15-1171

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

The Secretary, United States Department of Housing and Urban Development,	)
Applicant,	)
v.	)
ELITE PROPERTIES OF IOWA, LLC., and ROBERT K. MIELL,	)
Respondents.	)

APPLICATION FOR ENFORCEMENT OF AGENCY ORDER

INTRODUCTION

Comes Now, the United States of America, on behalf of the Secretary of the United States Department of Housing and Urban Development (hereafter HUD) pursuant to the Fair Housing Act, 42 USC Section 3601-3631 (hereafter the Act) hereby applies to the Court for enforcement of the agency order issued on July 9, 2010 which became final on August 8, 2010, in *The Secretary, United States Department of Housing and Urban Development, on behalf of Beverly Dittmar and her minor children v. Elite Properties, LLC., and Robert K. Miell,* HUDALJ 09-M-113-FH-40, (Exhibit 1) (hereafter "Order").

Because respondents have not sought judicial review of the order within the time allowed by the Act, the administrative law judge's (hereafter "ALJ") findings of fact and order are "conclusive in connection with any petition for enforcement . . . ." 42 U.S.C. § 3612(l). The statute directs, therefore, that on the filing of an application for enforcement, "[t]he clerk of the court of appeals . . . shall forthwith enter a decree enforcing the order." 42 U.S.C. § 3612(n).

This application is filed pursuant to 42 U.S.C. § 3612(j)(1), which provides: "the Secretary may petition any United States Court of Appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge . . . by filing in such court a written petition praying that such order be enforced . . . ." 42 U.S.C. § 3612(j)(1). The procedure governing an Application for Enforcement of Agency Order is provided by Fed. R. App. P. 15.

Since no petition for review was filed before the expiration of forty-five days after the date of the ALJ's order was entered, this application is also being filed pursuant to 42 U.S.C. § 3612(l) and (n)

which provide, respectively, that " the administrative law judge's finding of fact and order shall be conclusive in connection with any petition for enforcement," 42 U.S.C. § 3612(l), and that "the clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) . . . of this section shall forthwith enter a decree enforcing the order . . . ." 42 U.S.C. § 3612(n).

Under the Act, the decision of the ALJ was subject to review and revision by the Secretary of HUD within 30 days. 42 U.S.C. § 3612(h)(1). Because the Secretary took no action in this case, the ALJ's decision became final after the 30 days for review expired which would have been August 8, 2010. After the final decision of the ALJ, the Respondents were permitted 30 days under the Act to seek judicial review of the ALJ's final order. 42 U.S.C. § 3612(i). In this case, no such review was sought by the respondents.

The Court has jurisdiction over this application pursuant to 42 U.S.C. § 3612(j)(1). Venue is appropriate under 42 U.S.C. § 3612(j)(1) because the discriminatory housing practice occurred with respect to the property in the city of Cedar Rapids, Linn County, Iowa and respondents reside and transacted business in the city of Cedar Rapids,

Linn County, Iowa and within the Eighth Judicial Circuit of the United States of America.

Administrative Proceedings

On September 28, 2009, HUD filed a charge of Discrimination against Respondent Elite Properties of Iowa, LLC, and Respondent Robert K. Miell, (hereafter "Respondents") alleging a violation of the Fair Housing Act, 42 U.S.C. § 3601-3631. Specifically, Respondents were charged with sexual discrimination and retaliation against Beverly Dittmar and her minor children in violation of 42 U.S.C. § 3610(g)(1) and (2). No party sought to have the matter heard before Federal District Court. The hearing come up before the ALJ who notified the parties of a hearing for October 23, 2009, Respondents did not answer the complaint or otherwise respond.

On November 19, 2009, Counsel for the Secretary sought default judgment against respondents and again respondents did not file any response. On December 21, 2009, the ALJ granted motion for default, determining the facts alleged in the Charge of Discrimination were deemed admitted. On February 3, 2010, HUD moved for an order specifying damages and penalties without a further hearing since

respondents had defaulted. Again, respondents did not respond and on February 22, 2010, a hearing was set to allow the respondents to once again challenge the admitted facts or the Court would proceed to consider damages and penalties. Both Respondents were served notice of the February 22, 2010 proceedings and failed to respond. The ALJ then determined based on the records and admitted facts as to the damages and penalties without further hearing.

On July 9, 2010, ALJ J. Jerimiah Mahoney issued an Initial Decision and Order. The ALJ concluded Respondents "significantly harmed Complainant and her children by retaliation for her complaint of discrimination based upon her sex. The ALJ enjoined the respondents and their successors from unlawfully discriminating or retaliating against any person in violation of the Fair Housing Act and further required Respondent Miell to not engage in additional rental activity without first informing HUD and submitting to fair housing training. Further, the ALJ enjoined the respondents and their successors from collecting from the Complainant uncollected back rents, late fees or interest, or any other fees levied pursuant to the Respondents' unlawful collection efforts.

As to the monetary damages to the Complainants, the ALJ awarded Respondents to pay to Betty Dittmar and her three children money damages totaling twenty thousand, one hundred and fifty dollars ($20,150) consisting of $150 in actual damages and $20,000 in damages for emotional distress caused by the actions of the Respondents. In addition, the ALJ ordered each respondent to pay a civil penalty of $16,000 to HUD. The respondents have failed to pay the monetary damages and penalties as required.

In view of Respondents' failure to satisfy their obligations under the Final Agency Order, the Secretary now seeks judicial enforcement of the Order by this Court. The action to enforce the order had been stayed by the Respondent's Bankruptcy petition.[1] The bankruptcy court denied Respondent's discharge. (Docket # 28, *In re Robert K. Miell,* Case No. 09-1500, Northern District of Iowa.) Discharge was denied pursuant to 11 U.S.C. Section 727(a)(4)(A) on a finding by the court that

[1] Respondent Robert K. Miell filed a voluntary Chapter 11 bankruptcy on May 28, 2009 in the United States Bankruptcy Court for the Northern District of Iowa, *In re Robert K. Miell,* Case No. 09-1500, Northern District of Iowa. The case was converted to Chapter 7 on October 9, 2009 and was terminated on July 1, 2014. The automatic stay as to the bankruptcy is no longer applicable and any collection action against the respondents and his assets are not affected by the bankruptcy case as it has been closed.

the Respondent had knowingly and fraudulently, in connection with his bankruptcy case, made a false oath. Now that the bankruptcy petition has been closed, the automatic stay as to the Respondents and their assets is no longer applicable.

The Act provides that whereas here the Respondents did not file a petition for review within forty-five days of the date on which the ALJ's Initial decision and order was entered (July 9, 2010), the administrative law judge's findings of fact and order shall be conclusive" with this application for enforcement. 42 U.S.C. § 3612(l). Accordingly, 42 U.S.C. § 3612(n) provides that the clerk of this Court "shall forthwith enter a decree enforcing the order."

CONCLUSION

Pursuant to 42 U.S.C. § 3612(n), the Secretary respectfully requests the Clerk of this Court enter a decree enforcing the final agency order in HUDALJ No 09-M-113-FH-40, attached as exhibit 1.

Respectfully submitted,

KEVIN W. TECHAU
United States Attorney

By: Martin J. McLaughlin

MARTIN J. McLAUGHLIN
Assistant United States Attorney
111 7th Avenue SE, Box 1
Cedar Rapids, IA 52401-2101
(319) 363-6333
(319) 363-1990 (Fax)
Marty.McLaughlin@usdoj.gov

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing document to which this certificate is attached to the parties or attorneys of record, shown below, on January 22, 2015.

UNITED STATES ATTORNEY

BY:_/s/ *Ashley Ness*_____

COPIES TO: Beverly Dittmar

CERTIFICATE OF SERVICE

I certify that copies of this INITIAL DECISION AND ORDER, issued by L. Jeremiah Mahoney, Administrative Law Judge, in HUDALJ 09-M-113-FH-40, were sent to the following parties on this 9th day of July, 2010, in the manner indicated:

Cinthia Matos

Cinthia Matos, Staff Assistant

FIRST CLASS MAIL:

Beverly Dittmar,
[redacted] and [redacted] Dittmar
1426 First Street, N.W.
Cedar Rapids, IA 52405

FIRST CLASS MAIL + FACSIMILE:

Robert K. Miell
c/o Iowa County Jail
960 Franklyn Avenue
Marengo, IA 52301
FAX: (319) 642-5273

FIRST CLASS MAIL and EMAIL

Heather M.F. Ousley, Esq.
Gayle F. Bohling, Esq.
Katherine A. Varney, Esq.
U.S. Department of Housing and Urban Development
Gateway Tower II
400 State Avenue
Kansas City, KS 66101-2406
heather.m.ousley@hud.gov
gayle.f.bohling@hud.gov
katherine.a.varney@hud.gov

INTEROFFICE MESSENGER:

Kathleen M. Pennington, Esq.
Assistant General Counsel for Fair Housing Enforcement
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10270
Washington, DC 20410

Cheryl Ziegler, Deputy Assistant Secretary for Enforcement & Programs
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5204
Washington, DC 20410

Exhibit A
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UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

2010 JUL 12 PM 12:08 RCUD

The Secretary, United States Department of Housing and Urban Development, on behalf of: BEVERLY DITTMAR and her Minor Children; Charging Parties, v. ELITE PROPERTIES OF IOWA, LLC., and ROBERT K. MIELL, Respondents.	HUDALJ 09-M-113-FH-40 July 9, 2010

Appearances

For the Complainant: Gayle E. Bohling, Katherine A. Varney, and Heather M.F. Ousley, Attorneys, United States Department of Housing and Urban Development, Kansas City, KS

For the Respondents: None.

INITIAL DECISION AND ORDER

BEFORE: J. Jeremiah MAHONEY, Administrative Law Judge

Background. In the summer of 2008, Cedar Rapids, Iowa, suffered extensive local flooding. The Complainant, Beverly Dittmar, and her three children, ages 6, 17, and 18, were forced from their home, staying temporarily with friends. Ms. Dittmar sought to rent a three-bedroom apartment from Respondents Miell and his management corporation, Elite Properties, LLC. The Respondents owned and managed more than 430 rental properties in the Cedar Rapids area. Respondent Miell rejected the Complainant's offer to rent the apartment, but he did offer to rent her a two bedroom house. The Complainant accepted, and with her children moved into the house on October 7, 2008.

On November 7, 2008, Ms. Dittmar brought a complaint of sexual discrimination against the Respondents for refusing to rent her the three bedroom apartment. While that

complaint was under investigation by HUD, Ms. Dittmar further alleged that the Respondents retaliated against her because of her sexual discrimination complaint. This resulted in amendment of the initial complaint. The gist of the two Fair Housing Act complaints can be summarized as follows:

Sexual Discrimination Complaint. The sexual discrimination complaint filed with HUD alleged that Respondents discriminated against Ms. Dittmar based on her gender in refusing to rent her the three-bedroom apartment, and charging her a $645 security deposit. Upon investigation, HUD issued a determination that no reasonable cause existed to believe that Respondents discriminated against the Complainant based on her sex in violation of the Fair Housing Act.[1]

Retaliation Complaint. While the charge of sexual discrimination was under investigation, the Respondents terminated the Complainant's month-to month lease on the home she rented from them. Specifically, on April 1, 2009, the Respondents refused Complainant's tender of rent payment, and provided her a notice of termination back-dated to March 1, 2009. Although Ms. Dittmar was a month-to-month tenant at the time, she was a tenant in good standing, current on her rental payments, and had never been issued any notices for lease violations. As a result, the original complaint was amended to include retaliation against the Complainant for activity protected by the Fair Housing Act.[2]

Procedural History. HUD is a Federal Executive Department of the United States Government.[3] As part of its functions, HUD is responsible for enforcing the Fair Housing Act.[4] The HUD Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) determined that reasonable cause existed for the foregoing complaint of retaliation.[5] On September 28, 2009, on behalf of the Secretary, HUD counsel brought a Charge of Discrimination against the Respondents. Because none of the parties exercised their right to have the matter heard in Federal District Court, the matter was ripe for a hearing before an Administrative Law Judge. On October 23, 2009, the undersigned Administrative Law Judge notified the parties of a hearing to be held in Cedar Rapids, Iowa, on February 23, 2010. The Respondents did not answer the complaint, or otherwise respond.

On November 19, 2009, counsel for the Secretary filed a motion for default judgment. Again, the Respondents did not respond. On December 21, 2009, this Court granted the motion for default, ruling that the matters of fact alleged in the Charge of

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[1] 42 U.S.C. § 3604(b).

[2] 42 U.S.C. § 3617. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title. See 24 C.F.R. §§ 100.400(b) and (c)(5).

[3] 42 U.S.C. § 3532.

[4] The Fair Housing Act, as amended in 1998, 42 U.S.C. § 3601 et seq.

[5] 42 U.S.C. § 3610(g)(1) and (2).

Discrimination were deemed admitted. The Court further recited that a hearing on HUD's request for damages, civil penalties and other relief would be held. On February 3, 2010, counsel for HUD moved that this Court issue an order specifying the damages and penalties without a hearing.[6] Respondents did not respond. On February 22, 2010, the Court issued notice that it would conduct a hearing on damages and penalties, if the Respondents made a timely request, notwithstanding their default, which admitted the facts recited in the Charge of Discrimination.

The February 22, 2010 notice was served upon Respondent Elite Properties of Iowa, LLC, but not upon Respondent Robert K. Miell.[7] As a result, the Court re-issued the Notice on March 24, 2010, and personal service was made upon Respondent Miell on the same date.[8] Both notices included the following language:

> **[T]he Respondent is hereby notified that he may request a telephonic hearing, or submit matters for consideration by the Court in deciding on damages and penalties. Any request for a hearing on damages and penalties—or for time to submit documents—must be received by the Court within 14 calendar days of the Respondents' receipt of this Notice.**

As of this date, the Court has received no response (or request) from either Respondent. Accordingly, the Court has determined that it may decide the issue of damages and penalties on the documents and pleadings of record, and without a hearing.[9]

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[6] Counsel cited for procedural precedent the case of HUD v. Gruzdaitis, HUDALJ 02-96-03778 (August 14, 1998), 1998 WL 482759. Like this case, that was a fair housing case wherein the respondents defaulted. The judge appropriately noted that the default constituted an admission of all the allegations in the complaint. The judge went on to discuss the factors he considered in imposing damages and penalties, but he did not discuss whether the default authorized their imposition without hearing. The applicable regulation promulgated by HUD for Civil Right matters indicates that failure to answer within 30 days of receipt of the charge shall be deemed an admission of all "matters of fact recited therein, and may result in the entry of a default decision." 24 C.F.R. § 180.420(b). However, unlike the HUD general regulations for proceedings pursuant to the Administrative Procedure Act, there is no specific provision requiring the ALJ to impose the penalty proposed in the Complaint. See, e.g., 24 C.F.R. § 26.41(c). The ALJ did not discuss any rationale for his implicit determination that the default as to the complaint went beyond admission of the allegations in the Complaint and, by implication, authorized imposition of damages and penalties.

[7] Respondent Miell owned the subject rental properties and he operated Respondent Elite Properties of Iowa, LLC, which managed the rental properties.

[8] As discussed in previous Orders in this case, the Court is advised that Mr. Miell has been in custody, awaiting sentencing Federal convictions for mail fraud, tax fraud, and perjury. The Notice of February 22, 2010, arrived at the Linn County Correctional Center shortly after Mr. Miell was transferred to the Iowa County Jail. The Notice of March 24, 2010, sent by facsimile, was personally served by a Deputy Sheriff at the Iowa County Jail.

[9] 24 C.F.R. § 180.105(d) provides in pertinent part that, except where contrary to law, ". . . the ALJ may, after adequate notice to all interested persons, modify or waive any of the rules in this part upon a determination that no person will be prejudiced and that the ends of justice will be served."

Consequences of the Default. By virtue of their default in this action, Respondent Miell and his management corporation, Respondent Elite Properties, LLC, were found to have unlawfully retaliated against the Complainant for making her sexual discrimination complaint against the Respondents. Counsel for HUD proposed damages and penalties based upon the impact of this violation of the Fair Housing Act. The Respondents have not availed themselves of the opportunity provided by the Court to submit matters to be considered in deciding what damages and penalties, if any, are appropriate in this case. Accordingly the Court will decide based upon the whole record of the proceeding, including the facts already admitted by the Respondents' default and failure to respond to requests for admissions.

FINDINGS OF FACT

On November 7, 2009, Complainant filed her initial complaint with HUD, alleging that, because of her gender, Respondent Miell refused to allow her to move into a three-bedroom apartment and unjustly charged a $645 security deposit. (CH ¶ 10)[10]

On April 1, 2009, when Complainant attempted to pay her rent, an Elite employee refused to accept the payment and informed her that her lease was terminated as of March 1, 2009, and that she was to have vacated her home by March 31, 2009. (CH ¶ 18) (RFA ¶¶ 32-34). Complainant was a tenant in good standing at the time and was aware that her complaint was being investigated by HUD. When she inquired as to why her lease had been terminated, she was informed that she would have to talk to "Bob," the Respondent Robert Miell. Upset and confused, Complainant left the office. (CH ¶¶ 9, 18) (CA ¶¶ 13-15) (RFA ¶¶ 32-38). Complainant had no place to move her family and did not know what she was going to do. (CA ¶ 15). Her anxiety, normally controlled by the anti-anxiety drug Xanax, became more severe. (CA ¶ 32).

On or around April 2, 2009, HUD Investigator Connie Radcliff contacted Respondent Miell and asked why he terminated Complainant's lease. Respondent stated there was no reason for his decision; that the lease was for three months; and the lease was up at the end of March 2009, and "it is just time to move on."

On or about April 3, 2009, Greg Vail, father of two of Complainant's children, attempted to pay Complainant's rent at the Respondents' office. Respondent Miell informed Mr. Vail the lease had been terminated, and he would not accept the rent payment. He further stated Complainant needed to sign a letter stating she would vacate the property by the end of April 2009. On the same date, Complainant checked the Respondents' website and saw that her home was listed as available for rent as of April 1, 2009. (CH ¶ 21) (CA ¶ 17) (RFA ¶¶ 43-47, 61(q)).

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[10] Consistent with the Government Memorandum in support of Damages and Civil Penalty (February 3, 2010), the following abbreviations are used: CH is the Charge of Discrimination (September 28, 2009); RFA is HUD's Request for Admissions (November 25, 2009); CA is Complainant's Affidavit (February 1, 2010); and GX is Government Exhibit, attached to the Memorandum.

On or about April 6, 2009, Complainant received a "notice to quit" letter from Respondent Miell, dated March 1, 2009, but post marked April 2, 2009. The letter, which was Complainant's first official notice related to the eviction, notified Complainant that she must vacate her home within three days; that she had failed to vacate after a 30-day notice; and that she was now a hold-over tenant. (CH ¶ 22) (RFA ¶¶ 48-51, 61(a)) (CA ¶ 18). Complainant began looking for alternate housing but had difficulty finding another suitable home to rent. The damage from the flooding the previous summer, and the Respondents' domination of the rental market in Cedar Rapids, limited the available housing from which Complainant could choose. (CA ¶¶ 19, 31) (GX # 2, 3).

In a letter postmarked April 13, 2009, Complainant was notified by Realtor Mike Graf that the house was now for sale and would need to be available for showings. (CA ¶ 20) (GX #5). A lock box was placed on her front door and a "for sale" sign was displayed in her yard. These tangible reminders that her housing situation was outside her control caused Complainant to feel insecure and increased her anxiety. (CA ¶ 21)

On or about April 20, 2009, Complainant received notice of an eviction hearing requiring her appearance in the Linn County, Iowa District Court on April 22, 2009. In the notice, Respondents demanded possession of the subject property, stating Complainant had failed to vacate and was a hold-over tenant. (CH ¶ 24) (CA ¶ 23) (RFA ¶¶ 54, 61(b)). Complainant was scared of being evicted, having witnessed other people's evictions. (CA ¶ 23). She was forced to miss her college classes to search for housing. (CA ¶¶ 31, 38). Complainant's children were showing signs of stress as well. Her 18-year-old son, [redacted], was having trouble concentrating in school. Her 17-year-old daughter, [redacted], recently diagnosed with Lupus, a condition aggravated by stress. As a result, she began experiencing arthritis-type pain. Complainant's daughter, [redacted] (then 5 years old), did not understand all that was going on, but did understand that her family was not wanted in their home. (CA ¶ 24).

On April 22, 2009, Complainant appeared at her scheduled eviction hearing and the judge informed her that she would be evicted on April 27, 2009. The judge indicated she was not interested in any information related to Complainant's HUD case, deeming it hearsay. (CH ¶ 25) (CA ¶ 25) (RFA ¶ 46). Complainant believed she and her children were about to be homeless. (CA ¶ 25). To prevent their belongings from being thrown on the street, Complainant paid Greg Vail $75 to move her family's possessions into storage. (CA ¶ 26).[11]

The weekend prior to the eviction date, Complainant could not eat or sleep, and she had been rapidly losing weight. (CA ¶¶ 26, 32). However, on Monday, April 27, 2009, no

[11] On Saturday, April 25th, Complainant attended a meeting held by Senator Chuck Grassley to address affordable housing concerns from those displaced by the flood. Unfortunately, the Senator's office was not able to assist her. (CA ¶ 27)

one arrived to evict Complainant and her family. (CA ¶ 28). On April 28, 2009, Complainant received a notice from the court stating the eviction action had been dismissed due to bad dates on the notices. (CH ¶ 28) (RFA ¶¶ 48, 61(d)) (CA ¶ 29). Briefly, Complainant entertained the thought that someone had realized that she and her children should be allowed to stay in their home. (CA ¶ 29). However, Respondent instead filed for another eviction hearing. (CH ¶ 28) (RFA ¶¶ 49, 61(g)). Later that same day, Complainant's signed EEO complaint, amended to include retaliation, was faxed to Respondent (CH ¶ 28).

On May 1, 2009, Greg Vail went to Respondents' office and attempted to pay Complainant's May rental payment, but Respondent Miell refused to accept it. (CH ¶ 29) (RFA ¶ 50) (CA ¶ 30). In response to an inquiry from a HUD investigator, Respondent Miell indicated that he still intended to move forward with the eviction of Complainant. (CH ¶ 30) (RFA ¶ 51). On May 6, 2009, the Complainant received a "3-Day Notice to Pay Unpaid Rent" from Respondent Miell, dated May 5, 2009, demanding unpaid rent in the amount of $645. (CH ¶ 33) (CA ¶ 30) (RFA ¶¶ 54, 61(f)).

On May 5, 2009, Respondent Miell failed to attend the second eviction hearing and the judge dismissed the action. (CH ¶ 32) (RFA ¶¶ 53, 61(g)). On May 7, 2009, Respondent Miell, whose eviction proceedings against Complainant had just been dismissed for the second time, informed Investigator Radcliff that Complainant could remain at the subject property if she paid rent for both April and May with cash or a money order. Respondent Miell concluded the conversation by stating that Complainant's fair housing case was frivolous and that she could "bring it up to the Supreme Court and President Obama." (CH ¶ 34) (RFA ¶¶ 55-57)

On or about May 8, 2009, Complainant received the official notice from Linn County, Iowa District Court stating that the eviction was "dismissed—no show by Plaintiff [Respondent Miell]." (CH ¶ 35) (CA ¶ 33) (RFA ¶¶ 53, 61(g)). The Complainant misunderstood the dismissal, because she had not received notice of the second eviction hearing, and feared that after refusing to accept May's rental payment, Respondent was again attempting to have her evicted. (CA ¶ 33) (CH ¶ 32).

Also on May 8, 2009, Respondent Miell was taken into custody by Federal authorities and incarcerated. (CH ¶ 36). Complainant Dittmar was left wondering whether or not her family would be allowed to remain in their home. (CA ¶¶ 33, 39).

In July 2009, Complainant resumed making rental payments to the Bankruptcy Trustee who took over the management of Respondent Miell's properties. (CH ¶ 36) (RFA ¶ 61(p))

Throughout the course of Respondent Miell's retaliatory actions, Complainant lost weight. (CA ¶¶ 26, 32) and her anxiety was no longer controlled by medication. (CA ¶ 32)

Complainant's own school studies suffered and her children could not concentrate in school and felt insecure. (CA ¶ 38).

LAW APPLICABLE TO REMEDIES

Money Damages. On finding that a respondent has violated the Fair Housing Act, the ALJ shall order appropriate relief, including "actual damages suffered by the aggrieved person[s]." 42 U.S .C. § 36 12(g)(3); 24 C.F.R. § 180.670(b)(3)(i) (2009). "The purpose of an award of actual damages in a Fair Housing case is to put the aggrieved person in the same position as he would have been absent the injury, so far as money can." HUD v. Godlewski, 2007 WL 4578553, p. 2 (HUDALJ 2007), citing Schwemm, Housing Discrimination: Law & Litigation, pp. 25-16, and cases cited therein.

Actual damages in housing discrimination cases may include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination. HUD v. Blackwell, 2A FH.—FL. (P-H) ¶ 25,001 at 25,001 (HUDALJ Dec. 21, 1989), enforced, 908 F.2d 864 (11th Cir.1990). Emotional distress damages may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof. HUD v. Wagner, 2A FH.—FL. (P-H) ¶ 25,032 at 25,337 (HUDALJ 1992). (citing HUD v. Blackwell, 908 F.2d 864,872 (11th Cir. 1990). "Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury." HUD v. Gruzdaitis, 2A FH.—FL. (P-H) ¶ 25,137 at 26,136 (HUDALJ 1998) (1998 WL 482759).

Key factors in determining emotional distress damages are the Complainant's reaction to the discriminatory conduct and the egregiousness of the Respondent's behavior. 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." Schwemm, Housing Discrimination: Law and Litigation, § 25:6 at 25-35 (citing Dobbs, Handbook on the Law of Remedies, p. 530-31 (1973)). Additionally, "those who discriminate in housing take their victims as they find them. 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." HUD v. Godlewski, 2007 WL 4578553, p. 5 (HUDALJ 2007), citing HUD v. Dutra, 2A FH.—FL. (P-H) ¶ 25,124 at 26,062-63 (HUDALJ 1996).

Complainant's fragile emotional state subjected her to greater emotional harm by Respondent's discrimination. While the discriminatory actions taken by Respondent Miell in this case were motivated by retaliation—as opposed to discrimination based on sex or race—the impact and emotional distress suffered by Complainant affected her in a manner similar to that experienced by Complainants who experience direct discrimination.

Retaliation cases. In HUD v. Lewis, No. 04-94-0227-8, 1996 WL 418887 (HUDALJ 1996), a retaliation case involving an employee of a Respondent apartment complex owner, the complainant was ridiculed and told not to rent to Blacks or Hispanics. Complainant was then prohibited from returning to work after she informed potential tenants that the reason they were not approved for tenancy was their race, encouraged them to file a complaint and participated in the subsequent fair housing investigation. Complainant was awarded $10,300 in actual damages, $2,800 for lost wages and $7,500 for emotional distress.

In another retaliation case, United States v. Fairway Trails Limited, et al., Case No. 5:06-CV-12087 (E.D. Mich. 2007), a consent decree was approved on January 18, 2007. The complaint, filed on May 8, 2006, alleged that the defendants retaliated against the complainant for having asserted his rights under the Act, when, after a state court ruling in an eviction proceeding that defendants had to accommodate the complainant's disability by allowing him to pay his rent the third week of every month, the defendants sent him a letter stating that his lease would not be renewed. The consent decree ordered the defendants to pay $50,000 to the complainant.

Discussion. In this case, Respondent Miell's actions were far more broad and reaching than a single statement, or a single letter denying renewal of a lease. Respondent Miell's behavior in this case was intentional, outrageous, and public, and therefore justifies a significant award for emotional distress. Respondent Miell, an experienced landlord with a long history of leasing rental property, owned and leased hundreds of properties. Furthermore, he repeatedly had communications with HUD investigators throughout the investigation, which included warnings and concerns about his retaliatory actions. Respondent Miell provided no legitimate, nondiscriminatory reason to HUD Investigator Radcliff when confronted about his retaliatory actions, but remained defiant. With Respondent's extensive experience as a landlord, he was well aware that it is illegal to retaliate against Complainant for participating in protected fair housing activity.

Nonetheless, Respondent Miell repeatedly acted with complete disregard of the Act, informing Investigator Radcliff and the Complainant that her claim was frivolous, and a waste of time. Respondent twice refused to accept Complainant's tender of rental payments so he could initiate eviction proceedings against her. In anticipation of her eviction, he listed the subject property as available for rent on his company's website, and listed the property for sale with Realtor Mike Graff. He authorized the placement of a realtor lock box on the front door of the property and the placement of a "for sale" sign in the front yard. He then attended the first eviction hearing, and asserted that Complainant was past due on her rent, even though she had tendered her rent payment. Respondent failed to attend the second eviction hearing, but he had clearly expressed his intention to move forward with the eviction in conversation with Investigator Radcliff, just two days prior to the hearing.

Emotional Distress Damages. As previously noted, Complainant's children suffered emotional distress because of Respondents' willful and unlawful actions. As for Complainant Dittmar, her susceptibility to suffer emotional distress damages from Respondent Miell's actions resulted from three factors:

(1) Complainant's Anxiety. Complainant's anxiety, previously controlled with Xanax, made her especially vulnerable to the stress that any person would feel in a situation involving eviction. She experienced a dramatic increase in her anxiety, resulting from fears of her family's impending eviction and potential homelessness. She experienced inability to concentrate on her school work, lost weight, and lost sleep.

(2) Complainant's Displacement due to Flooding. Complainant's family had recently recovered from the displacement that occurred after the flooding in Cedar Rapids in the summer of 2008 and then was forced to find temporary shelter with friends. Respondent's attempts to unlawfully evict Complainant's family from the new residence they recently rented was particularly stressful, as they again faced displacement.

(3) Limited Affordable Housing in Cedar Rapids. The flooding during the summer of 2008 destroyed much of the affordable housing available in Cedar Rapids. (GX #2, 3). This shortage of housing, coupled with the fact that Complainant would not be able to rent from Respondents (who controlled much of the rental market at the time) placed Complainant at a distinct disadvantage in searching for decent housing.

Civil Penalties. To vindicate the public interest, the Fair Housing Act authorizes the Administrative Law Judge to impose civil penalties upon Respondents. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R.§ 180.670(b)(3)(iii) (2009). For Respondents with no prior history of discrimination, the maximum penalty is $16,000 for each respondent. 24 C.F.R. § 180.671(a)(1) (2009). Determining an appropriate penalty requires consideration of five factors:[12]

(1) The Nature and Circumstances of the Violation. The nature and circumstances of Respondents' violation merit imposition of a significant civil penalty. Respondents' retaliation was a direct result of Complainant's participation in protected fair housing activity, resulting in months of distress for Complainant and her family. Respondents' actions were in disregard of the provisions of the Fair Housing Act, even if the Respondents correctly concluded that the initial complaint of sexual discrimination was unsustainable. The Respondents' acts reflected disrespect for the legitimate investigatory procedure established by the Fair Housing Act, and the legitimate duties of officials pursuing a legitimate complaint.

(2) The Degree of Respondents' Culpability. Respondent Miell was the owner and operator of the subject property and hundreds of other rental properties. Respondent Miell

[12] Other factors may be considered as justice requires. 24 C.F.R. § 180.67 l(c)(vi) (2009).

owned Respondent Elite, the management company managing the property. Respondents had significant experience with rental transactions. Additionally, Respondent Miell was informed by HUD Investigator Radcliff that Complainant was considering amending her complaint to allege retaliation, and yet he continued to move forward with his eviction attempts and to refuse Complainant's rental payments. Respondent Miell was well aware that the Act prohibits retaliation and that Complainant's activity was protected under the Act. The evidence demonstrates that he acted defiantly, with blatant disregard for the anti-retaliation provisions of the Fair Housing Act.

(3) The Goal of Deterrence. Deterrence in this case is a significant consideration. Those similarly situated as Respondent Miell must be placed on notice that violations of the Act will not be tolerated. Owners and management companies must be aware that retaliating against complainants for filing complaints and participating in investigations will not be tolerated. The fear of retaliation must not prevent future victims of discrimination from coming forward and asserting their rights under the Act. Respondents must receive a clear message that retaliation under Section 818 is prohibited just as clearly as is prohibited discriminatory treatment prohibited under other sections of the Act.

(4) History of Prior Violations. There is no evidence of prior violations by Respondents.

(5) Respondents' Financial Resources. Respondent Miell's incarceration, bankruptcy and personal debt should not insulate him from a warranted civil penalty, even if collection by HUD may be difficult under the circumstances. Respondents should not be rewarded with lesser penalties because Respondent Miell's of other illegal and fraudulent behavior.

(6) Other Factors as Justice Requires. In a previous case where the Respondent refused to participate in any of the proceedings throughout the investigation and in the hearing that occurred after the Charge was filed, ALJ Constance O'Bryant wrote:

> Maximum penalties should be reserved for the most egregious cases and imposed where needed to vindicate the public interest. In this case, although a first offender, Respondent has thumbed his nose at the system with regard to the prosecution of this case. He has refused to participate in the legal proceedings since the filing of the complaint in this forum. He has shown no concern for the civil rights of these Complainants or for the general public interest. His refusal to participate in these proceedings suggests disrespect for, or contempt of, the Fair Housing Act, this court, and the general public interest and is an appropriate additional factor to consider in assessing a civil penalty. Respondent's dismissive attitude trumps the other factors that might have otherwise suggested a less than maximum civil penalty. HUD v. Godlewski, 2007 WL 4578553, p. 10 (HUDALJ).

As aggravating factors in this matter, Respondent Miell was uncooperative and defiant throughout the investigative process, as evidenced in comments he made to HUD Investigator Connie Radcliff, stating Complainant's allegations were a "lynching" rope (CH ¶ 15) (RFA ¶¶ 22, 24), and that Complainant could take her case "to the Supreme Court and President Obama." (CH ¶ 34) (RFA ¶ 57). Respondent Miell's disregard was most notable during a March 19, 2009, on-site investigation and interview, scheduled and agreed to in advance, in which Respondent left without notice and did not return. (CH ¶¶ 14, 16) (RFA ¶ 27). Additionally, Respondent's indifference and disrespect was directed at HUD's investigators, by abruptly hanging up during a phone interview (CH ¶ 12) (RFA ¶ 16), refusing to claim certified letters during the investigative process (CH ¶ 19) (RFA ¶¶ 12, 18), and by informing Investigator Radcliff that he hoped she would "get a badge from the Wizard of Oz." (CH ¶ 15) (RFA ¶ 25).

Respondent Miell exhibited disdain for the EEO complaint process, from the preliminary investigative stage, all the way through preparations for an administrative hearing. Respondent has exhibited defiance, disrespect, and refusal to cooperate throughout the investigation and in proceedings before this Court. As a result, a maximum civil penalty of $16,000 against each Respondent is warranted.

Injunctive and Equitable Relief. In requesting injunctive relief, counsel for the Complainant notes that upon 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); 24 C.F.R § 180.670(b)(3)(ii) (2009). As noted by counsel for the Complainant, a court has "the power as well as the duty to 'use any available remedy to make good the wrong done.'" Moore v. Townsend, 525 F.2d 482,485 (7th Cir. 1975), citing Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 239 (1969). Two types of injunctive relief have been requested:

(1) Back Rent and Fees. Counsel for the Complainant ask this Court to provide relief to the Complainant for past due rent, late fees, and filing fees levied by the Respondents for the eviction process, in the amount of $2,185. Counsel characterize collection of such money as inequitable because of the presumed difficulty for the Complainant in collecting from the Respondent any damages awarded by this Court. While probably a fair assessment of the situation, this rationale avoids recognition that—as to the rent involved—the Complainant and her children were residing in the house, and she legitimately owed the rent. The Court's present determination of damages (and any anticipated problems with their collection) does not change that fact.

However, the Court notes that the Respondents' refusal to accept rent payments when tendered by and on behalf of the Complainant on April 1, 2009, and May 1, 2009, were part and parcel of Respondents' unlawful retaliation against the Complainant—through eviction—because of her exercise of her rights under the Fair Housing Act. Certainly it would be inequitable for the Respondents—or their successor(s) in interest—to

now benefit from that wrongdoing. In refusing the tenders of rent payment as retaliation against the Complainant for her exercise of her rights under the Fair Housing Act, the Respondents forfeited their right to those rents. Any successors in interest stand in their shoes. Consequently, the Respondents and their successor(s) in interest will be enjoined from collecting such rents, late fees or interest, or any fees levied pursuant to the Respondents' unlawful eviction efforts.

(2) Future Discrimination. Respondents, their agents, employees, and successors, and any other persons in active concert or participation with them should be enjoined from again unlawfully discriminating or retaliating against any person in violation of the Fair Housing Act. Prior to again engaging in housing rental or other activities covered by the Fair Housing Act, the Respondent Miell should be required to inform the Department of Housing and Urban Development and to submit to such fair housing training as may be offered and required.

CONCLUSION

Respondents have significantly harmed Complainant and her children by retaliation for her complaint of discrimination based upon her sex. Even though the complaint for sexual discrimination was not sustained, the Respondents unlawfully retaliated against the Complainant because she exercised her right to lodge a complaint invoking the Fair Housing Act.

Complainant suffered actual damages when she was required to pay a total of $150 to Greg Vail to move the family possessions into storage in anticipation of eviction, and then back into the subject property when the eviction efforts failed. (CA ¶¶ 26, 35). Complainant personally, and on behalf of her three children, is also entitled to recover damages for emotional distress in the total amount of $20,000.00. Authorized civil penalties payable to HUD in the maximum amount of $16,000.00 are warranted by the facts, and imposed on each Respondent.

Back rent and other associated fees (including late fees and filing fees, owed to Respondents by Complainant from the relevant time frames when Respondents unlawfully refused Complainant's rental payments during their attempts to unlawfully evict her family from the subject property shall not be collectable by the Respondents nor by their successor(s) in interest.

ORDER

Accordingly, the Court awards Complainant Beverly Dittmar and her three children money damages totaling twenty thousand one hundred and fifty dollars ($20,150), consisting of $20,000 for Emotional Distress and $150 for out-of-pocket expenses;

Further, the Court assesses a civil penalty of sixteen thousand dollars ($16,000) against each Respondent, payable to HUD; and

Respondents and their successors are hereby enjoined from unlawfully discriminating--or retaliating—against any person in violation of the Fair Housing Act. Respondent Miell shall not engage in housing rental or other activities within the protection of the Fair Housing Act, without first informing the Department of Housing and Urban Development and submitting to such fair housing training as may be offered and required. For the reasons above stated, the Respondents and their successor(s) in interest are further enjoined from collecting from the Complainant uncollected back rents, or resulting late fees or interest, or any other fees levied pursuant to the Respondents' unlawful eviction efforts.

So **ORDERED.**

J. Jeremiah Mahoney
Administrative Law Judge

Finality of Decision. The foregoing initial decision shall become the final agency decision 30 days after the date of its issuance. 24 C.F.R. § 180.670(b)(1).

Notice of Appeal Rights. The appeal procedure is set forth in detail in 24 C.F.R. § 26.52. (2009). This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 90 days of its service, this decision becomes final.

Service of Appeal. Any appeal must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024
Facsimile: (202) 401-5153
Scanned electronic document: secretarialreview@hud.gov

Copy of Appeal. A copy of any appeal shall also be served upon the Court by mail or email:

If filing by United States Postal Service (USPS):
Office of Administrative Law Judges
451 7th Street S.W. Room. B-133
Washington, D.C. 20410

If sending by non-USPS couriers send to:
Office of Administrative Law Judges
409 3rd Street S.W., Suite 201
Washington, D.C. 20024;

If sending by email scanned attachment send to: alj.alj@hud.gov