

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States  
Department of Housing and Urban  
Development, on behalf of  
James Lavender,

**CORRECTED COPY**

Charging Party,

v.

HUDALJ 09-01-0380-8  
Decided: October 17, 2003

Senior Nevada Benefits Group, L.P.,  
Ida, Inc., and LeRoy Black,

Respondents.

Matthew Q. Callister, Esq.  
For the Respondents

Melanie Lampert Ryan, Esq.  
For the Secretary

Before: Arthur A. Liberty  
Chief Administrative Law Judge

**INITIAL DECISION AND ORDER**

Statement of the Case

This matter arose as a result of a complaint filed by James Lavender (“Complainant”) in March 2001 with the Department of Housing and Urban Development (“HUD” or “Charging Party”). The Complaint alleged discrimination based upon race (African-American) in violation of the Fair Housing Act, as amended by

the Fair Housing Amendments Act of 1988 (“Act”), Pub. L. 100-430 (1988), 42 U.S.C. § 3601, *et seq.* Following an investigation and a Determination of Reasonable Cause, HUD filed a Charge of Discrimination on December 19, 2002 against Respondents Leroy Black, the Senior Nevada Benefit Group, L.P., and Ida, Inc. (“Respondents”), pursuant to the Act.

Senior Nevada Benefit Group, L.P. (“SNBG”), is a Nevada limited partnership that owns and manages rental properties in Nevada. JS #1.<sup>1</sup> Ida, Inc., a Nevada corporation, is the general partner of SNBG. JS #2. Black is the president and resident agent of Ida, Inc. Respondent Black is also a limited partner in SNBG, and has authority to speak on behalf of himself, SNBG, and Ida, Inc. JS ## 3, 4.

SNBG was the owner of a rental property at 213 N. 6<sup>th</sup> Street, Las Vegas, Nevada (“subject property”), consisting of 27 single-occupant rooms, when the alleged discrimination occurred. JS #7; Ch. ¶¶ 2, 3. At that time, William Dawson, since deceased, was employed as the property manager of the subject property. JS #11; Ch. ¶ 7. The Complaint alleged that Dawson refused to rent a room to Complainant at the subject property. Ch. ¶¶ 7, 8, 9, 13.

#### Procedural history

On January 24, 2003, the Charging Party filed a Motion for Default Decision against Respondents on the ground that Respondents had failed to file an Answer to the Charge of Discrimination. I issued an Order to Show Cause directing Respondents to tell me why they had failed to answer the Charge and why I should not grant the Default Decision. The Charging Party was also ordered to submit a brief on requested damages and support therefor. In response to the Order to Show Cause, Respondents stated that they had answered the Charge before it had been issued – when they had answered questions from the HUD San Francisco office during its investigation in March 2001 – and that they did not need to answer further now. I found this response unpersuasive, and granted the Motion for Default Decision against Respondents on February 13, 2003. In the same Order, a hearing date was set in March to determine damages. On February 12, 2003, the Charging Party had filed its Prayer for Monetary Damages, and Respondents were granted until February 24, 2003, to file a response.

On February 18, 2003, Respondents submitted a document entitled “Government Folly, A five act play depicting the foolishness and waste of a typical government agency

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<sup>1</sup> The following abbreviations are used throughout this decision: “JS” for Joint Stipulation, “TR” for Transcript, “Ch.” for Charge, “Ch. P. Ex.” for Charging Party Exhibit.

(HUD)” (“Folly”). Respondents attributed this document, containing numerous misstatements of law, poor grammar, and other errors, to “The Student Body of the newly accredited Law school at UNLV, as a class project.” Folly, pp. 1, 6. Due to the unusual nature of this document, I contacted the law school at UNLV to verify Respondents’ claim. I received a response from the Dean of the William S. Boyd School of Law at UNLV stating that no student or professor at the law school had been involved in drafting the Folly, which the Dean described as “nonsense.” I therefore concluded that Respondents lied to this court, in violation of the standards of conduct governing persons appearing in this proceeding. *See* 24 C.F.R. §180.315.

Due to this behavior and the Respondents’ pattern of refusing to participate meaningfully in the proceedings,<sup>2</sup> I determined that it would be pointless to hold a hearing on the issue of damages. Accordingly, an Order was issued on February 26, 2003 cancelling the March 2003 hearing and denying all pending motions, with the intention of reaching a decision without holding an oral hearing.

Subsequently, however, Respondents retained legal counsel and requested that I reconsider this Order. After due consideration, a Notice of Hearing and Order re-setting the damages hearing for April 17, 2003, was issued in the hope that, with the assistance of counsel, Respondents’ behavior would improve enough to make a hearing useful. This Order was amended by Order on March 27, 2003, to reschedule the hearing until May 7, 2003. In another Order on March 27, 2003, the Respondents’ oral Motion to Reconsider the Order of Default entered in this matter was denied. A ruling on the Charging Party’s Motion for Sanctions was reserved.

Respondents were ordered to answer the Charging Party’s still-pending interrogatories by April 14, 2003. On April 18, 2003, the Charging Party submitted a Second Motion for Default or in the Alternative, Sanctions, because Respondents

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<sup>2</sup> Respondents had engaged in efforts to obstruct the hearing process at every step. They had refused to file an Answer to the Charge. They refused to respond to any discovery request propounded by the Charging Party. *See* Charging Party’s Motion to Compel Discovery, February 10, 2003. Mrs. Ida Black, Respondent Black’s mother, the treasurer of Ida, Inc., and a witness in the case, appeared to have evaded service of a deposition notice. *See* Charging Party’s Motion for Recognition of Substitute Service, February 10, 2003. Respondents subsequently continued to disregard discovery requests and failed to attend scheduled depositions. *See* Charging Party’s First Motion for Sanctions, February 25, 2003. Respondent Black also refused to participate in the pre-hearing conference call I held on February 22, 2003, instead having one of his managers, Chuck Steel, participate. During the beginning of the conference call while I was explaining procedural matters, Steel said, “That’s bullshit,” and hung up. Based on this pattern of behavior, I reached the conclusion that further efforts to gather information from Respondents would be fruitless.

continued to fail to respond to the interrogatories. This motion was granted by Order dated April 30, 2003, and the Charging Party's First Motion for Sanctions was also granted. I denied the Charging Party's Second Motion for Default on the issue of damages.

The parties submitted Joint Stipulations on May 6, 2003. The damages hearing was held on May 7 and 8, 2003, in Las Vegas, Nevada, and both parties timely submitted post-hearing briefs. Accordingly, this issue is now ripe for decision.

#### Findings of Fact by Reason of Default

1. Complainant is an African-American male receiving Social Security retirement benefits. Ch. ¶ 4.
2. On or about January 11, 2001, Complainant saw an advertisement for an available unit at the subject property. Complainant telephoned the number listed on the advertisement, spoke to Respondent Black, and arranged to view the unit. Ch. ¶ 5.
3. The qualifications for rental at the subject property were that a person must be male, a senior, with a low income. Complainant met all of these criteria. Ch. ¶ 6.
4. Upon arriving at the subject property, Complainant had his first contact with Mr. Dawson, a Caucasian male. Dawson saw that Complainant is African-American. Dawson refused to show the unit to Complainant. Ch. ¶ 7.
5. Complainant again requested that Dawson show him the unit. Dawson continued to refuse. Ch. ¶¶ 8, 9.
6. On April 6, 2001, the subject property was sold. Ch. ¶ 10.
7. United States Census data indicates that in 2000, African-Americans comprised 21.9 percent of the population in the census tract where the subject property is located. Ch. ¶ 12.

#### Findings of Fact Based on Hearing Evidence

1. The Complainant is a 66-year-old retired man who currently lives in Las Vegas, Nevada. TR pp. 31, 32.

2. He lives on a Social Security check of a little more than \$600 per month and additional income he earns as a salesman of various merchandise. TR p. 33. At times that additional income can amount to roughly \$300 in a month. TR p. 176.

3. On January 11, 2001 Complainant moved to Las Vegas from Los Angeles. TR pp. 35, 38. He drove a U-haul truck from California and slept in the truck when he arrived late that night. TR pp. 38-39. He knew no one in Las Vegas and did not know his way around the city. TR p. 39. He had about \$600 in savings with him when he arrived. TR pp. 38-39, 101.

4. The next morning Complainant purchased a newspaper to look for a place to live. TR p. 40. In Los Angeles, Complainant had lived for more than a year in a quiet, comfortable, furnished hotel room with television, bed, table, bathroom, and refrigerator. TR p. 36. It was an average hotel room in an older hotel. TR p. 103. Complainant paid \$600 a month for that room. *Id.* He was looking for a similar furnished room in Las Vegas. TR pp. 116-17.

5. Complainant selected the rental advertisement for the subject property, owned by Respondents. TR pp. 40, 41, 119-20. The property advertised a “Downtown Senior Special” for \$295 per month that included furniture, utilities, maid service, laundromat, a private bathroom, and private entry. Ch. P. Ex. 1. Complainant also marked the ad just below the one for the subject property, although he did not call it. TR p. 120; Ch. P. Ex. 1. The ad was for several rooms downtown, including one for \$75.50 a week (\$302/month); only a few dollars more per month than the subject property. Ch. P. Ex. 1. Complainant started with the ad for the subject property because it was cheaper than the other downtown ads. TR p. 120. Complainant thought that downtown would be more convenient, although he knew nothing about Las Vegas. TR pp. 120, 122-23. He did not consider any rooms in other parts of town, including at least one that was cheaper than the subject property. *Id.*; Ch. P. Ex. 1.

6. When Complainant called Black about the room, he informed Black of his age and that he received Social Security. TR p. 42. He did not inform Black of his race during the less-than-five-minute conversation. *Id.* Black told the Complainant he would be able to get 99-cent meals nearby. TR p. 41. Black also told Complainant he could view the property before four p.m., when the gates to the subject property would close. TR pp. 43-44. Complainant assumed from this statement that he had found a place to stay if he liked it. TR p. 43.

7. The dimensions of each unit at the subject property were 14 feet by 11 feet, of which the closet and bathroom took up 4 feet by 11 feet. Ch. P. Ex. 7. The main portion of the

room, therefore, was 10 feet by 11 feet. *Id.* In this part of the room, roughly half the room was taken up with the bed, table, and chair, leaving approximately a 5' x 11' space in which there was a dresser, night stand, and into which the doors to the closet, bathroom, and from the outside opened. *Id.* There was no remaining wall space against which to put any additional furniture. *Id.*

8. Complainant drove his 14-foot U-Haul truck to the property. TR pp. 43-44, 104. When Complainant drove around to find the building and walked around in front of the subject property for a few minutes after arriving (while looking for the property number), he noticed that the area around it was quiet and that there were no signs of homeless people in the area, such as a person pushing a shopping cart filled with possessions. TR pp. 64, 173. An older hotel was located across the street. TR p. 130. A metro police station was located down the street, and there was a casino on the corner. TR pp. 62, 63-64. Complainant assumed that the police station and casino meant the neighborhood would be safe and quiet because tourists going to the casino would be protected. TR pp. 62-64, 130-31. There is also a health clinic nearby. TR p. 199.

9. Complainant saw Dawson, the property manager, sitting on the porch. TR p. 44. Dawson had an artificial eye and was older than Complainant. TR pp. 131, 132. Dawson looked angry to Complainant because he was not smiling and his face was “tight.” TR p. 133-34. Dawson did not get up, did not motion to Complainant, and his facial expression and tone of voice did not change while they were talking. TR. pp. 44, 46, 132, 134.

10. Complainant informed Dawson that Black had sent him to look at the property and that he wanted to rent a room. TR pp. 44, 45, 137. Dawson responded, “You’ve got a U-Haul truck . . . and the place is small, and you’ve got furniture.” TR pp. 136-37. Complainant told Dawson he was going to store some of the things in the truck at U-Haul. TR p. 138. Dawson was still focused on the idea that Complainant had too much to fit in the room and said again “You have a U-Haul truck.” TR pp. 45, 139. Complainant stated, “He was – he was always talking about me storing furniture there which I had no plans to do.” TR p. 139. Complainant then asked to see the room and Dawson said no. TR p. 139.

11. Complainant then left the property. No argument or unpleasant or otherwise objectionable words were spoken between the two. TR pp. 46, 139, 140. The interaction between them lasted three to five minutes. TR p. 139.

12. Complainant felt uncomfortable with Dawson’s failure to stand up, gesture, smile, or change his expression and tone. TR p. 46. It gave him the impression that Dawson did not really want to rent the space to him. *Id.* Complainant assumed this meant there

was something strange going on because he, as a salesman, knows that he has to be cheerful and work hard to sell his products so he can make money. TR pp. 181-82. He imputed this same requirement to Dawson. *Id.*

13. After he left the property, Complainant attempted to telephone Black, but a younger woman answered and said that he was not home at the time. TR pp. 47, 143. She did not know when he would be coming back. *Id.* Complainant did not identify himself during this 15-30 second conversation and did not leave a message. TR pp. 143-44. Complainant gave up on renting the subject property at that point. TR pp. 47, 145-46. From Dawson's demeanor and what the woman said on the phone he concluded that Black and Dawson did not want him to live there because of his race. TR p. 146.

14. Complainant did not call Black again. *Id.* Nor did he make any other attempts to address the situation with Black or with Dawson. TR p.147. Complainant assumed that his race, evident to Dawson, had been the reason that Dawson refused to show him the unit. TR p. 48. Complainant also assumed that Dawson called Black during the time it took Complainant to get to a phone booth to call Black, told Black that Complainant was African-American, and thus Black avoided talking to Complainant when he called a few minutes later. TR pp. 145-47.

15. Complainant believes he can tell when someone is discriminating against him. He stated, "Well, you know, being a black person, African-American, you can have an idea of how people feel about you and that's what I picked up . . . ." TR p. 160. Complainant elaborated,

A person who wants to rent an apartment, they introduce themselves. They say would you like to see the room, whatever. They would take me to it. My name is Ms. Jones or whomever. They make you feel a sense of – of, you know, that they want to rent the place, but if a person reacts in a negative way, it tells you they don't want to rent the place.

TR p. 181.

16. Complainant did not look for other places to rent. TR pp. 48, 53. He was hurt and humiliated by Dawson's refusal to show him the room. TR p. 53. He returned to his U-Haul truck for the night to decide what to do. TR p. 48.

17. The next day, January 12, 2001, Complainant visited the Las Vegas HUD office where he was referred to Catholic Charities, an organization that could help him find

temporary housing. TR pp. 50-51. One of Catholic Charities' case-workers asked him how long he had been homeless, and Complainant was upset to realize that he now fit that description. TR p. 52. Complainant had never been homeless before and was embarrassed and humiliated to find himself in such a situation. *Id.*

18. At Catholic Charities, he was told that his references would be checked and he would be placed in the organization's St. Vincent's apartments, but until that was completed he could sleep at their shelter. TR p. 51. Because Complainant had a place to sleep at St. Vincent's, he did not move into a motel or look for a place to live while he was in the shelter. TR p. 184.

19. Complainant lived at the men's homeless shelter for roughly 13 days, until January 25, 2001. TR pp. 54, 56; Ch. P. Ex. 2. He paid \$70 in rent for his time at the shelter. Ch. P. Ex. 2. During that time he stored his household belongings in a U-Haul storage facility, as he had intended to do if he had rented the subject property. TR p. 55. He also paid an additional \$14 to store his personal items in a locker at the shelter. TR p. 55; Ch. P. Ex. 3.

20. While at the shelter, Complainant shared a room with several people, had no privacy, and did not sleep well. TR pp. 54, 56. He described the shelter as housing "a lot of people down – down and out on their luck, people who were probably alcoholics or drug addicts, and it's just a whole bunch of people sleeping in one big place." TR p. 54.

21. Complainant also did not have the opportunity to bathe regularly while at the shelter. He developed temporary back problems. He bathed in his U-Haul facility when he could not bathe at the shelter. TR p. 56. He experienced depression, anger, discouragement, nervousness, stomachaches, exhaustion, headaches, and withdrawal from social contact while there. TR pp. 49, 56.

22. On January 26, 2001, Complainant moved into St. Vincent's, an apartment building for individuals with low income, where he lived for more than a year and a half, until August 2002. Ch. P. Ex. 4, 5. The rent at St. Vincent's was approximately \$146 a month. Ch. P. Ex. 4, 5.

23. Complainant described the apartment he rented at St. Vincent's as a "rather new place, two years old, kitchen area for cooking, bathroom. It was nice and clean. Security on the premise. So, I felt a lot better." TR p. 60. Complainant felt his personal property and items were safe at St. Vincent's. TR p. 61. During his time there Complainant "felt better" and the physical and emotional symptoms he had developed while at the shelter went away. TR p. 60. However, he felt the area outside the building was not a nice place



to be around. *Id.* He described the area as full of “people who’d rather sleep on the streets and push carts . . . alcoholics, drugs, a lot of people mentally challenged.” *Id.*

24. St. Vincent’s was not located downtown as was the subject property. TR p. 63. Located at 1501 North Las Vegas Boulevard, St. Vincent’s is located 1.2 miles north of the subject property.<sup>3</sup>

25. In order to travel most places in the city from St. Vincent’s, Complainant had to travel downtown to switch to the other bus lines, instead of being downtown already with direct access to the bus, as he would have been at the subject property. TR p. 63.

26. A few months after Dawson refused to rent to him, Complainant encountered another racist incident. TR pp. 67, 179. He was in line at a vending store when a white man pushed in front. TR p. 67. The clerk told the man that Complainant was first. *Id.* The man threw his items back and left the store. *Id.* When Complainant went out, the man was sitting in a truck with a little boy. *Id.* The man said to Complainant, “You black nigger.” *Id.* Complainant was “astonished” at the way the man spoke to him and the incident made him feel that there was a lot of prejudice in Las Vegas. TR p. 179.

27. Complainant looked for other housing while staying at St. Vincent’s but did not find any that he felt was as nice as St. Vincent’s. TR p. 65. Complainant chose to stay at St. Vincent’s because he liked it, it allowed him to save money and gave him the opportunity to buy furniture. *Id.* However, St. Vincent’s allows only a maximum of a two-year stay. TR p. 171.

28. In September 2002, Complainant moved to his current residence, where he pays \$515 a month in rent. TR pp. 66-67; Ch. P. Ex. 6. Complainant’s current residence is a one-bedroom apartment instead of a single room, and the rent he pays is about normal for one-bedroom apartments in Las Vegas. TR pp. 67, 178. Complainant also pays power bills between \$100-200 per month, telephone costs of around \$20, food and transportation costs, and “business” taxes he pays on his sales income. TR pp. 176-78. However, Complainant also receives state help with his power bill that offsets his cost significantly. TR p. 178.

29. Moving from place to place did not bother Complainant because he is basically a salesman. TR p. 69. As a sales person, he is usually looking for the best place to make some money, and living in different places allowed him to do that. *Id.* In fact,

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<sup>3</sup> This data was obtained online from “Mapblast.com.”

Complainant had not intended to live in the subject property permanently. TR p. 159. He arrived in Las Vegas intending to rent a temporary residence, and later move on if he did not like the place. *Id.*

30. Housing in the area around the subject property is affordable because the rents are low. TR p. 199. The housing in the area is not the same as subsidized, public affordable housing, either in quality or in cost. TR pp. 198-99. The quality of public housing, like St. Vincent's, is higher than affordable private housing, like the subject property and other places Complainant rejected in favor of St. Vincent's, and the rents in public housing are lower. TR pp. 193, 199. The affordable housing in the area of the subject property ranged from about \$250 - \$350 a month, with some weekly rentals for about \$100 a week. TR p. 199.

31. St. Vincent's and the subject property are about 10-15 minutes apart by bus. TR p. 215. St. Vincent's is located in a homeless corridor. TR pp. 215-16. The area around the subject property also had an enormous problem with homelessness, but not as high a concentration of homeless people as the area within the homeless corridor. TR p. 217. Visible homeless people were present on the block in which the subject property is located. *Id.*

32. Complainant was offered public housing in January or February 2003 by the Clark County public housing authority, which he refused because the neighborhood was not as nice – he was told people broke into cars and stole there. TR p. 66. He had already moved into his current residence in September 2002.

33. Complainant was raised in North Carolina and grew up during the period of “substantial segregation” in the Deep South. TR pp. 72, 75. Complainant experienced the effects of segregation when, for example, he was required to sit in the back of the bus due to his race. TR p. 75.

34. Complainant moved to New York City after graduating from high school in 1956. TR p. 73. Complainant held several different jobs while living in NYC, including a job as a NYC Social Services police officer for five years. TR pp. 80-82. Complainant lived in the Bronx while in NYC, and for a time in New Jersey. TR p. 84. After being let go by the NYC Social Services police for excessive use of force during an arrest, Complainant became a NYC Gypsy-cab driver. TR p. 87. He continued this job for a number of years until he moved to Los Angeles in 1974. TR pp. 87, 88.

35. In Los Angeles, Complainant lived in the South Central area. TR p. 96. Complainant worked as a security guard for less than a year and then quit and began

selling merchandise door-to-door and on the street. TR pp. 89-90. He continued to make his living solely from merchandise sales until he began receiving Social Security retirement benefits in 1999 at the age of 62. TR pp. 92-97. Since then, he has continued merchandise sales in addition to receiving Social Security. TR p.100.

36. In 1996, Complainant moved back to NYC to be near his son, who had been living in Las Vegas and had suffered an accident in which he'd been paralyzed. TR p. 97. Complainant remained in NYC until 1999, when he returned to Los Angeles after a falling out with his son. TR pp. 98, 102. He lived in the Gardena area of Los Angeles until he moved to Las Vegas in 2001. TR pp. 98-99.

37. Complainant describes himself as a "go-getter." TR p. 49. This was in part why he came to Las Vegas. *Id.* He is also used to dealing with the public as a salesman and has learned over the years that even when he feels bad he needs to get over it so he can present a positive face or he would not be able to sell anything. TR p. 182.

38. At the beginning of April 2001, a few months after Complainant tried to rent a room at the subject property, the subject property was sold. The percentage of known white tenants at the complex has remained approximately the same under both old and new owners and managers – 63 percent in 2001, 68 percent in 2003, and 67 percent of new tenants.<sup>4</sup> The percentage of black or unknown race tenants has also remained fairly consistent – 26 percent in 2001, 20 percent in 2003, and 28 percent of new tenants. There is therefore no evidence that there had never been black tenants while the subject property was managed by Dawson.

### **Discussion**

The regulation found at 24 C.F.R. § 180.420(b) authorizes judgment by default for failure to timely answer a charge of discrimination under the Act. An answer is required to be filed within 30 days after service of the charge, and any allegation in the charge that is not denied is deemed admitted. *HUD v. Cabusora*, 2A Fair Housing-Fair Lending

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<sup>4</sup> All of the figures in this finding were derived from the old and new tenant lists submitted by the government (Ida's Senior Housing Accounts Receivable Summary (Rent Roll) for the first third of 2001 (G.Ex. 8) and Smiling Face Senior Housing unit and resident list submitted by manager for the current owner (G.Ex. 9)). The tenant lists were compared with the current manager's testimony about the race of residents, beginning on TR. p. 221, to determine the respective race of each tenant on the lists. The number of black and unknown residents on each list was added together and then mathematically converted into a percentage of the total number of residents on that list, and the same was done with the white residents, to arrive at the cited numbers.

(Aspen) ¶ 25,026, 25,288, HUDALJ No. 09-90-11381 (March 23, 1992), *aff'd*, 9 F.3d 1550 (9<sup>th</sup> Cir. 1993). Since a Default Judgment has been entered in this matter, the only remaining issue is to determine the appropriate amount of damages and other remedies to be ordered.

## Remedies

### Damages

Section 812(g)(3) of the Act provides that where an administrative law judge finds that a respondent has engaged in a discriminatory housing practice, the judge shall issue an order for “such relief as may be appropriate.” 42 U.S.C. § 3612(g)(3). This relief may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. *Id.* The purpose of an award of actual damages is to compensate the complainant for the injury sustained without creating a windfall. Robert G. Schwemm, *Housing Discrimination: Law and Litigation*, § 25:4 (rev. Sept. 2001). Actual damages that are compensable include tangible losses, loss of amenities, inconvenience, and emotional distress, as appropriate.

The Charging Party requests the following damages: 1) out-of-pocket tangible losses of \$2,214<sup>5</sup> for rent differential and locker costs; 2) loss of amenities totaling \$2,719.25 for the subjective differences between the subject property and St. Vincent’s;<sup>6</sup> and 3) emotional distress damages in the amount of \$25,750 to cover the period from when the discrimination occurred in January 2001 until the present, roughly two and a half years.

#### *Out-of-pocket losses*

As a result of his initial demoralization and incapacity to deal with housing searches, Complainant chose to go to a homeless shelter, rather than a motel or other living arrangement. He remained there for two weeks, at a cost of \$70. He was required to rent a locker in which to store his personal possessions, at a total cost of \$14.

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<sup>5</sup> The Charging Party calculates this based on the \$220 per month rent differential between the subject property and Complainant’s current residence for 40 weeks (from August 2002 until May 2003), plus the \$14 he paid to store his personal belongings at the homeless shelter.

<sup>6</sup> The Charging Party reaches this amount by calculating \$149 per month, the difference between the subject property’s rent of \$295 per month and St. Vincent’s rent of \$146 per month, or the amount more that Complainant was willing to pay to get the higher level of amenities at the subject property.

Complainant also placed his household goods into a U-Haul storage unit, but he had intended to do so anyway and is not requesting damages for that cost.

Damages for direct economic losses such as the locker rental fees and the rent for the homeless shelter are appropriate in awards under the Act. *See, e.g., Krueger v. HUD*, 115 F.3d 487, 492-93 (7<sup>th</sup> Cir. 1997); *Douglas v. Metro Rental Services, Inc.*, 827 F.2d 252, 254 (7<sup>th</sup> Cir. 1987); *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 190 (7<sup>th</sup> Cir. 1982); *Steele v. Title Realty Co.*, 478 F.2d 380, 383-84 (10<sup>th</sup> Cir. 1973); *HUD v. Wagner*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,032, 25,336-37, HUDALJ No. 05-90-0775-1 (June 22, 1992). The Charging Party has shown that Complainant incurred such direct economic costs and that they were incurred as a direct result of Respondents' violation. Although the Charging Party did not request damages for the \$70 rent, evidence of this cost was presented and I find an award of \$84 reasonable and appropriate to compensate Complainant for his out-of-pocket losses.

The Charging Party also seeks \$2,200 as the difference between the rent of the room made unavailable by Respondents' actions and the cost of the more expensive one-bedroom apartment he is in now.

Damages for the amount reasonably expended on alternate housing are appropriate where the complainant has made a demonstration that such higher housing costs were incurred. *See, e.g., Krueger*, 115 F.3d, at 492; *Miller v. Apartments and Homes of N.J., Inc.*, 646 F.2d 101, 112 (3d Cir. 1981); *HUD v. Gwizdz*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,086, HUDALJ 05-92-0061-1 (Nov. 1, 1994); *HUD v. Morgan*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,008, HUDALJ No. 08-89-0077-1 (July 25, 1991), *aff'd*, 985 F.2d 1451, 1458 (10<sup>th</sup> Cir. 1993). However, in the instant case, I do not find that the costs of Complainant's current housing are the result of the discriminatory act, nor do I find that they are reasonable.

Complainant did not initially look for alternate accommodations in the city's housing market, instead going to Catholic Charities to stay at their shelter and then to secure an apartment in their low-income apartment complex, St. Vincent's. The shelter itself, a clearly temporary place to live, does not constitute the alternate housing to which Complainant was forced to resort in direct consequence of the violation. Therefore, St. Vincent's, where he lived for almost two years after Dawson's refusal, was the alternate housing cost incurred by Complainant as a direct result of the discrimination. Once at St. Vincent's, Complainant began looking at other housing options, which he rejected or turned down as not being up to the standards of St. Vincent's. He was able to look for other housing that suited him, at his leisure, and make choices as to when and where he

would go next. Therefore, any subsequent housing choice was not a direct result of Respondents' violation.<sup>7</sup>

At any time during the almost two years he resided at St. Vincent's, Complainant could have chosen comparable alternate housing at a lower price than he currently pays. Angela Quinn, the Charging Party's expert witness regarding affordable housing, low income housing, and senior housing, testified to the shortage of affordable housing in Las Vegas. Her information, however, was not exclusively about furnished rooms for rent. Clearly, as there were four rooms for rent downtown in the same price range as the denied housing listed in a single newspaper in one day, as well as several others in other sections of town, it was possible to find such similarly priced housing. It may be harder to find one-or-two-bedroom or family housing in the same price range as the denied housing, but such housing is not equivalent to what Complainant had been trying to find.

Complainant left St. Vincent's to occupy housing that was more expensive than the denied housing. He could have chosen housing that was comparable in quality and cost to the denied housing. He did not. Complainant was not forced to occupy more expensive housing as a consequence of Respondents' unlawfully discriminatory act. Therefore, the cost of the housing he occupied after leaving St. Vincents' is not compensable.

I find that out-of-pocket tangible damages requested in the amount of \$2,200 are unreasonable and not based on tangible costs expended by Complainant in direct consequence of the refusal to rent. They are therefore denied. The total award for out-of-pocket tangible damages is \$84.

#### *Loss of amenities*

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<sup>7</sup> Cf. *HUD v. Kogut*, 2A Fair Housing-Fair Lending (Aspen) ¶25,100, 25,905, n. 24, HUDALJ No. 09-93-1245-1 (April 17, 1995), in which the complainant was awarded compensation for rent differential when she moved from the property at which the discrimination occurred to a larger, one-bedroom apartment. The court in *Kogut* stated, "[T]o the extent that [Complainant] did receive more value at the substitute apartment, this can be viewed as a forced reallocation of . . . monetary resources' for which Complainant may be reimbursed." *Id.*, quoting *Miller*, 646 F.2d at 112. *Kogut*'s facts differ from the instant case, however: the housing for which the complainant was seeking rent differential was the housing to which she had been forced to relocate directly after the discrimination removed her from her previous residence. In the instant case, Complainant is requesting reimbursement for the housing he lives in now, after having resided first in the shelter and then at St. Vincent's for almost two years. See also, *Morgan*, 2A FH-FL ¶25,008; *Miller*, 646 F.2d at 112.

Discrimination under the Act may give rise to additional tangible costs to complainants than specific out-of-pocket expenses. When denied housing, complainants must find somewhere else to live, which can result in a loss of amenities if they cannot find similar quality property for the same price. Loss of amenities may consist of items such as a lack of parking, a smaller kitchen, no bathroom, or fewer rooms, and is appropriate in a damages award. *See, e.g., Kogut*, 2A FH-FL ¶25,100 (complainant was forced to move to a ground floor apartment in a crime-ridden neighborhood where it was broken into twice, in addition to lost amenities of quieter neighborhood, access to public transportation, newer building, air conditioning, and laundry facilities); *Wagner*, 2A FH-FL ¶25,032 (complainant required to live in an apartment with smaller rooms, less modern kitchen, busier and noisier street location, more difficult parking, and no nearby park). Complainants may recover for the loss of particular housing amenities if the Complainant's subjective valuation of the amenities is greater than the market value. Alan W. Heifetz and Thomas C. Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 J. Marshall L. Rev. 3, 12 (Fall 1992).

In the instant case, Complainant moved into an apartment at St. Vincent's that was newer and with more space than the subject property, in addition to costing about half as much.<sup>8</sup> The Complainant asserts, however, that he lost easy access to inexpensive meals and public transportation, and a quieter, safer neighborhood in the location of the subject property. Complainant also describes two incidents that occurred at St. Vincent's that he seems to believe indicate that St. Vincent's was not as good a place to live. In one incident, the person living above him dropped weights on the floor, causing Complainant to decide to sleep in the bathroom. TR p. 62. In the other, a child on the street threw a rock that hit the window of the room above him, making Complainant leery because it could have been him. *Id.* However, Complainant chose to live at St. Vincent's for

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<sup>8</sup> Because St. Vincent's cost less than the subject property did to rent, Complainant does not qualify for the "forced reallocation of monetary resources" theory cited in *Kogut*, *supra*, even though Complainant received more value at St. Vincent's. However, courts have granted lost amenities awards for items such as smaller rooms, less modern kitchen, busier, noisier location, more difficult parking, and no nearby park, even when the cost of the alternative housing was less than the desired housing. *See, e.g., Wagner*, 2A FH-FL at 25,337-38. In *Wagner* and other similar cases, however, there were several lost amenities, not just one, they were not vague or speculative, often the less expensive housing was not nicer as in the instant case, and the court found that loss of these amenities was more troublesome to the complainant than to the typical tenant – of "particular value . . . not reflected in the comparative market values of the two apartments." *Id.* at 25,337. The evidence does not support such a finding in this case. In addition, because the complainant in *Wagner* remained in this undesirable housing for about two years after moving in, the court found that such lost amenities – in total – were not vexing enough for him to move and were worth only \$350. *Id.*

almost two years while other housing opportunities were available. He chose to deal with the noise and safety issues. Furthermore, there was no evidence he would have avoided these kinds of disturbing events at the denied housing.

There was no evidence of the cost difference of meals that may have been available in the vicinity of the denied housing and the actual meal costs incurred by Complainant. Because the evidence supports only an award for the loss of easy access to transportation, and that appears to not have been a significant loss, I find that the requested loss of amenities amount, \$2,719.25, is significantly higher than the value Complainant actually placed on this amenity. *See, e.g., Wagner*, 2A FH-FL at 25,337-38 (award of \$350 instead of requested \$2,000 because loss of amenities was not as great as asserted as complainant remained in the housing for about two years). I therefore award Complainant \$100 in damages for lost amenities due to increased difficulty in using public transportation at St. Vincent's as compared with public transportation at the subject property.

#### *Emotional distress*

Actual damages are not limited to out-of-pocket losses, but may also include damages for intangible injuries. Such injuries may include embarrassment, humiliation, and emotional distress caused by the discrimination.

The Charging Party's request for \$25,750 in emotional distress damages consists of three parts: \$4,000 for emotional distress due to homelessness for two weeks; \$19,750 for emotional distress during the 79 weeks at St. Vincent's; and \$2,000 for continuing emotional distress since leaving St. Vincent's.

Although courts "do not demand precise proof to support a reasonable award of damages [for emotional distress]," *Block v. R.H. Macy and Co.*, 712 F.2d 1241, 1245 (8<sup>th</sup> Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony or evidence. *See Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7<sup>th</sup> Cir. 1974); *see also HUD v. Tucker*, 2A Fair housing-Fair Lending (Aspen) ¶ 25,033, 25,350, HUDALJ Nos. 09-90-1008-1, 09-90-1009-1 (Aug. 24, 1992). "Racial discrimination against blacks, because it is one of the 'relics of slavery' is the type of action that would reasonably be likely to humiliate or cause emotional distress." *Gwizdz*, 2A FH-FL at 25,795 (quoting *Seaton*, 491 F.2d at 636).

Emotional distress damages should make the victim whole without creating a financial windfall. *Heifetz & Heinz*, 26 J. Marshall L. Rev. 3, at 17. Courts have wide discretion in determining damages for emotional distress. However, to gauge the



reasonableness and extent of an appropriate award, courts often look at two key factors: 1) the egregiousness of the respondent's behavior, and 2) the susceptibility of the victim, or his reaction to the conduct. *See HUD v. Pfaff*, 2A Fair Housing-Fair Lending (Aspen) ¶25,085, HUDALJ No. 10-93-0084-8 (Oct. 27, 1994); Heifetz & Heinz, 26 J. Marshall L. Rev. 3, at 21-22. *See also generally* Schwemm, *Housing Discrimination*.

A causal connection must exist between the discriminatory action and the complainant's mental distress. In addition, evidence of treatment for emotional distress and effect on daily living activities is relevant to the damage claim. *HUD v. Schmid*, 2A Fair Housing-Fair Lending (Aspen), ¶ 25,139, 26,153, HUDALJ No. 02-98-0276 (July 15, 1999). A party's pre-existing emotional condition is also taken into consideration in determining the level of emotional distress and appropriate amount of compensation. *HUD v. Jerrard*, 2A Fair Housing-Fair Lending (Aspen), ¶ 25,005, 25,091, HUDALJ No. 04-88-0612-1 (Sept. 28, 1990).

The discriminatory conduct in the instant case, while likely to humiliate or cause emotional distress simply because it was based on race, was not egregious. Dawson, although he did not rent Complainant the room, did not say anything overtly discriminatory to or about Complainant, and did nothing to indicate that Complainant himself was unacceptable as a renter or that race was an issue, for example. Complainant concluded that he had been discriminated against solely from the fact that he is black, that he was refused a chance to view the rental unit, and that the manager did not smile at him.

In cases similar in degree to the facts of the instant case, the courts have awarded much lower amounts of damages. As the court stated in *Morgan v. HUD*, 985 F.2d 1451, 1459 (10<sup>th</sup> Cir. 1993), "more than mere assertions of emotional distress" are required to support an award for intangible emotional damages. Rather, the record as a whole must demonstrate the need for the amount awarded. *HUD v. Joseph*, 2A Fair Housing-Fair Lending (Aspen) ¶25,072, HUDALJ No. 04-93-0306-1 (June 2, 1994). For example, in *Wagner*, 2A FH-FL at 25,337, a \$500 award for emotional distress was based on Complainant's testimony that "Respondents' treatment ... was distressing," his assertions of emotional distress, that he had experienced similar treatment as a child when his mother was unable to get housing with kids, and "I couldn't believe that in 1990 this sort of thing was still going on . . . so I was angry and I was determined to do something about it." *Id.*

In *Williams v. Flannery*, No. 89-CV-73, 1989 U.S. Dist. LEXIS 14589 at \*18 (N.D. N.Y. Dec. 7, 1989), by contrast, the plaintiff was awarded a slightly higher amount, \$3,500, in emotional distress damages in a situation in which he had had a troubled past,

including drug addiction, had recently come out of a rehabilitation program, and was working hard toward rebuilding his life. He had taken on two jobs and gotten a loan to secure the money for shelter. Nonetheless, the court did not credit the “more dire picture [of emotional distress] plaintiff presents” by mere assertions, instead limiting its award only to the “understandable” and reasonable testimony that the plaintiff was depressed over losing the apartment, that his experience being denied the housing was painful, and that he lost confidence in himself and had lost some enthusiasm for work. *Id.* at \*18.

Similarly, in *Gwizdz*, 2A FH-FL at 25,795, the court concluded that the respondent’s actions, particularly those motivated by race, caused the complainant emotional distress “consisting of ‘shock’ and a fear of future rejection.” However, the court added, that while the complainant experienced emotional distress, “there is no evidence of severe physical or emotional trauma.” In *Gwizdz*, the complainant had been rejected three times, presented credible evidence that white applicants were treated differently, and was presented with transparently false excuses for not renting (apartment not ready, no more application forms). 2A FH-FL at 25,795. Therefore, considering both the lack of evidence of severe emotional distress and the aggravating facts of the respondent’s discriminatory conduct, the court awarded \$7,000 in emotional distress damages.

In the instant case, the facts are similar to the cases in which very little credible evidence of emotional distress, other than mere assertions, was presented. Like the complainant in *Williams*, Complainant in the instant case paints a more dire picture of his emotional responses to the discrimination than is understandable or believable, given his personality, history, background, experiences, and subsequent actions.

I find that any emotional distress arising from the facts surrounding the discriminatory act did not survive past Complainant’s time at the homeless shelter. The only evidence of any negative emotional impact of living in the shelter was the Complainant’s testimony that he “felt kind of bad.” TR. 54. Complainant testified that he slept well the first couple of nights in the shelter because he was tired, but after that, he had difficulty sleeping due to the noise and other distractions from his fellow residents. TR. 54 and 56. There was no testimony or any other evidence concerning any other negative impact of living in the shelter for two weeks. Given the paucity of evidence, I award Complainant \$100 in damages for each week he resided in the homeless shelter, for a total of \$200.<sup>9</sup>

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<sup>9</sup> Although the Charging Party requests \$2,000 per week for the period Complainant was in the shelter, it has provided no fact-specific basis for such an amount. The Charging Party cites *HUD v.*

Because of his past life experiences, I do not credit his testimony concerning the amount of impact and the duration of his emotional distress from the discriminatory act.

Complainant was born and raised initially in the South, during a time when segregation and discrimination were legal and rampant. Complainant recalled being required to sit at the back of the bus because he was black, for example. He recalled hearing about several incidents of deaths, burnings, and other such atrocities against blacks, even though he did not recall any acts of discrimination against him personally.<sup>10</sup> As a result, Complainant was aware that racial discrimination does occur. In addition, Complainant spent most of his life in huge cosmopolitan cities, working as a security guard, a taxi driver, and a street salesman, and therefore would have been frequently exposed to negative public comment and invective.

Complainant's own testimony shows that he was not especially sensitive to racial discrimination. He testified that within a few weeks after he had been refused a room by Dawson he had encountered another discriminatory incident. He had been standing in line at a vending store when a white man tried to butt in front of him. The clerk told the man he had to wait on Complainant first. The man tossed his items down and stormed out. When Complainant exited the store, the man was in his car and said something to Complainant to the effect of, "You black nigger!" This disturbed Complainant, but he decided not to respond and went about his business. He did not claim that this act of overt racism caused him undue emotional distress for months, let alone years, of emotional and physical difficulties. It is highly incredible, then, that Dawson's bland facial expression and refusal to show him the room caused Complainant such emotional

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*Flowers*, 2A Fair Housing-Fair Lending (Aspen) ¶25,152, HUDALJ No. 09-99-0004-8 (Jan. 22, 2001), as a formula, asserting that the complainant in that case received \$1,875 per week for each of the weeks during his four-month homelessness. The Charging party arrived at this amount by dividing the \$30,000 award in the *Flowers* case by the number of weeks. I decline to apply the *Flowers* award as a strict formula mandating \$1,875 per week or more in damages for homelessness in all cases. In addition, the Charging Party's approach assumes that each week of homelessness would cause as much distress as any other week, no matter how long an individual was forced to remain homeless. I find that four months of homelessness would cause significantly more emotional distress than two weeks. See, e.g., *HUD v. Banai*, 2A Fair Housing-Fair Lending (Aspen) ¶25,095, HUDALJ No. 04-93-2060-8 (Feb. 3, 1995), *aff'd*, 102 F.3d 1203 (11<sup>th</sup> Cir. 1997). Finally, no corroborating evidence of either the physical or emotional impact on Complainant is included in the record (i.e. medical records of treatment or long-term physical impairments).

<sup>10</sup> Complainant's testimony on this aspect of his life was one of the areas in which he was inconsistent. See note 11, *infra*.

distress that he was unable to bring himself to look for alternative housing for nearly two years thereafter.

Complainant has demonstrated throughout his personal history the ability to relocate to new places and establish a life for himself. Complainant had at his fingertips the resources by which to find equivalent housing, and even housing at about the same price or less: the newspaper in which he located the advertisement for the denied housing. One of the other rooms for rent advertised in the same section of the newspaper he used to locate the subject property advertised “EAST - Male pref’d. Furn. rm. \$285/mo.” Complainant’s go-getter personality, work history, and experience relocating all support the conclusion that Complainant would not have been afraid to jump back up and go forward on his plans after the incident with Dawson, even if he had been upset enough to need a couple of weeks to regroup while at the homeless shelter.

When a complainant’s testimony has been consistent throughout the case, including during cross examination, ALJs have found the witness credible. *See, e.g., HUD v. Kormoczy*, 2A Fair Housing-Fair Lending (Aspen) ¶¶25,071, 25,660, HUDALJ No. 05-91-0747-1 (May 16, 1994) (“[the complainants’] testimony is internally consistent and consistent with the testimony of each other.”); *Kogut*, 2A FH-FL at 25,902 (complainant found reliable as testimony was entirely consistent). On the other hand, when a complainant’s testimony is inconsistent, the witness was found to be less than credible. In *HUD v. Welch*, 2A Fair Housing-Fair Lending (Aspen) ¶¶25,125, 25,069, HUDALJ No. 10-96-0007-8 (Dec. 2, 1996), for example, the complainant’s inconsistent testimony “undermine[d] the Charging Party’s request for an award of money damages.” The same is true in the instant case.

Complainant’s testimony contains many inconsistencies and unbelievable statements. For example, on one hand Complainant states that he grew up in the South during the height of legal segregation, an era in which there was a “lot of prejudice, racism, killings of black people, and so I experienced a lot growing up until I was 19, then I moved to New York.” TR p. 35. He made similar statements in his Declaration. Yet later in his testimony, Complainant repeatedly asserts on cross examination that he had never experienced any incidents of discrimination in any aspect of his entire life prior to his interaction with Dawson, nor had anyone he’d ever known. TR pp. 74-98. In the Charging Party’s Prayer for Monetary Damages, the assertion is that Complainant’s background of having been a victim of discrimination makes him more susceptible to harm from Respondents’ actions in this case. Yet, in the Charging Party’s Post-Hearing Brief and during the hearing, the assertion is that, because he has *not* experienced discrimination, he is more vulnerable to harm from Respondents’ actions because he had not expected to encounter it.

Complainant's job history and experience starting over in new places is inconsistent with his claim that he was so upset by Dawson's facial expression and the fact that Black was not home when he called that he could not even bring himself to call back and find out what was going on, if anything. In one account of the second-ever discriminatory incident he experienced, while at the vending store in Las Vegas a few months after meeting Dawson, Complainant asserts that he said "How can you say that? Your son is there" to the white man who called him a "black nigger;" he then asserts that he said nothing to the man. TR p. 68. In addition, Complainant's interaction with Dawson, which included at worst a grouchy expression and no social niceties, assertedly resulted in long-term physical and emotional damage, while the incident at the vending store had no impact other than to make Complainant think there might be discrimination in Las Vegas.

Complainant is a man who has years of experience in some of the most difficult, abusive, rejection-and-insult prone lines of work; who grew up during the height of legal segregation in the South with all the attendant horrors of that time and after; who has the strength of character to have moved from North Carolina to New York City at 19, then started over again in Los Angeles twenty years later, leaving behind his businesses, his family, and his adult life, and then started yet again in Las Vegas as a retired man twenty years after that with nothing more than a U-Haul and \$600 in his pocket (an amount that would not have covered one month's living expenses at his previous residence in Los Angeles); and who is a go-getter and has learned through his life experiences the trick of making a living persuading people to buy his wares even when he's feeling bad. It is simply impossible to believe that he would have experienced serious, long-term emotional and physical distress from an encounter with a man who had an angry face, did not welcome him by smile, word, stance, or gesture, and did not show him the room, but instead kept talking about Complainant's U-Haul truck and its contents. It's also hard to credit that Complainant believed Dawson's actions were based on prejudice due to his race.

In addition to the internal inconsistencies in Complainant's testimony, there is evidence of external inconsistencies as well. For example, Complainant testified on both direct and cross-examination that there were no signs of homeless people in the area of the subject property. TR pp. 64 – 65, 173. However, the Charging Party's expert witness testified that there were visible homeless present on the block where the subject property is located. TR p. 217.

In light of the conflicts between Complainant's testimony and his actions, I find his statements that he has suffered long-term emotional damage and distress as a result of

his interaction with Dawson not credible. Considering the likely susceptibility of the Complainant based upon his background and his personal resiliency, I find that no emotional distress damages are warranted for the time after he left the homeless shelter.

The total damages, both tangible and intangible, awarded to Complainant in this case therefore is \$284.

### **Civil Penalties**

To vindicate the public interest, the Act authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 812(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Assessment of a civil penalty is not automatic. *See* H. Rep. No. 711, 100<sup>th</sup> Cong., 2d Sess. at 37 (1988). An appropriate penalty is determined by considering five factors: the nature and circumstances of the violation; whether the respondent has previously been adjudged to have committed unlawful housing discrimination; respondent's financial resources; the degree of respondent's culpability; and the goal of deterrence. *See, e.g., HUD v. Blackwell*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,001, HUDALJ No. 04-89-0520-1 (Dec. 21, 1989), *aff'd*, 908 F.2d 864 (11<sup>th</sup> Cir. 1990).

I have considered the nature and circumstances of the violation, the fact that Respondents have not been previously adjudged to have committed unlawful housing discrimination, the default assumption supported only vaguely by statements in documents that Respondent has the financial resources to pay a civil penalty, the nature of the discriminatory act, and the goal of deterrence contained in the Act.

The Charging Party presented evidence of "the inexorable zero." The Supreme Court in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 342 n. 23 (1977), stated that the inference of discrimination can be inferred from the complete lack of minorities – "the inexorable zero." In the instant case, the Charging Party presented expert testimony that the subject property is located in a census tract which has 23 percent African-Americans and caters to a low-income clientele, yet there were no records indicating that Respondents had rented to any African-Americans. However, the evidence did not establish that the Respondents' had never rented to African-Americans.

Both of the tenants who testified regarding this issue had no idea if there had been African-American tenants during Dawson's management because they knew only a few residents. In addition, one of these tenants, McCole, was unaware of any African-American tenants during the time he had lived at the subject property – including under

the new owner and management, although the current manager solidly established that he has consistently had African-American tenants. In addition, the first record in the case of an African-American tenant occurred while Dawson was helping the new manager learn how to manage the property, thereby at least implying that he had no objection to such rentals. The manager and tenants all testified that Dawson had never said anything to them indicating that he had a problem with African-Americans as tenants. And the relative percentages of white tenants to other tenants appears to have remained consistent under both managers since there is no information on the race of the other five tenants in April 2001.

In addition, the bald fact that the area in which the subject property is located has 21 percent African-Americans does not establish whether those individuals live in or desired to live in a rental room, are single, are male, or are senior citizens, which were the qualifying criteria for renting at the subject property. As far as we know, the 21 percent statistic could be comprised entirely of families and thus would be ineligible to live in a single room set aside for senior citizens. The census tract vs. rental rate statistic presented by the Charging Party might help to create a presumption that Respondents discriminated against Complainant, but that is not at issue here where a default judgment has already established a violation. Furthermore, while such information can establish an inference of discrimination, it does not automatically create such an inference, particularly where, as here, the information is incomplete and out of context. There simply is no proof that Respondents had never rented to African-Americans.

I do not find this information, or the nature and circumstances of the violation, establishes a need for civil money penalties in this case. However, I do find that the pattern established by the Respondents' of disregarding the procedural law and regulations, intentionally refusing to cooperate with these proceedings and filing a pleading that they fraudulently alleged was the product of an accredited law school, all demonstrate willful disregard of the Fair Housing Act and the regulations governing these proceedings and contempt for the federal agency charged with enforcing the Act. In the process, Respondents made clear their views that they are not subject to federal fair housing laws, that they are not required to submit to the authority of the federal agencies or administrative law judges charged with carrying out the Act, and that they may choose to rent or not rent to anyone on any basis at any time. These views and actions establish a need for imposition of a civil money penalty. I have considered that Respondents have never been previously adjudged to have committed a fair housing violation, that Respondents are not directly culpable for violating the Fair Housing Act, and that they have provided no evidence that they are financially unable to pay a civil penalty. In order to deter Respondents and others from such action in the future, I find that imposition of a civil penalty in the amount of \$2,500 is appropriate.

### **Injunctive Relief**

As noted above, Respondents are under the impression that they are above the provisions of the Fair Housing Act. This is blatantly incorrect on all counts, and directly resulted in the default judgment against Respondents. In addition to Respondents' lie about the pleading they filed, they made threats against and aspersions about not only Complainant, but also about HUD officials, the Charging Party's counsel and me.

Injunctive relief may be imposed under the Act pursuant to 24 C.F.R. § 180.670(b)(3)(ii). Injunctive relief "must be tailored in each instance to the needs of the particular situation." *Marable v. Walker*, 704 F.2d 1219, 1221 (11<sup>th</sup> Cir. 1983). In light of Respondents' behavior and clear lack of understanding of the fair housing laws applicable to all landlords in the United States, I find that the Charging Party's request for injunctive relief is appropriate.

### **ORDER**

It is hereby ORDERED that:

1. Respondents are enjoined and prohibited from taking any action of reprisal, retaliation, or harassment against Complainant or any other person who testified or otherwise participated in this case in any manner;
2. Respondents are permanently enjoined from discriminating against any person on the basis of race, or any other protected basis, in connection with any transaction involving any residential rental property owned or managed by Respondents currently or in the future;
3. Respondent Black and his property manager Mr. Steel shall contact, within two months of the date on which this Decision and Order become final, the HUD office servicing Las Vegas and schedule 20 hours of fair housing training, and shall attend all 20 hours of such training as scheduled within six months of the final Order in this case unless HUD certifies a HUD-created delay. The training shall focus on the fair housing requirements applicable to residential rental



property, including the Act's authority and goals, the various types of discrimination prohibited by the Act, a range of the overt and covert behaviors that have been found to be discriminatory, with an emphasis on race discrimination and its harms so that Respondents will understand how the Act applies to them, what protected classes of persons categories may not be discriminated against, and what effect discrimination may have on victims of housing discrimination;

4. All other employees of Respondents involved with leasing and management of residential rental property owned by Respondents shall each attend eight hours of fair housing training approved in advance by HUD via the same process set forth in injunction 3 above;
5. Respondent Black and Mr. Steel annually shall attend four hours of HUD fair housing refresher training each year for three years following completion of the training prescribed in injunction 3. above, and all other employees within the group described in injunction 4. above annually shall attend two hours of such refresher training during the same period;
6. Respondents are required to display the HUD Fair Housing logo in all advertising and media, on all "for rent" signs, and on other documents given or displayed to the public or to any of their current or future tenants at any of their current or future residential rental properties for a period of three years;
7. Respondents are required to display a HUD-approved Fair Housing poster in all of their residential rental properties owned or managed now or in the future for a period of three years;
8. Respondents are required to give all current and future tenants and applicants for tenancy during the next three years the Form-HUD-903.1 "Are You a Victim of Housing Discrimination?: Fair Housing is Your Right!" brochure. Respondents are required to obtain a signature from every current tenant and future tenant or applicant for tenancy acknowledging receipt of this brochure, and are required to keep those records on file, for purposes of HUD monitoring, for three years. Respondents are required to permit HUD access to view those records upon 24 hours notice;
9. Respondents are required to create and maintain a log of all rental applicants for all residential rental properties which they currently own or manage or may own or manage in future, for a period of three years, indicating the applicants' race, color, national origin, and sex. Respondents are required to keep these records on

file, for purposes of HUD monitoring, for three years, and are required to permit HUD access to view those records upon 24 hours notice; and

10. Respondent Black and Mr. Steel are required to submit a letter of apology to the Dean of the University of Las Vegas School of Law for fraudulently attributing the “Folly” to that institution. This letter is to be submitted not later than ten days after the issuance of this Order. It shall be addressed as follows:

Dean Richard J. Morgan  
William S. Boyd School of Law  
4505 Maryland Parkway  
P. O. Box 451003  
Las Vegas NV 89154-1003

A copy of that letter shall be served on the Government’s attorney, Melanie Lampert Ryan, at her business address. Ms. Ryan shall contact Dean Morgan to verify his receipt of the apology letter.

11. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of \$294 to the Complainant, James Lavender. Respondents liability to pay this amount shall be joint and several.
12. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay a civil penalty in the amount of \$2,500 to the Secretary, U. S. Department of Housing and Urban Development. Respondents liability to pay this amount shall be joint and several.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. §§ 180.670 and 180.680(b), and will become the final agency decision thirty (30) days after the date of issuance of this initial decision unless further action is taken by the Secretary.

**ENTERED:** October 17, 2003.

/s/

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Arthur A. Liberty  
Chief Administrative Law Judge

