

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

)	
)	
The Secretary, United States Department of)	
Housing and Urban Development,)	
Charging Party, on behalf of:)	
)	
Delores Walker, Gregory Walker,)	
by and through Delores Walker, his)	
legal guardian,)	
)	
Complainants,)	HUDALJ 10-M-207-FH-27
)	
v.)	August 15, 2012
)	
Michael Corey)	
)	
Respondent.)	
)	
)	

For the Complainant: Jeanine Worden, Associate General Counsel for Fair Housing, Kathleen Pennington, Assistant General Counsel for Fair Housing Enforcement, Sheryl L. Johnson, Regional Counsel, Region III, Richard A. Marchese, Associate Regional Counsel, Region III, Melissa Stegman and Michelle Caramenico, Trial Attorneys, U.S. Department of Housing and Urban Development

For the Respondents: Fred F. Holroyd, Attorney, Holroyd & Yost, Charleston, WV

ORDER ON SECRETARIAL REVIEW

On July 27, 2012, Respondent submitted a Petition for Review of the Initial Decision and Order on Remand (“Respondent’s Petition Upon Remand”) asking the Secretary to reinstate the ALJ’s May 16, 2012, Initial Decision. On July 30, 2012, the Charging Party submitted a reply to Respondent’s Petition Upon Remand

and also a Petition for Review of the Initial Decision Upon Remand (“Charging Party’s Petition Upon Remand”), appealing the July 16, 2012, Initial Decision and Order Upon Remand (“Initial Decision Upon Remand”) issued by Acting Chief Administrative Law Judge (“ALJ”) J. Jeremiah Mahoney. This consolidated Order will resolve the issues raised in the Petitions filed by both parties. In the Initial Decision Upon Remand, the ALJ first awarded Complainant Delores Walker \$5,000 in emotional distress damages. Second, the ALJ found that the record failed to support an award for inconvenience damages. Third, the ALJ imposed a \$4,000 civil penalty on Respondent. Lastly, the ALJ ordered that Respondent provide specific information in regards to his rental properties to the Charging Party for monitoring purposes and participate in fair housing training conducted by an approved fair housing organization. Respondent’s Petition Upon Remand seeks to have the ALJ’s May 16, 2012, decision finding that Respondent had not violated the Fair Housing Act reinstated. In its Petition Upon Remand, the Charging Party argues that the ALJ ignored the Order on Secretarial Review (“Order”) and erroneously minimized emotional distress damages and civil penalties. The Charging Party requests that the Secretary vacate the Initial Decision Upon Remand, issue a new decision on damages and civil penalty, and clarify the injunctive relief order.

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, I DENY Respondent’s Petition in its entirety and GRANT IN PART the Charging Party’s Petition Upon Remand. In accordance with 24 C.F.R. §§ 180.675(a) and 180.675(b)(2)-(4) and 42 U.S.C. § 3604(f)(1)-(2) and 42 U.S.C. § 3604(c), I SET ASIDE the ALJ’s assessment of damages and civil penalty and modify the ALJ’s injunctive relief order. I ORDER Respondent to pay \$18,000 in emotional distress damages and \$16,000 in civil penalty. Finally, I modify Part I(a) of the injunctive relief consistent with the Charging Party’s request.

BACKGROUND

On September 29, 2010, the Charging Party filed a Charge of Discrimination (“Charge”) on behalf of Delores Walker and Gregory Walker, by and through Delores Walker, his legal guardian (“Complainants”) alleging that Michael Corey (“Respondent”) discriminated based on disability¹ in violation of the Fair Housing Act, as amended 42 U.S.C. §§ 3601 *et seq.*, by making facially discriminatory statements in violation of 42 U.S.C. § 3604(c); making housing unavailable because of disability in violation of 42 U.S.C. § 3604(f)(1); and imposing discriminatory terms and conditions because of disability in violation of 42 U.S.C. § 3604(f)(2). Specifically, the Charging Party alleged that after Ms. Walker informed Respondent that she wanted to rent the property with her autistic and mentally retarded brother, Mr. Walker, Respondent violated the Fair Housing Act by requiring Ms. Walker to (1) purchase a \$1 million liability insurance policy

¹ The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

to cover damages or injuries caused by Mr. Walker; (2) sign a paper assuming liability for damages caused by Mr. Walker; and (3) obtain a doctor's note from Mr. Walker's doctor. On November 10, 2010, Respondent filed his Answer to the Charge. The hearing was held on November 29 and 30, 2011. Post-hearing briefs were submitted on January 17, 2012, and reply briefs were submitted on January 30 and 31, 2012.

On May 16, 2012, the ALJ issued an Initial Decision. Based on the record, the ALJ held that Respondent had not violated the Fair Housing Act because his statements were nondiscriminatory and reasonable requests for information that would determine whether Mr. Walker was a threat to persons or property. See Initial Decision at 20. Subsequently, the Charging Party submitted a Petition for Review ("Initial Petition") requesting that the Secretary vacate the Initial Decision and remand the case to the ALJ.

On June 13, 2012, the Secretary issued an Order granting the Initial Petition. See Order at 8. The Secretary found that the Charging Party offered evidence sufficient to prove Respondent violated 42 U.S.C. §§ 3604(f)(1)-(2) and (c) of the Fair Housing Act. Id. at 3-4. The Secretary then remanded the proceeding to the ALJ to rule on the issue of damages and civil penalty. See id. at 8.

On July 16, 2012, in his Initial Decision Upon Remand, the ALJ held that Respondent's behavior did not justify a higher emotional award because it was not an intentional, public or particularly outrageous act of discrimination. See Initial Decision Upon Remand at 4. Second, the ALJ found that inconvenience damages were unwarranted because the evidence did not establish that Complainants' current residence was unsuitable or unsatisfactory.² See id. at 5-7. Third, the ALJ imposed a \$4,000 civil penalty. See id. at 7-9. Lastly, the ALJ ordered that Respondent provide certain information to the Charging Party related to his rental activities and participate in fair housing training. See id. at 9-10.

DISCUSSION

I. Respondent's Petition Upon Remand Asking the Secretary to Vacate the Order and Reinstate the Initial Decision is Denied.

Respondent appeals the Order that found Respondent had violated §§ 3604(f)(1)-(2) and (c) of the Fair Housing Act. See Respondent's Petition at 2. Respondent argues that the ALJ correctly held that the Charging Party had not made a case of housing discrimination, and thus no damages or civil penalties should be assessed. See id. Respondent's Petition Upon Remand asks the Secretary to dismiss the case. See id. After reviewing the Respondent's Petition Upon Remand, the Secretary denies Respondent's request for the reasons set forth below.

² The Charging Party is not seeking review of the ALJ's decision in regards to inconvenience damages.

HUD's administrative process permits parties to petition for Secretarial review following an administrative law judge's initial decision. The party seeking Secretarial review must ensure that its petition is "reviewed by the Secretary within 15 days after issuance of the initial decision." 24 C.F.R. § 180.675(d). The party opposing Secretarial review must ensure that its petition is "received by the Secretary within 22 days after issuance of the initial decision." 24 C.F.R. § 180.675(e). The Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision and issue his own final decision in the case as a whole or any matters therein. 24 C.F.R. § 180.680(b)(1). In this case, the Initial Decision was issued on May 16, 2012. On May 31, 2012, the Charging Party made a timely request for Secretarial review. Respondent attempted to file an opposition to the Initial Decision, but did so in an untimely fashion.³ See Order at 3. On June 13, 2012, the Secretary issued the Order and limited the ALJ's ruling to damages and a civil penalty. See *id.* at 8. Pursuant to the Order, the ALJ issued an Initial Decision Upon Remand which focused on damages and penalties. Respondent has not appealed the Initial Decision Upon Remand but instead raises issues discussed in the Initial Decision that was overruled by the Secretary's June 13, 2012, Order. Therefore, Respondent's request that the Secretary vacate the Order at this juncture is denied.

II. The ALJ's Holding that Complainants Are Entitled to \$5,000 in Emotional Distress Damages is 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).

³ Respondent's initial petition was filed seven days after it was due.

A. Respondent's Conduct Was Egregious.

The Charging Party appeals the ALJ's decision awarding Complainants \$5,000 in emotional distress damages. See Petition Upon Remand at 2. The Charging Party argues that the ALJ ignored legal precedent and the Order, thus erroneously minimizing the emotional distress damages. See Petition Upon Remand at 2. After reviewing the Petition Upon Remand and the record, 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)).

In this case, the ALJ concluded that Respondent's actions effectively denied Complainants' rental of subject property, but said Respondent did not intentionally deny Complainants a rental opportunity. See Initial Decision Upon Remand at 4. The ALJ supported this conclusion by stating that "Respondent provided Ms. Walker with a rental application and credibly testified that if Ms. Walker had returned the application and put down a deposit, Respondent would have held the subject property for her while she met his rental requirements and completed the process." See *id.* However, this conclusion ignores the Order. See Order at 4-5. To be clear, the Order found that Respondent intentionally erected barriers to housing on a foundation of rank stereotyping and unfounded speculation. The Order described the intentional and egregious nature of Respondent's conclusions about Mr. Walker and his conduct based on those conclusions. Moreover, Respondent knew that he had no objective basis to reach those conclusions. Respondent imposed three written discriminatory conditions upon the Complainants: "1,000,000 Ins policy to protect landowner from any problems that might exist due to her brother's condition. Tenant is to sign a paper to be responsible for any damages caused by her brother. Note from doctor about brother's condition." See GX⁴ 7; See also GX 39 at pp. 33, 34, 45. In addition, Respondent admitted in his testimony that he set these conditions because of Mr. Walker's disability. See GX 39 at pp. 26-27. Further, Respondent admitted, "I was looking for a letter telling me that he was no danger to himself, no danger to the property, and no danger to the surrounding neighbors, and that he was not capable of setting the house on fire or any other damage due to his condition." See GX 39 at p. 40. Respondent also admitted that, in his view, "persons diagnosed with autism and mental retardation pose a greater risk in

⁴ "GX" refers to Government Exhibit.

terms of liability." See GX 18, # 27; See also GX 19. Respondent also admitted that he does not typically require liability insurance, doctor's notes, or hold harmless statements from his tenants and that he imposed no such conditions on the nondisabled tenant to whom he rented instead of Complainants. See GX 39 at pp. 28, 30, 39; Tr.¹ 146.

Additionally, Respondent offered no objective evidence showing that Mr. Walker posed a direct threat to the property or surrounding neighbors as a defense to imposing discriminatory conditions on Ms. Walker prospective tenancy. See Order at 6. The ALJ, in the Initial Decision Upon Remand, accepts Respondent's rationalization of his discriminatory conduct as proof that the conduct was not intentional, but the Respondent's excuse for his conduct does not amount to a defense or minimize the intentional or egregious nature of the conduct. In fact, the ALJ's reliance on what is described as Respondent's credible willingness to rent to Ms. Walker only if she satisfied his discriminatory conditions serves to further highlight the Respondent's intent to discriminate; it does not excuse it. See Initial Decision Upon Remand at 4. Respondent purposefully discriminated against Complainants by requiring different terms and conditions and his behavior cannot be excused simply because he provided Ms. Walker with a rental application.

Finally, the ALJ held that Respondent's behavior was not outrageous because the record did not reflect "that Respondent communicated any malicious intent or animus towards persons with mental disabilities . . ." See Initial Decision Upon Remand at 4. However, as displayed in the record, Respondent's actions were particularly outrageous because they were based on unfounded generalizations and stereotypes. At the outset of the rental process, Respondent imposed conditions upon Complainants' tenancy because of Mr. Walker's disability and admitted that he did not impose such conditions on the nondisabled tenant to whom he rented instead of Complainants. See GX 39 at pp. 28, 30, 39; Tr.⁵ 146. Respondent also testified that he relied on the fact that a red flag went off in his head when he heard that Mr. Walker had a disability. See GX at pp. 26-27. To support this alarm, the Respondent testified that he had seen autistic children "flailing their arms and hollering and screaming in outrage" and had observed autistic children "running into walls and running around the kitchen and making noise . . ." See Tr. at 122-23. Furthermore, Respondent subjected Ms. Walker to highly offensive statements, including that he was worried about Mr. Walker burning down the house and attacking neighbors, simply because Mr. Walker was autistic and mentally retarded. See Tr. 25-26. The record shows that Respondent's discrimination was based on unfounded generalizations and stereotypes regarding individuals with autism. As the Order made clear, such generalizations and conclusions based on unfounded speculation were the very type of conduct that Congress sought to ban when amending the Fair Housing Act in 1988. See Order at 6.

Based on the record, the Secretary finds that Respondent's behavior was

⁵ "Tr" refers to Trial Transcript.

intentional and egregious and the Initial Decision Upon Remand erroneously minimized the nature of Respondent's actions.

B. Respondent's Conduct Caused Ms. Walker "Significant 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's meager damage award is inconsistent with the ALJ's finding that Ms. Walker suffered significant emotional distress. See Petition Upon Remand at 6. After carefully reviewing the record and legal precedent, the Secretary finds that the Initial Decision Upon Remand erroneously minimized the damage award despite having found that Ms. Walker had suffered "significant emotional distress."

The Initial Decision Upon Remand acknowledged that Ms. Walker suffered "significant emotional distress beyond what [was] typically expected when attempting to secure suitable rental housing." See id. at 4. The ALJ stated:

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 months.⁶

However, despite recognizing the "significant emotional distress" Ms. Walker suffered, the ALJ awarded minimal damages because he felt that Respondent's "additional requirements were merely to assure protection of people and his property." See Initial Decision Upon Remand at 4. This conclusion misconstrues the law. First, Respondent's rationalization for discriminating against Ms. Walker has nothing to do with the impact of his discrimination on Ms. Walker. Second, Respondent's discriminatory conduct cannot be used as a basis for minimizing damages. As the ALJ noted in his decision in Godlewski, "Housing discriminators must take their victims as they find them; that is, damages are measured based on the injuries actually suffered by the victim, not on the injuries that would have been suffered by a reasonable or by an ordinary person. Put otherwise, judges must take into consideration the susceptibility of the victim to injury." Godlewski at *13. Similar to the plaintiff in Godlewski, the ALJ found Ms. Walker to be particularly vulnerable:

⁶ See Initial Decision Upon Remand at 3.

Although the 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 records 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.⁷

In Godlewski the ALJ awarded \$18,000 for emotional distress damages to a vulnerable Complainant who was confronted with intentional discrimination at the onset of the rental process. Ms. Walker's "significant emotional distress" coupled with the fear and frustration she experienced⁸ warrants at least an award of a similar amount. Therefore, based on the record and legal precedent, the Secretary finds that the ALJ erroneously minimized the emotional distress damage award and finds that an award of \$18,000 for Ms. Walker's emotional distress is more appropriate in this case.

III. The ALJ's Assessment of Only a \$4,000 Civil Penalty Was Erroneous.

After finding that a respondent engaged in a discriminatory housing practice, the 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 \$4,000 civil penalty. The Charging Party appeals the ALJ's assessment of a \$4,000 civil penalty arguing that the ALJ erroneously construes two of the factors relevant to the penalty. We agree with the Charging Party, in part, because we find the analysis of the relevant factors in the Parker case is persuasive in this instance. Faced with remarkably similar circumstances to those at issue here, the ALJ's decision in Parker concluded that a maximum civil penalty was appropriate. In Parker, the ALJ based the decision to assess the maximum civil penalty on the following: (1) the discrimination was intentional; (2) the landlords were very experienced and owned multiple rental properties; and (3) deterrence was a significant consideration. See Parker at *31-34. Based on these same factors, the

⁷ See Initial Decision Upon Remand at 4.

⁸ Following the discriminatory incident, Ms. Walker felt discouraged from applying to other housing opportunities and obsessed over whether the discrimination would occur again. See Tr. 55-56, 174. Ms. Walker's fear of discrimination was confirmed by witness Nancy Brown, who testified that Ms. Walker told her that her mother "never had a problem in all the time she had Greg living in her house and, you know, now this has come. And is this going to be this way every time?" See id. at 174. Ms. Brown further testified that Ms. Walker has a tendency of "taking things that happen one time and thinking that it's going to happen every single time she tries to do something. So it affected her like that." See id.

Secretary concludes 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 Nature and Circumstances of the Violation Warrants a Higher Civil Penalty.

The Charging Party argues that the ALJ erred in minimizing the nature and circumstances of the Respondent's violation. See Petition Upon Remand at 9. The Charging Party believes that the violation in this case warrants imposition of the maximum penalty because Respondent's impermissible reliance on stereotypes and fears about people with autism and intellectual disabilities led him to set extraordinary terms on Complainants' tenancy. See id. at 9-10. The ALJ found that the nature and circumstances of the violation in this case do not warrant the imposition of the maximum penalty because Respondent's actions were based on a response to Ms. Walker volunteering the information about Mr. Walker. See Initial Decision Upon Remand at 8. However, the ALJ again erroneously misconstrued the Fair Housing Act and the Order by minimizing the Respondent's behavior. As the Order stated, Respondent engaged in unlawful discrimination by imposing discriminatory terms and conditions upon Complainants' tenancy because of his baseless concern that Mr. Walker could pose a threat to his property and neighbors. See Order at 4. However, it is irrelevant that Ms. Walker volunteered information about Mr. Walker's disability. Respondent had no objective rationale for imposing discriminatory terms and conditions upon Complainants based on Ms. Walker's statement. See id. As the Order made clear, Respondent's actions violated the Fair Housing Act and the nature and circumstances of the violation should not be minimized. See id. The record clearly shows that a higher civil penalty is warranted.

B. The Respondent's Degree of Culpability Warrants a Higher Civil Penalty.

The Charging Party also argues that the ALJ erred in finding that Respondent's degree of culpability did not merit the maximum penalty. See id. at 11. A respondent with high culpability is one who acts with disregard for the law. See HUD v. Blackwell, 908 F.2d 864, 873 (11th Cir. 1990) (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."). The Charging Party believes that the maximum penalty should be awarded. After reviewing the Petition Upon Remand, the Secretary finds that the Respondent's culpability supports a higher civil penalty.

As the Charging Party argues and the ALJ noted, Respondent has been in the rental profession for at least 15 years, owns more than 20 rental properties, is

the full-time manager of the properties, and does not use a management company or agent. See Petition Upon Remand at 12; see also Initial Decision Upon Remand at 8. However, the ALJ fails to discipline Respondent for his lack of knowledge of the Act. There is simply no excuse for a housing provider who has been in the 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.

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 id. 11. “An award of some civil penalty is appropriate as deterrence to others. Those similarly situated to a respondent must be put on notice that violations of the Fair Housing Act will not be tolerated. Owners must be put on notice that the making of discriminatory statements to prospective tenants during rental negotiations will not be tolerated.” Wooten at *16. The Charging Party argues and the record shows that Respondent remains in the rental business; thus he should be deterred from imposing discriminatory conditions in future transactions. Additionally, those similarly situated must also be put on notice that imposing discriminatory terms and conditions based on stereotypes is illegal and will not be overlooked. After review of the Petition Upon Remand, the Secretary finds that a greater civil penalty should have been assessed to deter not only Respondent, but others in his position from acting in this fashion in the future.

IV. The Charging Party’s Recommendation Related to the Injunctive Relief is Accepted.

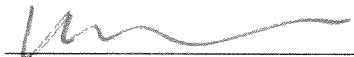
Upon a finding that a respondent has engaged in a discriminatory housing practice, the ALJ may order injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3). The ALJ ordered injunctive relief to preclude the recurrence of discriminatory acts. See Initial Decision at 9. The Initial Decision Upon Remand requires Respondent to provide to the Charging Party: “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 dated of such action; and, if rejected, the reason for such rejection. See id. The Charging Party argues that it is improper for Respondent to seek information about the nature or severity of an applicant’s disability. See Petition Upon Remand at 14. After review, the Secretary agrees with the Charging Party and modifies Part I(a) of the injunctive relief to read: “. . . to include information identifying the applicant’s disability status if volunteered by the applicant or otherwise known . . .”

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, I DENY Respondent's Petition in its entirety and GRANT IN PART the Charging Party's Petition Upon Remand. In accordance with 24 C.F.R. §§ 180.675(a) and 180.675(b)(2)-(4) and 42 U.S.C. § 3604(f)(1)-(2) and 42 U.S.C. § 3604(c), I SET ASIDE the ALJ's assessment of damages and civil penalty and modify the ALJ's injunctive relief order. I ORDER Respondent to pay \$18,000 in emotional distress damages and \$16,000 in civil penalty. Finally, Part I(a) of the ALJ's injunctive relief is modified as discussed in this Order.

IT IS SO ORDERED.

Dated this 15th day of August, 2012



**Laurel Blatchford
Secretarial Designee**