STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights & Opportunities ex rel. Barbara Capri, Complainant	CHRO No. 1050039 Fed No. n/a
v.	
Luis M. Malta and Maria H. Malta, Respondents	December 28, 2010

Final Decision After
Re: Hearing in Damages

I.
Background

On September 17, 2009, Barbara Capri (complainant) filed with the Commission on Human Rights and Opportunities (commission or CHRO) a complaint alleging that she had been discriminated against by Luis M. Malta and Maria H. Malta (respondents) by denying her an apartment they had advertised for rent based on her lawful source of income in violation of Conn. Gen. Statutes § 46a-64a et seq.

On February 5, 2010, the commission after a preliminary investigation determined that there was reasonable cause for believing that an unfair practice was committed as alleged in the complaint and after having endeavored to eliminate the unfair practice by conference, conciliation and persuasion having failed, the matter was certified to public hearing.

On February 9, 2010, the Office of Public Hearings (OPH) sent to all parties a "Notice of Contested Case Proceeding and Hearing Conference" and a copy of the complaint. The notice states in pertinent part:

> A copy of the complaint, and any applicable amendment, is hereby served on the respondent with this notice. **Within fifteen (15) days after receipt of this notice and complaint, the respondent shall file an answer under oath to the complaint and any amendments thereto in accordance with § 46a-54-86a of the Regulations of Connecticut State Agencies (Regulations).** Even if the respondent intends to adopt the answer that was filed during the earlier investigation of the complaint, an answer must be filed at this stage because the contested case process is a de novo proceeding. Failure to file an answer may result in an order of default and a hearing in damages pursuant to § 46a-54-88a (a) (1) of the Regulations. (emphasis in original).

On March 11, 2010, a hearing conference[1] was held. Present were Attorney Kimberly Jacobsen representing the commission, Attorney Greg J. Kirshner representing the complainant and Attorney Michael Cruz (via telephone) representing the respondents.

On March 12, 2010, the undersigned as presiding referee issued a "conference summary and order" which included an order requiring the respondents to file

[1] A hearing conference is the initial hearing in the contested case process. It is at this hearing that the presiding referee establishes dates for the public hearing and other conferences, such as a settlement conference and shall address discovery, exchange of witness and exhibit lists that occurs before a referee other than the presiding referee. At the conclusion of the hearing conference the presiding referee issues a hearing conference summary and order. It is in this order that the respondents were ordered to file an answer to the pending complaint.

their answer to the pending complaint on or before March 26, 2010.[2] The date for filing the respondents' answer (February 27, 2010) was extended at the request of the respondents' counsel, without objection by the complainant or the commission.

On May 19, 2010, the complainant filed a motion for default against the respondents for their failing to file an answer. On June 4, 2010, the undersigned entered an order of default against the respondents and gave notice to all parties that pursuant to Section 46a-54-88a(b) of the Regulations of Connecticut State Agencies that a hearing in damages would be conducted on July 26, 2010, at 10:00 a.m. at OPH, 21 Grand Street, Hartford, CT. The parties were further notified that the scheduled hearing would be limited in scope to the relief necessary to eliminate the discriminatory practice and making the complainant whole and would not address the issue of liability.

On July 21, 2010 the undersigned conducted the aforementioned hearing. The commission was represented by Attorney Michelle Dumas-Keuler and the complainant by Attorney Greg Kirshner. Although the respondents and their attorney were provided notice of both the date and place of the hearing, neither

[2] The respondents presumably filed an answer (though the record does not reflect this) not later than ten (10) days after the receipt of the complaint (see § 46a-54-43a (a) of Regulations of Connecticut State Agencies). However once a complaint is certified to public hearing § 46a-54-86a (a) requires a respondent(s) to file an answer in writing, under oath and signed by the respondent(s) no later than fifteen (15) days after the complaint and notice of hearing are received.

appeared nor in the alternative filed any pleading requesting any postponement or alternative relief to the order of default.

At the conclusion of the hearing a briefing schedule was ordered and the record was to close on September 17, 2010. As a consequence of the complainant seeking an extension to file her post hearing brief the record closed on September 27, 2010.

II.
Parties

The complainant is Barbara Capri of 24 Starr Ave., Danbury, CT, 06810. The Commission on Human Rights and Opportunities is located at 21 Grand Street, Hartford, CT 06106. The respondents are Luis M. Malta and Maria H. Malta both of 21 Aspen Way, Brookfield, CT 06804.

III.
Complainant's Position

The complainant responding to a sign advertising an apartment for rent in close proximity to her current home and her children's' schools in Danbury, CT arranged to tour the advertised apartment. After having seen the apartment the complainant found it perfect and agreed to rent it from the respondents. Prior to executing the lease the complainant explained that she would be using a Section 8[3] voucher for the monthly rent and in lieu of a cash security deposit she would

[3] The Section 8 program is a federally operated rent supplement program under the Department of Housing and Urban Development and administered by municipal housing authorities and designed to assist qualified low income

be using the Security Deposit Guarantee Program (SDGP or SDG). Both of these were agreeable to the respondents. The respondents' acknowledgement of this is confirmed by the execution of certain documents and inspections required by both Section 8 and the SDGP.

The respondents after having executed all the necessary documents, including a lease agreement, notified the complainant that the SDGP would no longer be acceptable and would now require a cash security deposit. As a consequence of the respondents' refusal to honor their commitment to accept the SDGP as well the legal requirement to do so, the complainant was forced to immediately find an apartment for her and her five children.

The complainant, within a week, was able to secure a substitute apartment, however it was in a different town requiring her children to change school systems. After having moved into the apartment it was discovered that it contained black mold which caused the complainant and at least one of her children to become very sick. After an investigation of the black mold she and her children were required again to move, this time back to Danbury, CT requiring her children to be enrolled in different schools then they had previously attended prior to the last move.

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persons pay their rental obligations. See, *United States Housing Act of 1937, Section 8 as amended*; 42 USCA section 1437f; *Commission on Human Rights and Opportunities ex rel. Colon v. Sullivan,* Conn. Super. CVBR1006541, Oct. 7, 2005, n.7, 2005 WL 2855540.

The complainant argues that she has suffered emotional distress because of the respondents' refusal to accept the SDGP and the resulting moves that the complainant and her children were forced to make and seeks an award of $30,000.00 to compensate her for her emotional distress. The complainant further argues she is entitled to money damages for expenses associated with the aforementioned moves and the travel associated with the processing of her complaint.

VI.
Findings of Fact[4]

After conducting the scheduled and noticed hearing in damages, and based upon the commission exhibits along with the testimony taken, the following facts relevant to this decision are found.

1. All procedural notices and jurisdictional pre-requisites have been satisfied and this matter is properly before me for hearing and to render a decision.
2. At all times relevant to this decision the complainant was a single mother of five children ranging in ages between 2 -14 (TR 29).
3. The complainant on or about June 1, 2009 was looking for a new apartment to which to move her family (TR 10).

[4] References to an exhibit are by party designation, number and page. The commission's exhibits are denoted as "CHRO Ex." followed by the exhibit number and page. The complainant's exhibits are denoted as "Compl. Ex." Followed by the exhibit number and page. References to testimony are to transcript page "TR" where testimony is found.

4. The complainant while driving in the beginning of June saw a sign on a property located on Triangle Street, Danbury, CT advertising an apartment. The sign provided a phone number to call if interested (TR 9-10).
5. The complainant immediately called the phone number provided on the sign and left a message that was responded to within an hour by the respondent, Maria H. Malta who returned the call and an appointment was made for the complainant to view the apartment the next day (TR 9).
6. The location of the respondents' apartment was in the same neighborhood and school district as the complainant's current apartment. The children's school was approximately three minutes from the apartment (TR 10 and 30).
7. The complainant, on or about June 2, 2009, viewed the apartment. The complainant believed the apartment was very nice. She found that the yard being fenced in was a "good idea" given that she has a baby and the fencing would allow her baby the ability to play outside. The complainant also noted that the apartment had both a nice deck and back yard (TR 14 and 17).
8. The complainant after viewing the apartment expressed to the respondent, Maria H. Malta that she found it very nice. The respondent questioned her as to how she would be paying the rent and the security deposit. The complainant responded that she had Section 8 and that would be using the Security Deposit Guarantee Program (SDGP). The

respondent, Maria H. Malta asked the complainant to return the next day with the necessary papers and she would fill them out (TR 14 – 15, ¶ ¶ 7 & 8 of complaint).

9. The complainant, the next day at or after 5:30 p.m. met with the respondent, Maria H. Malta at the apartment and presented to the respondent the Section 8 Tenant Inspection and Security Deposit Guarantee Program (SDGP) forms (TR 15).

10. On June 3, 2009, the respondent, Maria H. Malta completed the inspection form except for the complainant's name, apartment number and number of bedrooms. The inspection form had a scale for the condition of particular items of the premises e.g., floors, windows, cabinets, plumbing fixtures. The scale consisted of four categories from "needs replacement or unsafe" to "ok" being the highest. All listed items for inspection were noted as being "ok" (TR 13, Compl. Ex. 1, ¶ 11 of complaint).

11. The respondent, Maria H. Malta, in addition to executing the Section 8 form also executed the "Security Deposit Guarantee Landlord Information" form which informs a potential landlord among other things that the SDGP does not involve a cash security deposit. It further informs a potential landlord were a tenant to owe a landlord for property damage or back rent at the end of a tenancy that landlord could then file a claim with the Department of Social Services (DSS) within 30 days after the tenant moves out. The funds to cover these payments are held by DSS not the landlord. A potential landlord is also notified that under the Connecticut

12. The respondent, Maria H. Malta initialed all seven paragraphs of the SDGP Landlord Information form signifying her understanding of the individual paragraphs along with signing and dating the form (TR 15-16, Compl. Ex. 2).

13. The respondent, Maria H. Malta, on June 3, 2009 in addition to executing the SDGP Landlord Information form, executed a "Security Deposit Guarantee Agreement" which states that the DSS will pay to the landlord any damages suffered due to the tenant's failure to comply with the tenant's obligations as defined in Section 47a-21[5] and 47a-11[6] of the

[5] CGS 47a-21 "Tenant's obligation" means (A) the amount of any rental or utility payment due to the landlord from a tenant; and (b) a tenant's obligations under the provisions of § 47a-11.

[6] CGS 47a-11 Tenant's responsibilities. A tenant shall: (a) Comply with all obligations primarily imposed upon tenants by applicable provisions of any building, housing or fire code materially affecting health and safety; (b) keep such part of the premises that he occupies and uses as clean and safe as the condition of the premises permit; (c) remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by the landlord pursuant to subdivision (5) of subsection (a) of section 47a-7; (d) keep all plumbing fixtures and appliances in the dwelling unit or used by the tenant as clean as the condition of each such fixture or appliance permits; (e) use all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises in a reasonable manner; (f) not willfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so; (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defines in section 47a-32, or a serious nuisance, as defined in section 47a-15; and (h) if judgment has entered against a member of the tenant's household pursuant to subjection (c) of

Connecticut General Statutes provided such amount shall not exceed the amount allowed under Security Deposit Regulation 17b-802.[7] The amount of the security deposit requested by the respondent was equal to 2 months rent ($3,000.00). At the request of the respondent, Maria H. Malta the complainant returned all executed forms to the Housing Authority and DSS (TR 21, Compl. Ex. 3).

14. On June 7, 2009 in compliance with Section 8 requirements the respondent, Maria H. Malta and the complainant signed a lease agreement for the subject apartment. The pertinent terms of the lease agreement were the following term – June 15, 2009 to June 15, 2010; monthly rental of $1,500.00; security deposit of $3,000.00; utilities was tenants' responsibility. The respondent, Luis Malta executed the lease agreement outside the presence of the complainant (TR 25, 26, Compl. Ex. 4).

15. On June 13, 2009, a Section 8 representative inspected the apartment. Present during the inspection were the respondent Luis Malta and the complainant. The apartment passed inspection (TR 23, 27-28).

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section 47a-26h for serious nuisance by using the premises for the illegal sale of drugs, not permit such person to resume occupancy of the dwelling unit, except with the consent of the landlord.

[7] Regulations of Connecticut State Agencies Section 17b-802-8(c) states: Security deposits guarantees for all recipients under the age of sixty-two (62) shall be limited to the equivalent of two (2) month's rent, except in the circumstances where the commissioner has determined that the health, safety or welfare of a child who resides with the applicant is threatened due to an emergency, in which case the security deposit guarantee shall be limited to the equivalent of one (1) month's rent combined with a security deposit that is limited to the equivalent of one (1) month's rent.

16. The respondent, Luis Malta upon learning the apartment passed the Section 8 inspection told the complainant to call his wife to arrange getting keys to the apartment (TR 23).
17. The complainant had anticipated moving into the apartment by June 15, 2009 (TR 23).
18. The complainant, prior to the Section 8 inspection but after executing the lease agreement arranged to have the electricity turned on at the apartment in her name (TR 24-25).
19. The complainant following the direction of the respondent Luis Malta contacted the respondent, Maria H. Malta to arrange to obtain the keys to the apartment. The respondent, Maria H. Malta informed the complainant that she needed to speak to her husband because he wanted a cash security deposit. The complainant responded that Maria H. Malta and her husband had already agreed to accept the SDGP. The respondent, Maria H. Malta stated that cash was needed but that she would speak to her husband (TR 28).
20. The complainant that same day while shopping for groceries received a telephone call from the respondent, Maria H. Malta stating that unless she comes up with $1500 for a cash security deposit by Monday (June 15, 2009) she will not be allowed to move into the apartment (TR 28, ¶ 18 of complaint).
21. The respondent, Maria H. Malta after being told that the complainant and her five children had no place to live, told the complainant that there was

nothing she could do “we need cash” and “we need to pay our mortgage” (TR 28-29).[8]

22. The complainant upon receiving this call and the news that she would be prevented from moving into the apartment became upset realized that she and her five children could be homeless “broke down” and cried, left her groceries and ran to her car (TR 28, 29).

23. After having received the respondent, Maria H. Malta’s call, the complainant called her mother, Deborah Danzy (Ms. Danzy), from her car and explained that the respondents were refusing to let her move in. In making this call she was a “nervous wreck” believing she had nowhere which to move and only one week to find a place to live. Ms. Danzy described the complainant during this call as hysterically crying, that her emotional state was really bad on a scale of one to ten the complainant was a ten (TR 29 and 56).

24. The complainant that same day after having been told she and her children could not move into the respondents’ apartment contacted the Housing Authority to ask what she could do and was told to look for

[8] The comment by the respondent that they needed cash to pay their mortgage is on its face troubling. If in fact the respondents are using a tenants security deposit for the payment of their household expenses it would appear that they are not only violating laws relating to housing discrimination but also § 47a-21 (h) relating to security deposits which states (h) Escrow deposit. (1) Each landlord shall immediately deposit the entire amount of all security deposits received by him on or after October 1, 1979, from his tenants into one or more escrow accounts for such tenants in a financial institution. Such landlord shall be escrow agent of such account. Within seven days after a written request by the commissioner for the name of each financial institution in which any such escrow accounts are maintained and the account number to each such escrow account a landlord shall deliver such requested information to the commissioner.

another place or her Section 8 voucher would be in jeopardy as a result of having no place to use it. This information caused the complainant to become more upset since she had the Section 8 voucher for nine (9) years (TR 30, 31).

25. The complainant placed a great deal of value on her Section 8 voucher as it helped pay her rent thus providing a home for her and her children (TR 30).

26. The complainant the next day after learning that the respondents were refusing to allow her to occupy the apartment purchased a newspaper and began responding to every advertisement for an apartment for rent. Eventually, the complainant found one landlord with an apartment in Bethel willing to accept the SDGP (TR 31 and 58).

27. The complainant accompanied by her mother went to Bethel to see the advertised apartment and found it to be a “dump” but believing she had no choice she applied for the apartment and it was accepted. The complainant and her children moved into the Bethel apartment located at 6 Granite Drive on June 29, 2009 (TR 32 and 58).

28. The apartment located at 6 Granite Drive, Bethel CT was inspected by the same company used by Section 8 to perform the inspection on the apartment of the respondents (TR 48-49).

29. The complainant thought it important that her children remain in the same schools in Danbury however as a consequence of having to move to

Bethel, CT the complainant's children had to change school systems. (TR 10).

30. The complainant would have used the time available to her to look for a suitable apartment in Danbury, CT had the respondents told her initially that they would not accept SDGP (TR 33).
31. One of the complainant's daughters was delayed in starting school in Bethel for two weeks as a consequence of the Danbury school system not finding her records. This delay caused the complainant to become upset.
32. The complainant on or about the end of August or beginning of September 2009, found her 12 year old daughter Teona passed out in her vomit. From this incident, the complainant learned that both units in the duplex where she resided suffered from a black mold problem (TR 34-36, Compl. Ex. 5 and 6).
33. As a consequence of the black mold problem, the complainant was informed by Restoration Cleaning Services that 6 Granite Drive, Bethel CT was "unsafe resulting in health issues such as vomiting, headaches" so that tenants cannot live there until the problem is corrected (TR 35, Compl. Ex. 5).
34. On October 15, 2009, the complainant as a further consequence of the mold problem and her children being very sick was again required to move. On this occasion the complainant moved back to Danbury, CT but was unable to use her SDGP as she had already used it when renting 6 Granite Drive, Bethel, CT (TR 36 and 38).

35. The complainant entered into a lease agreement with Anthony Viccaro to rent an apartment in Danbury, CT from October 15, 2009 to September 15, 2010. The lease required a monthly rental payment of $1643.00 and a security deposit of $1643.00 (TR 38-40, Compl. Ex. 7).
36. The complainant being unable to use the SDGP was required to borrow the monies necessary for the required security deposit ($1643.00) from her children's' father and will have to repay him (TR 38).
37. The complainant's children as a result of moving back to Danbury, CT were again required to change schools and they could not attend the schools they had previously attended just prior to the respondents refusing to accept the SDGP (TR 40).
38. The complainant in preparing to move to the respondents' apartment arranged for a Uhaul truck costing her $100.00 however once hearing of the respondents' position regarding the security deposit was able to cancel the truck and get her money back (TR 41-42).
39. The complainant twice during the course of this matter was required to travel from Danbury to Hartford, CT, first trip was during the investigation of her complaint, and the second was to attend the hearing in damages (TR 53).
40. The complainant has initiated a civil action in the Danbury Superior Court for damages suffered by her and her daughter as a result of living at the Granite Drive apartment (TR 44, 45).

41. The complainant has brought no other legal proceedings against the respondents for any conduct relating to her attempting to rent the apartment (TR 46).

V.
Discussion

The entry of default pursuant to § 46-83(i) authorizes the presiding officer to issue an order eliminating the discriminatory practice complained of and making the complainant whole. In this instance the allegations brought by the complainant have not been responded to by the respondents are deemed admitted without the need of further proof (see § 46a-54-88a(b) of the Regulations of Connecticut State Agencies). Liability has been determined pursuant to the order of default and damages shall be awarded.

A.
Damages

Liability having been determined there remains the assessment of damages based on the evidence presented. In the present matter, the complainant is requesting damages for her emotional distress, damages associated with having to move and traveling to Hartford, CT in connection with this case, and attorney's fees. The authority to award damages under § 46-86(c) …"has been construed to include the authority to award damages for emotional distress or other non-economic harm…. Such awards must be limited to compensatory rather than punitive amounts…" *Commission on Human*

Rights and Opportunities ex rel. Ronald Little v. Stephen Clark, et al., 2000 WL 35575648, CHRO No. 9810387 at 17 (citations omitted).

Emotional Distress

"The public policy considerations in support of emotional distress damages in a housing discrimination case are discussed extensively in *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco,* No. 7930433 pp 12-14 (June 3, 1995). For example, [a]warding humiliation and mental distress damages would deter discrimination and encourage filing of complaints, particularly in the housing area where out of pocket damages are often small…[t]hat damages for emotional distress are not readily subject to precise mathematical compensation is sufficient reason to deny them once the right to such damages has been established…" (citations omitted, internal quotations omitted.) *Commission on Human Rights on Human Rights and Opportunities Hartling v. Carfi,* supra 2006 WL 4753467.

In assessing damages based on emotional distress the criteria to be considered includes "the subjective emotional reaction to the respondent's actions; the public nature of the respondent's actions; the degree of the offensiveness of those actions; and the impact of those actions on the complainant." *Commission on Human Rights and Opportunities ex rel. Hartling v. Carfi,* 2006 WL 4753467, CHRO No. 0550116.

The complainant's onset of emotional distress commenced while shopping for groceries when she received a cell phone call from the respondent, Maria H. Malta. The respondent informed the complainant that the SDGP was no longer acceptable. The tone of the respondent's conversation based on the testimony of the complainant was not malicious or offensive. It could best be categorized as a matter of fact. There was no inference of any delight taken by the respondent or any indication that the respondent questioned the complainant's economic status based on her inability to provide a cash security deposit. While the respondent's communication essentially removed an apartment that the complainant considered perfect, it was done so with the minimum degree of offensiveness. (Compare citations). Compare *Commission on Human Rights and Opportunities ex rel. Jackson v. Pixbey* CHRO No. 0950094 consolidated with *Commission on Human Rights and Opportunities ex rel. Lawton v. Jensen* CHRO No. 0550135 2002 WL_____ where in bothe these cases the respondents over a period of approximately town years harassed the complainants in the most vile and racially charged manner, thus warranting awards of approximately $40,000.00 in each case for emotional distress.

Despite the lack of offensiveness in the respondent's call, their refusal to accept SDGP was a discriminatory act which resulted in the complainant experiencing emotional distress and thus warranting some award of emotional distress damages. *Commission on Human Rights and*

Opportunities ex rel. v. Forvil, Dk. No.1007639 (June 4, 2009) 2009 WL 1959263 appeal pending, No. 18500 (CT Supreme Court).

"When discriminatory actions occur in front of other people, the victim may be further humiliated and thus deserving of a higher award for emotional distress. Indeed, this was a critical factor justifying relatively large awards in cases such as *Commission ex rel. Thomas v. Mills,* supra, CHRO No. 9510408 and *Commission on Human Rights and Opportunities ex rel. Cohen v. Menillo,* CHRO No. 9420047 (June 21, 1995). Conversely, the absence of a public display of discrimination weighs against a substantial award. *Commission ex rel. Peoples v. Belinsky,* supra, 1988 WL 492460 (the absence of such public display led to an award $1500 lower than the $5,000 requested); *Commission on Human Rights and Opportunities ex McNeal-Morris v. Gnat,* CHRO No. 9950108 (January 4, 2000)." *Commission on Human Rights ex rel Taranto v. Big Enough Inc.,* CHRO No. 0420316 (June 30, 2006) 2006 WL 4753475.

Based on the testimony it is clear that no one other than the complainant heard the respondent, Maria H. Malta's statement that unless the complainant comes up with $1500.00 for a security deposit she will not be allowed to move into the apartment. The question than to answer is did others witness the complainant on her phone while being told the SDGP would not be accepted. The complainant testified that she received this call while shopping for

groceries, started crying and then ran out of the store. While her actions were certainly in a public store and one could speculate that other customers must have seen her experience the call from Maria H. Malta, there was no testimony of anyone witnessing her crying, offering to assist her, asking her what was wrong or at a minimum being in some proximity to just witness her reaction. Given the testimony of the complainant I must find that she was not subjected to any discriminatory conduct in front of others.

Finally to be considered is the subjective emotional reaction to the respondents' actions. In this instance the complainant's emotional response was both immediate and visceral. Upon learning of the respondents refusal to accept the SDGP she immediately became upset, started crying and sought refuge in her car. Her first thoughts were of her five children and how they were all about to be homeless. This reaction was confirmed by her mother, Ms. Danzy who testified receiving a call from the complainant who was "hysterically crying" and could hardly be understood. The complainant's mother, Ms. Danzy described this moment as "really bad" and on a scale of one to ten this moment was a ten.

This initial incident was almost immediately followed by the complainant believing she and her children were about to become homeless and that she was in serious risk of losing her Section 8 voucher. This was then followed by

her learning that the SDGP program was now no longer available.[9] This too added to the emotional distress triggered by the respondents.

Having had the opportunity to witness the complainant during the hearing I have no doubt as to her concern for her family or the despair she most certainly experienced.

The complainant seeks an award of $30,000.00 for damages associated with the emotional distress that she has suffered. The complainant in addressing her claim looks to two cases which she argues supports her position. The first is *CHRO ex rel. Arnold v. Forvil,* Dk. No. 1007639 (June 4, 2009) 2009 WL 1959263 (Conn. Super.) appeal pending No. 18500 Ct. Supreme Court. The complainant proffers that the similarity of this case with the pending matter offers a significant degree of support for an award of $30,000. Regrettably I find that significant degree of support lacking. In the *Forvil* decision as cited by the complainant any similarity between the two cases begins and ends with a potential landlord first agreeing to then refusing to accept the SDGP and demanding a cash security deposit. While the complainant represents the court then awarded $50,000.00 in compensatory damages, the decision as cited by the complainant makes no reference to an award. What the court did state in terms of damages was that it would make

[9] Regulations of Connecticut State Agencies § 17b-802-109b) states a person shall be eligible for a security deposit guarantee or security deposit only once within an eighteen (18) calendar month period, except for the circumstance identified in subjection (c) of this section.

orders after further evidence by the parties. While I have no doubt that the court arrived at its award, certainly nothing in the *Forvil* decision provides any analysis as to the emotional distress component of the courts award if in fact any emotional distress award was indeed made. From the record before me I see nothing that allows me to arrive at the conclusion. Even if the court awarded emotional distress damages, the record is without any supporting facts that would allow me to draw from the court's decision and compare how the present matter warrants an award of a similar monetary value.

The second case that the complainant places reliance on is *CHRO ex rel. Westphal v. Brookstone Court LLC,* 2006 WL 463262 (Conn. Super.) (Feb. 15, 2006). This case is apparently offered to provide a floor as what the minimum award should be.

The pertinent facts as to why the complainant cited this case are that the plaintiff after having been denied an apartment felt depressed, her appetite changed, and she lost weight over four to six months. Furthermore, the plaintiff secluded herself from people and her depression lasted eight months to one year. However, the plaintiff had been denied an apartment in another complex and she filed a complaint of discrimination. This case settled for $3,000.00. The court found that the plaintiff could not attribute all her emotional affects to the defendant appearing before it and that shortly after the claimed act of discrimination the plaintiff purchased a house. The court

found the fair and reasonable compensation for the plaintiff's emotional distress was $10,000.00.

In comparison to the pending matter the complainant experienced no depression, no weight loss and certainly did not seclude herself from the public. The complainant here did certainly experience emotional distress. However within approximately a week of being denied the respondents' apartment she found an apartment albeit not to her liking but one that passed a Section 8 inspection. The complainant despite having found a suitable housing had to move her children to a new town and school system which extended the emotional distress caused by the respondents.

The question that now must be answered is, how does the complainant finding a suitable apartment affect her claim for emotional distress damages? This question was raised with the parties at the conclusion of the hearing in damages.[10] Specifically the complainant was asked to address this issue but

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Transcript pages 72 - 74

[10] "Human Rights Referee Austin: Next, in your brief, I'd Like you to discuss the fact that she rents in Bethel, does that cut off damages. And I analogize it by in an employment case, if someone were to sue for back pay or lost wages, and in en effort to mitigate, finds a job, gets a job, and then loses the job, one school of thought is that cuts off your pay.

I guess in this instance the question is well, the mold, but I'd like that addressed because it is an issue that impacts on damages with regards to the Maltas, and how far do the damages extend? When the house the complainant rented was inspected by Section 8, she did enter into a lease, so please address that.

either chose to not to do so or just failed to do so, in either event pursuant to section 46a-54-93a of the Regulations of Connecticut State Agencies, I deem these claims for emotional distress relating to the complainant issues regarding to the Bethel apartment, the transfer of the schools and the complainant's move back to Danbury as waived. Knowing that the complainant has pending a superior court action for damages as a result of her tenancy in Bethel gives me some solace that should she prevail she may achieve additional relief.

The respondents unlawfully refusing to accept the SDGP and the complainant's family upheaval all resulting in emotional distress certainly warrant an award for the distress suffered. However, the record before me precludes that I make such an award within the parameters offered by the

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Because that going to potentially affect any emotional distress, and so forth. The moving back, and expenses, and so forth. Did we address -- I'm assuming you're claiming the differential in rent between -- because the rent went up for Bethel. It was $1500.00 – oh, what was Bethel's rent? …

Human Rights Referee: so, it impacts on that in terms of when – so, your damages component is going to be emotional distress, presumably you'll be arguing for the rent differential to Danbury, the expense in the move back to Danbury, the $600.00 – the $600.00 dollars there.

Mr. Kirchner: Time, expense and travel for getting the paperwork done, and back and forth for Triangle Street and the Housing Authority.

Human Rights Referee: Right. Those – those are the components, plus attorney's fees.

Mr. Kirchner: Correct."

complainant. I therefore find that an award of $4,000.00 is fair and reasonable and in keeping with prior awards of this office for "garden variety" emotional distress claims, *Howell v. New Haven Board of Education,* 2005 WL 217582 *9.

B.

Out of Pocket Expenses

The complainant along with her emotional distress claim has requested that any award included an amount to cover her mileage expenses for the two excursions where she traveled to the commission's offices in Hartford Connecticut. I find this request to be reasonable and do make part of my order that the complainant be reimbursed for her two roundtrips from Danbury, Connecticut to Hartford Connecticut. The mileage was calculated by the complainant and totals 114 miles per trip. The standard mileage for business purposes as provided for by the Internal Revenue Service is .50 per mile.[11] I therefore make as part of my award the sum of $114.00 for reimbursement of the complainant's travel associated with her then pending complaint.

C.

Attorney's Fees

Pursuant to General Statutes § 46a-86(c) the complainant requests an award of $6820.00 (see affidavit of Attorney Greg Kirshner) this fee is broken down

[11] 26 C.F.R. §601.105

in the submitted affidavit by both time and attorney. According to Attorney Kirshner's affidavit his office spent a total of 31.9 hours working on this matter. Of the total time, Attorney Kirshner spent 23 hours and Attorney Maria Escobedo worked the remaining 8.9 hours. These figures were discounted or no charge for the time spent for 1.5 hours for Attorney Escobedo and .9 hours for Attorney Kirshner to the time actually requested. Attorney Kirshner requested an hourly rate of $250.00 which I find reasonable based on his years of practice and the fact, his area of practice is exclusively in the area of fair housing litigation. As to Attorney Escobedo's time an hourly rate of $175.00 is requested, this request is fair and reasonable for an attorney with her experience coupled with that she too practices exclusively in the area of fair housing litigation. Therefore I make the following award for attorney's fees:

Attorney Kirshner:	221 hours × 250	= $5525.00
Attorney Escobedo:	7.4 hours × 175	= $1295.00
Total Award:		= $6820.00

D.

Interest

The complainant has sought an order of post judgment interest. I find that such an award to be reasonable and appropriate and do make it part of the damages awarded to the complainant.

Order of Relief

1. The respondent shall pay to the complainant the sum of $4,000.00 for emotional distress.
2. The respondents shall pay the complainant the sum of $114.00 representing her travel expenses to and from Hartford CT and Danbury CT.
3. The respondents shall pay to the complainant attorney's fees totaling $6820.00.
4. Pursuant to General Statutes § 37-3a the respondent shall also pay post-judgment interest on the total award of damages. Said interest shall accrue daily on the unpaid balance from the date of this decision at a rate of ten percent (10%).
5. The respondents shall cease and desist from all acts of discrimination prohibited under state and federal law.
6. The respondent shall not retaliate against the complainant.

It is so ordered this 28th day of December 2010

_____
Thomas C. Austin, Jr.
Presiding Human Rights Referee

cc.
Barbara Capri
Luis M. Malta
Maria H. Malta
Greg Kirshner, Esq.
Michael Cruz, Esq.