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, Charging Party, on behalf of: HOUSING ADVOCATES, INC., Complainant, v. KATHY PARKER and DERYL GIBSON Respondents.	HUDALJ 10-E-170-FH-19 October 27, 2011

INITIAL DECISION AND ORDER AWARDING DAMAGES AND CIVIL PENALTIES

I. Procedural Background

This proceeding was initiated upon a Charge issued July 9, 2010, by the Secretary of the United States Department of Housing and Urban Development ("HUD," the "Government" or "Charging Party") on behalf of Housing Advocates, Inc. ("Complainant HAI"). The Charge alleges that Kathy Parker and Deryl Gibson (collectively, "Respondents") violated the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq*. (the "Act" or "FHA"). Specifically, Respondents were charged with discriminating against Complainant HAI and Carmen Cedeno on the basis of Cedeno's national origin, in violation of 42 U.S.C. § 3604(a) and (c).

The Charging Party sought damages in the amount of: $23,134.38 for diversion of Complainant HAI's resources; $5,000 for frustration of Complainant HAI's mission; $5,000 for emotional distress suffered by Cedeno; and $3,500 for inconvenience suffered by Cedeno. The Brief also sought a civil penalty of $16,000 per Respondent. Finally, the Charging Party requested that Respondents be enjoined from engaging in further discriminatory housing practices, that their rental activities be monitored for a period of three years, and that they be prevented from transferring their properties to third parties until they have satisfied the imposed judgments.

From August of 2010 through April 4, 2011, this case was in litigation before an Administrative Law Judge (ALJ) employed by the Environmental Protection Agency (EPA). [1] On September 23, 2010, HUD served Respondents with discovery requests and began Respondents' depositions. On October 1, 2010, HUD filed a *Motion to Compel Discovery Responses and Request for Sanctions*. By Order dated October 26, 2010, the Court instructed Respondents to submit full and complete responses to HUD's First Set of Interrogatories and Requests for Production by November 5, 2010. (Order on Charging Party's Mot. to Compel Disc. Resps. and Req. for Sanctions ("October 26 Order"), dated Oct. 26, 2010.) Respondents were also advised that they would be prohibited from introducing at hearing any evidence responsive to the Interrogatories and Production Request that they did not submit by November 5, 2010.

On November 5, 2010, HUD submitted its *Prehearing Statement*, and on November 12, 2010, submitted a *Second Motion to Compel Discovery Responses, Motion for Rule to Show Cause and Request for Sanctions* and a *Motion for Summary Judgment*, requesting judgment as a matter of law on Respondents' liability for violating the Fair Housing Act. Respondents did not file a Prehearing Statement, did not respond to HUD's previous motions, and did not submit full and complete discovery responses by November 5, 2010, as ordered by the Court.

On December 17, 2010, the Court granted the Charging Party's Motion for Summary Judgment, holding Respondents individually and jointly liable for violating 42 U.S.C. § 3604(a) and (c). Upon motion by HUD, to which Respondent did not respond, the Court issued an Order granting a hearing on the written record. (Order Granting Charging Party's Mot. for a Hr'g on the Written R. and Cancelling Oral Hr'g, dated Jan. 20, 2011.)

Pursuant to 42 U.S.C. § 3612(g)(3) and its implementing regulation, 24 C.F.R. § 180.670 *et seq.*, HUD filed its *Brief in Support of Damages and Civil Penalty* ("CP Brief") on February 9, 2011. Respondents filed a *Brief in Opposition to Charging Party's Brief in Support of Damages and Civil Penalty* ("Resp't's Opp'n Br.") on March 23, 2011.

No further judicial action was taken in the matter prior to the transfer of this case (and many others) back to the HUD Office of Hearings and Appeals on April 4, 2011.[2] On April 18, 2011, the Director of the HUD Office of Hearings and Appeals (OHA) referred this matter to the undersigned HUD ALJ to serve as presiding judge. As a result of the foregoing, this matter is ripe for a hearing on the record as to what damages and civil penalties, if any, are to be imposed. In considering the written record, the Court has carefully read and evaluated all of the matters timely submitted by the parties.

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[1] Pursuant to an Interagency Agreement in effect beginning March 4, 2010, Administrative Law Judges of the U.S. Environmental Protection Agency were authorized to hear cases for the U.S. Department of Housing and Urban Development.

[2] On March 31, 2011, HUD issued a Stop Work Order for Legal Support Services provided by the EPA Office of Administrative Law Judges. EPA Chief Administrative Law Judge Susan L. Biro, who was presiding over this case, transferred it back to HUD on April 4, 2011.

II. Applicable Standard for Damages and Penalties

The Fair Housing Act states that it is a violation of the Act to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a).

The Act also provides that no person shall "make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race." 42 U.S.C. § 3604(c). Statements include both written and oral representations by a person engaged in the sale or rental of a dwelling. 24 C.F.R. § 100.75(b).

Respondent Parker's statements to Cedeno—asking why Cedeno wanted to live in a Black neighborhood, stating that Parker would have to think about whether to rent to Cedeno, and telling Cedeno that Parker did not think it was a good idea for Cedeno to move into the neighborhood—have already been adjudged to constitute violations of 42 U.S.C. § 3604(a) and (c). The Order granting summary judgment for the Charging Party also concluded that the statements represented violations by Respondent Gibson, as he was aware of the statements made by Respondent Parker, his agent.[3]

If the presiding administrative law judge finds that a discriminatory housing practice has been committed or is about to be committed by the Respondent, the Fair Housing Act provides that the ALJ may issue an order granting the aggrieved person actual damages and injunctive and other equitable relief. In addition, to vindicate the public interest, the ALJ may assess a civil penalty against the Respondent. 42 U.S.C. § 3612(g); 24 C.F.R. § 180.671(b)(3)(iii).

An "aggrieved person" is defined in the Act as including "any person who claims to have been injured by a discriminatory housing practice." 42. U.S.C. § 3602(i)(1); 24 C.F.R. § 103.9. A "person" may include an association, corporation, or legal representative. 42 U.S.C. § 3602(d); 24 C.F.R. § 103.9.

Actual damages for discriminatory housing practices may include compensation for humiliation and embarrassment. 24 C.F.R. § 180.670(b)(3)(i). When determining the appropriate civil penalty, the Court may award a separate penalty for each separate and distinct discriminatory housing practice. 24 C.F.R. § 180.671(a). In cases such as this one, where there is more than one liable Respondent, each civil penalty award applies equally to each Respondent. 24 C.F.R. § 180.670(b)(3)(iii)(C). HUD's implementing regulations define a "separate and distinct" discriminatory housing practice as any single, uninterrupted

[3] (See Order on Charging Party's Motions to Compel Discovery Responses, For Reconsideration, for Show Cause Order, for Sanctions, and for Summary Judgment and Order Rescheduling the Hearing ("Summ. J. Order"), issued Dec. 17, 2010.)

occurrence that violates sections 804, 805, 806, or 818 of the Fair Housing Act. 24 C.F.R. § 180.671(b). An occurrence that meets this definition is considered a single act even if it violates multiple sections of the FHA, violates the same section more than once, or violates the rights of more than one aggrieved party. Id.

III. Assessment of Damages and Penalties

A. Complainant HAI and Cedeno are Aggrieved Persons as Defined by the Fair Housing Act

HUD asserts that Complainant HAI may properly seek damages both for itself as a fair housing organization and as the representative of Cedeno, a member of the organization. (CP Brief 12.) In granting HUD's Motion for Summary Judgment, the Court has already acknowledged that HAI is indeed an aggrieved party and thus has standing to bring this action. (Summ. J. Order 18.) Cedeno, who was the recipient of Respondent Parker's discriminatory statement and who was denied the opportunity to rent Respondents' apartment, is also a valid aggrieved person under the implementing regulations of FHA and HUD. Both parties are therefore entitled to collect damages from Respondents. The sole question now to be determined by the Court is what damages and penalties are appropriate to "put the aggrieved person in the same position, so far as money can do it, as he would have been had there been no injury." Lee v. S. Home Sites Corp., 429 F.2d 290, 293 (5th Cir. 1970).

B. Determining Complainant HAI's Damage Award

(1) HAI's Diversion of Resources

As a fair housing organization, HAI may receive damages for diversion of its resources and frustration of its mission causally attributable to Respondents' discriminatory actions. United States v. Balistrieri, 981 F.2d 916 (7th Cir. 1992); City of Chicago v. Matchmaker Real Estate Ctr., Inc., 982 F.2d 1086 (7th Cir. 1992); HUD v. Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *8 (Dec. 21, 2007).

The U.S. Supreme Court has found that an organizational complainant has standing to sue under the FHA when the Respondent's actions have caused the organization to "devote significant resources to identify and counteract the defendant's . . . discriminatory . . . practices." Havens Realty Corp., v. Coleman, 455 U.S. 363, 379-80 (1982); see also Village of Bellwood v. Dwivedi, 895 F.2d 1521 (7th Cir. 1990) (maintaining a legal action drains resources from an organization's primary counseling function); Balistrieri, 981 F.2d at 933 ("[T]he deflection of the agency's time and money from counseling to legal efforts directed against discrimination is a sufficient injury to confer standing. . . .[I]f the agency is able to establish this injury at trial, it may collect for it." (quoting Dwivedi, 895 F.2d at 1526) (internal quotation marks omitted)).

Overwhelming precedent suggests that, to the extent that Complainant HAI can

substantiate its claim for diversion of resources, it should recover those costs from Respondents. The organization asserts that litigating this case has redirected resources away from its advocacy, counseling, education, and outreach activities. (CP Brief 14.) Specifically, Complainant HAI states that the resources committed to this case prevented the organization from fully investing in its fledgling "Move On To Housing Equal Rights" (MOTHER) project.[4] (Id. at 15.) The Charging Party requests $23,134.48 as compensation for this diversion of resources. (Id. at 14; Ex. E, Declaration of Edward G. Kramer, Director & Chief Counsel in Support of the Housing Advocates, Inc., Request for Damages and Costs ("Kramer Decl.").) HUD arrives at this figure by calculating the number of hours expended by the six participating HAI employees and multiplying those hours by each employee's fair market rate. (Kramer Decl. 7.) This is, perhaps not coincidentally, the generally accepted formula for determining the amount of an attorney's fee award in cases brought under 42 U.S.C. § 3604. See Perdue v. Kenny, 130 S. Ct. 1662 (2010); Hensley v. Eckerhart, 461 U.S. 424 (1983). Indeed, Complainant could well have sought attorney's fees rather than diversion of resources-based damages in this case, as four of the six participants—comprising the bulk of the expended hours—are attorneys.[5] (See CP Brief 17-18.)

Assuming the accuracy of the Charging Party's calculations, it does not immediately follow that the hours expended litigating this case constitute a compensable diversion of Complainant HAI's resources. Diversion damages are appropriate when the Respondent's actions have caused the organization to deflect time and money from counseling to legal efforts directed against discrimination. Dwivedi, 895 F.2d at 1526. As the Seventh Circuit noted in that case, the resources Complainant was forced to devote to litigation would otherwise have been used to provide additional counseling services. (Id.) Complainant HAI was therefore free to recoup the lost funds. (Id.) Put another way, the diversion of resources calculations does not focus on how much the organization spent on the litigation, but rather on how much the litigation prevented them from spending on other activities. As an example, an organization that budgets $5,000 per year on counseling and other services, but spends $10,000 litigating a case, has not diverted $10,000 from its other services. Unless the hypothetical organization provides evidence to show that it would have spent an additional $5,000 providing non-legal services, it can only recoup the $5,000 that, but for the discriminatory practice, would have been used for those services.

Here, HUD offers no evidence showing Complainant HAI's expenditures on non-legal services. Rather, its Brief requests only those hours expended by Complainant HAI's employees on the litigation. (CP Brief, p. 18.) The implication, therefore, is that the employees would otherwise have expended those hours providing those additional services. While this may be true, the Court can find nothing in the record justifying why Respondents

[4] Complainant HAI describes the MOTHER project as "a new form of testing" that involved recruiting and training Section 8 voucher holders and sending them out to suburban Cleveland locations in order to determine if landlords in those areas were discriminating against subsidized housing recipients. (CP Brief 5-6.)

[5] HAI co-founder Edward Kramer is both the organization's director and chief counsel. Mary Jo Hansen is a HAI staff attorney, and Michael Aten is listed as a testing coordinator and staff attorney. (CP Brief 17-18.) Kramer identifies Joanne Wu as an attorney, though she does not appear to have been acting in her legal capacity in this case.

should pay attorney market rates for the non-legal work performed by Complainant HAI's attorneys. The Charging Party seeks $450 per hour for work performed by Chief Counsel Edward Kramer, $150 per hour for Staff Attorneys Mary Jo Hanson and Michael Aten, and $75 per hour for Assistant Director Joanne Wu. (CP Brief 18; Kramer Decl. 7.)

Although these requests are likely reasonable as attorney's fees, they appear excessive in a non-legal context, particularly when compared to their non-attorney counterparts. For example, the fair market rate for Testing Coordinator Karen O'Connor Knox is $30 per hour. (CP Brief 18: Kramer Decl. 7.) Aten, listed as both a Staff Attorney and a Testing Coordinator, commands $150 per hour. (Id.) It would be implausible to suggest that Aten, while wearing his Testing Coordinator hat, would earn five times as much as O'Connor Knox in the same role. Indeed, Kramer specifically states that "[t]he substantial difference between the fair market rates of staff is because Joanne Wu, Michael Aten and Mary Jo Hansen are all attorneys." (Kramer Decl. ¶ 32.)

It would be similarly implausible to suggest that these additional services require the presence of attorneys acting in their legal capacity.[6] To award attorney's fees as compensation for the diverted non-legal work would thus constitute a windfall for Complainant HAI. Instead, the Court will trim the rate of the participating attorneys to reflect their likely market rate for non-legal work.[7] Accordingly, Aten will receive the same $30 per hour that O'Connor Knox earns. Kramer, the co-founder and Director of Complainant HAI, would reasonably command higher compensation than the other employees, and so will receive $150 per hour, double the figure for Wu, his Assistant Director. Determining an appropriate rate for Hanson, however, proves more difficult, as there is no evidence in the record that Hanson contributes to Complainant HAI in any non-legal capacity. As a staff attorney, her salary is based on providing legal services. Because there is no evidence that her participation in the present case prevented her from performing legal work needed elsewhere, the Court concludes that her hours have not been diverted. The Court therefore discounts her hours entirely.

Additionally, it is important to note that Complainant initiated its test of Respondents' property before it had any reason to suspect Respondents of enforcing a discriminatory policy. Respondents were not "targeted" for testing until after Cedeno's experience. In analyzing the diversion of resources cause of action, the District of Columbia Circuit Court has emphasized that fair housing organizations may recover those resources used to *counteract* the effects of alleged discrimination. See Equal Rights Ctr. v. Post Properties, 633 F.3d 1136 (D.C. Cir. 2011); Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp., 28 F.3d 1268 (D.C. Cir. 1994); Spann v. Colonial Vill., Inc., 899 F.2d 24 (D.C. Cir. 1990). Resources used

[6] The Court notes that "implausible" does not mean "impossible." An evidentiary showing that legal representation at market rates for services unassociated with the instant litigation is a regular organizational expense that would entitle the organization to recoup those fees. However, the Charging Party's Brief does not direct the Court to any evidence that this is the case here.

[7] The rate for Ms. Wu will not be adjusted because Complainant HAI does not appear to be seeking compensation for Ms. Wu as an attorney, but rather in her Assistant Director capacity.

to *discover* discrimination are considered budgetary decisions, as the organizations could choose to combat discrimination via other measures. Equal Rights Ctr., 633 F.3d at 1140; BMC, 28 F.3d at 1276-77.

In Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp., the court "explicitly reject[ed]" the complainant's argument that preliminary testing was a cognizable injury and characterized the resources spent conducting the testing as a "self-inflicted" harm caused by "the [Complainant's] own budgetary choices." BMC, 28 F.3d at 1276. In Equal Rights Center v. Post Properties, the court specifically noted that the analysis "focused on whether [the organizations] undertook the expenditures in response to, and to counteract, the effects of the defendants' alleged discrimination rather than in anticipation of litigation." Equal Rights Ctr., 633 F.3d at 1140.

Complainant HAI here could not have initiated the testing of Respondents' property to counteract Respondents' discriminatory activity because Complainant HAI was unaware at that time of any such activity attributable to Respondents. The Court therefore concludes that Respondents are not liable for the costs of Complainant HAI's tests.

After due consideration of the foregoing, the Court determines that Complainant HAI is entitled to damages for diversion of resources for the hours and rates as follows:

	Hours x Rate	Total
Edward Kramer	34.5 x $150	$5,175.00
Michael Aten	5 x $30	150.00
Joanne Wu	.25 x $75	18.75
Karen O'Connor Knox	.33 x $30	10.00
Gwen Long	.25 x $22.55	5.63
TOTAL		**$5,359.38**

(2) Complainant HAI's Frustration of Mission

The Charging party seeks damages of $5,000 from Respondents as compensation for frustration of Complainant HAI's mission. Complainant HAI states that its mission is to "promote and protect civil rights, particularly the civil rights of minority, disabled and disadvantaged people." (CP Brief 19.) Respondents' discriminatory actions made that task more difficult by reinforcing a perception that housing discrimination in any form is acceptable. Complainant HAI asserts that Respondents' actions will force the organization to engage in more community outreach and education programs, specifically among the Hispanic community.

Frustration of mission is an abstract concept, and not one that easily lends itself to a qualitative damage assessment. As HUD notes, it is "difficult to assign a dollar amount" to this type of harm. (CP Brief 20.) However, an award of $5,000 is well within the range normally awarded in various circuits. See Fair Hous. of Marin v. Combs, 285 F.3d 899 (9th

Cir. 2002) (awarding $10,160); Baltimore Neighborhoods, Inc. v. Lob, Inc., 92 F. Supp. 2d 456 (D. Md. 2000) (awarding $2,977.27); HUD v. Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *7 (Dec. 21, 2007) (awarding $10,000). Accordingly, the Court awards Complainant HAI $5,000 in frustration of mission damages.

C. Determining Carmen Cedeno's Damage Award

(1) Emotional Injury

Actual damages in housing discrimination cases may include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination. 24 C.F.R. § 180.670(b)(3)(i); HUD v. Blackwell, 2A FH.--FL. (P-H) ¶ 25,001, at 25,001 (HUDALJ Dec. 21, 1989), enforced, 908 F.2d 864 (11th Cir. 1990). Emotional distress damages may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof. HUD v. Wagner, 2A FH.--FL. (P-H) ¶ 25,032, at 25,337 (HUDALJ June 22, 1992). "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." Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553 (citing Marable v. Walker, 704 F.2d 1219, 1220 (11th Cir. 1983)).

Key factors in determining emotional distress damages are the Complainant HAI's reaction to the discriminatory conduct and the egregiousness of the Respondents' behavior. Accordingly, an intentional, particularly outrageous or public act of discrimination generally justifies a higher emotional award, because such an act will "affect the plaintiff's sense of outrage and distress." ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 25:6, at 25-35 (1990) (citing DAN B. DOBBS, HANDBOOK ON THE LAW OF REMEDIES 530-31 (1973)). Additionally, "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." Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *5 (citing HUD v. Dutra, HUDALJ 09-93-1753-8, 1996 WL 657690 (Nov. 12, 1996)).

The Charging Party here requests a $5,000 award for Cedeno as compensation for the emotional injury caused by Respondents' discriminatory conduct. (CP Brief 31.) The record indicates that Cedeno experienced substantial, though not debilitating, psychological trauma as a result of her interaction with Respondent Parker. Already suffering from depression, Cedeno was told that she would have to leave, within months, the home she had rented for four years. The Warrensville Heights home owned by Respondents offered Cedeno the size, amenities, and location she preferred. (Id. at 7-8.) However, due to Respondents' discriminatory conduct, Cedeno could not rent that property and instead rented a unit in Parma, Ohio, some five months later. (Id. at 32.) The Parma property was subjectively less desirable for Cedeno, as it was located farther from her family and did not have the same features and amenities as the Warrensville Heights property. (Id. at 33.)

The Charging Party asserts that Respondents' actions caused Cedeno to experience approximately three month's worth of heightened stress and anxiety, manifesting in difficulty sleeping, weight loss, and difficulty associated with people of non-Hispanic ethnicities, among other symptoms. (CP Brief 28-29.) Cedeno's depression also worsened, as she began to wonder whether racial discrimination would prevent her from finding an acceptable home before she was forced to vacate the Porter property. (Id. at 28.)

Respondents argue that Cedeno's emotional distress is not attributable to Respondents' actions because Cedeno had a Section 8 voucher for a two-bedroom unit and the property in question was a three-bedroom unit. (Resp't's Opp'n Br. 5.) Cedeno, they argue, would therefore have been denied the opportunity to rent the subject property regardless of any discrimination on the part of Respondents. (Id.) Respondents also contend that there is no evidence that the discriminatory conduct exacerbated Cedeno's depression. Finally, Respondents assert that the discriminatory conduct was minimally egregious, noting that Cedeno was not called a derogatory name. (Id. at 5-6.)

None of Respondents' arguments is meritorious. Respondents attempt to characterize Cedeno's emotional harm as caused by her inability to rent the subject property. In reality, Cedeno suffered injury not because she could not rent the property, but because Respondents' racial discrimination prevented her from renting the property. This harm is directly attributable to Respondents, and their liability in this matter has already been settled. It is of no consequence what kind of Section 8 voucher Cedeno had, or even if she was legitimately attempting to rent the property. See HUD v. Ro, HUDALJ 03-93-0313-8, 1995 WL 326736 (June 2, 1995).

Cedeno also was not required to provide documentary proof that the discriminatory conduct exacerbated her depression. Inferential and testimonial evidence is sufficient. Moreover, respondents who choose to engage in discriminatory behavior must "take their victims as they find them." Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *5. The victim here already suffers from severe depression. By refusing to rent the subject property to her based on her national origin, and by implying a preference for Black tenants, Respondents humiliated Cedeno and forced her to look elsewhere for housing. These actions were highly likely to increase Cedeno's depression. Respondents are therefore answerable to Cedeno for these injuries.

With regard to Respondents' final argument, it is irrelevant whether Cedeno was called a derogatory name. Nothing in the Fair Housing Act or HUD regulations suggest that discriminatory conduct must be paired with open hostility. Indeed, insidious discrimination could well take a more damaging emotional toll than overt hostility, as it would likely increase the aggrieved party's distrust of other ethnicities.

The fact that Respondent Parker's statements were not overwhelmingly confrontational also does not minimize their egregiousness. Respondent Parker admits that

this is not the first time she has asked a non-Black potential tenant why he/she wants to move into a majority Black neighborhood. The purpose of the question is immaterial; as a trained real estate agent, Respondent Parker was or should have been aware that such a query was inappropriate. The resulting emotional impact was predictable.

Accordingly, the Court finds that Respondents' egregious conduct caused Cedeno to suffer significant emotional distress. Cedeno is therefore entitled to $5,000 from Respondents as compensation.

(2) Cedeno's Inconvenience and Financial Loss

The Charging Party seeks $3,500 as compensation for Cedeno's inconvenience both in searching for alternative housing and in participating in this litigation. (CP Brief 31-34.) HUD asserts that Respondents' discriminatory conduct forced Cedeno to spend another five months looking for housing, which also forced her to remain in the Porter property for those five months. (Id.)

Additionally, because Cedeno still wished to live closer to her family, Respondents' conduct necessitated additional trips to Warrensville Heights and surrounding neighborhoods each time she wished to view potential rental properties. (CP Brief 31-32.) Cedeno does not drive, so each trip also required her to inconvenience one of her children to drive her to the appointment and back. (Id.)

The Charging Party also seeks compensation on behalf of Cedeno for the time she spent assisting in this case. (CP Brief 34.) Cedeno "spent time speaking with HAI staff . . . spoke to the HUD investigator on a number of occasions . . . and spent time being interviewed by HUD attorneys." (Id.)

While conducting a housing search and participating in litigation qualify as inconveniences attributable to Respondents' conduct, the mere assertion of inconvenience is insufficient to justify a damages award. Damages for inconvenience and financial loss, unlike for emotional distress damages, require proof of actual loss. That proof is wholly missing here.

HUD cites to Godlewski to support its position that Cedeno is entitled to recover for time she spent assisting the litigation. (CP Brief 34.) The complainant in Godlewski was awarded $2,000 for her inconvenience and financial loss. However, the award was to remunerate her for the cost of cell phone calls she made and employment income she missed by having to rearrange her work schedule. Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *7.

Similarly, in Mauricio Bravo v. Gruen, the complainant was awarded $18,500 in tangible losses. Mauricio Bravo v. Gruen, HUDALJ 05-99-1375-8, 2003 WL 973495 (Feb. 27, 2003.) The award was comprised of $13,500 as the difference in his rents, $2,000 in rent

and living expenses while complainant lived with his mother, and $800 in lost wages.

By comparison, there is no evidence here that Cedeno was employed or suffered any out-of-pocket losses. Indeed, the Charging Party's brief does not include any monetary figure whatsoever to support the claim for financial loss. There is, therefore, nothing to justify or explain the $3,500 figure HUD requests. Accordingly, the Court will deny this request because the alleged injuries have not been proven.

D. Respondents' Civil Penalties

To vindicate the public interest, the FHA authorizes the presiding ALJ to impose civil penalties upon Respondents. 42 U.S.C. § 3612(g)(3)(A) (2006); 24 C.F.R. § 180.670(b)(3)(iii) (2010). For respondents with no prior history of discrimination, the maximum penalty is $16,000 under the FHA, subsequent statutes, and HUD regulations.[8] Determining an appropriate penalty requires consideration of six factors: (1) Whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (2) respondents' financial resources; (3) the nature and circumstances of the violation; (4) the degree of each respondent's culpability; (5) the goal of deterrence, and (6) other matters as justice may require. 24 C.F.R. § 180.671(c)(1).

The Charging Party is seeking the maximum penalty of $16,000 from each Respondent.

(1) Previous Unlawful Discrimination. Neither Respondent has been adjudged to have committed a previous act of unlawful discrimination.

(2) Respondents' Financial Resources. The burden of producing evidence of financial resources falls upon the respondent, because such information is peculiarly within the respondent's knowledge. Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *10. A civil penalty may be imposed without consideration of a respondent's financial situation if the respondent fails to produce evidence that would tend to mitigate the amount to be assessed. Id.; see also Campbell v. United States, 365 U.S. 85, 96 (1961).

Respondents contend that they are "at best moderate earners," and they provide supporting evidence in the form of income tax returns from 2006-2009 for both Respondents. (Resp't's Opp'n Br. 4; Ex. A-S.) Respondents do not argue, however, that they are unable to pay a maximum civil penalty, or that such a penalty would cause them undue financial

[8] 42 U.S.C. § 3612(g)(3)(A) states that a civil penalty against a first-time offender may not exceed $10,000. However, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, requires each federal agency to make inflation adjustments to its maximum civil money penalties. Application of this rule raised the maximum penalties that HUD may impose upon violators with respect to several HUD regulations, including 24 C.F.R. § 180.671(a)(1). The most recent inflation adjustment, effective March 8, 2007, raised the maximum first-time offender penalty for violations of 24 C.F.R. § 180.671(a)(1) from $11,000 to $16,000. HUD is therefore authorized to seek a $16,000 judgment here, as the violation in question occurred on June 19, 2008.

burden. The Respondents own multiple rental properties, as indicated on their tax returns. Any or all of these properties, if sold, would likely generate sufficient income to cover a maximum civil penalty. The Court therefore finds that Respondents' financial circumstances do not mitigate the award of a maximum penalty in this case.

(3) Nature and Circumstances of the Violation. Respondent Parker's statements toward Cedeno represent a clear, conscious and deliberate violation of the Fair Housing Act, warranting a severe civil penalty. Her actions not only prevented Cedeno from renting the house she preferred, but also would likely discourage other non-Blacks from moving into the Warrensville Heights neighborhood. Respondent Parker has admitted that this behavior is not unusual for her,[9] and includes not just race-conscious questioning but also questions evidencing a preference for religious tenants and a preference against tenants with multiple children. The only conclusion to be drawn from these questions is that Respondent Parker is seeking to cherry-pick only those tenants she prefers. This behavior is in direct opposition to the requirements of the Fair Housing Act.

(4) Degree of Respondents' Culpability. The Fair Housing Act has been in place for more than 40 years. Both Respondents are experienced landlords, and Respondent Parker is a licensed realtor who has received civil rights sensitivity training. Respondents own multiple rental properties and have significant experience with rental transactions. Both Respondents therefore either knew or should have known that the Act prohibits discrimination on the basis of race or national origin. In the face of this knowledge, Respondents' actions constitute a deliberate violation of the Act.

(5) Deterrence. Deterrence in this case is a significant consideration. Those similarly situated to Respondents must be put on notice that violations of the Fair Housing Act will not be tolerated. Also, a substantial civil penalty may deter Respondents here from continuing their discriminatory conduct. The evidence shows a willingness on the part of Respondents to self-select the members of the Warrensville Heights community. Respondents have shown no indication that they believe this behavior to be unlawful. The risk is therefore high that, absent a penalty, this behavior will continue.

(6) Other Matters as Justice May Require. Respondents have been largely uncooperative in this proceeding. They failed to respond timely to the Charging Party's requests for admissions, refused to produce full discovery materials, failed to file a pre-hearing statement, and ignored multiple Orders from the Court.

Respondents appeared disinclined to participate in this litigation, failing to respond even to the Charging Party's Motion for Summary Judgment. As a result of Respondents' lack of participation, the Court granted the Charging Party's motion and prohibited Respondents from introducing new documentary evidence in this damages hearing. The

[9] Respondent Parker admitted Complainant's Charge No. 26, which stated that Respondent Parker has previously asked prospective tenants who are not Black why they want to move to a Black neighborhood. (Resp't's Answer to Charge of Discrimination 7.)

Court also ordered Respondents to file a brief in response to the Charging Party's damages and civil penalty brief. Respondents did not timely file their brief, even after receiving an extension of time to do so. Additionally, Respondents' brief was ultimately non-responsive to most of the Charging Party's arguments, attempted to address issues that had already been conclusively determined and included evidentiary materials in defiance of the Court's previous Orders.

Respondents' pattern of dismissive behavior betrays a disrespect for this Court, the legal process, and the general public interest. Their refusal to acknowledge the unlawfulness of their discriminatory statements likewise shows disregard and contempt for their obligations under the Fair Housing Act. As such, this is an appropriate factor to consider in assessing a civil penalty. Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *10.

Based on consideration of the factors discussed above, the Court concludes that Respondents' violation of the Act, and their conduct in response to the violation, are particularly egregious and warrant the maximum civil penalty of $16,000 apiece. That amount will be imposed.

E. Injunctions and Affirmative Relief.

Upon finding that a respondent has engaged in a discriminatory housing practice, the presiding ALJ may order injunctive or other equitable relief as necessary to make the complainant whole or to protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.670(b)(3)(ii); Godlewski, HUDALJ 07-034-FH, 2007 WL 4578553, at *10.

The Charging Party here requests the Court to enjoin Respondents, their agents, employees, and successors from committing further violations of the Fair Housing Act. This request will be granted.

The Charging Party further requests that, for monitoring purposes, Respondents provide to Complainant HAI a duplicate of every written rental application and a written description of every oral application they receive for a period of three years from the date of this decision. (CP Brief 41-42.) Each submission must also include Respondents' impression of the applicants' national origin, whether the person was accepted or rejected, the date of the action, and, if rejected, an explanation of the reason for the rejection. (Id.) The Charging Party also asks that Respondent provide to Complainant HAI notices of vacancies at the subject property and a list of the national origin of all tenants at the subject property. (Id.) Respondents have offered no objection to this request.

Finally, the Charging Party requests that this Court issue an injunction preventing Respondents from transferring the properties they currently own, or any other real properties in their possession, until they have satisfied the judgments against them. The request is reasonable and will be granted. However, the injunction will not apply to any contract, sale, encumbrance or lease consummated before the issuance of this initial decision that involved a

bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge. 24 C.F.R. § 180.670(b)(3)(ii). Moreover, this injunction shall not be construed to prevent Respondents from disposing of one or more of their properties to directly satisfy the judgment herein.

IV. Conclusion and Orders

In accordance with the foregoing, the preponderance of the evidence establishes that, as a result of Respondents' unlawful action, Complainant HAI and Carmen Cedeno have suffered injuries that must be remedied by an award of compensatory damages. In addition, to protect and vindicate the public interest, a civil penalty award must be imposed upon each Respondent individually.

A. Damages. Accordingly, the Court awards to Complainant HAI $5,359.38 as compensation for its diversion of resources to combat the effects of Respondents' discriminatory conduct and $5,000 as compensation for frustration of Complainant HAI's mission. The Court awards to Carmen Cedeno $5,000 as compensation for the emotional harm she suffered at the hands of Respondents. The Respondents are jointly and severally responsible for payment of such damages.

B. Penalties. The Court assesses a civil penalty of $16,000, payable to HUD, against each Respondent, to be paid individually.

C. Injunctive Relief. Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them are hereby permanently enjoined from unlawfully discriminating against any person in any aspect of the rental of a dwelling.

Additionally, for a period of three years after issuance of the final decision in this matter, Respondents shall, semi-annually, provide to Complainant HAI:

(1) copies of every written application, and a written synopsis of any oral applications, for rental of a unit at the subject property within the preceding six months, including statements as to Respondents' impression of applicants' national origin; whether the person was accepted or rejected as a tenant; the date of such action; and if rejected, the reason for rejection; [10]

[10] The Court notes that compliance with this Order does not require Respondents to seek national origin information directly from tenants or prospective tenants; Respondents' own observations as to tenants or prospective tenants' national origin will be sufficient. Further, the creation and maintenance of these records pursuant to this Order shall not be considered discriminatory, as they are essential to ensure full compliance with this Order and created solely for this purpose. See United States v. Youritan Constr. Co., 370 F. Supp. 643 (N.D. Cal. 1973), aff'd in part, remanded in part, 509 F.2d 623 (9th Cir. 1975); Rogers v. 66-36 Yellowstone Boulevard Coop. Owners, Inc., 599 F. Supp. 79 (E.D.N.Y. 1984).

(2) copies of all notices of vacancies at the subject property; and

(3) the names, and national origin (if known), of current tenants at the subject property.

Further, as stated above, Respondents are hereby enjoined from disposing of, or transferring, any real property in their possession until they have satisfied the judgments against them hereby imposed.

It is so **ORDERED.**

/s/

J. Jeremiah Mahoney
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675 (2009). This Initial Decision and Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review must be received by the Secretary within 15 days after the date of this Initial Decision and Order. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this Initial Decision and Order.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024
Facsimile: (202) 708-3498
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of Agency Action. 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 30 days or the affirmance, in whole or in part, by the Secretary within that time. 24 C.F.R. § 180.680.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.