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

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| Commission on Human Rights and Opportunities *ex rel*. Tina Saddler, Complainant | : | CHRO No. 0450057 |
| v. | : | |
| Margaret Landry, dba Superior Agency, Respondent | : | May 23, 2006 |

## MEMORANDUM OF DECISION

### PROCEDURAL BACKGROUND

On or about October 17, 2003, the complainant, Tina Saddler, filed a complaint with the Commission on Human Rights and Opportunities (the commission), alleging that the respondent, Margaret Landry, refused to rent an apartment to her because of her source of income (Section 8), in violation of General Statutes section § 46a-64c (a). (Complaint affidavit filed November 26, 2003; parties' Stipulated Facts dated January 10, 2006 [Stipulation] ¶1)

The commission investigated the charges of the complaint, found reasonable cause to believe that discrimination had occurred, and attempted to conciliate the matter. After conciliation efforts failed, the commission certified the case to public hearing on March 9, 2005, in accordance with General Statutes § 46a-84 (a).

Due notice of the public hearing was served upon all parties and attorneys of record on March 10, 2005, in accordance with General Statutes § 46a-84 (b) and § 46a-54-79a of the Regulations of Connecticut State Agencies ("the regulations").

I conducted a public hearing on January 10, 2006. Thereafter, the parties filed post-hearing briefs and reply briefs, and the record closed on March 28, 2006.

## FINDINGS OF FACT

1. The respondent, Margaret Landry, has been a licensed real estate broker since 1963 or 1964. (Testimony of Landry, transcript pp. 108-09, 146).[1] As such, she obtains apartment listings from landlords and attempts to rent those apartments to prospective tenants. (Stipulation ¶8; Landry, 108, 110-11)

2. During all times pertinent to this case, the respondent worked out of her home at 844 Queen Street, Bridgeport, doing business as Superior Agency. In July 2003, her business telephone was (203) 372-2191; her business cell phone was (203) 520-6200. (Stipulation ¶¶9-11; Landry, 109-10)

3. In July 2003, the complainant, a single parent, was living at 104 Jewett Street in Ansonia with her two children. Her sources of income were her employment as a nurse's aide at a health care center in Seymour, and a Section 8 voucher issued by the Ansonia Housing Authority.[2] (Ex. C-1; Saddler, 8-10)

4. The Jewett Street apartment was small, had no yard and was located in a busy and noisy area near the fire and police stations. The complainant wanted to move to a larger apartment, preferably one closer to Bridgeport, where her mother, sisters and other relatives lived, so they could help her with childcare, as she generally left for work before the school bus arrived and returned after the children came home from school. While living on Jewett Street, the complainant relied upon a neighbor for this assistance. (Saddler, 10-15)

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[1] Hereinafter, all references to testimony simply indicate the witness's name and the transcript page numbers. References to the exhibits presented by the commission on the complainant's behalf are labeled with the prefix "C" and a number. The respondent's exhibits bear the prefix "R."

[2] The Section 8 program is a federally operated rent supplement program under the Department of Housing and Urban Development and administered locally by municipal housing authorities. It is designed to assist qualified low-income persons with payment of their rental obligations. See 42 U.S.C. § 1437f; *Commission on Human Rights and Opportunities ex rel. Colon v. Sullivan*, 2005 Conn. Super. LEXIS 2748, 4 n.7.

5. On or about July 4, 2003, the respondent caused to be published in the Connecticut Post an advertisement describing a half-duplex with three bedrooms, available for rent in Stratford, a town closer to Bridgeport than Ansonia. (Stipulation ¶12; Landry, 112; Ex. C-4 ¶ 2 [respondent's initial answer to complaint, December 24, 2003])

6. The complainant saw the advertisement on or about July 7, 2003 and called the telephone number listed in the advertisement, (203) 372-2191. (Saddler, 16) The woman answering the phone identified herself as "Margaret." The complainant explained that she was a single parent with two children and was interested in the advertised three-bedroom half-duplex in Stratford. Margaret asked the complainant if Section 8 was involved. When the complainant confirmed that this was the case, Margaret stated that she did not accept Section 8 tenants. (The complainant testified that Margaret said, "Oh, no, no. We don't accept that.") Margaret then hung up the phone and the two did not speak again. (Saddler, 16-18)

7. The complainant felt humiliated and degraded by this rejection. As a single parent, she felt that she "wasn't good enough to take care of [her] kids." For several months, she became too discouraged to pursue a new apartment, and she required considerable emotional support from her family. (Saddler, 18-19, 33)

8. The complainant did not seek medical attention, incur any medical costs, or take any time off from work after she was rejected for the Stratford unit. (Saddler, 26-27)

9. To avoid further rejection, she went to the Ansonia Housing Authority to obtain a list of landlords who would accept Section 8 tenants. In October 2003, after looking at other apartments, she found and moved into an apartment on Lester Street in Ansonia, where she presently resides. For the first few months, she continued to rely on the assistance of her former neighbor to help get her children on and off the school bus. (Saddler, 20-25, 37)

10. Prior to her move, the complainant paid her neighbor fifty dollars per week for the latter’s assistance during the school year. The complainant continued to pay this

amount through December 2003. (Saddler, 36-37) [3] Had the complainant been able to move to the Stratford unit, her family would have helped her instead and would not have charged her. (Saddler, 38)

11. In March 2004, the complainant reduced her work schedule from forty to twenty-four hours per week so she could get her children on and off the school bus. She continued to work reduced hours for sixteen weeks, until the end of the school year. (Saddler, 22, 23)

12. In the summer of 2004, the complainant drove her children to day camp in Bridgeport before going to work. The complainant's sister took care of the children after camp until the complainant was able to pick them up. (Saddler, 24-25)

13. An attorney from the Connecticut Fair Housing Center ("CFHC") represents the complainant in this matter. Among other tasks, the CFHC investigates housing discrimination complaints and conducts community outreach and education. The CFHC often uses contractual "testers" to help investigate and corroborate discrimination complaints. Testers contact landlords or agents who have rejected applicants in order to determine if those landlords or agents, despite their proffered reasons for rejecting the applicants, were actually motivated by the applicants' protected class status (e.g., race, national origin, familial status, source of income). A tester inquires about the availability of the unit and presents herself as having the specific characteristic rejected by the landlord (e.g., reliance upon Section 8 assistance); for comparison purposes, another tester might claim not to have that characteristic. (Muller, 40-55) In the present case, testers also inquired about other rentals advertised by the respondent, in an apparent attempt to gauge the respondent's reaction to Section 8 recipients.

14. Testers prepare records of their communications, and the CFHC maintains all records in the course of its business. (Muller, 44-48)

[3] The complainant's testimony about the dates is confusing. On direct testimony, she stated that her former neighbor assisted her until March 2004 (Saddler, 22), but on redirect she clarified that the neighbor stopped helping at the end of 2003. (Saddler, 37) The complainant's post-hearing brief confirms the latter testimony.

15. Sarah Smith, a CFHC tester, called (203) 372-2191 on July 14, 2003 to ask about a three-room apartment advertised in the Connecticut Post. A recorded voice identified herself as "Marge" and instructed callers to contact her on her cell phone, 520-6200. Calling the cell phone, Smith engaged in a brief conversation with “Marge,” who, after some apparent confusion, indicated that the three-room apartment was taken but that a three-bedroom unit in a Stratford duplex was available for $1200. No discussion occurred about Section 8. (Ex. C-3; Smith, 57-61)

16. On July 17, 2003, Lauren Patalak, a CFHC tester, called (203) 372-2191 about an advertisement in the Connecticut Post for a three-room apartment in the Shelton/Huntington area. As instructed by a recorded answer from someone who identified herself as "Marge," Patalak then called the 520-6200 cell number and asked "Marge" if any three-bedroom apartments were available. Marge indicated that she had a three-bedroom available at that time, but neither Patalak’s report, written the day after the telephone conversation, nor her testimony indicates where that unit was located. Marge asked Patalak if she received Section 8 assistance. When Patalak replied in the affirmative, Marge informed her that she does not accept Section 8 because “it’s a pain in the butt” and “they don’t want to fix anything.” (Ex. C-10; Patalak, 63-68)

17. On July 29, 2003, CFHC tester Anna Montemurno[4] called 372-2192 about an advertised two-bedroom apartment in Bridgeport. According to Montemurno's uncontested written report, someone named "Barb" or "Marge" asked her if she received Section 8 rental assistance. When Montemurno replied in the affirmative, she was told that the owner did not accept Section 8 tenants. (Exs. C-16, C-17)

18. On July 29, 2003, Annie Gentile, a CFHC tester, called 520-6200 in response to a Connecticut Post advertisement for a two-bedroom apartment in Bridgeport. A woman who identified herself as "Marge" asked if Gentile received Section 8 assistance; Gentile

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[4] Montemurno did not testify at the public hearing and thus was not available for cross-examination. Her written report and other records, however, were admitted into evidence by stipulation of the parties. (Stipulation ¶14)

told her that she did not. Marge told Gentile she was showing the two-bedroom that night and noted that she also had a townhouse at Derbyshire that was presently available for $1300 per month. (Exs. C-11, C-12, C-13; Gentile, 95-99)

19. On the morning of July 30, 2003, Gentile again spoke with Marge on the telephone about the two-bedroom apartment in Bridgeport. Marge indicated that she could rent the apartment for $850 per month, rather than the advertised $900, and she told Gentile of the "good looking" single man who lived upstairs. They arranged for Gentile to view the apartment that afternoon. Later that morning, Gentile called Marge and cancelled the appointment. (Exs. C-14, C-15; Gentile, 103-04)

20. On August 14, 2003, Deanna Bray, a CFHC tester, spoke with "Marge" on the telephone about the advertised two-bedroom apartment in Bridgeport. According to Bray, Marge had no recollection of this particular apartment being available or advertised, but discussed two other available apartments in the same price range. According to Bray's uncontested report, when the conversation shifted to Bray's finances, Marge said,

> Section 8? Oh no! You know a lot of people don't take section 8! She spoke in a raised voice. I said, what about the people for the $850 [apartment]? She said, Oh, I don't know, probably not. Not many people do, you know! People just don't give a crap, they trash the place and Section 8 just doesn't give a crap! She was speaking in a very high pitched agitated manner. She spoke quickly and loud and continued to repeat that people just don't give a crap these days, they will just trash the place! If she owned a home, she wouldn't take section 8 either! I said in a pleasant tone, with a small laugh, we aren't all bad. People just love me. She said, well, you're the exception honey because people don't care, they will trash the place and section 8 just doesn't give a crap. No way!

(Exs. C-21, C-22, C-23; Bray, 80-84)

21. The respondent is a poor record-keeper. Because she lives in a small house, she does not have room for file cabinets. She does not maintain records of the dates her listings were advertised or records of telephone calls from prospective tenants. At most, she notes telephone calls on a pad by her telephone, but even then she does not write

down every call. In fact, although she notes the details of her open listings on index cards, she does not retain the cards after the unit is rented or sold. (Landry, 120, 134-37, 141, 151; Ex. C-4 ¶6) She does, however, retain a copy of at least some of the leases. (Landry, 137)

22. In July 2003, the respondent told a number of callers that the Stratford unit was not Section 8 approved (Ex. C-4; Landry, 130-32), yet no Section 8 inspector had viewed the Stratford unit for at least fifteen years. (Id., 154)

## DISCUSSION AND CONCLUSIONS

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

B. 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 . . .." 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)

C. 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). The complainant emphasizes that the *Price Waterhouse* model should be applied in this case; the respondent offers no opinion. In light of the respondent's direct statement that she would not accept a Section 8 recipient for the Stratford unit, I agree that the *Price Waterhouse* model is appropriate. See *Miko v. Commission,* supra, 204-06 (property manager's statement to applicant with minor child that the landlord would not rent to families with children constituted direct evidence of landlord's discrimination).

Under the *Price Waterhouse* model, the complainant has the burden to demonstrate, with direct—or even circumstantial—evidence, that she 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 her. *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 ex rel. Colon v. Sullivan*, 2005 Conn. Super. LEXIS 2748, 16. The complainant readily demonstrated that she is a member of a protected class, insofar as she receives Section 8 rental assistance. Despite the respondent's contrary testimony, the complainant also credibly and convincingly demonstrated that the respondent explicitly told her that she could not rent the Stratford unit because of her Section 8 status. Accordingly, the complainant successfully met her prima facie burden.

Once the complainant establishes her prima facie case, the burden shifts to the respondent to prove, by a preponderance of evidence, that it 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. Furthermore, and critical to the analysis, the respondent may not prevail merely by offering a legitimate reason for her decision; she must also demonstrate that the allegedly legitimate reason motivated her at the time of her decision. Id. at 105; *Miko v. Commission*, supra, 220 Conn. 205, 207. If the respondent satisfies her burden, then the tribunal must determine, from the entire record, whether the complainant has met her burden of

proving disparate treatment by a fair preponderance of the evidence. *Miko v. Commission*, supra, 205-06.

The respondent raised several defenses to the claim: she denied ever speaking to the complainant; she asserted that she never rejected a potential tenant because that person received Section 8 assistance; she claimed that the unit in question was not Section 8 approved; and she argued at the hearing—for the first time—that she had already rented the unit prior to July 7, 2003, the date the complainant purportedly read the advertisement and made her telephone inquiry. (See, e.g., Ex. C-4; Landry, 114, 120-21, 143.)

The first—and most critical—issue is whether the complainant actually spoke to the respondent about the Stratford duplex. One party is telling the truth, the other is not. The complainant credibly depicted the brief conversation between the two, with sufficient detail to belie any suggestion that this was a mere fabrication. The respondent's denial, on the other hand, is unconvincing for several reasons.

The respondent claimed that she would have remembered the complainant's name "because it's such a simple name," yet her memory frequently failed when examined under oath on several other matters. She also testified that she would have written down the complainant's name, yet her other statements reveal that she did not always take notes on such conversations (Id., 120), that she did not retain records of phone calls, and that she disposed of most of the paperwork for her listings after rental transactions were completed (Id., 120, 134; Ex. C-4 ¶6; see FF 22.).

In fact, it is quite likely that the respondent never even heard the complainant's name, because, according to the complainant's credible testimony, the respondent began asking questions before the complainant even finished introducing herself. (Saddler, 17) In that case, not knowing the complainant's name, the respondent would be technically correct—but highly disingenuous—when she claimed that she never spoke with anyone named "Tina" or "Tina Saddler." (Landry, 120; Ex. C-4 ¶3, ¶6)

The respondent's disorganized business practices were reflected in her demeanor and presentation while on the stand: her testimony was confused and at times inconsistent with her prior testimony or written statements; her memory was faulty; and she tended to be evasive and argumentative. Overall, her demeanor, her poor recordkeeping, and her weak memory made her a consistently less credible witness than the complainant. Accordingly, I conclude not only that the telephone conversation occurred, but that it occurred in the manner described by the complainant.

Similarly, the respondent's protestations that she never denied a rental application to anyone receiving Section 8 assistance are not credible. In addition to the convincing testimony from the complainant, the testers' uncontroverted reports also belie the respondent's claim. (The respondent never denied speaking to the testers and, at the hearing, never challenged their testimony.) Telephone discussions about potential rentals with testers Patalak and Montemurno, for example, ended quickly once the testers revealed that they received Section 8 funding. (See FFs 16, 17.) Tester Bray received even worse treatment, painfully enduring the respondent's lengthy diatribe against both the Section 8 program and recipients of its funds. (See FF 20.)

The respondent also contends that she could not rent a unit to a Section 8 tenant if that unit had not been approved by a Section 8 inspector. In her December 2003 answer to the complaint, the respondent twice stated, under oath, that the Stratford unit was not approved for Section 8. (See Ex. C-4 ¶2, ¶5.) She further indicates that several telephone inquiries ended with her telling the callers that the unit was not Section 8 approved—even though she also testified that she never discussed Section 8 with any potential tenants. Although the respondent referred to some cracked electrical plugs, a warped floor and missing storm windows, she also admitted that she had no direct knowledge that the unit was not, or could not be, approved by Section 8. Upon further questioning, she conceded that no Section 8 inspector had even viewed the Stratford unit in the past fifteen years. (See FF 22.) Finally, the respondent cripples this defense beyond rehabilitation when she admits that she did not even write the December 2003 answer to the complaint; instead, she claims, it was written by a "jerky lawyer" (not her present counsel) and she signed it, without question, at his insistence. (Landry, 144-45.)

During her direct testimony, the respondent argued, for the first time, that the Stratford unit had already been rented by July 7, 2003, the date on which the complainant claimed to have called. According to her version of events, someone named "Caesar" called on July 4, she met with him that day, and she took a deposit from him. I do not find this argument to be credible.

The respondent never raised this defense until the public hearing itself. The defense is neither set forth in her December 2003 or April 2005 answers to the complaint, nor alluded to in any other document or pleading. Even when describing her anticipated testimony in her prehearing submissions (as required by my written directive of April 1, 2005), the respondent indicated only that she would testify that she had never spoken to the complainant; she gave no indication that the unit was no longer available. The element of surprise—especially when coupled with the respondent's lack of credibility—casts a strong shadow over the legitimacy of this argument.

In her telephone conversation with the complainant, the respondent never mentioned that someone had rented or placed a deposit on the Stratford duplex. Instead, the respondent terminated the communication after telling the complainant that she would not accept a Section 8 recipient. As someone who professes to know housing law, and to know that landlords cannot deny housing to Section 8 recipients, the respondent could easily have avoided legal difficulties by offering the purported truth. Her failure to do so strongly suggests that there really was no other potential tenant.

Moreover, other than her own dubious testimony, the respondent failed to offer any other evidence to suggest, much less demonstrate, that she had another tenant. She proffered no copy of a lease, no receipt of a deposit, no record of any transaction for the Stratford duplex. The prospective tenant himself did not testify or provide an affidavit, nor was he even identified, prior to the hearing, as a potential witness.

Finally, the respondent's conversation with tester Smith further suggests that the Stratford unit had not been rented. (See FF 15.) When Smith inquired about a three-room apartment advertised in the Connecticut Post, the respondent informed her that

the apartment was already rented but that she still had a three-bedroom unit in a Stratford duplex for $1200. This conversation occurred on July 14, a week after the complainant was rejected and ten days after Caesar allegedly rented the unit.

Similarly, the respondent told tester Patalak on July 17 that she had a three-bedroom unit available. (See FF 16.) Although it is not clear that this is the same unit sought by the complainant, the respondent's conversation with tester Smith reveals the Stratford three-bedroom unit was available merely three days earlier. Unless the respondent rented the Stratford unit and received a new three-bedroom listing within that brief period, the unit she mentioned to Patalak was likely the Stratford duplex.

The respondent's telephone interactions with the various testers underscore her bias against Section 8 tenants and, accordingly, corroborate the complainant's position. As discussed above, the respondent did not merely reject testers Patalak, Montemurno and Bray after she learned they received financial assistance, but she also verbally demonstrated her hostility toward Section 8. (See FFs 16 and 20.)

Conversely, the respondent was far more cooperative with those testers who claimed not to receive Section 8 assistance. When tester Smith sought an advertised three-room apartment that was already rented, the respondent indicated the availability of a three-bedroom unit in a Stratford duplex for $1200 per month. (See FF 15.) The respondent was even more solicitous of Annie Gentile, offering a lower rent for a Bridgeport apartment and telling her that a good-looking single man lived upstairs. She also offered to show Gentile a townhouse at Derbyshire for $1300 per month. (See FF 18, 19.)

In light of the foregoing, I conclude that the respondent has not met her burden of persuasion under the *Price Waterhouse* analytical model and accordingly conclude, based on the record as a whole, that the complainant has established the respondent's liability for discriminatory denial of a rental unit because of her source of income, in violation of General Statutes § 46a-64c (a) (1).

D. The respondent is also liable for violating General Statutes § 46a-64c (a) (3), which prohibits, among other things, any statement "with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . lawful source of income, . . . or intention to make any such preference, limitation, or discrimination . . ." Although the complainant quoted this statute at the beginning of her post-hearing brief, she subsequently provided no analysis of either liability or damages. Because she has, for all intents and purposes, abandoned this claim, I need not address it further.

E. General Statutes § 46a-86 (c) authorizes the presiding officer, upon a finding of a discriminatory practice prohibited by § 46a-64c, to award damages, which may include, but need 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 [her] as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs."

The record contains no evidence of the complainant's expenses, if any, for seeking another apartment, for moving from Jewett Street to Lester Street, or for storing any goods and effects. The complainant also failed to establish the differential, if any, between her contribution to the rent at Jewett Street and her contribution to the rent at Lester Street. (See Saddler, 30.)

From September 2003 (when the school year began) through December 2003, the complainant relied upon her former neighbor to take her children to the school bus in the morning and to pick them up in the afternoon. Had she been given the Stratford apartment, her family would have been able to provide such help, at no cost. For this assistance, the complainant paid her former neighbor fifty dollars per week for approximately sixteen weeks. (See FF 10.) While I calculate these expenses as approximately $800, the complainant claims only $600 (see complainant's proposed finding of fact # 76). The complainant is entitled to recover the latter amount as an expense that would have been rendered unnecessary but for the respondent's refusal to rent the Stratford unit to the complainant.

In March 2004, no longer relying on assistance from her former neighbor, the complainant reduced her work hours from forty hours per week to twenty-four so she could ensure that her children got on and off the school bus safely and had adult supervision both before and immediately after school. (See FF 11.) (The record lacks any evidence of how the complainant handled her childcare issues in January and February.) The concomitant loss in salary from March until the end of the school year, a period of sixteen weeks, is certainly a consequence—albeit indirect—of the respondent's discriminatory decision. The complainant, however, rested her case without ever establishing her hourly rate of compensation; thereafter, I sustained the respondent's appropriate objection to the complainant's attempt to raise this matter on rebuttal. (See transcript, 158.) Thus, while her claim for lost wages is meritorious, it is not readily calculable because she failed to proffer (or even identify prior to the hearing) any testimony or documentary evidence allowing meaningful calculation of her actual loss.

To compensate for this omission, in her post-hearing brief the complainant attempts to measure her lost wages based on the 2003 federal minimum hourly wage, $5.15, as set forth at **http://www.epinet.org/content.cfm/issueguides_minwage_minwage**. (At her request, I have taken official notice of that internet source.) The respondent raised no objections to this tactic, and I therefore accept this method of calculation so the complainant may be at least partially compensated for her lost earnings. Working sixteen fewer hours each week for a period of sixteen weeks, the complainant sustained, based on the minimum wage, a loss of $1318.40. She is entitled to recover that amount.

Finally, in the summer of 2004, the complainant sent her children to day camp in Bridgeport and her sister would pick up the children after camp until the complainant finished work. According to her post-hearing brief, the complainant sent her children to camp for twelve weeks and drove an additional thirty miles each day (from Ansonia to Bridgeport and back) for a total of 1800 miles. The brief then indicates, "At the federal rate of $0.44 per mile, [the complainant] suffered actual damages of $792.00." Although

the complainant credibly testified that her children did attend camp in Bridgeport, the record lacks any evidence of the length of the camp program. Moreover, the complainant did not establish (or provide reason for me to take official notice of) the distance between the two municipalities, and she predicates her claim of $0.44 per mile on a website not hitherto mentioned on the record. Given the paucity of evidence, I cannot grant this particular claim for damages.

F. This tribunal's broad authority to award damages under General Statutes §46a-86 (c) includes the discretion to award damages for emotional distress or other non-economic harm. *Fulk v. Lee*, 2002 Conn. Super. LEXIS 499, 5, citing *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91 (1995); *Commission on Human Rights and Opportunities ex rel. Peoples v. Estate of Eva Belinsky,* 1988 Conn. Super. LEXIS 23, 10-18; *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco,* CHRO No. 7930433, pp. 12-14 (June 13, 1985). Such awards must be limited to compensatory, rather than punitive, amounts. *Chestnut Realty, Inc. v. Commission on Human Rights and Opportunities*, 201 Conn. 350, 366 (1986). The public policy considerations in support of emotional distress damages in housing discrimination cases are extensively discussed in *Commission ex rel. Harrison v. Greco,* supra: for example, awarding humiliation and mental distress damages would deter discrimination and encourage filing complaints, particularly in the housing area where actual out-of-pocket damages are often small. Here the complainant seeks $10,000 for her emotional distress.

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 ex rel. Peoples v. Belinsky,* supra, 1988 Conn. Super. LEXIS 23, 17-18; *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 her internal emotional response to the harassment; her 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); *Commission on Human Rights and Opportunities ex rel. Thomas v. Mills, CHRO No. 9510408, pp. 6-7 (August 5, 1998).* Medical testimony, however, may strengthen a case; *Busche v. Burkee,* 649 F.2d 509, 519 n. 12 (7th Cir. 1981); just as the testimony of relatives, friends and business associates may also provide insight into a complainant's emotional state; *Blackburn v. Martin,* 982 F.2d 125, 132 (4th Cir. 1992).

In the present case, the complainant testified frankly and forcefully about her emotional reactions to her rejection. Already struggling with the travails of single parenthood and undesirable living conditions, the complainant found the experience so humiliating that she became wracked with self-doubt about her worth as a parent and so afraid of further rejection that she temporarily put her apartment search on hold. Although she relied on her family for emotional support during this trying period, no family member or, for that matter, any other witness, lay or expert, testified on her complainant's behalf.

The complainant's emotional harm, however debilitating at first, appears not to be permanent and, absent evidence to the contrary, I infer that it subsided once the complainant found a new apartment. See *Commission on Human Rights and Opportunities ex rel. Banks and Hansberry v. Eckhaus*, CHRO Nos. 0250114 and 0250115, p. 21 (May 23, 2003). The complainant's daily routines returned to a predictable and reliable pattern--albeit one not altogether convenient--and her relationships with friends and family remain untainted by the experience. Her discomfort while formally testifying to painful recollections is unsurprising but it does not, by itself, demonstrate that her emotional distress continued unabated from the July 2003 incident through the time of the public hearing. I am unconvinced by her argument that she still suffers from ongoing emotional distress and, accordingly, she should not be compensated for what she depicts as almost three years of emotional suffering.

When discriminatory actions occur in front of other people, the victim may be further humiliated and thus deserving of a higher award for emotional distress. Indeed, this was a critical factor in justifying the relatively large awards in several cases; see, e.g., *Commission ex rel. Thomas v. Mills,* supra, CHRO No. 9510409, pp. 7-8*; Commission on Human Rights and Opportunities ex rel. Cohen v. Menillo,* CHRO No. 9420047 (June 21, 1995). Conversely, the absence of a public display of discrimination militates against a substantial award. *Commission ex rel. Peoples v. Belinsky,* supra, 1988 Conn. Super. LEXIS 23, 17-18 (the absence of such public display led to an award of $3,500, lower than the $5,000 requested); *Commission on Human Rights and Opportunities ex rel. McNeal-Morris v. Gnat,* CHRO No. 9950108, pp. 7-8 (January 4, 2000).

On this record, there is no evidence that anyone other than the complainant heard the respondent's remarks, or that anyone was present to observe the complainant's immediate reactions. The evidence plainly shows that only the complainant's family members—and perhaps her helpful neighbor—were aware of her experience, and then only because the complainant shared the experience with them. The absence of a public display of discrimination must temper the size of the award.

The degree of offensiveness of the respondent's conduct, along with its overall impact on the complainant, is another factor to consider when assessing emotional distress damages. The respondent's one-time comments contained no derogatory or offensive language, were not made with the intention of producing pain, embarrassment and humiliation, and, at least on this record, had no long-standing impact on the complainant. Cf. *Commission ex rel. Thomas v. Mills*, supra, CHRO No. 9510408 (over the course of several months, the respondent repeatedly—and publicly—taunted, harassed, and threatened the complainant because of her disability and sexual orientation, causing her to live in fear that the respondent would seriously harm her); *Commission on Human Rights and Opportunities ex rel. Nelson v. Malinguaggio*, CHRO NO. 9740155 (June 10, 1999) (landlord referred to the complainant's children as "niggers" in front of the complainant and her friend); *Commission ex rel. Cohen v. Menillo*, supra, CHRO No. 9420047 (landlord refused to rent to African American

complainants and made disparaging comments about their race); *Commission on Human Rights and Opportunities ex rel. Scott v. Jemison*, CHRO No. 9950020 (March 20, 2000) (landlord's constant racial slurs and physical threats over a two and one-half year period led to complainant's depression, anxiety attacks, and premature contractions during pregnancy.).

The complainant cites specifically to *Commission on Human Rights and Opportunities ex rel. Westphal v. Brookstone Court*, 2006 Conn. Super. LEXIS 477 to justify her claim for $10,000 in emotional distress damages. *Westphal,* like the present case, involved a telephone inquiry culminating in the landlord's denial of a rental unit to a protected-class complainant—in that case, a wheelchair-bound prospective tenant who would have required several structural changes to the building to accommodate her disability. The Superior Court awarded the requested $10,000, having found that the complainant secluded herself from others, remained depressed for eight to twelve months, and lost weight over a four-to-six month period. On the record before me, I cannot conclude that the complainant's emotional injuries were as severe or long-lasting as those of the *Westphal* plaintiff.

The complainant also cites to *Commission ex rel. Colon v. Sullivan*, supra, 2005 Conn. Super. LEXIS 2748, where the Superior Court awarded the plaintiff emotional distress damages of $4000 after the landlord told her, on the telephone, that he would not rent to Section 8 recipients. The court awarded compensation for the plaintiff's economic losses based on her "unchallenged creditable evidence" and, with a well-reasoned legal analysis, assessed a civil penalty, payable to the commission. The decision, however, contains no analysis or explanation why $4000 was an appropriate award for emotional distress. Other than suggesting an arbitrary amount for a particular telephone rejection of a Section 8 recipient, the *Colon* case offers little guidance on the assessment of emotional distress damages.

Several other cases, not mentioned by the complainant, provide further perspective. For example, in *Fulk v. Lee*, supra, 2002 Conn. Super. LEXIS 499 the Superior Court found that the defendant realty company denied the plaintiff an apartment because of

her source of income (Section 8), and awarded the plaintiff emotional damages in the amount of $1500, having found that she was “upset, hurt . . . depressed and anxious,” and that she continued to suffer up to and at the time of trial, six years after the incident. In the present case, the evidence does not support a finding that the complainant continued to suffer emotional distress up to the time of trial.

In *Commission ex rel. Banks and Hansberry v. Eckhaus*, supra, CHRO Nos. 0250114 and 0250115, p. 8, the discriminatory act, like that in the present case, occurred on the telephone with no observers at either end of the exchange, when the landlord’s representative told the complainants (in two separate conversations) that the landlord would not rent to Section 8 tenants. Both complainants described, in general terms, their feelings of rejection, frustration, and emotional stress. Complainant Banks suffered temporary, stress-induced hair loss. Complainant Hansberry testified that her blood pressure had risen, but medical evidence proved that assertion to be false. Nevertheless, neither complainant suffered significant disruption of their daily routines, although both continued to live in undesirable situations—far worse than that of the present complainant—for several months. The presiding human rights referee awarded emotional distress damages of $4500 to complainant Banks and $2500 to complainant Hansberry.

In light of the foregoing, I conclude that an emotional distress award of $5000 is fair and reasonable.

G. General Statutes § 46a-86(c) also allows for the recovery of reasonable attorney’s fees. The process of determining a reasonable attorney’s fee initially begins with the calculation of an objective “lodestar” figure, derived by multiplying the number of hours reasonably expended on the case by a reasonable hourly rate. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 763-64 (2nd Cir. 1998) (a case brought under the Fair Housing Act); *Ernst v. Deere and Company*, 92 Conn. App. 572, 576 (2005).

The parties agreed that the complainant's counsel could set forth her claim for (and calculation of) attorney's fees in the context of her post-hearing brief and accompanying

affidavits. Nonetheless, at my request, complainant's counsel described on the record the general nature of her legal work done to date, as well as the approximate number of hours worked and applicable hourly rates. (Tr. 159-61) The attorney's first affidavit, filed with the complainant's post-hearing brief, describes nearly twenty years of experience in housing discrimination cases, details thirty hours and forty-five minutes of work spent to date on this case, [5] and indicates that $250 per hour "is the rate charged by attorneys of similar experience in the private bar." Her second affidavit, submitted with the complainant's reply brief, indicates one additional hour of work since the time of her first affidavit. None of the tasks is described in such a vague manner that I cannot discern its purpose or the reasonableness of the time spent.

The respondent raised no objections to the attorney's oral presentation on the record or her post-hearing affidavits, nor did she produce any countermanding evidence or offer her own opinion as to a reasonable figure. Therefore, for purposes of calculating the lodestar amount, I accept the thirty-one hours and forty-five minutes as a reasonable and necessary amount of time to spend on this case (in the manner described in the attorney's sworn timesheet), and $250 as a reasonable hourly rate in light of the attorney's experience. See *Commission on Human Rights and Opportunities ex rel. Colon v. Sullivan*, 2005 Conn. Super. LEXIS 3464, 8-9 and n.12. Accordingly, the complainant has established a lodestar award of attorney's fees in the amount of $7937.50.

Although the lodestar figure, in and of itself, may be presumed reasonable; see, e.g., *LeBlanc-Sternberg v. Fletcher*, supra, 143 F.3d 748, 765; *Mulligan v. Rioux*, 1996 Conn. Super. LEXIS 2677, 14-17; a trial court—as well as this tribunal—has the discretion to review the claim and, in light of the entire administrative record, adjust the award. Exercise of such prerogative is appropriate in this instance and guidance for my review comes from a consistent body of decisional law, both state and federal. A leading case from the Fifth Circuit Court of Appeals, *Johnson v. Georgia Highway Express, Inc*., 488

[5] In her first affidavit, the complainant's attorney states 30 hours and 55 minutes, but her detailed timesheet totals 30 hours and 45 minutes.

F.2d 714 (5th Cir. 1974), sets forth twelve criteria for assessing the reasonableness of an award of attorney's fees and thus for adjusting the lodestar figure:

1. the time and labor required;
2. the novelty and difficulty of the questions presented;
3. the skill requisite to perform the legal service properly;
4. the preclusion of other employment by the attorney due to the acceptance of this case;
5. the customary fee;
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.

Id. at 717-19; see also *Charts v. Nationwide Mutual Insurance Co*., 397 F.Sup. 2d 357, 381 (D.Conn. 2005). Connecticut courts have adopted the twelve criteria set forth in *Johnson*. *Ernst v. Deere,* supra, 92 Conn. App. 576; *Riggio v. Orkin Exterminating Company*, 58 Conn. App. 309, 317-19 (2000); *Lavoie v. Hoffman of Hartford*, 2006 Conn. Super. LEXIS 755, 3-4.[6] The list of criteria is not exclusive and the tribunal may consider other factors pertinent to the individual case. *Krack v. Action Motors Corp.,* 87 Conn. App. 687, 695, cert. denied, 273 Conn. 926 (2005). Moreover, although it is inappropriate to render a decision based only on one factor; *Riggio v. Orkin*, supra, 318-19; because not all factors apply in any given instance, the tribunal need not consider all twelve criteria. See, e.g., *Ernst v. Deere*, supra, 577.

[6] See also *Rodriguez v. Ancona*, 88 Conn. App. 193, 2002 (2005), which relies upon the similar criteria articulated in Rule 1.5(a) of the Rules of Professional Conduct: (1) time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if made known to the client, the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

The complainant's attorney appeared to spend an appropriate amount of time for this reasonably straightforward case. Neither the client nor the circumstances of the case imposed any undue time limits on her and the record contains no evidence that the time she spent on this matter precluded her from other contemporaneous employment.

The parties, for the most part, complied with their pre-trial responsibilities expeditiously and with little or no rancor. I note, however, that the complainant filed her requests for production after my established deadline and, consequently, when the respondent failed to comply, I denied the complainant's subsequent motion to compel responses to her untimely request for production. The futility of these discovery efforts should diminish the calculation of any attorney's fees awarded.

Prior to the hearing, the respondent stipulated to the admission of all but one of the complainant's twenty-three proposed exhibits; the respondent had no exhibits of her own. The hearing itself, at worst mildly contentious, was not complicated and was completed in the course of a single day, presenting no unusual or difficult legal issues, at least not to one with this attorney's experience and expertise. The complainant offered direct evidence of discrimination—the respondent's comments that she would not rent to Section 8 tenants—thus placing the greater legal burden on the respondent. Liability, to a great extent, depended on only two salient factual issues and assessment of the credibility of the two opposing parties.

The complainant's attorney neglected to address damages when presenting the complainant's case, but then attempted to do so with rebuttal testimony. The respondent correctly objected to this tactic and I disallowed the rebuttal. Compounding this oversight is the attorney's earlier failure to identify, much less proffer, any documents that would have demonstrated her losses. As a result, in her post-hearing brief, the attorney resorted to measuring the complainant's lost wages based on the 2003 federal minimum wage, an effort that unquestionably diminished the complainant's damages. The attorney's failure to provide the necessary evidence to establish the complainant's consequential expenses during the summer of 2004 (day camp and driving expenses) likewise reduced the complainant's recovery.

Finally, the degree of success (i.e., the result of the case) is the most critical element of the calculus. *Broome v. Biondi*, 17 F.Sup. 2d 230, 238 (S.D.N.Y. 1997), citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992); *Ernst v. Deere*, supra, 92 Conn. App. 577. Here, the complainant's victory is almost as much a tribute to the weakness of the respondent's case (including her cursory post-hearing submissions) and the respondent's credibility problems, as it is to the efforts of complainant's counsel. The attorney's mishandling of the evidence on damages (e.g., failure to proffer—or even identify—any potential exhibits supporting the claims of lost wages and of child care in the summer of 2004, as well as her failure to elicit pertinent testimony during the complainant's direct case) unquestionably compromised the complainant's potential recovery.

In sum, when weighing the pertinent *Johnson* criteria, I conclude that the particular circumstances of this case militate against an award of the full amount of attorney's fees requested. In light of the foregoing, therefore, I find that an award of attorney's fees in the amount of $5500 would be fair and reasonable.

## FINAL DECISION AND ORDER

1. Within one week of the date of this decision, the respondent shall pay to the complainant damages in the amount of $12,418, based on the following:

| | |
|---|---|
| Economic losses (lost wages; childcare)……. | $ 1918 |
| Emotional distress damages…….. | $ 5000 |
| Attorney's fees ……. | $ 5500 |
| TOTAL …….. | $12,418 |

2. Pursuant to General Statutes §37-3a, post-judgment simple interest shall accrue on this award at the rate of 10% per annum, from the date payment is due.

3. The respondent shall immediately cease and desist from refusing to rent any residential property to which the provisions of §46a-64c apply, from refusing to negotiate to rent such property, and from refusing to make such property available for rental to any person because of lawful source of income, except as otherwise may be permitted by Chapter 814c of the General Statutes.

4. The respondent shall immediately cease and desist from making any statements with respect to the sale or rental of a dwelling that indicate any preference, limitation or discrimination based on a prospective tenant's or buyer's lawful source of income, except as otherwise may be permitted by Chapter 814c of the General Statutes.

5. The respondent shall not retaliate against the complainant or any person who participated in this proceeding.

6. The commission shall refer this matter to the Connecticut Real Estate Commission for any additional action that the real estate commission deems appropriate.[7]

It is so ordered this ___ day of May, 2006.

_____
David S. Knishkowy
Human Rights Referee

[7] See *Commission on Human Rights and Opportunities ex rel. Watts v. Plaza Realty*, CHRO No. 8710078 (December 20, 1989), where the presiding officer issued a similar order.

**PARTY LIST**

| Party | Represented by |
|---|---|
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