Comm'n on Human Rights ex rel. Ondaan v. Lysius

OATH Index No. 2801/18 (Sept. 12, 2019)

In discrimination case, ALJ held that a landlord discriminated against a tenant because of her citizenship status by sending her a series of text messages stating that she was an illegal immigrant and threatening to contact immigration enforcement. ALJ recommended damages of $12,000 for emotional distress and a civil penalty of $5,000.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
COMMISSION ON HUMAN RIGHTS EX REL. HOLLY ONDAAN
Petitioner
- against -
DIANNA LYSIUS
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

Petitioner, the New York City Commission on Human Rights ("Commission"), brought this discrimination action on behalf of complainant, Holly Ondaan, against her former landlord, respondent Dianna Lysius, under section 8-109 of the Administrative Code of the City of New York ("Code"). By a verified complaint dated January 31, 2018, the Commission alleged that the respondent discriminated against Ms. Ondaan by sending her a series of text messages stating that she was an illegal immigrant and threatening to contact immigration enforcement, in violation of section 8-107(5)(a)(2) of the Code, and retaliated against Ms. Ondaan after she filed her complaint with the Commission, in violation of section 8-107(7) of the Code.

Respondent submitted an answer on May 1, 2018, requesting dismissal of the complaint on the grounds that a prior Housing Court action by Ms. Ondaan alleged similar claims and that the complaint constituted "double jeopardy" (ALJ Ex. 1). Respondent submitted an amended answer on May 23, 2018, seeking dismissal on the grounds that Ms. Ondaan's Housing Court

complaint of harassment constituted an election of remedies which foreclosed a discrimination claim under the Human Rights Law (ALJ Ex. 2).

On June 14, 2018, the Commission referred the case to this tribunal. Following several conferences, trial was held on May 16 and June 3, 2019. The Commission presented the testimony of Ms. Ondaan and the texts sent by respondent to Ms. Ondaan in January 2018. Representing herself, Ms. Lysius admitted that she sent some of the texts, but insisted that other texts were not sent at all. She presented the testimony of her nephew, who stated that he resided for a short time at the building where Ms. Ondaan had lived.

For the reasons discussed below, I find that respondent violated section 8-107(5) of the Human Rights Law, that Ms. Ondaan should be awarded damages of $12,000 for emotional distress, that respondent pay a civil penalty of $5,000, and that respondent be directed to complete 50 hours of community service.

ANALYSIS

The Commission filed this action under the City Human Rights Law, which makes it unlawful for providers of housing accommodations to discriminate "in the terms, conditions or privileges" in the rental of a housing accommodation because of "alienage or citizenship status." Admin. Code § 8-107(5)(a)(1)(b) (Lexis 2019). The complaint alleges that a series of text messages and e-mails sent by respondent to the complainant, Ms. Ondaan, in January 2018 constituted unlawful discrimination under this section.

Ms. Ondaan, the complainant in this case, testified that, in September 2011, she signed a one-year lease and moved into the second floor of a two-story, two-family building on 148th Street in Jamaica, Queens, owned by respondent. Another tenant, Mr. Romero, lived on the first floor (Tr. 42-44). For the next five years, Ms. Ondaan signed additional one-year leases and in 2016 signed a two-year lease (Tr. 45; Pet. Ex. 1). Throughout her tenancy, Ms. Ondaan received rental assistance through the City Human Resources Administration, which issued partial monthly rent checks to respondent (Tr. 43).

The relationship between Ms. Ondaan and respondent was evidently unremarkable until the fall of 2017, when Ms. Ondaan started complaining to the police about receiving harassing texts and visits from respondent which she indicated made her fear for her safety (Resp. Ex. E).

Then, in October 2017, Ms. Ondaan stopped paying rent. Ms. Ondaan stated that this was due to unspecified "financial difficulties" (Tr. 220-21). Respondent commenced a non-payment action against Ms. Ondaan soon afterwards (Tr. 57). Ms. Ondaan admitted that she did not pay any rent to respondent from October 2017 to September 2018. Ms. Ondaan blamed this, in part, on respondent's rejection of Ms. Ondaan's offers of partial payment to settle the nonpayment action (Tr. 223-24).

Ms. Ondaan printed out increasingly hostile text messages that she received from respondent in January 2018 (Pet. Exs. 5, 7). On January 11, respondent texted Ms. Ondaan, "HAVE MY MONEY OR IM CALLING ICES [sic] THAT DAY PERIOD." Later that day, respondent texted a link to an article entitled "Ice Cracks down on 7-Elevens in a Predawn Raid."

On January 14, respondent texted Ms. Ondaan, "Hatian Bitch You immigrant" and later that day, "I REPORTED YOU TO IMMIGRATION BOO THEY KNOW IM THE LANDLORD TO PROVIDE THEM KEYS COME DIRECTLY TO YOU."

On January 15, respondent sent three more texts:

> It was fun and games when you calling DOB now it's fun and games calling immigration 12 times day. They can deport you.
>
> I'm born here I don't need no green card that the differbdd [sic].
>
> YOU KNOW MY GOD PROTECT ME SO YOU KNOW WHAT I GUESS ICE BE COMING FOR YOU BOO.

(Pet. Ex. 5 at 21).

On January 17, 2018, the Commission sent respondent a cease-and-desist letter (Pet. Ex. 6). This letter ordered respondent to cease reporting or threatening to report tenants to immigration authorities, engaging in any "actions or practices" that discriminated against tenants based upon their citizenship or immigration status, refusing to make repairs or provide services to tenants based upon immigration status, obtaining tenant Social Security numbers, and retaliating against tenants who filed a complaint. The letter further ordered respondent to provide proof she had attended a Commission training.

On January 17, after receiving the Commission's letter, respondent sent an e-mail to Ms. Ondaan stating, "Anyone who is conducting themselves in to illegal active [sic] must be reported to law enforcement." She then sent two more texts to Ms. Ondaan:

> Girl, I got big fish to fry in AMERICA.

(Pet. Ex. 5 at 31).

> ALL YOU ALL MAD MOTHERFUCKERS KISS MY ASS, Y'ALL DON'T KNOW DISCRIMINATION YOU HAD TO LIE TO GET THE REPORT FILED NOW I ANSWER BUT I KNOW YOU WILL BE EVICTED BY HOUSING COURT BY THEN. Y'ALL ARE MAD I PRAY EVERYDAY ALL DAY THAT NOONE RENTS Y'ALL AN APARTMENT AND I HAVE THE PLEASURE OF VIDEO TAPING THE MARSHALLS

(Pet. Ex. 5 at 41).

On January 18, respondent sent an e-mail to the Commission attorney stating, "I want everyone on this e-mail to continue to observe the behaviors of the tenants who are being evicted and have found it EXTREMELY difficult to find housing because they are undocumented and terminally ill which I nor [sic] housing court cares about" (Pet. Ex. 8). Later on January 18, 2018, respondent sent another e-mail stating, "[P]lease note Holly, that if I am aware of a person with an illegal immigration status that is conducted themselves into illegal activities to include drugs sales, gun distribution of various alias and driver license is [sic] can report them to the local police and ICE. As a citizen of the country I must protect my country. And that I will definitely REPORT all activity" (Resp. Ex. 8).

Ms. Ondaan testified that respondent's threatening text messages and e-mails made her "an emotional wreck" because she was fearful of being deported and permanently separated from her 23-year-old daughter (Tr. 86, 149). She stated that she lost sleep, could not eat much, and lost weight fearing that she could be taken into custody by immigration (Tr. 86-87). She avoided leaving her apartment (Tr. 87).

Ms. Ondaan testified that she obtained her green card as a permanent resident on July 30, 2018, after submitting an application in February 2018 (Tr. 211; Resp. Ex. J). She qualified for the green card because her daughter, who was born in the United States, reached the age of 21 (Tr. 218).

In her testimony, respondent stated she purchased the building in May 2010 (Pet. Ex. 2). She described having an amicable ten-year relationship with Ms. Ondaan, to whom she gave her a reduced rent. Respondent testified that, after Ms. Ondaan failed to pay the rent on October 1, 2017, she promised to pay it by October 21 (Tr. 396). Sometime before October 20, 2017, Ms. Ondaan changed the locks on the apartment, preventing respondent from doing needed repairs (Tr. 397).

Respondent admitted that she contacted the immigration authorities once on January 13, 2018, and three times on January 14, 2018 (Tr. 340). She asked them "if someone could file false reports and obtain a, a green card" (Tr. 303). She was told that she had to be "sure and certain" that this had been done before she could file a complaint (Tr. 340-41). She stated that she communicated this information to the Commission attorney (Tr. 341). She sent a screenshot showing she made this call to Mr. Romero (Tr. 303).

Respondent commenced a nonpayment action against Ms. Ondaan in early 2018 asserting that Ms. Ondaan stopped paying her portion of the rent around September 2017. After a trial, involving screenshots of various texts between respondent and Ms. Ondaan, the Court ruled that respondent was entitled to rent arears of $6,895. In a decision issued on September 4, 2018, the Court rejected Ms. Ondaan's assertions that respondent failed to provide essential services, noting that respondent, upon being notified by the tenants of service issues, "made every attempt to correct conditions immediately" (Resp. Ex. F).

Respondent stated that, due to her inability to collect rent from Ms. Ondaan, respondent could not pay her mortgage and the lender began foreclosure proceedings (Tr. 429; Resp. Ex. R). According to respondent, Ms. Ondaan vacated the apartment in October 2018 owing $14,400 in rent (Tr. 197, 225). Respondent accused Ms. Ondaan of fabricating the discrimination allegations to obtain a green card (Tr. 197) and insisted that Ms. Ondaan's green card was therefore "fraudulently obtained" (Tr. 444). Respondent offered Ms. Ondaan's immigration card and New York State identification card to support her contention that Ms. Ondaan and Mr. Romero were involved in a plot against her (Tr. 440-41; Resp. Ex. J).

Respondent objected generally to the accuracy of the paper copies of the text messages produced by Ms. Ondaan between January 9 and January 31, 2018 (Tr. 62, 72). Specifically, respondent contended that Exhibit 5, which Ms. Ondaan testified contained all of the text

messages exchanged between herself, respondent, and Mr. Romero, had only "one-sided" communications (Tr. 64). Respondent later stated that she did not send any of the text messages contained in this exhibit (Tr. 362-63, 495), although she offered no evidence to corroborate this statement.

Respondent's objections to the admissibility and accuracy of the text messages were unpersuasive. First, although respondent complained during her deposition as well as during trial that the versions of the text messages produced by petitioner were "altered" in some way, she never demonstrated what this supposed alteration consisted of and, in particular, never produced either in discovery or at trial any of the texts taken from her own phone. In fact, at trial she herself offered into evidence additional copies of text messages from Ms. Ondaan's phone received from petitioner in discovery. Respondent stated that these were vital to demonstrate that Ms. Ondaan "had issues" with her before the October 2017 rent dispute (Tr. 444).

As explained by counsel for petitioner, the copies offered by petitioner were produced through software which extracted the texts from Ms. Ondaan's phone (Tr. 59). Ms. Ondaan credibly testified that the two exhibits offered by petitioner contained all of the texts that she received from respondent in January 2018. This was corroborated by Sprint records from respondent's cell phone (Pet. Ex. 9), which confirmed the dates and times of the texts sent to Ms. Ondaan (Pet. Ex. 7). The records do not list the dates or times of the texts allegedly sent on the text thread to both Ms. Ondaan and Mr. Romero (Pet. Ex. 5). Petitioner's counsel stated that, according to information from Sprint, the reason for this omission was that some group texts do not incur carrier charges (Tr. 256).

Respondent persisted in introducing into evidence an enormous welter of documents, none of which had any apparent relevance to the issues raised in the complaint. She offered printouts of increasingly acrimonious and vulgar text messages that she wrote to Ms. Ondaan and others in the fall of 2017 (Resp. Exs. B, K, N, O, P). In one of these texts, respondent referred to Ms. Ondaan as a "stupid Guyanese flat ass Bitch" (Resp. Ex. P at 526). Nearly all of the texts in the text threads are from respondent, with Ms. Ondaan only occasionally replying or asking questions about her water or why access to her apartment is needed. At some point, Ms. Ondaan asked respondent to stop texting her (Resp. Ex. P at 520).

Respondent also insisted on offering the entirety of her deposition (Resp. Ex. M), Housing Court records (Resp. Ex. F), police records (Resp. Ex. E), and dark photographs of the exterior of a house (Resp. Ex. V), none of which bore any discernable relevance to the allegations of discrimination. Notably, respondent offered no copies of texts between herself and Ms. Ondaan on the dates and times of the texts placed into evidence by petitioner.

I found the testimony of Ms. Ondaan that respondent sent her the offending texts, testimony corroborated by the copies of texts themselves and by respondent's partial admissions, to be credible. Respondent's testimony, on the other hand, was heavily embellished and only marginally connected to the allegations of discrimination in the complaint. Respondent raised various uncorroborated and unlikely accusations against Ms. Ondaan, contending that, after the Housing Court trial, Ms. Ondaan assaulted her (Tr. 401-02) and that her son was attacked by Ms. Ondaan in September 2018 (Tr. 183-84). Respondent asserted that Ms. Ondaan, Mr. Romero, and Ms. Ondaan's friend "all worked together" in a "plot" to harm her (Tr. 404, 407). Respondent stated that Ms. Ondaan and Mr. Romero filed a false complaint about her with the police on November 8, 2017, alleging that she threatened to kill Ms. Ondaan (Tr. 271; Resp. Ex. E). Respondent stated that she was assaulted by a friend of Ms. Ondaan's in September 2017 (Tr. 186, 387, 396). While admitting that she was aware that Ms. Ondaan was not born in the United States, respondent asserted that Ms. Ondaan's immigration status did not mean anything to her (Tr. 551).

In this action, petitioner bears the initial burden of establishing that: (1) complainant is a member of a protected class as defined by the Human Rights Law, and has been denied privileges or advantages by respondent; (2) respondent leases housing accommodations; and (3) respondent's actions constituted discrimination in violation of section 8-107. *See Comm'n on Human Rights ex rel. Whittacre v. Northern Dispensary*, OATH Index No. 380/87 at 3-4 (Mar. 30, 1988), *adopted*, Comm'n Dec. & Order (Aug. 17, 1988) (*citing McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973)). The credible and largely uncontradicted testimony of Ms. Ondaan established that, at the time respondent sent her the texts, Ms. Ondaan was respondent's tenant and was not a United States citizen.

Petitioner also established that respondent's texts discriminated against Ms. Ondaan because of her "alienage or citizenship" in the "terms, conditions, or privileges" of her rental or

lease. Admin. Code § 8-107(5)(a)(1)(b) (Lexis 2019). As asserted in petitioner's post-trial brief, the appropriate standard for assessing discrimination under the City Human Rights Law is whether the conduct complained of is beyond "petty slights and trivial inconveniences." *Williams v. New York City Housing Auth.*, 61 A.D.3d 62, 80 (1st Dep't 2009). In *Williams*, a case involving alleged sexual harassment and retaliation, the lower court dismissed a claim because the conduct complained of was not "severe or pervasive," as required under federal law. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986). The Appellate Division reversed, holding that, under the City Human Rights Law, the more restrictive "severe and pervasive" standard was inconsistent with the "uniquely broad and remedial" purpose of the City Human Rights Law. Instead, the City law was intended to prohibit any differential or unequal treatment as discriminatory conduct. The Court noted that it would be an affirmative defense if the defendant could demonstrate that the conduct was "nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences.'" *Williams*, 61 A.D.3d at 80.

In this case, respondent's texts identifying Ms. Ondaan as an illegal immigrant and threatening to report her to federal authorities were neither petty nor trivial. As testified to by Ms. Ondaan, respondent's statements were intended to frighten Ms. Ondaan by raising the specter of deportation and separation from her daughter, vulnerabilities which were peculiar to her status as a non-citizen. As such, I find that the texts from respondent violated section 8-107(5)(a)(1)(b) of the City Human Rights Law by treating Ms. Ondaan unequally as to the "terms, conditions, or privileges" of her tenancy.

Furthermore, as argued by petitioner's counsel in his post-trial brief, similar conduct has been held to violate the federal Fair Housing Act which similarly forbids actions which discriminate against tenants in the "terms, conditions, or privileges" of their tenancies. In *Wetzel v. Glen St. Andrew Living Community, LLC,* 901 F.3d 856 (7th Cir. 2018), a tenant brought an action against her landlord under the Fair Housing Act, alleging verbal abuse by other tenants because she was lesbian. The Court held that the landlord's failure to take action upon being informed of the other tenants' vindictive actions, accompanied by other retaliatory conduct, created a hostile housing environment due to "severe and pervasive" harassment and constituted discrimination in the "terms, conditions, or privileges" of the tenant's occupancy. In *Texas v.*

Crest Asset Mgmt., 85 F. Supp.2d 722, 730-33 (S.D. Tex. 2000), a tenant of Liberian descent brought an action against his landlord under the Fair Housing Act, alleging that a property manager told him to move because Arabic, African, and Hispanic tenants were being terminated and called him an "Arab terrorist," a "f. . . Arab, a "dumb Arab," and a "habitual criminal." The Court held that the tenant's allegations stated a cause of action for discrimination as well as infliction of emotional distress.

Respondent's contention that the building should not fall under the jurisdiction of the Human Rights Law because she had a family member living there must be rejected. Under section 8-107(5)(a)(4)(a)(1), the law does not apply to a building with "two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations." In support of this argument, respondent called as a witness her nephew, Kymahli, who testified that he stayed in the basement in the building on 148th Street in January and February 2018 due to problems with two of his children's mothers (Tr. 521, 547). Respondent's jurisdictional argument was misplaced. It was undisputed that, at the time respondent sent the offending texts to Ms. Ondaan, both Ms. Ondaan and Mr. Romero were residing in separate apartments in the building so that, even assuming Mr. Lysius was in the basement, there were still two independently occupied apartments.

Even assuming *arguendo* that Ms. Ondaan had been the only tenant in the building, the testimony that Mr. Lysius stayed in the basement for two months was contradicted by other evidence and was not credible. During respondent's deposition, she stated that no other family member ever lived in the building on 148th Street (Tr. 508; Resp. Ex. M at 51). Ms. Ondaan also credibly denied that any of respondent's family members ever lived in the apartment building (Tr. 45), stating that, from December 2017 through January 2018, only she and Mr. Romero were residing in the building (Tr. 164).

Respondent's contention in her answer that there is some manner of legal preclusion due to the rejection of Ms. Ondaan's defense of harassment to the nonpayment action in Housing Court is likewise untenable.

In sum, I find that petitioner's evidence established that respondent's text messages to Ms. Ondaan concerning her immigration status violated section 8-107(5) of the Human Rights Law.

RECOMMENDATION

The final issue to be determined is the appropriate relief for the discrimination found to have occurred here. Petitioner seeks emotional distress damages, a penalty, and affirmative relief.

Damages for emotional distress have been awarded for discrimination where "a reasonable person of average sensibilities could fairly be expected to suffer mental anguish from the incident." *Batavia Lodge v. NYS Division on Human Rights*, 43 A.D.2d 807, 810 (4th Dep't 1973) (Marsh, J.P., Caradamone, J., *dissenting*), *dissent adopted*, 35 N.Y.2d 143 (1974); *Comm'n on Human Rights ex rel. L.D. v. Riverbay Corp.*, OATH Index No. 1300/11 at 21 (Aug. 26, 2011), *adopted*, Comm'n Dec. & Order (Jan. 9, 2012). Relevant factors include the severity and duration of the discrimination, the level of anguish caused by the misconduct, and comparable rewards. *See Comm'n on Human Rights ex rel. Cherry v. Stars Model Management*, OATH Index No. 1464/05 at 15 (Mar. 7, 2006) *adopted*, Comm'n Dec. & Order (Apr. 13, 2006), *aff'd sub. nom*., *Secor v. NYC Comm'n on Human Rights*, 13 Misc. 3d 1220A (Sup. Ct. N.Y. Co. 2006).

A finding of mental anguish can be based solely on the complainant's testimony. *119-121 East 97th St. Holding Corp. v. NYC Comm'n on Human Rights*, 220 A.D.2d 79, 85 (1st Dep't 1996), *citing Cullen v. Nassau County Civil Service Comm'n et al.*, 53 N.Y.2d 492, 497 (1981). While evidence of mental health treatment by a professional can be useful to provide "some evidence of the magnitude" of the mental distress claimed, *NYC Transit Auth. v. NYS Division of Human Rights*, 78 N.Y.2d 207, 217 (1991), it is not required. *119-121 East 97th St. Holding Corp*., 220 A.D.2d at 85.

Pursuant to Administrative Code section 8-126(a), the Commission may impose civil penalties of up to $125,000 for violations of the Human Rights Law. The purpose of this provision is to "punish the violator" and to "strengthen and expand the enforcement mechanisms of the law so the Commission could prevent discrimination from playing any role in actions related to employment, public accommodations, housing and other real estate." *Comm'n on Human Rights ex rel. Howe v. Best Apartments, et al.*, OATH Index No. 2602/14 at 9 (Feb. 18, 2015), *modified on penalty*, Comm'n Dec. & Order (Mar. 14, 2016).

In this case, petitioner has requested emotional distress damages of $40,000 and a civil penalty of $20,000 and 50 hours of community service.

Here, the credible testimony of Ms. Ondaan demonstrated that some emotional distress damages are warranted, as in past Commission cases involving landlord harassment. In *Comm'n on Human Rights ex rel. Blue v. Jovic*, OATH Index No. 1624/16 (Aug. 19, 2016), *adopted*, Comm'n Dec. & Order (May 26, 2017), a tenant and her disabled daughter received $50,000 and $45,000 for the landlord's refusal for some two years to provide the reasonable accommodation of a new bathtub. In *Comm'n on Human Rights v. American Construction Associates, LLC*, CHR Compl. No. M-H-G-14-1031012, Comm'n Amended Dec. & Order at 17 (Apr. 5, 2017), a tenant was awarded $13,000 in emotional distress damages after being denied an apartment because she tried to use a public assistance voucher for a security deposit. In *Comm'n on Human Rights ex rel. Russell v. Chae Choe*, OATH Index No. 2617/09 (Sept. 25, 2009), *adopted*, Comm'n Dec. & Order (Dec. 10, 2009), a tenant was compensated $30,000 for her landlord's failure, for more than a year, to reasonably accommodate her by allowing her to replace her bathtub. The tenant suffered from multiple medical conditions including osteoarthritis, rheumatoid arthritis, and other conditions causing her difficulty and pain getting in and out of the bathtub in her residence. *Id* at 2. In another case, *Comm'n on Human Rights ex rel. Carol T. v. Mutual Apartments, Inc.*, OATH Index No. 2399/14 (Mar. 13, 2015), this tribunal recommended $40,000 in compensatory damages to tenants whose landlord refused for over two years to permit them to have a comfort animal.

Ms. Ondaan's emotional distress, while tangible, was not as severe as that of the tenants in these past cases, where the discriminatory conduct lasted longer and where the consequences were far more detrimental. I therefore recommend that, for the distress suffered here, Ms. Ondaan be awarded $12,000.

The amount of the appropriate civil penalty for discriminatory conduct is dependent upon whether respondents' conduct was willful, the presence of aggravating factors, the egregiousness of the conduct and its impact on the public, and whether there have been prior findings of discrimination against the same party. *Comm'n on Human Rights ex rel. Russell v. Chae Choe*, OATH Index No. 2617/09 at 9-10 (Sept. 25, 2009), *adopted*, Comm'n Dec. & Order (Dec. 10, 2009).

Most of the circumstances here suggest that only a minor penalty can be justified. There was no contention here that respondent's actions were willful violations. Respondent owned only one small two-family apartment building. She accepted Ms. Ondaan as a tenant knowing that she would be using public assistance vouchers and that she was a non-citizen. In her deposition, respondent stated that, after selling the building in foreclosure proceedings, she was not able to buy any other property (Resp. Ex. M at 57). It was apparent that respondent had limited experience in managing rental property, yet, as established by the Housing Court decision, she responded promptly to all tenant complaints concerning services. At the time that respondent was texting Ms. Ondaan, Ms. Ondaan was not paying rent and respondent was struggling to pay her mortgage, a struggle she ultimately lost. Respondent's dire financial circumstances likely played a significant part in motivating her hostile text messages.

In general, past cases indicate that penalties for small businesses should be relatively low. *See Comm'n on Human Rights ex rel. Nieves v. Rojas*, OATH Index No. 2153/17 (Oct. 24, 2017), *adopted*, Comm'n Dec. & Order (May 16, 2019) ($10,000 penalty for novice real estate broker who refused to accept a housing voucher from a tenant); *Comm'n on Human Rights v. Shahid*, OATH Index No. 1381/13 (May 13, 2013), *adopted*, Comm'n Dec. & Order (July 26, 2013) ($10,000 penalty for landlord with six apartments who advertised that housing assistance vouchers were not accepted); *Comm'n on Human Rights ex rel. Campbell v. Personal Employment Services*, OATH Index No. 1579/07 at 7 (Aug. 20, 2007), *adopted*, Comm'n Dec. & Order (Dec. 14, 2007) ($5,000 penalty for small employment agency which had refused to consider an applicant for employment because of her age). Higher penalties have been reserved for those cases involving discrimination by larger businesses. *See, e.g., Comm'n on Human Rights ex rel. Alvarez v. Gerardo's Transportation*, OATH Index No. 2045/09 at 5 (May 22, 2009), *adopted*, Comm'n Dec. & Order (Aug. 12, 2009) ($15,000 penalty imposed for refusal of car service with offices in multiple states to transport individual with a disability); *Comm'n on Human Rights ex rel. Cherry v. Stars Model Management*, OATH Index No. 1464/05 at 18 (Mar. 7, 2006), *adopted*, Comm'n Dec. & Order (Apr. 13, 2006), *aff'd*, 13 Misc.3d 1220A (Sup. Ct. N.Y. Co. 2006) ($15,000 penalty for employment discrimination aggravated by the fact that the respondent handled bookings for hundreds of modeling opportunities on behalf of many companies); *Rojas*, OATH 2153/17 ($10,000 penalty for novice real estate broker who refused to

accept a housing voucher from a tenant). Notably, in *119-121 East 97th Street Corp*., 220 A.D.2d at 88, the First Department reduced the original penalty award of $75,000 to $25,000, based on a finding that the landlords owned 50 units, "not in the upper range of units owned by large landlords in the city."

I therefore recommend that the penalty in this case be $5,000, a sum reflecting respondent's modest means as well as the fact that she had only two tenants and, soon after the complaint was filed, she lost the apartment building in foreclosure.

Finally, petitioner has requested that respondents be ordered to participate in 50 hours of community service, an appropriate remedy considering the rancorous nature of respondent's weeks of text messages to Ms. Ondaan.

In sum, I recommend that, for the discrimination found to have occurred here, respondent pay emotional distress damages of $12,000 to Ms. Ondaan and a civil penalty of $5,000. Further, respondent should be required to complete 50 hours of community service, as directed by the Commission.

John B. Spooner
Administrative Law Judge

September 12, 2019

SUBMITTED TO:

CARMELYN P. MALALIS
Commissioner

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