UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban Development, Charging Party, on behalf of: NAME REDACTED, Complainant, v. QUANG DANGTRAN, HA NGUYEN, and HQD ENTERPRISE, LLC, Respondents.	19-AF-0148-FH-015 December 9, 2022

Appearances:

For Complainants: Erik Heins and Rosanne Avilés, Attorneys
U.S. Department of Housing and Urban Development, Washington, DC

For Respondents: Quang Dangtran, *Pro Se*
Plano, Texas

INITIAL DECISION AND ORDER

BEFORE: Alexander **FERNÁNDEZ-PONS**, Administrative Law Judge

This matter arises from a *Charge of Discrimination* filed by the U.S. Department of Housing and Urban Development ("HUD"), as Charging Party, on behalf of NAME REDACTED ("Complainant") against Quang Dangtran, Ha Nguyen (also known as Stephanie Nguyen), and HQD Enterprise, LLC (collectively, "Respondents") pursuant to the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* ("the Act"), as implemented by 24 C.F.R. part 180.

The *Charge of Discrimination*, as amended, alleges that Respondents, in their capacity as owners and landlords of a rental dwelling in Plano, Texas, unlawfully discriminated against Complainant, a prospective tenant who is Black, by (1) posting a discriminatory housing advertisement, in violation of section 804(c) of the Act, 42 U.S.C. § 3604(c); (2) making a discriminatory statement to Complainant concerning the rental of a dwelling, also in violation of section 804(c) of the Act; (3) refusing to negotiate a room rental with Complainant because of her race, in violation of section 804(a) of the Act, 42 U.S.C. § 3604(a); (4) misrepresenting the availability of a dwelling to Complainant because of her race, in violation of section 804(d) of

the Act, 42 U.S.C. § 3604(d); and (5) retaliating against Complainant for filing a complaint under the Act, in violation of section 818 of the Act, 42 U.S.C. § 3617. The Charging Party seeks compensation for Complainant's actual damages, civil penalties against each Respondent, and attorneys' fees for time spent addressing discovery violations.

Respondents deny making a discriminatory statement to Complainant or otherwise acting with discriminatory intent and argue that they are protected from liability under section 803(b)(2) of the Act, commonly referred to as the "Mrs. Murphy" exemption, which generally applies to dwellings with four or fewer residential units if the owner occupies one of those units. See 42 U.S.C. § 3603(b)(2). Respondents also claim the benefit of the exemption at section 803(b)(1), 42 U.S.C. § 3603(b)(1). If applicable here, these provisions would exempt Respondents from the requirements of sections 804(a) and (d) of the Act.

The Court has already found that Respondents violated section 804(c) of the Act by posting a discriminatory housing advertisement. The issues remaining to be addressed in this Decision are whether Respondents also violated section 804(c) by making a discriminatory statement; whether Respondents violated sections 804(a), 804(d), and 818 of the Act; whether any claimed exemptions apply; and what damages and other relief should be awarded.

BACKGROUND AND PROCEDURAL HISTORY

On June 25, 2019, after investigating a housing discrimination complaint Complainant had filed with HUD, the Charging Party filed a *Charge of Discrimination* on Complainant's behalf alleging that Respondents had violated 804(c) of the Act by posting a discriminatory housing advertisement and making a discriminatory statement and had violated section 804(a) of the Act by refusing to negotiate a room rental with Complainant because of her race. On July 17, 2019, after the deadline had passed under 42 U.S.C. § 3612(a) for the parties to elect to proceed with a civil action in a federal district court instead of the instant administrative action, this Court issued a *Notice of Hearing and Order* scheduling a hearing to take place in October 2019 in or around Dallas, Texas.

On August 26, 2019, the Court issued a *Ruling on Motion to Compel, Request to Deem Facts Admitted, and Request to Modify Deadlines* which postponed the hearing to November 2019 at the Charging Party's request due to Respondents' failure to cooperate in discovery. On September 30, 2019, the Court issued an *Order Granting Motion to Extend Deadlines and Rescheduling Hearing* further postponing the hearing to March 2020 to provide more time for the parties to complete discovery and resolve ongoing discovery disputes.

On September 5, 2019, Respondents filed a motion for summary judgment arguing that no discriminatory conduct had occurred; that enforcing the Act against them would raise constitutional concerns; and that the Court lacks jurisdiction based on the Act's Mrs. Murphy exemption. The Charging Party responded on September 13, 2019, with a cross-motion seeking partial summary judgment on its claim that Respondents had posted a discriminatory housing advertisement in violation of section 804(c) of the Act. On October 24, 2019, the Court issued a *Ruling on Summary Judgment* denying Respondents' motion in full and granting the Charging Party's cross-motion for partial summary judgment concerning the discriminatory advertisement.

Respondents subsequently requested reconsideration of the *Ruling on Summary Judgment* and asked the Secretary of HUD to overturn it. On November 26, 2019, the Court issued an *Order Certifying Ruling for Interlocutory Review* affirming its findings and inviting the Secretary to weigh in. However, the Secretary, by *Secretarial Order* dated February 5, 2020, declined to address the merits of Respondents' arguments, finding that the procedural rules governing this matter do not provide an avenue for interlocutory review.

Meanwhile, between September and December 2019, the Charging Party had filed a *Motion for Sanctions* and four supplements thereto asking the Court to sanction Respondents for their continued failure to fully respond to discovery. On January 9, 2020, the Court issued a *Ruling on Motion for Sanctions* imposing sanctions on Respondents due to their failure to provide complete discovery responses despite having been ordered to do so on four prior occasions. Specifically, the ruling barred Respondents from introducing documentary evidence not previously produced to the Charging Party and from offering witnesses not previously disclosed to the Charging Party. The ruling also required Respondents to reimburse the Charging Party for costs and expenses, including attorneys' fees, arising from the preparation and filing of the *Motion for Sanctions* and supplements. Counsel for the Charging Party was ordered to file, and duly submitted, a statement of its costs and expenses to allow the Court to determine the appropriate award for inclusion in this Decision, to be discussed in the "Remedy" section below.

On January 13, 2020, the Court issued an *Order Denying Charging Party's Motion for Summary Judgment on Respondents' Asserted "Mrs. Murphy" Defense* declining to rule against Respondents on their claimed Mrs. Murphy defense because material facts remained in dispute. Similarly, on January 27, 2020, the Court issued an *Order Denying Default Judgment* rejecting a motion through which Respondents, based on the Mrs. Murphy defense, had requested reversal of the January 9 *Ruling on Motion for Sanctions* and dismissal of the proceeding. The Court reiterated that material facts remained in dispute and noted that the Mrs. Murphy exemption, even if proven, would not serve as a complete defense in this case.

On February 12, 2020, the Court issued an *Order Granting Motion to Amend and Vacating Hearing Dates and Prehearing Deadlines*, as well as a *Second Notice of Hearing and Order*. Through these orders, the Court granted the Charging Party's January 21, 2020 motion to amend the *Charge of Discrimination* to add two new claims: (1) a claim that Respondents had misrepresented the availability of a dwelling to Complainant because of her race, in violation of section 804(d) of the Act, and (2) a claim that, by filing a lawsuit against Complainant in state court, Respondents had retaliated against her because of her filing of a discrimination complaint, in violation of section 818 of the Act. The Court also moved the hearing from March to July 2020 to give Respondents time to file an answer to the new allegations and to conduct discovery on the section 818 claim.

Shortly thereafter, the Charging Party notified the Court of a conflict with the July 2020 hearing dates, and Respondents asked the Court to push the hearing back to provide additional time for discovery. Accordingly, on February 24, 2020, the Court issued a *Third Notice of Hearing and Order* moving the hearing to August 2020.

On April 23, May 8, and June 11, 2020, the Court issued orders denying several dispositive motions, including a motion through which Respondents again sought dismissal based on the Mrs. Murphy exemption; a request for reconsideration of that motion; an unsupported request for dismissal raised in Respondents' answer to the two new claims added to the *Charge of Discrimination* in February 2020; and the Charging Party's motion for default judgment on those new claims based on Respondents' failure to timely answer them. The Court accepted Respondents' answer to the new claims even though it was not timely filed.

On June 17, 2020, Respondents requested a continuance of the hearing due to the ongoing Coronavirus Disease 2019 ("COVID-19") pandemic, which they claimed had prevented them from adequately preparing for hearing. The Charging Party opposed the continuance and noted Complainant's preference for an in-person hearing to be held without delay. On June 29, 2020, the Court issued an order finding that Respondents' reasoning in favor of a continuance was not compelling; however, the Court explained it was unwilling to require any hearing attendee, including its own Washington, D.C.-based staff, to travel for the hearing in light of the pandemic, and asked Respondents to notify the Court whether they were willing to travel.

On July 7, 2020, after Respondents stated they were unwilling to travel, the Court issued an *Order Changing Hearing Location, Continuing Hearing, and Denying Request for Additional Time to Conduct Discovery*. In view of the COVID-19 pandemic and the parties' conflicting preferences as to where and how the hearing should be held, the Court moved the hearing location to Washington, D.C. and continued it indefinitely pending confirmation of whether and how some, but not all, of the participants would be able to attend virtually.

The parties subsequently requested the appointment of a Settlement Judge. On July 16, 2020, the Court referred this matter to a Settlement Judge.

On January 14, 2021, after the Settlement Judge notified the Court that attempts to settle the case had been unsuccessful and referred the matter back to the presiding judge, the Court issued a *Fourth Notice of Hearing and Order* scheduling a hearing to take place virtually through the Microsoft Teams platform in March 2021. The Court had been conducting virtual hearings on this platform since the previous summer without any major issues, and determined that an entirely virtual hearing was the best option to give all parties an equal opportunity to participate and to avoid further delaying this matter while also avoiding requiring or encouraging anyone to travel or congregate during the COVID-19 pandemic.

On March 10, 2021, the Court issued an *Order Denying Summary Judgment on Section 818 Claim*. The Court rejected the Charging Party's request for summary judgment on this claim because a material fact remained in dispute.

On March 23-24, 2021, the Court conducted a hearing virtually through the MS Teams platform. The Court admitted to the record Joint Exhibit 1; Government Exhibits 1-19 and 21; Government Demonstrative Exhibit C-1A; and Respondents' Exhibits 1-5, 11-14, 25, 29, and 38-41. The Court heard the testimony of Complainant; Respondents' witness David Gonzales; Respondent Nguyen; and Respondent Dangtran. The Court also admitted the deposition

testimony of Government witnesses Alex Sutton, Mitchell Rivera, and Keren Liu pursuant to 24 C.F.R. § 180.520(a)(4)(ii) and (iv).[1]

Following receipt of the hearing transcript, the Court issued a *Post-Hearing Order* on April 14, 2021, establishing briefing deadlines. In consideration of Respondents' *pro se* status, and because they had expressed confusion at the end of the hearing about when they would be permitted to submit financial information concerning their ability to pay civil penalties, the *Post-Hearing Order* authorized them to append to their closing brief any financial information they wished the Court to consider as evidence. The order authorized the Charging Party to raise objections and include rebuttal evidence in its response brief. In addition, because Respondents had not received the video recordings of the depositions of Mr. Sutton, Mr. Rivera, and Ms. Liu until after the hearing, the *Post-Hearing Order* set a deadline for Respondents to object to any portion of those witnesses' testimony.

Instead of identifying portions of the testimony they found objectionable, Respondents filed a motion to exclude the testimony in full. Respondents also moved for production of the hearing transcript by the Court or the opposing party, arguing they could not afford the fee charged by the court reporter.

On May 14, 2021, the Court issued an *Order Denying Respondents' Motion for Exclusion of Witnesses*. That same day, the Court issued a *Ruling on Motion for Production of Hearing Transcripts* explaining that its contract with the court reporter does not permit it to share copies of transcripts and that it could not order the Charging Party to produce a copy. However, noting that Respondents had submitted a request for HUD to release the transcript under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Court stayed the briefing deadlines in this matter and ordered Respondents to notify the Court if and when HUD responded to the FOIA request, or to file a status report by June 10, 2021, if the FOIA request remained pending.

On June 17, 2021, following receipt of Respondents' status report, the Court issued an *Order Reestablishing Briefing Deadlines*. Although Respondents' FOIA request remained pending, the Court noted it was unclear whether or when the transcript would ever be in Respondents' possession. Because the parties' briefs serve as closing arguments in this matter, the Court deemed it expedient to reestablish the briefing deadlines rather than postpone closing arguments indefinitely.

The parties duly submitted post-hearing briefs on August 16, 2021 and response briefs on September 15, 2021. Respondents appended to their post-hearing brief a 200-page appendix containing new documentary evidence, to which the Charging Party objected via its response brief. The record is now closed.[2]

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[1] The deposition testimony was deemed admissible by pretrial order dated March 11, 2021, which granted the Charging Party's motion to use this testimony under 24 C.F.R. § 180.520(a)(4)(ii) and (iv) due to the witnesses' unavailability at hearing. The Court also issued pretrial rulings on March 16, 2021, denying Respondents' request to call opposing counsel as witnesses, and on March 19, 2021, sustaining the Charging Party's objection to Respondents' proposed Exhibits 9, 15-24, 26-28, and 30-37, which were subject to exclusion under the January 9, 2020 *Ruling on Motion for Sanctions* because Respondents did not timely produce them to the Charging Party.

[2] Because this decision is being issued more than sixty days after briefing was completed, the Act requires the Administrative Law Judge to notify the parties in writing of the reason for the delay. 42 U.S.C. § 3612(g)(2); see 24

RELEVANT LEGAL PRINCIPLES

The Fair Housing Act. Title VIII of the Civil Rights Act of 1968 is commonly known as the Fair Housing Act ("the Act"). See Pub. L. No. 90-284, §§ 801-819, 82 Stat. 73, 81-89 (1968) (codified as amended at 42 U.S.C. §§ 3601-3631). The Act, as amended, prohibits discrimination in the sale, rental, and financing of housing based on race, color, religion, sex, national origin, familial status, or disability. Id.; see Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988) (adding familial status and disability as protected statuses); Housing and Community Development Act of 1974, Pub L. No. 93-383, § 808, 88 Stat. 633, 728-29 (1974) (adding sex as protected status).

To effectuate its stated policy of "provid[ing], within constitutional limitations, for fair housing throughout the United States," see 42 U.S.C. § 3601, the Act imposes prohibitions on certain discriminatory housing practices. As relevant here, the Act makes it unlawful "to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race," id. § 3604(a); "[t]o 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, limitation, or discrimination based on race … or an intention to make any such preference, limitation, or discrimination," id. § 3604(c); "[t]o represent to any person because of race … that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available," id. § 3604(d); and "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section … 3604," id. § 3617.

Administrative Hearings. An aggrieved person who believes that the Act has been violated may file a complaint with HUD alleging a discriminatory housing practice. See 42 U.S.C. § 3610(a)(1)(A). If HUD determines, after investigation, that there is probable cause to believe the alleged discrimination occurred, HUD may initiate a legal action by filing a charge of discrimination on the complainant's behalf. Id. § 3610(g). Any party may elect to have the action decided in a federal district court pursuant to 42 U.S.C. § 3612(o). Id. § 3612(a). If the parties do not so elect, the action moves forward as an administrative proceeding before this Court, which holds a hearing and renders findings of fact and conclusions of law in accordance with the Act and HUD's implementing regulations in 24 C.F.R. parts 100 and 180. See id. § 3612(b)-(g).

Burden and Standard of Proof. The Charging Party bears the burden of proving the essential elements of its claims. See 5 U.S.C. § 556(d) (stating that, except as otherwise provided by statute, the proponent of an order has the burden of proof in administrative proceedings); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511 (1993) (stating that plaintiff alleging discrimination "at all times bears the 'ultimate burden of persuasion'" despite application of burden-shifting framework when analyzing discrimination claims); HUD v. Saari,

C.F.R. § 180.670(b). The Court was unable to issue written findings in this matter within sixty days due to limited government resources; the complexity of this case, the extensive record, and the time taken to consider the parties' respective evidence and positions; and the impact of the ongoing COVID-19 pandemic, which necessitated closure and reopening of the Court's physical office while this case was pending, and has disrupted some of the Court's operations and workflow.

No. 16-AF-0152-FH-021, 2017 HUD APPEALS LEXIS 3, at *10-11 (HUDALJ Oct. 6, 2017). The standard of proof is that generally applicable in civil actions, proof by a "preponderance of the evidence." Marr v. Rife, 503 F.2d 735, 739 (6th Cir. 1974); Saari, 2017 HUD APPEALS LEXIS 3, at *7. Proof by a preponderance of the evidence "simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." Metro. Stevedore Co. v. Rambo, 521 U.S. 121, 137 n.9 (1997). Accordingly, to prevail under this standard of proof, the Charging Party must establish that its allegations are more probably true than not.

PRELIMINARY EVIDENTIARY RULING

As noted above, the Court's *Post-Hearing Order* gave Respondents the opportunity to submit with their closing briefs financial information concerning their ability to pay civil penalties. In accordance with the *Post-Hearing Order*, Respondents appended to their August 16, 2021 post-hearing brief a 200-page documentary Index containing a mix of new materials and exhibits previously offered at hearing, and the Charging Party raised objections to some of these materials in its September 15, 2021 response brief.

The Charging Party first asks the Court to strike pages 58-62, 86-90, 172, 174-76, and 178-85 of the Index on grounds that the materials contained therein were previously excluded from evidence at hearing. A review of the pages in question confirms that the materials are duplicative of previously excluded exhibits. Accordingly, the listed pages are hereby **STRICKEN** from the record and will not be considered by the Court in this Decision.

Many of the remaining pages of the Index are merely copies of materials that were offered and admitted into evidence at hearing. However, the Index also contains three categories of new information: (1) pages 96-171 and 192-200 of the Index appear to contain bank account statements for one of Respondent Dangtran's business entities, WHOA USA, Inc.; (2) pages 189-90 of the Index appear to contain an Order discharging Mr. Dangtran from court supervision for a prior felony; and (3) page 191 of the Index appears to contain a letter to Mr. Dangtran confirming he exited employment with Southwest Funding on May 24, 2021. The Charging Party objects to all of these documents and moves the Court to either strike them from the record or allow the Charging Party to conduct limited discovery thereon.

The Charging Party argues that the WHOA USA, Inc. documents should be stricken because they are not authenticated, contain hearsay, and are irrelevant and of no probative value in this matter. These documents consist of bank statements for the months of April to December 2016. Although they seem genuine and bear no indicia of fabrication or tampering, they are not properly authenticated by seal or certification or by any testimony or explanation from Respondents. See Fed. R. Evid. 901, 902 (applicable to this proceeding under 24 C.F.R. § 180.620). Moreover, although the documents appear to corroborate other record evidence concerning the identity of some of the tenants who rented rooms from Respondents in and around October 2016, their dates render them irrelevant to Respondents' ability to pay civil penalties at this time, which is the only purpose for which the Court's *Post-Hearing Order* authorized Respondents to submit new evidence after hearing. Accordingly, the bank statements are not admissible.

Similarly, the Order discharging Mr. Dangtran from court supervision for a prior felony is not admissible at this juncture because it has not been properly authenticated and is not relevant to Respondents' ability to pay civil penalties. In addition, the subject matter of the Order—it contains information relevant to Mr. Dangtran's prior felony conviction and to statements he made about the conviction in this proceeding—is of such low probative value that it would not be material to the outcome of this Court's decision even if admitted.[3]

Finally, the employment exit letter offered by Respondents is also inadmissible because it has not been properly authenticated and does not offer information relevant to Respondents' ability pay civil penalties. Respondents' closing brief alleges that Mr. Dangtran is not in a financial position to pay penalties because he lost his job due to the allegations at issue in this case. However, as pointed out by the Charging Party, the employment exit letter does not corroborate this allegation because it sheds no light on the reason(s) for or conditions surrounding Mr. Dangtran's exit from employment with Southwest Funding, nor does it provide any information about his current financial situation, such as whether he became unemployed after leaving Southwest Funding or simply switched jobs.

For the reasons discussed above, pages 96-171 and 189-200 of the Index appended to Respondents' post-hearing brief are hereby **EXCLUDED** from evidence and **STRICKEN** from the record.

FINDINGS OF FACT

I. Introduction

Respondents are the owners and landlords of a two-story, five-bedroom home ("the subject property") in Plano, Texas. During the time periods relevant to this matter, Respondents Dangtran and Nguyen resided in the master bedroom on the ground floor of the subject property and rented some or all of the four upstairs bedrooms to other people.

[3] During a September 2019 deposition, a transcript of which has been admitted into evidence in this matter, see 24 C.F.R. § 180.520(a)(3) (permitting use of party's deposition for any purpose at hearing), Mr. Dangtran testified that he had been on probation about ten years earlier in relation to an incident where he pulled a gun on a belligerent customer who refused to pay for beer at a convenience store Mr. Dangtran owned. The Charging Party subsequently offered evidence that Mr. Dangtran pled guilty to aggravated assault with a deadly weapon in 2010, and now argues that this evidence impeaches his credibility under Rule 609 of the Federal Rules of Evidence and because he did not disclose his criminal conviction at deposition. At hearing, Mr. Dangtran attempted to rebut this evidence by testifying that his attorney advised him he need not disclose the prior criminal charge after successfully completing probation. Apparently, the Order discharging him from court supervision is intended to support this testimony, but the Charging Party argues it actually shows only that Mr. Dangtran was not entitled to petition the criminal court for an order of nondisclosure until March 2023.

On consideration, none of the foregoing facts or arguments are particularly relevant to the outcome of this case. As the Court remarked in its April 30, 2020 ruling permitting the Charging Party to introduce evidence of the criminal conviction under Rule 609, a ten-year-old assault conviction is not highly probative of Mr. Dangtran's character for truthfulness in the instant housing discrimination case. Although Mr. Dangtran technically did not acknowledge the conviction during his deposition, he discussed the underlying criminal conduct and disclosed that he had been on probation because of it. The criminal conviction and related testimony will not be discussed elsewhere in this Decision because the Court does not find these factors to be material to Mr. Dangtran's credibility or to any other issues in this case.

In October 2016, Respondents refused to show or rent to Complainant a room they had advertised on Craigslist. The Charging Party alleges that Respondent Dangtran made a discriminatory statement to Complainant when he refused to show her the room, that he later falsely told her the room was unavailable, and that Respondents' actions were unlawfully motivated by Complainant's race.

After the Charging Party initiated the instant discrimination proceeding against Respondents, Respondents filed a civil suit against Complainant in state court. The Charging Party alleges the state lawsuit was retaliatory and was unlawfully motivated by Complainant's protected activity under the Act.

II. Respondents and the Subject Property

The subject property was purchased by Respondent Nguyen and Respondent HQD Enterprise, LLC in July 2016, and was still co-owned by those two Respondents as of October 2016. Respondent Dangtran was the director, manager, and owner of HQD Enterprise, LLC, and Ms. Nguyen was the registered agent. Mr. Dangtran and Ms. Nguyen moved into the house in July 2016 and began renting out some of the upstairs bedrooms within two months.

During the time periods relevant to this case, Mr. Dangtran effectively acted as rental agent for the subject property on behalf of all Respondents, as he was the individual with primary responsibility for finding and selecting tenants and for managing the rental process. In this capacity, he posted advertisements on Craigslist seeking tenants for the upstairs bedrooms and interviewed prospective tenants by phone and in person.

III. Complainant's Attempt to Rent a Room from Respondents

In October 2016, the Complainant in this matter, NAME REDACTED, had recently graduated from the Georgia Institute of Technology with high honors and was working as a software engineer for a company in Richardson, Texas, while taking courses at a local community college to try to get into a Master's program. In August 2016, she had begun renting a room from a young couple with a three-year-old daughter who lived very close to her job. However, by October, she was seeking alternate housing. Specifically, she hoped to find a larger room in a quieter household that would still be near her job and within her budget of less than $800 per month.

On or about October 3, 2016, Complainant saw an advertisement Mr. Dangtran had posted on Craigslist seeking to rent out one of the bedrooms at the subject property. The ad did not ask for Complainant's race. The advertised dwelling was relatively close to Complainant's job and was advertised as being a home for professionals, the $700-per-month rent was within her budget, and the pictures looked clean and spacious, so she sent a text message to Mr. Dangtran inquiring about the dwelling. Mr. Dangtran asked her to send a picture of herself. Complainant declined, which ended the conversation, because she was uncomfortable sending a picture and did not think her appearance was relevant. Complainant testified that she then deleted the text message thread and continued searching for somewhere else to live.

On October 5, 2016, Mr. Dangtran sent Complainant a text message asking if she was still interested in the room. After reviewing the Craigslist ad again, Complainant exchanged text messages with Mr. Dangtran to set up an appointment to view the advertised dwelling. She also spoke to him by phone for about 10 to 15 minutes, during which time they discussed Complainant's job, where she was from, and why she was seeking housing. Mr. Dangtran also again asked Complainant to send a picture of herself, but she felt this was unnecessary and told him she was uncomfortable doing so. They agreed that she would text him when she got off work and he would send the address so she could come see the house.

When she arrived at the subject property later that afternoon after notifying Mr. Dangtran that she was on her way, Complainant parked in front of Respondents' house, got out of her car onto the sidewalk, and texted Mr. Dangtran that she was outside. Mr. Dangtran came out of the front door with a small dog.

Complainant and Mr. Dangtran's recollection of events diverges from this point.[4] Complainant testified that Mr. Dangtran lingered by the door for "maybe like 15 seconds" while staring at her, then walked up the driveway "very, very, very slowly," taking about two minutes to approach, before stopping approximately six feet away from her. When Complainant introduced herself, Mr. Dangtran said, "Oooh, you're [NAME REDACTED]," and appeared surprised. His demeanor was hesitant and unfriendly. Complainant asked if she could go inside, but Mr. Dangtran began asking her questions instead of ushering her in.

Mr. Dangtran denies taking two minutes to walk down the driveway, stating that this "doesn't make sense" as he is not a "90 year[] old man with a cane or handicap." He testified he could not recall whether he hesitated when approaching Complainant, but offered that he could not be sure Complainant was the person to whom he had spoken on the phone and he "d[id]n't know what this person [was] capable of." Mr. Dangtran further testified that he screens tenants carefully to get to know them and ensure they will "fit into our social economic style," and the way Complainant approached him made him hesitant because she wanted to see the house immediately and he felt she was "pushy."

According to Complainant, when she asked if they could go in the house, Mr. Dangtran countered by asking whether she cooked and how often. Complainant testified she told him that she cooked about once a week, while Mr. Dangtran asserts she told him she cooked a lot. Regardless, both parties agree Mr. Dangtran told Complainant that Respondents did not allow their tenants to cook because they did not like smells. Complainant began to suspect that Mr. Dangtran was trying to disqualify her as a tenant, as his Craigslist advertisement had featured a picture of the kitchen and his question about cooking seemed "ridiculous" to her. She began to experience a mix of emotions including confusion.

Complainant testified that Mr. Dangtran next asked if she was quiet, which they had already discussed during their phone conversation earlier. She replied in the affirmative and

[4] In their post-hearing response brief, Respondents appear to argue that Complainant's testimony recounting all the statements Mr. Dangtran made to her on October 5, 2016, constitutes inadmissible hearsay. Aside from the fact that Respondents did not timely object to this testimony at hearing, the testimony in question is clearly excluded from the definition of hearsay under Rule 801(d)(2) of the Federal Rules of Evidence. Accordingly, to the extent Respondents are now attempting to raise a belated hearsay objection, it is **OVERRULED** as baseless.

explained she was taking classes and studying to get into a Master's program. Mr. Dangtran warned that being quiet was very important because the house was a professional environment, and asked whether she was a professional. Complainant was taken aback, as they had discussed her job over the phone earlier that day, including the fact that both she and Mr. Dangtran were IT professionals, and she was still wearing her ID badge from work. After she showed Mr. Dangtran her badge, he inquired whether she had a degree, asked for the name of her college, and then requested that she produce a copy or picture of her diploma, which Complainant could not do because her diploma was at her parents' house in Georgia. Although Complainant did not believe this last request was reasonable, and had begun to feel desperate and upset, she logged into her college's student portal on her phone in a frantic attempt to find copies of her transcripts. When this effort was unsuccessful, she asked if she could just see the house.

It is undisputed that Mr. Dangtran would not let Complainant go in the house. According to Complainant, after she was unable to produce a picture of her diploma, Mr. Dangtran told her that, to be honest, his wife would not be comfortable with her living in the house because Complainant was Black and all the other people living in the house were Asian professionals, and Complainant "would just make the house uncomfortable." When she told Mr. Dangtran this was not fair, he responded that he did not have to follow fair housing laws because this was his private home. Complainant testified she felt degraded and dehumanized that Mr. Dangtran would not even pretend to consider her as a tenant or let her into the house.

Complainant felt further disrespected when Mr. Dangtran received a call on his cell phone and walked away for 10 to 15 minutes. She testified she did not leave, even though Mr. Dangtran seemingly wanted her to do so, because she had invested time and energy into the transaction, which had already lasted about 30 minutes, and "kind of wanted to plead her case" because she felt she was being treated unfairly. But when Mr. Dangtran returned, he told her the room was now taken because he had already promised it to another applicant whose mother had just called to provide a reference.

Mr. Dangtran admits telling Complainant that all the residents of the subject property were Asian professionals. However, he denies telling her that Respondents would not rent to her because she was Black. He remarked that it would be "suicidal and stupid" to say such a thing and that, as a minority himself, he would be offended if subjected to similar treatment based on his status as an Asian man. He maintains that he and Complainant parted ways because she wanted to cook frequently, which he would not allow. He admits the room was still available when Complainant left. By his account, he had already decided not to rent to Complainant because "[s]he didn't fit," but he told her the room was unavailable as a "white lie" to avoid hurting her feelings.

Respondents further maintain that they are protected by the Mrs. Murphy exemption because they live at the subject property and usually rent out only three bedrooms at a time, keeping the fourth upstairs bedroom open for visiting family members. However, both at hearing and during a September 2019 deposition, the transcript of which is in evidence under 24 C.F.R. § 180.520(a)(3), Mr. Dangtran conceded that he rented out all four upstairs bedrooms at times in October 2016. The Charging Party also presented testimony from two of Respondents'

former tenants, as well as the former boyfriend of one of those tenants, that all four upstairs bedrooms were occupied simultaneously by unrelated people in and around October 2016.

The Charging Party's witnesses further offered testimony as to their general experiences applying for and renting housing from Respondents; what sort of rules Respondents imposed on their tenants, including rules about cooking; and their perceptions of Mr. Dangtran and Ms. Nguyen's character for truthfulness. Respondents called their own witness, a tenant who had lived with them for two years beginning in March or April 2019, to testify as to his experience renting from them and to deny that he had observed any racism on their part. Mr. Dangtran and Ms. Nguyen also offered their own testimony about their policies and practices as landlords.

IV. Events Following Refusal to Rent

On October 6, 2016, the day after meeting with Mr. Dangtran, Complainant decided to send him a text message because she was still trying to process the preceding day's events, which bothered her deeply. She texted that he had wasted her time, stating, "You did not even [l]et me look at the place and told me outrightly that you would not let me live there because I was black and you would not feel comfortable with it. I don't want to l[i]ve with people that are prejudice[d] but I want you to know that That's wrong." Mr. Dangtran responded that he had decided to rent the room to another person at the time they spoke, but may reconsider her if a room became available. Complainant retorted that this was not true, described what had occurred the day before, and persisted in seeking an admission that the way Mr. Dangtran had treated her was wrong, but his response did not change.

Complainant felt that Mr. Dangtran's October 6 text message responses amounted to "gaslighting," as she did not believe he would actually consider renting to her in the future. At the end of the exchange, she texted Mr. Dangtran that she had recorded their conversation the day before, even though she actually had not. Mr. Dangran did not respond. At hearing, Complainant testified that she had made up the story of the recording out of frustration, in hopes of making Mr. Dangtran admit what had really happened.

After Respondents declined to rent to her, Complainant pivoted her housing search away from Craigslist, as she was "traumatized" by her experience with Respondents and "didn't want anything like that to happen again," and instead used an online application to find a roommate. The dwelling she ended up renting with her new roommate for the next two and a half years was in a lower-income and higher-crime area than the subject property. The dwelling offered less space than Respondents' house, and Complainant felt less safe walking in the area because she found out after moving in that her roommate previously had been robbed at gunpoint. The rent was also higher, at $750 per month; the neighborhood was louder; and the commute to her job was longer than it would have been from Respondents' house.

Complainant testified at length as to the lasting negative effects of her interaction with Respondents. Ultimately, she decided to file a discrimination complaint against Respondents. After making this decision, she searched for Respondents' original housing advertisement online and ran across a new ad they had posted to Craigslist for the subject property that was substantially similar to the original, except that Respondents now asked applicants to disclose

their race and provide a recent picture of themselves. Specifically, the new ad asked applicants to provide a "brief description about yourself, race and age; and a recent picture of you." HUD has submitted copies of ads bearing this language, as well as records from Craigslist indicating such ads were posted on November 4, 2016, December 5, 2016, and July 13, 2017.

At hearing, Mr. Dangtran did not explain why the inquiries about race appeared in some ads but not others, except to note that he was not the operator of Craigslist. He maintained that he requests a selfie from rental applicants to screen out online scammers and asks them to disclose their race so that he can better understand their background and "know what you look like for my safety." He asserted he removed the inquiry about race from his ads as soon as he realized it was problematic. But the record shows he posted at least one ad inquiring about race under the pseudonym "Jeff" even after learning he was under investigation by HUD.

Complainant filed a housing discrimination complaint with HUD on February 17, 2017. After investigating her allegations, HUD, as Charging Party, initiated the instant discrimination proceeding against Respondents by filing the *Charge of Discrimination* in June 2019. As noted above, the Court granted partial summary judgment in the Charging Party's favor in in October 2019, finding that the housing ad Respondents had placed on Craigslist that inquired about race was facially discriminatory.

V. Respondents' Civil Suit Against Complainant in State Court

On November 21, 2019, less than a month after this Court had granted partial summary judgment against Respondents, Respondents filed a civil complaint against Complainant in ADDRESS REDACTED District Court in Texas. The complaint, docketed as Civil Case No. NUMBER REDACTED , contained the following factual allegations:

> The defendant [Complainant NAME REDACTED] on DATE REDACTED filed in federal administrative law court an Urban Housing Development (HUD) complaint against the Plaintiffs [Respondents Quang Dangtran, Ha Nguyen, and HQD Enterprise, LLC] for racial discrimination due to an advertisement placed of Craig's list looking for a roommate. The advertisement requested that the applicant state their race and other personal information which was not used by the defendant for racial discrimination but for informational purposes and to complete a background check of the applicant.

The civil complaint went on to accuse Complainant of committing abuse of process and slander by filing a frivolous claim, thereby causing Respondents to incur expenses and to experience hardship, emotional pain and suffering, embarrassment and humiliation, and reputational harm.

On May 26, 2020, the ADDRESS REDACTED District Court held a hearing and granted Complainant's motion to dismiss the suit pursuant to the Texas Citizens Participation Act ("TCPA"), a state law that provides a mechanism for the speedy dismissal of lawsuits that may

chill the exercise of protected rights.[5] On June 8, 2020, the ADDRESS REDACTED District Court held a further hearing on court costs, attorneys' fees, and sanctions. That same day, the ADDRESS REDACTED District Court issued an order dismissing Respondents' claims in the civil suit with prejudice, ordering them to pay attorneys' fees in the amount of $5,429.52, and ordering them to pay a $2,500.00 sanction to deter them from bringing similar actions in the future. The judge explained that she was sanctioning Respondents because, after Complainant's attorney had explained to them why their lawsuit was frivolous, Respondents had been given multiple opportunities to drop the suit, but had failed to do so.

PRIOR FINDINGS ON SUMMARY JUDGMENT

On October 24, 2019, the Court issued a *Ruling on Summary Judgment* granting the Charging Party's motion for partial summary judgment on the issue of whether Respondents caused a discriminatory housing advertisement to be published in violation of section 804(c) of the Act, 42 U.S.C. § 3604(c). Specifically, the Court found that Respondents' admitted posting of a housing advertisement on Craigslist[6] that asked prospective tenants to disclose their race indicated an intent to consider race as a preference or limitation, which was facially discriminatory. See Soules v. U.S. Dep't Hous. & Urban Dev., 967 F.2d 817, 824 (2d Cir. 1992) (agreeing with HUD that "there is simply no legitimate reason for considering an applicant's race"); Sec'y, U.S. Dep't Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990) (affirming that inquiring about race of potential home buyer violated 804(c)); HUD v. Roberts, No. 02-98-0775-8, 2001 HUD ALJ LEXIS 86, at *13 (HUDALJ Jan. 19, 2001) (finding that inquiries about race are not reasonably related to qualification for housing and would lead a reasonable person to assume that race was being used a factor to determine eligibility).

The *Ruling for Summary Judgment* also addressed, as a threshold matter, Respondents' argument that enforcing the Act against them would raise the constitutional concerns described in Fair Housing Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216 (9th Cir. 2012) (hereinafter "Roommate.com"). The Roommate.com decision involved an online service that matched users with potential roommates. 666 F.3d at 1218. Two housing organizations sued the service, alleging it violated the Act by requiring users to disclose their sex, sexual orientation, and familial status and by steering and matching users based on those characteristics. Id. The Ninth Circuit found that the pivotal question was "whether the [Act] applies to roommates" and that the reach of the Act turned on the meaning of the term "dwelling." Id. at 1219. The Ninth Circuit held that Congress could not have intended that term

[5] See 2011 Tex. HB 2973 (June 17, 2011) (codified at 2 TEX. CIV. PRAC. & REM. CODE §§ 27.001 to 27.011); Klocke v. Watson, 936 F.3d 240, 244 (5th Cir. 2019). The TCPA is an anti-SLAPP statute. "SLAPP" is an acronym for "strategic lawsuits against public participation." Anti-SLAPP statutes such as the TCPA aim to protect citizens from lawsuits that have the purpose or effect of chilling their exercise of protected rights. To accomplish this goal, the TCPA implements a process by which a party can seek rapid dismissal of a lawsuit that may impinge on her rights. See id.

[6] The *Ruling on Summary Judgment* stated that the ad was placed on Craigslist at some point prior to October 3, 2016, when Complainant first saw it. However, the facts developed at hearing show that the ad Complainant saw on October 3 did not actually inquire about race. Rather, Complainant later saw that Mr. Dangtran had posted new ads on Craigslist that were nearly identical to the first, with the exception that the new ads included an inquiry about race and asked potential applicants to submit a recent picture of themselves. The date the discriminatory advertisements were posted is not material to the question of whether they violated section 804(c) and would not have changed the outcome of the *Ruling on Summary Judgment*.

to include portions of single-family homes or apartments in which living space is shared by roommates. Id. at 1220-22.

This Court disagreed, explaining that the Act expressly defines a "dwelling" as including any portion of a building or structure intended for residential occupancy by a "family," 42 U.S.C. § 3602(b), which can consist of a single individual, id. § 3602(c). The Court further explained that Congress crafted the Act's Mrs. Murphy exemption, see id. § 3603(b)(2), with the express intent of carving out a limited exemption from liability for "the rental or leasing of a portion of a single-family dwelling, which means in practical terms the letting of a room or rooms in a person's home." 114 Cong. Rec. 2495, 2495 (1968). Thus, Congress must have believed the Act was broad enough to apply to individual rooms, as otherwise the exemption would have been unnecessary. Moreover, contrary to the Ninth Circuit's holding in Roommate.com, courts have routinely applied the Act to housing arrangements involving shared living facilities and the letting of individual rooms. The *Ruling on Summary Judgment* cites numerous such decisions, and further explains that the new exemption the Ninth Circuit sought to create in Roommate.com was overbroad and would lead to results that would undermine the Act's remedial purpose. For all these reasons, this Court opined in its *Ruling on Summary Judgment* that Roommate.com was wrongly decided and declined to follow it.[7]

In a footnote, the Court further stated that Respondents had not established that Roommate.com was applicable to the facts of the instant case. The Court explained that the Ninth Circuit's holding appeared limited to housing arrangements involving an intimate roommate relationship, and indicated that further development of the record could potentially show that Respondents' arrangement with their tenants in this case more closely resembled a pure business transaction.

Now that the parties have been given a full opportunity to develop the record, the facts establish an additional reason Roommate.com should not be applied to this case. The Ninth Circuit supported its finding that roommate selection is protected by the constitutional right of intimate association by explaining that a roommate's "unfettered access to the home" implicates certain privacy, autonomy, and security concerns. 666 F.3d at 1220-21. The Ninth Circuit explained that roommates see each other in various states of undress, have access to each other's physical belongings, and even have access to each other's persons while asleep. Id. at 1221. The Ninth Circuit further noted that an individual is fully exposed to his roommates' activities, habits, and proclivities, even those that may be offensive, dangerous, annoying, or simply incompatible with his lifestyle; examples cited in Roommate.com included drug use, failure to follow religious culinary restrictions in a shared kitchen, playing loud music, having frequent overnight visitors, being messy, and hogging the bathroom. Id.

But the Ninth Circuit did not appear to consider a case such as this, where many of the usual concerns about roommates have limited impact due to Respondents' status as landlords and consequent ability to control, to some extent, their roommates' activities and ability to access

[7] The Court also found that it lacks authority to deem the Act unconstitutional. See Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 215 (1994); Califano v. Sanders, 430 U.S. 99, 109 (1977); Oestereich v. Selective Serv. Sys. Local Bd. No. 11, 393 U.S. 233, 242 (1968) (Harlan, J., concurring in result); Buckeye Indus. v. Sec'y of Labor, 587 F.2d 231, 235 (5th Cir. 1979); *In re* Navajo Hous. Auth., No. 14-JM-0121-IH-002, 2016 HUD ALJ LEXIS 2, at *30-33 (HUD Sec'y May 2, 2016).

Respondents' personal space. Mr. Dangtran and Ms. Nguyen have their own bedroom and bathroom on the ground floor that they do not share with their tenants, limiting tenants' access to their belongings and persons. The testimony establishes that, during the times relevant to this case, Respondents provided individually keyed locks on the doors to each of the bedrooms at their house and rarely ventured upstairs, where the tenants lived. Although some spaces within the house were shared by all residents, Respondents exercised control over their tenants' activities in shared areas by maintaining house rules, such as rules limiting noise and guests.

The Roommate.com decision fails to consider arrangements such as Respondents', where the privacy, autonomy, and security concerns associated with the roommate relationship are mitigated by one's status as a resident landlord. In such cases, the Mrs. Murphy provision, which was carefully crafted by Congress to address this very arrangement, supplies a more appropriate framework to consider whether and under what circumstances a resident landlord should be exempt from liability under the Act.

FURTHER FINDINGS AND DISCUSSION

After summary judgment, the major issues remaining to be addressed pertaining to liability are (1) whether the Mrs. Murphy exemption applies to this case; (2) whether Respondents can claim the benefit of the section 803(b)(1) exemption; (3) whether Respondents violated section 804(c) of the Act by making a discriminatory statement to Complainant; (4) whether Respondents violated section 804(a) by refusing to rent or negotiate a room rental with Complainant due to her race; (5) whether Respondents violated section 804(d) by misrepresenting the availability of a room due to Complainant's race; and (6) whether Respondents violated section 818 of the Act by retaliating against Complainant for filing a complaint under the Act.[8] The Court's findings are as follows.

I. The Mrs. Murphy exemption does not apply to this case.

The Mrs. Murphy exemption is codified in section 803(b)(2) of the Act, which states: "Nothing in section 3604 of this title (other than subsection (c)) shall apply to … rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four

[8] In addition to these issues, Respondents devote much of their post-hearing brief to arguing that, by pursuing this case against them, the Charging Party has committed abuse of process and slander by filing a frivolous and baseless claim; has engaged in extortion and racketeering under 18 U.S.C. § 1962; has trespassed on their property; and has tortiously interfered with their prospective business relations and violated Texas antitrust law. In response, the Charging Party asks the Court to strike some of Respondents' new claims and argues, among other things, that it has already prevailed on its discriminatory advertising claim, thereby showing that this proceeding is neither frivolous nor a baseless attempt to extort Respondents; that it properly served upon Respondents a Request to Permit Entry Upon Land and Other Property pursuant to 24 C.F.R. § 180.525(a)(2) before visiting the subject property; and that it is entitled to enforce the Act and seek appropriate relief for violations therefor as mandated by Congress.

Aside from the fact that Respondents have not adequately supported the above-referenced claims and did not formally plead or raise these issues until submitting closing briefs in this matter, this Court is an administrative tribunal of limited subject matter jurisdiction, not an Article III court of general jurisdiction, and therefore lacks authority to consider or rule on Respondents' new claims. An administrative court's jurisdiction is confined to the matters entrusted to it by statute or regulation. In fair housing proceedings, the Act empowers the presiding Administrative Law Judge to decide only whether discrimination has occurred under the Act, and, if so, what remedy is appropriate. See 42 U.S.C. § 3604(b), (g). The judge is not authorized to consider or award relief on counterclaims, much less criminal accusations, tort claims, or claims of state law violations. Accordingly, the Court declines to consider the new claims Respondents have raised against the Charging Party in their closing brief.

families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence." 42 U.S.C. § 3603(b)(2); see also 24 C.F.R. § 100.10(c)(2). In other words, if four or fewer independent families occupy units within a single dwelling, and the property owner's family is one of them, the property is exempt from some of the requirements of section 804.

Congress premised the Mrs. Murphy exemption on "the metaphorical 'Mrs. Murphy's boardinghouse.'" United States v. Space Hunters, Inc., 429 F.3d 416, 425 (2d Cir. 2005) (citing 114 Cong. Rec. 2495, 3345 (1968)). As such, the exemption was intended to provide a shield for those who choose to convert a portion or portions of their own home into rental units and whom Congress therefore expected to, "by the direct personal nature of their activities, have a close personal relationship with their tenants." 114 Cong. Rec. 2495, 2495 (1968). Respondents bear the burden of proving they are entitled to the benefit of the Mrs. Murphy exemption, which, like all exemptions to the Act, must be narrowly construed. See City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731-32 (1995); United States v. Columbus Country Club, 915 F.2d 877, 883 (3d Cir. 1990), cert. denied, 501 U.S. 1205 (1991); Singleton v. Gendason, 545 F.2d 1224, 1227 (9th Cir. 1976); Guider v. Bauer, 865 F. Supp. 492, 495 (N.D. Ill. 1994); HUD v. Dellipaoli, No. 02-94-0465-8,1997 HUD ALJ LEXIS 22, at *12-13 (HUDALJ Jan. 7, 1997).

In their post-hearing brief, Respondents argue that HUD lacks jurisdiction over them due to the Mrs. Murphy exemption and that the exemption justifies dismissing all allegations against them. These arguments fail, for multiple reasons.

As a threshold matter, the exemption, even if applicable, would not deprive HUD of jurisdiction. As this Court has previously explained several times, (see the Court's October 24, 2019 *Ruling on Summary Judgment* and April 23, 2020, *Order Denying Motion to Dismiss*), the Mrs. Murphy exemption is "an affirmative defense having no bearing on subject matter jurisdiction." Space Hunters, Inc., 429 F.3d at 425.

In addition, it is not clear that Respondent Dangtran is entitled to the benefit of the exemption. The exemption is available only to a resident-landlord who is also the owner of the property. 42 U.S.C. § 3603(b)(2). Courts have strictly construed this requirement. See, e.g., Guider v. Bauer, 865 F. Supp. at 495-96 (refusing to apply Mrs. Murphy exemption to resident-landlord whose parents had owned the property at the time the alleged discrimination occurred). Technically, Mr. Dangtran was not the owner of the property in October 2016, as it was owned by Ms. Nguyen and by one of Mr. Dangtran's business entities, HQD Enterprise, LLC. Thus, it is not completely clear that Mr. Dangtran qualifies as "the owner" of the subject property under section 803(b)(2), even though the other two Respondents do.

Further, Respondents fail to acknowledge that, as explained in several prior rulings—including the Court's October 24, 2019 *Ruling on Summary Judgment*, the January 27, 2020 *Order Denying Motion for Default Judgment*, and the April 23, 2020 *Order Denying Motion to Dismiss*—the Mrs. Murphy provision does not exempt a covered landlord from *all* of the Act's requirements. As relevant here, by its plain language, the exemption does not excuse a landlord from liability for violating sections 804(c) or 818 of the Act. 42 U.S.C. § 3603(b)(2); see, e.g., United States v. Hunter, 459 F.2d 205, 213-14 (4th Cir. 1972) ("While the owner or landlord of

an exempted dwelling is free to indulge his discriminatory preferences in selling or renting that dwelling, neither the Act nor the Constitution gives him a right to publicize his intent to so discriminate. …The draftsmen of the Act could not have made more explicit their purpose to bar all discriminatory advertisements."), cert. denied, 409 U.S. 934 (1972). Thus, even if Respondents were to establish the exemption applies, it would not serve as a complete defense, because they can still be found liable for discrimination under sections 804(c) and 818.

Finally, and most importantly here, the exemption applies only to properties occupied by four or fewer families. 42 U.S.C. § 3603(b)(2). Mr. Dangtran and Ms. Nguyen moved into the downstairs master bedroom at the subject property in July 2016 and began renting out the four upstairs bedrooms shortly thereafter. Respondents claim they usually rent out just three of the upstairs bedrooms at a time, keeping the fourth open for visiting family members. Respondents admit in their post-hearing brief that they have occasionally made "an exception if there was a need for an urgent roommate," but assert that they "never intended to have their house fully rented out at any time." However, the evidence does not support these claims.

Although Respondents refused to identify or provide contact information for their tenants during discovery, the Charging Party was able to find and elicit testimony from two former tenants from the October 2016 timeframe, Keren Liu and Mitchell Rivera, who contradicted Respondents' assertions.

Ms. Liu rented a bedroom from Respondents from approximately September 2016 to February 2017. She testified that there was only one other tenant renting a room at the time she moved in, a woman named Yuki, last name unknown, whom Mr. Dangtran allegedly assured her she would like because both tenants were Chinese. Ms. Liu testified that Mr. Dangtran also assured her he only planned to rent to a total of two people. Nonetheless, two additional tenants—Mr. Rivera and a Syrian man, full name and spelling thereof uncertain—moved in shortly after Ms. Liu arrived. Ms. Liu recalled that all four tenants were still living at the subject property at Halloween, and although Yuki moved out sometime after that, her room was quickly filled by another Syrian man who was friends with the first Syrian tenant. Ms. Liu also stated that she never observed friends or family visiting Respondents at the subject property during her tenancy there.

Mr. Rivera testified he rented a room at the subject property from approximately September 30, 2016, to December 26, 2016. Consistent with Ms. Liu's account, he indicated that all four upstairs bedrooms were occupied almost continuously during his tenancy. He testified that Ms. Liu, Yuki, and a Syrian man were already living at the property when he moved in.[9] Yuki later moved out, but was replaced by another Syrian tenant within one to two weeks. Mr. Rivera further stated that he never saw any friends or family visiting Respondents and that Respondents did not reserve any bedrooms for visitors.

[9] Because Mr. Rivera moved into the last available room, his testimony regarding the start date of his tenancy (September 30, 2016) is likely inaccurate. Rather, he must have moved in after October 5, as otherwise a room would not have been available when Mr. Dangtran texted Complainant on October 5 asking if she was still interested in the rental. Given that several years elapsed between the events in question and the time Mr. Rivera gave his testimony in January 2020, and given that he indicated the start date was just an estimate, this discrepancy does not impact the weight the Court accords his testimony.

The Charging Party also presented testimony from Alex Sutton, Ms. Liu's former boyfriend who regularly spent long weekends with her at the subject property during her tenancy there, confirming Ms. Liu and Mr. Rivera's accounts of who was living at the property in and around October 2016. Mr. Sutton also confirmed that he never saw Respondents receiving any visitors who would have necessitated a guest bedroom.

Respondents do not directly dispute the foregoing testimony. In fact, Mr. Dangtran has twice admitted that Respondents sometimes rented out all four upstairs bedrooms simultaneously in or around October 2016. In addition, Respondents' own witness, David Gonzales, who began renting a room from them in March or April 2019, testified that four tenants resided at the subject property simultaneously during his time there. Thus, the evidence belies Respondents' claim that they generally try to keep one room open for visiting guests. Instead, the evidence shows that they usually or often rent out all four upstairs bedrooms at the same time, and did so during the time period relevant to this case.

The evidence also shows that, as of October 2016, Respondents and their tenants constituted separate families maintaining independent households. The Act states that a "family" can consist of a single individual. 42 U.S.C. § 3602(c). In this case, Respondents rented to unrelated individuals who shared an address and some amenities, but occupied their own bedrooms with individually keyed locks, did not share vehicles or bank accounts, did not regularly dine together, and did not regularly associate with Respondents except to make passing small talk. Respondents' former tenants testified that none of the individuals occupying the upstairs bedrooms in the October 2016 timeframe were related to each other or Respondents. Although Mr. Dangtran vaguely suggested at hearing that Yuki and Ms. Liu may have been related, Ms. Liu testified they were not. In short, in and around October 2016, Respondents and their tenants comprised five separate families living independently of each other.

Because the subject property contained living quarters occupied by more than four families living independently of each other during the relevant timeframe, the Mrs. Murphy exemption does not apply.

II. Respondents are not entitled to the benefit of the section 803(b)(1) exemption.

In their post-hearing response brief, Respondents raised, for the first time, a claim that they are protected from liability by the exemption codified at section 803(b)(1) of the Act. This provision states that nothing in section 804 of the Act, other than 804(c), shall apply to a single-family house that is sold or rented by the owner "(A) without the use in any manner of the sales or rental facilities or the sales or rental services of … any person in the business of selling or renting dwellings … and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c)." 42 U.S.C. § 3603(b)(1).

Respondents argue that this exemption applies here because the subject property is a single-family home and they are not in the business of selling or renting dwellings. However, section 803(c) specifies that a person is deemed "in the business of selling or renting dwellings" if he has participated as agent in two or more transactions involving the rental of any dwelling in the past twelve months, or if she owns any dwelling occupied by five or more families. Id.

§ 3603(c)(2), (3). Respondents appear to meet these criteria. Although their home is zoned as a single-family residential property, they essentially operate it as a boardinghouse with five separate family units, and Mr. Dangtran also owns another rental property elsewhere in Texas. Further, to qualify for the 803(b)(1) exemption, Respondents would have had to rent out the subject property "without the publication … of any advertisement … in violation of section 3604(c)," id. § 3603(b)(1)(B), which they did not do in this case.

But even if the evidence suggested Respondents qualified for the exemption, they have raised the issue too late. The 803(b)(1) exemption is an affirmative defense that "must be timely asserted—usually in the answer, and certainly at the trial." Ho v. Donovan, 569 F.3d 677, 682 (7th Cir. 2009). Respondents have had many opportunities to raise the exemption before now but have failed to do so. They raised the Mrs. Murphy defense, but not 803(b)(1), in their answer in this matter. Later, they filed a motion for summary judgment and three motions seeking dismissal that also failed to address 803(b)(1), and they failed to assert 803(b)(1) as a defense at the hearing or in their post-hearing brief. Instead, they claimed the defense for the first time in their response brief, depriving the Charging Party of a fair opportunity to respond or to conduct discovery on the relevant issues. Accordingly, they could not claim the benefit of the section 803(b)(1) exemption even if it applied here.

III. Respondents violated section 804(c) of the Act by making a discriminatory statement.

Under section 804(c) of the Act, it is unlawful to make or cause to be made any notice or statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on protected status, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c). Any written or oral notice or statement by a person engaged in the rental of a dwelling that indicates a preference, limitation, or discrimination because of race violates section 804(c). See 24 C.F.R. § 100.75(b). This includes using words or phrases that convey a dwelling is available or not available to a particular group because of race, color, or national origin, or expressing a preference for or against or a limitation on a tenant because of race, color, or national origin. Id. § 100.75(c).

The Charging Party bears the burden of establishing a section 804(c) violation by providing evidence of the following elements: (1) Respondents made a statement, (2) with respect to the rental of a dwelling, (3) that indicated a preference, limitation, or discrimination against Complainant based on her race. Corey v. Sec'y, 719 F.3d 322, 326 (4th Cir. 2013); White v. U.S. Dep't Hous. & Urban Dev., 475 F.3d 898, 904 (7th Cir. 2007); Greater New Orleans Fair Hous. Action Ctr. v. Kelly, 364 F. Supp. 3d 635, 653 (E.D. La. 2019); HUD v. Morgan, No. 11-F-090-FH-49, 2012 HUD ALJ LEXIS 30, at *5 (HUDALJ Sept. 28, 2012), modified on other grounds, 2012 HUD ALJ LEXIS 33 (HUD Sec'y Oct. 26, 2012).

The Charging Party alleges that Respondent Dangtran made a discriminatory statement to Complainant on October 5, 2016, when he told her that his wife would not be comfortable with Complainant living in their house because Complainant was Black and everyone else living there was Asian, and that Complainant "would just make the house uncomfortable." As discussed in prior rulings in this matter, the bedroom Complainant sought to rent from Respondents constituted a "dwelling" within the meaning of the Act. See 42 U.S.C. § 3602(b) (defining term "dwelling" as including any portion of a building "occupied as, or designed or intended for

occupancy as, a residence by one or more families"). Thus, the statement cited by the Charging Party, if Mr. Dangtran actually said it, was made with respect the rental of a "dwelling" under the Act. The content of the alleged statement clearly indicated a preference against Complainant based on her race. The question is whether Mr. Dangtran actually made the statement.

Mr. Dangtran admits telling Complainant during their meeting that all the other people living at the subject property were Asian professionals. This statement alone may denote a racial preference. Courts apply an "ordinary listener" standard to discern whether a statement indicates impermissible discrimination based on a protected status. See, e.g., Rodriguez v. Village Green Realty, Inc., 788 F.3d 31, 52-53 (2d Cir. 2015); Miami Valley Fair Hous. Ctr. v. Connor Grp., 725 F.3d 571, 577 (6th Cir. 2013); Corey, 719 F.3d at 326; White, 475 F.3d at 905-06; Greater New Orleans Fair Hous., 364 F. Supp. 3d at 653; HUD v. Carlson, No. 08-91-0077-1, 1994 HUD ALJ LEXIS 45 (HUDALJ Nov. 14, 1994). Under this test, a statement is discriminatory if it suggests to an ordinary listener that a person or group from a protected class is favored or disfavored for the housing in question. Jancik v. Dep't Hous. & Urban Dev., 44 F.3d 553, 556 (7th Cir. 1995); see also Ragin v. New York Times Co., 923 F.25 995, 1002 (2d Cir. 1991), cert. denied, 502 U.S. 821; Morgan, 2012 HUD ALJ LEXIS 30, at *23 (noting that the ordinary listener is "neither the most suspicious nor the most insensitive of our citizenry"). This is an objective test, and the speaker's subjective belief is not determinative; rather, the "touchstone" of the inquiry is the message conveyed. Rodriguez, 788 F.3d at 53.

Arguably, applying the ordinary listener standard, Mr. Dangtran's statement about the subject property being occupied solely by Asian professionals would have suggested to an ordinary listener under the circumstances that Asians were preferred for the housing in question, and people of other races and national origins were not preferred. But it is unnecessary to determine whether this statement, alone, would be discriminatory under 804(c), because the Court credits Complainant's testimony that Mr. Dangtran also made the blatantly discriminatory statement that Respondents would not be comfortable renting to her because she was Black.

Complainant alleges that Mr. Dangtran made this statement. Mr. Dangtran alleges he did not. No one else was present when the statement was allegedly made. Thus, whether the words were spoken is largely a question of credibility that rightly rests with the Administrative Law Judge, who has heard the testimony of the witnesses and observed each witness's demeanor. See, e.g., Powers v. Apfel, 207 F.3d 431, 435 (7th Cir. 2000) (stating that ALJ's credibility determination is entitled to deference because ALJ is in the "best position to see and hear the witnesses and assess their forthrightness"); Thunder Basin Coal Co. v. S.W. Pub. Serv. Co., 104 F.3d 1205, 1212 (10th Cir. 1997) (noting that fact finder has the "exclusive function of appraising credibility, determining the weight to be given to the testimony, drawing inferences from the facts established, resolving conflicts in the evidence, and reaching ultimate conclusions of fact"). After considering the entire record and assessing the words and demeanor of the respective witnesses, the undersigned finds Mr. Dangtran to be a less credible witness than Complainant, for multiple reasons.

First, the record reveals numerous instances in which Mr. Dangtran has lied or bent the truth for self-serving purposes. For example, to support his Mrs. Murphy defense, he has

repeatedly insisted that Respondents try to rent out only three bedrooms at a time. But, as discussed above, the evidence shows this is not true.

Similarly, at hearing, Mr. Dangtran testified that former tenants Yuki and Ms. Liu may have been related to each other because they knew each other well. If true, this could show they were not independent families for purposes of the Mrs. Murphy provision. However, this testimony is inconsistent with Mr. Dangtran's prior admission at deposition that none of his tenants were related to each other, and is flatly contradicted by Ms. Liu's testimony. Yuki and Ms. Liu were not related and did not even know each other before living at the subject property, and Mr. Dangtran knew it. His suggestion otherwise appears dishonest and litigation-inspired.

Mr. Dangtran has also made less-than-credible claims concerning whether he allowed tenants to cook at the subject property. A prohibition or limitation on cooking, if proven, would support Respondents' argument that they rejected Complainant as a tenant because she wanted to cook too much. But Mr. Dangtran's claims on this point have been shifting and unclear. At deposition, he first asserted that use of the kitchen was limited and had to be arranged by the tenant, but later indicated he did not keep track of or tightly control kitchen usage as long as all residents were courteous to each other. He did not mention smells. At hearing, he stated that tenants were not permitted to cook when Ms. Nguyen was home because she was bothered by smells. None of Respondents' former tenants who testified in this matter, including their own witness Mr. Gonzales, corroborated these claims.[10]

Mr. Dangtran maintains that Complainant's desire to cook disqualified her as a tenant, yet his housing advertisements featured a picture of the kitchen, and there is no evidence he screened other prospective tenants based on cooking. And if cooking were truly a disqualifying factor, it would have made sense for him to ask Complainant about it over the phone before inviting her to see the house, as he indicated he does not invite someone to his house unless he is ready to rent to them. But there is no evidence he broached the subject of cooking until he saw Complainant in person. In sum, Mr. Dangtran's self-serving claims about cooking are not consistent or plausible, and seem contrived. This weighs against his credibility.

Throughout this proceeding, Mr. Dangtran has also shown a marked tendency to hedge and equivocate when answering questions. In fact, at one point during the hearing, the Court expressly admonished Mr. Dangtran for equivocating and changing his mind on the stand after he repeatedly avoided providing a yes-or-no answer to the question of whether he lied to Complainant when he told her the bedroom she sought to rent was unavailable on October 5, 2016. The Charging Party points out that the trial judge in another recent legal proceeding found Mr. Dangtran to be "completely not credible" as a witness. See Whoa USA, Inc. v. Regan

[10] Ms. Liu testified that the tenants were allowed to cook in the beginning, and she cooked about five times a week, but Respondents later added restrictions "like, can you cook less? Or they don't allow other roommates to cook." She further testified that Yuki cooked at least three times a week and that she observed the girlfriend of one of the Syrian tenants cooking, but Mr. Rivera was not allowed to cook. However, Mr. Rivera stated that he *was* permitted to cook, though he never actually did, and that he did not recall anyone being prohibited individually from cooking, though "there was a bit of an issue on that subject throughout the house." Tellingly, Respondents' own witness, Mr. Gonzales, testified he had full access to the kitchen and used it "a lot of times." Taken together, the testimony suggests there may have been an "issue" with kitchen use at some point in 2016; however, the witnesses' accounts do not corroborate that Respondents maintained consistent rules about cooking or genuinely viewed cooking as a disqualifying factor for prospective tenants.

Props., LLC, No. 05-16-01283-CV, 2018 Tex. App. LEXIS 1832, at *7 (Tex. App. Mar. 12, 2018) (affirming ruling against Mr. Dangtran). Likewise, after observing Mr. Dangtran on the stand, this Court formed the impression that he was not being forthright at all times.

On top of the Court's own observations, the Charging Party presented evidence of instances when others have observed Mr. Dangtran engaging in dishonest behavior outside of this proceeding. Former tenants Ms. Liu and Mr. Rivera, as well as Ms. Liu's ex-boyfriend who frequently visited her at the subject property, all testified to such instances. All three witnesses stated that Mr. Dangtran attempted to conceal from his neighbors and homeowners' association ("HOA") that he was violating HOA rules by renting to too many people.[11] He reportedly instructed Mr. Rivera to park his work truck away from the house and to falsely claim that all the occupants of the subject property were related, while he asked Ms. Liu to park across the street and to falsely claim that she was Respondents' niece and that Mr. Rivera was her boyfriend. Ms. Liu also testified, as corroborated by her actual boyfriend Mr. Sutton, that Mr. Dangtran initially told her he would rent to just two tenants, which was false, as he added two more renters shortly after Ms. Liu moved in. In addition, Mr. Rivera testified that, when one of the house's two water heaters died, Mr. Dangtran switched their warranty stickers to create the false impression that the faulty heater was still under warranty, allowing him to obtain a repair or replacement at no charge even though the warranty had actually expired.

Mr. Dangtran's credibility is undermined by all of the foregoing examples of times when he has shown himself not to be completely forthright and honest. By contrast, at hearing, Complainant came across as a truthful and sincere witness who answered questions in a straightforward manner and to the best of her ability. She has stuck by her version of events throughout this proceeding. She admitted she lied in a text message about creating a recording of Mr. Dangtran's words, but explained that this was a bluff through which she hoped to compel Mr. Dangtran to admit that he had treated her unfairly. The Court does not believe this detracts from her overall trustworthiness. There is no other evidence impugning her credibility. Complainant was a credible witness and her account of events was very believable.

Finally, Complainant's seemingly credible allegation that Mr. Dangtran made a discriminatory statement about race is further supported by other circumstantial evidence that race mattered to Respondents when they were making rental decisions. Admittedly, Mr. Dangtran told Complainant the race/ethnicity of the other residents of the house when she was trying to rent a room from him. He reportedly did the same for at least one of his former tenants, Ms. Liu. He also posted housing advertisements asking applicants to disclose their race. He admitted requesting applicants' race so that he could better understand their background and "know what you look like for my safety." These facts support a finding that race mattered to Mr. Dangtran and was a factor he considered when selecting tenants, which is consistent with Complainant's allegation that he told her, in essence, her race was the disqualifying factor.

For these reasons, the Court credits Complainant's testimony that Mr. Dangtran made a discriminatory statement to her on October 5, 2016, in violation of section 804(c) of the Act, by

[11] Ironically, in a May 6, 2020 motion, Respondents argued that, because their HOA prohibited them from renting rooms to more than two unrelated people, they were operating under a "built in Ms. Murphy exemption" and therefore could not be held liable for violating the Act. Apparently, Respondents pick and choose when to ignore the HOA rules and when to treat them as important limitations.

telling her that she would make the house uncomfortable and that his wife would not be comfortable renting a room to her because she was Black. At the time, Mr. Dangtran was acting as rental agent for his wife and HQD Enterprise, LLC, who co-owned the subject property. Thus, Ms. Nguyen and HQD Enterprise, LLC are vicariously liable for Mr. Dangtran's discriminatory statement under the Act. See 24 C.F.R. §§ 100.7(b), 100.20; Meyer v. Holley, 537 U.S. 280, 282, 285 (2003).

IV. Respondents violated section 804(a) of the Act by refusing to rent a room and refusing to negotiate a room rental with Complainant because of her race.

Under section 804(a) of the Act, it is unlawful for a person "[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 race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a); see also 24 C.F.R. § 100.60. Thus, to prevail under 804(a), the Charging Party must show that Respondents took one of the enumerated actions and the action was motivated by a discriminatory purpose or intent. HUD v. Hietpas, No. 18-JM-0251-FH-020, 2019 HUD ALJ LEXIS 19, at *14 (HUDALJ Sept. 3, 2019) (stating that action must be motivated, at least in part, by such intent); see also Crain v. City of Selma, 952 F.3d 634, 641 (5th Cir. 2020) (requiring showing that discriminatory animus was "significant" motivating factor) (citing Woods-Drake v. Lundy, 667 F.2d 1198, 1202 (5th Cir. 1982)).

As discussed, the bedroom Complainant tried to rent from Respondents was a "dwelling" under 804(a). Respondents do not dispute that they refused to show or rent the room to Complainant, and that Mr. Dangtran ceased negotiating a potential rental with her upon meeting her in person on October 5, 2016. Accordingly, it is beyond dispute that Respondents "refuse[d] to sell or rent" and "refuse[d] to negotiate for the sale or rental of, or otherwise ma[d]e unavailable or den[ied]" a dwelling to Complainant, within the meaning of 804(a). The remaining question is whether these actions were unlawfully motivated by Complainant's race, *i.e.*, by discriminatory intent, which Respondents deny.

The Charging Party can establish discriminatory intent either by producing direct evidence from which the Court can conclude that Respondents acted with such intent, or, in the absence of direct evidence, by satisfying the McDonnell Douglas/Burdine burden-shifting test imported from the employment discrimination context. See Mooney v. Aramco Servs. Co., 54 F.3d 1207, 1216-17 (5th Cir. 1995) (employment discrimination case); Texas v. Crest Asset Mgmt., Inc., 85 F. Supp. 2d 722, 728 (S.D. Tex. 2000); Hietpas, 2019 HUD ALJ LEXIS 19, at *18; see generally McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). Direct evidence is evidence which, if believed, proves a fact without reliance upon inference or presumption. Bodenheimer v. PPG Indus., Inc., 5 F.3d 955, 958 (5th Cir. 1993). The McDonnell Douglas/ Burdine test is inapplicable where there is direct evidence of discrimination. Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985); Crest Asset Mgmt., 85 F. Supp. 2d at 729.

In this case, the Charging Party argues that Mr. Dangtran's discriminatory statement to Complainant constitutes direct evidence of discrimination. The Court agrees. By Complainant's account, after Mr. Dangtran tried to dissuade her from pursuing the rental opportunity by telling

her that cooking was forbidden and requesting proof of her job and degree, he eventually refused to let her into the house and told her that, to be honest, she would make the house uncomfortable and his wife would be uncomfortable renting to her because she was Black and everyone else at the house was Asian. The Court has credited Complainant's testimony. No evidence of racial discrimination could be more direct than telling a rental applicant that the homeowner is not comfortable renting to her because of her race.

Even where there is direct evidence of discriminatory intent, a respondent can still avoid liability under a "mixed-motives" theory by proving that he would have made the same adverse housing decision regardless of the discriminatory animus. See Crest Asset Mgmt., 85 F. Supp. 2d at 729-30. In this case, Respondents have variously asserted that they rejected Complainant as a tenant because the room became unavailable, because she "didn't fit" with their desired socioeconomic style, and/or because she wanted to cook too much. None of these explanations are convincing.

First, Mr. Dangtran told Complainant the room had become unavailable after receiving a phone call at the end of their encounter on October 5, 2016. However, in both his discovery responses and testimony, he indicated that he made this statement only because he felt it was kinder than an outright rejection. He admits the room was actually still available. Thus, he has admitted that this proffered alternative reason for rejecting Complainant was pretextual.

As for the explanation that Complainant "didn't fit," this is so vague and nonspecific that it is no explanation at all. Mr. Dangtran has failed to articulate a convincing reason why Complainant "didn't fit." During his 2019 deposition, he suggested that he rejected Complainant's tenancy in part because she wanted to have too many friends over, but there is no evidence to corroborate that he and Complainant ever actually discussed this topic, and he has not pursued this allegation. At hearing, he indicated Complainant came across as "pushy" because she wanted to see the house immediately. However, this rings hollow in light of his testimony that he is usually ready to rent to someone as soon as he invites them to the property, and in light of his former tenants' testimony that he immediately ushered them into the house when they arrived for their in-person interviews. This evidence suggests he was applying a different standard to Complainant. He had invited her to the property to see the rental unit. It is difficult to believe that he truly felt she was "pushy" just because she asked to do so when she arrived.

Similarly, as indicated in the discussion of section 804(c) above, Respondents' assertion that they rejected Complainant because she wanted to cook appears contrived and pretextual. The testimony from the Charging Party's witnesses and from Respondents' own tenant-witness, Mr. Gonzales, does not support their claim that they viewed cooking as a disqualifying factor for any prospective renters other than Complainant. Their Craigslist advertisements featured a picture of the kitchen, and their tenants were allowed to use it. Mr. Dangtran and Complainant discussed her qualifications by phone before he invited her to view the house, yet despite Respondents' assertion in their post-hearing response brief that cooking "was an absolute deal breaker," Mr. Dangtran did not inquire about this supposedly all-important criterion or mention it to Complainant until he saw her in person.

For the above reasons, the Court finds that Respondents' proffered reasons for rejecting Complainant as a tenant are pretextual and do not overcome the direct evidence that they actually rejected her because of her race.

The circumstantial evidence supports this finding, as it shows that race mattered to Respondents. Their housing advertisements asked applicants to disclose their race, a factor Mr. Dangtran admits considering during the screening process. Mr. Dangtran admitted at deposition that Respondents had never welcomed a Black tenant into their home. See Woods-Drake v. Lundy, 667 F.2d at 1202 n.7 ("In housing cases, a history of not renting to blacks is relevant in proving racial discrimination."). Further, the record shows that, unlike Complainant, other prospective tenants were immediately invited into the house when they arrived to interview, were not prohibited from cooking, and were not asked to produce copies of their diplomas; indeed, Mr. Rivera, the tenant who likely took the room Complainant was trying to rent, was not even a college graduate. Mr. Dangtran began treating Complainant differently from other applicants as soon as he saw what she looked like. This disparate treatment is circumstantial evidence of discriminatory intent. See, e.g., Crain, 952 F.3d at 641 (stating that discriminatory motive can sometimes be inferred "from the mere fact of differences in treatment") (citing Int'l Bhd. Of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977)).

Both the direct and circumstantial evidence in this case support a conclusion that Respondents refused to negotiate with or rent to Complainant because she was Black. Respondents' proffered alternate reasons for their rejection of Complainant as a tenant are pretextual, and because they have not put forward any credible alternate reasons for the rejection, it appears that race was the only significant motivating factor in that decision. Accordingly, the Court finds that Respondents violated section 804(a) of the Act. Respondent Dangtran is directly liable for this violation because he actually engaged in the discriminatory conduct, and Respondents Nguyen and HQD Enterprise, LLC are vicariously liable because Mr. Dangtran was acting as their rental agent at the time.

V. Respondents violated section 804(d) of the Act by misrepresenting the availability of a room to Complainant because of her race.

Section 804(d) of the Act makes it unlawful "[t]o represent to any person because of race … that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." 42 U.S.C. § 3604(d). Thus, this provision confers on all persons "a legal right to truthful information about available housing." Havens Realty Corp. v. Coleman, 455 U.S. 363, 373 (1982).

The Court has already found that Mr. Dangtran misrepresented the availability of the room Complainant was trying to rent when he falsely stated, after receiving a phone call near the end of their October 5, 2016 meeting, that the room was now taken. The evidence suggests he made this misrepresentation in an effort to induce Complainant to leave, as he and Ms. Nguyen did not want to rent to a Black person. Therefore, the Court finds that Mr. Dangtran's misrepresentation was made for a discriminatory purpose, in violation of section 804(d). Ms. Nguyen and HQD Enterprise, LLC are also liable under principles of vicarious liability.

VI. Respondents violated section 818 of the Act by retaliating against Respondent because of her exercise of protected rights.

Section 818 of the Act states, in pertinent part: "It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed … any right granted or protected by section 3603, 3604, 3605, or 3606 of this title." 42 U.S.C. § 3617; Evans v. Tubbe, 657 F.2d 661, 663 n.3 (5th Cir. Unit A Sept. 1981). Conduct rendered unlawful by section 818 includes "[r]etaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act." 24 C.F.R. § 100.400(c)(5); see, e.g., Scruggs v. Marshall Hous. Auth., No. 00-40216, 2000 U.S. App. LEXIS 39741 (5th Cir. Aug. 23, 2000) (recognizing cause of action for retaliation under section 818).

Retaliation claims under the Act are analyzed under the same standard as retaliation claims under Title VII of the Civil Rights Act (pertaining to employment discrimination). See, e.g., Harmony Haus Westlake, LLC v. Parkstone Prop. Owners Ass'n, 468 F. Supp. 3d 800, 815 (W.D. Tex. 2020); Campos v. HMK Mortg., LLC, 458 F. Supp. 3d 517, 530 (N.D. Tex. 2020); Texas v. Crest Asset Mgmt., Inc., 85 F. Supp. 2d 722, 733 (S.D. Tex. 2000). To make out a claim of retaliation under this standard, the Charging Party must show that (1) Complainant engaged in an activity that was protected under the Act, (2) Complainant was subjected to an adverse action by Respondents, and (3) a causal connection exists between the protected activity and the adverse action. See LeMaire v. Louisiana, 480 F.3d 383, 388 (5th Cir. 2007) (Title VII case); Harmony Haus, 468 F. Supp. 3d at 815; Campos, 458 F. Supp. 3d at 531.

In a March 10, 2021 ruling denying the Charging Party's motion for summary judgment on the section 818 claim, the Court found that Complainant engaged in protected activity by filing a housing discrimination complaint with HUD and participating in the instant discrimination proceeding against Respondents. See Harmony Haus, 468 F. Supp. 3d at 815-16 (finding that initiating discrimination suit is protected activity); Oxford House, Inc. v. City of Baton Rouge, 932 F. Supp. 2d 683, 700 (M.D. La. 2013) (finding that filing administrative complaint constitutes protected activity); 24 C.F.R. § 100.400(c)(5) (expressly extending section 818's protection to those who file complaints and participate in administrative proceedings under the Act). This satisfies the first prong of the test for retaliation.

Under the second prong, Complainant was subjected to an adverse action when all three Respondents filed and pursued a civil suit against her in [redacted] District Court in Texas alleging, among other things, slander and abuse of process arising out of the instant discrimination proceeding. Under the third prong, there is no question that Respondents' actions were directly causally related to Complainant's protected activity, as the civil suit was entirely predicated on her discrimination case and Respondents have admitted they sued her "because she had brought the previous lawsuit with HUD."

Respondents, however, argue that they have a constitutional right to sue, citing the First Amendment right "to petition the Government for the redress of grievances." U.S. CONST., amend. I. This raises the question whether Respondents can be held liable for a violation of

section 818 when, even though they clearly took adverse action against Complainant because of her exercise of protected activity, that action implicates a constitutional right.

The First Amendment right to petition does not always provide a shield from liability for statutory violations. In some cases, courts have found retaliation or interference where a person accused of discrimination files a separate lawsuit against his or her accuser. See, e.g., Walker v. City of Lakewood, 272 F.3d 1114, 1129 (9th Cir. 2001) (holding that filing a lawsuit can constitute interference under the Act); United States v. Wagner, 940 F. Supp. 972, 978-80 (N.D. Tex. 1996) (finding interference under the Act); see also Durham Life Ins. Co. v. Evans, 166 F.3d 139, 157 (3d Cir. 1999) (finding that filing a lawsuit can constitute retaliation under Title VII); Spencer v. Int'l Shoppes, Inc., 902 F. Supp. 2d 287, 295-300 (E.D.N.Y. 2012) (same); Ward v. Wal-Mart Stores, Inc., 140 F. Supp. 2d 1220, 1231 (D.N.M. 2001) (same, in context of Americans with Disabilities Act); EEOC v. Va. Carolina Veneer Corp., 495 F. Supp. 775, 778 (W.D. Va. 1980) (finding defamation suit to be retaliatory under Title VII), appeal dismissed, 652 F.2d 380 (4th Cir. 1981). And the Supreme Court has expressly recognized that a "lawsuit may no doubt be used … as a powerful instrument of coercion or retaliation" and may have a chilling effect on the exercise of rights. Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 740-41 (1983).

However, courts have also recognized that the First Amendment right to petition may immunize the filing of a lawsuit from statutory liability unless the lawsuit is a "sham" litigation, meaning it is both (1) objectively baseless, and (2) filed with a subjective intent to abuse process. See Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc., 508 U.S. 49, 60 (1993). This is referred to as the Noerr-Pennington doctrine, see id. at 56, and courts have applied it in Fair Housing cases. See Tri-Corp. Hous., Inc. v. Bauman, 826 F.3d 446, 450 (7th Cir. 2016); Sanghvi v. City of Claremont, 328 F.3d 532, 542-43 (9th Cir. 2003); Walker, 272 F.3d at 1129 n.5 (noting that conduct forming basis of section 818 claim, including the filing of a lawsuit, may be protected under Noerr-Pennington); see also Wagner, 940 F. Supp. at 978 (noting that, to prevail on claim that lawsuit violated section 818, government has burden of proving it was filed for an illegal objective and with an improper motive).

In this case, the Charging Party argues that Respondents' Texas state lawsuit is not protected under the First Amendment because it was both objectively baseless and motivated by an unlawful purpose. The evidence supports these arguments.

An objectively baseless suit is one for which "no reasonable litigant could realistically expect success on the merits." Prof'l Real Estate Investors, 508 U.S. at 60; see, e.g., Bryant v. Military Dep't, 597 F.3d 678, 689-94 (5th Cir. 2010). The thrust of Respondents' allegations in their Texas lawsuit was that Complainant had committed abuse of process and slander by filing a frivolous discrimination case against them. No reasonable litigant could have realistically expected to succeed on these claims. As noted by the Charging Party, by the time Respondents filed the Texas lawsuit on November 21, 2019, this Court had already granted partial summary judgment against them on one of Complainant's claims of discrimination and had issued three orders to compel discovery on the other discrimination claims. This would make clear to any reasonable litigant that Complainant's discrimination case was not frivolous. To the extent Respondents nonetheless unreasonably believed their Texas suit may succeed at the time they

filed it, this belief became even less reasonable after opposing counsel in the Texas suit sent them a letter outlining why their complaint would be dismissed under the TCPA. Indeed, the ADDRESS REDACTED District Court later dismissed the suit pursuant to the TCPA and sanctioned Respondents for pursuing it.

As for whether Respondents were motivated by an unlawful purpose or a subjective intent to abuse process when they initiated and pursued the Texas suit, Respondents argue that they had no intent to retaliate against Complainant and that the suit "was not designed to intimidate harass or affect this case in any manner." However, given that Respondents could not possibly have expected to prevail in the Texas suit, they have not identified any plausible reason for pursuing the suit other than to harass or retaliate against Complainant for filing a discrimination complaint and/or to intimidate her and interfere with her pursuit of the discrimination case.

The Supreme Court has indicated that, in evaluating a party's subjective motivation for filing a lawsuit, courts should focus on whether the lawsuit represents an attempt to use the judicial *process*, as opposed to the *outcome*, as a weapon. Prof'l Real Estate Investors, 508 U.S. at 60-61; see id. at 68 (Stevens, J., concurring) (explaining that a party is abusing judicial process if he is "indifferent to the outcome of the litigation itself, but has nevertheless sought to impose a collateral harm on the defendant"); Liberty Lake Ins. v. Magnuson, 12 F.2d 155, 159 (9th Cir. 1993). In this case, Respondents appear to have used the judicial process itself as a weapon, without concern that they would ultimately lose the Texas lawsuit. Several factors support this conclusion.

First, they filed the suit shortly after being found liable by this Court for discriminatory advertising, suggesting they were motivated by frustration or anger at that ruling rather than by a genuine belief that the underlying discrimination case was meritless. In fact, the "Background" section of their civil complaint shows they premised their suit entirely on the discriminatory advertising claim, and did not even disclose that Complainant and HUD had also accused them of violating the Act by refusing to rent to Complainant and making a discriminatory statement concerning race.

Second, in a June 8, 2020 hearing before the Texas court, Mr. Dangtran explained that he had filed the suit because he was frustrated that HUD was handling the discrimination case on Complainant's behalf free of charge, meaning she had no financial incentive not to pursue the case. This suggests that Respondents hoped to create such an incentive by filing the collateral suit against her. Finally, at the June 8 hearing, Complainant's attorney stated that, after he sent Respondents a letter explaining why their suit was doomed to fail and promising he would not seek attorneys' fees if they dropped the suit immediately, Respondents instead lodged an *ex parte* extension request without first consulting with opposing counsel about the trial schedule. This suggests Respondents were engaging in gamesmanship in an attempt to prolong a litigation they knew would likely be dismissed.

Because Respondents have not identified any legitimate reason for their pursuit of a clearly baseless lawsuit against Complainant, and because there are signs they were simply attempting to use the judicial process as a weapon against her, the Court finds that their initiation

and pursuit of the lawsuit was motivated by an unlawful purpose and that they intended to abuse the judicial process. Accordingly, Respondents' Texas lawsuit constituted a sham litigation that is not protected by the First Amendment in this case. Respondents filed and pursued the lawsuit against Complainant because of her protected activity under the Act, thereby committing unlawful retaliation in violation of section 818.

REMEDY

Upon a finding of discrimination, the Act requires this Court to issue an order awarding "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). The Court may also assess civil penalties against Respondents to vindicate the public interest. Id.

In this case, the Charging Party asks the Court to award Complainant $150,000 in actual damages, impose the maximum civil penalty of $19,787 against each Respondent, and issue injunctive relief. Pursuant to the Court's January 9, 2020 *Ruling on Motion for Sanctions*, the Charging Party also seeks an award of attorneys' fees in the amount of $44,104.80. The Charging Party's requests are addressed in turn below.

I. Complainant's Actual Damages

Proof of a violation of the Act entitles the aggrieved party to actual damages. 42 U.S.C. § 3612(g)(3); see Curtis v. Loether, 415 U.S. 189, 195-97 (1974). Such damages may include compensation for quantifiable monetary losses as well as for intangible injuries such as anger, embarrassment, humiliation, and emotional distress. HUD v. Saari, No. 16-AF-0152-FH-021, 2017 HUD APPEALS LEXIS 3, at *34 (HUDALJ Oct. 6, 2017); HUD v. Blackwell, No. 04-89-0520-1, 1989 HUD ALJ LEXIS 15, at *44-45 (HUDALJ Dec. 21, 1989), aff'd, 908 F.2d 864 (11th Cir. 1990); see, e.g., Woods-Drake v. Lundy, 667 F.2d 1198, 1202-03 (5th Cir. 1982) (indicating that actual damages should account for out-of-pocket costs and emotional distress attributable to the discriminatory conduct); United States v. Wagner, 930 F. Supp. 1148, 1152-53 (N.D. Tex. 1996) (awarding compensatory damages for legal expenses and emotional distress); see also Gertz v. Robert Welch, 418 U.S. 323, 350 (1974) (noting that actual injury is not limited to out-of-pocket loss, but also includes harms such as personal humiliation and mental anguish and suffering).

An aggrieved party must prove its damages in order to recover more than a nominal amount. See, e.g., Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 n.21 (1982) (noting plaintiff's burden of demonstrating injury in order to obtain relief under Act); United States v. Pelzer Realty Co., 537 F.2d 841, 844 (5th Cir. 1976) (affirming refusal to award damages under Act where no proof was offered as to actual damages suffered). Damages may not be determined by mere speculation or guess, see Assoc'd Gen. Contractors v. Cal. State Council of Carpenters, 459 U.S. 519, 532 n.26 (1983) (noting general rule that damages cannot be recovered for "uncertain, conjectural, or speculative losses"), and recovery is available only for harm that was proximately caused by the discriminatory conduct, Bank of Am. Corp. v. City of Miami, 581 U.S. 189, 201 (2017).

Here, the Charging Party seeks compensation on Complainant's behalf for three categories of actual damages: (A) emotional distress damages, (B) lost housing opportunity, and (C) out-of-pocket expenses.

A. Emotional Distress Damages

Courts have long recognized "the indignity inherent in being on the receiving end of housing discrimination." HUD v. Wooten, No. 05-98-0045-8, 2007 HUD ALJ LEXIS 68, at *8 (HUDALJ Aug. 1, 2007). Accordingly, damages are available under the Act for distress, anxiety, embarrassment, and humiliation suffered by the aggrieved party as a result of the respondent's discriminatory actions. See, e.g., Woods-Drake v. Lundy, 667 F.2d at 1202-03; Wagner, 930 F. Supp. at 1152-53; Saari, 2017 HUD APPEALS LEXIS 3, at *40-47; Blackwell, 1989 HUD ALJ LEXIS 15, at *44-45. Because emotional injuries are by nature difficult to quantify, courts may award compensation for such injuries without requiring proof of the exact dollar value, so long as the evidence supports a finding of legally cognizable harm. See Saari, 2017 HUD APPEALS LEXIS 3, at *44; Blackwell, 1989 HUD ALJ LEXIS 15, at *44-45 (citing Block v. R.H. Macy & Co., 712 F.2d 1241, 1245 (8th Cir. 1983) and Marable v. Walker, 704 F.2d 1219, 1220-21 (11th Cir. 1983)).

Key factors in determining the amount of emotional distress damages include (1) the egregiousness of the respondent's discriminatory conduct, and (2) the aggrieved party's reaction to the conduct. Saari, 2017 HUD APPEALS LEXIS 3, at *41; HUD v. Parker, No. 10-E-170-FH-19, 2011 HUD ALJ LEXIS 15, at *19 (HUDALJ Oct. 27, 2011). Subject to those two factors, the Court is afforded broad discretion in determining the damages. HUD v. Sams, No. 03-92-0245-1, 1994 HUD ALJ LEXIS 74, at *25 (HUDALJ Mar. 11, 1994), aff'd per curiam, No. 94-1695, 1996 U.S. App. LEXIS 449 (4th Cir. Jan. 16, 1996); see HUD v. Woodard, No. 15-AF-0109-FH-013, 2016 HUD ALJ LEXIS 4, at *15 n.5 (HUDALJ May 9, 2016) (noting range of past awards); HUD v. Wooten, No. 05-98-0045-8, 2007 HUD ALJ LEXIS 68, at *9 (HUDALJ Aug. 1, 2007) (same).

The Charging Party argues that a significant emotional damages award is warranted here to compensate Complainant for her prolonged and ongoing suffering, humiliation, and anger resulting from the discrimination, which has changed the course of her life and affected how she sees herself, other people, and the world. The Charging Party further argues that the egregiousness of Respondents' actions justify a substantial award. The Charging Party does not identify a specific figure it is requesting for emotional damages, but asserts that Complainant should receive no less than $150,000 in total damages. The Charging Party attributes $1,782.75 of that amount to quantifiable lost housing opportunity costs and out-of-pocket expenses. Thus, the Charging Party is seeking an emotional distress award of at least $148,217.25.

Respondents contend that Complainant has not proven her damages, citing the general rule that an injury in fact must be concrete and particularized to establish standing to sue. Respondents argue that Complainant's injuries are unsubstantiated because they are supported only by her own testimony and she has not submitted any medical evidence. Respondents further suggest that Complainant has been victimized by racism throughout her life, and, to the

extent she now claims her emotional injuries are traceable to Respondents' actions, she is "simply out to win her case and get as much money out of it [a]s possible."

Contrary to Respondents' argument, medical evidence is not required to prove emotional distress damages. HUD v. Graham, No. 19-JM-0014-FH-002, 2020 HUD ALJ LEXIS 8, at *8-9 (HUD Sec'y Feb. 5, 2020); see DeCorte v. Jordan, 497 F.3d 433, 442 (5th Cir. 2007) (indicating that claimant's testimony, even without corroborating testimony or medical evidence, may sometimes suffice to support compensatory damages for emotional distress and other intangible injuries); Bolden v. Southeastern Pa. Transp. Auth., 21 F.3d 29, 36 (3d Cir. 1994) (holding that expert medical evidence is not required to prove emotional distress damages). Even without medical evidence, Courts can find emotional harm based on the nature and circumstances of the wrong and its impact on the aggrieved party. See Carey v. Piphus, 435 U.S. 247, 263-64 (1978) (noting that emotional distress is "customarily proved by showing the nature and circumstances of the wrong and its effect on the plaintiff"); Bryant v. Aiken Reg'l Med. Ctrs., Inc., 333 F.3d 536, 546 (4th Cir. 2003) ("We have held that a plaintiff's testimony, standing alone, can support an award of compensatory damages for emotional distress.").

This Court has long held that, in cases under the Act, damages for emotional distress may be based on testimonial proof or on inferences drawn from the circumstances surrounding the discrimination. See, e.g., Saari, 2017 HUD APPEALS LEXIS 3, at *41; Blackwell, 1989 HUD ALJ LEXIS 15, at *44. In this case, both the circumstances surrounding the discriminatory conduct, and Complainant's testimony describing its impacts on her, support the Charging Party's argument that she suffered compensable emotional distress.

First, the nature and circumstances of the discriminatory conduct show that Respondents' behavior was egregious in several ways. According to Complainant, Mr. Dangtran's first words upon seeing her in person on October 5, 2016, were, "Oooh, you're [NAME REDACTED]," with an unwelcoming demeanor and an inflection that indicated she had surprised him in an unpleasant way. The meeting did not improve from there. Although Mr. Dangtran himself had reached out to Complainant to see if she was still interested in renting a bedroom and had invited her to see the house, upon meeting her in person, he would not even allow her to go inside. Instead, as noted by the Charging Party, he interrogated her on the sidewalk for over thirty minutes, and even asked her to produce her college diploma on the spot, which was completely unreasonable. He also took a phone call and walked away after they had been talking for about 30 minutes, leaving Complainant standing awkwardly by herself for 10 to 15 more minutes. Ultimately, he told Complainant outright that Respondents would not be comfortable renting to her due to her race. Mr. Dangtran's actions were rude and offensive, and would have been unexpected and shocking to any ordinary person. The Court finds them to be egregious.

Respondents' filing of a retaliatory lawsuit is another aspect of their conduct that was egregious, especially because the lawsuit appears to have been motivated purely by a desire to make Complainant pay for successfully pursuing a discrimination case against them. In addition, it is somewhat appalling that, after Mr. Dangtran's encounter with Complainant, he modified his Craigslist advertisement to expressly request rental applicants' race. Overall, as Complainant indicated on the witness stand, Respondents' discriminatory conduct was shocking because it

was so open and blatant. The egregious nature of Respondents' conduct, the impact of which is palpable in her testimony today, supports a significant award of emotional distress damages.

Complainant's testimony describing her reaction to the discriminatory conduct, as well as its ongoing and substantial effects on her life, further supports a significant award. Complainant clearly and credibly recounted how she felt during her meeting with Mr. Dangtran, as she gradually realized she was being rejected due to her the color of her skin. At first she was confused at the way Mr. Dangtran was treating her. They had shared a friendly conversation on the phone earlier that day that had led her to believe he was prepared to rent the room to her, but when she arrived he appeared surprised and acted as if he did not know her. When he proceeding to ask her "ridiculous" questions such as whether she cooked a lot and whether she was really a professional with a college degree, she testified she began to feel a mix of emotions. These appear to have included an ominous feeling that Mr. Dangtran was intentionally trying to disqualify her as a tenant, as well as confusion and disbelief that this was actually happening.

Complainant was taken aback by some of his questions and became increasingly nervous and "frazzled," to the point that, even though she knew Mr. Dangtran's request for a copy of her diploma was unreasonable, she found herself frantically trying to log into her school's student portal on her cell phone to see if she could find documents to prove herself to him. After working hard to earn a degree with high honors from a good school, it upset her to feel that "my whole being is being minimized into whether or not I can find transcripts and prove that I've got the grades that I said I got. I just couldn't believe it … I don't know if I was nervous, whatever, I just couldn't find it. And [Mr. Dangtran] said, well basically, he didn't believe me."

When Mr. Dangtran then told Complainant that Respondents would not rent to her because of her race, she was shocked to be subjected to blatant racial discrimination by someone who had just had a conversation with her. She had experienced subtle racism before, but "never had someone be racist to my face." It was dehumanizing that Mr. Dangtran would not even pretend to consider her as a tenant or let her into his home, and she felt speechless and "worthless, really." When Mr. Dangtran subsequently accepted a phone call and walked away, leaving her waiting on the sidewalk for 15 minutes, she felt further disrespected and "small."

At hearing Complainant expressed feelings of regret, and perhaps humiliation and self-disgust, at how she had handled the situation, mentioning several times how "sad" it was that she had continued trying to plead her case even after it was clear Respondents were rejecting her for a factor beyond her control. She also testified to her feelings of shame and degradation as she drove home from the subject property. And the events of that day "continued to eat at [her]," causing ongoing distress and generating in her a persistent fear, which she had never previously experienced, that no matter what she did, others would perceive her as less worthy solely due to her race.

Complainant experienced renewed feelings of shame and worthlessness when she later saw that Respondents had posted a housing advertisement explicitly inquiring about race. She testified she began to understand the journey a person can take into self-hate, due to the juxtaposition between the messages she had always received from friends and family that she

would succeed as long as she worked hard and took pride in herself, versus the disappointing realization that the world is not always fair and her skin color may be an impediment.

Complainant's testimony suggests that the discrimination affected the course of her career. Before, she was a high achiever academically and aspired toward entering a Master's program and building a career in the medical field. But the events of October 5, 2016 dispelled her conception of the world as an essentially fair place, and she no longer expects she will be recognized for her work rather than judged based on her color. She has more difficulty concentrating and has lost motivation to pursue a Master's degree and medical career, which she has been unable to explain to her family, as she feels like "there's always going to be something holding me back."

Complainant's testimony also demonstrates that the discrimination has affected her entire personality. She has lost self-confidence and instead developed self-defense mechanisms. These have included becoming less open and more withdrawn; assuming that others will not immediately value her as a human being and will only see the color of her skin; and feeling a need to insert her qualifications into conversation so that people will take her seriously despite her skin color. She has even stopped using the name "[NAME REDACTED]," which is her middle name, instead choosing to go by her first name, "[NAME REDACTED]," because it is an African name and she wants to avoid ever again experiencing discrimination from someone who is surprised to find out she is Black. It is clear from Complainant's testimony that the discrimination resulted in a feeling of shame over her race which could not be overcome, regardless of her many successes in school and in life. Indeed, the adage taught by her parents, that if she studied and worked hard she would be rewarded, was proven untrue.

In their closing brief, Respondents suggest that Complainant's claimed emotional injuries stem from discrimination she experienced in the past, when she "grew up in the south and had to fight bullies and was discriminated against every day" due to her skin color.[12] But there is no evidence Complainant was bullied or the subject of any significant discriminatory acts before the events of this case. She testified she had experienced indirect racism in the past, but her encounter with Mr. Dangtran was shocking to her because it was the first time she had ever experienced racism directly to her face, her "first very bitter bite into the real world." Moreover, it is axiomatic that "discriminators take their victims as they find them." HUD v. Kelly, No. 05-90-0879-1, 1992 HUD ALJ LEXIS 79, at *37 (HUDALJ Aug. 26, 1992), remanded on other grounds, 3 F.3d 951 (6th Cir. 1993); e.g., HUD v. Godlewski, No. 07-034-FH, 2007 HUD ALJ LEXIS 90, at *12 (HUDALJ Dec. 21, 2007) ("Where a victim is more emotionally affected than another might be under the same circumstances, and the harm is felt more intensely, he/she deserves greater compensation for the discrimination that caused the suffering.").

[12] Mr. Dangtran questioned Complainant about the precise color of her skin at hearing, and now appears to argue that part of her claimed emotional damages stem from her "refus[al] to consider her skin color as black" rather than brown. Complainant's skin color is, in fact, more accurately described as a shade of brown or tan than black. Because English is not Mr. Dangtran's first language, it is possible that his confusing and specious argument about skin color, as well as the awkward nature of the underlying exchange at hearing, may be attributable to a language barrier. However, Respondents expressly disclaimed the need for a translator in this matter, and Mr. Dangtran has otherwise proven himself capable of articulating coherent arguments both in writing and orally throughout this proceeding. His line of questioning concerning Complainant's skin color was, at best, uncomfortable, and could be construed as unnecessary and unkind.

Considering all the foregoing, the Court must determine the appropriate amount of emotional distress damages. The Charging Party seeks an award close to $150,000. In support, the Charging Party cites two cases where lesser amounts were awarded, and asserts the conduct in those cases was less egregious. See Broome v. Biondi, 17 F. Supp. 2d 211 (S.D.N.Y. 1997) (awarding $114,000 to each spouse in interracial couple subjected to racial discrimination); HUD v. Kocerka, No. 05-94-0537-8, 1999 HUD ALJ LEXIS 3, at *25-26, 31 (HUDALJ May 4, 1999) (awarding $90,000 collectively to interracial couple subjected to racial discrimination). But these awards differ from the instant case in that the Broome case involved a jury award on claims under not just the Act, but also 42 U.S.C. §§ 1981 and 1982 and N.Y. Exec. L. § 296(5), while the Kocerka case involved an award after default judgment. Further, as acknowledged by the Charging Party, the facts are not directly analogous.

A more closely analogous case is HUD v. Graham, in which the Secretary of HUD recently awarded $60,000 to a complainant after finding that she had been subjected to blatant, egregious racial discrimination and that the discrimination had caused an extreme impact in the form of a mental breakdown. See 2020 HUD ALJ LEXIS 8, at *8-16. The instant case involves even more egregious discrimination, including the filing of a retaliatory lawsuit against Complainant, and the impact of the discrimination on Complainant has been similarly extreme, causing not just distress, humiliation, and feelings of degradation, but changing Complainant's entire perspective on society and her sense of her own identity. Complainant testified she still thinks about the discrimination every day. She has even changed her name.

The presiding judge has wide discretion in granting damages awards, especially those relating to intangible injuries and emotional distress. HUD v. Raimos, No. 21-JM-0160-FH-022, slip op. at 10 (HUDALJ June 22, 2022), *available at* https://www.hud.gov/sites/dfiles/HA/documents/21-JM-0160-FH-022-Decision.pdf; Sams, 1994 HUD ALJ LEXIS 74, at *25. Consequently, "the awards themselves run the gamut from a pittance to a windfall." Raimos, slip op. at 10; see HUD v. Wooten, No. 05-98-0045-8, 2007 HUD ALJ LEXIS 68, at *9 (HUDALJ Aug. 1, 2007) (describing awards ranging from $150 for complainant who suffered threshold level of cognizable harm to $175,000 at upper end of spectrum). When compared to other cases, the facts of this case, including the egregious nature of Respondents' conduct and the profound impact on Complainant, lean towards a substantial award. Accordingly, the Court finds that an award of $78,000 is appropriate to compensate Complainant for emotional distress damages.

B. Damages from Loss of Housing Opportunity

The Charging Party asserts that because Respondents denied Complainant the opportunity to rent a room at the subject property, which was her ideal housing selection in many ways, she was forced to pay $50 more per month to rent a smaller space, in a louder and less safe neighborhood, with a longer commute to her job. Complainant lived in this inferior housing for 2.5 years. The Charging Party therefore requests compensation for lost housing opportunity in the amount of $1,500, calculated by multiplying the $50-per-month rent differential by 2.5 years. Respondents do not raise any argument with respect to this request.

Damages are available in cases under the Act for lost housing opportunity, including compensation for amounts reasonably expended on alternative housing. See HUD v. Krueger, No. 05-93-0196-1, 1996 HUD ALJ LEXIS 62, at *40 (HUDALJ June 7, 1996). In this case, the Charging Party's calculation of alternative housing expenses is reasonable and supported by the record. Accordingly, the Court will award $1,500 to Complainant in damages for lost housing opportunity.

C. Out-of-Pocket Expenses

The Charging Party requests an award of at least $282.75 for time Complainant spent participating in this proceeding. Complainant testified that she spent about 30 hours preparing for and attending the hearing in the civil lawsuit Respondents filed against her in Texas. In addition, Complainant attended the hearing in this matter, which lasted 9 hours and 12 minutes (excluding breaks). Thus, the Charging Party obtained the $282.75 figure by multiplying 39 hours and 12 minutes by Texas's minimum hourly wage of $7.25.

An aggrieved party may be compensated for the time and expense of participating in proceedings under the Act. See, e.g., Saari, 2017 HUD APPEALS LEXIS 3, at *35-36 (awarding compensation for complainants' time at rate based on their hourly wages); HUD v. Pheasant Ridge Assocs. Ltd., No. 05-94-0845-8, 1996 HUD ALJ LEXIS 63, at *48 (HUDALJ Oct. 25, 1996) (allowing recovery for time and money spent prosecuting discrimination complaint). Respondents do not challenge the Charging Party's $282.75 approximation of the amount of out-of-pocket expenses Complainant incurred participating in this case, which is likely a vast underestimate. Accordingly, the Court will grant the reasonable request to award Complainant $282.75 for time expended on this proceeding.

II. Civil Penalties

To vindicate the public interest, the Act authorizes the Court to assess a civil penalty of up to $19,787 against each respondent found guilty of a violation who has not previously been adjudged to have committed housing discrimination. 42 U.S.C. § 3612(g)(3); see 81 Fed. Reg. 38931, 38933 (June 15, 2016) (adjusting maximum penalty amount in 24 C.F.R. § 180.671(a) to account for inflation). In this case, the Charging Party asks the Court to assess the maximum civil penalty against each Respondent

In determining the appropriate amount of the penalty, the Court considers the following factors: (i) whether Respondents have previously been adjudged to have committed unlawful housing discrimination; (ii) Respondents' financial resources; (iii) the nature and circumstances of the violations; (iv) the degree of Respondents' culpability; (v) the goal of deterrence; and (vi) other matters as justice may require. 24 C.F.R. § 180.671(c)(1).

(i) Respondents' Violation History

There is no evidence that Respondents have previously been adjudged to have committed unlawful housing discrimination.

(ii) Respondents' Financial Resources

Respondents bear the burden of producing evidence of their financial resources, as such information is peculiarly within their knowledge. Woodard, 2016 HUD ALJ LEXIS 4, at *16; Godlewski, 2007 HUD ALJ LEXIS 67, at *26. A civil penalty may be imposed without consideration of a respondent's financial situation if he fails to produce mitigating evidence in this regard. Woodard, 2016 HUD ALJ LEXIS 4, at *16 (citing Campbell v. United States, 365 U.S. 85, 96 (1961)).

Respondents argue that they are not in a financial position to pay civil penalties. However, no information about Respondent Nguyen's financial situation has been submitted into evidence by Respondents, other than the fact that she has a job working from home. As for Respondent Dangtran, as of 2019, he testified he was unsure of his net worth, but he was making about $85,000 per year as a software manager at Southwest Funding and receiving rental income from the subject property and one other rental property he owns. He now argues he has lost his job and has been pushed to financial ruin due to this proceeding. However, there is no evidence confirming that he is unemployed or otherwise corroborating his allegations about his current financial condition. The Court notes that Mr. Dangtran owns several business entities, including Respondent HQD Enterprise, LLC, but there is no financial information in the record for these entities, either. Mr. Dangtran characterizes HQD Enterprise, LLC as a shell company with no assets or employees.

Respondents could have offered evidence at hearing pertaining to their ability to pay civil penalties, and were given an additional opportunity to append such evidence to their post-hearing brief. However, the only financial information they submitted consisted of bank statements from 2016 for an account held by one of Mr. Dangtran's business entities other than HQD Enterprise, LLC, which are not relevant to Respondents' ability to pay penalties at the present date, and a letter showing Mr. Dangtran exited his job with Southwest Funding in May 2021, which does not establish the reason for his exit or prove he is unemployed.

Because Respondents have not produced evidence establishing their current financial condition or corroborating their purported inability to pay the proposed civil penalties, the Court need not consider inability to pay as a mitigating factor.

(iii) Nature and Circumstances of the Violations

The Charging Party argues that the nature and circumstances of the violations warrant the maximum penalty, asserting that Respondents fabricated multiple reasons why Complainant could not rent a room as a façade to mask intentional discrimination and then continued to harass her and violate the Act by filing a retaliatory lawsuit. The Court agrees that Respondents' conduct, the nature and circumstances of which have been discussed at length above, was egregious and warrants a high penalty. This is particularly true for Mr. Dangtran, who actually engaged in the discriminatory actions.

(iv) Respondents' Degree of Culpability

The Charging Party argues that Respondents are highly culpable because they had every opportunity to do the right thing in this case, yet over and over again, they have instead chosen to engage in unlawful discrimination. The Charging Party notes that Mr. Dangtran continued to post discriminatory housing advertisements under a pseudonym even after being notified that he was under investigation for housing discrimination. Further, even after summary judgment was issued against them regarding the discriminatory ads, Respondents have continued to maintain that Complainant's claims are baseless and frivolous and that the Act does not apply to them.

The record supports the Charging Party's assertions. The evidence shows that Respondents committed intentional racial discrimination, which is the precise type of discrimination the Act was originally intended to address. Racial discrimination in housing has been prohibited for decades, and "owners of rental property are bound to know the law and to adhere to its mandates." HUD v. Schmid, No. 02-98-0276-8, 1999 HUD ALJ LEXIS 5, at *31 (HUDALJ July 15, 1999). Yet, to date, Respondents appear unwilling to acknowledge the wrongful nature of their conduct or to change their ways. Respondents are fully culpable for committing multiple acts of intentional discrimination, including retaliation for Complainant's exercise of protected rights, which weighs in favor of a severe penalty.

On the other hand, Ms. Nguyen did not directly engage in the discriminatory most of the discriminatory acts, and her participation in the retaliatory Texas lawsuit appears indirect, as she allowed Mr. Dangtran to represent her interests in that suit. She is less culpable than Mr. Dangtran for the discriminatory acts, and the civil penalties should so reflect.

(v) Deterrence

The Charging Party contends that the goal of deterrence would be most effectively accomplished through imposition of the maximum penalties in this case, arguing that Respondents have shown no remorse and are unlikely to be discouraged from their discriminatory ways absent a severe sanction. The Court agrees that serious penalties are warranted to impress upon Respondents the severity of their misconduct and to deter others from engaging in similar misconduct.

(vi) Conclusion

After considering the entire record in this matter with emphasis on the penalty factors discussed above, the Court will assess a $19,797 civil penalty against Mr. Dangtran; a $9,898 civil penalty against Ms. Nguyen; and a $19,797 civil penalty against HQD Enterprise, LLC.

III. Injunctive Relief

The Act authorizes the Court to award "injunctive or other equitable relief" as may be appropriate. 42 U.S.C. § 3612(g)(3). The purposes of injunctive relief include eliminating the effects of past discrimination and preventing future discrimination. HUD v. Gruen, No. 05-99-1375-8, 2003 HUD ALJ LEXIS 40, at *22-23 (HUDALJ Feb. 27, 2003) (citing Park View

Heights Corp. v. City of Black Jack, 605 F.2d 1033, 1036 (8th Cir. 1979), cert. denied, 445 U.S. 905 (1979), and Moore v. Townsend, 525 F.2d 482, 485 (7th Cir. 1975)).

In this case, the Charging Party asks the Court to (1) enjoin Respondents and their agents, employees, successors, and any others in active concert or participation with them from engaging in discrimination in violation of the Act; (2) order Respondents, within 45 days of the date this Order becomes final, to attend a minimum of two hours of training on the Act that covers race discrimination and any applicable state and local non-discrimination laws, and attend cultural sensitivity training; and (3) order Respondents to adopt a non-discrimination policy, as well as equal housing opportunity language for future advertisements and rental documents, furnished by HUD, and to retain rental records for five years and submit them to HUD for monitoring.

The Charging Party's request for an order compelling fair housing training and cultural sensitivity training is reasonable and will be granted with respect to Respondents Dangtran and Nguyen. The Court will also grant the Charging Party's reasonable request for an order compelling Respondents to adopt a non-discrimination policy and equal opportunity language and to retain rental records and submit to monitoring by HUD. The request to retain rental records and allow HUD to monitor them is especially reasonable in light of Respondents' refusal to furnish such records to the Charging Party during discovery in this matter, despite being ordered multiple times to do so, which delayed the proceedings.

Because Respondents will be required to undergo fair housing training to prevent future discrimination, and because the Act already forbids them from engaging in discriminatory conduct, the Court deems it unnecessary to enjoin them from future violations and will deny the Charging Party's request for such an injunction.

IV. Attorneys' Fees

A. Background

On September 17, 2019, the Charging Party filed a *Motion for Sanctions* asking the Court to sanction Respondents for their failure to comply with a prior order to compel. Thereafter, the Charging Party filed four supplements to its *Motion for Sanctions* and the Court issued several more orders instructing Respondents to correct substantial deficiencies in their discovery responses. All told, Respondents were ordered four times to submit or supplement their discovery responses.

On January 9, 2020, the Court issued a *Ruling on Motion for Sanctions* sanctioning Respondents for their continued failure to fully respond to discovery. Among other things, the Court stated: "Respondents shall reimburse HUD for its reasonable costs and expenses, including attorneys' fees, arising from the preparation and filing of its *Motion for Sanctions* and supplements." The Court instructed the Charging Party to file a statement of its costs and expenses and advised that an award would be included in the final order disposing this case.

On February 6, 2020, the Charging Party filed a *Statement Setting Forth Attorney's Fees Arising from Preparing Charging Party's Motion for Sanctions and Supplements* ("*Fee*

Statement") seeking $44,104.80 in attorneys' fees. On February 11, 2020, the Charging Party submitted a *Supplemental Statement and Response to Order to Submit Additional Information*. The Charging Party now requests that the Court award fees in accordance with its *Fee Statement*.

B. Legal Authority and Framework for Fee Award

The procedural rules governing this matter authorize the Court to impose sanctions for discovery violations and provide a nonexclusive list of actions that may be undertaken as a means of sanctioning a party, which concludes with a catchall provision allowing the Court to take "such other action as may be appropriate." 24 C.F.R. § 180.540(d). More generally, the rules also authorize the Court to "[i]mpose appropriate sanctions against any person failing to obey an order." Id. § 180.205(h). In addition, 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3) authorize the Court to award "such relief as may be appropriate" after hearing. See also Chambers v. NASCO, 501 U.S. 32, 45 (1991) (recognizing courts' inherent power to assess attorneys' fees).

Courts have consistently utilized the "lodestar" method to determine a "reasonable attorney's fee." See, e.g., Cruz v. Maverick Cty., 957 F.3d 563, 574 (5th Cir. 2020) ("In this circuit, attorneys' fees are calculated by the lodestar method."). Under this method, the court multiplies the number of hours an attorney reasonably expended on the case by a reasonable hourly rate. Id.; see Perdue v. Kenny, 559 U.S. 542, 550-51 (2010); Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The fee applicant bears the burden of proving the reasonableness of the hours worked and the hourly rates claimed. Id. at 437; Riley v. City of Jackson, 99 F.3d 757, 760 (5th Cir. 1996).

C. Discussion

The Charging Party requests attorney's fees totaling $44,104.80 to recover the costs incurred resulting from Respondents' multiple violations of their discovery obligations, which include the time spent preparing its statement of costs and expenses. Respondents acknowledge that the "lodestar" method should be used to calculate the attorney's fees, but claim, without elaboration, that the fees awarded by the Court "should not be equal to the amount being sought by HUD."

I. The Charging Party's Attorney Hours are Reasonable.

The Charging Party claims its two attorneys, Rosanne Aviles and Erik Heins, worked 86.48 hours preparing its *Motion for Sanctions* and four supplements thereto, as well as preparing its *Fee Statement*.

The Charging Party is "expected to exercise 'billing judgment' in calculating his or her fee; excessive, redundant or otherwise unnecessary hours are to be omitted from the fee submission." Tomazzoli v. Sheedy, 804 F.2d 93, 96 (7th Cir. 1986) (quoting Hensley, 461 U.S. at 434). If a court finds hours to be based on inaccurate or misleading records, it may disallow those hours. If it finds hours to be insufficiently documented, it may omit those hours or reduce the fee award by a proportionate amount. Hensley, 461 U.S. at 433.

In support of its fee request, the Charging Party submits time logs that include the date, type of work performed, and number of minutes spent for each of their attorneys. The time was meticulously documented, and billable work that could not be adequately documented was noted in the time logs but omitted from the billable time calculation. And, although noted in their time logs, the Charging Party also omitted as "billable" time any work that was clerical in nature, meetings with supervisors during which this matter was discussed, and time spent reviewing previously examined correspondence and conversation history. Although the *Ruling on Motion for Sanctions* ordered Respondents to reimburse the Charging Party only for expenses "arising from the preparation and filing of [the Charging Party's] *Motion for Sanctions* and supplements," the Court finds that the work performed by the Charging Party's attorneys to prepare the *Fee Statement* was necessary and arose from Respondents' underlying misconduct being sanctioned. Accordingly, the Court finds the 86.48 hours (or 5,189 minutes) expended by Attorneys Aviles and Heins to prepare the *Motion for Sanctions*, its multiple supplements, and the *Fee Statement* to be reasonable, adequately documented, and substantiated.

II. The Charging Party's Proposed Rate is Excessive for the Purposes of the Sanction.

The Charging Party claims its attorney's fees should be awarded at an hourly rate of $510, which is the prevailing hourly rate in the local legal community under the U.S. Attorney's Office Attorney's Fees Matrix prepared by the U.S. Attorney's Office for the District of Columbia.

Although the Charging Party cites case law supporting the proposition that government attorney's fees should be calculated at a rate comparable to the local legal community, the Court finds employing that rate would exceed the Court's intended purpose in imposing the sanction. Here, the purpose of awarding fees and expenses is to both sanction Respondents for their conduct, which abused the judicial process, and make the Charging Party whole for expenses incurred due to Respondents' repeated refusals to comply with discovery requests. See Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991) (stating that an attorney fee sanction serves the "dual purpose of vindicating judicial authority without resort to the more drastic sanctions available for contempt of court and making the prevailing party whole for expenses caused by his opponent's obstinacy").

In the *Ruling on Motion for Sanctions*, the Court sanctioned Respondents for their repeated refusals to comply with discovery orders by (1) prohibiting Respondents from introducing as evidence any document they had not already produced to HUD; and (2) prohibiting Respondents from offering as a witness any person whom they had not already identified or for whom they had not already provided information to HUD. Those sanctions were proportionate to the harm and delays to the case and fact-finding.

Respondent's misconduct during discovery also requires the Charging Party to be made whole for having to file several motions to compel Respondents' cooperation in this process. As such, the Court concluded that Respondents should also reimburse the Charging Party for reasonable costs and expenses, including attorneys' fees. However, the rate proposed by the

Charging Party is more than seven times the actual hourly rate of Attorneys Aviles and Heins as calculated based on their salaries.

Although Respondents have not substantiated their claim that they could not pay the attorneys' fees proposed by the Charging Party, the Court recognizes that significant civil penalties are already being imposed against Respondents. Accordingly, the Court finds that awarding fees at a rate that would actually compensate the Charging Party will also serve to sanction Respondents for disregarding the Court's orders. Recognizing that hourly pay for these attorneys, alone, would not adequately reimburse the Charging Party, the Court accepts the Charging Party's calculation for a "fully-loaded" employee which accounts for benefits, and other traditional overhead. The Court therefore finds the hourly rate of $131.76 for each attorney to be reasonable and appropriate.

D. Conclusion and Award

For the reasons stated above, the Court concludes that the Charging Party is entitled to attorneys' fees in the following amounts:

Aviles:	$131.76	x	54.63	hours	=	$7,198.05
Heins:	$131.76	x	31.85	hours	=	$4,196.56
						$11,394.61

ORDER

Based on the foregoing, it is hereby **DECLARED** that:

1. Respondents have violated 42 U.S.C. § 3604(a), (c), and (d) and § 3617.

2. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay to Complainant the total sum of $79,782.75 in damages.

3. Within thirty (30) days of the date on which this Order becomes final, Respondent Dangtran shall pay to the Secretary of HUD the total sum of $19,787 in civil money penalties; Respondent Nguyen shall pay to the Secretary of HUD the total of $9,898 in civil money penalties; and Respondent HQD Enterprise, LLC shall pay to the Secretary of HUD the total of $19,787 in civil money penalties.

4. Within 120 days of the date on which this Order becomes final, Respondents Dangtran and Nguyen shall:

    a. Attend a minimum of two (2) hours of training on the Fair Housing Act that covers race discrimination and any applicable state and local non-discrimination laws; and

    b. Attend cultural sensitivity training.

5. Within fifteen (15) days of the date on which this Order becomes final, Respondents shall:

    a. Adopt and begin using the Non-Discrimination Policy provided by HUD. Respondents shall provide notice and documentation to HUD within ten (10) days of implementation of this policy;

    b. Adopt equal housing opportunity language in future advertisements and rental documents; and

    c. Begin retaining rental records for five (5) years, including accepted and rejected applications, with a clear statement of whether an applicant was accepted or rejected and the reason for the rejection. Respondents shall submit these records to HUD quarterly for monitoring to ensure no discrimination occurs.

6. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay to HUD $11,394.61 in attorneys' fees to compensate HUD for time spent addressing Respondents' multiple violations of their discovery obligations.

So **ORDERED**,

_____

Alexander Fernández-Pons
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675. This *Initial Decision* may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review must be received by the Secretary within 15 days after the date of this *Order*. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this *Order*.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov
Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 180.680.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **INITIAL DECISION AND ORDER** issued by Alexander Fernández, Administrative Law Judge, in HUDOHA 19-AF-0148-FH-015, were sent to the following parties on this 9th day of December 2022, in the manner indicated:

Cinthia Matos, Docket Clerk
HUD Office of Hearings and Appeals

VIA EMAIL

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