

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:

VANELLA WELLS,

Complainant,

v.

ALEX RAIMOS, a.k.a. ALEANDRO CLAUDIO SR., AL CLAUDIO, ALANDRO CLAUDIO, ALE CLAUDIO, ALEAJANDRO CLAUDIO, ALEANDRO CLAUDIO, ALEANDRO CLAUDRO, ALENDRO CLAUDIO, ALEX CLAUDIO, and CLAUDIO ALEANDRO,

Respondent.

21-JM-0160-FH-022

June 22, 2022

Appearances

Christopher Bronchus, Attorney

David Heitner, Attorney

United States Department of Housing and Urban Development, Washington, DC
For Charging Party

INITIAL DECISION AND ORDER ON DAMAGES AND REMEDIES

BEFORE: J. Jeremiah MAHONEY, Chief Administrative Law Judge

On June 7, 2021, the U.S. Department of Housing and Urban Development (“HUD,” the “Charging Party,” or the “Government”) filed a *Charge of Discrimination* against Respondent on behalf of Vanella Wells (“Complainant”). The *Charge* alleged that Respondent made discriminatory statements against the disabled and refused to rent an apartment to Complainant based on Complainant’s daughter’s disability, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*

On June 29, 2021, this Court issued a *Notice of Hearing and Order* setting several procedural deadlines, including that Respondent file an answer to the *Charge* by July 8, 2021. Respondent did not respond to the *Charge*, and the Charging Party moved for default judgment against Respondent on August 6, 2021. This Court ordered Respondent to both show cause as to why the *Motion for Default Judgment* should not be granted and to respond to the *Charge* by August 31, 2021. Again, Respondent failed to respond.

On September 16, 2021, the Court granted HUD’s *Motion for Default Judgment*, finding Respondent liable for violating sections 804(a), (c), and (f)(1)(B)-(C) of the Fair Housing Act, 42 U.S.C. § 3604. A hearing was held via Microsoft Teams on January 6, 2022, solely on the issue of damages and remedies. Testimony was received from Complainant Vanella Wells, FHEO investigator Monique Williams (“Investigator Williams”), Ofc. Scaturro of the Suffolk County Police Fifth Precinct, and Complainant’s cousin, Demetria Wells (“Demetria”). Respondent was notified of the time and venue of the hearing, but he did not attend.

On January 21, 2022, the Court issued a *Post-Hearing Order* requiring the submission of post-hearing briefs by February 11, 2022, which was ultimately extended to March 3, 2022. HUD filed its *Post-Hearing Brief* on that date. Respondent did not file a brief. Accordingly, this matter is ripe for initial decision on damages and remedies.¹

DISCUSSION

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.

I. Actual Damages

HUD alleges Respondent’s discriminatory housing practice caused actual damages in this case. Such damages include lost housing opportunity, lost income, out-of-pocket expenses, and emotional distress. HUD claims a total award of \$100,386 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 (HUDALJ 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, 2016 HUD ALJ LEXIS 4, at *3-4 ; HUD v. French, No. 09-93-1710-8, 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, 2016 HUD ALJ LEXIS 4, at *3-4. Emotional distress may be determined based on inferences drawn from the circumstances of the act of discrimination, as well as on 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

¹ The *Order Granting Default Judgment* contained findings of facts. The damages assessment is based on those facts and others as specifically referenced in this Initial Decision.

the actual dollar value of the injury.” HUD v. Godlewski, No. 07-034-FH, 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 \$100,386 to compensate Complainant for her lost housing opportunity, lost income, out-of-pocket expenses, and intangible injuries. Specifically, the Charging Party contends that Complainant is entitled to \$15,000 for the lost housing opportunity; \$32,496 for the replacement cost for a fair-market rental unit; \$14,040 in lost income; \$250 for car insurance; \$600 for fuel costs; and \$38,000 in compensation for intangible injuries. These requests for damages are discussed in turn below.

A. Lost Housing Opportunity

As noted above, the Charging Party contends that Complainant is entitled to \$15,000 in compensation for the lost housing opportunity.

Before considering HUD’s request, it is useful to summarize the benefits of the property Complainant sought to rent at 10 Blacker Street, Brentwood, New York 11717 (“the Property”). While searching for housing, Complainant found that most of the available rentals could not accommodate her and her daughter’s needs because they were out of Complainant’s budget and would not be conducive to her daughter’s mobility issues. However, Complainant found that the Property was “almost perfect,” would greatly improve her and her daughter’s material living conditions and would grant her the dignity of living independently. If Complainant had been permitted to rent the Property, Complainant would have been able to provide her daughter her own space, “be free,” and “be able to run [her] household.” The Property was within Complainant’s budget; had few vertical steps; and had storage space for her daughter’s wheelchair. The Property also offered her daughter more room and would allow her more freedom to crawl, and Complainant would have been able to do everything that her daughter needed in the new space. The Property was also conveniently located closer to her daughter’s school² and significantly closer to one of Complainant’s jobs.

By comparison, Complainant’s alternative housing was significantly inferior. Complainant’s cousin Demetria took in Complainant and her daughter because they had nowhere else to go and were on the cusp of homelessness during Respondent’s delays of agreed occupancy and the ultimate denial. Demetria’s home was significantly farther from Complainant’s place of employment, and the school bus for Complainant’s daughter could not pick her up from that location. Complainant had to borrow Demetria’s vehicle to drop her daughter off at school, then drop off Demetria at work, and only then travel to her own job, thereby incurring additional costs

² As a result of her disability, Complainant’s daughter attended a special needs school before she was eventually homeschooled by Complainant in addition to occupational, physical, and speech therapy.

and time expenditures. The alternate home had wooden floors, which made crawling difficult for her disabled daughter who could not walk. The home had one bed, which often resulted in Complainant and her daughter sleeping on the couch. There was little privacy among them, and no ability to independently set a schedule for Complainant and her daughter. After six months, Complainant was able to move in with her daughter's grandmother, and remains there today.

Other cases are illustrative of the types of compensatory awards for these types of injuries. For example, in HUD v. Sams, No. 03-92-0245-1, 1994 HUD ALJ LEXIS 74, at *23-27 (HUDALJ Mar. 11, 1994), a family with five children was awarded \$24,000 for loss of housing opportunity and emotional distress because they lost the opportunity to live in what was, for them, an ideal environment. The home they were denied had space and amenities necessary for the specific needs of the family, including educating the children at home.

Similarly, in HUD v. Morgan, the Secretary awarded a family with children \$15,000 for loss of housing opportunity and emotional distress damages, including the loss of access to a preferred school. HUD v. Morgan, No. 11-F-090-FH-49, 2012 HUD ALJ LEXIS 33, at *25-28 (HUD Sec'y Oct. 26, 2012) (Order on Secretarial Review), *see also* United States v. Hylton, 944 F. Supp. 2d 176, 197 (D. Conn. 2013) (finding \$20,000 to be an appropriate award for lost housing opportunity); HUD v. Banai, No. 04-93-2060-8, 1995 HUD ALJ LEXIS 47, at *27 (HUDALJ Feb. 3, 1995) (awarding \$70,000 for emotional distress, inconvenience, and lost housing opportunity where complainants were discriminated against based on race and color).

Many of the same factual circumstances regarding a lost housing opportunity are also present in this case. Complainant was forced to move farther away from her place of work and accept a living situation that was markedly inferior to the one she would have had at the Property. Complainant was deprived of access to school busing and needed to drive her child to school and herself to work in a borrowed vehicle, incurring additional expense. Demetria's apartment lacked the amenities available at the Property, such as space to store a wheelchair; more room and more freedom to crawl; proximity to favorite activities; and privacy. Accordingly, a \$15,000 award is appropriate and in keeping with previous HUD decisions.

B. Replacement Cost for a Fair-Market Rental Unit

The Charging Party also claims Complainant is entitled to \$32,496 for the replacement cost of a fair-market rental unit, because Complainant lost the opportunity to rent at a rate below fair market rent.

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, No. 08-89-0077-1, 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. HUD v. French, 1995 HUD ALJ LEXIS 38, at *32 (citing HUD v. Edelstein, No. 05-90-0821-1, 1991 HUD ALJ LEXIS 88, at *15 (HUDALJ Dec. 9, 1991)). More importantly, though, alternate housing expenses must actually be incurred. *See* HUD v. Collier, No. 16-AF-0127-FH-011, 2017 HUD APPEALS LEXIS 4, at *20 (HUDALJ 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, 2017 HUD APPEALS LEXIS 4, at *21 (declining to impose alternative housing costs as damages when “the failure of the Charging 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 with her cousin for several months before Complainant ultimately moved into the home of her daughter’s grandmother. Complainant paid her relatives who provided these alternative housing sources. However, the Charging Party has not established Complainant’s out-of-pocket costs for this alternative housing.³

Instead, the Charging Party takes the position that Respondent’s denial of the Property resulted in Complainant losing the opportunity to save money. Specifically, the Charging Party claims that the agreed-upon rent for the Property was \$850 per month, which was well below the \$1,527 per month fair market rent calculated by HUD for a one-bedroom unit in the area. Therefore, the Charging Party argues, Respondent’s discriminatory housing practice deprived Complainant of savings between \$8,124 and \$32,496.⁴

The Charging Party provided credible evidence that the fair market rent for a comparable unit was roughly \$677 more per month than the rent for the Property. However, the deprivation of the opportunity to save money is not the equivalent of an out-of-pocket cost. Complainant’s alternative housing expenses are what she actually paid, which have not been quantified with an actual figure or reasonable estimate. The Charging Party has failed to demonstrate evidence of any actual alternative housing costs, let alone proffer that the cost of such alternative housing was more than the amount of rent that would have been owed for the Property. Accordingly, the Court finds that in this case, no award for alternative housing costs is appropriate. See Gonzalez v. Rakkas, 93 CV 3229 (JS), 1995 U.S. Dist. LEXIS 22343, at *16 n.4 (E.D.N.Y. July 25, 1995) (“An award of economic damages typically includes the cost of temporary housing, the *increased cost* of alternative housing, in addition to any moving expenses incurred by the plaintiff.”) (emphasis added).

³ The Court recognizes that Complainant’s actual alternate housing arrangement was not comparable to the Property, because it was significantly inferior to the Property and lacked many of the qualities that appealed to Complainant during her housing search. Nevertheless, to the extent this housing option was unsatisfactory because of its shortcomings, Complainant is made whole with the lost housing opportunity award.

⁴ The lower figure of \$8,124 is reflective of the presumptive one-year term of the lease had Complainant not been denied the Property. The higher figure of \$32,496 is the amount of savings Complainant would have incurred from the time of the discrimination through January 2022.

C. Lost Income and Out-of-Pocket Expenses

As noted above, the Charging Party contends that Complainant is entitled to compensation for economic damages of \$14,040 in lost income, \$250 for car insurance, and \$600 for fuel costs.

Respondent's discriminatory conduct caused significant economic consequences to Complainant. An award of economic damages is intended to "put the aggrieved person in the same position as he would have been absent the injury, so far as money can." Godlewski, 2007 HUD ALJ LEXIS 67, at *4-5. "Complainants are entitled to economic damages for out-of-pocket expenses and other economic harm incurred as a result of Respondent's discriminatory acts." HUD v. Simpson, No. 04-92-0708-8, 1994 HUD ALJ LEXIS 61, at *41 (HUDALJ Sept. 9, 1994).

First, Complainant was required to pay additional expenses for transportation while staying with Demetria. Complainant paid for travel that was farther to work and her daughter's school, costing roughly \$100 a month in gas, totaling \$600 over that six-month period. In addition, she paid for car insurance while borrowing the vehicle, which cost her \$250 over the relevant period.

Second, due to her drastically increased transit time, Ms. Wells lost her job as a caretaker to three children. Courts have routinely awarded economic damages to compensate complainants for, among other things, job and career-related adjustments resulting from unlawful housing discrimination. HUD v. Fung, No. 07-053-FH, 2008 HUD ALJ LEXIS 46, at *43-44 (HUDALJ Jan. 31, 2008) (finding that complainant's "likely choice of a place to work and live during her professional career was affected by her discriminatory experience").

Complainant previously worked with three children, three times a week for one hour at a rate of \$30 per hour. In its post-hearing brief, HUD counsel inferred from Complainant's testimony that nine sessions a week were performed – three each for each of three children, totaling \$270 per week, for which HUD requests an annual compensation of \$14,040. Compensation for one year of loss of potential employment is reasonable.⁵ However, when asked a clarifying question by HUD counsel, as to the aggregate amount of the compensation, Complainant confirmed that she earned only about \$90 per week:

HUD Counsel:	Let me just briefly go back to the second job you had, the caretaker...about how often would you work and what was your hourly rate?
Complainant:	I would see three kids three times a week. And I got paid 30 dollars an hour.
HUD Counsel:	Okay. So that's 90 dollars a week you were paid?

⁵ This also parallels the Secretary's reasoning for the cost of alternative housing in Morgan. See Morgan, 2012 HUD ALJ LEXIS 33, at *6.

Complainant: Yeah, sometimes a little more because I would
 – I would stay for an hour. But for some kids, I
 would stay for, like, hour and a half, two hours.

The preponderance of the evidence—indeed the only evidence on the point—is the testimony of Complainant. In response to HUD Counsel, she confirmed that as caretaker she was paid \$90 per week (plus possible occasional overtime). As such, an award of \$4,680 for one year is appropriate. Accordingly, the Court awards Complainant economic damages of \$850 for the costs of alternative transport and \$4,680 for the loss of Ms. Wells’s second job. In total, the Court awards Complainant \$5,530 for her lost income and out-of-pocket expenses.

D. 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 \$38,000 in damages for embarrassment, humiliation, and emotional distress, specifying: \$5,000 for the effect of Respondent’s discriminatory actions on her interpersonal relationships with her family; \$5,000 for the loss of trust in finding future housing with a disabled daughter; and \$28,000 for the emotional distress caused by the egregious discrimination. Again, a brief synopsis of Respondent’s conduct, and its effect on Complainant, is helpful.

In November of 2017, Complainant and her daughter were residing with her aunt, who planned to move out-of-state. During that time, Complainant was working two jobs and cutting expenses to save enough money for a security deposit on her own home. When she saw the Property, she found it to be “almost perfect” and paid the deposit immediately to ensure nothing would impede her rental of the Property. Complainant was happy when Respondent agreed to rent the Property to her, because it symbolized freedom for her and her daughter. At last, Complainant would have the dignity of providing for her own home after years of relying on the charity of relatives for housing.

Prior to learning of Complainant’s daughter’s disability, Respondent had professed no misgivings about renting to Complainant. Respondent accepted Complainant’s security deposit and set a move-in date 17 days later for December 15, 2017. However, upon learning of the daughter’s disability, Respondent then delayed the initial move-in date three times beyond December 15, 2017. Each time the move-in was delayed, Respondent offered an unsubstantiated and pretextual reason in an apparent effort to string Complainant along and withhold the security deposit. Each time the move was delayed, Complainant became more and more concerned and frustrated with the situation. After the final delay, Respondent informed Complainant on January 13, 2018, that she would not be permitted to move in because of her daughter’s disability—even though it would not require any modifications to the Property--noting to Complainant, “Yeah, sucks right?”

In the months between the initial offer to rent and Respondent’s sudden decision to deny Complainant the opportunity to rent the property, Complainant shared her hopes and excitement with friends and family and planned out her new life with her daughter. Respondent’s discriminatory actions caused Complainant and her daughter to be displaced for over six months.

Complainant lost sleep, her anxiety “went through the roof,” and her “aura changed,” as she started to feel “down.” Complainant testified that she suffered emotional distress because of Respondent’s refusal to rent the Property to her, including loss of trust, hurt, anxiety, worry, and stress. Complainant’s stress and anxiety were further heightened by the need to explain to her family what had happened. Her daughter suffered emotionally and mentally from confusion and the lack of stability.

The testimony of Demetria Wells was particularly informative as to the impact of Respondent’s discriminatory housing practice on Complainant. Demetria described Complainant as being a very optimistic person, who is “never bothered” and “always a happy-go-lucky person.” However, Demetria was present when Respondent told Complainant she could not move into the Property on account of her daughter’s disability. Demetria recalls seeing sadness immediately come over Complainant. Demetria tried to offer Complainant comfort but “the words [didn’t] really change anything.” Demetria explained that, although Complainant is a cousin, Demetria sees her relationship with her as being a mother-daughter relationship, because Complainant is only one year older than Demetria’s own child.

As examined above, Complainant suffered because of Respondent’s words and actions. She experienced embarrassment, humiliation, and emotional distress, which are compensable under the Act. See, e.g., Godlewski, 2007 HUD ALJ LEXIS 67, 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, No. 05-98-0045-8, 2007 HUDALJ LEXIS 68, at *8-9 (HUDALJ Aug. 1, 2007). 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 HUD v. Graham, No. 19-JM-0014-FH-002, 2020 HUD ALJ LEXIS 8, at *8-10 (HUD Sec’y Feb. 5, 2020) (Order on Secretarial Review). “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. HUD v. Kelly, No. 05-90-0879-1, 1992 HUD ALJ LEXIS 79, at *37 (HUDALJ Aug. 26, 1992), remanded on other grounds, 3 F.3d 951 (6th Cir. 1993). 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; see also Wooten, 2007 HUDALJ LEXIS 68, at *9. Both factors merit a significant damages award in this case.

Here, Respondent engaged in egregious behavior. He agreed to terms with Complainant and accepted a security deposit. Thereafter, upon finding out that Complainant has a disabled daughter, he notified her that he was not aware of that, and that he could not rent her the Property because of her daughter’s disability. Respondent was particularly callous in declaring “Yeah, sucks right?” when denying Complainant the opportunity to rent the Property. Respondent further compounded the injury to Complainant by improperly retaining Complainant’s security deposit for two months despite her repeated requests for its return.

Complainant was particularly vulnerable as a single mother caring for her severely disabled daughter, and on her first opportunity to live on her own. HUD introduced uncontroverted

testimony that Complainant was an emotional young adult, in between homes while raising a severely disabled child alone, and about to rent her first home. In a similar case, HUD v. Corey, the court awarded \$18,000 for a discriminatory refusal to rent based on the complainant's brother's mental disability where the complainant was upset, stressed, sleepless, and had stomach pain. Corey, No. 11-M-207-FH-27, 2012 HUD ALJ LEXIS 24, at *4-8 (HUDALJ July 16, 2012).

The Court also sees strong parallels between the instant matter and the injury suffered in Godlewski. 2007 HUD ALJ LEXIS 67. In that case, the complainant was denied her preferred housing opportunity due to familial status discrimination. After seeing a "for rent" sign which stated "no kids, no dog," the complainant experienced extreme anger and anxiety, ultimately leading to a days-long migraine headache. She ruminated over the discriminatory sign excessively, and was thereafter hesitant to search for housing. The court awarded her \$18,000 as well. Notably, the court found that even if the average person may not have reacted so violently to seeing a discriminatory advertisement, the complainant was uniquely susceptible to such statements. Her distress was therefore particularly acute. Id.; see also HUD v. Castillo Condominium Assoc., No. 12-M-034-FH-9, 2014 HUD ALJ LEXIS 2 (HUD Sec'y Oct. 2, 2014) (Order on Secretarial Review) (awarding \$20,000 in emotional distress damages because complainant's history of anxiety and depression was exacerbated by discriminatory conduct). Here, where Respondent engaged in a campaign of 31 advertisements frequently containing discriminatory statements, unlawfully discriminated against Complainant because her daughter is disabled, and then attempted to retain Complainant's security deposit, Complainant's distress was understandably severe.

Additionally, Complainant lost trust in the rental market and does not want to go through a similar ordeal again. She was particularly concerned about being discriminated against and losing her security deposit again. The anxiety of potentially finding suitable housing only to be denied discouraged Complainant from continuing to find another property to rent. Cf., e.g., Morgan, 2012 HUD ALJ LEXIS 33, at *23 (Order on Secretarial Review) (higher award amount appropriate because discriminatory actions caused complainant to fear others would refuse to rent to her because of her children and the emotional impact of finding out property remained available for rent); see also HUD v. Parker, No. 10-E-170-FH-19, 2011 HUD ALJ LEXIS 15, at *23 (HUDALJ Oct. 27, 2011) (finding that "distrust" can be part of "damaging emotional toll" and awarding tester-complainant \$5,000 for emotional distress after race discrimination), cited by Morgan, 2012 HUD ALJ LEXIS 33.

Complainant may also be awarded damages for distress experienced as a result of witnessing the distressing effect of Respondent's discriminatory conduct on family members, including her daughter and Demetria. HUD v. Ocean Parks Jupiter Condominium Assoc., Nos. 04-90-0589-1 & 04-90-604-1, 1993 HUD ALJ LEXIS 99, at *115-24 (HUDALJ Aug. 20, 1993) (holding that emotional distress damages take into consideration emotional consequences to work and interpersonal relationships). Demetria suffered as she was hurt by the discrimination against Complainant, whom Demetria thought of as a daughter. Although Demetria wanted to help take care of Complainant and her daughter, Demetria lost her privacy, and eventually slept on the couch so that Complainant's daughter could have a bed. Complainant's emotional distress was thus compounded by the feeling that she was intruding on Demetria's space and that Demetria could not fully enjoy her place because of her and her daughter's presence.

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. Parker, 2011 HUDALJ LEXIS 15, at *19 (holding that 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's actions are egregious both in their nature and their visibility. Respondent's denial because Complainant's daughter is disabled is reprehensible, and his statement "Yeah, sucks right?" reflects an indefensible callous attitude. Complainant's friends and family, along with those who witnessed Respondent's advertisements, have been exposed to acts of discrimination because of Respondent. This weighs in favor of a higher damage award.

The presiding judge has wide discretion in granting damages awards, especially those relating to intangible injuries and emotional distress. See Woodard, 2016 HUD ALJ LEXIS 4, at *15 n.5. Consequently, the awards themselves run the gamut from a pittance to a windfall. Id. When compared to other cases, the facts of this case lean towards a substantial award. For example, in HUD v. Edelstein, the court awarded \$1,000 for the complainant's inconvenience and emotional distress because she was forced to stay in her "unsatisfactory" apartment for two additional months. Edelstein, 1991 HUD ALJ LEXIS 88, 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., No. 11-F-052-FH-18, 2012 HUD ALJ LEXIS 15 (HUDALJ May 7, 2012).

Accordingly, the Court awards Complainant \$30,000 for the emotional distress caused by Respondent's actions.

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:

\$20,111, 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) (2018).

In determining the amount of the penalty, the Court considers the following factors:

- i. whether Respondent has previously been adjudged to have committed unlawful housing discrimination;
- ii. Respondent's financial resources;
- iii. the nature and circumstances of the violation;

- iv. the degree of Respondent's culpability;
- v. the goal of deterrence; and
- vi. other matters as justice may require.

24 C.F.R. § 180.671(c)(1).

In this case, the Charging Party requests a civil penalty of \$20,111, the maximum allowable against a first-time offender.

A. Respondent and Previous Adjudication(s)

HUD does not contend that Respondent has committed any prior act of housing discrimination.

B. Respondent's Financial Resources

The burden of producing evidence of financial resources falls upon the Respondent, because such information is peculiarly within the Respondent's knowledge. Godlewski, 2007 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).

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

C. Nature and Circumstances of the Violation

Respondent's behavior merits imposition of a maximum civil penalty. The outright refusal to rent is arguably the most egregious form of fair housing violation, as it completely denies an individual a valuable housing opportunity. To put Complainant and her disabled child through two months of anticipation, excitement and hope only then to take it away because of her child's cerebral palsy is reprehensible. As noted above, Respondent's callous attitude of "Yeah, sucks right?" is indefensible. To further resist for months the return of Complainant's security deposit can only aggravate the offense.

Furthermore, Respondent posted 31 Craigslist ads evincing either explicit or implicit discrimination against families with children. See HUD v. Anderson, No. 10-00-0100-8, 2001 HUD ALJ LEXIS 83, at *10 (HUDALJ June 7, 2001) (assessing \$5,000 civil penalty where respondent admitted to policy of excluding families with children). Exposure of such a large rental market to such advertisements could send the message to the general public that such discrimination is permissible. A maximum penalty is necessary to impress upon Respondent the severity of his misconduct.

D. The Degree of Respondent's Culpability

Respondent is solely and fully responsible for making the discriminatory statements and for denying Complainant the opportunity to rent the Property. Thus, Respondent, and no other party, is fully culpable for the discrimination at issue.

E. Deterrence

A substantial penalty is necessary to convince Respondent and other housing providers that "actions such as those taken in this case are not only unlawful but expensive." HUD v. Dutra, No. 09-93-1753-8, 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 told law enforcement that he manages and owns other properties, raising a reasonable inference that he continues to be engaged in real estate and rental management. See HUD v. Corey, 2012 HUD ALJ LEXIS 26, at *23-24 (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's refusal to participate in these proceedings shows he is unwilling to adhere to the Act and the imposition of a civil penalty will deter him (and others) from any future violation.

E. Other Factors as Justice May Require

Maximum penalties should be reserved for the most egregious cases and imposed where needed to vindicate the public interest. In this case, although a first offender, Respondent has thumbed his nose at the system with regard to the prosecution of this case. See HUD v. Wagner, No. 05-90-0775-1, 1992 HUD ALJ LEXIS 75, at *32 (HUDALJ June 22, 1992) (imposing \$10,000 civil penalty where respondent ignored HUD's charge); HUD v. Woodard, 2016 HUD ALJ LEXIS 4; HUD v. Elite Properties of Iowa, LLC, No. 09-M-113-FH-40, 2010 HUD ALJ LEXIS 31 (HUDALJ July 9, 2010); HUD v. Parker, 2011 HUD ALJ LEXIS 15, at *10-11. He has refused to participate in these legal proceedings and by doing so he has shown no concern for the law or the civil rights of Complainant. Indeed, his refusal to participate in these proceedings suggests disrespect for, or contempt of, the Fair Housing Act and this Court, and is an appropriate additional factor to consider in assessing a civil penalty. Additionally, Respondent's discrimination occurred in advertisements for the Property that were widely disseminated, and his statements to Complainant were blatantly discriminatory.

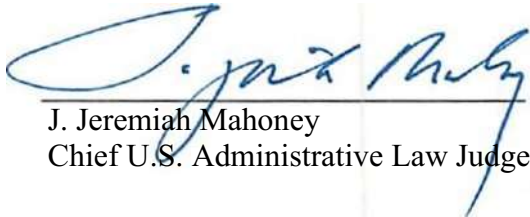
Upon consideration of all six factors, the Court finds that Respondent's conduct was especially egregious and must be met with a harsh penalty to deter similar future behavior by him. Additionally, Respondent is directly culpable, and has not shown any measure of concern or remorse for the consequences of his actions. Accordingly, a maximum civil penalty of \$20,111 is appropriate.

ORDER

Based on the foregoing:

1. Within sixty (60) days of the date on which this Order becomes final, Respondent shall pay to Complainant the sum of \$50,530, consisting of:
 - a. \$15,000 for Complainant's lost housing opportunity;
 - b. \$5,530 for Complainant's economic loss; and
 - c. \$30,000 for Complainant's emotional distress; and
2. Within sixty (60) days of the date on which this Order becomes final, Respondent shall pay to the Secretary the sum of \$20,111 in civil money penalties.

So **ORDERED**



J. Jeremiah Mahoney
Chief U.S. Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675. This Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review must be received by the Secretary within 15 days after the date of this Order. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this Order.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 180.680.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. § 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.