State of Connecticut
Commission on Human Rights and Opportunities
Office of Public Hearings – 450 Columbus Ave., Suite 2, Hartford, CT 06103
Main (860) 418-8770 officeofpublichearings@ct.gov Fax (860) 418-8780

August 17, 2018

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

FINAL DECISION ON REMAND

Dear Complainant/Respondent/Commission:

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

The decision is being sent via email to the commission, 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 8902

Richard Cantillon
488 Perkins Ave., Unit 6-8
Waterbury CT 06704
7015 0640 0007 6546 9152

Kimberly Jacobsen, Esq.
kimberly.jacobsen@ct.gov

Scott Madeo, Esq.
Scott.madeo@ct.gov

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

August 17, 2018

Decision on Remand

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 [1] 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.,[2] 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),[3] as enforced through General Statutes § 46a-58 (a). [4]

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[1] 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).

[2] 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."

[3] The federal counterpart to General Statutes § 46a-64c (a) (9), at 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.

[4] 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, 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 ..."

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 Shelton 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).

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.

By decision issued June 12, 2017, following the hearing on damages upon default, this tribunal found that the commission and the complainant, Kelly Howard, provided sufficient credible evidence to support an award of compensatory damages in the amount of $15,000 for emotional harm suffered by the complainant as a result of the respondent's racially motivated, neighbor-on-neighbor, hostile housing harassment. The tribunal awarded the complainant $157.15 to cover her mileage expenses for travel related to the prosecution and investigation of her complaint, and ordered the respondent to pay postjudgment interest on the total award at the rate of ten percent per annum. On June 27, 2017, the commission filed a petition for reconsideration pursuant to General Statutes Section 4-181a, alleging that amount of damages was an error of law. On July 24, 2017, the petition for reconsideration was deemed denied pursuant to General Statutes § 4-181a (a) (1).

On August 30, 2017, the commission appealed the decision to the Superior Court and caused a petition of administrative appeal to be served on itself, on the respondent Richard Cantillon, and on the complainant. On October 3, 2017, the commission filed an amended petition of administrative appeal.

By order entered at a January 31, 2018, conference in the matter, the case was remanded to the undersigned "for further consideration in light of *Patino v. Birken Manufacturing Co.,* 304 Conn. 679 (2012)." *Commission on Human Rights & Opportunities v. Richard Cantillon,* Superior Court for the judicial district of New Britain at New Britain, Docket No. HHBCV 176039406 S (Order 409665) (Levine, J.).

II
Complainant's Position

This matter involves a claim of race-based neighbor-on-neighbor hostile environment harassment in the condominium association context in violation of General Statutes § 46a-64c (a) (9) and its federal counterpart, § 818 of the federal Fair Housing Act. 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 (I); Regs., Conn. State Agencies § 46a-54-88a (b). A default admits the material facts alleged in the complaint without the need 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. [5]

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 board of directors 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).

[5] 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).

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 a 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).
16. After 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. The respondent directed racially disparaging slurs and obscene gestures at the complainant when he was alone and the complainant was alone and there were no witnesses to observe the harassing conduct (Tr. 17, 18, Record Ex. 1). Witnesses observed two incidents of the respondent's harassing conduct (Tr.18, 20-21, 28, Record Ex. 1).
18. On February 9, 2015, the respondent confronted the 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).
19. The commotion from the snow-shovel incident on February 9, 2015, provoked a neighbor, who witnessed the event, to call the police. The complainant and the respondent were both arrested. Charges against the complainant were dismissed and the respondent was ordered to report to a Community Court (Tr. 18, 20-21, Record Ex. 1).
20. On February 23, 2015, as the complainant walked past the respondent's door, he yelled at her: "I'm still going to get you nigger." (Record Ex. 1)
21. 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).
22. Punter once witnessed the respondent calling complainant a "nigger" and giving her the middle finger (Tr. 18).
23. The respondent twice called Punter a "nigger." (Tr. 30)
24. Punter testified that the respondent's interactions with complainant sometimes made her upset and angry, but did not have an effect on their relationship (Tr. 29, 30).
25. One day, the respondent called the complainant's daughter a "fat black nigger." The complainant and her daughter became upset and complainant felt sorry for her daughter who is overweight (Tr. 20).
26. Once the respondent verbally threatened to get his gun and shoot the complainant. The complainant believed the respondent intended to carry out his threat (Tr. 19, Record Ex. 1).
27. The respondent's intimidating actions prompted the 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 the 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. At times, she fears for her safety and the safety of her daughter (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 she continues to see him at his condominium unit from time to time (Tr. 21).
30. The complainant is employed as a program director for three group homes for mentally disabled persons. The 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).
31. The pursuit of her complaint with the commission 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 hostile environment harassment and intentional interference with the complainant's right to the peaceful use and enjoyment of her home in violation of our fair housing laws. [6] *Skyler 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

[6] 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) (recognizing a cause of action in Connecticut for hostile housing environment discrimination); *Gomes v. Casagmo Condominium Association, Inc.*, Superior Court, Docket No. 331907 (July 23, 1999) (1999 WL 566862, *2) (same.) 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 discussed elsewhere in this opinion.

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."

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. See *Chestnut Realty, Inc. v Commission on Human Rights & Opportunities*, 201 Conn 350, 366 (1986); *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. Harrison v. Greco,* supra, CHRO No. 7930433, 11-13.

Arriving at an appropriate award of noneconomic damages for emotional harm, or other forms of intangible injury, from the loss of civil rights is not a matter of science. E.g., *Commission on Human Rights & Opportunities ex rel. Jackson v. Pixby, Commission on Human Rights & Opportunities ex rel. Jackson v. Lutkowski,* 2010 WL 551717180, *6 (CHRO Nos. 0950094 and 0950095) (May 25, 2010); *Commission on Human Rights & Opportunities ex rel. Hartling v Carfi,* supra, 6. There is no mathematical formula for determining the amount of compensatory damages to make the complainant whole. *Campbell v. Gould,* 194 Conn. 35, 40 (1984); *Johnson v. Chaves,* 78 Conn. App. 342, 347 (2003). 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.

"Criteria to be considered when awarding damages for emotional distress include: the complainant's subjective internal emotional reaction to the respondent's actions; the public nature of the respondent's 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; see also *Commission on Human Rights & Opportunities ex rel. Filshtein v. West Hartford Housing Authority,* 2001 WL 36041440, *15 (October 4, 2001); *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills,* supra; *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco,* supra, 15. These criteria provide a systematic framework for evaluating compensatory awards for noneconomic emotional harm. 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 hostile environment harassment caused the complainant to suffer emotional harm. In evaluating the complainant's entitlement to emotional distress damages, her internal subjective emotional reaction to the respondent's racially motivated harassment is the key element and 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 establishing garden-variety emotional distress claims, the complainant need not present medical or expert testimony; the complainant's own testimony regarding the detrimental effects of the harassment may suffice. See, e.g., *Schanzer v. United Technologies Corp.,* 120 F.Supp.2d 200, 217 (D. Conn. 2000); *Patino v. Birken Manufacturing Co.,* supra, 304 Conn. 707 n. 25; *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 or expert testimony, however, may strengthen a case. See *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* supra. The testimony of healthcare professionals, or relatives, friends and business associates, may provide insight into the complainant's emotional state and strengthen her claim for damages. Id.

In the present matter, the evidence of any psychological injury to the complainant from the respondent's racial comments, obscene-gesture harassment, and threats derives almost completely from the testimony of the complainant. The 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 hostile housing harassment included anger and sometimes fear. Her life was

made miserable when walking outside her home by her fear of the insults and threats directed at her when she walks her dog and traverses common areas going to and from her car and the shared trash dumpster located near the respondent's unit. That the respondent once mocked the complainant's adult daughter with a racial taunt was hurtful and upsetting. The 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 in 2015, and a total of some twenty or thirty times overall 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. [7] The respondent once verbally threatened to get his gun and shoot the complainant. The complainant viewed the threat as credible and feared the respondent would shoot her.

The harassment by the respondent created a hostile living environment and interfered with the complainant's peaceful enjoyment of her home. *Ohana v. 180 Prospect Place*, 996 F. Supp. 238, 243 (E.D.N.Y. 1998). The respondent's acts of discrimination did not, however, cause the complainant to seek medical help, or miss work. It did not interfere with her ability to sleep or eat, 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 only other witness, McCarthy Punter, indicating that the complainant experienced depression, mental anxiety, panic attacks, isolation, sleeplessness, weight loss, or increased drinking – factors generally present in high-award hostile housing harassment cases. [8] Based on the testimony, there is no indication from the evidence presented that any emotional damage suffered by the complainant was severe or had long-term implications or ramifications.

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 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. McNeal-Morris v. Gnat*, supra, CHRO No. 9950108; *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills,* supra, CHRO No. 9510408.

The complaint allegations, and the testimony of the complainant and her former boyfriend, establish that the respondent's racially hostile epithets and obscene-gesture harassment generally were not visible or readily apparent to other persons. In fact, according to the complaint and the complainant's testimony the respondent went out of his way to avoid any public display of his harassing behavior, instead targeting the verbal and obscene-gesture harassment directly and specifically to the complainant when no one else was present. The complaint alleges: "Since the protective order Respondent Cantillon continued to shout

[7] Charges against the complainant were dropped and the respondent was ordered to attend a Community Court.

[8] See discussion below in this opinion.

racial slurs at me, *especially when there were no witnesses to observe this behavior.*" (Emphasis added.) (Record Ex. 1 ¶ 11). The complainant testified "... *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). According to the testimony, the discriminatory harassment occurred in front of other people only twice. The complainant testified that "There was a neighbor that witnessed it, and McCarthy Punter that I used to date witnessed it." (Tr. 18). [9]

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 others observed respondent's threatening conduct at the association meeting as being racially motivated or discriminatory in a way that would have caused a more intense feeling of humiliation and embarrassment or would have exacerbated complainant's distress on account of her race and color. The respondent's racially hostile harassment of the complainant began *after* the association meeting of January 21, 2009, and with two exceptions, was not observed other people.

On this record, there is no evidence that the respondent aimed his hostile speech and conduct at the complainant in the presence of other listeners with the intent to inflict greater emotional distress. With the exception of McCarthy Punter and one neighbor, who each observed the respondent's harassment of the complainant once, no one else was privy to the respondent's racially motivated conduct. The absence in the present case of 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); militates against a higher-end award. See, e.g., *Commission on Human Rights & Opportunities ex rel. McNeal-Morris v. Gnat*, supra, CHRO No. 9950108, 7.

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 epithets 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. On one occasion, the respondent taunted the 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 once threatened to get his gun and fire it 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, with the charges against the complainant being dropped and the respondent's assignment to report to Community Court. There is no evidence that the complainant's job performance was adversely affected, although the harassment did

[9] The neighbor referred to is the neighbor who witnessed the snow-clearing altercation on February 9, 2015, when the respondent physically threatened the complainant and told her that "niggers don't belong here." (Record Ex. 1 ¶¶ 12, 13).

cause 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 out of her home.

The present case stands in contrast to several other housing harassment decisions of this tribunal wherein the parties had a legal housing relationship. See *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) [10] which both involved direct discriminatory harassment of a tenant by a landlord. See also *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi*, supra, 2006 WL 4753467, which involved direct discriminatory harassment of a condominium owner by the property manager of the condominium complex. [11] In these three harassment cases, the respondent landlord, or condominium association property manager as the case may be, had the power and authority, and hence far greater ability than the discriminator 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.[12] 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.

B

Review of Emotional Distress Awards in Other Hostile Housing Environment Cases

Based on a review of similar cases and taking into consideration the particular injuries and the unique circumstances of each, this case lies somewhere in the middle ground of hostile housing environment disputes, between those extreme claims involving "allegations of force and violence, such as the

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[10] The charges in *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) were based on violations of other provisions of the state Fair Housing Act, but not on § 46a-64c (a) (9).

[11] 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.

[12] "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." (Effective: October 14, 2016). "Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, *and the relationships of the persons involved."* (Emphasis added.) 24 C.F.R. § 100.600 (a) (2) (i) (A).

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. See, e.g., *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. McIntosh-Waller v. Vahlstrom*, supra, 2008 WL 2683291, *5; see also *Commission on Human Rights & Opportunities ex rel. Brown v. Jackson,* supra, 2008 WL 5122193, *18.

The respondent's pervasive harassment, pernicious racial epithets, offensive gestures, and verbal and physical threats demonstrate an unacceptable racial bigotry over a considerable period and were sufficiently intimidating and disruptive of complainant's enjoyment of her housing environment 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, at 13. However, the extent of emotional distress damages that can be inferred from the degree of humiliation, psychological injury, pain and suffering established by the evidence presented 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 similar cases decided by this tribunal. The actual discriminatory acts, although egregious, were, by complainant's own admission, not generally committed in the presence of others subjecting her to public ridicule. The harassment did not interfere with her ability to perform her job, did not cause her to experience sleeplessness or weight loss, did not cause her to seek medical help from a healthcare professional, and did not cause her to move from her condominium or deprive her of her home. In the present case, the extent of the complainant's subjective emotional injuries, based on her own testimony, was not as severe or as long lasting as in other high-award hostile housing environment cases, or as in *Patino*, an employment discrimination case involving workplace harassment by co-workers. "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.

Bearing in mind that "[s]uch awards must be limited to compensatory rather than punitive amounts ..." (citations omitted); *Commission on Human Rights & Opportunities ex rel. Jackson v. Pixby, Commission on Human Rights & Opportunities ex rel. Jackson v. Lutkowski,* supra, 2010 WL 551717180, *6, I have, on remand, reexamined the presented evidence in support of an award of emotional distress damages in terms of the complainant's subjective emotional reaction to the respondent's actions; the public nature of the respondent's actions; the degree of offensiveness of those actions; and the impact of those actions on the complainant. In determining the amount of compensatory damages, I have sought to provide stability, predictability, and consistency to the case law. Confronted with the question of an appropriate measure of damages, I have looked to the historical practices of prior referees to inform my understanding of what a fair and reasonable amount in the present case would be. As previous referees also have done, I have examined the amount of damages awarded to other complainants in similar discrimination cases involving comparable injuries. I have canvassed previous awards to victims of hostile housing harassment, landlord-tenant harassment, and hostile public accommodations harassment within a significant body of case law decided by this office, taking into consideration the complainant's particular injuries and the unique circumstances of the case; See *Broome v. Bionde*, 17 F. Supp. 2d 211, 223 (S.D.N.Y. 1997); *Schramm v. Long Island R.R. Co.*, 857 F. Supp. 225, 258 (E.D.N.Y. 1994); and the legal standards and compensation principles that should govern a complainant's right to an appropriate monetary award for emotional distress damages. *Commission on Human Rights & Opportunities ex re. Hartling v. Carfi,* supra, 2006 WL 4753467, *7; see also *Commission on Human Rights & Opportunities ex rel. Filshtein v. West Hartford*

Housing Authority, supra, 2001 WL 36041440, *15; *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills*, supra, CHRO No. 9510408; *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, supra, CHRO No. 7930433, 15. And, with these guideposts in mind, I have, on this remand, further considered my award in light of *Patino v. Birken Manufacturing Co.,* supra, 304 Conn. 679. [13]

In my analysis of an appropriate measure of damages in alignment with the amount of compensatory damages awarded to other complainants in cases involving comparable injuries, I have reconsidered the range of awards by this office in the following hostile environment discrimination cases, listed in descending order from the highest to the lowest award according to the amount of their compensatory awards. [14] For each case, the amount of the compensatory award and certain other significant case-specific factors relating to the scope, severity, and duration of the discriminatory behavior and of the resulting emotional damage are listed below.

1. In *Commission on Human Rights & Opportunities ex rel. Planas v. Bierko*, CHRO No. 9420599 (February 8, 1995), $75,000 in emotional distress damages was awarded to a complainant whom the respondent constantly harassed over a period of three years, shouting racist slurs, sending racist slurs to the complainant and her family by mail, placing signs with racial slurs on them pointed at the complainant's property, and making negative comments to neighbors and parish priest. As a result of the respondent's hostile housing harassment, the complainant sold her house, changed parish churches, and suffered extreme emotional distress.

2. In *Commission on Human Rights & Opportunities Maybin v. Berthiaume*, CHRO No. 9950026 (March 29, 1999), $50,000 was awarded to the complainant where the respondent repeatedly [15] directed racial slurs at the complainant and her family and encouraged others to do so as well. The acts of the respondent caused the complainant and her family to live under siege, afraid to leave the security their home and of being together. The complainant was compelled to seek medical assistance. As a result of the respondent's verbal harassment, the children's school work suffered, and, continuing to the time of the public hearing, the children suffered from nightmares.

3. In *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), the complainant was awarded $40,000 in emotional distress damages, in equal amounts of $20,000 assessed against each of two respondents, neighbors of the complainant who constantly harassed the complainant with vulgar racial slurs, blocked the parties' common driveway to prevent the complainant from using her car, nightly flashed car headlights and caused a noise disturbance around midnight, vandalized the complainant's car, threatened her, used racial epithets against her son and his friends, and spat at her great nephew,

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[13] Employment discrimination cases may be used as authority in establishing appropriate damages in housing discrimination cases. *Commission on Human Rights & Opportunities ex rel. Peoples v. Belinsky*, supra, 1988 WL 492460, * 6.

[14] These cases, which were referenced in footnote 11 of my decision in this case issued June 12, 2017, were considered as guidance for assessing the amount of that award. To the best of my knowledge, none of the compensatory emotional distress awards in the decisions cited has been challenged on appeal or overturned.

[15] The duration and frequency of the respondent's harassment of the complainant and her children is not mentioned in the decision.

who was 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. This racially motivated harassment commenced on the day the respondents moved in next door to the complainant and continued on a daily basis up to and including the day the complainant was forced to move to a new residence approximately two years later.

4. In *Commission on Human Rights & Opportunities ex rel. Lawton v. Jansen,* 2007 WL 4623071 (CHRO No. 0550135) (October 18, 2007), a total emotional distress award of $40,000, with a $15,000 set-off for settlement award in companion case brought against the complainant's landlord, was awarded against the respondent Chad Jansen who made verbal, hateful comments related to the race and color of the complainants and her children, played loud rock music with racist lyrics, and constantly banged on the common wall between their two apartment to annoy and harass complainant. The respondent spat on complainant's minor children. The complainant became depressed, began drinking heavily, missed work, could not let her children play outside, and ultimately was forced to move to a less desirable apartment. The respondent's harassment began about a year after complainant took occupancy and continued for about two and one half years until the complainant became so upset that she moved.

5. In *Commission on Human Rights & Opportunities ex rel. Little v. Clark,* 2000 WL 35575648 (CHRO No. 9810387) (August 9, 2000), damages for emotional distress in the amount of $25,000 were awarded to complainant, who was totally disabled from Parkinson's disease. Because of his Parkinson's disease, the complainant had movement difficulties, lack of coordination, and dyskinesia, a condition brought on by Parkinson's medication which is characterized by involuntary movements such as falling, walking pigeon-toed, holding one's arms behind one's back, and leaning forward. The complainant 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. The respondents caused extensive physical damage to the complainant's house. They damaged his gutters and siding, exhibited malicious graffiti on the premises, placed feces in his barbecue, intentionally played basketball against the complainant's house, placed hang-up calls to the complainant, and rang his doorbell at night. Some acts were displayed publicly, but most were unobserved by others. According to medical and expert testimony, the ongoing stress from the hostile harassment exacerbated the physical symptoms of the complainant's Parkinson's disease and intensified his feelings of vulnerability.

6. In *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* 2006 WL 4753467 (CHRO No. 0550116) (October 26, 2006), $25,000 as compensation for emotional harm was awarded against the property manager of a condominium complex, and his girlfriend, for publicly posting on a community bulletin written comments attacking the complainant's sexual orientation and other intimidating actions, including harassing and videotaping guests who were arriving at the complainant's home to attend a gathering of association residents, and withholding services to her condominium. The respondent's harassment caused the complainant to experience stress, sleeplessness, anxiety, depression, and panic attacks, and affected the quality of her work for several months. The discriminatory actions triggered the complainant's dormant symptoms of depression and anxiety, necessitating her return to therapy, with lingering, long-term impacts on her emotional state. The complainant was so afraid of respondent's harassment that she slept

with a baseball bat at her bedside. On a complaint to the police, the respondent's girlfriend (McKeon) was arrested for breach of the peace and second-degree harassment. The respondent property manager (Carfi) was arrested for conspiracy to commit breach of peace and conspiracy to commit second-degree harassment, and the complainant obtained restraining orders against both individuals. The hostile environment harassment, which spanned a period of about six weeks, ended when the condominium association board terminated the respondent.

7. In *Commission on Human Rights & Opportunities ex rel. Brown v. Jackson,* 2008 WL 5122193 (CHRO Nos. 0750001, 0750002) (November 17, 2008), the referee split an emotional distress award of $22,000 between two tenants, a married couple, with $12,000 awarded to complainant Johnmark Brown and $10,000 awarded to complainant Clarissa Brown, against respondent landlord of an owner-occupied building, who harassed, berated, threatened, and intimidated the complainants constantly for two months because of their desire to participate in a rental subsidy program. The respondent 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 the police several times all on groundless charges; and threatened the complainants 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.

8. In *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 was found in the condominium association context for actions of the respondent, who lived in an adjacent unit, who harassed complainant and complainant's three sons using racial slurs and obscene gestures, complained about complainant's dog, and about her sons' noisemaking, and spread unsubstantiated rumors and complainants about her sons' illegal drug use and activity. The respondent once blocked the complainant in her car. Respondent once complained to the condominium association that the complainant was violating association rules. The harassment occurred about once a month for a little more than a year. This conduct, while petty and upsetting, was not deemed the violent conduct or the threat of violent conduct that violates the Fair Housing Act.

Because of similarities in the nature and severity of the discriminatory behavior, I also considered the amount of the awards in *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills,* CHRO No. 9510408 (August 5, 1998), and in *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), although these cases do not present hostile environment harassment claims in violation of General Statutes § 46a-64c (a) (9), and its federal counterpart.

Commission on Human Rights & Opportunities ex rel. Thomas v. Mills, supra, involved a claim of discrimination in public accommodations practices in violation of General Statutes § 46a-64. The hearing officer awarded $25,000 in emotional distress damages against a private security guard for 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 highly visible manner in public in front of many other people, taunted, harassed, and threatened the complainant, a lesbian with reflex sympathetic dystrophy, a progressive disease involving the involuntary nervous system, and her partner, who was undergoing chemotherapy for cancer, with anti-gay rhetoric and anti-disabled-

person comments. The public accommodations harassment occurred in the parking lot of a public voting place with many people around. The respondent interfered with complainant's use of a public parking lot, blocked her car in, and interfered with her voting. In another instance, respondent challenged the complainant's use of the handicapped entrance to a bank and caused a steel door to slam into her, physically injuring her. On another occasion, to avoid a second incident at the public voting place, the complainant and her partner left without voting. The respondent's discriminatory intimidation and repeated threats caused the complainant to suffer humiliation, embarrassment, and live in fear that the respondent would seriously harm her. As a result, the complainant kept a gun in her home for protection.

In *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), the presiding referee awarded the complainant $6,000 in emotional distress damages against her landlord whose racist-sexist derogatory and vulgar slurs, and physical threats against the complainant and her minor children, spanning two and one half years, were highly offensive and deeply disturbing to the complainant and her children. The evidence showed that the respondent Muhammad began verbally and physically harassing and threatening the complainant and her five minor children after the complainant filed a complaint with the Hartford Department of License and Inspections, which cited the respondents for ongoing violations. The respondents' retaliatory actions included frequent complaints to the police and threats of eviction. After the complainant filed a complaint with the Commission on Human Rights and Opportunities, she was served with an eviction notice. The respondent Muhammad attempted to coerce the complainant into withdrawing her CHRO complaint by offering to allow her to stay in the apartment if she withdrew the complaint. The respondent Muhammed also pressured the complainant to join his mosque. The complainant suffered depression, anxiety attacks, and premature contractions when pregnant. The respondent landlord's threats to the complainant's children made her cry. Although the complaint was based on alleged violations of other provisions of our fair housing laws,[16] and not on General Statutes § 46a-64c (a) (9), the respondents' discriminatory threats and abusive conduct, where the continued provision of rental services were conditioned on complainant's submission to certain demands, was sufficiently pervasive and severe as to also interfere with the complainant's exercise of her right to the peaceful use and enjoyment of her home free from quid pro quo and/or hostile environment harassment.

With regard to the emotional distress award in *Commission on Human Rights & Opportunities ex rel. Planas v. Bierko,* supra, CHRO No. 9420599, previous presiding referees have noted that the decision in *Planas* provides few supporting facts and little analysis regarding the factual and legal basis for such a substantial award, and the $75,000 award stands out as being exceptionally high.[17] In determining the

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[16] In *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), the complainant alleged that she and her minor children were physically and verbally assaulted and harassed, denied equal services, and threatened with eviction on the basis of her race and color and of her children's race and color in violation of General Statutes §§ 46a-64c (a) (2), 46a-64c (a) (3), and 46a-64c (a) (4).

[17] In the 1998 case of *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills,* supra, CHRO No. 9510408, 9, the hearing officer notes that other than the anomalous $75,000 award in the *Planas* case, Connecticut decisions "have as their high water mark the $15,000 award for emotional distress damages in the Murphy case." (The reference is to *Commission on Human Rights and Opportunities ex rel. Gonzales v. Murphy,* CHRO No. 9210241 (December 30, 1992). In 2006, the presiding referee in *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* supra, 2006 WL 4753467, 8, also agreed that the award was anomalous, and in critiquing the basis for *Planas* award noted that ".... with few facts and little legal analysis, the hearing officer [in the *Planas* case] relied upon federal decisions in calculating the damages award. Federal awards for emotional distress in cases of housing

amount of the emotional distress award in the *Planas* case, the hearing officer relied on the broad authority conferred on hearing officers to award damages for emotional distress in housing discrimination cases, without further analysis under the four-factor framework relevant in determining the amount to aware for emotional distress. Id., 2-3. As previous referees have concluded in treating the *Planas* award as an anomaly, the basis for the amount of the award is not satisfactorily explained in the decision. In the absence of any discussion of the factual or legal basis for the *Planas* award in terms of accepted legal standards, the exceptionally high award is not a meaningful measure for the appropriate level of damages to be awarded for emotional distress in cases of this kind.

Since the Connecticut courts have yet to issue an award of compensatory damages in a case involving a housing discrimination claim based on hostile environment harassment, [18] the historical practice of prior referees over the past two decades informs the tribunal's understanding of what a fair and reasonable emotional distress award would be. The award in *Planas* stands out as an historical exception to the basic range of such awards. The overwhelming weight of the awards for emotional distress in other hostile housing environment cases, post-*Planas*, strongly suggests that the relatively high award in *Planas* is an outlier, not the harbinger of a trend.

Leaving the exceptionally high *Planas* award out of the equation, as other hearing officers have done, then the $50,000 award in the 1999 case of *Commission on Human Rights & Opportunities Maybin v. Berthiaume*, supra, CHRO No. 9950026, represents the high water mark for emotional distress damages in cases of this kind. [19] As with *Planas*, the factual and legal basis for setting the *Maybin* award at $50,000 is not satisfactorily explained in the opinion or readily apparent from the sparse analysis of the case. [20] The basis for the $50,000 emotional distress award rests primarily on the "aggressive" monetary award in *Planas*; on a trend "in certain appellate decisions [that] have encouraged hearing officers to be aggressive in the award of [compensatory] damages. ..." Id., 2-3, and on awards in other jurisdictions.

In the two cases where the size of the award was $40,000, namely, *Commission on Human Rights & Opportunities ex. rel. Jackson v. Pixbey, Commission on Human Rights & Opportunities ex rel. Jackson v. Lutkowski*, 2010 WL 551717180, supra, and *Commission on Human Rights & Opportunities ex rel. Lawton*

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discrimination have consistently been much higher than awards from this tribunal." Id, at footnote 7. And in the 2007 decision, *Commission on Human Rights & Opportunities ex rel. Lawton v. Jansen,* supra, 2007 WL 4623071, the presiding referee noted that the award in *Planas* "seems to be at the far end of the extreme of awards. Scant facts and conclusions are given which makes it difficult to use in arriving at an appropriate award for emotional distress." Id., n.10.

[18] The closest our courts have come to providing any guidance on this subject is in two cases in which, on pre-trial motions, the trial court recognized a cause of action in Connecticut for hostile housing environment discrimination, without rendering a decision on the merits. *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) (recognizing a cause of action in Connecticut for hostile housing environment discrimination); *Gomes v. Casagmo Condominium Association, Inc.*, Superior Court, Docket No. 331907 (July 23, 1999) (1999 WL 566862, *2) (same.)

[19] The *Maybin* case was decided by the same hearing officer who decided *Planas*.

[20] In seeking an appropriate range in which to analyze and calculate a meaningful award in *Commission on Human Rights & Opportunities ex rel. Lawton v. Jansen,* supra, 2007 WL 4623071, the hearing offer tempered his use of the *Maybin* case as a comparator "due to the limited nature of the hearing officer's findings of facts."

v. Jansen, 2007 WL 4623071, supra, the respondent had spat on minor children, conduct that was likely reflected in the awards as being particularly egregious. Of the remaining six cases, in three of those cases, the size of the award was $25,000. [21] In one case, the size of the award was $22,000, apportioned between two complainants, with an award of $12,000 to one complainant, and an award of $10,000 to the other complainant. In one case, the size of the award was $6,000. [22] And in one case, where liability was not found, the award was zero.

In the difficult task of evaluating the complainant's intangible emotional injury, the three hostile environment decisions that I perceive as offering the most guidance, based the relationship of specific elements of the emotional distress suffered by the complainants in a given case to the amount of the award, are *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; and *Commission on Human Rights & Opportunities ex rel. McIntosh-Waller v. Vahlstrom,* supra, 2008 WL 2683291.

In *Hartling v. Carfi*, the respondents, the property manager of a condominium complex and his girlfriend, publicly posted derogatory written comments attacking the complainant's sexual orientation, and engaged in other intimidating actions after the complainant filed a complaint with the Commission on Human Rights and Opportunities alleging housing discrimination based on her sexual orientation and in retaliation for previously filing a housing discrimination complaint with the commission. When the commission issued a draft finding, and then a final finding, of no reasonable cause, the respondent's girlfriend, McKeon, publicly posted the notices of the commission's draft and final findings on an association bulletin board, with derogatory slurs. The respondent Carfi, the property manager, disrupted a gathering of residents at the complainant's house with harassing conduct, and withheld services from her living unit. The respondent's harassment of the complainant, which spanned a period of about six weeks, ended when the association board terminated the respondent. The respondent's harassment caused the complainant to suffer from stress, anxiety, sleeplessness, depression, and panic attacks. The respondent's actions triggered the complainant's dormant symptoms of depression and anxiety, necessitating her return to therapy. Her emotional state adversely affected her productivity at work for several months. She withdrew from family and friends, cried often, suffered from digestive problems, and feared retribution by the respondents. In awarding the complainant $25,000 for emotional distress damages, the referee stressed that the harassment had profound long-term emotional effects on the complainant, was directed at the complainant in a highly public setting exacerbating the complainant's embarrassment and humiliation, and was highly offensive.

In *Little v. Clark,* where the complainant with Parkinson's disease 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, the tribunal awarded $25,000 in emotional distress damages. Respondents caused extensive physical damage to

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[21] Although technically a hostile public accommodations environment harassment case, and not a housing discrimination case, *Commission on Human Rights & Opportunities ex rel. v. Mills*, CHRO No. 9510408 (August 5, 1998) is included as a comparator.

[22] Although technically not a hostile housing environment harassment case, *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), involved the type of coercive, intimidating, threatening conduct by a landlord against the complainant tenant that also could foster a hostile housing environment in violation of General Statutes § 46a-64c (a) (9).

complainant's house, exhibited malicious graffiti on the premises, and committed other acts of vandalism. Some acts were displayed publicly, but most were unobserved by others.

In *McIntosh-Waller v. Vahlstrom,* no liability for hostile housing harassment was found in the condominium association context for actions of the respondent, a neighbor who lived in an adjacent unit, who harassed the 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 constitutes a discriminatory housing practice under the Fair Housing Act.

As compared to the amount of the awards in these three similar cases, I conclude that a compensatory damage award of $15,000 for emotional injury suffered by the complainant as a result of the respondent's discriminatory conduct is fair and reasonable and falls well within the limits of just damages awarded in previous cases. Unlike the situation in *Hartling v. Carfi,* the respondent's discriminatory actions in the present matter were not directed at the complainant in a highly public setting exacerbating her humiliation and embarrassment, and did not cause the present complainant to suffer depression and anxiety, affect her productivity at work, or cause her to suffer severe or long-term emotional effects. Unlike the situation in *Little v. Clark,* the present complainant's home was not physically vandalized, malicious graffiti was not exhibited at her condominium unit, nor was she so frightened from being physically terrorized that she kept a shotgun by her bed. The present complainant's peaceful enjoyment of her home was not physically interrupted by hang-up phone calls, doorbell ringing, and basketball-bouncing against her outside walls. In *McIntosh-Waller v. Vahlstrom,* after a contested hearing, the alleged discriminatory conduct by a neighbor in an adjacent condominium unit, consisting of harassment in the form of racial slurs and obscene gestures directed at the complainant's three sons, was not deemed to result in liability for creating a hostile housing environment in violation of our fair housing laws. Since liability was not found, and no damages were awarded, the degree of emotional distress suffered by the complainant was not at issue. Nevertheless, the nature of the discriminatory conduct alleged in *McIntosh-Waller* is strikingly similar in many respects to the respondent's discriminatory conduct in the present matter, which also took the form of obscene gestures, racial slurs and epithets. In both cases, the harassing behavior at issue involved not only speech, but also conduct; in *McIntosh-Waller,* the respondent once blocked the complainant in her car, and complained to the condominium association alleging the complainant was violating association rules. Not alleged in *McIntosh-Waller,* however, were the type of physical or verbal threats that tinged the present case.

C
Review of Emotional Distress Award in *Patino*

Turning to the damages awarded by the jury in the *Patino* case, when a case is decided and damages are awarded by a jury, the jury is not required to make findings or explain its verdict or the basis for the award. Whereas, if the judge in a court case, or the presiding referee in an administrative adjudication in this tribunal, makes an award, she or he is required to examine the evidence with reference to all of the factors that have been developed to provide guidance to provide guidance for factfinders in evaluating damages for the largely intangible emotional injuries to victims of housing, and other forms of, discrimination. *Commission on Human Rights & Opportunities ex rel. Peoples v. Belinsky,* supra, 1988 WL 492460, *4-6. Since the jury in *Patino* did not articulate the reasons for assigning the large award, we cannot know the jury's reasoning and premises for the award. The justification for the compensatory damage award in *Patino* cannot be divined with any certainty.

Patino is an employment discrimination action based on workplace harassment in which an employer was held liable under General Statutes §46a-81c (1) for the harassment of the complainant by other co-workers, including a supervisor, based on the complainant's sexual orientation, when the employer knew of the unlawful harassment and repeatedly failed to take immediate and appropriate corrective action to prevent it. [23]

Under the facts of the *Patino* case, the plaintiff, who was employed as a machinist by the defendant, was subjected to persistent and pervasive name-calling by co-workers on the shop floor from 1991 until his termination in 2004. The name-calling consisted of derogatory slurs in English, Spanish, and Italian about homosexuals, such as "pato," "maricon," "pira," "homo," "faggot go home," and "faggot get out of here." The plaintiff was subjected to verbal harassment by co-workers very often, sometimes two or three times a week, for thirteen years. The demeaning treatment caused the plaintiff to be so upset his body would shake and his work product suffered as a result. The harassment made the plaintiff feel angry, sad, and humiliated, and interfered with his ability to sleep. After the plaintiff complained to the defendant, his employer, about the harassment, the defendant recommended that the plaintiff be evaluated by a psychologist because his job required him to work with precision instruments and he posed a safety risk to others when his mental facilities were compromised and he lost concentration. After numerous attempts to have the employer solve the problem, including four earlier complaints to the Commission on Human Rights and Opportunities, [24] the plaintiff filed a fifth complaint with the commission in January 2004, which was the subject of the 2012 *Patino* decision. In that decision, the court for the first time established a hostile work environment cause of action based upon a person's sexual orientation, recognized that an employer can be held liable for derogatory slurs that were not necessarily said directly to the plaintiff but were said in his presence, and upheld a jury award of $94,500 for emotional distress damages in favor of the plaintiff.

The *Patino* decision is silent as to the factors that influenced the amount of damages awarded. Nevertheless, the facts establish that the discriminatory work environment harassment was highly offensive and occurred entirely in a public setting within view and earshot of co-workers, which would cause a more intense feeling of humiliation and embarrassment than in the present case. In *Patino*, the plaintiff's stress from the harassment was so overwhelming that the plaintiff's body would shake, his work product suffered, and he had difficulty sleeping. The workplace harassment provoked the defendant to recommend that a psychologist evaluate the plaintiff because his job required him to work with precision instruments and he posed a safety risk to others when his mental state was impaired. The name-calling by co-workers was pervasive and persistent, and permeated the workplace. Given the sustained nature of the discrimination endured by the plaintiff several times a week over a period of thirteen years in a

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[23] Liability for hostile environment harassment may be imposed more easily in the housing context than in the workplace. Neighbors may be found liable for discrimination based on verbal slurs and insults alone. The burden to support a hostile work environment claim is higher. To support a hostile work environment claim, "the workplace [must be] permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive *to alter the conditions of the victim's employment* and create an abusive working environment .... By definition, therefore, a hostile work environment is one that is so severe that it affects the terms and conditions of the workplace." (Emphasis added; internal quotation marks omitted.) *Patino v. Birken Manufacturing Co.*, 304 Conn. 679, 691 (2012).

[24] One of the plaintiff's complaints to the Commission on Human Rights and Opportunities was settled and one complaint was withdrawn.

highly public setting on the work shop floor, in the presence of his coworkers; the severity of the hostility he experienced in the form of derogatory slurs in several languages about homosexuals; the nature and extent of the his physical and emotional reaction to the discriminatory conduct; and the continued failure of the defendant to remedy the situation despite the plaintiff's many complaints to defendant and five formal complaints filed with the Commission on Human Rights and Opportunities, the *Patino* court held that the trial court did not abuse its discretion when it concluded that the award was not excessive or shocking when compared to verdicts awarded under similar circumstances.

There is a wide discrepancy between the $94,500 jury award for compensatory damages involving workplace harassment in *Patino* and the range of awards for emotional injury within the mainstream of hostile environment cases and other similar cases decided by this tribunal, wherein the hearing officer must articulate the basis for the determination that a given award is a fair measure of damages. The *Patino* decision instructs us only that the jury's $94,500 award "falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury [was] influenced by partiality, prejudice, mistake or corruption ....The court's broad power to order a remittitur should be exercised only when it is manifest that the jury [has] included items of damage which are contrary to law, not supported by proof, or contrary to the court's explicit and unchallenged instructions." (Citations omitted; internal quotation marks omitted.) *Patino v. Birken Manufacturing Co.*, supra, 304 Conn. 706.

In reviewing the jury award of $94,500 for emotional distress damages in *Patino*, I have carefully compared the case-specific facts relating to the workplace harassment in *Patino* with the factual and legal basis for my award of $15,000 for emotional injury to the complainant in the present case. Based on a thoughtful reevaluation of my award with reference to the facts in evidence applied with reference to the elements that should be considered in determining the amount of compensatory damage awards in cases involving discrimination claims of this kind, I find that a compensatory damage award of $15,000 is a fair and reasonable measure of damages and falls well within the realm of compensatory awards ordered in similar cases decided by this office.

Accordingly, I conclude, based upon the allegations in the complaint, on the evidence presented, and a comprehensive review of emotional distress awards in similar decisions of this tribunal, viewed together with the jury award in *Patino*, that an award of $15,000 for emotional distress suffered by the complainant as a result of the respondent's discriminatory action is appropriate and well within the mainstream of prior awards of this office for "garden variety" emotional distress injuries. On the remand, no change to my previous award of emotional distress damages is made.

D

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, 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.

E
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 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 17th day of August 2018.

Elissa T. Wright

Hon. Elissa T. Wright
Presiding Human Rights Referee

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