CONSUMER PROTECTION DIVISION,	*	**BEFORE EMILY DANEKER,**
OFFICE OF THE ATTORNEY GENERAL,	*	**AN ADMINISTRATIVE LAW JUDGE**
PROPONENT,	*	**OF THE MARYLAND OFFICE OF**
v.	*	**ADMINISTRATIVE HEARINGS**
WESTMINSTER MANAGEMENT, LLC,	*	**OAH NO.: OAG-CPD-04-19-34292**
***et al.*,**	*	
RESPONDENTS.	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On or about October 23, 2019, the Consumer Protection Division (CPD) of the Maryland Office of the Attorney General filed a Statement of Charges (SOC) against 26 respondents[1].

[1] The Respondents, broken down on the basis of their representation, are:

- The Westminster Respondents: Westminster Management, LLC (Westminster); Commons at Whitemarsh I, II, V, LLC; Commons at Whitemarsh III, LLC; Commons at Whitemarsh IVA, LLC; Commons at Whitemarsh IVB, LLC; Dutch Village, LLC; Fontana, LLC; Hamilton Manor Apartments, LLC; Harbor Point Estates I, II, IV, LLC; Harbor Point Estates III, LLC; Highland #179, LLC; Highland #241 LLLP; Highland #689, LLC; Pleasantview, LLC; Riverview Apartments, LLC; RP Cove Village, LLC; Whispering Woods #250, LLC; and Whispering Woods #299 Limited Partnership. The Westminster Respondents, excluding Westminster Management, LLC, are at times referred to as the "10-Pack".
- The SRH Respondents: Carriage Hill Investment LP; Princeton Estates LP; SRH Fox Haven, LLC; SRH Woodmoor, LLC; and SRH Charlesmont, LLC; and
- The Park Holdings Respondents: Carroll Park Holdings LLC; Essex Park Holdings LLC; and, Morningside Park Holdings LLC. The Park Holdings Respondents refer to themselves as the Middle River Respondents, however, for consistency with the use in all written decisions and orders issued by the OAH, and for ease of reference, I continue to refer to them as the Park Holdings Respondents herein.

The 10-Pack, SRH Respondents, and Park Holdings Respondents are at times collectively referred to as the owner Respondents.

alleging violations of the Consumer Protection Act (the Act) relating to residential tenancies. The CPD delegated this matter to Office of Administrative Hearings (OAH) to conduct a hearing and issue proposed findings of fact and conclusions of law, with the CPD making the final findings of fact, conclusions of law, determining the appropriate relief, and entering a final order in this matter.

On February 13, 2020, the CPD filed an Amended SOC. On March 12, 2020, I issued a Proposed Ruling on Motions to Dismiss, granting, in part, the Respondents' various motions to dismiss, in part, the SOC. After various additional motions and the resolution of discovery disputes, the hearing in this matter commenced on September 9, 2020 and continued for a total of 31 days until December 1, 2020.[2] On January 29, 2021, the parties submitted written closing arguments and proposed findings of fact and conclusions of law.

The CPD was represented by Deputy Chief Philip D. Ziperman and Assistant Attorneys General Jessica B. Kaufman, Niknaz McCormally, Leah Tulin, and Kira Wilpone-Welborn. The Westminster Respondents were represented by Ty Kelly, Christopher Dahl, and Alison C. Schurick, with the law firm of Baker Donelson. The Park Holdings Respondents were represented by Barry C. Goldstein and John T. Sly, with the law firm of Waranch & Brown. The SRH Respondents were represented by Christopher R. Mellott, Evan T. Shea, and Emily Wilson, with the law firm of Venable LLP.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the CPD, and the Rules of Procedure of the OAH govern procedure in this case.

[2] The CPD initially referred the hearing to the OAH with the hearing to commence on January 21, 2020. Given the scope of the hearing, the requests for discovery, and the Respondents' intention to file various dispositive motions, it was not feasible to commence the hearing just two months after the CPD filed its SOC. The hearing was initially rescheduled for 22 days between June 1 and July 16, 2020, but it was postponed as a result of the COVID-19 pandemic.

Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (COMAR) 02.01.02; COMAR 28.02.01.

ISSUES

1. Are the CPD's charges limited by section 5-107 of the Courts and Judicial Proceedings Article?

2. Are the owner Respondents vicariously liable for any alleged violations of the Act?

3. Is Westminster liable for acts or omissions undertaken by JK2 Westminster LLC (hereinafter, JK2)?

4. Is the CPD engaged in impermissible selective prosecution?

5. Is the abusive practices provision of the Act applicable?

6. Did Respondents Dutch Village, LLC and Pleasantview, LLC violate the Act by leasing rental units in multi-family dwellings without maintaining the multi-family dwelling license required by the Baltimore City Code?

7. Did JK2 and Westminster violate the Consumer Debt Collection Act, and thus the Act, by:

   - Doing business as a debt collection agency without maintaining a debt collection license required by the Maryland Collection Agency Licensing Act;
   - Collecting rent on behalf of Dutch Village, LLC and Pleasantview, LLC, when they knew that those properties were unlicensed and, thus, not entitled to collect rent; or
   - Collecting fees that they knew they had no right to collect?

8. Did JK2, Westminster, the 10-Pack Respondents, the SRH Respondents, or the Park Holdings Respondents, or any combination of them, violate the Act:

- In their collection and retention of application fees and holding fees;
- By failing to return small credit amounts to tenants and instead writing off those amounts;
- By charging late fees that exceeded of 5% of the monthly rental amount and charging late fees that were based in part, on the non-payment of charges other than monthly rent;
- In charging and collecting agent fees and court costs that were not incurred and in charging and collecting agent fees and court costs that were incurred but were not awarded in a judgment by the court;
- By charging early termination fees and failing to advise tenants that the fee was optional and that the landlord was required to take reasonable steps to re-let the unit;
- In their notification to tenants of security deposit deductions, in their assessment of security deposit deductions, and in failing to credit tenants for security deposit interest; or
- By providing consumers with realty that was not in good, habitable condition and by failing to provide maintenance services?

SUMMARY OF THE EVIDENCE

Exhibits

A complete exhibit list is attached as an appendix to this decision.

Testimony

The CPD presented testimony from Jedd Bellman, Assistant Commissioner for Non-Depository Supervision, Office of the Commissioner of Financial Regulation, Maryland Department of Labor; Angelecia Banks, Manager of Property Registration and Alarm Licensing Section, Baltimore City Department of Housing and Community Development; Dr. Corinne Keet, who was accepted as an expert in the impact of mold and indoor pests on the health of

individuals who suffer from asthma and/or allergies and as an expert in the treatment of patients with allergies and/or asthma where those conditions are exacerbated by mold or indoor pests; Evelyn Hodge, Director of Operations for eWrit Filings; and Diana McGee, an investigator with the CPD.

The CPD also presented testimony from the following current and former supervisory and managerial employees of Respondent Westminster Management: Theresa Webb, a regional manager; Jennifer McLean, Chief Financial Officer; Catherine Miller, a regional manager; and Anne Angel, former Director of Operations/Director of Property Management.

The CPD presented testimony from the following current and former on-site employees of Respondent Westminster Management:

Michael Hoyte, a former maintenance technician at the Commons;

James Kates, a former maintenance technician at the Commons;

Dennis Owens, a former service manager and senior service manager at the Commons;

Ashley Contreras, a former resident relations representative at Highland Village;

Steven Thornton, a former maintenance technician at Princeton Estates;

Stephanie Brown, a former leasing consultant at Whispering Woods;

Kevin Flesher, a former maintenance technician and lead technician at the Commons and lead technician at Charlesmont;

William Barnes, a former maintenance technician at Carriage Hill and, as-needed, at Gwynn Oaks Landing;

Quentin Thomas, a former maintenance technician at Dutch Village;

David Chesley, a former leasing consultant at the Commons;

Robert Remmell, a former maintenance technician at Highland Village;

Phyllis Roosevelt, a former leasing consultant at Whispering Woods and Gwynn Oaks Landing; and

Angelique Marine, a community manager at Dutch Village and Pleasantview.

The CPD presented testimony from the following current and former tenants[3] of properties owned or managed by the various Respondents:

Harry Gillis, Commons	Kelly Hall, Charlesmont
Tiffany Dixon, Commons	James Leight, Highland Village
Kelly Ziegler, Highland Village	Nakia Mack, Riverview
Erica Frey, Carroll Park	Lauren Sheeder, Riverview
Franklin Hernandez Portillo, Harbor Point Estates	Tia Stepney, Riverview
Shania Whitaker, Pleasantview	Quasia Peterson, Riverview
Shaleza Guytan, Commons	Jessica Waters, Highland Village
Patrick Bailey, Carroll Park	Shakeria Taylor, Essex Park
Doreen Lewis, Highland Village	Roxanne Horsey, Whispering Woods
Tatianna Joyner, Pleasantview	LaShawn Epps, Carriage Hill
Richard Brown, Essex Park	Tammy VanDevander, Gwynn Oaks Landing
Dionne Mont, Fontana Village	Ciera Wozniak, Charlesmont
Julieann Govan, Carroll Park	Lashina Chambers Ulloa, Commons
Rodney Lomax, Commons	Sara Kline, Commons
Javonia Harden, Cove Village	Felicia Heyward, Cove Village
Sophia Fitzpatrick, Gwynn Oaks Landing	Darrian Cate, Gwynn Oaks Landing
Darlene Hill, Carriage Hill	LeShaunde' Clark, Highland Village
Scott Ferree, Commons	Miatta Hubbard, Dutch Village

[3] The tenants are at times generally referred to as "Consumers."

Jennifer Huddleston, Highland Village	Kurtis Sewell, Gwynn Oaks Landing
Vaughn Phillips, Fontana Village	Nicholas Johnson, Sr., Fontana Village
Michael Johnson, Pleasantview	Jamila Weathers, Carriage Hill
William McDermott Jr., Carroll Park	Latonia Weathers, Fontana Village
Shawn Phillips, Fontana Village and Dutch Village	Karen Hope, Whispering Woods
Hattie Crosby, Carroll Park	Juamani Rivers, Princeton Estates
Evelyn Njob, Fontana Village	Shannon Gaylor, Highland Village
Zachary Stupi, Charlesmont	Kiarah Rush, Highland Village
Sherrita Drayton, Cove Village	Tonya Simmons, Commons
Megen Frierson, Fontana Village	Monica Booker, Cove Village
Jesenia Correa, Harbor Point Estates	Charmaigne Harris, Essex Park
Pauline Redmond, Carriage Hill	Shanae Jones, Pleasantview
Mickel Owens, Riverview	Kevin Jura, Harbor Point Estates
Nickkia Sansbury, Commons	

The Westminster Respondents presented testimony from Catherine Miller, a regional manager with Westminster Management, and Peter Febo, Chief Operating Officer of Westminster Management.

The Westminster Respondents presented testimony from the following on-site Westminster employees:

Carroll E. Smith Jr. (a.k.a. Bunky Smith), a senior service manager at Dutch Village and Pleasantview;

Karrie Fabrizio, a leasing consultant at Harbor Point;

Lawrence Smith, a maintenance supervisor at Harbor Point;

Quinton Crawford, a maintenance technician at Harbor Point;[4]

Keith Grover, formerly a maintenance technician at Harbor Point;[5] and

Tammy Diaz, a property manager at Harbor Point.

The Westminster Respondents also presented testimony from the following current and former tenants of properties owned or managed by the various Respondents:[6]

Skye Jones, Essex Park	Antonio Hunter, Cove Village
Tonya Spearman, Harbor Point Estates	Tonya Ewell, Whispering Woods
Shelton Flemming, Commons & Whispering Woods	Ashley Braxton, Commons
Mohammad Farooq, Riverview	Victor Hernandez-Zayas, Commons
Antoinette Tillman, Princeton Estates	Jillian Lacy-Lewis, Cove Village
Twaniria Johnson, Riverview	Roxana Gomez, Charlesmont
Antoinette Summons, Whispering Woods	Geoffrey Stafford, Commons
Tiyanna Gray, Carriage Hill	Myrtle Turnage, Whispering Woods
Jeffrey Smith, Commons	Regina Webster, Dutch Village
Amanda England, Highland Village	Joseph Barnes, Commons
Mark Brunner, Whispering Woods	Joyce Winkler, Harbor Point Estates
Jeni Newell Littlefair, Whispering Woods	Patrice Gardner, Whispering Woods
Oldayo Olaniyan, Fontana Village	Kimberly Sprinkle, Highland Village
Comfort Kissi, Riverview	Carlos McGhee (f.k.a. Carlos Randall), Harbor Poir

[4] Mr. Crawford is currently a maintenance technician at the Commons. His testimony related to a prior period of time when he was a maintenance technician at Harbor Point.

[5] Mr. Grover continues to work as a maintenance technician with Westminster but is now working at a property that is not involved in this proceeding.

[6] These are consumer witnesses for whom the CPD sought to submit affidavits instead of live testimony; the Respondents subpoenaed these affidavit witnesses to preserve the ability to cross-examine them. Even so, the CPD declined to arrange for the witnesses to testify in its case in chief, thus, the witnesses were called to testify by the Respondents.

Michelle Moore-Wright, Commons	Korosh Soleimani Faraz, Fontana Village

The Park Holdings Respondents did not present any witness testimony.

The SRH Respondents did not present any witness testimony.

STIPULATIONS OF FACT

The parties stipulated to the following facts:[7, 8]

1. Carriage Hill Apartments (Carriage Hill), whose address is 3456 Carriage Hill Circle in Randallstown, Baltimore County, Maryland, has 806 units. It was managed by JK2 Westminster LLC (JK2) from August 31, 2012 to December 2016[9] and by Westminster from December 2016 to October 31, 2017; during that time, it was owned by Carriage Hill Investment Limited Partnership.

2. Carroll Park Apartments (Carroll Park), whose address is 227 Carroll Island Road in Middle River, Baltimore County, Maryland, has 157 units. It was managed by JK2 from April 15, 2014 to December 2016 and by Westminster from December 2016 to July 1, 2019; during that time, it was owned by Carroll Park Holdings LLC.

3. Charlesmont Apartment Homes (Charlesmont), whose address is 3000 Wallford Drive in Dundalk, Baltimore County, Maryland, has 565 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to October 31, 2017; during that time, it was owned by SRH Charlesmont, LLC.

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[7] A copy of the Joint Stipulation is included in the administrative record. Stipulations concerning the authenticity of documents are omitted from this recitation. I have altered the text of the stipulated facts where needed for format, clarity, and readability.

[8] The owner Respondents' stipulations are limited to their respective properties. As to those owner Respondents who owned their respective property for less than the full period of time at issue in the Amended Statement of Charges, their stipulations are limited to their period of ownership.

[9] The parties did not stipulate to a precise date in December 2016 and the Assignment and Assumption of Property Management Agreement omits the precise date of the agreement. CPD Ex. 1-A-4; *see also* CPD Ex. 1-A-3 (relating to agreements for the 10-Pack Owners).

4. Commons at White Marsh Apartments (Commons), whose address is 9901 Langs Road in Middle River, Baltimore County, Maryland, has 1,212 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owners, at all relevant times, are Commons at Whitemarsh I, II, V, LLC; Commons at Whitemarsh III, LLC; Commons at Whitemarsh IVA, LLC; Commons at Whitemarsh IVB, LLC.

5. Cove Village Apartments (Cove Village), whose address is 2 Driftwood Court in Essex, Baltimore County, Maryland, has 299 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owner is, at all relevant times, RP Cove Village, LLC.

6. Dutch Village Apartments (Dutch Village), whose address is 2349 Perring Manor Road in Parkville, in Baltimore City, Maryland, has 544 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owner is, at all relevant times, Dutch Village, LLC.

7. Essex Park Apartments and Townhomes (Essex Park) whose address is 1572 Alconbury Road in Essex, Baltimore County, Maryland, has 229 units. It was managed by JK2 from April 15, 2014 to December 2016 and by Westminster from December 2016 to July 1, 2019; during that time, it was owned by Essex Park Holdings LLC.

8. Fontana Village Apartments (Fontana), whose address is 1 Orion Court in Rosedale, Baltimore County, Maryland, has 356 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owner is, at all relevant times, Fontana, LLC.

9. Gwynn Oaks Landing Apartments (Gwynn Oaks), whose address is 3103 Windsor Boulevard in Gwynn Oak, Baltimore County, Maryland, has 884 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to October 31, 2017; during that time, it was owned by SRH Fox Haven, LLC and SRH Woodmoor, LLC.

10. Hamilton Manor Apartments (Hamilton Manor), whose address is 3342 Lancer Drive in Hyattsville, Prince George's County, Maryland, has 245 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owner is, at all relevant times, Hamilton Manor Apartments, LLC.

11. Harbor Point Estates (Harbor Point), whose address is 911 South Marlyn Avenue in Essex, Baltimore County, Maryland, has 650 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owners are, at all relevant times, Harbor Point Estates I, II, IV, LLC and Harbor Point Estates III, LLC.

12. Highland Village Townhomes (Highland Village), whose address is 3953 McDowell Lane in Halethorpe, Baltimore County, Maryland, has 1,098 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owners are, at all relevant times, Highland #179, LLC, Highland #689, LLC, and Highland #241, LLLP.

13. Morningside Park Townhomes (Morningside), whose address is 50 Hebron Drive in Middle River, Baltimore County, Maryland, has 128 units. It was managed by JK2 from April 15, 2014 to December 2016 and by Westminster from December 2016 to July 1, 2019; during that time, it was owned by Morningside Park Holdings LLC.

14. Pleasantview Apartments (Pleasantview), whose address is 2101 East Northern Parkway in Baltimore City, Maryland, has 259 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owner is, at all relevant times, Pleasantview, LLC.

15. Princeton Estates Apartment Homes (Princeton Estates), whose address is 4637 Dallas Place in Temple Hills, Prince George's County, Maryland, has 474 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to October 31, 2017; during that time, it was owned by Princeton Estates L.P.

16. Riverview Townhomes (Riverview), whose address is 600 Fifth Avenue in Halethorpe, Baltimore County, Maryland, has 330 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owner is, at all relevant times, Riverview Apartments, LLC.

17. Whispering Woods Apartments (Whispering Woods), whose address is 37 Alberge Lane in Middle River, Baltimore County, Maryland, has 524 units. It was managed by JK2 from August 31, 2012 to December 2016 and by Westminster from December 2016 to the present. The owners are, at all relevant times, Whispering Woods #250, LLC, Whispering Woods #299 L.P.

18. Respondent Carroll Park Holdings LLC sold Carroll Park on June 28, 2019.

19. Respondent Essex Park Holdings LLC sold Essex Park on July 31, 2019.

20. Respondent Morningside Park Holdings LLC sold Morningside on July 31, 2019.

21. The Sawyer Property Management of Maryland LLC (Sawyer) form lease, an example of which is included as Westminster Exhibit 32A (pages WM RRPD 102471 to WM RRPD 102500), was the lease in use for tenants at the Commons, Cove Village, Dutch Village,

Fontana, Hamilton Manor, Harbor Point, Highland Village, Pleasant View, Riverview, Whispering Woods (collectively, the 10-Pack), at the time when JK2 took over the property management of the 10-Pack properties on August 31, 2012.

22. The BLDG Management Co. LLC form lease, an example of which is in evidence as Westminster Exhibit 279, was the lease in use for tenants at Carroll Park, Essex Park, and Morningside Park (collectively, the Park Holdings Properties) when JK2 took over the property management of those properties on April 15, 2014.

23. The JK2 form lease, an example of which is in evidence as Westminster Exhibit 65A (pages WM RRPD 033876 to WM RRPD 033898), was offered by JK2 to new tenants at the properties owned by the respective Respondents from August 31, 2012 to December 2016.

24. The Westminster form lease that is in evidence as CPD Exhibit 331 was offered to new tenants at the properties owned by the respective Respondents beginning in approximately December 2016.[10]

25. On October 31, 2017, the SRH Respondents sold their respective properties: Carriage Hill, Charlesmont, Gwynn Oaks, and Princeton Estates.

26. Beginning at various times in 2018, and at all relevant times thereafter, Westminster has offered the form lease that is in evidence as CPD Exhibit 332 to new tenants at the 10-Pack and Park Holdings Properties.[11, 12]

[10] This will at times be referred to as the pre-2018 lease.
[11] This will at times be referred to as the post-2018 lease.
[12] The various form leases are incorporated herein by reference.

27. Between October 8, 2012 and December 1, 2017, the application fees charged at the properties were:

Property	Application Fee
Carriage Hill	$35
Carroll Park	$35
Charlesmont	$35
Commons	$35
Cove Village	$40
Dutch Village	$40
Essex Park	$35
Fontana	$35
Gwynn Oaks	$35
Hamilton Manor	$40
Harbor Point	$35
Highland Village	$35
Morningside	$35
Pleasantview	$40
Princeton Estates	$50
Riverview	$35
Whispering Woods	$35

28. As of June 1, 2014, no agent fees associated with filing warrants of restitution (also known as writs) were incurred by any Respondent in connection with summary ejectment actions at their respective properties.

29. At all relevant times, the fees assessed by the District Courts of Maryland in connection with the filing of summary ejectment actions in Maryland never exceeded the following amounts:

Fee Type	Baltimore City	Baltimore County	Prince George's County
Failure to Pay Rent Complaint	$25 filing fee + $5 service fee for each location + $5 for each tenant for whom personal service is requested	$15 filing fee + $5 service fee for each tenant of record	$15 filing fee + $5 service fee for each tenant of record
Warrant of Restitution	$50 ($10 filing fee + $40 service fee)	$40 (service fee only)	$40 (service fee only)

30. The Yardi work order directories produced to the CPD (CPD Exhibits 5 and 349) include consumer requests for maintenance made only during the following time frames:[13]

Property	Time Period
Carriage Hill	March 25, 2015 to October 24, 2017
Carroll Park	August 8, 2014 to June 27, 2019
Charlesmont	March 25, 2015 to October 24, 2017
Commons	April 15, 2015 to November 25, 2019
Cove Village	April 17, 2015 to November 25, 2019
Dutch Village	May 6, 2015 to November 25, 2019
Essex Park	August 2, 2014 to July 30, 2019
Fontana	April 17, 2015 to November 25, 2019
Gwynn Oaks	March 26, 2015 to October 24, 2017
Hamilton Manor	May 1, 2015 to November 23, 2019
Harbor Point	April 15, 2015 to November 25, 2019
Highland Village	May 4, 2015 to November 25, 2019
Morningside	August 4, 2014 to July 11, 2019
Pleasantview	May 6, 2015 to November 25, 2019

[13] To the extent the Respondents other than Westminster Management did not stipulate to this fact, I find this as fact.

Princeton Estates	March 25, 2015 to October 25, 2017
Riverview	May 1, 2015 to November 25, 2019
Whispering Woods	April 15, 2015 to November 25, 2019

PROPOSED FINDINGS OF FACT

Having considered demeanor evidence, testimony, and other evidence, I find the following additional facts by a preponderance of the evidence:[14]

Background[15]

1. Carriage Hill, Carroll Park, Charlesmont, Commons, Cove Village, Dutch Village, Essex Park, Fontana, Gwynn Oaks, Hamilton Manor, Harbor Point, Highland Village, Morningside Park, Pleasantview, Princeton Estates, Riverview, and Whispering Woods (collectively, the Properties) are multi-family dwelling complexes and the Respondents primarily offer and lease the units at the Properties to consumers for use as personal residences.

2. JK2 is a Delaware limited liability company that was formed in 2012. It provided property management services for the Properties, pursuant to written property management agreements, during the periods set out in the Stipulations of Fact.

3. In December 2016, JK2 assigned its property management agreements for the Properties to Westminster.

4. The members of JK2 were Jared Kushner and Joshua Kushner, each of whom held a 50% interest in the company, with Mr. Jared Kushner being the managing member of JK2.

5. When the property management agreements were assigned to Westminster, Jared Kushner signed the agreements on behalf of both the assignee, as Executive Vice President and

[14] Throughout, citations to the exhibits are included for reference only and may not be the sole basis for the facts found.

[15] Subheadings are used solely for convenience. A fact set forth under one subheading will not necessarily be repeated under another subheading to which it may be relevant; the facts proposed to be found are applicable to the decision as a whole.

Authorized Signatory of JK2, and the assignor, as the Executive Vice President of its managing member Westminster Mgt. GP Corp. (WMGPC).

6. JK2 was thereafter dissolved on December 30, 2016.

7. Westminster is a New Jersey limited liability company that was formed in 2000; it provides property management services for multifamily residential properties. Westminster is the successor company to JK2.

8. In addition to property management, Westminster "through various entities, manages the affairs and businesses of Kushner Companies LLC [(Kushner Cos.)]. . . and certain affiliated entities and subsidiaries . . . ." CPD Ex. 1-A-7.

9. As of January 2014, WMGPC was the managing member of Westminster and held 0.10% interest in Westminster; the remaining members of Westminster were Charles Kushner, 43.90%, Seryl Kushner, 6.00%, and Jared Kushner, 50.00%. CPD Ex. 1-A-2.

10. JK2 and Westminster regularly conducted business in Maryland.

11. In 2017, after Westminster took over management, it entered into new management agreements with 13 of the Properties; the terms were substantially similar terms as to the scope of services, management fee, and reimbursement of salaries and wages of on-site staff. *See* CPD Ex. 3-D-2, §§ 4, 8, and Exhibit B thereto; *see also* CPD 3-B-2, 3-E-2, 3-F-2, 3-G-2, 3-H-2, 3-J-2, 3-K-2, 3-L-2, 3-M-2, 3-N-2, 3-P-2, and 3-Q-2.

12. As the management company for the Properties, JK2 and Westminster were responsible for procuring tenants and leasing units; collecting rent, including instituting legal proceedings; maintaining and repairing the Properties and units; implementing capital improvements, and managing and making improvements to the secured lenders of the owner Respondents, pursuant to various property management agreements. CPD Exs. 3-A & 3-B-2 to

3-F-2, 3-G-2 to 3-L-2, 3-M-2 to 3-Q-2. In exchange, JK2 and Westminster receives a property management fee and was reimbursed for the salaries and wages of the on-site employees.

13. Pursuant to the property management agreements, JK2 and Westminster were required to act in a diligent and professional manner and act "in a fiduciary capacity with respect to the proper protection of and accounting for Owner's assets." CPD Ex. 3-A at Westminster 000386, §5.a; *see also* CPD Ex. 3-B-2, §4.3. They were required to "promptly and diligently enforce Owner's rights under tenant leases, including . . . terminating tenancies, . . . instituting actions and evicting tenants . . . [and] recovering rents and other sums due by legal proceedings." CPD Ex. 3-A at Westminster 000387, §5.b; *see also* CPD Ex. 3-B-2, §7.7.

14. JK2 and, subsequently, Westminster, entered into leases on behalf of the owner Respondents, coordinated all communication with the tenants for the Respondents, and marketed the properties. *See, e.g.,* CPD Ex. 3-A, §5.b; CPD Ex. 3-B-2, art. 7; CPD Ex. 3-D-1, §5.b; CPD Ex. 3-D-2, §5.b; .

15. The owner Respondents set minimum maintenance standards, but JK2 and Westminster were responsible for implementing a maintenance program, establishing tenant service request procedures, and implementing the capital improvements specified in the budget approved by the owner. CPD Ex. 3-A, §5.b.2, .11, .12, .14; CPD Ex. 3-B-2, §9.1; CPD Ex. 3-D-1, §5.b.2, .11, .12, .14; CPD Ex. 3-D-2, §5.b.2, .11, .12, .14.

16. The owner Respondents paid a management fee of three percent of collected revenues of the property and reimbursement for salaries and wages of the on-site employees. CPD Ex. 3-D-1, §8.c and Ex. B thereto.

17. A consumer's first point of contact when inquiring about renting a unit at one of Properties would be with a leasing consultant employed by the property management company

(JK2 or Westminster). Leasing consultants gather information from the consumer to determine which type of unit the consumer is interested in renting and whether the consumer will qualify to rent. Test. Theresa Webb; Test. Catherine Miller; CPD Ex. 340-B at CPD No. 046706-07. Leasing consultants also had many other duties, including developing prospective leads, giving tours of the property, entering data about prospective tenants and new tenants into Westminster's property management system, explaining the lease to tenants at move-in, conducting walk-through inspections at move-in, surveying or visiting competitors, training, and, depending on the staffing at a particular property, fielding complaints from residents and entering work orders. CPD Ex. 340-D at CPD No. 047366, 047374, 047575-77, 047606; CPD Ex. 340-E at CPD No. 047822-23; Test. Stephanie Brown; Test. David Chesley; Test. Angelique Marine.

18. At all relevant times, Westminster and JK2 staffed each of the Properties[16] with an on-site property manager, sometimes called a "community manager," who was responsible for overseeing day-to-day operations at that property, including leasing, collections, budgeting, staffing, and overall management, a maintenance supervisor, and an assistant property managers. Most of the Properties also had one or more leasing specialists, a resident relations coordinator, an assistant service manager, and one or more service or maintenance technicians on-site, each of whom reported, ultimately, to the property manager. The precise staffing varied according to the size of the particular property.

19. Each on-site property manager reported to one of Westminster's regional managers, who were responsible for, among other things, assisting with and overseeing the daily operations and activities, training, monitoring delinquency, and preparing financials at the properties they oversaw.

[16] Given their proximity, Dutch Village and Pleasantview shared a property manager and other on-site employees.

20. Theresa Webb and Catherine Miller were regional managers at Sawyer and continued in their roles when JK2 took over management of the property, and they remained in those roles after Westminster assumed management of the properties.[17] The properties they each oversaw varied over time.

21. The regional managers reported to the Director of Property Management,[18] an executive-level employee located in Maryland who oversaw the management and day-to-day operations of the Maryland Properties. The Director of Property Management was also responsible for implementing effective cost control measures, developing operating budgets, and overseeing the development and implementation of marketing plans for the properties.

22. Prior to 2018, the Director of Property Management, located in Maryland, was also responsible for overseeing the policies and procedures being implemented at the Properties in Maryland and ensuring compliance with Maryland law, among other job duties. No one at the Westminster headquarters oversaw this.

23. Lisa Marie Francke was the Director of Property Management until she took a medical leave of absence in late 2016 or the beginning of 2017.[19] In or about May 2017, Westminster hired Anne Angel to fill Ms. Francke's former role. Ms. Angel remained in that role until the end of 2017, when she left the company. Jill MacMillan took over the role in April 2018; she has been the senior Westminster employee in Maryland since that time.

24. Ms. Francke often communicated policy and procedure changes to the property-level staff by use of email. Ms. Francke's email directives were inconsistently implemented at

[17] Ms. Miller was on a leave of absence from August 2015 to August 2016.
[18] At various times the position was titled Senior Vice President, Real Estate (during Ms. Francke's tenure) and Director of Operations (during Ms. Angel's tenure). For consistency, I use Director of Property Management, the current title.
[19] Prior to her formal leave of absence, Ms. Francke had been out intermittently for about a year due to health issues. Test. Anne Angel.

the various Properties and some, such as the waiver of the agent fee for writs, were never timely implemented. Such discrepancies were not timely addressed.

25. During her tenure as Director of Property Management in 2017, Ms. Angel began working on a policy and procedure manual. Aside from the old Sawyer policy and procedure manual that was still available on the Westminster intranet, Westminster, and JK2 before it, lacked their own policy and procedure manual until at least July 2018.

26. When JK2 and, subsequently, Westminster took over the management of the Properties, the leases in effect at the time continued until the end of the lease term.[20] Consumers who entered new leases thereafter were offered the standard form lease then in use by JK2 or Westminster.

27. During the time they managed the Properties, JK2 and Westminster used a standard form lease across all the Properties. Consumers were unable to negotiate or modify the standard terms of the lease documents, but they received a copy of the lease and reviewed its terms with a leasing agent. CPD Ex. 340-D at CPD No. 047403; Test. Phyllis Roosevelt.

28. All of the form leases used by Respondents contained an automatic renewal provision putting the responsibility on the consumer to notify the landlord that he or she did not intend to renew the lease. *See* CPD Ex. 331 at Westminster 000581; CPD Ex. 332 at Westminster 078258; West. Ex. 32A at WM RRPD 102486; West. Ex. 65A at WM RRPD 033898; West. Ex. 279 at Westminster 081181. Pursuant to this lease provision, JK2 or Westminster would regularly send a form lease renewal letter offering the consumer a new lease with all the provisions of the existing lease to "remain in full force and effect," aside from an

[20] Prior to being managed by JK2, Carriage Hill, Charlesmont, Gwynn Oaks, and Princeton Estates (collectively, the SRH properties) were managed by Sawyer. When JK2 took over management of the SRH properties, the leases in effect were Sawyer form leases. *See also* Stipulation No. 21 (10-Pack leases in effect were Sawyer lease forms).

increase in the monthly rent. *See, e.g.*, West Ex. 65A at WM RRPD 033874; CPD Ex. 83-I; CPD Ex. 87-E; CPD Ex. 145-D-2.

29. When management of the 10-Pack and SRH properties transitioned from Sawyer to JK2, many of the employees remained the same, and the same on-site policies and procedures continued in effect. This continued through to Westminster's management of the properties.

30. In January 2019, Westminster hired Peter Febo to be its Chief Operating Officer. Mr. Febo was faced with challenges that included the inconsistent practices and forms (aside from the form leases) being employed at the Properties then under management. He implemented additional controls, including standardizing the forms being used across the Properties then under management. A policy and procedure manual was also under way.

MFDLs

31. As of 2012, multi-family rental dwellings in Baltimore City are required to have a multiple family dwelling license (MFDL), issued through the Baltimore City Department of Housing and Community Development (BCHCD) Office of Permits and Code Enforcement. Baltimore City Code, Art. 13, § 5-4.

32. At all pertinent times, issuance of an MFDL has required a current registration statement, including a Part C certificate of compliance with lead paint laws, a property inspection, and payment of licensing fees based on the number of dwelling units; additionally, a property cannot have any open violations of the Baltimore City Building, Fire, and Related Codes Article. Baltimore City Code, Art. 13, § 5-6.

33. At all times during their respective management of the Properties, JK2 and Westminster were aware of the need to obtain and renew MFDLs for Dutch Village and Pleasantview.

34. The MFDLs were sent to the "owner," addresses at Dutch Village and Pleasantview, and plainly stated their expiration dates. Renewal notices were also mailed to the owner addresses for Dutch Village and Pleasantview.

35. Dutch Village was issued MFDLs by the BCHCD for 2012 through October 2014.

36. For reasons unknown, when BCHCD issued MFDLs for Dutch Village, it did so under two registration numbers (registration number 401012, for 544 units associated with 6808 McClean Boulevard, and registration number 201175, for 30 units associated with 2501 Perring Manor Road and 20 units associated with 6801 McClean Boulevard) for a total of 594 rental units; this is fifty more dwelling units than Dutch Village operates.[21]

37. On October 17, 2014, MFDL 401012 for Dutch Village expired without renewal.

38. On or about October 22, 2014, the inspection required for renewal of Dutch Village's MFDL was performed by a BCHCD inspector.[22] At that time, other requirements for renewal of the MFDL—a current Part C certificate of compliance with lead paint laws and payment of the licensing fee—were not met.

39. Ultimately, between April 17 and 23, 2015, JK2 completed the renewal process by providing Dutch Village's Part C certificate of compliance and making payment of outstanding amounts; Dutch Village's MFDL 401012 was renewed effective April 24, 2015 for the period ending October 22, 2015.

40. MFDL 401012 for Dutch Village was timely renewed for the period of October 23, 2015 to October 22, 2016.

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[21] This was not an issue for Pleasantview, which was issued a single registration for the correct number of units at the property.

[22] Until 2018, BCHDC used its own inspectors to perform the required inspections, and at times their busy schedules might delay an inspection.

41. On August 25, 2016, JK2 sent BCHCD a $29,855.00 check to cover the renewal payments for all of the MFDLs for Dutch Village. The check was lost at some point in the process, and on or about October 13, 2016, JK2 placed a stop payment order on the check and issued a new check to the BCHCD that same day.

42. BCHCD processed the re-issued $29,855.00 payment on October 14, 2016, but subsequently, and erroneously, adjusted its records to reflect the payment as a "bad check."

43. MFDL 401012 expired, by its terms, on October 22, 2016.

44. On October 27, 2016, the scheduled inspection required for renewal of Dutch Village's MFDL was performed by a BCHCD inspector.

45. On or about December 13, 2016, BCHCD properly processed payment for renewal of Dutch Village's MFDL No. 401012.

46. Despite payment thus having been made for the MFDL for Dutch Village, a current Part C certificate of compliance was not on file with the BCHCD until May 26, 2017, by which time Westminster had already taken over as the property manager for Dutch Village.

47. Effective May 30, 2017, after filing of the registration statement with the Part C certificate of compliance, the BCHCD renewed Dutch Village's MFDL No. 401012 for the period ending October 27, 2017.

48. Pleasantview was issued MFDLs, under registration number 401013, by the BCHCD for 2012 through October 15, 2014.

49. On October 15, 2014, Pleasantview's MFDL expired without renewal.

50. On or about October 23, 2014, the scheduled inspection required for renewal of Pleasantview's MFDL was performed by a BCHCD inspector. At that time, other requirements

for renewal of the MFDL—an updated Part C certificate of compliance with lead paint laws and payment of the licensing fee—were not met.

51. Between April 21 and 23, 2015, JK2 completed the renewal process for Pleasantview's MFDL by providing a Part C certificate of compliance and making payment of the required fee. Pleasantview's MFDL was renewed effective April 24, 2015 for the period ending October 23, 2015.

52. Pleasantview's MFDL was timely renewed for the 2015 registration year, with a license expiration date of October 29, 2016.

53. On November 14, 2016, the inspection required for renewal of Pleasantview's MFDL was performed by a BCHCD inspector. Pleasantview's MFDL license was not renewed for registration year 2016 because an updated Part C certificate of compliance was not on file with BCHCD.

54. On November 20, 2017, Pleasantview's MFDL was renewed for registration year 2017.

55. While they lacked the requisite MFDLs, JK2 and Westminster were not permitted to rent or offer to rent units and were not permitted to charge or collect rent. Baltimore City Code, Art. 13, § 5-4(a).

56. During the periods when Dutch Village and Pleasantview did not have MFDLs, Westminster, JK2, and the respective owner Respondents continued to operate them as multi-family dwellings, including advertising and leasing residential units, and collecting rent.

57. While Dutch Village lacked the requisite MFDL, summary ejectment actions were filed with the district court against tenants of Dutch Village (from November 2014 through April 16, 2015 and from November 2016 through May 6, 2017). While Pleasantview lacked the

requisite MFDL, summary ejectment actions were filed with the district court against tenants of Pleasantview (November 2014 through April 23, 2015 and from November 2016 to November 14, 2017). The filing of these summary ejectment actions in the district court required an affirmation under penalty of perjury, that the landlord had the requisite license to rent the property as a residential rental.[23]

58. The leasing of residential dwellings without a required MFDL is likely to cause substantial injury to consumers.

59. Expired MFDLs were displayed in the leasing offices and summary ejectment filings for Pleasantview and Dutch Village necessarily represented that the landlords held MFDLs. Tenants had no reasonable means to discern that Pleasantview and Dutch Village lacked MFDLs at various times during their tenancies or at the commencement of their tenancies. The injury was not reasonably avoidable by consumers.

60. There is no countervailing benefit to consumers or competition from the leasing of dwelling units without a required license.

61. Although JK2 collected and attempted to collect rent while Dutch Village and Pleasantview lacked MFDLs, it did so without knowledge that it lacked the MFDLs and the right to collect.

62. Although Westminster collected and attempted to collect rent while Dutch Village and Pleasantview lacked MFDLs, it did so without knowledge that it lacked the MFDLs and the right to collect.

[23] Baltimore City Code, Art. 13, § 5-4(a)(2); CPD Ex. 333-B-6 at CPD No. 011687 to 011796 and 012126 to 012265; CPD Ex. 333-B-14 at CPD No. 025441 to 025509 and 025706 to 025848; CPD 340 F at CPD No. 000242.

Collection Agency Licensure

63. JK2 was not licensed in Maryland as a collection agency when it began managing the 10-Pack properties in August 2012 or the Park Holdings properties in April 2014.

64. In August 2014, suit was filed against JK2, and others, in the Circuit Court for Baltimore County alleging that JK2 was not licensed as a collection agency (the Circuit Court Case).

65. On August 8, 2014, JK2 applied to the Maryland Collection Agency Licensing Board of the Office of the Commissioner of Financial Regulation (OCFR) to be licensed as a collection agency. It was licensed on December 15, 2014 and the license expired without renewal on December 31, 2015.

66. On August 28, 2015, the Circuit Court for Baltimore County issued a ruling dismissing the claims filed against JK2 in the Circuit Court Case. The court explained that prior litigation in federal court had fully resolved whether Sawyer, as JK2's predecessor, needed to maintain a Maryland collection agency license and the court further explained that even aside from the federal court decision, it was independently concluding that JK2 was not operating as a collection agency.[24] At that time, collection suits were being filed in JK2's name.[25]

67. At no time has the OCFR taken an enforcement action against JK2 or Westminster for acting as a collection agency without a license. Test. Jedd Bellman.

68. After its collection agency license expired on December 31, 2015, JK2 was never licensed as a collection agency in Maryland.

69. While unlicensed, JK2 collected rent and other payments from tenants at the Properties. Specifically, it did so from August 31, 2012 through December 14, 2014 and again

[24] *See Ramsay v. Sawyer Prop. Mgm't LLC*, 2016 WL 6583892, at *8 (Md. Ct. Spec. App. Nov. 4, 2016).
[25] *Id.* at *2.

from January 1, 2016 through December 2016 for the 10-Pack properties, and from April 15, 2014 through December 14, 2014 and again from January 1, 2016 through December 2016 for the Park Holdings properties.

70. The JK2 lease defined the term "Landlord" as "JK2 Westminster LLC agent for [owner]," defined "rent" as payments from the tenant to the Landlord, and provided that rent was to be paid to the Landlord. West. Ex. 65A at WM RRPD 033876, 033879, and 033883; West Ex. 30A-1 at WM RRPD 015727.

71. In at least some instances, payments were not made out to JK2 but to the property. *See* West. Ex. 65A at 033932; CPD Ex. 340-E at CPD No. 048005-06, and 048133.

72. The JK2 management agreements provided that JK2 was enforcing the "Owner's rights under tenant leases, including . . . recovering rents," and that JK2 was to "immediately . . . deposit all rents and other funds collected relating to the property . . . in the operating account established by [the owner]." *See, e.g.,* CPD Ex. 3-A at Westminster 000387, §5.b.1, and 000389, §5.d. Disbursements from the accounts "shall be made as Owner may direct from time to time." *Id.* §5.d; *see also, e.g.*, CPD Ex. 3-F-1 at Westminster 015172, 015175, §§5.b.1, 5.d The management agreement further made plain: "All money in any account maintained pursuant to the terms hereof . . . shall be the property of Owner. In no event shall any funds of the Manager be commingled with funds in any of the Accounts." *Id.*

73. From at least March through November 2013 and from June 2014 through December 2016, when summary ejectment actions were filed, they were typically filed in the name of the owner Respondents, and not in the name of JK2. Test. Evelyn Hodge; *see also, e.g.*, CPD Ex. 333-B-14; *but see, e.g.* CPD Ex. 333-B-2.

74. Although JK2 collected rent and other payments from tenants at the Properties without a collection agency license in Maryland, it did so without knowledge that it lacked the right to collect.

75. On December 5, 2014, Westminster applied to the OCFR to be licensed as a collection agency in Maryland. Westminster was licensed on March 24, 2015 and the license expired on December 31, 2015.

76. Westminster was not licensed as a collection agency from January 1, 2016 through July 2, 2017.

77. In an April 27, 2017 letter in connection with its application to become licensed again, Westminster's attorney, Andrew Berman, explained to the OCFR: "Westminster was previously registered as a collection agency in Maryland. However, the expired license was not renewed, as the company was doing business a collection agency under the entity JK2 Westminster LLC. Now, Westminster is active in Maryland and needs a new collection agency license." CPD Ex. 342-E at CPD No. 051897.

78. On July 3, 2017, Westminster again became licensed in Maryland as a collection agency. It has timely renewed that license and, at all subsequent relevant times, has remained licensed as a collection agency.

79. While unlicensed, Westminster collected rent and other payments from tenants at the Properties. Specifically, Westminster collected rent and other payments from January 1, 2017 through July 2, 2017, a total of 183 days, while it was unlicensed.

80. During the period when Westminster collected rent without being licensed as a collection agency, JK2 form leases and Westminster pre-2018 form leases were in effect.

81. Under Westminster's pre-2018 form leases, there was a spot to identify the Landlord and Westminster was then identified as the "agent for Landlord." CPD Ex. 331; *see also* CPD Ex. 340-E at CPD No. 048043.

82. The Westminster pre-2018 lease provided that rent payments were to be made by the tenant to the "Landlord." CPD Ex. 331; *see also* CPD Ex. 340-E at CPD No. 048106 (June 2017 money order made payable to Highland Village). In practice payments could be made out to either Westminster or the community. CPD Ex. 340-E at CPD No. 048243.

83. Under Westminster's various property management agreements,[26] security deposits and rent were "amounts due to the [o]wner relating to the Premises." *See, e.g.*, CPD Ex. 3-B-2, ¶¶ 7.5 and 7.6; *see also, e.g.,* CPD Ex. 3-D-2, §§5.b.1 (Manager "shall promptly and diligently enforce Owner's rights under tenant leases, including . . . recovering rents and other sums due."), 5.d ("shall be the property of Owner").

84. At all times from December 2016 onward, when summary ejectment actions were filed, they were typically filed in the name of the owner Respondents, and not in the name of Westminster. Test. Evelyn Hodge; *see also, e.g.*, CPD Ex. 333-B-14; CPD Ex. 340-F at CPD No. 000242-45.

85. While Westminster collected rent and other payments from tenants at the Properties without a collection agency license in Maryland, it did so with knowledge that it lacked the right to collect.

[26] The JK2 property management agreements were assigned to Westminster. *See* CPD Exs. 1-A-3, 1-A-4, 1-A-5. To the extent those property management agreements continued in effect, the pertinent terms are set out above.

Application Fees

86. At all relevant times, the Respondents regularly collected an application fee from consumers applying for tenancy at the Properties. Each prospective tenant over the age of 18 was required to submit an application and fee.

87. When JK2 took over management of the 10-Pack and the SRH Properties, application fees in excess of $25.00 were already being charged. *See, e.g.*, West. Ex. 55A at WM RRPD 022221-22.

88. After taking over management of the 10-Pack and SRH Properties, Westminster increased the application fee at five of those properties, Cove Village, Dutch Village, Hamilton Manor, Pleasantview, and Princeton Estates. The change was announced to employees in an email from D. Dawn Miller, Westminster's Director of Marketing, who advised:

> [W]e recently asked you to conduct a survey to confirm the application fees of your competitors. What we learned is that the market will bear larger application fees at some communities. Therefore, also effective immediately, we are increasing the application fees . . . .

CPD Ex. 340-D at CPD No. 047628. The application fee at Princeton Estates was increased to $50.00 and the application fee at the other four properties was increased to $40.00. There was no suggestion that a difference in application processing costs led to the increase or to the different rate for Princeton Estates.

89. As stipulated by the parties, the Respondents charged consumers application fees of $35 or more (where indicated) at all of the Properties during the following time periods:

Property	Timeframe
Carriage Hill	10/8/12 – 10/31/17
Carroll Park	4/15/14 – 12/1/17
Charlesmont	10/8/12 – 10/31/17
Commons	10/8/12 – 12/1/17

Cove Village	10/8/12 – 12/1/17 ($40)
Dutch Village	10/8/12 – 12/1/17 ($40)
Essex Park	4/15/14 – 12/1/17
Fontana	10/8/12 – 12/1/17
Gwynn Oaks	10/8/12 – 10/31/17
Hamilton Manor	10/8/12 – 12/1/17 ($40)
Harbor Point	10/8/12 – 12/1/17
Highland Village	10/8/12 – 12/1/17
Morningside	4/15/14 – 12/1/17
Pleasantview	10/8/12 – 12/1/17 ($40)
Princeton Estates	10/8/12 – 10/31/17 ($50)
Riverview	10/8/12 – 12/1/17
Whispering Woods	10/8/12 – 12/1/17

90. The Respondents' rental application advised consumers that "sums deposited herewith as Application Fee are not refundable" but went on to advise that consumers would be refunded for any portion of the fee exceeding $25 that was not expended on behalf of the consumer making the application. *See, e.g.*, West. Ex. 66A at WM RRPD 227449.

91. In connection with the application process, the Respondents incurred fees for background and credit checks performed by vendors.

92. The per-application cost for a credit and background check often was much lower than $25. For example:

- In October 2014, Yardi charged Westminster a flat monthly fee of $196.25 ($1.25 x 157 units) to process background and credit checks for applications from Carroll Park. That month, Westminster submitted 17 applicants from Carroll Park, making the per applicant cost **$11.54**. CPD Ex. 346 at WM 034066-034068. At that time, the application fee at Carroll Park was $35.00.

- In October 2014, Yardi charged Westminster a flat monthly fee of $286.25 ($1.25 x 229 units) to process background and credit checks for applications from Essex Park. Westminster submitted 34 applicants for Essex Park, making the per applicant cost **$8.42**. *Id.* at WM 034070. At that time, the application fee at Essex Park was $35.00.

- In March and April 2015, while using CoreLogic with charges made on a per-product basis for credit and background checks, the charge for a particular applicant was **$25.61**, still less than the $35.00 application fee being charged. *See* CPD Ex. 345-A at WM RRPD 001925-31 (Carriage Hill); CPD Ex. 345-D[27] at WM RRPD 002053-002065 (Commons); CPD Ex. 345-I at WM RRPD 002421-38 (Gwynn Oaks); CPD Ex. 345-P at WM RRPD 002843-49 (Riverview). Subsequently, CoreLogic moved to a flat fee arrangement.

- In September 2015, Yardi charged Westminster a flat monthly fee of $160.00 ($1.25 x 128 units) to process background and credit checks for applications from Morningside. Even though Westminster submitted only 9 applicants for Morningside that month, the per applicant cost was still only **$17.78**. CPD Ex. 346 at WM 034148. At that time, the application fee at Morningside was $35.00.

- In July 2016, CoreLogic charged Commons $1,227.43 (a flat fee of $1,157.96 plus tax) to conduct background and credit checks. CPD Ex. 345-D at WM RRPD 002066-002067. Although the CoreLogic invoice does not indicate how many credit and background checks were processed that month, Westminster's ledgers reflect that at least 57 credit and background checks would have been done. CPD Ex. 334-D at 3749, 5033, 5763, 5765 (2 consumers), 5768 (2 consumers), 5775, 5779 (3 consumers), 6164, 6587, 6866, 7083, 7134, 7338, 7341 (5 consumers), 7343 (2 consumers), 7353, 7358, 7369, 7371 (2 consumers), 7373 (3 consumers), 7377 (4 consumers),[28] 7383, 7389, 7392 (2 consumers), 7394, 7401, 7402, 7405 (2 consumers), 7410 (4 consumers), 7415 (2 consumers), 7420, 7423, 7426 (3 consumers), 7429 (3 consumers), 7434 (4 consumers), 7439, 7444, 7457, 8356, 8392 (2 consumers), 8572 (t9819718, Application Fee, 7/21/16). Thus, the per applicant cost for that month was at most **$21.53** ($1,227.43 ÷ 57).[29] At that time, the application fee at Commons was $35.00.

- Similarly, in August 2017, CoreLogic charged Princeton Estates $480.02. CPD Ex. 345-O at WM RRPD 002837-002838. Westminster's ledgers show that Princeton Estates processed at least 33 applicants that month. CPD Ex. 334-O, at 1316, 1317 (4 consumers), 1318 (5 consumers), 1784 (2 consumers), 1787 (8 consumers), 1788 (4 consumers), 1792 (6 consumers), 1793 (4 consumers). Thus, the total cost per applicant for that month was at most only **$14.55** ($480.02 ÷ 33).[30] At that time, the application fee at Princeton Estates was $50.00.

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[27] In the electronic file copies of the exhibits, CPD Exhibits 345-B through 345-K are misnamed as 346-B through 346-K.

[28] The exhibit page reflects an application fee being charged for two occupants under tenant number 9811448 on July 10, 2016, but also reflects an application fee concession in an equal amount.

[29] I arrived at a higher number than 57. As the basis for the difference was not immediately apparent, I used the CPD's lower number, which would be more favorable to the Respondents.

[30] I arrived at a higher number than 33. As the basis for the difference was not immediately apparent, I used the CPD's lower number, which would be more favorable to the Respondents.

93. In addition to third-party vendors, leasing consultants at each of the Properties also worked on lease applications, including ensuring all documents were submitted, entering information into the computer system for third-party background and credit checks, at times making calls to verify employment and speak to former landlords, and determining if the applicants met the qualifying income level. The amount of time spent by leasing consultants varied based on the application, but it could exceed an hour if follow up calls were necessary. If the property had a leasing manager, the leasing manager would review the application file, including vendor reports, to sign off on it. The property manager would also review every application file to approve the decision made.

94. Pursuant to the property management agreements, the owner Respondents reimburse the property manager (*i.e.*, JK2 or Westminster) for the salaries of the leasing agents and other on-site employees; reimbursement was not dependent on the amount of time expended processing applications. *See, e.g.*, CPD 3-D-2, §§ 5(b)(1) and 8(c). Leasing consultants did not track the time they spent processing an application; Respondents did not track the internal salary expenses associated with processing an individual tenant's application. CPD Ex. 340-D at CPD No. 047374.

95. The Respondents did not actually expend more than $25.61 on behalf of the tenant making application, and frequently expended less.

96. The Respondents' ledger data shows that application fees were charged, in amounts ranging from $35 to $50, to at least 11,640 applicant households, which corresponds to at least 15,289 consumers having been charged an application fee in that amount. Those fees broke down by property as follows:

Property	Number of Households Charged Application Fees of $35 or More	Number of Consumers Charged Application Fees of $35 or More
Carriage Hill	473	577
Carroll Park	286	346
Charlesmont	667	923
Commons	1,384	1,767
Cove Village	448	598
Dutch Village	1,082	1,386
Essex Park	379	462
Fontana	517	706
Gwynn Oaks	1,137	1,390
Hamilton Manor	264	365
Harbor Point	926	1,296
Highland Village	1,385	1,898
Morningside	223	278
Pleasantview	517	661
Princeton Estates	717	922
Riverview	538	787
Whispering Woods	697	927
Total	11,640	15,289

These numbers do not include data from the Jenark property management software, which was used by Respondents until 2014-2015.

97. As a matter of practice, the Respondents did not track the total amount actually expended to process a particular application. CPD 340-D at CPD No. 047374, 77.

98. As a matter of practice, the Respondents did not return any portion of the application fee to consumers as funds not actually expended on behalf of the tenant making application, and instead they treated the entire application fee as non-refundable. CPD Ex. 340-

D at CPD No. 047386; West. Ex. 66A at WM RRPD 227449 ("the sums deposited herewith as Application Fee are not refundable").

99. Consumers could not reasonably avoid this practice and it served no countervailing benefit to consumers or competition.

100. In or about December 2017, Westminster ceased charging application fees greater than $25.00, per adult occupant, at any of the Properties then under its management.

Holding Fees

101. Prior to December 2017, the Respondents also collected a holding fee (sometimes described as a reservation deposit, rental deposit, or down payment) from consumers applying for tenancy at the Properties. *See, e.g.*, CPD Ex. 347B at 7.

102. The holding fee was sometimes required at the time of application but was more regularly required after a consumer's application for tenancy was accepted. *Compare* CPD Ex. 347-B at 1, 21, *and* CPD Ex. 340-D at CPD No. 047350-51, *with* CPD Ex. 347-B at 11, 24, 14, West. Ex. 66A at WM RRPD 227469, *and* Test. Stephanie Brown.

103. The holding fee was typically in the neighborhood of $100.00, though it could be as much as $300.00. *See, e.g.*, CPD Ex. 347-B at 3-7.

104. The holding fee was presented to consumers as a non-refundable fee; its purpose was to reserve a unit for a prospective resident. *See, e.g.,* CPD Ex. 347-B at 14, 21, 24, 26; CPD Ex. 340-D at CPD No. 047350, 54-55; CPD Ex. 340-E at CPD No. 047843; Test. Stephanie Brown.

105. If the consumer had already paid a holding fee but was not approved to lease a unit, the holding fee was returned. CPD Ex. 340-D at 047354-55; CPD No. CPD Ex. 340-E at CPD No. 047845-46; Test. David Chesley. If the consumer was approved and signed a lease, the

holding fee was applied to the security deposit that was required. *See, e.g.,* CPD 347-B at 3, 13, 25; Test. Stephanie Brown; Test. David Chesley. If the consumer was approved but did not sign a lease, the holding fee was returned if requested by the consumer. Test. Peter Febo; Test. Angelique Marine Testimony; Test. Theresa Webb; Test. Catherine Miller. Meaning, the holding fees were at times retained when a consumer did not sign a lease. CPD Ex. 347-B at 15.

106. Westminster did not have a uniform policy or practice addressing under what circumstances consumers could get their holding fees refunded or whether and how the availability of a refund was communicated to consumers. CPD Ex. 347-B at 15; Test. Theresa Webb; Test. Catherine Miller; CPD 340-D at CPD No. 047354-56.

107. Respondents did not have a set policy or procedure for tracking holding fees. CPD 340-D at CPD No. 047354-59; Test. Peter Febo.

108. Due to how the holding fees were handled and coded for bookkeeping purposes and due to the transition from the Jenark property management software to Yardi property management software, the total amount of holding fees that were retained by the Respondents instead of being refunded to consumers or applied to security deposits is not fully known. CPD Ex. 370; CPD Exhibit 347-A; Test. Peter Febo.

109. Respondents charged consumers at least $30,068 in holding fees that were not refunded, as follows:

Property	Total Unrefunded Holding Fees
Carriage Hill	$1,500
Carroll Park	$500
Charlesmont	$1,700
Commons	$8,799
Cove Village	$300
Essex Park	$500

Gwynn Oaks	$1,470
Hamilton Manor	$100
Harbor Point	$3,900
Highland Village	$4,700
Princeton Estates	$799
Riverview	$2,700
Whispering Woods	$3,100
Total	$30,068

110. The Respondents ceased charging holding fees at any of the Properties in or around December 2017.

111. As of October 2019, the CPD published a pamphlet for consumers, titled "Landlords and Tenants Tips on Avoiding Disputes." In that pamphlet, the CPD addresses holding fees, stating:

> If, when filling out an application, a landlord asks for money to hold an apartment, it may not be clear that you are being asked for a security deposit. It's not wise to pay a security deposit until your application has been accepted and you are signing a lease. Before you pay any money, you should confirm with the landlord whether it will be refunded if you decide not to rent or if the landlord decides not to rent to you. Ask the landlord to write that information on a receipt. This could save you from having to fight to get the money refunded later.

West. Ex. 274 at 2-3.

Credit Write-Offs

112. JK2, from as early as 2012 and continuing through its assignment of the property management agreements, and Westminster, from its assumption of the property management agreements into 2018, in some instances reflected a charge on a tenant's account in order to cancel out a small credit balance owed to the tenant. This was a manual entry that was made instead of refunding the amount or otherwise allowing the tenant to use the credit balance to satisfy his or her ongoing monthly obligations. *See, e.g.*, CPD Appendix T, Yardi Ledgers

Extracted from West. Ex. 314A, Yajaira Melendez Tenant Ledger, at 24-26 (entries dated 8/21/15, 11/10/15, 1/11/16, 6/14/16); *id.* at 7-9, Tamia Copes Tenant Ledger, (entries dated 10/13/14, 7/7/15, 10/5/15).

113. Westminster and JK2 failed to disclose to tenants that they would cancel out small credits. Moreover, the entries were reflected on tenant ledgers as a "charge" or "write-off."

114. The failure to disclose that credit balances would be written off instead of returned was material and deceptive.

115. From 2012 through 2018, Westminster and JK2 engaged in this practice at least 1,545 times, impacting at least 823 tenants, including at least one tenant (Regina Webster) whose tenant ledger reflected she was receiving Section 8 housing assistance.

116. The small credit write-offs were made to tenant ledgers at Carriage Hill, Charlesmont, Commons, Cove Village, Dutch Village, Essex Park, Fontana, Gwynn Oaks, Hamilton Manor, Harbor Point, Highland Village, Pleasantview, Princeton Estates, Riverview, and Whispering Woods, as reflected in CPD Exhibits 339-A-1 through 339-M-2 and CPD Appendix W.

117. The total amount of tenants' small credit balances that were canceled out by JK2 and Westminster from 2012 through 2018 is at least $2,465.24, as follows:

Property	Total Write Offs
Carriage Hill	$32.64 (from 8 instances)
Charlesmont	$85.83 (from 45 instances)
Commons	$27.85 (from 13 instances)
Cove Village	$9.17 (from 13 instances)
Dutch Village	$115.70 (from 98 instances)
Essex Park	$700.28 (from 457 instances)
Fontana	$0.18 (from 1 instance)
Gwynn Oaks	$180.48 (from 120 instances)

Hamilton Manor	$827.76	(from 448 instances)
Harbor Point	$209.32	(from 128 instances)
Highland Village	$31.51	(from 14 instances)
Pleasantview	$73.72	(from 47 instances)
Princeton Estates	$92.31	(from 65 instances)
Riverview	$39.38	(from 29 instances)
Whispering Woods	$39.11	(from 58 instances)

118. This practice provided no benefit to consumers or competition and was not reasonably avoidable by consumers.

Late Fees

119. A 5% late fee is charged to all tenants who owe rent on the sixth of every month.

120. All of the pre-2018 lease forms contain substantially the same provision for the 5% late payment penalty:

> Tenant will pay, as additional rent, a charge of five (5%) percent of the monthly rental as a late charge in the event that Tenant shall fail to pay, both while occupying the Premises and after vacating same, an installment of the rent after 4:30 p.m. on the fourth day beyond the date on which it became due and payable. This shall not constitute a waiver of the Landlord's right to institute proceedings for rent, damages and/or repossession of the Premises for non-payment of any installment of rent.

CPD Ex. 331 at Westminster 000577; West. Ex. 32A at WM RRPD 102478; West. Ex. 65A at WM RRPD 033884; West. Ex. 279 at Westminster 081180.

121. All of the pre-2018 form leases expressly defined "rent" to include more than the monthly market rent, stating: "All payments from Tenant to Landlord required under the terms of this Lease, including, but not limited to, Court costs, shall be deemed rent." CPD Ex. 331 at Westminster 000572; West. Ex. 32A at WM RRPD 102473; West. Ex. 65A at WM RRPD 033879; West. Ex. 279 at Westminster 081176.

122. The Sawyer, JK2, and pre-2018 Westminster lease forms also provide for the application of tenant payments, as follows:

> All payments from Tenant to Landlord may, at Landlord's option, be applied in the following order to debts owed by Tenant to Landlord: late charges, agent's fees, attorney's fees, court costs, obligations other than rent (if any) due Landlord, other past due rent other than monthly rent, past due monthly rent, current monthly rent.

CPD Ex. 331 at Westminster 000577; West. Ex. 32A at WM RRPD 102478; West. Ex. 65A at WM RRPD 033884.

123. The BLDG lease form provided for allocation of payments from tenants as follows:

> No payment by Tenant, or receipt by Landlord, of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the stipulated rent, nor shall any endorsement or statement on any check or letter accompanying any payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment, and may apply such check or payment to the oldest rent owed Landlord, without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease or by applicable law provided.

West. Ex. 279 at Westminster 081180.

124. Westminster's post-2018 form lease contains primarily the same late fee provision as the earlier lease forms, but changes the language limiting the fee to "five (5%) percent of the amount of rent due" rather than "five (5%) of the monthly rental." CPD Ex. 332 at Westminster 078246.

125. The post-2018 Westminster form lease defines "rent": "All payments due us from you required by this Lease, which relate to your use, possession and occupancy of the Premises, are to be considered rent." CPD Ex. 332 at Westminster 078240.

126. The post-2018 Westminster form lease provides for application of tenant payments as follows:

> All payments from you to us will first be applied to the oldest money owed by you to us, regardless of why the payment may have been tendered or submitted.

CPD Ex. 332 at Westminster 078246.

127. All of the lease documents identified the rent that would be due in "monthly installments" and any concessions to that monthly rental amount. *See* CPD Ex. 331 at West. 000568; CPD 332 at Westminster 078238 (specifying the "base rent"); West. 32A at WM RRPD 102471; West. Ex. 65A at WM RRPD 033876; West. Ex. 279 at Westminster 081175.

128. Monthly concessions were at times offered as an inducement to consumers to enter into a lease. When entering monthly lease charges on a tenant's ledger, the rental amount and the concession amount were entered separately, with the monthly rent being described as "Market Rent" and the concession generally entered as credit for a "Recurring Concession." The tenant was responsible for the rental amount minus the amount of the concession.

129. Westminster and JK2 calculated late fees based on more than the outstanding monthly rental installment and charged tenants late fees that exceeded 5% of the fixed monthly rental installment that the tenant owed. Test. Anne Angel; Test. Peter Febo.

130. As of late 2017, Anne Angel became aware of this practice for charging late fees. On December 1, 2017, she issued a policy memo stating that "policy changes" would go into effect that day, including the policy on late fees:

> On the 6th of the month, a late fee is assessed which equals 5% of the base monthly rent due for the rental period for which the payment was delinquent. We cannot charge a 5% late fee on a balance due and owing that is more than the base monthly rent.

West. Ex. 273.

131. In 2018, Westminster revised its form lease to limit the late fee to "five (5%) percent of the amount of rent due" rather than "five (5%) of the monthly rental." CPD Ex. 332, Westminster Post-2018 Lease, at ¶ 31.

132. At least 50 times, JK2 and Westminster charged tenants who had received a rent concession as an inducement to enter the lease[31] a late fee that equaled 5% of the fixed monthly rental installment without deducting the agreed-upon concession from that amount. More specifically, the ledgers of 17 the witnesses who testified at the hearing reveal the following 50 instances of such charges:

- Between April and August 2017, Cove Village tenant Monica Booker was charged 4 late fees in the amount of $44 (5% of $880). None of these fees accounted for the $44 monthly concession to her fixed monthly rent. West. Ex. 20B-1, Monica Booker Tenant Ledger (updated), at 2-3 (late fee entries dated 4/6/17, 6/6/17, 7/6/17, and 8/6/17); *see also* West. Ex. 20A at 49 & 53.

- Cove Village resident Javonia Harden was charged a late fee of $54.30 in July and August 2017, which failed to account for her $54 monthly concession. West. Ex. 94B-1 at 1 (late fee entries dated 7/6/17 and 8/6/17).

- On three occasions, in June, July, and August 2016, Darlene Hill, a tenant at Carriage Hill, was charged a $46.85 late fee, which is 5% of the market rental amount of $937, which failed to account for her $54 monthly concession. West. Ex. 100B, Darlene Hill Tenant Ledger (Carriage Hill), at Westminster 022463-022464 (late fee entries dated 6/6/16, 7/6/16, and 8/6/16).

- Fontana Village tenant Nicholas Johnson, Sr. was charged late fees that failed to account for his monthly rental concession on at least 5 occasions. West. Ex. 117B-1, Nicholas Johnson, Sr. Ledger, at 1-3 (late fee entries dated 7/6/15, 10/6/15, 1/6/16, 2/6/16, and 3/6/16).[32]

- Tatianna Joyner, a tenant at Pleasantview, was charged three late fees that failed to

[31] Respondents sometimes offered consumers a rental concession, a recurring monthly reduction on the market rent. Such concessions were documented in an addendum to the lease and each month the tenant ledgers reflected both the market rent and, in a separate credit, the concession. *See, e.g.,* West. Ex. 126A at4; West. Ex. 126B at 1; CPD Ex. 97-B.

[32] In addition to charging 5% of Mr. Johnson's monthly rent before accounting for his monthly rental concession, the late fee that Mr. Johnson was charged on July 6, 2015 appeared on his ledger three days after an $865 payment—the amount of rent he agreed to pay in his lease—posted to his account. West. Ex. 117B-1, Nicholas Johnson, Sr. Ledger, at 1 (entries dated 7/3/15 and 7/6/15).

account for her $25 monthly rental concession on a market rent of $785. West. Ex. 126B, Tatianna Joyner Tenant Ledger, at 1-2 (late fee entries dated 7/6/15, 8/6/15, and 11/6/15).

- When she moved into Fontana Village in August 2014, Evelyn Njob's monthly rent was $880, which included an initial $50 monthly rental concession on the market rent of $930, which eventually became a $31 monthly concession on a market rent of $955 in September 2015. In July 2015, Ms. Njob was charged a late fee of $46.50, or 5% of $930. That fee did not account for Ms. Njob's monthly $50 rent concession or for a $10.07 credit on her account from the prior month. Ms. Njob was charged late fees that did not account for her monthly rental concession at least 4 other times (though on other occasions, it accounted for a credit from the prior month). *See* CPD Ex. 97B, Evelyn Njob Tenant Ledger (late fee entries dated 7/6/15, 8/6/15, 10/6/15, 11/6/15, and 3/6/16).

- Carriage Hill tenant Pauline Redmond was charged late fees that did not account for her $59 monthly rental concession at least 11 times. West. Ex. 178B, Pauline Redmond Tenant Ledger, at Westminster 020724-020726 (late fee entries dated 10/6/16, 11/6/16, 1/6/17, 2/6/17, 4/6/17, 5/6/17, 6/6/17, 7/6/17, 8/6/17, 9/6/17, and 10/6/17).

- Tonya Simmons, a tenant at the Commons, was charged late fees that failed to account for her $57 monthly rental concession on market rent of $1,140 at least 7 times. West. Ex. 197B, Tonya Simmons Ledger, at 1-4 (late fee entries dated 7/6/15, 8/6/15, 10/6/15, 11/6/15, 12/6/15, 7/6/16, and 2/6/17).

- Highland Village tenant Kelly Ziegler signed a lease that included a monthly rental amount of $895 and a monthly rental concession of $75. At the end of her first month living at Highland Village, Ms. Kelly had a $104.87 credit balance on her account. After accounting for that existing credit and the market rent less Ms. Ziegler's monthly rental concession, she owed $715.13. Ms. Ziegler, however, was charged a late fee equal to 5% of $790.13—the market rent minus her pre-existing credit balance but *not* her monthly concession. West. Ex. 242B, Kelly Ziegler Tenant Ledger, at 1 (late fee entry dated 11/6/15).

- Nine other witnesses—Joseph Barnes, Richard Brown, Darrian Cate, LaShawn Epps, Shanae Jones, Nakia Mack, Carlos McGhee (formerly Carlos Randall), Tia Stepney, and Jamila Weathers—were charged at least one late fee that did not account for the monthly concessions from the rental amounts included in their leases. West. Ex. 15B, Joseph Barnes Ledger (Commons), at 1 ($47.50 late fee entry dated 10/6/15 did not account for $47 monthly concession); CPD Ex. 138-B, Richard Brown Ledger (Essex Park) at 1 ($54.40 late fee entry on 10/6/16 did not account for $54.00 monthly discount; compare with 11/6/16 entry of $51.70 late fee based on discounted rent); West. Ex. 36B, Darian Cate Tenant Ledger (Gwynn Oaks), at 2 ($44.90 late fee entry dated 2/6/17 did not account for $45 monthly concession); CPD Ex. 84-A, LaShawn Epps Ledger (Carriage Hill) ($43.80 late fee entry dated 6/6/16 accounted for preexisting credit balance but not $36 monthly concession); West. Ex. 122B, Shanae Jones Ledger (Pleasantview), at 2 ($39.16 late fee entry dated 7/6/16 accounted for preexisting credit balance but not $75 monthly concession); CPD Ex. 112-B, Nakia Mack (a.k.a. Nakia Pringle) Ledger

(Riverview), at WM RRPD 0153452 ($50.45 late fee entry dated 8/16/16 did not account for $49 monthly concession);[33] West. Ex. 177B, Carlos Randall Tenant Ledger (Harbor Point), at 1 ($46.46 late fee entry dated 8/6/15 did not account for $47 monthly concession); West. Ex. 206B, Tia Stepney Tenant Ledger (Riverview), at 3 ($41.80 late fee entry dated 10/6/19 did not account for $42 monthly concession); West. Ex. 229B, Jamila Weathers Tenant Ledger (Carriage Hill), at Westminster 021434 ($52.20 late[34] fee entry dated 4/13/15 did not account for full $26 monthly concession).

133. This practice is not reasonably avoidable, and it provides no countervailing benefit to consumers or competition.

134. The Respondents' practice is to charge late fees on 5% of the open balance, up to the amount of the monthly rental installment, even where other fees or charges made up a portion of that amount. Examples of this occurring are:

- Highland Village tenant Amanda England was charged late fees in May and June 2018 that were based in part on amounts other than rent. On March 6, 2018, Ms. England was charged a late fee of $46.15 (5% of $923). The $923 balance on her account included $903 in rent—*i.e.*, the fixed monthly rent listed in her lease, $949, less her monthly concession of $46—and $20 for a parking fee. West. Ex. 62B-1, Amanda England Tenant Ledger (updated), at 2 (entries dated 2/7/18, 3/1/18, and 3/6/18). In May 2018, Ms. England was charged a late fee, court fees, and agent fees. Ms. England subsequently made a payment of $998.28, which was same amount as the open balance on her account before the court and agent fees were charged. *Id.* (showing $998.28 account balance after late fee charge on 5/6/18 and $60.00 account balance after payment of $998.28 on 5/8/18). The following month, on June 6, 2018, Westminster charged Ms. England a late fee of $47.15 (5% of $949), but Ms. England's monthly rental amount was only $923 after her concession was applied, meaning that some portion of the late fee was calculated based on non-rent charges. *Id.* at 3 (late fee entry dated 6/6/18).[35]

- On December 6, 2018, Javonia Harden, a tenant at Cove Village, was charged a late fee of $27.39, or 5% of $547.81—the balance that remained on her account after she made a

[33] The late fee that Westminster charged Ms. Mack on August 16, 2016, which was charged late in the month due to her August 4 payment being returned due to insufficient funds, also failed to account for a $619.49 payment that Ms. Mack had made on August 1, 2016, which should have brought the balance of her monthly rent due and owing (and thus the balance on which the late fee was calculated) down to just $340.54. Accordingly, Ms. Mack was overcharged $33.42 in late fees that month.

[34] The $52.50 amount noted by the CPD appears to be solely a typographical error.

[35] The $26 of non-rent charges that were included in the 5% calculation could be characterized either as some portion of the agent and court fees charged in May 2018 (which were each charged twice, resulting in $30 of overcharges) or some portion of the charges for utilities that were assessed in June 2018. West Ex. 62B-1, Amanda England Tenant Ledger (updated), at 2-3 ("legal af" and "legal sf" entries dated 5/6/18 and 5/7/18)). As a practical matter, however, the late fee Ms. England was charged in June 2018 was plainly calculated on something other than simply the fixed monthly rental amount set forth in her lease.

$600 payment on December 4, 2018. The remaining balance on which the late fee charge was based, however, included $61.81 in utility bills that were charged to account the same day as her December rent. West. Ex. 94-B-1, Javonia Harden Tenant Ledger, at 4 (entries dated 12/1/18, 12/4/18, and 12/6/18).

- Beginning in June 2017, Whispering Woods tenant Greyling McCray's base monthly rent was $855. Mr. McCray also paid a monthly pet fee of $30 per month. On June 3, 2017, Mr. McCray made a payment to his account of $927.51, after which he had a $1.70 credit on his account. On July 6, 2017, Westminster charged Mr. McCray a $44.17 late fee, which equated to 5% of $883.30. The extra $28.30 included in the calculation of Mr. McCray's late fee was not part of the monthly rental; instead, it was part of the monthly pet fee. Appendix T, Yardi Ledgers Extracted from West. Ex. 314A, Greyling McCray Tenant Ledger, at 5 (entries dated 6/3/17 (payment), 7/1/7 (pet fee), 7/1/17 (market rent), 7/6/17 (late fee)).

135. This practice is not reasonably avoidable by consumers, and it provides no countervailing benefit to consumers or competition.

136. In two identified instances, the Respondents mistakenly charged late fees based on 5% of a monthly rent that exceeded the amount provided for in the lease, regardless of the monthly concession:

- LeShaunde Clark agreed to pay $794 in monthly rent for the apartment she leased at Highland Village: installments of $836 less a monthly concession of $42. West. Ex. 42A, LeShaunde Clark Tenant File, at WM RRPD 013709 & 013711. On February 6, 2017, Ms. Clark was charged a late fee at 5% of $876, which exceeded the monthly rental amount, regardless of the rental concession. *Id.* at WM RRPD 013765 ($43.80 ledger entry dated 2/6/17).

- In May 2016, Darlene Hill owed Carriage Hill $830 in rent, the market rent of $937 less a $107 monthly concession of $107.[36] On May 6, Ms. Hill was charged a late fee of $50.95—*i.e.*, 5% of $1,019, which exceeded even the market rent without the concession. West. Ex. 100B, Darlene Hill Tenant Ledger (Carriage Hill), at Westminster 022463 (ledger entries dated 4/6/16, 4/28/16, 5/1/16, and 5/6/16).

137. The Respondents did not engage in a regular, repeated, or ongoing practice of charging tenants a 5% late fee based on a monthly rent that exceeded the amount provided for in

[36] Ms. Hill's monthly rental concession was reduced from $107 to $54 in June 2016.

the lease (even without the concession). There was no substantial injury to consumers and no likelihood of substantial injury to consumers therefrom.

Summary Ejectment—Agent Fees

138. From the time JK2 started managing the Properties in 2012 until the spring of 2018, JK2 and Westminster, respectively, caused a summary ejectment action (often referred to as a failure to pay rent action) to be filed, under section 8-401 of the Real Property Article, against any tenant who had an outstanding balance of $100 or more as of the fifth day of the month. In the spring of 2018, Westminster increased the balance triggering a filing to $250.

139. At all relevant times, JK2 and Westminster retained a third-party rent court agent to file the summary ejectment proceedings against delinquent tenants.[37]

140. Since taking over management of the Properties beginning in 2012, it has been the practice of JK2 and, subsequently, Westminster to charge tenants fees for the services of the third-party rent court agent. This is noted on tenant ledgers on or about the time the action is filed with the court.

141. The JK2 and pre-2018 leases, in effect for the period covering December 2, 2013 to December 2017 (as applicable), provided for the recovery of agent fees from tenants as follows:

> Should Landlord employ an Agent to institute proceedings for rent and/or repossession of the Premises for non-payment for any installment of rent, and should such rent be due and owing as of the filing of said proceedings, Tenant shall pay to Landlord the reasonable costs incurred by Landlord in utilizing the services of said Agent" employed "to institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent.

CPD Ex. 331 at Westminster 000576; West. Ex. 65A at WM RRPD 033883.[38]

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[37] The findings set forth above concerning Ewrit and the Law Office of Richard Basile will not be repeated herein.
[38] To the extent any Sawyer form leases were still in effect as of December 2, 2013, the same provision was included therein. West Ex. 32A at Westminster 102477.

142. The BLDG lease in effect when JK2 took over management of the Park Holdings properties in April 2014 similarly provided for agent fees as follows:

> Should Landlord employ an Agent to institute proceedings for rent and/or repossession of the Premises for non-payment for any installment of rent, and should such rent be due and owing as of the filing of said proceedings, Tenant shall pay to Landlord the reasonable costs incurred by Landlord in utility of the services of said Agent.

West. Ex. 279 at Westminster 081179.

143. The post-2018 leases, which would have applied to the 10-Pack and Park Holdings properties, also provide for the recovery of agent fees, as follows:

> Should we employ an agent to institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent, and should such rent be due and owing as of the filing of those proceedings, you agree to pay us the reasonable costs incurred by us in utilizing the services of the agent. . . .

CPD 332 at 078246.

144. The agent fee provision in all of the leases in effect under JK2's and Westminster's management of the Properties fully informed consumers that agent fees incurred in connection with filing suit would be passed through to tenants.

145. From at least March 2013 to December 2, 2013, JK2 contracted with eWrit Filings LLC (Ewrit) to file summary ejectment proceedings against delinquent tenants. During that period, Ewrit charged JK2 a $12.00 agent fee per writ for its services.

146. Effective December 2, 2013, Lisa Marie Francke, Senior Vice President of Real Estate, who oversaw the management of the Properties, negotiated with the Law Office of Richard Basile to begin handling summary ejectment proceedings for JK2 and for the waiver of the agent fee for writs.

147. After negotiating the waiver of the $12.00 agent fee for writs with Mr. Basile's office, Ms. Francke notified the employees at the properties it was then managing (all of the

Properties except for those owed by the Park Holdings Respondents), by a November 22, 2013 email, that the writ fee was being waived. Ms. Francke informed the employees: "Effective with the December 2, 2013 suit list, we will begin using the [L]aw [O]ffice of Richard Basile. Mr. Basile's office will charge us only $13.50/filing and $0/writ. Yup[,] writs are FREE." She explained that this would save money and that suits should no longer be submitted to Ewrit for filing. CPD Ex. 340-E at CPD No. 048121.

148. Mel Scheinerman, Ms. Francke's supervisor, was copied on Ms. Francke's November 22, 2013 email announcing that there would no longer be an agent fee for filing writs. CPD Ex. 340-E at CPD No. 048121; see also CPD Ex. 340-B at CPD No. 046777-79 (detailing Mr. Scheinerman's role).

149. Regional managers Theresa Webb and Catherine Miller also knew of the change in the agent fee.

150. Ultimately, JK2 negotiated to resume using Ewrit as its rent court agent as of June 2014.[39] JK2 specially negotiated with Ewrit for the waiver of the $12.00 agent fee for filing writs for the 10-Pack and SRH Respondents. CPD Ex. 340-F at 000234, 000240-41. Mr. Basile's office continued to handle the rent court cases for the 10-Pack and SRH Respondents until June 2014. CPD Ex. 340-E at CPD No. 048145.

151. By September 2014, the Park Holdings properties were also subject to the fee arrangement with Ewrit, waiving the $12.00 agent fee. See, e.g., West. Exs. 287B at CPD No. 005048, 287G at CPD No. 014197; 287M at CPD No. 024986.

[39] There was testimony that Mr. Basile's office was unable to handle the volume of rent court filings JK2 required, but there was also evidence that it was a more time-consuming process for the on-site JK2 employees, particularly at the larger properties, as Mr. Basile did not have access to JK2's electronic system and property managers had to manually enter information.

152. Ewrit invoices each Property separately, and separately sets out the rate for the summons/court costs from any agent fee. The invoices went to the community manager at each property for review and, from June 2014 onward, reflected that for writs, the only charge was for court costs (the filing and service fees assessed by the court).

153. For a period of time, these costs were manually entered by property-level employees on a tenant's ledger.

154. From December 2, 2013 to December 2017, JK2 and Westminster did not incur agent fees when their third-party rent court filing agent (Richard Basile and subsequently Ewrit) filed for Warrants of Restitution (or writs).

155. From December 2, 2013 through December 2016, despite not incurring any costs in utilizing the services of an agent to file writs, JK2 charged, collected, and attempted to collect $12.00 agent fees from tenants, knowing that it did not have a right to do so.

156. This practice was not disclosed to consumers.

157. From January 2017 through December 2017, despite not incurring any costs in utilizing the services of an agent to file writs, Westminster charged, collected, and attempted to collect $12.00 agent fees from tenants, knowing that it did not have a right to do so.

158. This practice was not disclosed to consumers.

159. Collectively, JK2 and Westminster charged a $12.00 agent fee to a tenant, even though they did not incur the fee, at least 28,276 times, totaling at least $332,246.00 across the

Properties.[40] As set out in CPD Exhibits 336-A-1 through 336-Q-2, the property breakdown of those fees is:

Property Name	Number of $12 Agent Fees Wrongly Charged	Total Amount of Agent Fees Wrongly Charged
Carriage Hill	2,353	$27,336
Carroll Park	353	$3,900
Charlesmont	971	$11,580
Commons	5,485	$64,092
Cove Village	232	$2,832
Dutch Village	3,151	$37,056
Essex Park	93	$1,116
Fontana	1,208	$14,510
Gwynn Oaks	2,980	$35,028
Hamilton Manor	75	$888
Harbor Point	3,315	$38,928
Highland Village	1,461	$17,052
Morningside	510	$5,844
Pleasantview	1,919	$22,476
Princeton Estates	830	$9,888
Riverview	1,024	$12,216
Whispering Woods	2,316	$27,504
Total	**28,276**	**$332,246**

160. In late-2017, after the commencement of the investigation that led to the Amended SOC, Westminster ceased the practice of charging tenants for agent fees it had not incurred.

[40] My review of the exhibits and the numbers provided by the CPD yielded slightly higher totals than yielded by the CPD's analysis. The CPD included in its exhibits $12.00 charges that were incurred prior to December 2, 2013, but appropriately excluded those from the totals it provided in its analysis. Additionally, the CPD concedes that in February 2019, Westminster refunded some of these $12.00 agent fees to then-current tenants. Upon review of the CPD's exhibits and in consideration of the testimony of its investigator, I accept the numbers the CPD provided in its analysis, as set forth above.

161. In February 2019, Westminster credited back to its then current tenants a total of $34,296.00 for the agent fees that were charged but not incurred. West. Ex. 325.

162. Currently, as a control measure, such charges are placed on tenant ledgers directly by Ewrit and not by property-level staff.

163. Information about the charges to be made under the lease is material to consumers in deciding whether to enter a lease.

164. The practice of charging tenants for agent fees that were not incurred was not reasonably avoidable by consumers and provided no benefit to consumers or competition.

165. Pass-through charges to tenants for agent fees actually incurred did not impose a legal or substantial harm on consumers.

Summary Ejectment—Court Costs Generally

166. Since taking over management of the Properties beginning in 2012, it also has been the practice of JK2 and, subsequently, Westminster to pass court costs for summary ejectment actions through to tenants. This is noted on tenant ledgers on or about the time the action is filed with the court.

167. Regardless of whether a court ultimately enters a judgment for possession or awards court costs, Westminster and JK2 collected payment from tenants for the court costs and fees, including when suits were dismissed by the rent court agent prior to judgment.

168. In regard to court costs, the JK2 and Westminster pre-2018 leases defined "rent" to include, "[a]ll payments from Tenant to Landlord required under the terms of this Lease, including, but not limited to, Court costs . . . ." CPD Ex. 331 at Westminster 000572; West. Ex. 65A at WM RRPD 033879. This same definition of "rent" was included in both the Sawyer leases that were in effect when JK2 took over management of the 10-Pack and SRH properties

and the BLDG leases in effect when JK2 took over management of the Park Holdings properties in April 2014. West. Ex. 32A at WM RRPD 102473; West. Ex. 279 at Westminster 081176.

169. None of the pre-2018 lease forms in effect while JK2 and Westminster managed the Properties contained a valid provision shifting court costs to tenants in the absence of a court order awarding costs, or otherwise informed consumers of this practice.

170. The post-2018 Westminster leases, which would have applied to the 10-Pack and Park Holdings properties, provided for court costs as follows:

> [I]f we institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent, you agree to pay us for any court costs and other fees which we must pay to file, institute or pursue those legal proceedings.

CPD 332 at 078246.

171. The post-2018 Westminster form lease fully informed consumers that court costs incurred to file suit would be passed through to the tenant.

172. It cannot be easily discerned from the Respondents' ledgers precisely how many times it collected court costs from tenants whose suits were dismissed without judgment. The practice was specifically identifiable in the following instances:

- Carriage Hill charged Pauline Redmond a total of $60 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 178B, Pauline Redmond Ledger, at 1 (entries dated 10/6/16, 11/6/16, and 1/6/17); CPD Ex. 333-B-1 at 1405 (Case No. 400053074), 1443 (Case No. 400058945), and 1525 (Case No. 40000717).

- Cove Village charged Monica Booker a total of $140 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 20B-1, Monica Booker Ledger, at 3-5 (entries dated 7/6/17, 10/6/17, 12/6/17, and 3/7/18); CPD 333-B-5 at 508 (Case No. 500031239), 548 (Case No. 500049044), 575 (Case No. 500059761), and 616 (Case No. 500016539).

- The Commons charged Tonya Simmons a total of $140 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 197B, Tonya Simmons Ledger, at 1-4 (entries dated 7/8/15, 8/10/15, 1/6/16, 6/7/16, 7/6/16, 1/6/17, and 2/6/17); CPD Ex. 333-B-4 at 801 (Case No.

500029776), 837 (Case No. 500035268), 1034 (Case No. 500000410), 1232 (Case No. 500024777), 1273 (Case No. 500030731), 1535 (Case No. 500000866), and 1583 (Case No. 500006835))

- Cove Village charged Javonia Harden a total of $60 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 94B-1, Javonia Harden Ledger, at 1-2 (entries dated 7/6/17 and 2/6/18); CPD Ex. 333-B-5 at 516 (Case No. 500031302) and 611 (Case No. 500006339).

- Cove Village charged Felicia Heyward a total of $60 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 99B-1, Felicia Heyward Ledger, at 2-3 (entries dated 12/6/17 and 3/7/18); CPD Ex. 333-B-5 at 577 (Case No. 500059781) and 617 (Case No. 500016549).

- Essex Park charged Charmaigne Harris a total of $130 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West Ex. 96B, Charmaigne Harris Ledger, at 1-2 (entries dated 7/6/17, 8/11/17, 10/6/17, 11/6/17, and 1/8/18); CPD Ex. 333-B-7 at 370 (Case No. 500031144), 382 (Case No. 500038477), 404 (Case No. 500049203), 415 (Case No. 500053618), and 438 (Case No. 500001267).

- Essex Park charged Richard Brown a total of $90 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. CPD Ex. 138-B, Richard Brown Ledger, at 1-2 (entries dated 12/6/16, 1/7/17, and 3/6/17); CPD Ex. 333-B-7 at 299 (Case No. 500057055), 310 (Case No. 500002512), at 355 (Case No. 500012084).

- Fontana Village charged Megen Frierson a total of $120 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 77B, Megen Frierson Ledger, at 2-5 (entries dated 10/6/15, 2/8/16, 4/6/16, 12/6/16, 1/6/17, and 3/6/17); CPD Ex. 333-B-8 at 280 (Case No. 500044778), 329 (Case No. 500006356), 349 (Case No. 500015326), 434 (Case No. 500057138), 445 (Case No. 500000341), and 466 (Case No. 500011362).

- Santos Gonzales Benitez moved into Hamilton Manor in August 2015, paying $1190 per month in rent. Mr. Benitez was often late in paying his rent, but he always paid by the end of the month, almost always leaving a zero balance and sometimes overpaying such that he had a credit on his account going into the following month. CPD Appendix T, Yardi Ledgers Extracted from West. Ex. 314A, Santos Gonzales Benitez Tenant Ledger, at 19-23. Nevertheless, between December 2015 and April 2018, Westminster filed 20 summary ejectment actions against Mr. Benitez. CPD Ex. 333-B-10, at 135, 141, 146, 151, 156, 162, 170, 174, 179, 184, 189, 194, 198, 204, 208, 222, 253, 258, 261, 265. Each time, Westminster charged Mr. Benitez a "summons fee." CPD Appendix T, Yardi Ledgers Extracted from West. Ex. 314A, Santos Gonzales Benitez Tenant Ledger, at 19-23 (entries dated 12/7/15, 1/6/16, 2/9/16, 3/7/16, 4/6/16, 5/6/16, 8/8/16, 9/8/16, 10/7/16, 11/6/16, 12/6/16, 1/6/17, 2/6/17, 3/6/17, 6/6/17, 12/6/17, 2/6/18, 3/6/18, 4/6/18). In all

but three of those cases, Westminster voluntarily dismissed the case before a judgment was entered. CPD Ex. 333-C-10 at 9, 14-19, 22-27 (Case Nos. 0501-2015-138412, 0501-2016-116165, 0501-2016-127415, 0501-2016-139205, 0501-2016-17129, 0501-2016-27139, 0501-2016-3136, 0501-2016-36586, 0501-2016-52599, 0501-2016-75493, 0501-2016-88562, 0501-2017-20373, 0501-2017-32030, 0501-2017-67800, 0501-2018-2804, 0501-2018-30225, 0501-2017-143312); *see also* CPD Ex. 333-B-10 at 179, 198, 261). Thus, Mr. Benitez was charged $392 in court costs that were never awarded by a court.

- Harbor Point Estates tenant Latarsha Lee was charged a total of $122 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 140B, Latarsha Lee Ledger, at 1-3, 5 (entries dated 4/6/15, 11/6/15, 12/7/15, 9/6/16, 7/6/17, and 10/6/17); CPD Ex. 333-B-11 at 449 (Case No. 500015189), 619 (Case No. 500049900), 640 (Case No. 500054119), 851 (Case No. 500040397), 1113 (Case No. 500031361) and 1213 (Case No. 500048248).

- Highland Village filed summary ejectment actions against—and charged summons fees to—LeShaunde Clark in November 2016, December 2016, and January 2017. West. Ex. 42A, LeShaunde Clark Ledger, at WM RRPD 013764-013765 (entries dated 11/7/16, 12/6/16, and 1/6/17). But in all those cases Ewrit voluntarily dismissed the summary ejectment action against Ms. Clark before obtaining a judgment from the court. CPD Ex. 333-B-12 at 1470 (Case No. 100030568), 1505 (Case No. 100033555), 1542 (Case No. 100000444). Ms. Clark was charged at least $90 in court costs never awarded by the court.

- Shane Michael Ratajczak, a tenant at Morningside Park, was charged at least $348 in court fees for summary ejectment actions that were voluntarily dismissed before a judgment entered. Appendix T, Yardi Ledgers Extracted from West. Ex. 314A, Shane Michael Ratajczak Tenant Ledger, at 10-16 (entries dated 2/6/15, 3/9/15, 4/6/15, 5/6/15, 10/6/15, 2/8/16, 3/8/16, 4/6/16, 9/6/16, 12/6/16, 1/9/17, 2/6/17, 3/6/17, 7/6/17, 8/7/17, 2/6/18, and 3/6/18); CPD Ex. 333-B-13 at 56 (Case No. 500006150), 61 (Case No. 500011249), 66 (Case No. 500014915), 73 (Case No. 500019932), 107 (Case No. 500044854), 136 (Case No. 500007150), 142 (Case No. 500012138), 148 (Case No. 500015279), 181 (Case No. 500041382), 202 (Case No. 500057209), 209 (Case No. 500002587), 217 (Case No. 500006757), 223 (Case No. 500011986), 256 (Case No. 500036587), 297 (Case No. 500006910), 303 (Case No. 500016437), 250 (Case No. 500030516).

- Riverview charged Twaniria Johnson a total of $100 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. West. Ex. 116B-1, Twaniria Johnson Ledger, at 2-4, 6-7 (entries dated 12/6/15, 9/6/16, 1/6/17, 10/7/17, and 3/5/18); CPD Ex. 333-B-16 at 300 (Case No. 100032204), 396 (Case No. 100024186), 445 (Case No. 100001288), 545 (Case No. 100029618), 604 (Case No. 100007927).

- Pleasantview tenant Tatianna Joyner was charged a total of $111 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment

was entered. West. Ex. 126B, Tatianna Joyner Ledger, at 1-3 (entries dated 7/6/15, 11/6/15, 1/6/16, and 5/6/16); CPD Ex. 333-B-14 at 253 (Case No. 2015529275), 291 (Case No. 2015429631), 312 (Case No. 2016500761), 351 (Case No. 2016105175).

- Princeton Estates charged Juamani Rivers a total of $80 in court fees associated with filing summary ejectment actions that were voluntarily dismissed before a judgment was entered. CPD Ex. 115-B-2, Juamani Rivers Ledger, at 1-3 (entries dated 1/6/16, 11/6/16, 2/6/17, and 7/6/17); CPD Ex. 333-B-15 at 706 (Case No. 0501-2016-3518), 962 (Case No. 0501-2016-127387), 1038 (Case No. 0501-2017-17493), 1155 (Case No. 0501-2017-78164)).

173. Between 2013 and 2018, a total of 42,197[41] cases were voluntarily dismissed before judgment, as follows:

Property	Number of Failure to Pay Rent Cases Dismissed Before Judgment
Carriage Hill	3,268
Carroll Park	656
Charlesmont	2,244
Commons	5,380
Cove Village	1,327
Dutch Village	2,407
Essex Park	975
Fontana	1,446
Gwynn Oaks	4,209
Hamilton Manor	1,061
Harbor Point	3,559
Highland Village	5,860
Morningside	589
Pleasantview	1,268
Princeton Estates	3,400
Riverview	1,811
Whispering Woods	2,737
Total	42,197

[41] The CPD came to a total of 42,937, without considering Carriage Hill. I did not find an obvious explanation for how the CPD arrived at that total number, as a result I conclude that this was simply a calculation error.

See CPD Exs. 333-C-1 to -17.

174. Information about the charges to be made under the lease is material to consumers in deciding whether to enter a lease.

175. The practice of passing court costs on to tenants, in the absence of a court order, pursuant to the pre-2018 lease forms was deceptive, was not reasonably avoidable by consumers, and provided no benefit to consumers or competition.

176. Pass-through charges to tenants for court costs made in accordance with the post-2018 Westminster form lease did not impose either a legal or substantial harm on consumers.

Summary Ejectment—Excess Court Costs for Writs at Dutch Village & Pleasantview

177. Dutch Village and Pleasantview are both located in Baltimore City and, accordingly, suits against their tenants for overdue rent and repossession of the premises were filed in Baltimore City.

178. After obtaining a judgment from the court for possession, if the tenant fails to pay the amount awarded, or as otherwise authorized by law, JK2 and Westminster would cause the filing of a petition for a warrant of restitution (writ) to obtain actual possession of the premises by evicting the tenant. JK2 and Westminster's practice was to charge the tenant an additional fee for the court costs associated with filing the writ (additional filing and service fees assessed by the court).

179. On or about July 1, 2013, the court costs for filing writs in Baltimore City increased from $40.00 to $50.00 and Ewrit adjusted its billings to JK2 accordingly and notified it of the change. West. Ex. 287F at CPD No. 012494, 012496; West. Ex. 287N at CPD No. 025917. The court fee remained at $50.00 at all relevant times thereafter.

180. At all relevant times, Ewrit's invoices to Dutch Village and Pleasantview clearly specified that court costs for filing writs for Dutch Village and Pleasantview were $50.00. *See, e.g.,* West. Ex. 287-F at CPD No. 012496, 012582, 012611; West. Ex. 287-N at CPD No. 025917, 025998, 026021.

181. Beginning no later than May 27, 2015 and continuing through November 20, 2017, JK2, and subsequently Westminster, at times assessed tenants at Dutch Village and Pleasantview $80.00 in court costs for the filing of a writ, even though the court costs incurred were only $50.00.

182. This practice of charging tenants more than the court costs incurred was not disclosed to consumers.

183. JK2 charged, collected, and attempted to collect $80.00 court costs from tenants as pass-through fees for filing writs, knowing that it was not incurring costs beyond $50.00 and that it lacked any right to collect or attempt to collect an additional, fictitious $30.00 in court costs.

184. Westminster charged, collected, and attempted to collect $80.00 court costs from tenants as pass-through fees for filing writs, knowing that it was not incurring costs beyond $50.00 and that it lacked any right to collect or attempt to collect an additional, fictitious $30.00 in court costs.

185. Collectively, there are 1,621 instances in which JK2 and Westminster charged various tenants at Dutch Village $80.00 in court costs for the filing of a writ, even though the court costs incurred were only $50.00. This resulted in a total of $48,630.00 in spurious charges being passed on to tenants of Dutch Village. *See* CPD Ex. 338A.

186. Collectively, JK2 and Westminster charged various tenants at Pleasantview $80.00 in court costs for the filing of a writ, even though the court costs incurred were only $50.00, on 1,021 occasions. This resulted in a total of $30,630.00[42] in spurious charges being passed on to tenants of Pleasantview. *See* CPD Ex. 338B.

187. This practice was not reasonably avoidable by consumers and provided no benefit to consumers or competition.

188. Previously, charges for court costs were placed on tenant ledgers by property-level staff. At present, as a control measure, Ewrit directly places charges for court costs on the tenant ledgers.

Early Termination Fees

189. The form leases in effect at all relevant times contained an Early Termination clause for in which the landlord agreed to accept the early termination with notice and the payment of two months' rent. It stated:

> **Early Termination:** In the event Tenant shall elect to terminate this Lease, or any renewal or extension thereof, prior to its expiration date, Landlord agrees to permit said early termination upon Tenant giving to Landlord one (1) calendar month's prior written notice of Tenant's intent to terminate, with Tenant agreeing, in writing, to pay to Landlord an amount equal to two (2) additional month's rent beyond the end of the month in which Tenant elects to terminate this Lease. This offer is contingent upon Tenant being current in the monthly rental at the time Tenant vacates, and with the two (2) additional month's rent being paid prior to such termination date.

West. Ex. 65A, ¶ 27; *see also* CPD Ex. 331, ¶ 27; CPD Ex. 332, ¶ 28 (further requiring that if early termination was exercised within the first 12 months of the lease term, any rent concession received would also need to be paid); West. Ex. 32A, ¶ 27; West. Ex. 279, ¶ 38 (but requiring a sixty-day notice).

[42] As opposed to the $30,640.00 identified by the CPD in its CPD Ex. 338-B and Appendix V.

190. The form leases set out that if the unit became vacant, the tenant would remain liable for rent through what would have been the end of the lease term; the leases did not state that a landlord has a duty to mitigate damages when a tenant breaches the lease by vacating the premises and ceasing rent payments prior to the expiration of the lease term. *See* CPD Ex. 331, ¶ 12; CPD Ex. 332, ¶ 11; West. Ex. 65A, ¶ 12; West. Ex. 32A, ¶ 12; West. Ex. 279, ¶ 9.

191. At times, various site-level employees at the Properties provided additional explanatory materials to tenants about the early termination option. Including, by way of example:

- A Dutch Village "Business Office Move In Checklist" form that advises new tenants that "[s]hould you want to terminate your lease early, please provide the business office with a 1 calendar month written notice via certified mail. There will be an early termination fee that needs to be paid before vacating the premises or when the keys are turned in." *See e.g.*, West. Ex. 21A at 008548 (dated Oct. 15, 2015). The form also reflects that it was used at Pleasantview.

- A June 1, 2015 letter to Mohammad Farooq from a bookkeeper at Riverview that references the early termination fee provision of the JK2 form lease and states that "per your lease agreement you are responsible for the rent thru [sic] the lease term or until it is re-rented, whichever comes first." West. Ex. 66A at 227467.

- The tenant files of Antonio Hunter and Jillian Lacy each contain a letter from the community manager at Cove Village, dated September 12, 2016 and February 8, 2017, respectively, which states:

> Please be advised that our office has received your letter . . . in regard to breaking your lease agreement . . . . Be advised that <u>your liability will continue subject to the following options</u>:
>
> First, you may terminate your lease in accordance with paragraph 27 of your lease agreement. . . . [Setting out paragraph 27, verbatim]
>
> It is the policy of Westminster Realty [sic] to charge a lease termination fee equal to two months [of] rent. Therefore you may pay a termination fee of [the specified amount] to end your lease. . . . [T]his option ends all future obligations of your tenancy. . . .
>
> Second, in the event your lease has 3 or fewer months remaining you could choose to pay the rent until the end of your lease term.

West. Ex. 107A at 022540 (emphasis added), 02252, and 022547; West. Ex. 138A at 022390.

- The tenant file of Jesenia Correa contains a May 10, 2017 letter from the community manager at Harbor Point, which references the early termination provision in the lease, properly states the amount of the early termination fee, and accurately notifies Ms. Correa that "[f]ailure to pay the Early Termination Fee will result in you being held rent responsible until the end of your current lease term or until a new resident occupies the unit, whichever comes first." West. Ex. 46A at 218635; *see also* West. Ex. 202A at 145167 (same language in June 18, 2015 letter to Fontana tenant Korosh Soleimani Faraz); West. Ex. 156A at 006424 (same language in December 7, 2015 letter to Commons tenant Michelle Moore Wright); West. Ex. 162A at 145421 (same language in May 1, 2019 letter to Fontana tenant Oladayo Olaniyan); CPD Ex. 11-A (same language in January 10, 2017 letter to Commons tenant Victor Hernandez Zayas).

- A June 28, 2017 email from the assistant community manager at Carriage Hill, to tenant Tiyanna Gray refers to the early termination fee and prominently states that "**[f]ailure to pay the Early Termination Fee will result in you being held rent responsible until the end of your current lease term 3/31/2018 or until a new resident occupies the unit, whichever comes first**." CPD Ex. 6-A (emphasis in original).

192. At times, on-site staff in the property management office would provide verbal information to tenants about the options for vacating the lease prior to the end of the lease term.

193. As a matter of general practice, when a tenant sought to vacate his or her unit at one of the Properties prior to the end of the lease term, Westminster and JK2 advised the tenant that if the tenant did not pay the early termination fee, the tenant would be responsible for the rent until the end of the lease term or until the unit was re-rented, whichever occurred first.

194. Offering a tenant a means of vacating the property prior to the end of the lease term for a definite sum, and without incurring ongoing liability for breaching the lease, provides a substantial benefit to consumers.

195. JK2 and Westminster did not advise, verbally or in writing, a tenant who was seeking to vacate the unit before the end of the lease term that it was possible the unit could be re-let in less than two months.

196. The failure to advise tenants that it was possible their unit could be re-let in less than two months did not cause substantial injury to consumers and was not likely to cause substantial injury to consumers.

Security Deposit Practices

197. When a consumer was approved and decided to enter into a lease for a unit at one of the Properties, the consumer was required to pay a security deposit, in varying amounts and as specified in the lease. The security deposit could be as much as the one month's rental installment.

198. The form leases provided that the security deposit, or a portion thereof, may be withheld from the tenant for "unpaid rent, damage due to breach of this Lease or damage by Tenant or the Tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the Premises, common areas, major appliances and furnishings owned by the Landlord." *See, e.g.* CPD Ex. 331 at Westminster 000570.[43]

199. The form leases also provide, as required by law, that the tenant has a right to receive a written list of charges made against the security deposit within 45 days after the termination of the tenancy. *See, e.g.,* CPD Ex. 331 at Westminster 000570.

200. The form leases also further set out the landlord's legal obligation to return the unused portion of the security deposit with 45 days after the termination of the tenancy and that the landlord was required to comply with the security deposit law. *See, e.g., id.*

[43] The other potentially applicable leases contained security deposit provisions that were substantially the same. CPD Ex. 332 at Westminster 078238-39; West. Ex. 65A at Westminster 033877; West. Ex. 178A at Westminster AG_MP 000602; West. Ex. 279 at Westminster 081175-76.

201. When a tenant moved into a unit, the tenant was provided with a move-in inspection form to note any pre-existing damage and that form was maintained by the management office.

202. When a tenant moved out of a unit, it was the Respondents' practice to have an employee, typically from the maintenance department, inspect the unit and document, including in photographs, the unit number and any areas of damage or concern. The photos would be reviewed by the maintenance supervisor, assistant property manager, and/or the property manager before deductions were made to the security deposit. *See, e.g.,* Test. Stephanie Brown.

203. Westminster and JK2 generally maintained photographs taken at the move-out inspection in the ordinary course of their business, though in various locations in its database and records.

204. After the inspection by an employee from property management, various vendors performed some of the work required to ready the unit to be re-rented, including carpet cleaning, carpet replacement, and painting. At times, a vendor would advise the property management that additional damage, beyond normal wear and tear, existed. For instance, a carpet-cleaning vendor, Super Scrub, at times advised that carpet was unable to be cleaned and a separate vendor would need to replace the carpet. The painting contractor at times advised that a second coat of paint was necessary to fully cover walls that had been painted by a tenant using colored paint.

205. Finally, it was the Respondents' practice to have an assistant property manager or property manager review the documents and photographs, and work order history where relevant, and make appropriate deductions, less depreciation, for any damages that exceeded ordinary wear and tear to the premises.

206. The Respondents tracked the disposition of tenant security deposits in ledger documents maintained and generated from their property management software.

207. Following the move-out inspection and process, it was the practice of Westminster and JK2 to send a letter and move-out statement of account to the tenant's last known address. *See, e.g.* West. Ex. 102A at WM RRPD 106744-45. The letter and move-out statement set out the amount due and owing or the amount to be refunded and provided an explanation of any charges made against the security deposit. *See, e.g.*, West. Ex. 66A at WM RRPD 227466. More specifically:

- After moving out of her unit at Highland Village, Shannon Gaylor timely received a move-out statement explaining the deductions made to her security deposit.
- After moving out of his unit at Cove Village, Antonio Hunter timely received a move-out statement explaining the deductions made to his security deposit.
- After moving out of his unit at Commons, Joseph Barnes timely received a move-out statement explaining the deductions made to his security deposit.
- After moving out of his unit at Princeton Estates, Juamani Rivers timely received a move-out statement explaining the deductions made to his security deposit.
- After moving out of her unit at Pleasantview, Tatianna Joyner timely received a move-out statement explaining the deductions made to her security deposit.
- After moving out of her unit at Pleasantview, Shania Whitaker timely received a move-out statement explaining the deductions made to her security deposit.
- After moving out of her unit at Dutch Village, Miatta Hubbard timely received a move-out statement explaining the deductions made to her security deposit.
- After moving out of her unit at Cove Village, Sherrita Drayton timely received a move-out statement explaining the deductions made to her security deposit.

208. Scott Ferree resided at his unit in the Commons for five years, from June 2008 to June 2013. Prior to vacating his unit in June 2013, Mr. Ferree cleaned the unit, including cleaning his carpet. Mr. Ferree was also present for the move-out inspection and was not told at

that time that that there was damage to any of the carpet; the carpet was in good condition at that time. On September 4, 2013, 66 days after Mr. Ferree vacated his apartment, he was mailed a Move Out Information Report from JK2 informing him that it had charged him $105.80 to replace carpet in his apartment. Mr. Ferree filed a complaint with the Attorney General's Office. The deduction was improper and JK2 resolved the complaint by returning Mr. Ferree's security deposit, less a deduction for utility charges that he had incurred during the last month of his tenancy.

209. In August 2017, LaShawn Epps moved out of her unit at Carriage Hill. Over two to three months, Ms. Epps repeatedly contacted the property manager about the return of her security deposit. Despite the routine practices in place and her repeated contacts, Ms. Epps never received a written move-out statement of the charges made against her security deposit and she never received a refund of any portion of her security deposit. Ms. Epps was charged $980.00 to replace the carpet and $250.00 for a double coat of paint. The charges were not substantiated based on the condition of the unit as Ms. Epps left it.

210. In 2019, Michael Johnson moved out of his unit at Pleasantview. He viewed his move-out statement on Pleasantview's payment app around the time he moved out of his unit. Based on the information in the app, Mr. Johnson was fully aware he was being charged for carpet replacement, and he knew to expect a partial refund of his security deposit. After moving out, Mr. Johnson went to the property management office to inquire about his refund and was told his check was being processed. He received the check for a partial refund of his security deposit refund, but he never received an explanation of the charges sent through the U.S. mail.

211. When Jesenia Correa moved out of Harbor Point in May 2107, she did not provide a forwarding address. Westminster timely emailed her a copy of her move-out

statement, reflecting the charges made against her security deposit and the amounts still due from Ms. Correa. She was fully aware of the charges made and amounts she owed, at that time. Those charges were appropriate based on the condition of her unit.

212. When Antoinette Summons moved out of Whispering Woods in March 2017, she did not receive a move-out statement. Nonetheless, a Westminster employee advised her of the basis for the deductions to her security deposit, damage to the blinds and countertop. Ms. Summons disputed the charges with Westminster, but it did not alter the charges and she did not contest them further. Ms. Summons was improperly charged for pre-existing damage to her countertop.

213. When Regina Webster moved out of Dutch Village, after living in her second unit for nearly seven years, deductions were made to her security deposit for resurfacing her tub, replacing the refrigerator, and replacing the stove. Westminster improperly depreciated the refrigerator and stove and improperly charged Ms. Webster as a result.

214. When Javonia Harden moved out of Cove Village in 2017, her security deposit was improperly charged $547.94 for carpet replacement.

215. The Respondents are required to credit tenants for security deposit interest in accordance with Maryland law.

216. When the Respondents credited security deposit interest to a tenant's account, it was set out as a separate entry on the move-out statement. *See, e.g.*, West. Ex. 66A at WM RRPD 227466.

217. The available tenant ledgers document at least 576 instances where security deposit interest was not credited to a tenant at the Properties:

Property	Documented Instances of Failure to Credit Security Deposit Interest
Carriage Hill	25
Carroll Park	61
Charlesmont	30
Commons	43
Cove Village	15
Dutch Village	18
Essex Park	58
Fontana	27
Gwynn Oaks	47
Hamilton Manor	49
Harbor Point	10
Highland Village	35
Morningside	56
Pleasantview	19
Princeton Estates	26
Riverview	33
Whispering Woods	24
Total	576[44]

See CPD Ex. 362-A to 362-Q.

218. Failure to credit tenants for security deposit interest was brought to JK2's attention in 2015, when Hattie Crosby filed suit against Carroll Park and "Westminster" for failure to return interest on her security deposit, as required by law. After receiving the suit, the JK2 community manager, Elida Bellance, emailed Theresa Webb to advise her that the interest was due to Ms. Crosby and that Ms. Bellance was "never aware" that she was to calculate the security deposit interest.

[44] The CPD totaled the number at 583; I was not able to determine how it arrived at that higher number and the exhibits referenced did not support it.

219. Despite this, action was not taken determine if this was a broader issue.

220. Failure to credit tenants for accrued security deposit interest is not reasonably avoidable by consumers and provides no countervailing benefit to consumers or competition.

Property Conditions & Maintenance

221. Each of the Properties was between 46 to 74 years old. Test. Peter Febo. The Properties contained units at varying levels of renovation. Rental units that had not been renovated at all were referred to as "vintage" or "classic" units. Some units were fully renovated, or updated, and some units were partially renovated. Test. Stephanie Brown; Test. David Chesley. The rental price for a unit was impacted by its level of renovation.

222. The Respondents represented to prospective tenants that their properties were in good, habitable condition and well-maintained.

223. The leases used by the Respondents all expressly represented, in substantially the same language, that:

> **CONDITION OF THE PREMISES:** The Premises will be made available such that it will not contain conditions which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health or safety of occupants.
>
> **EXISTING DAMAGES:** Upon written request of Tenant (sent in accord with Section 2 of this Lease Agreement) within fifteen (15) days of occupancy, Tenant shall have the right to have the Premises inspected by the Landlord, in the Tenant's presence, for the purpose of making a written list of damages that exist at the commencement of the tenancy

CPD Ex. 331 at Westminster 000575; CPD Ex. 332 at Westminster 078245; West. Ex. 65A at WM RRPD 033882; West. Ex. 32A at WM RRPD 102476; West. Ex. 279 at 081179;

224. Typically, when a consumer inquired about leasing a unit at one of the Properties, the consumer was shown the property's model unit and sometimes was also shown a rent-ready unit of the approximate size the consumer wanted. CPD Ex. 340-B at CPD No. 046709. The

purpose of showing the model was to give a prospective tenant an idea of what their unit would look like and what they would be getting if they entered into a lease. The model units were maintained in pristine condition; they were clean, well-painted, with updated fixtures and appliances, and kept in good working order. *See* CPD Ex. 340-E at CPD No. 048218; Test. David Chesley; *see, e.g.,* Test. Dionne Mont; Test. Nicholas Johnson Sr.

225. The model units were a direct representation of what the consumers could expect from their own unit. Leasing consultants typically, though not always, advised consumers that the unrenovated and partially renovated units would not have the updated appliances and fixtures shown in the model. *See, e.g.,* Test. Stephanie Brown; Test. David Chesley; Test. Julieann Govan. Consumers reasonably expected that, aside from that, their units would be in a similar condition to the model. *See, generally*, Test. Consumers; *see also* CPD Ex. 340-B at CPD No. 046708-09.

226. Consumers frequently were not allowed to see their actual rental unit prior their move-in date. Some consumers were not allowed to see their unit until after signing the lease. Consumers were advised that this was because the unit was still being readied for them.

227. When consumers finally saw their unit, they often observed differences in the quality of the appliances and fixtures, as compared to the renovated model unit. Consumers, however, often also noted differences in the level of maintenance and repair, including issues with water damage, leaking faucets or toilets, pests, broken appliances, cabinets and doors, chipping or poor paint, and worn and dirty carpet. Test. Consumers.

228. As the consumers frequently first saw their unit on the day of move-in, after having signed the lease, they often had no viable options other than moving into the unit and

making a list of repair needs to be addressed by the property's maintenance department at a later time.

229. Specifically, the evidence establishes the following concerning misrepresentations and omissions:

- Kelly Hall moved into Charlesmont at the start of July 2014 after seeing a rent-ready unit that he described as looking like it was recently remodeled. He thought that this was the unit he was moving into but was later told it was rented out to someone else. He first saw his actual unit only after signing the lease. In contrast to the unit he was shown, his unit had dirty carpet and smelled like a litter box. The night he moved in, his kitchen ceiling collapsed due to a leak from an upstairs neighbor's apartment. The neighbor's leak had been going on for weeks. Mr. Hall asked if there was another unit available and was told that there was not. Despite repeated complaints, the carpet was not cleaned and the ceiling was not repaired. Eventually, Mr. Hall's employer paid to have the carpet professionally cleaned. In late August, Mr. Hall bought supplies at Home Depot and repaired the ceiling himself. Mr. Hall twice missed the deadline for avoiding the automatic renewal clause in his lease. Test. Kelly Hall; CPD Exs. 91-B-1 & -C.
- Jamila Weathers moved into a unit at Carriage Hill in September 2013 after being shown a model unit. Ms. Weathers noted the model unit was very nice, newly painted, and had updated cabinets and appliances. Ms. Weathers reasonably expected that her unit would be comparable to the model. She first saw her unit the day she moved into it, after signing the lease. Ms. Weathers was very unhappy with the unit, particularly noting mice entry holes. She saw a mouse that very evening. She would find mouse droppings on her stove and countertop; she could hear them in the walls. Mice ate into the bottom of her couch. The property manager had someone come to her unit and put out traps and subsequently do a seek and seal to close off entry points. An exterminator also came. Despite this, the mice problems continued. She maintained a regular cleaning schedule and purchased plastic containers to store her food. She was concerned about exposing her child to both mouse excrement and the chemicals being used to exterminate the mice. Test. Jamila Weathers.
- William McDermott moved into Carroll Park in 2017, after seeing a model unit that he described as being in very good condition and nicely painted. He reasonably anticipated his unit would be of a similar character. He saw his actual unit prior to moving in but did not note the leak in the bathroom ceiling until the drywall started to bubble shortly after he moved into the unit. Maintenance responded within a week to address the leak, but it thereafter took about two months to have the drywall contractor come out to repair the drywall. Mr. McDermott continues to reside at Carroll Park for financial reasons. Test. William McDermott.
- Latonia Weathers moved into Fontana after seeing a model unit there that was in excellent condition. She was never able to see her own unit prior to moving in and was repeatedly told that the unit was not ready. On the day of her move-in, she was still being told her unit was not ready and she signed the lease without seeing the unit first, as she had a truck full of her belongings waiting to be moved in. Ms. Weathers noted that her

unit had a gap under the front door, missing pieces in the countertop, a hole behind the bathroom sink, a hole in the kitchen that went through to the outside, and frayed carpet. Prior to moving in, Ms. Weathers had extensive conversations with the leasing agent about mice, as she has a fear of mice. The leasing agent told her that mice were not a concern, and that there were consistent extermination efforts at the property. In addition to initially noting the holes in her unit, Ms. Weathers began to see mouse droppings within a week of moving into the unit. She asked for a unit toward the back of the property but was told there was a price difference; she asked about getting out of her lease but was told she would have to pay an early termination fee. She began to stay with her daughter most evenings due to her fear over the mice. The mice persisted throughout her tenancy. Test. Latonia Weathers.

- Shawn Phillips moved into Dutch Village in March 2016. Prior to moving in, she had the opportunity to view her actual unit. On the day she moved-in, she noted there had been a flood in the main bedroom, the carpet was wet and there was a sewer backup with a strong odor of sewage. She asked to move to a different unit but was told none were available. The property manager had the carpet cleaned but the chemical smell was so strong she had to delay moving in. Test. Shawn Pillips.
- Karen Hope was shown a model unit at Whispering Woods before moving into a unit there in November 2018. After seeing the model, she expected that her unit would be up to date and nice. She did not see her actual unit until after she signed the lease. Her unit was "disgusting"; it was not clean, cabinets were off the hinges, and it was not ready for anyone to move into it. She was so upset at the condition that she was in tears. Management arranged for her to have a different unit. This unit was much better than the prior one, but still had broken drawers in the refrigerator, warped cabinets, uneven counters, a loose toilet, a loose kitchen sink, water damage in the kitchen ceiling under the bathroom, and mice holes in the closet. Ms. Hope was told that the problems would be resolved but they were not. Eventually, she began to see mice and was concerned that this would pose a problem for her due to her other health issues. She continues to hear mice in the walls, which is stressful to her. She uses additional bleach to clean. Test. Karen Hope.
- Lauren Sheeder lived at Riverview in 2016. She was shown the model prior to moving in, it was in "pristine" condition; she expected her unit would be in a similar condition. She could not see her unit prior to moving in and was told it was not ready. When she moved in, her unit was in "horrible" condition: the smoke detectors did not work and windows were broken. It was not representative of what was in the model. Because she received Section 8 housing assistance and an advance inspection of the dwelling was required, she was unable to switch to a different unit. Test. Lauren Sheeder.
- Tia Stepney moved into Riverview in late June 2018 after seeing a model unit. She noted the model unit to be in great condition and expected that her unit would likewise be in good condition. She asked to see her unit ahead of time but was told it was not ready. At move-in, she noted windows were not working properly, there was a hole in the wall in the closet, the freezer was not working, the toilet did not flush properly, and the sink was stopped up, among other things. Problems with her toilet and windows persisted into December. Test. Tia Stepney; CPD Exs. 175-C & -D.
- Shania Whitaker moved into Pleasantview in 2017 after seeing the model unit. She described the model as really nice and she expected her unit would be comparable. She

asked to see her unit ahead of time, but was not allowed to until the day she moved in. When she moved into her unit, the carpet was stained, the shower head did not work, there were no shelves in the refrigerator, the sink was stained, and there were damaged tiles in the bathroom. She also observed mice in the unit and was provided traps; that did not solve the problem and the exterminator was never sent, despite being requested. She did not request a new unit or to be let out of her lease because she was told maintenance staff would correct the issues. Test. Shania Whitaker.

- Quasia Peterson moved into Riverview in April 2019 and still resided there as of the time of the hearing. She was shown a model unit prior to moving in and noted it to have updated appliances and to be nicely painted, with no dents or cracks in the wall. She first saw her unit the day she was to sign her lease. In her unit, the cabinets were falling off the wall in the bathroom and kitchen; there were dents and holes in the wall; window screens were missing and the kitchen windows did not lock; there were no shelves in the refrigerator; the kitchen exhaust fan did not work, paint was chipping. She was offered an updated unit but could not afford it. She had already given notice at her old apartment complex and had nowhere else to go. In mid-June, maintenance staff was still working on the identified problems; as of October 2019, the issue with the kitchen window was not fixed. Test. Quasia Peterson; CPD Exs. 160-C & -D.
- Shaleza Guytan lived at Commons from 2018 to 2019. She was not given a chance to see her unit prior to moving in, but she was shown the model unit. She observed the model unit to have fresh carpet and up to date appliances. She could not see her unit until after signing lease because maintenance was still working on it. At move-in, her unit was dirty, the stove hood had grease and dust on it, the refrigerator was dirty, there was hair and a barrette in the bathroom, the grout was dirty, and the closets had hairbands on the floor. There was a dead roach next to the thermostat and dead roaches in the kitchen cabinets. She noted the kitchen cabinets were falling off the wall and a bathroom sink was cracked and clogged. The paint was chipped and the walls had cracks and there was water damage in the ceiling of the front bedroom. She reported mice shortly after moving in; the mice worsened over time and persisted the entire time she lived in the unit. She understood there would be differences from the model, but was not told the extent of the differences, even when she pointed to particular things in the model she was pleased with. She asked about getting a different unit but was told none were available. Given the timing, she had no viable option but to move into the unit. Test. Shaleza Guytan.
- Jessica Waters rented a unit at Highland Village in December 2014 after being shown a model unit. She observed the model to have nice cabinets, carpet, paint, and flooring. She asked to see her unit prior to signing the lease but was told it was not available. Upon seeing her unit, she observed it to be completely different from the model. There was a sliding door with no screen in it; a hole cut in the wall; mismatched blinds; the oven would not light; there was trash outside the unit; and her water heater did not get hot. She was told there were no other units available. The issue with trash continued to be a problem into July 2015. Test. Jessica Waters; CPD Exs. 128-B & -C.
- Roxanne Horsey moved into Whispering Woods in March 2015 after seeing a model unit that was in clean and excellent condition. She expected her unit would be clean and in good condition resembling the model. She saw her unit before signing the lease and believed it was in good condition, only needing light touchups. She quickly discovered

holes under the sink, mice droppings, and a mouse. She reported this to the property management and an exterminator was sent some weeks later, but she began to see more and more mice. She made repeated requests for holes to be sealed. In November 2015, mice still continued to be a problem; in December 2015, there were still issues with holes; Ms. Horsey bought her own traps to try and resolve the problem. Test. Roxanne Horsey; CPD Exs. 148-A & -B.

- Tatianna Joyner moved into Pleasantview in February 2015. She was not shown a model. She asked to see her own unit ahead of time but was told it was still being worked on. Upon moving in, she noted broken windows, an external sliding door did not lock, and there were leaks in the bedroom. There were mice and roaches. She asked about moving to a different unit but was told none were available and was told the problems would be fixed. Problems with the mice persisted throughout her tenancy, with one getting caught in her garbage disposal. She failed to give timely notice prior to the automatic renewal of her lease. Test. Tatianna Joyner.
- Dionne Mont moved into Fontana in early June 2015 after seeing a model unit that she noted to be in "pristine" condition and having clean carpet. She asked to see her unit before signing the lease but was told it was still being readied for her. When she first saw her own unit, she observed the cabinets to be rotted and coming off the frame, there were no shelves in the refrigerator, there were mouse droppings under the cabinets, the kitchen window was missing a screen, the stove did not light, and the front door did not lock and looked like it had been kicked in. She did not go farther than the kitchen before calling back to the leasing office to ask about getting her money back. The property manager came to the unit with maintenance and Ms. Mont was advised that the problems would be fixed. Ms. Mont inquired if another unit was available and was told that they would let her know if one became available but would try to fix her current unit. Upon touring the rest of the unit, Ms. Mont noted, among other things, trash on the patio, water stains in the bedroom, stagnate water in the tub, mildew on the tub grout, and a broken cold-water faucet. She noticed mouse droppings in additional locations as well. She did not sleep in the unit until the main repairs were completed at the end of July and was told that she should not unpack her kitchen as they would need to move her things anyway to fix the cabinets. Test. Dionne Mont.
- Julieann Govan moved into Carroll Park in April 2015 after seeing an updated empty unit. Based on what she was shown, she expected a safe environment for her family. She first saw her unit on the day she moved in. The dishwasher did not work, the kitchen cabinets did not stay closed, the tub was rusty. The problem with the dishwasher was not fully remedied until late-August or September 2015. Test. Julieann Govan.
- Sophia Fitzpatrick moved into Gwynn Oaks in July 2013 after seeing a rent-ready unit that was fully updated and she was looking forward to moving into what she believed was her unit, as she was leasing an updated model apartment. She found out on the day she moved in that she was not getting that unit and she first saw her actual unit after signing the lease. Her unit appeared much older than the one she was shown, the cabinets, appliances, and carpet were all old. The kitchen and bathroom cabinets had water damage and were warped. She noticed mouse droppings and, subsequently, mice. It took two requests before an exterminator was sent out, and extermination did not solve the problem. On multiple occasions she found a mouse had gotten into her food. She

began to stay at a friend's house due to the mice problem; the problem persisted until she moved out in 2015, in part due to the infestation of mice. Test. Sophia Fitzpatrick

- Darrian Cate moved into Gwynn Oaks in February 2016 after seeing a model unit. He noted the model to be in good condition. He was not allowed to see his own unit prior to the day he moved in. His unit was not in the same condition as the model. Instead, the blinds still needed to be replaced, the carpet needed to be cleaned, the toilet leaked when it was flushed and the toilet seat was loose and would not stay on the toilet, and there was chipping in the bathroom sink. Despite attempts by property management to fix the toilet, it repeatedly resumed leaking and it continued to be an intermittent problem as of December 2016. Test. Darrian Cate.
- Darlene Hill moved into Carriage Hill at the end of May 2015 after seeing the actual unit she was renting. She noted problems with the unit, including a muddy patio, wet carpet, a leaking window in the bedroom, and sloping in the kitchen floor. She was assured the issues would be fixed. As of July 2015, the bedroom window continued to leak and maintenance staff told her there was nothing they could do; the window continued to be a problem into September 2015. The patio issue was the result of a problem with water runoff; it was not addressed and mud built up further in July 2015. Water backed up on her patio again in August and September 2015 and maintenance noted a need for drainage; her unit flooded after a separate rainstorm at the end of September 2015. Test. Darlene Hill; CPD Ex. 95-A-1.
- LeShaunde' Clark moved into Highland Village in May 2016 after seeing a model unit that she noted to be clean and in excellent condition. Based on the model, she expected that her unit would be in a similar condition. She asked to see her unit before signing the lease and moving in but was told it was not ready. When she first saw her unit, she noted it had worn carpet, loose window panels, scuffed paint. When it rained, water entered through the loose window. The problem continued into September 2016. Test. LeShaunde' Clark
- Jennifer Huddleston moved into Highland Village in 2015 after seeing a model unit. She observed the model unit to be in excellent condition; after seeing the model, she thought her unit would be in a similar condition. Ms. Huddleston first saw her unit on the day she moved into it. She noted a smell of urine throughout the unit, that a door was partially painted, and a huge bubble in the countertop. In the living room and dining room the walls were peeling. Walls in several rooms had not been cleaned before being painted and she saw hair was dried into the paint on the wall. The bathroom was dirty and the tub was peeling. She observed mice in the unit shortly after moving in. Pest control came to her apartment, but the mice continued and ate clothes that she had in storage. The ceiling in her utility closet was missing and she saw mice running through the ceiling. She was told there was nothing that could be done about the utility closet ceiling. She bought traps herself and spent additional time cleaning. The problems persisted. Test. Jennifer Huddleston.
- Kurtis Sewell lived at Gwynn Oaks in 2016 and in September 2017 he moved into a larger unit there. He was not able to see the unit prior to moving in because someone else was still living in it. Prior to moving to that unit, he inquired about rodents because he had a mice infestation in his first unit; he was told there was not a problem with mice. Despite asking about mice, he found that when he moved the mice infestation continued. The mice ate food and damaged clothing. He could hear the mice in the walls and

repeatedly complained to Westminster about the mice, but they continued to be a problem. He noted that he was preparing for his son's first birthday at the end of September and was anxious about having his family over because of the mice. The mice problems persisted until at least the end of October 2017, when Gwynn Oaks was sold and Westminster stopped managing the property. Test. Kurtis Sewell.

- Vaughn Phillips moved into Fontana in October 2015 after seeing a model unit, which he described as modern, up to date, well-painted, and nice looking. He asked to see his unit before signing the lease but was told it was still being cleaned and was not ready. Based on the model unit, he expected his unit would be similar, but with a different number of bedrooms. When he moved in, the unit was in poor condition: his stove was not working, blinds were broken, the toilet did not work, and he noted evidence of water damage. The paint was chipping and the carpet was in bad condition, a smell of urine and feces was coming from a wall. The issues were not fixed for weeks to months. Test. Vaughn Phillips.
- Nicholas Johnson Sr. moved into Fontana in August 2014 after seeing a model unit, which he described as beautiful, clean, having no issues and "pristine." He first saw his own unit only after signing the lease. His unit had a stench to it, the toilet leaked, and the carpet was worn. The downstairs ceiling had water damage from the leaking toilet. The hot water heater did not work properly. There were mice in the unit: maintenance tried to seal the mouse holes with steel wool, but it did not resolve the problem. Mr. Johnson had difficulty sleeping because he could hear the mice in the walls at night. The problem persisted until he went to Home Depot and purchased his own extermination supplies. Test. Nicholas Johnson Sr.
- Kiarah Rush moved into Highland Village in August 2016 after seeing a model unit that was nice and well-kept. She was not permitted to see her unit until after she signed her lease. When she saw her unit, she noted that the toilet was leaking down into the kitchen ceiling. Due to the leaking toilet, her move was delayed for three weeks. Test. Kiarah Rush.
- Sherrita Drayton moved into Cove Village in March 2016 after seeing a model unit with new appliances and nice carpet. She advised the leasing agent that she wanted something similar in appearance to the model unit and was assured that she would get something similar. She asked to see her unit beforehand but was told it was not available. When she saw her unit, it had older appliances and flooring and was not what she had expected to get. There were holes in window screens and in the kitchen. She saw mouse droppings and found a dead mouse on her third day at the unit. She inquired if there was another unit she could move into, because she did not want to deal with mice, but was told she had already signed a lease and could not switch units. The traps did not stop the infestation and she purchased poison herself to address the problem and cleaned thoroughly and regularly. The mouse infestation was stressful and embarrassing to her and she was reluctant to have out-of-town family stay with her. She did not have the means to simply move out. Test. Sherrita Drayton; CPD Ex. 17-A.
- Tonya Simmons moved into Commons in October 2014 after seeing a model with new appliances and nice carpet and no visible maintenance issues. She was not permitted to see her unit before moving in, but she expected that her unit would be very similar to the model as she was leasing a renovated unit. Instead, the carpet was worn and buckled, the appliances were older, the refrigerator did not stay cold, the washer only filled half-way,

and the dryer would not dry clothes in a single cycle. The carpet was subsequently patched, and it took weeks for her appliances to be replaced. Test. Tonya Simmons.

- Megen Frierson moved into Fontana in March 2015 after seeing a model unit that was clean and nicely decorated. She asked to see her unit before moving in, but she was told she could not see it because there was still a tenant in the unit. When she saw her actual unit, the stove was grimy, there were dead insects in the kitchen light fixture, the bathroom was dirty and there was mold on the grout, the tub needed to be resurfaced, the walls had old green paint on them, and there were roaches and mice. She did not have upgraded appliances that she had paid for and the refrigerator was still dirty from the prior tenant. It took weeks for the repairs to be made. The issue with mice persisted throughout her tenancy due to the way trash bags were set out at the complex. Test. Megen Frierson.
- Shannon Gaylor moved into Highland Village in August 2015 after seeing a model unit, which was clean and well taken care of. Based on the model unit, she expected that her unit would be clean, fairly up to date (though she knew she was not getting a renovated unit), and in working order. She first saw her unit the day she moved into it, after signing the lease. The unit was dusty and smelled of gas, there was a leak in the bathroom, the faucet was broken, and the toilet did not always flush properly. Test. Shannon Gaylor.
- Rodney Lomax moved into Commons in early July 2015 after being shown a model unit, which he observed to be nicely painted and have new appliances. He was not shown his unit prior to moving in. When he moved in, he noted his unit had water stains in the bedroom and a bad smell. The problem with the wall was not resolved until late September 2015. Test. Rodney Lomax; CPD Ex. 105-A.
- Patrick Bailey moved into Carroll Park in January 2016. He asked to see his unit before signing the lease but was told it was not available, and he first saw it on his scheduled day to move into the unit. He expected the unit would be in good working order. He had already moved out of his old place and had his belongings in a moving truck when he was told that he could not move in because of a problem with a serious water leak from the kitchen into the living room. Ultimately, because he had nowhere else to go, he was permitted to move into the unit with the understanding that he would not have running water in the kitchen. Test. Patrick Bailey.
- Nakia Mack began living at Riverview in July 2015. She did not see her unit or a model prior to moving in. At move-in, her unit did not have closet doors in one of the bedrooms and an electrical socket in the kitchen did not work. The closet issue was resolved in September 2015. Test. Nakia Mack; CPD Ex. 112-A.
- Nickkia Sansbury moved into a townhome at the Commons in March 2015. She saw a model unit before signing her lease. She was told her unit would have a new washer and dryer. On the day of her scheduled move-in, the unit was still being cleaned and the washer and dryer were being installed. As a result, they could not move in that day and had to pay to rent their moving truck for an extra day. There was an immediate problem with roaches when she moved in. Roaches covered a cake they had purchased for a baby shower. She made several requests for an exterminator and eventually she and her boyfriend had to bomb the apartment themselves to get rid of the roaches. Test. Nickkia Sansbury; CPD Ex. 12.
- Kevin Jura moved into Harbor Point in February 2013 after only getting a brief look at his unit while work on it was still underway. At move-in, he had a long list of problems

with the unit, including water damage and old cabinetry with mouse droppings in it. Finding another apartment complex was not a viable option for him at that point. Mice continued to be a problem. Test. Kevin Jura; CPD Ex. 31.

230. Mold, rodents, roaches, and other household pests can all aggravate breathing issues for consumers who already suffer from asthma or allergies. Test. Corrine Keet, M.D.

231. There is no countervailing benefit to consumers or competition from providing residential dwellings that do not live up to the lessor's representations.

232. The Respondents employed on-site maintenance staff at each Property. They were charged with routine maintenance, such as changing filters; responding to tenant requests for maintenance and repair; and turning over units between tenants.

233. The Respondents used third-party vendors for carpet cleaning, carpet replacement, pest extermination, groundskeeping, roofing, and significant painting and drywall work.

234. The generally accepted ratio for maintenance workers (supervisors and technicians) in the multi-family dwelling industry is 1 per 100 units, though it may vary with the experience of the staff. Test. Peter Febo; Test. Carroll Smith; Test. James Kates; Test. Michael Hoyte. This ratio assumes that maintenance staff will also be charged with groundskeeping, which Westminster tasks to outside contractors. Test. Peter Febo.

235. The Respondents had difficulty recruiting and retaining maintenance staff, resulting in vacant positions and short staffing at times. However, the Respondents appropriately budgeted for maintenance staff within the 1:100 ratio at all relevant times and attempted to hire qualified staff to fill openings.

236. The Respondents offered varying amounts of training to maintenance employees. Until 2019, the training opportunities primarily training consisted of shadowing a more

experienced employee; a very inexperienced employee might shadow other employees for two to three weeks. The Respondents also offered online classes through Grace Hill or classes through the Maryland Multi-Housing Association, which have been available since before JK2 managed the properties and, more recently, a program known as "Westminster University," which requires a certain number of classes per year.

237. Consumers who moved into a unit at the Properties could request maintenance services in multiple ways—calling or going directly to the leasing office, contacting a resident relations staff member (if available at the property), calling maintenance directly, or using an on-line portal. *See, e.g.*, Test. Consumers; Test. Dennis Owens.

238. Outside of normal business hours, maintenance technicians were available on an on-call basis at the Properties for emergency service. The Respondents define an emergency maintenance request to include:

- no heat (if the outside temperature is below fifty degrees Fahrenheit);
- lack of air conditioning was not an emergency unless a resident had a documented medical condition; when the temperature was over 85 degrees all calls were elevated to a 24-hour response time;
- the smell of gas or if any gas-powered appliances were not working;
- loss of electricity;
- a sounding carbon monoxide or smoke detector;
- water leaks or flood, if water was entering from "a non-conventional method, such as through the ceiling, under the floor, or by back up";
- lack of hot water;
- lack of water;
- inoperable refrigerator, which would be addressed during business hours;
- inoperable toilet, if it was the only toilet in the unit; and
- an inoperable door or window lock;

See, e.g., West. Ex. 20A at 142; West. Ex. 171A at 40; West. Ex. 197A at WM RRPD 098027.

239. Between tenants, the Respondents had a process for "turning over" units. A maintenance technician would inspect the unit when the former tenant moved out and take photographs of any damage. As part of the prior tenant's move-out process, the maintenance

supervisor, property manager, and assistant property manager would review the photographs to determine what work needed to be done to restore the unit. A maintenance employee would subsequently make a more thorough review of the unit to determine the work to be done to make the unit rent-ready. A maintenance technician would ready the unit for the next tenant by making small repairs and replacements, such as hanging new blinds. Vendors would be brought in for additional work, as needed.

240. Due to maintenance staff shortages and supply issues, the maintenance technician assigned to perform the turnover work was frequently unable to complete turnover repairs before the new tenant moved into the unit. Test. Phyllis Roosevelt; Test. James Leight; Test. Steven Thornton; Test. Consumers.

241. When tenants entered a maintenance request directly into the Respondent's online portal, the request was captured in the maintenance records in evidence. When tenants submitted their requests by phone or stopping into the office, the requests frequently were not entered into the Yardi database by office staff but were instead passed along to maintenance as paper service tickets. As a result, the Respondents' maintenance records were incomplete. Requests for extermination services also were frequently omitted, as tenants were placed on a separate list for scheduled services by a third-party exterminator.

242. The maintenance logs, as excerpted by the CPD, include the tenant's description of the need for maintenance, as entered into Yardi by either the employee who received the tenant's service request or by the tenant through a web portal. Test. Carroll Smith.

243. The "Call Date" category on the maintenance logs identifies the date that maintenance was requested. The "Schedule Date" contains information that has changed over time, and identifies either the date that service was completed (under Westminster's prior, paper

ticket system) or the date that the ticket is assigned to a technician (under Westminster's more recent mobile system). The "Complete Date" category identifies the date when the work ticket was closed, and may be the same date that service was provided, or it may be later if there is a delay between when the technician responds and when the ticket is entered into the system as closed (it is not possible from the face of the maintenance logs to determine whether there has been such a delay). Test. Carroll Smith.

244. As of January 2019, the Respondents are in the process of transitioning from their paper-based system to a system known as "Mobile Maintenance," which allows maintenance staff to receive work orders on their phone and enter data about the repair directly through their phone. Mr. Febo and John Heath regularly monitor maintenance reports through Mobile Maintenance.

245. Between January 2014 and December 20, 2019, the 10-Pack Respondents spent more than $35 million on capital expenditures, in addition to the amount spent on immediate repairs. West. Ex. 286D. In 2017 alone, more than $2.2 million was spent on repairs and maintenance at the 10-Pack Properties.

246. Between 2017 and 2019, the ratio of expenses to gross revenue at the 10-Pack was 45% to nearly 48%, *see* West. Ex. 286A, and at the Park Holdings Properties it was 46% to 50%, *see* WMR 324B.[45] These ratios were noticeably higher than the industry standard. *See* Testimony of Peter Febo.

247. Compared to similarly situated properties, the 10-Pack and Park Holdings Properties spent more than the industry averages on salaries, expenses, capital expenses, and expense and capital combined in 2017 to 2019. West. Exs. 342A & B.

[45] The SRH Respondents sold their properties on October 31, 2017, at which time Westminster ceased managing those properties.

248. In 2012 Property Condition Reports (2012 PCRs) were prepared by Blackstone Consulting ("Blackstone") for the 10-Pack and the SRH Properties in connection with the requirements of the lender, Freddie Mac. West. Exs. 263A to 263N.

249. Each of the 2012 PCRs contains a "Section III" that lists "critical and priority repairs and cost estimates," *see, e.g.,* West. Ex. 263E at 017783, reflecting the immediate repair requirements for the company requesting the loan. A failure to execute the immediate repair requirements would be considered a default on the loan. The Owners were required to escrow 125% of the estimated costs of the immediate repair work. The expenditure of the funds was audited by a public accounting firm, which found all conditions and requirements were met, and the lender performed a follow-up inspection to ensure that the work set forth in the Section IIIs was completed. The "critical and priority" were completed within certain timeframes, as condition of the loans. Test. Peter Febo.

250. Blackstone also completed property condition reports for the 10-Pack in 2015 (2015 PCRs). *See* West. Exs. 316A to 316J. The 2015 PCRs likewise contained a "Section III" of "critical and priority repairs and cost estimates," *see, e.g.*, WMR 316J at 240087. The total priority spends required in the 2015 PCRs was significantly less than what was required in the 2012 PCRs. Between the time of the 2012 PCRs and the 2015 PCRs, the condition of eight of the 10-Pack Properties improved from "fair" to "good" rating due to the maintenance and improvements at those properties; the remaining two properties maintained their overall "good" condition rating.

251. The Respondents' annual budgeting process for maintenance and repairs was based on historical amounts spent as well as reports from the property about maintenance needs. The amount actually spent on repairs and maintenance at the 10-Pack properties came in at

budget in 2017, and exceeded budget by $185,965 in 2018, and by $205,666 in 2019. Test. Peter Febo; West. Ex. 286A.

252. The age of the Properties and their use as multi-family dwellings result in additional maintenance challenges, including more complex maintenance, the prevalence of tenant-cause damages,[46] and the heightened frequency of pest problems associated with multi-family dwellings, particularly those having shared walls.

253. In July and August 2015 and on September 18, 2015, Darlene Hill, who resided at 3418 Carriage Hill Circle, complained to management about her concerns about the drainage behind her apartment. Test. Darlene Hill. In response to her complaints, the maintenance staff twice noted the drainage issue. On September 18, 2015, Ms. Hill's apartment flooded during a heavy rainstorm. Ms. Hill's unit was flooded a second time on July 30, 2016. Ms. Hill's apartment floods were not unique among Carriage Hill residents. For example:

- On September 30, 2015, Tamera Johnson, who resided at 3434 Carriage Hill Circle, Apt. 1, complained of flooding in her apartment from the rain. CPD Ex. 5-A-1, row 554.
- That same day, September 30, 2015, Godfrey Logan at 3452 Carriage Hill Circle, Apt. 4, also complained that his apartment had flooded from the rain. *Id.*, row 826.
- Ruth Owens, who resided at 3552 Carriage Hill Circle, Apt. 1, also experienced flooding in her apartment from the rain and lodged a complaint with the maintenance staff on September 30, 2015. *Id.*, row 1216. Two years later, on September 26, 2017, while the unit was vacant, a technician noted "this is a vacant [unit] that I'm assuming had a flood. There is mold all along the baseboards in the living and bedroom." *Id.*, row 1217.
- On October 26, 2015, Mezerena Wells, who resided at 3524 Carriage Hill Circle, Apt. 201, complained that the "ground floor is flooded again" and the responding technician snaked the building drain. *Id.*, row 983.
- On April 3, 2016, Ruth Garcia, who resided at 3548 Carriage Hill Circle, Apt. 1, complained "The door outside our porch is flooding. Water has been coming out of it ALL weekend." The responding technician indicated that the "ground set to be dug up per serv mgr." *Id.*, row 1170.
- Maintenance records for Vivian Yagan reflect that on April 28, 2017, following a flood in her unit at 3408 Carriage Hill Circle, Apt. 1, as well as a neighboring unit at 3406 Carriage Hill Circle, the responding technicians indicated 50 feet of drain line would be installed to stop the flooding. *Id.*, row 270.

[46] *See, e.g.,* Test. Mark Brunner concerning damage caused by neighbor.

- Also on April 28, 2017, Monique Johnson, who resided at 3532 Carriage Hill Circle, Apt. 1, apparently experienced a flood along with a neighbor and the same note is inserted in her maintenance records noting that 50 feet of drain lines were being installed to stop the flooding. *Id.*, row 1042.
- On May 26, 2017, Lana Waalkes, who resided at 3432 Carriage Hill Circle, Apt. 3, complained about flooding in her front door area. *Id.*, row 540.
- Tory Delaney, who resided at 3432 Carriage Hill Circle, Apt. 1, complained on May 30, 2017, "Last week our living room flooded from the bad thunderstorm we had. We had to wait all weekend until someone came out today to finish taking care of our carpet. The carpet smells awful as it did after the flood. My carpet either needs to be cleaned again or replaced please. The smell is giving me a headache." *Id.*, row 535.

254. Westminster has been aware of the flood problems at Carriage Hill since at least June 26, 2012, when in connection with an inspection of the complex, Blackstone noted site drainage and erosion problems at the property. Specifically, Blackstone observed:

> Overall, the site storm water drainage was observed to be in poor[47] to good condition. Management reported and Blackstone observed significant drainage improvements within the past five years consisting of grading, installation of tight line drains and cleaning drainage inlet structures. However, Blackstone observed widespread areas of erosion throughout the site that is negatively impacting the landscaping, building permitters, some lower level patios and pedestrian steps and walkways. We also observed sandbags at patios located at Buildings 2, 3426, 3552, 3418 and 3412 indicating stormwater has previously impacted these areas.

West. Ex. 263A at WM RRPD 017424. To address these drainage issues, Blackstone recommended: "Based on conditions observed, we recommend that a licensed contractor perform landscaping and site drainage improvements (regrading, French drains over tight line systems, downspout extensions, drainage routing, etc.) as needed to improve stormwater drainage and erosion at the site. Eroded areas should then be repaired." *Id.* As of April 24, 2015, Tony White, the maintenance supervisor at Carriage Hill, wrote to Theresa Webb, his Regional Manager, and Denise Shelton, his Property Manager, seeking authority to spend $10,000 to fix landscaping issues and instead of getting permission, he was asked to justify the expenditure and compare it

[47] The Blackstone Property Condition Report defines "Poor" to mean "Below average conditions for the building system evaluated. Requires immediate repair, significant work or replacement anticipated to return the building system or material to an acceptable condition." West. Ex. 263A at WM RRPD 017429.

to amounts spent previously on the property to address prior flooding in units. Test. Theresa Webb; CPD Ex. 197.

255. In March 2018, a strong storm damaged roofs at Commons, Dutch Village, Harbor Point and Pleasantview. Westminster retained Vertex Companies, Inc. (Vertex) to evaluate the properties for mold and water damage. Vertex generated reports of its work. West. Exs. 262A to D.

256. On November 5, 2018, eight months after the storm, Vertex inspected the Commons and found that 215 of the 224 units that it was able to access had water stains and/or damage on ceilings and around windows and that 32 of the units had visible suspected mold growth. West. Ex. 262, pp. 1-3. Westminster's maintenance staff did not timely and adequately repair the storm-damaged roofs causing the leaks in tenants' units.

257. On January 23 and 24, 2019—ten months after the storm—Vertex inspected units at Dutch Village for damage. Although management had identified 109 units in need of evaluation, Vertex was provided access to 95 units. Of the 95 units assessed, 92 units, or 96.8% of units that Vertex was able to access, had water stains and/or damage on ceilings and around second-floor windows. West. Ex. 262B, pp. 1-3. Vertex attributed the majority of the water staining/damage on the ceilings to be the result of roof leaks. In addition, Vertex observed water staining/damage around windows in the lower level living room in 6 of the units. Vertex also concluded that 6 of the units assessed had active leaks. Finally, Vertex observed suspected visible mold growth in 27 of the 95 units, or 28.4% of inspected units. *Id.*, pp. 2-3. Westminster's maintenance staff did not timely and adequately repair the storm-damaged roofs causing the leaks in tenants' units.

258. Between January 24 and 25, 2019, almost eleven months after the storm, a Vertex representative, accompanied by "site property engineers," reviewed the accessible areas within 32 of the 39 units identified for inspection. West. Ex. 262C at WM RRPD 251749. Vertex found evidence of water staining and damage, generally on the ceiling and/or around windows on the second floor, of 28 of the 32 units they assessed. Vertex noted this damage was "the result of roof leaks." Vertex observed suspected visible mold growth in 9 of the 32 units assessed and found elevated moisture content measurements in the front bedroom closet wall of 938 Sandalwood Road, which Vertex assumed to be due to an active leak in that unit. West. Ex. 262C at WM RRPD 251751. Westminster's maintenance staff did not timely and adequately repair the storm-damaged roofs causing the leaks in tenants' units.

259. On January 24, 2019, ten months after the storm that had caused the damage, Vertex inspected Pleasantview. Vertex was able to access nine of the ten units identified for inspection by management. Eight of the 9 units assessed had water stains and/or damage on ceilings and around windows on the second floor. West. Ex. 262D, pp. 1-3. Vertex attributed the majority of these water staining/damage on the ceilings to the roof leaks. Vertex also concluded that two of the units assessed had active leaks based on elevated moisture content measurements. Finally, Vertex observed suspected visible mold growth in two of the units. *Id.*, pp. 3. Westminster's maintenance staff did not timely and adequately repair the storm-damaged roofs causing the leaks in tenants' units.

260. Beginning around September 2017, after ceilings "dropped" in two units at Fontana, Fontana's maintenance supervisor discovered some ceilings had play, or some looseness, in them. Upon discovering this, Westminster promptly surveyed the ceilings to

determine whether any were sagging and made preventative repairs. Its response was reasonable.

261. As of January 2015, the management at Carriage Hill was aware that when the temperatures were extremely cold, water lines from tenants' washing machines sometimes froze and burst, flooding the unit. CPD Ex. 193; CPD Ex. 194; CPD Ex. 203. Tony White, the maintenance supervisor, acknowledged the problem had been going on for years at the property and that it was caused by a lack of insulation. CPD Ex. 203. The problem was not timely corrected by JK2 and, instead, management at Carriage Hill sent notices to tenants during times of cold weather asking them to not use their washing machines and to turn up their heat. CPD Ex. 193; CPD Ex. 194; CPD Ex. 203.

262. When maintenance staff received a complaint of mice or rats, they would address it by laying baits and traps and/or conducting "seek and seals," though which a maintenance technician would inspect the affected unit to identify points of entry and fill them with steel wool or seal them.

263. Residents could also request to be placed on the exterminator list for an outside contractor to treat the unit for mice. Tenants could also get on an extermination list for roaches or bed bugs. Spraying required the tenant to prepare their unit.

264. Residents often had continuing problems with pest, despite these efforts. In part, the rodent problem was connected to trash collection issues, including insufficient dumpsters, tenants being directed to place their trash directly at the curb in bags, and trash pick-up being limited to once per week.

265. From 2017 to 2019, Westminster spent $464,950 spent on outside extermination contracts at the 10-Pack. West. Ex. 286A at 2.

266. When Westminster and JK2 received tenant complaints of mold, sometimes the substance was not mold but mildew. If maintenance determined that it was mildew, they cleaned the surface. If maintenance determined that it was mold that was only on the surface, they cleaned the surface and would also repaint the area. If maintenance determined that the mold was not limited to the surface, it would cut out the affected area of the wall. At times, it used a mold remediation company to perform such work. In any case, if the source of the moisture as not resolved, the mold could return.

DISCUSSION

The CPD's Amended SOC charges the Respondents with multiple violations of the Act, spanning from 2012 to the present, including various charges of unfair, abusive, and deceptive trade practices as well as charges based on alleged underlying violations of the Maryland Collection Agency Licensing Act ("MCALA"), sections 7-101 to 7-502 of the Business Regulation Article, and the Maryland Consumer Debt Collection Act ("Debt Collection Act"), sections 14-201 to 14-204 of the Commercial Law Article.

Applicable Law

In enacting the Consumer Protection Act, the Maryland General Assembly (Legislature) expounded, "consumer protection is one of the major issues which confront all levels of government, and . . . there has been mounting concern over the increase of deceptive trade practices in connection with sale of merchandise, real property, and services and the extension of credit." Md. Code Ann., Com. Law §13-102(a)(1) (2013). It went on to state that, as a result of that concern:

> (1) It is the intention of this legislation to set certain minimum statewide standards for the protection of consumers across the State, and the General Assembly strongly urges that local subdivisions which have created consumer

protection agencies at the local level encourage the function of these agencies at least to the minimum level set forth in the standards of this title.

(2) The General Assembly is concerned that public confidence in merchants offering goods, services, realty, and credit is being undermined, although the majority of business people operate with integrity and sincere regard for the consumer.

(3) The General Assembly concludes, therefore, that it should take strong protective and preventive steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland. It is the purpose of this title to accomplish these ends and thereby maintain the health and welfare of the citizens of the State.

Md. Code Ann., Com. Law §13-102(b).

To that end, the Act prohibits a person from engaging in "any unfair, abusive, or deceptive trade practice, as defined in this subtitle or as further defined by the Division" in connection with:

(1) The sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services;
(2) The offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services;
. . .
(5) The collection of consumer debts[.]

Com. Law § 13-303 (Supp. 2020). The Act "squarely appl[ies] to the rental agreement between [a residential tenant] and [landlord]." *Golt v. Phillips*, 308 Md. 1, 8-9 (1986); *see also Converge Servs. Group, LLC v. Curran*, 383 Md. 462 (2004).

The Act specifically defines an "unfair, abusive, or deceptive trade practice" to include, as charged by the CPD:

(1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;
(2) Representation that:
(i) Consumer goods,[48] consumer realty, or consumer services have a

[48] The term "consumer good" is defined broadly as goods "which are primarily for personal, household, family, or agricultural purposes." Com. Law § 13-101(d)(1) (Supp. 2020). Although the definition was amended during the

> sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have; [or]
> . . .
> (iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not; [or]
> (3) Failure to state a material fact if the failure deceives or tends to deceive[.]

Com. Law § 13-301 (Supp. 2020).[49] It must be kept in mind, however, that this is not an exclusive list. *Id.* §§ 13-105 (2013), 13-303; *Legg v. Castruccio*, 100 Md. App. 748, 758 (1994).

Generally, to establish deception there must be a false or misleading statement that has a tendency to mislead consumers or omission of material fact that has the tendency to deceive. Com. Law § 13-301. The Act covers both express and implied representations: "the meaning of any statement or representation is determined not only by what is explicitly stated, but also by what is reasonably implied." *Golt*, 308 Md. at 9. In determining if an omission is material, the inquiry is whether "a significant number of unsophisticated consumers would find that information important in determining a course of action." *Green v. H & R Block*, 355 Md. 488, 524 (1999).

As noted above, section 13-301 is not an exclusive list of the practices that may be considered unfair, abusive, or deceptive. General "unfairness" is a separate standard under the Act and was discussed in depth by the Court of Special Appeals of Maryland in *Legg*, 100 Md. App. 748:

> As a byproduct of controversy surrounding the FTC's exercise of its consumer unfairness authority in the late 1970's, the FTC provided a "definition" of unfair trade practices. The definition came in the form of a 1980 policy statement made at the request of Congress.

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time period at issue here (to include fraternal organizations and the like), the applicable portion of the definition has not changed during that time. For convenience purposes, I cite to the current version.

[49] As noted above, the Act was amended several times throughout the period at issue in the Amended SOC, which spans many years. While the addition of "abusive" practices was an intervening substantive amendment, it is specifically addressed below; none of the other amendments to the statute are relevant to this case. Accordingly, for convenience, I cite to the current version of the statute.

> The Policy Statement, subscribed to by each commissioner, attempted to delineate ... a concrete framework for future application of the Commission's unfairness authority. The Commission suggested that the present understanding of the unfairness standard is the result of an evolutionary process. Thus, the Commission began with its earlier three-part standard of unfairness:
> . . .
> These factors were:
> (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen).
>
> The Policy Statement notes that the Supreme Court quoted these criteria "with apparent approval" in *FTC v. Sperry & Hutchinson Co.*, [405 U.S. 233, 244-45 n.5 (1972)]. Courts that have examined [*Sperry & Hutchinson*] in light of the Policy Statement have concluded that the most that can be reasonably inferred is that the Supreme Court thus put its stamp of approval on the Commission's evolving use of a consumer unfairness doctrine not moored in the traditional rationales of anticompetitiveness or deception. Indeed, the quoted 1964 standards were merely used to exemplify the Supreme Court's statement that "the Federal Trade Commission ... like a court of equity, considers public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws." [*Sperry & Hutchinson*], 405 U.S. at 244 . . . .
>
> The Policy Statement went on to state that, since the 1964 standards, the Commission has continued to refine the standard of unfairness in its cases and rules, and it has now reached a more detailed sense of both the definition and the limits of these criteria. The Commission opined that consumer injury is the primary focus of the FTC Act and the most important of the . . . criteria. By itself, consumer injury could warrant a finding of unfairness. Nonetheless, not every consumer injury is legally unfair. To warrant a finding of unfairness, the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.

Legg, 100 Md. App. at 766-68 (internal citations omitted).

In brief, whether a practice is "unfair" within the meaning of section 13-303 of the Act primarily turns on whether it causes or is likely to cause, a substantial injury to a consumer, that is not reasonably avoided by the consumer, and which is not outweighed by a countervailing

benefit to consumers or competition. *Legg*, 100 Md. App. at 771-72; *see also* 45 U.S.C.A. § 45(n). An injury may be substantial if it causes a large harm or if it does "small harm to a large number of people." *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1004 (N.D. Cal. 2010), *aff'd* 475 Fed. Appx. 106 (9th Cir. 2012); *Apple Inc.; Analysis of Proposed Consent Order to Aid Public Comment*, 79 Fed. Reg. 3801, 3804 (Jan. 23, 2014) ("[T]he FTC Act does not give a company with a vast user base and product offerings license to injure a large number of consumers . . . merely because the injury affects a small percentage of its customers . . . ."). Whether the injury is reasonably avoidable considers whether consumers had the opportunity to make an informed choice, which would have allowed them to avoid the harm, or whether consumers are aware of avenues of relief from the harm. *FTC v. Neovi, Inc.*, 604 F.3d 1150,1158 (9th Cir. 2010); *Orkin Exterminating Co. v. FTC*, 849 F. 2d 1354, 1365 (11th Cir. 1988); *In Re Int'l Harvester Co.*,104 F.T.C. 949, 1066 (1984) ("Whether some consequence is 'reasonably avoidable' depends, not just on whether people know the physical steps to take in order to prevent it, but also on whether they understand the necessity of actually taking those steps.").

A claim of unfair practices under section 13-303 can be founded on the violation of another statute. *See F.T.C. v. Accusearch, Inc.*, 570 F.3d 1187, 1194 (10th Cir. 2009); *Legg*, 100 Md. App. at 769-70; *see also, e.g.*, *In re Sears, Roebuck & Co.*, 125 F.T.C. 395 (Feb. 20, 1998) (consent order concluding that "respondent's collection of debts that it was not permitted by law to collect was, and is, unfair"). The Tenth Circuit, in analyzing whether an underlying violation of the Telecommunications Act, 47 U.S.C. § 222, could support a claim of unfair practices, stated:

> To be sure, violations of law may be relevant to the unfairness analysis. *See* 15 U.S.C. § 45(n) ("In determining whether an act or practice is unfair, the

> Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.")[.]
> . . .
>
> [T]he FTC may proceed against unfair practices even if those practices violate some other statute that the FTC lacks authority to administer. . . . Indeed, condemnation of a practice in criminal or civil statutes may well mark that practice as "unfair."

Accusearch, Inc., 570 F.3d at 1194-95; *see also American Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 983 (D.C. Cir. 1985) (observing, "In its Policy Statement, the Commission states that considerations of public policy are frequently used as confirmatory evidence of the unfairness of a particular practice" and concluding that the FTC properly exercised its unfairness authority in proscribing the use of wage assignments and considering that such assignments were contrary to the law in several states).

The Legislature has directed that the Act "shall be construed and applied liberally to promote its purpose." Com. Law § 13-105. The courts have repeatedly recognized this legislative directive that the Act be given a liberal construction and remedial purpose. *See, e.g.*, *State v. Cottman Transmissions Sys., Inc.*, 86 Md. App. 714, 743 (1991). The Court of Appeals of Maryland has recognized that the CPD has "broad powers to enforce and interpret the [Act]." *Consumer Protection Div. v. Consumer Publishing Co., Inc.* 304 Md. 731 (1985); *see also* Com. Law. § 13-204(a) (Supp. 2020). To this end, the CPD is not required to prove that any consumer has been deceived or harmed in order to establish a violation of the Act. *See* Com. Law § 13-302 (2013).

In this proceeding, the CPD, as the Proponent, bears the burden of proving the charged violations by a preponderance of the evidence. COMAR 02.01.02.05; *see also* Md. Code Ann., State Gov't § 10-217 (2014). To the extent the Respondents raise affirmative defenses, they bear

the burden of proof to establish those defenses. COMAR 28.02.01.21K(2)(b); *see also Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so," when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Coleman*, 369 Md. at 125 n.16.

Analysis

I. General Issues

A. Section 5-107 of the Courts & Judicial Proceedings Article is Inapplicable.

The Respondents advocate for the dismissal of all charges to the extent they concern conduct occurring more than one year before the filing of the SOC on October 23, 2019. In support of their position, they cite section 5-107 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, which provides:

> Except as provided in § 5-106 of this subtitle, § 1-303 of the Environment Article, and § 8-1815 of the Natural Resources Article, a prosecution or suit for a fine, penalty, or forfeiture shall be instituted within one year after the offense was committed.

Md. Code Ann., Cts. & Jud. Proc. § 5-107 (2020).[50] The Respondents assert that the instant proceeding is a "prosecution" within the meaning of the statute. The Court of Special Appeals has already held, twice, that the statute does not apply to administrative proceedings.

In in *Nelson v. Real Estate Commission*, 35 Md. App. 334 (1977), a licensing proceeding, the court considered the plain meaning of the words of the statute and concluded:

[50] In 2014, the statute was amended in a manner not relevant here.

> A hearing before such an administrative body is not a "prosecution" nor is it a "suit." We construe the words "prosecution" and "suit" as used in [section 5-107] as follows:
>
> "Prosecution" means a criminal action brought by the State, in a court of competent jurisdiction, by way of indictment, information, or other charging document, against an accused for violation of the common or statutory criminal laws of this State.
>
> "Suit" means an action at law or equity brought in a court having jurisdiction over the subject matter.
>
> The key word in both definitions is 'court.' Patently, an administrative agency is not a 'court' and thus the proscription contained in s 5-107 is not applicable thereto.

35 Md. App. at 341.

Over twenty years later, in *Maryland Securities Commissioner v. U.S. Securities Corp.*, 122 Md. App. 574 (1998), the court applied the same rationale in a context very similar to the one at hand. In *U.S. Securities Corp.*, after an administrative hearing, the Maryland Securities Commissioner imposed a $30,000 fine against a securities broker-dealer for engaging in a scheme to defraud investors in violation of the Maryland Securities Act. The broker-dealer appealed the administrative decision to the circuit court, which concluded that the $30,000 fine imposed in the administrative proceeding was time-barred under section 5-107 of the Courts and Judicial Proceedings Article.

On further appeal, the Court of Special Appeals reversed the circuit court, explaining that the language of section 5-107 applied "only to judicial proceedings as opposed to administrative hearings," as confirmed by the decision in *Nelson, supra. See* 122 Md. App. at 589. The court found further support for this result in the important purpose being served by the agency's action to protect the public from unscrupulous conduct. *Id.* at 591-93. The court summarized:

> Clearly, however, the impetus of our reasoning was two-fold: (1) an administrative hearing was not a "prosecution" or "suit" within the meaning of

> [section 5–107], and (2) the underlying purpose of protecting the public from unscrupulous practices by real estate brokers preempted the defense of limitations.
>
> . . .
>
> [A]dministrative boards and officials are instrumentalities of the executive . . . . Notwithstanding . . . the quasi-judicial nature of some administrative hearings, we hold fast to the definitions of "prosecution" and "suit" that we set forth in the *Nelson* majority as excluding administrative proceedings from the limitations defense embodied in [section 5-107].

Id. at 591, 592-93.

The statute, by its plain terms, applies to judicial proceedings—suits and prosecutions—and not to administrative proceedings. Further, as imposing such a narrow window on the CPD would be contrary to its purpose of protecting the public interest and would hamper its ability to investigate practices prior to bringing charges. Section 5-107 of the Courts and Judicial Proceedings Article is inapplicable to this administrative proceeding. *U.S. Securities Corp.*, 122 Md. App. 574.

B. Agency Liability

The SRH Respondents and the Park Holdings Respondents argue, among other things, that they are not liable for alleged violations of the Act committed by Westminster or JK2 because they, as owners, were not involved in the day-to-day management and operation of the respective properties. Park Holdings Memo. at 2-3; SRH Memo. at 2-3. In sum, they contend that JK2 and Westminster were acting as independent contractors and, thus, they are not vicariously liable for any acts or omissions by JK2 and Westminster.[51]

The distinction between an independent contractor agency relationship and the ordinary principal-agent relationship (generally referred to as a master-servant or employer-employee relationship) is relevant for liability purposes:

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[51] The 10-Pack Respondents did not advance this argument. Notably, at least some of them are affiliated with the Kushner Cos. CPD Exs. 2-E-2, 2-F-2, 2-H-2, 2-J-2, 2-K-3, 2-K-4, 2-L-5, 2-L-6, 2-N-2, 2-P-2, 2-Q-3.

> [T]he prevailing rule is that, where the relationship is that of master/servant, the master is answerable for the tort of the servant committed while acting in the scope of his employment; where the agent is not a servant, the principal is not liable for the agent's negligent conduct "unless the act was done in the manner authorized or directed by the principal, or the result was one authorized or intended by the principal."

Sanders v. Rowan, 61 Md. App. 40, 51 (1984); *see also Cox v. Prince George's Cty.*, 296 Md. 162, 165 (1983). An independent contractor is "employed to represent the principal in regard to contractual obligations with a third person," while a "servant is employed to render a service to . . . a master, although it may occur that the service will involve relations with third persons." *Balt. Police Dep't v. Cherkes*, 140 Md. App. 282, 331 (2001); *see also Schramm v. Foster*, 341 F. Supp. 2d 536, 544 (D. Md. 2004) (an independent contractor "contracts to perform a certain work for another according to his own means and methods, free from control of his employer in all details connected with the performance of the work except as to its product or result") (*quoting Kersten v. Van Grack, Axelson & Williamowsky, P.C.*, 92 Md. App. 466, 469-72 (1992)).

Recently, the Court of Appeals has explained the factors that bear on whether a relationship is one of traditional agency or as an independent contractor:

> We have held that the determination of the existence of a principal-agent relationship depends on three considerations: (1) the agent's power to alter the legal relations of the principal; (2) the agent's duty to act primarily for the benefit of the principal; and (3) the principal's right to control the agent. A principal need not exercise physical control over the actions of its agent in order for an agency relationship to exist; rather, the agent must be subject to the principal's control over the result or ultimate objectives of the agency relationship.

Andrews & Lawrence Prof'l Servs., LLC v. Mills, 467 Md. 126, 166 (2020) (internal citations omitted). It has long been recognized, however, that the right to control the conduct of the other party is the key factor in that determination. As the Court of Special Appeals has observed:

> [A]lthough there are several criteria for determining whether an agent is, or is not, a servant, the ultimate test is that of control. If the principal "controls or has the right to control the physical conduct of the other in the performance of the service," the relationship is that of master/servant. If there is not that degree of control or right of control, the agent is not a servant, but an independent contractor.

Sanders, 61 Md. App. at 51 (internal citations omitted). The burden of establishing agency liability falls on the CPD. *See id.* ("The party that claims the existence of an agency relationship has the duty to prove the nature and extent of the relationship.").

JK2 and Westminster were indisputably traditional agents of the owners for purposes of entering into lease agreements and contracts with third parties, as stated in the management agreements. *See, e.g.,* CPD Ex. 3-A, §2; CPD Ex. 3-B-2, §4.3 ("Manager will clearly identify itself as the Owner's agent in all dealings with third parties."). The leases reflect that Westminster and JK2 were held out to tenants as the agent of the owner. *See* CPD Ex. 331 at Westminster 000568; CPD Ex. 332 at Westminster 078238; West. Ex. 65A at WM RRPD at 033876.

Additionally, the owner Respondents retained a right to control aspects of the work, in varying respects. For instance, some owner Respondents had the right to control the terms of the form leases. *See, e.g.,* CPD Ex. 3-A, §5.b.10 ("All leases shall be in accordance with guidelines promulgated by Owner from time to time and shall be on a lease form approved by Owner."). Other owner Respondents had the right to control the accounting and management reporting system. *See, e.g.*, CPD Ex. 3-B-2, art. 10. Further, the property management agreements, as a whole, make clear that Westminster and JK2 were under a duty to act in the interests of the SRH and Park Holdings Respondents in leasing the respective Properties, collecting rent, terminating tenancies, and ejecting tenants. *See, e.g.*, CPD Ex. 3-A, §5.b.1 (Manager is to "promptly and diligently enforce Owner's rights under tenant leases"), §5.b.10 (Manager "shall perform all

obligations of landlord under all leases, and coordinate all relations and communications with tenants"); CPD Ex. 3-B-2, §4.3 ("The Owner-Manager relationship will be one of trust . . ."), §7.1. JK2's and Westminster's essential functions were representing these Respondents in regard to entering contracts and impacting their legal relations. *See, e.g.*, CPD Ex. 3-A, §5.b.1, .10; CPD Ex. 3-B-2, art. 7. As concerns acts or omissions in connection with leases and the tenancy relationship, JK2 and Westminster were agents of the owner Respondents, and not independent contractors.

The property management agreements assert that JK2 and Westminster are independent contractors for all other purposes. That is not dispositive, however. Accordingly, I consider other factors bearing on their status with regard to the repair and maintenance aspects of their duties. The evidentiary record establishes that JK2 and Westminster were agents of the SRH and Park Holdings Respondents for these purposes as well.

As an initial matter, it is plain that operating and maintaining such properties is a usual part of the ownership of such properties. JK2 and Westminster were held out to tenants as being responsible for the maintenance and repair of the properties. JK2 and Westminster were under a duty to act for the owners' benefit in protecting the Owner's "assets." CPD Ex. 3-A, §5.a.[52] As Mr. Febo explained, the primary asset is the property itself. Accordingly, JK2 and Westminster had the power to enter into contracts with third parties, on the owner's behalf, for maintaining and repairing the properties. *See, e.g.*, CPD Ex. 3-B-2, §4.2 (providing that the manager shall enter into contracts with third parties, as called for in the owner-approved business plan, for rubbish hauling, extermination, janitorial services, landscaping services, and other maintenance services, and that such contracts "shall be in the name of the Owner" and terminable by the

[52] *See also, e.g.*, CPD Ex. 3-B-2, art. 5.

Owner; providing that otherwise entry into a service contract required owner approval); *see also, e.g.*, CPD Ex. 3-A, §7 (providing that the manager can enter into third party contracts on behalf of the owner for maintenance services, to the extent that authority is provided in the owner-approved budget). The owners had a right to set the minimum standards for maintenance of the property or provide written maintenance instructions, and they approved and ultimately controlled the budgets for maintenance. *See, e.g.*, CPD Ex. 3-A, §§5.b.2.A, .B, 6.a; 3-B-2, §§ 8.1, 9.1. The leases entered into by JK2 and Westminster on behalf of the SRH Respondents were to be in accordance with guidelines from those owner Respondents and on a form approved by the owner Respondents. CPD Ex. 3-A at Westminster 000389, §5.b.10.

There are additional hallmarks of control. For instance, the evidence established that the property management staff was situated in on-site offices, within the property buildings, and that the office, equipment, and supplies therein were furnished by the owner Respondents. *See also, e.g.,* CPD Ex. 3-B-2, art. 6; CPD Ex. 3-A, §6.c.3. To varying degrees, the owners had a right of approval over the selection of on-site employees. *See* CPD Ex. 3-A, §8.a; CPD Ex. 3-B-2, §12.1. The management agreements provided that the owners would pay the salaries of the on-site employees out of their operating accounts or would reimburse the manager for the salaries. CPD Ex. 3-A, §8.c; CPD Ex. 3-B-2, §§8.5, 14.3.

The record reflects that JK2 and Westminster were authorized to enter into service contracts with third parties for the owners' benefit and, in some cases, in the owners' names. They were obligated to act for the owners' interests in protecting the property by adequately maintaining it. There was a right to control aspects of the work. JK2 and Westminster were agents and not independent contractors. The acts at issue here were undertaken within the scope of their authority. Vicarious liability is applicable here.

C. Westminster is Liable as the Successor Entity to JK2.[53]

JK2 is not a party to this proceeding, but the Amended SOC clearly premises liability against Westminster, in part, on the theory that it was the successor to JK2 and is liable for its acts and omissions.[54] JK2 was a Delaware limited liability company that was formed in 2012. CPD Ex. 1-B-2. JK2 was owned by Jared Kushner and Joshua Kushner on a 50-50 basis; Mr. Jared Kushner was the managing member. In August 2012, JK2 began managing certain of the residential rental Properties that are at issue in this proceeding, and by April 2014 it was managing all of the Properties.

Westminster was formed as a New Jersey limited liability company in November 2000, and its Amended and Restated Operating Agreement is dated January 1, 2014. CPD Exs. 1-A-1 & 1-A-2. WMGPC was the managing member of Westminster and held 0.10% interest in Westminster; the remaining members of Westminster were Charles Kushner, 43.90%, Seryl Kushner, 6.00%, and Jared Kushner, 50.00%. As of January 19, 2017, Charles Kushner was the President of WMGPC. CPD Ex. 1-A-7.

Westminster "through various entities, manages the affairs and businesses of Kushner Companies LLC [(Kushner Cos.)]. . . and certain affiliated entities and subsidiaries . . . ." CPD Ex. 1-A-7. As of January 19, 2017, just prior to the inauguration of his father-in-law, former

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[53] A month after the deadline for submitting closing arguments, the CPD filed a letter in which it asserted that this argument was waived by Westminster. Westminster's briefing sets out where it raised the argument in its opening statement. In any event, the issue is akin to vicarious liability, where the burden is on the party seeking to establish liability. *Cf. Market Tavern, Inc. v. Bowen*, 92 Md. App. 622, 641 (1992) ("A third person suing an employer for injuries sustained has the burden of pleading and proving the requisite facts to establish vicarious liability."). Thus, the CPD had to plead and prove that Westminster was liable for JK2's acts and omissions under a theory of successor liability. As the CPD notes in its letter, it pled that issue; the question now is whether it met its burden of proof. That Westminster acknowledges it was the successor to JK2, is not sufficient to establish successor liability. *See* Am. SOC ¶2; Resp. Am. SOC ¶ 2.

[54] The Amended SOC makes no reference to Sawyer and does not allege any continuity of entity or enterprise between Sawyer and JK2, much less between Sawyer and Westminster. Thus, whether the CPD had viable theories relating to Sawyer, its representations and subsequent practices, is irrelevant.

President Donald J. Trump, Jared Kushner had resigned from his roles with Kushner Cos., and Jennifer McLean was appointed as the Secretary for Westminster and Kushner Cos. "and each of their respective affiliates and subsidiaries." CPD Ex. 1-A-7. At the time of the assignment and assumption of the property management agreements, both JK2 and Westminster listed their address as care of Kushner Cos. *See, e.g.,* CPD Ex. 1-A-4. When corresponding about an expired collection agency license, an attorney for Westminster represented that its prior license was allowed to lapse because Westminster had been doing business "as a collection agency under the entity JK2 . . . ." CPD 342-E at CPD No. 051897.

In December 2016, JK2 transferred the management agreements for the Properties to Westminster, and JK2 then dissolved on December 30, 2016. The assignment and assumption agreements for the property management contracts were all signed by Jared Kushner for both the assignor and assignee. Mr. Kushner signed for the assignor, in his capacity as Executive Vice President and Authorized Signatory of JK2. He signed for the assignee in his capacity as the Executive Vice President and Authorized Signatory of WMGPC, the managing member of Westminster. CPD Exs. 1-A-3, 1-A-4, & 1-A-5.

In its Response to the Amended SOC, Westminster admitted that it is the "successor company" to JK2. Am. SOC ¶ 2; Westminster Respondents' Resp. to Am. SOC ¶ 2. Westminster further admitted that it began operating in Maryland as a property manager for Carriage Hill, Charlesmont, Commons, Cove Village, Dutch Village, Fontana, Gwynn Oaks, Hamilton Manor, Harbor Point, Highland Village, Pleasantview, Princeton Estates, Riverview and Whispering Woods in 2012—*i.e.*, the year its predecessor company, JK2, began managing those properties. Am. SOC ¶ 56; Westminster Respondents' Resp. to Am. SOC ¶ 56. Likewise, it admitted that it began managing Carroll Park, Essex Park, and Morningside in 2014—the year

that JK2 began managing those properties.. Am. SOC ¶ 56; Westminster Respondents' Resp. to Am. SOC ¶ 56. There is no dispute that the staff remained in place after the property management agreements were assumed by Westminster. Indeed, during the period the Properties were managed by JK2, there are documents in evidence relating to the management of those properties that are authored by individuals who identify their employer as "Westminster Management." *See, e.g.*, CPD Ex. 340-D at CPD No. 047628.

Simply being the successor company to JK2 does not, as Westminster notes, make it responsible for JK2's liabilities. The general rule of successor liability is one of nonliability—an entity that acquires the assets of another entity does not acquire the debts and liabilities of the predecessor. *See, e.g.*, *Martin v. TWP Enters. Inc.*, 227 Md. App. 33, 49 (2016) (analyzing successor liability between a limited liability company and corporation without making any distinction about the predecessor form of entity). This general rule is subject, however, to four exceptions. The exceptions provide that the successor entity acquires the obligations of its predecessor if: 1) there is an express or implied assumption of liability in the transaction, 2) the transaction is a merger or consolidation, 3) the successor corporation is a "mere continuation" of the predecessor, or 4) the transaction is entered fraudulently to escape liability. *Id.* at 50. Whether an exception to the successor liability rule applies is a question of fact that may include such factors as common management, common ownership and financial control, interrelation of operations, centralized control of labor relations, adequacy of consideration, and the purpose of the transaction. *See id.* at 49, 61.

The "mere continuation" exception, while not expressly codified, has been the focus of the bulk of the reported opinions addressing successor liability. The policy underlying the mere continuation exception is that if a corporation goes through a "mere change in form without a

significant change in substance," in other words, if it simply wears a "new hat," it should not be allowed to escape liability. *Id.* at 53, 55. The courts have made clear the distinction between the continuity of the entity and the continuity of the business enterprise. In *Nissen Corp. v. Miller*, 323 Md. 613 (1991), the Court explained:

> The mere continuation or continuity of entity exception applies where there is a continuation of directors and management, shareholder interest and, in some cases, inadequate consideration. The gravamen of the traditional 'mere continuation' exception is the continuation of the corporate entity rather than continuation of the business operation. This exception focuses on the continuation of management and ownership. In contrast, the continuity of enterprise theory focuses on continuation of the business operation or enterprise where there is no continuation in ownership.

323 Md. at 620 (internal citations and quotations omitted); *see also Academy of Irm v. LVI Environmental Services, Inc.*, 344 Md. 434, 451 (1997). This distinction is important to observe in analyzing the applicability of the mere continuation exception.

In *Baltimore Luggage Co. v. Holtzman*, 80 Md. App. 282 (1989), the court declined to apply a continuity of enterprise theory, as opposed to a continuity of entity theory. *See* 80 Md. App. at 296, n.10. In discussing continuity of entity, the court explained:

> Under this exception, a successor corporation may be liable for the debts of its predecessor if certain indicia are met. The indicia of continuation are:
>
> > "common officers, directors, and stockholders; and only one corporation in existence after the completion of the sale of assets. While the two foregoing factors are traditionally indications of a continuing corporation, neither is essential. Other factors such as continuation of the seller's business practices and policies and the sufficiency of consideration running to the seller corporation in light of the assets being sold may also be considered. To find that continuity exists merely because there was common management and ownership without considering other factors is to disregard the separate identities of the corporation without the necessary considerations that justify such an action."
>
> 15 W. Fletcher, supra § 7122 (Cum. Supp. 1988).

80 Md. App. at 297. The court noted that there was a change in ownership and both corporations

continued to exist after the sale. Thus, although the successor corporation continued the same basic business and used the same name as its predecessor, the appellate court held that the lower court erred in concluding that the successor was a mere continuation of its predecessor. *Id.* at 298.

Subsequently, in *Academy of Irm, supra*, the Court of Appeals rejected a theory of continuing enterprise and further held that, under the facts before it, the evidence was insufficient to establish successor liability based on a theory of continuity of the entity. 344 Md. at 453-54. It noted that use of the predecessor's goodwill, failure to substitute the successor for the predecessor on federal contracts, and continuing use of the same business regulation licenses were not sufficient to establish successor liability as a continuing entity. The Court cited to the test employed by the Supreme Court of Rhode Island, though it expressly noted it that affirmatively endorsing that test was not necessary to the case before it:

> The criteria listed by the Rhode Island court are:
> "(1) there is a transfer of corporate assets; (2) there is less than adequate consideration; (3) the new company continues the business of the transferor; (4) both companies have at least one common officer or director who is instrumental in the transfer; and (5) the transfer renders the transferor incapable of paying its creditors because it is dissolved either in fact or by law."

344 Md. at 457 (quoting *H.J. Baker & Bros., Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I. 1989)).

In the most current case, the Court of Special Appeals also declined to find successor liability under the "mere continuation" exception. In *Martin*, as in *Baltimore Luggage Co.*, a former employee sought to recover certain obligations under his employment contract. And, as in *Baltimore Luggage Co.*, the former employee was not successful in recovering these obligations through the successor company. 227 Md. App. at 37.

In the instant case, there could be no viable dispute that Westminster continued the business enterprise of JK2. The operative question, however, is whether it was a continuation of the business entity. Beyond the common enterprise, JK2 and Westminster had overlapping ownership, with Jared Kushner having a 50% interest in each entity. Jared Kushner was the managing member of JK2 at the time of the assignment and assumption agreement[55] and he was the Executive Vice President of WMGPC, the managing member of Westminster, at the time of the agreement; he signed off on the agreements on behalf of both parties thereto. At the time of the assignment and assumption, both JK2 and Westminster represented their addresses to be care of Kushner Cos., and Westminster, "through various entities, manages the affairs and businesses of Kushner [Cos.] and certain affiliated entities and subsidiaries of [Westminster] and [Kushner Cos.]" CPD Ex. 1-A-7. There was overlapping ownership and management between the companies and JK2 was dissolved following the assignment and assumption of the management contracts by Westminster. Under the facts set forth above, Westminster's admissions, and the case law, the CPD has established that Westminster is liable as the successor to JK2.

Further, imposing successor liability in this case is appropriate given that this proceeding involves charges brought by the Office of the Attorney General under the Consumer Protection Act. Westminster maintained the same staff as JK2 and continued many of the same practices as JK2. Westminster is, thus, the entity in position to remedy any violation of the Act.

[55] Some of the property management agreements being assigned also identified Jared Kushner as the "key person," whose death, disability, or lack of active involvement could trigger a for cause termination of the property management agreements by the owners. *See, e.g.*, CPD Ex. 3-A at Westminster 000383, 000385, §§ 1.G, 3.C; CPD Ex. 3-C, Westminster 000422, 000424, §§ 1.G, 3.C.

D. The CPD has a Record of Enforcement Actions Against Property Management Companies and Selective Prosecution was Not Shown.

The Respondents have contended throughout this proceeding that the CPD has selectively targeted them on the basis of political animus, as Respondent Westminster and its predecessor, JK2, had ties to Jared Kushner, who is the son-in-law of now former President Donald J. Trump and who served as one of his senior advisors. In support of their position, the Respondents pointed to Attorney General of Maryland Brian Frosh's statements to media and to numerous suits he instituted or joined against former President Trump and his administration.

The CPD, on the other hand, contends that there is no evidence to support the Respondents' assertions that the charges were motivated by anything other than the serious violations of the Act that it has alleged. It further points to numerous prior enforcement actions it has brought against other landlords and property management companies to rebut any assertion that it has targeted Respondents for political reasons. Specifically, the CPD references the following enforcement actions, spanning from 1978 up to 2019:

- *Attorney General of Maryland v. Grady Management* (May 1978) (improper rent increases);
- *State of Maryland v. Connolly* (December 1985) (failure to maintain property);
- *In re Kamakol Realtors Limited Partnership* (March 1989) (illegal late rent fees and rent increases);
- *Consumer Protection Division v. Potomac Property Management, L.L.P.* (April 1998) (violating the Security Deposit Law);
- *Consumer Protection Division v. Potomac Property Management, L.L.P.* (April 2000) (violating the Security Deposit Law);
- *In re Berkshire Holdings, L.P.* (August 2000) (violating the Application Fee Law and the Security Deposit Law);
- *In re Property Management People, Inc.* (July 2002) (violating the Application Fee Law and the Security Deposit Law);
- *Consumer Protection Division v. Converge Services Group, L.L.C.* (March 2005) (violating the Security Deposit Law);
- *In re Equity Residential Properties Management Corp.* (August 2005) (violating the Application Fee Law the Security Deposit Law);
- *Consumer Protection Division v. Equity Management, Inc.* (April 2006) (violating the Application Fee Law);

- *In re Associated Estates Realty Corporation* (January 2007) (violating the Application Fee Law and the Security Deposit Law);
- *In re Double H Corporation* (February 2007) (violating the Application Fee Law the Security Deposit Law);
- *In re Owings Park, LLC* (February 2007) (violating the Application Fee Law the Security Deposit Law);
- *Consumer Protection Division v. Ager Road Station LLP* (March 2012) (violating the Security Deposit Law);
- *In re American Equity Property Management, LLC* (September 2013) (violating the Security Deposit Law); and
- *In re Cole Property, L.L.C.* (April 2019) (violating the Security Deposit Law).

CPD Ex. 369, CPD Settlements.

As the Supreme Court of the United States recognized in *U.S. v. Armstrong*, 517 U.S. 456 (1996), a claim of this type of selective prosecution is not a defense to the merits of charges, but rather is "an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." 517 U.S. at 463-64. Further, there is a presumption that the prosecuting entity has acted properly in bringing the charges. *Id.* Accordingly, proving a claim of selective enforcement requires meeting a "demanding" standard. *Id.*

The exercise of some selectivity in bringing charges is not, without more, improper. *Consumer Protection Division v. Consumer Pub. Co.*, 304 Md. 731, 751-52 (1985). This is because "an enforcement agency 'cannot be expected to bring simultaneous proceedings against all of those engaged in identical practices.'" *Id.* at 752. Moreover, the success of one enforcement action would potentially induce voluntary compliance by others in the industry. *Id.* Nonetheless, enforcement actions cannot be targeted based on "an unjustifiable standard or arbitrary classification" such as "race, sex, or organizational membership, or in retaliation [for the] exercise[ ] of constitutional or statutory rights." *Id.* at 752-53, n.6. Statements made by the Attorney General fall far short of establishing political motivation for the charges. *Cf. id.* at 765-67 (observing, "[c]ourts have repeatedly held that the issuance of press releases announcing

charges by the agency that will ultimately decide the case does not violate due process guarantees").

The evidence does not establish differential treatment or selective enforcement based on any politically motivated basis, as opposed to motivation to protect Maryland consumers.

E. The General Abusive Practices Provision of the Act Is Inapplicable.

The CPD charges, under paragraph 104 of the Amended SOC, that all of the alleged acts and omissions by the Respondents are also abusive practices in violation of the Act. Specifically, paragraph 104 charges the Respondents with violating section 13-303 of the Act by engaging in abusive behavior by taking "unreasonable advantage of consumers' (1) lack of understanding regarding the costs and conditions associated with the rental properties that the Respondents offered for lease, and/or (2) reasonable reliance on the Respondents to act in the consumers' interests." Am. SOC ¶ 104. In filings made during the pendency of this proceeding, the CPD made clear that paragraph 104 sought to apply the Dodd-Frank Act's standard for abusive practices.[56] Although a prior ruling in this case makes clear that the Dodd-Frank definition of abusive practices is inapplicable to the facts of this case, the charge in paragraph 104 was not covered by any subsequent dispositive motion filed by the Respondents and, thus, it remains in the case—despite the CPD's decision to forgo further argument in support of the charge. Given that it was not definitively disposed of, I briefly address the issue again.

The Legislature's addition of the prohibition on "abusive" practices to the Act in 2018 was designed to protect Maryland consumers from the rollback of financial consumer protections at the federal level, specifically protections afforded by the Dodd-Frank Act. *See* 2018 Md.

[56] This argument was made in the context of the CPD's March 31, 2020 Motion to Reconsider and/or Request for Clarification Regarding Proposed Ruling on Motions to Dismiss. Although that filing involved paragraph 104 of the original SOC, paragraph 104 of the Amended SOC is identical.

Laws ch. 731. In light of this express legislative intent, I accepted the CPD's argument that the addition of the word "abusive" to the Act imported the Dodd-Frank definition of "abusive practices."[57] The Dodd-Frank Act definition of abusive practices is a practice that:

> (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
> (2) takes unreasonable advantage of—
> (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
> (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
> (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

12 U.S.C.A. § 5531(d) (2014). The applicability of a provision addressing financial consumer protection and practices, to allegations that the Respondents violated various landlord tenant laws in connection with residential leases, is not apparent. To the contrary, the relevant definitions in the federal law exclude typical residential leases from the scope of a "consumer financial product or service." *See* 12 U.S.C.A. § 5481(5), (15)(A)(ii) & (A)(ix)(I)(cc) (2014) (providing that a "consumer financial product or service" does not include residential lease unless it is the functional equivalent of a purchase finance arrangement). It would contradict the intent of the Legislature to interpret the more general standard of "abusive" practices, under section 13-303 of the Act, as applying to the facts of this case.

[57] In the context of the Act, the phrase "abusive practices" does not have an apparent or definite plain meaning. The primary purpose of statutory interpretation is to determine legislative intent and where that intent is not apparent from the plain language of the statute, the legislative history is considered to ascertain the legislature's intent. *See Brendoff v. State*, 242 Md. App. 90, 108-09, 111-12 (2019) (stating, "[o]ur primary goal is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision . . . ."). Although the Act is a remedial statute and to be broadly interpreted, this does not override the principle that the statute should be read to effectuate its legislative intent. When the issue arose, the CPD did not refer to any long-standing interpretation of the term "abusive practices," which was added to the Act only in October 2018, but it instead referred to the Dodd-Frank definition, which is consistent with the legislative intent.

II. Licensure Issues

A. Multi-Family Dwelling Licenses for Dutch Village and Pleasantview (Am. SOC ¶¶ 99(j), 100(b), 101(e), 103)

The CPD brings charges against Respondents Westminster, Dutch Village, LLC, and Pleasantview, LLC arising from their failure to maintain multi-family dwelling licenses, as required by the Baltimore City Code, for Dutch Village and Pleasantview. Am. SOC ¶¶ 90-92, 99(j), 100(b), 101(e), and 103; *see also* Baltimore City Code, Article 13, § 5-4.[58]

Angelecia Banks, the Manager of Property Registration and Alarm Licensing section of the BCHCD testified in the CPD's case. Ms. Banks' testimony and the relevant documents established that there were periods of time where Dutch Village and Pleasantview did not have a required MFDL. Ms. Banks' testimony also made clear that while on paper the BCHCD's renewal process ideally should have been fairly straightforward and communications should have been well-tracked internally, as is often the case, the actual processes did not live up to that ideal. It was apparent from the evidence as a whole that confusion abounded from the fact that Dutch Village was registered for more than the total number of dwelling units, under three different addresses, and with two different registration numbers. Ms. Banks testified about BCHCD's block and lot system that could have led to multiple registrations with different addresses, but her testimony did not adequately explain why BCHCD would issue one MFDL, registration number 401012, that appeared to cover all 544 dwelling units at Dutch Village, and

[58] As of May 11, 2018, article 13, section 5-4 of the Baltimore City Code, titled License Required, provides, with an exception not relevant here:

> (a) In general. Except as provided in subsection (b) of this section, no person may:
> (1) rent or offer to rent to another all or any part of any rental dwelling without a currently effective license to do so from the Housing Commissioner; or
> (2) charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy.

two additional MFDLs, both under registration number 201175, that covered an additional 50 dwelling units. Thus, overpayment of fees resulted from the inclusion of 50 additional dwelling units, though at times the BCHCD's records reflected, for various other reasons, outstanding payments due on the accounts.

In addition, it was clear that there were some human and technological errors at BCHCD as concerns these properties. As noted above, the BCHCD failed to properly process and record payment of the MFDL licensing fee for Dutch Village in October 2016. The BCHCD's Property Registration Memo, a record of customer interactions and communications, documents the related bad check voucher but, incongruously, not the prior receipt of that check, as it should have according to Ms. Banks' testimony. In any event, Mr. Febo's testimony credibly and convincingly established that there was not a "bad check" written with insufficient funds, and this characterization was an additional error in the BCHCD process. By way of further example, the Property Registration Memo did not record an entry for receipt of the April 2015 walk-in payment made by Westminster.

Ms. Banks acknowledged, too, that there was the opportunity for human error to impact whether or not updated lead certifications had been received. That this was more than a bare hypothetical possibility is illustrated by the other holes in the system, including the previously mentioned omissions from the Property Registration Memo; the failure to reflect new contact information in the BCHCD's licensing documents; and documentation problems arising from the BCHCD's migration to a new computer registration system in 2018, resulting in licensing information not being reflected correctly in its records and resulting in the production of three variations of the same document collection in response to subpoenas issued in this case. Despite explanations being offered for some of these issues, questions concerning the accuracy and

completeness of the Property Registration Memo, in particular, persist and substantially diminish the reliability of the record.[59]

Ultimately, however, Westminster (and JK2 before it) is an experienced property management company operating in Baltimore City, it was aware of the need for an MFDL for Dutch Village and Pleasantview, and it was aware of the licensing process. A Westminster employee, Valeria Kelly, eventually observed, by email, that despite being aware of the need to renew the MFDL for Dutch Village, she only had an MFDL that was expired. *See* West. Ex. 307 at WM RRPD 267781. Westminster and the respective property owners were obligated to comply with the licensing laws in operating their properties and Westminster had a responsibility to stay informed of the licensure status of the properties it was managing and to follow up with the BCHCD in a timely manner. Despite this, the evidence firmly established that Dutch Village operated without the necessary MFDL after October 17, 2014 until April 24, 2015 and after October 22, 2016 until May 30, 2017. Similarly, the evidence firmly established that Pleasantview operated without the necessary MFDL after October 15, 2014 until April 24, 2015 and after October 29, 2016 until November 20, 2017.

It was clear that the intermittent failure to obtain MFDLs for Dutch Village and Pleasantview was not contumacious, but merely neglectful. The properties were not denied MFDLs because they failed inspections or had lead paint. Nonetheless, I can only interpret the Baltimore City Code's requirement of an MFDL as determination by the City Council that one is necessary for the protection of tenants. Accordingly, I find that CPD has established that the leasing of units without a valid MFDL is likely to cause a substantial injury to consumers.

[59] Although the Part C certificates eventually filed with the BCHCD were contemporaneously signed by Ms. Francke, *see* West. Ex. 322A, I do not find this fact, standing alone, to be dispositive of whether Part C certificates had been submitted to the BCHCD at an earlier point in time for the same licensing year. Neither side provided sufficient, reliable evidence to permit a finding on this point.

Accusearch, Inc., 570 F.3d at 1194-95. The injury is not reasonably avoidable, as consumers had no reasonable way of knowing about the intermittent lack of an MFDL, particularly where old MFDLs were on display and the summary ejectment proceedings represented that the landlord held the necessary MFDL. There is no countervailing benefit to consumers or competition generally. Thus, the practice was unfair and violated section 13-303 of the Act.

The CPD need not prove any consumer was actually deceived or damaged to prevail on its charges under section 13-301 of the Act. *See* Com. Law § 13-302; *Legg*, 100 Md. App. at 757. Although the evidence firmly established that the failure to maintain the MFDLs was not deliberate, the advertising, rental, and operation of dwelling units at Dutch Village and Pleasantview without the required MFDLs is a violation of the Act. Com. Law §§ 13-301(1), (2)(i), (3), 13-303; *Golt*, 308 Md. at 9-10 (advertising and renting an unlicensed apartment is a misleading representation that the landlord could provide an unimpeded right to possession, a representation that the realty has a sponsorship, approval, or characteristic which it does not, and is "a material fact that any tenant would find important in his determination of whether to sign a lease agreement and move into the premises"); Am. SOC ¶¶ 99(j), 100(b), 101(e).

The owners of Dutch Village and Pleasantview are likewise liable for the respective violations of the Act. *See Andrews & Lawrence Professional Services*, 467 Md. at 165-68; *see also, e.g.,* CPD Ex. 332 (Westminster is the "managing agent" for the owners); CPD Ex. 3-A ("to the extent [JK2] is authorized pursuant to the terms hereof to enter into leases and contracts with respect to Property in Owner's name, it shall enter into such leases and contracts as Owner's agent").

B. Debt Collection Activity (Am. SOC ¶¶ 99(j), (k), 100(b), 101(f), 103)

The CPD further charges violations of the Debt Collection Act and the Act based on: collecting consumer debt without a license, collecting rent while knowing Dutch Village and Pleasantview lacked required MFDLs, and collecting fees and costs that were not owed. Am. SOC ¶¶ 48-51, 93-97, 99(j), (k), 100(b), 101(f),[60] 103.

As to the charges based on the collection of consumer debts without a license, Westminster asserts that no license was required and, in any event, making the incorrect call on a novel issue of law does not rise to a violation of the Act. On the charges predicated on the failure to maintain required MFDLs for Dutch Village and Pleasantview, the Respondents question the agency recordkeeping and note that the failure to pay licensing fees for the 2015 MFDLs for Dutch Village and Pleasantview was a mere oversight. Further, they note that there was no evidence that Dutch Village or Pleasantview were ever in violation of the substance of the requirements governing the standards of the units (no unabated violations, consistent lead paint certification status). Finally, as to the collection practices charges (the collection of fees and costs without right), the Respondents assert that they did not act with knowledge that they lacked the right to collect, but instead acted based on "considerable confusion" due to "unforeseeable staffing circumstances." West. Memo. at 234.

1. Collection of Rent without being Licensed as a Collection Agency

The Amended Statement of Charges alleges that prior to December 2014 and from January 2016 to July 2017, Westminster,[61] violated the Debt Collection Act and the Consumer

[60] While subparagraph 101(f) of the original SOC was dismissed, the Amended SOC renumbered certain subparagraphs, including this one, which was formerly 101(e) of the original SOC and was not dismissed.
[61] Confusingly, the Amended SOC defines Westminster Management, LLC as Westminster and also defines JK2 Westminster, LLC and Westminster Management, LLC, collectively, as Westminster.

Protection Act by collecting and attempting to collect rent (consumer debts) without a license required by MCALA.[62] Am. SOC ¶¶ 48-51, 93-95, 97.

At all pertinent times, from 2012 through July 2017, section 7-101 of MCALA has defined a "collection agency" as "a person who engages directly or indirectly in the business of: . . . collecting for, or soliciting from another, a consumer claim."[63] Bus. Reg. § 7-101(d)(1)(i) (Supp. 2020).[64] Section 7-301 of MCALA has required a license as follows:

> (a) Except as otherwise provided in this title, a person must have a license whenever the person does business as a collection agency in the State.
> (b) This section does not apply to:
> (1) a regular employee of a creditor while the employee is acting under the general direction and control of the creditor to collect a consumer claim that the creditor owns; or
> (2) a regular employee of a licensed collection agency while the employee is acting within the scope of employment.

Bus. Reg. § 7-301(a), (b) (Supp. 2020).

Under Maryland law the failure to maintain a required collection agency license can violate not only MCALA, but also section 14-202(8) of the Debt Collection Act and the Consumer Protection Act. *LVNV Funding LLC v. Finch*, 463 Md. 586, 606 (2019) (applying pre-October 2018 law and finding that unlicensed collection activity violated MCALA, the Debt

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[62] From and after October 1, 2018, unlicensed debt collection in violation of MCALA is an express violation of the Debt Collection Act and, thus, constitutes a statutory violation of the Act. Com. Law §§ 13-301(14)(iii), 14-202(10). The October 2018 amendment adding subsection 14-202(10) to the Debt Collection Act predates the period when Westminster was unlicensed and the CPD has acknowledged that this provision should not be applied retroactively. As made plain in *LVNV, infra*, while a pre-2018 violation of MCALA is not a *per se* violation of the Consumer Protection Act, engaging in unlicensed collection activity may still violate section 14-202(8) of the Debt Collection Act and, as a result, subsection 13-301(14)(iii) of the Consumer Protection Act.

[63] A "consumer claim" is defined in MCALA as a claim "for money owed or said to be owed by a resident of the State . . . [that] arises from a transaction in which, for a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services." Bus. Reg. § 7-101(e). As noted above, the amendment effective July 1, 2017 redesignated the paragraph letter at which this definition appears, but the substance was unchanged. Plainly, money owed for rent is within the definition of a consumer claim.

[64] Sections 7-101 and 7-301 of MCALA were amended, effective July 1, 2017. As pertinent here, the definition of "collection agency" in section 7-101 was renumbered but otherwise unchanged. The licensing provisions of 7-301 subsections (a) and (b) were unchanged by the amendment. A subsequent amendment to section 7-101 did not impact the provisions at issue here. For convenience and consistency, I cite to the current supplement, as opposed to the 2017 supplement.

Collection Act, and the Consumer Protection Act, despite claimed confusion over need for license). Section 14-202 of the Debt Collection Act provided, at all pertinent times: "In collecting or attempting to collect an alleged debt a collector may not . . . [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist[.]" Md. Code Ann., Com. Law § 14-202(8) (2013). A violation of the Debt Collection Act is, in turn, a per se violation of the Consumer Protection Act. Com. Law § 13-301(14)(iii).

Westminster acknowledges that it was not licensed as a collection agency in Maryland for a period of time. However, it asserts, among other things, that as a signatory to the leases it did not need to be licensed and that, even if it did need to be licensed, its failure to have a license is not actionable, as it simply made the wrong call on a novel issue of law.

An Attorney General's Opinion from 1980 addresses the applicability of MCALA's licensing requirement to landlords and third-party rent collectors and concludes that "[p]ersons (such as landlords) who collect rent owed to themselves, as creditors or owners of the claims, do not fall within the requirement . . . that a collection agency be 'directly or indirectly engaged in the business of soliciting from, or collecting for[,] *others*'." 65 Md. Op. Atty. Gen. 316 (second alteration in original). Therefore, landlords collecting rent for themselves are not required to be licensed as collection agencies. *Id.*

As to third party rent collectors, the Opinion continued:

> On the other hand, third party rent collectors—those who, on behalf of others, collect rent owed to those others—might well be covered by the statutory definition of 'collection agency'. They clearly are engaged in the business of 'soliciting from, or collecting for[,] others' claims that are 'due or asserted to be owed or due to' those others as 'seller, lender, holder, or creditor'. The claims to be collected by these rent collectors are for rent 'due or asserted to be . . . due' by tenants to landlords, who are 'creditors' of the tenants. Third party rent collectors thus fall within this part of the definition [of a collection agency].

65 Md. Op. Atty. Gen. 316. The 1980 published Attorney General's Opinion made plain the Attorney General's view that the statute "might well" cover third party rent collectors, and that the Attorney General had concluded that they "fall within this part of the definition." *Id.*

Notably, the Attorney General set out two general categories around which it framed its 1980 Opinion: "those who collect or attempt to collect rents that are owed to the collectors themselves (that is, persons who themselves are creditors or owners of claims); [and] those who collect or attempt to collect rents that are owed to others." 65 Md. Op. Atty. Gen. 316. The Opinion was not an attempt to define all the various factual scenarios and legal arrangement that underlie whether a person falls within the first category or the second category. It noted, as set out above, that "landlords" were not within the category of people required to be licensed but did not delve into the meaning or application of that term. Nonetheless, the Opinion distinguished third-party rent collectors: "The claims that rent collectors seek to collect arise from the rental of real property by a landlord to a tenant under a lease." *Id.* Thus, the Opinion predicated its conclusion that a license was required on the contemplation that there would be the parties renting the property (the landlord and the tenant) as well as a separate third-party collector.

Westminster relies on the Sawyer Cases, a series of decisions all captioned *Ramsay v. Sawyer Property Management*, to support its position that it is not a separate third-party collector that required a license. In *Sawyer I*, 948 F. Supp. 2d 525 (D. Md. 2013), a tenant brought a federal class action lawsuit against Sawyer, a rental and property manager for various landlords, under the Fair Debt Collection Practices Act (FDCPA), the Debt Collection Act, and the Act.[65] The court, based upon the complaint and the documents attached to it, dismissed the claim brought under federal law and declined to exercise supplemental jurisdiction over the State law

[65] As noted above, Sawyer preceded JK2 as the property manager for several of the properties at issue here.

claims (the Debt Collection Act and Consumer Protection Act claims were, thus, dismissed without prejudice). 948 F. Supp. 2d at 529, 537.

In reaching its decision on the FDCPA claims in *Sawyer I*, the court observed that the FDCPA does not apply to creditors, such as landlords, who collect debts in their own names and whose primary business is not debt collection. *Id.* at 531. The court found that the allegations in the complaint did not show that Sawyer was regularly collecting debts on behalf of others. The court noted that both the collection lawsuits and court orders attached to the complaint were in Sawyer's name and concluded that exhibits reflected Sawyer "was acting as a judgment creditor, collecting its debts in its own name." *Id.* at 532. Additionally, the court observed that the tenant did not allege any facts demonstrating that Sawyer's primary business purpose was debt collection, so as to bring it within the FDCPA. *Id.* at 533. Accordingly, the court concluded, "there is no plausible claim that Sawyer . . . required a collection agency license under Maryland law." *Id.* at 536.

The tenant appealed the decision in *Sawyer I*, arguing, *inter alia*, that the district court erred in its determination that Sawyer was not a debt collector within the meaning of the FDCPA, as Sawyer was acting as the property owner's agent.[66] In *Sawyer II*, an unpublished decision,[67] the U.S. Court of Appeals for the Fourth Circuit affirmed the decision in *Sawyer I* that the property manager was not a debt collector under the FDCPA. 593 Fed. App'x 204 (4th Cir. Dec. 9, 2014). The court noted that the FDCPA excluded from the definition of a debt collector, "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . concerns a debt which was not in default at

[66] The property owner was Respondent SRH Woodmoor, LLC.
[67] Although *Sawyer II* and *Sawyer III* are unpublished decisions, they are cited as they are uniquely pertinent to the instant proceeding, given JK2's involvement in *Sawyer III*.

the time it was obtained by such person." *Id.* at 206. The court then noted that a "rental agent generally 'obtains' a debt when a lease is executed, which necessarily predates a default under the lease . . . ." *Id.* at 206. The court observed that Sawyer was listed as the landlord in the lease documents, the tenant entered the lease agreement with Sawyer, and the tenant sent her monthly rental payments to Sawyer; it concluded Sawyer obtained the tenant's debt when the tenant first signed the lease and Sawyer was not a debt collector within the meaning of the FDCPA. *Id.* at 206-07.

After the federal court dismissed their suit, the same tenants then pursued their State law claims, under the Debt Collection Act and the Consumer Protection Act, in the Circuit Court for Baltimore County. The Circuit Court dismissed the claims; the appellate court summarized the lower court's reasoning:

> The court concluded that the federal judgment precluded both counts of [the] complaint. The court reasoned that the issues of whether Sawyer . . . needed to maintain a Maryland collection agency license and whether the disclosure stamp was deceptive had been fully litigated and resolved against [the tenant] in federal court. The court also reasoned that, without giving any preclusive effect to the federal judgment, it would independently conclude that Sawyer . . . did not need to be licensed because it was not operating as a collection agency. In addition, the court reasoned that the mini-Miranda warnings on the court forms were not deceptive. The court stated that its rulings extended to JK2 . . . .

See Sawyer III, 2016 WL 6583892, at *8 (Md. Ct. Spec. App. Nov. 4, 2016), *cert. denied* 451 Md. 267 (2017).

Before the Court of Special Appeals, the tenants raised the issue of whether the property management companies, Sawyer and JK2, were required to be licensed under MCALA to collect rent from delinquent tenants and, thus, whether they had violated the Debt Collection Act and the Consumer Protection Act by doing so without a license. *Id.* at *6, *8. As the Court of Special Appeals noted, the issue boiled down to whether Sawyer and JK2 were required to maintain a

license. *Id.* at *8. In considering this question, the court cited the MCALA statute and the 1980 Attorney General's Opinion.

The court considered the documents, observing that Sawyer prepared the lease, was referred to in the lease agreements as the "landlord," who "hereby lease[d]" the property, and is signed the lease as the "landlord/agent." *Id.* at *1, *10, *13 ("If the relevant clause is read in its entirety, however, it becomes apparent that Sawyer Property is the entity defined as the 'Landlord' under the leases."). The court also relied upon the fact that Sawyer obtained judgments in its own name in concluding that there was an insufficient showing that Sawyer was collecting for any party other than itself. *Id.* at *10.

In reaching its conclusion, the court analyzed *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012), and agreed with the *Sawyer I* court that the property manager was "not analogous to the management agent in *Fontell*." 2016 WL 6583892, at *10. In doing so, the Court of Special Appeals noted that although *Fontell* concluded that the management agent qualified as a collection agency, the federal court had observed that the decision was a "close call" and that it was "not entirely obvious that the management agent was 'collecting . . . for another' . . . considering the interconnected nature of the homeowner association with its management agent on all matters of managing community affairs." 2016 WL 6583892, at *9 (citing 870 F. Supp. 2d at 408-09).

The Court of Special Appeals contrasted *Fontell* from the situation presented in the Sawyer cases:

> We agree with the [*Sawyer I*] court that Sawyer is not analogous to the management agent in *Fontell*. The management agent in *Fontell* took efforts to ensure that the debtor would pay a debt to the homeowner association even though the agent had no relationship with the underlying transaction other than its contract with the association. *Fontell*, 870 F.Supp.2d at 409. By contrast, Sawyer Property prepared and executed the agreements that created the debts *and* used

> those agreements to obtain judgments payable directly to itself. Because of this crucial distinction, the tenants' allegations are insufficient to show that Sawyer Property engaged in the business of collecting claims for any party other than itself. Therefore, the tenants failed to state a claim based on the premise that Sawyer Property was doing business as a collection agency.

2016 WL 6583892, at *10 (emphases added). The Court in *Sawyer III* acknowledged that JK2 was "in a slightly different position with respect to its debt-collection efforts" than Sawyer was, but it nevertheless declined to "disturb the circuit court's decision to treat JK2 Westminster as identically situated" because the "tenants' briefs . . . make no attempt to explain the legal significance, if any, of JK2 Westminster's status as a successor to [the property manager]." *Id.* at *13.

I give due deference to the Attorney General's published, long-standing position that a landlord collecting rent owed to it does not fall within the definition of a collection agency, though a third-party rent collector collecting "rent owed to those others" "might well" be covered by the definition of a collection agency and thus falls within this part of the definition. *See Baltimore County Licensed Beverage Ass'n, Inc. v. Kwon*, 135 Md. App. 178, 189 (2000). Nonetheless, the Attorney General's Opinion did not expound on the distinction between a "landlord" and a third-party rent collector beyond the general sense. The courts have filled this gap, as necessary. In doing so, courts have looked to whether the third-party agent has a relationship to the underlying transaction and is collecting in its own name.

The management agreement makes clear that Westminster was collecting "rents, charges, and other amounts due to the Owner." CPD Ex. 3-B-2, ¶ 7.6 (emphasis added). Unlike the Sawyer lease[68] and the JK2 lease,[69] the Westminster pre-2018 form lease separately identifies the "Landlord" and expressly states that Westminster is acting as an agent for the Landlord and is

[68] *See* West. Ex. 32A at WM RRPD 102471; *see also Sawyer III*, 2016 WL 6583892, at *13.
[69] *See* West. Ex. 65A at WM RRPD 033876.

leasing the property as the Landlord's agent—that is, not in its own right. CPD Ex. 331 at Westminster 000568. The lease provided that the rent was owed to the "Landlord" and the "Landlord" had the right to institute proceedings for delinquent rent—again, unlike the Sawyer & JK2 leases the Westminster pre-2018 lease did not define Westminster as the "Landlord." *Id.* at 000576-77. Westminster expressly recognized that "[i]t is the [o]wners, not Westminster, who are the 'landlords' under the leases." West. Memo. at 200. Moreover, when collection actions were filed, they were not filed in Westminster's name but in the owner's name—again reflecting that it was not Westminster's own debt to collect. CPD Ex. 340-F at CPD No. 000243-45; *see also, e.g.,* CPD Ex. 333-B-14; Test. Evelyn Hodge. This was not the situation in the Sawyer Cases, and the courts made plain that those facts were critical to the decision that Sawyer was not acting as a collection agency. The evidence reflects that Westminster was collecting debts owed to others, the owners.

Under the case law and the facts at hand, Westminster was acting as a collection agency as defined in MCALA. As a result, it was required to be licensed at all relevant times. This is consistent, as well, with the representation of Mr. Berman that Westminster was doing business as a collection agency.

The CPD contends that this also constitutes a violation of the Debt Collection Act. As set out above, the Debt Collection Act provides that a debt collector may not "[c]laim, attempt, or threaten to enforce a right *with knowledge* that the right does not exist . . . ." Com. Law § 14-202(8) (emphasis added). An unlicensed collection agency that attempts to collect a debt is attempting to enforce a right that, for it, does not exist. *LVNV Funding*, 463 Md. at 612. From January 1, 2017 through July 2, 2017, Westminster, as an unlicensed collection agency, was thus attempting to enforce a right that, for it, did not exist. The issue then becomes whether

Westminster attempted to enforce that right, knowing that it did not exist, which would constitute a violation of section 14-202(8) of the Debt Collection Act.

This knowledge requirement was explored in *Fontell*. The court observed:

> The "knowledge" requirement of the [Debt Collection Act] has been interpreted as imposing liability against a defendant only where the plaintiff can show that the defendant "attempt[ed] to enforce a right with actual knowledge or with reckless disregard as to the falsity of the existence of the right."

870 F. Supp. 2d at 407 (*quoting Bradshaw v. Hilco Receivables, LLC*, 765 F.Supp.2d 719, 732 (D. Md.2011)); *see also Spencer v. Henderson Webb, Inc.*, 81 F. Supp. 2d 582 (D. Md. 1999). Although the court recognized that its decision that the management agent was required to be licensed as a collection agency was "a close call" under the facts, it further explained that the management agent must have known it was not licensed and the mistake of law concerning the need for a license did not immunize them from liability. 870 F. Supp. 2d at them from liability. 870 F. Supp. 2d at 409-10; *see also LVNV Funding*, 463 Md. at 598-99, 606.

The court also considered the knowledge requirement in the context of an additional claim that the management agent violated the Debt Collection Act by filing the collection action on time-barred claims. The court stated:

> If this Court were to find that Defendants' ignorance about the limitations period was a mistake of law, their professed lack of knowledge would not save them from liability under the MCDCA. *Spencer v. Hendersen-Webb, Inc.*, 81 F.Supp.2d 582, 594 (D.Md.1999) ("the term 'knowledge' in the [Debt Collection Act] does not immunize debt collectors from liability for mistakes of law."). In other words, Defendants don't escape liability under the [Debt Collection Act] merely because they didn't bother to make themselves aware of an obvious limitations period surrounding their claims.
>
> Where the law's application to the facts is unclear, however, as appears to have been the case with the limitations period, and Defendants had a meritorious argument that the limitations period had not passed, it would be proper for Defendants to bring suit to resolve such issues. To argue that Defendants committed a mistake of law in bringing the collection action against Plaintiff, due to the fact that such action was subsequently found to be time-barred, would be to

> ignore the decision of the state district court implicitly affirming the timeliness of Defendants' action and to apply the circuit court's decision ex post facto. Because the proper limitations period was not initially clear, the Court finds that Defendants' failure adhere to the statute of limitations does not constitute a mistake of law.

Fontell, 870 F. Supp. 2d at 407-08; *but see Bradshaw v. Hilco Receivables, LLC*, 765 F.Supp.2d 719, 732 (D. Md. 2011) (considering the Debt Collection Act's knowledge requirement and stating "it does not seem unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line").

Under the facts at hand, I do not find that Westminster simply made an incorrect call on a novel issue of law and should be shielded from liability. *See Chavis v. Blibaum*, 246 Md. App. 517, 535 (2020). The cases have, for many years, reflected that whether an entity is a collection agency is a fact-driven inquiry. *Fontell*, 870 F. Supp. 2d at 408-10 (holding that even in the case of a "close call" mistake of law was not defense where agency knew of its licensing status).

Further, as noted above the central factors that the courts relied upon in determining that Sawyer did not require a license were not applicable to Westminster's situation. The Westminster pre-2018 form lease separately identified the "Landlord," made clear that Westminster was the "agent for Landlord" and provided that rent was owed from the tenant to the "Landlord" and that it was the "Landlord's right" to institute proceedings for non-payment of rent. CPD Ex. 331 at Westminster 000568, 000572, 000576, 000577. By contrast, the Sawyer form lease did not separately identify the owner as the Landlord and instead defined the "Landlord" as "Sawyer . . . agent for [owner], hereinafter referred to as Landlord . . . ." and then went on to define rent as the payment from the tenant to the Landlord (which definition included Sawyer). West. Ex. 32A at WM RRPD 102471, 102473. JK2's leases were similar to Sawyer's

leases in this regard and, importantly for this analysis, distinct from Westminster's. The court in *Sawyer II* gave considerable importance to those distinct facts.

By the same token, the court in *Sawyer I* gave importance to the fact that Sawyer had obtained judgments for delinquent rent in its own name. At the time pertinent to the Sawyer Cases, JK2 was also filing suits for delinquent rent in its own name, using Maryland attorney Jeffrey Tapper as its rent court agent. *See Sawyer III*, 2016 WL 6583892, at *2. Here, by contrast, judgments were sought and obtained in the name of the owner Respondents, and not in Westminster's name. As a result of these distinctions, the Sawyer Cases do not provide a basis for Westminster to claim uncertainty and, thus, lack of knowledge. Moreover, *Sawyer III* questioned whether JK2 was in a distinct situation from Sawyer, which further diminished Westminster's ability to reasonably rely on the Sawyer Cases.

It is apparent that Westminster was acting as a collection agency; its own documents (leases, property management agreements, and rent court filings) reflect that it was collecting consumer debts owed to another. Westminster was at all pertinent times aware of the licensing requirement of MCALA, having previously been licensed. It plainly did not, and could not, fall within the Sawyer Cases. Indeed, after the decisions in *Sawyer I* and *Sawyer II*, Westminster applied for a license to act as a collection agency in Maryland and was licensed from March 24, 2015 to December 31, 2015. Westminster determined not renew its license between January 1, 2016 and July 2, 2017, despite the November 2016 appellate court decision in *Sawyer III* that noted JK2 was not necessarily on par with Sawyer in all respects and despite the factual differences.

Westminster's operations under its pre-2018 form lease fit squarely within even the general parameters of the Attorney General's 1980 Opinion—it was "collect[ing] rents that are

owed to others" and was only an agent for the landlord, per its own documents. There was no ambiguity or novel issue here: the evidence shows that when it engaged in unlicensed collection activity, Westminster was attempting to enforce a right, knowing that it did not exist, within the meaning of the Debt Collection Act.

Between January 1, 2017 and July 2, 2017, Westminster violated MCALA by collecting consumer claims without the license required by MCALA, Westminster violated section 14-202(8) of the Debt Collection Act by claiming, attempting, or threatening to enforce a right with knowledge that the right does not exist, which also constitutes a *per se* violation of section 13-301(14)(iii) of the Consumer Protection Act. *See* Bus. Reg. §§ 7-101(d), 7-301; Com. Law § 14-202(8); Com. Law § 13-301(14)(iii); *Andrews & Lawrence Prof. Servs.*, 467 Md. at 152 (failure to obtain a license under MCALA is both a violation of the MCPA and MCDCA); *LVNV Funding*, 463 Md. at 606.

To the extent the CPD brings charges against Westminster, in its own right, for periods prior to January 1, 2017, the charges fail. Although the Amended SOC alleges that Westminster was doing business in Maryland since 2012, it does not clearly allege any collection activity by Westminster (as opposed to JK2) prior to January 1, 2017. Am. SOC ¶ 2.[70] Indeed, the Amended SOC asserts that Westminster's collection activity "[i]n its capacity as property manager" required a license under MCALA. Am. SOC ¶¶ 44, 94. The parties have stipulated, that Westminster began managing the properties in December 2016. To the extent Westminster (as opposed to JK2) may have been engaging in other collection activity in Maryland prior to December 2016, the Amended SOC cannot be reasonably read to include such charges. *See, e.g.*, *Regan v. Bd. of Chiropractic Exam'rs*, 120 Md. App. 494, 519 (1998).

[70] The Amended SOC confusingly defines Westminster Management, LLC as "Westminster" and "JK2 Westminster, LLC and/or Westminster Management, LLC," collectively, as "Westminster." Am. SOC at 1 & ¶ 2.

To the extent the CPD is seeking to hold Westminster liable for JK2's collection activity while unlicensed, JK2 is in a somewhat different position than Westminster. Initially, I note that contrary to the CPD's representation, the cases, including *Sawyer III*, do not support a blanket conclusion that "[P]roperty managers that collect or attempt to collect rent and other payments from consumers on behalf of third-party property owners are collection agencies within the meaning of MCALA." CPD Proposed Findings at ¶ 875. I recognize that the property management agreements make clear that JK2 was collecting on behalf of the owner Respondents. Presumably, however, management companies, whether in the context of multi-family rental housing or homeowners' associations, generally will have a written agreement that specifies that the agent is acting on behalf of the owner, yet the case law, including the Sawyer Cases and *Fontell*, reflects that the mere status as a managing agent is not dispositive of the issue.

Turning to the facts, JK2 was more similarly situated to Sawyer than Westminster was. The underlying JK2 lease agreements contain much the same language as the courts emphasized in the Sawyer Cases in holding that Sawyer (and JK2) did not require a license as a collection agency. For instance, the Sawyer leases provided: "SAWYER PROPERTY MANAGEMENT OF MARYLAND LLC agent for SRH Woodmoor, hereinafter referred to as Landlord, does hereby lease" the premises to the tenant. *Sawyer III*, 2016 WL 6583892, at *1. The JK2 leases likewise provided, "JK2 Westminster LLC agent for Whispering Woods, hereinafter referred to as Landlord, does hereby lease" the premises to the tenant. West. Ex. 65A at WM RRPD 033876. The court also made note of the fact that the Sawyer leases were signed by a Sawyer employee as the "Landlord/Agent." *Sawyer III*, 2016 WL 6583892, at *1. The JK2 leases were likewise signed by a JK2 employee as the "Landlord/Agent." *See* West. Ex. 65A at WM RRPD

033876. Collection suits were sometimes filed in JK2's name and sometimes filed in the name of the relevant owner Respondent. *See Sawyer III*, 2016 WL 6583892, at *2; CPD Ex. 333-B-2; CPD Ex. 333-B-1; Test. Evelyn Hodge. The courts had already held, on similar facts, that JK2 did not require a collection agency license. On this record, the CPD failed to establish that JK2 required a collection agency license under MCALA.

In any event, JK2 also stands in a different position than Westminster with regard to the Debt Collection Act's knowledge requirement. Unlike Westminster, JK2 was a party to *Sawyer III*. While there was not an actual determination *on appeal* that JK2 did not require a collection agency license, the circuit court "independently conclude[d] that Sawyer . . . did not need to be licensed because it was not operating as a collection agency . . . [and] that its rulings extended to JK2 . . . ." *Sawyer III*, 2016 WL 6583892, at *6 (detailing the circuit court's decision). Although the intermediate appellate court noted that JK2 was "in a slightly different position with respect to its debt-collection efforts" than Sawyer was, it left the lower court's decision undisturbed, explaining that the tenants failed to adequately develop their arguments as to JK2's status. Moreover, the Court of Special Appeals made its observation in a decision issued on November 4, 2016, less than two months before JK2 assigned the property management agreements to Westminster. The circuit court applied its conclusions—both that the federal court decision in *Sawyer I* was applicable and that management company was not acting as a collection agency—to JK2, making it at least debatable whether, at all relevant times, JK2 was acting as a collection agency. JK2 applied for its collection agency license at approximately the same time that the circuit court case was filed against it, and after receiving a favorable decision that it was not operating as a collection agency, it allowed that license to lapse. OCFR never pursued an enforcement action against JK2. In these circumstances, the preponderance of the

evidence does not demonstrate that by failing to maintain a collection agency license prior to August 2014 and after December 31, 2015, JK2 violated section 14-202(8) of the Debt Collection Act by claiming, attempting, or threatening to enforce a right with knowledge that the right does not exist. *See Fontell*, 870 F. Supp. 2d at 408. Nor do I find a concomitant violation of the Act by JK2, as a result.

2. Collecting Rent while Dutch Village and Pleasantview Lacked MFDLs

The Amended SOC further alleges that Westminster violated section 14-202(8) of the Debt Collection Act (and thereby section 13-301(14)(iii) of the Consumer Protection Act) by collecting rent on behalf of Dutch Village and Pleasantview "despite having actual and/or collective knowledge that those properties did not have [MFDLs] and were therefore not entitled to collect rent." Am. SOC ¶ 97. For the sake of completeness, I again note that subsection 14-202(8) of the Debt Collection Act provided, at all pertinent times: "In collecting or attempting to collect an alleged debt a collector may not . . . [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist[,]" and that this knowledge requirement has been defined as actual knowledge of falsity or reckless disregard for falsity. Md. Code Ann., Com. Law § 14-202(8); *Fontell*, 870 F. Supp. 2d at 407; *Brooks v. Cama Self Directed IRA, LLC*, 2019 WL 418412, at *11 (D. Md. Jan. 31, 2019); *Shah v. Collecto, Inc.*, 2005 WL 2216242, at *10 (D. Md. Sept. 12, 2005).

The MFDL process has already been discussed in detail. As clearly as the email chain from Valeria Kelly reflects that Westminster should have known that Dutch Village and Pleasantview were unlicensed, the email equally reflects that Westminster in fact did not know of the lack of licensure. *See* West. Ex. 307 at WM RRPD 267781. The documents reflect that at least some licensure steps had been timely undertaken to renew the MFDLs. As noted above, the

MFDL process for Dutch Village and Pleasantview was convoluted and confused, in part due to irregularities and issues at the BCHCD. The preponderance of the evidence does not establish that Westminster violated section 14-202(8) of the Debt Collection Act by collecting rent on behalf of Dutch Village, LLC and Pleasantview, LLC, with knowledge that it lacked that right. As a result, although these underlying facts established a violation of subsections 13-301(1), (2)(i), and (3) of the Act, as addressed above, the facts do not support a further violation (or violations) under section 13-301(14)(iii) of the Act.

Based on the testimony from Ms. Barnes and the documents in evidence, I conclude that, as a matter of fact, this analysis applies equally to JK2's collection activity while Dutch Village and Pleasantview lacked MFDLs.

3. Collecting Fees and Costs Without Right

In paragraphs 96 and 97 of the Amended SOC, the CPD charges that Westminster and JK2 violated section 14-202(8) of the Debt Collection Act, and thus the Consumer Protection Act, in collecting agent fees and court costs from tenants, on behalf of the owner Respondents, despite having knowledge that such costs had not been incurred. Westminster does not dispute that the $12.00 agent fee was passed along to tenants as a charge even though the fee was not incurred; instead, it contends that this was the result of an unintentional oversight and should be excused.

As noted previously, section 14-202(8) of the Debt Collection Act prohibits a debt collector who is attempting to collect a debt from attempting to enforce a right with actual knowledge, or with reckless disregard, as to the falsity of the existence of the right. Md. Code Ann., Com. Law § 14-202(8) (2013); *Fontell*, 870 F. Supp. 2d at 407. Neither JK2 nor Westminster had any colorable right to collect or attempt to collect from tenants such pass-

through type fees that were not incurred and which were contractually waived. *See* CPD Ex. 331 at Westminster 000576 (pre-2018 lease; stating, "Tenant shall pay to Landlord the reasonable costs incurred by Landlord in utilizing the services of [an Agent to institute proceedings to for rent or repossession]"); West. Ex. 65A at WM RRPD 033883 (JK2 form lease, containing the same language); *see also* CPD Ex. 332 at Westminster 078246 (post-2018 lease; stating, "you agree to pay us the reasonable costs incurred by us in utilizing the services of the agent"); CPD Ex. 333-A at Westminster 000654 (waiving per writ agent fee).

The evidence further establishes that at the time they were collecting and attempting to collect such fees, JK2 and Westminster each knew that the right to collect the fees did not exist. Notably, in changing its rent court agent from Ewrit to the Law Office of Richard Basile, effective December 2, 2013, JK2 touted the elimination of filing fees for Warrants of Restitution as a measure that would save the Properties $172,000 in the next year (when combined with a reduction in the initial filing fee as well). CPD Ex. 340-E at CPD No. 048121. Subsequently in 2014, when Ewrit agreed to waive the agent fee for writs, it was as a specially negotiated term designed to regain JK2 as a client. CPD Ex. 340-F at CPD No. 000174-75; CPD Ex. 333A at Westminster 000654. The relevant staff remained unchanged during the transition from JK2's to Westminster's management, and many of the same staff, such as Ms. Webb and Ms. Miller, were still filling the same roles at Westminster at the time of the hearing.

Further, Ms. Webb, a regional manager overseeing property-level staff, testified that such charges were, at least for a time, entered manually by property-level staff. In addition to Ms. Francke's email detailing the change, billing statements from Ewrit were sent to the properties, for review by the property manager (or Community Manager); the billing statements unambiguously listed the fees that were actually charged ("writ court cost[s]" specified to be at

the rate of $50.00 court costs) and conspicuously omitted the $12.00 agent fees that it previously charged. CPD Ex. 340-E at CPD No. 047858-59; *compare* West. Ex. 287F at CPD No. 012504, *with* West. Ex. 287F at CPD No. 012506, *and* 012527. Despite this, the practice occurred regularly and continued for years. Given the notice to management and on-site employees, who, acting within the scope of their duties, continued to charge the fee, given the extensive period of time over which the fictitious fees were assessed, and given the ultimate dollar amount of the error, I find that Westminster and JK2 had actual or constructive knowledge of the baseless charge; it cannot be considered a mere oversight.

Accordingly, the evidence establishes that JK2 had knowledge that it had no right to collect or attempt to collect $12.00 agent fees for writs because it had not incurred such charges. The evidence likewise establishes that Westminster had knowledge that it had no right to collect or attempt to collect from tenants a $12.00 agent fee that it was not incurring. By charging tenants a fee that was not actually incurred, JK2 and Westminster claimed, attempted, or threatened to enforce a right with knowledge that the right did not exist. JK2 and Westminster thereby violated section 14-202(8) of the Debt Collection Act and, accordingly, section 13-301(14)(iii) of the Consumer Protection Act. This is not a situation where there is a dispute about the validity of the amount of a debt, this goes to the invalidity of the very right to collect.[71] The number of times Westminster and JK2 collected or attempted to collect $12.00 agent fees in violation of the Debt Collection Act and the Consumer Protection Act, and the total amounts involved, are set forth above in Proposed Finding of Fact Number 159.

[71] Thus, this case is distinct from *Chavis v. Blibaum Assocs.*, 246 Md. App. 517, 528 (2020), *cert granted*, 471 Md. 100 (October 6, 2020), and *Kemp v. Nationstar Mortgage Ass'n.*, 248 Md. App. 1 (2020), *cert granted*, 471 Md. 285 (November 23, 2020).

The above analysis applies similarly to the practice of passing along charges for court costs that went beyond the costs actually incurred. The evidence established that at times Westminster and JK2 charged $80.00 filing fees to tenants at Dutch Village and Pleasantview when a Warrant of Restitution was filed, even though the court's filing fee for writs was only $50.00. The amount of court costs is publicly available and Westminster, like JK2 before it, is a sophisticated entity in the business of managing residential rental properties and it manages multiple properties in Maryland, including multiple properties in Baltimore City. In any event, the $50.00 rate for court costs is clearly set out on the invoices Westminster and JK2 received from Ewrit. Westminster and JK2 were aware of the court costs charged for the writs.

Contrary to *Chavis v. Blibaum*, 246 Md. App. 517, 535 (2020), this is not a situation where there is a colorable dispute as to the amount to be charged or the right to include the amount. There was no factual or legal basis for increasing the court costs when collecting or attempting to collect from tenants. Westminster and JK2 had no right to include entirely spurious amounts in collecting and attempting to collect debts. *See Mills v. Galyn Manor Homeowner's Ass'n*, 239 Md. App. 663, 676 (2018), *aff'd sub nom., Andrews & Lawrence Prof'l Servs.*, 467 Md. 126; *Allstate Lien & Recovery Corp. v. Stansbury*, 219 Md. App. 575, 591 (2014); *see also, e.g.*, CPD Ex. 331 at Westminster 000572, 76. Accordingly, the evidence establishes that Westminster and JK2 were collecting and attempting to collect court costs with knowledge that they lacked the right to do so, from May 2015 through November 2017.

III. Unfair and Deceptive Leasing and Fee Practices

A. Application Fees and Holding Fees (Am. SOC ¶¶ 99(a), 101(b), 103)

In the Amended SOC, the CPD charges that the Respondents' application fee practices were deceptive and unfair in violation of sections 13-301(1), 13-301(3) of the Act. Specifically,

it alleges that the Respondents charged fees during the rental application process and expressly represented to consumers that they would only retain as much of the fee as they expended in processing the application, but that the Respondents instead retained excess application fees, as well as fees they denominated as holding fees, and failed to advise consumers of the excess amounts being retained. Am. SOC, ¶¶ 23-27, 57-62, 99(a), 101(b), 103.

The Respondents argue that Westminster and JK2 are not landlords and, thus, are not subject to the application fee law and further argue that the owner Respondents, as the landlords, incurred additional employee costs that the CPD did not consider in its allegation that the excess application fees were retained. Thus, they contend that the CPD has failed to prove they retained excess application fees. As to the holding fees, the Respondents contend that such fees are not within the scope of the application fee law. Finally, they assert that even if the holding fees could be considered to fall within the scope of the application fee law, there was insufficient evidence concerning the circumstances in which a holding fee would not be returned.[72]

1. Failure to Return Excess Application Fees

Underlying the CPD's charges is section 8-213 of the Real Property Article, which governs application fees. It provides, in pertinent part:

> (1)(i) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by § 8-203(a) of this subtitle, and these fees exceed $25, then the landlord shall return the fees, subject to the exceptions below, or be liable for twice the amount of the fees in damages.

[72] The Respondents also note that application fee law is not enumerated in section 13-301(14) of the Act, the CPD has not been delegated enforcement authority over the application fee law, and the application fee law provides its own remedies; thus, they contend that a violation of the application fee law cannot constitute a violation of the Act. This argument was fully addressed and rejected in connection with the various motions to dismiss and will not be revisited. *See Garrity v. State Bd. of Plumbing*, 447 Md. 359, 363-66 (2016) (noting that the CPD had taken action against respondent for behavior that also violated title 12 of the Business Occupations and Professions Article); *Consumer Protection Div. v. Consumer Publishing Co., Inc.* 304 Md. 731 (1985) (noting the CPD has "broad powers to enforce and interpret the [Act]").

(ii) The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not actually expended on behalf of the tenant making application.

Real Prop. § 8-213(b) (2015).

The application forms in evidence reflect that the Respondents, as required by section 8-213, advised consumers that application fees in excess of $25.00 that were not actually expended on behalf of the tenant making the application would be returned to the tenant. West. Ex. 66A at WM RRPD 227449; *see also* Real Prop. § 8-213(a)(2). The CPD established that the Respondents routinely charged more than $25.00 in what they denominated as "application fees," the Respondents did not track the amounts actually expended, and they did not return amounts to consumers as unexpended application fees, despite the representations in their applications.

The evidence presented is convincing that the Respondents' standard application fees were not based on the costs incurred in connection with applications, but instead were based on what the market would bear. When the initial increase in application fees was made shortly after JK2 took over management of the properties from Sawyer, the increase was based on a market-survey, and there was no indication that a cost-analysis had factored in the consideration. There was no suggestion at that time that the general increase, or the higher rate at Princeton Estates, was due to application costs that were previously not being recouped. At her deposition, Ms. Miller testified the increase was due to large number of cancellations at certain properties[73] and

[73] Applications generally were not processed until the application fee was paid, absent special circumstances or a promotion. CPD Ex. 340-D at CPD No. 047376, 80.

because the market would bear it. CPD Ex. 340-D at 047375-76. She estimated that the cost to have the vendor process lease applications was "on an average, probably about $20." CPD Ex. 340-D at CPD No. 047371-72. Ms. Marine testified that she did not believe the background and credit check costs ever exceeded $25.00. As set out in the Findings of Fact, the documents establish that the vendor costs were often substantially less than $25.00.

Further, the employee time and costs were not tracked for consideration,[74] the Respondents only had guesstimates as to how much time was spent on the application process. CPD Ex. 340-D at CPD No. 047371-74. Reimbursement of the employees' salary was an expense that was consistently incurred regardless of the number of applications handled or the extent of other work performed by the employee—such as developing prospects, explaining the lease to tenants at move-in, conducting walk-throughs at move-in, surveying or visiting competitive communities, and training. CPD 3-D-2, §§ 5(b)(1) and 8(c); CPD Ex. 340-D at CPD No. 047366, 047374, 047575-77, 047606; CPD Ex. 340-E at CPD No. 047822-23; Test. Stephanie Brown; Test. David Chesley. In these circumstances, the cost of reimbursement for employee salaries, where those costs have not been tracked or allocated to the application process or to the individual application, cannot be considered as part of the costs actually expended by Respondents on behalf of the tenant making the application.

By representing to consumers that they would refund any application fees over $25.00 if the funds were not actually expended on behalf of the tenant while routinely failing to follow through on this representation, the Respondents made false statements with the effect of misleading or deceiving consumers. The information is important to consumers; the Legislature has recognized this by requiring this information be explained to consumers in the lease. Real

[74] CPD Ex. 340-D at CPD No. 047371-74.

Prop. § 8-213(a). Further, as the Respondents knew, the finances of its applicants were often precarious enough that applicants had difficulty coming up with both an application fee and holding fee in the same month, CPD Ex. 240-D at CPD No. 047349-51, thus the circumstances under which a portion of the funds would be returned would be important to consumers. Accordingly, the CPD established that the Respondents violated section 13-301(1) the Act. The CPD likewise established that the Respondents violated section 13-301(3) of the Act by failing to disclose to consumers when there was an excess amount collected and retained.

The CPD also established its charge of unfair practices in violation of section 13-303 of the Act. The documented costs expended on applications were frequently less than $25.00 per application and were sometimes as little as $8.42 per application. Proposed Finding of Fact No. 92. Yet, the Respondents were consistently charging and retaining $35.00 or more per application in violation of section 8-213 of the Real Property Article. While the financial harm to an individual consumer would likely be small, the practice continued over a period of three to five years, depending on the Property at issue, and occurred at all of the Properties. As explained in *Inc21.com*, "an act or practice can cause 'substantial injury' by doing a 'small harm to a large number of people[.]'" 745 F. Supp. 2d at 1004. In addition, section 8-213 of the Real Property Article is a remedial law designed for the protection of tenants and providing a penalty that was not available at common law. *See Accusearch, Inc.*, 570 F.3d at 1194-95 (observing, "violations of law may be relevant to the unfairness analysis," and explaining that the "FTC may proceed against unfair practices even if those practices violate some other statute that the FTC lacks authority to administer). Given the aggregate financial injury and the violation of a remedial statute, I find that the CPD has established an unfair practice that is likely to cause a substantial injury. The consumer would have no idea of the amounts charged to the Respondents for

processing the application or that the Respondents' actual practice was contrary to representations in the application that fees in excess of $25.00 would be returned if not expended on behalf of the applicant. Thus, the injury was not reasonably avoidable by consumers. There was no countervailing benefit to consumers or competition.

2. Holding Fees

The CPD also asserts that the holding fees collected by the Respondents were also subject to section 8-213 of the Real Property Article as application fees. Am. SOC ¶ 59. The evidence established that the holding fees served a distinctly different purpose, reserving a specific unit so that it would be taken off the market for the consumer pending finalization of the lease documents and move-in. The evidence further established that holding fees were primarily collected only after an application was approved to lease a unit.[75] Finally, if a tenant moved in, the holding fee was applied to the security deposit.

The context of section 8-213 of the Real Property Article, which focuses on fees expended in processing a lease application, does not squarely apply to a holding fee. *See also* West. Ex. 274 at 2 ("Landlords use application fees to cover the costs of processing an application, such as running a credit check."). Further, the CPD has not established a longstanding policy of interpreting section 8-213 as applying to holding fees. To the contrary, as the Respondents point out, the CPD's own materials distinguish a holding fee from an application fee, stating:

> If, when filling out an application, a landlord asks for money to hold an apartment, it may not be clear that you are being asked for a security deposit. It's not wise to pay a security deposit until your application has been accepted and you are signing a lease. Before you pay any money, you should confirm with the landlord whether it will be refunded if you decide not to rent or if the landlord

[75] When a holding fee was collected in advance of the application being approved, it was returned if the applicant was declined.

> decides not to rent to you. Ask the landlord to write that information on a receipt. This could save you from having to fight to get the money refunded later.

West. Ex. 274 at 2-3 (emphasis added). Security deposits are expressly excluded from the scope of section 8-213. Real Prop. § 8-213(b)(1)(i).

Charging a holding fee does not violate section 8-213 and the charging of a holding fee to a tenant is not otherwise within the scope of traditional concepts of unfairness and there was no unfair trade practice in violation of section 13-303 of the Act. Likewise, the CPD did not establish, with respect to the holding fees, that the Respondents violated subsections 13-301(1) or (3) of the Act—the charges in that respect were dependent upon the characterization of holding fees as application fees. *See* Am. SOC, ¶¶ 99(a), 101(b).

B. Credit Balance Write-Offs (Am. SOC ¶¶ 101(d), 103)

The CPD charges that all of the Respondents violated section 13-301(3) of the Act and engaged in unfair practices in violation of section 13-303 of the Act by retaining small credit balances on tenants' accounts and by failing to disclose to tenants that they have done so. Am. SOC ¶¶ 83, 84, 101(d), 103. The Respondents do not dispute that the write-offs occurred. Instead, they advocate for a finding that this was simply a matter of individual and *de minimus* employee errors and was not a matter of practice.

The CPD submitted documentation, credibly supported by the testimony of its investigator, Diana McGee, showing that between September 2012 and into 2018, tenant credit balances were at times written off by Westminster and JK2 at Carriage Hill, Charlesmont, Cove Village, Commons, Dutch Village, Essex Park, Fontana, Gwynn Oaks, Hamilton Manor, Harbor Point, Highland Village, Pleasantview, Princeton Estates, Riverview, and Whispering Woods—all the Properties, save Carroll Park and Morningside. Despite the Respondents' contention that these were isolated mistakes and should not be considered violations of the Act, the evidence is

to the contrary. Small credits were written off 1,545 times across those 15 properties, this was not simply a handful of isolated incidents.

Moreover, as the CPD points out, training material from Sawyer specifically mentions writing off small credits and cautions employees to be careful as the tenant could be watching. CPD Ex. 340-B at CPD No. 047308-309; *see also* CPD 340-E at CPD No. 048246. While that manual predated JK2's and Westminster's management of the Properties, the evidence was that the staff was largely unchanged in the transitions from Sawyer, to JK2, to Westminster. At her deposition, Ms. Webb identified the manual as being "the policy and procedure manual we had at Sawyer that rolled into Westminster." CPD Ex. 340-E at CPD No. 047898. Thus, the policy manual is indicative of the training that those employees had received and the understandings they were operating under, including the Regional Managers.

Further, the testimony from Ms. Webb, Ms. Miller, and Ms. Marine, coupled with the number and varying types of improper charges that went undetected, leads to the inescapable conclusion that Westminster and JK2 did not employ adequate oversight of the bookkeepers responsible for making entries on the tenant ledgers. Indeed, Mr. Febo testified that one of the strengths that Westminster saw in its Regional Managers (both of whom had worked at Sawyer) was their ability to follow orders and be "good soldiers" who followed past protocol without questions. He further acknowledged that since he started his employment with Westminster, as Chief Operating Officer, in January 2019, he implemented the necessary policies and controls, including additional supervision and procedures, to limit errors—something which surely could have been done by those in charge at an earlier point in time.

The practice of writing off small credits owed to tenants is equivalent to unauthorized charges to consumers and the analysis applied to the agent fees and court costs applies with equal

force here. JK2 and Westminster listed in their leases the charges that tenants would incur but did not disclose to tenants that credit balances would be written off and retained by it, rather than refunded. The credit balances were removed from tenant ledgers by reflecting a counter "charge" or "write off." This had the tendency to deceive consumers as to the nature and basis for the entry, which aided the practice in continuing unabated for years. That the practice both continued for years and was frequently employed against the same tenant on multiple occasions without detection further demonstrates that the practice had a tendency to deceive consumers. Certainly, the fees and circumstances under which a landlord intends to charge a tenant are material to a consumer in making the choice of whether to enter into a tenancy. Indeed, Westminster and JK2 recognized the importance to tenants of the financial aspect, stating, in the Westminster handbook: "A common question the prospect will first ask is, 'How much are your . . . apartments?' Of course, price is a determining factor for many prospects . . . ." CPD Ex. 340-E at CPD No. 048220 (first alteration in original). The CPD has established the charge in paragraph 101(d) of the Amended Statement of Charges that the practice was deceptive in violation of sections 13-301(3) and 13-303 of the Act.

The practice is likewise unfair. There was no basis for writing off credits due to consumers and there was no notice to consumers that small credits would be retained by Westminster or JK2. It must be noted that many of the write-offs were excessively minimal, on their own—many instances involved as little as one cent, though some as much as $5.00 to $10.00. Despite the extremely minimal nature of some of the credit write-offs, a substantial injury may be shown by a small harm to a large number of people. *Inc21.com*, 745 F. Supp. 2d at 1004; *Devine Seafood, Inc. v. Attorney General*, 37 Md. App. 439 (1977) (finding a violation of the Act based where merchant at Lexington Market regularly overcharged consumers by 10¢

per pound). This unfair practice occurred at least 1,545 times impacting at least 823 tenants, in the total amount of at least $2,465.24. Moreover, as a result of their credits repeatedly being written off, some tenants lost total amounts that were surely not insignificant to them. For instance, Iris Perdomo, a tenant at Hamilton Manor, lost $44.77; Lashawna Hall, at Dutch Village, lost $32.00; Holly Gover, at Charlesmont, lost $32.16; Oluchi Mochan, at Carriage Hill, lost $30.00; Fabian Carabantes, at Hamilton Manor, lost $26.05; Tamia Copes, at Essex Park, lost $20.20; and Regina Webster, who received Section 8 housing assistance, lost $17.12. The injury was not reasonably avoided by consumers—as noted above, the practice was not disclosed in the leases and the description as a write-off or charge did not shed light on the fact that a credit owed to a tenant was being eliminated. *See also Inc21.com*, 745 F. Supp.2d at 1004 (declining to place burden on unsuspecting consumers to detect and dispute unauthorized charges). The practice of writing off small credit balances provided no countervailing benefit to consumers or to competition.

Thus, by writing off small credits owed to tenants, JK2 and Westminster engaged in both deceptive trade practices in violation of sections 13-301(3) and 13-303 of the Act and unfair practices in violation of section 13-303 of the Act. Am. SOC ¶¶ 101(d), 103.[76]

C. Calculation of Late Fees & Initiation of Summary Ejectment for Non-Rent Charges (Am. SOC ¶ 103)

The CPD further charges that the Respondents violated section 13-303 of the Act by charging excessive late fees, misapplying rent payments to trigger late fees, and calculating their 5% late fees on the basis of non-rent charges, in violation of section 8-208(d)(3) of the Real

[76] The SRH Respondents point out that its properties experienced few or no such errors, depending on the property, and specifically argue that each property should be treated separately. As set out above, the owner Respondents are vicariously liable under a principal-agent theory; thus, to the extent a deceptive or unfair practice employed by JK2 or Westminster impacted a specific owner Respondent's property, that owner Respondent is vicariously liable therefor. The Agency has reserved the issue of appropriate sanctions for its internal decisionmaker.

Property Article and section 13-158 of the Prince George's County Code of Ordinances.[77] Am. SOC ¶¶ 33-36, 63-65, 99(b), 103.[78] Subsection 8-208(d)(3)(i) of the Real Property Article states: "A landlord may not use a lease or form of lease containing any provision that . . . [p]rovides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent[.]" *See* Real Prop. § 8-208(d)(3)(i) (2015 & Supp. 2020).[79] The CPD asserts that the Respondents violated this provision, and the Act, both by failing to account for monthly rent concessions when calculating the 5% late fee and by using a fixed monthly rent rate that was higher than provided for in the lease when calculating the 5% late fee. Further, the CPD takes issue with the Respondents' practice of including charges such as court fees, agent fees, and parking fees within their lease definition of "rent" and calculating the 5% late fee based in part on such charges.

The Respondents observe that allocating payment to the oldest balance first is a common and long-standing accounting practice, is not prohibited by the Real Property Article, and is consistent with the lease terms and its definition of "rent." Further, they argue that there is no substantial injury, as late fees are authorized by statute; that any harm is reasonably avoidable, because the provision is disclosed and, thus, consumers have the information to enable them to decide to decline to enter into a lease; and that there is a countervailing benefit, as the practice incentivizes delinquent tenants to pay their rent.

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[77] Section 13-158 of the Prince George's County Code of Ordinances limits the late fees a landlord may charge, not to exceed 5% of the total monthly rental payment.

[78] Although paragraph 99(b), charging that this was deceptive, was previously dismissed (as was the charge under ¶ 101(b)), this same basic conduct was incorporated into the charge of unfair practices, in violation of section 13-303 of the Act. Paragraph 99(b) is cited solely as it illuminates the charge in paragraph 103.

[79] Although this statute was amended during the operative time period, the revisions are not of particular relevance to this analysis. For convenience, I cite to the current version of the statute.

1. Use of Monthly Rent that Exceeded Monthly Market Rent in Lease

To the extent the CPD's claim of unfair practices under the Act is based on an assertion that in calculating the 5% late fee the Respondents used a base market rent that was more than specified in the particular tenant's lease, the charge fails. By the parties' stipulations, there were 8,760 units at the Properties under management; each leased unit would have a monthly entry for rent in the respective tenant's ledger—a total number of ledger entries that could approach or exceed 100,000 per year (depending upon occupancy rates). The CPD's charges span from 2012 to the present—potentially resulting in upwards of three quarters of a million ledger entries for monthly rent. Though certainly the number of times late fees were calculated would be but a percentage of that number, it would still be a significant number. *See, e.g.,* West. Ex. 287A at CPD No. 004208, 004223, 004228, 004262, 004264, 004277 (reflecting that nonpayment of rent suits were filed for, at times, 200 or more units per month out of 806 total units) Within this large potential universe, and despite commencing its investigation in 2017, the CPD has identified just two entries in which a tenant was charged late fees based on a stated market rent that was higher than provided for in the lease. The incidents did not involve the same tenant or the same apartment complex and occurred months apart.

As the CPD has noted, a practice may be both deceptive and unfair, or it may be unfair without being deceptive. The Act sets out specific representations, acts, and omissions that constitute unfair, abusive, or deceptive trade practices. Com. Law § 13-301. Section 13-303 of the Act prohibits the acts and omissions specifically set out in section 13-301, additionally it more generally prohibits an "unfair, abusive, or deceptive trade *practice*." Com. Law § 13-303; *see also* Com. Law § 13-102(a)(1), (b)(3). This general prohibition on unfair practices is at issue here, as the deception-based charges under section 13-301 were previously dismissed.

The CPD repeatedly emphasized that it was bringing a pattern and practice case to advance the public's interest and benefit.[80] The evidence failed to establish that the Respondents engaged in a policy, procedure, or course of either charging consumers a higher rate of market rent than provided for in the lease or calculating late fees using a higher rate of market rent than was provided for in the lease. There was no evidence of routine acts or ongoing wrongful conduct in that regard. The calculation of a late fee based on a rental amount contrary to what was provided for in the lease is not so closely related to the other late fee concerns raised by the CPD that it could be considered part of the same practice. Two instances over a course of years, and thousands of units, does not show a practice or any likelihood of a repetitive or recurring practice. Two instances do not establish a broad impact on consumers or even a likelihood of a broad impact on consumers. The evidence brought forward by the CPD establishes only that in two isolated instances, a mistake was made that resulted in a minimal increase in the late fee charged. This was set out in the records to which the tenant had access.[81] The CPD failed to demonstrate an unfair practice that had any likelihood of causing a substantial injury, even in the aggregate, as would be required to make out a charge of unfairness.

2. Calculating Late Fees Without Considering Rent Concessions

At least 50 times between April 2015 and October 2019, JK2 and Westminster calculated a tenant's 5% late fee based on a monthly rent that did not take into consideration the tenant's rent concession—that is, the charge was more than 5% of the rent due for that period. *See* Real Prop. § 8-208(d)(3)(i); Prince George's Cty. Code, § 13-158. Notably, the practice is contrary to

[80] Distinct from a single consumer filing suit seeking damages incurred as the result of a single, specific violation.
[81] I previously dismissed the deceptive practices claim asserted in paragraph 99(b) of the SOC, on the grounds that there was no deception, as the CPD's complaint came down to the late fee practices being in accordance with the lease provisions. *See also Miller v. Pacific Shore Funding*, 224 F. Supp. 2d 977 (D. Md. 2002). At that time, the CPD did not protest that it was also complaining that the Respondents were charging amounts that plainly exceeded the amount provided for in the lease.

the remedial provisions of section 8-208(d)(3)(i) of the Real Property Article, under the only plain and reasonable reading of that statute, and is thus unfair. *Accusearch, Inc.*, 570 F.3d at 1194-95; *Legg*, 100 Md. App. at 766-68. Although individual amounts may have been small, the evidence established that the practice is likely to cause substantial injury to consumers; the practice was recurring, and numerous tenants were impacted by this on more than one occasion. The practice continued to occur at least until October 2019—nearly two years after the CPD began its investigation and just weeks before it filed the SOC. *See* West. Ex. 206B at 3.

Moreover, in an August 6, 2015 email chain, Ms. Francke emailed an address identified as "Yardi Support" to advise that the late fees had not yet been assessed for Commons. The reply to Ms. Francke, from Candice Ward, seemingly a vendor assisting with the Yardi database, noted:

> [I]n MD especially, <u>they only charge late fees based on NET rent (so market rent minus concessions)</u> and, only rent amounts owed for this month.
>
> For example, a resident owes $500 rent from last month, $30 filing fee from last month, a $25 late fee from last month, $500 rent from this month, and $38 for water and sewer for this month. From what I understand, only $500 should be charged the 5% late fee.
>
> The trouble with that is, in Yardi I can either charge 5% of what is owed this month (which in this case would be $538) or I can charge 5% of the monthly scheduled rent amount (which in this case would be $500). The trouble comes in here if they only owe $250 for this month's rent and you charge them 5% of $500. Yardi also uses a GL account flag to determine if a charge gets late fees or not. Some properties say they charge late fees on water and sewer, and some say they don't. Same with filing fees, etc. This change is database wide, so I can't do that for just certain properties.
>
> Hence my dilemma! That being said, the Commons batch [of late fees] is in the system as unposted, and I can either post it for you, knowing all of the above, or we can remove it and have the PM run them manually. . . .

CPD Ex. 340E at Ex. 7, CPD No. 048123-25 (emphasis added). Despite this thorough explanation of the concerns with the late fee charges, Ms. Ward was directed to post the late fees. *Id.* at CPD No. 048123. Beyond reflecting an overall cavalier attitude toward imposing only

legitimate fees on tenants, the response further supports a finding that Westminster and JK2's practices in this regard were likely to result in substantial harm. In any event, the continuing nature of the practice separately demonstrates the likelihood of substantial harm.

The practice is not reasonably avoidable by consumers. It is relevant here, too, that the practice is contrary to a remedial law designed for the protection of residential tenants. Additionally, the lease does not make plain that late fees would be charged without regard to rent concessions, and it is reasonable to expect that a consumer presented with the lease and then offered a rent concession would not understand that to be the case when determining whether to enter the lease. Further, as demonstrated at the hearing, the ledgers were difficult for tenants, and at times even for counsel,[82] to comprehend. In any event, the Legislature determined it was necessary to protect tenants from this type of harm; the Respondents failed to comply with a remedial law. In these circumstances it would be contrary to the remedial aim of the statute to put the burden on the tenant of ferreting out mischarges. *See also Inc21.com*, 745 F. Supp. 2d 975 (2010). Finally, there is no countervailing benefit to consumers or competition from this practice.

3. Calculating Late Fees Based on Amounts other than the Balance of the Monthly Rental Installment & Initiation of Summary Ejectment based on Charges Other than the Monthly Rental Installment

The Respondents' leases define "rent" to include more than the fixed monthly rent installment; and, accordingly, the Respondents have interpreted "rent" to include charges such as court costs, agent fees, utility bills and parking fees. Additionally, the Respondents allocate rental payments to the oldest balance first, meaning that a monthly rental payment may go first to charges other than the traditional monthly rent. When a tenant is late paying the rent in full, it is

[82] I note this not as commentary on counsel, but as a reflection on the difficulty an average consumer may have in understanding the tenant ledgers.

the Respondents' practice, after a short grace period, to impose a 5% late fee on the tenant, up to the amount of the monthly rental installment set out in the lease. If the "rent" has not been paid in full by the fifth day of the month, the Respondents thereafter commence summary ejectment proceedings under section 8-401 of the Real Property Article.

The CPD takes issue with the Respondents' expansive definition of rent and its allocation of the monthly rental payment to non-rent charges. It notes that section 8-208 of the Real Property Article precludes the use of a lease term that "[p]rovides for a penalty for the late payment of *rent* in excess of 5% of the amount of *rent* due for the rental period for which the payment was delinquent[.]" Real Prop. § 8-208(d)(3)(i) (emphasis per the CPD). The CPD characterizes the Respondents' practice as charging 5% late fees based on a balance that consists of charges other than the monthly rent—such as court costs and parking fees. Similarly, section 8-401 of the Real Property Article authorizes a landlord or its agent to institute summary proceedings to repossess the premises when "the tenant or tenants fail to pay the rent when due and payable[.]" *Id.* § 8-401(a) (2015 & Supp. 2020). The CPD charges that these practices are in violation of the Act. Am. SOC ¶¶ 63-65, 67, 73, 103.

The Respondents disagree with the CPD's position that the term "rent" includes only the monthly rental installment and not charges and fees. The Respondents further note that their leases disclose that payments will be allocated to the oldest balance first and, thus, their practice is consistent with the leases. Further, they suggest that allocating payments in this manner means that the outstanding balance does not include older non-rent charges, as a matter of practice. The logic is that the payment was allocated to the older charges first, and the outstanding amount (up to the amount of the current monthly installment) would then be viewed as consisting of only the current monthly rental installment, or a portion thereof.

The Respondents contend that their late fee and summary ejectment practices are in keeping with their lease provision on the allocation of payments from tenants and note that this is spelled out in their leases. They note that this is a common accounting method to allocate a payment first to the oldest balance. The Respondents argue that other obligations (such as court costs, etc.) are defined under the lease as "rent," and thus there is no impropriety in allocating a monthly rent payment to those charges as well. They argue that the decision in *Sager v. Housing Commission of Anne Arundel County*, 957 F. Supp. 2d 627 (D. Md. 2013), does not prohibit them from allocating payments in this manner and that the CPD did not adduce evidence of the practice ever resulting in a summary ejectment proceeding being initiated against a tenant who did not owe at least some part of the monthly rental installment. Accordingly, the Respondents assert that the CPD has not established that either their assessment of late fees or their summary ejectment practices are unlawful or otherwise unfair in violation of the Act.

I previously rejected the Respondents' argument concerning the meaning of the term "rent." The Respondents, once again, seek to distinguish *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016), and rely on the decisions in *University Plaza Shopping Center, Inc. v. Garcia*, 279 Md. 61 (1977), *Shum v. Gaudreau*, 317 Md. 49, 63-65 (1989), and *Ben-Davies v. Blibaum*, 457 Md. 228, 271 (2018), as well as the fact that the Legislature has not redefined the term "rent" in the intervening years. Their arguments are no more persuasive this time around.

In *Garcia*, the landlord filed a complaint for summary ejectment after the commercial tenant failed to pay charges due for work necessary to adapt the premises to the tenant's use. 279 Md. at 63-64. In applying section 8-401 of the Real Property Article, the Court of Appeals held that "charges which may be definitely ascertained, paid by the tenant, and going to his use, possession and enjoyment of rental commercial premises, are rent if such was the intention of the

parties." 279 Md. at 67. Significantly, the Court expressly limited its holding to commercial properties and explained why it was doing so, stating:

> We limit our holding at this time to premises leased for commercial purposes as distinguished from residential use. We are of the mind that in the negotiation of a lease of premises to be used for a commercial enterprise there is little likelihood of successful overreaching on the part of the landlord and of coerced adhesion on the part of the tenant, so that the final agreement would fairly represent the actual intention of the parties. We expressly leave open the question whether similar charges under a lease of residential property would be rent. In any event, the matter is best left for determination on a case to case basis, depending upon the provisions of the lease, express or implied, verbal or written, and, where appropriate, the attendant circumstances.

Id. at 67 (emphasis added).

Subsequently in *Shum*, the Court again held that where the parties to a commercial lease define costs as rent, those costs may be treated as such under section 8-401 of the Real Property Article. 317 Md. at 60-64. As in *Garcia*, *supra*, the Court noted that it was not addressing whether the same would hold true for a residential lease. *Id.* at 63.

In 2016, after both *Garcia* and *Shum*, the Court decided *Lockett*, *supra*; that decision supports limiting the holdings of those earlier cases to commercial leases. There, the Court considered both principles of statutory interpretation and the remedial purpose of the legislation in concluding that "rent," within the meaning of section 8-208.1, referred to "the periodic charge for use or occupancy of the premises" and did not include various other charges that a landlord may define as additional rent. *Lockett*, 446 Md. at 418-25. Specifically, although the statute lacked a definition of "rent" and the leases at issue contained a broad definition that included various charges, the Court held:

> The ordinary meaning of "rent," the statutory context, and the remedial purpose of the statute all lead to the conclusion that the term "rent" in [Real Property Article] section 8-208.1 denotes the periodic charge for use or occupancy of the premises, but not the various other payments that the tenant may owe to the landlord from

> time to time, even if the lease characterizes them as "deemed rent" or "additional rent."

Id. at 425.

The Court's opinion in *Lockett* is particularly persuasive as it was addressing the use of the term "rent" in section 8-208.1, a part of the same subtitle as section 8-208. The Court considered the statutory scheme as a whole; it referred to sections 8-203, 8-212.1, and 8-212.2 and noted that each of those sections requires a clear and specific definition of rent. *Lockett*, 446 Md. at 422-23. It would be illogical, and contrary to the principle that statutory schemes be interpreted as a whole, to employ a different meaning of "rent" to section 8-208, absent clear direction from the Legislature.

Finally, I address the Respondents' argument that the Legislature's intent to allow the parties to a lease to employ broad definition of rent, per *Garcia*, can be divined from its failure to adopt a specific, narrower definition of rent. The Court of Appeals expressly carved out residential leases from the scope of its holding in *Garcia* and it maintained that limitation in *Shum*. *See also Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016) (observing that in *Garcia*, the Court "signaled that it was less likely to defer to a lease's characterization of a particular charge as 'rent' in the context of a residential lease"). Thus, contrary to the Respondents' argument, as to the meaning of "rent" in regard to residential leases, there is little to be gleaned from the Legislature's subsequent failure to enact a specific and narrow definition of "rent." This is particularly true given the subsequent decision in *Lockett*. It would be inappropriate to draw the inference that the Respondents advocate.

Section 8-208 prohibits residential leases from containing certain provisions that are adverse to a tenant's rights, including a provision for a penalty in excess of 5% of the rent due; it is "designed to protect tenants in residential properties." *See id.* at 424. It would be contrary to

the remedial aims of the Legislature to ignore the plain and common meaning of the term rent in favor of "a broader, uncertain definition of 'rent' that includes more than the periodic sum." *Id.* at 424. Moreover, the statutory scheme must be read as a whole. Accordingly, the word "rent" in section 8-208 of the Real Property Article must be read to have the same meaning as it does in section 8-208.1: "the periodic amount paid by a tenant for use or occupancy" *See* 446 Md. at 422-24. As with section 8-208.1, this definition stands, regardless of any provisions in the lease that more broadly define the term "rent." *See id.* at 409.

Thus, I conclude that the term "rent" in section 8-208 of the Real Property Article likewise "denotes the periodic charge for use or occupancy of the premises, but not the various other payments that the tenant may owe to the landlord from time to time, even if the lease characterizes them as 'deemed rent.'" *Id.* at 425. Section 8-208 therefore allows for a penalty for the late payment of the monthly rental installment that is not in excess of 5% of the periodic amount due for use and occupancy.

The Court employed the plain ordinary meaning of the term "rent" when it interpreted section 8-208.1, *Lockett*, 446 Md. at 421, and there is no reason to interpret the term "rent" differently in the context of section 8-401 of the Real Property Article. Generally, the plain and ordinary meaning of the words of a statute control. *Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 128-30 (2000). Moreover, related statutes are to be interpreted harmoniously. *Id.* Both of those principles are served by employing the same definition of "rent" in both section 8-208 and section 8-401 of the Real Property Article. Indeed, the Court in *Lockett* observed:

> Likewise [Real Property] § 8-401 provides that a landlord may precover, for nonpayment of rent for a residential tenancy, both "late fees" and "costs of the suit" indicating that the statute treats "rent" as distinct from late fees.

Lockett, 446 Md. at 423. Allowing the term "rent" as used in section 8-401 to include charges for other fees and costs would intrude into section 8-402.1, which governs breaches of a lease other than the failure to pay rent. For all of these reasons, the same definition of "rent" must apply.[83]

The Respondents object that in light of the decisions in *Garcia* and *Shum*, *supra*, this would result in the term "rent" having different meanings under section 8-401, depending upon whether the lease was commercial or residential. The additional flexibility for commercial leases as opposed to residential leases was clearly within the contemplation of the Court of Appeals when it decided *Garcia* and *Shum*, as it expressly excluded residential leases from its holdings. More importantly, for purposes of statutory interpretation, this is not inconsistent with the statutory scheme, as a whole. The Legislature contemplated that residential leases would be subject to different considerations than commercial leases; indeed, it created a separate subtitle of the Real Property Article specifically addressing residential leases. *See* Md. Code Ann., Real Prop. § 8-201 (2015). In considering how the provisions of the Real Property Article that are applicable to leases more generally should apply to residential leases, the various provisions should be harmonized and interpreted in light of each other. *See Lockett*, 446 Md. at 422 ("We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law[.]").

In *Garcia*, the Court specifically noted that because the parties to a commercial lease are on more equal footing, it saw no reason that the parties should be precluded from negotiating a definition of the term "rent" that was broader than the traditional definition. *See* 279 Md. at 67.

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[83] Equally, there is no reason to employ anything other than the plain meaning of "rent" in interpreting "rental payment" as used in the Prince George's County Code of Ordinances. *O'Connor v. Baltimore Cty.*, 382 Md. 102 (2004) ("Local ordinances and charters are interpreted under the same canons of construction that apply to the interpretation of statutes"; "When interpreting a statute, we assign the words their ordinary and natural meaning.").

That rationale is inapplicable here. Indeed, the Court in *Lockett* specifically rejected the notion that determining the meaning of "rent" was "simply a matter of accepting whatever a residential lease defines 'rent' to be[.]" *Lockett*, 446 Md. at 421.

The Respondents' citation to *Ben-Davies v. Blibaum & Assocs.*, 457 Md. 228, 271 (2018), does not alter this analysis: it instead observed that the analysis in *Lockett* "may be relevant to the interpretation of the word 'rent' as used in a statute within Title 8 of the Real Property Article [but] does not address the issue of whether judgments like those in the instant case constitute 'money judgment[s] for rent of residential premises' under [Courts and Judicial Proceedings Article] § 11-107(b)." (Emphasis added). While the Court may not have had the opportunity to decide the precise issue raised here, I must be guided by its prior decisions, which, under the present state of the case law, point clearly and undeniably toward the narrow and plain meaning of the term "rent."

Even if I were to apply *Garcia*, under the facts at hand the Respondents would fall short in their effort to bring their residential leases within the Court's holding that the parties to a commercial lease could negotiate a broader definition of rent. The Court in *Garcia* noted that whether other charges could be considered rent was subject to a case by case determination "depending upon the provisions of the lease, express or implied, verbal or written, and, where appropriate, the attendant circumstances." 279 Md. at 67. Unlike in *Garcia*, the leases at issue here are not leases that were negotiated between two commercial parties on similar footing. *See* 279 Md. at 67 (noting, "in the negotiation of a lease of premises to be used for a commercial enterprise there is little likelihood of successful overreaching on the part of the landlord and of coerced adhesion on the part of the tenant, so that the final agreement would fairly represent the actual intention of the parties"). Rather, the leases here are form leases presented by an

experienced property management company to residential tenants who had no ability to alter the specific terms of the lease.

The allocation clause in the form leases must also be considered. The Respondents argue, with some merit, that it is typical to allocate rent payments to the oldest balance first; there may well be very good reasons for doing so. Nonetheless, as explained in *Sager*, 957 F. Supp. 2d 627, a decision that is now nearly a decade old, there is a substantial reason not to permit the allocation of rent payments in this manner. Despite some factual differences, the decision in *Sager*, *supra*, is instructive and the pertinent portions of its analysis are not limited to the public housing sector.

In *Sager*, a public housing tenant was summarily evicted for failure to pay rent. The tenant brought suit, contending that the housing agency's decision to allocate her monthly rent payment to outstanding maintenance fees and then summarily evict her for failure to pay rent violated the United States Housing Act, the Brooke Amendment to that act, section 8-208 of Maryland's Real Property Article, and the Consumer Protection Act. The court entered summary judgment in the tenant's favor, concluding, among other things, that the lease's allocation clause violated section 8-208(d) of the Real Property Article and violated the Consumer Protection Act as an unfair practice. *See* 957 F. Supp. 2d at 634-37, 641-43.

The lease at issue in *Sager* contained a payment allocation provision that read:

> Any payment by the Tenant to the Landlord under this Lease which is not specifically designated, in written notation, as "rent" or "for rent" may be applied at the Landlord's option, as follows: first to outstanding maintenance charges and/or late fees and/or legal fees and secondly to rent.

957 F. Supp. 2d at 630. As the court noted, and much like the allocation clause at issue here, the "[t]his clause thus allows [the landlord] to apply undesignated payments from a tenant first towards outstanding maintenance charges, late fees, or legal fees, and then to rent." *Id.* at 629.

As a result, even where a tenant has tendered the full amount of the monthly rent, the tenant's payment may be allocated to other charges and leave a portion of the rent unpaid. Because a portion of the rent remains unpaid, the landlord can then utilize the summary ejectment process, an expedited process designed solely for failure to pay rent, as opposed to the more developed process provided for other breaches of a lease.

In holding that the allocation clause was invalid under Maryland law, the court relied on section 8-208(d) of the Real Property Article, which prohibits a residential lease from containing a provision by which the tenant agrees to waive any right or remedy provided by law. *See* Real Prop. § 8-208(d)(2). The tenant argued that the allocation clause effectively allowed the landlord to circumvent section 8-402.1 of the Real Property Article—which provides for fuller procedures when a tenant fails to pay non-rent charges and requires a showing that the tenant's breach "was substantial and warrants an eviction"—and instead institute summary ejectment proceedings under section 8-401, which are expedited in nature and limited to the calculation of the rent due. *See* 957 F. Supp. 2d at 634-36; *see also* Real Prop. §§ 8-402.1(b)(1), 8-401; *Shum*, 317 Md. at 60 ("It would be contrary to the purpose of the summary ejectment statutory scheme to allow recovery of general contract damages, with possible complexities of proof, in a summary ejectment action."). Judge Gauvey agreed, stating: "A rent-paying public housing tenant has an unassailable, not conditional, right to the procedural protections relevant here." 957 F. Supp. 2d at 635.

The court explained that by allocating what were clearly payments of the monthly rental installment to other charges first, the allocation clause denied the tenant the procedural protections provided by section 8-402.1:

> Through use of the allocation clause, however, [the housing authority] diverted [the tenant's] rental payment towards maintenance charges, exposing her

> to a non-payment proceeding under § 8–401. As a result, [the tenant] was denied her right to pre-trial discovery guaranteed by 8–402.1. She was also denied the opportunity to make the case that her alleged violations were not a substantial breach that warranted eviction.[] These rights are not insignificant: a tenant with a relatively small disputed maintenance debt could make a reasonable case that the debt was not a substantial breach of lease.[] In short, these rights can mean the difference between a tenant maintaining her home and eviction.
>
> Accordingly, the Court finds that the allocation clause operates as a waiver of rights in violation of [Real Property] § 8–208(d). Under state law a tenant has the right not to be summarily evicted except for failure to pay rent. While the lease provision does not totally waive a tenant's right to procedural protections, it waives the tenant's unconditional right to such protections. A rent-paying tenant should not bear the burden of ensuring that she is granted rights guaranteed under state law. Indeed, the sole purpose of a statute such as § 8–208(d) is to ensure that a tenant is not led to waive guaranteed rights in a lease. This is exactly what the allocation clause achieves. As such, the clause is invalid under § 8–208(d).

957 F. Supp. 2d at 636-37 (emphases added). This rationale is fully applicable to the allocation clauses at issue here. Although in *Sager* the court considered the definition of "rent" under federal law, that definition is consistent with the definition set out in *Lockett*, *supra*, as "the periodic amount paid by a tenant for use or occupancy." *See* 446 Md. at 422-24. That there is an unconditional right to the protections provided by the law is no less true for other tenants—the Legislature drew no distinction in sections 8-208, 8-401, or 8-402.1 between tenants in public housing and tenants living in privately owned and operated housing.

The allocation clauses do not validly permit the Respondents to allocate monthly rental payments to late fees and charges. Thus, the Respondents were effectively imposing a 5% late fee on charges and fees that were not part of the fixed monthly rent installment specified in the lease. Section 8-208(d)(3) does not allow for that. Likewise, by instituting summary proceedings for amounts that included fees other than the monthly rental installment, they were going beyond the provisions of section 8-401 and effectively evading section 8-402.1 of the Real Property Article. It is evident that the Respondents' practices are unfair and likely to result in substantial injury to consumers—these practices are inconsistent with the remedial provisions of

section 8-208(d)(3), led to financial harm (the imposition of additional late fees), and ultimately alter the basis on which summary ejectment proceedings can be filed and deprived tenants of the rights and procedural protections provided by section 8-402.1. *See Legg*, 100 Md. App. at 769-70; *see also Sager*, 957 F. Supp. 2d at 643 ("the harm here is substantial: the threat, to a rent-paying tenant, of summary ejectment for non-payment of rent"). The CPD need not establish an actual injury for its enforcement action.

There is no countervailing benefit to consumers or competition from the Respondents' practice. The Respondents assert that the practice encourages consumers to pay their obligations, but that end is already met by the allowance of a late fee provision that complies with the limits of section 8-208(d)(3)(i) of the Real Property Article.

Further, the injury was not reasonably avoidable. Westminster's form lease, broadly defining "rent," was not subject to negotiation and was used at all the Properties, a total of 8,760 units. Westminster itself has pointed out that "similar clauses [were] in use across the industry." West. Memo. at 218 (citing Sawyer Lease, CPD Ex. 158-B at 013975, ¶ 8 and 013980, ¶ 32; BLDG Lease, West. Ex. 279 at 081776, ¶ 5 and 081179-80, ¶ 27; Westover Lease, Park Holdings Ex. 5 at 005, ¶ 7 and 011, ¶ 32; Thornhill Lease, West. Ex. 49A at 045069, ¶ 5 and 045071, ¶ 28; Capstone Lease, West. Ex. 282A and 282B at 2, ¶ 3 and 3, ¶ 4). Moreover, testimony from the consumers made plain that they often had very limited housing options available to them.

Finally, the Respondents argue that even if they were not permitted to charge more than 5% of the outstanding periodic rental payment as a penalty for late payment of the rent, there is no limitation on their ability to impose a penalty for the late payment of non-rent charges. Thus, according to the Respondents, the charge fails for this further reason. The only provision in the

leases that would arguably authorize such a penalty would be the provision at issue here—which allows for a charge of 5% "of the monthly rental" as a penalty for failing to timely pay "an installment of the rent." CPD Ex. 331 at ¶ 31; *see also* CPD Ex. 332 at ¶ 31. It cannot be interpreted to authorize further penalty, regardless of how the penalty is calculated, without violating section 8-208(d)(3) of the Real Property Article. Further, the provision is unenforceable pursuant to subsection 8-208(g) of the statute.

The CPD has established its charge that the Respondents engaged in unfair trade practices in violation of section 13-303 of the Act in connection with the calculation of late fees and institution of summary ejectment proceedings.

D. Summary Ejectment Agent Fees and Court Costs (Am. SOC ¶¶ 99(d), 101(b), 103)

The CPD contends that the Respondents violated the summary ejectment law by charging tenants for agent fees and court costs that were not incurred and by charging tenants for court costs and fees that were incurred, but were never awarded by a court, and that the Respondents thereby violated sections 13-301(1), (3) and 13-303 of the Act. Am. SOC ¶¶ 66-73, 99(d), 101(b), 103.

The summary ejectment law provides for an expedited process by which a landlord may repossess its premises when a tenant fails to pay the rent due. Md. Code Ann., Real Prop. § 8-401; *see also Shum v. Gaudreau*, 317 Md. 49, 59-60 (1989). The summary ejectment law permits a landlord or its agent or attorney to file a complaint, in the jurisdiction where the property is located, seeking repossession of the property and a judgment for "rent due, costs, and any late fees." Real Prop. § 8-401(b)(1)(iv). The court then issues a summons to be served on the tenant advising that the matter will be heard on the fifth day after the filing of the complaint.

Id. § 8-401(b)(3)-(6). There are court costs and fees associated with this process. *See id.* § 8-401(b)(1)(iv). There may be agent fees as well, if the landlord utilizes an agent.

If a judgment is entered against the tenant, the tenant may still redeem the premises by timely tendering the rent and late fees determined by the court in its order to be due, along with court-awarded costs and fees. *Id.* § 8-401(c), (e). If a judgment is entered against the tenant and the tenant fails to redeem the property, the landlord may thereafter obtain a warrant of restitution to evict the tenant. *Id.* § 8-401(d). There are court costs and fees associated with the warrant of restitution as well. *See* Stipulation of Fact, No. 29.

1. Agent Fees and Court Costs that were Not Incurred

The CPD alleges that the Respondents engaged in deceptive practices when they represented to consumers that the agent fees and court costs being charged to tenants were actually incurred when they were not, that the Respondents failed to disclose that the agent fees and court costs exceed the amount that can be collected and retained; and that and that these practices were unfair. Am. SOC, ¶¶ 99(d), 101(b), 103.

The Respondents' lease agreements expressly stated that tenants would be charged, on a pass-through basis, the reasonable agent fees that were actually incurred by Respondents. *See, e.g.,* CPD Ex. 331 at Westminster 000576. Subsequently, Westminster amended its form lease to provide that tenants would be charged, on a pass-through basis, the reasonable costs of using an agent and the court costs and fees that the court required it to pay. CPD Ex. 332 at Westminster 078246.

As noted above, the Respondents do not deny that they charged tenants for agent fees and court costs that were not incurred. Instead, the Respondents contend that the fictious pass-through charges made to tenants were unintentional oversights and not a deliberate practice. The

Respondents also question the sufficiency of the evidence to establish that they were not being charged an agent fee for the period of December 2013 through June 2014 and to establish which Properties were impacted.

The evidence establishes that from December 2, 2013 through December 2017, JK2 and Westminster were not charged a $12.00 agent fee for filing writs, but nonetheless passed such a charge along to tenants. Although Westminster urges that there is insufficient evidence to establish either (1) that it was not charged a $12.00 agent fee for writs filed between December 2013 and June 2014, or (2) which Properties were impacted, West. Memo. at fn.15, its arguments lack merit.

The record evidence includes, as part of CPD Ex. 340-E, an email from Lisa Marie Francke, Senior Vice President of Real Estate for Westminster, to all of the Properties that JK2 was then managing, with each property being identified by its own email address in the address line. In the email, Ms. Francke clearly stated that "[e]ffective with the December 2, 2013 suit list" Mr. Basile's office would handle the rent court work and would not charge for writs. She emphasized: "Yup[,] writs are FREE." CPD Ex. 340-E at CPD No. 048121. Subsequently, when JK2 switched back to using Ewrit, Ms. Francke emailed the properties advising them of the change and again used the property email addresses which identify the properties at issue. The invoices from Ewrit to each of the Properties are in the record and the agreement with Ewrit is in the record and includes, as attachment C thereto, a list of the properties subject to the agreement (the 10-Pack and SRH properties). The invoices reveal that as of September 2014, Ewrit was handling the filings for the Park Holdings properties under the same fee arrangement.

The evidence produced by the CPD is persuasive that as of December 2013, JK2 was no longer incurring a $12.00 agent fee for filing writs for the Properties that were then under its

management (the 10-Pack and SRH properties). Further, there was evidence that, as of September 2014, JK2 was not incurring a $12.00 agent fee for filing writs for the Park Holdings properties. The evidence was that this fee arrangement continued for all the Properties through at least December 2017, when Westminster ceased the practice of passing this purported fee onto tenants.

The CPD presented convincing evidence that the Respondents were not incurring a $12.00 agent fee as of December 2013. The Respondents did not rebut the CPD's case with any persuasive evidence that the 10-Pack or SRH Properties continued to incur a $12.00 agent fee for writs between December 2013 and June 2014. Although Ms. Miller testified at her deposition that they "just tried [Mr. Basile's office] out on I want to say two small properties[,]" she also contradictorily testified at her deposition that the change had been difficult for the larger properties because of the manual entry that was required. CPD Ex. 340D at CPD No. 047483-84. Further, there were no invoices from Ewrit referenced to show any of the Properties continued using Ewrit instead of Mr. Basile's office and Ms. Francke's email to all of the Properties under management was clear in its directive to use Mr. Basile's office. Evelyn Hodge, the Director of Operations for Ewrit, testified that Ewrit did not file any rent court actions on behalf of any Respondents after November 2013 until June 2014.

Accordingly, I find that the CPD met its burden of proof to establish that, effective December 2, 2013 and continuing through December 2017, the $12.00 agent fee for the filing of writs was not being charged to JK2, and subsequently Westminster, for the 10-Pack properties. I further find that the CPD met its burden of establishing that effective December 2, 2013 and continuing through October 30, 3017, when the properties were transferred, the $12.00 agent fee for the filing of writs was not being charged to JK2, and subsequently Westminster, for the SRH

properties. *See also, e.g.*; West Ex. 287C at CPD No. 00627 & 006712. The CPD has further met its burden of proof to establish that as of September 2014, the waiver of the agent fee for writs applied to the Park Holdings properties as well and that this fee arrangement continued through December 2017, when Westminster stopped charging tenants an agent fee that it was not incurring for writs. As discussed above, the evidence also firmly establishes that from August 2015 through November 2017, Westminster and JK2 charged tenants at Dutch Village and Pleasantview $80.00 as a pass-through fee for court costs, even though the amount incurred was only $50.00.

The Respondents lack both a factual and legal foundation for their assertion that they should not be found in violation of the Act because JK2 and Westminster acted unintentionally when they passed non-incurred charges on to tenants. On November 22, 2013, Ms. Francke was the Senior Vice President of Real Estate for Westminster, emailed both her superior, Mr. Scheinerman, and all of the Properties then under JK2's management and emphasized that they would no longer be incurring any agent fee for filing writs. These charges were manually placed on tenant ledgers by Westminster employees at the property. The waiver of agent fees for writs was a specially negotiated and agreed-upon term when Ewrit resumed handling rent court actions for the Properties. After Ewrit resumed handling rent court matters for the Respondents in June 2014, its invoices, which were sent to the Properties, reflected no agent fees being charged for writs. Despite this, spurious $12.00 agent fees were charged to tenants as a pass-through fee on 28,276 occasions over four years. JK2 and Westminster acted with full knowledge that the fees being charged were not being incurred. *See Duckworth v. Bernstein*, 55 Md. App. 710, 722 (1983).

Similarly, although Ewrit's invoices plainly reflected that Dutch Village and Pleasantview were only incurring $50.00 in court costs for writs. Nonetheless, tenants were inexplicably being charged $80.00 in court costs. This occurred a total of 2,642 times over the course of more than two years. These circumstances do not support a finding that this was the result of isolated or inadvertent mistakes.

In any event, whether the imposition of the fees and costs resulted from a belief that they were valid is immaterial to the charges under sections 13-301(1), (3), and 13-303 of the Act. *See* Com. Law § 13-301; *Inc21.com*, 745 F. Supp. 2d at 1003; *Apple Inc.; Analysis of Proposed Consent Order to Aid Public Comment*, 79 Fed. Reg. 3804 (Jan. 23, 2014) ("[W]e follow a long line of FTC cases establishing that the imposition of unauthorized charges is an unfair act or practice.[] This basic tenet applies regardless . . . of whether a company engages in deliberate fraud."); *Golt*, 308 Md. at 11 (observing that subsection 13-301(1), (2), and (3) do not require knowledge of the falsity or intent to deceive).

The lease agreements provided for tenants to be charged, on a pass-through basis, the reasonable agent fees that were actually incurred by the Respondents. The practice of billing fictitious fees and costs that were never incurred by the Respondents is analogous to making unauthorized charges to consumers, which is a practice that has long been recognized as violating consumer protection laws as both a deceptive practice and an unfair practice under the Federal Trade Commission Act and Maryland law. *See Inc21.com*, 745 F. Supp. 2d at 1000-05; *Devine Seafood*, 37 Md. App. 439.

In *Inc21.com*, at the summary judgment stage, the court found that the FTC had undisputedly established all of the elements of a claim of deceptive practices under section 5 of the FTC Act in case involving defendants' billing consumers for internet-based products by

placing charges on their monthly phone bill.[84] The court explained that by placing the charges on consumers' bills, the defendants had made an affirmative representation that the charges were authorized by the consumer and owed by the consumer to the defendants. *See* 745 F. Supp. 2d at 1000. The court further reasoned that placement of the charges on consumer telephone bills was likely to mislead consumers, who generally operate under "the common and well-founded perception . . . that they must pay their telephone bills." *Id.* at 1001. The court found that the representation was material, noting that consumers acted in reliance on the representation and paid the additional amounts. *Id.* The court rejected the defendant's argument that they subjectively believed the charges were authorized by consumers, explaining that this was immaterial. *Id.* at 1003.

The court then proceeded to consider whether the billing of unauthorized charges also constituted an unfair practice under the FTC Act and concluded it did. *See also Apple Inc.*, 79 Fed. Reg. 3803-05. In discussing the element of substantial injury, the court observed, "while losses incurred by individual consumers may have been relatively small, an act or practice can cause 'substantial injury' by doing a 'small harm to a large number of people.'" 745 F. Supp. 2d at 1004 (quoting *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1157 (9th Cir. 2010). Turning to whether the injury was reasonably avoidable, the court noted that the unsuspecting consumers had paid the charges and had no reason to scrutinize their bills for fraudulent charges and declined to place the burden on the consumers to detect and dispute unauthorized charges. 745 F. Supp. 2d at 1004. Finally, the court observed that there was no countervailing benefit to the practice. *Id.*

Here, the CPD has established that the charging of these fees and court costs was a deceptive practice. The leases provide that consumers would be responsible only for the agent

[84] The Maryland legislature specifically directed that in interpreting and applying the Act, due consideration should be given to interpretation of the federal act by the FTC and federal courts.

fees which were incurred in connection with rent court proceedings and for court costs, but tenants were charged for fictitious fees and court costs. Placing those charges on a tenant's ledger further falsely represented to tenants that the charges actually had been incurred by the Respondents, when they had not. As with the telephone bills in *Inc21.com*, tenants commonly operate with the knowledge that they must pay the amount due or their landlord will take legal action against them, which was also spelled out in the leases. That tenants regularly paid these charges[85] reflects that the representations were material and had the tendency to mislead consumers.[86] Thus, the CPD established the violation of sections 13-301(1) and (3) of the Act.

Further, charging spurious fees is unscrupulous and within traditional concepts of unfairness. The evidence reflects that the practices of charging sham agent fees and court costs occurred thousands of times (collectively, over thirty thousand times) and thereby harmed many consumers. Some tenants incurred charges for fictitious fees that totaled hundreds of dollars. *See, e.g.,* CPD Ex. 338-A at 1 (row 25, showing $540.00 in excessive writ charges made to Derek Giles); CPD 336-F-2 at 5-6 (rows 162-79, showing $216.00 in fictitious agent fees charged to Derek Giles). Collectively, Westminster and JK2 took $411,506.00 in fictitious fees and costs out of the pockets of financially distressed tenants at the Properties. All of the tenants subjected to these practices were people who were already having difficulty making their rent payments and, thus, were more likely to feel the financial impact of these practices. The practice

[85] As noted above, some have been refunded for the amounts improperly charged to them and paid by them.
[86] The CPD further charged that the Respondents' practices with regard to court costs were deceptive because even though their leases provided for the right to collect agent fees, in fact they were also collecting court costs and under the law they were not, in many instances, entitled to collect those costs. As the CPD observes in a footnote to its memorandum of law, my March 12, 2020 Proposed Ruling is dispositive of this deception claim. The statement of a charge is not a representation as to the legality of that charge. *See Miller v. Pacific Shore Funding*, 224 F. Supp. 2d 977 (D. Md. 2002); *see also Bourgeois v. Live Nation Entertainment, Inc.*, 3 F. Supp. 3d 423 (D. Md. 2014). Aside from the issue of the legality of charging the fees when they did, the Respondents' leases adequately disclose that tenants will be charged for court costs and are not deceptive in that manner. CPD Ex. 331 at Westminster 000572; West. Ex. 32A at WM RRPD 102473; West. Ex. 65A at WM RRPD 033879; West. Ex. 279 at Westminster 081176.

causes substantial injury to consumers. Additionally, the practice was not reasonably avoidable, as the leases seemingly provided a basis for the charges (which were purportedly for agent fees and court costs) and consumers were not alerted to the practice at the time when they could have made an informed choice. *Orkin*, 849 F. 2d at 1366. Moreover, courts have declined "to blame unsuspecting consumers for failing to detect and dispute unauthorized billing activity. . . . the burden should not be placed on defrauded consumers to avoid charges that were never authorized to begin with." That rationale applies here, as well. Finally, there is absolutely no countervailing benefit to consumers or competition that outweighs the injury. Thus, these practices are also unfair practices under section 13-303 of the Act.

Thus, by charging tenants, on a pass-through basis, for agent fees and court costs that the Respondents did not actually incur, JK2 and Westminster engaged in deceptive trade practices in violation of sections 13-301(1), (3) and 13-303 of the Act, as charged in paragraphs 99(d) and 101(b) of the Amended SOC. By charging tenants, on a pass-through basis, for agent fees court costs that the Respondents did not incur, JK2 and Westminster engaged in unfair practices in violation of section 13-303 of the Act.

2. Court Costs and Fees Incurred

The CPD charges that the Respondents' practice of passing through to tenants the court costs incurred in connection with summary ejectment actions was deceptive under 13-301(3) of the Act because the pre-2018 lease forms did not provide for tenants to be assessed costs in the absence of a court order and, for that same basic reason, the practice was also unfair under section 13-303 of the Act. Am. SOC ¶¶ 101(b), 103.[87]

[87] The charge under section 13-301(1) of the Act, Am. SOC ¶ 99(e), was previously dismissed.

The CPD further charges that the Respondents' practices with regard to court costs and agent fees were deceptive because even if the leases could be read to authorize charging tenants for court costs and agent fees actually incurred, it was illegal for them to do so absent a court order pursuant to section 8-401 of the Real Property Article. As the CPD observes in a footnote to its memorandum of law, my March 12, 2020 Proposed Ruling is dispositive of this deception claim and dismissed paragraph 99(e) of the SOC; that ruling was later applied to the Amended SOC. As explained in the Ruling, the statement of a charge or fee is not an implied representation that it complies with the law; for this reason, the CPD's claim of deception, in this articulation, fails. *See Miller v. Pacific Shore Funding*, 224 F. Supp. 2d 977 (D. Md. 2002); *see also Bourgeois v. Live Nation Entertainment, Inc.*, 3 F. Supp. 3d 423 (D. Md. 2014). However, the CPD also asserted that this constitutes an unfair trade practice in violation of section 13-303 of the Act. Am. SOC ¶ 103.

The Respondents contend that their leases disclosed that court costs would be shifted to tenants and that there was nothing deceptive or unfair about charging a tenant for the court costs that it actually incurred as a result of the tenant being late in paying the rent due.

a. Court Costs in Pre-2018 Leases

I turn first to the issue of whether the pre-2018 leases were deceptive or unfair because they did not provide for the assessment of costs in the absence of a court order. The typical rule, referred to as the American Rule, is that each party bears their own costs in litigation, though the courts routinely award court costs to a prevailing party, as authorized by law. *Bainbridge St. Elmo Bethesda Apts., LLC v. White Flint Express Realty Group Ltd. P'ship, LLLP*, 454 Md. 475, 488-89 (2017); Md. Rules 2-603, 3-603, 8-607. Contractual provisions that alter that rule and shift attorneys' fees and costs are generally valid and enforceable in Maryland; but such

provisions, being contrary to the common law rule, must be express and unambiguous. *Plank v. Cherneski*, 469 Md. 548, 617 (2020) (unambiguous contractual provisions that shift attorneys' fees and costs are generally valid and enforceable); *Bainbridge St. Elmo Bethesda Apts., LLC v. White Flint Express Realty Group Ltd. P'ship, LLLP*, 454 Md. 475, 488-89 (2017) (cost-shifting provision must be express).

The Sawyer, BLDG, JK2, and pre-2018 Westminster form leases define "rent" to include "[a]ll payments from Tenant to Landlord required under the terms of this Lease, including, but not limited to, Court costs." *See, e.g.*, CPD Ex. 331 at Westminster 000572. The arguments concerning the meaning of "rent" aside, the leases do not clearly or expressly provide for shifting of court costs when suit is filed against a tenant for failure to pay rent. Simply listing "court costs" in the definition of rent, in a contract of adhesion, is insufficient to inform consumers that the typical rule is being changed and that even when there is no court order awarding costs and the proceeding is voluntarily dismissed prior to judgment, the costs of filing and serving suit will still be shifted to the tenant. Nor does that provision of the leases which authorizes the shifting of costs incurred for using the "services of [the rent court] Agent" disclose that the court's own fees will also be shifted. *See, e.g.*, CPD Ex. 331 at Westminster 000576; *see also Plank*, 469 Md. at 617; *Bainbridge*, 454 Md. at 488-89. Accordingly, I reject the Respondents' assertion that the shifting of costs for court filing fees, as opposed to agent fees, was "conspicuously disclosed" and thus could not be deceptive or unfair.

None of the pre-2018 leases disclosed that tenants would be assessed court costs where the suit was dismissed without a favorable judgment or award of court costs. The financial provisions and circumstances of the lease, the charges to be made, and the effects of a late payment are material facts. The failure to disclose this information, particularly in consideration

of the Respondents' practices regarding the recording of the charge on tenant ledgers, was deceptive in violation of section 13-301(3) of the Act.

The CPD also alleges that this practice of charging tenants for court costs in the absence of a court order awarding costs violated the Act under the general unfairness doctrine, section 13-303 of the Act. Am. SOC ¶ 103. The practice was contrary to common law concepts of fairness in regard to fee shifting arrangements. Further, the parties stipulated to the court costs in various jurisdictions, and it is easy to see that the practice of shifting court costs without an adequate basis to do so would be likely to cause substantial injury, in the aggregate. The substantial nature of the injury is particularly evident when it is considered how frequently suits were filed and how frequently those suits were dismissed before judgment. *See Inc21.com*, 745 F. Supp. 2d at 1004; *Divine Seafood*, 37 Md. App. at 446 (describing the consumers effected by the 10¢ per pound over-charging scheme as "numerous but unknown"); Proposed Finding of Fact No. 173.

As none of the pre-2018 lease forms disclosed that court costs would be shifted to the tenants merely because suit was filed—that is, regardless of the suit being dismissed and no court order for costs being entered—tenants did not have an informed opportunity to avoid the injury. While the Respondents suggest that tenants had the opportunity to reasonably avoid the injury by simply paying their rent on time, the argument falls flat. It cannot reasonably be assumed that tenants had the means to pay their rent in a timely manner but deliberately elected not to do so, and there was no evidence that this was the case. The evidence was quite the opposite. *See, e.g.*, Proposed Finding of Fact No. 172. The lease did not disclose the shifting of these costs and consumers did not have the necessary information to allow them to reasonably avoid the injury.

The injury to consumers is not outweighed by a countervailing benefit to consumers generally or to competition. Although the Respondents urge that the shifting of costs encourages tenants to pay their rent on time, again, there was no indication that tenants had the ability to make payment but simply elected not to. Moreover, the law already authorizes a 5% penalty for the late payment of rent and the pre-2018 leases provide for a late payment penalty; thus, that purpose is already served. Real Prop. § 8-208(d)(3)(i); *see also, e.g.*, CPD Ex. 331 at Westminster 000577. The pre-2018 form leases did not provide for the assessment of court costs in the absence of a court order, and Westminster and JK2's practice of nonetheless assessing those costs to tenants was also unfair in violation of section 13-303 of the Act.

b. Agent Fees, Generally, and Court Costs in Post-2018 Leases

Unlike the court filing fees in the pre-2018 leases, the shifting of the agent fees was disclosed to tenants in all of the applicable form leases. The form leases all substantially stated:

> Should Landlord employ an Agent to institute proceedings for rent and/or repossession of the Premises for non-payment for any installment of rent, and should such rent be due and owing as of the filing of said proceedings, Tenant shall pay to Landlord the reasonable costs incurred by Landlord in utilizing the services of said Agent" employed "to institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent.

CPD Ex. 331 at Westminster 000576; CPD 332 at 078246; West Ex. 32A at Westminster 102477; West. Ex. 65A at WM RRPD 033883; West. Ex. 279 at Westminster 081179. The CPD recognized that, as to agent fees, the lease provisions disclosed to tenants that they would be paying the costs of the agent. CPD Memo. at 30. Additionally, the post-2018 Westminster lease disclosed the shifting of court costs as well, stating, fully:

> Should we employ an agent to institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent, and should such rent be due and owing as of the filing of those proceedings, you agree to pay us the reasonable costs incurred by us in utilizing the services of the agent. Whether or not we employ an agent, <u>if we institute proceedings for rent and/or repossession</u>

> of the Premises for non-payment of any installment of rent, you agree to pay us for any court costs and other fees which we must pay to file, institute or pursue those legal proceedings.

CPD 332 at 078246 (emphasis added). The Act distinguishes between deceptive practices and unfair practices—it was not deceptive under the Act to pass agent fees and court costs onto tenants pursuant to these lease provisions that clearly authorize as much.

The CPD urges that despite these lease provisions, the Respondents were not legally authorized to collect such costs in the absence of a judgment for costs entered by the court. (*Id.* at 30, 33-34.) Specifically, in the Amended SOC, the CPD asserts that the "Respondents represent to consumers that [they] are entitled to collect agent fees and court costs in the absence of a judgment for such costs issued by a court when, in fact, such fees and costs cannot exceed the 5% cap in the Late Fee Laws unless they have been awarded in a judgment by a court pursuant to the Summary Ejectment Law." Am. SOC ¶ 99(e).[88]

The late fee law referred to by the CPD limits a penalty for late payment of the rent, as follows:

> A landlord may not use a lease containing any provision that:
> . . .
> (i) Provides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent; or
> (ii) In the case of leases under which the rent is paid in weekly rental installments, provides for a late penalty of more than $3 per week or a total of no more than $12 per month;

Md. Code Ann., Real Prop. § 8-208(d)(3). All of the Respondents' lease forms also contain substantially the same provision for a 5% late payment penalty provision:

> Tenant will pay, as additional rent, a charge of five (5%) percent of the monthly rental as a late charge in the event that Tenant shall fail to pay, both while occupying the Premises and after vacating same, an installment of the rent after

[88] As noted above, paragraph 99(e), charging that this was deceptive, was dismissed. Nonetheless, the charge remains that this same conduct was unfair, in violation of section 13-303 of the Act. Am. SOC ¶ 103.

> 4:30 p.m. on the fourth day beyond the date on which it became due and payable. This shall not constitute a waiver of the Landlord's right to institute proceedings for rent, damages and/or repossession of the Premises for non-payment of any installment of rent.

CPD Ex. 331 at Westminster 000577; CPD Ex. 332 at Westminster 078246; West. Ex. 32A at WM RRPD 102478; West. Ex. 65A at WM RRPD 033884; West. Ex. 279 at Westminster 081180. The leases provide for this 5% charge separately from the assessment of agent fees and court costs, and, in keeping with that, the Respondents implemented both the 5% charge and the cost-shifting provisions.

The starting point for interpreting a statute is the plain meaning of the words employed by the Legislature, as read in the context of the statute as a whole. *Conaway v. State*, 464 Md. 505, 522–23 (2019). If the language is clear, the analysis need not go any further. *Id.* If the statutory language is ambiguous or to confirm the plain meaning, the legislative history of the statute may be considered, including statutory purpose and structure and prior case law. *Id.* In addition, remedial statutes are generally interpreted broadly to effectuate their purpose. *Andrews & Lawrence Prof. Servs.*, 467 Md. 126.

The late fee limitation found in section 8-208 of the Real Property Article prohibits the use of a lease providing "for a penalty for the late payment of rent" that exceeds 5% of the amount of rent due. Whether the 5% "penalty" limitation would encompass the shifting of court costs that were actually incurred is not apparent from the language of the statute. As set out in Black's Law Dictionary,

> ["Penalty" is] [a]n elastic term with many different shades of meaning; it involves idea of punishment, corporeal or pecuniary, or civil or criminal, although its meaning is generally confined to pecuniary punishment.
>
> . . .
>
> A penalty is a sum inserted in a contract, not as a measure of compensation for its breach, but rather as punishment for default, or by way of security for actual damages which might be sustained by reason of nonperformance. The sum a

> party agrees to pay in the event of a contract breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a punishment, the threat of which is designed to prevent the breach.
>
> A penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done. A statutory liability imposed on [a] wrongdoer in [an] amount which is not limited to damages suffered by [the] party wronged.

Penalty, Black's Law Dictionary (abridged 6th ed. 1991); *see also Williams v. Standard Fed. Sav. & Loan Ass'n*, 76 Md. App. 452, 461 (1988) (recognizing that "penalty" is a flexible term, the meaning of which depends on the context in which it is used; holding that limitations on filing suit for penalty did not bar private suit for civil remedies); *cf. United States v. Childs*, 266 U.S. 304, 307 (1924) (distinguishing between "penalty," a "means of punishment," and "interest," a "means of compensation"); *Meeker v. Lehigh Valley Ry. Co.*, 236 U.S. 412, 423 (1915) (distinguishing between a penalty, something imposed in a punitive way, and liability to redress a private injury).

Further, section 8-401 of the Real Property Article provides for the court to enter an award of court costs in a summary ejectment action:

> In the case of a residential tenancy, the court may also give judgment in favor of the landlord for the amount of rent and late fees determined to be due together with costs of the suit if the court finds that the residential tenant was personally served with a summons.

Md. Code Ann., Real Prop. § 8-401(c)(2)(iv) (2020).[89] Thus, the laws governing landlord tenant relations contemplate, in at least some circumstances, that a landlord could recover both the 5% penalty and court costs incurred. This to some extent undercuts any public policy argument.

Section 8-401 of the Real Property Article does not, on its face, prohibit parties to a lease from entering into a cost-shifting provision. *But see Pajic v. Foote Props. LLC*, 72 A.3d 140,

[89] Although section 8-401 has undergone several revisions since 2012, the provision cited here has remained unchanged since prior to January 1, 2012. I have cited to the current version for convenience.

144-45 (D.C. 2013) (concluding that award of attorneys' fees pursuant to a lease provision was error where local law expressly prohibited an owner from including in a lease any provision requiring the tenant to pay the owner's court costs or legal fees), *and Willis v. NAICO Real Estate Prop. & Mgmt. Corp.*, 884 N.E.2d 752, 755 (Ill. App. 2008) (same). Further, section 8-208 of the Real Property Article illustrates that the Legislature knew how to impose express prohibitions for the protection of tenants when it determined such provisions were appropriate. Certainly, if the Legislature intended to impose a prohibition on cost-shifting, it could have expressly said so, as other jurisdictions have done.

The CPD did not set out legislative history or case law to support its reading of section 8-208(d)(3) of the Real Property Article as prohibiting a landlord from recovering compensation for the actual costs incurred to file suit. Although I note the remedial purpose of the statute, in the absence of authority to support the CPD's position, there is no basis to depart from the language employed by the Legislature.

Section 8-401 contemplates recovery of costs in some circumstances and provides a mechanism for that, but the statute does not limit the recovery of costs to that sole mechanism. Nor does section 8-208(d)(3) preclude recovery of compensation for actual pecuniary loss incurred as a result of the need to file suit to obtain payment of overdue rent. Further, as noted above, contractual provisions that shift attorneys' fees and costs are generally valid and enforceable in Maryland. *See Plank*, 469 Md. at 617. The post-2018 form lease discloses the cost-shifting for court costs and all the form leases disclose the shifting of agent fees. Except as addressed elsewhere in this Decision, the costs assessed were actually incurred by the Respondents in filing suits against tenants who had not paid what was owed. Passing-through court costs and fees that were actually incurred, in a manner consistent with the lease terms, and

which was not prohibited by law, does not constitute an unfair practice that is likely to cause a substantial injury.

Accordingly, the Respondents did not engage in a deceptive[90] or unfair practice by charging agent fees that were actually incurred or by charging court costs and fees, pursuant to the post-2018 Westminster leases, that were actually incurred.

E. Early Termination Fees (Am. SOC ¶ 103)

The CPD's charges concerning the early termination fees are relatively undefined. It asserts that the Respondents (1) misled tenants as to whether payment of an early termination fee was mandatory or optional when the tenant sought to move out of the unit prior to the end of the lease term, and (2) failed to disclose to tenants that a landlord has a duty to mitigate damages when a tenant moves out prior to the end of the lease. Am. SOC, ¶¶ 77-82, 103.[91] It charges that these were unfair practices in violation of section 13-303 of the Act. In support of its position, the CPD points to the provisions of section 8-207 of the Real Property Article, setting out the landlord's duty to mitigate.

The CPD also charges that the early termination provision constituted a liquidated damages provision that is prohibited by (unspecified) Maryland law and was thus unfair. Am. SOC ¶¶ 79, 103. The Westminster Respondents note that section 8-207 of the Real Property Article does not prohibit such a provision, and they point to section 8-212.2(a), which contemplates that leases may contain such a provision. Section 8-212.2 of the Real Property Article provides, in pertinent part:

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[90] To be clear, there was no deception with regard to the shifting of agent fees in any of the form leases or to the shifting of court costs in the post-2018 Westminster form lease. The language provides for the tenant to bear the court costs and fees and agent fees if suit is instituted, without regard to whether the court awards those fees and costs. The provisions are not, on their face, contrary to law. Moreover, as previously held, statements concerning fees are not representations as to the legality of the fees. Miller, 224 F. Supp. 2d 977.

[91] My March 12, 2021 Proposed Ruling on Motions to Dismiss disposed of the deception-based charges arising from the early termination provision.

> This section does not apply to a tenant under a residential lease that contains a liquidated damages clause or early termination clause that:
> (1) Requires written notice to vacate of 1 month or less; and
> (2) Imposes liability for rent less than or equal to 2 months' rent after the date on which the tenant vacates the leased premises.

Real Prop. § 8-212.2(a) (2015). The use of a liquidated damages provision is countenanced by Maryland law; as such, the Respondents' use of such a provision does not present a viable basis for the CPD's charge of unfairness.

As to the remainder of the CPD's unfairness claims, the Respondents again emphasize the lack of a statutory violation to support a charge of unfairness, generally; they contend that the statements alleged to be made by its employees were not inconsistent with the lease, as the CPD alleges; they argue that they have no obligation to educate tenants about a landlord's duty to mitigate damages, though they sometimes did; they note that their early termination fee practice provides a countervailing benefit to consumers; and finally they assert that consumers could reasonably avoid any harm by simply fulfilling the full term of the lease. As to this final argument, that consumers could avoid the harm by fulfilling the term of their lease, this is not an adequate response in light of the specifics of the charges, which include allegations that the Respondents failed to inform consumers of their options for proceeding.

In support of the charges, the CPD presented testimony from consumer witnesses who paid the early termination fee: Hattie Crosby (Carroll Park), Antonio Hunter (Cove Village), Roxanna Gomez (Charlesmont), Jillian Lacy (Cove Village), Jeni Newell Littlefair (Cove Village), Oladayo Olaniyan (Fontana Village), Antoinette Tillman (Princeton Estates), Shania Whitaker (Pleasantview), Victor Hernandez Zayas (Commons), and Korosh Soleimani Faraz (Fontana). The CPD specifically relies on testimony from Ms. Crosby, Mr. Hunter, Ms. Gomez, Ms. Newell Littlefair, Mr. Olaniyan, Ms. Tillman, Ms. Whitaker, and Mr. Hernandez Zayas, to

support a finding that Westminster employees orally advised tenants that the early termination fee was mandatory. I did not find the testimony on this point convincing due to the passage of time and fading of memories and the presence, in some cases, of inconsistent documents.

For instance, Ms. Crosby[92] explained that she resided at Carroll Park and moved out before the end of her lease term because she had purchased a home; she testified that when she moved out she was told she "had to pay" two months' rent to end the lease. Despite the purchase of a home being a significant life event, Ms. Crosby remained unable to recall the year in which she purchased the home and moved out of her apartment. Ultimately, the evidence established that she terminated her lease at Carroll Park in June 2015—more than five years before her testimony at the hearing. Ms. Crosby did not provide a level of detail that would tend to show she had a good recollection of the conversation concerning the termination of her lease, and she did not offer any reason why, years later, she would remember the particular details of what was said to her about the early termination fee. On cross examination, she was shown a letter noting her options, but could not recall if she received it. Given the passage of time, her demonstrated inability to recall the dates of a contemporaneous, but significant, life event, and the lack of detail, I did not find her testimony that she was told the early termination fee was mandatory to be reliable or convincing.

Shania Whitaker testified and demonstrated a fair recall of events surrounding and relating to her early termination of her lease. She was candidly hesitant about her ability to accurately remember her conversation with a Westminster employee concerning the early termination. Nonetheless, she testified:

> If I can remember correctly, I believe that the guy told me that since I was moving out early and they didn't have nobody to cover the unit that I had to pay, I had to

[92] Although there were specific reasons for Ms. Crosby to recollect the issues surrounding her security deposit, the same cannot be said about the early termination fee.

> pay for two months or something, or, I believe he said two months or something until they could find somebody else to take over my lease.

The reasonable inference from her testimony is that both the option to "pay for two months" under the early termination provision and the alternative of remaining liable for the rent until a new tenant was found—or as Ms. Whitaker put it, "until they could find somebody else to take over my lease"—were in fact discussed with Ms. Whitaker.

Antoinette Tillman's testimony made clear she was confused about what her obligations were in connection with the early termination of her lease. Her confusion seemed to be in part due to the passage of time and in part due to her genuine misunderstanding of the information conveyed to her. The CPD rested on her affidavit, but her own testimony undercut the affidavit, as she testified that she had misunderstood the statement in paragraph 12 of her affidavit, the central statement that:

> Westminster Management did not tell me that I would only be liable for the time during which my apartment was unrented. Westminster Management did not tell me that it could take less than two months to rent the apartment I had lived in to a new tenant.

CPD Ex. 43, ¶ 12.

Jeni Newell Littlefair's testimony also reflected a lack of memory and did not support the CPD's position. Notably, she moved out of her unit at Whispering Woods in December 2015—nearly five years before her testimony. She acknowledged that the passage of five years had impacted her memory. She testified that she believed her husband handled most of the conversations with the property manager about the early termination of the lease and she did not remember speaking with anyone directly. When asked if she was aware that if they did not pay the early termination fee they would be liable until the end of the lease or until the property was re-rented, she replied that she "guessed" she was but that she was not told this. Given that she

did not speak with the property management office about the early termination fee, given the passage of time, and given that she had some awareness of her options, the testimony fails to support the CPD's position.

In his testimony, Mr. Hunter made clear that his goal in contacting his property management office was to "get out of the lease" and "get it over with." Test. Antonio Hunter. He testified that he went to the leasing office to ask about a termination fee and had a conversation with the property manager; she "made clear" to him that if he did not pay the early termination fee, he would be liable for the rent even if he was not staying there. *Id.* He further understood that if he paid the early termination fee he would be "clear of any responsibility for the apartment anymore." He did not recall, however, being advised that if his apartment were re-rented, his obligation under the lease would end. Given that Mr. Hunter's obvious focus was on ending his obligation under the lease, and given the passage of more than four years since the conversation at issue, I had serious concerns about his ability to accurately recall the details of the conversation about the early termination fee and the alternative of continuing to pay on the lease. In any event, Mr. Hunter's testimony reflects that he understood the early termination fee was the option that allowed him to definitively end his liability under the lease, and that he understood it was not mandatory. His testimony did not reliably establish that the property manager failed to advise that if he chose not to pay the early termination fee, his obligation to pay the rent for the next six months would end sooner if the landlord was able to re-lease the unit. I did not find his testimony to provide reliable support for the CPD's charge regarding the early termination practices.

Significantly, the documents in evidence reflect that Ms. Correa, Mr. Soleimani Faraz, Ms. Wright, Mr. Olaniyan, Mr. Farooq,[93] and Ms. Gray, who vacated their units at various properties between June 2015 and May 2019 were each explicitly informed, in letters from the property management office, that they could pay the early termination fee or be "held rent responsible until the end of your current lease term or until a new resident occupies the unit, whichever comes first." *See, e.g.*, West. Ex. 46A at 218635. Although the tenants largely testified that they did not recall receiving such letters, I have significant concerns about relying on testimony that, years earlier, a specific letter was not received. The basis for this concern is exemplified by the testimony from Mr. Hernandez Zayas: at the hearing, he testified that he did not recall receiving any correspondence about the early termination fee from the Commons, but nonetheless he found his own copy of the letter in his records after the CPD sent him a copy of it. He explained the lack of memory by noting that it had been quite a few years. Further, he continued to maintain that the management office never told him that even if he did not pay the early termination fee, his obligation would end if the lese were re-let before the expiration of the lease—despite the letter in his possession clearly stating this. *See* CPD Ex. 11-A.

Mr. Olaniyan's testimony reflects all of these concerns as well. In testifying about his conversations with the property management office at Fontana Village about early termination, Mr. Olaniyan testified that he was told he had to pay for two months of rent. When asked what he understood would happen if he did not pay the early termination fee, he stated that the manager told him it was a breaking of the lease and he had to pay the early termination fee. On further questioning, however, he conceded that he understood that if he did not pay the early termination fee, he would have to keep paying the rent. Even though Mr. Olaniyan moved out of

[93] Although Mr. Farooq did not provide Riverview with a forwarding address, he did not move out until June 30, 2015; thus, this would not have been an impediment to his receipt of the June 1, 2015 letter from the bookkeeper.

Fontana Village in May 2019—less than a year and a half before his testimony—he did not recall receiving the letter advising him that if he did not pay the early termination fee, he would be liable for the rent until the end of his lease term "or until a new resident occupies the unit, whichever comes first." CPD Ex. 25B. Despite that lack of memory, the affidavit he signed in April 2020 attests that he did receive the letter. Having reviewed the letter during his testimony, he acknowledged that it advised him of the option to remain responsible for the rent until the end of the lease term or until a new tenant was found. His testimony is contrary to the CPD's charge.

The testimony of other witnesses was largely to the same effect. Zachary Stupi testified that he and his now-wife terminated their lease at Charlesmont approximately three months into a one-year renewal term, and he went to the property management office and signed documentation to effect the termination. Although he testified that he was not given any choice in paying the early termination lease fee, he also repeatedly testified that his goal, as discussed with Charlesmont personnel in the property management office, was to make a "clean break" from the apartment. Mr. Stupi explained that by "clean break" he meant that he wanted to break the lease "without any legal disregard or legal actions," he wanted to be "out of the apartment and not have to pay anything still on it." Test. Zachary Stupi. He was told by the Westminster employee that two months' rent would be the "opt out" fee. *Id.* His testimony reflected that he understood he would have to pay the lease otherwise, but he did not realize that it was possible that the landlord could re-let his unit quickly. He did not ask any questions about what would happen if he simply broke the lease and he did not review his lease to determine that information. Although Mr. Stupi testified that he was not advised that the apartment could be re-let quickly, his testimony reflected a basic understanding that his options were to pay the break lease fee or breach the lease and potentially remain legally liable for months of rent, and that he was focused

on ending his liability with certainty. As Mr. Stupi's focus was on obtaining a clean break, as he did not ask any questions about the consequences of simply breaking the lease, and as his testimony was over five years after the conversation in question, I find that it does not reliably support the CPD's charge concerning early termination fees.

Ms. Lacy's testimony was to the same effect as Mr. Stupi's—she understood that providing the requisite notice and paying the two months of rent as an early termination fee would end her obligations under the lease; she understood that she would otherwise be liable for the full term of the lease; she was not aware that the landlord had an obligation to re-rent the unit and that her obligation under the lease would end when it was re-rented. She testified that Westminster never told her she could continue paying the rent until the apartment was re-let or her lease expired. In light of the fact that she was testifying about a conversation she had more than three years prior, I had significant concerns about the reliability of her testimony. She could not recall if she was ever given written notice related to the early termination process. She did not recall receiving a letter from Cove Village advising her about the early termination fee process. West. Ex. 138A at 022390. I also had concerns given her testimony that when the CPD subsequently contacted her in connection with this proceeding, her recollection was the individual she spoke with from the CPD informed her that Westminster was required by law to advise her of the duty to mitigate and was further required to advise her it could take less than two months to re-let her apartment. Whether her recollection of her conversation with the CPD was accurate or inaccurate is somewhat beside the point, as there would be concerns either way about what this means for the reliability of her testimony on this topic.

Some tenants acknowledged receiving early termination letters setting out their options. For instance, Michelle Moore-Wright recognized the letter she received setting out her options.

The letter, like others in evidence, reflected that she could pay an early termination fee in the amount of two months of rent or, if she did not do so, she would be "held rent responsible until the end of your current lease term or until a new resident occupies the unit, whichever comes first." West. Ex. 165A at WM RRPD 006424. Ms. Moore-Wright also documented in her own letter terminating the lease that, based on her conversations with the property manager, she was paying two months' rent with the understanding that if a tenant moved in to the unit in less than two months, she would be reimbursed for that portion of the two-month period. *Id.* at WM RRPD 006425. Ms. Moore-Wright testified that her unit was re-let so she ended up only paying half of a month's worth of rent.

In addition to the testimony of former residents, discussed above, the CPD also pointed to the move-in statement, used for an unknown period of time at Dutch Village and Pleasantview, and the letters sent to Mr. Hunter and, to an unknown extent, other tenants terminating their lease. I did not find it significant that the move-in statement did not go into the same level of detail about the early termination fee. The lease contemporaneously and fully set out the early termination provision and the consequences of breaching the lease, and the remainder of the evidence reflected that tenants were appropriately informed at the time they were making the actual determination of how to end their lease prior to its term. Finally, I note that the letters to Mr. Hunter were generally consistent with the lease and did not purport to make the early termination fee mandatory or negate his ability to breach the lease with continuing liability. Instead, the letters advised him that despite moving out before the end of the lease term, his "liability [would] continue" unless he either paid the early termination fee of two months' rent prior to his termination date, which would "end[ ] all future obligations of [his] tenancy" or, if there was less than three months left on his lease, he could chose to pay that same amount at the

rental intervals until the end of his lease term (*i.e.*, monthly). Neither of these options negates his ability to break the lease with continuing liability therefor until the unit was re-let. In any event, Mr. Hunter denied receiving those letters and the record documents that the September 2016 letter was returned as undeliverable.

On whole, the evidence at the hearing demonstrated that it was Westminster's general practice to advise tenants who wanted to move out prior to the end of the lease term that one option was to pay an early termination fee. The evidence further reflects that at the time the tenant sought to terminate the lease, JK2 and Westminster generally advised tenants that if they did not pay the early termination fee, they would continue to be liable for rent until the end of the lease term or until a new tenant was found for the unit, whichever was earlier. Westminster and JK2 did not advise tenants that a tenant might be found in less than two months.

Clearly, the inclusion of an early termination provision in a lease is not an unfair practice in and of itself. Maryland law expressly contemplates that leases might contain such terms. *See* Real Prop. § 8-212.2(a). Moreover, it provides a substantial benefit to consumers, as it allows them the flexibility to move from their residence while limiting their financial obligation and legal liability to a definite sum.

To the extent the CPD argues that the Respondents' early termination practices were unfair because the lease makes the early termination fee optional, but they contradictorily advised tenants that the fee was mandatory, the charge fails as a matter of fact. The early termination fee is only mandatory in the sense that it is the available alternative to what is otherwise provided for by law: moving out early and continuing to be liable for rent until the end of the lease or until the unit is re-rented. *See* Real Prop. § 8-207(a)(3) (2015). The lease sets this out. Letters sent to tenants set this out. The testimony from tenants, on whole, convinced me

that this also was conveyed to tenants at the time they sought to end their tenancies, and that they fully understood this. There was no deceptive or otherwise unfair practice in this regard.

As to the argument that the practice was deceptive or otherwise unfair because the Respondents did not advise tenants of the landlord's duty to mitigate, the charge fails as a matter of law and fact. I have already held, in the March 12, 2020 Proposed Ruling, that the failure to advise tenants of the duty to mitigate is not deceptive. *See also Miller v. Pacific Shore Funding*, 224 F. Supp. 2d 977, 989 (D. Md. 2002) ("the failure to state a material law is a failure to state a material *fact* only if the law requires that the law be stated"). Further, the documents reflect that the Respondents typically were advising tenants, in writing, of the general duty to mitigate—that is, if they did not pay the early termination fee their obligation would still end early if the unit was re-let. *See, e.g.,* CPD Ex. 6-A.

Finally, to the extent the CPD argues that the Respondents' early termination practices were unfair because they did not specifically advise tenants of the possibility that the unit could be re-let in less than two months or the specifics of a landlord's duty to mitigate, the charge fails. There is no statute or public policy that would support a conclusion that the failure to provide such specific advice is unfair and the lack of such specific advice does not otherwise violate traditional notions of unfairness within this context. Nor did the evidence reflect any substantial injury to tenants from the failure to provide such advice; the CPD did not develop evidence at the hearing that would establish how frequently the Respondents re-let a unit less than two months after an early termination fee was paid. Nor did the CPD develop evidence that tenants would have preferred to take that risk, and the testimony suggested the opposite. Moreover, making a more specific statement—about the scope of the landlord's duties or the possibility that a

tenant's unit might be re-rented in less than two months—may lead a tenant to act based on false expectations that a unit will be quickly re-let.

Accordingly, the evidence did not establish that the Respondents early termination fee practices were unfair.

F. Security Deposits

In regard to the Respondents' security deposit practices, the CPD charges that the Respondents violated sections 13-301(1), (3), and 13-303 of the Act by improperly deducting amounts from tenant security deposits for wear and tear and pre-existing damage, by failing to provide tenants with notice of deductions within 45 days of the termination of the tenancy, and by failing to credit tenant accounts with interest on the security deposit.

The Respondents assert that any failure to credit interest to tenant accounts was a minor error and not the result of any practice on their part and that, in any event, the law already provides adequate remedies such that violation of the security deposit law should not form the basis of a claim under the Act. They also note that a tenant who abandons the lease or who is evicted is only owed security deposit interest in limited circumstances, and the CPD has not established that those circumstances exist. The Respondents further contend that the evidence does not support the CPD's charges.

1. Written Notice of Deductions (Am. SOC ¶¶ 99(f), 101(c), 103)

In regard to the CPD's charge that the Respondents failed to provide notice of the deductions, it cites section 8-203(f)(1) and (g)(1) of the Real Property Article. Subsection 8-203(f)(1) states:

> (i) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the

leased premises, common areas, major appliances, and furnishings owned by the landlord.

(ii) The tenant has the right to be present when the landlord or the landlord's agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail of the tenant's intention to move, the date of moving, and the tenant's new address.

(iii) The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving.

(iv) Upon receipt of the notice, the landlord shall notify the tenant by certified mail of the time and date when the premises are to be inspected.

(v) The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice.

(vi) The tenant shall be advised of the tenant's rights under this subsection in writing at the time of the tenant's payment of the security deposit.

(vii) Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

Real Prop. § 8-203(f)(1) (2015 & Supp. 2020). Subsection 8-203(g)(1) provides:

> If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred.

Real Prop. § 8-203(g)(1); *see also, e.g.*, CPD Ex. 331 at Westminster 000570, ¶1.

The testimony and documents in evidence reflect that when a tenant vacated their unit, it was the standard practice of JK2 and Westminster to send a move-out statement and accompanying letter to the tenant setting out any deductions to the security deposit and the amount of any refund or balance due. As set out above, this area is highly and quite specifically regulated by statute, with the potential for significant penalties, thus incentivizing landlords to comply with the law. The Respondents general practices were in keeping with the law.

In support of its argument to the contrary, the CPD specifically relies on testimony from Mohammad Farooq, Michael Johnson, Jr., Scott Ferree, Juamani Rivers, Evelyn Njob, Antonio Hunter, Tammy Van de Vander, Shannon Gaylor, and LeShawn Epps that they never received an

itemized statement reflecting the deductions made from their security deposits. CPD Memo. at 56-57. Factually, that testimony reflects that, in limited instances, Westminster or JK2 neglected to send the required notice in a timely fashion.

Scott Ferree began leasing a unit at the Commons in June 2008. He moved out of his unit at the Commons five years later, in June 2013. His move-out statement, detailing deductions from his security deposit, was mailed to him on September 4, 2013; the postmarked envelope and accompanying report are in the record. Mr. Ferree did not receive a copy of his move-out statement at any time prior to September 4, 2013. *See* CPD Exs. 85-C & 85-D. After viewing the move-out statement, Mr. Ferree disagreed with the charge to replace carpet, as he had been living in the unit for five years and believed it was in normal condition for carpet of that age. Mr. Ferree ultimately contacted the Office of the Attorney General for assistance and received approximately half of his security deposit back, after outstanding utility charges were deducted.

LaShawn Epps testified that when she moved out of her first apartment at Carriage Hill she eventually got her security deposit back, with interest. She testified that when she moved out of her second apartment in August 2017, she did not get any of her security deposit back. She stated that over the course of two to three months, she reached out to the assistant manager, Shawn, repeatedly to find out the status of her security deposit but was given the run-around and was not provided any information. Eventually, she was told, by email, that she would not be getting her security deposit back due to the state in which her apartment was left. When she asked why she never received a bill or notice, the response she got was not that notice was sent, but that they did not send one because they had written it off as a loss. Ms. Epps' testimony was detailed and credible and her testimony convinced me that a move-out statement was not sent to her.

Michael Johnson testified that when he moved out of Pleasantview in 2019, he never received a move-out statement setting out any deductions from his security deposit. Instead, he viewed his move-out statement on Pleasantview's payment app around the time he moved out of his unit. As a result, he was able to identify a hard copy of his move-out statement, West. Ex. 118A at WM RRPD 173888-89, was fully aware he was being charged for carpet replacement, and he knew to expect a partial refund of his security deposit. After moving out, he went to the property management office to inquire about his refund and was told his check was being processed. He received the check for a partial refund of his security deposit refund, but never received the explanation of the charges by mail. Mr. Johnson's testimony was detailed and credible that he never received the hard copy by mail.

Jesenia Correa testified that she did not receive a move-out statement after leaving Harbor Point in May 2017. Her testimony revealed that she did not leave a forwarding address. Documents in evidence reflect that Westminster emailed Ms. Correa a letter and move-out statement providing notice and an explanation of the charges made against her security deposit. West. Ex. 46A at WM RRPD 218727-29. Although Ms. Correa testified that she was unable to open the attachment, her contemporaneous response to the email noted no such problem and instead states, "Thank you. I appreciate it [smiley face emoji.] . . . ." *Id.* at 218729. Moreover, the email from Westminster reflects that Ms. Correa agreed to a payment plan for the amount due—it is difficult to believe she would do so without knowledge of the charges, particularly as her email reflects that she questioned at least one aspect of the charges (pro ration of her rent). *See id.* Given the evidence of record, I do not find Ms. Correa's testimony, more than three years later, to reliably and credibly establish that she did not receive actual notice of the charges against her security deposit.

Ms. Summons testified that she did not receive a move-out statement after she moved out of her unit at Whispering Woods in March 2017. A move-out statement, with her new address was admitted into evidence. West. Ex. 210A at 16339. Nonetheless, despite the passage of time she was detailed and consistent in her testimony, she demonstrated good recollection of events despite the passage of time. Accordingly, I credited her assertion that she did not receive the move-out statement; though this does not necessarily reflect that the statement was not mailed. I note, however, that Ms. Summons further testified that after receiving a partial refund of her security deposit, she spoke with "Tara" in the property management office and was then referred to management who informed her that the deductions made to the security deposit were for repair/replacement of blinds and damage to the kitchen countertop. Ms. Summons then contested the deductions, advising the manager that the countertops were damaged when she moved in and that the blinds had never been replaced while she lived there.

Ms. Gaylor testified that after she and her husband moved out of their townhome at Highland Village, she received a partial refund of her security deposit and along with the refund an explanation of the deductions. She identified CPD Exhibit 144B, a Move Out Statement, as the itemization she received with her security deposit. She understood that deductions were made for damage to walls/doors and windows/floors. She explained that they had left a stain on the wall from hair dye and, while moving out, put a hole in the ceiling with a bedframe. Although she was unsure why deductions were made for any damage to windows or floors, she and her husband elected not to contest the deductions. Her testimony plainly contradicts the CPD's position.

Antonio Hunter testified that he moved out of Cove Village at the end of October 2016, and he did not receive a move-out statement itemizing deductions from his security deposit. He

stated that he did not receive any documents from Cove Village after he moved out. Nonetheless, he somehow learned that after accounting for damage to his unit, the security deposit, and charges due, he owed Cove Village $1,160.14, as set out on the move-out statement he denied receiving. He could not explain how he knew to pay the exact balance, explaining that he did not remember at all. Moreover, the testimony did not reveal any specific reason why Mr. Hunter would be able to accurately recall whether, four years earlier, he failed to receive a move-out letter from his former landlord. Given the passage of time and the fact that he clearly received information about his account after he moved out of Cove Village, I did not find his testimony to be sufficiently reliable on the question of whether he received a move-out statement detailing the deductions from his security deposit and amounts owed.

The testimony of Joseph Barnes was similar in this regard. Mr. Barnes testified that he did not recall receiving a move-out statement and letter after he vacated his unit at the Commons in 2015. *See also* CPD Ex. 9, ¶ 10. Nonetheless, he was aware at the time that he owed money to the Commons and agreed he must have received a notice of some sort and ultimately testified that he believed he received the move-out statement showing the deductions to his security deposit and accompanying letter. West. Ex. 15A at WM RRPD 004231-32.

Mohammad Farooq testified that he did not receive a letter from Riverview concerning security deposit deductions. However, he also testified that he never provided Riverview with his forwarding address. The move-out statement was addressed to his last known address, at Riverview. West. Ex. 66A at 227466. I have significant concerns about the reliability of testimony that, five years prior, he did not receive a statement from his former landlord. Even assuming, *arguendo*, that Mr. Farooq's testimony was reliable, in the circumstances here, his failure to receive a move-out statement is not indicative of whether it was sent. In light of the

Respondents' general practice of sending a move-out statement, I find that the CPD has not established by a preponderance of the evidence that the required statement was not sent in this instance.

Evelyn Njob testified that she did not receive a refund of her security deposit or an itemized statement of the deductions when she moved out of Fontana. She repeatedly acknowledged, however, that due to the passage of time it was hard for her to recall events from when she moved out in March 2016. She could not recall when she turned in her keys and denied that she left extensive amounts of personal property, though this was documented by Westminster in photographs. West. Ex. 112E. As a whole, Ms. Njob's testimony concerning the circumstances surrounding her move out was not reliable or credible.

Mr. Rivers acknowledged that he was having difficulty recalling events that took place years earlier, in 2015, when he moved out of his first unit at Princeton Estates. He did not recall receiving a notice he was being charged for carpet replacement and he recalled that the balance of his security deposit was transferred to his new apartment. When he moved out of his second apartment in 2017, he called about his security deposit and someone read the charges to him over the phone. He then got 'something' in writing too—the reasonable inference being that this was a move-out statement listing the security deposit deductions.

Ms. Van de Vander testified that she got her security deposit refund, but never got a move-out statement explaining any deductions when she moved out of Gwynn Oaks in June 2017. Ms. Van de Vander's testimony established that she was expecting a security deposit of $705 plus a pro rata refund of nearly a half of last month's rent of $775. Yet when she only received $730 back, she did not notice the amount was lower than it should have been, and she never called for an explanation of charges. Given the passage of time and her lack of attention to

the security deposit refund generally, I had concerns about relying on her undetailed testimony that she did not receive the security deposit notice. I did not find her testimony convincing on this particular point and further note that her answers to questions generally was very abbreviated and lacking in detail. On the other hand, I also considered that I was not directed to a letter documenting that a move-out statement was mailed to Ms. Van de Vander. However, there were difficulties with documents throughout the hearing and pre-hearing process (documents stored in a different place than expected, documents under misspelled tenant names, documents not readily located due to misspelling of witness names, repeated and ongoing supplementation of documents, and difficulty compiling documents due to the extensive period of time covered). In these circumstances, I did not find the absence of documentation to be dispositive of whether the notice was in fact sent to Ms. Van de Vander, nor did I find it to be a reliable indicator, absent other compelling evidence.

Tatianna Joyner testified that she never received a move-out statement after she vacated her unit at Pleasantview on March 9, 2017. She testified that she provided Westminster with her forwarding address, an address where her mother continues to reside. Again, I had significant concerns about Ms. Joyner's ability to accurately recall, over three years later, whether she received a move-out statement. Ms. Joyner could not recall the amount of her security deposit and testified that even though none of her security deposit was returned, she never inquired about it and explained that she just wanted to move on with her life. An April 13, 2017 move-out letter and statement, addressed to Ms. Joyner at the address she provided, were admitted into evidence. West. Ex. 126A at 56-57. The letter reflected that Ms. Joyner owed $715.46, meaning that Westminster had a financial incentive to ensure the letter was sent. Given the passage of time,

her lack of interest in the return of her security deposit, I did not find her testimony on this point to be reliable and instead relied upon the documents in evidence.

The testimony of Shania Whitaker was similar to that of Ms. Joyner—she did not recall receiving a move-out statement after she left her unit at Pleasantview in May 2017, but she was not interested in pursuing it further despite not receiving a refund. A June 2, 2017 move-out statement and accompanying letter, addressed to Ms. Whitaker at her forwarding address, were admitted into evidence; the letter reflected that Ms. Whitaker owed $143.49. West. Ex. 231A at WM RRPD 225985-86. In these circumstances, I do not find that Ms. Whitaker's testimony reliably established that she was not sent a move-out statement describing the deductions from her security deposit.

Mickel Owens and her roommate moved out of Riverview in 2018. Ms. Owens did not recall receiving a move-out statement explaining deductions from her security deposit. Nonetheless, a move-out statement with Ms. Owens' forwarding address, dated 18 days after she moved out, is in evidence. West. Ex. 164A at WM RRPD 122616. It reflects a balance was owed by Ms. Owens and her roommate in the amount of $451.76. A handwritten note on the file copy reflects that a separate copy of the notice was mailed to Ms. Owens and her former roommate, each to their own address. *Id.* Ms. Owens' testimony revealed that her former roommate had received a copy of the statement. Given that a copy of the statement is in the record, that Ms. Owens' former roommate received a copy of it, and that Westminster had a financial incentive to send the statement, I find that the preponderance of the evidence does not establish Westminster failed to mail Ms. Owens the required notice.

The testimony of other witnesses also reflected that the ability to accurately recall whether they received a notice some years prior was a significant concern. For instance, Miatta

Hubbard recalled that she did not get any of her security deposit back after moving out. She was able to identify her move-out statement as a document she recognized and which contained her name and address, but nonetheless still testified that she could not recall if the statement (which she recognized and was addressed to her) was something she received. Despite this, she acknowledged that she was given a final bill, which she paid. Her testimony raised questions about her ability to accurately recall whether she received a move-out statement that reflected the charges against her security deposit. Furthermore, she testified that she disputed the charges with the office and, at that time, she knew what the charges were for.

Michelle Moore-Wright was shown a copy of her February 4, 2016 move-out statement, West. 156A at WM RRPD 006415-16, and candidly testified that she did not recall seeing the document. She acknowledged that the address on it was her new address. When pressed on the issue, she clarified that she was not saying she never received the document, but that it had been so long that she did not remember if she received the letter. She recalled however, as that letter informed her, that she learned she would be getting part of her security deposit back. She was also aware that a portion of her security deposit was being withheld due to the condition of the stove and the carpet.

The passage of time and its impact on the witness's ability to accurately recall receipt of a move-out statement was a concern with many witnesses. This was particularly true for witnesses, such as Shakeria Taylor, who were testifying about events which occurred years prior and whose testimony revealed that the return of the security deposit was not something they focused on. Some of these witnesses, such as Ms. Taylor, also acknowledged that they failed to provide a forwarding address, which could have played a role in any failure to receive a move-out statement.

Still other witnesses acknowledged that they received the move-out statement listing the charges made against their security deposit. For instance, despite signing an affidavit stating that she did not receive an itemized notice of deductions from her security deposit, Sherrita Drayton acknowledged in her testimony that she had received a move-out statement listing the deductions from her security deposit. *Compare* CPD Ex. 17, ¶16 *with* Test. Sherrita Drayton.

The CPD established that in specific instances (Scott Ferree, LaShawn Epps, and Jesenia Correa) JK2 or Westminster failed to timely mail the notice required by section 8-203(g)(1) of the Real Property Article. Section 8-203(g) of the Real Property Article is not among the statutes enumerated in section 13-301(14) of the Act. Thus, the issue is not whether JK2 or Westminster violated the security deposit law, but whether they violated the Act. The violation of the security deposit law may be relevant to a charge of unfair practices under section 13-303 of the Act. Further, the security deposit laws reflect that an explanation of the deductions is material information, which bears on the charges under section 13-301 of the Act.

As to Ms. Correa, I do not find that any failure to mail the notice required by section 8-203(g)(1) of the Real Property Article also constitutes a violation of the Act where Ms. Correa failed to provide a forwarding address and actually received an email sent by Westminster providing the required information. This allowed her an opportunity to question the charges to her security deposit, if she saw fit to do so.

Although I credited the testimony from Michael Johnson and Antoinette Summons that they did not receive the notice required by the security deposit law, there are also hard copies of their notices in evidence. In these circumstances, the preponderance of the evidence establishes the non-receipt of their notices but fails to establish that the notices were not mailed in accordance with the security deposit law. In any event, the same analysis as set out above for

Ms. Correa would apply to Mr. Johnson and Ms. Summons—they both received actual notice of the charges being made against their security deposits and were able to discuss those charges with the property manager, as they saw fit.

As to Mr. Ferree and Ms. Epps, the CPD established that JK2 and Westminster, respectively, failed to disclose material facts that tend to deceive and misrepresented that they would comply with the security deposit law, thereby violating section 13-301(1) and (3) of the Act and, thus, section 13-303 of the Act. However, the CPD did not, as a matter of fact, establish a broader charge of deceptive or unfair trade practices by the Respondents for more generally failing to provide written notice describing the security deposit deductions. *Coleman*, 369 Md. at 125 n.16.

2. Improper Withholding from Security Deposits (Am. SOC ¶¶ 99(f), 103)

The CPD further charges that the Respondents improperly charged tenants' security deposits for wear and tear and for damage that was not caused by the tenant. While the evidence failed to establish that Respondents regularly made improper deductions to tenant security deposits, the evidence established discrete instances of improper withholding of security deposits.

In terms of the Respondents' practices, the testimony and documentation in tenant files established that the Respondents had procedures in place to inspect units after move-out, document concerns thorough photographs, and make appropriate charges after review by the property manager. Tenants testified about the move-in forms that they filled out at the start of their tenancy to document existing damage; some of those forms are in evidence. Photographs taken after move-out, vendor invoices, and move-out statements were also admitted into evidence. Ms. Webb testified about the Respondents' practices for inspecting units at move-out

and assessing appropriate charges. Maintenance technicians testified about the process for turning over units and making them ready for new tenants.

In terms of the CPD's evidence, it established that in certain instances improper charges were made. For instance, the evidence established that Mr. Ferree resided in his unit at the Commons for five years, but upon moving out in 2013, JK2 charged him to replace the carpet although he lived in his unit for more than five years, the typical life of carpet for depreciation purposes.[94] The photographs taken by Mr. Ferree, though not showing all of the carpet, revealed that the carpet was generally in good condition. He testified credibly that he attended the inspection and no problem with the carpet was brought to his attention. He contemporaneously disputed the basis for the deduction and involved the Attorney General's Office. Ultimately, Westminster returned a portion of Mr. Ferree's security deposit, less monies owed for a utility bill. I credited Mr. Ferree's testimony. The evidence established that JK2 initially improperly deducted $105.80 from his security deposit to cover the cost of carpet replacement, without any basis to do so.

The evidence also established that Antoinette Summons was improperly charged for damage to her countertop that was pre-existing. As noted above, Ms. Summons was detailed, consistent, and demonstrated a good recollection of the pertinent events, despite the passage of time. She explained that she initially raised the issue when she received her security deposit, after leaving Whispering Woods in 2017, and her prompt complaint lent credibility to her

[94] The Respondents typically used five years, or 60 months, as the depreciation period for carpet. *See, e.g.,* West. Ex. 126A at 61.

testimony at the hearing. As a result, I credited her testimony that the countertop was damaged when she moved in, in September 2009. She acknowledged that her child damaged the blinds.[95]

Regina Webster lived in a townhome at Dutch Village from November 2010 to June 2017. When she moved out, Westminster deducted amounts for replacement of the refrigerator and stove and resurfacing the tub, among other things.[96] In her affidavit, Ms. Webster disputed the charge for reglazing the tub. While she agreed that the tub needed to be resurfaced, she noted that it had been resurfaced twice during her tenancy because it kept peeling, and the need for resurfacing was not as a result of her use of the tub. There was no further evidence on this point. Ms. Webster also disputed the deductions made to replace the stove and refrigerator. She explained that she had previously lived in a different unit at Dutch Village and when she changed units, management moved her old refrigerator to the new unit as the refrigerator originally in place at that unit was not working. The refrigerator had been in her former unit since at least 2006, meaning it was more than ten years old at the time she moved out—Ms. Webster was detailed and credible in this regard and her move-in statement for the new unit reflected that the refrigerator originally was not working. Westminster depreciated the refrigerator at a rate of ten percent per year, but incorrectly put the refrigerator at only seven years of age, based on the date she moved into the unit. West. Ex. 230A at WM RRPD 008279. Similarly, it depreciated the stove based on the date she moved into the unit, and not the age of the appliance. West. Ex.

[95] Ms. Summons explained that she had lived there for seven years (from September 2009 to March 2017) without having the blinds replaced. The CPD, however, did not establish the useful life of blinds and whether they were due to be replaced.

[96] Photographs document damage to the blinds, stains on the carpet, and the need for additional coats of paint. West. Ex. 230A at WM RRPD 008290 & 008292-95.

230A at WM RRPD 008280. Accordingly, Westminster's deductions for the refrigerator and stove were plainly improper and lacked support.[97]

LaShawn Epps moved out of Carriage Hill in September 2017, after living in two different units. When she moved out of her second unit, she was charged for carpet replacement and a double coat of paint. She acknowledged that the carpet needed to be cleaned, but testified that it did not need to be replaced and was not new when she moved in. Ms. Epps took photographs to document the condition of her unit when she left.[98] CPD Ex. 84B. The photographs show, without question or ambiguity, that the walls were in a good and ordinary condition. Ms. Epps credibly testified that any unphotographed areas of her home were in similar condition. Ms. Epps disputed the deductions at the time they were made, but while that process was ongoing the property was sold, and Westminster was no longer the manager. Her testimony was detailed and credible, corroborated by the photographs in evidence, and supported by her prompt complaint. The preponderance of the evidence establishes that Westminster improperly and unreasonably charged her security deposit for wear and tear at the end of her tenancy.

Finally, the evidence establishes that Javonia Harden's account was improperly charged $547.94 for carpet replacement when she moved from Cove Village to Essex Park in May 2017. Her testimony was detailed and I found her to be credible. She denied damaging the carpet and she contested the charge at the time. She detailed her conversations with the property management office, testifying that she spoke with Denise Shelton and was told there was a small

[97] Although Westminster argued that Ms. Webster in fact received a new stove during her tenancy in the second unit, the fact that it depreciated the refrigerator from the date she moved in contradicts that argument. In any event, Ms. Webster's testimony was that she never received a new stove.

[98] She explained that when she moved out of her first unit, it had taken some effort to get her security deposit back. As a result, she wanted to make sure she documented the condition in which she left the second unit.

stain on the carpet. Ms. Harden further testified that Ms. Shelton declined to show her any photographs of the damage. There was no evidence that would reflect why a small stain would necessitate replacing carpet in the amount of $547.94, and there was no evidence to contradict Ms. Harden's testimony that the carpeting was not generally damaged and the only damage noted was a small stain. Thus, the deduction for carpet replacement was improper and unreasonable.

As to the other tenants, the evidence was either evenly balanced or in the Respondents' favor. Many tenants denied leaving their unit in anything but good condition or with minor issues; however, photographs taken by JK2 or Westminster after the tenant moved out often revealed a much different story.

For instance, Jesenia Correa denied damaging the carpet, but ultimately testified that she did leave a large stain on the carpet from an orange drink. She further testified that she cleaned the apartment, but when confronted with pictures showing furniture left behind and piles of trash, she noted that it was her furniture and blamed her brother for leaving the mess. The photographs establish that the deductions made to her security deposit were appropriate.

Patrice Gardner similarly testified that the deductions to her security deposit were unwarranted, even though photographs documented bleached spots on the carpet and scuffed walls. She acknowledged the scuffed walls were likely from her moving furniture out and she did not dispute that two coats of paint were needed in the entryway. Although she was aware of the basis for the charges when she moved out of Whispering Woods in November 2017, she did not challenge the charges to her security deposit at that time. The CPD did not establish that the deductions were improper.

Jeffrey Smith testified that when he moved from his apartment at the Commons in January 2016, after living there for one year, there were bubbles in the carpet from where it was improperly laid down, but the carpet was otherwise clean and free from damage. The Move Out Information Report reflects that everything was working properly and in good condition, except for the carpet. In the carpet category, there is a note indicating possibility carpet would need to be replaced or cleaned. West. Ex. 200A at WM RRPD 006356. There was documentation that a vendor was retained to clean the carpet and noted heavy soil accumulation and matted hallways. CPD Ex. 185-B-9, at 537. Although Mr. Smith testified that he was told by employees that he would be charged for "wear and tear" it also seemed that he latched onto this term for purposes of his testimony because it was used by the CPD during his interview. On balance, the CPD did not meet its burden of proof to establish that the Respondents made an improper deduction from Mr. Smith's security deposit.

Shakeria Taylor resided at Essex Park for only four months, June 2017 through October 25, 2017, before she was asked to leave for breaching her lease when a resident in her unit was arrested at the property. She was charged for blind replacement, lock replacement, carpet depreciation, and stove cleaning. Ms. Taylor testified that when she moved in, everything looked good in the unit, and that when she moved out, the unit was in the same condition as it was when she moved in. She acknowledged that she was unhappy that she was asked to leave. Despite the unexpected end to her tenancy, she claimed that she cleaned the apartment. Nonetheless, Ms. Taylor explained that she was too busy trying to find a new place to live to make any effort to pursue the return of her security deposit at the time in question. She denied having unpaid rent for October, despite documentation otherwise. CPD Ex. 125. Based on Ms. Taylor's manner of testifying and her testimony as a whole, I did not find her to be a reliable and

credible witness on this point and, accordingly, I find that the CPD failed to establish that improper deductions were made to Ms. Taylor's security deposit.

Tatianna Joyner testified that she resided at Pleasantview from February 2015 to March 2017. She described cleaning her unit at Pleasantview prior to moving out and denied causing any damage. Ms. Joyner was charged for carpet replacement, stove/refrigerator cleaning, and replacing blinds. During her testimony, Ms. Joyner was confronted with photographs taken of her unit after she moved out. Despite a photograph showing stained carpet, Ms. Joyner denied that the carpet looked like this when she left. Ms. Joyner acknowledged that the stove had a black mark on it, as shown in a photograph, but asserted it was in the same condition when she moved in. She testified that she and her young son hardly ever ate in the house in the two years she lived there and denied using the stove, though she was also aware of a stain inside the oven. As to the blinds, Ms. Joyner testified that if blinds were broken when she moved out, they were like that when she moved in. Upon review of the photographs and consideration of Ms. Joyner's testimony, the CPD did not establish that improper deductions were made. The photographs, West. Ex. 126A at 68 and 69, document the stained carpet and missing blinds. At best, the evidence was in equipoise on the issue of the dirty stove and refrigerator. *Id.* at 62, 65.

Geoffrey Stafford resided at the Commons for approximately eight months in 2015 before leaving due to concerns about crime in the area. After moving out, he was charged $58.30 for carpet cleaning. He testified that before leaving, he vacuumed the carpets and left the unit in generally clean condition. Mr. Stafford generally denied that the carpeting had any stains or damage; however, he acknowledged that he and his fiancée had foster pets at the apartment.[99] There were no photographs of the condition of the unit and Mr. Stafford did not contest the

[99] They paid a pet fee for their unit.

deduction for carpet cleaning at the time the charge was made. Given his failure to act on the charge at the time and the presence of multiple pets in the unit, I did not find his uncorroborated testimony, five years after the fact, sufficient to establish that the deduction of $58.30 for carpet cleaning was improper.

Miatta Hubbard testified and questioned the validity of the deductions made to her security deposit after she moved out of her unit in Dutch Village, where she resided from September 2011 to September 2015. She was charged for cleaning the stove, replacing blinds, and replacing carpet. Ms. Hubbard testified that she spent days or weeks cleaning the unit and rented a machine to clean the carpet and that there was no staining or spills on the carpet. Significantly, Ms. Hubbard's testimony was five years after she moved out of her apartment. Photographs showing the condition of her unit prior to and at move-out are in evidence. West. Ex. 105A. The photographs show signs that Ms. Hubbard cleaned the carpet, as she testified. *See id.* at WM RRPD 010627. However, the photographs reflect that carpeting on the stairs was worn bare and in other areas the carpet appears to be stained. *Id.* at 010626, 29, 34. Ms. Hubbard admitted that the blinds on the sliding door needed replacement and testified that a slat fell off and she had been unable to reattach it. Ms. Hubbard acknowledged that at an earlier point in time, when she sought to change units, management had raised concerns about the cleanliness of her unit, though she testified that there were extenuating life circumstances at that time. There were no photographs of the stove and oven after Ms. Hubbard moved out. I considered the evidence as a whole and find that the CPD failed to establish that the deductions to Ms. Hubbard's security deposit were improper.

Joseph Barnes testified that he moved out of his townhome at Commons in October 2015. After he moved out, $282.33 was charged against his security deposit for "carpet replacement

depreciation."[100] Mr. Barnes explained that he was in such a rush to move out that he did not concern himself with the deductions made to his security deposit, even though the family agreed to a repayment plan for the amounts JK2 claimed were due and owing. Mr. Barnes testified that he had the carpet professionally cleaned, though there was no evidence of the company that cleaned the carpet or any photographs showing the condition of the carpet. Given the passage of time, the lack of details in his testimony, and his failure to contest the charges at the pertinent time, I found Mr. Barnes uncorroborated testimony insufficient to establish, by a preponderance of the evidence, that the charges were improper.

Michelle Moore-Wright moved out of her unit at the Commons in February 2016 and received a partial refund of her security deposit, after charges for replacing the carpet, cleaning the stove, and replacing a miniblind. She testified that at the time of the deductions, she was aware she was being charged for the carpet and stove did not contest the charges at the time. In her affidavit, she asserted that if "Westminster" determined that the carpet needed to be replaced, "it could only have been due to wear and tear and the management company's desire to put in new carpeting in order to make the units attractive for new tenants, because I left the carpeting clean and undamaged." CPD Ex. 15, ¶ 6. She also testified that she the stove was clean prior to moving out. *See also id.*, ¶ 7. I considered this in light of the passage of time, her failure to challenge the charge at the time, the subjective nature of the matter, and the lack of detail as to what her efforts entailed (whether the oven was cleaned, whether there was any staining). I find that the CPD failed to establish, by a preponderance of the evidence, that the stove cleaning charge was improper.

[100] Documents in his tenant file reflect that this was the cost to replace the carpet, less the depreciation of the carpet. West. Ex. 15A at WM RRPS 004236.

At the hearing, Ms. Moore-Wright also testified that she had the carpet professionally shampooed twice a year due her daughter's asthma and maintained it was in good condition. She did not have any pictures of the carpet at move-out to support her testimony that it was in good condition and could not recall who she used to clean the carpet, though it had been several years.

Westminster submitted a $0 dollar invoice from its carpet cleaning vendor, Super Scrub, which contained a notation that the carpet needed to be replaced. West. Ex. 156A at WM RRPD 006421. A depreciation worksheet reflects that the cost of the new carpet was $975.00, and that after accounting for the age of the old carpet, Ms. Moore-Wright was charged $130.00. *Id.* at WM RRPD 006420.

The CPD contends that Ms. Moore-Wright was improperly charged for damage to the carpet due to flooding, and not damage she caused. It points to a note on Ms. Moore-Wright's move-out information report that the carpet was damaged "due to flood from closet area" to support its position that Ms. Moore-Wright was improperly charged for the damage. *See id.* at WM RRPD 006422. Theresa Webb's deposition makes clear that the properties was not supposed to charge a tenant for damage that was due to maintenance issues, like a flood. CPD Ex. 340-E at CPD No. 047902. The CPD overlooks a critical fact, however: the estimated amount for replacing the carpet due to the flooding was only $25.00, as seen on the move-out information report. West. Ex. 156A at WM RRPD 006422. The only reasonable inference from the estimated $25.00 replacement cost is that it was a very limited area of carpet that was contemplated to be replaced based on the internal walk-through inspection. This is consistent with Ms. Moore-Wright's testimony that the flood involved a limited area of her unit and some of the carpet was pulled up at the time of the flood, but the remainder in the impacted area was just dried out. Subsequently, the final amount of the charge for carpet replacement was placed

on the move-out information report with a distinctly different pen—at which time the $25.00 amount was crossed out and the carpet replacement cost was noted to be $130.00 for the tenant's share of the $975.00 replacement cost. A reasonable inference is that the new, much higher replacement cost was the result of a change in circumstance; that is, a determination that carpeting beyond what was impacted by the flood also needed to be replaced. The entirety of the relevant evidence fails to establish by a preponderance of the evidence that improper deductions were made to Ms. Moore-Wright's security deposit for carpet replacement.

Sherrita Drayton was charged $368.91 for carpet replacement and $25.00 for removal of a satellite dish when she moved out of Cove Village in March 2017. She testified that she disputed the $25.00 satellite charge at the time and, ultimately, was not charged for it. It was apparent from her testimony that she received the move-out statement which set out both the carpet and satellite dish charges, one after the other. Despite that the charges were listed one following the other, Ms. Drayton explained that she did not contest the charge for replacing the carpet because she was not aware of it at the time. It is difficult to believe she would notice the $25.00 charge for satellite removal but not the $368.91 charge for carpet. Given the passage of some years, it seems more likely that she simply had no reason to recall seeing the carpet charge. Although Ms. Drayton disputed that carpet replacement charge at the hearing, explaining that the carpet was not stained, she did not have any photographs to support her testimony. The move-out information report reflects a contemporaneous determination that the carpet needed to be replaced at the stairs; a depreciation worksheet was completed. West. Ex. 58A at WM RRPD 222710-11. Given the passage of time, the lack of detail in her testimony, the absence of photographic support, and the failure to make a contemporaneous challenge to the charge, I find her testimony insufficient to establish that she was improperly charged for carpet replacement.

When Mickel Owens and her roommates moved out of Riverview in November 2018, their security deposit was charged for damage to carpet and blinds. West. Ex. 164B. At the hearing, Ms. Owens disputed the charges. Ms. Owens testimony reflected that at times there were three large dogs in the apartment. There are photographs in evidence to support the charges made for the carpet and blinds, including damage that appears consistent with the presence of crated dogs. West. Ex. 164E. Her testimony was insufficient to establish that she was improperly charged.

The totality of the evidence concerning deductions made to the security deposits of other tenants was likewise too equivocal to meet the CPD's burden of establishing that the deductions made were improper. For instance, Roxanne Horsey testified that she left her apartment at Whispering Woods in clean condition and that the carpet only had "wear and tear." While she was detailed in her testimony, she also admitted that the carpet was tearing away from the stairs. The Respondents' carpet cleaning vendor, Super Scrub, issued a $0 invoice reporting that the carpet was "damaged/soiled beyond restorable condition" and needed to be replaced. West. Ex. 102A at WM RRPD 106754. Westminster determined the cost to replace the carpet and made an allowance for ordinary wear and tear. *Id.* at 106755.

Similarly, the totality of the evidence concerning deductions to Antoinette Tillman's security deposit did not establish that improper deductions were made. When Ms. Tillman moved out of Princeton Estates, after living there for a matter of months in 2016, she was charged for damage to carpet and blinds. She acknowledged there was some staining on the carpet. At the time she and her husband left, they agreed to pay for the damages to the extent they exceeded the security deposit.

Myrtle Turnage resided in a unit at Whispering Woods from September 2010 through August 2017. After moving out, she was charged for damage to blinds and an extra paint work. Ms. Turnage acknowledged she had painted the townhome teal but contested whether she should have been charged for extra coats of paint, as she believed the color could be easily painted over. CPD Ex. 57, ¶¶ 7 & 8. The evidence does not establish the charges were improper.

Mark Brunner testified that he was unsure of some of the conditions when he moved out of his two units at Whispering Woods. Photographs in evidence show damage to blinds and carpet and dirty appliances and support the charges made against his security deposit. West. Ex. 30F-1.

Richard Brown moved out of his townhome in Essex Park in February 2018, after having lived there for a year and a half. He testified that he vacuumed the unit and left it empty with no trash; he denied that the carpet was stained or damaged beyond ordinary wear and tear. He did not take any photographs of the unit, but he acknowledged that there were black spots on the carpet by the front door, though he believed the spots might be removed with cleaning. At the time, he did not inquire about why his security deposit was not returned; he explained that he did not take issue with it until he was contacted by the CPD about this proceeding. His testimony failed to establish, by a preponderance of the evidence, that the deductions to his security deposit were improper.

When Ms. Van de Vander left Gwynn Oaks in January 2017 she was charged for damage to the blinds and carpet. She testified that when she left the carpet was in "great" condition and her boyfriend, who worked for a carpet cleaning company, professionally cleaned the carpet. She testified that the blinds in her apartment were "fine." There were no photos of the carpet or

blinds[101] and she did not inquire about the deductions at the time. In these circumstances, the evidence was not sufficiently convincing that improper deductions were made.

Latonia Weathers lived at Fontana for approximately one year, from August 2016 to August 2017. When she moved out, deductions were made to her security deposit for cleaning the stove, replacing blinds, replacing carpet, and double coating with paint. Ms. Weathers testified that she kept a clean house and often stayed at her daughter's house due to mice in her unit at Fontana. Nonetheless, photographs supported the deductions. *See* West. Ex. 228A.

Juamani Rivers resided in two units at Princeton Estates, the first from August 2012 to October 2105, and the second from October 2015 to September 2017. When he moved out of the first unit, he was charged for carpet damage and was provided a partial refund on his security deposit. When he moved from the second unit, his account was charged $505.92 for carpet replacement, $75.00 for three broken blinds, $25.00 to clean the refrigerator, and $25.00 to clean the stove. CPD Ex. 115-B-2 at 3. At the hearing, he testified that de did not recall leaving anything in the refrigerator when he moved out. The fact that, three years later, he did not recall leaving anything in the refrigerator falls short of establishing the charge was improper.

As to the carpet charge, Mr. Rivers acknowledged in his testimony that the carpet was damaged. However, he contended that the damage was caused by Westminster's contractors working in the unit at various times during his tenancy and an issue with the front door not closing correctly. Mr. Rivers did not contest the charge to his security deposit at the time it was made. There was no documentation or testimony that he requested replacement carpet or complained about how contractors were treating the carpet. His testimony changed from

[101] Gwynn Oaks is no longer owned or managed by any of the Respondents. Morgan Properties took over management of the property and Ms. Van de Vander's tenant file, if it still exists, is in the possession of Morgan Properties. The Division did not subpoena those records, and Westminster was unable to obtain them despite serving on Morgan a subpoena returnable at the start of the Hearing.

blaming the contractors for just the damage at the front of the unit, to also blaming them for damage at the back of the unit. This raises questions about the accuracy of his memory on this point. I do not find his testimony, concerning events three years prior, to be sufficient on its own to establish that the deduction made to his security deposit for carpet replacement was improper.

Kelly Hall moved into the Charlesmont community in early July 2014. I credited his testimony that when he moved in, the carpet was dirty and the apartment smelled like a "litterbox" and that, after his requests to management to have the carpet cleaned did not produce results, his boss had the carpet professionally cleaned for him. The property sent someone to spray the apartment to address the smell. In October 2014, he added a work colleague as a roommate; he reported this to the management office and provided the required written notice. Mr. Hall subsequently renewed his lease twice before ultimately moving out, mid-lease term, in September 2016; at move-out he was charged for carpet replacement and appliance cleaning.

After Mr. Hall advised property management that he was breaking the lease, his roommate moved out, and management locked out the apartment. Mr. Hall's belonging remained inside, as he was out of town at the time. Mr. Hall was unable to get back into the property to claim his belongings or clean the apartment. He acknowledged that the apartment was in "crappy" condition; he contended it was the same as when he moved into it. The CPD asserts that because the carpet smelled when he moved in, he should not have been charged for carpet replacement when he moved out. Mr. Hall and a roommate lived in the apartment for over two years, he was unable to get back in to do any cleaning after he broke his lease. Although cleaning previously rendered the carpet acceptable to both Mr. Hall and his roommate for over two years, after their tenancy it was determined the carpet needed to be replaced, not just cleaned. There were no photographs of the condition of the carpet; Mr. Hall did not take

further action at that time. Regardless of Mr. Hall's other difficulties during his time at Charlesmont, *infra*, the evidence does not establish that it was improper to deduct the carpet replacement, after considering depreciation, from Mr. Hall's security deposit. Similarly, it does not establish that it was improper to deduct appliance cleaning charges.

The propriety of charges for damage versus wear and tear is a difficult thing to establish, particularly years after the fact. As the CPD's own publication recognizes, landlords and tenants often disagree on whether a condition is damage or wear and tear and "there are no hard and fast rules that fit every situation." West. Ex. 274 at 012. While the CPD may not be subject to a defense of laches, the quality of its evidence was greatly impacted by the passage of time. Witnesses, such as Antoinette Tillman, testified that they no longer had photographs they believed they had taken years prior. Some tenant files were no longer accessible to the Respondents. Many witnesses, such as Myrtle Turnage, readily acknowledged their memory deficits about the events in question. The CPD bears the burden of proof and cannot prevail on uncertain evidence.

I also considered the CPD's reliance on the testimony of Ashley Contreras concerning charges made to security deposits for painting work purportedly necessitated by prior patch work from maintenance repairs or by mold growth. I did not find Ms. Contreras to be particularly reliable witness on this topic and her testimony was largely based on assumptions and personal opinions, as opposed to factual observations. Additionally, while the CPD's charges span from 2012 to 2019 and cover 17 properties, Ms. Contreras was only employed with Westminster for approximately four months, from October 2016 to February 2017 (well over three years prior to the hearing), at a single property, Highland Village. Ms. Contreras was employed as a resident relations representative and while she sometimes fielded calls from former tenants about their

security deposits, her duties did not regularly include handling security deposit deductions. She did not independently investigate security deposit deductions or review photographs taken at move-out, but simply passed along consumer inquiries and might be told why a deduction was being made so that she could inform the tenant of the reason. When asked about the condition of the property at Highland Village, Ms. Contreras replied that she had not been inside the townhomes. In light of her limited employment with Westminster and her lack of first-hand knowledge, I did not give her testimony any weight.

I also considered the CPD's reliance on the testimony of Stephanie Brown. While I found Ms. Brown to be a credible, candid, and knowledgeable witness generally, she was employed as a leasing consultant and handling security deposits was not one of her primary job duties. Although she testified that a tenant might be charged for carpet, despite having been in the unit for seven years and carpet having a five-year useful life, it was apparent that this was a hypothetical example, and not an actual tenant. Moreover, when asked if depreciation was considered when determining a tenant's share of damaged carpet, Ms. Brown acknowledged that she did not know if depreciation was deducted because she never handled this aspect of security deposits. Depreciation worksheets are in evidence. Given her limited knowledge base relating to security deposit deductions, I did not give Ms. Brown's testimony on this subject significant weight.

In summary, the evidence reflected that there were significant discrepancies with both Mr. Ferree's and Ms. Epps' move-out process, generally. Other than Mr. Ferree and Ms. Epps, the CPD established improper deductions to security deposits in three other instances, Ms. Webster, Ms. Summons, and Ms. Harden. In those five instances, the CPD established deceptive acts and a violation of the Act. Com. Law §§ 13-301(1), 13-303. With regard to these

individuals, JK2 and Westminster falsely represented, through the leases and, subsequently, the move-out statements and/or statements of its employees, the nature of the security deposit deductions that would be made and were made. The representations had the tendency to deceive and were material to the tenants. The evidence reflected the tenants were concerned with the return of their security deposits from the outset and documented existing damage on move-in statements with that in mind; they cleaned their units at move-out in accordance with the representations; and at times they inquired why they were not refunded for their security deposit. The Legislature has recognized that the amounts in issue make it difficult for tenants to dispute a landlord's treatment of their security deposits. *See* Real Prop. § 8-203.

As a whole, however, the evidence does not establish that the Respondents engaged in unfair practices that were likely to cause substantial injury to tenants. Com. Law § 13-303. Nor do the facts establish broader deceptive acts. Com. Law § 13-301(1). Generally applicable findings about the Respondent's practices cannot be made based on the five limited instances established by the CPD.

3. Failure to Credit Security Deposit Interest (Am. SOC ¶¶ 99(f), 103)

Under Maryland law governing security deposits for residential tenancies, a landlord is currently required to return the security deposit to the tenant "[w]ithin 45 days after the end of the tenancy . . . together with simple interest which has accrued at the daily U.S. Treasury yield curve rate for 1 year, as of the first business day of each year, or 1.5% per year, whichever is greater, less any damages rightfully withheld." Real Prop. § 8-203(e)(1). Interest accrues monthly but is not compounded. *Id.*, § 8-203(e)(2). Under current law, interest is not due if the landlord has held the security deposit less than six months and interest is not due for a portion of a month. *Id.* Over the period of time relevant here, the particulars of the obligation to credit a

tenant for interest on the security deposit have varied,[102] but at all relevant times a landlord has been obligated to credit the tenant for security deposit interest in some manner.

The documents in evidence establish that the Respondents frequently failed to credit tenant accounts for interest on the security deposits, as required by law. There was testimony from tenants to support this, as well. Moreover, the lawsuit filed by Hattie Crosby in 2015 put JK2 on notice of a potential issue with the return of security deposit interest. Upon receiving Ms. Crosby's complaint, Elida Bellance, the community manager for Carroll Park, emailed Theresa Webb a copy of the complaint and stated: "During the move out process I was never aware I was to calculate interest I thought it corp [sic] did calculations." CPD Ex. 354 at WM RRPD 261468. Notwithstanding Ms. Bellance's admission that she was "never" aware of the procedure for calculating security deposit interest, both Ms. Webb and Ms. Marine admitted that they did not take any action to determine whether the failure to return security deposit interest to Ms. Crosby was an isolated occurrence. The testimony and documents in evidence reflect that this was not an isolated incident, but instead was a problem across the Properties.

With the exception of the BLDG form lease that was in effect when JK2 took over management of the Park Holdings Properties in April 2014, none of the form leases in use at the Properties during the operative time expressly referenced the return of security deposit interest. The BLDG lease provided that "Landlord will return the security deposit to Tenant, with simple interest which has accrued at the rate of three (3%) percent per annum on any security deposit over $50.00, less any damages rightfully withheld . . . ." West. Ex. 279 at Westminster 081175.

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[102] Prior to January 1, 2015, interest was at the rate of 3% per year, accrued at six-month intervals, and was not payable on security deposits of less than $50.00. As of January 1, 2015, the statute was amended to provide for interest at the current "daily U.S. Treasury yield curve rate for 1 year, as of the first business day of each year, or 1.5%, whichever is greater[,]" but accrued at six-month intervals and was limited to security deposits of $50.00 or more. Effective June 1, 2015, the statute was amended to provide for interest to accrue monthly, to reflect that interest was not due for a partial month, and to provide that interest was only required to be credited if the landlord had held the security deposits for at least six months.

The documents in evidence reflect that some tenants who would have signed a BLDG lease prior to April 2014 and moved out under those leases were not credited with security deposit interest. *See, e.g.,* CPD Ex. 362-B at 1, 2, 4. As to those tenants, the failure to pay security deposit interest, despite the contrary representation in the lease, is deceptive under section 13-301(1) of the Act.

The remaining lease forms do not expressly mention security deposit interest, but they do reference the landlord's obligation to comply with the Maryland security deposit laws. *See* CPD Ex. 331 at Westminster 000570; CPD Ex. 332 at Westminster 078239; West. Ex. 65A at WM RRPD 033877; West. Ex. 178A at Westminster AG_MP 000602. The Respondents' representation that they comply with the security deposit law and their subsequent failure to do so is deceptive under section 13-301(1) of the Act.

Moreover, the failure to credit tenants with security deposit interest is an unfair practice in violation of section 13-303 of the Act. The security deposit statute is a remedial law designed for the protection of residential tenants. *See Pak v. Hoang*, 378 Md. 315, 323-28 (concluding, "Section 8–203 serves a similar, remedial purpose—to provide tenants with a remedy not provided for under common law"; citing, among others, *Neal v. Fisher*, 312 Md. 685 (1988) (recognizing the remedial nature of rent escrow statute)). As the Court explained, a remedial statute provides remedies not available at common law and is "designed to correct existing law, to redress existing grievances and to introduce regulations conducive to the public good." *Pak*, 378 Md. at 325-26. The failure to credit tenants with security deposit interest is a violation of a remedial statute and contrary to the representations of compliance made in the lease; it offends public policy as established by section 8-203(e) of the Real Property Article.

At times, the amount and effect of this failure might have been minimal. For instance, some of the tenants who were not credited with security deposit interest resided in their unit for less than a year (meaning the interest would be minimal) and left owing substantial amounts to the Respondents, which amounts were written off. *See, e.g.,* CPD Ex. 362-A at 6-7, 40-41; CPD Ex. 362-B at 1; CPD Ex. 362-C at 1-2; CPD Ex. 362-E at 5-6. On the other hand, however, the Respondents also failed to credit security deposit interest to tenants who had been in their units for years, while the security deposit accrued interest, and who were given a partial refund of their security deposit when they left—meaning they were actually shorted on their refund by virtue of not receiving credit for the interest. This included tenants like Nadine Lawson, who resided at Carriage Hill for 5 years, received Section 8 housing assistance, and was paid a partial refund on her security deposit, but was never credited for the interest thereon. CPD Ex. 362-A at 10-11; *see also, e.g., id.* at 20-21, 49-50; CPD Ex. 362-B at 2; CPD Ex. 362-C at 3-4; CPD Ex. 362-E at 7; CPD Ex. 362-I at 83-86; CPD Ex. 362-Q at 46-49 (witness Antoinette Summons). Further, the CPD has documented at least 576 instances, involving each of the Properties, in which the Respondents failed to credit tenants with security deposit interest. On whole, the evidence established that the failure to credit security deposit interest to tenants was unfair and likely to cause substantial injury. *See Inc21.com*, 745 F. Supp. 2d at 1004.

The injury was not reasonably avoidable by tenants. The leases presented to tenants at the outset represent that there will be compliance with the security deposit law. It was apparent from the testimony of former tenants that they were unaware that security deposit interest had not been credited or paid. The remedial provisions in section 8-203(e) of the Real Property Article were enacted, at least in part, in recognition of the fact that it is difficult for tenants to enforce the security deposit obligations because of the individually minimal sums involved. *See*

Pak, 378 Md. at 327-28 (noting that the provisions of section 8-203(e) are an attempt to remedy the difficulties encountered by tenants seeking return of security deposit and interest from landlords). The security deposit law imposes an obligation on the landlord to credit security deposit interest; it would contrary to the purpose of that law and the intent of the Legislature to place the burden of ensuring compliance on the tenant.

Finally, there is no countervailing benefit to consumers or competition when an landlord fails to credit a tenant for security deposit interest. Accordingly, the Respondents engaged in an unfair practice in violation of section 13-303 of the Act.

IV. Unfair and Deceptive Practices Relating to Property Conditions (Am. SOC ¶ 99(i), 100(a), 101(a))[103]

The CPD further charges that the Respondents violated sections 13-301(1), (2), (3) and 13-303 of the Act by: expressly and implicitly representing to consumers that the realty it was leasing was in good habitable condition and well maintained when it was not, misrepresenting the standard and quality of the realty by representing it was in good condition and well maintained, and failing to disclose to consumers the condition of the realty and their failure to maintain the realty. Am. SOC ¶¶ 85-89, 99(i), 100(a), 101(a). The CPD bases these charges on alleged rodent, roach, and insect infestations; floods, leaks, and water infiltration; mold growth; toilet and sewage backups; fixtures and appliances in disrepair; and delayed and inadequate repairs.

[103] I do not revisit the March 12, 2020 Proposed Ruling disposing of the claims relating to conditions issues arising during the course of the lease term on the basis of the Court's decision in *Richwind Joint Venture 4 v. Brunson*, 335 Md. 661 (1994). The CPD fully briefed this issue twice, in connection with the motions to dismiss and in connection with its Motion to Reconsider and/or Request for Clarification Regarding Proposed Ruling on Motions to Dismiss and it subsequently sought to raise the issue a third time, in a modified version, in its motions *in limine*.

A. Background and Representations

The various leases used by the Respondents all represented, in substantially the same language, that:

> **CONDITION OF THE PREMISES:** The Premises will be made available such that it will not contain conditions which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health or safety of occupants.
>
> **EXISTING DAMAGES:** Upon written request of Tenant (sent in accord with Section 2 of this Lease Agreement) within fifteen (15) days of occupancy, Tenant shall have the right to have the Premises inspected by the Landlord, in the Tenant's presence, for the purpose of making a written list of damages that exist at the commencement of the tenancy.

CPD Ex. 331 at Westminster 000575; CPD Ex. 332 at Westminster 078245; West. Ex. 65A at WM RRPD 033882; West. Ex. 32A at WM RRPD 102476; West. Ex. 279 at 081179; *see also* Real Prop. §§ 8-208(c), 8-211 (2015 & Supp. 2020); Baltimore City Code of Pub. L., § 9-14.1(a), (b)(3);[104] Baltimore Cty. Code § 35-4-201(b);[105] Prince George's Cty. Code of Ordinances § 13-139.[106] Issues like lack of heat, running hot water, infestations of rodents, and structural defects are within the scope of the life, health and safety threats covered by these

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[104] "In any written or oral lease or agreement for rental of a dwelling intended for human habitation, the landlord shall be deemed to covenant and warrant that the dwelling is fit for human habitation[,]" meaning that "the premises shall not have any conditions which endanger the life, health and safety of the tenants, including, but not limited to vermin or rodent infestation, lack of sanitation, lack of heat, lack of running water, or lack of electricity."

[105] A tenant can bring an action in court to avoid paying all or part of their rent under the following circumstances:

> (1) A tenant may assert that there exists on the leased premises or on property used in common with the leased premises a condition that constitutes, or will constitute if not promptly corrected, a fire hazard or serious threat to the life, health, or safety of the occupants of the leased premises.
> (2) A serious threat to the life, health, or safety of the occupants of a leased premise includes:
> (i) A lack of heat or of hot or cold running water, except if:
> 1.The property is a single-family dwelling or a multiple dwelling where the tenant is responsible for payment of the water charge; and
> 2.The lack of water is the direct result of the tenant's failure to pay the water charge;
> (ii) A lack of light or of electricity;
> (iii) A lack of adequate sewage disposal facilities;
> (iv) An infestation of rodents, except if the property is a single-family dwelling.

[106] "[L]andlord shall be obligated to maintain all facilities supplied with the leased dwelling unit and/or as enumerated in the lease."

provisions, though lack of fresh carpet or paint, cracks, and the absence of air conditioning are not. *Cf.* Real Prop. § 8-211(e), (f); Baltimore City Code of Pub. L., § 9-14.1(a), (b)(3); Baltimore Cty. Code § 35-4-201(b). If such life, health, and safety issues arise during the course of the lease, the tenant may pursue rent escrow; a "landlord's acts or omissions during the term of the lease are fully regulated by comprehensive landlord and tenant statutes as well as the common law." *Richwind*, 335 Md. at 683; *see also* Real Prop. § 8-211. To the extent tenants were asked, the testimony established a general awareness of the right to pursue a rent escrow action, though not necessarily the particulars of filing for rent escrow. *See, e.g.,* Test. Latonia Weathers; *see also*, West. Ex. 21A at WM RRPD 008526 (rent escrow documents); West. Ex. 274 at 016-18.

The Properties were advertised as having 24-hour emergency maintenance. *See, e.g.,* CPD 4-B-2. This meant only that an on-call maintenance technician would respond to remediate certain issues, such as flooding, even after hours. Test. Michael Hoyte; Test. Carroll Smith. The leases further state that the landlord is responsible for repairs to the premises. *See, e.g.,* CPD Ex. 331 at Westminster 000573.

In addition to the express written representations, the testimony established that prospective tenants at the Properties were generally shown the model unit at the property. *See also*, CPD Ex. 340-B at CPD No. 046709. Several tenants testified that the model unit was in "pristine" condition; it was updated, clean, and nicely painted as tenants repeatedly testified, regardless of which of the Properties was being discussed. *See, e.g.,* Test. Dionne Mont; Test. Nicholas Johnson Sr.; Test. Latonia Weathers; Test. Lauren Sheeder. The documents in evidence likewise show that JK2 and Westminster emphasized the importance of the model unit being in tiptop condition. *See* CPD Ex. 340-E at CPD No. 048218 ("Models must be cleaned on

a daily basis. Carpets should be vacuumed, floors waxed, furniture dusted, and kitchens must sparkle. Make sure there are no odors - always deodorize with a 'fresh' scent. Make sure everything is in working order. If something requires a work order, make sure it gets repaired immediately."). The model units generally were updated units, meaning they had newer appliances and cabinets, two colors of paint, and better doors. *See, e.g.,* Test. David Chesley.

At least as to Whispering Woods, Stephanie Brown testified that consumers were shown a binder with the photo samples of each type of unit offered at Whispering Woods (renovated, partially renovated, and vintage). Ms. Brown credibly testified that the photos in the leasing binders did not accurately represent the condition of the actual units, particularly where the "vintage," or unrenovated units were concerned.

The testimony from the tenants and from the leasing consultants established that tenants at the Properties typically did not get to see their actual unit until the day they were signing the lease, which was often the day they were prepared to move into the unit.[107] Some tenants were not permitted to see their unit until after the lease was signed, despite asking to see it.[108] Tenants were often told the unit was unavailable to see because it was still being readied for them. *See, e.g.,* Test. Latonia Weathers.[109] The tenant testimony repeatedly reflected that the condition of the actual units frequently was not at all on par, at a very basic level, with the models being shown. Some of the complaints concerned chipped or dingy paint or older model appliances and cabinets but other complaints related to dirty units, broken appliances and fixtures, infestation of

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[107] *See, e.g.,* Test. Lauren Sheeder; Test. Tia Stepney; Test. Shania Whitaker; Test. Darrian Cate; Test. Tonya Simmons; Test. Megen Frierson; Test. Quasia Peterson; Test. Latonia Weathers; Test. Stephanie Brown; Test. Phyllis Roosevelt.

[108] *See, e.g.,* Test. Kelly Hall; Test. Shaleza Guytan; Test. Jessica Waters; Test. Patrick Bailey; Test. Kelly Ziegler; Test. Felicia Heyward; Test. Sara Kline; Test. Sophia Fitzpatrick; Test. LeShaunde' Clark; Test. Vaughn Phillips; Test. Dionne Mont; Test. Ciera Wozniak; Test. Kiarah Rush; Test. Sherrita Drayton; Test. Monica Booker; Test. Jesenia Correa; Test. Charmaigne Harris; Test. Jamila Weathers; Test. Karen Hope; Test. David Chesley; Test. Stephanie Brown.

[109] Of course, some tenants testified that they saw their actual unit well in advance. *See, e.g.,* Test. Shawn Phillips.

pests, broken locks, and water damage. *See, e.g.*, Test. Quasia Peterson; Test. Shaleza Guytan. At the point where they saw the condition of their actual unit, many tenants felt that they had little recourse, because they were there with their belongings and had nowhere else to go.[110] Tenants repeatedly testified that, after seeing their actual unit, they inquired if another unit was available or if they could be let out of the lease, and were often told no.[111] Some tenants were Section 8 voucher holders and, thus, could not easily switch apartments. *See, e.g.*, Test. Lauren Sheeder. Other tenants took the property personnel at their word that the problems listed would be fixed. *See, e.g.*, Test. Shania Whitaker. As discussed above, a prospective tenant would typically lose their holding fee if they did not move in.

Phyllis Roosevelt, a leasing agent at both Gwynn Oaks and Whispering Woods, at various times, explained that maintenance staff was often unable to get a unit fully rent-ready in time for the new tenant and concerns would simply be placed on the move-in checklist for repair after the tenant took possession of the unit. *See also* Test. David Chesley; Test. Stephanie Brown. Ms. Roosevelt estimated that this occurred about fifty percent of the time. She noted, however, that there were some issues, such as broken pipes, that would prevent a unit from being occupied. *See also, e.g.*, Test. Patrick Bailey; Test. Kelly Ziegler. Likewise, many tenants testified that they were told that they could not see the apartment before move-in because work was still being done on it. *See, e.g.*, Test. Latonia Weathers.

B. Maintenance Services

To support their charge that the Respondents violated the Act by failing to provide maintenance services, the CPD largely relied on consumer testimony, maintenance logs, and

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[110] *See, e.g.*, Test. Patrick Bailey; Test. Rodney Lomax; Test. Shaleza Guytan; Test. Ciera Wozniak; Test. Quasia Peterson; Test. Latonia Weathers.

[111] *See, e.g.*, Test. Patrick Bailey; Test. Kelly Hall; Test. Shaleza Guytan; Test. Dionne Mont; Test. Ciera Wozniak; Test. Latonia Weathers.

testimony from former maintenance technicians. The Respondents largely relied on cross-examination, their own maintenance witnesses, and evidence relating to maintenance and repair budgets and expenditures, capital improvement expenditures, and their use of outside contractors to supplement their internal maintenance programs. As to the provision of maintenance services, the preponderance of the evidence generally fell short of establishing the type of pattern and practice case this was represented to be—with exceptions related to the delayed replacement of storm-damaged roofs at certain properties and flooding at Carriage Hill. In any event, the claims are barred by the decision in *Richwind Joint Venture 4 v. Brunson*, 335 Md. 661 (1994).

1. Consumer Testimony

In reaching this decision, I carefully considered the testimony of the consumer witnesses about the issues they experienced while living at the various Properties. The testimony was concerning; consumers testified about recurring leaks and delays in repairs. I also considered that witness memories had clearly faded with time and the witnesses were generally unable to say with certainty how many calls they had made to maintenance for a particular issue, the period of time over which the problem persisted, or the nature of the work performed.

By way of example, Harry Gillis resided at Commons, at 9877 Edisto Way, from May 2016 until July or August of 2020, *see* West. Ex. 83B, pursuant to a lease entered into with JK2, West. Ex. 83A at 005537, which he renewed several times, including signing a new lease with Westminster in 2019, *id.* at 005484. Mr. Gillis saw his specific unit before he signed the lease and was also shown a model apartment. During his tenancy, he encountered issues with his air conditioner, leaks in his ceiling, recurrent mold or mildew, and varying problems with his clothes dryer. At the hearing, Mr. Gillis was shown a log of his maintenance complaint, CPD

Ex. 88-A; he believed it contained all of his complaints, though he later testified that he thought he made more complaints about his air conditioner.

On June 22, 2016, Mr. Gillis reported that his air conditioner had leaked water onto the carpet. On June 23, 2016, a maintenance worker came to blow out the air conditioner's condensate line to unclog it; the carpet was not dried out at that time. Although Mr. Gillis thought he called an additional time about an air conditioner leak at a similar point in time (two to three weeks later), and a contractor responded with industrial fans to dry out the carpet, there was no record of it. However, there was a record that three weeks after the initial complaint, on July 12, 2016, Mr. Gillis reported that his air conditioner was not cooling the home sufficiently. Mr. Gillis explained that it was approximately 90 degrees outside, but his air conditioner was keeping the temperature at 78 to 80 degrees inside. He testified about fungus growing on the floor of the utility closet at that time. A worker responded and charged the unit and scheduled it for replacement. Mr. Gillis testified that the air conditioner and the floor were replaced; although he recalled they were replaced about 3 months from his initial complaint, the work order was closed out on July 19, 2016. In considering Mr. Gillis' testimony about these events, I took into account that the events at issue occurred more than four years prior to his testimony, and the passage of time had demonstrably impacted his recollection. Mr. Gillis made no further complaints about the air conditioner during the four years he lived at the Commons. The evidence relating to Mr. Gillis's problems with his air conditioner does not establish misrepresentations about the quality or level of maintenance that would be provided nor any unfair practices in that regard.

Mr. Gillis also experienced problems with mold/mildew,[112] his clothes dryer, and leaks much later in his tenancy (beginning in March 2017). The records reflect that maintenance responded and took action; however, the repair did not always resolve the problem the first or second time. For example in March 2017, repairs were made to Mr. Gillis' clothes dryer and there were no complaints for nearly a year; when he again complained about a problem with the dryer in February 2018, the motor was replaced; that repair only lasted a day and the problem was determined to be that an old motor was used in the repair, the dryer was then repaired through October 2018; at that time Mr. Gillis reported that his dryer would not turn on, but the maintenance technician responded, within three days, and observed that the "dryer works fine"; there were no further complaints about the dryer.

Mr. Gillis experienced ongoing problems with two different leaks from February 2018 through February 2019; one leak was from a cracked pipe that required multiple requests to resolve (after Mr. Gillis used his cell phone camera to find the source of the leak himself) and one leak was reported to be from a roof issue. Mr. Gillis took photographs showing water damage to a section of his ceiling and a small green plastic cup, sitting on a dry paper towel in the middle of normal (dry) looking rug. Maintenance staff responded to the complaints and made repairs that seemed reasonably designed to address the problem, a roofing contractor performed work.

The same can be said with regard to Mr. Gillis' reports of mold/mildew growth—the growth was cleaned off and surfaces painted, cabinetry was replaced, drywall was replaced, flooring (as noted) was replaced. The photographs in evidence, CPD Ex. 88B, reflect small amounts of apparent mold or mildew in the bathroom, the evidence does not show that the

[112] Mr. Gillis acknowledged that he did not know which it was.

maintenance provided was inappropriate. While photographs reveal that the inside of Mr. Gillis' kitchen cabinets became filthy with apparent mold growth, Mr. Gillis testified that when he brought this to management's attention, the cabinet doors were immediately replaced.[113]

In some instances, the consumer testimony was not sufficiently credible. For instance, Mr. Hernandez Portillo and his family, including two children under the age of five, moved into a unit at Harbor Point in January 2019. At the time they moved into the unit, Mr. Hernandez Portillo made a list of the problems with the unit, a standard practice at the Properties. The list included "mold by window frame." The log further reflects that maintenance was not able to get into the unit to make any repairs until April 10, 2019, but this was because the family had changed the locks, which prevented access. Testimony reflected that they were otherwise denied entry. After gaining entry, maintenance advised that the suspected mold was not mold and cleaned the window. There are no further reports of mold on the maintenance log. CPD Ex. 93-A.

In late February 2020, three individuals, none of whom were Mr. Hernandez Portillo, came to the property management office to complain of mold and showed photographs to the leasing agent with whom they interacted. Test. Karrie Fabrizio. The back bedroom in the unit was extensively covered in mold and the reaction from the property manager was immediate. Ms. Fabrrizio contacted the maintenance manager, Larry Smith, on an emergency basis. *Id.* Maintenance responded to the unit that very day but was refused entry. Test. Fabrizio. A

[113] The issues with the dryer, leaks, and mold/mildew growth occurred well after Mr. Gillis took possession of the unit. As such, this would not establish a violation of the Act in any event. *Richwind Joint Venture 4 v. Brunson*, 335 Md. 661, 682-86 (1994) (noting that the Act is "intended to govern deceptive trade practices which induce the prospective tenant to enter into such a lease" but not "omissions concerning the leased premises occurring during the term of the lease"; explaining that tenants are in a better position, during the term of the lease, to know the condition of the property and that there are other laws designed to protect the tenant during the term of the lease; observing that dwellings are "subject to constant use and deterioration from many causes . . . the tenant may expect that at the time of letting there are no hidden dangerous defects known to the landlord of which the tenant has not been warned, but he does not expect that all will be perfect in his apartment for all the years of his occupancy").

regional construction supervisor, Chris Smith, was contacted and he and Larry Smith spoke to the residents and gained entry that day or the next. The mold was so pervasive that management would not allow him to continue living in the unit. The mold had grown onto a mattress and other belongings in the bedroom. *See, e.g.*, CPD Ex. 93-C-5. A mold remediation contractor was retained to resolve the mold. Test. Larry Smith.

At the time of the events, Mr. Hernandez Portillo wrote a letter to Westminster representing that he complained about the mold on a monthly basis. CPD Ex. 93-B. At the hearing, he testified that he complained on a weekly basis about the mold. There was no record of any complaints about mold after the initial move-in complaint. CPD Ex. 93-A. Mr. Hernandez Portillo's testimony further varied as to whether he made the complaints in-person at the office, over the phone, or in handwritten notes. Mr. Hernandez Portillo testified that he actually showed the mold to maintenance workers when they were in his unit on other occasions. Mr. Hernandez Portillo also testified, however, that he was rarely home during the week, as he worked out of state in construction. Two maintenance employees testified that they were never permitted to enter the back bedroom or shown mold in it. Test. Quinton Crawford; Test. Keith Grover. Given the consistent testimony and that the family had changed the locks and denied entry from January to April 2019, I credited the testimony from the workers.

Mr. Portillo's testimony about his interactions with the property manager was confusing. For instance, he testified that she told him she would erase him from the lease so no one would know he had rented the unit. He also testified that she offered him money to drop his complaint to the State about the mold; however, the CPD advised that it is not contending that this took place.

When shown photographs of the mold on the back-bedroom window, Mr. Hernandez Portillo denied what was clearly depicted—that two fleece blankets were being used to cover the window. CPD Ex. 93-C-1; *see also* Test. Larry Smith. A window air conditioner was present in the room, Test. Fabrizio, and photographs show it was plugged in, but it was positioned on the floor instead of being installed in the window, as it should have been for proper use. Mattresses had been propped up flat against the wall, actually covering the wall. Test. Larry Smith. All of this strongly suggests that the manner in which the room was being used by the tenants played a role in the growth of the mold. Since the unit was remediated, there have been no further complaints of mold. *Id.*

Given the inconsistencies in Mr. Hernandez Portillo's testimony, I did not find it sufficiently credible and convincing. Despite the appalling conditions in the photographs, the credible evidence does not establish that maintenance failed to address complaints of mold in Mr. Hernandez Portillo's unit.

In some cases, the consumer testimony simply did not meet the burden of proof. For instance, William McDermott, Jr. testified that he requested maintenance services to address mold in the ceiling of his outside utility closet, which housed his HVAC unit. He further testified that maintenance inspected the area and advised him, at least twice, that there was not mold in the utility closet. The photographs in evidence are poor quality and I cannot say that any growth is depicted, much less that it was mold. CPD Exs. 106-B-3 to -5. Mr. McDermott reported a leak, maintenance responded within a week to address the problem. It thereafter took about two months to have the drywall contractor come out to repair the drywall. CPD Ex. 106-A. Although Mr. McDermott testified that he continued to have issues with the leak, there is no

further record of any subsequent problem with it until January 2019 and maintenance responded within three days. *Id.* Mr. McDermott continues to reside at Carroll Park, since 2017.[114]

2. Maintenance Logs

In addition to the consumer testimony, I also considered the maintenance logs. Those logs were concerning in terms of the number of leaks noted and the seemingly continuing nature of some of the problems complained about. However, I also considered the testimony establishing the unreliability of those maintenance logs—including inaccuracies in when a repair was completed and the nature of the work performed. This was established in the record from the testimony of both maintenance employees and consumers. Further, while the descriptions provided by the consumer for the maintenance logs were sometimes very detailed, they often were not sufficiently detailed to determine if a leak was an ongoing occurrence of the same previously reported leak. Finally, it is difficult to make the generalizations the CPD seeks to make without any standard by which to determine what number of leaks, in a large multi-family complex, is excessive.

3. Former Maintenance Technicians

In addition to the consumer testimony and maintenance logs, the CPD presented testimony from various former maintenance workers at six of the seventeen properties. The testimony of these witnesses as to staffing levels and maintenance practices at the Properties was of limited weight, as the individuals called to testify were generally employed with Westminster for very short periods of time. For instance, James Kates was employed as a maintenance technician supervisor at the Commons for approximately five weeks, from June 20, 2017 through approximately July 31, 2017, when Westminster terminated him for missing too much time from

[114] As of July 1, 2019, Carroll Park had new ownership and management. Mr. McDermott testified that even under new ownership and management, he continues to have problems with the same leak.

work. Mr. Kates completed only 46 work orders in the time he worked for Westminster. Quentin Thomas worked at Dutch Village as a maintenance technician for just three to four months, from August 2013 to November 2013—nearly seven years before his testimony. Steven Thornton worked at Princeton Estates as a maintenance technician for what he believed was somewhere between seven and nine months, but was actually less than four and a half months, in early 2014—more than six years prior to his hearing testimony. Shelton Flemming worked as a maintenance technician at Commons for approximately two months, from October to December 2017, and at Whispering Woods for the next two and a half to three months. Dennis Owens worked for Westminster, first as a service manager and then as a senior service manager as Commons, from February 2019 to September 2019. Michael Hoyte worked for Westminster as an entry-level maintenance technician at the Commons for only seven to eight months; he left Westminster's employment in October 2019 after a dispute with his supervisor escalated. Although three of the employees worked at Westminster for longer periods of time (Kevin Flesher at Commons and Charlesmont from March 2015 to July 2016; William Barnes at Carriage Hill from July 2013 to May 2015, and sometimes assisting at Gwynn Oaks; and James Leight who worked at Highland Village for just under a year, until July 2018, and then returned for an additional period of time), it still did not cover a substantial period of time, given the number of properties and years at issue.

4. Specific Issues

The documents and testimony thoroughly established that Westminster failed to respond adequately and sufficiently to roof issues at Commons, Dutch Village, Harbor Point, and Pleasantview after a severe March 2018 storm. Vertex was retained to investigate the impact at the properties and its reports reflect that individual units were being impacted by leaks and

resultant water damage, ongoing moisture, and suspected mold growth. These conclusions were based on observations and investigations that took place many months after the fact: Commons, eight months after the storm; Dutch Village, ten months after the storm; Harbor Point eleven months after the storm; and Pleasantview, ten months after the storm. West. Exs. 262A to D. Clearly, the conditions persisted for an extensive period of time. Management was aware of the storm damage at the time it occurred but made delayed and inadequate repairs.

Similarly, problems with flooding and burst pipes were allowed to persist at Carriage Hill and were inadequately addressed over an extended period of time. This includes repeat flooding of units during rainstorms due to inadequate drainage and bursting of uninsulated pipes during extremely cold weather. The documents and testimony on these points, noted in the Findings of Fact, were decisive.

5. Respondents' Evidence

I weighed the CPD's evidence against the testimony that the Respondents budgeted for maintenance technicians in accordance with the only industry standard established by the evidence, one worker per 100 residential units. I considered the varying testimony about recruitment and training efforts. I also considered that not all maintenance issues present a readily apparent solution, particularly where water intrusion is concerned. *See* Test. Dennis Owens; Test. Carroll Smith; Test. Michael Hoyte. I considered that the CPD's own witness, Mr. Hoyte testified for the CPD that in his (limited) experience work orders (or "tickets") were generally completed within twenty-four hours to a week, and that they were often completed based on the priority of the problem. While he once saw a ticket that was six months old, he explained that the maintenance technician had actually performed the work but never turned in the ticket. Test. Michael Hoyte. Mr. Leight testified that the longest outstanding work order he

personally knew of was two weeks old, and the supervisor was very unhappy about this. Test. James Leight. He further testified that during his time at Highland Village, the maintenance technicians were not allowed to leave for the day until their tickets were done.

I also took into account Mr. Febo's testimony that the Respondents' interests lie in protecting the asset—the property itself—including by making capital improvements—and that maximizing income from the Properties over time requires ongoing maintenance and upkeep. Outside contractors were hired for groundskeeping, roofing, extermination, and some drywall work. There was a preventative maintenance program in place that occurred twice a year. Test. Carroll Smith. The annual maintenance budgets were at times significantly exceeded.

I considered, though with less weight given their purpose, the property condition reports, reflecting the general condition of the Properties. I also considered that, at least at the 10-Pack properties, between 2012 and 2015 the general condition of the property either improved from a fair to a good rating (for Commons, Cove Village, Dutch Village, Fontana, Hamilton Manor, Harbor Point, Highland, and Pleasantview) or maintained a good rating (for Riverview and Whispering Woods). I considered Mr. Febo's testimony that lender requirements for capital expenditures were met.

Given the totality of the evidence, I find that the evidence establishes that Westminster and JK2 failed to provide the represented maintenance services with regard to the March 2018 roof leaks at Commons, Dutch Village, Harbor Point, and Pleasantview, with regard to uninsulated laundry pipes at Carriage Hill, and with regard to drainage issues causing flooding during rainstorms at Carriage Hill. Aside from those issues, however, the evidence did not establish a pervasive failure to provide maintenance services in violation of the Act or that the Respondents "misrepresented their ability to maintain the Properties," CPD Memo. at 64, as

argued by the CPD. There were also some instances where the evidence established failure to provide maintenance services for tenant-specific issues. For example, Mr. Hall's testimony credibly established that Westminster failed to repair the hole in his ceiling for over a month and that he eventually repaired it himself. Nonetheless, this is an area fully regulated by the law and which provides tenants with the ability to obtain a timely remedy. *See Richwind Joint Venture 4 v. Brunson*, 335 Md. 661, 682-86 (1994).

In terms of maintenance issues arising after a lease was entered into, the charge is essentially that the Respondents allowed the units to be in poor condition during the term of the lease. The March 12, 2020 Proposed Ruling fully addressed this issue and dismissed those charges on the basis of *Richwind*, 335 Md. 661 (affirming motion for judgment entered in favor of landlord on Consumer Protection Act claim arising from chipping lead paint at premises; noting that the Act is "intended to govern deceptive trade practices which induce the prospective tenant to enter into such a lease" but not "omissions concerning the leased premises occurring during the term of the lease"; explaining that tenants are in a better position, during the term of the lease, to know the condition of the property and that there are other laws designed to protect the tenant during the term of the lease; observing that dwellings are "subject to constant use and deterioration from many causes . . . the tenant may expect that at the time of letting there are no hidden dangerous defects known to the landlord of which the tenant has not been warned, but he does not expect that all will be perfect in his apartment for all the years of his occupancy"). I do not revisit the issue. Accordingly, I find that the CPD's charge in this regard fails as a matter of law.

C. Habitability and Condition at Commencement of Lease[115]

As noted above, in order to establish a violation of section 13-301 of the Act, there must be a false or misleading statement that has a tendency to mislead consumers or an omission of material fact that has the tendency to deceive. Com. Law § 13-301. "[T]he meaning of any statement or representation is determined not only by what is explicitly stated, but also by what is reasonably implied." *Golt*, 308 Md. at 9. Further, a practice may violate section 13-303 of the Act if it causes or is likely to cause, a substantial injury to a consumer, that is not reasonably avoided by the consumer, and which is not outweighed by a countervailing benefit to consumers or competition. *Legg*, 100 Md. App. at 771-72.

The form leases in use at the Properties all contained an express representation of habitability, as noted above. *See, e.g.*, CPD Ex. 331 at Westminster 000575. In addition to those express representations, consumers who were considering leasing a unit at one of the Properties were typically shown a model unit. The purposed of showing the tenant the model unit was to induce the tenant to enter into a lease by making representations to the prospective tenant as to what the unit would look like. *See* CPD Ex. 340-E at CPD No. 048218 (stating that the model is a "sample[ ] of what a home can look like after the prospect moves in, it is imperative that the first impression be a positive one.") Although tenants were generally aware that there would be differences in style from the model unit, it was apparent from the consumer testimony that they were not advised, and did not understand, that their actual apartment may not be fully move-in ready when they took possession or that it might be in poor condition or have habitability issues.

The testimony from consumers, as noted above, uniformly noted the model units being displayed at the Properties were clean, well-painted, with no broken or dirty appliance, doors, or

[115] The March 12, 2020 Proposed Ruling disposed of the claims relating to conditions of the premises arising during the lease term. I do not revisit that decision.

cabinetry. *See also* CPD Ex. 340-E at CPD No. 048218. Although consumers typically were aware that non-upgraded units would not have modern and stylish fixtures and appliances, consumers reasonably expected, based on viewing the model and the lease representations, that at the outset, their apartments or townhomes would be comparably clean, well-painted, functioning, and free of pests. *See, e.g.,* Test. Jamila Weathers; William McDermott. Indeed, tenants were frequently advised by the leasing representative that their specific unit was not available to be viewed because they were readying it for the tenant, furthering the impression that the unit would be in presented in good condition. *See, e.g.,* Test. Latonia Weathers; Test. Lauren Sheeder at CPD No. 048218.

The testimony consistently reflected, however, that the unit provided to the tenant was not in any way comparable to the model and that the problems persisted beyond a reasonable period of time for resolution. Units were given to consumers with leaking faucets, dirty carpet, walls, and kitchens. Further, many consumers testified as to habitability issues, contrary to the representations in the lease. For instance, Ms. Latonia Weathers credibly testified about her problems with mice; her fear and stress from simply discussing the problem was palpable. Structural defects were present as well at the inception of the lease. For instance, Mr. Hall experienced a structural issue, the collapse of his ceiling, the very night he moved into his unit; that collapse was caused by an unabated water leak from the upstairs neighbor's unit, that had being going on for a period of weeks. The testimony from the tenants concerning the property conditions at lease inception, as a general matter, was often supported by the information contained in the maintenance logs. *See, e.g.,* CPD Ex. 175-D.

The conditions of the units being leased were not comparable, at a basic level of cleanliness, repair, and habitability, to the direct visual representations made through the model.

The units did not live up to the express representation in the lease that they would be made available in a condition which would not constitute a hazard to life, health, or safety of occupants. Given the totality of the evidence presented by the CPD, particularly given that maintenance was often performing work in the unit on the day it was turned over to the new tenant, I agree with the CPD that the Respondents were undoubtably aware of the conditions of the units when they were being turned over to tenants.

The consumer testimony established the materiality of these representations. *See, e.g.,* Test. Karen Hope; Test. Latonia Weathers. Moreover, Westminster and JK2's own Operations Manual recognizes the materiality of the representation. CPD Ex. 340-E at CPD No. 048218 (noting that it was "imperative" that the model unit give a positive first impression). The evidence substantiated that these practices were occurring at all of the Properties, with the exception of Essex Park, Hamilton Manor, Morningside Park, and Princeton Estates, about which there was no such consumer testimony. Thus, the CPD established that, in connection with the offer to lease and lease of consumer realty, Westminster and JK2 violated the Act by making false written statements and misleading visual representations that have the capacity and effect of misleading consumers, that represent that the consumer realty being offered has characteristic or benefit it does not, and by failing to disclose material facts where the failure has the tendency to deceive. Com Law §§ 13-301(1), (2), (3), 13-303.

Tenants were regularly denied the opportunity to view the unit prior to move-in day and, in many cases, until after they had already signed their leases. Tenants explained that they had nowhere else to go, their belongings were packed and waiting to be unloaded, they could not afford to lose the money already expended, and, in some instances, were constrained by Section 8 program requirements that would have made it difficult to abandon the lease. Moreover,

tenants were often told no other units were available and were regularly promised that they could note the issues on a move-in form and maintenance staff would remedy the problems. Tenants were then trapped in their leases for the lease term or subject to a termination fee for terminating the lease early. Some tenants explained that they ended up staying in the lease for even longer due to their personal finances or failing to give notice in time to avoid the lease's automatic renewal provision.

Tenant testimony made plain the emotional impact of the conditions. Additionally, there were financial impacts: tenants sustained damage to personal property including clothing and furniture; tenants spent their own money trying to remediate pests; tenants expended funds to protect their food from pests. Finally, Dr. Keet testified about the potential harm to health from rodent and roach infestations.

The evidence establishes that Westminster and JK2 engaged in unfair trade practices, in violation of section 13-303 of the Act, by making visual misrepresentation of the units and failing to disclose their actual condition, that the practice causes and is likely to cause substantial injury, that the practice was not reasonably avoidable by consumers, and there is no countervailing benefit to consumers or competition.

PROPOSED CONCLUSIONS OF LAW

Based on the Proposed Findings of Fact and Discussion, I conclude as follows:

1. Section 5-107 of the Courts and Judicial Proceedings Article is inapplicable to this proceeding. Md. Code Ann., Cts. & Jud. Proc. § 5-107 (2020); *Maryland Securities Commissioner v. U.S. Securities Corp.*, 122 Md. App. 574 (1998); *Nelson v. Real Estate Commission*, 35 Md. App. 334 (1977).

2. JK2 and Westminster were agents of the owner Respondents for all relevant

purposes, including offering leases of consumer realty to consumers, leasing consumer realty to consumers, the tenancy relationship with consumers, and managing, operating, and maintaining the consumer realty being offered and leased to consumers. JK2 and Westminster were not operating as independent contractors for these purposes. Violations of the Act by JK2 and Westminster may be attributed to the respective owner Respondents. *Andrews & Lawrence Prof'l Servs., LLC v. Mills*, 467 Md. 126 (2020).

3. To the extent the CPD establishes the violations of the Act that it has charged against JK2 in the Amended SOC, Westminster is liable for those violations as the successor to JK2. *Martin v. TWP Enters. Inc.*, 227 Md. App. 33, 49 (2016); *see also Academy of Irm v. LVI Environmental Services, Inc.*, 344 Md. 434, 451 (1997); *Baltimore Luggage Co. v. Holtzman*, 80 Md. App. 282 (1989).

4. The CPD has not engaged in improper selective prosecution in bringing charges against the Respondents. *Consumer Protection Division v. Consumer Pub. Co.*, 304 Md. 731, 751-52 (1985).

5. The Respondents and JK2 did not engage in abusive practices, as charged in paragraph 104 of the Amended SOC. *See* 2018 Md. Laws ch. 731; *see also* 12 U.S.C.A. § 5481(5), (15)(A)(ii) & (A)(ix)(I)(cc) (2014); 12 U.S.C.A. § 5531(d) (2014).

6. The dwelling units that the Respondents and JK2 offered and leased to consumers are consumer realty within the meaning of the Act because the units were used by consumers primarily for personal, family, and household purposes. Com. Law § 13-101(d)(1) (Supp. 2020).

7. The Respondents and JK2, directly or indirectly, offered and made available their consumer realty, including associated maintenance services, to consumers and, therefore, acted as merchants. Com. Law § 13-101(g) (Supp. 2020).

8. The acts and omissions, described below, were undertaken in connection with the lease or offer for lease of consumer realty. Com. Law § 13-303(1), (2) (Supp. 2020).

9. JK2 and Respondent Dutch Village, LLC committed unfair, abusive, or deceptive trade practices, as defined in subsections 13-301(1), (2)(i), and (3) of the Act and section 13-303 of the Act, by advertising and leasing dwelling units at Dutch Village without the required MFDL after October 17, 2014 until April 24, 2015, and after October 22, 2016 until December 31, 2016; thus, they violated section 13-303 of the Act. Com. Law §§ 13-301(1), (2)(i), (3), 13-303 (Supp. 2020); Baltimore City Code, Article 13, § 5-4; *Golt v. Phillips*, 308 Md. 1, 9-10 (1986)); *see also FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010).

10. Respondent Westminster and Dutch Village, LLC committed unfair, abusive, or deceptive trade practices, as defined in subsections 13-301(1), (2)(i), and (3) of the Act and section 13-303 of the Act, by advertising and leasing dwelling units at Dutch Village without the required MFDL from January 1, 2017 until May 30, 2017; thus they violated section 13-303 of the Act. Com. Law §§ 13-301(1), (2)(i), (3), 13-303 (Supp. 2020); Baltimore City Code, Article 13, § 5-4; *Golt v. Phillips*, 308 Md. 1, 9-10 (1986)); *see also FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010).

11. Each day that JK2, Westminster, and Dutch Village, LLC rented or offered to rent unlicensed rental dwellings they violated the Act.

12. JK2 and Respondent Pleasantview, LLC committed unfair, abusive, or deceptive trade practices, as defined in subsections 13-301(1), (2)(i), and (3) of the Act and section 13-303 of the Act, by advertising and leasing dwelling units at Pleasantview without the required MFDL after October 15, 2014 until April 24, 2015, and after October 29, 2016 until December 31, 2016; thus they violated section 13-303 of the Act. Com. Law §§ 13-301(1), (2)(i), (3), 13-303 (Supp.

2020); Baltimore City Code, Article 13, § 5-4; *Golt v. Phillips*, 308 Md. 1, 9-10 (1986)); *see also FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010).

13. Westminster and Pleasantview, LLC committed unfair, abusive, or deceptive trade practices, as defined in subsections 13-301(1), (2)(i), and (3) of the Act and section 13-303 of the Act, by advertising and leasing dwelling units at Pleasantview without the required MFDL from January 1, 2017 until November 20, 2017; thus, they violated section 13-303 of the Act. Com. Law §§ 13-301(1), (2)(i), (3), 13-303 (Supp. 2020); Baltimore City Code, Article 13, § 5-4; *Golt v. Phillips*, 308 Md. 1, 9-10 (1986); *see also FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010).

14. Each day that JK2, Westminster, and Pleasantview, LLC rented or offered to rent unlicensed rental dwellings they violated the Act.

15. The debts that JK2 and Westminster collected from tenants are consumer debts because they were debts incurred primarily for personal, family or household purposes. Com. Law § 13-101(d)(1) (2013 & Supp. 2020).

16. In their capacity as management agents for the owner Respondents, JK2 and Westminster collected rent and other payments from tenants on behalf of third parties, the owner Respondents; thus, JK2 and Westminster were required to hold a Maryland collection agency license pursuant. Bus. Reg. §§ 7-101(d)(1)(i), 7-301(a), (b) (Supp. 2020); 65 Md. Op. Atty. Gen. 316 (1980).

17. JK2 did not violate section 14-202(8) of the Debt Collection Act or section 13-301(14)(iii) of the Consumer Protection Act from August 2012 through December 14, 2014 or from January 1, 2016 through December 2016, despite collecting and attempting to collect rent without being licensed as a collection agency, as it did so without knowledge that the right did

not exist. Md. Code Ann., Com. Law § 14-202(8) (2013); *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012); *Sawyer III*, 2016 WL 6583892, at *8 (Md. Ct. Spec. App. Nov. 4, 2016).

18. Westminster violated section 7-301 of MCALA, section 14-202(8) of the Debt Collection Act, and section 13-301(14)(iii) of the Consumer Protection Act from January 1, 2017 through July 2, 2017, by collecting and attempting to collect rent due to the owner Respondents without being licensed as a collection agency and with knowledge that the right did not exist. Bus. Reg. § 7-301(a), (b) (Supp. 2020); Com. Law § 13-301(14)(iii) (Supp. 2020); Com. Law § 14-202(8) (2013); *LVNV Funding LLC v. Finch*, 463 Md. 586, 606 (2019); *see also Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

19. Each day that Westminster collected debts without the required license it violated the Consumer Protection Act and Consumer Debt Collection Act.

20. Westminster did not violate section 14-202(8) of the Debt Collection Act, and thus did not violate section 13-301(14)(iii) of the Consumer Protection Act, by knowingly claiming or attempting to enforce a right that does not exist, in connection with its collection and attempted collection of rent from tenants at Dutch Village and Pleasantview during periods when they lacked required MFDLs, as it did so without knowledge that the right did not exist. Com. Law § 13-301(14)(iii) (Supp. 2020); Com. Law § 14-202(8) (2013); *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

21. JK2 did not violate section 14-202(8) of the Debt Collection Act, and thus did not violate section 13-301(14)(iii) of the Consumer Protection Act, by knowingly claiming or attempting to enforce a right that does not exist, in connection with its collection and attempted collection of rent from tenants at Dutch Village and Pleasantview during periods when they lacked required MFDLs, as it did so without knowledge that the right did not exist. Com. Law §

13-301(14)(iii) (Supp. 2020); Com. Law § 14-202(8) (2013); *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

22. From January 1, 2017 through December 2017, Westminster violated section 14-202(8) of the Debt Collection Act, and thus section 13-301(14)(iii) of the Consumer Protection Act, by collecting and attempting to collect from tenants spurious agent fees in connection with the filing of warrants of restitution, with knowledge that the right did not exist. Com. Law § 13-301(14)(iii) (Supp. 2020); Com. Law § 14-202(8) (2013); *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

23. From December 2, 2013 through December 2016, JK2 violated section 14-202(8) of the Debt Collection Act, and thus section 13-301(14)(iii) of the Consumer Protection Act, by collecting and attempting to collect from tenants spurious agent fees in connection with the filing of warrants of restitution, with knowledge that the right did not exist. Com. Law § 13-301(14)(iii) (Supp. 2020); Com. Law § 14-202(8) (2013); *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

24. Every time consumers were charged a $12 agent fee that Respondents did not incur, and consumers did not owe, the Respondents and JK2 violated the Consumer Protection Act, and JK2 and Westminster violated the Consumer Debt Collection Act. These violations of the Consumer Protection Act may be attributed to each of the owner Respondents as follows:

Carriage Hill Investment Limited Partnership	2,353
Carroll Park Holdings LLC	353
SRH Charlesmont, LLC	971
Commons at White Marsh I, II, V, LLC, Commons at Whitemarsh III, LLC, Commons at Whitemarsh IVA, LLC, and Commons at Whitemarsh IVB, LLC	5,485
RP Cove Village, LLC	232
Dutch Village, LLC	3,151
Essex Park Holdings LLC	93
Fontana, LLC	1,208

SRH Fox Haven, LLC and SRH Woodmoor, LLC	2,980
Hamilton Manor Apartments, LLC	75
Harbor Point Estates I, II, IV, LLC and Harbor Point Estates III, LLC	3,315
Highland #179, LLC, Highland #689, LLC, and Highland #241, LLLP	1,461
Morningside Park Holdings LLC	510
Pleasantview, LLC	1,919
Princeton Estates Limited Partnership	830
Riverview Apartments, LLC	1,024
Whispering Woods #250, LLC and Whispering Woods #299 Limited Partnership	2,316

Andrews & Lawrence Prof'l Servs., LLC v. Mills, 467 Md. 126 (2020); *Sanders v. Rowan*, 61 Md. App. 40, 51 (1984).

25. From at least May 2015 to November 2017, Westminster and JK2, during their respective period managing the Properties, violated section 14-202(8) of the Debt Collection Act, and thus section 13-301(14)(iii) of the Consumer Protection Act, each time they collected or attempted to collect court costs that were fictitiously inflated from $50.00 to $80.00, as set out in CPD Exs. 338-A and 338-B[116], from tenants at Dutch Village and Pleasantview, with knowledge that the right did not exist. A total of 1,621 of these violations are also attributable to Dutch Village, LLC. A total of 1,021 of these violations are also attributable to Pleasantview, LLC. Com. Law § 13-301(14)(iii) (Supp. 2020); Com. Law § 14-202(8) (2013); *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

26. The violations of the Consumer Protection Act and Consumer Debt Collection Act were widespread and numerous.

27. Between October 8, 2012 and December 1, 2017, JK2 and Westminster (during their respective period managing the Properties), and the 10-Pack Respondents engaged in

[116] With the total amount set out in CPD Ex. 338-B corrected to $30,630.00.

deceptive and unfair practices in violation of sections 13-301(1), (3), and 13-303 of the Act by charging prospective tenants application fees that exceeded $25.00 and retaining and failing to refund amounts not actually expended on behalf of the applicant. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); Real Prop. § 8-213 (2015). The practice was widespread and numerous.

28. Between October 8, 2012 and October 31, 2017, JK2 and Westminster (during their respective period managing the Properties), and the SRH Respondents engaged in deceptive and unfair practices in violation of sections 13-301(1), (3), and 13-303 of the Act by charging prospective tenants application fees that exceeded $25.00 and retaining and failing to refund amounts not actually expended on behalf of the applicant. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); Real Prop. § 8-213 (2015). The practice was widespread and numerous.

29. Between April 15, 2014 and December 1, 2017, JK2 and Westminster (during their respective period managing the Properties), and the Park Holdings Respondents engaged in deceptive and unfair practices in violation of sections 13-301(1), (3), and 13-303 of the Act by charging prospective tenants application fees that exceeded $25.00 and retaining and failing to refund amounts not actually expended on behalf of the applicant. Com. Law §§ 13-301(1), (3) (Supp. 2020); Real Prop. § 8-213 (2015). The practice was widespread and numerous.

30. The Respondents and JK2 did not violate the Act by charging holding fees to consumers in connection with the lease or offer to lease of consumer realty. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); Real Prop. § 8-213 (2015).

31. Between September 2012 and into 2018, JK2 and Westminster engaged in deceptive and unfair practices, in violation of sections 13-301(3) and 13-303 of the Act, by repeatedly writing off credit balances owed to tenants at Carriage Hill, Charlesmont, Cove Village, Commons, Dutch Village, Essex Park, Fontana, Gwynn Oaks, Hamilton Manor, Harbor

Point, Highland Village, Pleasantview, Princeton Estates, Riverview, and Whispering Woods. The practice was widespread and numerous. Each instance is a violation of the Act, which is also attributable to the respective owner Respondents. Com. Law §§ 13-301(3), 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010).

32. Respondents and JK2 did not engage in a practice of calculating late fees based on a market rent that exceeded the market rent specified in the tenant's lease that would cause a substantial injury to consumers and, thus, they did not engage in unfair practices in violation of section 13-303 of the Act in this regard. Com. Law §§ 13-102(a)(1), (b)(3), 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010).

33. Between April 2015 and December 31, 2016, JK2 engaged in unfair trade practices by calculating late fees based on a monthly rent that did not take agree-upon rent concessions into consideration. Thus, it violated section 13-303 of the Act. Com. Law § 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010). The practice was widespread and numerous.

34. Between January 1, 2017 and October 2019, Westminster engaged in unfair trade practices by calculating late fees based on a monthly rent that did not take agree-upon rent concessions into consideration. Thus, it violated section 13-303 of the Act. Com. Law § 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010). The practice was widespread and numerous.

35. Between at least April 2015 and October 2019, the owner Respondents, Westminster and JK2 (during their respective period managing the Properties) engaged in unfair trade practices in violation of section 13-303 of the Act by calculating late fees based on amounts that did not properly account for rent payments and instead included other fees and costs. Com.

Law § 13-303 (Supp. 2020); Real Prop. § 8-208(d)(3)(i) (2015 & Supp. 2020); *Sager v. Housing Commission of Anne Arundel County*, 957 F. Supp. 2d 627 (D. Md. 2013); *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016). The practice was widespread and numerous.

36. Between at least April 2015 and October 2019, the owner Respondents, Westminster and JK2 (during their respective period managing the Properties) engaged in unfair trade practices in violation of section 13-303 of the Act by filing summary ejectment actions seeking recovery for amounts that included fees and costs other than the outstanding rent. Com. Law § 13-303 (Supp. 2020); Real Prop. § 8-401 (2015 & Supp. 2020); *Sager v. Housing Commission of Anne Arundel County*, 957 F. Supp. 2d 627 (D. Md. 2013); *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016). The practice was widespread and numerous.

37. From Deceber 2, 2013 through December 2017, JK2 and Westminster (during their respective period managing the Properties) enaged in deceptive and unfair practices, in violation of sections 13-301(1) and (3) and 13-303 of the Act, by charging fictitious $12.00 agent fees for writs to effected tenants at the 10-Pack Properties. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010); *Devine Seafood, Inc. v. Attorney General*, 37 Md. App. 439 (1977). The practice was widespread and numerous.

38. From December 2, 2013 and continuing through October 30, 2017, JK2 and Westminster (during their respective period managing the Properties) enaged in deceptive and unfair practices, in violation of sections 13-301(1) and (3) and 13-303 of the Act, by charging fictitious $12.00 agent fees for writs to effected tenants at the SRH Properties. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010); *Devine Seafood, Inc. v. Attorney General*, 37 Md. App. 439 (1977). The practice was widespread and numerous.

39. From September 2014 through December 2017, JK2 and Westminster (during their respective period managing the Properties) enaged in deceptive and unfair practices, in violation of sections 13-301(1) and (3) and 13-303 of the Act, by charging fictitious $12.00 agent fees for writs to effected tenants at the Park Holdings Properties. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010); *Devine Seafood, Inc. v. Attorney General*, 37 Md. App. 439 (1977). The practice was widespread and numerous.

40. From August 2015 through November 2017, Westminster and JK2 (during their respective period managing the Properties) engaged in deceptive and unfair practices, in violation of sections 13-301(1) and (3) and 13-303 of the Act, by charging effected tenants at Dutch Village and Pleasantview $80.00 as a pass-through fee for court costs, even though the amount incurred was only $50.00. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010); *Devine Seafood, Inc. v. Attorney General*, 37 Md. App. 439 (1977). The practice was widespread and numerous.

41. Under the pre-2018 lease forms, JK2 and Westminster did not violate the Act when they passed the agent fees that they actually incurred through to the tenants. Com. Law §§ 13-301(3), 13-303 (Supp. 2020).

42. Under the pre-2018 lease forms, JK2 and Westminster (during their respective period managing the Properties) engaged in deceptive and unfair practices in violation of section 13-301(3) and 13-303 of the Act, by shifting court costs to tenants absent a court order, without advising tenants that it would do so. Com. Law §§ 13-301(3), 13-303 (Supp. 2020); *Bainbridge St. Elmo Bethesda Apts., LLC v. White Flint Express Realty Group Ltd. P'ship, LLLP*, 454 Md. 475, 488-89 (2017). The practice was widespread and numerous.

43. Under the post-2018 Form Lease, Westminster did not violate the Act when it shifted court costs to the tenants, even absent a court order. Com. Law §§ 13-301(3), 13-303 (Supp. 2020); *Conaway v. State*, 464 Md. 505, 522–23 (2019).

44. The Respondents and JK2 did not violate the Act in connection with their early termination fee practices. Com. Law § 13-303 (Supp. 2020).

45. JK2 engaged in a deceptive practice, as defined in section 13-301(1) and (3) of the Act, when it failed to timely provide Scott Ferree with the notice required by section 8-203(g) of the Real Property Article. Thus, it violated section 13-303 of the Act. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020).

46. Westminster engaged in a deceptive practice, as defined in section 13-301(1) and (3) of the Act, when it failed to timely provide LaShawn Epps with the notice required by section 8-203(g) of the Real Property Article. Thus, it violated section 13-303 of the Act. Com. Law §§ 13-301(1), (3), 13-303 (Supp. 2020).

47. Aside from the failure to provide timely notice to Mr. Ferree and Ms. Epps, the CPD did not establish that the Respondents or JK2 engaged in a practice of failing to provide the notice required by section 8-203(g) of the Real Property Article, or that the Respondents violated the Act in this manner. Com. Law § 13-303 (Supp. 2020).

48. JK2 made patently improper deductions to Scott Ferree's security deposit when he left the Commons, in contravention of the security deposit law and its representations in the lease; this was a deceptive practice as defined in section 13-303(1) of the Act. JK2 thereby violated section 13-303 of the Act. Com. Law §§ 13-301(1), 13-303 (Supp. 2020).

49. Westminster made improper deductions to Antoinette Summons' security deposit when she left Whispering Woods in 2017, in contravention of the security deposit law and its

representations in the lease; this was a deceptive practice as defined in section 13-303(1) of the Act. Westminster thereby violated section 13-303 of the Act. Com. Law §§ 13-301(1), 13-303 (Supp. 2020).

50. Westminster made improper deductions to Regina Webster's security deposit for replacing the stove and refrigerator when she left Dutch Village in 2017, in contravention of the security deposit law and its representations in the lease; this was a deceptive practice as defined in section 13-303(1) of the Act. Westminster thereby violated section 13-303 of the Act. Com. Law §§ 13-301(1), 13-303 (Supp. 2020).

51. Westminster made improper deductions to LaShawn Epps' security deposit for wear and tear to carpet and paint when she left Carriage Hill in 2017, in contravention of the security deposit law and its representations in the lease; this was a deceptive practice as defined in section 13-303(1) of the Act. Westminster thereby violated section 13-303 of the Act. Com. Law §§ 13-301(1), 13-303 (Supp. 2020).

52. Westminster made improper deductions to Javonia Harden's security deposit when she left Cove Village in 2017, in contravention of the security deposit law and its representations in the lease; this was a deceptive practice as defined in section 13-303(1) of the Act. Westminster thereby violated section 13-303 of the Act. Com. Law §§ 13-301(1), 13-303 (Supp. 2020).

53. Aside from the instances set out above, the CPD failed to establish that the Respondents or JK2 made improper deductions to tenant security deposits or engaged in a practice of doing so. Com. Law §§ 13-301(1), 13-303 (Supp. 2020); *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); COMAR 02.01.02.05.

54. During their respective periods managing the Properties, JK2 and Westminster enaged in deceptive and unfair practices, in violation of sections 13-301(1) and 13-303 of the Act, by failing to credit tenants with accrued security deposit interest, in contravention of the security deposit law and their representations in their leases. The practice was widespread and numerous. Com. Law §§ 13-301(1), 13-303 (Supp. 2020).

55. During their respective periods managing the Properties, JK2 and Westminster engaged in deceptive and unfair practices, in violation of sections 13-301(1), (2), (3), and 13-303 of the Act by misrepresenting and failing to disclose material information about the characteristics, condition, and habitability of the consumer realty being leased and offered for lease at Carriage Hill, Carroll Park, Charlesmont, Commons, Cove Village, Dutch Village, Fontana, Gwynn Oaks, Harbor Point, Highland Village, Pleasantview, Riverview, and Whispering Woods. Com. Law §§ 13-301(1), (2), (3), 13-303 (Supp. 2020).

56. The CPD did not establish that the Respondents or JK2 violated the Act by misrepresenting their ability to provide maintenance services during the lease term. Com. Law §§ 13-301(1), 13-303 (Supp. 2020); *Richwind Joint Venture 4 v. Brunson*, 335 Md. 661, 682-86 (1994).

Emily Daneker

April 29, 2021
Date Decision Issued

Emily Daneker
Administrative Law Judge

ED/cj
#189314

NOTICE OF RIGHT TO FILE EXCEPTIONS

A party aggrieved by this proposed decision may file exceptions thereto and request an opportunity to present oral argument. Such exceptions and any request for argument must be made within thirty (30) days from the date of this proposed decision. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2014 & Supp. 2020); COMAR 28.02.01.25. The written exceptions and request for argument, if any, should be directed to Clerk, Administrative Hearings, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, Maryland 21202. The Office of Administrative Hearings is not a party to any review process.

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