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: CASSIE AND SAMUEL BROWN, Complainants, v. ALLAN R. SAARI, individually and as trustee of The Allan R. Saari Revocable Trust of 2009, Respondent.	16-AF-0152-FH-021 October 6, 2017

Appearances

For Complainants: Hillary H. Harnett and Eric D. Levin, Attorneys, United States Department of Housing and Urban Development, Boston, Massachusetts

For Respondent: Michael P. Bentley, Attorney, Lane & Bentley, P.C., Keene, New Hampshire

INITIAL DECISION AND ORDER

BEFORE: Alexander **FERNÁNDEZ**, United States Administrative Law Judge

On September 27, 2016, the Secretary of the United States Department of Housing and Urban Development ("HUD," "the Charging Party," or "the Government") filed a *Charge of Discrimination* ("the *Charge*") against Allan R. Saari ("Respondent") on behalf of Cassie Brown, Samuel Brown, and their minor children (collectively, "Complainants") alleging that Respondent impermissibly discriminated against Complainants in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq. ("the FHA" or "the Act"). Specifically, the *Charge* alleges that Respondent refused to negotiate the rental of a dwelling and stated he would not rent to Complainants based on their familial status, in violation of 42 U.S.C. § 3604(a) and (c) and HUD's associated implementing regulations in 24 C.F.R. Part 100.

The Court held a hearing in Worcester, Massachusetts on May 9, 2017. The parties submitted documentary evidence and presented the testimony of Cassie Brown; Samuel Brown; a test caller from the Fair Housing Testing Program at New Hampshire Legal Assistance; and Respondent.

On June 7, 2017, the Court issued a *Post-Hearing Order* requiring the submission of post-hearing briefs by July 7, 2017. Both HUD and Respondent filed their post-hearing briefs on that date. In addition, Respondent filed a reply brief on July 26, 2017 and HUD filed a reply brief on July 28, 2017.[1]

APPLICABLE LAW

The Fair Housing Act. On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968. Title VIII of the Civil Rights Act of 1968 is commonly known as the Fair Housing Act ("FHA"). Pub. L. No. 90-284, §§ 801-819, 82 Stat. 73, 81-89 (1968) (codified as amended at 42 U.S.C. §§ 3601-3631). The FHA expanded on the Civil Rights Act of 1964 by prohibiting discrimination regarding the sale, rental, and financing of housing based on race, color, religion, or national origin. Id.

In 1988, Congress amended the FHA's protections, this time prohibiting discrimination based on familial status or disability. Pub. L. No. 100-430, 102 Stat. 1619 (1988). The amendments defined "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent, legal custodian, or designee of such parent or legal custodian. 42 U.S.C. § 3602(k). In extending protections under the FHA to families with children, a new protected class was established, as Congress had never before enacted a federal civil rights statute based on familial status. H.R. REP. NO. 100-711, at 23 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2184.

An aggrieved person can bring an FHA claim under a theory of disparate impact or disparate treatment.[2] Batista v. Cooperativa de Vivienda Jardines, 776 F.3d 38, 43 (1st Cir. 2010) (citing Astralis Condo. Ass'n v. HUD, 620 F.3d 62, 66 (1st Cir. 2010)); see Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507 (2015) (explaining that a disparate impact case involves a practice that disproportionately affects a protected class and is otherwise unjustified by a legitimate rationale, while a disparate treatment case involves discriminatory intent or motive). The case at bar involves two allegations of disparate treatment based on familial status. The Charging Party and Complainants allege that Respondent violated the following two core prohibitions of the FHA: (1) the making of discriminatory statements in the rental of a property; and (2) the refusal to negotiate the rental of a property because of protected status. 42 U.S.C. § 3604(c), (a).

Discriminatory Statements. Section 3604(c) of the FHA prohibits housing providers 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 protected status or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c). Violations under section

[1] Pursuant to 24 C.F.R. § 180.670(b), an initial decision was to be issued within sixty days of the close of the record (that is, by September 26, 2017). However, due to limited government resources and, more specifically, a government-wide hiring freeze implemented pursuant to a Presidential Memorandum dated January 23, 2017, the issuance of this decision was delayed.

[2] In addition, an aggrieved person who alleges discrimination based on disability can proceed under a theory of failure to make a reasonable accommodation. Batista v. Cooperativa de Vivienda Jardines, 776 F.3d 38, 43 (1st Cir. 2010).

3604(c) include all written or oral notices or statements by a person engaged in the rental of a dwelling that indicate a preference, limitation or discrimination because of familial status. See 24 C.F.R. § 100.75(b). Actions prohibited include using words or phrases that convey that dwellings are not available to a particular group because of familial status or expressing a preference against or limitation on any renter because of familial status. Id. § 100.75(c).

To make out a claim under section 3604(c), the Charging Party must present evidence of the following elements: (1) Respondent made a statement; (2) the statement was made with respect to the rental of a dwelling; and (3) the statement indicated a preference, limitation, or discrimination against Complainants on the basis of their status as members of a protected class. Corey v. Sec'y, 719 F.3d 322, 326 (4th Cir. 2013); White v. U.S. Dep't Hous. & Urban Dev., 475 F.3d 898, 904 (7th Cir. 2007); HUD v. Morgan, No. 11-F-090-FH-49, 2012 HUD ALJ LEXIS 30, at *5 (Sept. 28, 2012), modified on other grounds, 2012 HUD ALJ LEXIS 33 (Oct. 26, 2012) (order on Secretarial review). Courts employ the "ordinary listener" test to determine whether a statement impermissibly indicates a preference, limitation, or discrimination based on protected status. E.g., Rodriguez v. Village Green Realty, Inc., 788 F.3d 31, 52-53 (2d Cir. 2015); Miami Valley Fair Hous. Ctr. v. Connor Grp., 725 F.3d 571, 577 (6th Cir. 2013); Corey, 719 F.3d at 326; White, 475 F.3d at 905-06. This is an objective test whereby the Court decides whether the statement, in context, would have suggested to an ordinary listener that a person from the protected group was favored or disfavored for housing. Ragin v. New York Times Co., 923 F.2d 995, 999 (2d Cir. 1991), cert. denied, 502 U.S. 821 (1991); see Rodriguez, 788 F.3d at 53 ("Under subsection 3604(c), the speaker's subjective belief is not determinative ... the 'touchstone' of the inquiry is the message conveyed.").

Courts "also have allowed parties to establish violations of section 3604(c) by proving an actual intent to discriminate." Soules v. U.S. Dep't Hous. & Urban Dev., 967 F.2d 817, 824-25 (2d Cir. 1992) (finding it appropriate for judge to assess speaker's intent when statements were not facially discriminatory); see Jancik v. Dep't Hous. & Urban Dev., 44 F.3d 553, 556 (7th Cir. 1995) (noting that although ordinary listener test does not require evidence of subjective intent to discriminate, "if such proof exists, it may provide an alternate means of establishing a violation" of 3604(c)); Hous. Opportunities Made Equal v. Cincinnati Enquirer, 943 F.2d 644, 646 (6th Cir. 1991) (stating that plaintiff can establish 3604(c) violation either by proof of actual intent to discriminate or by proof that ordinary reader would naturally interpret advertisement to indicate preference).

Refusal to Negotiate. Section 3604(a) of the FHA makes it unlawful for a housing provider to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling because of familial status. 42 U.S.C. § 3604(a). Prohibited actions include refusing to rent or negotiate for the rental of a dwelling, refusing to accept or consider a bona fide offer, or imposing different rental charges, qualifications, or conditions on a tenant or prospective tenant based on the tenant's familial status. 24 C.F.R. § 100.60(b).

To make out a claim under section 3604(a), the Charging Party must present evidence that Respondent took one of the prohibited actions and the action was motivated, at least in part, by a discriminatory purpose or intent. E.g., Reg'l Econ. Cmty. v. City of Middletown, 294 F.3d 35, 48-49 (2d Cir. 2002) (requiring showing that discriminatory intent was "significant"

motivating factor); Woods-Drake v. Lundy, 667 F.2d 1198, 1202 (5th Cir. 1982) (same); Morgan, 2012 HUD ALJ LEXIS 30, at *6 (same); see also Smith & Lee Assocs. v. City of Taylor, 102 F.3d 781, 790-91 (6th Cir. 1996) (explaining that discriminatory purpose need not be dominant, primary, or sole motivating factor).

Standard and Burden of Proof. "Standard of proof" refers to the degree of proof necessary for a party to carry the burden of persuading the factfinder of the veracity of its claims. Steadman v. SEC, 450 U.S. 91, 95 (1981). The standard of proof thus serves to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." Santosky v. Kramer, 455 U.S. 745, 754-55 (1982) (quoting Addington v. Texas, 441 U.S. 418, 423 (1979), and In re Winship, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).

The standard of proof in FHA cases is that generally applicable in civil actions, proof by a "preponderance of the evidence." Marr v. Rife, 503 F.2d 735, 739 (6th Cir. 1974); see Grogan v. Garner, 498 U.S. 279, 286 (1991) (noting presumption that preponderance standard applies in civil actions). *Black's Law Dictionary* defines the "preponderance of the evidence" as "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." *Black's Law Dictionary* (9th ed. 2009). Thus, the standard is qualitative, not quantitative. See Ortiz v. Principi, 274 F.3d 1361, 1365 (Fed. Cir. 2001) ("This burden of proof is not amenable to any mathematical formula, such as the often-recited 'fifty-one percent/forty-nine percent' rule ... Rather, a preponderance of the evidence can be said to describe a state of proof that persuades the factfinders that the points in question are more probably so than not.") (internal quotation marks omitted); United States v. Montague, 40 F.3d 1251, 1254-55 (D.C. Cir. 1994) ("Often, under a preponderance-of-the-evidence standard, it is assumed that the trier of fact piles up the evidence arguably on the plaintiff's side and the evidence arguably on the defendant's side and determines which pile is greater ... In fact, a more accurate notion ... is 'evidence which as a whole shows that the fact sought to be proved is more probable than not.'").

Succinctly stated, showing something by a preponderance of the evidence "simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." Metro. Stevedore Co. v. Rambo, 521 U.S. 121, 137 n.9 (1997) (quoting Concrete Pipe & Prods. v. Constr. Laborers Pension Trust, 508 U.S. 602, 622 (1993)). Accordingly, to prevail under this standard, a party must establish that its allegations are more probably true than not.

The allocation of the burden of proof refers to the rule of substantive law that identifies which party bears the risk of nonpersuasion— that is, which party loses if the evidence is closely balanced. Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 56 (2005); Dir., Office of Workers' Comp. Programs v. Greenwich Collieries, 512 U.S. 267, 271 (1994). Thus, allocation of the burden of proof to one party functions as "a sort of default rule of liability" that operates in the opposing party's favor. Am. Dredging Co. v. Miller, 510 U.S. 443, 454 (1994).

Absent evidence that Congress intended otherwise, the ordinary rule is that the party seeking relief (in this case, the Charging Party and Complainants) bears the burden of proving all the essential elements of his claim. Schaffer, 546 U.S. at 56-58. This rule flows from the longstanding principle that the party who "seeks to change the present state of affairs ... naturally should be expected to bear the risk of failure of proof or persuasion." Id. at 56 (quoting 2 J. Strong, McCormick on Evidence § 337, at 412 (5th ed. 1999)); see JUSTINIAN DIG. 22.3.2 (Paulus, Ad Edictum 69) ("*Ei incumbit probatio qui dicit, non qui negat*": the burden of proof lies with the declarer, not the denier).

For example, consistent with this principle, the Supreme Court has struck down as impermissible a rule that shifted the burden of persuasion away from the party seeking relief in certain proceedings before the Department of Labor's administrative law judges. See Greenwich Collieries, supra, 512 U.S. 267. The Department of Labor's now-defunct "true doubt" rule provided that the benefits claimant in a workers' compensation case would prevail if the evidence was in equipoise. Id. at 269. The Supreme Court held that this ran afoul of section 7(c) of the Administrative Procedure Act ("APA"), 5 U.S.C. § 556(d), which states, consistent with the ordinary default rule allocating the burden of proof to the plaintiff, that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof" in administrative proceedings. Id. at 280-81.

In FHA cases, a complainant alleging disparate treatment bears the initial burden of producing either (1) direct evidence of discriminatory intent or (2) indirect evidence creating an inference of such intent. Batista, 776 F.3d at 43. If the complainant offers only indirect evidence, courts analyze the evidence under the inferential burden-shifting framework set forth by the Supreme Court in McDonnell Douglas Corp. v. Green for the analysis of claims of intentional discrimination. 411 U.S. 792, 800-02 (1973) (employment discrimination case); see, e.g., Committee Concerning Cmty. Improvement v. Modesto, 583 F.3d 690, 711 (9th Cir. 2009) (applying McDonnell Douglas framework in FHA case); Reg'l Econ. Cmty., 294 F.3d at 48-49 (same); Kormoczy v. Sec'y, 53 F.3d 821, 823-24 (7th Cir. 1995) (same).

If direct evidence is available, the McDonnell Douglas framework need not be applied, and the court may proceed directly to the ultimate question of whether unlawful discrimination occurred. Griffith v. City of Des Moines, 387 F.3d 733, 736 (8th Cir. 2004); Pinchback v. Armistead Homes Corp., 907 F.2d 1447, 1452 (4th Cir. 1990); see Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985) (explaining why burden-shifting framework is unnecessary under these circumstances) (citing Loeb v. Textron, Inc., 600 F.2d 1003, 1014 (1st Cir. 1979)). Regardless of whether direct or only indirect evidence of discriminatory intent is available, the Supreme Court's Civil Rights opinions emphasize that the complainant at all times retains the ultimate burden of persuasion with respect to his claims. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506-08, 511 (1993) (citing Tex. Dep't Cmty. Affairs v. Burdine, 450 U.S. 248 (1981)); accord Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142-43 (2000).

Accordingly, in this case, consistent with the Supreme Court's Civil Rights discrimination jurisprudence, section 7(c) of the APA, and the ordinary rules governing allocation of burdens of proof, the Charging Party bears the ultimate burden of proving the essential elements of its claims by a preponderance of the evidence. If the evidence is in

equipoise, the Charging Party cannot prevail. See Burch v. Reading Co., 240 F.2d 574, 579 (3d Cir. 1957) ("[T]he plaintiff's burden is to convince [the jury] upon all the evidence before them that the facts asserted by the plaintiff are more probably true than false. This, we think, is the intended effect of the 'preponderance of the evidence' rule ... if in [the jurors'] minds the probabilities of those facts being true or false appear equal the plaintiff has not met his burden of proof.") (footnotes omitted).

FINDINGS OF FACT

The subject property is located in Keene, New Hampshire and consists of a house with a garage and yard. Respondent purchased the property in 1984 and subsequently transferred ownership to the Allan R. Saari Revocable Trust of 2009, which is administered by Respondent as trustee. The property is divided into three rental units: a ground floor apartment, a second-floor apartment, and a studio apartment above the garage. Respondent, who was a licensed real estate broker in the state of New Hampshire from 1986 until his license lapsed in 2016, manages all aspects of the rental of the subject property.

In December 2015, after Respondent evicted a family with three children who had failed to pay their rent on time, damaged the property, and quarreled with at least one of the other tenants, the second-floor apartment became vacant. In late December 2015, Respondent placed an advertisement in the Keene Sentinel, a local newspaper, seeking new tenants to rent the subject apartment. The advertisement stated: "huge apt., great W. Keene loc. Garage, storage, W/D H/U. NP/NS. New appli., $950+ heat & elec.," followed by Respondent's telephone number.

At that time, Complainants Cassie and Samuel Brown, a married couple, were residing in a mobile home elsewhere in Keene, New Hampshire with their eight-year-old daughter and one- or two-year-old son. Complainants had purchased and moved into the mobile home in August 2012. However, by early 2016, both Mr. and Mrs. Brown believed the family was "outgrowing" their mobile home.

Mr. Brown, a disabled military veteran, had undergone major abdominal surgery in January 2016, which prevented him from shoveling snow or mowing the lawn and shifted many of the upkeep responsibilities for the mobile home to Mrs. Brown. In addition, the couple had become concerned about safety in the vicinity of the mobile home. "The neighborhood was going downhill," according to Mr. Brown. For all of these reasons, Complainants allege that in January 2016, they began searching for alternative housing— ideally, a home with at least two bedrooms and a garage located in a safer neighborhood, but still within their daughter's elementary school district. Their budget was between $900 and $1,400 per month. They testified they planned to rent their mobile home to someone else if they were able to find alternate housing.

In February 2016, Mrs. Brown saw Respondent's advertisement in the online version of the Keene Sentinel. She testified that the apartment listed in the advertisement appealed to her because it had a garage, storage, and a washer and dryer, it was described as "huge" with new appliances, and it was located in her daughter's school district. Accordingly, on February 12,

2016, she called the phone number listed in the advertisement and reached Respondent. The parties have offered divergent accounts of the ensuing phone conversation, although they agree that it lasted between 30 and 60 seconds.

Mrs. Brown's account is as follows. First, she informed Respondent that she was calling about the newspaper ad and asked how many bedrooms were in the apartment. Respondent replied that the apartment had five rooms and said, "Tell me about yourself." Mrs. Brown stated that she would be living in the apartment with her veteran husband and two children. At that point, according to Mrs. Brown: "The man on the other line said, 'Wait a minute. I'm not interested in renting to anyone with children, because I just evicted a family that was too loud.' I told the man that it was illegal. He said he didn't care and ended the call."

The entire phone call had lasted about a minute. Mrs. Brown was angry and upset afterward. She told her husband what had happened, then called and described the conversation to her father, who encouraged her to report it. She also created a Facebook post describing the incident, a copy of which was submitted to the record. Ultimately, she called HUD's 1-800 number and filed the housing discrimination complaint that triggered the instant proceeding.

Mr. Brown testified he was present at the time of the February 12 phone call and was "chasing our youngest around ... trying to get the kids under control or get them in the other room so [Mrs. Brown] had some privacy," which "[d]idn't happen." To the best of his recollection, the phone call lasted 30 to 60 seconds. After his wife hung up, she started crying and told him that the person to whom she had just spoken was not interested in renting to anyone with children. Mr. Brown was angry and later spoke to his veterans' counselor about the incident, explaining, "I felt that I didn't go through hell overseas for nothing, to be denied on the housing for having children."

Respondent denies stating that he was uninterested in renting to families with children. He agrees that he received a call on or around February 12 from an unidentified woman, whom he later learned was Mrs. Brown, who wanted to arrange to view the apartment advertised in the Keene Sentinel. Respondent testified that he asked Mrs. Brown how many people would be living in the apartment; she replied she would live there with her husband and two children. Respondent agrees that he then stated he had just evicted a family with three children. Then, according to Respondent, before he could obtain financial information or references from Mrs. Brown or give her the address of the apartment, the phone line went dead. He assumed Mrs. Brown had hung up. The conversation had lasted just 30 to 45 seconds. He testified he was very surprised to later receive paperwork from HUD relating to the discrimination complaint.

After the *Complaint* was filed, but presumably before Respondent became aware of it, New Hampshire Legal Assistance assigned two female FHA test callers to contact Respondent and inquire about the subject apartment. The first tester was instructed to tell Respondent that she was interested in renting the apartment with her husband and two children. She tried to reach Respondent twice but ended up leaving him a voice message each time. She did not mention children in either of her messages. She never actually spoke to Respondent.

The second test caller was instructed to tell Respondent that she was interested in moving into the apartment with her husband and that they had no children. The second tester left messages on Respondent's voicemail on February 26, 2016, and March 1, 2016, relaying her name and number and expressing interest in the apartment. On March 1, 2016, Respondent left a voicemail returning her calls. Later that day, the tester called Respondent again and reached him.

The FHA tester provided the following account of her approximately 15-minute conversation with Respondent. Respondent first asked if she was calling from Nashua, but she told him that was just the location where her phone was registered. Respondent asked where she worked and how many people would be moving into the apartment, and she replied that she worked at a local Target store and that the only other tenant would be her husband. Respondent explained that his current tenants in the other two units on the property had lived there for more than twenty years, but he had evicted a prior tenant, a family with three children, from the subject apartment in December 2015 after renting to them for just two years. He described the evicted family as "white trash" who had made a mess of the apartment, were often late with rent, and still owed him money in small claims court for damage to the property. The test caller maintains that Respondent then told her, "You sound like the kind of tenant I'm looking for." After again confirming that no children or close relatives other than her husband would take up residence in the subject apartment, he further stated, "I'd like a husband or wife or a single person in there." After Respondent and the tester conversed for several more minutes about the apartment, the call ended on a cordial note.

Respondent does not challenge the FHA tester's account of the statements he made during the March 1 phone conversation. However, he disputes her conclusion that these statements indicated a preference for tenants without children. He fully believed the tester to be a prospective tenant at the time of their March 1 conversation. He maintains that he would have told any prospective tenant he or she was the type of renter he was looking for in hopes of encouraging the person to visit his property.

After advertising the subject apartment for about four months, Respondent ultimately rented it to two women with no children for $900.00 per month on May 1, 2017. Meanwhile, Complainants continued searching for housing until they entered a contract to sell their mobile home in November 2016 and moved into a rental unit in January 2017. They still resided in the rental unit as of the hearing date. The rent was $975.00 per month, and the unit had no garage and was not in the same elementary school district as Complainants' former residence.

The Charging Party, on behalf of Complainants, now seeks $36,820.00 in damages for out-of-pocket expenses, lost housing opportunity, and emotional distress. The Charging Party also requests that the Court impose a civil penalty of $16,000.00 and provide injunctive relief for the alleged discrimination.

DISCUSSION

The Court has considered all issues raised and all documentary and testimonial evidence in the record and presented at hearing. Those issues not discussed here are not addressed because the Court finds they lack materiality or importance to the decision.

I. Respondent made a discriminatory statement in violation of section 3604(c).

Section 3604(c) of the FHA provides that it is unlawful to "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 ... familial status ... or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c).

As discussed supra, the Charging Party can prevail on a claim under section 3604(c) by proving by a preponderance of the evidence that (1) Respondent made a statement, (2) with respect to the sale or rental of a dwelling, (3) which indicated a preference, limitation, or discrimination on the basis of protected status. White, 475 F.3d at 904. The parties do not dispute that the apartment at issue in this matter constitutes a "dwelling" within the meaning of the statute or that Complainants are members of a protected class under section 3604(c) by virtue of their familial status. See 42 U.S.C. § 3602(k) (defining "familial status"). The sole matter in dispute is whether Respondent made a discriminatory statement to Mrs. Brown during their conversation regarding the rental of the subject dwelling.

The dispute centers on what was said and done during the February 12, 2016, phone conversation between Mrs. Brown and Respondent, which was the only contact between the parties prior to the instigation of this proceeding. The parties agree that Mrs. Brown initiated the phone call to express interest in renting the subject dwelling and that the duration of the call was brief, lasting approximately 30 to 60 seconds. The parties further agree that, in response to a question from Respondent, Mrs. Brown informed him she planned to live in the apartment with her husband and their two children, and Respondent then mentioned that he had recently evicted a family with three children. The parties disagree as to how the call ended and whether Respondent expressed an intent not to rent to anyone with children.

The Charging Party and Complainants allege that Respondent expressly stated, "I'm not interested in renting to anyone with children." Mrs. Brown told Respondent that was illegal, according to the Charging Party and Complainants, whereupon Respondent hung up without obtaining any financial or other information that would have allowed him to further evaluate Complainants' suitability as renters.

The claimed statement "I'm not interested in renting to anyone with children" directly conveys an intent to discriminate on the basis of familial status. These words would indicate to any ordinary listener that tenants with children are disfavored. If Respondent indeed said them, he violated section 3604(c). Cf. Thurmond v. Bowman, 211 F. Supp. 3d 554, 566 (W.D.N.Y. 2016) (finding complainant entitled to judgment as matter of law on basis of statement that landlord would "not be able to rent to [complainant] because of [her] two small children").

Yet Respondent has repeatedly and vehemently denied making the claimed statement or harboring any intent to discriminate against families with children. (E.g., Tr. 180, 183, 192.) He testified that all he wants in a prospective tenant is a person who will pay the rent on time and take care of the property. He conceded he asked Mrs. Brown how many people would be living in the apartment with her, but explained that he poses this inquiry to all prospective renters in order to ensure compliance with local housing codes.[3] He contends that after he mentioned having recently evicted a family from the subject apartment, the phone line went dead before he could obtain further information from Mrs. Brown. He denies hanging up and suggests that either Mrs. Brown terminated the call or it was dropped by the phone carrier.

Thus, the first and potentially dispositive inquiry in this case is whether Respondent actually made the claimed statement.

The only evidence directly bearing on this inquiry is the conflicting testimony of Respondent and Mrs. Brown. Against Respondent's consistent and forceful denials that he made any discriminatory statements during the February 12 call, Mrs. Brown perceived that she and her husband were being denied housing because of their status as a family with children. She testified she was angry and upset after the conversation, and her husband confirmed that she burst into tears after the call ended. Shaken, she documented her version of the conversation in a contemporaneous Facebook post, called her father to describe it to him, and, later, recounted it again in a consistent manner in the complaint she filed with HUD. Mr. Brown was so distressed about the incident that he discussed it with a counselor. This evidence supports the Court's conclusion that both Mr. and Mrs. Brown genuinely believed Respondent made a discriminatory statement.

By itself, however genuine, Complainants' subjective perception of discrimination provides only a slender reed upon which to rest a 3604(c) claim. This perception arose entirely from the disputed February 12 phone conversation. All parties agree that the conversation was very brief. Mr. Brown, who heard only his wife's side of the call, was in the background at the time "trying to get the kids under control or get them in the other room so she had some privacy," which "[d]idn't happen." According to the FHA tester who later spoke to Respondent by phone, Respondent's manner of conversing was blunt and abrupt and he was "a little bit rude" at times. The Court's observations at hearing were consistent with the tester's. Respondent, a 77-year-old man, had a curt, direct, and sometimes off-putting way of speaking that could easily be construed as rude or dismissive. Respondent's tone and delivery, the noise and activity in the background on Mrs. Brown's end, and the fact that Respondent mentioned recently evicting a family with children could plausibly have led to a misunderstanding or created an impression of hostile intent where none actually existed. Relying solely on the parties' contradictory testimony, the Court would be hard pressed to conclude that Respondent *more probably* made the claimed discriminatory statement than not.

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[3] Such an inquiry does not violate section 3604(c) of the FHA. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 735 n.9 (1995) (explaining that Congress added to the FHA at the same time as the familial discrimination provision a statutory exemption permitting maximum occupancy restrictions, indicating that "landlords legitimately may refuse to stuff large families into small quarters"); Soules, 967 F.2d at 824 (distinguishing inquiries regarding number of occupants from those regarding race by explaining there is never a legitimate reason for a landlord to ask about a prospective tenant's race).

Similarly, Mrs. Brown and Respondent's competing accounts of the phone conversation fail to establish who terminated the call. Mrs. Brown says that Respondent hung up on her, while Respondent says the line went dead and suggests that either the carrier dropped the call or Mrs. Brown hung up. The Charging Party characterizes Respondent's latter suggestion as "nonsensical," arguing that Mrs. Brown had no reason to terminate the call when she had only just requested to see the apartment. Conversely, however, it would not make sense for Respondent to hang up almost immediately without obtaining any financial information from a prospective tenant when the apartment had been vacant since December 2015, he had lost money on it during the prior tenancy, and he was actively seeking a new tenant. Also, Respondent had thirty years of experience as a rental agent at the time, and asserts he was aware of the nondiscrimination requirements in housing. The Court would not, absent more, expect a landlord with Respondent's experience to rudely hang up on a prospective tenant after making an openly discriminatory statement, thereby inviting an FHA lawsuit. Mrs. Brown stood to lose out on a housing opportunity, but was obviously upset by the tenor of the phone conversation with Respondent. Again, relying solely on Respondent and Mrs. Brown's dueling accounts of their actions and motives, the Court would be reluctant to find that the preponderance of the evidence establishes that Respondent more likely terminated the call than not.

However, the conflicting testimony does not exist in a vacuum. The Charging Party points to several other factors that serve as circumstantial evidence supporting the claim that Respondent disfavored tenants with children and corroborating Mrs. Brown's allegation that he made a discriminatory statement to this effect.

First, the Charging Party argues that Respondent had a strong motive not to rent to families with children because of his recent bad experience with the tenant he had evicted from the subject apartment in December 2015. Respondent counters that he has rented this very unit to other families with children in the past, including a family with a handicapped child that resided in the apartment for ten years and a mother with two school-aged daughters who lived there for several years until the daughters graduated from high school, without experiencing any other problems. The recent eviction was his first. Further, Respondent claims that he did not evict the previous tenants because they had children. His stated grievance against the tenants, as he informed the FHA tester over the phone and later reiterated before this Court at hearing, was that they were "white trash" who did not take care of the property or pay their rent on time.

Despite Respondent's protestations, some of his complaints about the evicted family relate to the family's three children. The children reportedly destroyed a fence on the property, and in Respondent's October 13, 2015, eviction notice, he listed this as one of three items of substantial damage to the property justifying eviction. He also noted that the walls of all the rooms in the unit were marred by nail holes, screw holes, and tape that peeled the plaster off, and one room had a hole in the wall shaped "sort of like a football." Although other factors apparently contributed to Respondent's decision to evict the family, Respondent's testimony indicates that damage caused by the children was part of the problem. It is plausible that this recent experience negatively influenced his attitude toward tenants with children.[4]

[4] The Charging Party further argues that Respondent ultimately rented the subject apartment to two women without children, thus confirming his intent not to rent to families with children. However, Respondent's willingness to rent

Finally, the Charging Party also argues that Respondent made statements during his March 1, 2016, conversation with the FHA test caller that again expressed an impermissible preference for tenants without children.[5] Specifically, Respondent told the test caller: (1) "You sound like the kind of tenant I'm looking for"; and (2) "I'd like a husband or wife or a single person in there [the subject dwelling]." The Charging Party asserts that these statements corroborate that Respondent expressed a similar discriminatory preference during his February 12, 2016, phone conversation with Mrs. Brown.

Respondent "does not dispute in any way" the testimony of the test caller, but challenges the Charging Party's conclusion that he indicated an unlawful preference for tenants without children during the March 1 conversation. (Resp. Br. 6.)

The first statement ("You sound like the kind of tenant I'm looking for") is no "smoking gun," Respondent contends. At hearing, Respondent testified that he makes similar statements to every prospective tenant because he wants to persuade them to visit the property. He explained that although he may have led the caller to believe she was a preferred tenant, "[r]ealistically I didn't know that much about her until I would have met her or whatever." In this context, Respondent rightly argues that, in the abstract, telling one person she is the "kind of tenant" he is looking for does not necessarily establish that the converse would be true for another person with a different familial status. Respondent also correctly notes that the FHA tester who spoke to Respondent was serving as the control subject for the test in which she was participating, as she was instructed to tell Respondent she did not have any children. The true test caller was the person feigning membership in the protected class. Unfortunately, this caller did not make contact with Respondent. Considering the foregoing, it is plausible that Respondent's statement that the test caller "sound[ed] like the kind of tenant [he was] looking for" was mere puffery intended to encourage her to visit the subject property, rather than a product of discriminatory intent.

However, Respondent fails to address the second statement he made to the tester to the effect that he would "like a husband or wife or a single person" in the rental unit. In context, the statement cannot be explained away as puffery. The test caller described the conversation as follows: After discussing the prior tenants who had been evicted and the money they had cost him,

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the unit to tenants *without* children does not necessarily establish that the converse is true, i.e., that he was *un*willing to rent to tenants *with* children. While Respondent's selection of a childless tenant is not inconsistent with the theory that he preferred such tenants, the Charging Party engages in fallacious ex post facto reasoning in relying on an outcome to prove its own cause. The Court accords minimal weight to the Charging Party's argument with regard to Respondent's ultimate tenant selection.

[5] Such statements could stand on their own as separate instances of unlawful discrimination under section 3604(c). See, e.g., Havens Realty Corp. v. Coleman, 455 U.S. 363, 373-75, 378-79 (1982) (recognizing FHA test callers, along with the nonprofit organization that employed them to conduct the testing, as "aggrieved parties" within the meaning of the Act with standing to pursue discrimination claims in their own right, so long as they can allege injury in fact). However, the Charging Party has failed to articulate or pursue any additional claims against Respondent on this ground. The Charging Party argues only that Respondent's statements to the test caller corroborate that he expressed a similar preference to Mrs. Brown.

> [Respondent] explained that he can't sell the place because he'd lose too much in taxes and it wasn't worth it, and then he told me, "You sound like the kind of tenant I'm looking for." Then he said after that, "So, no kids or close relations would take up residence with you?" And I just kind of laughed and said, "No, just the two of us." And he said, "I'd like a husband or wife or a single person in there. It's freshly painted and it's a nice place."

Respondent's statement that he would like a husband, wife, or single person in the unit followed a line of inquiry confirming that "no kids" would be residing in the unit, indicating a contrast between the two types of tenants. Further, the Respondent immediately followed with a statement that the apartment was "freshly painted" and a "nice place," suggesting a link between the two statements: Respondent wanted a husband and wife or a single person to rent the unit because it was in "nice" condition. The natural implication is that a different type of tenant, one with children, would not be expected to maintain the apartment in its current condition. Thus, considered in context, the statement "I'd like a husband or wife or a single person in there" indicated that Respondent preferred not to rent to a family with children who would place him at greater risk of incurring damages similar to those caused by the family he had evicted in December 2015.

This is a close case in which the evidence is not sufficient to wholly dispel reasonable doubt. However, to prevail by the preponderance, the Charging Party need only present evidence sufficient to incline the Court to its side by persuading the Court that the "points in question are more probably so than not." Ortiz v. Principi, 274 F.3d at 1365 (internal quote marks omitted). Considered in context, Respondent's statement to the test caller that he would "like a husband or wife or a single person" in the subject apartment tips the evidentiary scale in favor of a finding that he more probably than not held a discriminatory preference for tenants without children. Respondent does not dispute making this statement and concedes that the test caller accurately summarized their conversation. This conversation, along with Respondent's recent bad experience evicting a family with three children who caused damage to the property, which may have unfavorably disposed him toward tenants with children, supports the Charging Party's allegation that Respondent disfavored tenants with children and corroborates Mrs. Brown's testimony that he told her he was "not interested in renting to anyone with children." On this basis, the Court finds it *more probable* than not that Respondent made the claimed discriminatory statement, in violation of section 3604(c).

II. Respondent refused to negotiate the rental of the subject property.

The Charging Party also claims that Respondent refused to negotiate with Complainants for the rental of the subject apartment because of Complainants' familial status, in violation of 42 U.S.C. § 3604(a).

Section 3604(a) makes it illegal 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 ... familial status." 42 U.S.C. § 3604(a). As discussed above, the Charging Party bears the burden of establishing the alleged discriminatory treatment by

proving that Respondent refused to negotiate the rental of the dwelling and that familial status was a significant factor in Respondent's decision to do so. To establish the latter element, the Charging Party may rely on either direct evidence of discriminatory intent or indirect evidence from which discriminatory intent can be inferred.

Here, the Charging Party contends that direct evidence of discriminatory intent exists in the form of Respondent's discriminatory statement during the February 12, 2016, telephone conversation with Mrs. Brown that he would not rent to any tenants with children. As discussed above, the preponderance of the evidence establishes that Respondent made the claimed statement "I'm not interested in renting to anyone with children." This statement was blatantly discriminatory and conveyed an intent to reject Complainants as tenants because of their children. Further, Mrs. Brown contends that Respondent subsequently terminated the phone call. Given the Court's foregoing conclusion that Respondent made a discriminatory statement and conveyed an intent to reject Complainants, the Court finds it more probable than not that Respondent did, in fact, hang up on Mrs. Brown. Respondent's discriminatory statement, together with his termination of the phone call, foreclosed any negotiations between Respondent and Complainants for the rental of the subject apartment.

The Court finds that Respondent refused to negotiate the rental of the dwelling. The Court further finds that Complainants' familial status was a significant factor motivating Respondent's decision to take this action. For these reasons, Respondent violated section 3604(a) of the FHA.

REMEDY

The Charging Party contends that Complainants are entitled to damages in the amount of $1,820 for out-of-pocket expenses, $15,000 for emotional distress, and $20,000 for lost housing opportunity incurred due to Respondent's discriminatory acts. Additionally, the Charging Party seeks a civil penalty of $16,000 and injunctive relief.

I. Complainants' Damages

Proof of an FHA violation entitles the aggrieved party to actual damages. 42 U.S.C. § 3612(g)(3); Curtis v. Loether, 415 U.S. 189, 195-97 (1974). Such damages may include compensation for quantifiable monetary losses as well as for intangible injuries such as anger, embarrassment, humiliation, and emotional distress. HUD v. Woodard, No. 15-AF-0109-FH-013, 2016 HUD ALJ LEXIS 4, at *3-4 (May 9, 2016); HUD v. Blackwell, No. 04-89-0520-1, 1989 HUD ALJ LEXIS 15, at *44 (Dec. 21, 1989), aff'd sub nom. Sec'y ex rel. Herron v. Blackwell, 908 F.2d 864 (11th Cir. 1990). The goal is to "put the aggrieved person in the same position as he would have been absent the injury, so far as money can." HUD v. Morgan, No. 11-F-090-FH-49, 2012 HUD ALJ LEXIS 30, at *32-33 (Sept. 28, 2012); HUD v. Wooten, No. 05-98-0045-8, 2007 HUD ALJ LEXIS 68, at *4 (Aug. 1, 2007); see also Banai v. Sec'y, 102 F.3d 1203, 1207 n.4 (11th Cir. 1997) (noting that "actual damages" serve as compensation for victim's actual injuries, not punishment for defendant's wrongdoing).

Damages must be proven by the aggrieved party. United States v. Pelzer Realty Co., 537 F.2d 841, 844 (5th Cir. 1976) (affirming lower court's refusal to award damages under FHA where no proof was offered as to actual damages suffered); see also Assoc'd Gen. Contractors v. Cal. State Council of Carpenters, 459 U.S. 519, 532 n.26 (1983) (noting general rule that damages cannot be recovered for "uncertain, conjectural, or speculative losses"). Aside from supporting the amount of damages requested, the aggrieved party must establish that Respondent's prohibited conduct proximately caused any injury for which recovery is sought. Bank of Am. Corp. v. City of Miami, 137 S. Ct. 1296, 1305-06 (2017) (holding that a claim for damages under the FHA is akin to a tort action and is therefore subject to common-law principles of directness). Foreseeability alone is insufficient to establish proximate cause under the FHA. Id. at 1306. Rather, proximate cause requires a showing of "some direct relation between the injury asserted and the injurious conduct alleged." Id. (remanding for lower courts to "define, in the first instance, the contours of proximate cause under the FHA"); see Lexmark Int'l v. Static Control Components, Inc., 134 S. Ct. 1377, 1390 (2014) (stating that proximate cause requires "a sufficiently close connection" and explaining that this "venerable principle reflects the reality that 'the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing'"); Staub v. Proctor Hosp., 562 U.S. 411, 419 (2011) (stating that proximate cause excludes only those links that are "too remote, purely contingent, or indirect").

A. Out-of-Pocket Expenses

The Charging Party seeks out-of-pocket expenses totaling $670 to compensate Complainants for the time they spent participating in this discrimination proceeding. Such time is compensable under the FHA. See, e.g., Woodard, 2016 HUD ALJ LEXIS 4, at *8-9 (awarding expenses for trial preparation at rate based on complainant's hourly wage). Here, the Charging Party requests compensation for 29 hours Mrs. Brown spent preparing for the hearing, 18 hours Mr. Brown spent preparing for the hearing, and 8 hours Mr. Brown spent traveling to and attending the hearing, all at a rate of $10 per hour, which represents both Complainants' hourly wages during the relevant time periods. Because Mrs. Brown's hourly wage had increased to $15 by the hearing date, the Charging Party requests compensation at that higher rate for the 8 hours she spent traveling to and attending the hearing. Respondent does not challenge the method of computation. The Court finds that Complainants are entitled to the amount requested.

The Charging Party also seeks $1,150 in compensation for out-of-pocket expenses incurred by Complainants in searching for housing after they were denied the rental of Respondent's apartment due to his refusal to negotiate with them. Housing search expenses are compensable under the FHA if attributable to a respondent's discriminatory denial of housing. See, e.g., HUD v. Gruen, No. 05-99-1375-8, 2003 HUD ALJ LEXIS 40, at *16 (Feb. 27, 2003) (awarding compensation for time lost searching for housing after being denied rental of apartment due to familial status); HUD v. Colber, No. 05-93-0510-1, 1995 HUD ALJ LEXIS 49, at *10 (Feb. 9, 1995) (awarding compensation for cost of hiring babysitter during housing search).

Complainants contend they continued searching but found no suitable alternate housing for about nine months after Mrs. Brown's February 12, 2016 phone call with Respondent. Complainants had previously decided to seek alternate housing for several reasons, including

their desire for a larger living space, their concerns about safety in the mobile home park where they were residing, and the fact that Mr. Brown had recently undergone emergency abdominal surgery, limiting his ability to perform necessary upkeep of the mobile home. Initially, they hoped to move into a rental apartment and rent out their mobile home to someone else. Ultimately, however, they decided to list the mobile home for sale in August 2016. They signed a contract with a buyer on November 10, 2016. Eleven days later, on November 21, 2016, they signed a month-to-month lease for an apartment elsewhere in Keene, on Woodburn Street. They moved into this apartment in January 2017 after closing on the sale of their mobile home.

Mrs. Brown testified that between February and November 2016, she spent about six hours each month looking for housing online and about 25 hours visiting rental units and homes for sale. Thus, she spent approximately 80 hours on the housing search. She compiled a list of homes she visited and submitted copies of emails supporting this time estimate. The Charging Party also estimates that Mr. Brown expended 25 hours on the housing search. Despite these efforts, Complainants were unable to find available alternate housing that was comparable to the apartment denied them by Respondent.[6] The Charging Party requests compensation for the Browns' time spent on the housing search at a rate of $10 per hour. The Charging Party also requests $100 for incidental child care expenses based on Mrs. Brown's testimony that she hired a babysitter on four or five occasions while she and Mr. Brown were viewing prospective homes.

Respondent, however, has raised arguments implying that his failure to negotiate the rental of the subject apartment with Complainants could not have caused any actual loss because they were not yet genuinely seeking alternate housing at the time the discrimination occurred. He points to several factors purportedly showing that the housing search amounted to nothing more than "tire kicking" and "window shopping" until Complainants sold their mobile home.

First, Respondent argues that, regardless of whether suitable alternate housing was available, Complainants were barred by the mobile home park's bylaws from renting their home to someone else. However, Complainants testified that the park does, in fact, allow rentals with the permission of the park board. Both Mr. and Mrs. Brown said they identified two potential tenants who were interested in renting from them and contacted the park president, who encouraged them to attend a board meeting to take the next steps, but Mrs. Brown explained they did not pursue the matter because they had not yet secured alternate housing. Instead, Complainants eventually decided to list the mobile home for sale because they "kind of felt stuck" in their housing situation and realized that selling could provide "more opportunity to buy, even though that's not what [they] had wanted" initially. (Tr. 45.) The Court credits the Browns' testimony.

Respondent also suggests that the coincidence in time between the date Complainants signed the contract to sell their home and the date they signed the lease for the Woodburn Street apartment shows they were not genuinely seeking alternate housing until they sold the mobile home. However, the Woodburn Street apartment was not ideal, as it was outside of

[6] At hearing, Mrs. Brown ran through the list of prospective homes she visited and explained why each was unsuitable. For example, some of the homes were in disrepair or located in an unsafe neighborhood, some were for sale and under contract before Complainants could act on them, and some were available only to college students or families with a lower income than Complainants. Her detailed, credible testimony supports the Court's finding that Complainants were unable to find suitable alternate housing during the time periods for which damages are claimed.

Complainants' daughter's elementary school district and did not include all the amenities they were seeking, such as a garage. Complainants signed a temporary month-to-month lease, continued searching for replacement housing, and entered a purchase and sales agreement for an ideally suited home elsewhere in Keene in April 2017. This scenario is entirely consistent with their assertions that they decided to sell the mobile home to increase their purchasing power after experiencing difficulty finding suitable rental housing, and obtained temporary, suboptimal alternate housing only out of necessity once they knew they would be selling the mobile home.

The Court finds that Complainants engaged in a genuine housing search after Respondent denied them the rental of his apartment in February 2016, but were unable to find suitable alternate housing until April 2017. Respondent's discriminatory refusal to negotiate foreseeably and directly caused Complainants' difficult nine-month housing search, and their resultant out-of-pocket expenses of $1,150 are compensable.

B. Emotional Distress

The Charging Party requests emotional distress damages in the amount of $5,000 each for Mrs. Brown, Mr. Brown, and their eight-year-old daughter, for a total requested award of $15,000.

Courts have long recognized "the indignity inherent in being on the receiving end of housing discrimination." Wooten, 2007 HUD ALJ LEXIS 68, at *8. Accordingly, damages are available under the FHA for emotional distress which arises as a consequence of a respondent's discriminatory acts and which "exceeds the normal transient and trivial aggravation attendant to securing suitable housing." Morgan v. HUD, 985 F.2d 1451, 1459 (10th Cir. 1993) (citing Steele v. Title Realty Co., 478 F.2d 380, 384 (10th Cir. 1973)).

Key factors in determining emotional distress damages include the egregiousness of the respondent's behavior and the aggrieved party's reaction to the discriminatory conduct. HUD v. Parker, No. 10-E-170-FH-19, 2011 HUD ALJ LEXIS 15, at *19 (Oct. 27, 2011). Subject to those two factors, Administrative Law Judges are afforded broad discretion in determining damages. HUD v. Sams, No. 03-92-0245-1, 1994 HUD ALJ LEXIS 74, at *25 (Mar. 11, 1994), aff'd per curiam, No. 94-1695, 1996 U.S. App. LEXIS 449 (4th Cir. Jan. 16, 1996); see Wooten, 2007 HUD ALJ LEXIS 68, at *9 (describing awards ranging from $150 for complainant who suffered threshold level of cognizable harm to $175,000 at the upper end of the spectrum).

Damages for emotional distress may be based on testimonial proof or on inferences drawn from the circumstances surrounding the discrimination. Woodard, 2016 HUD ALJ LEXIS 4, at *4; Blackwell, 1989 HUD ALJ LEXIS 15, at *44. The "more inherently degrading or humiliating the [unlawful] action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action." United States v. Balistrieri, 981 F.2d 916, 932 (7th Cir. 1992). For example, this Court recently found that a landlord had engaged in egregious conduct in refusing to rent to a complainant with a mental illness when the landlord had blocked the complainant's entry to the apartment the day she arrived to move in, notified her without warning that he would no longer rent to her because of her mental illness, and directed

discriminatory statements toward her in front of her family and prospective roommate. Woodard, 2016 HUD ALJ LEXIS 4, at *10-11.

In this case, Respondent's discriminatory acts were not, by themselves, so shocking, insulting, or inherently degrading and humiliating as to support an inference that Complainants sustained $15,000 worth of emotional damage. The acts consist entirely of a 30- to 60-second phone call during which Respondent told Mrs. Brown he had just evicted a family with three children and was not interested in renting to anyone else with children, then hung up. Respondent's conduct was rude, unlawful, and upsetting to Mrs. Brown, but not so egregious as to raise an inference that it would inflict more than nominal emotional harm. Cf. HUD v. Collier, No. 16-AF-0127-FH-011, slip op. at 9-10 & n.7 (HUD ALJ Aug. 15, 2017) (rejecting suggestion that any FHA violation that causes emotional distress is *per se* egregious and reducing emotional distress damages in part based on lack of egregiousness when discriminatory conduct consisted solely of three-minute phone conversation in which respondent stated she would not rent to families with children). Thus, Complainants' ability to recover emotional distress damages in this case turns on the strength of their testimony demonstrating the actual emotional injuries they sustained.

Mrs. Brown testified she was angry and upset immediately after the phone call with Respondent. Her husband noted that she began to cry as soon as the phone conversation ended. She then called her father and posted to Facebook because she was "still pretty upset, like I can't believe this just happened." (Tr. 34.) She continued to feel angry and upset during the ensuing nine-month housing search, which she described as a discouraging process that increased her anxiety and stress and took a toll on her weight, her ability to sleep, and her relationship with her husband. She worried continuously about her family's safety in the mobile home park and whether they would ever find suitable alternative housing. While they were still living in the mobile home and searching for alternate housing, the neighbor behind them was indicted on drug charges, and someone broke into Mr. Brown's car that was parked in the neighborhood and stole his handgun. Complainants also had to obtain a no trespassing order in June 2016 against a neighbor who was lurking on their property and looking through their daughter's bedroom window. In addition to these safety concerns, Mrs. Brown noted that the furnace stopped working at one point during a cold snap, and meanwhile, her husband, who is a wounded war veteran with severe PTSD, was unable to mow the lawn or shovel snow because he was still recovering from abdominal surgery.

The Court finds that Respondent's discriminatory refusal to negotiate with Complainants and their resultant lengthy housing search caused emotional distress and inconvenience to Mrs. Brown and exacerbated her anxiety stemming from the family's less than optimal housing situation. Although the Charging Party has not presented evidence to support a specific numeric award, emotional injuries are by nature difficult to quantify and courts may award compensation for such injuries without requiring proof of the exact dollar value. See Woodard, 2016 HUD ALJ LEXIS 4, at *4; Blackwell, 1989 HUD ALJ LEXIS 15, at *44-45 (citing Block v. R.H. Macy & Co., Inc., 712 F.2d 1241, 1245 (8th Cir. 1983) and Marable v. Walker, 704 F.2d 1219, 1220-21 (11th Cir. 1983)). Based on Mrs. Brown's testimony, the Court will award compensation in the amount of $5,000 for her emotional distress and inconvenience.

Both Mr. and Mrs. Brown testified that Mr. Brown was also angry and upset when his wife told him what Respondent had said on the phone. "He felt like he didn't go through hell in Afghanistan to be denied housing," Mrs. Brown explained, "and he kind of carried that anger with him for quite a while." (Tr. 32.) Mr. Brown confirmed that he "felt that I didn't go through hell overseas for nothing" and was so distressed that he spoke to his counselor at the veterans' center about the incident. (Tr. 100.) He also noted he was taking classes at the time the discrimination occurred, and he found it frustrating to deal with school, work, his medical issues and PTSD, and the housing search and problems with the family's housing situation all at the same time. He indicated he was often short-tempered and took it out on his family members.

The Court finds that the Charging Party has adequately established that Mr. Brown suffered emotional distress in the form of anger and frustration due to Respondent's discriminatory conduct. The discrimination also exacerbated Mr. Brown's preexisting PTSD. Respondent can be held liable for exacerbation of an existing sensitivity. See HUD v. Godlewski, No. 07-034-FH, 2007 HUD ALJ LEXIS 67, at *12-13 (Dec. 21, 2007) (stating that FHA respondents "must take their victims as they find them"); Woodard, 2016 HUD ALJ LEXIS 4, at *11-14 (stating that complainant was "far more susceptible to emotional harm than most others would be" because she already suffered from anxiety and depression and awarding $20,000 in emotional distress damages in part because respondent's conduct triggered complainant's preexisting proclivity for anxiety attacks and increased her high-risk behaviors). The Court finds an award of $5,000 appropriate for Mr. Brown's emotional distress in the form of anger, frustration, and exacerbation of his PTSD due to learning of the discriminatory statement and being stuck in an undesirable housing situation.

Turning to the Charging Party's claim of emotional distress on behalf of Mr. and Mrs. Brown's eight-year-old daughter, Mrs. Brown testified her daughter was "confused" after the incident of discrimination and "went the way of the family rhythm" in that she was alternately discouraged and excited throughout the housing search. (Tr. 49.) She was anxious about the possibility that she might need to switch schools, according to Mrs. Brown. Also, her parents did not let her play outside the mobile home often during the summer of 2016 because they were concerned about crime in the neighborhood. Mrs. Brown asserts this was "really hard on her [the daughter], because she loves to be outside." (Tr. 50.)

When offering testimony to support a claim of emotional distress, a plaintiff must sufficiently articulate demonstrable emotional distress without relying merely on conclusory statements. Biggs v. Village of Dupo, 892 F.2d 1298, 1304 (7th Cir. 1990); Matarese v. Archstone Pentagon City, 795 F. Supp. 2d 402, 445 (E.D. Va. 2011) (citing Bryant v. Aiken Reg'l Med. Ctrs. Inc., 333 F.3d 536, 546 (4th Cir. 2003)); Collier, slip op. at 7-8. The evidence that the Browns' daughter endured emotional distress is scant and somewhat conclusory. Although the evidence indicates Respondent's discriminatory conduct indirectly caused some degree of emotional upset to the daughter, the Charging Party has not established she suffered the same level of distress as her parents. Cf. Wooten, 2007 HUD ALJ LEXIS 68, at *12 (reducing emotional distress awards for five-year-old and nine-year-old because they did not directly hear respondent's discriminatory statements and were "too young to really understand what was going on"). Accordingly, the Court awards $500 for her emotional distress.

C. Lost Housing Opportunity

The Charging Party contends that Complainants are entitled to damages for lost housing opportunity based on the inferior quality of the homes they lived in following the illegal discrimination, as compared to the better-suited rental unit that was denied them by Respondent. The subject apartment's superior attributes included a garage and storage space, a fenced-in backyard, new appliances, snow removal and lawn mowing services, and its location in a safe, family-friendly neighborhood within Complainants' daughter's elementary school district, in close proximity to a park and walking trails. Because Respondent denied this rental opportunity to Complainants in February 2016, they remained in their less suitable mobile home until January 2017, and then moved to an apartment that lacked a garage and was in a different school district. For these reasons, the Charging Party asserts that damages are appropriate in the amount of $5,000 for each family member to compensate them for missing out on an ideal housing opportunity, for a total award of $20,000 in lost opportunity costs.

Respondent asserts that this figure "borders on the outrageous." As discussed above, Respondent takes the position that Complainants were not genuinely searching for alternate housing until after they sold their mobile home, at which point they quickly obtained alternate housing; therefore, Respondent contends no damages should be awarded for any loss of housing opportunity. Respondent argues it is not his fault Complainants were "literally stuck in a bad situation" until the mobile home sold.

The Court has already rejected Respondent's contention that Complainants were not engaged in a genuine housing search before they sold their mobile home. Respondent withheld a housing opportunity from Complainants because of their familial status, and he is therefore liable for any resultant actual damages stemming from the lost opportunity. However, the Charging Party has not established a basis to award $5,000 to each Complainant for lost housing opportunity on top of the other compensatory damages already awarded.

Loss of housing opportunity may stand alone as a separate compensable injury in some cases. For example, this Court recently awarded $5,000 for lost housing opportunity separately from and in addition to a $20,000 emotional distress award. Woodard, 2016 HUD ALJ LEXIS 4, at *5-8 (also awarding compensation for commuting costs and hearing preparation). But in that case, unlike in the instant case, the emotional harm and lost opportunity costs were distinguishable. The complainant suffered emotional injury in the form of panic attacks, weight gain, exacerbation of preexisting anxiety and depression, and deterioration of her self-esteem and her friendship with a former roommate after respondent barred her from the premises on the day she was to move into her new apartment and made disparaging remarks about her mental disabilities in front of her family and roommate. Id. at *9-15. Quite apart from her emotional reaction to the respondent's distressing remarks, the complainant was inconvenienced by the loss of an opportunity to live in an ideally located home that featured a porch where she could smoke, artwork she admired, and a yard where she could pursue two hobbies she particularly enjoyed, gardening and canning. Id. at *5-7. Thus, Woodard involved proof of two distinct harms.[7]

[7] See also United States v. Hylton, 944 F. Supp. 2d 176, 195-97 (D. Conn. 2013) (awarding separate damages for lost housing opportunity based on extensive expert testimony establishing better "life chances" in neighborhood where housing was denied), aff'd, 590 F.App'x 13 (2d Cir. 2014); HUD v. Welch, No. 10-96-0007-8, 1996 HUD ALJ LEXIS 58, at *19-22 (Dec. 2, 1996) (awarding $500 for lost housing opportunity, alone, after rejecting other

By contrast, in this case, the Charging Party has failed to distinguish the harm caused by lost housing opportunity from the harms the Court has already considered and addressed. To the extent the Charging Party is seeking compensation for any tangible economic losses attributable to Complainants' inconvenience at being denied an ideal housing opportunity and being forced to remain in less suitable housing, Complainants have already recovered out-of-pocket housing search costs to compensate them for their inconvenience. The Charging Party has failed to produce evidence of other tangible losses. Complainants may have even saved money by staying in their mobile home rather than renting Respondent's apartment, as they would have been paying $975 in rent each month while still owning mobile home.

To the extent the Charging Party is seeking compensation for intangible injuries, the evidence adduced to prove the harm consists of testimony regarding the ideal nature of the lost housing opportunity and the inconvenience and distress Complainants endured at being stuck in a less safe neighborhood without amenities such as a garage, fenced-in yard, and snow removal and lawn mowing services. However, the Court already accounted for these factors when evaluating Complainants' emotional distress, supra. The Court's emotional distress award is intended to compensate Complainants for their unhappiness, frustration, anxiety, and inconvenience arising out of the discriminatory denial of housing. The Charging Party has failed to allege or prove a distinct and additional harm arising from the lost housing opportunity.

Judges have declined to award damages for lost housing opportunity when the charging party fails to distinguish the harm from the complainant's other intangible injuries. See HUD v. Riverbay Corp., No. 02-93-0320-1, 1994 HUD ALJ LEXIS 71, at *33 n.19 (Sept. 8, 1994) (rejecting claim for lost housing opportunity and inconvenience damages where charging party failed to distinguish them from general emotional distress damages); HUD v. Elroy R. & Dorothy Burns Trust, No. 09-92-1622-1, 1994 HUD ALJ LEXIS 68, at *41 n.19 (June 17, 1994) ("Damages for 'inconvenience' and 'lost housing opportunity' are awarded as compensation for intangible losses resulting from the stress associated with finding new housing, litigation, and the loss of more desirable housing. Because these damages are intangible, I consider them together with the other claimed damages for emotional distress."), modified on other grounds, 1995 HUD ALJ LEXIS 41 (Jan. 17, 1995); HUD v. Edelstein, No. 05-90-0821-1, 1991 HUD ALJ LEXIS 88, at *24-25 (Dec. 9, 1991) (rejecting claim for lost housing opportunity when complainant failed to show she suffered damages separate from those already compensated, which included

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damage claims on credibility grounds); Colber, 1995 HUD ALJ LEXIS 49, at *10-14 (awarding $6,000 for emotional distress and $500 for lost housing opportunity and inconvenience); HUD v. French, No. 09-93-1710-8, 1995 HUD ALJ LEXIS 38, at *36-42 (Sept. 12, 1995) (awarding $500 for "emotional distress, embarrassment, and humiliation" and $5,000 for lost housing opportunity). The Court also notes that, although these cases yielded stand-alone awards for lost housing opportunity, it appears that Administrative Law Judge decisions have more frequently awarded such damages as part of a lump sum that also includes emotional distress damages. This includes most of the decisions cited in the Charging Party's brief to support its claim for a separate award. See HUD v. Krueger, No. 05-93-0196-1, 1996 HUD ALJ LEXIS 62, at *42-45 (June 7, 1996) (awarding lump sum of $22,000 for emotional distress and lost housing opportunity, which ALJ characterized as inconvenience), aff'd sub nom. Krueger v. Cuomo, 115 F.3d 487 (7th Cir. 1997); HUD v. Kogut, No. 09-93-1245-1, 1995 HUD ALJ LEXIS 52, at *45-49 (Apr. 17, 1995) (awarding lump sum of $25,000 for emotional distress, lost housing opportunity, and physical harm despite Charging Party's request for separate, higher amounts); HUD v. Ineichen, No. 05-93-0143-1, 1995 HUD ALJ LEXIS 48, at *19-23 (Apr. 4, 1995) (substantially similar case); Sams, 1994 HUD ALJ LEXIS 74, at *25 (stating that emotional injury is "[e]ntirely separate from the intangible difference in [housing] value" that underpins lost housing opportunity costs, but nonetheless awarding single lump sum for all "actual intangible damages").

higher cost of alternate housing and cost and inconvenience of living farther from work); HUD v. Denton, No. 05-90-0012-1, 1991 HUD ALJ LEXIS 89, at *34 n.24 (Nov. 12, 1991) (refusing to make separate award for lost housing opportunity where charging party failed to clarify whether damages were sought "for economic loss, loss of civil rights or any other loss not included in the damage claim for inconvenience or emotional distress"); see also Morgan, 985 F.2d at 1459 (reversing separate award for inconvenience in part because it was duplicative of economic damages already awarded).

Moreover, Supreme Court precedent indicates that additional damages should not be awarded based solely on loss of a right, as an abstract matter, if the court is otherwise fully authorized to compensate the aggrieved party for both monetary and nonmonetary harms. See Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299 (1986); Carey v. Piphus, 435 U.S. 247 (1978). Applying this precedent to an FHA discrimination case, the Sixth Circuit reversed an ALJ's award of $2,500 in compensatory damages for denial of the complainant's right to choose where to live in Baumgardner v. Sec'y ex rel. Holley, 960 F.2d 572, 581-83 (6th Cir. 1992). The Sixth Circuit noted that the ALJ had already awarded two other types of compensatory damages, economic losses (including inconvenience) and emotional distress damages, and explained that the Supreme Court disfavors the award of additional damages solely to vindicate a civil right. Id. at 581-82 (citing Stachura and Carey v. Piphus). The Sixth Circuit then found the ALJ's $2,500 award to be an "unwarranted, subjective, additional assessment" that exceeded the proper measure of compensatory damages proven by the complainant and already awarded by the judge. Id. at 583. The judge in question subsequently interpreted Baumgardner as precluding anything more than a nominal award for lost housing opportunity where the harm alleged was duplicative of other claimed damages, reasoning that, in such cases, the award is made purely to vindicate a lost right. See HUD v. Bangs, No. 05-90-0293-1, 1993 HUD ALJ LEXIS 91, at *38-40 (Jan. 5, 1993).

Thus, although an award of damages for lost housing opportunity may be appropriate in some cases, such as those where the resultant harm is distinct from the other harms alleged such that the aggrieved party cannot be made whole otherwise, Baumgardner and the Supreme Court precedent cited therein counsel against making a separate award for the lost opportunity in the abstract. Here, the Charging Party seeks a substantial intangible damage award purely to vindicate the loss of a right. However, Complainants have already been awarded other compensatory damages, including emotional distress damages, that fully account for their intangible dignitary interests.[8] Because the claimed harm arising out of the lost housing opportunity overlaps with Complainants' emotional injuries, awarding $5,000 to each member of Complainants' family for lost housing opportunity would provide a windfall and would be

[8] The Charging Party has requested a lost housing opportunity award for Complainants' infant son, for whom emotional distress damages were not claimed, but has failed to produce even a scintilla of evidence to sustain a finding that he suffered any actual loss, harm, or inconvenience other than indirectly via the harms to his parents that have already been compensated. To justify an award of actual damages, the Charging Party bears the burden of establishing, by superior evidentiary weight, both that an actual injury more probably than not occurred and that there is a direct relation between the discrimination and the injury. See Bank of Am. Corp. v. City of Miami, 137 S. Ct. at 1305-06 (discussing directness requirement and concept of proximate causation); Santosky v. Kramer, 455 U.S. at 754-56 (discussing preponderance of the evidence standard). Because the Charging Party has failed to meet its burden of proof, the Court declines to award lost housing opportunity damages to Complainants' infant son without further analysis.

duplicative of the damages already recovered. Accordingly, the Court finds that Complainants are not entitled to a separate award of damages for lost housing opportunity in this case.

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 Respondent in an amount not to exceed:

> $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(a)(1) (2015).

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).

i. Previous Unlawful Housing Discrimination

Although Respondent had thirty years of experience as a rental agent and real estate broker at the time of hearing, no evidence was presented that he had committed prior discriminatory housing practices. The Charging Party concedes there is no evidence he has ever previously been adjudged to have committed any such practice. The Court considers Respondent's lack of violation history to be a mitigating factor in the penalty calculation.

ii. Respondent's Financial Resources

Respondent bears the burden of producing evidence of his financial resources, as such information is peculiarly within his knowledge. Woodard, 2016 HUD ALJ LEXIS 4, at *16; Godlewski, 2007 HUD ALJ LEXIS 67, at *26. A civil penalty may be imposed without consideration of his financial situation if he fails to produce mitigating evidence in this regard. Woodard, 2016 HUD ALJ LEXIS 4, at *16 (citing Campbell v. United States, 365 U.S. 85, 96 (1961)).

Respondent has presented no evidence pertaining to his financial resources, nor does he argue that imposition of the Secretary's proposed civil penalty would result in financial hardship. Thus, Respondent's financial circumstances do not constrain the Court's determination of the appropriate penalty amount. See id. at *16-17; HUD v. Schmid, No. 02-98-0276-8, 1999 HUD ALJ LEXIS 5, at *31-32 (July 15, 1999).

iii. Nature and Circumstances of the Violation

The violations occurred during a telephone conversation that, by all accounts, lasted just 30 to 60 seconds. As discussed above, Respondent's conduct was not particularly shocking or outrageous. However, it was rude, upsetting, and unlawful.

iv. Respondent's Degree of Culpability

Respondent was the person who made the discriminatory statement to Mrs. Brown. He admits he was responsible for managing all aspects of the rental of the subject property. As a licensed real estate broker with thirty years of experience, Respondent should have been well aware that the FHA prohibits discrimination on the basis of familial status and should have known that his actions in stating "I'm not interested in renting to anyone with children" and in refusing to negotiate the rental of the subject apartment on the basis of Complainants' familial status violated the FHA. The Court finds Respondent to be fully culpable for his acts of discrimination, warranting the imposition of a penalty.

v. Deterrence

The Charging Party asserts that the Court should assess the maximum $16,000 penalty against Respondent to send a message to housing providers that discrimination against children will not be tolerated. The Court agrees that an award of a civil penalty is appropriate both as a deterrent to Respondent and to put those similarly situated to Respondent on notice that violations of the FHA will not be tolerated.

However, a $16,000 penalty is excessive. As this Court has previously stated, maximum penalties should be reserved for only the most egregious cases. Wooten, 2007 HUD ALJ LEXIS 68, at *16 (characterizing the "most egregious cases" as those "where willful conduct causes grievous harm, that is, where all factors argue for the maximum penalty"). For example, judges have awarded the maximum penalty in cases involving retaliation, particularly shocking or mean-spirited conduct on the respondent's part, or a lasting and severe emotional impact on the complainant. See Woodard, 2016 HUD ALJ LEXIS 4, at *17-19 (respondent physically barred complainant's entry to apartment at last minute, made disparaging statements in front of complainant's family and roommate, and further exhibited dismissive attitude by refusing to participate in proceedings before ALJ); HUD v. Hope, No. 04-99-3640-8, 2002 HUD ALJ LEXIS 38, at *25-27 (May 8, 2002) (respondent threatened complainant with vicious dogs); HUD v. Krueger, No. 05-93-0196-1, 1996 HUD ALJ LEXIS 62, at *46-47 (June 7, 1996) (respondent "used his position as a housing provider to prey upon [complainant] for his own sexual gratification" and retaliated against her for complaining about it), aff'd sub nom. Krueger v. Cuomo, 115 F.3d 487 (7th Cir. 1997); HUD v. Simpson, No. 04-92-0708-8, 1994 HUD ALJ LEXIS 61, at *50-51 (Sept. 9, 1994) (respondents engaged in "deliberate and premeditated campaign of discrimination that went on for over two years" because they did not want Hispanic complainants as neighbors); HUD v. Lashley, No. 04-90-0766-1, 1992 HUD ALJ LEXIS 70, at *14-16 (Dec. 7, 1992) (respondents placed bomb under complainants' home, subjecting them to "intense public scrutiny" and "tremendous emotional distress which may never cease to affect them").

The instant case does not fall within the same category as the cases described above. Respondent is a 77-year-old man with no history of fair housing violations who manages a three-unit rental property which, according to his remarks to the fair housing test caller in March 2016, he could not sell because he would lose too much money in taxes. The Court has already adjudged Respondent liable for $12,320 in damages. If Respondent were, for example, a large commercial realtor, imposition of the maximum civil penalty on top of damages might be necessary to ensure a deterrent impact would be felt. Cf. HUD v. Pheasant Ridge Assocs. Ltd., No. 05-94-0845-8, 1996 HUD ALJ LEXIS 63, at *64 (Oct. 25, 1996) (awarding maximum penalty in part because respondent was "large land holding" with "large sums of money" and court wanted to ensure penalty would "make[] a significant dent in their resources"); see also Morgan, 2012 HUD ALJ LEXIS 30, at *52-53 ("The Court cannot explain why the Charging Party believes that an $8,000 assessment would be appropriate against an 88-year-old Respondent with responsibility over three rental properties, while an assessment of $5,000 was appropriate [in another recent case] for the general manager of a cooperative with 60,000 residents."). But as the case stands, the Court believes Respondent and other similarly situated housing providers will be sufficiently deterred by imposition of a civil penalty that is less than the maximum amount.

vi. Other Factors as Justice Requires

The parties have not identified any other factors for consideration in the penalty determination. For all the reasons discussed above, the Court concludes that a $4,000 penalty is appropriate to vindicate the public interest in this case.

III. Injunctive Relief

The Charging Party requests that the Court issue an order compelling Respondent to undergo fair housing training and an order enjoining Respondent from future acts of discrimination. Respondent does not challenge this request.

The FHA authorizes the Court to award "injunctive or other equitable relief" as may be appropriate. 42 U.S.C. § 3612(g)(3). The purposes of injunctive relief include eliminating the effects of past discrimination and preventing future discrimination. Gruen, 2003 HUD ALJ LEXIS 40, at *22-23 (citing Park View Heights Corp. v. City of Black Jack, 605 F.2d 1033, 1036 (8th Cir. 1979), cert. denied, 445 U.S. 905 (1979), and Moore v. Townsend, 525 F.2d 482, 485 (7th Cir. 1975)). The Charging Party's request for an order compelling Respondent to undergo fair housing training is granted. Because Respondent's behavior was not particularly egregious, because he has no history of FHA violations or discriminatory housing practices, and because he will be required to undergo fair housing training to prevent future violations, the Court declines to issue an injunction regarding future acts of discrimination.

ORDER

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

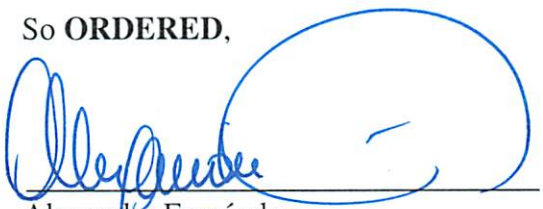
1. Respondent has violated 42 U.S.C. § 3604(a) and (c).

2. Within thirty (30) days of the date on which this Order becomes final, Respondent shall pay to Complaints the total sum of $12,320 in damages.

3. Within thirty (30) days of the date on which this Order becomes final, Respondent shall pay to the Secretary of HUD the total sum of $4,000 in civil money penalties.

4. Within one (1) year of the date on which this Order becomes final, Respondent shall undergo fair housing training.

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. This *Initial Decision* 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.