

Main (860) 418-8770

June 12, 2017

CHRO ex rel. Kelly Howard v. Richard Cantillon CHRO No. 1550288.

**FINAL DECISION ON HEARING IN DAMAGES**

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent by via by via email to the commission and certified mail to the complainant and respondent.

Very Truly yours,

  
Kimberly D. Morris  
Secretary II

cc. Kelly Howard  
488 Perkins Ave., Unit 6-5  
Waterbury CT 06074  
7015 0640 0007 6546 8216

Richard Cantillon  
488 Perkins Ave., Unit 6-8  
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Elissa T. Wright, Presiding Human Rights Referee

State of Connecticut  
Commission on Human Rights and Opportunities  
Office of Public Hearings

Commission on Human Rights and Opportunities  
ex rel. Kelly Howard, Complainant

CHRO Case No. 1550288

v.

Richard Cantillon, Respondent

June 12, 2017

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Final Decision

Hearing on Damages after the Entry of an Order of Default

I  
**Procedural Background**

On June 8, 2015, the complainant, Kelly Howard, whose address is 488 Perkins Avenue, Unit 6-5, Waterbury, Connecticut, filed a housing discrimination complaint (complaint) with the Connecticut Commission on Human Rights and Opportunities (commission) alleging that her neighbor, Richard Cantillon (respondent), whose address is 488 Perkins Avenue, Unit 6-8, Waterbury, Connecticut <sup>1</sup> discriminated against her, harassed and threatened her on the basis her race (African-American) and color (black) in violation of the state Fair Housing Act, General Statutes § 46a-64c (a), et seq.,<sup>2</sup> and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et seq. (federal Fair Housing Act),<sup>3</sup> as enforced through General Statutes § 46a-58 (a).<sup>4</sup>

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<sup>1</sup> Several weeks before the hearing on damages, the respondent moved, at least temporarily, to a senior facility, although he continued to occupy the premises at 488 Perkins Avenue, Unit 6-8, Waterbury, Connecticut (Tr. 21).

<sup>2</sup> General Statutes § 46a-64c (a) (2) makes it unlawful to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income or familial status.” Pursuant to General Statutes § 46a-64c (a) (9), 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 this section.”

<sup>3</sup> Section 818 of the federal Fair Housing Act, 42 U.S.C. § 3617, makes it 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 [the act].”

The commission has no direct jurisdiction to enforce violations of federal law. Deprivations of rights secured or protected by federal antidiscrimination law constitute violations of General Statutes § 46a-58 (a), however, and the commission treats such deprivations as purely state law violations. *City of Selton v. Collins*, 2014 WL 1032765 (D. Conn. March 14, 2014), *aff’d sub nom. City of Shelton v. Hughes*, 578 Fed. Appx. 53 (2d Cir. 2014).

<sup>4</sup> General Statutes § 46a-58 (a) provides in pertinent part that: “[i]t shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights,

On June 17, 2015, the commission caused to be served notice of the complaint on the respondent by certified mail (Record Ex. 2). On July 29, 2015, the United States Postal Service returned the letter to the sender deemed unclaimed and unable to forward (Record Ex. 3). On August 31, 2015, a state marshal served the complaint on the respondent by abode service after the respondent refused to accept in-hand service of the complaint (Record Exs. 4, 5, 6). On September 22, 2015, the commission sent a reminder letter to the respondent in which it advised the respondent that it would request the executive director to issue an order of default against him if he did not submit an answer to the complaint by October 5, 2015 (Record Ex. 7). On October 29, 2015, pursuant to General Statutes § 46a-83 (l) and § 46a-54-46a of the Regulations of Connecticut State Agencies, the commission's executive director entered a default order against the respondent for failing to file an answer under oath (Record Ex. 9). The default order was mailed to the respondent by certified mail and the United States Postal Service returned the letter to the sender deemed unclaimed and unable to forward (Record Ex. 10). On December 7, 2015, the Office of Public Hearings sent a notice of hearing on damages to the respondent by certified mail (Record Ex. 11). The United States Postal Service returned the notice to the Office of Public Hearings deemed unclaimed and unable to forward (Record Ex. 12).

On April 27, 2016, a hearing on damages was held to determine the relief necessary to eliminate the discriminatory practice and make the complainant whole. General Statutes § 46a-83 (l). The complainant and the commission appeared to prosecute the action. The respondent did not appear. The record closed on July 26, 2016, when the commission filed its post-hearing brief.

## II

### Complainant's Position

This matter involves a claim of race-based neighbor-on-neighbor hostile environment harassment in the condominium association context. The complainant, who is black, alleges that beginning in 2009, three years after she purchased and moved to condominium unit 6-5 at 488 Perkins Avenue, Waterbury, CT, she became the subject of verbal and physical harassment by the respondent, a near neighbor in the condominium complex, in the form of racial slurs and obscene gestures directed at her while she was walking outside her home to her car, to the trash dumpster, or walking her dog. Complainant also alleges that during a meeting of the condominium association in January of 2009, and later in an altercation with the respondent while she was shoveling snow in February of 2015, the respondent threatened her with bodily harm and was arrested by local police. As a consequence of respondent's continued harassment of the complainant based on her race and color, the complainant claims damages for emotional distress and for travel expenses incurred in the prosecution and investigation of her claim.

## III

### Findings of Fact

In a hearing on damages upon default, the hearing is limited to the relief necessary to eliminate the discriminatory practice and make the complainant whole. General Statutes § 46a-83 (l); Regs., Conn. State Agencies § 46a-54-88a (b). A default admits the material facts alleged in the complaint without the need

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privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of" inter alia "color, race ..."

for further proof. Regs., Conn. State Agencies § 46a-54-86a (b). After conducting a duly scheduled and noticed hearing, and based upon a review of the complaint, exhibits, and transcripts, and an assessment of the credibility of the witnesses, the following relevant facts are found.<sup>5</sup>

1. All procedural notices and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the matter and render a decision (Tr. 5 – 12, Record Exs. 1 - 12)
2. The entry of the default order established the respondent's liability for violations of General Statutes § 46a-64c (a), et seq., and the federal Fair Housing Act, 42 U.S.C. § 3601, et seq., as enforced through General Statutes § 46a-58 (a).
3. The complainant is a member of one or more protected classes because of her race (African American) and her skin color (black) (Tr. 14, Record Ex. 1).
4. In 2006, the complainant bought and occupied her townhouse-style condominium, Unit 6-5 at 488 Perkins Avenue, Waterbury, CT (Tr. 14, Record Ex. 1)
5. Complainant lives with her daughter, who was 25 years of age at the time of the hearing. Complainant owns a small dog (Tr. 13, Record Ex. 1).
6. Respondent is a neighbor of the complainant and lives at condominium unit 6-8, which is located three units away from the complainant's unit. The respondent's unit is near the shared trash receptacle and the visitor parking lot, common areas (Tr. 15, Record Ex. 1).
7. After moving to her condominium in 2006 and prior to 2009, the complainant had minimal interaction with the respondent. When complainant greeted the respondent he would not respond (Tr. 15-16).
8. On January 21, 2009, the complainant attended the annual meeting of the condominium association. She attended the meeting after receiving a letter from the association alleging that she had failed to curb her dog in violation of an association rule (Tr. 16, Record Ex. 1).
9. The respondent also attended the January 21, 2009, association meeting (Tr. 16-17, Record Ex. 1).
10. At the meeting, the complainant explained that she always cleans up after her dog and that the waste complained of did not belong to her dog (Tr. 16, Record Ex. 1).
11. At the meeting, the respondent accused the complainant of failing to curb her dog and said: "[I]t is your dog's do-do and if you don't stop lying, I will punch you in the face." (Tr. 16, Record Ex. 1).
12. At the meeting, the respondent created a disturbance and threatened complainant with bodily harm. An association member notified the police and the respondent was arrested for threatening and harassment (Tr. 16-17, Record Ex. 1).
13. Following the respondent's arrest for disruptive conduct at the condominium association meeting when he accused the complainant of failing to curb her dog and physically threatened her, the complainant obtained an order of protection against the respondent for period of two years (Tr. 17, Record Ex. 1).
14. There is no specific allegation, nor was evidence presented, that the respondent directed racially derogatory epithets at the complainant during the condominium association meeting on January 21, 2009 (Tr. 16-17, Record Ex. 1).
15. The respondent's hostile housing harassment of the complainant began after she obtained a protective order against him following the January 21, 2009, annual meeting of the association (Tr. 16-17, Record Ex. 1).

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<sup>5</sup> References to testimony in the transcript are designated as "Tr.", followed by the page number. The record exhibits are designated as "Record Ex.", followed by the exhibit number. References to the commission's brief are designated as "CHRO brief", followed by the page number(s).

16. Subsequent to the January 21, 2009, association meeting, and ongoing since that time, the respondent has regularly called complainant a "nigger," given her the middle finger, or engaged in other obscene-gesture harassment when he encounters her outside her condominium unit. Such incidents occurred between two and five times a week (Tr. 17-18, Record Ex. 1).
17. For the most part, the respondent directed racially disparaging slurs and obscene gestures at the complainant when there were no witnesses to observe the harassing conduct (Tr. 17, 18, Record Ex. 1). Complainant's then-boyfriend, McCarthy Punter, and one neighbor witnessed the respondent's racially offensive harassment of the complainant (Tr. 18, Record Ex. 1).
18. Once the respondent threatened to get his gun and shoot the complainant. The complainant believed respondent intended to carry out his threat (Tr. 19, Record Ex. 1).
19. On February 9, 2015, the respondent confronted complainant as she was shoveling snow away from her car. The respondent said "[N]iggers don't belong here" and lifted his own shovel to hit her. Complainant blocked respondent's shovel with hers (Tr. 20-21, Record Ex. 1).
20. The commotion from the snow-shovel incident on February 9, 2015, provoked a neighbor to call the police and the complainant and respondent were both arrested. Charges against complainant were dismissed and the respondent was ordered to report to a Community Court (Tr. 20-21, Record Ex. 1).
21. On February 23, 2015, as complainant walked past respondent's door, he yelled at her: "I'm still going to get you nigger." (Record Ex. 1)
22. McCarthy Punter (Punter) dated complainant between 2001 and 2011 and visited her at her condominium unit nearly every day while they were dating (Tr. 28).
23. Punter witnessed the respondent calling complainant a "nigger" and giving her the middle finger (Tr. 18).
24. Respondent twice called Punter a "nigger." (Tr. 30)
25. Punter testified that respondent's interactions with complainant sometimes made her upset and angry, but did not have an effect on their relationship (Tr. 29, 30).
26. Respondent called the complainant's daughter, who lives with her, a "fat black nigger." Complainant and her daughter became upset and complainant felt sorry for her daughter who is overweight (Tr. 13, 20).
27. The respondent's intimidating actions prompted complainant to call the police ten times during the two years prior to her filing the present complaint in 2015 (Record Ex. 1) and twenty or thirty times overall (Tr. 20). No evidence was presented of the disposition of complainant's police complaints.
28. At times, the complainant is in fear of the respondent's threats and insults directed at her during her daily activities outside her dwelling, including walking her dog, going to her car to drive to work, and taking trash to the common trash dumpster. In general, walking to and from her condominium unit makes her feel upset and miserable (Tr. 19, 20, 22, Record Ex. 1).
29. The complainant testified that several weeks before the public hearing the respondent moved to a senior facility, at least temporarily, but that she continues to see him at his condominium unit from time to time (Tr. 21).
30. As a result of the respondent's harassment, the complainant at times fears for her safety and the safety of her daughter (Tr. 19-20).
31. The complainant is employed as a program director for three group homes for mentally disabled persons. Respondent's harassment affected her interactions with colleagues at work. She has felt unapproachable to her co-workers and has been angry toward them as a result of the respondent's harassing conduct toward her (Tr. 19, 22-23).
32. The pursuit of her complaint required the complainant to travel to the commission's central office in Hartford on four occasions and to the commission's Waterbury office on two occasions (Tr. 23).

Based on the federal mileage rates of \$0.57 per mile in 2015 and \$0.54 in 2016, the complainant incurred travel expenses of \$36.18 for one roundtrip to the commission's central office in 2016, and \$115.58 for three roundtrips to the commission's central office and one roundtrip to the commission's Waterbury office in 2015, for a total amount of \$157.15 (CHRO brief, pp. 16-17).

#### IV

#### Discussion and Conclusions

The respondent failed to file a written answer and an order of default was entered. General Statutes § 46a-83 (l) expressly permits the executive director or her designee to enter a default order against a respondent "who ... after notice, fails to answer a complaint ..." See also Regs., Conn. State Agencies § 46a-54-46a.

The respondent, by virtue of having been defaulted for failing to answer the complaint, admitted the factual allegations of the complaint for purposes of establishing liability for racially motivated neighbor-on-neighbor hostile environment harassment and intentional interference with complainant's right to the peaceful use and enjoyment of her home in violation of our fair housing laws.<sup>6</sup> *Skylar Ltd. Partnership v. S. P. Douthett & Co.*, 18 Conn. App. 245, 253 (1989); Regs., Conn. State Agencies § 46a-54-88a (b). Upon the entry of an order of default, the presiding officer shall conduct a hearing "limited to [determining] the relief necessary to eliminate the discriminatory practice and make the complainant whole." *Id.*; *State of Connecticut v. Commission on Human Rights & Opportunities*, 211 Conn. 464, 478 (1989). Pursuant to General Statutes §§ 46a-83 (l) and 46a-86, and § 46a-54-46a (e) of the regulations, the undersigned is authorized to award such relief. *State of Connecticut v. Commission on Human Rights & Opportunities*, supra. As required by law, the hearing on damages was limited to eliminating the discriminatory practices and determining the appropriate relief to make the complainant whole. *Id.*; *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, 2006 WL 4753467, \*6 (CHRO No. 0550116) (October 26, 2006).

#### V

#### Damages

General Statutes §46a-86 (c) specifically authorizes: "In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant."

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<sup>6</sup> See, e.g., *Commission on Human Rights & Opportunities ex rel. Pyles v. Yeshiva Gedolah Rabbinical Institute of New England, Inc.*, Superior Court, judicial district of New Haven Docket No. NNHCV 12602S (October 1, 2012) (2012 WL 5200376, \*4); *Gomes v. Casagmo Condominium Association, Inc.*, Superior Court, Docket No. 331907 (July 23, 1999) (1999 WL 566862, \*2). See also *Lachira v. Sutton*, United States District Court, Docket No. 3:05cv1585 (PCD) (D. Conn. May 7, 2007) (2007 WL 1346913, \*19); *Ohana v. 180 Prospect Place*, 996 F. Supp. 238, 243 (E.D.N.Y. 1998); and hostile environment harassment decisions of this tribunal cited in footnote 11 below in this opinion.

The tribunal's authority to award damages under §46a-86 (c) includes the authority to award damages for emotional distress or other non-economic harm. *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 100, 106 (1995); *Fulk v. Lee*, Superior Court, Docket No. CV 970063572 February 7, 2002 (2002 WL 316325,\*3); *Commission on Human Rights & Opportunities ex rel. Peoples v. Belinsky*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CVNo8806-1209 (November 8, 1988) (1988 WL 492460); *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra, 2006 WL 4753467, \*6; *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, 2000WL 35575648, \*9 (CHRO No. 9810387) (August 9, 2000); *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433 (June 3, 1985).

The purpose of compensatory damages in a fair housing case is to "[compensate] for the emotional injury inflicted by a discriminator... [and to] effectuate the purpose of the discrimination laws ..." *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, supra, CHRO No. 7930433, 13. Awards for damages for emotional distress and other noneconomic consequences of a discriminatory housing practice must be truly compensatory and not punitive. *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, supra, 2000 WL 35575648,\*13.

In her prayer for relief, the complainant is requesting compensatory damages for emotional distress in the amount of \$75,000; for out-of-pocket travel expenses incurred in the prosecution of her complaint in the amount of \$157.15; and prejudgment and postjudgment interest.

#### A Emotional Distress

The public policy considerations in support of emotional distress damages in housing discrimination cases, and the factual analysis to determine their amount in a particular case, are extensively discussed in *Commission on Human Rights & Opportunities ex re. Hartling v. Carfi*, supra, 2006 WL 4753467, \*6-7; *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli*, 2000 WL 35575655, 3-4 (CHRO No. 9420599) (February 14, 1995); *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills*, CHRO No. 9510408, 7 (August 5, 1998); *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, supra, CHRO No. 7930433, 11-13; see *Commission on Human Rights & Opportunities ex rel. Peoples v. Belinsky*, supra, 1988 WL 492460.

That damages for emotional distress from the loss of civil rights often are incapable of precise mathematical computation and necessarily uncertain is insufficient reason to deny them as an element of damages once the right to such damages has been established. *Commission on Human Rights & Opportunities ex re. Hartling v. Carfi*, supra, 2006 WL 4753467; *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills*, CHRO No. 9510408, supra, 8; *Commission on Human Rights & Opportunities ex rel. Cohen v. Menillo*, CHRO No. 9420047, 12-13 (June 21, 1995).

"Criteria to be considered when awarding damages for emotional distress include: the complainant's subjective internal emotional reaction to the respondents' actions; the public nature of the respondents' actions; the degree of offensiveness of those actions; and the impact of those actions on the complainant." (Citations omitted.) *Commission on Human Rights & Opportunities ex re. Hartling v. Carfi*, supra, 2006 WL 4753467, \*7. The testimony of the complainant and her former boyfriend establish the existence of all of these factors, as follows.

### ***Complainant's Subjective Emotional Reaction***

As a threshold matter, there must be a showing that the respondent's housing discrimination caused complainant to suffer emotional harm. In evaluating complainant's entitlement to emotional distress damages, her internal subjective emotional reaction to the respondent's racially motivated hostile environment harassment is the most important consideration. *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra, 2006 WL 4753467, \*7; *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills*, supra, CHRO No. 9510408. "In garden-variety emotional distress claims, the evidence of mental suffering is generally limited to the testimony of the witness." (Citation omitted). *Patino v. Birken Manufacturing Co.*, 304 Conn. 679, 707 (2012). A complainant need not present medical testimony; her own testimony may suffice. See, e.g., *Schanzer v. United Technologies Corp.*, 120 F.Supp.2d 200, 217 (D. Conn. 2000); *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra; *Commission on Human Rights & Opportunities ex rel. McNeal-Morris v. Gnat*, CHRO No. 9950108, 7 (January 4, 2000). Medical testimony, however, may strengthen a case. *Busche v. Burkee*, 649 F.2d 509, 519 n. 12 (7<sup>th</sup> Cir. 1981); *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra. Similarly, the testimony of relatives, friends and business associates may also provide insight into the complainant's emotional state. *Id.*

In the present matter, the evidence of psychological injury, pain and suffering to the complainant from the respondent's opprobrious racial comments, obscene-gesture harassment, and race-based threats derives almost completely from the testimony of the complainant. The emotional harm the complainant experienced assumes an added significance because the respondent's harassment disrupted the safety and comfort provided by the complainant's home. *Ohana v. 180 Prospect Place*, 996 F. Supp. 238, 243 (E.D.N.Y. 1998). Complainant's testimony demonstrates that the respondent's race-based abusive conduct over a period of seven years was sufficiently severe and pervasive to be distressing to her and render aspects of her living situation at times difficult to tolerate. The complainant's subjective emotional reaction to the respondent's harassment included anger and sometimes fear. Her life was made miserable by her fear of the insults and threats directed at her when walking her dog outside her home or traversing common areas when going to her car or the shared trash dumpster located near the respondent's unit. That the respondent mocked the complainant's adult daughter with a racial taunt was hurtful and upsetting to complainant. Respondent's harassing and threatening conduct prompted the complainant to call the police ten times during the two-year period prior to filing the present complaint, and a total of some twenty or thirty times since 2009. In February of 2015, when the respondent confronted the complainant while she was shoveling snow and lifted his own shovel to strike her, a neighbor called the police and both parties were arrested, with charges against the complainant being dropped and the respondent ordered to attend a Community Court. The respondent once threatened to get his gun and shoot the complainant; the complainant viewed the threat as credible and feared the respondent would shoot her.

The respondent's harassment created an abusive living environment and interfered with the complainant's peaceful enjoyment of her home, but did not cause her to seek medical help, or miss work, or deprive her of that housing by forcing her to move. The record is devoid of evidence, either medical or from the testimony of the complainant or the witness McCarthy Punter, indicating that the complainant experienced depression, panic attacks, isolation, sleeplessness, weight loss, or increased drinking – factors generally present in high-award hostile housing harassment cases.<sup>7</sup>

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<sup>7</sup> See footnote 11, below in this opinion.



### **Public Nature of the Discriminatory Actions**

“When discriminatory actions occur in front of other people, the victim may be further humiliated and thus deserve a higher award.” *Commission on Human Rights & Opportunities ex rel. Capri v. Malta*, 2010 WL 6763585, \*10 (CHRO No. 1050039) (December 28, 2010). The public nature of a respondent’s discriminatory conduct causing a complainant to suffer further humiliation has been a factor justifying some of the higher emotional distress awards in past decisions of this tribunal. *Commission on Human Rights & Opportunities ex rel. Brown v. Jackson*, 2008 WL 5122193, \*23 (CHRO Nos. 0750001, 0750002) (November 17, 2008); *Commission on Human Rights & Opportunities ex rel. Lawton v. Jansen*, 2007 WL 4623071 (CHRO No. 0550135) (October 18, 2007); *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra, 2006 WL 4753467; *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, supra, 2000 WL 35575648; *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills*, supra, CHRO No. 9510408; *Commission on Human Rights & Opportunities ex rel. Maybin v. Berthiaume*, CHRO No. 9950026 (March 29, 1999); *Commission on Human Rights & Opportunities ex rel. Planas v. Bierko*, CHRO No. 9420599 (February 8, 1995).

The complaint allegations and testimony of the complainant and her former boyfriend establish that the respondent’s racial slurs and obscene-gesture harassment generally were not visible or readily apparent to other persons. The complaint alleges: “Since the protective order Respondent Cantillon continued to shout racial slurs at me, *especially when there were no witnesses to observe this behavior.*” (Emphasis added.) (Record Ex. 1 ¶ 11). Complainant testified that “... *if no one is out there* [respondent] would call me a nigger, or stick up his middle finger and stick his tongue out at me... If I see him at the mailbox *and he’s with no one and I’m with no one*, he would say “I’m still going to get you, nigger, and that was mainly every time that, *if his wife is not in the car with him, or no one is with me*, that’s when he would do it.” (Emphasis added.) (Tr. 17-18). The complainant also testified that “There was a neighbor that witnessed it, and McCarthy Punter that I used to date witnessed it.” (Tr. 18). A neighbor called the police after witnessing the snow-clearing altercation on February 9, 2015, when respondent threatened complainant and told her that “niggers don’t belong here.” (Record Ex. 1 ¶¶ 12, 13).

The public disturbance caused by respondent’s disruptive conduct at the annual meeting of the condominium association on January 21, 2009, occurred in the presence of some twenty or twenty-five people. However, the parties’ disagreement at the meeting centered solely on whether or not the complainant cleaned up after her dog. Although public in nature, no evidence was presented that respondent’s conduct at the association meeting, even if disruptive and wrongful, was motivated by discriminatory animus within the meaning of the Fair Housing Act, or that others observed respondent’s conduct at the meeting as being racially motivated in a way that would have caused a more intense feeling of humiliation and embarrassment or exacerbated complainant’s distress on account of her race and color. The record is clear that the respondent’s racially hostile harassment of the complainant began *after* she obtained a protective order against the respondent following the association meeting of January 21, 2009. With very few exceptions, the respondent’s subsequent discriminatory conduct, including race-based verbal harassment and personal threats, was not in view of or within earshot of other people. On this record, there is no evidence that anyone, other than McCarthy Punter and one neighbor, observed the respondent’s discriminatory racial slurs, obscene-gestures, and physical threats which interfered with the complainant’s enjoyment of her home over time. Public humiliation “done with the intention and effect of producing the maximum pain, embarrassment and humiliation” (Citation omitted); *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli*, 2000 WL 35575655, \*3 (CHRO No. 9420599) (February 14, 1995); present in higher-end awards of this tribunal is absent in the present case.

### ***Degree of Offensiveness of the Discriminatory Actions and Impact on the Complainant***

There is no doubt that the respondent's race-based verbal harassment, obscene gestures, and threatening conduct were highly offensive and inflammatory. The pervasive and persistent use of derogatory racial slurs such as "nigger" and race-based threats such as "niggers don't belong here" or "I'm still going to get you nigger" over a period of seven years is patently offensive and well-recognized as such. Respondent taunted complainant's adult daughter with a racial slur. He repeatedly taunted and harassed the complainant because of her race and color causing her to feel "miserable" and sometimes fearful when she traversed the common areas of the condominium complex outside her home. He threatened to fire his gun at her. The respondent's racially motivated disruptive conduct toward the complainant in the snow-shovel incident in February of 2015 was sufficiently threatening to prompt a neighbor to call the police, resulting in the arrest of both parties and the respondent's assignment to report to Community Court. The respondent's harassment caused complainant to withdraw from colleagues at work, and to misdirect her anger toward them. Her interactions with the respondent were not so severe or oppressive as to affect the complainant's relationship with her boyfriend, McCarthy Punter, or to cause her to seek medical help, miss work, or move from her home.

In determining the award for emotional harm suffered by the complainant, I considered the relationship of the parties as one of the factors impacting the degree of offensiveness of the respondent's discriminatory interference with the complainant's housing situation. The present case stands in contrast to several other hostile housing harassment decisions of this tribunal wherein the parties had a legal housing relationship. For example, the cases of *Commission on Human Rights & Opportunities ex rel. Brown v. Jackson*, supra, 2008 WL 5122193, and *Commission on Human Rights & Opportunities ex rel. Scott v. Jemison, a.k.a Muhammad and Crescent Realty, Inc.*, 2000 WL 35575662 (CHRO No. 99500200) (March 20, 2000), both involved direct discriminatory harassment of a tenant by a landlord. And the case of *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra, 2006 WL 4753467, involved direct discriminatory harassment of a condominium owner by the property manager of the condominium complex.<sup>8</sup> In those cases, the respondent landlord, or property manager as the case may be, had the power and authority, and hence far greater ability than the respondent in the present matter, to interfere with the housing rights and status of the victim or to affect the provision or services or facilities in connection with housing as a quid pro quo.<sup>9</sup> In the present case, where both parties are resident-owners, the respondent, not being an association board member or property manager of the condominium complex, had no enforcement and supervisory power over the complainant with respect to association rules or the provision or enjoyment of services or common facilities, and lacked an ability to oppress or penalize her by virtue of his authority.

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<sup>8</sup> In *Commission on Human Rights & Opportunities ex rel. Lawton v. Jansen*, 2007 WL 4623 071(CHRO No. 0550135) (October 18, 2007), one of the respondents was the complainant's landlord, but the complainant and the respondent landlord entered into a separate settlement agreement before the public hearing in the matter.

<sup>9</sup> "In a community governed by a homeowner's association, for example, the influence an owner-board member has over another resident by virtue of his or her authority to make association policy, to approve homeowner requests, and to bring or adjudicate charges of association rule violations may be greater than a non-board member, and thus each person's relationship to the victim should be considered when assessing whether a hostile environment exists." 81 FR 63054-01, 2016 WL 4762179,\*63063, Rules and Regulations Department of Housing and Urban Development, 24 CFR Part 100: "Quid Pro Quo and Hostile Housing Environment Liability and Damages for Discriminatory Housing Practices under the Fair Housing Act," September 14, 2016. See also 24 C.F.R. § 100.600, "Quid pro quo and hostile environment harassment."

The present case lies in the middle ground of hostile housing harassment disputes, between those extreme claims involving "allegations of force and violence, such as the firebombing of a home or car, physical assaults, vandalism, firing weapons, or other extreme activities designed to drive a person out of his or her home;" *Lachira v. Sutton*, United States District Court, Docket No. 3:05cv1585 (PCD) (D. Conn. May 7, 2007) (2007 WL 1346913, \*19); and those unfortunate skirmishes between neighbors, untinged with intimations of violence or discriminatory overtones, which are not appropriate for resolution under the fair housing laws. *Lachira v. Sutton*, supra, \*20; *Sporn v. Ocean Colony Condominium Association*, 173 F. Supp. 2d 244, 251-52 (D.N.J. 2001); *Commission on Human Rights & Opportunities ex rel. Brown v. Jackson*, supra, 2008 WL 5122193, \*18; *Commission on Human Rights & Opportunities ex rel. McIntosh-Waller v. Vahlstrom*, supra, 2008 WL 2683291, \*5.

The respondent's pervasive hostile housing harassment conduct, his threats, pernicious racial epithets, and offensive gestures, demonstrate an unacceptable racial bigotry over a considerable period of time and were sufficiently intimidating and disruptive of complainant's enjoyment of her housing environment as to warrant compensatory relief. On the evidence presented, the complainant is entitled to a meaningful award designed to make her whole and to deter the conduct displayed by the respondent. *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, supra, CHRO No. 7930433, 13. But the extent of emotional distress damages that can be inferred from the degree of humiliation, psychological injury, pain and suffering established in this case does not in my opinion warrant an award of damages at the high end of the broad contours of damage awards in neighbor-on-neighbor hostile housing environment discrimination decisions of this tribunal. The actual discriminatory acts, although egregious, were not generally committed in the presence of others and the extent of the complainant's subjective emotional injuries was not as severe or long lasting as in other high-award hostile housing environment cases.<sup>10</sup> "The award should be in line with the injury." (Citation omitted.) *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli*, supra, 2000 WL 35575655, \*7.

Accordingly, based upon the allegations in the complaint, the evidence presented, and a comprehensive and in-depth review of emotional distress awards in hostile housing harassment cases by this tribunal,<sup>11</sup>

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<sup>10</sup> See footnote 11, below.

<sup>11</sup> In descending order from the highest emotional distress award to the lowest, see, e.g. in *Commission on Human Rights & Opportunities ex rel. Planas v. Bierko*, CHRO No. 9420599 (February 8, 1995) (\$75,000 award to complainant whom respondent constantly harassed over a period of three years, shouting racist slurs, sending racist slurs to complainant and her family by mail, placing signs with racial slurs on them pointed at complainant's property, and making negative comments to neighbors and parish priest. As a result, complainant sold her house, changed parish churches, and suffered extreme emotional distress); *Commission on Human Rights & Opportunities Maybin v. Berthiaume*, CHRO No. 9950026 (March 29, 1999) (\$50,000 award where racial slurs forced complainant and her family to live under siege for a significant period of time, afraid to leave their home); *Commission on Human Rights & Opportunities ex. rel. Jackson v. Pixbey*, *Commission on Human Rights & Opportunities ex rel. Jackson v. Lutkowski*, 2010 WL 551717180 (CHRO Nos. 0950094 and 0950095) (May 25, 2010) (\$40,000 award in equal amounts of \$20,000 against each of two respondents, neighbors of the complainant who constantly harassed complainant with vulgar racial slurs, blocked the parties' common driveway to prevent complainant from using her car, nightly flashed car headlights and caused a noise disturbance around midnight, vandalized complainant's car, threatened her, used racial epithets against complainant's son and his friends, and spat at her great nephew, a special needs child. When complainant was forced to move, respondent blocked the driveway to block the moving truck. Complainant experienced tension and stress, had trouble sleeping, and lost weight. She sought medical advice and her physician prescribed medication and recommended she move); *Commission on Human Rights & Opportunities ex rel. Lawton v. Jansen*, 2007 WL 4623071 (CHRO No. 0550135) (October 18, 2007) (\$40,000 total emotional distress award, with a \$15,000 set-off for settlement award in companion case. Respondent Chad Jansen made verbal, hateful comments,

I conclude that an award of \$15,000 is fair and reasonable and in keeping with prior awards of this office and of the courts for "garden variety" emotional distress claims in neighbor-on-neighbor hostile environment discrimination claims.

## B

### Out of Pocket Expenses

The complainant has requested, and is entitled to recover an award to cover her out-of-pocket mileage expenses for travel related to the prosecution and investigation of her complaint. *Commission on Human Rights & Opportunities ex rel. Capri v. Malta*, 2010 WL 6763585, \*10 (CHRO No. 1050039) (December 28,

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played loud rock music with racist lyrics to annoy and harass complainant, and spat on her minor children. Complainant became depressed, began drinking heavily, missed work, could not let her children play outside, and ultimately was forced to move); *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills*, CHRO No. 9510408 (August 5, 1998) (\$25,000, not housing discrimination case. Multiple instances of egregious intimidation, harassment, and discrimination on basis of complainant's physical disability and sexual orientation. For several months, the respondent repeatedly, in public in front of other people, taunted, harassed, and threatened the complainant causing her to suffer humiliation, embarrassment, and live in fear that the respondent would seriously harm her); *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, 2000 WL 35575648 (CHRO No. 9810387) (August 9, 2000) (\$25,000 award to complainant with Parkinson's disease who suffered deep humiliation and helplessness from being mocked, harassed, taunted, vandalized, and physically terrorized by group of four teenage boys for more than a year, causing him to live in fear and keep a shotgun by his bed. Respondents caused extensive physical damage to complainant's house and exhibited malicious graffiti on the premises. Some acts were displayed publicly, but most were unobserved by others); *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, 2006 WL 4753467 (CHRO No. 0550116) (October 26, 2006) (\$25,000 award against property manager of condominium complex for public posting attacking complainant's sexual orientation and intimidating actions including withholding services to her condominium. Respondent's harassment caused complainant to experience stress, sleeplessness, anxiety, depression, panic attacks, affecting the quality of her work for several months. Complainant was so afraid of respondent's harassment that she slept with a baseball bat at her bedside); *Commission on Human Rights & Opportunities ex rel. Brown v. Jackson*, 2008 WL 5122193 (CHRO Nos. 0750001, 0750002) (November 17, 2008) (\$22,000 award to two tenants, a married couple, against respondent landlord of owner occupied building, including \$12,000 to complainant Johnmark Brown and \$10,000 to complainant Clarissa Brown. Respondent harassed, berated, threatened, and intimidated them constantly for two months because of their desire to participate in a rental subsidy program; attempted to get Mr. Brown's parole revoked; humiliated complainants with vindictive calls to the Department of Children and Families; provoked them in hallway encounters; entered their apartment without permission; called police several times all on groundless charges; and threatened them with violence at the hands of respondent's boyfriend. Mrs. Brown developed hypertension, suffered headaches and sleeplessness, and saw a physician for medical problems. Mr. Brown suffered fear and anxiety of parole revocation, sought medical counseling, and took prescribed medications for anxiety and physical symptoms); *Commission on Human Rights and Opportunities ex rel. Scott v. Jemison, a.k.a Muhammad and Crescent Realty, Inc.*, 2000 WL 35575662 (CHRO No. 99500200) (March 20, 2000) (\$6,000 award against landlord whose racist-sexist derogatory and vulgar slurs, physical threats to complainant and her minor children, and retaliatory actions including frequent complainants to police and threats of eviction over period of two and one-half years were highly offensive and deeply disturbing to complainant. Complainant suffered depression, anxiety attacks, and premature contractions when pregnant. Respondent landlord's threats to complainant's children made her cry); *Commission on Human Rights & Opportunities ex rel. McIntosh-Waller v. Vahlstrom*, 2008 WL 2683291 (CHRO No. 0750080) (June 6, 2008) (No liability for hostile housing harassment found in condominium association context for actions of respondent, who lived in an adjacent unit, who harassed complainant's three sons using racial slurs and obscene gestures, complained about complainant's dog and her son's noisemaking, and spread unsubstantiated rumors and complainants about her sons' illegal drug use and activity. This conduct, while petty and upsetting, was not deemed the violent conduct or the threat of violent conduct that violates § 3617).

2010). Complainant's travel expenses in the total amount of \$157.15, based on the federal mileage rates of \$0.57 per mile in 2015 and \$0.54 in 2016, are calculated as follows: \$36.18 for one roundtrip to the commission's central office in Hartford in 2016, and \$115.58 for three roundtrips to the commission's central office and one roundtrip to the commission's Waterbury office in 2015. The tribunal finds that an award compensating the complainant for such costs to be reasonable and justified.

### C

#### **Prejudgment and Postjudgment Interest**

The complainant also has requested both prejudgment and postjudgment interest on any award of compensatory damages. General Statutes §§ 37-3a and 46a-86 (b) authorize the human rights referee to award prejudgment and postjudgment interest on the award, within the discretion of the human rights referee. See *Thames Talent Ltd v. Commission on Human Rights & Opportunities*, 265 Conn. 127, 142-44; *Silhouette Optical Ltd. v. Commission on Human Rights & Opportunities*, Superior Court, judicial district of Hartford, Docket No. 92-5205 90 (January 27, 1994) (2008 WL 7211987, \*3-4). As part of the award the respondent shall pay postjudgment interest on the total award at the rate of ten percent per annum, compounded annually.

#### **Conclusions of Law**


As a result of the entry of a default order against the respondent for his failure to file an answer under oath, a hearing in damages was held to determine the relief necessary to eliminate the discriminatory practice and to make the complainant whole. The commission and the complainant presented sufficient credible and detailed evidence from which damages can be awarded for complainant's claim for out of pocket travel expenses incurred in the prosecution of her claim and for complainant's claim for emotional distress damages.

#### **Order of Relief**

**Therefore, based on the foregoing the following remedies are hereby Ordered:**

1. The respondent shall cease and desist from all acts of discrimination against the complainant, any member of her family, or any party to or participant in these proceedings with respect to housing because of race, color, or any other category forbidden by the Fair Housing Act.
2. The respondent shall not retaliate against or otherwise harass the complainant, any member of her family, or any party to or participant in these proceedings.
3. The respondent shall pay to the complainant a total of \$157.15 in reimbursement for travel expenses to the commission's offices associated with the prosecution of her complaint.
4. The respondent shall pay to the complainant \$15,000.00 in emotional distress damages.
5. The respondent shall pay postjudgment interest on the total award at a rate of ten percent per annum, compounded annually. Interest shall accrue on the unpaid balance from the date of this decision.

It is so ordered this 12<sup>th</sup> day of June 2017.

  
Hon. Elissa TWright  
Presiding Human Rights Referee

cc. Kelly Howard  
Kimberly Jacobsen, Esq.  
Scott Madeo, Esq.  
Richard Cantillon