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 January 29, 2016

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

The above-entitled matter is before this Court on several motions filed by the U.S. Department of Housing and Urban Development ("HUD," the "Charging Party," or the "Government"). On December 22, HUD filed a *Motion to Strike Affirmative Defenses* ("Motion to Strike"). On December 28, 2015, it filed a *Motion for Sanctions Against Respondent Woodard* ("Motion for Sanctions") citing Respondent Deane Woodard's refusal to engage in discovery.[1] On January 8, 2016, HUD filed a *Motion for Default Decision* ("Default Motion") and a *Motion for Summary Judgment As to Liability* ("Summary Judgment Motion"). HUD contends that it is entitled to judgment by default because Respondent failed to file an answer as required by 24 C.F.R. § 180.420 and by *Order* of this Court. Respondent has also refused to participate in this proceeding. Alternatively, HUD asserts that it is entitled to summary judgment because Respondent has not denied any of the allegations raised in the *Charge of Discrimination* ("Charge").

Parties are allowed to file written responses to motions within seven calendar days of being served with the motion. 24 C.F.R. § 140.430(b). Respondent therefore had until January 15, 2016, to respond to HUD's *Default Motion*. The Court issued an *Order to Show Cause* on January 11, 2016, ordering Respondent to file a response to the *Summary Judgment Motion* on or before January 19, 2016. Respondent has not filed any responses to either *Motion*.

[1] HUD filed a *Motion to Renew* on January 20, 2016, seeking to reintroduce the *Motion to Strike* and the *Motion for Sanctions*.

PROCEDURAL HISTORY

On August 24, 2015, HUD 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 roommate[2] 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. The *Notice* instructed Respondent to file an answer on or before September 23, 2015, and ordered both parties to complete discovery by January 15, 2016. On September 10, 2015, Respondent sent a letter to HUD's Counsel that contained a two-paragraph response and highlighted excerpts from the *Charge*. HUD Counsel forwarded Respondent's letter to the Court on September 24, 2015.

On November 24, 2015, HUD filed a *Motion to Compel*, asking the Court to compel Respondent's participation in the discovery process. The *Motion to Strike* was filed on December 22, 2015, and the *Motion for Sanctions* followed on December 28, 2015. The next day, the Court issued an *Order* granting the *Motion to Compel* and holding the *Motion to Strike* in abeyance. The *Motion for Sanctions* was denied because Respondent had not been provided an opportunity to correct his behavior. The *Order* also found that Respondent's letter did not constitute an answer because it did not meet the requirements of 24 C.F.R. § 180.420.[3] Accordingly, the Court gave Respondent until January 8, 2016, to file an appropriate answer to the *Charge*, and until January 11, 2016, to respond to HUD's discovery requests. The Court also warned Respondent that failure to comply with the *Order*'s deadlines would lead to the imposition of sanctions.

Sometime in the first week of January, 2016, Respondent sent several identical letters ("the January Letter") to HUD Counsel, but not to the Court.[4] The letter stated that it was "in answer to the January 8th 2016 sanction." In the letter, Respondent claimed that he had not used discriminatory language and that "there is no case." The letter also announced that Respondent "will not accept calls from 312 area or 847 area." The 312 and 847 area codes represent Chicago and its surrounding suburbs, which are home to HUD's Region V office and to the HUD Counsel assigned to this case. HUD filed its *Default Motion* and *Summary Judgment Motion* on January 8, 2016. To date, Respondent has not responded to either *Motion* and has not fully responded to the discovery requests.

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[2] The roommate, Jane Doe 2, chose not to participate in this proceeding.

[3] A copy of the regulation was provided to Respondent along with the *Order*.

[4] One of the letters was addressed to the Judge, but was mailed to HUD Counsel instead of the Court. This letter was included as an exhibit to HUD's *Motion to Renew*.

LEGAL FRAMEWORK

Summary Judgment

Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Elec. Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574 (1985); Celotex Corp. V. Catrett, 477 U.S. 317 (1986). Summary judgment is a "drastic device" because, when exercised, it cuts off a party's right to present its case. Nationwide Life Ins. Co. v. Bankers Leasing Ass'n. Inc., 182 F.3d 157, 160 (2d Cir. 1999). "Accordingly, the moving party bears a heavy burden of demonstrating the absence of any material issues of fact." Id. In reviewing a motion for summary judgment, the reviewing court must find "all ambiguities and draw all reasonable inferences in favor of the party defending against the motion." Id.; see also, Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990) ("where the facts specifically averred by [the nonmoving] party contradict facts specifically averred by the movant, the motion must be denied").

APPLICABLE LAW

The Fair Housing Act

On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968. Federal Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 73, 81 (1968) (codified as amended at 42 U.S.C. §§ 3601-3631). Title VIII of the Civil Rights Act of 1968 is commonly known as the Fair Housing Act (the "Act" or "FHA"). The Act expanded on the Civil Rights Act of 1964, which prohibited discrimination regarding the sale, rental, and financing of housing based on race, color, religion, or national origin. Id.

The Act was amended in 1988 to prohibit discrimination based on familial status or disability. (Pub. L. 100-430, approved September 13, 1988.) In defining the term "handicap," the Act copied near verbatim the definition used in the Rehabilitation Act of 1973, which defined the term as, "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment."[5] 29 U.S.C. § 706.

When ascribing affirmative responsibilities to housing providers, Congress recognized that "more than a mere prohibition against disparate treatment was necessary in order that handicapped persons receive equal housing opportunities." HUD v. Dedham Hous. Auth., 1991 WL 442793, *5 (HUDALJ November 15, 1991) ("Dedham I") (citing H.R. No. 711.) Congress also used the 1988 amendment to repudiate the use of stereotypes and ignorance when dealing with individuals with disabilities, stating that "generalized perceptions about disabilities and

[5] The statute uses the term "handicap." However, in the years since the statute's passage, that term has fallen out of favor, as it has acquired a somewhat negative social connotation. The Court therefore generally prefers and uses the term "disabled."

unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion." H.R. No. 711, at 18.

Pursuant to the FHA, housing providers are prohibited from making, printing, or publishing, or causing 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 disability, or intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(c)(2). Additionally, the Act prohibits discriminating in the sale or rental of housing because of a disability of a buyer or renter, anyone residing or intending to reside in the housing, or any person associated with a disabled buyer or renter. 42 U.S.C. § 3604(f)(1).

DISCUSSION

HUD regulations state that an answer to a fair housing complaint must admit or deny every allegation made, or state that the respondent does not have sufficient information to make an admission or denial. 24 C.F.R. § 180.420(a)(1). Any allegation that is not denied is deemed admitted. Id. Failure to file an answer is deemed to be an admission of all allegations made in the *Charge* and may result in the entry of a default judgment. 24 C.F.R. § 180.420(b).

The Court is convinced that Respondent has all-but abandoned any attempt to defend himself against the *Charge*. He has made only two attempts to communicate with HUD regarding this proceeding.[6] The first was a nearly incomprehensible two-paragraph letter that was not responsive to the *Charge*. The letter stated that Jane Doe 1 was told she could rent the apartment and noted that Jane Doe 2 did not want to be a party to the litigation. The second communication, the January Letter, was a one-page letter that was more intelligible but only slightly more substantive. That letter made reference to Respondent's age and poor health and stated that he would not accept phone calls from the Chicago area because his cell phone was on a pay-per-minute plan.

Neither of Respondent's letters specifically admit or deny any of the allegations made in the *Charge*. They therefore do not comply with 24 C.F.R. § 180.420(a)(1). However, the Court cannot overlook the fact that Respondent is acting without benefit of legal counsel. *Pro se* litigants often cannot decipher complex legal jargon or understand the Court's procedural requirements. This places them at a significant disadvantage. The consequences for noncompliance with these requirements can be severe; none more so than default. A default judgment strips a respondent of his right to defend himself at all. Accordingly, the Court has historically shown great leniency to *pro se* litigants, and will only grant a default judgment when there is no viable alternative.

Respondent's letters, though far from compliant with the Court's rules, do represent a general denial of the *Charge*. Respondent contends that he did not make discriminatory statements and did not deny housing to Complainant because he was prepared to allow her to

[6] On January 28, 2016, the Court initiated a conference call at the behest of HUD Counsel. Respondent joined the conference call at the appointed time. However, after realizing that the call was related to this case, he reaffirmed his disinterest in participating in the proceeding. Respondent then promptly — but politely — hung up.

rent the unit, albeit without her preferred roommate. The January Letter denounces the allegations as "completely unfounded and are falsehoods." The Court, giving maximum deference to Respondent due to his *pro se* status, will accept his letters as his *Answer*.

The January Letter also makes reference to Respondent's health and age. HUD asks that these statements be stricken from the record as insufficiently pled affirmative defenses. Neither Respondent's age nor health are directly relevant to this proceeding, and they do not absolve him of responsibility for his alleged actions. Accordingly, they are not valid affirmative defenses, even given the Court's wide latitude for pleadings by *pro se* litigants.

Respondent's *pro se* status also does not immunize him from sanctions when his behavior jeopardizes the opportunity for a full and fair hearing on the merits. See Tabron v. Grace, 6 F.3d 147, 153 (3d Cir. 1993); Padro v. Heffelfinger, 110 F.R.D. 333, 335 (E.D. Pa. 1986); Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989). He has actively frustrated any attempt to achieve such a hearing in this proceeding. Respondent has deliberately ignored all attempts to contact him by HUD Counsel, and has been adamant that he will not engage in any further communication regarding this case. He refused to attend his deposition, despite receiving proper notice of its date and time. By doing so, he caused HUD to waste $1,084.32 in taxpayer resources. To date, he has responded to one request for admission and one interrogatory, while ignoring all other discovery requests. He has not exchanged any witness or exhibit lists, and has not complied with any procedural deadline set forth in the *Notice of Hearing and Order*. He has not communicated directly with the Court at any point in this proceeding, other than his brief participation in the conference call. He also has not filed a *Pro Se Appearance Form*, as is required. HUD's evidence shows that Respondent's refusal to participate dates back to the initial investigation into his allegedly discriminatory conduct. In short, Respondent has shown a pattern of disregard for the legal process.

The Court previously refused to impose sanctions against him for his conduct. It will not normally sanction a *pro se* litigant without prior warning. The *Order on Motions* provided that warning, but Respondent has not heeded it. The January Letter confirmed that he has no intention of participating any further in this litigation. Such flagrant disregard for the judicial process cannot be tolerated. Accordingly, the Court has no choice but to impose sanctions. All unanswered requests in HUD's Request for Admissions are hereby deemed admitted. Additionally, because he has failed to provide HUD with his exhibits or identify any witnesses, Respondent is prohibited from introducing either at the hearing. He must also reimburse HUD for the $1,084.32 it spent fruitlessly attempting to depose him.

Moreover, because Respondent's *Answer* contained no specific denials to any of HUD's allegations in the *Charge*, those allegations are also deemed admitted pursuant to 24 C.F.R. 180.420(b). Given these admission, no genuine issues of material fact remain in dispute.

Based on Respondent's admissions, the Court finds that Respondent denied a rental opportunity to Complainant and Jane Doe 2 based entirely on his belief that Jane Doe 2 was bipolar and schizophrenic. It is unconfirmed whether Jane Doe 2 in fact does suffer from schizophrenia, but there is no doubt that Respondent regarded her as being mentally disabled. Respondent has therefore violated 42 U.S.C. § 3604(f)(1).

The Court further finds that Respondent communicated his discriminatory rationale to Complainant, Jane Doe 2, and Complainant's parents when they arrived at the Roosevelt property on or around August 13, 2013. He stated that Complainant and Jane Doe 2 could not rent the property because of Jane Doe 2's bipolar disorder and that Ms. Beck did not want to rent to someone "with a fault in their mental abilities." These are explicit statements of preference, limitation, or discrimination. Respondent has therefore violated 42 U.S.C. § 3604(c).

FINDINGS OF FACT

Based upon the unanswered allegations, which the Court is required to accept as true, the Court makes the following findings of fact:

1. Complainant has been diagnosed with and takes medication for anxiety, depression, and bipolar disorder, which is sometimes known as "manic depression." Jane Doe 2 also has bipolar disorder.

2. Due to her bipolar disorder, Complainant struggles to concentrate, interact socially, or follow schedules.

3. Respondent believed Jane Doe 2 was schizophrenic.

4. Complainant and Jane Doe 2 are both single females. At the time of the events in question, Complainant was 19 years old and Jane Doe 2 was 21 years old.

5. Complainant and Jane Doe 2 were friends and lived together in the basement of Complainant's parents' house.

6. In early August, 2013, Complainant and Jane Doe 2 sought to move into an apartment together.

7. Pearl Beck[7] owned a single family house at 1103 Roosevelt Avenue ("the Roosevelt property") in Detroit Lakes, Minnesota. Ms. Beck makes the property available for rent.

8. Respondent was Ms. Beck's agent, and worked in exchange for free rent at one of her other rental properties.

9. Respondent's duties as Ms. Beck's agent included making repairs, screening prospective applicants, showing rental properties, and managing those properties.

10. Complainant and Jane Doe 2 saw a "for rent" sign posted in the front yard of the Roosevelt property. Attached to the sign was an envelope containing Respondent's business cards.

[7] Ms. Beck was initially named as a respondent in this matter, but entered into a Conciliation Agreement with Complainant prior to the issuance of the *Charge*.

11. Complainant and Jane Doe 2 called the number on the business card and spoke to Respondent, who agreed to let them tour the Roosevelt property.

12. Respondent showed the Roosevelt property to Complainant, Jane Doe 2, and Complainant's father within days of receiving their call. Respondent told Complainant and Jane Doe 2 that rent was $625 per month, plus utilities.

13. Approximately one week later, in the second week of August, Complainant, Jane Doe 2, and Complainant's father met with Respondent and Ms. Beck.

14. During that meeting Respondent gave Complainant a key to the Roosevelt property with the expectation that Complainant and Jane Doe 2 would rent the apartment.

15. During that meeting, Complainant and Jane Doe 2 stated that they were taking medication to "counteract what they had."

16. At some time after the meeting, Ms. Beck's son, Gregory Beck, visited Jane Doe 2 at her place of employment and asked her some questions.

17. Gregory Beck later told Ms. Beck that Jane Doe 2 was bipolar and schizophrenic. Ms. Beck in turn told Respondent that, according to her son, both Complainant and Jane Doe 2 were "schizophrenic and crazy."

18. On or about August 11, 2013, Respondent called Complainant to inquire about her mental disabilities and those of Jane Doe 2. Complainant informed Respondent that she had anxiety, depression, and bipolar disorder. She acknowledged that Jane Doe 2 was also bipolar, but refused to discuss Jane Doe 2's disabilities any further.

19. On or about August 16, 2013, Complainant, Jane Doe 2, and Complainant's parents went to the Roosevelt property with a rental check and cleaning supplies, intending to begin moving into the property. Respondent met them at the property.

20. Respondent told them that he would not rent the Roosevelt property to Complainant and Jane Doe 2 because he believed Jane Doe 2 was bipolar and schizophrenic. He also suggested that Complainant and/or Jane Doe 2 could start a fire or otherwise damage the property. Respondent further stated that Ms. 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." He later told Complainant's parents that Complainant's anxiety and depression were additional reasons not to rent to them.

21. Respondent demanded Complainant and Jane Doe 2 return the keys to the Roosevelt property, which they did. Before leaving, Complainant's father informed Respondent that they would pursue a housing discrimination lawsuit.

22. Respondent later told Complainant during a phone conversation that he would consider renting the apartment to her, but not to Jane Doe 2, if Complainant dropped the threatened lawsuit.

23. Complainant could not afford the rent on her own and refused to rescind her complaint.

24. Respondent did not rent the property to Complainant and Jane Doe 2.

25. Respondent had no information to support his belief that Complainant or Jane Doe 2 posed any danger to the property. Other than the information given to him from Ms. Beck, Respondent had no reason to believe Jane Doe 2 was schizophrenic.

26. Respondent's belief was influenced by his experience with a former roommate whom Respondent suspected was bipolar and schizophrenic. The roommate once "threw hamburgers in his face, and tore shrubbery."

27. Respondent believed that Gregory Beck is schizophrenic and bipolar, and once threatened to burn down Ms. Beck's house. He also believed that Ms. Beck's daughter is schizophrenic and bipolar and had previously damaged Ms. Beck's property.

ORDER

Upon examination of the legal arguments and the facts underpinning them, the Court reaches the following conclusions:

1. Respondent's written communications with HUD Counsel constitute an *Answer* to the *Charge*. The *Default Motion* is therefore **DENIED**.

2. The statements in the *Answer* as to Respondent's age and health are not affirmative defenses. The *Motion to Strike* is therefore **GRANTED**.

3. Respondent has repeatedly refused to participate in the discovery process in any meaningful way. He has also failed to comply with this Court's orders compelling him to respond to discovery. The *Motion for Sanctions* is therefore **GRANTED**. All unanswered requests for admissions are deemed admitted, Respondent is prohibited from introducing exhibits or witnesses at the hearing,[8] and he must reimburse HUD $1,084.32 for deliberately frustrating its attempts to depose him.

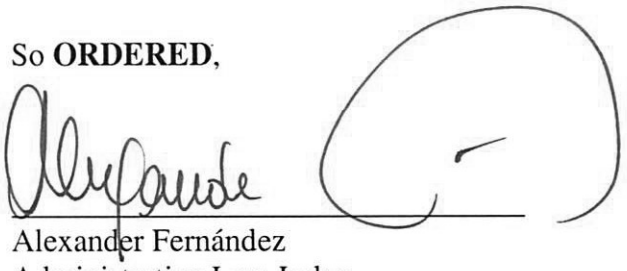
4. Based on the undisputed evidence, HUD is entitled to judgment as a matter of law as to Respondent's violations of 42 U.S.C. §§ 3604(c) and 3604(f)(1). The Charging Party's *Summary Judgment Motion* is therefore **GRANTED**.

[8] Respondent may still cross-examine HUD's witnesses if he chooses to do so.

5. The Charging Party has requested a hearing on the issue of damages and other remedies in the public interest. Accordingly, it is hereby **ORDERED** that:

    a. A hearing on the issue of damages and remedies shall be held in Fargo, North Dakota, on February 9-10, 2016. The hearing shall commence at 10:00 a.m. on February 9, 2016, and at 9:30 a.m. on February 10, 2016. The hearing will conclude at or before 4:00 p.m. both days.

So **ORDERED**,



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.