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

Commission on Human Rights and Opportunities ex rel. Jeffrey Daniels, Complainant

CHRO No. 0550012
HUD No. 01-04-0410-8

v.

Andre C. Ruellan, Respondent

November 6, 2006

FINAL DECISION

I.

PROCEDURAL BACKGROUND

On or about July 30, 2004, the complainant, Jeffrey Daniels, filed a complaint with the Commission on Human Rights and Opportunities ("commission") alleging that the respondent, Andre Ruellan, refused to rent an apartment to him because of his source of income ("section 8"), and physical disability, in violation of General Statutes §§ 46a-58 (a), 46a-64c (a) (1), 46a-64c (a) (2), 46a-64c (a) (3), 46a-64c (a) (6) (A), 46a-64c (a) (6) (B) and Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 et seq.

The commission investigated the charges in the complaint, found reasonable cause to believe an unfair housing practice had been committed, and attempted to eliminate the unfair practice by conference, conciliation and persuasion. After failing to so eliminate the practice, the commission certified the case to public hearing on

February 8, 2005, in accordance with General Statutes §§ 46a-84 (a) and § 46a-54-79a of the Regulations of Connecticut State Agencies ("the regulations").

I conducted the duly noticed public hearing on January 18, 2006. Thereafter the parties filed post-hearing briefs. Proceedings related to a possible award of attorney's fees were held as more particularly set forth in Section lll Subsection F of this decision and the record closed August 15, 2006.

II.

FINDINGS OF FACT

1. The complainant was awarded a section 8 certificate in 1998 by the West Haven Housing Authority through the Veterans Administration. (Tr. p. 15)
2. The complainant used the certificate to assist him in making payments on an apartment he leased in West Haven. (Tr. p. 16)
3. The complainant also receives social security disability benefits, which commenced in or about 1999 or 2000. (Tr. p. 16)
4. In July 2004 the complainant still held a section 8 certificate and was also still receiving social security disability benefits. (Tr. pp. 16, 17)
5. The complainant has no means of support other than section 8 and social security disability benefits. (Tr. p. 17)
6. The complainant moved from West Haven to 275 Palisade Avenue, Bridgeport in February 2004. (Tr. p. 17)
7. The complainant transferred his section 8 certificate from West Haven to Bridgeport. (Tr. p. 18)

8. The complainant's rent in Bridgeport was $700 a month. (Tr. p. 18)

9. The rent advertised by the respondent for his apartment was $700 a month. (Tr. p. 18)

10. Under the section 8 formula, the complainant's share of the rent for his Palisade apartment in Bridgeport was $158 a month. (Tr. pp. 19, 22; CHRO Exh. 8)

11. The complainant discovered many things wrong with the Palisade apartment (leaks, drug transactions, broken elevators) and received permission from section 8 to look for another apartment in June of 2004. (Tr. pp. 19-23)

12. After giving notice to the landlord and section 8 of his intention to move the complainant had thirty days to find an apartment prior to the expiration of his section 8 certificate. (Tr. p. 23)

13. The complainant needed to find a one-bedroom apartment pursuant to the terms of his section 8 certificate. (Tr. p. 23)

14. In July 2004, the complainant responded to a newspaper ad for an available apartment and called the number listed and a left a message and telehone number on the answering machine. (Tr. pp 25, 26; CHRO Exh. 1)

15. The complainant received a "call back" about the available apartment. The complainant's caller ID indicated that the call was coming form Andre Ruellan (respondent). (Tr. p. 26)

16. The call was in fact made by the respondent. (Tr. p. 28)

17. The respondent informed the complainant that the apartment that was available (50 Carleton Avenue, Bridgeport), was a one-bedroom unit with hardwood floors, and was an upper level apartment. (Tr. pp. 28, 29)

18. The respondent informed the complainant that the apartment was available for rent. (Tr. p. 29)

19. The complainant informed the respondent that he had a section 8 certificate and that he was able to pay his rent with his certificate. (Tr. p. 29)

20. The complainant told the respondent in response to his inquiry that he was not employed and was “on disability.” (Tr. p. 29)

21. The complainant did not indicate and the respondent did not ask, whether the disability was temporary or permanent. (Tr. pp. 160, 161)

22. The respondent informed the complainant that he did not accept section 8, no one in his building had section 8 and he was not going to start accepting it now. (Tr. p. 29)

23. During the telephone conversation between the complainant and the respondent, the respondent did not ask the complainant how much income he received every month, did not ask the complainant how much money he paid at his previous apartment, did not ask the complainant any questions regarding whether he had ever been the subject of eviction proceedings, or about his credit history, or whether he had any problems with prior landlords. (Tr. p. 30)

24. The complainant informed the respondent that his refusal to accept section 8 was discrimination, and respondent stated that as far as he was concerned it was not discrimination. (Tr. p. 31)

25. The complainant reacted negatively to the rejection of his section 8 certificate, testifying that he felt hurt and belittled, as if he was nobody, (Tr. pp. 35-39), and that he felt as if the respondent had looked right through him like he was unimportant. (Tr. P. 45)

26. After his encounter with the respondent, the complainant contacted Bridgeport Fair Housing and spoke to a representative Joe Wincze (Wincze) and informed him of his conversation with the respondent. (Tr. pp. 39-41)

27. The complainant quickly found an apartment to rent in Stratford, moved in on August 1, 2004, and used his section 8 certificate there. The full market rent for the apartment initially was $875 a month and the complainant's share of the rent was $295 a month. (Tr. pp. 43, 44)

28. Commencing August 1, 2005, the complainant's rent increased and his share of the Stratford apartment rent increased to $327 a month. (Tr. pp. 44, 45)

29. After his phone contact with the respondent, the complainant spoke to his pastor, his caseworker and his psychiatrist at family services about his experience. (Tr. p. 45)

30. The complainant spent approximately $60 on gas looking for apartments to rent, after being rejected by the respondent. (Tr. p. 47)

31. The complainant also paid $50 in application fees for other apartments. (Tr. p. 48)

32. Thomas Ivers (Ivers) is employed by the City of Milford as block grant coordinator and fair housing officer. (Tr. p. 106)

33. As the fair housing officer for the City of Milford, Ivers responds to complaints and inquiries from landlords, real estate agents and tenants about tenant/landlord issues. (Tr. pp. 106, 107)

34. Ivers has been fair housing officer for four years and has undergone discrimination training conducted by the Connecticut Fair Housing Center. He has also participated in additional training sessions. He is a member of the Connecticut Fair Housing Association and has received training through the educational programs that the association sponsors. (Tr. p. 107)

35. Ivers became aware of the complainant as a result of a call he received from Wincze. (Tr. pp. 108, 109)

36. Wincze contacted Ivers regarding complainant's experience with the respondent and wanted corroboration of that experience. (Tr. p. 108)

37. Ivers was provided by Wincze with a copy of the classified ad concerning respondent's available apartment. (Tr. p. 109; CHRO Exh. 1)

38. On July 23, 2004, Ivers called the telephone number contained in the classified ad and left a message on the answering machine. (Tr. p. 110)

39. Ivers later received a "call back" that day from the respondent in response to his inquiry about the available apartment. (Tr. p. 111)

40. Upon inquiring whether it was acceptable for him to use section 8, Ivers was told by the respondent that section 8 was not acceptable. (Tr. pp. 111, 112)

41. Ivers was asked by the respondent if he was calling for someone else. (Tr. p. 112)

42. Ivers did not receive any payment for contacting the respondent, nor does he have any interest or stake in the outcome of the instant case. (Tr. p. 112)

43. Ivers' function with respect to Wincze's request was just to report what transpired between Ivers and the respondent. (Tr. p. 112)

44. Ivers provided an affidavit to the commission outlining his contact with the respondent. (Tr. pp. 109, 112; CHRO Exh. 1)

45. Ivers' affidavit was prepared the day of his contact with the respondent. (Tr. pp. 116, 124; CHRO Exh. 1)

46. After the respondent informed Ivers that he did not accept section 8, the respondent did not ask Ivers any additional questions about his income. (Tr. p. 132)

47. The respondent attempts to control the social economic class of whom he will accept as tenants. (Tr. pp. 162, 163)

48. The respondent has a minimum income criterion that no more than twenty-nine percent of the tenant's gross income can be devoted to rent. (Tr. p. 163)

49. The apartment, that the complainant was interested in is located at 50 Carlton Avenue, Bridgeport, and is owned and managed by the respondent. (Tr. p. 191)

50. The respondent owns twenty apartment units consisting of six buildings in Bridgeport. (Tr. p. 193)

51. The respondent does not accept tenants who are on social security disability because even the maximum payment does not meet his formula. (Tr. p. 189)

52. The respondent developed his income criteria to "…try and get a level of clientele which I would…feel more comfortable with…and whom I could relate to and whom I felt would look after the apartments…". (Tr. p. 194)

53. According to the respondent, section 8 tenants cannot meet his minimum income criteria. (Tr. p. 165)

54. The respondent does not allow any person who does not meet his minimum income criteria to proceed with the application and he therefore excludes every applicant on social security disability or section 8. (Tr. p. 168)

55. The subject apartment remained available months after the complainant's contact with the respondent. (Tr. p. 190)

56. The person who eventually rented the subject apartment was not a section 8 recipient or a disable person. (Tr. p. 190)

III.

DISCUSSION AND CONCLUSIONS

A.

Preliminary

All statutory and procedural prerequisites to the holding of a public hearing have been satisfied, and the complaint is properly before me, a human rights referee, for adjudication.

B.

The Complainant's Disability Claims

The complainant's claims of discrimination based on disability, pursuant to General Statutes §§46a-64c (a) (6) (A) and 46a-64 c (a) (6) (B) are herewith DISMISSED. There is no evidence to establish the nature of the complainant's alleged disability, that he ever disclosed same to the respondent at the time of his rental inquiry, that the respondent ever inquired about it at the time of the inquiry or that he disclosed at the time of the inquiry that he was the recipient of social security disability payments. At the time the respondent rebuffed the complainant's attempt to rent his apartment (after learning of his section 8 source of income) the respondent knew only that the complainant had stated that he was "on disability" in response to the respondent's inquiry as to where the complainant was employed. The details of the nature of the disability, and source and amount of disability payments, emerged only after this matter

was initiated with the commission. The significance of having disclosed being "on disability" to the respondent at the time of the rental inquiry will be given some limited consideration in buttressing the section 8 source of income claim, but any disability claim unrelated to source of income, was never established even to the level of a prima facie case, and was for all intents and purposes abandoned.

C.

The Complainant's Source Of Income Claims

According to General Statutes § 46a-64c (a) (1), it shall be a discriminatory practice "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . lawful source of income . . .." General Statutes § 46a-64c (a) (2) extends protection to discriminatory terms and conditions in sales and rental agreements and §46a-64c (a) (3) makes it unlawful even to make a statement that indicates discrimination based upon a protected class, one such class being lawful source of income. Lawful source of income is defined as "income derived from social security, supplemental security income, housing assistance, child support, alimony or public or general assistance." General Statutes § 46a-63 (3). A section 8 voucher is considered "housing assistance" for the purposes of § 46a-64c. *Commission on Human Rights and Opportunities v. Sullivan Associates*, 250 Conn. 763, 775, reargument denied, 251 Conn. 924 (1999)

The evidentiary requirements for federal employment discrimination cases, such as those cases predicated upon Title VII, apply to both federal and state housing discrimination cases as well. *AvalonBay Communities v. Town of Orange*, 256 Conn. 557, 591 (2001). Both the "pretext" paradigm of *McDonnell Douglas v. Green*, 411 U.S. 792 (1973) and the "mixed-motive" (also referred to as "direct evidence") approach of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) have been recognized by our courts as proper means of establishing housing discrimination based on protected class status. *AvalonBay v. Town of Orange*, supra, 592; *Miko v. Commission on Human Rights and Opportunities*, 220 Conn. 192, 202 (1991). It is uncontroverted that the respondent told the complainant (and Ivers) that he did not take section 8 and in fact the respondent proudly reaffirmed his position on the matter during the public hearing. There can be no question then that the *Price Waterhouse* model applies. Under the *Price Waterhouse* model, the complainant has the burden of establishing a prima facie case by demonstrating with direct—or even circumstantial—evidence, that he was a member of a protected class and that an impermissible factor played a substantial motivating role in the respondent's decision not to rent to him. *Levy v. Commission on Human Rights and Opportunities*, 236 Conn. 96, 106 (1996), citing *Price Waterhouse*, supra, 490 U.S. 258; *Commission on Human Rights and Opportunities ex rel. Colon v. Sullivan*, 2005 Conn. Super. LEXIS 2748,16. The complainant readily demonstrated that he is a member of a protected class, insofar as it is uncontroverted that he received section 8 rental assistance (which assistance was buttressed only by social security disability benefits) and that the respondent did not (and would not even today) consider a rental applicant

with a section 8 voucher as a suitable candidate for the subject apartment. Accordingly, the complainant has successfully met his prima facie burden.

Once the complainant establishes his prima facie case, the burden shifts to the respondent to prove, by a preponderance of evidence, that he would have made the same decision for legitimate reasons even if it had not taken the ostensibly illegal factor into consideration. *Levy v. Commission*, supra, 236 Conn. 106. The respondent has offered no legitimate reasons for his action. Instead he has used the complainant's protected class status (recipient of section 8 and social security disability benefits) as a "legitimate" reason in and of itself, by attempting to turn the protected status "on its head" by claiming that his minimum income formula entitles him to reject all recipients of such public benefits. In support of his argument, he relies on General Statutes § 46a-64c (a) (b) (5), which qualifies the prohibition of discrimination on the basis of lawful source of income by not prohibiting, "…the denial of full and equal accommodations solely on the basis of insufficient income."

The basis of the respondent's utilization of this exemption, as described during the hearing, is his belief (allegedly buttressed by formulae used by federal agencies and lending institutions etc.) that no more than twenty-nine percent of a person's income should be expended on rent. He then postulated that no person who is a section 8 recipient could have qualified for the $700 per month apartment in issue. He further postulated that knowing (as he now does but presumably did not then) that the complainant's supplemented income consisted of social security disability payments (established to be approximately $10,000 per year) that the complainant could not possibly have qualified under his formula. (R. Exh. 6)

The respondent's convictions (appearing to be deeply held and certainly artfully articulated), are nonetheless deeply flawed, at least insofar as they are clearly inconsistent with Connecticut law, which has been developed in great detail in recent years, in part to address just such arguments as the respondent has advanced.

The Connecticut Supreme Court has addressed the core issue of this case with a comprehensive analysis, replete with in depth legislative research and a spirited dissent. In *Commission on Human Rights and Opportunities v. Sullivan Associates,* supra, the court wrestled with a formula employed by a landlord, which required any potential tenant to have a minimum weekly income that approximated or equaled the monthly rent. The landlord claimed that its minimum family income formula was authorized by the exception set forth in General Statutes § 46a-64c (b) (5). The Court made it clear, as I am prepared to do here, that the good faith of the respondent's business judgment was not under question, that there was no credible evidence to suggest that the respondent's formula was pretextual or that the respondent was not uniform in the application of his formula. Id at 790.

In arriving at its decision the Court majority rejected two extreme positions. It rejected the respondent's position that the neutral application of its formula would effectively, and legally, allow it to disqualify presumably all section 8 candidates. It also rejected the plaintiff commission's "apparent" position, that because section 8 rental assistance payments are calculated to provide adequate assistance to make a subject rental feasible, a section 8 tenant's income should never fall within the "insufficient income" exception. Id.at 788.

The majority fashioned a middle ground and, ecause it was the “first instance” in which this “exception” was considered, remanded the case to the trial court for the purpose of allowing the respondent the opportunity to make its case under the newly articulated “ground rules.” Id at 791. These “ground rules” having been set down in 1999, and followed by lower courts since, require that the respondent Ruellan be entitled to no such extraordinary consideration.

The “ground rules” the majority articulated are predicated upon the meaning of the term “sufficient income.” The majority adopted a “narrow reading” of the term and predicated it upon a tenant’s ability “to meet his or her personal rent obligation for that part of the rental not covered by section 8 rental assistance payments and to cover other obligations reasonably associated with the tenancy.” Id at 789, 790.

The burden of proving eligibility for the “insufficient income” exception is on the respondent. Id. at 791. Based on undisputed facts, there is no basis to believe this respondent carried his burden. In his telephone conversations with the complainant and Ivers, upon learning of section 8 involvement, his decision was immediately made as to the insufficiency of income despite:

- Failure to inquire as to the amount of the applicant’s portion of the rent.
- Failure to determine the amount of the applicant’s income above and beyond the section 8 voucher.
- Failure to inquire as to the applicant’s credit worthiness.
- Failure to inquire as to past and present landlord references.

In short, the respondent garnered none of the information from the complainant (or tester) he would have needed to make the kind of lawful and reasoned evaluation the

Court required in *Sullivan Associates* in order for the "insufficient income" special defense even to be credibly raised, not to mention established. The manner in which the Court required an applicant's income to be evaluated (comparing it to his or her personal share of the rent as opposed to the gross rent) of necessity leads to financial evaluations far more favorable to a section 8 participant. This is eminently reasonable in light of the fact that under section 8 the landlord is "guaranteed" direct payment by section 8 of the "lion's share" of the rent, with the tenant being directly responsible for only a small portion. The formulae allegedly used by the respondent and other litigant landlords are formulae predicated on the tenant being responsible for the total rent, with his or her income thereby being subject to various and sundry temptations, and competing needs and desires, to which the section 8 voucher is immune.

Sullivan Associates has been applied and followed in two subsequent superior court decisions. In *Fulk v. Lee*, 2002 WL 316325 (Conn. Super.), the defendant rejected the plaintiff applicant on the basis that she had no employment income, only a section 8 voucher (that would have paid the full amount of the rent) and welfare benefits. The trial court found that allowing the respondent to use lack of employment as a disqualification would give a landlord carte blanche authority to define "insufficient income" without the requisite inquiry required by *Sullivan Associates,* and would allow a landlord to accomplish indirectly what could not lawfully be accomplished directly.

In the 2005 decision (currently on appeal) of the *Commission on Human Rights v. Sullivan,* 2005 WL 2855540 (Conn. Super.), a landlord created formula, similar to that employed by the respondent, was rejected by the court, despite the fact that the subject defendant was far more thorough and organized in his information gathering. In

rejecting the defendant's 1 to 4.3 rent to income formula, the court stated clearly that the appropriate inquiry is whether the applicant will be able to pay his or her share of the subsidized rent when due. In finding for the plaintiff, the court found what the Supreme Court had found in *Sullivan Associates,* and what I have found here, that the defendant did not have the raw data at the time of his decision to make an informed, reasonable and lawful calculation.

The respondent's decision to disqualify the complainant on the basis of section 8 participation without so much as inquiring as to the amount of the voucher and the source and amount of his "disability" income is a violation of General Statutes § 46a-64c (a) (1), and his statements concerning the automatic disqualification of Section 8 participants is a violation of § 46a-64c (a) (3). Efforts made by the respondent during the investigation and during and after the public hearing to deal with the complainant's actual income numbers (still flawed by dealing with gross rental computation rather than the complainant's share of the rent) are unavailing, as the requisite analysis must be made with the information available at the moment the rental decision is made, not later. *Levy v. Commission on Human Rights and Opportunities,* 236 Conn. 96, 105 (1999).

D.

Damages

The complainant claims damages for emotional distress, actual losses, attorney's fees and interest. The authority to award damages under General Statutes § 46a-86 (c) includes the discretion to award damages for emotional distress and other non-

economic harm. *Fulk v. Lee,* supra, citing *Bridgeport Hospital v. Commission on Human Rights and Opportunities*, 232 Conn. 91 (1995).

Criteria to be considered when awarding damages for emotional distress include: (1) the subjective internal emotional reaction of the complainant; (2) whether the discrimination occurred in front of other people; and (3) the degree of offensiveness of the discrimination and its impact on the complainant. *Commission on Human Rights and Opportunities ex rel. Aguiar v. Frenzilli,* CHRO No. 9850105, pp. 9-15 (January 14, 2000); *Commission ex rel. Harrison v. Greco,* supra, CHRO No. 7930433, pp. 15-17.

A complainant need not present medical testimony to establish his internal emotional response to the harassment; his own testimony may suffice. See, e.g., *Schanzer v. United Technologies Corp.,* 140 F.Sup.2d 200 (D.Conn. 2000); *Berry v. Loiseau*, 223 Conn. 786, 811 (1992).

The complainant had but a single brief telephone exchange with the respondent, which did not occur in the presence of others. The rejection of the complainant's inquiry, while tactless and abrupt (and probably rude), was not clearly intended to injure or wound. While the complainant gave evidence as to the hurt and shame the rejection nonetheless engendered, he appeared quickly to recover and secured a replacement apartment approximately one week after the incident. Additionally, the complainant committed a possible credibility gaffe that must be reflected in the award for emotional distress. In testifying about conversations the complainant had with his pastor, he testified as to this treatment by the respondent in the following words: "Like, you know, how he just looked through me like I was unimportant." It is not possible to know if the complainant was carelessly (or worse) implying the existence of a then non-existent

personal encounter with the respondent, or not. More likely than not, it was not meant in a literal sense, but nonetheless exhibited a penchant for hyperbole that warrants that greater scrutiny be directed to other elements of his testimony on the issue of emotional distress.

In *Fulk v. Lee,* the court awarded $1,500 in emotional distress to a section 8 applicant who was given a more thorough qualification review than that afforded the complainant, but who required a full three months to find other acceptable housing. In light of the brevity and sterility of the telephone encounter in issue, and the complainant's moving into a more expensive apartment in just a matter of days, damages for emotional distress are limited to the amount of $1,000.

Actual damages are awarded in the amount of $50 for application fees and $60 for gasoline expenses. Rent differential is an allowable element of damage under General Statutes § 46a-86 (c) and may be awarded by this tribunal. *Commission on Human Rights and Opportunities, ex. rel Nelson v. Malingauggio,* CHRO No. 9740155 (June 10, 1999) Total rent differential damages are awarded in the amount of $3,165 as claimed and documented.

Simple pre judgment interest is awarded at the rate of 10% per annum on fees, gasoline and emotional distress from August 1, 2004 through the date of this decision, and is likewise awarded on rent differential from the first of the month a rent differential was first incurred (a differential of $137 per month for the twelve months commencing August 1, 2004 and a differential of $169 per month for the months commencing August 1, 2005) until and including the month commencing April 1, 2006.

E.

Order

The respondent shall pay the complainant the sum of $4,275 plus interest as calculated pursuant to qualifications set forth above. A separate computation and order regarding attorney's fees is contained in the following section.

The respondent is also ordered to cease and desist from the discriminatory practices complained of with regard to the complainant and all applicants who may or will in the future become similarly situated. The respondent shall not engage in any retaliatory conduct against the complainant or any other participant in these proceedings. The respondent shall notify the complainant by mail (copy enclosed to commission counsel of record) of any one-bedroom apartment for rent at 50 Carleton Avenue, Bridgeport, within one year from the date hereof.

F.

Attorney's fees

Pursuant to a scheduling order dated July 7, 2006 and revised July 11, 2006, the complainant's counsel filed a motion for attorney's fee award on July 24, 2006, an affidavit regarding his qualifications and experience, an itemized bill and a supporting memorandum of law. The respondent filed an objection on August 4, 2006 and oral

arguments were heard on August 15, 2006. Inasmuch as the complainant has prevailed on the merits of this matter, I am authorized to award a "reasonable attorney's fee" pursuant to General Statutes § 46a-86 (c). The complainant's counsel has requested the sum of $ 21,697, which represents 78.9 hours of legal service at an hourly rate of $275. The respondent argues that the hourly rate be restricted to $190 per hour pursuant to a written agreement between the complainant and his counsel referenced in the motion. After then identifying proposed selective reductions in the hours of legal service billed, the respondent stated that the "maximum" fee awarded should be $13,623, which represents application of the $190 hourly rate to 71.7 hours of legal service. The maximum should be halved, he argued, should the complainant prevail on only one of his two counts, which is what ultimately transpired. There is no basis in law for such a suggested division, however, as it is appropriate for a prevailing party to be compensated for time expended in developing alternate theories as long as they are relevant to the claim and they are also relevant to the pursuit of the goal achieved. *Russell v. Dean Witter Reynolds, Inc.,* 200 Conn. 172 (1986).

The accepted practice in Connecticut in arriving at a reasonable attorney's fee award is to arrive at the "lodestar" figure, which is defined as the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hemsley v. Eckerhart,* 461 U.S. 424, 433 (1983). Connecticut courts have found that the lodestar calculation may then be adjusted by the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir. 1974). *Ernst v. Deere and Company, et al.,* 92 Conn. App. 572 (Conn. App. 2005). The *Johnson* factors are (1) the time and

labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee for similar work in the community, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. The list is not exclusive and other factors may be applied to determine reasonableness. *Krack v. Action Motors Corp.,* 87 Conn. App. 687, 694-95, cert. denied, 283 Conn. 926 (2005).

Counsel for the complainant disclosed in his memorandum a written fee agreement he entered into with the complainant, which provided for an hourly rate of $190 per hour. The agreement was provided to me and the respondent at oral argument on August 15, 2006. A copy is appended to this decision as Appendix A. While counsel maintained during oral argument that the agreed upon fee was to apply only in the case of a resolution by settlement, the agreement does not say that. Upon my question to counsel indicating that I did not see such language in the agreement, counsel responded: “Well, I would agree with your honor that it’s not as well written as it might be….” August 15, 2006 attorneys fee Tr. p.12. With regard to counsel’s claim that the intent was nonetheless that he would reserve the right to request a higher rate in the event of a full hearing, I asked if written language to that effect existed, could it only be found in the subject agreement? Counsel responded in the affirmative. Yet no such

written language therein exists. The plain, uncontroverted written language of the agreement must prevail, and the hourly rate can therefore not exceed $190 per hour. Additionally, none of the twelve Johnson criteria, nor any other relevant criteria, give me reason to believe that the agreed upon rate should be reduced further and it is herewith set at $190 consistent with the agreement.

The hours of legal service are very well documented and I have no serious reason to believe that any of the entries are inflated or are not related to time spent on the matter, the respondent's claimed reductions notwithstanding. The established rate ($190) times established hours (78.9) results in a lodestar fee of $14, 991. I will apply the relevant Johnson criteria to the lodestar fee as a whole, and while I am cognizant that the respondent concluded (arguably conceded) in his written objection that the maximum fee should not exceed $13,623, I will ascribe no special significance to that number in light of the respondent's pro se status, and inasmuch as that "concession" did not result in a settlement of the case.

The following Johnson criteria need to be addressed:

- Time and labor required: Significant time was expended on discovery unrelated to the issue ultimately litigated. While such time is generally compensable, some adjustment must be made when so much time is directed to the production and review of evidence ultimately--and perhaps forseeably--unrelated to the merits of the respondent's only defense.

- Novelty and difficulty of the question: The respondent's financial qualification formula has been the subject of recent Connecticut court decisions wherein it has been rejected.
- The amount involved and the results obtained: The total award for damages, excluding interest, is less than $5,000.00.
- Awards in similar cases: Attorney's fees awarded in commission housing cases are generally substantially lower than the requested fee, even after adjustment to the hourly rate.

The overriding additional consideration I would employ to adjust the lodestar fee stems from my concern that there is something unsettling about an administrative proceeding that culminates in a one day public hearing and a modest award for damages, yet can nonetheless produce a plausible claim for an attorney's fee in excess of $20,000. It is duly noted that the precise nature of the respondent's defense was not clearly disclosed early in the proceedings and that he added to the complexity of the matter with dubious forays of his own, such as his effort to disqualify complainant's counsel. His contribution to the general level of acrimony also added a measure of intransigence to the proceedings, which was also detrimental to the expeditious administration of justice. To the extent, however, that additional attorney's fees are attributable to a lack of reasonable urgency in finding a way (through aggressive motion practice or vigorous "jawboning") to bring a case, which case hinges essentially on the need for a dispositive ruling on a relatively straightforward matter of law, to a quick and expeditious conclusion, then I believe the financial burden should not be borne by the respondent alone. This is particularly true when a respondent is pro se, and may understandably

not fully recognize the potential cost he will incur to his opponent's attorney for the fleeting satisfaction of having his day in court.

I would therefore discount the lodestar award by a factor of one third, resulting in a calculation of $10,148.90, which I would round upward to an attorney's fee award in the amount of $10,150, which sum the respondent shall pay to counsel for the complainant.

It is so ordered this ____ of November 2006.