UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY

The Secretary, United States Department of Housing and Urban Development, on behalf of Complainant [redacted],	)	
Charging Party,	)	HUDALJ 12-M-034-FH-9
v.	)	
Castillo Condominium Association and Carlos Toro Vizcarrondo,	)	OCT - 2 2014
Respondents.	)	

For the Complainant: Jeanine Worden, Associate General Counsel for Fair Housing; Kathleen Pennington, Assistant General Counsel for Fair Housing Enforcement; Allen Levy, Deputy Assistant General Counsel for Fair Housing Enforcement; Amanda Korber, Trial Attorney, U.S. Department of Housing and Urban Development

For the Respondents: Sigfredo A. Irizarry, Attorney, San Juan, Puerto Rico

ORDER ON SECRETARIAL REVIEW

On September 19, 2014, the Charging Party submitted a Petition for Review ("Petition"), appealing the September 5, 2014, Initial Decision and Order on Damages ("Initial Decision on Damages") issued by Acting Chief Administrative Law Judge ("ALJ") J. Jeremiah Mahoney. On September 26, 2014, the Respondent submitted a reply to the Petition ("Respondent's Statement in Opposition to Petition") asking the Secretary to affirm the ALJ's Initial Decision on Damages. On August 15, 2014, the Secretary vacated the ALJ's July 17, 2014 Initial Decision and Order in this matter in its entirety, and remanded the case to the ALJ to issue an initial decision on the question of damages and an appropriate civil penalty based upon the existing administrative record and the Secretary's Order. In the Initial Decision on Damages, the ALJ first ordered Respondent to pay $3,000 in damages to Complainant for emotional injury, including those flowing from dislocation from his home. Second, the ALJ assessed a civil penalty of $2,000 against Respondent. Third, the ALJ ordered the U.S. Department of Housing

and Urban Development (HUD) to provide, at no cost, Fair Housing training for condominium associations, landlords, and local governmental agencies within the Commonwealth of Puerto Rico during the Fiscal Year 2015. Fourth, the ALJ ordered Respondent's officers to participate in and successfully complete Fair Housing training at a time and place offered by the Charging Party, not later than September 30, 2015.

The Charging Party's petition asks the Secretary to award Complainant damages for emotional distress in the amount of $50,000; assess a civil penalty in the amount of $16,000; modify the order by striking the requirement that HUD provide training at no cost to Respondent and replacing it with the requirement that Respondent obtain fair housing training with approval from HUD regarding the source of the training; and modify the order by striking the reasonable accommodation policy contained in the Initial Order on Damages as Appendix B and replacing it with the policy attached to the Charging Party's Petition at Appendix B. Respondent's Statement in Opposition to Petition asks the Secretary to affirm the ALJ's decision.

Upon review of the entire record in this proceeding, including the briefs filed with the Secretary, and based on an analysis of the applicable law, the Charging Party's Petition for Review is GRANTED in part and the ALJ's Initial Decision on Damages is MODIFIED. Respondent is ORDERED to pay $20,000 in emotional distress damages and $16,000 in civil penalties. Finally, the ORDER regarding injunctive and equitable relief is MODIFIED consistent with the Charging Party's request.

BACKGROUND

On March 29, 2012, the Charging Party filed a Charge of Discrimination ("Charge") on behalf of [redacted] ("Complainant") alleging that Castillo Condominium Association and Carlos Toro Vizcarrondo violated the Fair Housing Act ("Act"), as amended 42 U.S.C. §§ 3601 *et seq.*, by discriminating against Complainant on the basis of his disability by denying him a reasonable accommodation and making housing unavailable in violation of 42 U.S.C. §§ 3604(f)(1) - (2). Specifically, the Charging Party alleged that Respondent unlawfully denied Complainant's request for a reasonable accommodation to Castillo Condominium's no-pet policy in order to keep his dog, Bebo, as an emotional support animal. On May 30, 2012, Respondent filed its Answer to the Charge. The hearing was held on August 6-9, 2013, and an Order was issued on November 29, 2013. Post-hearing briefs were submitted on January 14, 2014, and reply briefs were submitted on February 7, 2014.

On July 17, 2014, the ALJ issued an Initial Decision. Based on the record, the ALJ held that the Respondent had not violated the Act because the Charging Party failed to prove by a preponderance of the evidence that Complainant suffered from a mental impairment warranting a companion animal as a reasonable accommodation. See Initial Decision at 18. Subsequently, on August 1, 2014, the Charging Party submitted a Petition for Review requesting that the Secretary vacate the Initial Decision, find that Respondent violated the Act by denying complainant's reasonable accommodation request, and remand the case to the ALJ for a determination of damages.

On August 15, 2014, the Secretary issued an Order on Secretarial Review ("Secretarial

Order") setting aside the Initial Decision and finding that the Charging Party proved by a preponderance of evidence that Complainant is disabled as defined by the Act, and that Respondent violated 42 U.S.C. §§ 3604(f)(1) – (2) by making housing unavailable because of a disability and refusing to provide a reasonable accommodation to its bylaws that prohibited pets as required by 42 U.S.C. § 3604(f)(3)(B). See Secretarial Order at 12. The Secretary remanded the proceeding to the ALJ to issue an initial decision on the question of damages and an appropriate civil penalty based on the existing administrative record and the Secretarial Order. See id.

On September 5, 2014, in his Initial Decision on Damages, the ALJ ordered Respondent to pay $3,000 in emotional distress damages and imposed a $2,000 civil penalty. See Initial Decision on Damages at 5, 7. The ALJ also ordered the Charging Party to provide Fair Housing training, at no cost, to condominium associations, landlords, and local governmental agencies within the Commonwealth of Puerto Rico during the Fiscal Year 2015. See id at 8. Lastly, the ALJ directed the Respondent's officers to participate in and successfully complete Fair Housing training at a time and place offered by the Charging Party, not later than September 30, 2015. See id.

DISCUSSION

I. The ALJ's Holding That Complainant Is Entitled To $3,000 In Emotional Distress Damages Was Erroneous.

Where a respondent has been found to have engaged in a discriminatory housing practice, the ALJ may issue an order for relief which may include actual damages suffered by the aggrieved person. 42 U.S.C. § 3612. "It is well established that the damages [an aggrieved person] may be awarded under the Act include damages for embarrassment, humiliation and emotional distress caused by the acts of the discrimination." See HUD v. Godlewski, 2007 HUD ALJ LEXIS 69, at *11 (HUDALJ July 6, 2007) citing HUD v. Blackwell, 1989 WL 386958, *16 (HUDALJ Dec. 21, 1989), aff'd 908 F.2d 864 (11th Cir. 1990). Courts have recognized that damages from emotional distress may be proven by testimony. See Bryant v. Aiken Reg'l Med. Ctrs. Inc., 333 F.3d 536, 546 (4th Cir. 2003) ("We have held that a plaintiff's testimony, standing alone, can support an award of compensatory damages for emotional distress."). Medical evidence concerning physical symptoms is not required for an award of emotional distress damages. See Morgan v. HUD, 985 F.2d 1451, 1459 (10th Cir. 1993). Additionally, courts have held that, because emotional distress is difficult to quantify, precise proof of the dollar amount of emotional distress is not required to support a reasonable award for such injuries. See HUD v. Wooten, 2007 HUDALJ LEXIS 68,* 8-9 (HUDALJ Aug. 1, 2007). Judges are afforded broad discretion in determining emotional distress damages, limited by the egregiousness of respondent's behavior and the effect of the respondent's conduct on the complainant. See Wooten at *9; HUD v. Ocean Sands, 1993 HUDALJ Lexis 89, *4 (HUDALJ Nov. 15, 1993).

A. Respondent's Discriminatory Conduct Was Egregious.

The Charging Party argues that the ALJ ignored legal precedent and the Secretarial Order, thus erroneously minimizing the emotional distress damages. See Petition at 2. After

review, the Secretary finds the ALJ erroneously minimized the emotional distress damages.

Key factors in determining emotional distress damages are complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. See HUD v. Parker, 2011 HUDALJ LEXIS 15, *19 (HUD ALJ Oct. 27, 2011). Accordingly, 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." See id., see also ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 25:6, at 25-35 (1990) (citing DAN B. DOBBS, HANDBOOK ON THE LAW OF REMEDIES 530-31 (1973)). Because emotional distress damages are hard to quantify, courts have found that "the more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. United States v. Balistrieri, 981 F.2d 916, 932 (7th Cir. 1992). A respondent's refusal to engage in the interactive process can be so egregious to warrant a significant amount of emotional distress damages. HUD v. Astralis Condo Ass'n, 2009 HUD ALJ LEXIS 29, at *56 (HUD ALJ September 10, 2009) aff'd 620 F.3d 62 (1st Cir. 2010) (Respondent's refusal to engage in the interactive process had severe and profound impact on Complainants' lives, thus warranting damages in the amount of $25,000).

In this case, the ALJ acknowledged that one of the key factors in determining emotional distress damages is the egregiousness of the respondent's behavior. See Initial Decision at 3. However, the ALJ failed to discuss this factor as it relates to Complainant and focused solely on Complainant's reaction to the discriminatory conduct. The Secretarial Order found that Respondent made no attempt to open a dialogue nor was there a good faith effort to resolve Complainant's request. See id. at 12. The record establishes that Respondent ignored the requirement to engage in the interactive process, and failed to make a good faith effort to gather additional information regarding Complainant's request. See id. Instead, Respondent disregarded the doctors' recommendations, ignored the Complainant and his reference to the Fair Housing Act in his requests, and voted to deny Complainant's accommodation request without gathering additional information regarding Complainant's disability. See id. In addition, the record establishes that Respondent did not meet with Complainant prior to its decision to deny Complainant's request. See id. It was clear that Respondent was not willing to make any exception to its no-pet policy, regardless of Complainant's needs or the applicable law.

The Secretary finds that Respondent's behavior was egregious and intentional because it exhibited willful disregard of its fair housing obligations.

B. Respondent's Discriminatory Conduct Caused Complainant Severe Emotional Distress.

In addition to determining the egregiousness of a respondent's conduct, the ALJ should also consider the effect of a respondent's conduct on the complainant when determining a damage award. See Parker at *19. "Where a victim is more emotionally affected than another might be under the same circumstances, and the harm is felt more intensely, he/she deserves greater compensation for the discrimination that caused the suffering." See HUD v. Godlewski, 2007 HUD ALJ LEXIS 67, at *12 (HUDALJ December 21, 2007). The Charging Party argues

that the ALJ erroneously diminished the extent to which Respondent's actions caused Complainant's severe emotional distress. After carefully reviewing the record and legal precedent, the Secretary finds that the Initial Decision on Damages erroneously minimized the damage award despite having found that Complainant suffered "stress, anxiety, fear, insomnia, and discomfort for a year due to Respondent's actions." See Initial Decision on Damages at 5.

i. The ALJ erroneously concluded that Complainant's pre-existing depression and anxiety are reasons to diminish Respondent's responsibility to pay damages.

As the Secretarial Order found, Bebo's arrival improved Complainant's quality of life. However, subsequently in April 2010, when Complainant was told that he would have to give up Bebo, he was shocked and felt the depression starting all over again. See Secretarial Order at 11. In addition, the ALJ stated:

> Complainant testified that he was 'devastated' and 'shocked' to receive the Board's letter ordering him to remove Bebo from the building. Afterwards, he faced near constant worry that he would be forced to either abandon Bebo or leave Castillo Condominium, especially while awaiting a determination from DACO [Puerto Rico's Department of Consumer Affairs] on his complaint. This worry increased his depression and anxiety. He further stated that if he had been forced to get rid of Bebo, he "probably would have ended up in the hospital with a real nervous breakdown or depression untreatable outside the hospital.

See Initial Decision on Damages at 3.

Further, the Secretarial Order accepted the testimony of Complainant's treating psychiatrist and primary physician. [redacted] Complainant's psychiatrist, testified that Complainant became more depressed, more anxious because Respondent was asking him to get rid of his dog. Secretarial Order at 10. He further stated that had Complainant been forced to give up the dog, he would "probably end up in the hospital or trying to kill himself." [Tr. at 272, 17-19]. [redacted] Complainant's primary physician, testified that if Complainant had been forced to remove Bebo from his home, "there is no doubt it would have had a detrimental effect on both Complainant's physical and mental state." Secretarial Order at 11.

The ALJ concluded, albeit incorrectly, that only a small portion of Complainant's emotional distress is attributable to Respondent because Complainant's depression and anxiety "pre-existed Bebo's arrival in the building and were only exacerbated by Respondent's behavior." Initial Decision on Damages at 3. The ALJ found that it is the exacerbation, not the foundational harassment, which is remediable. Id.

Respondents who discriminate in housing must take their victims as they find them and compensate them accordingly. See HUD v. Godlewski, 2007 HUD ALJ LEXIS 67, at *12 (HUDALJ December 21, 2007); see also HUD v. Housing Auth. Of City of Las Vegas, 1995 HUD ALJ LEXIS 31, at *82 (HUD ALJ Nov. 6, 1995). In the case of a particularly sensitive complainant, judges must take into consideration the susceptibility to injury of that complainant,

and damages must be awarded based on the injuries actually suffered. HUD v. Kelly, 2 Fair Housing-Fair Lending (P-H) P15,034 at 25,362 (HUDALJ Aug. 5, 1991); HUD v. Nelson Mobile Home Park, Fair Housing-Fair Lending (P-H) P25,063 at 25,613 (HUDALJ Dec. 2, 1993). Therefore, the fact that Complainant suffered from depression and anxiety prior to Respondent's denial of his reasonable accommodation request is not a reason to discount damages, but rather makes clear that Complainant was particularly vulnerable to Respondent's unlawful actions and should in fact be compensated for his heightened emotional damages. See HUD v. Dutra, 1996 HUD ALJ LEXIS 55, at *36-37(HUD ALJ Nov. 12, 1996) (the fact that a complainant may be unusually emotionally sensitive and incur great emotional harm from the discriminatory conduct does not absolve the respondent from responsibility for the greater emotional harm).

As mentioned above, the ALJ found that denial of the accommodation request caused Complainant stress during the time awaiting the DACO ruling, from April of 2010 until March 2011. Initial Decision on Damages at 5. During that time, Complainant was left to weigh the continuing threat of separation from Bebo. See id. Further, the ALJ noted that Complainant experienced stress, anxiety, fear, insomnia, and discomfort due to Respondent's discriminatory actions. See id. The additional stress and depression, which the ALJ acknowledged was a result of the denial of the accommodation request, should not be discounted. As noted above, respondents take their victims as they find them and must compensate them accordingly.

The Secretary finds that the ALJ's conclusion that Respondent's conduct caused Complainant to suffer severe emotional distress does not align with the $3,000 damages award.

ii. The ALJ erroneously discounted the fact that Complainant was forced to move from his home as a result of Respondent's discriminatory conduct.

The Secretarial Order found that because of the failure to grant the reasonable accommodation request, Complainant was forced to move out of his property in Castillo Condominium in order to keep Bebo. Secretarial Order at 12. The ALJ justified the $3,000 emotional damages award on the basis that Complainant was not forced to move out of his apartment and he was never separated from his pet. In doing so, the judge relied on HUD v. Dutra, 1996 HUD ALJ LEXIS 55 (HUD ALJ Nov. 12, 1996). In Dutra, the ALJ awarded $5,000 to the complainant because she was never separated from her pet and was not forced to move against her will. Here, although Complainant was never separated from his pet, unlike the complainant in Dutra he was forced to move against his will. The only reason Complainant moved from Castillo Condominium is because he was not permitted to keep Bebo. Accordingly, the ALJ's reliance on Dutra to support of the amount damages for emotional harm is misplaced.

The Secretarial Order found that Complainant was forced to move out of his property because Respondent denied his reasonable accommodation request to keep Bebo, a decision that was upheld by DACO. Complainant lived at Castillo Condominium for 15 years. In addition, Castillo Condominium is located near his childhood home. Initial Decision on Damages at 5. Complainant explained that "Castillo was [my] home. [My] childhood...and [I] hated to leave there." [Tr. at 206, 21-22; Tr. at 1-4]. The ALJ acknowledged that courts have awarded substantially more when the discriminatory conduct has forced the complainant to move against

their will. Initial Decision on Damages at 4; see HUD v. Krueger, 1996 HUD ALJ LEXIS 62, at *42-45 (HUD ALJ June 7, 1996) (awarding $22,000 in emotional distress and inconvenience damages to a complainant who was forced to move to an apartment that was "smaller, not as efficiently heated, and without a dining room.); see also HUD v. Kogut, 1995 HUD ALJ LEXIS 52 (April 17, 1995) (awarding $25,000 when moved from safe, third-floor apartment to ground floor apartment with no air conditioning in crime-ridden neighborhood, where she was burglarized twice).

The ALJ did not believe that Complainant's harm met or exceeded that suffered by complainants in similar cases where they were forced to move out of their homes. The ALJ concluded that because Complainant was never separated from Bebo; he moved to a larger condominium and sold his Castillo Condominium unit for fair value; he was never at risk of eviction, homelessness or arrest; and his physical integrity was never compromised, his situation did not arise to the level of the complainants in Dutra, Riverbay and Astralis. Initial Decision on Damages at 5; see also Dutra, 1996 HUD ALJ LEXIS 55 (HUD ALJ Nov. 12, 1996); HUD v. Astralis Condominium Ass'n, 2009 HUD ALJ LEXIS 29 (HUD ALJ September 10, 2009) aff'd at 620 F.3d 62 (1st Cir. 2010); HUD v. Riverbay, 2012 HUD ALJ LEXIS 15 (HUDALJ May 7, 2012). However, that is not the standard for awarding damages associated with being forced to move from one's ideal location because of a discriminatory act. The cases specifically articulate that damages may be awarded for the emotional impact that one has when being forced to move against his will See HUD v. Sams, 1994 HUD ALJ LEXIS 74, at *24-25 (HUD ALJ March 11, 1994) (awarding $7,500 for emotional distress and loss of housing opportunity in their "ideal environment"); see also Pack v. Fort Wash. II, 2010 U.S. Dist. LEXIS 23015, at *6-7 (E.D. Cal. Feb. 22, 2010) (upholding settlement of $32,000 for family of four that was forced to move as a result of discriminatory acts). Complainant was forced to move from his ideal location that was near his childhood home to a sub-optimal location. He should be compensated for the emotional impact of being forced to make this move regardless of the size of his new property or that he never faced homelessness or eviction.

Based on the record, the Secretary finds that the ALJ erroneously minimized the emotional distress damage award and finds that an award of $20,000 for Complainant's emotional distress is more appropriate in this case.

II. The ALJ's Assessment Of Only a $2,000 Civil Penalty Was Erroneous.

After finding that a respondent engaged in a discriminatory housing practice, an ALJ may vindicate the public interest and assess a civil penalty against the respondent. 42 U.S.C. § 3612(g)(3). In determining the appropriate penalty, the ALJ is to consider six factors, including: (1) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (2) respondent's financial resources; (3) the nature and circumstances of the violation; (4) the degree of that respondent's culpability; (5) the goal of deterrence; and (6) other matters as justice may require. 24 C.F.R. § 180.671(c). In this case, the ALJ assessed a $2,000 civil penalty. The Charging Party appeals the ALJ's assessment of a $2,000 civil penalty arguing that the ALJ erroneously concluded that Respondent's actions are not "the sort of willful, malicious conduct that demands a maximum penalty." Charging Party's Petition at 7. The Charging Party seeks the maximum civil penalty of $16,000.

After carefully reviewing the record and legal precedent, the Secretary finds that Respondent's violations of the Act are particularly egregious and warrant the maximum civil penalty of $16,000 in order to vindicate the public interest and act as a deterrent.

A. The ALJ Erred in Considering Respondent's Financial Resources in Assessing the Civil Penalty.

The Charging Party argues that the ALJ erred in considering Respondent's financial resources in assessing the civil penalty even though Respondent offered no evidence of financial hardship. Petition at 21. Evidence regarding respondents' financial circumstances is peculiarly within their knowledge, so they have the burden of producing such evidence for the record. See HUD v. Schmid, 1999 HUD ALJ LEXIS 5, at *31-32 (HUD ALJ July 15, 1999). If a respondent fails to produce credible evidence which would tend to mitigate against assessment of a civil penalty, a penalty may be imposed without consideration of financial circumstances. See id. citing Campbell v. United States, 365 U.S. 85, 96 (1961). In his assessment of the civil penalty, the ALJ erroneously stated that "although Respondent has not shown financial hardship, the Court will consider that Respondent is an association of individual owners of residential units in a condominium complex who would be required to pay for all actual damages and civil penalties assessed in this case." Initial Decision on Damages at 6.

In Respondent's Statement in Opposition to Petition, Respondent submitted an unaudited balance sheet and a budget statement of revenues and expenditures for seven months ending August 31, 2014. Respondent indicated that during discovery, it provided information concerning its financial situation and its capacity to pay a fine or an amount in compensation for damages. See Respondent's Statement at 13, Annex. Because the income and expenses vary from year to year, Respondent contends that the information provided in answer to discovery is not presently accurate. See id. Therefore, Respondent attached as an "Annex" to its statement in opposition, a copy of the current financial information. See id. at Annex. However, these documents are not part of the record. Rather, they were merely provided to the Charging Party during the exchange of discovery. There is no evidence that this information was subsequently introduced into the record. See HUD v. French, 1995 HUD ALJ LEXIS 38 (HUD ALJ September 12, 1995) (ALJ held that respondents did not present any testimony to indicate that payment of the maximum penalty would cause them financial hardship, therefore the record does not contain any evidence that respondent could not pay a civil penalty without suffering undue hardship).

Because Respondent did not present any evidence regarding financial hardship, the ALJ may not then make the assumption regarding Respondent's financial circumstances. See Godlewski, at *26. Even with the additional statements from Respondent, there is still insufficient evidence to show financial hardship. The Respondent provided no explanation for why it would be unable to pay a certain amount. Therefore, the Secretary finds that Respondent did not sufficiently show financial hardship and the ALJ erred in mitigating the penalty based on Respondent's financial resources.

B. The ALJ Erred in Finding that Respondent's Ignorance of Fair Housing Law Minimizes its Culpability.

The Charging Party argues that in assessing only a de minimis civil penalty, the ALJ incorrectly reasons that Respondent's actions, "though inappropriate, were fueled by ignorance of the law and an unwillingness to challenge Toro Vizcarrondo's leadership." Charging Party's Petition at 19. The Charging Party believes that the maximum penalty should be awarded.

Ignorance of the law does not mitigate a respondent's culpability or the nature and circumstances of the violation, but instead may support a higher civil penalty when a respondent is in the business of providing housing. See HUD v. Blackwell, 908 F.2d 864, 873 (upholding ALJ's decision of maximum civil penalty because respondent "bears the full weight of responsibility for his actions and their effects...since as a licensed real estate broker with nearly 20 years-experience, he knew or should have known that his actions were not only wrongful, but also, were unlawful."); see also HUD v. Corey, 2012 HUD ALJ LEXIS 26, at *22-23 ("There is simply no excuse for a housing provider who has been in business for 15 years to not know that the Act prohibits discrimination against disabled persons. Therefore, the evidence demonstrates that respondent acted without regard for the law and the Secretary finds that such conduct supports a higher civil penalty."). After carefully reviewing the record and legal precedent, the Secretary finds that the Respondent's culpability supports a higher civil penalty.

As the Charging Party argues and the ALJ acknowledged, the Respondent did not have the requisite knowledge of fair housing laws. At trial, Mr. Vizcarrondo stated that "there was no member of the Board that would have that itemized or detailed knowledge about disabilities law or an obligation to provide a reasonable accommodation." [Tr. at 99, 14-18]. The ALJ stated that the Board's ignorance of its obligations under the Act permitted it to be swayed by Mr. Vizcarrondo's personal animosity towards Complainant, thereby aggravating Complainant's emotional distress. See Initial Decision on Damages at 7. However, the ALJ failed to penalize Respondent for this lack of knowledge of the Act. See id. A condominium association is responsible for adhering to the standards under the Act. Further, the Act is mentioned in the documentation submitted to the Board in support of Complainant's request for the reasonable accommodation. Jt. Ex. 2(a)-(b). However, Respondent failed to inquire any further regarding the assertions Complainant made under the Act and let one Board member's personal animosity toward Complainant control the Board's response. This evidence clearly demonstrates that Respondent acted without regard for the law and the Secretary finds that such conduct supports a higher civil penalty.

C. The Goal Of Deterrence Warrants A Higher Civil Penalty.

The Charging Party argues that the ALJ erred in analyzing the deterrent effect of a civil penalty. See Charging Party's Petition at 22. The Charging Party argues that such a nominal penalty cannot reasonably be expected to have any deterrent effect on Respondent or on other similarly situated housing providers. See id. It is appropriate to consider the impact of a particular penalty, both upon this Respondent, who will undoubtedly continue to administer and set policy for residential property within the condominium, and upon others similarly situated who might otherwise commit similar violations of the Act. See Krueger v. Cuomo, 115 F.3d 487,

493 (7th Cir. 1997) (rejecting a respondent's argument that a $10,000 civil penalty was too severe and noting that "a painless sanction would have little deterrent effect."). Many apartments and condominium associations have a "no pet" policy. However, they need to be aware of the Fair Housing laws that would permit an exception to that policy when a resident requests a reasonable accommodation. Therefore, the Secretary finds that a greater civil penalty should have been assessed to deter not only Respondent, but others in similar positions from acting in this fashion in the future.

Based on the above, the Secretary finds that the maximum civil penalty in the amount of $16,000 is warranted in this matter.

III. The Charging Party's Recommendation Regarding Injunctive Relief Is Accepted.

Upon a finding that a respondent has engaged in a discriminatory housing practice, the ALJ may order injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3). The ALJ ordered injunctive relief to preclude the recurrence of discriminatory acts. See Initial Decision on Damages at 8. The Initial Decision on Damages required HUD to publicize and make available, at no cost to the recipients, Fair Housing training for condominium associations, landlords, and local governmental agencies within the Commonwealth of Puerto Rico, and report the results to the Secretary at the conclusion of Fiscal Year 2015. See id. The ALJ also ordered Respondent to participate in and successfully complete the aforementioned training at a time and place offered by the Charging Party, not later than September 30, 2015.

The Charging Party argues that providing fair housing training to condominium associations, landlords, and local government agencies goes beyond the scope of the ALJ's authority under the Act and its implementing regulations, and must be set aside as contrary to law. See 24 C.F.R. § 180.674(b)(3). Further, the Charging Party asserts that requiring HUD to provide this training may prevent HUD's Puerto Rico office from prioritizing and effectively managing its many duties. See Charging Party's Petition at 14; Declaration of Diana Ortiz, Appendix A.

After review, the Secretary agrees that the ALJ's injunctive relief is both contrary to law and unduly burdensome to the Department. Injunctive relief relating to the ultimate outcome of a lawsuit may be issued only against a respondent or defendant found to have violated the law. See Prairie Band Potawatomi Nation v. Wagnon, 476 F.3d 818, 822 (10th Cir. 2007) (injunction requires showing actual success on the merits"); see e.g. Parker, 2011 HUD ALJ LEXIS 15, at *29 ("Upon finding that a respondent has engaged in a discriminatory housing practice, the presiding ALJ may order injunctive relief or other equitable relief as necessary to make the complainant whole or to protect the public interest in fair housing"); Godlewski, 2007 HUD ALJ LEXIS 67, at *28 ("The [ALJ] may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing."). In this case, the ALJ erroneously issued injunctive relief against the Charging Party by requiring them to conduct free training to condominium associations, landlords, and governmental agencies in the Commonwealth of Puerto Rico.

In addition, the extra time allocated to provide training specified in the ALJ's Initial

Decision on Damages requires substantial staff time as well as HUD resources and is unduly burdensome. Thus, the Secretary accepts the Charging Party's recommended modification and modifies the injunctive relief to read:

> Within ninety (90) days of the effective date of this Order, Respondent shall obtain fair housing training pertaining to its obligations under the Fair Housing Act and applicable state non-discrimination law. Respondent shall obtain approval of the source of the training from the FHEO Field Director for the Puerto Rico Office at least thirty (30) days before the date scheduled for such training. Respondent will provide proof of such training to the FHEO Field Director for the Puerto Office within one-hundred (120) days of the effective date of this Order.

IV. The Charging Party's Request to Strike the Reasonable Accommodation Policy is Accepted.

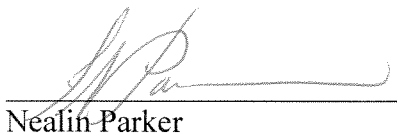
The Charging Party inadvertently asked the ALJ to order Respondent to adopt a reasonable accommodation policy that is inconsistent with HUD policy and contrary to Fair Housing law. The Secretary strikes the policy contained in the Initial Order on Damages, which is denoted Appendix B, and orders it replaced by the policy attached to this Secretarial Order at Appendix A.

CONCLUSION

Upon review of the entire record in this proceeding, including the briefs filed with the Secretary, and based on an analysis of the applicable law, the Charging Party's Petition for Review is GRANTED in part and the ALJ's Initial Decision on Damages is MODIFIED. Respondent is ORDERED to pay $20,000 in emotional distress damages and $16,000 in civil penalties. Finally, the ORDER regarding injunctive and equitable relief is MODIFIED consistent with the Charging Party's request.

IT IS SO ORDERED.

Dated this 2 day of October, 2014



Nealin Parker
Secretarial Designee

APPENDIX A

APPENDIX B-1

CASTILLO CONDOMINIUM ASSOCIATION REASONABLE ACCOMMODATION POLICY

Castillo Condominium Association is committed to granting reasonable accommodations to its rules, policies, practices, or services when such accommodations may be necessary to afford people with disabilities[1] the equal opportunity to use and enjoy their dwellings or common areas.

A reasonable accommodation is a change or exception to a rule or policy that is needed because of a person's disability. Since rules or policies may have a different effect on people with disabilities than on other people, treating people with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. In order for a requested accommodation to be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the disability. For example, a housing provider that has a policy of not assigning parking spaces must make an exception to this policy in order to grant an assigned parking space to an individual who is substantially limited in his ability to walk. A request for a reasonable accommodation may be denied only if there is no disability-related need for the accommodation or the accommodation is not reasonable – that is, if it would impose an undue financial and administrative burden on Castillo Condominium Association or it would fundamentally alter the nature of Castillo Condominium Association's operations. If a requested accommodation would impose such a burden or fundamentally alter Castillo Condominium Association's operations, Castillo Condominium Association may not simply deny the request but must discuss with the requester whether an alternative accommodation could effectively address the person's disability-related needs. An interactive process between Castillo Condominium Association and the person who made the request is helpful to all because it can result in an effective accommodation that does not impose an undue burden or fundamentally alter Castillo Condominium Association's operations. Persons with disabilities are generally in the best position to determine if an accommodation would adequately address their disability-related needs.

One common type of reasonable accommodation is allowing a person with a disability to keep an assistance animal. An assistance animal is an animal that works, provides assistance,

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[1] For this purpose, a person with a disability is defined as a person with a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment. Physical or mental impairments include, but are not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. The term "substantially limits" suggests that the limitation is significant or to a large degree. The term "major life activity" means those activities that are of central importance to daily life, including but not limited to seeing, hearing, walking, breathing, working, performing manual tasks, caring for one's self, learning, and speaking.

performs tasks for the benefit of a person with a disability, or provides support that alleviates one or more identified symptoms or effects of a person' s disability. We recognize the importance of assistance animals, and we are dedicated to ensuring that individuals with assistance animals may keep them at Castillo Condominium.

We will not deny a request to keep an assistance animal solely because the animal has not received formal training. Some assistance animals, known as service animals, are trained by professionals, their owners, or someone else to work or perform tasks for individuals with disabilities. Other assistance animals, however, do not require any special training. The relevant question is whether the animal performs the assistance or provides the benefit needed by the person with a disability.

If an individual requests a reasonable accommodation, including a request to keep an assistance animal, we will not ask about the nature or extent of the person's disability. Many times, it is readily apparent or otherwise known to us that a person has a disability. It is also often readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, such as a dog guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability to an individual with a mobility disability. If this is the case, we will not make any inquiries at all and the reasonable accommodation will be granted.

If it is not readily apparent or otherwise known that the person has a disability or that an animal is trained to aid an individual with a disability, we will need to make a few inquiries before granting the reasonable accommodation. We will first ask if the animal is required because of a disability and what work or task the animal has been trained to perform. We will not, however, require documentation that an animal is trained or certified or licensed as a service animal.

If the animal is not trained to do work or to perform tasks for individuals with disabilities, we may ask for a statement from the individual requesting the accommodation, or from a health or social service professional, such as a doctor, physician's assistant, psychologist, or social worker, that the individual has a disability and the designated animal provides emotional support or other assistance that alleviates one or more symptoms or effects of the person's disability. A peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also be able to provide verification of a disability and need for an assistance animal. A service animal tag, though not required, may also serve as verification of the disability and need. Based on this verifying information, we will not ask for any additional information about a person's disability or about the symptoms or effects of the disability that will be alleviated by the assistance animal. Again, if it is readily apparent or otherwise known to us that an individual has a disability or needs an assistance animal, we will not need to ask for any information related to what is already known or readily apparent. In no case will we charge a person requesting a reasonable accommodation to keep an assistance animal any fee, deposit, or other charge for making the request or for keeping the animal. Since individuals with disabilities are entitled to keep and use assistance animals in units and common areas at Castillo Condominium, it is our policy to make the process of obtaining approval to keep an assistance animal as burdenfree as possible.

You may obtain a form to request a reasonable accommodation at _____ office. If you require assistance in completing the form, a Reasonable Accommodation Coordinator ("RAC") will assist you in filling out the form or will fill out a form based on an oral request. We are using this form to record reasonable accommodation requests so that we obtain only the information that is necessary for a reasonable accommodation decision and do not obtain confidential information that we do not need to make a reasonable accommodation decision.

All requesters shall be notified in writing of a decision within 10 days of the request. Prior to denying a request, the RAC will attempt to engage in an interactive process with the requester in which the parties discuss possible alternative accommodations that might effectively meet the individual's disability-related needs. We recognize that an individual with a disability is generally in the best position to know whether or not a particular accommodation will be effective in meeting his or her needs. If the request is denied, an explanation for the denial will be provided in the written notification. If an individual with a disability believes that the request is denied unlawfully or that the response is delayed unreasonably, then he or she may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing & Equal Opportunity
451 7th St. SW, Washington DC 20410
Telephone: 1-800-669-9777
Website: http://hud.gov/complaints/

APPENDIX B-2

FORM TO REQUEST A REASONABLE ACCOMMODATION IF IT IS NOT READILY APPARENT OR OTHERWISE KNOWN THAT THE PERSON HAS A DISABILITY AND NEEDS A REASONABLE ACCOMMODATION

If you, a member of your household, or someone associated with you has a disability and feels that there is a need for a reasonable accommodation to have equal opportunity to use and enjoy a dwelling unit or the public or common use areas, please complete this form and return it to the Reasonable Accommodation Coordinator ("RAC"). Check all items that apply and answer all questions. The RAC will answer this request in writing within 10 days (or sooner if the situation requires an immediate response). If you require assistance in completing this form, contact the RAC for assistance or to make an oral request for a reasonable accommodation.

Name _____

Today's Date _____

The person who has a disability requiring a reasonable accommodation is:

Me_____ A person associated or living with me_____

Name of person with disability_____

Phone #_____

Address_____

I am requesting the following change in a rule, policy, practice, or service so that a person with a disability can have an equal opportunity to use and enjoy the premises:

_____

_____

_____

This reasonable accommodation is needed because:

_____

_____

_____

If the request is to keep an assistance animal:

(1) Designate the species, e.g., "dog," "cat," "bird" _____

(2) If the request is to keep an animal that is trained to perform work or do tasks for an individual with a disability:

Is the animal required because of a disability? Yes___ No____

State at least one task or type of work that the animal has been trained to perform

_____

-OR-

If the request is to keep an animal that is not trained to perform work or do tasks for an individual with a disability, provide information verifying that the individual has a disability and the animal alleviates one or more symptoms or effects of the person's disability. Many times, information verifying a disability can be submitted by the individual himself or herself, such as a statement by the individual or proof that an individual under the age of 65 receives Supplemental Security Income or Social Security Disability Insurance benefits. A health or social service professional or other individual with knowledge of the disability and the fact that the animal alleviates one or more identified symptoms or effects of the disability may also provide verifying information. A form which can be provided to a health or social service professional will be provided to you by the Reasonable Accommodation Coordinator.

_____ _____

Signature of Person Making Request Date

To be completed by RAC or designee:

Form accepted by _____ _____

Date

_____

Signature

APPENDIX B-3

FORM TO BE COMPLETED BY RAC IF REQUESTER IS UNABLE OR CHOOSES NOT TO COMPLETE WRITTEN FORM

On _____ [date], _____ [name] orally requested the following reasonable accommodation:

_____

_____

_____

I, RAC of Castillo Condominium:

____ Gave the requester the applicable form and offered to assist in filling it out

____ Granted the request

____ Gave the requester a copy of this form and explained that the request could not be evaluated until the following additional information is provided:

_____

_____

_____

_____ _____

RAC Date

Requester's Address_____

Requester's Telephone Number_____

APPENDIX B-4

FORM FOR HEALTH OR SOCIAL SERVICE PROFESSIONAL IF REQUESTING TO KEEP AN ASSISTANCE ANIMAL

On _____ [date], _____ [name] requested the reasonable accommodation of keeping the following animal in his home: _____. Please complete this form to assist us in determining whether or not to grant the requested accommodation.

_____ has a disability[2]: Yes ____ No____

The animal provides some type of assistance to the individual or the presence of the designated animal alleviates one or more identified symptoms or effects of the person's disability?
Yes ____ No ____

_____ Name

_____ Date

_____ Signature

_____ Title

When completed, return this form to:

Castillo Condominium Association Corporation
Attention: Reasonable Accommodation Coordinator
Address

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[2] For this purpose, a person with a disability is defined as a person with a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment. Physical or mental impairments include, but are not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. The term "substantially limits" suggests that the limitation is significant or to a large degree. The term "major life activity" means those activities that are of central importance to daily life, including but not limited to seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

APPENDIX B-5

APPROVAL OR DENIAL OF REASONABLE ACCOMMODATION REQUEST

Dear: _____:

Address: _____

_____

Phone: _____

On _____ [date], you requested the following reasonable accommodation [describe request]:

_____

_____

_____

We have (check all that apply):

___ **Approved** your request. The following reasonable accommodation will be permitted:

_____

_____

___The change is effective immediately.

___The reasonable accommodation is not effective immediately because [list reason(s) accommodation cannot be implemented immediately]

_____

_____

We anticipate that the change will be made by _____ [date], and we will notify you if we discover that there will be a delay.

___ **Can neither approve nor deny your request** without the following additional information:

_____

_____

_____

___ **Denied** your request. We have denied your request because [You must check at least one]:

___You do not have a disability

___The requested accommodation is not related to your disability

___Granting the request would impose an undue financial and administrative burden or would fundamentally alter the nature of our operations

We used these facts to deny your request:

_____

_____

_____

_____

If you disagree with this decision you may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing & Equal Opportunity
451 7th St. SW, Washington DC 20410
Telephone: 1-800-669-9777
Website: http://hud.gov/complaints/

Sincerely,

Signature: _____ Date_____

Name: _____ Title: _____