UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban Development, Charging Party, on behalf of: CARLO GIMENEZ BIANCO, Complainant, v. CASTILLO CONDOMINIUM ASSOCIATION and CARLOS TORO VIZCARRONDO, Respondents.	HUDALJ 12-M-034-FH-9 September 5, 2014

INITIAL DECISION AND ORDER ON DAMAGES

At the request of the Charging Party, the Secretarial Designee vacated the July 17, 2014, *Initial Decision and Order* in this matter in its entirety, and remanded the case to the undersigned to issue an initial decision on the question of damages and an appropriate civil penalty based upon the existing administrative record.[1]

Contrary to the vacated *Initial Decision and Order*, the *Order on Secretarial Review*, dated August 15, 2014, concludes that: Complainant had a mental disability or impairment; that the mental impairment warranted an emotional support animal as a reasonable accommodation; that Complainant made a request for reasonable accommodation, without which he would be denied an equal opportunity to use and enjoy his condominium; that Respondent rejected the request by imposing a fine on Complainant; and that Respondent failed to meet its obligation to engage in an interactive process to resolve Complainant's request.

BACKGROUND

The animal in question, a dog named "Bebo," was given to Complainant by a friend in December of 2009, and Complainant kept Bebo in his residence within Castillo Condominium without incident until the following spring. In April of 2010 a member of the Association reported to the Respondent's Board of Directors that Complainant was keeping Bebo in his condominium unit in violation of the Association's "no-pets" rule. On April 12, 2010, the Board

[1] At the request of the Charging Party, the Secretarial Designee has found that only Respondent Castillo Condominium Association has violated the Fair Housing Act. Accordingly, the term "Respondent" is used herein solely with respect to the Castillo Condominium Association.

of Directors responded with a warning letter to Complainant, pointing out the no-pets rule, and giving him 30 days to remove his dog, or be subject to a $100 fine. In response, on April 26, 2010, Complainant sent the Board a copy of an e-mail from his doctor, and requested a reasonable accommodation to be permitted to keep Bebo as an emotional support animal. On May 3, 2010, Complainant also sought relief from the Puerto Rico Department of Consumer Affairs (DACO), asking for an order allowing him to keep Bebo in his condominium unit. At its May 18, 2010, meeting the Respondent's Board of Directors, noting the passage of 30 days since the warning letter, voted to impose the fine. However, the fine was never collected, because DACO issued an order on May 20, 2010, precluding the fine—and permitting Complainant to retain Bebo in his condominium unit—while the case was pending before DACO.

Complainant declined an invitation to meet with the Board's Conciliation Committee about the matter, and began contemplating moving to another location in order to be able to keep Bebo. Complainant was a real estate investor and owned other apartments in Puerto Rico, New York and Tunisia. He found a condominium in Isla Verde, Puerto Rico, suitable for his residence or for investment. On March 3, 2011, DACO rejected Complainant's complaint and upheld Respondent's bylaws prohibiting pets. On March 18, 2011, Complainant completed the purchase of a unit at Condominio Mundo Feliz, and subsequently moved to Isla Verde. He sold his unit at Castillo Condominium on October 4, 2011.

DISCUSSION OF DAMAGES

The Secretarial Designee has found that Respondent, by refusing to provide a reasonable accommodation to its bylaws prohibiting pets, engaged in a discriminatory housing practice by making housing unavailable because of a disability. 42 § U.S.C 3604(f). Accordingly, the Administrative Law Judge is authorized to order appropriate relief, including actual damages suffered by Complainant; a civil penalty to vindicate the public interest; and injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3). The Charging Party initially sought an award of $100,000 in damages for Complainant's emotional injuries, and imposition of a $16,000 civil penalty against Respondent, as well as declarative and injunctive relief.[2]

Actual damages are awarded to "put the aggrieved person in the same position as he would have been absent the injury, so far as money can." HUD v. Riverbay Corp., Vernon Cooper, and Henry T. Milburn, Jr., 2012 WL 1655364 (May 7, 2012); HUD v. Godlewski, 2007 WL 4578553, *2 (HUDALJ 2007). Actual damages may include both out-of-pocket expenses and damages for intangible injuries such as embarrassment, humiliation, and emotional distress. Godlewski, 2007 WL 4578540, at *2. Damages for emotional distress can be based on inferences drawn from the circumstances of the act of discrimination, or by testimonial evidence. Emotional injuries are by nature difficult to qualify, so courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury. Id.

[2] The Charging Party's *Complaint* requested imposition of a $5,000 penalty against Carlos Toro Vizcarrondo, but the Charging Party's *Petition for Review Secretarial Review of Initial Decision* sought only the reversal of the *Initial Decision* as to Respondent Castillo Condominium Association. Accordingly, as previously noted, and decided by the Secretarial Designee, no penalty may be imposed on Mr. Vizcarrondo.

Emotional Distress Damages. In order to recover for emotional distress injuries, the Charging Party must demonstrate that there is a causal connection between the discriminatory activity and Complainant's injuries. Morgan v. HUD, 985 F.2d 1451, 1459 (10th Cir. 1993) (citing Gore v. Turner, 563 F.2d 159, 164 (5th Cir. 1977)). The key factors in determining emotional distress damages are the complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. HUD v. Parker, 2011 WL 5433810, *7 (HUDALJ Oct. 27, 2011). Administrative Law Judges are afforded broad discretion in determining damages based on those factors. HUD v. Sams, 1993 WL 599076, *9 (HUDALJ March 11, 1994).

Here, Complainant testified that he was "devastated" and "shocked," to receive the Board's letter ordering him to remove Bebo from the building. Afterwards, he faced near-constant worry that he would be forced to either abandon Bebo or leave Castillo Condominium. This worry increased his depression and anxiety. He further stated that if he had been forced to get rid of Bebo, he "probably would have ended up in the hospital with a real nervous breakdown or depression untreatable outside the hospital."

Rather than suffer without Bebo, Complainant purchased a condominium in Isla Verde, and moved there soon after his legal defeat in DACO. He did not want to move from his previous unit, as Castillo Condominium was only one block from the beach and was located in the area where he was raised. He stated that he moved because the uncertainty of Bebo's status, combined with continued conflict with Toro Vizcarrondo, caused him to "get out of there, for my own sanity."

It is clear that Complainant did experience emotional harm during his time at Castillo Condominium. It is less clear how much of that harm was caused by Respondent's discriminatory behavior. Even before Respondent refused his accommodation request, Complainant's life in the building was one of tension and strife. He was engaged in a bitter and persistent conflict with Toro Vizcarrondo, which inflamed his anxieties. In fact, it was this conflict that prompted Complainant and Dr. Fernandez to discuss Complainant obtaining a dog. Complainant has theorized that Toro Vizcarrondo used his position as president of the Board to further a campaign of harassment and aggression against Complainant. The refusal to allow Bebo to remain in the condominium unit was merely a new front in that on-going battle. It therefore cannot be said that Complainant's depression and anxiety were *caused* by Respondent's discriminatory actions. They were caused — at least in large part — by his frequent confrontations with Toro Vizcarrondo. Complainant's maladies thus pre-existed Bebo's arrival in the building, and were only exacerbated by Respondent's behavior.[3] It is that exacerbation, not the foundational harassment, which is remediable.

The Charging Party offers little insight into how Complainant's depression and anxiety worsened after Respondent's refusal to honor his accommodation request. It contends that Complainant's fear of potentially losing Bebo worsened his depression and anxiety, thus taking

[3] Despite these confrontations, and despite the description of his condition by Dr. Fernandez in July 2009, Complainant did not obtain a dog. Bebo was a gift to Complainant at Christmas of 2009 by an unnamed third party. There is no indication that Bebo's arrival was causally related to Dr. Fernandez's suggestion or to Toro Vizcarrondo's abusive behavior.

his condition from bad to worse. HUD provides no clear explanation how this justifies a $100,000 award. Of course, quantifying adequate compensation under such circumstances is difficult, but such is often the case when attempting to determine damages for emotional suffering. Even so, the Court believes a $100,000 award is excessive and out of sync with precedent.

The complainant in Riverbay, for example, experienced severe anxiety, embarrassment, and humiliation related to his dispute over a reasonable accommodation for his service animal. Riverbay, 2012 WL 1655364. He was accosted by his apartment complex's police force, and had notices taped to his front door. His neighbors witnessed these events, sparking building gossip and uncomfortable interactions with other building residents. The stress even caused the complainant to undergo an angioplasty because he felt he would have a heart attack. The Court awarded him $30,000 in emotional damages.

HUD v. Astralis Condominium Ass'n., 2009 WL 6869727 (Sept. 10, 2009), offers an even starker contrast. There, "[R]espondent ignored Complainants' requests. It entered into contracts with Complainants and then rescinded them. It harassed, humiliated, embarrassed, and retaliated against Complainants. It determined that no accommodations would ever be provided unless they were ordered by a court. It disavowed previous Conciliation Agreements. In short, Respondent behaved like a bully." Id. at *21. As compensation, the Court awarded complainants $25,000 in emotional damages, an amount that was upheld on review by the First Circuit Court of Appeals. See Astralis Condominium Ass'n. v. HUD, 620 F.3d 62 (1st Cir. 2010).

In HUD v. Dutra, HUDALJ 09-93-1753-8 (Nov. 12, 1996), the complainant requested $75,000 in emotional damages for circumstances substantially similar to the one present here. The court found that because the complainant was never separated from her pet and never forced to leave her apartment, she was only due $5,000 in damages. Courts have awarded substantially more when the discriminatory conduct has forced the complainant to move against their will. However, even when the complainant moved into a sub-optimal living situation, they have not received anywhere near $100,000 in emotional damages. See, e.g., HUD v. Burns Trust, 1995 WL 29708 (HUDALJ Jan. 15, 1995) (new apartment posed serious health and sanitation risks; court awarded complainants $49,000 and $29,500, respectively); HUD v. Krueger, 1996 WL 418886 (HUDALJ June 7, 1996) (pregnant mother and two children moved from three-bedroom apartment to her mother's two-bedroom unit; awarded $22,000); HUD v. Kogut, 1995 WL 225277 (HUDALJ Apr. 17, 1995) (moved from safe, third-floor apartment to ground floor apartment with no air conditioning in crime-ridden neighborhood, where she was burglarized twice; awarded $25,000).

The Charging Party cites several cases where complainants have been awarded $100,000 or more in emotional damages. However, those cases are dramatically different from the circumstances seen here. The award in one such case came via consent decree, while another was a jury award, making neither of them remotely useful here. In HUD v. Housing Authority of Las Vegas, 1995 WL 678326 (Nov. 6, 1995), and HUD v. Simpson, 1994 WL 497538 (Sept. 9, 1994), the complainants were the victims of outrageous and blatant discrimination with the

potential for dire consequences. The complainants in Las Vegas, for instance, were forced to choose between homelessness and a poorly maintained public housing unit in a gang-infested neighborhood. Meanwhile, other housing options in safer communities were closed to them because the housing authority's gatekeeper disliked African-Americans. The respondents in Simpson actively and repeatedly attempted to have the complainants arrested and evicted on frivolous grounds because the complainants were Peruvian. The respondents often verbally assaulted the complainants, using threatening and profoundly racist language. At one point, a respondent bought a tax bill to the complainant's house, and then refused to accept payment of the bill in an attempt to force foreclosure of the home. The court found that respondents' behavior was entirely motivated by racial hatred of Hispanics.

In the terms of the Secretarial Designee, before Complainant was given Bebo, het felt overwhelmed and was developing symptoms of anxiety and depression. He felt lonely and unprotected, and he did not go out of his apartment or talk to anyone. He felt worthless and helpless, had psychomotor retardation, problems sleeping, decreased energy, and decreased appetite (SRO p. 6). The Secretarial Designee noted that Bebo improved many of the effects of Complainant's disability, and the threat of removing Bebo would have a detrimental effect on his physical and mental state (SRO 10-11). The denial of the accommodation request caused Complainant stress during the time awaiting the DACO ruling, from April of 2010 until March of 2011. During that time, Complainant was left to weigh the continuing threat of separation from Bebo. Nonetheless, he was never deprived of Bebo, and in fact was able to keep and be comforted by Bebo in his condominium unit at Castillo Condominium. Although Complainant experienced stress, anxiety, fear, insomnia, and discomfort due to Respondent's actions, which were found to be discriminatory by the Secretarial Designee, it can hardly be argued that Respondent's ordeal met or exceeded those cited above. He was never separated from Bebo. He moved to a larger condominium and sold his Castillo Condominium unit for fair value. He was never at risk of eviction, homelessness, or arrest. His physical integrity was never compromised. The Court therefore finds that he is due $3,000 in emotional damage injuries, including that flowing from dislocation from his home.

Dislocation from home. After spending his adult life living in New York, Complainant returned to Puerto Rico in 1997. He purchased a unit and moved into Castillo Condominium, located near his childhood home. He remodeled the unit, from a studio to a one-bedroom. Despite his long conflict with Toro Vizcarrondo, Complainant stated he wanted to continue to live at Castillo Condominium, but he apparently anticipated that he might need to move. He moved to Isla Verde shortly after DACO upheld Respondent's no-pets bylaw.

Economic loss. Respondent imposed a $100 fine on Complainant for violation of its no-pets bylaw, but the collection of the fine was stayed by DACO, and never collected. It may be inferred from the administrative record that Complainant suffered the economic cost of moving to his new condominium unit in Isla Verde, but no specific claims for reimbursement have been made. As for the cost of purchasing a new condominium, and the sale of the old condominium, no claims were made or proven. It appears from examination of the purchase price and the sale price that Complainant did not suffer an economic loss on the sale of his unit at Castillo Condominium. The administrative record contains no evidence that Complainant's purchase of a

condominium unit at Condominio Mundo Feliz was other than at market value, and it further appears that the purchase was consistent with his activities as a real estate investor. Finally, the purchase was partially subsidized by a government program. Complainant has therefore demonstrated no economic loss.

DISCUSSION OF CIVIL PENALTY

The Secretarial Designee has found that Respondent, by refusing to provide a reasonable accommodation to its bylaws prohibiting pets, engaged in a discriminatory housing practice by making housing unavailable because of a disability. 42 U.S.C. § 3604(f). Accordingly, Respondent is subject to a civil penalty to vindicate the public interest, in an amount not to exceed $16,000. 42 U.S.C. § 3604(g)(3); 24 C.F.R. § 180.671.

In determining the amount of the penalty, the Court considers the following factors: (i) whether Respondent has previously been adjudged to have committed unlawful housing discrimination; (ii) Respondent's financial resources; (iii) the nature and circumstances of the violation; (iv) the degree of that Respondent's culpability; (v) the goal of deterrence; and (vi) other matters as justice may require. 24 C.F.R. § 180.671(c)(1).

Record of Prior Housing Discrimination. There is no evidence, and the Charging Party does not allege, that Respondent has ever previously been adjudged to have committed any discriminatory housing practice. Accordingly, any civil penalty imposed upon Respondent may not exceed $16,000. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 180.671(a)(1). The Court notes this fact may be considered a reason to "temper the government's reaction to this violation." HUD v. Bang, 1993 WL 23713, *15 (Jan. 5, 1993).

Respondent's Financial Resources. Evidence regarding Respondent's financial circumstances is within its knowledge. Respondent therefore has the burden to introduce such evidence into the record. HUD v. Welch, 1996 WL 755681, *8 (Dec. 2, 1996). Respondent has not shown financial hardship. However, the Court will consider that Respondent is an association of individual owners of residential units in a condominium complex who would be required to pay for all actual damages and civil penalties assessed in this case. HUD v. Schmid, 1999 WL 521524, *11 (HUDALJ Jul. 15, 1999).

Nature and Circumstances of the Violation. Respondent's actions forced Complainant, an elderly single man, to choose between the home he loved and the dog that was his primary source of companionship. As found by the Secretarial Designee, refusal of Complainant's accommodation request heightened his anxiety, deepened his depression, and ultimately caused him to move from the building and leave San Juan. Overall, Respondent's conduct suggests a stubborn and inflexible allegiance to its own rules at the expense of the human needs of its residents. On the other hand, it is clear that Respondent was unaware of the primacy of federal law in this matter, an ignorance likely reinforced by a Department of the Commonwealth's belief that condominium bylaws trump federal law.

Degree of Culpability. The Board appears to have been drawn into the conflict between Complainant and Toro Vizcarrondo, to its detriment. Other than Toro Vizcarrondo himself, there is no evidence that anyone on the Board held any personal enmity towards Complainant. Although several members of the Board knew Complainant, there is also no evidence that his mental disabilities were known to them, nor were they observable to a layperson. The Board therefore had no reason to antagonize Complaint and no reason to suspect any medical justification for Bebo's presence in his unit. However, once presented with the letters from Complainant, Dr. Unda, and Dr. Fernandez, the Board was put on notice that additional investigation might be necessary. Rather than conduct that investigation, the Board — led by Toro Vizcarrondo — rejected Complainant's proffered explanation and proceeded to fine him. Had any of the Board members been properly trained about the Fair Housing Act, they likely would have known to engage in a more aggressive interactive process before making such a decision. The Board's ignorance of its obligations under the Act—possibly reinforced by actions of the Puerto Rico Department of Consumer Affairs—permitted it to be swayed by Toro Vizcarrondo's personal animosity towards Complainant, thereby aggravating Complainant's emotional distress.

Deterrence. It is appropriate to consider the impact of a particular penalty, both upon this Respondent, who will undoubtedly continue to administer and set policy for residential property within the condominium, and upon others similarly situated who might otherwise commit similar violations of the Act.

Other Matters. The Charging Party has not identified any other matters that would justify imposing a maximum sanction, and the Court finds none. Respondent's actions in this case, though inappropriate, were fueled by ignorance of the law and an unwillingness to challenge Toro Vizcarrondo's leadership. This was not the sort of willful, malicious conduct that demands a maximum penalty. Accordingly, the Court will impose a civil penalty of $2,000 on Respondent.

DISCUSSION OF INJUNCTIVE AND EQUITABLE RELIEF

The Charging Party also requests that the Court require Respondent to undergo fair housing training and to implement the Charging Party's proposed Reasonable Accommodation Policy. Both requests will be granted.

As was clear from the outset of this matter, Respondent was not aware of its duties under the Fair Housing Act. As was further shown on the facts of this case, a key governmental agency in the Commonwealth was also apparently unaware of the applicability and priority of the Fair Housing Act. One of the Charging Party's fundamental functions is education of the public—including state and local governments—on the provisions of the Fair Housing Act.[4] Puerto Rico is within the First Circuit, the law has been crystal clear in that circuit since 2010 that the U.S.

[4] http://hudatwork.hud.gov/po/odoc/progservices/chapter1.pdf

Fair Housing Act (and the Fair Housing Amendments Act) takes precedent over any conflicting statutes and practices in any jurisdiction subordinate to the United States.

> [T]he language of the FHAA itself manifests a clear congressional intent to vitiate the application of any state law that would permit discrimination based on physical handicap. See 42 U.S.C. § 3615 (expressly commanding that "*any* law of a State ... that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid") (emphasis supplied). Second, adopting [Respondent's] view would create a sinkhole that would swallow the general rule and cripple the effectiveness of the FHA. To say that private agreements under a state's condominium statute are capable of trumping federal anti-discrimination law verges on the ridiculous. We disavow that proposition. See, e.g., Shelley v. Kraemer, 334 U.S. 1, 11, (1948) ("It is ... clear that restrictions on [housing] of the sort sought to be created by the private agreements in these cases could not be squared with the requirements of the Fourteenth Amendment if imposed by state statute or local ordinance.").

Astralis, 620 F. 3d 62 at 70.

ORDER

Accordingly, it is hereby ordered that:

1. Within thirty (30) days of the date on which this *Order* becomes final, Respondent shall pay damages to Complainant—for his emotional distress, including the inconvenience and disruption in moving from the area of his childhood where he wished to remain—in the amount of $3,000;

2. Within thirty (30) days of the date on which this *Order* becomes final, Respondent shall pay to the Secretary of HUD a civil money penalty in the amount of $2,000;

3. As a matter of equitable relief, HUD is directed to publicize and make available, at no cost to the recipients, Fair Housing training for Condominium Associations, landlords, and local governmental agencies within the Commonwealth of Puerto Rico, and report the results to the Secretary at the conclusion of Fiscal Year 2015;

4. As a matter of injunctive relief, Respondent's officers are directed to participate in and successfully complete the aforementioned training at a time and place offered by the Charging Party, not later than September 30, 2015;

5. Respondent is further directed to adopt, to post, and to maintain in a conspicuous location on its premises the Reasonable Accommodation Policy proposed by the Charging Party and attached to this Order;

6. Respondent, its officers, agents, employees, and successors are enjoined from retaliating in any way against Complainant or any other person based on his or her participation in this case, or his or her exercise of rights protected by the Act in violation of 42 U.S.C. § 3617.

So **ORDERED.**

J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

Attached: "Appendix B" Reasonable Accommodation Policy

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
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
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 decision. The agency decision becomes final as indicated in 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.