of the complaint.

At the Pre-Hearing Conference held in this matter, the Respondent indicated that it wished to enter a stipulation or admission to a violation of the ordinance. The Hearing Examiner gave the Respondent a date by which such an admission must be made. The Respondent filed such an admission on September 2, 2005. The Complainant objected to the Respondent's admission asserting that it was a single admission, and did not admit violations of both allegations of the complaint. The Hearing Examiner indicated that he would accept the admission, but that the Complainant could reserve her objection.

The parties filed several different forms of discovery. These submissions resulted in competing Motions to Compel discovery. It took some time to resolve the discovery disputes, but most importantly, the Complainant stipulated to limit the damages that she sought so as to preclude the issuance of an order compelling her to disclose information about her efforts to find housing after being denied by the Respondent. The Complainant also wished to preclude an order compelling disclosure of her medical history prior to November 24, 2004, and subsequent to that date.

The effect of the Complainant's stipulations was to prevent her from seeking damages except in one extremely limited area. Customarily, the Commission will seek to issue an award of damages that will place the Complainant in the position she would have been in had the discrimination not occurred. This "make whole" remedy can include out-of-pocket expenses resulting from the act of discrimination, and damages for emotional distress arising from the effects of discrimination upon the Complainant. However, for the most part, the Complainant agreed not to seek such damages.

Ultimately, the Complainant seeks three things from the Commission as a result of the discrimination that the Respondent admits she experienced. First, the Complainant wants the Respondent to specifically admit that it violated the ordinance on two bases, arrest record and conviction record. The Complainant is apparently not satisfied with the Respondent's admission that it violated the ordinance by considering the Complainant's open charge. Second, the Complainant wishes monetary compensation from the Respondent for the alleged discrimination she experienced at the homeless shelter run by the Salvation Army. The Complainant contends that she would not have suffered such discrimination had the Respondent not discriminated against her. Third, the Complainant asks that the Hearing Examiner order the Salvation Army to release to the Complainant her file compiled by the Salvation Army relating to her stay at the Salvation Army's homeless shelter.

While the Complainant may derive some personal satisfaction from requiring the Respondent to make specific admissions for each of her allegations, the Hearing Examiner sees no need to require such admission in writing. The Respondent's generalized admission of a violation of the ordinance is sufficient to allow the Hearing Examiner to proceed to assess the Complainant's claim for damages. Generally speaking, more numerous allegations of discrimination do not correlate with greater awards of damages. It is important to bear in mind that the goal of the Equal Opportunities Ordinance is to redress discrimination that has occurred, not to punish the Respondent. While punishment of a Respondent may have a preventative effect that is desirable, punishment is reserved to a system of civil forfeitures that is separate and distinct from the Commission's hearing process. Compare MGO sec. 3.23(10)(c)2b and MGO sec. 3.23(15).

Unless a Complainant can demonstrate distinctly different damages arising because of different bases of discrimination, there is no practical benefit to separate findings of discrimination. Given the record in the present complaint, there was no testimony from which the Hearing Examiner could find that any different type

or degree of damage might flow from the Complainant's allegation of discrimination on the basis of arrest record and from the allegation of discrimination on the basis of conviction record.

The Complainant was unable to articulate any basis for determining that an individualized admission of discrimination was necessary in order to make her whole again. At best, the Complainant stated that she felt it was required.

Additionally at hearing, after discussion of this issue, the Respondent made an oral amendment to its stipulation dated September 2, 2005, admitting discrimination on the basis of conviction record. Given that multiple allegations of discrimination do not lead to cumulative awards of damages in most cases, and the Complainant's inability to set forth any specific need or reason for wanting separate written admissions of discrimination for each allegation of discrimination, the Hearing Examiner will not order the Respondent to make any further written admission. The Hearing Examiner is also concerned that given the lack of a specific finding of probable cause relating to arrest record and conviction record, there may not be a jurisdictional basis for such an order. The Hearing Examiner understands the very personal nature of discrimination and that specific findings may seem to be desirable. However, the personal satisfaction of specific admissions also carries a punitive element, and is not something that the Commission can sanction in the context of its hearing process.

Next, the Hearing Examiner will move to the Complainant's third request. At hearing, the Complainant made clear that she was particularly concerned about the contents of her file compiled by the Salvation Army during her stay. The exact nature of the Complainant's interest is not clear from the record in this matter. The Complainant's request to hold the record open, and to reopen discovery so that she might subpoena her file from the Salvation Army is a clear indication of the importance of the file to the Complainant.

Unfortunately, the Hearing Examiner can be of no assistance to the Complainant in obtaining her file at this stage of the proceedings. The Salvation Army is not a party to this complaint and is not under the control of the Respondent in this matter. Without this type of formal connection to the complaint, the Hearing Examiner is without authority to compel a non-party in any respect.

During discovery, the scope of inquiry is greater than at the time of hearing. Given the allegations of this complaint and a broader scope of inquiry, it is possible that the Hearing Examiner might have ordered a non-party such as the Salvation Army to produce documents that have an arguable relevance to the proceeding for review and copying. That is not to say that a higher authority would necessarily uphold such an order of the Hearing Examiner.

Whatever might have happened had the Complainant made this request during discovery instead of at hearing, the request comes too late at the time of hearing. The Hearing Examiner has no doubt that the Complainant's status as an unrepresented litigant has worked to the Complainant's detriment in this regard. While the Hearing Examiner and counsel for the Respondent have attempted not to take advantage of the Complainant's *pro se* status, the Hearing Examiner's required neutrality, and Respondent's counsel's professional duty to the Respondent make acquiescence to the Complainant's request to hold open the record and to reopen discovery impossible.

The Hearing Examiner will now return to the Complainant's primary request for damages. In a typical claim of discrimination, the Complainant seeks damages that stem immediately from the act of discrimination. Ossia v. Rush, MEOC Case No. 1377 (Ex. Dec. 07/07/88); Williams and Oden v. Sinha, et al., MEOC Case No. 1605 (Comm. Dec. 7/25/96; Ex. Dec. 12/23/96); Sprague v. Hacklander-Reddy and Rowe, MEOC Case No. 1462 (Comm. Dec. 02/10/94; Ex. Dec. 12/27/91) (other citations omitted). This may include out of pocket expenses such as an additional or lost security deposit, other out-of-pocket expenses directly related to the act of discrimination, and for emotional distress arising directly from the actions of the Respondent. Id. In the present complaint, the Complainant, for reasons of her own, has chosen not to seek the typical damages awarded in a discrimination complaint, but damages attributable to a third party that she alleges are linked to discrimination at the hands of the Respondent. The Complainant's argument seems to flow as follows. If the Respondent had not discriminated against her, she wouldn't have been homeless. If she hadn't been homeless, she wouldn't have needed to stay at the homeless shelter of the Salvation Army. If she hadn't needed to stay at the homeless shelter, she wouldn't have been subjected to discrimination and harassment by the staff and clients at the Salvation Army. So, all things considered, it is the fault of the Respondent that she experienced discrimination at the Salvation Army.

The Complainant's logic is seductive in its simplicity. However, when applying the Complainant's argument to the record a number of difficulties become apparent. First, the conduct of which the Complainant complains during her stay at the Salvation Army homeless shelter does not appear to represent any actionable discrimination or tortious conduct.

At hearing, the Complainant reviewed several exhibits showing a conflict between herself and several individuals including staff at the Salvation Army. This conflict seems to stretch from sometime in mid-January, 2005 until early April, 2005. The disputes include complaints about lost personal property, conflicts over eligibility for Salvation Army programs, and receipt of a copy of the file prepared by the Salvation Army during the Complainant's stay. None of these disputes appear to have been on the basis of any protected class under the Equal Opportunities Ordinance. Equally, it appears that the disputes appear to stem either from personal disagreements between the complainant and Salvation Army staff or clients, and/or misunderstandings about the services and programs of the Salvation Army. The Hearing Examiner does not mean to diminish the impact felt by the Complainant from these conflicts. From the Complainant's demeanor at hearing, she clearly felt deeply about the impact of these problems on her life.

The problem for the Hearing Examiner is that none of the conduct or conflict described by the Complainant appears to create any actionable discrimination, harassment or other claim. The events described by the Complainant, as upsetting as they appear to be, do not strike the Hearing Examiner as being out of the ordinary for someone in a housing crisis. The lack of wrongful action would preclude a claim of damages against the Respondent.

Additionally, the type of things experienced by the Complainant at the Salvation Army homeless shelter are in no way attributable to the Respondent. The Respondent denied the Complainant housing in November of 2004. The events at the Salvation Army occurred beginning in late January, 2005. There is nothing in the record to explain where the Complainant was between these dates or why she wound up at the Salvation Army instead of some other form of housing, be it emergency shelter or not. The break in continuity between the complainant's attempt to gain housing with the Respondent and the time when things began to become a problem at the Salvation Army, do not meet the need to establish a causal connection between the Respondent's action and the injuries allegedly suffered at the Salvation Army.

Even if the Respondent had gone directly from the Respondent's to the Salvation Army, the fact that problems did not arise until sometime after she began to be housed at the Salvation Army creates a causation problem that the record does not resolve.

Finally, there is no organizational connection between the Respondent and its programs and those of the Salvation Army. Given this lack of connection, the Hearing Examiner cannot attribute the problems experienced by the Complainant at the Salvation Army to the Respondent.

Given the record in this matter, the Hearing Examiner cannot make an award of damages to the Complainant. She stipulated to limit her damages to those experienced as a result of her stay at the Salvation Army Homeless shelter. The record does not permit finding that the damages, if any, experienced by the Complainant at the Salvation Army homeless shelter are in any way attributable to the conduct of the Respondent.

Finally, as noted previously, the Hearing Examiner is unable to order the other items requested by the Complainant.

Signed and dated this 8th day of October, 2007.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner

cc: Paul F X Schwartz