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FEDERAL JURY AWARDS
\$150,000 IN PUNITIVE DAMAGES AGAINST
MANHATTAN RENTAL AGENCY FOR HOUSING DISCRIMINATION

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, announced that a jury in Manhattan federal court yesterday awarded \$150,000 in punitive damages against a Manhattan rental agency, SPACE HUNTERS, INC., and its principal, JOHN M. McDERMOTT, for discriminating against a prospective tenant because of his disability, in violation of the federal Fair Housing Act.

The Government filed its civil lawsuit against the defendants in March of 2000, alleging that in January 1999, the defendants, who sell listings of rooms for rent, refused to serve a prospective tenant, KEITH TOTO, because he is hearing impaired. In October 2002, a jury in an earlier phase of the case found that the defendants had intentionally discriminated against Mr. TOTO because of his hearing impairment, and awarded Mr. TOTO \$1,500 in compensatory damages. That jury did not consider, however, whether to award punitive damages.

Punitive damages are designed to punish a defendant for particularly egregious misconduct, and to deter the defendant and others from similar misconduct. In 2005, deciding an appeal by the Government, the U.S. Court of Appeals for the Second Circuit ruled that the jury should have been permitted to consider whether to award punitive damages in addition to compensatory damages. A trial on whether punitive damages should be awarded began on October 2.

The evidence at trial showed that SPACE HUNTERS, INC. ("SPACE HUNTERS") maintained a policy of refusing to accept telephone calls from deaf or hearing-impaired customers who called SPACE HUNTERS using a telecommunications device for the

deaf (TDD). The evidence established that when Mr. TOTO called SPACE HUNTERS in response to a newspaper ad advertising rooms for rent in the Bronx, Mr. McDERMOTT used obscenities and told Mr. TOTO that SPACE HUNTERS does not serve people with disabilities. When Mr. TOTO called back, Mr. McDERMOTT threatened to report him to the police for harassment. When Mr. TOTO called a third time, he was told to "take a hike." The evidence at trial also established that, when defendants were thereafter investigated by THE U.S. Department of Housing and Urban Development ("HUD"), Mr. McDERMOTT defended his practices, arguing that SPACE HUNTERS had "better things do to with our time" than deal with deaf callers, and that the defendants did not need to "lift a finger" to comply with the Fair Housing Act. At trial, a HUD investigator testified that, when she called SPACE HUNTERS to ask about Mr. TOTO's complaint, Mr. McDERMOTT told her that disabled customers would not be allowed into his office, and that the call ended when Mr. McDERMOTT used an obscenity and a racial epithet.

The evidence at trial also established that, three years after the first jury found the defendants liable for intentionally discriminating against Mr. TOTO, Mr. McDERMOTT refused to serve another deaf customer. Specifically, the evidence included a transcript of a recording of an encounter between Mr. McDERMOTT and a deaf customer on June 28, 2005, in which Mr. McDERMOTT ejected that prospective tenant from his office, saying: "Read my lips. . . We have no time for you. . . I know you got a disability. . . Go file your lawsuit, man." At trial, Mr. McDERMOTT admitted that, at the time of this encounter, he knew that he was under a court order, which had been entered against him in 2004 after the first trial, that prohibited him from discriminating on the basis of disability.

The jury's verdict comes approximately two months after District Judge COLLEEN McMAHON found Mr. McDERMOTT in contempt of court for violating a 2004 court order, entered as a result of the first jury's verdict, which prohibited Mr. McDERMOTT from committing any further acts of housing discrimination. In that ruling, the District Court found that Mr. McDERMOTT willfully violated that court order by his conduct on June 28, 2005, and because he refused to take a telephone call from a deaf caller in November of 2006. At this week's punitive damages trial, the evidence also included the transcript of that call, in which Mr. McDERMOTT stated to the operator placing the call on behalf of a hearing impaired customer: "you tell the customer to go [expletive] himself."

At the time Mr. McDERMOTT intentionally discriminated against Mr. TOTO in 1999, he was subject to a 1996 Consent

Judgment entered in the United States District Court for the Eastern District of New York, which prohibited Mr. McDERMOTT from violating the Fair Housing Act in the future. That consent decree resolved a fair housing lawsuit, brought by the New York State Attorney General's Office, alleging that a rental agency run by McDERMOTT on Long Island steered customers on the basis of race.

MR. GARCIA stated: "The jury's decision shows that the public will not tolerate callous discrimination like that practiced by Mr. McDERMOTT and SPACE HUNTERS. My Office will ensure that those who flagrantly disregard the Fair Housing Act pay the price for their misconduct."

After the verdict was announced, Judge COLLEEN McMAHON granted the defendants ten days to file any papers seeking to reduce the size of the jury's award.

Assistant United States Attorneys ANDREW W. SCHILLING and NEIL M. CORWIN are in charge of the case.

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