UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, U.S. Department of Housing and Urban Development, on behalf of Meki Bracken and Diana Lin, Charging Party, and Meki Bracken and Diana Lin, Complainants-Interveners, v. Chak Man Fung, and Jennifer Ho, Respondents.	HUDALJ 07-053-FH FHEO Case: 05-04-1165-8 FHEO Case: 05-04-1166-8 Decided: January 31, 2008

Lisa Danna-Brennan, Esquire
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For the Charging Party

John Marshall School of Law Fair Housing Legal Clinic
For Complainants-Interveners

Chak Man Fung, *pro se*
Jennifer Ho, *pro se*

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION

This matter arose from a Charge of Discrimination ("Charge") filed on August 22, 2007, by the Secretary of the United States Department of Housing and Urban Development ("HUD" or "the Department" or "the Government") on behalf of Meki Bracken and Diana Lin ("Complainants-Interveners") against Chak Man Fung and Jennifer Ho ("Respondents") alleging a violation of the Fair Housing Act, as amended ("the Act"). 42 U.S.C. § 3601, *et seq.* Specifically, the Charge alleges that Respondents violated the Act by refusing to rent to Ms. Bracken because of her race, by interfering with Ms. Bracken's attempt to take possession of a rental unit because of her race, by making racially discriminatory statements related to Ms. Bracken's attempts to rent, and by intimidating and retaliating against Ms. Lin on account of

having aided Ms. Bracken in the exercise of her fair housing rights in violation of 42 U. S. C. §§ 3604(a) and (c) and 3617. The matter came before the undersigned pursuant to 42 U. S. C. § 3612(b).

PROCEDURAL HISTORY

The Charge and other documents were served upon both Respondents by first class mail, postage prepaid, and by Federal Express ("FedEx") at their last known address on August 23, 2007. Neither Respondent filed an Answer to the Charge.

On September 28, 2007, Judge Arthur A. Liberty of this tribunal granted Complainants Bracken and Lin's Motion to Intervene. Since that time they have been represented by The John Marshall Law School Fair Housing Legal Clinic ("JMLS").

On October 1, 2007, the Charging Party filed a Motion for Default against Respondent Fung. On October 3, 2007, the Charging Party filed a Motion for Default against Respondent Ho. Neither Respondent filed a response to the Motion for Default. On October 18, 2007, Judge Liberty granted the motions for default against both Respondents, finding each Respondent liable on the counts included in the Charge. He set a hearing date for the determination of damages. On that same day, he transferred the case to me. On November 7, 2007, I modified the default judgment to clarify that the default decision found Respondents liable for all acts of discrimination alleged in the Charge and that the hearing would be limited to the introduction of evidence as to damages and civil penalty.

The hearing was held on November 15, 2007 in Chicago, Illinois at the Kluczynski Federal Building, Courtroom 3908. The Charging Party and Complainants-Interveners attended. Respondent Fung did not appear nor was he represented. Respondent Ho appeared, unrepresented, at the commencement of the trial. She tendered a note from a lawyer written on the back of a document and requested a postponement.[1] The note stated that the lawyer was engaged in a trial on the day of the hearing but "intend[ed]" to represent Ms. Ho the next day. Respondent Ho also represented that she spoke and understood very little English and so it would be futile for her to attend the hearing without representation and without an interpreter. Upon questioning, she acknowledged that she had not requested that an interpreter be present. She said she had relied upon the Government to do so.

The Charging Party and Complainants-Interveners objected to postponement of the hearing to allow Respondent Ho to obtain counsel and/or to obtain an interpreter on timeliness basis because Respondent Ho had not requested a delay to obtain counsel or an interpreter prior to the hearing. The Charging Party represented that it had informed Respondent Ho months ago, with a Chinese interpreter present, of her need to obtain counsel. Additionally, counsel for the Charging Party and Complainants-Interveners represented that they had reason to believe that Respondent Ho's ability to speak and understand English was adequate for her to proceed without an interpreter.

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[1] The note was signed by one Robert D. Shearer, Jr. and included his telephone number and address. It said that he was on trial at Daley Center before a judge in another case and that "After today I intend to represent Jennifer Ho in this matter." Tr. 6-8.

I denied Respondent Ho's request to postpone the hearing. I observed that the note from the attorney was very artfully worded. According to it, he did not currently represent Respondent Ho, but "intend[ed]" to represent her "after today." One could only speculate when he would be prepared for a hearing in the case. Also, the note did not include a request for a postponement on her behalf. As to Respondent Ho's ability to understand English, there is reason to believe that she understands English far better than she admitted.[2] I advised Respondent Ho that it was in her best interest to stay through the hearing and strongly encouraged her to do so. After her repeated insistence that she wanted to leave the courtroom, I allowed her to make the decision whether she stayed or not. She left the hearing before any testimony was taken. Thus, the hearing proceeded in the absence of both Respondents whom I considered to have waived their right to be present at the hearing.

At the conclusion of the hearing, I required the parties to file of post-hearing briefs by December 21, 2007. On December 21, 2007 I granted the Complainants-Interveners' motion for extension of time to file the brief until January 21, 2008. The Charging Party filed its brief on December 21, 2007. Complainants-Interveners filed their brief on January 21, 2008. The record is now closed and the matter is ripe for adjudication.

STATEMENT OF THE FACTS

The facts recited below are deemed established by the Charge of Discrimination, by deemed admissions, and/or by testimony taken at the trial on November 15, 2007.

The subject property is a one-bedroom condominium located at 20 North State Street, Unit 602, in Chicago, Ill. It is owned by Respondent Chak Man Fung. He purchased it in May 2003 but never resided at the subject property. Tr. 68-69. RAF ¶ 3.[3] Respondent Fung structurally modified the one bedroom unit by installing walls in the living room and making it into two bedrooms, creating three separate bedroom units. After the modification, the living arrangement was much like that of a rooming house, with a shared kitchen and bathroom. He rented out each bedroom. The arrangement was that each lease was separate and unrelated. Tr. 133.

Respondent Fung is a man of Chinese/Cantonese descent. He is the owner of the subject property. He owns other property in the Chicago, Illinois area. Gx. 2, 3, 4, 5. He is fluent in Cantonese, as well as in English. At the time in question, he had a real estate license in Chicago. Tr. 133.

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[2] Complainant-Intervener Lin testified that Respondent Ho read, spoke and wrote English without difficulty. She based her testimony on having lived in the same unit with Respondent Ho over a period of nearly six months from November 2003 to May 2004. During that time she often talked to Respondent Ho. At times they had pretty extensive conversations about their backgrounds, where they grew up and about their parents, etc. They always spoke in English and Ms. Lin, who is English speaking, never had difficulty understanding what Respondent Ho said and Respondent Ho never indicated to Ms. Lin that she had any difficulty understanding English. Ms. Lin also had opportunity to go over written material with Respondent Ho. When Ms. Lin applied to rent the subject unit, it was Respondent Ho who gave her the lease agreement. The lease was in English. They read through it together. Ms. Lin also witnessed that Respondent Ho accurately filled out, in English, a form to put an ad in *The Reader*, a local publication. Tr. 129-31.

[3] The following abbreviations are used herein: Charge ¶ for Charge of Discrimination; Tr. # for Hearing Transcript; GX # for Government Exhibit; IX# for Intervener Exhibit and RAF # and RAH# for Request for Admissions from Respondent Fung and Respondent Ho, respectively.

Respondent Ho is a woman of Chinese/Cantonese descent. She was raised in China but came to the United States as a young adult of university age. She reads and writes English without significant difficulty. Tr. 129-133. Respondent Ho is a personal friend of Respondent Fung. In the summer of 2003, Respondent Fung authorized her to move into one unit in the subject property and to receive and process applications on his behalf for the others. Charge, ¶ 36. From the beginning, Respondent Ho was the point of contact for prospective and existing tenants of Unit 602. She showed the subject property to prospective tenants, collected and delivered rental checks to Respondent Fung and oversaw minor repair and maintenance services on the property. Charge ¶ 6. Respondent Fung also allowed Respondent Ho to access his email account (CMF88@netzero.net") for the purpose of communicating with him and with the other tenants. Tr.114.

In the late summer of 2003 Respondent Ho approved the leases for the two remaining tenants for the subject property – one was a Korean student named Jae Eun Shin, and the other, a Chinese American named Diana Lin, one of the Complainants in this case. Respondent Ho showed the subject property to Diana Lin. She provided her with a rental application and forwarded the completed rental application to Respondent Fung. Tr. 49, 133.

Complainant Diana Lin is an American woman of Chinese/Taiwanese descent. She was born in Chicago, Ill. English is her primary language. She does not speak either Chinese or Cantonese. Tr. 37. Ms. Lin grew up in a "primarily working class" neighborhood that was 99% White until she left for college. Being one of a few Chinese people living there, she experienced agonizing bouts of racial hostility in her home town. Tr. 37. Her neighbors and schoolmates surrounded and taunted her and her family. They yelled racial slurs and told her and her family to "go back to China." Tr. 37, 156-57. Her house was "egged," her family car shot at with a BB gun, and her family's Christmas display lights were cut. Tr. 37-38. Nobody else in the neighborhood appeared to be experiencing similar treatment. Tr. 38. As a result, Ms. Lin "did not want to be an Asian at all" and "didn't want to be associated with anything Asian." Tr. 157-58. She tried to hide her Asian heritage, refusing to even speak Chinese, her parents' language, because she was afraid her English accent would be affected. Tr. 37, 157. In every respect, she tried to blend in with the White majority.

But in college, Ms. Lin had an epiphany, of sorts, while visiting Swarthmore College as an exchange student. Tr. 39. There, she witnessed the aftermath of a series of racially-motivated attacks: a skinhead attacked African American students and a portrait of Malcolm X was stolen. Tr. 40. The portrait of Malcolm X was found a few days later, the image violently marred, showing Malcolm X with his throat cut and a noose placed around it, and smeared with ashes. Tr.40. She witnessed students resisting the administration's attempt to get them to respond as representatives of their race, rather than as individuals. Tr. 41. These experiences left an impression on Ms. Lin, who felt that she should make a stand by embracing, rather than hiding, her heritage. Tr. 41. Around that time, she also met and was inspired by the dean of the University of Pennsylvania, an Asian American who helped her to see that it was possible for individuals to transcend racial stereotypes. Tr. 40-41.

The above experiences led Ms. Lin to focus on civil rights. Tr. 42. When she returned to her home college, she led the Asian-American Student Alliance, advocating Asian American student interests. Tr. 42. After college, she was devoted to civil rights causes. She attended

CORO, a nonprofit leadership fellowship program related to civil rights. She worked for U. S. Senator Carol Mosely Braun, an African American. She attended the Kennedy School of Government at Harvard University to study the administration of nonprofit civil rights organizations. Tr. 43. Afterwards, she worked for the Ford Foundation in New York, a philanthropic charity that provides grant funds to nonprofit organizations specializing in civil rights and immigration rights issues. Tr. 43-44. After two years, she obtained a public interest law scholarship and attended Georgetown Law School, mostly focusing on public interest work. Tr. 44. In her law school clinics she taught law to homeless people and prison inmates and handled asylum cases. Tr. 44.

Upon her graduation from law school in the Spring of 2003, Ms. Lin was offered a position at a nationally recognized law firm. Tr. 45. She deferred her position with them to return to Chicago to work for the Chicago Lawyers' Committee for Civil Rights at one-third of the salary because she wanted to become a better civil rights advocate. Tr. 45-46.

In November 2003, Ms. Lin rented the third of the three bedrooms at the subject property from Respondent Fung. Her lease was for nine months and ran from November 2003 to July 2004. Gx 13.

Sometimes after renting at the subject property, Ms. Lin purchased a condominium of her own. She expected that the sale would be finalized and that she could move into the condo at the end of May, 2004. In April, 2004, she informed Respondent Fung that she had purchased the condo and wanted to move before her lease expired. She sought and obtained his agreement for her to sublet her bedroom unit for the remainder of the lease. Thus, she placed ads about town seeking a person to sublease her unit for June and July, 2004. Tr. 73-74, 85.

Complainant Meki Bracken is a 25-year old African American woman. She is one of two children raised in relative affluence in suburban Detroit, Michigan. She comes from a diverse racial background – her father is African American and her mother is Samoan. According to her father, "we have just about every race of people you can possibly have" in our family. Tr. 237. Ms. Bracken attended "very racially diverse" small private elementary and high schools and had friends of diverse racial backgrounds. Also, her family hosted Japanese exchange students in her home during her childhood. Ms. Bracken has traveled extensively. As a young child she traveled many times to New Zealand and Samoa to visit her mother's family. Also, she has lived in Japan for a period of time. Prior to 2004, she had never knowingly experienced racial discrimination. Tr. 170. Her African American father and Samoan mother had taught her to be "conscious of who she is," and to be "tolerant," but did not necessarily prepare her for 'the realities of being a Black woman in America." Tr. 236-37.

At the time of the incident in question Ms. Bracken was 22 years old. On May 9, 2004, Ms. Bracken and her mother arrived in Chicago, after Ms. Bracken had just graduated from Oakwood College, a small historically Black college in Alabama. She was to start law school in the Fall. It was an exciting time for Ms. Bracken and her family as she traveled to Chicago with her belongings in her car, eager to get set to start a summer internship with a law firm – Sachnoff and Weaver - which she considered one of the most prestigious in Chicago. Her first priority was to find a place to stay for the short period of time that she would be working in Chicago. Tr. 170-172.

On her first day in Chicago she read and responded to Ms. Lin's ad posted on *craigslist*. The vacancy involved a sublease from the current occupant, one Diana Lin. Ms. Bracken sent an inquiry to Ms. Lin, who replied the same day. That very evening the two met at the subject property and Ms. Lin showed the available unit to Ms. Bracken. After viewing the unit, Ms. Bracken related to Ms. Lin that she wanted to rent the unit. It was within walking distance of Sachnoff and Weaver's location, was on well-known State Street, and was close to everything that Ms. Bracken knew about in Chicago. She filled out and submitted an application to Ms. Lin. Before signing the sublease agreement, however, she agreed to meet the two other tenants who were not present at that time. Tr. 173-177, 221.

After meeting with Ms. Lin and submitting her application, Ms. Bracken felt that she had secured a place to stay in Chicago. Her mother then left Chicago, having intended to stay with Ms. Bracken only until she found housing. Tr. 175, 178. Ms. Bracken then went to stay at the apartment of Keturah Scott, an acquaintance of her friend Nicole, for what she expected to be a couple of days until she could move into the subject property. Ms. Bracken and Ms. Scott were essentially strangers brought together by that mutual friend. Ms. Bracken stayed in the living room of Ms. Scott's small, "very cramped" one bedroom/one bathroom apartment, sleeping on the hardwood floor on a "deflating" air mattress. There was no space for her belongings there and she had to go to the street to her parked car each day to obtain her clothes for the next day. Tr. 178 – 180, 205- 06.

Ms. Lin was "thrilled" that she had found someone in Ms. Bracken to sublease her unit. She was in the final stages of purchasing her first home and had been looking for someone to take over the last few months of her lease. She had found it surprisingly difficult to sublease her unit. She had received the authorization of Respondent Fung to sublease her unit on April 22 and had received some thirty responses to her ad, but only six persons had ultimately viewed the unit, including two or three persons who had been referred to her by Respondent Ho. They were all not interested. Tr. 52-55; 73-75. Upon receiving Ms. Bracken's application on May 10, Ms. Lin emailed Respondent Fung that day and advised him that she had found a person she really liked to sublease her unit and that the person would need the room by May 13. Ms. Lin offered to fax the application to Respondent Fung. Mr. Fung did not respond to the email until May 16. Tr. 55

On May 11, 2004, Ms. Lin informed Respondent Ho that she had found someone to sublease her unit. She described the applicant as being "nice," "responsible," and having a well-paying job in a downtown law firm. Tr. 55. Ms. Ho was pleased. She told Ms. Lin that there was no need for her to see the application or to run a credit check because it involved only a short term lease. Respondent Ho agreed to meet the applicant and to call the third roomer, Jae Eun Shin, to inform her. Tr. 56, 58. Ms. Lin made no mention of Ms. Bracken's race at that time. Tr. 56 Following this discussion, Ms. Lin checked Ms. Bracken's references, which were excellent, and as requested by Ms. Bracken, spoke with Ms. Bracken's father to arrange for payment of the rent and security deposit.

A meeting was set up for Ms. Bracken, Lin, Ho and Shin for the evening of May 12 at the subject property. On that day, Ms. Bracken arrived at the property and was met by Ms. Lin and Ms. Ho. Ms. Ho looked surprised upon seeing Ms. Bracken. When introduced, she spoke to Ms. Bracken but within seconds abruptly turned and went to her own room, leaving Ms. Lin and Ms. Bracken together. Tr. 58, 182-83. Ms. Lin thought Respondent's Ho's behavior was "really rude." Tr. 61. Believing that Ms. Ho would eventually return to join them, Ms. Lin continued

talking to Ms. Bracken for a period of time. Ms. Lin could hear Respondent Ho speaking in Cantonese to a person she thought to be Respondent Fung, however Ms. Lin does not speak Cantonese and could not understand what was being said. Tr. 89. After about an hour, Ms. Lin concluded that Ms. Ho was not coming back out of her room and decided to proceed without her input. She gave Ms. Bracken the sublet agreement she had prepared for her signature. Tr. 61. During this discussion, Ms. Ho came out of her room and interrupted Ms. Lin, requiring that the third roomer meet Ms. Bracken before Ms. Lin could sign the lease. As a result, the parties agreed to meet again.

After Ms. Bracken left the unit, Ms. Ho, in a burst of anger, scolded Ms. Lin for considering a Black applicant. She told Ms. Lin that she could not sublease her unit to Ms. Bracken because Jae Eun was "scared of Black people." Tr. 62. However, Ms. Lin challenged Ms. Ho's statement, having not remembered Ms. Shin ever suggesting any fear of Black people, and suggested instead that it was Ms. Ho who was racist. Tr. 62. At that point, Ms. Ho said she thought Ms. Lin knew that she would not rent to Blacks because she had told her about a prior experience with a Black woman whose application she rejected and who later accused her of racial discrimination. Tr. 62, 64-65. Ms. Lin remembered the conversation and remembered, too, that Ms. Ho had said she consulted an attorney who told her that she could discriminate because there was "some kind of exception" in the law which pertained to her situation. Tr. 62. Ms. Lin advised Ms. Ho that the attorney was wrong if he, in fact, told her that and that Respondent Ho was engaging in unlawful discrimination. Ms. Ho told Ms. Lin that she was going to start looking for another person to sublease Ms. Lin's unit. Tr. 62.

The events of the evening so upset Ms. Lin that she called her mother, who used to manage an apartment building, to discuss the situation with her. She was "crying" and "shaking" and her stomach was "knotted" as she talked to her mother. Tr. 65.

When Ms. Shin arrived back at the subject property she told Ms. Lin that she was not interested in meeting the person who would lease her unit at all and that the race of the person was of no interest to her. Tr. 66. That settled, Ms. Lin tried again to set up a meeting with Ms. Bracken, Ms. Lin and Ms. Ho. Ms. Ho refused, which led to a heated exchange between the two with "yelling and screaming." Ms. Lin warned Ms. Ho that she was being "completely racist," "wrong," "illegal," and could be sued. Ms. Ho's response was, "Fine, sue me." Tr. 67.

Not long after the argument between Ms. Lin and Ho, Respondent Fung, after having talked to Ms. Ho, placed a new online ad for the sublease of the subject property. The ad offered the unit at $595, $55 less than Ms. Bracken had agreed to pay. The ad listed Respondent Ho as the contact person at an email address that Respondent Fung shared with Respondent Ho. Tr. 117; RAF 38-40.

The next day, Ms. Lin received an email from Respondent Fung telling her to find another tenant to sublease her unit and to lower the asking price for rent. He would "share the difference." Tr. 68. On that day also, Ms. Lin discovered a form on the kitchen counter which Respondent Ho had already filled out to place a new ad for Ms. Lin's unit in *The Reader*, a local publication. Tr. 69. On May 15, a little more than two days after the meeting with Ms. Bracken, Respondent Ho, without prior notice to Ms. Lin, brought a White prospective tenant to view Ms. Lin's unit. Tr. 69-70.

As a result of Respondent Ho's actions, Ms. Lin consulted with a friend at the Chicago Commission on Human Relations regarding the legality of Respondents' conduct. She also conducted five to six hours of research on fair housing laws. As a result of the information she obtained, Ms. Lin concluded that it would be a violation of the local laws, and possibly state and federal laws, not to rent to Ms. Bracken. Tr. 72. Accordingly, she met with Ms. Bracken that very day and had her sign the sublease agreement. Tr. 184. Ms. Lin gave Ms. Bracken the keys to the main entrance of the building and her unit. Ms. Bracken gave Ms. Lin a $335 check to cover half of the rent for the month of May and two $650 checks to cover rent for the months of June and July. Tr. 78-79; 184. Ms. Lin did not tell Ms. Bracken about the conversations she had with Respondent Ho or that Respondent Ho did not approve of her subleasing the unit, although she struggled with the idea of telling her. Ultimately she decided that if she told Ms. Bracken that Respondent Ho did not want her to move there, and Ms. Bracken withdrew her application because of it, that she would be letting Respondent Ho get away with her racist beliefs. Tr. 80. It was her hope that once Ms. Bracken moved in, Respondent Ho would get to know her as a "very responsible" and "nice" person, and would like and accept her. Tr. 79. Ms. Lin also thought that Respondent Fung, too, would change his mind once he became aware that Respondent Ho's objection to Ms. Bracken's sublease was made on a racial basis. She was not aware that Respondent Fung already knew of the reason for Respondent Ho's opposition. Tr. 79, 86-87.

Ms. Lin worked tirelessly to move out of her unit on Friday night, May 14th to make it available for Ms. Bracken who had an immediate need for a place to stay. Ms. Bracken was to move in on Sunday, May 16th.

Around 2:00 a.m. on May 16, Ms. Lin sent an email to Respondent Fung telling him that Ms. Bracken was moving in on May 16 and asking him to inform Respondent Ho and Ms. Shin. She told him that Respondent Ho's reasons for opposing Ms. Bracken's sublease of her unit was because of racial bigotry. She asked him to "uphold" Ms. Bracken's right to sublet her room.[4]

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[4] The email to Respondent Fung stated:
Chuck:

I wanted to let you know that the only reason Jennifer has given for not wanting Meki subletting my room is that Meki is African American. Jennifer made no attempt to get to know Meki when she met her last Wednesday, so I don't know how she could decide that she would not get along with Meki.

After Meki left on Wednesday, Jennifer said that I should have told her Meki was black before she arrived because, 'I would have told you that I don't want to rent to blacks' Jennifer claimed that Jae Eun was scared of African Americans. Later that evening when Jae Eun returned home, she said that she did not care what religion or race the sublettor was, as long as they were calm. Moreover, Jennifer also told me about an African American woman who had wanted to rent my room last summer who had accused Jennifer of discriminating against her when Jennifer did not rent the room to her. Jennifer then consulted with an attorney who advised her that she was allowed to discriminate because of an exception in the law. This attorney is mistaken.

I would of course respect Jennifer's opinion on this matter and not sublet to someone she did not think she could get along with if she had a legitimate reason for this belief. It is important for you to know that if you support Jennifer's discriminatory beliefs by refusing to allow an African Americans [sic] to sublet my room, you will be violating the City of Chicago Fair Housing Ordinance, the Cook County Human Rights Ordinance, the Illinois Human Rights Act, and the federal Fair Housing Act.

In your email of April 22, 2004 granting permission for me to sublet my room, you requested that I sublet my room to someone that I trust under the same rules and conditions in my lease. I have found someone who has excellent references, a well paying job and mature personality whom I trust. That person is Meki Bracken. She is subletting [sic] my room under the same rules and conditions in our lease. Meki will be moving in on Sunday, May 16, 2004. Please inform Jennifer and Jae Eun of this.

I wish there were a better way of resolving this problem with Jennifer, but she refused to even consider allowing Meki to sublet my room. I have tried a number of times to discuss this with Jennifer, as well as have them

By her email, Ms. Lin hoped that Respondent Fung, who had a real estate license and whom she thought would know fair housing laws, would prevent Respondent Ho from interfering with Ms. Bracken's move into her unit. Tr. 87.

Respondent Fung read the email at about 10:28 a.m. on Sunday, May 16. However, instead of stopping Respondent Ho from interfering with Ms. Bracken's move into the unit, he supported her resistance. He replied with an email to Ms. Lin in which he challenged her statements regarding the law. He stated that "when you have to live with someone, you can discriminately choose whom you will live with." He stated that it is "wrong morally" to make someone live with a person she does not want to live with. Gx 10.

At around 2:00 p.m. on May 16, Ms. Bracken arrived at the subject property and took belongings from her car to the hallway outside of the unit. Shortly thereafter she was joined by two acquaintances who had volunteered to help her move. They continued to unload the car and move her belongings to the hallway. She then unlocked the door to the unit, only to discover that the door would not open. Tr. 186. Ms. Bracken noticed that when she used the key and the three of them pushed on the door, the top of the door separated from the door jamb, however, the bottom part of the door would not budge. She also noticed movement inside and scratching-like sounds. Because it appeared to her that a person was inside, she knocked on the door. There was no response. She knocked again, louder, because she could hear water running and music playing inside as well as a light on by peering through the door's peephole, but no one answered. Tr. 186. All three knocked on the door over the course of a half hour or so. They tried calling inside to get someone to hear them, as well as banging on the door. Throughout this time Ms. Bracken was calling Ms. Lin as well as her parents to see what she should do. Ms. Lin did not answer her call and so she left a voicemail message. Tr. 88.

While Ms. Bracken and associates were still attempting to gain access to the subject property, Ms. Lin returned Ms. Bracken's phone call. Ms. Lin confirmed to her that the key she gave her should open the door because there were no additional locks on the door. Ms. Lin gave Ms. Bracken the phone numbers for Respondents Fung and Ho. She also suggested that Ms. Bracken call the police to assist her in moving in. Tr. 188, 195. Ms. Bracken called and left a message for Respondent Ho, who did not answer. Ms. Lin called both Respondents. Tr. 95, 97. Respondent Ho never responded to either of their phone calls. Ms. Lin left a message for Respondent Fung when he did not answer. When she called a second time she got the message that he had turned off his voice mail service. Tr. 96.

When Ms. Bracken finally realized that she was not going to be able to get into the subject property, she became frustrated, confused and upset. Tr.189. Giving up meant that she had to take all her belongings back out of the building and load them into her car again. She was confused because she did not know what was going on. She was convinced that someone was trying to prevent her from moving in but she did not know why, or for how long! And, she was

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meet again, but Jennifer has refused to even consider changing her mind. Given that Jennifer's reason is illegal, I have no choice but to ask you to uphold Meki's right to sublet my room. Please don't hesitate to contact me if you have any questions. Gx 10; Tr. 84-87.

upset because it meant that she would have to find someplace to stay for at least another night. Tr. 188-190.

Later in conversation with Ms. Bracken's father, Ms. Lin revealed to him the truth about why his daughter had been locked out of the unit – that Respondent Ho refused to allow the rental based on the fact that she was a Black woman. Mr. Bracken then broke the news to his daughter. Ms. Bracken was "shocked" and "incredulous," and very upset with Ms. Lin that she had not told her before and had allowed her to humiliate herself by trying to force her way into the unit over what was now clearly resistance from Respondent Ho. Tr.194-96. Together, she and her father decided that she should not humiliate herself or possibly put herself in harms' way by trying to move in. She would have to find another place to live for the summer.

Ms. Bracken called her best friend Nicole and cried over the situation. They prayed together. Her friend assured her that she could continue staying with Ms. Scott until she found some place else to stay.Tr.198. Feeling embarrassed and sensitive to further imposition, Ms. Bracken returned to Ms. Scott's apartment to stay for what she thought would be just a few more days. Tr. 199-200.

Ms. Lin received an email from Respondent Fung on May 17, the day after Ms. Bracken was locked out of the apartment she was to sublease. In the email, Respondent Fung denied that he had authorized Ms. Lin to sublease her unit. Ms. Lin believed his April 22 email to her had so authorized. He also claimed that Ms. Lin had violated her lease by failing to give him one month's notice before subleasing her unit. Gx 11. However, Ms. Lin's lease contained no requirement that she give him a month's notice before subleasing. See Gx.13; Tr.110-11.

Respondent Fung stated in his email that Ms. Bracken should fax her application to him but admonished that if she could not wait for his final decision, she would "have to find some other place to live." Gx.11. He did not indicate when he would make a decision on Ms. Bracken's application. Ms. Lin noticed that for the first time in her communications by email with Respondent Fung, his email included non-discrimination disclaimer language at the end of it. Tr.108-109. Gx. 11 .

The following day, Ms. Lin received another email from Respondent Fung. Gx 12; Tr.111-12. The email started with the non-discrimination disclaimer. It then requested that Ms. Lin return her keys to him. He stated that he had found "the best out of all applicants" who was "ready to move in at the end of [May]." Gx 12, Tr. 113-14. He intended to keep Ms. Lin's full May rent payment. Tr. 112.

As a result of his request, Ms. Lin returned the keys to him and surrendered her unit. Tr. 115-16. Ms. Lin's unit at the subject property remained vacant until July of 2004. It was ultimately leased to Fiona Fang, a person of East Asian descent. RAF 62; RAH 70.

After returning to Ms. Scott's place for what she thought would be a few more days, Ms. Bracken searched for the next ten days or so for another sublet. She had no success. Sublets available for summer or short rental were scarce. She visited several of them, but soon found that those listed were too far from the city to work for her, or that they were in undesirable neighborhoods. Tr. 173, 200, 202. Ultimately, she was unable to find another suitable apartment and ended up staying in Ms. Scott's apartment, sleeping on the hardwood floor on an airbag, and

taking clothes from her car, as needed. She had no privacy for the entire time that she stayed with Ms. Scott. Tr.191, 201, 209.

Ms. Bracken "never felt comfortable" staying with Ms. Scott, always thinking that she was imposing on her. She also was concerned that the imposition on Ms. Scott might affect her friendship with their mutual friend, Nicole. Ms. Scott was doing Nicole a favor by allowing Ms. Bracken to stay there. Tr. 200. Ms. Bracken resolved to make the imposition as slight as possible and began staying out of the apartment until bedtime. She began spending time at a local bookstore. After about six weeks into the stay, when she had a month remaining on her summer job, Ms. Scott asked her to move out. She was expecting a houseguest and there was not space for all three of them. Tr. 209-210, 125. Finding herself without a place to stay, again, Ms. Bracken remembered that Ms. Lin had offered to have her stay at her place if she could find no other accommodations. Tr. 210-211.

Ms. Bracken went to stay with Ms. Lin, who by now was living in her two bedroom condo that she had purchased. However, Ms. Lin was as much or more of a stranger to Ms. Bracken as was Ms. Scott, and the arrangement between Ms. Bracken and Ms. Lin was "uncomfortable," as well. And, Ms. Lin felt extreme guilt, feeling that she was responsible for Ms. Bracken's predicament. She did not require any payment from Ms. Bracken to stay at her place. Ms. Bracken spent the remainder of her summer there and then left the city to begin law school in Washington, D.C.

REMEDIES

The Charging Party has the burden of proving discrimination by a preponderance of the evidence. In this case, liability was established upon the entry of a default judgment against Respondents. The uncontested evidence shows that Respondents refused to rent a housing unit to Ms. Bracken because of her race and made racially discriminating statements with regard to her rental application. Respondents also interfered with Ms. Bracken's exercise of her fair housing rights and attempted to intimidate or coerce Ms. Lin on account of her having aided or encouraged Ms. Bracken in the exercise of Ms. Bracken's fair housing rights. Thus, I find that Respondents Fung and Ho violated 42 U. S. C. § 3604(a) and (c) and § 3617, as charged. I find, further, that because of Respondents' discriminatory conduct, Complainants suffered damages, including emotional damages and out-of-pocket expenses and costs for which they deserve compensation.

Where an administrative law judge finds that a respondent has engaged in a discriminatory housing practice, the administrative law judge may issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). A civil penalty may also be imposed. *HUD v. Cabusora*, HUDALJ 09-90-1138-1 (March 23, 1992).

The purpose of an award of actual damages in a fair housing case is to put the aggrieved person in the same position as he would have been absent the injury, so far as money can. *Schwemm*, Housing Discrimination: Law & Litigation, p. 25, and cases cited therein. Actual damages in housing discrimination cases are not limited to out-of-pocket losses, but may also include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination. *See e.g. HUD v. Blackwell*, HUDALJ 04-89-0520-1, Dec. 21, 1989, *aff'd*, 908 F. 2d 864 (11th Cir. 1990) (hereinafter "*Blackwell I*").

Damages for emotional distress may be based on inferences drawn from the circumstances of the act of discrimination, as well as on testimonial proof. *Blackwell I.* Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury. *See, Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983). Awards for emotional distress from housing discrimination have ranged from the nominal amount of $150.00 in *HUD v. Murphy*, FH – FL (P-H) ¶ 25,002 (HUDALJ July 13, 1990), to much more substantial amounts, e.g. $175,000 in *HUD v. Johnson*, FH – FL (P-H) 25,076 (HUDALJ July 26, 1994).

Moreover, the peculiar circumstances of a complainant's situation may properly be taken into account in determining a proper damage award. This forum has long taken the position that those who discriminate in housing take their victims as they find them. Where a victim is more emotionally affected than another might be under the same circumstances, and the harm is felt more intensely, he/she deserves greater compensation for the discrimination that caused the suffering. *HUD v. Dutra*, HUDALJ Nov. 12, 1996, 2A FH - FL (P-H) ¶ 25,124, 26,062-63 (Complainant's fragile emotional state subjected him to greater emotional harm by Respondent's discrimination).

DISCUSSION

The Charging Party seeks a total of $49,984 on behalf of Complainant-Intervener Bracken and $19,945 on behalf of Complainant-Intervener Lin in compensation for emotional distress, inconvenience and out-of-pocket expenses and $11,000 in civil penalty against each Respondent. Complainants-Interveners seek a damage award of $54,984 for Ms. Bracken and $25,345 for Ms. Lin. For the reasons set forth below, Complainant-Intervener Bracken will be awarded $49,284. Complainant-Intervener Lin will be awarded $25,345.

In this case we have two very remarkable young women complainants, both of whom come from a racial minority - Ms. Bracken is African American and Ms. Lin is Asian American. Both are now lawyers. Both Ms. Bracken and Ms. Lin were very credible and compelling witnesses and I give great weight to their description of the impact of Respondents' discrimination on their emotional state. From my observation at the hearing and the evidence in the case, both are bright, attractive, articulate, thoughtful young women. They come from strikingly different backgrounds, yet both were particularly vulnerable to the racial discrimination experience, but for different reasons. Ms. Bracken had lived under circumstances which sheltered her from racial discrimination, whereas Ms. Lin had experienced repeated acts of racism beginning in early childhood.

Although Ms. Lin and Ms. Bracken were strangers in 2004, this case has similarities to cases involving racially mixed family members, usually a White and a Black family member, who attempt to rent or buy in a predominately White community where the White member of the family is intimidated or retaliated against for associating with, or insisting on the protection of the civil rights of the minority member. In this case, the predominant community is the Asian community and Ms. Lin, an Asian American, was discriminated against because she insisted on upholding the civil rights of another minority - a Black person. In HUD v. Tucker (HUDALJ 04-98-0332-8 (August 14, 2002)) I awarded $80,000 to a mixed couple (White woman $60,000 and

Black man $20,000) where a White trailer court owner, from whom the woman had rented for years, forced her to move her trailer from his park because she allowed the Black man to live with her. In HUD v. Timmons, Fair Hous. – Fair Lend. (P-H) ¶25,149 (HUDALJ 2000) a total of $60,000 was awarded to a White couple when a property owner, who had agreed to rent an apartment to them, changed his mind after seeing the couple's adopted Black child. In HUD v. Kocerka, Fair Hous. – Fair Lend. (P-H) ¶25,138 (HUDALJ 1999) a total of $90,000 was awarded to an interracial couple for intangible damages they suffered after the landlord of an apartment they wanted to rent told the woman (White) over the telephone that he did not want Blacks in his building. In Broome v. Biondi, 2 FH-FL (P-H), ¶16,240 (1998), an interracial couple sought to sublet an apartment. The husband, who was Black, was interviewed by the condominium board and felt the members' hostility. There was no direct evidence of racial hostility. The jury awarded each spouse $114,000 for emotional distress, and the reviewing court found there was enough evidence to sustain the award. And, in Portee v. Hastava, 853 F. Supp. 597 (E.D.N.Y.1994) aff'd., 104 F.3d 349 (2d Cir. 1996), the White woman of an interracial couple with a five-year-old child, made a contract with the defendant realtors to lease a dwelling. When her mate, a Black man, came to sign the lease, the realtors backed out of the deal. The jury awarded $208,000 to the interracial couple and their son for compensatory damages. On retrial the court reduced the amount to $101,000.

In this case, the total compensation I award Ms. Bracken and Ms. Lin of $74,629 is consistent with the amounts awarded in the above discussed cases. Considering the egregiousness of the Respondents' conduct, and the lingering effect that their behavior had had on both Complainants, I conclude that each award is reasonable. Neither Respondent opposed the requests for damages. Finding that the requested awards are reasonable based on the evidence, it is easy for me to conclude that both Complainants-Interveners deserve the compensation they seek, with minor exceptions as discussed below.

A. COMPLAINANT - INTERVENER MEKI BRACKEN:

Emotional Distress

The impact of the discrimination on Ms. Bracken can best be understood after looking at her personal and family background. Ms. Bracken was raised in Detroit, Michigan, with loving parents, in an affluent family from a diverse racial background. According to her father, about every race of people can be found in their family. Further, she attended "very racially diverse" private schools in the suburbs of Detroit and had friends from diverse racial backgrounds. She is described as being "reserved and private." Tr. 168, 235, 246. She had never knowingly experienced racial discrimination before. As a result, in the summer of 2004 she was "naïve" and "utterly vulnerable to an experience of racism." Tr. 195.

The evidence shows that in 2004 her parents were still very protective of her and she was still very dependent on them for her security and for help in decision making. For instance, when Ms. Bracken traveled to Chicago, not too far from her home in Detroit, her mother accompanied her and stayed with her until she believed that Ms. Bracken had found a suitable housing arrangement. It was Ms. Bracken's father, not Ms. Bracken, who negotiated the terms of the sublease with Ms. Lin. Tr. 102. When Ms. Bracken felt uncomfortable and suspicious about her inability to gain access to the subject property, she called her father. And, instead of calling Ms. Lin herself, she relied on her father to find out what was going on.

Ms. Bracken depended on her friends, as well. When Ms. Bracken needed a place to stay in Chicago, it was her best-friend, not Ms. Bracken, who arranged for her to stay with Ms. Scott. Then, after realizing that she would not be able to live at the subject property and still needed a place to stay, Ms. Bracken did not approach Ms. Scott on her own but rather depended upon her friend Nicole to negotiate her continued stay with Ms. Scott.

Her protective parents and educational environments -- attending small private schools and historically Black Oakwood College -- did little to expose Ms. Bracken to overt racism. Her experience with rejection by Respondents Fung and Ho amounted to a "rough welcome to the real world." Tr. 195. The experience changed the way Ms. Bracken looked at the world around her and her plans for the future.

Ms. Bracken's initial reaction to finding the door to the subject property barred was disappointment, frustration and bewilderment. But those feelings quickly changed to shock, humiliation and despair when she discovered the real reason that she could not enter the unit. She now had the humiliating realization that Respondent Ho had walked away from the meeting with her because she was disgusted that she, a Black woman, was the prospective tenant. Also that Respondent Ho had been so bent on keeping her from renting the unit that she had barricaded the door to prevent her from moving in. It was a painful realization for her. She began to wonder what others thought of her when they saw her on the street, riding the bus, or at work. She walked down Chicago streets with this "new consciousness," wondering, for the first time, whether people she passed on the street were judging her because of her race. She obsessed about the situation. The thoughts were depressing and humiliating. She cried and prayed with her friend. She began to withdraw within herself. She lost her enthusiasm for her work and for the Chicago experience. She went to work out of obligation and only wanted the summer to end. She "soldiered" through her job only through her sense of obligation. Tr. 231, 242-43. Respondents' discrimination had taken "the wind out of her sails" and "ruined her whole summer." Tr. 242; IX#l at 14.

Ms. Bracken feared the possibility of suffering another discriminatory episode. Although she made some attempt to sublease another apartment, she was ultimately discouraged by her fear of facing "a similar situation again." Tr. 208-09. Ms. Scott states that Ms. Bracken preferred to sleep in her small, cramped apartment, on the floor, rather than to go out and look for another place because, as Ms. Bracken explained to her, the discrimination made her feel very uncomfortable and she didn't want to put herself through that again. IX#1 at 11-13; Tr.243. When Ms. Scott asked her to leave because she had a guest coming to visit, Ms. Bracken "panicked" because "she had nowhere else to go." Feeling she had no other options, she contacted Ms. Lin and went to stay with her.

Ms. Bracken's world view was severely damaged by Respondents' acts of racism. Prior to this experience, she thought that "how people thought of you was merit based" and that if you work hard, "do what you're supposed to do, if you're a good person . . . people will think accordingly." Tr. 215. As a result of the experience, she suddenly became self-conscious. As Ms. Bracken testified, "in the past I'd been naive and now I was finding out that . . . when people see me, they are judging me in a way that I hadn't really contemplated before." Tr. 195. She was especially troubled by the realization that other people of color, immigrants to America and even people who had themselves experienced discrimination, also discriminated against African Americans. The discrimination by Respondents, themselves people of color,

made her feel that there was a ranking to discrimination, and that Blacks were at the bottom of that hierarchy Her feelings were so strong that, in addition to "see[ing] the city in a different way," for a time she had apprehensive feelings toward Asians. This was so despite the fact that she had many positive experiences living with and among Japanese and other friends.

Ms. Bracken's "pain and self-consciousness" did not "fade away" after the summer but rather have "stuck with her." She still thinks about the experience, which is "always there." Tr. 216. The discrimination injured her so deeply that she has no desire to return to Chicago, even though she could have easily obtained a job and moved there. In fact, when Ms. Bracken graduated law school, she applied for jobs in the biggest cities in the United States, including Atlanta, Washington, D.C., and Los Angeles, but refused to even consider Chicago, despite her parents' plea to do so. Respondents' discrimination literally changed the course of her life. In Ms. Bracken's words, Respondents' discrimination "shocked her," "took the wind out of her sails," "darkened her summer experience," and made her "a lot less enthusiastic" employee for her whole summer in Chicago. It inflicted a deep wound that changed the way she regarded herself and her surroundings and continues to affect her today. IX #1, Tr. 242.

After carefully considering the evidence in this case, and finding all of the witnesses who testified to Ms. Bracken's emotional state during the time in question to be wholly credible, I award $30,000 to compensate her for emotional suffering caused by Respondents' discrimination.

Loss of Housing Opportunity

The Charging Party seeks $18,000 for Ms. Bracken for loss of housing opportunity and inconvenience. This amount will be awarded.

The opportunity to live at 20 North State Street, unit 602, was extremely valuable to Ms. Bracken and the loss of the opportunity to sublease the unit caused Ms. Bracken substantial hardship. Subleasing was the perfect arrangement for Ms. Bracken who was only going to be in Chicago for the summer. The time frame for which she needed a residence coincided almost exactly with the time remaining on Ms. Lin's lease. She would have her own private bedroom and access to a kitchen. The location of the building was perfect, as well. It was close to her place of employment. And, it was in a safe neighborhood. She would not need a car because she could walk to work and feel comfortable. Further, subleasing Ms. Lin's unit would have allowed her to live alone and in one place for the summer. Instead, she ended up without a place of her own, having to pick up and move twice, and being dependent on the kindness of virtual strangers for living accommodations for the entire summer. She lost this housing opportunity for no other reason than the racial bigotry of Respondents Fung and Ho.

As a result of the discrimination, Ms. Bracken was greatly inconvenienced. She spent approximately ten hours searching, unsuccessfully, for alternative housing. None was available. Continued searching, itself, was very uncomfortable for her because she felt intimidated by the search, fearing that if she found a place she might again be rejected because of her race. Failing to find another similarly satisfying place, she had to live under far less desirable conditions during the entire summer. Instead of having her own private bedroom, she ended up living with virtual strangers, and during the period when she slept in Ms. Scott's living room, had no

privacy at all. Instead of being able to walk to work, she had to travel 42 blocks by bus to get to work, taking an extra 40 minutes each way and at a cost of $75 per month. Instead of being able to keep her clothing and other belongings in her own room, she was forced to leave them in her car and make daily trips to and from her car to obtain or return them. She did this for nearly eight weeks.

Ms. Bracken was also keenly aware that she was living off of the kindness of strangers. Being the respectful and sensitive person she was, she went to great inconvenience to herself to stay out of Ms. Scott's and Ms. Lin's way and allow for their privacy. Because she slept in Ms. Scott's living room and it was a cramped apartment, Ms. Scott's entertaining space was effectively Ms. Bracken's "bedroom." Ms. Bracken spent most of her evenings sitting in a bookstore downtown reading magazines and writing in her journal to "pass time" and "not bother" Ms. Scott. If Ms. Scott had guests, Ms. Bracken could not retire for the evening and if Ms. Scott went out for the evening, she unavoidably awoke Ms. Bracken by walking through the room in which Ms. Bracken was sleeping. Throughout the summer, Ms. Bracken never settled into a routine, or got more than four or five hours of sleep, far less than her usual eight hours. She also ate out more often, eating at least two meals per day away from home when she would have preferred to eat at home.

Ms. Bracken's likely choice of a place to work and live during her professional career was affected by her discriminatory experience. Her intention was to return to Chicago to work at the law firm at Saginaw after law school. She had family connections there. She changed her planned career trajectory because she was "unhappy in Chicago ... disjointed and just kind of worried about . . . how soon could she get out of Chicago." Her current work choice in Washington, D.C. is farther away from her parents than in Chicago and is with a firm with no personal or family connections.

Finally, as a consequence of Respondents' discrimination, Ms. Bracken was necessarily inconvenienced by the need to spend many hours to pursue a claim against Respondents for their discrimination against her. She spent many hours before and after the Charge speaking with persons at JMLS Fair Housing Clinic and HUD and appearing at her trial. Tr. 232, 233.

Having considered the claims for loss of housing opportunity and the considerable physical hardship and inconvenience Ms. Bracken suffered as a result of Respondents' discrimination, the requests for $15,000 for loss of housing opportunity and $3,000 for inconvenience are reasonable and will be granted.

Out-of-Pocket Damages

The Charging Party and Complainant-Intervener Bracken contend that Ms. Bracken had costs and expense of $1984 that she would not have had to pay but for Respondents' discrimination. They request an award to cover this amount. For the reasons stated below, this amount will be reduced by $700. $1284 will be awarded for out of pocket damages. JMLS requests an additional $5000 for Ms. Bracken "for her time spent on the case." Because no explanation is provided as to how that amount was determined, that request will be denied.

The evidence shows that for at least two months, Ms. Bracken had to buy monthly bus passes, at $75 each, to commute to and from work when she could have walked to work had she been allowed to sublease the subject property. She also incurred $30 in banking fees when she cancelled her money orders to Ms. Lin. Because she did not want to impose upon Ms. Scott whose kitchen was too small for the two of them to use together and because she wanted to assure Ms. Scott's privacy, Ms. Bracken ate out practically every meal when she would have otherwise eaten breakfast and dinner at home. The Charging Party calculates a resulting difference in expenditure for meals of $17.50 per day or $1,225 over the course of 70 days from May 17 to July 26, 2007 that Ms. Bracken had to live under these conditions. For the purpose of attending the hearing in this case, Ms. Bracken missed a full day of work, incurring approximately $640 in damages (based upon her salary and on 2,000 annual billable hours typically required by large law firms). These expenditures are causally related to Respondents' discrimination and are compensable.

Ms. Bracken also received two parking tickets totaling $100 for parking her car on the street during street cleaning hours. Tr. 204. Ms. Bracken contends that had she rented at the subject property, she would not have needed her car and would have avoided these tickets. Tr. 219. However, there is no persuasive evidence connecting the two events. Ms. Bracken has not shown that the parking tickets were caused by, or resulted from, the act of discrimination in question. Ms. Bracken testified that had she subleased Ms. Lin's unit, she would have taken her car back home to Detroit and therefore would not have had it on the streets of Chicago. She kept the car while she stayed with Ms. Scott because she needed to store her clothes and other items in it that she could not keep in Ms. Scott's small apartment. However, even if so, her testimony showed that she continued to park the car at Ms. Scott's location after she moved to Ms. Lin's condo. She had space at Ms. Lin's condo to store her clothes and other belongings and therefore would not have needed to keep the car for that purpose. There is no explanation as to why Ms. Bracken did not move the car from Ms. Scott's street during this latter period. Also, the dates the tickets were written are not established on the record and it is not known whether one or both was received while she was staying at Ms. Lin's address. Accordingly, the $100 cost of parking tickets is denied and the requested award reduced by $100.00

Ms. Bracken seeks $889 to cover the cost of airline fares for herself and her father to Chicago for the Hearing ($289 for her and $600 for her father), and $600 to cover their overnight hotel stay. Tr. 228, 246. I conclude that $600 for the airline ticket for her father's roundtrip flight from Detroit to Chicago is excessive, as well as the $600 cost for one night stay at a Chicago hotel, and should be reduced. The parties had at least a month's notice of the trial date. It is reasonable to allow $300 for Mr. Bracken's roundtrip flight, coach fare, from Detroit to Chicago. The same is true for the hotel stay. $600 for one night stay is not reasonable under these circumstances. $300 will be awarded. In sum, the requested amount of $1984 for out-of-pocket expenses is reduced by $700 (minus $100 for the parking tickets, $300 for roundtrip airfare for Mr. Bracken, and $300 for their hotel stay) for a total award of $1284.

COMPLAINANT-INTERVENER DIANA LIN:

Ms. Lin seeks a total of $25,345 in damages: $17,000 for emotional damages, $2,500 for inconvenience, and $5,400 for her time spent on the case, and $445 for out-of-pocket damages. Although for the reasons stated below, I conclude that she has not provided adequate justification for $5,400 for "time spent on the case," I conclude that she is deserving of an increased award for emotional distress, and thus will award the full $25,345 requested.

Emotional Distress

Ms. Lin was a target of discrimination in this case, as was Ms. Bracken. Respondents were hostile to her and took adverse action against her for aiding Ms. Bracken in her attempt to rent her unit. Their conduct was egregious against her, as well. With their racist acts, Respondents repeatedly provoked Ms. Lin, causing her feelings of anger, frustration, outrage, embarrassment, guilt, humiliation, and shame. She was "shocked" at how rudely Respondent Ho behaved when she walked away from the meeting with Ms. Bracken, and she became "more and more angry" to the point of being "furious and livid" when Respondent Ho unabashedly declared to her that she did not rent to Blacks, even reprimanding Ms. Lin for not anticipating her racist response. Tr. 61. Respondent Ho's statements reduced Ms. Lin to tears and "knotted" her stomach. Tr. 54, 63-65, 80-87. Ms. Lin became indignant when Respondent Ho tried to use their fellow roommate, Jae Eun Shin, to justify her own racist actions. Tr. 66-67. She and Respondent Ho ended up heatedly "yelling and screaming" at each other because of it. Tr. 67.

When Ms. Lin heard from Ms. Bracken the way in which she was locked out of the subject property, she was "just floored, just absolutely stunned." Tr. 94. She panicked. She was "agitated and livid" when she realized that Respondent Fung had approved Respondent Ho's discriminatory actions. She was "enraged" and "completely offended when he accused her of doing something wrong morally, and when she saw Respondents' ads offering her unit for $55 less than what Ms. Bracken had agreed to pay. Tr.117. To her, Respondents were stating, "consequences be damned . . . I'm going to continue being racist." Tr.118. Ms. Lin was particularly upset because she believed that Respondents would not have so blatantly discriminated but for their belief that Ms. Lin would allow them to get away with discriminating because they were all Chinese. Tr. 104-05.

Ms. Lin suffered humiliation, embarrassment and guilt when she had to admit to Ms. Bracken's father and then to Ms. Bracken that Respondents had discriminated against Ms. Bracken and that she had known of Respondent Ho's racist feelings but had withheld it from them. She felt "nervous," "uncomfortable" and "terrible" about it. Tr.102-03, 195. And, it was all the more embarrassing to her because Respondents, like her, were both Asians.

Ms. Lin worried over the impact the discrimination was having on Ms. Bracken and felt "awful" about it. Tr. 102-03. Throughout the summer she worried because she did not know if Ms. Bracken was still angry with her. Even today, she still feels "very guilty" and "responsible" "about having put Ms. Bracken in that situation." Tr. 120.

The deep sense of guilt and repeated bouts of anger and frustration experienced by Ms. Lin due to Respondents' discrimination have caused her to have flashbacks of traumatic childhood

racial discrimination, crying spells, loss of appetite and sleep disturbance resulting in weight loss, and poor work performance.

Ms. Lin remains anguished over the damage her involvement in this case would be to her reputation among other Asian Americans. Pursuing a legal remedy against Respondents has been "very emotionally draining from beginning to end" for her. She does not enjoy confrontation. Further her parents discouraged her filing the claim and she knew that her suit would make her unpopular in the Chinese community and controversial in Asian-American civil rights organizations and circles. She also remains scared that Respondents may retaliate against her because of the position she took in this case.

In sum, Because of her background and painful childhood memories, Ms. Lin was particularly sensitive to racial discrimination. Her background reveals a woman who is dedicated to civil rights and racial equality. She testified that since college she has continued to find ways to advocate on behalf of racial minorities and other marginalized groups. That "[p]art of reason I[she] went to law school was to become a civil, a better civil rights advocate, a more affective advocate." She was inspired to do so by remembrance of the racial hostility she experienced growing up and the feeling of powerlessness she felt in face of the hostility. Her parents always wanted her to stay quiet and not to respond. It infuriated her that when kids would yell and scream racial slurs at her and her sister that they could say nothing back. Tr. 46 So, as an adult she felt a need to respond to racism to make up for a childhood of not doing so. And, she was, and is, especially committed to standing up for the civil rights and equal protection of her fellow Asian Americans.

Against this backdrop it can be seen how emotionally wrenching and depressing her participation in this case has been. It severely distressed her that the persons who were committing the racist acts this time were from her own community – other Asian Americans. She was put in a very tough and uncomfortable position, but owing to her commitment to the fair treatment of all people, she made the decision to do the right thing and stared bigotry in the face. She insisted that Ms. Bracken be allowed to rent the unit, and told Respondents they were breaking the law. Her parents were against her filing the instant complaint. The difficulty she experienced in confronting her fellow Asians was evident in her trial testimony. At times she became overwhelmed and was reduced to tears.

In standing up for Ms. Bracken, Ms. Lin showed strength and courage where many others would not have. The late great Dr. Martin Luther King, Jr. said that "the ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." At the time of this significant challenge, Ms. Lin's stand for the civil rights of Ms. Bracken shows her great character, courage and strength of convictions. Her form of citizenship should be encouraged. I award her $22,400 for emotional distress and a total of $25,345, the full amount of damages sought.

Inconvenience

At the time of Respondents' discrimination Ms. Lin was under a lot of pressure to close on her first home. Her closing date was set for Tuesday, May 18. Having already pushed her closing back twice, Ms. Lin was afraid the seller would walk away from the deal if she delayed again. She was spending at least five or six hours to prepare for the closing on her first house in addition to working full time. Time spent dealing with Respondents' discrimination was a severe tax on her scarce time, further stressing her and causing her inconvenience.

Because Ms. Bracken had no place to stay for the month of July as a direct result of Respondents' discrimination, Ms. Lin gave up her privacy and convenience for a month or more and opened up her home to Ms. Bracken. She did so, and without compensation, because she felt great guilt and responsibility for Ms. Bracken's situation.

Finally, Ms. Lin suffered the inconvenience of pursuing a legal remedy for Respondents' discrimination, which was "very emotionally draining from beginning to end." Tr. 123-24. The hearing process was time-consuming, taking up "at least" 50 but "closer to 60" hours of her time. Tr. 140-153. Overall, the hearing process was unpleasant and inconvenient for her, one that she endured only because she was "really angry" at Respondents and "wanted to be sure [Respondents] wouldn't be in the position where they could do something like this again." Tr. 118-19. I conclude that an award of $2,500 for inconvenience is reasonable in this case.

Out-of-Pocket-Damages

As the result of Respondents' rejection of Ms. Bracken's application, and Respondent Fung's retaliatory termination of Ms. Lin's lease, Ms. Lin lost $325, which is half of her May rent. Tr. 78, 112-13; GX12. Ms. Lin also incurred $20 in bank fees when Ms. Bracken's checks were returned as unpaid. Tr. 136-39; IX 2, 3, 4, 5. Additionally, Ms. Lin had to pay the attorney who assisted her with her closing an extra $100 because she had to unexpectedly spend time dealing with Respondents' discrimination instead of working on her closing. Tr. 77, 153; IX 46. These expenses are compensable. Accordingly, she will be awarded $445 for out-of-pocket expenses which are compensable.

C. OTHER RELIEF

The Charging Party and Complainants-Interveners request imposition of the maximum civil penalty of $11,000 against both Respondents and asks for specific injunctive relief. In addition, both seek to permanently enjoin Respondents from discriminating against prospective tenants, based on race for the benefit of the public interest, an order requiring monitoring of Respondents' rental practice, and the issuance of injunctive enjoining Respondents from disposing of any real estate owned by them until they have satisfied the judgments in this case. These requests, too, are reasonable and will be granted.

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose a civil penalty upon a respondent who has been found to have discriminated in violation of the Act. 42 U.S.C. § 3512(g)(3)(A); 24 C.F.R. § 180.670(b)(3)(iii)(2007). However, assessment of a civil penalty is not automatic. It requires consideration of five specific factors: 1)the nature and circumstances of the violation; 2) the degree of culpability; 3) any history of prior violations; 4) the financial circumstances of the Respondent; and 5)the goal of deterrence, and other factors as justice may require. *See HUD v. Jerrard*, 2 FH – FL (P-H) ¶¶25,005, 25,092 (HUDALJ, Sept. 28, 1990).

The Charging Party requests that the maximum civil penalty be imposed against both Respondents. In a case such as this where there is no evidence that Respondents have been previously found to have violated the Act, the maximum civil penalty that can be assessed is $11,000. 42 U. S. C. §3612(g)(3)(A). *See also* 24 C.F.R. §180.671(a)(1). I conclude that the maximum civil penalty is warranted as to both Respondents.

Nature and Circumstances of the Violation

The nature and circumstances of Respondents' violations were egregious and warrant imposition of a significant penalty. The violations were not inadvertent but intentional. Respondent Ho rejected Ms. Bracken's application based solely on her race, and Respondent Fung supported her in that discrimination. Respondent Ho physically barred Ms. Bracken from entering the subject unit and Respondent Fung supported her in doing so. Moreover, Respondent Fung retaliated against Ms. Lin by terminating her lease for daring to insist on following the law. Respondents Ho and Fung openly declared their discriminatory intent and Respondent Fung was willing to lose money rather than to rent to a Black woman. Their actions were racist and mean-spirited and caused severe emotional and other damages to both Ms. Bracken and Ms. Lin.

Degree of Culpability

Both Respondents share a high degree of culpability for the egregious discriminatory conduct in this case. Respondents had "every opportunity to do the right thing" yet consciously chose to engage in unlawful discrimination. Again, the decision to reject Ms. Bracken's application was based solely on her race. Respondent Fung was a licensed real estate agent. Neither he nor Respondent Ho can claim an ignorance of the law because Ms. Lin specifically made known to them that they would violate various fair housing laws if they did not accept Ms. Bracken's application, and warned them of the legal consequences for their actions. When Ms. Lin told Respondent Ho that she could get sued, her response was "Fine. Sue me." Tr. 67. Although it was Respondent Ho who barred Ms. Bracken's entry into the unit, Respondent Fung is equally culpable because he ratified her actions. And, he is directly responsible for the retaliatory actions against Ms. Lin. Their actions were hateful and hurtful and demonstrated a reckless disregard for anti-discrimination provisions of the Fair Housing Act. *See Morgan v. HUD*, 985 F. 2d 1451 (10th Cir.1993).

Goal of Deterrence

An award of some civil penalty is appropriate as deterrence to others. Those similarly situated to Respondents who would act upon their bigoted thoughts must be put on notice that racist rental practices in violation of the Fair Housing Act will not be tolerated and that they will pay dearly for their discriminatory conduct.

In this case a maximum penalty is warranted. Respondents made it known that keeping racial separation was more important than their economic interests. Respondents ran ads allowing a $55 per month discount on the rental just to avoid renting to a Black person, and in the end showed a willingness to leave the unit empty for two months – from May to July – and suffer that economic loss rather than offer the unit to Ms. Bracken. Respondents, therefore, are unlikely to be discouraged from their discriminatory ways unless the sanction is very severe.

History of Prior Violations

There is no evidence that either Respondent has been adjudged to have committed any previous discriminatory housing practices.

Respondent's Financial Circumstances

Evidence regarding a respondent's financial circumstances is peculiarly within his knowledge, so he has the burden of producing such evidence for the record. If he fails to produce credible evidence which would tend to mitigate against assessment of a civil penalty, a penalty may be imposed without consideration of financial circumstances. *See Campbell v. United States,* 365 U.S. 85, 96 (1961); *Blackwell I.* Respondents chose not to participate in these proceedings. Since neither Respondent presented evidence to the contrary, the record supports finding that each Respondent could pay the maximum civil penalty without suffering undue hardship.

Other Factors as Justice Requires

Maximum penalties should be reserved for the most egregious cases and imposed where needed to vindicate the public interest. In this case, I conclude that although neither Respondent has been previously adjudged to have violated the Act, the maximum penalty is warranted as to both Respondents. Both Respondents have shown no concern for the civil rights of these Complainants or for the general public interest.

Respondent Fung, in particular, has mocked the judicial process with regard to the prosecution of this case. He has refused to participate in the legal proceedings since the filing of the complaint in this forum. His refusal to participate in these proceedings suggests disrespect for, or contempt of, the Fair Housing Act, this court, and the general public interest and is an appropriate additional factor to consider in assessing a civil penalty. His dismissive attitude to this administrative process trumps the other factors that might have otherwise suggested a less than maximum penalty.

Respondent Ho showed some interests in the proceedings although far too late. However, her personal conduct in discriminating against Ms. Bracken was of such an egregious nature that

maximum penalty is warranted as to her, as well. It was she who barricaded the door that Ms. Bracken and others tried to force open. And, although there is no record of a prior adjudication of violation on her part, based upon her own statements to Ms. Lin, she acknowledged previously discriminating against another potential renter based solely on her race. Finally, when Ms. Lin informed her that she was violating the law and could be sued, her response was "Fine. Sue me." By this response, she has shown that she is recalcitrant and has no regard for the protections afforded by the Fair Housing Act. The maximum penalty is needed to impress upon her the seriousness of her offense.

Based on consideration of the factors discussed above, I conclude that the above-described violations of the Act, and Respondents' conduct in response to the violations, are particularly egregious, sufficient to warrant the maximum civil penalty of $11,000 as to each Respondent. That amount will be imposed.

Injunctive Relief

After the Administrative Law Judge finds that a respondent has engaged in a discriminatory housing practice, she may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3623(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Marable v. Walker*, 704 F. 2d at 1219, 1221 (11th Cir. 1983). The purposes of injunctive relief in housing discrimination cases include: eliminating the effects of past discrimination, preventing future discrimination, and positioning the aggrieved persons as close as possible to the situation they would have been in but for the discrimination. *See Park View Heights Corp. v. City of Black Jack,* 605 F. 2d 482, 485 (7th Cir. 1975)(citation omitted). The relief is to be molded to the specific facts of the case. A court has "the power as well as the duty to use any remedy available to make good the wrong done." *Moore v. Townsend*, 525 F. 2d 482, 485 (7th Cir. 1975).

The Charging Party seeks injunctive and other equitable relief in light of the violations found. I conclude that the requested relief serves to rectify past harm or to deter others and are therefore appropriate. The requested relief shall be ordered.

CONCLUSION AND ORDER

The preponderance of the evidence establishes that Respondents discriminated against Complainant-Intervener Bracken on the basis of race, made racially discriminatory statements, interfered with Ms. Bracken's attempt to rent because of her race, and retaliated against Complainant-Intervener Lin in violation of 42 U.S.C. §§ 3604(a) (c) and 3617. It also established that as a result of Respondents' unlawful actions, Complainants-Interveners Bracken and Lin suffered injuries which must be remedied by an award of compensatory damages. In addition, to protect and vindicate the public interest, a civil penalty must be imposed against Respondent. Accordingly, it is HEREBY ORDERED that:

1. Within thirty (30) days of the date on which this Order becomes final, Respondents, jointly and severally, shall pay actual damages in the amount of $49,284 to Complainant-Intervener Meki Bracken for emotional distress and humiliation, loss of housing opportunity, and for tangible losses and inconvenience;

2. Within thirty (30) days of the date on which this Order becomes final, Respondents, jointly and severally, shall pay actual damages in the amount of $25,345 to Complainant-Intervener Diana Lin for emotional distress and humiliation suffered, and for tangible losses and inconvenience;

3. Within thirty (30) days of the date on which this Order becomes final, each Respondent shall pay a civil penalty of $11,000 to the Secretary, United States Department of Housing and Urban Development;

4. Each Respondent is hereby permanently enjoined from unlawfully discriminating against persons on the basis of race or violating the Fair Housing Act;

5. Each Respondent is hereby enjoined and prohibited from taking any action of reprisal, retaliation or harassment against either Diana Lin or Meki Bracken or any other person who testified or otherwise participated in the trial in this case;

6. For a period of three years after issuance of this decision, Respondents shall provide the following information to the Secretary, United States Department of Housing and Urban Development for monitoring purposes:

a. a duplicate of every written application and a written description of any oral application for any of the properties owned and leased by Respondents including information identifying the applicant's race, whether the person was accepted or rejected, the date of such action and, if rejected, the reason for such action;

b. a copy of all notices or advertisements of vacancies at any of the properties owned by either Respondent and a written description of the manner in which such notices were provided; and

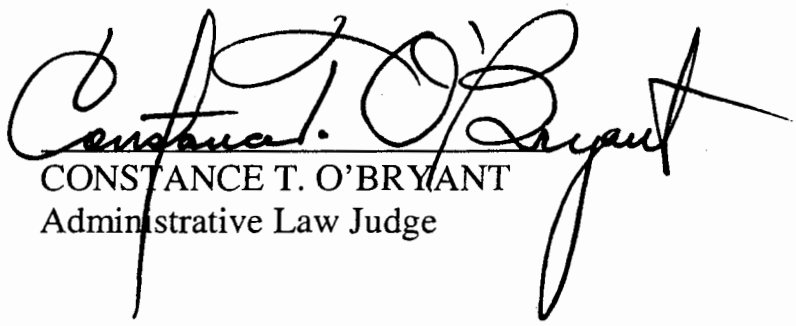
c. the race of current tenants at any and all of either Respondent's rental properties.

7. Respondents are hereby enjoined from transferring any real property listed in Government Exhibits 2, 3, 4 and 5 or any other real properties in their possession until they have satisfied the judgment against them in this case; and

8. Complainants-Interveners are granted leave to petition for attorney's fees and costs in this matter.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) of the Fair Housing Act and the regulations codified at 24 C.F.R. § 104.910, and will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary of HUD within that time.

So ORDERED, this 31st day of January, 2008.

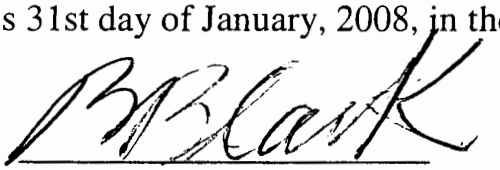


CONSTANCE T. O'BRYANT
Administrative Law Judge

J:\DRAFT\FH.Fung.Initial Decision.01.31.08

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION issued by CONSTANCE T. O'BRYANT, Administrative Law Judge, in HUDALJ 07-053-FH, were sent to the following parties on this 31st day of January, 2008, in the manner indicated:



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