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

Commission on Human Rights and Opportunities ex rel. Nicole Thompson, Complainant

CHRO No. 0450008
FED No. n/a

v.

Marc A. Pennino, Marie Pennino, John Bauco and Karen Bauco, Respondents

March 2, 2007

MEMORANDUM OF DECISION

I.
Background

On August 4, 2003, Nicole Thompson (complainant) of 2226 East Main Street, Bridgeport, Connecticut filed an Affidavit of Illegal Discriminatory Practice (complaint) with the Commission on Human Rights & Opportunities (commission) located at 21 Grand Street, Hartford, Connecticut alleging that the respondents refused to rent an apartment located at 132 Benham Ave., Bridgeport, Connecticut to her because of her source of income (Section 8) in violation of General Statutes §§ 46a-64c (a) (1), 46a-64c (a) (2) and 46a-64c (a) (3). After having completed an investigation of the complaint, the commission found reasonable cause to believe an unfair housing practice had been committed and attempted to eliminate the unfair practice by way of conference, conciliation and persuasion. Since, efforts to eliminate the practice failed, the commission, on April 22, 2004 certified the matter to a public hearing. The respondent, Marc A. Pennino of 150 Miro Street, Fairfield, Connecticut filed his answer on June 17, 2004 denying all allegations of discrimination. The remaining respondents,

Marie Pennino of 150 Miro Street, Fairfield, CT and John Bauco and Karen Bauco of 35 McKinley Ave., Bridgeport, CT filed their answers on June 29, 2005 in which all claims of discrimination were denied. The public hearing was held in accordance with § 46a-84 (a) and § 46a-54-79a of the Regulation of Connecticut State Agencies on September 20, 21, 22, 2005, October 11, 19, 2005 and February 1, 2, 3, 2006, March 7, 2006 and December 5, 2006. The record closed on December 5, 2006 after the parties filed post-hearing briefs as to liability and attorney's fees.[1]

II.
The Parties' Positions

The complainant, prior to filing of her complaint, was living in a rental apartment infested with roaches, mice and rats, and had been waiting for Section 8-subsidy approval for approximately 6 years. Having been selected for participation in the Section 8 program, she responded to a "For Rent" advertisement in her local newspaper. When questioned by Marc A. Pennino, if she was using Section 8, she was told he wasn't accepting Section 8 recipients. At the time she received her Section 8 subsidy the complainant had been informed that refusing to accept Section 8 was an act of discrimination. The complainant alleges as a result of the discriminatory actions of the respondents she suffered damages in the amount of $15,176. The complainant further requests an award of emotional distress damages in the amount of $20,000, along with attorney's fees.

[1]It was determined after the parties had submitted post-hearing briefs, that it would be more practical to hear argument and have submissions relating to attorney fees for review and analysis (if warranted) in the final decision rather than bifurcate the issues as was previously anticipated.

The respondents' defenses include: 1) the complainant had not solidified her protected status (recipient of Section 8 funding) as the apartment she was making inquiries about had not passed inspection; 2) the inspection of the unit would of have taken several weeks, thus depriving the respondents of rental income from the first of the month; and, 3) there was no intent to discriminate.

III.
Findings of Fact

1. Statutory and procedural prerequisites to the public hearing were satisfied and the complaint is properly before the undersigned Human Rights Referee for decision.
2. In July 2003, the complainant, a single parent, was living at 1333 East Main Street, Bridgeport with two children ages 8 years and 2 weeks (TR 16-19).
3. In July 2003, the complainant was paying $600 per month as rent (TR 20).[2]
4. The premises that the complainant and her two children occupied at 1333 East Main Street, Bridgeport were infested with roaches, mice and rats, which she would observe on a nightly basis. The complainant found rat and mice pellets throughout her apartment including in her sons' drawers and clothing. Additionally, her bathroom had a large hole in the ceiling caused by water from

[2] Reference to an exhibit are by party designation, number and page. The commission's exhibits are denoted as CHRO Ex followed by the exhibit number and page. The complainant's exhibits are denoted as "C" followed by the exhibit number and page. The respondents' exhibits are denoted by R Ex followed by the exhibit number and page. References to testimony are to the transcript page (TR.) where the testimony is found.

the apartment above. The water coming from the apartment above occurred on a daily basis or whenever someone took a shower in that apartment. The heat would not work all the time, cabinets and fixtures were broken. The complainant's toilet at one point remained broken for an entire month (TR 24-31).

5. In July and August of 2003 the complainant was employed by Resources for Human Development making $400 per week. In September and October 2003 she was unemployed and her income was $200 per week based on unemployment compensation. The complainant returned to work in November 2003 and her income was $1200 per month. In 2004 for 3-4 months the complainant's income increased to $2000 per month but this was reduced again to $1200 and stayed at that level until March 2005 when she was terminated. In April 2005 she started collecting unemployment compensation at a rate of $376 per week and has continued receiving that benefit (TR 20-23).
6. In 1997 the complainant applied for Section 8[3] assistance (TR 16).
7. On July 23, 2003, the complainant was awarded a Section 8 voucher certificate for $800 per month by the Bridgeport Housing Authority (TR 37, 52).
8. The complainant's oldest son suffered from a heart condition known as Kawasaki Disease. The symptoms of which (as believed by the complainant) can be triggered by rats and roaches and can cause him to develop an infection requiring him to be hospitalized (TR 29-30).

[3] 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 and designed to assist qualified low-income persons pay their rental obligations. See, *United States Housing Act of 1937, Section 8 as amended;* 42 USCA section 1437f; *Commission on Human Rights & Opportunities ex rel. Colon v. Sullivan,* 2005 Conn. Super. LEXIS 2748 4 n.7.

9. The complainant, upon receiving notice of Section 8 assistance, was provided with training in the use of the awarded subsidy. Specifically, the complainant was told that she had 120 days to find housing or lose her voucher. Further, she was told that a landlord's refusal to accept Section 8 was discrimination and was given names of individuals to call should she experience such situation (TR 39).
10. One of the names provided to the complainant to call should a potential landlord refuse to accept her Section 8 certificate was Joe Wincze (TR 39).
11. The Section 8 certificate that complainant was awarded could not be used toward rent on her present apartment (TR 52).
12. On July 29, 2003, the respondents published in the Connecticut Post newspaper an advertisement offering a first floor two-bedroom apartment on Benham Ave., Bridgeport for $800 per month plus a security deposit, with the caveat of no pets. Included in the advertisement were two telephone numbers (203) 981-5045 and 332-1599 (TR 42-44, C-6).
13. On July 29, 2003, the complainant obtained a copy of the Connecticut Post published on or about that day with the intent to look for apartments advertised for rent[4] (TR 42).
14. The complainant discovered the advertisement offering the respondents' apartment for rent, which was in her price range, and called one of the telephone numbers given in the advertisement (332-1599). While no one answered the

[4] The complainant testified she purchased the Connecticut Post published on July 29, 2003. This advertisement was published on July 27, 28 and 30, 2003. It is presumed the advertisement responded to by the complainant was from either July 27 or 28. See C-36, pp. 148-149.

complainant's call, she left a message as to her interest in the advertised apartment (TR 41, 46-47, 148).

15. On July 29 the complainant at approximately 4:07 p.m. received a telephone call in response to her inquiry concerning the advertised apartment. While the complainant could not identify the caller in the return telephone call the person who in fact called her back had the same voice as that on the answering machine when she left her message. At the time of this call the complainant's caller I.D. displayed the name of Marc A. Pennino as the caller and displayed the number of the telephone being used to make the call as 332-1599 (TR 47-49).

16. The conversation between Marc A. Pennino and the complainant was brief. It consisted of the caller stating he was answering the message left and that the apartment was still available with a rental amount of $800 per month. Upon conveying the information that in fact the apartment was available respondent was asked if the complainant had Section 8. She responded she did, which elicited from the caller, "I don't take Section 8" and the call was then terminated (TR 51).

17. The complainant, as a result of being told the Section 8 was not being accepted, felt hurt, worthless, ashamed and like a "nobody." The complainant further felt depressed and stressed in not having sufficient money to find an apartment that would not pose a risk for her sons (TR 52-53).

18. As a result of being told that Section 8 was not being taken, the complainant contacted Joe Wincze who was employed by the City of Bridgeport as the Director of the Fair Housing, Fair Rent Department (TR 54-55, 1335).

19. On July 30, 2003, Mr. Wincze returned the complainant's calls and after the complainant explained what she had experienced, he requested that she contact someone she knew to again call for the apartment and see if they would be denied if they didn't admit to having a Section 8 subsidy (TR 55).
20. Kevin Rhodes, at the request of the complainant and using the telephone number and information regarding the apartment provided by the complainant, called at or about noon on July 30, 2003 and made an inquiry regarding the apartment advertised for rent. Upon answering the telephone, a man questioned Mr. Rhodes as to his employment, ability to pay the rent and the number of people to be living in the apartment. Mr. Rhodes responded that he worked for Intagio as a corporate trade broker, his income was approximately $50,000 per year and the apartment was for him and his wife (TR 73-75, 512, 524).
21. During the conversation between Rhodes and Marc A. Peninno, the topic of Section 8 benefits was not raised (TR 521).
22. At no time during the conversation between Mr. Rhodes and Marc A. Pennino was it suggested that there was any urgency to act on renting the subject apartment (TR 521).
23. The telephone numbers referred to in the rental advertisement for Benham Ave., 332-1599 and 981-5045 belongs to Marc A. Pennino (TR 618).
24. In 2003 telephone number 332-1599 was for a cell phone that the respondent Marc A. Pennino carried except for his wife, respondent Marie Pennino, and their 7-year-old son.

25. On July 30 the complainant at approximately 12:30 p.m. spoke with Mr. Rhodes who gave her the results of his inquiry regarding the apartment (TR 58).
26. The complainant then telephoned Joe Wincze and explained to him the results of Mr. Rhodes' call (TR 75).
27. Joe Wincze then dialed the second telephone number given in the advertisement, 981-5045, from his office while the complainant was on the same telephone line. The person who answered was the same person who had answered when the complainant called 332-1599 the previous day. Again, the complainant asked about the availability of the apartment advertised on Benham Ave. The complainant was told by Marc A. Pennino, that the apartment was available and the monthly rental was $800. Marc A. Pennino asked the complainant how many people were intending to occupy the apartment. After the complainant told him three, Marc A. Pennino then asked if the complainant had Section 8. When she informed him she did, Marc A. Pennino responded, "I don't take Section 8." In response to this statement the complainant asked him why he didn't take Section 8 to which he stated, "because I can't get the inspectors out there tomorrow." He then hung up the telephone (TR 75-83).
28. The respondents obtained ownership to the property known as 128-134 Benham Ave. on or about April 16, 1991 and held title to that property until approximately October 2004 (C-9, p. 52, TR 526-527).
29. The respondents rented the apartment to Michael Williams and Rhonda Williams on August 1, 2003 for $800 per month for one year (C-3, pp. 22-27).

30. On August 23, 2003, Michael Williams was arrested for assault in the 1st degree (see General Statutes §53a-59) after striking his wife's uncle several times with a baseball bat (C-29, pp. 84-86).

31. The respondents received only one month's rent from Mr. and Mrs. Williams. Due to the lack of rental payments the respondents caused to be served a Notice to Quit on the Williams on September 12, 2003. On September 24, 2003, the respondents caused to be served on the Williams a Summary Process (eviction) action, which resulted in the respondents and the Williams entering into a stipulated agreement on October 20, 2003. As a result of the Williams failure to abide by the terms and conditions of the stipulated agreement the respondents sought a Summary Process Execution for Possession (C-7, pp. 33-41).

32. Leases entered into pursuant to Section 8 can start on any day of the month providing the intended apartment passes inspection (TR 1315).

33. The process for obtaining Section 8 approval of a particular apartment by the Bridgeport Housing Authority takes approximately fifteen calendar days. This is broken down as follows: on the first day the tenants' applications are reviewed by the potential landlord. This process takes approximately 15-20 minutes and assuming it is approved, the subject apartment is scheduled for inspection. The inspection process is completed within fourteen calendar days unless the apartment fails inspection. Were an apartment to fail, a re-inspection would be done within thirty (30) days (TR 1289-1293).

34. As a result of the telephone conversation with Marc A. Pennino on July 30, 2003, the complainant felt ashamed (as a result of how she had been spoken to), “disrespected” and worthless (TR 82).
35. After the rejection the complainant saw her primary care doctor, Dr. Chinnah for the symptoms she was experiencing (TR 430).
36. The complainant, despite continuing to search for a suitable apartment, was unable to find one and on December 18, 2003 her voucher expired (C-48, pp. 215-216, TR 91)
37. The complainant remained at 1333 East Main Street until the end of January 2004 (TR 114).
38. On January 31, 2004 the complainant and her children moved and commenced living with Mr. Rhodes’ mother. She paid no rent, but did pay $400 for childcare (TR 126-127).
39. At the time of the commencement of the public hearing, the complainant was paying $900 per month for rent at 2226 East Main Street and had a monthly income of $1504 per month (TR 118).
40. A monthly Section 8 subsidy is calculated by the Bridgeport Housing Authority by multiplying weekly income by 52. From that total, $480 is subtracted and the result divided by 12. That total is then multiplied by 30%. This is how the total tenant payment (TTP) is determined. From the TTP $94 is subtracted as utility allowance (TR 1272-1274).

IV.
Analysis

The length of the public hearing, coupled with the extensive record, including the briefs submitted by the parties, belies the simplicity of the matter pending before this tribunal.

The complainant has alleged[5] that the respondents have violated Connecticut's Fair Housing Law § 46a-64c (a) (3) which states, "It shall be a discriminatory practice in violation of this section to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, imitation, or discrimination based on race, creed, color, national origin, ancestry, sex, marital status, age, **lawful source of income,** familial status, learning disability or physical or mental disability, or an intention to make any such preference, limitation or discrimination." (emphasis added.) In this instance the claim of the complainant is that her receipt of Section 8 assistance places her within the purview of this statute. Lawful source of income is defined in § 46a-63 (3) as "income derived from…housing assistance…" Furthermore, our state supreme court in *Commission on Human Rights and Opportunities v. Sullivan,* 250 Conn. 763 (1999) found that lawful source of income includes Section 8 assistance and that landlords are prevented from refusing to participate in the Section 8 program except but for limited reasons, e.g. poor credit, poor rental history, or poor references. Id. 776. The purpose of our fair housing statute as it relates to housing assistance, is to address "the

[5] While the complainant in her affidavit cited, § 46a-64c (a) (2) as a ground for her claims of discriminatory conduct by the respondents, this was not briefed. As a consequence, I deem it waived. *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 115 (1995).

unspoken presumption that Section 8 assistance recipients, by virtue only of their source of income, are undesirable tenants for a landlord's rental properties." Id.

This statute's is enactment and purpose is "reflected in the title of the enacting legislation, 'An Act Adopting the Comprehensive Connecticut Fair Housing Statute Conforming to the Federal Fair Housing Act'…which was codified as § 46a-64c." Its enactment was intended to create a state anti-discrimination housing statute consistent with its federal counterpart [42 U.S.C. §3601 et seq.] *Commission on Human Rights & Opportunities v. Savin Rock Condominium Assoc.,* 273 Conn. 373, 384 (2005). In construing a Connecticut statute similar to its federal counterpart the courts (and certainly this tribunal), turn to decisions interpreting federal law for guidance. Id 386, *Miko v. Commission on Human Rights & Opportunities,* 220 Conn. 192, 202 (1991); *Levy v. Commission on Human Rights & Opportunities,* 236 Conn. 96, 103 (1996). Furthermore, "when the overlap between state and federal law is deliberate…federal decisions are particularly persuasive." *Commission on Human Rights & Opportunities v. Savin Rock Condominium Assoc.,* supra, 386.

In most instances where complainants bring claims of discrimination, analysis of liability is performed under one of two theories, these being the pretext model stated in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973) or the mixed-motive theory of *Price Waterhouse v. Hopkins,* 490 U.S. 228 (1989).

The complainant having failed to mention (let alone analyze the facts under) using the pretext model, and the respondent barely paying lip service to that theory warrant that I give no consideration to that manner of analysis.[6] It is the mixed-motive that serves as the model of analysis the complainant employs as well the method by which the respondents offer their defense. Under *Price Waterhouse* the complainant has the burden of showing (either with direct or circumstantial evidence) that she was a member of a protected class and that an impermissible factor played a substantial motivating role in the respondents' decision to choose not to rent to her. *Levy v. Commission on Human Rights & Opportunities,* 236 Conn. 96, 106 (1996). In this instance the complainant has proven that she in fact was accepted into the Section 8 program. Furthermore, the complainant has successfully shown that the respondents' decision not to rent to her or even discuss the possibility of renting to her was due to her intended use of Section 8 in paying her rent. Potential legitimate reasons for refusing to rent to a Section 8 recipient (e.g., poor rental history, bad credit, or poor reference) could not have formed the basis for refusing to rent to the complainant, as they were never raised or discussed.

Successfully establishing by direct evidence that the respondents' intention to discriminate was due to a protected status (recipient of Section 8 funding) would in most cases utilizing the mixed-motive model shift the burden to the respondents to prove by a

[6] While the complainant failed to argue the pretext model, the commission in a supplemental reply brief did outline the pretext model under *McDonnell Douglas.* While in fact this theory of analysis was discussed, the commission's position was that due to direct evidence of discrimination having been presented, the mixed-motive/*Price Waterhouse* model is the proper means of analysis.

preponderance of the evidence that it would have made the same decision even if it had not taken the discriminatory factor into account. *Levy v. Commission on Human Rights & Opportunities,* supra. 236 Conn. 106.

Having presided over this public hearing I had ample opportunity to view and assess the credibility of the respondent Marc A. Pennino, the primary witness for the respondents. His lapses of meaningful memory under cross-examination, his gamesmanship with complainant's counsel and his evasive demeanor led me to conclude that he was not a credible witness. His excuse to avoid liability was that there was no time to have the apartment inspected and thus deprives the complainant of her protected status is completely without merit. First and foremost respondent's defense is directly linked to the complainant's status (Section 8 recipient), which required any potential apartment to be inspected. Second, using the logic of the respondents produces an utterly absurd result. This argument would allow a landlord the ability to dictate when an apartment could be offered or withheld from a potential renter based solely on that person's source of income just by refusing to allow an inspection to take place, thereby removing (as was done in this case) a publicly advertised apartment from that portion of the public using Section 8. This argument would most certainly offer a loophole to the landlord's mandatory participation in this program. *Commission on Human Rights & Opportunities v. Sullivan,* supra, 250 Conn. 765. It is clear that, based on the evidence, the respondents had purposely chosen to remove themselves from participating in a mandatory program and the bureaucracy that goes with it. Finally, the respondents

have not supported this argument with any authority, caselaw or otherwise. They simply state "[w]ithout a passed inspection the complainant was not qualified."[7]

The respondents' excuses for why they would not rent to the complainant fail to measure up to legitimate motivating reasons and further analysis at this juncture can be halted.

With all the above being said, the statute under which the complainant is seeking a finding of liability (§ 46a-64c (a) (3)) has been found to impose strict liability on a respondent. *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli,* CHRO No. 9850105 (Ruling re: Setting Aside Default, April 22, 2002). In ruling on § 46a-64c (a) (3) and its federal counterpart 42 U.S.C.S § 3604 (c) it has been found that 3604 (c) has been recognized as a strict liability statute. "[A]ll that is required to establish liability is that the challenged **statement was made** with respect to the rental of a dwelling and indicates discrimination based on [protected class] status." (emphasis added.) The secretary, United States Department of Housing and Urban Development o/b/o *Gayle Herman v. Paul Schmid,* HUDAJL 02-94-0276-8 pp. 8-10 (July 15, 1999). No showing of subjective intent to discriminate is necessary to establish a violation of § 3604 (c). *Janick v. Department of Housing and Urban Development,* 44 F.3d 553, 556 (7th Cir. 1995). Mr. Pennino's comments that Section 8 was not being accepted supplies the evidence necessary for a finding of liability. Marc A. Pennino's failure even

[7] The respondent's trial memorandum dated July 14, 2006, pp. 10-11.

to discuss the possibility of renting, let alone renting the apartment to the complainant, supports such a finding.

The relevant facts in analyzing the subject statute (§ 46a-64c (a) (3)) through the lens of strict liability are that the complainant is a participant in the Section 8 rental assistance program who responded to an advertisement offering an apartment for rent. The respondent, in returning the complainant's call after indicating the apartment's availability, abruptly questioned the complainant on whether she was using Section 8. Upon hearing that she was, respondent stated, "I don't take Section 8." Nothing regarding intent is necessary in the analysis. See *Ragin v. Macklowe Real Estate Co., et al.,* 6 F.3d 898, 906 (1993). Though unnecessary to the determination, it should not go unstated that respondents' comments and questions to Mr. Rhodes (tester) as to availability, income, job and that lack of urgency certainly bolsters the argument that the respondents certainly had determined who they would not rent to, that being Section 8 recipients.

With Marc A. Pennino testifying as to the practices typically employed in renting an apartment owned jointly by all named respondents, the question to be answered is, are the actions of one respondent attributable to all respondents. In this instance the answer is in the affirmative. Paragraph 5 of the complaint states in part, "[d]ue to the discriminatory act on behalf of Marc A. Pennino and the owners of the property of 132 Benham Ave. in Bridgeport,… I have been caused pain, humiliation and distress." In response to this allegation all respondents chose to state they have no knowledge of

any economic or non-economic damages, and are not responsible for them in any event. What the respondents J. Bauco, K. Bauco and Marie Pennino did not deny or challenge was that Marc A. Pennino's actions were on their behalf. This alone is enough to create an admission that Marc A. Pennino's discriminatory acts were done on behalf of all owners of the property. The commission's regulations require that all answers shall admit or deny each and every allegation. Furthermore, denials shall be direct and specific.[8] In this instance all respondents have chosen not to deal in any meaningful manner with the proposition that one or all of them are not responsible for the actions of respondent, Marc A. Pennino. As such this claim is deemed admitted.[9] It is also interesting to note that respondents' counsel in his post-trial memorandum did not argue the extent of liability of any of the individual respondents or take issue with the position taken by complainant's counsel in his post trial brief regarding the liability of all four respondents. I therefore find that the four respondents are jointly and severely liable for the damages below.

V.
Damages

A.
Emotional Distress

Having found that the respondents have violated § 46a-64c (a) (3) this tribunal is authorized by § 46a-86 (c) to award damages. Included in this is authority to award damages for emotional distress and other non-economic harm. *Fulk v. Lee,* 2002 WL 316325, (Conn. Super.) The criteria to be considered in arriving at an award for emotional distress include "the subjective emotional reaction to the respondents'

[8] See "Reg., Conn. State Agencies § 46a-54-94(b).
[9] See footnote 8.

actions; the public nature of the respondents' actions; the degree of the offensiveness of those actions; and the impact of those actions on the complainant." *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* CHRO No. 0550116 (Oct. 27, 2006). The complainant is not required to present medical testimony to establish her internal emotional response to the discriminatory treatment; her own testimony will suffice. See, e.g., *Schanzer v. United Technologies Corp.,* 140 F. Sup. 2d 200, 217 (D. Conn. 2000); *Berry v. Loiseau,* 223 Conn. 786, 811 (1992).

The public policy considerations in support of emotional distress damages in a housing discrimination case are extensively discussed in *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco,* CHRO No. 7930433 (June 3, 1985). For example, "[a]warding humiliation and mental distress damages would deter discrimination and encourage filing of complaints, particularly in the housing area where actual out-of-pocket damages are often small. …[t]hat damages for emotional distress are not readily subject to precise mathematical computation is insufficient reason to deny them once the right to such damages has been established…" (citations omitted; internal quotations omitted). *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* supra.

Prior to assessing the criteria just outlined, it is important to note that at the time in question the complainant was living in squalid conditions that included rat, mice and roach infestation. This, together with caring for a newborn and a child suffering from Kawaski Disease (which the complainant believed could be triggered by the conditions

of her current apartment), certainly warranted her seeking a new home for her and her children. After having after waited six years to receive a Section 8 subsidy and then finally being approved, she contacted a potential landlord only to be told in a very abrupt manner, “I don’t take Section 8.” This conversation, along with a second, similar conversation, triggered her feelings of depression, worthlessness and feeling like she was a “nobody.” It also caused her to experience sleeplessness and loss of appetite.

The most important factor in assessing emotional distress is the complainant’s subjective internal emotional reaction. *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco,* supra 15. While no medical evidence was presented, the complainant testified to her mental feelings and physical symptoms. This testimony went unchallenged by the respondents. The discriminatory conduct of the respondents took place over the telephone and not in public, the latter of which could negatively impact any award ordered more than were the discriminatory actions to have occurred otherwise. See *Commission on Human Rights & Opportunities ex rel. Little v. Clark*, CHRO No. 9810387, p.18 (August 2, 2000). In other words, the lack of a public display of discrimination weighs against a substantial award. *Commission on Human Rights & Opportunities ex rel. Peoples v. Estate of Belinsky,* 1988 WL 492460, (Conn. Super.)

The next factor to consider is the offensiveness of the discrimination and its impact on the complainant. *Commission on Human Rights & Opportunities ex rel. Aquiar v. Frenzilli,* CHRO No. 9850105, pp. 9-15 (January 14, 2000). While the conversation was brief in duration, the manner in which the statement “I don’t take Section 8” was made,

and the abruptness of the call's termination was done with apparent disdain and lack of any respect that they certainly contributed to the complainant's emotional turmoil. That being said, the discriminatory acts were committed during telephone conversations and were limited to the respondents' statements about Section 8. True, the statements uttered by the respondent Marc A. Pennino strike at the heart of the complainant's protected status; however, I do not find them to be highly offensive and/or egregious so as to infer an intent of producing maximum pain, embarrassment and humiliation, so as to increase any award of emotional distress. Id.

The complainant's emotional distress claim centers on two brief telephone calls, one of which was a confirmation that the respondents would not rent to her due to her receiving Section 8. Certainly, these two calls, while brief, caused the complainant to feel a sense of worthlessness, hurt, and feeling like a "nobody", along with causing her to suffer sleepiness, depression, and stress. All of this caused her to seek medical care from her doctor. While the complainant could not remember the particulars of seeing her doctor, the respondents spent little time in trying to explore with the complainant whether the feelings and symptoms testified to, were actually connected with the actions alleged. Having had the opportunity to witness the testimony of the complainant, I find her to be credible and conclude that her feelings and symptoms were indeed a consequence of the discriminatory actions attributable to the respondents, and caused the complainant to experience internal emotion distress.

The complainant seeks an award of $20,000 for emotional distress. This request exceeds the awards typically employed by this tribunal in “garden variety” emotional distress claims. Garden-variety emotional distress claims are matters where the evidence of emotional distress is limited (as in this case) to the testimony of the complainant and is presented in vague and/or conclusory terms without relating either to the severity or consequence of the distress suffered. *Howell v. New Haven Board of Education,* 2005 WL 217982 (D.Conn.) In the present case the complainant testified as to her feelings of worthlessness, feeling hurt and being “disrespected.” Eventually the complainant saw her primary care doctor for sleeping difficulties, anxiety attacks, dizzy spells, stress, loss of appetite and depression. While the complainant did testify to seeing Dr. Chinniah, she offered no medical documentation such as a medical report or, at minimum, bills associated with the treatment, which could document the need to seek medical assistance over a period of time and could be of assistance in evaluating the degree of emotional distress. Certainly the complainant suffered some degree of emotional distress but nothing to the degree found in, for example *Commission on Human Rights & Opportunities ex rel. Thomas v. Mills,* CHRO No. 9510408 (1998), where the complainant was awarded $25,000 for emotional distress after being subjected to multiple instances of intimidation, harassment and discrimination, causing severe embarrassment, pain and terror.

While sufficient evidence has been introduced to support damages for emotional distress, I find the complainant’s evidence only sufficient to support an award of $5,000 for emotional distress damages.

B.
Actual Damages

The actual damages claimed by the complainant consist solely of rent differentials she was forced to pay. This tribunal in the past has found rent differential a proper element of damages. *Commission on Human Rights & Opportunities ex rel. Nelson v. Malinguaggio,* CHRO No. 9740155 (June 14, 1999).

In requesting compensatory damages the complainant has the duty to mitigate damages. *Ann Howard's Apricots Restaurant v. Commission on Human Rights & Opportunities,* 237 Conn. 209, 229 (1996). The burden to establish that the complainant failed to fulfill her obligation to mitigate however rests with the respondents. Id. The decision whether the complainant used reasonable diligence in attempting to mitigate damages rests with the trier of fact. Id. In this instance the complainant has presented evidence sufficient to support a finding of her reasonable efforts to mitigate damages. The respondents on the other hand, while making inquiry of the complainant on cross-examination as to her efforts to mitigate, have failed to sustain their burden to establish the complainant's failed obligation to mitigate.

The complainant argues that she has suffered losses totaling $15,176 as a result of being deprived of the use of her Section 8 subsidy. This figure in her post trial brief relating to liability and damages breaks this down, using the calculation testified to by Patsy Michelle of the Bridgeport Housing Authority and complainant's claimed income over different periods of time, as reflected in exhibit C-67. While this exhibit certainly

refers to income and was used by Patsy Michelle in calculating what the complainant's portion of rent would have been, (hypothetically) some of the underlying facts were not testified to by the complainant, and as such I cannot award damages based on mere speculation. The complainant's evidence will support a finding of damages, but not to the extent requested. As such I find that damages attributable for the loss of the rental subsidy as calculated by the Bridgeport Housing Authority and based on the testimony of the complainant to be $9,938.

This is calculated as follows:

Date	Rent	Tenant's share	Loss
August 2003	$600	$414	$186
September 2003	$600	$1511	$446
October 2003-January 2004	$600 per month	$414 per month	$1656
September 2005-February 2007	$900 per month	$475 per month	$7650
		Total	$9938

I have purposely excluded from my damage calculations the period of time from February 2004 to September 2005, as there was no testimony from the complainant as to her address or rental status other than when she was living with Mr. Rhodes' mother for a period of time and not paying rent. No other pertinent testimony was given from the point of the complainant leaving Mr. Rhodes mother's home to the commencement of the public hearing.

C.
Attorney's Fees

Having found the respondents liable, I am authorized under General Statutes § 46a-86 (c) to award reasonable attorney's fees. In this regard, complainant's counsel has submitted a memorandum accompanied by an affidavit in support of complainant's request for attorney's fees were she to prevail. The complainant's counsel has provided a chronological listing of activity along with the time associated all of which totals 252.2 hours of time spent. Counsel further requests that the time spent be multiplied by an hourly rate of $210, resulting in a fee request of $53,962. This request was further supported in a brief submitted by commission counsel. The respondents' counsel responded to the submissions of the complainant and commission by filing his own memorandum relating to the fee request of the complainant and a motion to strike the commission's brief.[10]

In arriving at an appropriate attorney fee award the traditional starting point is determining the "lodestar" amount. This is done by multiplying the reasonable hourly rate by the number of hours reasonably expended. *Hemsley v. Eckerhart,* 461 U.S. 424, 433 (1983). This figure can then be analyzed by the 12 criteria set out in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir. 1974). *Ernest v. Deese & Co.,* 92 Conn. App. 572 (2005). "[T]hough it should be noted that many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonably hour rate. See *Copeland v. Marshall,* 205 U.S. App. D.C. 390, 4000… (1980)…" *Hemsley v. Eckerhart,* supra, n. 9.

[10] The respondents' motion to strike was heard on the record (see December 5, 2006 transcript) wherein I ruled that the first three pages of commission's brief dated November 20, 2006 would not be considered in any decision rendered as it exceeded the scope of the scheduling order dated November 14, 2006.

The twelve criteria outlined in the Johnson decision are:

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 the complainant by the attorney due to the acceptance of this case;
5) The customary fee for similar work in the community;
6) Whether the fee was fixed or contingent;
7) The time limitations imposed by the client or 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.

"Connecticut courts have adopted the twelve criteria set forth in *Johnson*." *Commission on Human Rights & Opportunities ex rel Tina Saddler v. Margaret Landry, dba Superior Agency* (CHRO No. 0450057 5/23/06). However, in determining the reasonable fee, "[t]he court… [is] not required to consider each of the twelve factors individually, but instead [is] required to consider the full panoply of factors and not base its decision solely on one of the elements." *Pratt and Whitney Containerboard Limited-Partnership v. Town of Montville,* Dist. of Conn., Dk.# 3:96 DV 413 (HBF), quoting *Riggio v. Orkin Exterminating Co.,* 58 Conn. App. 309, 318 (2000).

The complainant's counsel has sought an hourly rate of $210. In response to this rate request respondents have chosen neither to object nor challenge the hourly rate requested.[11] In fact when respondent's counsel was questioned by the undersigned as to Mr. Rosner's hourly rate request, he responded as follows:

> "HRR: …I don't want to put words in your mouth but $210.00 is not an excessive hourly rate;
>
> Attorney Lee: Right
>
> HRR: Can I glean from that that $210 that you believe is not excessive is in light of Mr. Rosner's experience with housing matters warrants at least a $210.00 hourly rate…
>
> Attorney Lee: I did not see any value in trying to argue for a lower rate for someone of his experienced both at the bar generally, and in this field in particular."

Despite the respondents' concession that the rate of $210 per hour is not excessive, it is incumbent on me to find it reasonable as well. In reviewing Mr. Rosner's affidavit and being familiar with his previous appearances before the Office of Public Hearings, I do find $210 per hour to be reasonable.

Having determined the first part of the equation for arriving at the lodestar amount, it now must be determined whether the number of hours employed was in fact

[11] See December 5, 2006 transcript pp. 32-33.

reasonable. The total hours spent on this matter by counsel for the complainant was 252.2. Of this I find 34.85 hours to have been unreasonably spent.[12] The basis for my finding is that the time spent far exceeds the time needed to complete the identified task by an attorney with the experience of complainant's counsel. Furthermore the time appears either to duplicate or is beyond what was necessary to be properly prepared.

In addition to the hours delineated as being unreasonable in counsel's preparation I find that an excessive amount of time was spent preparing complainant's post hearing brief. A review of Mr. Rosner's affidavit reveals approximately 50 hours was spent on this task alone. While this brief, is an important element of the complainant's case the legal theories presented were neither novel nor particularly difficult. Furthermore, a lawyer with Mr. Rosner's background and experience certainly is well equipped to perform this task in less time. As such I am further reducing the hours requested by an additional 15.

The respondents, during the public hearing dealing with the attorney's fees, raised three areas of concern. They were: 1) time spent on discovery; 2) time spent on the direct examination of Marc A. Pennino and 3) time spent preparing for the examination of Marc A. Pennino. As to the time spent on discovery respondents need only look to themselves for a reason as to why discovery may have exceeded the parameters they

[12] The following dates and times spent identify the time found to be unreasonable: 5-4-05; 2 hrs., 6-2-05; .5 hrs., 8-12-05; 3hrs., 9-12-05; 1 hr., 9-19-05; 1.4 hrs., 10-10-05; 1.3 hrs., 10-18-05; 2.8 hrs., 1-26-06; 5 hrs., 1-27-06; 4.5 hrs, 4-20-06; 5.4 hrs., 5-1-06; 2 hrs., 5-2-06; 1 hr., 5-3-06; 1.5 hrs., 7-28-06; .75 hrs., 8-1-06; 1.4 hrs. and 8-3-06; 1.3 hrs. Total hours found to be unreasonable is 34.85 hrs.

feel would be reasonable. While discovery is at best limited, relating solely to production requests, these requests made of the respondents not only went unanswered but eventually required a full hearing that was held on July 7, 2005.

As to the time spent with Marc A. Pennino on the witness stand, a review of the transcript will show that Marc A. Pennino's manner of addressing questions posed by opposing counsel certainly resulted in more time being spent than would have been the case had he chose to respond directly to the questions asked. Additionally, it was at the request of the respondents that the commencement of the hearing was delayed on several days so as to allow Marc A. Pennino to bring his child to school. This alone caused the time in days for Marc A. Pennino to be on the "witness stand" to be extended.

During the course of the hearing relating to attorney's fees the respondents' counsel requested the opportunity to examine Mr. Rosner. This request was both objected to and denied. When questioned by this tribunal as to what questions or areas of Mr. Rosner's fee request was counsel going to inquire of, no specific response was forthcoming. Mr. Lee simply reiterated his previous areas of concern. Having proffered no specifics and not providing the undersigned with any affidavit in opposition of the fee requested, I then found that a "fishing expedition" was not a productive use of this tribunal's time. Furthermore, this same tactic or lack thereof was employed by the respondents' attorney in *Commission on Human Rights & Opportunities ex rel. Colon v. Sullivan,* 2005 WL 362392 (Conn. Super.) (Appeal pending S.C. 17594) which was met

with the same result when Judge Melville denied counsel's request to examine (interesting enough) Mr. Ronser. The court in that instance again found that the defendants had ample time to submit either counter affidavits or solicit testimony on any contested portion of the fee request but chose not to. *Commission on Human Rights & Opportunities ex rel. Colon v. Sullivan,* supra, see n. 5.

Having determined both the reasonable number of hours spent (202.35) and a reasonable hourly rate ($210) the lodestar figure can now be determined as $45,643.50. The criteria set forth in *Johnson v. Georgia Highway Express, Inc.,* supra, 717-719, can now be used to determine if any further adjustment is warranted. Having reviewed and applied the *Johnson* criteria to the now determined lodestar figure I find that further adjustment is not necessary. I further find that the lodestar figure of $42,493.50 is reasonable and order it be paid to complainant's counsel. I make no further adjustments to the fee awarded for time spent in preparing for or attending the hearing on attorney's fees as I believe counsel is being reasonably compensated by my finding as to lodestar amount.

I further find that the costs of $342.69 requested are reasonable and order that they too be paid.

VI
Order of Relief

Having found the respondents jointly and severely liable and having found damages, I hereby order the following:

1. The respondents are hereby ordered to pay to the complainant damages totaling $15,280.69 together with post judgment interest on the unpaid balance at the rate of 10% per annum. The damages awarded are broken down as follows:

Rent differential/loss of Section 8 benefit:	$9,938
Emotional distress:	$5,000
Costs:	$342.69
Total	$15,280.69

2. The respondents are hereby ordered to pay complainant's attorney's fees totaling $42,493.50 together with post judgment interest at the rate of 10% per annum on the unpaid balance.
3. The respondents are hereby ordered to cease and desist from engaging in discriminatory practices regarding the rental of any residential property.

It is so ordered this 2nd of March 2007.

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

Cc.

Nicole Thompson
Marc and Marie Pennino
John and Karen Bauco
Attorney Alan Rosner
Attorney James Lee