

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

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| THE SECRETARY, UNITED STATES |) | |
| DEPARTMENT OF HOUSING AND |) | |
| URBAN DEVELOPMENT, ON BEHALF OF |) | |
| JAMES LAVENDER, |) | |
| Charging Party |) | HUDALJ: |
| |) | 09-01-0380-8 |
| and |) | |
| |) | |
| James Lavender, |) | |
| Intervenor/Complainant |) | |
| |) | |
| SENIOR NEVADA BENEFIT GROUP, L.P., |) | |
| IDA, INC., AND LEROY BLACK, |) | |
| Respondents |) | |
| |) | |
| |) | |

Theresa Kitay, Esq., Coughlin & Kitay, P.C.
Andrew Smith, Esq., Ellsworth, Moody & Bennion
For the Respondents

Melanie Lampert Ryan, Esq.
For Charging Party

D. Scott Chang, Esq.
For the Intervenor/Complainant

DECISION AND ORDER UPON SECRETARIAL REMAND

Statement of the Case and Procedural History

James Lavender (Complainant) filed a fair housing complaint in March 2001.¹ Following an investigation and a Determination of Reasonable Cause, the Secretary, United States Department of Housing And Urban Development (Charging Party), on behalf of Complainant filed a Charge of Discrimination on December 19, 2002 against Senior Nevada Benefit Group, L.P., Ida Inc., and LeRoy Black (Respondents). The Charge alleged that Respondents, on January 11, refused rental housing to the Complainant, an African American receiving social security, on the basis of race in violation of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988 (the Act), Pub.L. 100-430 (1988), 42 U.S.C. § 3601, *et seq.*

¹ All dates are in 2001 unless otherwise indicated.

On February 13, 2003, Chief Administrative Law Judge, Arthur A. Liberty (Chief ALJ) granted Charging Party's motion for default decision because the Respondent failed to file an answer to the charge within the deadline required by 24 C.F.R. § 180.420(b). A hearing solely for the purpose of determining damages was conducted by the Chief ALJ on May 7 and 8, 2003.

On October 17, 2003, the Chief ALJ issued an Initial Decision awarding the Complainant \$84 in out-of-pocket losses and \$200 in emotional distress damages, ordering Respondents to pay a civil penalty of \$2,500, and granting all injunctive relief requested by Charging Party. Pursuant to the parties' October 31, 2003 Petitions for Secretarial Review, the Secretarial Designee, on November 12, 2003, remanded the matter to the Chief ALJ for reconsideration of the amount of the emotional distress damage award to the Complainant for the two weeks he stayed in a homeless shelter following Respondents' discriminatory rental refusal. By Decision on Remand dated March 5, 2004, the Chief ALJ affirmed his \$200 emotional distress damage award. On April 4, 2004, the Secretarial Designee granted Charging Party's motion to disqualify the Chief ALJ for appearance of impropriety, set aside the October 17, 2003 Initial Decision and the March 5, 2004 Decision on Remand, and remanded this proceeding to a new administrative law judge to be selected by the Office of Personnel Management to preside over an evidentiary hearing and issue a new initial decision concerning the issue of damages. By Order dated April 20, 2004, the undersigned Administrative Law Judge was so designated.

On May 25, 2004, the undersigned granted Complainant's May 14, 2004 Motion to Intervene. On June 2, 2004, the undersigned denied Charging Party's request to present expert forensic psychological testimony at the hearing based on proposed psychological testing and evaluation of the Complainant. On June 24, 2004, Respondents filed with the Secretarial Designee a motion to set aside the Chief ALJ's February 13, 2003 default judgment, or alternatively, to expand the scope of the hearing to include a *de novo* determination on the issue of liability. On June 30, 2004, the Secretarial Designee denied the motion as untimely.

Hearing in this matter was held on July 6, 2004. By joint stipulation, the record consists of Complainant's July 6, 2004 oral testimony, the recorded testimony of Angela Quinn, Denis Shishido, James McCole, and Sontsuk Tungkitkancharoen, given in the May 7, 2003 hearing, a May 5, 2003 joint stipulation, and Charging Party's Exhibits 1 through 15 entered into evidence during the May 7, 2003 hearing.²

Issues

1. The amount of emotional distress and out-of-pocket damages, if any, to be awarded Complainant.
2. The Civil Penalty, if any, to be assessed.
3. The injunctive relief, if any, to be granted.

² The parties specifically did not stipulate that the recorded testimony of Complainant, given in the earlier hearing, be added to the record herein.

On the entire record, including my observation of the demeanor of complainant, the only witness to give oral testimony, and after considering the briefs³ filed by Charging Party, Intervenor/Complainant, and Respondents, I make the following

Findings of Fact

At all times relevant hereto, Senior Nevada Benefit Group, L.P. (L.P.) has been a Nevada limited partnership that owns and manages rental properties in Nevada. Ida, Inc., a Nevada corporation, has been the general partner of L.P. LeRoy Black (Mr. Black) has been the president and resident agent of Ida, Inc. L.P. has owned a rental property at 213 N. 6th Street, Las Vegas, Nevada (the Sixth Street property). William Dawson (Mr. Dawson) has been employed as the property manager of the Sixth Street property.

Complainant is an African-American male who lived in North Carolina from about 1937 to 1956 under a system of institutionalized segregation.⁴ At age 19, Complainant moved to New York, where he worked as a law enforcement officer for the Department of Social Services and a taxicab driver. In March 1974, Complainant moved to Los Angeles, California. He experienced no discernable racial discrimination in either New York or California. On January 10, Complainant left Los Angeles with the intention of relocating to Las Vegas, Nevada, in order to reach out to his grandchildren then living in Las Vegas. His income at that time and at all times relevant hereto, consisted of Social Security retirement benefits, which he supplemented with proceeds from his informal jewelry and small items street sales business.

At about 1:00 a.m. on January 11, Complainant arrived in Las Vegas with all his possessions, including furniture, contained in a rented U-Haul truck.⁵ He spent the remainder of the night sleeping in the U-Haul truck. Later that morning, Complainant obtained a copy of a local newspaper, *Las Vegas Review Journal*, in which Respondents had placed an advertisement, which read as follows:

³ Post hearing, Intervenor/Complainant requested that the undersigned strike portions of Respondents' brief, i.e., those that refer to the Chief ALJ's prior conclusions on damages, as such were vacated by the Secretary, and those that cite Complainant's testimony at the hearing conducted by the Chief ALJ. Both Charging Party and Respondents filed responses. Respondents counter that although the Chief ALJ's prior decisions have no precedential value, they may be cited to "reinforce Respondents' arguments that Complainant's testimony was not credible." Respondents further argue that Complainant's testimony in the prior hearing is admissible as "admissions by a party-opponent." Neither the Chief ALJ's prior decisions nor the prior testimony of Complainant, except as used during cross-examination in the instant hearing to impeach Complainant, are appropriate or probative evidence on which I may rely. Therefore, I have considered neither in reaching my decision herein.

⁴ Where not otherwise noted, the findings herein are based on the default judgment, the stipulations of counsel, and/or unchallenged credible evidence.

⁵ Complainant testified the U-Haul was "a larger truck than the ones that they use [in local moves]."

DOWNTOWN SENIOR SPECIAL
\$295/MO. Incl util, maid, Laundromat, Furn, pvt. Ba. & entry
Male pref. 213 N. 6th St. 366-1600

Complainant telephoned the listed number and spoke to Mr. Black. Complainant told Mr. Black he was a senior citizen on social security looking for a place to stay. Mr. Black said a lot of the renters were people on social security and that casinos and inexpensive restaurants were within easy distance. Mr. Black suggested Complainant see the manager, Mr. Dawson, who would be sitting on a porch at the property. He instructed Complainant to arrive before 4:30 or 5:00 p.m., after which the gates were locked.

Between 4:00 and 4:30 that afternoon, Complainant drove his U-Haul rental truck to the Sixth Street property. Complainant observed the area of the Sixth Street property had nearby casinos and restaurants that offered relatively inexpensive meals, easily accessed public transportation, a metro police station, businesses, and a health clinic, all of which Complainant considered desirable and advantageous. Complainant believed derelicts would not frequent an area with such facilities as it would be bad for business. Moreover, the presence of the police station would contribute to area safety.

When Complainant arrived at the Sixth Street property, he saw a man sitting on a porch at the address and approached him. Complainant greeted the man and said, "You Mr. Dawson? My name is James Lavender. Mr. Black sent me over to look at the room."

Mr. Dawson remained seated saying, "You got a lot of furniture in the truck."⁶ Complainant told him he intended to put his things in storage at U-Haul. Mr. Dawson repeated that Complainant had a lot of furniture in the truck. When Complainant asked if he could see the rental unit, Mr. Dawson refused. Complainant perceived Mr. Dawson's manner to be unfriendly, unsmiling, and harsh.

Complainant returned to his rental truck. When he located a pay telephone, he telephoned the advertisement number. In response to his request to speak to Mr. Black, a woman said Mr. Black was not there. Complainant left no message and did not call again.

Complainant spent the night of January 11 in the U-Haul truck. On the following morning, in order to receive prompt delivery of his social security checks, he reported to the local Social Security Administration office that he had moved to Las Vegas. There, he obtained pamphlets of various governmental agencies, including that of the Department of Housing Urban Development (HUD). At that point, it occurred to Complainant that it would be a good idea to contact a government agency about what had occurred the previous afternoon with Mr. Dawson. Moreover, he thought a government agency could help him find a place to stay.

Complainant went to a HUD office and talked to an African-American employee there. He told her he needed a place to stay and explained what had happened at Respondents' rental property. The employee told him he should file a complaint with HUD because "something was

⁶ The Housing Discrimination Complaint filed by Complainant notes in the statement of facts that Mr. Dawson told Complainant the unit would be too small for his belongings.

wrong.” Complainant did not file a complaint at that time because he did not “want to go through it.” The main thing Complainant wanted was to “find a place to stay, see if I could find my grandkids, and kind of start a new life...”

Another employee at HUD gave Complainant a list of organizations that could assist him in finding housing. From the list, Complainant chose Catholic Charities because he could see where the building was. When Complainant arrived at Catholic Charities, a security guard directed him to see Mr. Abernathy, which Complainant did. Complainant told Mr. Abernathy what had occurred the previous day and that he needed a place to stay because he was tired, not having been in a bed since he arrived in Las Vegas. Mr. Abernathy told Complainant he would put him up in a shelter until his application for housing was completed, whereafter Catholic Charities would move him into St. Vincent’s apartments, the Charities’ low-income complex. Given the housing situation in Las Vegas at that time, Complainant was fortunate to have the opportunities Mr. Abernathy offered. Complainant accepted Mr. Abernathy’s proposal, preferring not to look at other rentals, as he “felt a sense of rejection...[that] maybe [that was] the way Las Vegas [was],” and he didn’t want to have to go through it again.⁷

For the following two weeks, Complainant slept at a shelter run by Catholic Charities, located in a known “homeless corridor.” At the shelter, Complainant occupied a bed in a communal sleeping room for which he paid \$35 a week. In compliance with shelter rules, Complainant had to be at the shelter by 5 p.m. each night to obtain a bed and had to leave by about 6 a.m. Each day, Complainant went to a storage rental unit where he stored all his possessions. Usually he performed personal grooming there and organized his sales merchandise. While staying in the shelter, Complainant daily pursued his street sales business.⁸

While sleeping at the shelter, Complainant experienced worsening of existing back pain and developed stomach trouble. He treated both problems with over-the-counter medications for about two weeks. He felt hurt and humiliated because of his January 11 experiences, but obtained no mental health treatment. While at the shelter, Complainant was inconvenienced by being unable to keep his personal things with him. Complainant talked to security about this latter problem and was provided with a locker. For Complainant, the worst part of living in the shelter was the snoring and body odors of others. Because of the shelter’s unpleasant environment, Complainant asked Mr. Abernathy if he could speed up the apartment application process. Mr. Abernathy assured him that within a day or so, he would be able to move in to St. Vincent’s.

Complainant rented a studio apartment at St. Vincent’s apartment complex, which was then about two years old. Complainant considered the St. Vincent locale to be less desirable than the Sixth Street property, as the area surrounding St. Vincent’s was heavily inhabited by derelicts, addicts, and prostitutes, was less convenient to access public transportation, and not quite as safe. Angelea Quinn, certified public housing manager with the Economic Opportunity Board of Clark County, Nevada, a community action agency, provided support for

⁷ Complainant became emotional at this point in his testimony, necessitating a short break.

⁸ In his street sales business, Complainant initially used a pushcart containing sales items such as jewelry and wallets to offer for sale to city pedestrians. Later, he carried his wares in a shoulder bag, approaching people on the street to solicit customers.

Complainant's opinion. Her testimony in the prior hearing was that the "homeless corridor" in which St. Vincent's was located nightly averaged 2,000 to 3,000 homeless people contrasted with 2 or 3 homeless individuals in the area of the Sixth Street property.

Notwithstanding the contrast between the amenities of the Sixth Street property and St. Vincent's, once Complainant moved into St. Vincent's, he was "able to relax," and his back pain and stomach problems went away. After residing at St. Vincent's for two months, Complainant decided to file a complaint with Charging Party regarding Respondent's January 11 refusal to rent to him because he knew what they had done was wrong, and if he did not file, the injustice would continue.

Residence in St. Vincent's was limited to two years. Complainant looked for other housing but without significant effort because his St. Vincent's apartment was "a comfortable place" with 24-hour security, where Complainant was also able to save money. With the assistance of Mr. Abernathy, Complainant filled out an application for Clark County housing, and requested a housing spot in Henderson, a local suburb, which Complainant felt would be an "updated" spot to live in. After Clark County accepted his public housing application, Complainant looked at the housing offered and found the area to be "very bad." Complainant wanted to find private housing, but he did not want to go through another bad experience. He looked for an area likely to be well disposed toward African-Americans and settled on a Cecile Avenue apartment with a high concentration of "Hispanic and black people" where a friend of his lived. He moved to the Cecile Avenue apartment in September 2002 after residing at St. Vincent's for about nineteen months, or just over five months before he was required to vacate that apartment. The Cecile Avenue apartment was "very nice," more spacious, and quieter than St. Vincent's. It was also close to a swap meet, which Complainant considered advantageous.

Regarding Respondents' rejection of his January 11 housing solicitation, Complainant testified it was the worst day of his life, that the experience "just shattered" him.⁹ Complainant felt angry and humiliated. He continues to ruminate over the night of January 11 when Mr. Dawson looked at him as if he were "dirt," when he was tired, couldn't find a place to sleep, had to sleep in his rental truck, and knew it was all because of racial discrimination. For the first time, Complainant felt a distrust of white people until he "correct[ed]" himself and began to attend church not far from St. Vincent's with a predominantly white congregation that welcomed him. Complainant testified that he did not really realize his hurt over the incident was still there until his attorney questioned him about it. After January 11, Complainant had a fear of looking for housing again and questioned why God made him a black man because the hurt "cut deep." He returned to the Sixth Street property on three occasions, trying to heal. Complainant still feels hurt by the January 11 incident, but he has gotten over being angry. At some point after January 11, Complainant attempted, unsuccessfully, to locate his grandchildren.

⁹ Under cross-examination, Complainant admitted he had "overrated" his experience with Mr. Dawson, but that it was something that "affected" him. Complainant's son was permanently injured as the victim of a gang shooting. Complainant felt bad about that experience, about his son's criminal activity and incarceration, and about his estrangement from his son. Given Complainant's admission and the implausibility that the January 11 events could overshadow Complainant's past misfortunes, I cannot give full weight to Complainant's testimony of the emotional distress he experienced.

In April, Respondents' sold the Sixth Street property. Sontsuk Tuntkitkancharoen, who managed the Sixth Street property after Respondents sold it in 2001, testified that no resident at the time of sale was African American, and long-term residents Denis Shishido and James McCole could not remember any African Americans living there. Mr. Tuntkitkancharoen's testimony does not establish a complete history, and the long-term tenants who testified said, respectively, they did not "circulate" with many other residents and "knew" only four or five of them.¹⁰ There is no evidence Mr. Dawson said anything to tenants or the successor manager that revealed racial biases. Mr. Dawson died in June.

Discussion

A default judgment of unlawful discrimination based on race having been entered in this matter, the only issues before the undersigned are the appropriate damages and remedies flowing therefrom. Where a respondent has engaged in a discriminatory housing practice, an administrative law judge has discretion to order "such relief as may be appropriate," including actual damages, and injunctive or other equitable relief. Section 812(g)(3) of the Act, 42 U.S.C. § 3612(g)(3). Actual damages are divided into tangible and intangible losses. Tangible damages include expenses such as increased cost of alternate housing, relocation expenses, lost income, moving expenses, etc. Intangible damages include embarrassment, humiliation, hurt, and emotional distress.

Charging Party requests the following damages, civil penalty, and injunctive relief:

1. Out-of-pocket expenses as follows:
 - (a) \$14.00 for the cost of a rental storage locker at the homeless shelter.¹¹
 - (b) A rent differential between his current residence and the Sixth Street property.
2. Loss of amenities in the amount of \$2,719.25 for subjective differences between the Sixth Street property and St. Vincent's, arrived at by calculating the difference between the Sixth Street property's rent of \$295 per month and St. Vincent's lower rent of \$146 per month (a difference of \$149.00 per month) for a total of \$2719.25.
3. Emotional distress damages from the point of discrimination, January 11, until July 6, 2004, the date of the hearing, apportioned as follows:
 - (a) \$2,000.00 per week for the two weeks Complainant spent in the homeless shelter for a total of \$4,000.00.
 - (b) \$250.00 per week for the seventy-nine weeks Complainant lived at St. Vincent's for a total of \$19,750.00.
 - (c) \$50.00 per week from the time Complainant moved into the Cecile Avenue apartment until the date of the hearing, a period of 96 weeks, for a total of \$4,800.00.

¹⁰ Although this latter witness, Mr. McCole, testified he never saw any African American residents while he lived at the Sixth Street property, his testimony cannot support a finding that none were renters there. Uncontroverted evidence shows African Americans rented accommodations at the property after its sale in 2001, and, apparently, Mr. McCole missed seeing them. Therefore, I cannot give weight to his perceptions.

¹¹ Complainant also rented a U-Haul storage unit for household items, but he had intended to so upon rental of the Sixth Street property and does not seek damages for that expense.

4. Civil penalty in the amount of \$11,000.
5. Injunctive relief to guard against repetition of and to eliminate the effects of Respondents' unlawful conduct.

DAMAGES

Out-of-pocket expenses

Because he could not keep personal items with him at the homeless shelter where he sought refuge after Respondents' discriminatory rebuff of his rental solicitation, Complainant rented an on-site storage locker to store personal items for immediate needs at a cost of \$14 for the two-week period. But for the discrimination practiced against him, Complainant would not have had to rent a storage locker. Accordingly, an award of \$14 is reasonable and appropriate to compensate Complainant for this expense.

After living at St. Vincent's for 19 months, Complainant sought other housing. Having considered and rejected low income public housing, Complainant found an apartment on Cecile Avenue that met his needs. The monthly rental cost of the Cecile Avenue apartment exceeded that of the Sixth Street property. Charging Party seeks as out-of-pocket expenses for Complainant, the rent differential between his current residence and the Sixth Street property.

Where a complainant obtains alternate housing following rental discrimination and demonstrates he has incurred higher housing costs as a result, the difference in costs is a proper measure of damages. *Miller v. Apartments and Homes of N.J., Inc.*, 646 F.2d 101, 112 (3d Cir. 1981); *Morgan v. Secretary of Housing and Urban Development*, 985 F.2d 1451, 1458 (10th Cir. 1993). The question is whether the Cecile Avenue apartment was in fact "alternate" housing, as contemplated by the above decisions. Following Respondents' discriminatory rejection of his rental solicitation, Complainant abode first in the Catholic Charities' shelter and thereafter for nearly two years in St. Vincent's. The shelter was a temporary exigent solution to Complainant's immediate housing needs and was not alternate housing, but at St. Vincent's Complainant resided for nearly two years in "a comfortable place" where he was "able to relax." It was only as the expiration of St. Vincent's two-year residence restriction neared that Complainant looked for other housing. In doing so, he considered various options, including public housing in Henderson, which he rejected. Complainant clearly did not feel pressured to obtain housing on Cecile Avenue where he moved nearly six months before his term at St. Vincent's expired; he had time to, and did, explore other housing options at lower costs than the Cecile Avenue apartment. In these circumstances, I find that Complainant was not forced to relocate to Cecile Avenue, and his relocation there was not the consequence of Respondents' unlawful refusal to rent to him. Consequently, the Cecile Avenue apartment is not an appropriate comparison property for determining damages. Rather, St. Vincent's constitutes the alternate accommodations to which any review of out-of-pocket expenses must be addressed. Accordingly, I find that out-of-pocket expenses in the form of a rent differential between the Cecile Avenue apartment and the Sixth Street property are not compensable. Since Complainant did not pay more for his St. Vincent's rental than he would have for the Sixth Street property, he has no out-of-pocket expenses on that score. The total award for out-of-pocket tangible damages is \$14.

Loss of amenities

Complainant also seeks compensation for the loss of the housing amenities he would have enjoyed had he been permitted to rent the Sixth Street property. Charging Party calculates this loss by determining the rent differential between St. Vincent's, where Complainant lived for about nineteen months and the Sixth Street property. The evidence is persuasive that significant and discernible differences between the properties existed that made the Sixth Street property both subjectively and objectively more desirable to Complainant than St. Vincent's. The difficulty in calculating the monetary value of loss of amenities is obvious, but Charging Party has presented a reasonable calculation that takes into account what Complainant was willing to pay beyond the rent charged at St. Vincent's. For the advantages connected with the Sixth Street property, not the least of which were quiet and safe surroundings, Complainant was willing to pay \$295 per month. For the less desirable housing at St. Vincent's, Complainant paid \$146 per month. While no exact computation of the value of housing amenities is possible, a calculation that considers what the Complainant was willing to expend for those amenities is reasonable. See *Krueger v. Cuomo*, 115 F.3d 487 (C.A. 7 1997) (inconvenience compensation of \$2,000 supported by evidence). However, it does not follow that Complainant must be compensated for loss of amenities for his entire residence at St. Vincent's. Not long after moving to St. Vincent's, Complainant had resumed his normal daily activities, made friends, and settled in comfortably. There is no evidence that during his entire stay at St. Vincent's, Complainant was emotionally or circumstantially restricted in finding rental space with the approximate amenities of the Sixth Street property. I find three months, which would reasonably have permitted Complainant time to adjust to his situation and reappraise his options, constitute an appropriate period for loss-of-amenities' compensation. Accordingly, the award for loss of amenities is \$447 (the difference between the Sixth Street property rent of \$295 and St. Vincent's rent of \$146, times three).

Emotional distress damages

Charging Party seeks \$28,550 as compensation for the emotional distress suffered by Complainant as a result of Respondent's unlawful discrimination against him. Emotional distress caused by housing discrimination is a compensable injury under the Fair Housing Act. *U.S. v. Balistreri*, 981 F.2d 916, 931 (C. A. 7 1992). Such distress may include embarrassment and humiliation. *Secretary v. Blackwell*, 908 F.2d 864 (C.A. 11 1990). It is not permissible, however, for a tribunal to "presume emotional distress from the fact of discrimination." *Id.* The Court in *Morgan v. HUD*, supra at 1459, stated, "More than mere assertions of emotional distress" are required to support an award for emotional distress damages. Factors to be considered are the discriminatee's emotional reaction to the discrimination and the circumstances of the discriminatory act, as "[t]he more inherently degrading or humiliating the [unlawful] action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action." *U.S. v. Balistreri*, supra at 932. Proof of emotional distress may consist of the discriminatee's description of the emotional effects of the discrimination, "as corroborated by reference to the circumstances of the alleged misconduct." *McIntosh v. Irving Trust Co.*, 887 F. Supp 662, 666 (SDNY 1995). While "evidence [of medical treatment for emotional distress] is not a prerequisite to recovery for emotional distress," *Sams v. U.S. Dept. of Housing & Urban Development*, 76 F.3d 375, 376 (C.A. 4 1996), such evidence, as well as evidence of interference with activities of daily living, may be considered in assessing the amount of damage. *HUD v. Schmid*, 1999 WL 521524* 7 (HUDALJ).

Although I have not accepted Complainant's testimony of emotional distress in its entirety for the reasons stated above, I find he did, indeed, experience emotional distress as a consequence of Respondents' discrimination against him and that he is entitled to compensation. In arriving at a reasonable compensatory sum, I have taken into account the following factors:

- (1) Although Respondents engaged in unlawful discrimination against Complainant, there is no evidence of overtly discriminatory or egregious conduct. While Mr. Dawson was unresponsive and disobliging to Complainant, nothing he said or did was racially offensive. Mr. Dawson was neither abusive nor disrespectful, and Complainant only inferred discriminatory intent from the totality of circumstances surrounding his rejected rental solicitation. While Complainant was humiliated, angered, disheartened, and hurt by the discrimination, he did not seek medical attention or counseling to alleviate symptoms of emotional distress and successfully treated ensuing back pain and stomach problems with over-the-counter medications. Further, Complainant's testimony of his emotional response to Respondents' discrimination against him is not entirely reliable, as it was admittedly "overstated."
- (2) Although Complainant understandably found living in the homeless shelter an inconvenient and highly disagreeable experience, he suffered little or no disruption of his usual activities of daily living. Complainant daily visited his storage unit and daily pursued his street sales business, an occupation involving frequent interactions with strangers. Further he initiated efforts to improve his situation, arranging for a small locker at the shelter and taking steps to speed up the St. Vincent's application process. Complainant's activity level is not consonant with debilitating or long-lasting emotional distress.
- (3) Upon relocation to St. Vincent's, Complainant's physical symptoms resolved; he continued to operate his street-sales business, self-corrected his distrust of white people, compatibly attended church with white congregants, handled his personal affairs, saved money, tried to find his grandchildren, and unhurriedly looked for other suitable housing. Complainant's increased activity reasonably suggests a significant and steady decrease in Complainant's emotional vulnerability after leaving the homeless shelter.

Upon consideration of the above factors, I find \$1,000 to be a reasonable compensation to Complainant for emotional damages. Accordingly, the total damages, both tangible and intangible, awarded to Complainant in this case are \$1,461.

CIVIL PENALTY

As vindication of public interest, an administrative law judge may impose civil penalties upon violators of the Act. 42 U.S.C. § 812(g)(3)(A); 24 C.F.R. § 104.910(b)(3). The purposes of civil penalties include compensating the public by shifting costs from the public to the perpetrator. See *True v. United States*, 894 F.2d 1197 (C.A. 10 1990). A penalty is appropriately determined by considering various factors: respondent's financial resources,¹² the nature and circumstances of the violation, whether the respondent has previously been

¹² There is no evidence of financial inability to pay.

adjudged to have committed unlawful housing discrimination,¹³ the degree of the respondent's culpability; and the goal of deterrence. 24 C.F.R. § 180.671(c)(1); see, e.g., *HUD v. Blackwell*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,001, HUDALJ No. 04-89-0520-1 (Dec. 21, 1989), affd. *Secretary v. Blackwell*, supra.

The circumstances of the instant violation do not reveal pervasive and/or egregiously promulgated racial discrimination by Respondents in the operation of the Sixth Street property. While Charging Party argues Respondents consistently refused to rent housing to African Americans, the evidence does not clearly support that contention. The testimony of Mr. Tuntkitkancharoen, who managed the Sixth Street property after Respondents sold it in 2001, establishes only that no resident at the time of sale was African American, and long-term residents' memories were limited and, in the case of Mr. McCole, faulty. There is no evidence Mr. Dawson, Mr. Black, or any of Respondents' agents expressed any racial biases.

Neither the circumstances of the violation herein nor the degree of Respondents' culpability demonstrates a need for a civil penalty. However, the evidence does show that from the inception of these proceedings until reigned in by competent legal counsel, Respondents engaged in persistent and recalcitrant disregard of the Act's procedural and regulatory requirements. Respondents' defiant insistence, e.g., that "exceptional state rights...protect[ed] them] from the likes of [HUD]," that "we in the state of Nevada, have the right to refuse service to anyone, for any reason we feel warranted," and Respondents' threats that they would sue HUD for "\$1,000/day, until [it] cease[d] and detest[ed] this foolishness," evidence their scorn for the Act's provisions and their intentional refusal to acknowledge the Act's application to them. Since Respondents' rampant and deliberate contumacy needlessly prolonged the proceedings and added to their expense, it is appropriate that they, rather than the public, bear some of the costs. For that reason, and in order to deter Respondents and others from similar actions in the future, I find imposition of a civil penalty in the amount of \$6,000 appropriate.

INJUNCTIVE RELIEF

Injunctive relief may be imposed under the Act. 24 C.F.R. § 180.670(b)(3)(ii). In light of Respondents' uncooperative and resistant conduct relative to these proceedings, I find Charging Party's request for injunctive relief is appropriate.

ORDER

It is hereby ordered that Respondents are:

1. 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;
2. Permanently enjoined from discriminating against any person on the basis of race in connection with any transaction involving any residential rental property owned or managed by Respondents currently or in the future;
3. Required to obtain appropriate training as follows: Respondent Leroy Black and Senior Nevada Benefit Group, L.P. employee, Chuck Steel, shall each, within six months of the date of a final Order in this case, or as soon thereafter as HUD and

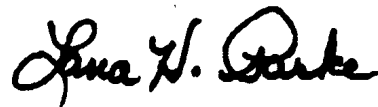
¹³ Respondents have no history of prior violations.

Respondents can arrange, attend eight hours of fair housing training and all other employees of Respondents involved with the leasing and management of all current and future residential rental property owned by Respondents, shall each attend four hours of housing training approved in advance by HUD. The training shall focus on the issue of race discrimination;

4. Required to display the HUD Fair Housing logo in all advertising and media, on all "For Rent" signs and other documents given or displayed to the public or to any current tenant at any current or future residential rental properties for a period of three years;
5. Required to display a HUD-approved Fair Housing poster in all residential rental properties owned or managed now or in the future for a period of three years;
6. Required to give all current tenants and future applicants for a period of three years, the Form-HUD-903.1 "*Are You a Victim of Housing Discrimination?: Fair Housing is Your Right!*" brochure and to require said tenants and applicants to sign and acknowledge receipt of this brochure and to keep said records of acknowledgement on file for purposes of HUD monitoring for a period of three years; and to permit HUD access to view those records upon 24 hours notice;
7. 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 the future, for a period of three years, indicating the applicants' race, color, national origin, and sex and to permit HUD access to view those records upon 24 hours notice;
8. Required, within forty-five (45) days of the date this Order becomes final, to pay damages in the amount of \$1,461 to Complainant, James Lavender. Respondents' liability to pay this amount is joint and several.
9. Required, within forty-five (45) days of the date this Order becomes final, to pay a civil penalty in the amount of \$6,000 to the Secretary, U.S. Department of Housing and Urban Development. Respondents' liability to pay this amount is joint and several.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. §§ 180.670 and 180.680.680(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: September 17, 2004



Lana H. Parke
Administrative Law Judge