

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:

JANE DOE 1,

Complainant,

v.

DEANE WOODARD,

Respondent.

15-AF-0109-FH-013

May 9, 2016

Appearances

Dana Rosenthal, Attorney

Sol Kim, Attorney

United States Department of Housing and Urban Development, Washington, D.C.

For Charging Party

Deane Woodard, *Pro Se*

For Respondent

INITIAL DECISION AND ORDER ON DAMAGES AND REMEDIES

BEFORE: Alexander FERNÁNDEZ, Administrative Law Judge

On August 24, 2015, the U.S. Department of Housing and Urban Development (“HUD,” the “Charging Party,” or the “Government”) filed a *Charge of Discrimination* against Respondent on behalf of Jane Doe 1 (“Complainant”). The *Charge* alleged that Respondent made discriminatory statements against the disabled and refused to rent an apartment to Complainant and her friend¹ based on their real or perceived mental disabilities, in violation of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*

On September 16, 2015, this Court issued a *Notice of Hearing and Order* (“Notice”) in which it set forth several procedural deadlines. Other than sending several letters that the Court deemed, collectively, to be an *Answer*, Respondent has refused to participate in this proceeding. A letter sent by Respondent in January 2016 stated that he would not accept telephone calls from

¹ The friend, Jane Doe 2, chose not to participate in this proceeding.

the Chicago area, which is the location of HUD's Region V office and HUD Counsel investigating this case. Respondent reiterated his disinterest in defending himself against the *Charge* during a brief conference call on January 28, 2016.

The Court then granted HUD's *Motion for Summary Judgment*, finding Respondent liable for violating sections 3604(c) and 3604(f)(1) of the Fair Housing Act, 42 U.S.C. § 3604. A hearing was held on February 9-10, 2016, in Fargo, North Dakota, solely on the issue of damages and remedies. Testimony was taken at the hearing from Jane Doe 1, her parents, and her sister. Respondent was aware of the time, place, and location of the hearing, but he did not attend.

On February 25, 2016, the Court issued a *Post-Hearing Order* requiring the submission of post-hearing briefs by March 25, 2016. HUD filed its *Post-Hearing Brief* on that date. Respondent did not file a brief.² Accordingly, this matter is ripe for initial decision on damages and remedies.³

DISCUSSION

After a finding that a respondent has engaged in a discriminatory housing practice, the Court is authorized to issue an order providing appropriate relief. 42 U.S.C. § 3612(g)(3). Such relief may include "actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent." *Id.*

I. Actual Damages

Actual damages may include both out-of-pocket expenses and damages for intangible injuries. *HUD v. Blackwell*, Fair Housing - Fair Lending (P-H) § 25,001, 25,005 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F. 2d 864 (11th Cir. 1990) ("*Blackwell I*"); *HUD v. Godlewski*, 2007 WL 4578540 (Dec. 21, 2007). Out-of-pocket damages seek to reimburse an aggrieved party for the actual, economic consequences of discriminatory conduct. Such expenses include the complainant's inconvenience, loss of housing opportunity, the costs associated with finding suitable alternative housing and costs associated with prosecuting fair housing cases. *See HUD v. French*, 1995 WL 542098 (Sept. 12, 1995). Damages for intangible injuries include compensation for embarrassment, humiliation, and emotional distress caused by the discrimination. Emotional distress may be determined based on inferences drawn from the circumstances of the act of discrimination, as well as on testimonial proof. *Blackwell I*.

² On March 10, 2016, the Court received a letter from Respondent that was apparently mailed on February 1, 2016. The letter consisted of a single, hand-written paragraph informing the Court that Respondent would not attend the hearing because "the litiaate [sic] Jane Doe I, and Jane Doe II, are not interested in litigating this matter. There is no case!" Jane Doe 1 is in fact a party in the instant case. She has been directly involved in the litigation of this matter. The letter did not include any substantive legal arguments and was not sent in response to the *Post-Hearing Order*. The Court therefore does not recognize it as a post-hearing brief. There has been no further communication from Respondent.

³ The *Order Granting Government's Motion For Sanctions, Motion To Strike Affirmative Defenses, And Motion For Summary Judgment As To Liability, And Denying Motion For Default*, issued on January 29, 2016, contained 27 findings of fact. The damages assessment is based on those facts and any others specifically referenced in this *Initial Decision*.

“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, 2007 WL 4578540, at *2. The injured party’s susceptibility to emotional harm must be taken into consideration as well. It is the Court’s long-held custom that “those who discriminate in housing take their victims as they find them.” Id., at *8. Accordingly, if an aggrieved party suffers unusually significant effects from discriminatory conduct, they are entitled to unusually significant damages. The record demonstrates that, as a result of Respondent’s conduct, Complainant suffered out-of-pocket expenses and severe emotional distress.

A. Out-of-Pocket Expenses

The Charging Party seeks \$7,122.67 to compensate Complainant for her inconvenience and lost housing opportunity. Specifically, the Charging Party contends that Complainant is entitled to \$5,000 for the lost housing opportunity, \$1,594.67 for the extra time and money associated with her longer commute from her new apartment, and \$528 for her time spent participating in the prosecution of this case.

Before considering HUD’s request, it is useful to summarize the benefits of the Roosevelt Property, the property Complainant sought to rent. It is a single-family home in a safe, residential neighborhood near the heart of the city. The home features a screened-in porch, a large backyard, and a basement. Complainant and Jane Doe 2, both smokers, intended to smoke on the porch. Complainant was also an avid gardener and a canner, and hoped to plant a garden in the backyard and store her canned goods in the basement. The house also featured a stained glass window and unique woodwork that Complainant admired. At the time, Complainant worked approximately four blocks away. Living at the Roosevelt Property would allow her to walk to work in less than ten minutes or drive there in less than three minutes. There is a grocery store, pharmacy, and fast food restaurants also approximately four blocks away. Finally, the Roosevelt Property would have allowed Complainant and Jane Doe 2 to live together.

By comparison, Complainant’s parents’ house, where she lived for two more years after the discriminatory event, was 12 miles away from Complainant’s job, requiring a 15-minute commute each way. Living in her parents’ basement deprived Complainant of the opportunity to live independently. It also limited her social options because she could not have friends over after her parents went to bed. Although Complainant eventually moved into her own apartment, it did not have the same features or benefits as the Roosevelt Property. The new apartment does not have a yard or storage space, and is farther from the downtown area. Complainant also alleges that the neighborhood is not as safe as the neighborhood that was denied her. There is drug activity in the apartment building, and homeless people occasionally sleep in the laundry room. Being an apartment, it also lacks the privacy of a single family home.

Based upon the evidence of record, it is apparent that the Roosevelt Property was ideal for Complainant and Jane Doe 2. Complainant’s alternate housing has been far less satisfactory. A \$5,000 award is thus reasonable, and is in keeping with previous HUD decisions.

For example, in HUD v. French the home that the complainant preferred was cheaper, in a better school district, closer to shopping, and in a safer neighborhood. After being denied that housing opportunity due to familial status discrimination, she was forced to move into a more expensive, crime- and insect-ridden apartment complex farther from her favorite activities and in a worse school district. The court awarded her \$5,000 for her lost housing opportunity.

Similarly, in HUD v. Ineichen, 1995 WL 152740 (April 4, 1995), a family was denied the opportunity to live in a quiet single-family home with a yard in the same neighborhood where they had previously lived. Instead, they had to move into an apartment far from their friends and live alongside “noisy, slovenly, quarrelsome, and lawless neighbors.” Ineichen, at p. 12. The apartment was often infested with roaches, had no secure play area for children, and was too far to allow the children to walk to school. The court awarded complainants \$4,000 each for the lost housing opportunity and the emotional injury the experience caused.

Many of the same factual circumstances are present in this case as well. Complainant was forced to move farther away and accept a living situation that was markedly inferior to the one she would have had at the Roosevelt Property. Both her parents’ house and her new apartment lack the amenities available at the Roosevelt Property, such as proximity to favorite activities, a yard, privacy, and a safe neighborhood. Being denied the Roosevelt Property’s screened porch meant Complainant was forced to smoke in her car. This clearly would not be an optimal scenario during North Dakota’s long winters. Accordingly, a \$5,000 award is appropriate.

The Charging Party also seeks compensation for the time Complainant spent commuting to work and preparing for this case. The Charging Party calculates these amounts using a \$16 per hour value, which represents Complainant’s average hourly salary through the relevant periods. The Court accepts this formulation, as there is not a more accurate option available.

The Charging Party requests an award of \$1,594.67 for the additional commute time Complainant endured while living at home. Complainant testified that she could drive to work in 3 minutes from the Roosevelt Property, but the trip would take 15 minutes from her parents’ house. Accordingly, Respondent’s conduct directly caused Complainant to spend an extra 26 minutes per day commuting to and from work for just under one year. The Court finds no flaw in the Charging Party’s calculation, and thus awards the full amount of \$1,594.67.

The Charging Party also contends that Complainant spent approximately 33 hours participating in and preparing for this proceeding. At a compensation rate of \$16 per hour, Complainant is thus owed \$528 for her time.

In total, the Court awards Complainant \$7,122.67 for her inconvenience and lost housing opportunity.

B. Intangible Injuries – Emotional Distress

The Court also finds that Complainant is entitled to damages to compensate her for the emotional injuries caused by Respondent's discriminatory conduct. Again, a brief synopsis of Respondent's conduct, and its effect on Complainant, is helpful.

Prior to learning of Complainant's and Jane Doe 2's mental illnesses, Respondent had professed no misgivings about renting the Roosevelt Property to them. In fact, they had already been provided with a key to the house, and were preparing to initiate their move. On or about August 11, 2013, after being informed that Jane Doe 2 was possibly bipolar and schizophrenic, Respondent called Complainant and pointedly asked if she "had anything to tell" him. Interpreting the question to be a reference to her mental state and that of Jane Doe 2, Complainant refused to answer.⁴

On or about August 16, 2013, Complainant, her parents, and Jane Doe 2 drove to the Roosevelt Property to give Respondent a security deposit and begin the move-in process. They had cleaning supplies and several packed boxes with them in the car. Before they could enter the house, Respondent told the group that Complainant and Jane Doe 2 could not rent the property because Jane Doe 2 was bipolar. Respondent stated that the homeowner, Ms. Pearl Beck, did not "want a bipolar in the house" and that she "does not want to rent to someone who has a fault in their mental abilities." When Complainant's mother asked Respondent whether a person with anxiety or depression could rent the property, he told the group that those disabilities were "all the more reason not to rent to both of them." Respondent made these statements in the presence of Complainant and Jane Doe 2, and intended for both young women to hear his words. Respondent then demanded the return of the house keys, thus preventing Complainant from moving into the property.

After being denied the opportunity to rent the Roosevelt Property, Complainant entered an extended period of severe depression and anxiety. Jane Doe 2 abruptly ended their friendship and moved out of Complainant's parents' basement within two weeks of the incident. After the incident, Complainant experienced bouts of crying, anger, emotional and physical withdrawal, and loss of motivation. For several weeks, she rarely got out of bed or left her parents' basement. She stopped showering regularly, and paid little attention to the cleanliness of her surroundings or herself. Her high-risk behaviors — such as over-eating, smoking, and drinking alcohol to excess — increased and she no longer engaged in exercise or hobbies. As a result, she gained approximately 35 pounds within six months, which eroded her self-esteem and further increased her depression. Complainant was reluctant to enter stores on her own and was unwilling to search for new housing for fear that she would again be discriminated against due to

⁴ The record is somewhat confused on this and other points. In previous filings, HUD has contended that Complainant and Jane Doe 2 mentioned being on medication during their first visit with Respondent, and that Complainant told Respondent during the phone call that she was bipolar. At the hearing, however, Complainant testified that she never revealed her disability status to Respondent during the call. If true, Respondent would not have been aware of Complainant's disability during their encounter on August 13, 2013. It is of no moment, however, because Respondent is liable for his discriminatory conduct even if he suspected only Jane Doe 2 of having a mental disability. Complainant is not only a member of the protected class in question, she also a prospective renter who witnessed and was affected by the discrimination directed at Jane Doe 2. She would therefore be an aggrieved person under the Fair Housing Act whether Respondent knew of her disability or not. 42 U.S.C. § 3604(f)(1).

her disability. She is also prone to anxiety attacks when faced with situations she cannot control, and has had panic attacks at work and while driving. Complainant testified that most of these symptoms existed for six months, and others lasted more than a year. The anxiety attacks continue to this day. The intensity of her symptoms led her to seek medical attention, and she began taking daily medication. Complainant's testimony as to the nature and length of these symptoms was credibly corroborated by her father, mother, and sister. The Court therefore has no doubt that Respondent's discriminatory actions caused Complainant significant emotional harm.

The Charging Party requests \$20,000 as compensation for Complainant's emotional injury. Its primary support for this figure is HUD v. Corey, 2012 WL 3645179 (Aug. 15, 2012), a relatively analogous case involving the discriminatory refusal to rent to a complainant due to her brother's mental disability. The complainant was very upset, experienced crying fits for several months, and had physical manifestations of stress such as stomach pain and sleeplessness. The court awarded that complainant \$18,000 in emotional distress damages.

The Court also sees strong parallels between the instant matter and the injury suffered in Godlewski. In that case, the complainant was denied her preferred housing opportunity due to familial status discrimination. After seeing a "for rent" sign which stated "no kids, no dog," the complainant experienced extreme anger and anxiety, ultimately leading to a days-long migraine headache. She ruminated over the discriminatory sign excessively, and was thereafter hesitant to search for housing. The court awarded her \$18,000 as well. Notably, the court found that even if the average person may not have reacted so violently to seeing a discriminatory advertisement, the complainant was uniquely susceptible to such statements. Her distress was therefore particularly acute.

As HUD observes, Complainant's injury here surpasses the injuries experienced by the complainants in Corey and Godlewski. Like in Godlewski, Complainant already suffers from anxiety and depression, and thus was far more susceptible to emotional harm than most others would be. See also, HUD v. Castillo Condominium Assoc., Order on Secretarial Review, HUDALJ 12-M-034-FH-9 (Oct. 2, 2014) (awarding \$20,000 in emotional distress damages because complainant's history of anxiety and depression was exacerbated by discriminatory conduct). Her emotional distress manifested in self-destructive behavior, anger, panic attacks, withdrawal, and depression, among other symptoms. The worst of these symptoms persisted anywhere between six months and a year. Her anxiety attacks, though less frequent, are ongoing. Meanwhile, the fracturing of her friendship with Jane Doe 2 appears to be permanent. By comparison, the complainants in Corey and Godlewski suffered for months and days, respectively. Moreover, unlike the Complainant here, neither of those complainants required treatment or medication. With these cases, and several others,⁵ as guidance, the Court finds it appropriate to award Complainant \$20,000 in emotional distress damages.

⁵ The *Post-Hearing Brief* provides an extensive analysis of damage awards spanning several decades' worth of fair housing cases. As these cases illustrate, the presiding judge has wide discretion in granting such awards. Consequently, the awards themselves run the gamut from a pittance to a windfall. When compared to these other cases, the facts of this case lean towards a substantial award. For example, in HUD v. Edelstein, Fair Housing – Fair Lending (P-H) ¶ 25,236 at 25,241 (Dec. 9, 1991), the court awarded \$1,000 for complainant's inconvenience and emotional distress because she was forced to stay in her "unsatisfactory" apartment for two additional months. On the other end of the scale, a complainant received \$30,000 in intangible damages when discriminatory conduct

II. Civil Penalty

Respondent may also be assessed a civil penalty to “vindicate the public interest.” 42 U.S.C. § 3612(g)(3). The Court is authorized to assess a civil penalty against Respondents in an amount not to exceed:

- (1) \$16,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.

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 Respondent’s culpability;
- (v) the goal of deterrence; and
- (vi) other matters as justice may require.

24 C.F.R. § 180.671(c)(1).

In this case, the Charging Party requests a civil penalty of \$16,000, the maximum allowable against a first-time offender. HUD does not contend that Respondent has committed any prior act of housing discrimination. He has not been previously adjudged to have committed any such violation at any level of government.

Respondent’s 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, 2007 WL 4578540, 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).

Respondent here has declined to participate in this proceeding, and has presented no evidence whatsoever regarding his financial resources. Accordingly, the Court presumes he is able to pay any civil remedy assessed.

created so much anxiety that he began experiencing severe chest pain, leading to a risky and expensive surgical procedure. HUD v. Riverbay Corp., 2012 WL 1655364 (May 7, 2012).

Nature and Circumstances of the Violation

Respondent's behavior merits imposition of a maximum civil penalty. The outright refusal to rent is arguably the most egregious form of fair housing violation, as it completely denies an individual a valuable housing opportunity. Respondent's actions are particularly severe in this case because they came late in the rental process. Complainant already had the keys to the property, and was mere minutes away from beginning the move-in process. She had no reason to suspect Respondent would block her path, literally at the front door. She thus had no opportunity to psychologically prepare for the shock and disappointment she experienced. Moreover, Respondent made his discriminatory comments directly to her or in her presence. He has shown no remorse for his conduct. If his brief communications with the Court are any indication, Respondent still does not believe he has done anything improper. A maximum penalty is necessary to impress upon him the severity of his misconduct.

The Degree of Respondent's Culpability

Respondent is culpable for making the discriminatory statements and for denying Complainant and Jane Doe 2 the opportunity to rent the Roosevelt Property. The Court notes, however, that he was not acting on his own. Rather, he was the agent for the homeowner; Ms. Pearl Beck. Respondent's statements accurately communicated Ms. Beck's discriminatory preferences. This fact does not absolve him of his obligations; an agent who carries out the discriminatory orders of another becomes a discriminator himself. See HUD v. Sams, 1993 WL 599076 (March 11, 1994). Indeed, HUD's investigation revealed that Respondent shares Ms. Beck's opinions about renting to individuals with mental disabilities. He therefore would likely have discriminated against Complainant and Jane Doe 2 even without Ms. Beck's express command.

Deterrence

A substantial penalty is necessary to convince Respondent and other housing providers that "actions such as those taken in this case are not only unlawful but expensive." HUD v. Dutra, 1996 WL 657690 (Nov. 12, 1996). Had Respondent been aware of any actual history of destructive behavior by Complainant or Jane Doe 2, he may have had proper cause to refuse them as tenants. But he did not. Instead, he relied on stereotypes and unfounded assumptions about mental illness.⁶ As a result, he was unwilling to rent to *anyone* with a mental illness under any circumstances. This perfectly encapsulates the very reason the United States Congress felt it necessary to bring disabled peoples under the Fair Housing umbrella.

Other Factors as Justice May Require

Maximum penalties should be reserved for the most egregious cases and imposed where needed to vindicate the public interest. In this case, although a first offender, Respondent has

⁶ Ironically, Respondent stated that he was concerned the women could burn the house down because of their mental disabilities. He expressed no such concern when he was told that both women smoked. Respondent thus ignored a legitimate safety concern in favor of a manufactured and wholly unsupported one.

thumbed his nose at the system with regard to the prosecution of this case. He has refused to participate in these legal proceedings, other than mailing a handful of hastily written notes to HUD Counsel and the Court. He failed to appear for his deposition, causing HUD to waste taxpayer dollars. He refused to accept phone calls from HUD Counsel, and prematurely terminated a teleconference call with the presiding Administrative Law Judge. Respondent has made it unmistakably clear that this proceeding is beneath his interest. By doing so, he has shown no concern for the law or the civil rights of Complainant, Jane Doe 2. He is completely unrepentant. Indeed, his refusal to participate in these proceedings suggests disrespect for, or contempt of, the Fair Housing Act and this Court, and is an appropriate additional factor to consider in assessing a civil penalty. Respondent's dismissive attitude overshadows any other factors that might have otherwise suggested a less-than-maximum penalty.

Upon consideration of all six factors, the Court finds that Respondent's conduct was especially egregious and must be met with a harsh penalty to deter similar behavior by himself or others in the future. Additionally, Respondent is directly culpable, and has not shown any measure of concern or remorse for the consequences of his actions. Accordingly, a maximum civil penalty of \$16,000 is necessary.

III. Injunctive and Affirmative Relief

Finally, the Charging Party seeks injunctive and other equitable relief pursuant to 42 U.S.C. § 3612(g)(3). As Respondent has offered no challenge to the request, it will be granted.

ORDER

Based on the foregoing, it is **HEREBY DECLARED AND ORDERED:**

1. Respondent Deane Woodard has violated 42 U.S.C. §§ 3604(c) and (f)(1).
2. Within sixty (60) days of the date on which this Order becomes final, Respondent shall pay to Complainant the sum of \$27,122.67, consisting of:
 - a. \$7,122.67 for Complainant's inconvenience and lost housing opportunity;
 - b. \$20,000 for Complainant's emotional distress
3. Within sixty (60) days of the date on which this Order becomes final, Respondent shall pay to the Secretary the sum of \$17,084.32, consisting of:
 - a. \$16,000 in civil money penalties;
 - b. \$1,084.32 as a sanction to reimburse HUD for its expenditures in its attempt to depose him deliberately frustrated by Respondent.
4. Respondent is enjoined from discriminating because of disability against any person in any aspect of the rental, sale, use or enjoyment of a dwelling.

5. For a period of three (3) years after the date on which this *Order* becomes final, Respondent shall provide the Charging Party with contact information for any prospective renter who inquires about the properties Respondent manages within 15 days of the inquiry.
6. Within sixty (60) days of the date on which this Order becomes final, Respondent shall participate in five (5) hours of fair housing training from any HUD-approved source.

So **ORDERED**,

/s/

Alexander Fernández
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675 (2009). This *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 *Order*. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this *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.