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: DELORES WALKER, and GREGORY WALKER, by and through DELORES WALKER, his legal guardian, Complainants, v. MICHAEL COREY, Respondent.	HUDALJ 11-M-207-FH-27 July 16, 2012

Appearances:

Michele Caramenico, Attorney, U.S. Department of Housing and Urban Development
Philadelphia, Pennsylvania, For the Charging Party

Fred F. Holroyd, Attorney, Holroyd & Yost
Charleston, West Virginia, For Respondent

INITIAL DECISION AND ORDER UPON REMAND

BEFORE: J. Jeremiah MAHONEY, Chief Administrative Law Judge (Acting)

On May 16, 2012, after a hearing in this matter, the Court issued an *Initial Decision and Order* finding that Respondent Michael Corey's statements to Complainant Delores Walker did not constitute violations of § 3604(c) of the Fair Housing Act ("Act"), and that the Charging Party failed to establish that Respondent discriminated in the rental, or otherwise made unavailable, or placed impermissible conditions upon rental of the subject property because of Gregory Walker's disability (in violation of §§ 3604(f)(1) or (2) of the Act). Finding no violations of the Act, the Court imposed no penalties or sanctions.

In due course, the Charging Party petitioned the Secretary to vacate the *Initial Decision and Order* and remand the case to the Administrative Law Judge.[1] On June 15, 2012, in an *Order on Secretarial Review*, the Secretary determined, based upon the Petition, a review of the

[1] 24 C.F.R. § 180.675.

entire record, and an analysis of the applicable law, that Respondent had violated the Act as alleged in the Complaint.

The Secretary set aside the Court's *Initial Decision and Order* and remanded the proceeding to the Administrative Law Judge to issue an initial decision that rules on the question of damages and an appropriate civil penalty based on the existing administrative record and the Secretary's Order of June 15, 2012.

In carrying out the Secretary's Order, the Court is bound by the Secretary's determination that Respondent violated the Act as alleged in the Complaint.[2] Accordingly, this *Initial Decision and Order upon Remand* will address solely the determination of appropriate damages, civil penalty, and injunctive relief.

DAMAGES

Where Respondent has been found to have engaged in a discriminatory housing practice, the Court may issue an order for relief, which may include actual damages suffered by the aggrieved person. 42 U.S.C. § 3612. Actual damages are awarded to "put the aggrieved person in the same position as he would have been absent the injury, so far as money can." HUD v. Godlewski, 2007 WL 4578553, *2 (HUDALJ 2007) (citing Robert G. Schwemm, Housing Discrimination: Law and Litigation, pp. 25-35 (1990)). An aggrieved person can recover for emotional distress and inconvenience damages due to a respondent's unlawful discrimination. HUD v. Yankee Dev. Assoc., 1994 WL 284066 (HUDALJ Jun. 28, 1994).

The Charging Party seeks a total of $30,000 in emotional distress and inconvenience damages on behalf of Complainants. Specifically, the Charging Party claims Delores Walker is entitled to $25,000 in damages to compensate her for the sleeplessness, anxiety, emotional strain and anger that she experienced as a result of Respondent's discriminatory words and actions. The Charging Party also seeks separate, compensatory damages in the amount of $5,000 for what it considers to be "lost housing opportunities"[3] suffered by Complainants Delores Walker and Gregory Walker.

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[2] On appeal, the agency has the same powers it would have had in making the Initial Decision. 5 U.S.C. § 557. The agency is free either to adopt or reject the ALJ's findings and conclusions of law. Starrett v. Special Counsel, 792 F.2d 1246 (4th Cir. 1986). However, this *de novo* standard of review applies only after the opportunity for a hearing when adjudication is required by statute to be determined "on the record." 5 U.S.C. §§ 554(a), 556. See also 41 N. 73 W., Inc. v. U.S. D.O.T., 408 F. App'x 393, 399 (2d Cir. 2010). Pursuant to the regulations for hearing procedures based on the Administrative Procedure Act, the Secretary may affirm, modify, reduce, reverse, compromise, remand, or settle any relief granted in the Initial Decision. 24 C.F.R. § 26.52(l). The Secretary may only consider evidence contained in the record forwarded by the ALJ (unless the Secretary determines that additional material evidence was not presented at the hearing on reasonable grounds, in which case the Secretary must remand the matter to the ALJ for reconsideration in light of the additional evidence). 24 C.F.R. § 26.52(i). In civil rights cases such as this, the Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision. 24 C.F.R. § 180.680(b)(1). Based upon such review, the Secretary may affirm, modify, or set aside the Initial Decision, in whole or part. 24 C.F.R. § 180.675(a).

[3] The Court notes that a "lost housing opportunity" is generally not a separate category for damages. See HUD v. Edelstein, 1991 WL 442784, *9 (HUDALJ Dec. 9, 1991). Damages for a "lost housing opportunity" are not ordered as separate awards from out-of-pocket damages, and inconvenience and emotional distress damages where such damages are sufficient to make the aggrieved party whole. Id. The injury the Charging Party identifies as "lost housing opportunities" is more aptly identified as emotional distress and inconvenience damages. See HUD v. Krueger, 1996 WL 418886, *14 (HUDALJ Jun. 7, 1996) (ALJ noting the Charging Party mislabeled the

Emotional Distress Damages. The Charging Party seeks $25,000 in emotional distress damages, because Respondent's egregious statements and actions caused emotional distress for Ms. Walker.[4] Under the Fair Housing Act, an aggrieved party may recover actual damages for embarrassment, humiliation and emotional distress as a consequence of Respondent's discriminatory acts. HUD v. Blackwell, 1989 WL 386958, *16 (HUDALJ Dec. 21, 1989), aff'd 908 F.2d 864 (11th Cir. 1990). In order to recover for emotional distress injuries, the Charging Party must demonstrate that there is a causal connection between the illegal action and Complainants' injuries. Morgan v. HUD, 985 F.2d 1451, 1459 (10th Cir. 1993) (citing Gore v. Turner, 563 F.2d 159, 164 (5th Cir. 1977). Emotional distress damages may be granted "in Fair Housing Act cases for distress which exceeds the normal transient and trivial aggravation attendant to securing suitable housing." Id. (citing Steele v. Title Realty Co., 478 F.2d 380, 384 (10th Cir. 1973)). The key factors in determining emotional distress damages are the complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. HUD v. Parker, 2011 WL 5433810, *7 (HUDALJ Oct. 27, 2011). Administrative Law Judges are afforded broad discretion in determining damages based on those factors. HUD v. Sams, 1993 WL 599076, *9 (HUDALJ Mar. 11, 1994).

It is undisputed that Ms. Walker suffered sleeplessness, anxiety, emotional strain, and anger. Ms. Walker testified that she had difficulty sleeping, a sore stomach, anxiety, and bouts of crying. Ms. Walker's testimony was corroborated by the testimony of Nancy Brown, Joyce Bardwil, and Pam Reveal, who all have close relationships with Ms. Walker and observed her difficulty eating and sleeping, and her crying. Ms. Walker's emotional distress lasted for a few

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inconvenience the complainant suffered as a result of having to live in less suitable housing as a "lost housing opportunity"); HUD v. Colber, 1995 WL 72442, *5 (HUDALJ Feb. 9, 1995) (ALJ finding the evidence provided tended to show factors of inconvenience where the Charging Party alleged the complainants were injured from being denied the right to choose where and under what conditions they would live).

[4] The Charging Party cited four cases in support of its request for emotional distress damages. All concern discrimination based on disability, but many of the cases are unpersuasive. The first case cited by the Charging Party was a consent order. See HUD v. High Country Apts., 2000 WL 1754153 (HUDALJ Nov. 13, 2000). With regards to HUD v. Pheasant Ridge Ass'n, 1996 WL 683029 (HUDALJ Oct. 25, 1996), as cited by the Charging Party, the ALJ awarded $29,500 and $49,000 in emotional distress damages to the complainants. However, a review of the case revealed that the respondent was actually ordered to pay $20,049 and $30,403 in *total damages*. It must also be noted that nearly half of the $20,049 in damages due to the first complainant was to compensate him for the difference in higher rent, transportation, and lost wages for the time he spent seeking another rental and meeting with HUD investigators and attorneys. Id. at *18. The $30,403 awarded to the second complainant took into consideration the fact that she was "a person with a pre-existing condition that was much exacerbated by [the respondent's] discriminatory conduct" and had to seek medical help for her resulting anxiety and tremors. Also notable was the inconvenience she suffered because the alternative housing she was able to secure was two-and-a-half hours from her work, while the respondent's rental property was merely six or seven miles away.

In HUD v. Burns Trust, 1995 WL 29708 (HUDALJ Jan. 15, 1995), the ALJ initially ordered $30,000 and $50,000 to the complainants for intangible damages. The citation provided by the Charging Party is for the Initial Decision on Remand and Order, in which the ALJ awarded $29,500 and $49,000 to the complainants for inconvenience, lost housing opportunity and emotional distress as lump sums. In considering the damages awards, the ALJ found that the respondents' discrimination caused the complainants inconvenience, a lost housing opportunity, and emotional distress after the complainants were evicted from their comfortable, clean home and forced into an apartment that posed such serious health and sanitation risks that one of the complainants, who would soon succumb to AIDS, was unable to remain there and the two were separated. Additionally, the complainants lost the assistance and emotional support of their neighbors who were willing and able to assist in caring for the ailing complainant. The ALJ awarded $50,000 to the estate of one complainant for the two-year period prior to his death that he endured said injuries, and $30,000 to the other complainant for the injuries he continued to suffer up to the date of the hearing. On remand, the ALJ lowered the awards to $29,500 and $49,000 after assessing the fact that the complainant's neighbors, who originally offered care and support to the complainants, moved within two months of the eviction.

months. Ms. Walker did not seek treatment from a doctor, but instead "just dealt with it." (Hearing Transcript (Tr.) 56.)

The Charging Party claims, and the Secretary has found, that Ms. Walker's emotional distress was caused by Respondent's discriminatory actions. Although Respondent's concerns were directed at Gregory Walker's prospective tenancy, Ms. Walker's love and affection for her brother caused her to be upset for her brother. Accordingly, the record shows that Respondent's words and actions caused Ms. Walker to suffer significant emotional distress beyond what is typically expected when attempting to secure suitable rental housing.

When determining the egregiousness of a respondent's behavior, it has been held 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." Parker, *7 (citing Schwemm, supra, at 25-35.) Although Respondent's actions effectively denied Complainants' rental of the subject property, it cannot be said that Respondent intentionally denied Complainants a rental opportunity. Respondent provided Ms. Walker with a rental application and credibly testified that, had Ms. Walker returned the application and put down a deposit, he would have held the subject property for her while she met his rental requirements and completed the rental process.

Further, Respondent's behavior, while insensitive, was not public or particularly outrageous. After Ms. Walker provided unsolicited information regarding Gregory Walker's disability, Respondent informed her of his resulting alternative, additional requirements for rental of the subject property to Complainants. The record does not demonstrate that Respondent communicated any malicious intent or animus towards persons with mental disabilities while conveying these requirements to Ms. Walker.[5] On the contrary, Respondent explained that his additional requirements were merely to assure protection of people and his property. Nevertheless, the Secretary has determined Ms. Walker's emotional distress was due to prohibited discrimination by Respondent. Based on the foregoing, the Court finds Complainant Delores Walker to be entitled to $5,000 in emotional distress damages.[6]

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[5] Ms. Walker's testimony concerning Respondent's statements about her brother is as follows:

> Q: All right. Now, can you tell us again just exactly what Mr. Corey said about your brother that upset you?
> A: When he wanted those requirements.
> Q: All right. Now, those are the requirements that he made. Now, what did he say about your brother?
> A: I felt that's what he said about my brother. He never said anything like your brother or nothing. I felt that those requirements is [sic] what he said about my brother.
> Q: Okay. So you interpreted his two requirements [. . .] to mean that he was saying something evil about your brother, is this correct?
> A: I felt, yeah, he disrespected my brother, yes, I did.

(Tr. 78-79).

[6] See Parker, at *7 (ALJ awarding $5,000 to Complainant who experienced substantial, though not debilitating psychological trauma, which included approximately three month's worth of heightened stress and anxiety manifesting in difficulty sleeping, weight loss, and difficulty associated with people of non-Hispanic ethnicities, among other symptoms); HUD v. Dutra, 1991 WL 657690 (HUDALJ Nov. 12, 1996) (ALJ finding both the $25,000 and $75,000 in emotional damages sought by the charging party and intervenor for the threatened loss of the complainant's pet to be excessive as the complainant was never separated from his pet and never forced to move. However, the ALJ awarded the complainant $5,000 for emotional distress and physical suffering after finding the

Inconvenience Damages. The Charging Party claims Respondent's discriminatory actions deprived Complainants of housing opportunities by (1) denying the Complainants the opportunity to rent the subject property; and (2) permanently discouraging Ms. Walker from applying for other rentals.

First, the Charging Party claims Complainants were denied the opportunity to rent the subject property. The Court finds this injury to be only hypothetical. Actual damages are awarded to "put the aggrieved person *in the same position as he would have been absent the injury*, so far as money can." HUD v. Godlewski, 2007 WL 4578553, *2 (HUDALJ 2007) (citing Schwemm, supra, at 25- 35) (emphasis added).

Putting aside the fact that Ms. Walker never did apply to rent the subject property, if she had applied, the evidence is clear that the application would have been denied based upon Complainant's inability to meet Respondent's legitimate credit and income requirements. Respondent reasonably required prospective tenants to demonstrate their ability to afford the $600 monthly rent and utility payments by providing proof of adequate income to pay the rent and reasonable living expenses. In the case of Ms. Walker and her brother, Respondent estimated that their monthly income would have to total $2,000.[7] The Charging Party has not demonstrated that Ms. Walker would have been able to provide Respondent with documentation demonstrating that she and Gregory Walker had a combined monthly income of $2,000.[8] Respondent testified credibly that he could not have rented to Ms. Walker without verifying her income first.[9] Accordingly, the Court finds that although Respondent's discriminatory conduct

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threatened loss of the pet caused the complainant, for a period of five months, significant emotional distress, which resulted in a trip to the emergency room for treatment); HUD v. Ocean Sands, Inc., 1993 WL 471296, *4 (HUDALJ Nov. 15, 1993) (ALJ awarded $12,500 to wife of disabled person who was harassed and ostracized by the respondent for her attempts to make the community grounds more wheelchair accessible for her husband. The ALJ noted that the complainants, who were "particularly fragile" and "advanced in age," suffered great emotional distress over a few years, but were not as significantly disrupted as the complainants in another case, as they were able to remain in their home and did not fear for their safety); see also HUD v. Baumgardner, 1990 WL 456960, *10 (HUDALJ Nov. 15, 1990) (A case concerning discrimination on the basis of sex where the ALJ awarded $500 in emotional distress damages, and noted that while the complainant was, for a few months, justifiably angered, hurt, and frustrated by the denial of the house he wanted, he "did not appear to be a man of vulnerable constitution who could easily be driven to distress in the sense of needing medical assistance").

[7] This would have included utilities and living expenses for two adults, including the expenses associated with having an automobile.

[8] Ms. Walker's Form-1099 indicated that she only earned $7,109.26 in 2009. Additionally, she had no records documenting receipt of $300-$350 monthly performing odd jobs. Although Ms. Walker's 2008 tax return reflected an adjusted gross income of $20,250, the income was earned while Ms. Walker was employed in a position she no longer held. Additionally, by Ms. Walker's own admission, her credit was not good, and she could not have provided records of the $300-$350 per month she earned as she did not pay taxes on that income.

[9] Although Respondent eventually rented the subject property to a tenant whose documented income totaled $1,747, Respondent testified, credibly, as to his reasoning for accepting this tenant. Respondent's formula for determining economic qualifications to rent takes into consideration various factors that make up the anticipated monthly expenses of the tenant(s). In the current tenant's case, she did not have the expense of maintaining and operating an automobile. Her expenses would be less than the average tenant, and her stated income would be adequate to rent the subject property at $600 per month, because the second occupant would be a child not requiring as much monetary support as an adult. Additionally, this tenant had excellent references, one of whom had been a friend of Respondent for 40 years. Although Respondent made an exception to his stated income requirement for this tenant, Respondent's decision was reasonably based upon factors that he routinely took into account as affecting a prospective tenant's ability to pay the required rent. Additionally, exhibits provided by Respondent concerning income required to support the rental amount in previous rentals of other properties are consistent with the income requirement he stated for Complainants for the Subject Property.

effectively discouraged Ms. Walker from submitting an application to rent the subject property, the Court also finds that Complainants were unable to meet Respondent's legitimate financial qualifications to qualify as tenants.[10] As Complainants were denied the opportunity to rent a property for which they were never qualified, the Court finds that Complainants have not suffered any injuries in that regard.

Second, the Charging Party also claims Respondent's discriminatory words and actions discouraged Ms. Walker from applying for other housing opportunities because she feared facing the same discrimination. The Court finds this claim to be unsupported by the evidence in the record. To the contrary, Ms. Walker continued looking for a possible rental, but became frustrated because she either did not like the areas in which the properties were located, or because of inadequate square footage despite being a two-bedroom home. Ms. Walker decided that she would, "stay here, find exactly what I want, you know, not just move because I have to move. I was just really frustrated with everything." (Tr. 55.)

Although Ms. Walker also testified to being concerned about facing further discrimination, the Court does not find her concern to be a motivating factor behind her decision not to move. Ms. Walker admitted that even after her interactions with Respondent, she looked at other possible rentals. On at least one other occasion, she brought her brother, Complainant Gregory Walker, with her to view a prospective rental. Ms. Brown also testified that while Ms. Walker looked at a couple other prospective rentals, she did not fill out an application because Ms. Walker either disliked the area in which the rental was located, or disliked the neighbors. Accordingly, the Court finds the Charging Party failed to establish that it was Respondent's words and actions that discouraged Ms. Walker from seeking other rental opportunities.

Lastly, the Charging Party seeks $5,000 in damages on behalf of Complainants because Respondent's discrimination caused Complainants to "remain in their cramped house." Complainants may be awarded damages for inconvenience of having to live in unsatisfactory housing. HUD v. Krueger, 1996 WL 418886, *14 (HUDALJ Jun. 7, 1996).[11] Ms. Walker, Ms.

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[10] Respondent also routinely performs a credit check on prospective tenants. Ms. Walker acknowledged that she had been denied credit cards and, had Respondent performed a credit check on her, she would have had a low credit score.

[11] In Krueger, the complainant was entitled to damages for inconvenience because the respondent's discrimination caused her to move from a comfortable three-bedroom apartment to her mother's two-bedroom apartment, which she and her two children had to share with three other adults. Additionally, the complainant suffered the inconvenience of having to search for alternative housing during the "Wisconsin Winter," while pregnant and relying on others to provide transportation as she did not have a car. Krueger, at *14; see also HUD v. Welch, 1996 WL 755681, *1 (HUDALJ Dec. 2, 1996) (Court awarded $500 to the complainant and her daughter for having to live for eight months in unsatisfactory housing, which was a pick-up camper that was small and too poorly heated for the baby, requiring the baby to spend extended time inside her grandparent's home); HUD v. Zbyslaw Kogut, 1995 WL 225277 (HUDALJ Apr. 17, 1995) (awarding the complainant damages for a "lost housing opportunity" after the respondent's discriminatory actions forced the complainant from her safe, spacious, apartment to a ground floor apartment, with no air conditioning or laundry facilities, that was located in an unsafe neighborhood and was robbed after she moved in); HUD v. Ineichen, 1995 WL 152740 (HUDALJ Apr. 4, 1995) (complainants were awarded $4,000 each for emotional damages and a lost housing opportunity resulting from their experiences living in alternative housing that was "disrupted by roach infestations that required repeated professional treatment and by noisy, slovenly, quarrelsome, and lawless neighbors whose behavior prompted at least three police visits. Late-night noise including drug busts, interfered with [the complainant's] sleep..."); Colber, 1995 WL 72442, at *3-5 (ALJ awarding $500 for inconvenience of having to search for two months for suitable housing, which ended up being an extra 5-10 minutes farther than the respondent's available rental).

Brown, and Ms. Reveal testified that the two-bedroom house in which Complainants continue to reside is too small for two persons. Ms. Walker testified that she felt the two-bedroom house was too small because she had to move her computer to her bedroom, her roll-top desk to her living room, and other various items into the garage so that Gregory could use the second bedroom. Although Complainants each had their own bedroom in the home, Ms. Brown testified that Complainants did not have enough space to "get away from each other. It's not like he's got a room that's further away or that the rooms or whatever is bigger." (Tr. 179.) Ms. Reveal also noted that the house was too small because only one person can use the bathroom at a time.

Although the house in which Complainants continue to reside may not be Ms. Walker's ideal living situation, the evidence does not establish it to be unsuitable or even unsatisfactory to the extent that damages should be awarded. By Ms. Walker's own testimony:

> It's a small house. It's a nice house. It has two small bedrooms, it has a very small bathroom, I have a living room and kitchen, I have a full-size laundry room. It has two big yards, it's got a really nice front porch and it's up the hollow, it's really nice and peaceful.

(Tr. 17.) Moreover, the record fails to demonstrate that the subject property, which was also a two-bedroom house, was larger or would have better suited Complainants' needs. Accordingly, the Court finds that Complainants are not entitled to damages related to the inconvenience of having to remain in their current home.[12]

CIVIL PENALTY

The Fair Housing Act authorizes the ALJ to impose a civil penalty upon a respondent found to have discriminated in violation of the Act in order to vindicate the public interest and deter future transgressions of the Act. 42 U.S.C. § 3612(g)(3); see also 24 C.F.R. § 180.671. Where, as here, a respondent has not been adjudged to have committed any prior discriminatory housing practice, a maximum penalty for a violation is $16,000. 42 U.S.C. § 3612(g)(3)(A); see also 24 C.F.R. § 180.671(a)(1) (2011).

Assessment of a civil penalty is not automatic; the ALJ must consider 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 that Respondent's culpability; (v) the goal of deterrence; and (vi) other matters as justice may require. 24 C.F.R. § 180.671(c)(1).

Record of Prior Housing Discrimination. There is no evidence that Respondent has ever previously been adjudged to have committed any discriminatory housing practice; therefore, any civil penalty imposed upon Respondent may not exceed $16,000 for a violation. 42 U.S.C. §

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[12] See HUD v. Leiner, 1992 WL 406536, *11 (HUDALJ Jan 3, 1992) (ALJ finding the record to be insufficient to support any award for lost housing opportunities as the Secretary failed to proffer evidence regarding housing opportunities missed as a result of the respondent's actions, or evidence that the complainants' present residence was inferior in quality or cost more than the rental offered by the respondents).

3612(g)(3)(A); 24 C.F.R. § 180.671(a)(1). The Court notes this fact may be considered a reason to "temper the government's reaction to this violation." HUD v. Bang, 1993 WL 23713, *15 (HUDALJ Jan. 5, 1993).

Respondent's Financial Resources. Evidence regarding Respondent's financial circumstances is within his knowledge and, therefore, Respondent has the burden to introduce such evidence into the record. Welch, 1996 WL 755681, at *8. Respondent has not shown financial hardship. To the contrary, Respondent owns a significant amount of moderately valuable rental property that generates income. Therefore, Respondent's financial circumstances are not a constraint in determining the civil penalty to be assessed in this case. HUD v. Schmid, 1999 WL 521524, *11 (HUDALJ Jul. 15, 1999).

Nature and Circumstances of the Violation. The nature and circumstances of the violation in this case do not warrant the imposition of the maximum penalty. Here, Respondent did not ask Ms. Walker if her brother had a disability, nor did he inquire as to the nature or severity of the disability. Instead, Ms. Walker volunteered this information by informing Respondent that Gregory Walker had "severe autism and mental retardation." This information was relayed in response to Respondent's request to meet Gregory Walker and obtain a rental application from him, which were requirements Respondent made of all his prospective tenants.

Not anticipating such information, Respondent hastily assessed the meaning of Ms. Walker's words and the implications of Gregory Walker's tenancy. Respondent's knowledge of mental disabilities was limited to only what he has observed of strangers. The information conveyed by Ms. Walker caused Respondent concern that Gregory Walker's tenancy could pose a direct threat to the subject property and the neighbors. Not having personally met or observed Gregory Walker, Respondent requested Ms. Walker provide a doctor's note stating whether Gregory Walker's disability made him a threat to persons or property.[13] Respondent considered the close proximity of the subject property to the house next door, which was the home of a woman with three small children. Respondent also considered ordinary household hazards that might pose a threat in view of Gregory Walker's stated disability.

Respondent's inquiry was not for a release of Gregory Walker's medical records, nor was it for a detailed account of Gregory Walker's disability. Ms. Walker testified that providing Respondent with a doctor's note would not have been a problem, but she did not believe it fair for Respondent to ask for one. Nonetheless, as determined by the Secretary, Respondent's request was still overly intrusive under the Act.

Degree of Culpability. Having been determined to have committed housing discrimination, Respondent's degree of culpability is high. Respondent owns more than 20 rental properties, which he manages full-time without the help of a management company. Respondent is a college graduate and has been in this profession for at least 15 years. Yet, while Respondent is somewhat familiar with the protections provided by the Act, he has never been

[13] Respondent testified that he had been around parents with autistic children, and seen them flailing their arms and hollering and screaming in outrage. But, he also testified that he did not know if Gregory might injure others, which was why he asked for a doctor's note, and why he reiterated his requirement to meet all prospective tenants.

educated on the Act's requirements or sought formal training. As a consequence of which, he was not aware that the Act considers that mentally disabled persons are a protected class.

Respondent also testified at length that he imposed impermissible requirements on Complainants because he was not familiar with mental disabilities and wanted the opinion of an expert that would assure him that having Gregory as a tenant would not create a threat to persons or property. Nonetheless, Respondent's lack of knowledge about mental disabilities does not excuse his ignorance of the protections provided under the Act, especially when Respondent's primary business is renting residential property.

Deterrence. It is appropriate to consider the impact of a particular penalty, both upon this Respondent who will likely continue to rent residential property, and upon others who might otherwise commit similar violations of the Act, thereby adversely affecting the availability of housing for the disabled.

Other Matters. The Charging Party requests that the maximum penalty of $16,000 be imposed due, in part, to the fact that "Respondent has caused the Charging Party to expend significant government resources that would not have been expended had Respondent not violated the Fair Housing Act." This generalized reference to the Charging Party's expenditures is insufficient as a basis for imposing the maximum penalty. Any litigation pursued to a trial will result in the expenditure of significant resources. However, the Charging Party failed to quantify its expenses or to distinguish how this case caused the expenditure of significantly more government resources than other similar cases. In point of fact, the hearing for this matter lasted less than a day and a half in its entirety,[14] and no expert witnesses were required. As the maximum penalty should be reserved for the most egregious of cases, where willful conduct causes grievous harm, the Court will not impose the maximum. Welch, 1996 WL 755681, at *8. The Court finds appropriate, considering the foregoing factors, a civil penalty in the amount of $ 4,000.

INJUNCTIVE RELIEF

Upon a finding that a respondent has engaged in a discriminatory housing practice, the Administrative Law Judge may order injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3).

1. Monitoring. To preclude the recurrence of discriminatory acts, the Court will order that Respondent Corey shall, for a period of three years after the entry of final judgment in this case, be required to provide the following information to the Charging Party for monitoring purposes:

a. A duplicate of each written rental application (and written description of any oral application) for purchase or lease of any of the properties owned and leased by Respondent, to include information identifying the applicant's disability status; whether the applicant was accepted or rejected; the date of such action; and, if rejected, the reason for such rejection.

[14] In fact, the entire hearing could have been concluded well within the time allotted for the first day, but was extended into a second day because a witness for the Charging Party had been subpoenaed for the second day. (Tr. 195.)

b. Copies of all notices or advertisements for vacancies at any of the properties owned or leased by Respondent and (if not otherwise clear) a written description of the manner in which such notices or advertisements were circulated.

2. Training. Respondent shall participate in fair housing training to be conducted by an approved fair housing organization. The training shall commence not later than 30 days from finality of this decision. The training should address federal, state, and local fair housing laws, regulations, and ordinances. If Respondent requests, the training shall be provided by HUD at a reasonably accessible location, at no cost to Respondent.

CONCLUSION

Accordingly, the Court imposes damages in the amount of $5,000, payable to Complainants. Additionally, the Court imposes a civil penalty in the amount of $4,000, payable to HUD. Damages and Penalties shall be paid in full not later than 30 days from finality of the decision in this matter. Finally, the Court imposes injunctive relief as above stated.

So **ORDERED**.

J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675 (2009). This *Initial Decision upon Remand* 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 *Initial Decision upon Remand.* Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this *Initial Decision upon Remand.*

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 Hearings and Appeals.

Finality of decision. Absent further action by the Secretary, the Initial Decision on Remand will become the final agency decision 30 days after the date of issuance of the initial decision. 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 the decision's finality.