INVESTIGATIVE REPORT
HRC Case No.: HV11-0025
HUD Case No.: 01-11-0281-8

CHARGING PARTY: Deborah Tilton
RESPONDING PARTY: Lisa & Michael Porta
CHARGE: housing – presence of minor children

Summary of Charge: On April 20, 2011, Ms. Tilton filed a housing discrimination charge alleging that she had been discriminated against by Michael and Lisa Porta because of the presence of a minor child in her dwelling. Specifically, she stated that the respondents made statements to her indicating their displeasure with a child living next to them and at least one of the Portas engaged in disruptive, loud repeated pounding on their common wall and/or screaming during the course of Ms. Tilton's tenancy in a condo unit that was adjacent to the Portas' condo.

Summary of Response: The respondents provided three responses to this charge. The first response was submitted by Michael Porta on 5/9/11. In that very short response he made a blanket denial of all the allegations. On 6/7/11, Michael Porta made a second response.[1] In his second response Mr. Porta denied making statements that indicated that children should not be living in the condos and denied that anyone in his condo ever pounded on the common wall or screamed. On 6/16/11, the Portas obtained legal counsel and the attorney submitted an additional response to the charge. In this response the Portas stated that if there was any noise on the dates alleged by Ms. Tilton it was not in retaliation for noise her child made but was most likely only incidental noise similar to the noise the Portas experienced coming from Ms. Tilton's condo. Additionally, Mr. Porta denied telling Ms. Tilton that no one with children should live in the condominiums. However, he admitted that he made generalized statements about the noise that children can make. Finally, the Portas

[1]In response to his first submission, this investigation explained to Mr. Porta that his lack of response to each point in the charge could result in a negative determination without much investigation and that he may want to respond specifically to each point.

allege that this situation is a dispute between neighbors that has nothing to do with discrimination.

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find there are **reasonable grounds** to believe that Michael and/or Lisa Porta violated 9 V.S.A. §4503(5) of the Vermont Fair Housing and Public Accommodations Act.

INTERVIEWS

06/06/2011 & 07/12/2011 - Deborah Tilton
06/07/2011 - Seth Morrissette, Condominium Association Board, (hereinafter the Board) president
06/08/2011 – Cynthia Weston, Board member
07/11/2011 & 07/20/2011 - Tom Barnett, Tilton condo unit owner & Board member
07/14/2011 - Michael Porta
07/15/2011 – James Angelino, Ms. Tilton's partner
07/20/2011 – Michael Angelino, James Angelino's son
07/20/2011 - Stacey Meyers, previous condo resident & Porta neighbor

DOCUMENTS

04/20/2011 – Charge of Discrimnation
05/04/2011 – First response to Charge
06/01/2011 – Second response to Charge
06/16/2011 – Third response to Charge
03/11/2011 – Affidavit of Amy Thilbaut, MD
03/11/2011 – Affidavit of Tom Barnett
03/11/2011 – Affidavit of Stacey & Danny Meyers (including their journal)
1/11–3/11 – Various emails from the Portas to condo Board
01/20/11 & 02/09/11 – Emails from condo board to Portas
03/07/2011 – Email from Tom Barnett to HRC

9 V.S.A §4503 (5)

(a) It shall be unlawful for any person:

(5) To coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title.

ELEMENTS OF PROOF

9 V.S.A §4503(5) – Prima facie elements

1) The Tiltons are members of a protected class
2) The Portas coerced, intimidated, threatened, or interfered with the Tiltons' exercise or enjoyment of, any right granted or protected by Vermont's fair housing laws

FACTS

Undisputed Facts

At the time Ms. Tilton filed this discrimination charge, Tom Barnett was the owner of the condominium unit (hereinafter T Condo) occupied by the Tiltons. Michael and Lisa Porta are the owners of and reside in, a condominium unit adjacent to the unit occupied by the Tiltons (hereinafter P Condo.) T condo and P condo have a common wall. Deborah Tilton and her partner, James Angelino, (hereinafter the Tiltons) rented T condo from Tom Barnett. Their lease began in December of 2010 and was to run until the completion of the house they were building which was to be sometime later in 2011. They paid rent through March 2001 but moved out before the end of March. As of July 15, 2011 their house still was not completed. When they moved into T condo they had a 20 month-old son who lived with the Tiltons. Ms. Tilton was pregnant and due to have their second child sometime in March 2011. Mr. Angelino also has a 16 year old son, Mike, who resided with the Tiltons on a part-time basis. Mr. Angelino

is an airline pilot stationed out of New York City, resulting in him being away from home for extended periods of time. He attended training in Texas in early March and was not expected to return home prior to the birth of their child.

The Portas have lived in their condo for approximately 15 years. Mr. Barnett purchased his condo in the spring of 2003 from Danny and Stacey Meyers who lived in the unit from approximately the fall 1999 until they sold it to Mr. Barnett in the spring of 2003. The Meyers had two children ages 6 years and 4 years when they moved into the condo in 1999. Both Mr. Porta and the Meyers acknowledged there was some level of conflict between the families during the time the Meyers lived in T condo.

Mr. Barnett did not have any children living in his household when he first moved into T condo though after a few years his wife's son lived with them. Mr. Barnett is one of three members of the condominium board and is in the process of selling his condo.

Statement of Deborah Tilton

Ms. Tilton stated she has rented several times in the past and that she has never received any noise complaints. She stated that this is the first place she and Mr. Angelino have rented together; he owned a home prior to this rental. Since living in the new place that they rented after moving out of T condo, there have not been any noise complaints from their new neighbors. She explained that they rented Tom Barnett's condo because they needed a place to live until their new home was completed. On weekdays, her whole family leaves the house by 7:00 a.m. and they return between 3:30 – 4:00 p.m. She works and her son is in daycare.

Ms. Tilton recounted the following events to this investigation:

On or about December 4, 2010 beginning at approximately 11:00 a.m., I heard pounding on the common wall we share with the Portas. The pounding lasted a few seconds and happened several times during the course of the day. Later that day Tom Barnett, the owner of the condo we were renting, called and told me he had received a call from the Portas complaining that my son was running on the floors and disturbing them.

I called the Portas but they did not answer, so I left a message. In the message I apologized for the noise and invited them to call or come to talk with us about any future noise problems they have with our family. The Portas did not call me back.

After the Portas complained I purchased area rugs that I placed on the wooden floors of our condo. I started keeping our son away from the common wall and I increased the amount of time our son was in day care.

On December 12, 2010, I put my son to bed at approximately 6:30 p.m. The rest of the household went to bed at about 8:00 p.m. James' teenage son, Mike, was spending the night. About the same time we went to bed we heard repeated pounding on the common wall and a woman screaming. I was unable to determine if she was just screaming or vocalizing words. The pounding continued so James got up and went over to the Portas' home. James was gone about 15 minutes and the pounding continued for part of that time and then stopped. Mike also got up and went out on our porch to observe what was happening. When James returned he recounted that Mr. Porta had denied anyone was pounding on the wall or yelling. He told me that at one point Mrs. Porta had come to the door yelling at him and lunged toward him. (Mr. Angelino's, his son's, and Mr. Porta's statements regarding this incident are set forth later in this report.) Because of the threatening nature of this incident we called the Vermont State Police and they took a statement from us but no action was taken by the police.

The next day my husband reported the incident to Mr. Barnett; besides being our landlord he is a member of the Board. I was told that Mr. Barnett then reported the incident to Seth Morrissette, the Board president. Later I heard that Mr. Morrissette attempted to contact the Portas to discuss the matter and that Mrs. Porta returned the call later that evening. (Details of Mr. Morrissette's

conversation with Mrs. Porta are found in his statement later in this report.)

On or about January 3, 2011, I again heard pounding on the common wall accompanied by a woman screaming. This occurred two times, once at about 1:00 a.m. and again at about 4:00 a.m. The noise lasted for a few minutes. I was unable to determine whether it was directed at my household. I again reported this incident to the Board.

It is my understanding that the Board issued a formal warning to the Portas stating that the pounding and screaming in the middle of night violated the Board's rules.

On or about January 22, 2011 at approximately 6:15 a.m., I again heard loud pounding on the common wall. The pounding was repeated several times and only lasted a few seconds. I reported this incident to the Vermont State Police and Mr. Barnett.

While I lived at T condo I did have a couple of conversations with Mr. Porta regarding the noise my child made. During one of the conversations, sometime in February, Mr. Porta told me that no one with children should live in these condominiums. He again made a statement similar to this again in March 2011. (see below)

On Thursday March 3, 2011, at approximately 7:30 a.m., I heard a loud pounding on the common wall. This time the pounding continued for approximately 20 minutes. I called the Vermont State Police. The police came to the housing complex and attempted to speak to the Portas but no one would answer the door. The police told me there was little more they could do.

On March 5, 2011, Mr. Porta came to talk to me and told me his wife was ill. He said that my son disturbs her and that this is Tom Barnett's fault because he should not have rented to a family with children.

In early March, I spoke with my obstetrics and gynecology physician [Dr. Thibaut] regarding the stress I was experiencing because of the Portas' actions. She supported my decision to move out of the condo and into my in-laws' home for the duration of pregnancy. She stated that a failure to relieve the stress I was experiencing put me and my unborn child at serious risk of both emotional and physical health complications. On March 14, 2011, I located a new residence to move to. I stopped sleeping at T condo in early March. My partner

and his son only occasionally slept there. All of our belongings were moved out of the condo by March 25, 2011.

Ms. Tilton told this investigation that she did not feel safe living next to Mrs. Porta. This investigation asked her if she had ever seen Mrs. Porta and Ms. Tilton replied that she had not. When asked the basis for her fear of Mrs. Porta, Ms. Tilton stated that is was based on the screaming she heard coming from the Portas' unit and the behavior of Mrs. Porta on December 12, 2011 when James went over to talk to them about the pounding that was occurring at that time.

Ms. Tilton told this investigation that she was unaware of Stacey and Danny Meyers' problems with Portas until after the second incident on December 12, 2010, when Mr. Barnett told them about the previous owners' problems with the Portas.

Statement of James Angelino

Mr. Angelino is Ms. Tilton's partner. They have two children together; the two-year old that lived with them in the condominium and the child born in March 2011. Mr. Angelino and Ms. Tilton were in the process of building a house when they rented Mr. Barnett's condo unit that is next to the Portas' condo.[2]

Mr. Angelino recalled that after the first incident when the Portas called Mr. Barnett to complain about the noise being made by the Tiltons, the Portas wanted the Tiltons' email addresses. Mr. Angelino said they felt uncomfortable with communicating by email and

[2] Mr. Angelino said the place they are renting now, which they had to find on short notice because Ms. Tilton was due two weeks after they decided they needed to move out, is smaller than they really need, not as nice and not as conveniently located as the condo that they had rented from Tom Barnett.

suggested that Mr. Porta come over to the Tiltons' condo to talk with them if there was a problem.

Mr. Angelino stated that Mr. Porta did come over two times to speak to them about noise. He said that the conversation was very civil. In one of the conversations Mr. Porta asked, "Is there anything you can do to keep him [the 20-month old] quiet?" Mr. Angelino said he told Mr. Porta that "we do the best we can – he's a two-year old." Their son is in bed between 6:30 and 7:00 p.m. Mr. Angelino further explained to this investigation he is a pretty typical two-year old; when he gets up in the morning he has a lot of energy – throughout the day he is "either stopped" and engaged in something, or he is going and that usually is in the form of running.

Mr. Angelino said that because his job requires him to be away a lot of the time he has only heard the pounding two times. He recounted the following:

> The first time I heard the pounding was on December 12, 2010. Our toddler had been in bed since 6:30 p.m. and we went to bed around 8:00 p.m. At that time we heard some loud pounding on the common wall and a woman screaming. After this sound was repeated several times I got up and went over to the Portas' condo. I knocked on the door and at first no one came to the door. Michael Porta finally opened the door and I confronted him saying "this has got to stop." Mr. Porta told me that they were not doing anything.
>
> Sometime during the conversation Mr. Porta stated, "Tom should not have rented to people who had kids." Mr. Porta also said that "perhaps now you know what it is like for us." After several minutes of intense exchange I heard Mrs. Porta coming down the stairs. When I first saw her she was about five feet from the door it was scary because her head was down and she was charging forward. At some point she started yelling all sorts of profanities. She specifically said, "take your f - - - ing wife and your f---- ing kids and go." Mr. Porta had to hold her back because she was so angry. My son heard this and saw much of it.

> He urged me to come home because he was afraid for my safety. As I left I said to Mr. Porta, "You are an idiot and if it happens again I'll call the police." I repeated it and turned and left. When I got home we called the Vermont State Police and made a report. The police said there wasn't anything they could do.

This investigation asked Mr. Angelino how he knew someone was actually pounding on the common wall since he could not see into the Portas' home when this was allegedly occurred. He stated, "I can't see someone knocking on my door but I know what it is when I hear it."

Statement of Michael Porta[3]

Mr. Porta stated that he and his wife have lived in their condo for about 15 years. Their condo is a three-bedroom unit with a common wall that is in the living room/kitchen on the downstairs level and two of the bedrooms on the upstairs level. The common wall is shared with the condo owned by Mr. Barnett (T condo) and rented by the Tiltons from December 2010 through mid-March 2011.

Mr. Porta stated that with any tenant that has lived in the adjoining condo he has tried to work something out regarding noise rather than file complaints with the Board or the police. He explained that when Tom Barnett moved into T condo there were initial problems with walking (sounding like stomping) and maybe guitar playing. He said that Tom may have complained about how they closed windows but it was so long ago it is hard to remember. He added "we just worked it out." Mr. Porta did not recall ever pounding on the wall while Tom and his wife lived there

[3] Mr. Porta would not allow his wife to be interviewed by this investigation because of her health issues. He also decided to not use an attorney for his interview on July 14, 2011.

This investigation asked Mr. Porta to talk about the problems he and his wife had with the Meyers who lived next to them in T condo from approximately 1999 until Mr. Barnett purchased the condo in the spring of 2003. Mr. Porta mentioned that he has realized a common thread with the Meyers and the Tiltons. Mr. Porta explained that neither family was willing to compromise. He continued saying that "we like kids but at some point parents need to end it. There were a lot of things we did not complain about. Folks have a right to live and we have the same right." He recalled that at one point the Meyers told him if they do not stop complaining about their noise the Meyers said they "would do it longer."

He said that he and his wife make a conscious effort to be quiet. "We even have boxes stacked against the common wall" to help muffle sounds." He explained that as much as the sounds bothers them it is the vibration and shaking that was constant, "never ending."

Mr. Porta stated that he had spoken to Ms. Tilton twice and her partner James maybe once. Mr. Porta denied ever saying that children should not be living in the condos. He said that the second time he spoke with Ms. Tilton he asked if there could be an early morning curtailing or reduction in the noise because this was very disruptive to his wife. He said Ms. Tilton got very irate with him, stating that he was trying to control her life.

In reference to the December 12, 2010 incident when Mr. Angelino came over to the house he stated the following:

> We were upstairs when I heard a pounding on the door. I got dressed and by the time I got down there Mr. Angelino was walking away. Then he yelled at me. My wife heard this and came down the stairs quickly. Mr. Angelino was "in an aggressive posture" so I put my arm around my wife in a protective way. She was not swearing, cussing or yelling at them.

Mr. Porta denied that either he or his wife ever pounded on the wall of their condo. This investigation asked what he thought people might be hearing. He stated that maybe it was "normal walking around." This investigation then asked what the Tiltons might have heard in the middle of the night. He speculated that his wife might have been up doing "normal" things like cooking to distract her pain.

On 1/31/11, the Portas made a formal complaint via email, to the Board regarding the noise coming from the Tilton's condo. He described the noise as awakening them most mornings around 6 – 6:30. But also in the afternoon hours the noise had increased in duration to the point that it disturbed them in the evening. He said that the noise included stomping, running and throwing some kind of toy against the wall. His email stated, "I went over to talk about it to no avail. And now with another child nearly here - she's indicated the noise will likely get worse. Even when I suggested a limit of time, it was dismissed as unacceptable. We know that they are able to control him as we've heard it. . . . running around in the house like it is a playground isn't normal behavior . . ." The last paragraph of the email stated, "**Its obvious a condo is not the environment for raising kids especially the way ours are constructed .**" (emphasis added) Tom had indicated to us that he was renting to a couple with a teenager, so this is a far cry from that situation and something needs to be done . . ."[4] This investigation asked him what "done" meant in the context of that email. He stated that this was probably "a poor choice words."

[4] On February 8, 2011, the Board sent an email to the Portas stating that it felt the noise being created by the Tiltons was normal childhood noises and therefore they could not do anything about it.

In response to the Board's imposition of a fine on the Portas for disturbing the Tiltons, Mr. Porta sent an email on 3/10/11 to the Board that listed 12 mornings when they experienced noise by the Tiltons. The email also stated that they would not pay the fine.

Mr. Porta told this investigation that he has a long history of not agreeing with actions that the Board has taken. He explained that Cynthia Weston has been on the Board for the whole time they have lived in their condo and that "we always felt that we were on the losing side" of issues. "We state our case and ask that they be upfront with us." He said "if you support Cynthia you are ok." He also expressed the feeling that the Board seems to change rules without notice or a vote.

During the interview with Mr. Porta this investigation shared with him that a number of people had told this investigation that he or his wife has indicated a dislike for children living in the condos; that they have witnessed his wife exhibiting out of control behaviors; and, that they have experienced loud pounding and/or very loud music being played in their condo (including in the middle of the night). This investigation asked if any of these things had ever happened. He stated, "no" This investigation asked Mr. Porta if none of these alleged behaviors happened what he thought would motivate people to make the sort of allegations regarding pounding on the walls and his wife yelling profanities about residents with children. He suggested that perhaps they wanted money and that they "were playing the system." Mr. Porta said he did not understand how anyone could be afraid of his wife. He explained that she is a very sweet person and a small person.

This investigation asked Mr. Porta to explain an email he sent to Ms. Weston and Mr. Morrissette, the Board members.[5] In the 3/11/11 email, Mr. Porta stated ". . .we're going about trying to live our life **under the conditions that Tom's rental decision has created** (emphasis added)." Mr. Porta stated the he was referring to Tom's "decision" to rent to noisy people. In the same email Mr. Porta stated, "Tom needs to make sure something like this doesn't happen again for all our benefit."

Mr. Porta also explained to this investigation that they could deal with noise that had a "rhythm" to it and that the Tiltons' noise was not predictable.

Mr. Porta included this statement in his second response to the Deborah Tilton's discrimination charge:

> We deny all allegations of this complaint. We are quiet people by nature. We did not pound on any walls. This was a noise issue between adjoining condo units that share a common floor and wall that transmits and amplifies sounds. We tried talking about the issue with the owner as well as his renters but it became apparent from these discussions that the situation was not going to change. We were put in a position of considering finding temporary housing to get away from the noise from the Tiltons' unit.

Additional information from the Portas' written second response to the charge includes:

1) The Portas deny ever receiving a phone call from Deborah Tilton after they first complained to Mr. Barnett.
2) Mr. Porta denied that his wife yelled any of the alleged profanities and that because Mr. Angelino was so upset

[5] Apparently, there are only 3 board members.

that he was uncomfortable leaving his wife home alone after the 12/13/10 incident.

3) The Portas denied ever making the statement to Seth Morrissette regarding Tom being an "asshole for renting to someone with a child."

4) Mr. Porta denied making any statements to Ms. Tilton regarding the fact that no one with children should live in the condos.

Additional information from the response filed by the Portas' attorney includes:[6]

1) Mr. Porta's attorney makes the point that the Tiltons only resided in the condo for 105 days and only alleged five incidents of pounding on the walls.
2) He also stressed that some of the incidents only lasted a few seconds.
3) He said that even if these incidents happened there is no evidence that it was directed at the Tiltons or because of noise their child made.
4) He pointed out that there were no reported incidents during the month of February
5) He said that on 3/3/11 the Portas "had been leaving their home between 7:00 and 7:30 p.m. to afford Mrs. Porta some quiet and that they always answer their door." They claim no knowledge of a police officer knocking on their door on 3/3/11.
6) The attorney also contends that any comments Mr. Porta made regarding children living in the condos or noise children

[6] Mr. Porta decided to not use an attorney after he filed the third response and before this investigation interviewed him.

make were general comments protected by the First Amendment.

7) In conclusion he cites case law that supports the position that the Fair Housing Act (hereinafter FHA) was not meant to "convert every quarrel among neighbors in which a racial or religious slur is hurled into a federal case."[7] He concludes that the situation between the Portas and the Tiltons amounts to only "a dispute between neighbors" not a violation of the fair housing laws.

Stacey and Danny Meyers:

This investigation spoke with Mrs. Meyers only to verify that she and her husband had written a journal that outlines numerous incidents they experienced with the Portas from October 1999 – spring of 2003. The journal recounts problems very similar to those alleged by Ms. Tilton in her discrimination charge. This investigation did not attempt to verify each incident entered into the journal.[8] The Meyers' journal recounts numerous complaints from the Portas involving the noise that their two children, aged 4 and 6 in 1999, made during the course of day-to-day living – including but not limited to playing in the yard, playing in the basement, playing a piano, where their children played and morning waking up noises. The Meyers' journal reflects many incidents of the Portas pounding on their common wall, repeatedly slamming doors, playing very loud music during the night,

[7] The attorney also cites case law regarding hostile work environment (often used to inform fair housing laws) to claim that even if all of Ms. Tilton's allegations were true the totality of the situation does not rise to the level of a hostile living environment.
[8] This investigation took note of the fact that Ms. Tilton was unaware of and had not read this journal prior to filing her discrimination charge - - as a matter of fact Ms. Tilton has never met the Meyers.

jumping up and down, negative statements the Portas made about the Meyers' parenting, and statements against children living in condos.

Mrs. Meyers said that there was an incident in December 2002 around 10:30 p.m. when they heard banging and extremely loud music. This happened after some conflict with the Portas about the kids playing in our basement earlier that day. That night they also heard Mrs. Porta screaming "Go away. Go away. Bitch. Get out! F - - - you Dan and Stacey." Mrs. Meyers said they called the then president of the Board, Matt Wagner, and he came over.[9] She said that the music was so loud that it was vibrating the common wall.

Mrs. Meyers told this investigation that she was afraid of the Portas because of their extreme reaction to her children. She also said that the Portas' complaints regarding their children were a large part of why they sold their condominium and moved.

Statement of Tom Barnett

Mr. Barnett stated that he lived in T condo from sometime in 2003 until last year. He stated that for approximately the first three years he lived there alone. His girlfriend and her son moved in when the son was about seven or eight years old. Her son was with her most weekdays and spent weekends with his dad.

Mr. Barnett said he had very few noise complaints from the Portas, though he recalled one time when he and his wife were arguing and their voices got a little loud. At that time he heard pounding on the common wall. He considered that it was in response to the noise they were making. He said this probably happened only once or twice.

[9] This investigation attempt to contact Mr. Wagner, but was unable to locate him.

He stated that he had other problems with the Portas including complaints about the smell of the detergent his wife used. He believed this was because Mrs. Porta has chemical sensitivities.

Mr. Barnett emphasized to this investigation that he was very concerned and even afraid of Mrs. Porta. He said that he and his wife have a new baby and he would not live in T condo with Mrs. Porta living next door. In a second phone conversation with him, Mr. Barnett said he wanted to make sure this investigation understood that "the fear part (of what he told this investigation) is very important." He then said, "people are very terrified - we got out of there." We called the police but they said there wasn't anything they could do because "there are no laws in Vermont regarding [criminal] threatening."

This investigation asked about how much contact he had with Mrs. Porta. He said he has probably only seen her about five times and has had several phone conversations. He explained that the intensity of those interactions were the basis for his fear. Mr. Barnett recounted the following incident:

> Our washing machine drain was clogged and overflowed. The water (not sewage) seeped under the common basement wall into the Portas' basement and one of her rugs got wet. At 5:00 a.m. we were awoken by some commotion. My wife looked out the window and saw Mrs. Porta dragging the rug out and she was yelling. I told my wife to get away from the window and when she walked away we heard Mrs. Porta say "run like you Russians, (my wife is Bosnian), always do and if you ever use scented detergent again I will f- - - ing kill you." We could see Mr. Porta standing off to the side trying to coax her to get back in the house.

On 12/5/11, Mr. Barnett said he got a call from the Portas regarding the noise the Tiltons were making. The Portas said that the Tiltons' toddler was running on the floors and this was bothering

them. Mr. Barnett suggested they go talk to the Tiltons as the Tiltons were nice people. Mr. Barnett then informed Ms. Tilton of the complaint. She said she would call the Portas and invited them to contact her and talk about the problems.

After the 12/12/11 incident with the Tiltons, Mrs. Porta called Mr. Barnett around 8 or 9 p.m. He explained to this investigation that he attempted to engage in a conversation in hopes of deescalating the situation, but the conversation was bizarre and went on for an hour. She said strange things like "I am dying and have horrible pain so I have nothing to lose – the Board, the police – make no difference." It seemed as if she was drugged or intoxicated. She said other bizarre things like she "loved me." Mr. Barnett told this investigation, "I was quite scared, frightened." Mr. Barnett said that he had little sleep that night" because he was worried about the situation. He reported the incident to the Board.[10]

She told Mr. Barnett this was "all his fault" for renting to those people. She continued saying that the noises the child makes disturbs her. Mr. Barnett explained that he cannot control the people he rents to and that it would be illegal to not rent to people with small children. She then told Mr. Barnett that he "could be more positive" and then she said, "I know where you live and I have nothing to lose." Mr. Barnett said he took this as a threat.

Statement of Seth Morrissette

Mr. Morrissette is the current president of the Board. He told this investigation that he heard Mrs. Porta make statements against children living in the T condo when she returned his call regarding the 12/12/11 incident. He said he called the Portas several times and did

[10] In an attempt by the Board to address the situation the rules were modified to allow the Board to act on noise disturbances between 10 p.m. and 8 a.m.

not get an answer. Eventually, Mrs. Porta returned his call and during the conversation she said, "I'll tell you now who the asshole is, Tom for renting to someone with kids. He has no right to rent to someone with small kids." Mr. Morrissette said she then escalated and was swearing at him. Mr. Morrissette suggested that this investigation speak to Cynthia Weston because she has been a resident at the condos for a long time and has been on the Board for a long time.

Statement of Cynthia Weston

Ms. Weston is a member of the Board. Ms. Weston stated that she felt the only people the Portas harassed were people with children. She said the there was a history of the same behaviors alleged by Ms. Tilton when the Meyers lived in T condo – pounding on walls and playing loud music at 3:00 a.m. She said the Portas do not know how to adapt. "On the surface they seem like wonderful people but if something doesn't go their way" there are problems. Ms. Weston said that the Portas regularly say that they have not received emails or phone messages. She does not believe that is true.

This investigation asked Ms. Weston if she ever heard either of the Portas make statements about not wanting children to live at the condos. She replied that she had. She explained that at a 2010 Board meeting in October or November, the meeting was breaking up and Mike Porta asked about who was moving in to Tom Barnett's condo. He was told the man was a pilot and out of town a lot – Mike Porta said "good." He was told the wife was a full time nurse – he again said "good." Then he was told they had a child who was a year and half old and the wife was pregnant – he said "oh that's all we need – little kids running."

She then referred to an incident a number of years ago when Mrs. Porta was outside in the winter, not properly dressed and "out of control." Ms. Weston closed the interview by saying, "Everyone is terrified of them – I'm not."

Statement by Mike Angelino

Mike is the 16 year old son of James Angelino. He spent many nights at T condo. He stated that he heard pounding on walls several times. He also verified that there was loud pounding on the wall on December 12, 2011 when his dad eventually went over to the Portas' unit. He said when he heard a commotion outside. Because he was concerned about his dad's safety he went out on their step and heard Mrs. Porta "swearing up a storm." He thought she was "really pissed off." He encouraged his dad to come home.

Conclusions Regarding the Facts

This investigation believes that based on the evidence it is more likely than not that the incidents alleged by Ms. Tilton in her discrimination charge did occur. Even though Mr. Porta unequivocally denied that he or his wife ever pounded on their walls, slammed their doors, played loud music, stomped on their floor or that his wife ever publicly swore, yelled/screamed or behaved in any sort of out of control, extreme manner, there is confirmation of these types of behaviors by seven people[11] besides Ms. Tilton. All of the people recounted similar past experiences with the Portas or witnessed the events Ms. Tilton alleged.

The fact that the Meyers provided evidence recounting very similar incidents that had occurred between their family and the

[11]These people are James Angelino, Michael Angelino, Stacey and Danny Meyers, Tom Barnett, Seth Morrissette and Cynthia Weston.

Portas, ten years prior to Ms. Tilton's experience with the Portas lends credibility to Ms. Tilton's allegations. Additionally, the fact that Ms. Tilton and the Meyers had never spoken to each other or met each other is important in accessing the Portas' version of the facts.

ANALYSIS

Vermont's Fair Housing and Public Accommodations Act (FHPAA), 9 V.S.A. §4503 (5) states:

It shall be unlawful for any person:

(5) To coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title.

Elements of Fair Housing Legal Analysis

To prevail in this portion of her charge Ms. Tilton must prove her allegations by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.") Additionally, Vermont's Supreme Court has stated that it looks to the federal Fair Housing Act in construing Vermont's Fair Housing and Public Accommodations Act (VFHPA.) Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995). The Supreme Court of the United States has held that the Federal Fair Housing Act's (FHA's) language should be construed broadly. Trafficante v. Metro life Ins. Co., 409 U.S. 205, 209 (1972), City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995). In analyzing federal fair housing law we look to federal regulations to help understand the meaning and intent of a statute. When a federal agency issues regulations regarding a federal statute, it also publishes commentary

on the regulations to further explain the regulation and implementation of the law.

9 V.S.A §4503(5)
Elements – Prima facie case

1. The Tiltons are members of a protected class
2. The Portas coerced, intimidated, threatened, or interfered with the Tiltons' exercise or enjoyment of, any right granted or protected by Vermont's fair housing laws

Whether the Tiltons are members of a protected class

The Tiltons resided in condo unit T condo with their 20-month old toddler. This makes them members of a protected class based on their intent to occupy their dwelling with one or more minor children.[12]

Whether the Portas coerced, intimidated, threatened, or interfered with the Tilton's exercise or enjoyment of, any right granted or protected by Vermont's fair housing laws

Specific to this charge the applicable federal regulation for §3617 of the FHA and the parallel section of Vermont's fair housing law, §4503(5), identifies the following prohibited behaviors in neighbor-on-neighbor harassment, "threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the . . . or familial status of such persons."[13] The HUD commentary to this regulation states that "persons who are not involved in any aspect of the sale or rental of a dwelling are nonetheless prohibited from engaging in

[12] Under federal FHA this protected class is called "familial status."
[13] 24 C.F.R.§100.40(c)(2)(2010).

conduct to coerce, intimidate, threaten or interfere with persons in connection with **protected activities** (emphasis added)."[14]

Based on a review of pertinent case law and legislative history Professor Schwemm recently stated in a law review article on neighbor-on-neighbor harassment[15] that the main problem in analyzing neighbor-on-neighbor harassment is determining how egregious a neighbor's conduct toward another resident must be for it to "interfere with" that person's fair housing rights in violation of §3617.[16] Schwemm recognizes that historically courts have required that the complained of behaviors be "severe or pervasive" in nature in order reach the level of discriminatory conduct prohibited by the FHA.[17] However, Schwemm argues convincingly, that there is also case law to support the idea that the meaning of this statue is best determined by the "plain meaning" of the triggering verbs in the statue.[18]

Schwemm cites a Ninth Circuit case where the Court adopted a broader view of the phrase "interferes with" rather than the "severe or pervasive" standard used by many courts.[19] The court in Walker used the "plain meaning" of the statutory words to determine what actions

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[14] The protected activities refer to rights granted to a person under federal fair housing laws such as to live in and rent a dwelling without being denied, evicted or harassed because of membership in a protected class.
[15] *Neighbor-on-Neighbor Harassment: Does the Fair Housing Act Make a Federal case Out of It?*, Case Western Law Review, Vol. 61 No.3, page 865, 2011.
[16] Again, §3617 is the federal FHA section that is substantially equivalent to Vermont's fair housing law 9 V.S.A. §4503(5).
[17] Id at 900.
[18] Id at 902.
[19] The "server or pervasive" standard was first used in sexual harassment employment discrimination case. Courts have adopted this same standard to analyze sexual harassment claims under §3604(b) of the federal FHA. The 3604(b) portion of the FHA prohibits discrimination in the "terms, conditions, or privileges for sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of" membership in a protected class. The Vermont equivalent section of the fair housing statute, §4503(2), is even stronger than the federal FHA. The Vermont statue adds that it is also illegal "to harass" any person in the terms,

trigger a §3617 violation of the FHA. Walker v. City of Lakewood, 272 F.3d 1114 (9th Cir. 2001). The Walker court quoted a 1968 (the time of the FHA) dictionary definition of "interference" in determining whether or not the defendant had violated the FHA. The dictionary definition for interference was "the act of meddling in or hampering an activity or process."[20]

The respondents' behavior must be sufficiently egregious so that it affects the "exercise or enjoyment" of a right granted to the charging party under fair housing law. An Eastern District of New York case recognized that §3617 of the FHA covered "actions that would interfere with enjoyment of a person's property." Ohanan v 180 Prospect Place Raelty Corp., 996 F. Supp. 238 at 241,243 (E.D.N.Y. 1998). In discussing the concept of the "peaceful enjoyment of one's home" within the context of the FHA, the court wrote that it:

> . . . is obviously sufficiently pervasive to embrace the expectation that one should be able to live in the racial and ethnic harmony with one's neighbors. This case is not about providing a federal judicial forum for the resolution of disputes amongst neighbors. It is simply about holding one accountable for intentionally intruding upon the quietude of another's home because of that person's race, color, religion, sex, familial status or national origin. The Fair Housing Act . . . is an appropriate means for accomplishing this salutary end . . ."[21]

Schwemm also states that an additional element of any successful neighbor-on-neighbor discrimination charge must

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conditions or privileges. Schwemm explains that there is a distinction between the "terms and condition" portion of the FHA §3604(b) and the "neighbor-on-neighbor harassment" portion, §3617, and that this fact requires the use of different standards for determining whether or not a violation of §3617 has occurred.

[20] Though the Walker court used a broader definition of "interferes with," other courts have adopted narrower definitions. *But See* Sporn v. Ocean Colony Condominium Ass'n. 173 F. Supp 2d 244, 251 (D.N.J. 2001) where the court held that "shunning type" actions do not constitute coercion, intimidation, threats or interference within the meaning of §3617.

[21] *Id.* at 243.

show that the complained about conduct was "invidiously motivated." In other words the conduct must include an animus toward the protected class.[22]

As stated above based on this investigation's interviews of persons other than Ms. Tilton, it believes that the events alleged in her discrimination charge are more likely true than not. This investigation makes this finding in spite of the fact that Mr. Porta categorically denied that he or his wife ever pounded on their common wall, played extreme loud music, screamed/yelled obscenities or made comments that indicated a very strong desire to not have the Tiltons with their toddler live in the condo next to theirs.

This investigation interviewed a number of people other than Ms. Tilton who recounted hearing one or both of the Portas making strong, clear statements that they did not want young children living next to them and that they were upset with Mr. Barnett because he had rented to someone with a young child. Based on the consistent information recounted by all of these people this investigation believes that the acts of pounding on the common wall and screaming by the Portas were at least in part motivated by the Portas' strong desire to not have young children living in the condo next to theirs. This investigation believes this evidence shows that the Portas' conduct was "invidiously motivated."

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[22] *See* Bloch v. Frischholz 587 F.3d 771 (7th Cir. 2009) (en banc), Simoes v. Wintermere Pointe Homeowners Ass'n, Inc., No. 6:08-CV-01384-LSC, 2009 WL 2216781, at *6 (M.D. Fla. July 22, 2009) (awarding summary judgment against Brazilian resident's § 3617 claim on the ground that he failed to show that the defendant's actions were prompted by —Latin American animus|| or —animus toward Brazilians||), *aff'd*, 375 Fed. App'x 927 (11th Cir. 2010).

The remaining question for this investigation is whether or not the actions by the Portas, specifically the five incidents of pounding and/or screaming during the four months the Tiltons lived in T condo, were egregious enough to constitute a violation of Vermont's fair housing laws.

It is clear that past actions by Mrs. Porta caused a number of people who had resided at the condos to fear her. The Tiltons first experienced Mrs. Porta's anger on 12/12/11 when Mr. Angelino went over to talk to the Portas because the Tiltons heard loud pounding on the common wall and screaming coming from the Portas' condo after the Tiltons had gone to bed.

On March 3, 2011, after a month where no pounding incidents occurred in the Tilton condo, it happened again. This time the pounding lasted for about 20 minutes. This time Ms. Tilton was only two weeks away from giving birth to their second child,[23] Her husband was out of town. Even though there were no reported incidents of pounding during the previous month, Mr. Porta had spoken to her and told her that he did not believe anyone with small children should live in these condominiums. Ms. Tilton called the Vermont State Police who came to the condominiums and attempted to talk with the Portas, but no one answered the Portas' door when the police knocked. The police for the third time told Ms. Tilton that there was little they could do about the situation.

Facing the reality of her own situation, Ms. Tilton decided she needed to do something before her child was born.[24] So she found a

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[23] It is common knowledge that a new baby cries at all hours and that adding a new baby to the family mix, especially for a toddler, commonly causes acting out behaviors.

[24] Even where "severe and pervasive" has been used in determining the outcome of a case, the court has limited the amount of illegal conduct a plaintiff must endure before he/she can leave a harassing situation and still maintain a cause of action. In Torres v. Piano,116 F.3d 625 at 631 (2nd Cir. 1997) *citing* Harris v. ForkliftSys., Inc.,

different place to live even though she was due to give birth any day. She spoke to her doctor, Dr. Thilbaut, and she supported Ms. Tilton's decision stating that given the stress her living situation was creating, staying in the condo could cause damage to her health and/or the new baby's health.

Even though there may have "only" been five incidents of distributive behavior (three were severe enough that the Tiltons called the police) by the Portas, this investigation believes these incidents were: intentional; intruded upon the quietude of the Tilton's home; and, were maliciously motivated by the Tiltons' familial status. Based on the discussion above this investigation believes the Portas' actions rise to the level of violating Vermont's fair housing law.

Addressing issues raised by Mr. Porta's attorney:

- The issue that there were only five incidents alleged by Ms. Tilton. There is no magic bullet number of incidents that make a situation untenable for a person. Even using the "severe or pervasive" standard, the courts have held that sometimes one incident can be enough to create a hostile environment. The severity of this situation is in part addressed by the fact that two weeks before Ms. Tilton was due to have a baby, she felt it was a better to relocate than stay and face unpredictable incidents with her neighbors.

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510 U.S. 17, 21, 22 (1993) the court stated "The fact that the law requires harassment to be severe or pervasive before it can be actionable does not mean that employers are free from liability in all but the most egregious of cases." "Title VII comes into play **before the harassing conduct leads to a nervous breakdown** (emphasis added). Harassed employees do not have to be Jackie Robinson, nobly turning the other cheek and remaining unaffected in the face of constant degradation. Whenever the harassment is of such quality or quantity that a reasonable employee would find the conditions of her employment altered for the worse, it is actionable under Title VII, so long as the employee subjectively experienced a hostile work environment."

- The issue that some of the incidents only lasted a few seconds. Though the length of an incident can certainly be one way to measure its impact, it is far from the only way. Loud noises that happen in an unpredictable manner can have an even more disturbing affect than noises that last for a long period of time and are predicable. The alleged short length of the pounding noise does not mean it had less of an impact on the Tiltons than if the pounding had lasted longer.

- Mr. Porta's attorney argues that even if the Portas did pound on the common wall or screamed there is no evidence that the incidents were directed at the Tiltons or related to the noise their child made. However, the Meyers" experiences, as reflected in the journal they kept, indicated that there was a pattern of reactions from the Portas regarding the noise their children made, that was very much the same as the Tiltons' alleged experiences. This combined with reported statements made by the Portas to the Tiltons and others [25] such as "perhaps now you know what it is like for us" indicate a nexus between the pounding and the noise made by the Tiltons' child. This investigation believes that there is enough evidence to conclude that it is more likely than not the pounding on the common wall and screaming were at least in part in because of noises the Tiltons' toddler made.

- Mr. Porta's attorney's argument that Mr. Porta's statements were general remarks about children living in the

[25] This investigation has already stated that it believes it is more likely than not that these statements were made by the Portas.

condominiums and therefore protected by the First Amendment would be germane if the Vermont Human Rights commission found that the Porta's statements regarding children violated fair housing law. However, the Portas' alleged statements indicating a desire to not have children live next to them, are important to this investigation because they show a motive for the alleged actions the Portas took regarding the noise created by the Tilton family. Had the Portas only made the statements regarding not liking children living in the condos and there had been no other allegations of harassing behavior, the HRC would not have accepted a discrimination charge from Ms. Tilton.

- His attorney cites case law that supports the position that the Fair Housing Act was not meant to "convert every quarrel among neighbors in which a racial or religious slur is hurled into a federal case." Halprin v. Praire Single Family Homes of Dearborn Park Assoc., 388 F.3d 327, 330 (7th Cir. 2004). This investigation agrees with that statement, but points out that the Halprin case also holds that if a resident is forced out of their home because of harassing behaviors that would constitute a violation of FHA under §3617. In 2009, the 7th Circuit in the case Bloch v. Frischholz quoting the Halprin case stated that behavior condemned by §3617 "must be more than a quarrel among neighbors or an isolated act of discrimination but rather [must be] a pattern of harassment, invidiously motivated." 587 F.3d 771 at 783 (7th Cir. 2009) (en banc). Mr. Porta's attorney states, "case law interpreting the FHA is clear that, to constitute a violation of the Act, the

conduct must result in something akin to 'constructive eviction.'" This investigation believes that is exactly what happened in this case, "something akin to a constructive eviction" occurred when Ms. Tilton moved out of the adjoining condo two weeks prior to the birth of her child because of behavior by the Portas. Additionally, the Portas' behavior was severe enough that the Tiltons called the Vermont State Police three of the five times

PRELIMINARY RECOMMENDATION:

This investigation report also recommends that the Human Rights Commission find that there are **reasonable grounds** to believe that the Portas discriminated against Ms. Tilton in violation of 9 V.S.A. §4503(a)(5) of Vermont's Fair Housing and Public Accommodations Act.

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Deborah Tilton Charging Party	)))
v.	) HRC Charge No. HV11-0025) HUD Case # 01-11-0281-8)
Lisa and Michael Porta Responding Party	))

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

1. The following vote was taken on a motion to find that there are **reasonable grounds** to believe that Michael and/or Lisa Porta, the Respondents, illegally discriminated against Deborah Tilton, the Charging Party, in violation of Vermont's Fair Housing and Public Accommodations Act on the grounds of minor children pursuant to 9 V.S.A. § 4503 (5).

Mary Marzec-Gerrior, Chair	For ✓	Against __	Absent __	Recused __
Nathan Besio	For ✓	Against __	Absent __	Recused __
Mary Brodsky	For ✓	Against __	Absent __	Recused __
Mercedes Mack	For ✓	Against __	Absent __	Recused __
Donald Vickers	For ✓	Against __	Absent __	Recused __

Entry: ✓ Reasonable Grounds __ Motion failed

Dated at Winooski, Vermont, this 25th day of August 2011.

BY: HUMAN RIGHTS COMMISSION

Mary Marzec-Gerrior, Chair

Nathan Besio

Mary Brodsky

Mercedes Mack

Donald Vickers