

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

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In the Matter of

COMMISSION ON HUMAN RIGHTS
ex rel. STEVEN B. NIEVES,

Complaint No. M-H-G-17-1035197
OATH Index No. 2153/17

Petitioner,
-against-

GILBERT ROJAS a/k/a REN ROJAS,

Respondent.
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DECISION AND ORDER

On December 16, 2016, the Law Enforcement Bureau of the New York City Commission on Human Rights (“Bureau”) filed a verified complaint (“Complaint”) on behalf of Complainant Steven B. Nieves, alleging that Respondent Gilbert Rojas, also known as Ren Rojas, denied Complainant a housing opportunity because of his reliance on a rental voucher as lawful source of income, in violation of § 8-107(5)(a)(1) of the New York City Human Rights Law (“NYCHRL”).

Respondent failed to file an answer or otherwise appear in the case. On April 12, 2017, the Bureau issued a finding of probable cause and, on April 17, 2017, referred the case to the Office of Administrative Trials and Hearings (“OATH”) for a hearing. (Bureau Exs. 10 & 11.)

The Honorable Faye Lewis presided over the hearing held at OATH on August 1, 2017. At the hearing, the Bureau presented evidence that it had served Respondent with copies of: (1) the Complaint (Bureau Ex. 1); (2) the notice of probable cause (Bureau Ex. 10); (3) the notice of referral to OATH (Bureau Ex. 11); (4) the notice of conference (Bureau Ex. 12); and (5) the notice of trial (Bureau Ex. 13). After reviewing the Bureau’s evidence of service on Respondent,

Judge Lewis found Respondent in default and proceeded with the hearing as an inquest. (Tr. of OATH Hearing (“Tr.”) at 6:25–7:2.)

On October 23, 2017, Judge Lewis issued her Report and Recommendation, recommending that the Office of the Chair of the New York City Commission on Human Rights (“Commission”): (1) find that Respondent violated § 8-107(5)(a)(1) of the NYCHRL; (2) award \$10,000.00 in emotional distress damages to Mr. Nieves against Respondent; (3) impose civil penalties of \$10,000.00 against Respondent; and (4) require that Respondent undergo anti-discrimination training. (Report & Recommendation (“R&R”) at 6.)

The Bureau submitted timely written comments and objections to the Report and Recommendation, asking the Commission to increase only the order of civil penalties from \$10,000.00 to \$35,000.00. (Bureau Comments dated Nov. 16, 2017 (“Bureau Comments”) at 2.) The Bureau did not initially request that the Commission increase the award of emotional distress damages; however, almost one year after the deadline for comments passed, the Bureau submitted a request to reopen the record to admit additional evidence related to compensatory damages. (Letter from Stephanie Rudolph, Esq. to Comm’r Malalis, dated Oct. 19, 2018.) That request was denied. (Letter from Zoey S. Chentiz, Esq. to all parties, dated Feb. 19, 2019.)

After reviewing the Report and Recommendation, the hearing transcript, the evidence admitted during the hearing, and the Bureau’s November 16, 2017 comments, the Commission agrees with Judge Lewis that Respondent is liable for violating § 8-107(5)(a)(1) of the NYCHRL, and orders that he pay Complainant \$10,000.00 in compensatory damages, pay \$10,000.00 in civil penalties to the City of New York, and undergo anti-discrimination training.

I. STANDARD OF REVIEW

In reviewing a report and recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the administrative law judge. Though the findings of an administrative law judge may be helpful to the Commission in assessing the weight of the evidence, the Commission is ultimately responsible for making its own determinations as to the credibility of witnesses, the weight of the evidence, and other findings of fact. *In re Comm'n on Human Rights ex rel. Agosto v. Am. Constr. Assocs.*, OATH Index No. 1964/15, Am. Dec. & Order, 2017 WL 1335244, at *2 (Apr. 5, 2017); *In re Comm'n on Human Rights ex rel. Spitzer v. Dahbi*, OATH Index No. 883/15, Dec. & Order, 2016 WL 7106071, at *2 (July 7, 2016). The Commission is also tasked with the responsibility of interpreting the NYCHRL and ensuring the law is correctly applied to the facts. *See In re Comm'n on Human Rights v. Aksoy*, OATH Index No. 1617/15, Dec. & Order, 2017 WL 2817840, at *4–5 (June 21, 2017); *Spitzer*, 2016 WL 7106071, at *2. The Commission reviews a report and recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law. *In re Comm'n on Human Rights ex rel. Gibson v. N.Y.C. Fried Chicken Corp.*, OATH Index No. 279/17, 2018 WL 4901030, at *2 (Sept. 28, 2018); *In re Comm'n on Human Rights ex rel. Martinez v. Joseph "J.P." Musso Home Improvement*, OATH Index No. 2167/14, Dec. & Order, 2017 WL 4510797, at *8 (Sept. 29, 2017).

II. THE EVIDENTIARY RECORD

For purposes of this Decision and Order, familiarity with the hearing record and with Judge Lewis's Report and Recommendation is generally assumed. The relevant facts and evidence are discussed below.

During the hearing, the Bureau presented testimony from two witnesses: Complainant and Edric Chung, a Bureau employee who had searched records to verify Respondent's identity. The documentary evidence entered into the record includes: (1) the Complaint (Bureau Ex. 1); (2) Complainant's Living in Communities I ("LINC") voucher, certified as of November 2, 2016 (Bureau Ex. 2); (3) an apartment listing accessed on July 31, 2017, on www.hotpads.com, for Apartment 3 at 1525 Nelson Avenue, Bronx, New York 10452 (the "Nelson Avenue Apartment") which asked applicants to call a phone number associated with Respondent (Bureau Ex. 3); (4) an apartment listing accessed on December 14, 2016, on www.zillow.com, for another apartment in the same building as the Nelson Avenue Apartment which stated "No Programs" and asked applicants to call the same phone number associated with Respondent (Bureau Ex. 4); (5) three emails between a Bureau attorney and Mr. Chung, dated December 14, 2016, regarding Mr. Chung's search for two phone numbers in the CLEAR database¹ (Bureau Exs. 5a, 5b, 5c); (6) a profile for Gilbert "Ren" Rojas accessed on www.linkedin.com on June 13, 2017 (Bureau Ex. 6); (7) a CLEAR report on Gilbert Rojas listing recent addresses and phone numbers, compiled on December 14, 2016 (Bureau Ex. 7); (8) four warning letters from the Bureau to Respondent requesting a Verified Answer, two dated February 3, 2017 and two dated March 8, 2017, to Respondent's most recent addresses (Bureau Exs. 8a, 8b, 9); (9) the notice of

¹ CLEAR is an investigation tool used for identifying and locating people, businesses, assets, and affiliations. See <https://legal.thomsonreuters.com/en/products/clear-investigation-software>.

probable cause determination and of intention to proceed to public hearing, along with affidavit of service, dated April 12, 2017 (Bureau Ex. 10); (10) the notice of referral to OATH, affidavit of service, and OATH intake sheet, dated April 17, 2017 (Bureau Ex. 11); (11) the notice of conference and affidavit of service, dated April 19, 2017 (Bureau Ex. 12); (12) the notice of trial and affidavit of service, dated June 20, 2017 (Bureau Ex. 13); (13) an audio recording from November 17, 2016, of one of Complainant's telephone conversations with Respondent, which is reflected in the hearing transcript; and (14) the Bureau's post-trial submission reporting on the unwillingness of landlords to rent to individuals with housing vouchers (ALJ Ex. 1).

Complainant testified that he, his wife, and his young son moved into a family shelter in Manhattan in May 2016. (Tr. 31:10.) At the shelter, Complainant and his family dealt with mold issues and mice infestations. (*Id.* at 33:18–24.) Complainant further testified that his son screamed about mice running over his bed and “started getting stressed” and “uncomfortable” to the point of having frequent nose bleeds. (*Id.* at 33:20–34:7.) In early November, after spending 90 days in the shelter, Complainant became eligible for a LINC voucher, a rent subsidy available to working families living in shelters. Complainant received a LINC voucher that provided approximately \$735.00 in monthly rental assistance towards a maximum monthly rent of \$1,515.00. (*Id.* at 32:4–33:1.)

Complainant and his wife began to look for apartments over the internet and came across an advertisement for the Nelson Avenue Apartment. (*Id.* at 34:24–5; *see* Bureau Ex. 3.) The Apartment's monthly rent was within the limits set by Complainant's LINC voucher and, in mid-November 2016, Complainant called Respondent, the listed contact on the advertisement. (Tr. 35:12–36:16;44:24–45:4.) During this conversation Complainant mentioned that he had a LINC voucher and Respondent informed Complainant that the apartment's landlord “does not

take any programs.” (*Id.* at 37:3–5.) Though Complainant recorded this conversation, the recording was not introduced into evidence. (*See id.* at 37:13.)

Complainant called Respondent a second time, on or around November 22, 2016, during which time the advertisement for the Nelson Avenue Apartment was still active. (*Id.* at 39:1–7, 44:11.) Complainant again asked Respondent if the apartment was available and again mentioned his LINC voucher. (*Id.* at 45:9–15.) Respondent reiterated that the landlord “does not accept any subsidy,” that he “was just following orders,” and that setting up a meeting between Complainant and the landlord would be a waste of time. (*Id.* at 47:10–4, 48:25.)

Complainant described the first conversation as “another door that slammed in our face,” stating that it “hurt” and “broke [his] heart” by making him feel that he could not provide for his family’s needs. (*Id.* at 38:7–19.) He further described that seeing his son with a bloody nose and crying in the shelter caused him to be stressed. (*Id.*) Complainant described the second phone conversation with Respondent as “another slap to the face,” that was aggravated by the fact that his wife began to cry when the call ended. (*Id.* at 50:15–18.) Complainant further stated that the phone call “bothered” him, that it was the last thing he thought about before falling asleep at night, and that his friends at work attempted to console him the next day. (*Id.* at 50:18–20.) Complainant eventually gave up on finding an apartment using a LINC voucher and, as of the date of the hearing, was renting an apartment for \$900.00 per month without the aid of a subsidy (in effect, paying approximately \$120.00 more per month than the maximum he might have paid with his voucher), and had been forced to change his job twice in order to afford the rent. (*Id.* at 54:25–55:10.) Complainant describes having to “push” to afford the rent and that his family at times lives “check by check.” (*Id.* at 55:7–10.)

III. DISCUSSION

A. Legal Standard

The NYCHRL expressly provides that it “shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of [the NYCHRL] have been so construed.” N.Y.C. Admin. Code § 8-130. Pursuant to the Local Civil Rights Restoration Act of 2005, “[i]nterpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City’s Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.” Local Law No. 85 (2005); *see also* Local Law No. 35 (2016). Case law interpreting analogous anti-discrimination statutes under state and federal law, though sometimes persuasive, is not precedential in the interpretation of the NYCHRL. *See Albunio v. City of N.Y.*, 23 N.Y.3d 65, 73 (2014) (“the New York City Council’s 2005 amendment to the NYCHRL was, in part, an effort to emphasize the broader remedial scope of the NYCHRL in comparison with its state and federal counterparts and, therefore, to curtail courts’ reliance on case law interpreting textually analogous state and federal statutes”).

B. Respondent Discriminated Against Complainant Based on His Lawful Source of Income, in Violation of § 8-107(5)(a)(1) of the NYCHRL

Section 8-107(5)(a)(1) of the NYCHRL states that it is unlawful to “refuse to sell, rent, lease... or otherwise deny [] or withhold... [a] housing accommodation” on the basis of an individual’s lawful source of income. N.Y.C. Admin. Code § 8-107(5)(a)(1). The LINC Rental Assistance Program was designed by the City of New York to help working families living in homeless shelters transition back into permanent housing. *LINC I Rental Assistance Program for*

Clients in Shelter, N.Y.C. Dep't of Homeless Serv. (Feb. 2015), available at <https://www1.nyc.gov/assets/dhs/downloads/pdf/LINC/2015/FEB/LINC-I-ClientFactSheet.pdf>. LINC vouchers, as a type of housing assistance provided by the City, qualify as a lawful source of income under the NYCHRL. N.Y.C. Admin. Code § 8-102(25); see *Alston v. Starrett City, Inc.*, 161 A.D.3d 37, 42 (1st Dep't 2018); *Agosto*, 2017 WL 1335244, at *5 (finding that “the term ‘lawful source of income’ reaches a broad range of government assistance”).

The unrebutted testimony and documentary evidence make clear that Respondent denied Complainant an opportunity to rent the Nelson Avenue Apartment solely based on the fact that he held a housing subsidy. On two separate occasions, Respondent informed Complainant that the landlord for the Nelson Avenue Apartment did not accept any “programs” or “subsidies,” and that Complainant “was not eligible for the apartment” because he was a voucher holder. (Tr. 37:4–5, 47:11–12.) Respondent justified his actions as “just following orders,” notwithstanding his independent responsibility as a broker to comply with the law and refrain from aiding and abetting the discrimination of others. (*Id.* at 47:10–4, 48:25); see N.Y.C. Admin. Code §§ 8-107(5), (6). The record also shows that Respondent posted an ad for a different apartment in the same building which expressly stated, “No Programs.” (Bureau Ex. 4.)

Based on the unrebutted evidence, the Commission concludes that Respondent is liable for discriminating on the basis of lawful source of income in violation of § 8-107(5)(a)(1) of the NYCHRL.

The First Department’s 2018 decision in *Alston v. Starrett City, Inc.* does not undermine this conclusion. In *Alston*, the court considered the interplay between the Urstadt Law² and the

² The Urstadt Law is a state statute that “was intended to prohibit attempts, whether by local law or regulation, to expand the set of buildings subject to rent control or stabilization.” *Tapia v. Successful Mgmt. Corp.*, 79 A.D.3d 422, 425 (1st Dep’t 2010). It states, in relevant part,

NYCHRL's source of income protections as applied to LINC vouchers that, at the time, included "mandatory riders that compel a landlord to renew a lease for up to five years at a minimum increase specifically tied to other City rent regulatory programs." 161 A.D.3d at 42. The landlord in *Alston* asserted that the LINC voucher's mandatory rider would impermissibly subject a market-rate apartment to rent regulations, violating the Urstadt Law's prohibition on municipal regulation of rents for housing accommodations that are exempt from state rent regulations. *Id.* The First Department agreed, finding that requiring that landlords to accept LINC vouchers pursuant to the NYCHRL and limiting their ability to increase rents under the LINC lease rider had the effect of "expanding the number of housing units subject to 'more stringent or restrictive provisions of regulation and control than those presently in effect,'" in violation of the Urstadt Law. *Id.* at 43.

In contrast to *Alston*, Respondent in this case was not a landlord facing a potentially impermissible expansion of rent regulations, but a real estate broker who discriminated in blanket fashion against all forms of lawful source of income, stating that the Nelson Avenue Apartment was unavailable for applicants with "any subsidy" (Tr. 47:11-12), and advertising that "No Programs" would be accepted for another unit in the same building (Bureau Ex. 4).³

that "[n]o housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision shall hereafter be by local law or ordinance or by rule or regulation which has not been theretofore approved by the state commissioner of housing and community renewal subjected to more stringent or restrictive provisions of regulation and control than those presently in effect." N.Y. Unconsol. Law § 8605.

³ Respondent has also failed to proffer evidence that the Nelson Avenue Apartment was market rate or would be subject to increased regulation under LINC. In fact, publicly available documents from the New York City Rent Guidelines Board indicate that 1525 Nelson Avenue in the Bronx has rent stabilized units, which may include the Nelson Avenue Apartment. *See NYC Rent Stabilized Building Listings: Bronx*, N.Y.C. Rent Guidelines Board, 9 (2017), available at <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/2017bronxbldgs.pdf>.

The Commission therefore finds no reason to disturb the conclusion that Respondent is liable for discriminating against Complainant in violation of § 8-107(5)(a)(1) of the NYCHRL.

IV. DAMAGES, CIVIL PENALITIES, AND AFFIRMATIVE RELIEF

Where the Commission finds that respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to order respondents to cease and desist from such practices and order such other “affirmative action as, in the judgment of the commission, will effectuate the purposes of” the NYCHRL. N.Y.C. Admin. Code § 8-120(a). The Commission may also award damages to complainants. *See id.* § 8-120(a)(8). In addition, the Commission may impose civil penalties of not more than \$125,000.00, unless the “unlawful discriminatory practice was the result of the respondent’s willful, wanton or malicious act,” in which case a civil penalty of not more than \$250,000.00 may be imposed. *Id.* § 8-126(a); *see Automatic Meter Reading Corp. v. N.Y.C. Comm. on Human Rights*, No. 162211/2015, 2019 WL 1129210, at *11 (Sup. Ct. N.Y. Cty. Feb. 28, 2019) (upholding \$250,000 civil penalty upon a finding that respondent engaged in willful and wanton sexual harassment over a three-year period). Civil penalties are paid to the general fund of the City of New York. N.Y.C. Admin. Code § 8-127(a).

A. Compensatory Damages

“Compensatory damages, including emotional distress damages, are intended to redress a specific loss that the complainant suffered by reason of the respondent’s wrongful conduct,” and should—insofar as monetary compensation can ever compensate for emotional harm—correspond to the complainant’s specific injuries, as supported by the record. *See Agosto*, 2017 WL 1335244, at *7. To support an award of emotional distress damages, the record “must be sufficient to satisfy the Commissioner that the mental anguish does in fact exist, and that it

was caused by the act of discrimination.” *Id.* An award for compensatory damages may be premised on the complainant’s credible testimony alone, or other evidence including testimony from other witnesses, circumstantial evidence, and objective indicators of harm, such as medical evidence. *See Agosto*, 2017 WL 1335244, at *7 (collecting cases). The NYCHRL places no limitation on the size of compensatory damages awards. N.Y.C. Admin. Code § 8-120(a)(8). In valuing compensatory damages in a particular case, the Commission assesses the nature of the violation, the amount of harm indicated by the evidentiary record, and awards that have been issued for similar harms. *See In re Sch. Bd. of Educ. of the Chapel of the Redeemer Lutheran Church v. N.Y.C. Comm’n on Human Rights*, 188 A.D.2d 653, 654 (2d Dep’t 1992).

Judge Lewis recommended that the Commission award Complainant \$10,000.00 in emotional distress damages. (R&R at 6.) While the Bureau initially sought an award of \$50,000.00 in emotional distress damages during the hearing, it did not ask the Commission to modify Judge Lewis’s recommendation in its November 16, 2017 comments on the Report and Recommendation. (Tr. 58:12; Bureau Comments at 2.) In light of the fact that the Bureau did not request economic damages in a timely manner, nor introduce a claim of lost housing opportunity at any point, and because the record does not provide sufficient evidence to facilitate an accurate accounting of any economic harm that Complainant may have suffered, the Commission is limiting damages in this case to emotional distress damages.

Complainant has provided credible testimony as to the emotional harm he suffered at the hands of Respondent, explaining that he was “hurt” and “bothered” by Respondent’s actions. (Tr. 38:8, 50:19.) Complainant’s account of his emotional distress largely focuses on the impact of Respondent’s actions on Complainant’s family, noting that staying in the shelter caused his wife and young son to cry and led his son to experience nose bleeds. (*Id.* at 38:12–13, 50:17–24.)

Complainant's testimony indicates that witnessing these responses caused him particular anguish as a father, making him feel that he was unable to provide for his family. (*Id.* at 38:15–16.) However, as Judge Lewis observed, Complainant has not provided further detail “as to the emotional impact of the discrimination on *him*,” such as physical manifestations of distress. (R&R at 9 (emphasis in original).)

While Complainant's testimony about his experience of emotional distress is somewhat limited, the Commission is also informed by evidence of the objective circumstances of his experience. In this regard, this case parallels that of *Agosto v. American Construction Associates, LLC*. In *Agosto*, the complainant did not provide particularly detailed testimony regarding her emotional distress. *Agosto*, 2017 WL 1335244, at *10. Nonetheless, the Commission found that the “objective circumstances” of her case—namely that the respondent's conduct left her street homeless for a period of approximately two months—were relevant to an assessment of her emotional distress damages. *Id.* (awarding \$13,000.00 in emotional distress damages). Here, Respondent's discriminatory actions in this case left Complainant and his family in substandard conditions at a homeless shelter for approximately ten months, where they were exposed to a rodent infestation and mold. (R&R at 9; *see* Tr. 55:14–15.) Such circumstances may reasonably cause any person to suffer mental anguish and, indeed, the record shows that Complainant was distressed not only by the conditions that he experienced himself, but also the negative impact that these housing circumstances had on the other members of his family.

This case also resembles *Short v. Manhattan Apartments, Inc.*, 916 F. Supp. 2d 375 (S.D.N.Y. 2012). In *Short*, the court awarded the plaintiff a total of \$20,000.00 in compensatory damages, comprised of \$10,000.00 from each defendant that had separately discriminated against plaintiff. 916 F. Supp. 2d at 401. In doing so, the court noted that by denying the plaintiff rentals

because of his source of income, the defendants forced him to extend his stay in an “unsanitary” single room occupancy (“SRO”) for several months, where “[t]rash was left in the hallways and Mr. Short had no access to cooking facilities and was required to use a dirty, communal bathroom.” *Id.* at 391. Here, the conditions that Complainant and his family experienced at the homeless shelter appear to have been similar, including mold and an infestation of mice. (*See* Tr. 33:20–1.)

It is well-established that a parent’s emotional distress may be compounded due to concern for the welfare of their family. *See, e.g., In re Comm’n on Human Rights ex rel. Blue v. Jovic*, OATH 1624/16, Dec. & Order, 2017 WL 2491797, at *14 (May 26, 2017) (finding that a parent’s emotional distress was “compounded by her concerns for the welfare of her child.”); *In re Comm’n on Human Rights ex rel. De La Rosa v. Manhattan & Bronx Surface Trans. Auth.*, OATH 1141/04, Dec. & Order, 2005 WL 5632050, at *1 (Mar. 1, 2005) (noting that a parent’s emotional distress was “further compounded” by feeling “helpless with regard to [her] ability to care for and protect [her] child.”); *see also Martinez*, 2017 WL 4510797, at *9 (factoring in complainant’s worries about not being able to provide for her family into her award of for emotional distress damages.). Here, Complainant described the distress he felt as a father, stating that it “broke [his] heart” to not be able to provide a home for his family and that it was “stressful” to see his wife and son cry. (Tr. 38:12–6.) After reviewing the record as a whole and in light of comparable cases, the Commission agrees with Judge Lewis that an award of \$10,000.00 in emotional distress damages is appropriate.

B. Civil Penalties

Judge Lewis also recommended civil penalties of \$10,000.00. (R&R at 6.) The Bureau, however, has requested that the Commission increase this penalty to \$35,000.00. (Bureau Comments at 2.)

In assessing whether the imposition of civil penalties will vindicate the public interest, the Commission may consider several factors, including, but not limited to: (1) the respondent's financial resources; (2) the sophistication of the respondent's enterprise; (3) the respondent's size; (4) the willfulness of the violation; and (5) the impact on the public of issuing civil penalties. *See, e.g., In re Comm'n on Human Rights v. A Nanny on the Net*, OATH Index Nos. 1364/14 & 1365/14, Dec. & Order, 2017 WL 694027, at *8 (Feb. 10, 2017); *In re Comm'n on Human Rights v. CU 29 Copper Rest. & Bar*, OATH Index No. 647/15, Dec. & Order, 2015 WL 7260570, at *4 (Oct. 28, 2015). The Commission also considers the extent to which the respondent cooperated with the Bureau's investigation and with OATH, *see, e.g., A Nanny on the Net*, 2017 WL 694027, at *9; *In re Comm'n on Human Rights v. Crazy Asylum*, OATH Index Nos. 2262/13, 2263/13, 2264/13, Dec. & Order, 2015 WL 7260568, at *6 (Oct. 28, 2015), as well as the amount of remedial action that the respondent may have already undertaken, *see, e.g., A Nanny on the Net*, 2017 WL 694027, at *8; *CU 29 Copper Rest. & Bar*, 2015 WL 7260570, at *4.

The evidence in this case concerning the size of Respondent's business and his financial resources is limited, in part because of Respondent's failure to cooperate during the investigative process. Respondent's failure to cooperate and to participate in the OATH hearing process necessitates the imposition of civil penalties. *See In re Comm'n on Human Rights v. Shalom*

Bombay 2 LLC, OATH Index No. 544/15, Dec. & Order, 2017 WL 2817844, at *5 (June 21, 2017).

Viewed as a whole, however, the record in this case suggests that Respondent is a small, unsophisticated actor. At the time of the violation, Respondent had held a real estate license for under three years. (See Bureau Ex. 6.) The record reflects that Respondent had realty listings for two different apartments in the Nelson Avenue apartment building (Bureau Exs. 3, 4), and little other online business presence or business connections (Bureau Ex. 6). Although Respondent represented himself online as a realtor with “very strong relationships with some of New York[']s biggest Landlords, Developers, and Investors,” and as an affiliate of the large realty company Charles Rutenberg Realty Inc. (Bureau Ex. 6), the Bureau did not dispute the company’s representation that it had no knowledge of or association with Respondent (Tr. 29:2–4). Even when viewed in the light most favorable to the Bureau’s case, the Commission is constrained to conclude from the record that Respondent was a relatively new, independent realtor with few documented apartment listings. (See Bureau Exs. 3, 4, 6; Tr. 29:2–4.) The Commission therefore concludes that the record would not support the imposition of the high civil penalty that the Bureau seeks. See *In re Comm’n on Human Rights ex rel. Jordan v. Raza*, OATH Index No. 716/15, 2016 WL 7106070, at *12 (July 7, 2016) (penalties “must be tailored to the specific circumstances of the respondent”); see also *Agosto*, 2017 WL 1335244, at *13 (imposing a \$20,000.00 civil penalty against a “mid-size” housing provider); ; *In re Comm’n on Human Rights ex rel. Howe v. Best Apartments*, OATH Index No. 2602/14, Dec. & Order, 2016 WL 1050864, at *4, 10 (Mar. 14, 2016) (imposing a \$100,000.00 civil penalty against a Respondent with “over 5000 apartments available for rent”).

There is, nonetheless, a strong public interest in discouraging source of income discrimination, especially in the context of New York City's current affordable housing crisis. Individuals who are eligible for housing subsidies make up some of the City's "most vulnerable residents," which makes the discrimination that they face "particularly harmful." *Howe*, 2016 WL 1050864, at *9. As discrimination on the basis of source of income continues to frustrate the goals of the City's housing subsidy programs (*see* ALJ Ex. 1), serious enforcement of source of income protections are important to bolster "the City's efforts to combat homelessness and to keep pace with the high demand for affordable housing." *Agosto*, 2017 WL 1335244, at *12.

In assessing civil penalties, the Commission is guided by the cases of *Agosto* and *Rent the Bronx*. In *Agosto*, the Commission imposed a \$20,000.00 fine on a medium-sized housing provider. 2017 WL 1335244, at *13. The penalty was aggravated by respondent's failure to cooperate with the Bureau and to present relevant financial information, the willfulness of respondent's conduct, and the necessity of robust civil penalties to prevent discrimination on the basis of source of income. *Id.* at *12. This case closely resembles *Agosto*, with the exception that Respondent in this case is a smaller actor.

In *Rent the Bronx*, a \$5,000.00 fine was imposed on a one-employee realty company with comparatively few apartment listings. The Commission determined that the penalty in that case must be mitigated by the small size of respondent's enterprise, respondent's low net-worth, respondent's "good intentions," as reflected in the record, and the fact that respondent primarily worked with recipients of housing subsidies to find them housing. *Rent the Bronx*, OATH Index No. 1619/11 at 22. It should be noted that in contrast to this case, respondent in *Rent the Bronx* cooperated with the Commission, a mitigating factor that is not present here.

In light of penalties in comparable cases, as well as Respondent's size, failure to provide relevant information as to the size of his enterprise and his financial resources, his lack of cooperation with the Bureau, and the important public policy of addressing housing discrimination on the basis of source of income, the Commission agrees with Judge Lewis that a civil penalty of \$10,000.00 is appropriate.

C. Additional Affirmative Relief

The Commission regularly requires individuals who are found liable for violations of the NYCHRL to attend Commission-led trainings to strengthen their understanding of their obligations under the law. *See, e.g., Spitzer*, 2016 WL 7106071, at *10; *Jordan*, 2016 WL 7106070, at *11. The Commission finds that Respondent would benefit from such a training and orders Respondent to attend a Commission-led training, as set forth below.

V. CONCLUSION

FOR THE REASONS DISCUSSED HEREIN, IT IS HEREBY ORDERED that Respondents immediately cease and desist from engaging in discriminatory conduct.

IT IS FURTHER ORDERED, that no later than 60 calendar days after service of this Order, Respondent pay Complainant \$10,000.00 in emotional distress damages, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to Steven Nieves, including a written reference to OATH Index No. 2153/17.

IT IS FURTHER ORDERED that no later than 60 calendar days after service of this Order, Respondent pay a civil penalty of \$10,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007,


Attn: Recoveries, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 2153/17.

IT IS FURTHER ORDERED that no later than 60 calendar days after service of this Order, that Respondent register for a Commission-led training on the NYCHRL, to be completed no later than 120 days after service of this Order. A schedule of available trainings may be obtained by calling the Director of Training and Development at (212) 416-0193 or emailing trainings@cchr.nyc.gov.

Failure to comply with any of the foregoing provisions in a timely manner shall constitute non-compliance with a Commission Order. In addition to any civil penalties that may be assessed against them, Respondent shall pay a civil penalty of \$100.00 per day for every day the violation continues. N.Y.C. Admin. Code § 8-124. Furthermore, failure to abide by this Order may result in criminal penalties. *Id.* at § 8-129.

Dated: New York, New York
May 6, 2019

SO ORDERED:
New York City Commission on Human Rights



Carmelyn P. Malalis
Commissioner/Chair

To:

