

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:

LAWRENCE J. CHRUM and his minor children,

Complainants,

v.

FELDER PETER KING ESTATE OF WARD PROTECTEE,
DANIEL J. FELDER as Co-Guardian and Conservator of the
Felder Peter King Estate of Ward Protectee,
ANDREA WILLIAMS as Co-Guardian and Conservator of the
Felder Peter King Estate of Ward Protectee, and
ERIC FELDER,

Respondents.

21-AF-0247-FH-029

December 9, 2022

Appearances

Heather Ousley, Attorney
Nicholas Draper, Attorney
United States Department of Housing and Urban Development, Washington, DC
For Charging Party

Eric Felder, *pro se*

BEFORE: Alexander FERNÁNDEZ-PONS, Deputy Chief Administrative Law Judge

INITIAL DECISION AND ORDER

On August 30, 2021, the United States Department of Housing and Urban Development (the “Charging Party”) filed a *Charge of Discrimination* against the Felder Peter King Estate of Ward Protectee (“Estate”), Daniel J. Felder and Andrea Williams as co-guardians and conservators of Respondent Estate, and Eric Felder (collectively, “Respondents”) on behalf of Lawrence Chrum (“Complainant”) and two of his minor children. The *Charge* alleged that (1) Respondents Eric Felder and Estate refused to rent to Complainant because of his familial status; (2) Respondents Eric Felder and Estate discriminated in the terms, conditions, or privileges of rental of a dwelling against Complainant because of his familial status; and (3) Respondent Eric

Felder made discriminatory statements relating to Complainant's familial status on behalf of Respondent Estate by refusing to rent an apartment to Complainant based on Complainant's familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* ("the Act").

On September 22, 2021, this Court issued a *Notice of Hearing and Order* setting several procedural deadlines, including that Respondents file an answer to the *Charge* by October 1, 2021. On October 13, 2021, Respondent Eric Felder filed an answer to the *Charge* on behalf of all Respondents.

On January 28, 2022, Charging Party moved for summary judgment, and on February 16, 2022, Respondent Eric Felder filed a response to the *Motion for Summary Judgment*. On March 1, 2022, the Court issued an order granting partial summary judgment in favor of the Charging Party, finding that Respondents Eric Felder and Estate had violated sections 804(a) and (c) of the Act, and set the remaining issues for hearing.

On July 11, 2022, a hearing was held via videoconference regarding the remaining issues, namely: (1) whether Respondents Daniel Felder and Andrea Williams were co-guardians and conservators of Respondent Estate; (2) if so, whether as co-guardians and conservators of Respondent Estate they were liable for the discriminatory conduct; (3) whether any Respondent had violated section 804(b); and (4) what relief should be adjudged as a result of the charged violation(s) for which Respondents are found liable. Testimony was received from Complainant, witness Bonnie Lincoln on behalf of a disabled tenant of the unit below the Subject Property, witness Scott Shipman as County Assessor of St. Charles County where the Subject Property was located, and Respondent Eric Felder.

On August 3, 2022, the Court issued a *Post-Hearing Order* requiring the submission of post-hearing briefs by September 7, 2022, which were timely filed by the Charging Party and Respondent Eric Felder.¹ Response briefs were to be filed, if any, by October 5, 2022, neither party filed a reply brief.² Accordingly, this matter is ripe for initial decision.³

¹ In Respondent Eric Felder's post-hearing brief, he raises a number of untimely and immaterial evidentiary objections. These were (1) waived by not being raised at hearing, (2) already ruled upon at the hearing, or (3) constitute untimely challenges to the rulings in the *Order Granting Partial Summary Judgment*. See also 24 C.F.R. § 180.645(c) ("The authenticity of all documents submitted or exchanged as proposed exhibits prior to the hearing shall be admitted unless written objection is filed before the commencement of the hearing, or unless good cause is shown for failing to file such a written objection."). As Respondent Eric Felder has not shown good cause as to why he did not or could not file such a written objection prior to the hearing (and did not raise them at the hearing), the Court shall not entertain them now.

² Respondent submitted, via regular mail, a second version of his initial post-hearing brief attaching GOV. Ex. 1, text messages along with Respondent's handwritten commentary, and what Respondent titles "Larry's Affidavit." The Court does not deem this a reply brief but rather a supplemental post-hearing brief. Because it is filed outside of the due date and Respondent did not seek leave to file his supplemental post-hearing brief, it is stricken.

³ The *Order Granting Partial Summary Judgment* contained findings of facts. This initial decision and damages assessment is based on those facts and others as specifically referenced in this Initial Decision.

LEGAL PRINCIPLES

Section 803(b) Exemption. The “Mrs. Murphy” exemption is an affirmative defense, which states nothing in section 804 of the Act (other than subsection (c)) shall apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies such living quarters as his residence.⁴ 42 U.S.C. § 3603(b)(2). Thus, where applicable, the exemption excuses a covered owner-occupant from the anti-discrimination requirements of subsections 804(a) and (b). See, e.g., HUD v Graham, 2020 HUD ALJ LEXIS 8, at *5-6 (HUDOHA Feb. 5, 2020) (Order on Secretarial Review).

Section 804(b) of the Act. As relevant here, section 804(b) of the Act makes it unlawful for a person “[t]o discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status.” 42 U.S.C. § 3604(b). Violations under section 804(b) include using different provisions in leases, failing to make or delaying maintenance or repairs, failing to process an offer for rental or communicate that offer accurately, and limiting the use of privileges, services, or facilities associated with a dwelling because of the tenant’s familial status. See 24 C.F.R. § 100.65(b).

To make a claim under section 804(b), the Charging Party must present evidence that Respondents (1) discriminated against Complainant (2) because of familial status (3) in the terms, conditions, or privileges of rental, or in the provisions of services or facilities in connection with the rental. E.g., Echols v. A-USA Mortg. Corp., No. 01-2033 G/A, 2001 U.S. Dist. LEXIS 25878 (W.D. Tenn. Aug. 28, 2001); HUD v. Murphy et al., 1990 HUD ALJ LEXIS 72, *7 (HUDALJ July 13, 1990).

DISCUSSION

I. Jurisdictional Challenge under the “Mrs. Murphy” Exemption under Section 803(b)

Respondent Eric Felder raised the affirmative defense of the “Mrs. Murphy” exemption shortly before the hearing. As discussed above, section 803(b) provides for exemption from section 804 claims (other than 804(c)) under specific conditions, namely, that the owner lives in one of the four or fewer units. As (1) owner Respondent Estate is a legal entity, it cannot reside in one of the units within the meaning of the act; (2) even if it could and did reside in one of the units, this Court previously found in the *Order Granting Partial Summary Judgment* that the relevant property consists of five units; and (3) Respondents Eric Felder and Estate have already been found to have violated 804(c), this jurisdictional challenge fails.

⁴ The etymology of the metaphorical Mrs. Murphy’s boardinghouse can be found at 114 Cong. Rec. 2495, 3345 (1968).

II. Naming of Co-guardians and Conservators of Respondent Estate

In the *Order Granting Partial Summary Judgment*, this Court noted that “there remain[ed] a genuine dispute as to one material fact: whether Respondents Daniel Felder and Andrea Williams are co-guardians and conservators of Respondent Estate.” The Court now answers this inquiry in the affirmative. At hearing, Charging Party introduced state court records substantiating that fact, Respondent Eric Felder did not dispute it, and the remaining Respondents did not appear.

III. Charge of Violation of Section 804(b)

The Charging Party claims the refusal to rent to Complainant because of his familial status is also a violation of §3604(b) of the Act, because residing in a unit is itself a “privilege” of renting, and because Respondent Eric Felder failed to process Complainant’s rental application.

Under 42 U.S.C. § 3604(b), it is unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status.” The Court understands this to apply most commonly in cases where there is not an outright refusal to rent or sell resulting from a discriminatory basis. Rather, this section should be utilized, for example, in situations where a landlord indicates a willingness to rent a property but pretextually modifies the terms, conditions, or privileges associated with that rental because of a discriminatory basis. In other words, § 3604(b) more appropriately applies when less favorable treatment is given because of discrimination rather than an actual denial. See Williamsburg Fair Hous. Comm. v. N.Y.C. Hous. Auth., 493 F. Supp. 1225, 1248 (S.D.N.Y. 1980) (noting that a violation of § 3604(b) occurred even when there might not have been a permanent denial or outright rejection of non-White families, because simply giving White families priority over units is discrimination based on race in the privileges of a rental).

The Court, therefore, disagrees with the Charging Party’s assertion that Respondents’ plain refusal to rent in this case also constitutes a violation of 3604(b). Here, Respondent Eric Felder directly relayed to Complainant that he could not rent the unit because of his children—“a firm ‘No.’” were the exact words used. This is an outright refusal or denial in violation of § 3604(a), which makes it unlawful to deny a dwelling because of familial status. To find, as the Charging Party suggests, that Respondents’ refusal also constitutes a violation of § 3604(b) would essentially require that every § 3604(a) violation is, *per se*, a § 3604(b) violation. Such a broad interpretation of § 3604(b) would obviate the need for § 3604(a) and its protections. For this reason, the Court concludes that § 3604(b) violations require “something more” or “something other” than a plain refusal based on a discriminatory factor.

Even the cases cited by the Charging Party in support of their position include additional circumstances or considerations that distinguish them from the case at bar. For example, in HUD v. Kelly, the owners of an apartment complex generally permitted families with children to rent units but the owners’ “one child per bedroom” condition resulted in the prospective tenant

with two children being denied the only available unit, which was a two-bedroom unit. Kelly, 1992 HUD ALJ LEXIS 79, at *23 (HUDALJ Aug. 26, 1992). In HUD v. Guglielmi, the trailer park's policy to restrict the sale of mobile homes in which children did not already live to buyers who also did not have children affectively resulted in the denial of a dwelling because the prospective buyers had children whereas the sellers resided in a "childless lot." Guglielmi, 1990 HUD ALJ LEXIS 73 (HUDALJ Sept. 21, 1990). This Court noted in HUD v. Kogut that residency is one of the many terms, conditions or privileges of rental. Kogut, 1995 HUD ALJ LEXIS 52, at *40 (HUDALJ Apr. 17, 1995). However, in that case, the tenant was already residing in a unit and it was the owner's unlawful eviction of the tenant that terminated the tenant's residency in violation of both § 3604(a) and (b).

In other cases cited by the Charging Party, it is even more evident that § 3604(b) violations should apply strictly to discrimination in the "terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities." For example, in HUD v. Edelstein the Court found that the owner of townhouse complexes violated § 3604(a)-(c) by discriminating against a single mother based on familial status. Edelstein, 1991 HUD ALJ LEXIS 88 (HUDALJ Dec. 9, 1991). However, the § 3604(b) violation was based solely on the fact that the lease included a term prohibiting children under the age of 18 from using the swimming pool.⁵ That is not to say that discriminatory conduct cannot constitute both a § 3604(a) and § 3604(b) violation. For example, in Bellwood v. Dwivedi, 895 F.2d 1521, 1525 (7th Cir. 1990), the court noted that racially motivated steering by a real estate broker could violate both subsections (a) and (b) with subsection (a) applying to the resultant denial of the dwelling and (b) applying to the discrimination in the *provision of services* to the customer. Finally, in United States v. Hylton, the court found that a defendant violated § 3604(b) by conditioning his approval of a sublease, which was a term of the lease, on whether the tenants found a White sublessee. Hylton, 944 F. Supp. 2d 176, 188 (D. Conn. 2013). And, although the defendant did not directly deny the Black sublessee the dwelling, the defendant's refusal to approve the sublease proposed by his tenants effectively prevented the sublessee from assuming residency.

The Court has carefully considered the Charging Party's position and finds that the facts in this case do not support a finding that Respondents also violated § 3604(b). Respondents' refusal to rent the dwelling to Complainant was an outright denial because of Complainant's familial status. Such discriminatory conduct violates § 3604(a) of the Act.⁶ Without more, Respondents' refusal does not also give rise to a § 3604(b) violation.

The Charging Party also claims Respondents violated § 3604(b) by failing to process Complainant's application or offer to rent. Failing to process an offer for the rental of a dwelling or to communicate an offer accurately because of familial status constitutes a violation under

⁵ In that case, the § 3604(a) and (c) violations arose from the owner steering prospective tenants with children away from housing and making statements expressing a preference, limitation or discrimination based on familial status both directly to prospective tenants and through advertisements. Id.

⁶ Because that refusal was made as a statement that impermissibly indicated discrimination based on familial status, it also constitutes a violation of § 3604(c).

§ 3604(b) of the Act.

Here, there is no evidence Complainant submitted an application or offer to rent the Subject Property. Rather, on February 3, 2020, he submitted a rental application for a unit at 618 Tompkins Street that Respondent Eric Felder showed him earlier that day. The next day, Respondent Eric Felder informed Complainant that the unit for which Complainant had applied was already rented to the first applicant. Over a month later, Complainant arranged to view the Subject Property, which was located in a different building on the property and had recently become available to rent. After Complainant expressed his desire to rent the Subject Property, Respondent Eric Felder denied Complainant the Subject Property because of Complainant's familial status. Complainant never submitted an application or offer to rent the Subject Property for Respondent Eric Felder to "process."⁷ Accordingly, the Court finds the facts do not establish a § 3604(b) violation in this matter.

IV. Relief⁸

As discussed in the *Order Granting Partial Summary Judgment*, this Court has found Respondents Eric Felder and Estate to have violated sections 804(a) and (c). Upon finding that a respondent has engaged in a discriminatory housing practice, the Court is authorized to issue an order providing appropriate relief. 42 U.S.C. § 3612(g)(3). Such relief may include "actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent." *Id.*

The Charging Party alleges Respondent's discriminatory housing practice caused actual damages in this case. Such damages include lost housing opportunity, out-of-pocket expenses, and emotional distress. HUD claims a total award of \$32,000 for actual damages is appropriate.

Actual damages may include both out-of-pocket expenses and damages for intangible injuries. *HUD v. Woodard*, No. 15-AF-0109-FH-013, 2016 HUD ALJ LEXIS 4, at *3-4 (HUDOHA May 9, 2016) citing *HUD v. Blackwell*, Fair Housing – Fair Lending (P-H) § 25,001, 25,005 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F. 2d 864 (11th Cir. 1990). Out-of-pocket damages seek to reimburse an aggrieved party for the actual, economic consequences of discriminatory conduct. See *FAA v. Cooper*, 566 U.S. 284, 306 (2012) ("Actual [d]amages compensate for actual injury.") (internal quotations omitted). Such expenses include the complainant's inconvenience, loss of housing opportunity, the costs associated with finding suitable alternative housing and costs associated with prosecuting fair housing cases. *Woodard*, at *3-4; *HUD v. French*, 1995 HUD ALJ LEXIS 38 (HUDALJ Sept. 12, 1995). Damages for intangible injuries include compensation for embarrassment, humiliation, and emotional distress caused by the discrimination. *Woodard*, at *3-4. Emotional distress may be determined based on inferences drawn from the circumstances of the act of discrimination, as well as on

⁷ Assuming, *arguendo*, that Complainant verbally offered to rent to Subject Property Respondent Eric Felder adequately "processed" that offer when he passed along Complainant's offer to the owner, which denied the offer.

⁸ Respondent Eric Felder requests \$10,000 in compensation for, *inter alia*, expenses in litigating this matter. As Respondent is not the prevailing party nor is such an award otherwise supported, this request is **DENIED**.

testimonial proof. Blackwell. “Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury.” HUD v. Godlewski, 2007 HUD ALJ LEXIS 67, at *5 (HUDALJ Dec. 21, 2007). The injured party’s susceptibility to emotional harm must be taken into consideration as well. It is the Court’s long-held axiom that “those who discriminate in housing take their victims as they find them.” Id., at *8. Accordingly, if an aggrieved party suffers unusually significant effects from discriminatory conduct, they are entitled to unusually significant damages. The record demonstrates that, as a result of Respondent’s conduct, Complainant suffered out-of-pocket expenses; economic loss; and severe emotional distress.

The Charging Party seeks \$32,000 to compensate Complainant for out-of-pocket expenses and intangible injuries. Specifically, the Charging Party contends that Complainant is entitled to \$18,000 for alternative housing costs, and \$14,000 in compensation for intangible injuries. These requests for damages are discussed in turn below.

A. Alternative Housing Costs

The Charging Party also claims Complainant is entitled to \$18,000 for the replacement cost of for a fair-market rental unit, because Complainant lost the opportunity to rent at the lower rate offered by Respondents for the duration of his children’s education in the local public school district.

Damages for the costs of alternative housing may be awarded to compensate victims of discriminatory housing practices even when the alternative housing is more expensive. HUD v. Morgan, 1991 HUD ALJ LEXIS 98, at *17 (HUDALJ Jul. 25, 1991). To recover the increased cost of alternative housing, a complainant must have made a reasonable effort to seek comparable housing and to minimize damages. French, 1995 HUD ALJ LEXIS at *32 (citing Edelstein, at *15). More importantly though alternate housing expenses must actually be incurred. See HUD v. Collier, No. 2017 HUD APPEALS LEXIS 4, at *20 (HUDOHA Aug. 15, 2017) (noting alternative housing costs are an “out-of-pocket” expense that must be proven by the charging party); see also Miller v. Apartments & Homes, 646 F.2d 101, 112 (3d Cir. 1981) (using the concept of “cover” from sales transactions when determining the appropriate remedy for a defendant’s racial discrimination that forced the plaintiff to find substitute housing);

The Charging Party has the burden to prove alternative housing costs. The Court may make a reasonable estimate of alternate housing costs based upon the record before it. Krueger v. Cuomo, 115 F.3d 487, 492 (7th Cir. 1997) (noting that a victim of housing discrimination need not document alternative housing costs with exacting specificity). However, when the Charging Party fails to provide evidence of the amount of such expenses, the Court may decline to grant an award. See Collier, at *21 (declining to impose alternative housing costs as damages when “the failure of the Charing Party to proffer evidence—or even an estimate—of such expenses requires too much speculation and guesswork on the part of the Court”).

Here, the Charging Party has demonstrated that Respondent’s discriminatory housing practice forced Complainant to seek alternative housing for himself and his children. Complainant ultimately obtained a two-year lease for this purpose at an increased cost of \$300

per month. The Charging Party also asks this Court to award Complainant the differential in rent for an additional three years, because Complainant intended to reside at the Property for five years. As this is entirely speculative, and beyond the evidence before the Court, this Court finds that the difference in rent for the two-year length of the actual replacement lease is appropriate, for a total of \$7,200. See HUD v. Morgan, 2012 HUD ALJ LEXIS 33, at *6-11 (Oct. 26, 2012) (Order on Secretarial Review finding that one year, the actual length of the lease, or from the discriminatory action until the issuance of an initial decision are each appropriate measures of alternative housing costs).

B. Intangible Injuries – Emotional Distress

The Court also finds that Complainant is entitled to damages to compensate for the emotional injuries caused by Respondent's discriminatory conduct. The Charging Party requests that the Court award Complainant no less than \$12,000 in emotional distress damages, and his two young children are entitled to at least \$1,000 in damages each, for a total of \$14,000. A brief synopsis of Respondents' conduct, and its effect on Complainant, is helpful.

On February 3, 2020, Complainant viewed a craigslist advertisement for a different unit on the same property owned by Respondent Estate. The same day, Complainant texted Respondent Eric Felder, viewed the unit, and picked up an application.

The next day, Respondent Eric Felder notified Complainant that the advertised unit had been rented to another applicant. Complainant asked Respondent Eric Felder if there were any other units, and he responded that the Subject Property would be one coming available in April. On March 18, 2020, Respondent Eric Felder permitted Complainant to view the Subject Property. By the next day, Respondent Eric Felder informed Complainant that he could not rent the Subject Property because of his small children.

Complainant was frustrated and a "little dishearten[ed]." Complainant told his children they would be moving into the Subject Property before he had viewed it and even before it became available. Complainant testified that when he later informed his twins of the denial, his son shut down and stayed quiet, moping around, while his daughter cried and asked why they weren't good enough to live there. Both children were looking forward to attending the same school as their friends.

Complainant found a unit nearby at \$300 per month additional cost, and on June 23, 2020 signed a lease beginning July 15, 2020 and terminating July 31, 2022.

As examined above, Complainant suffered because of Respondent's words and actions. He experienced some emotional distress, which is compensable under the Act. See, e.g., Godlewski, at *11. Quantifying emotional distress is difficult, but the Court may award such damages notwithstanding that a party does not prove an exact dollar amount. See HUD v. Wooten, 2007 HUDALJ LEXIS 68, at *8-9 (HUDALJ Aug. 1, 2007) (decision on remand). The value of such injuries may be established by testimony and inferred from the circumstances. See Morgan v. HUD, 985 F.2d 1451, 1459 (10th Cir. 1993); see also Graham, at *5. "Housing

discriminators take their victims as they find them,” and damages are awarded based upon the harm suffered by the complainant – without regard to whether another hypothetical complainant without the same specific vulnerabilities as the complainant would have suffered less harm from the same act of discrimination. Kelly, at *37. The Court has wide discretion to set an emotional distress damages award based upon the consideration of two factors: (i) the egregiousness of Respondent’s behavior and (ii) the effect of that behavior on Complainant. HUD v. Sams, 1994 HUD ALJ LEXIS 74, at *25 (HUDALJ Mar. 11, 1994); see also Wooten, at *9. Both factors merit a lower damages award in this case.

Here, Respondent Eric Felder engaged in unlawful but not especially egregious acts on behalf of Respondent Estate. HUD draws an inapposite comparison to HUD v. Gruen, where the Court awarded \$10,000 to the complainant who was bluntly denied even an application to rent while touring a unit, where he needed a similar unit to qualify for visitation for his 4-year-old child, housing was very difficult to obtain in the area, and the respondent continued to advertise units in the same building with the same unlawful policies. Gruen, 2003 HUD ALJ LEXIS 40 (HUDALJ Feb. 27 2003). HUD also makes an inapposite analogy to Wooten, where the Court awarded Complainant \$10,000 for herself and \$1,000 for each of her two children in emotional distress damages because complainant became very upset, angry, and insulted when the landlord ended their phone conversation upon learning she had children. Wooten, 2007 HUD ALJ LEXIS 68. However, Wooten is easily distinguishable, as the parties failed to develop any evidence as to actual costs, losses, or inconvenience and thus could not award damages as here; and an additional instance of renewed discrimination - when the complainant applied again but changed her family composition, she was accepted as a prospective renter, establishing that the only reason for the denial was unlawful discrimination. It is noteworthy that both Gruen and Wooten draw on HUD v. Dellipaoli to emphasize that there is a significant difference between denial of a rental in an apartment building as opposed to a home where the respondent and family lived, and only awarded \$500 in the latter situation. Dellipaoli, (HUDALJ Jan. 7, 1997). HUD finally draws a comparison to HUD v. Morgan, where the Secretary awarded \$15,000 to complainants for intangible damages in the context of profoundly callous statements to complainant and a restrictive rental market. See Morgan, 2012 HUD ALJ LEXIS 33. However, the Secretary awarded that amount for lost housing opportunity, inconvenience, loss of a preferred school district, and emotional distress combined. Here, Charging Party has not established nor requested damages for lost housing opportunity nor did Complainant lose access to a preferred school district. This weighs in favor of a lower damages award.

The Court sees stronger parallels to Dellipaoli and Edelstein in this case. Edelstein, 1991 HUD ALJ LEXIS 88. Like Dellipaoli’s two-minute telephone conversation, Respondent Eric Felder made a brief, singular discriminatory statement communicating a denial to rent based on familial status. Nonetheless, a higher award than Dellipaoli’s \$500 is merited here, not least because Respondents are not eligible for the section 803(b) exception to 804(a). Edelstein saw an award of \$1,000 for the inconvenience of additional travel time, inconvenience in prosecution of the case, and two months of unsatisfactory housing. A similar award is merited here.

Complainant may also be awarded damages for distress they experienced as a result of witnessing the distressing effect of Respondents’ discriminatory conduct on family members, including his two children. HUD v. Ocean Parks Jupiter Condominium Assoc., Nos.

1993 HUD ALJ LEXIS 99, at *115-124 (HUDALJ Aug. 20 1993) (emotional distress damages take into consideration emotional consequences to work and interpersonal relationships). Here, the additional distress experienced by Complainant's twins justifies an award on their behalf.

Malicious intent or an egregious act may serve as a factor to evaluate the victim's reaction to the discrimination and in turn increase a damage award for emotional distress injuries. HUD v. Parker, 2011 HUDALJ LEXIS 15, at *19 (HUDOHA Oct. 27, 2011) (an intentional, particularly outrageous, or public act of discrimination generally justifies a higher emotional award, because such an act will "affect the plaintiff's sense of outrage and distress.") Here, Respondent Eric Felder's actions on behalf of Respondent Estate are not especially egregious in their nature or their visibility, as they consisted of a short exchange of relatively civil text messages, and does not weigh in favor of a higher award.⁹

The presiding judge has wide discretion in granting damages awards, especially those relating to intangible injuries and emotional distress. See Woodard, at fn. 5. Consequently, the awards themselves run the gamut from a pittance to a windfall. When compared to other cases, the facts of this case lean towards a lower award. For example, in Edelstein, the court awarded \$1,000 for complainant's inconvenience and emotional distress because she was forced to stay in her "unsatisfactory" apartment for two additional months. Edelstein, at *18. On the other end of the scale, a complainant received \$30,000 in intangible damages when discriminatory conduct created so much anxiety that he began experiencing severe chest pain, leading to a risky and expensive surgical procedure. HUD v. Riverbay Corp., 2012 HUD ALJ LEXIS 15 (HUDOHA May 7, 2012).

Accordingly, the Court awards Complainant \$1,000 for the emotional distress caused by Respondents' actions, and each of his two minor children \$1,000 for the emotional distress caused by Respondents' actions.

V. Civil Penalty

The Charging Party requests a civil penalty of \$21,039, the maximum allowable against a first-time offender, against both Respondent Eric Felder and Respondent Estate.

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

\$21,039, 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

⁹ Respondent Eric Felder expressed regret at having to inform Complainant that he could not rent the Subject Property and apologized for the refusal before wishing Complainant "Good Luck."

discriminatory housing practice.

24 C.F.R. § 180.671(a)(1) (2019). 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).

A. Respondents and Previous Adjudication(s)

HUD does not contend that Respondents have committed any prior act of housing discrimination. Respondent Eric Felder credibly testified that his mother handled the property as a rental for 40 years without any complaints.

B. Respondents' Financial Resources

The burden of producing evidence of financial resources falls upon the Respondents, because such information is peculiarly within the Respondents' knowledge. Godlewski, 2007 HUD ALJ LEXIS 67, at *25. A civil penalty may be imposed without consideration of a respondent's financial situation if the respondent fails to produce evidence that would tend to mitigate the amount to be assessed. Id., see also Campbell v. United States, 365 U.S. 85, 96 (1961).

Respondents Eric Felder and Estate have presented no evidence regarding their financial resources. Accordingly, the Court infers Respondents are able to pay the civil remedy proposed by the Charging Party.

C. Nature and Circumstances of the Violation

Respondent Estate's behavior merits imposition of a higher civil penalty. The outright refusal to rent is arguably the most egregious form of fair housing violation, as it completely denies an individual a valuable housing opportunity. A significant penalty is necessary to impress upon Respondent Estate's the severity of its misconduct. As Respondent Eric Felder acted at the direction of and on behalf of Respondent Estate, his conduct also merits imposition of a civil penalty.

D. The Degree of Respondents' Culpability

Respondent Eric Felder is culpable for making the discriminatory statements and informing Complainant he could not rent the Property because of his children. However, he did so on behalf of his mother, who was making decisions on behalf of Respondent Estate at the time. In fact, the evidence suggests that Respondent Eric Felder would not have denied Complainant the rental but for his mother's direction to do so. Respondent Eric Felder's mother has since passed and there is no evidence the other named Respondents, as Co-Guardians and Conservators of the Respondent Estate, directed Respondent Eric Felder to deny Complainant the dwelling or otherwise participated in the decision to discriminate against Complainant based on familial status. Thus, the culpability of Respondents Eric Felder and Estate does not warrant a significant penalty.

E. Deterrence

A substantial penalty is necessary to convince Respondents and other housing providers that "actions such as those taken in this case are not only unlawful but expensive." HUD v. Dutra, 1996 HUD ALJ LEXIS 55, at *44 (HUDALJ Nov. 12, 1996) quoting HUD v. Jerrard, 2 Fair Housing-Fair Lending (P-H) P25, 005, 25, 092 (HUDALJ Sept. 28, 1990). Respondent Estate should not benefit from its refusal to participate, and the evidence before the Court indicates that Respondent Estate continues to be engaged in real estate and rental management. See HUD v. Corey, 2012 HUD ALJ LEXIS 26, at *23-24 (Order on Secretarial Review) (holding that greater civil penalty was warranted where respondent remained in rental business and where higher penalty would put other housing providers "on notice that imposing discriminatory terms and conditions based on stereotypes is illegal and will not be overlooked"). Furthermore, Respondent Estate's refusal to participate in these proceedings shows it is unwilling to adhere to the Act and the imposition of a civil penalty will deter it (and others) from any future violation.

Respondent Eric Felder has indicated that he has since ceased to be engaged in real estate and rental management, and has also participated actively in these proceedings. A lower civil penalty is therefore warranted as to him.

F. Other Factors as Justice May Require

Maximum penalties should be reserved for the most egregious cases and imposed where needed to vindicate the public interest. In this case, although a first offender, Respondent Estate has thumbed its nose at the system with regard to the prosecution of this case. See HUD v. Wagner, 1992 HUD ALJ LEXIS 75, at *32 (HUDALJ June 22, 1992) (imposing \$10,000 civil penalty where respondent ignored HUD's charge); Woodard, 2016 HUD ALJ LEXIS 4; HUD v. Elite Properties of Iowa, LLC, et al., HUDALJ 09-M-113-FH-40 (July 9, 2010); and Parker, 2011 HUD ALJ LEXIS 15, at *10-11. It has refused to participate in these legal proceedings and by doing so it has shown no concern for the law or the civil rights of Complainant. Indeed, its refusal to participate in these proceedings suggests disrespect for, or contempt of, the Fair

Housing Act and this Court, and is an appropriate additional factor to consider in assessing a civil penalty.

Upon consideration the Court finds that Respondent Estate's conduct was especially and must be met with a significant penalty to deter similar future behavior. Accordingly, a maximum civil penalty of \$5,000 is appropriate. The Court further finds that Respondent Eric Felder's conduct was unlawful but not especially egregious, and a lower civil penalty of \$500 is appropriate to vindicate the public interest.

ORDER

Based on the foregoing:

1. Within sixty (60) days of the date on which this Order becomes final, Respondents Eric Felder and Estate shall jointly and severally pay to Complainant the sum of \$10,200.00, consisting of:
 - a. \$7,200 for Complainant's alternative housing costs; and
 - b. \$3,000 for Complainant's emotional distress; and
2. Within sixty (60) days of the date on which this Order becomes final, Respondent Estate shall pay to the Secretary the sum of \$5,000, consisting of a \$5,000 in civil money penalty; and
3. Within sixty (60) days of the date on which this Order becomes final, Respondent Eric Felder shall pay to the Secretary the sum of \$500, consisting of a \$500 civil money penalty.

So **ORDERED**,
ALEXANDER
FERNANDEZ-
PONS

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS email = ALEXANDER.FERNANDEZ-
PONS@HUD.GOV C = AD O = OFFICE OF
THE SECRETARY OU = OHA
Date: 2022.12.09 12:18:50 -05'00'

Alexander Fernández-Pons
Deputy Chief Administrative Law Judge

Attachment: *Order on Motion for Summary Judgment*, dated March 1, 2022