

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Teresa Little,

Complainant,

vs.

Lawrence Werner,

Respondent.

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FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles on January 8, 1998 at the Office of Administrative Hearings, 100 Washington Avenue South, Minneapolis, Minnesota.

Donald E. Horton and Laurie A. Cylkowski, Attorneys at Law, Horton and Associates, 4930 West 77th Street, Suite 210, Minneapolis, Minnesota 55435-4804, appeared on behalf of Complainant, Teresa Little.

Respondent Lawrence Werner, 774 East Country Club Drive, Benson, Arizona 85602, appeared Pro Se.

NOTICE

This order is **not** a final decision in this case. A final decision incorporating both liability and all costs will be issued in accordance with Minn. Stat. § 363.071, subd. 2 and 3, after incorporation of the Department of Human Rights hearing and litigation costs.

STATEMENT OF ISSUE

Whether Respondent Lawrence Werner committed an unfair discriminatory practice by engaging in conduct that constituted sexual harassment against Complainant Teresa Little in connection with the rental of real property in violation of Minn. Stat. § 363.03, subd. 2(1)(b);

Whether Respondent Lawrence Werner has coerced, intimidated, threatened or interfered with Complainant Teresa Little's exercise or enjoyment of her Civil Rights in violation of Minn. Stat. § 363.03, subd. 2(6); and

If violations of Complainant Teresa Little's Civil Rights have occurred, what are the appropriate damages, remedies and other relief?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Complainant Teresa Little is a 23-year-old African American female who resided in an apartment building located at 3537 - 11th Avenue South in Minneapolis, Minnesota from August 1995 to July 1996. The apartment building has ten apartments. Teresa Little occupied a one-bedroom basement level apartment.

2. On the date that Teresa Little moved into the housing unit, about August 1, 1995, she had recently turned 20 years old. She moved in with her daughter and boyfriend and was at that time receiving public assistance.

3. During the period August 1995 to July 1996, Respondent Lawrence Werner was the manager and registered owner of the apartment building located at 3537 - 11th Avenue South in Minneapolis, Minnesota. Lawrence Werner visited each of the apartment units two or more times a month to collect rent. He required a cash payment. Complainant would see Respondent about once a week.

4. On or about August 1, 1995 when Teresa Little moved into the apartment, Respondent engaged her in a conversation in front of the apartment building. Respondent asked her if she had a boyfriend. After Complainant answered yes, he asked, "Does your boyfriend like to jump your bones?" and "Do you guys make the headboard shake against the wall?"

5. Despite Respondent Lawrence Werner's initial comments to her, Complainant moved into the apartment because "I really needed a place to stay". During the time that she lived in the apartment, each time Respondent Lawrence Werner greeted her, he would remark, "Hey Sexy", or would ask suggestive questions about her sex life. Each time he would make comments of a sexual nature to her related to what she was wearing, or ask her about whether her boyfriend was around. When Teresa Little complained to Respondent about these suggestive sexual comments, Respondent often indicated that he was "just a horny old man".

6. Though she was not fearful of Respondent, she felt uncomfortable around him. She felt that he sought to be too personal in his relationship toward her. Teresa Little attempted to avoid Respondent whenever possible; out of a concern for her privacy, she changed the locks on the door to her apartment as a result of Lawrence Werner's conduct. Because Teresa Little had limited financial resources, her options for avoiding the sexually harassing behavior of Lawrence Werner were limited.

7. Teresa Little informed Lawrence Werner that the sexual comments were unwelcome. However, the comments continued throughout her tenancy at the apartment. Instead of having the use and enjoyment of her apartment, Teresa Little found herself spending more and more time at other friends' houses, not only for the purpose of being with friends, but also to avoid chance meetings with Respondent.

8. Teresa Little was not the only female tenant subjected to the sexual comments and behavior of Respondent Lawrence Werner. Other female tenants were also subjected to this behavior. When Lisa Lee moved into an apartment in the building, she was told by other female residents that Respondent would try to come-on to her. So she "looked out" for it. On one occasion when Lawrence Werner came to her apartment to pick up rent, he told her, "I can see your nipples"; on another occasion, he told her, "You have nice legs" and "Does your man rub on your legs?"

9. In March 1996, Respondent Lawrence Werner gave Complainant and another female tenant, Holly Marshall, a ride to an automatic teller machine located at the K-Mart on Lake Street for the purpose of withdrawing money to pay rent. Respondent stated to them while they were in route, "You know what you have to do if you don't want to pay your rent." Taking into consideration Lawrence Werner's tone of voice and past harassing behavior, Teresa Little inferred that this remark was essentially a request for a quid pro quo exchange of her providing sex to Respondent in exchange for not having to make a rental payment.

10. In September of 1995, Teresa Little requested that a ceiling fan be installed in her apartment similar to those in use in other similar units in the apartment building. In response to this request, Lawrence Werner stated, "Depends on how nice you are to me." Because of Lawrence Werner's tone of voice and past harassing behavior, Teresa Little inferred that this remark constituted a request for a quid pro quo exchange of her providing sex to Respondent in exchange for Respondent's installation of the ceiling fan. A fan was not installed in her apartment.

11. At one point during Complainant's tenancy, her mother, Mattea Smith, overheard Complainant and Lisa Lee talking about Lawrence Werner. She heard Lisa Lee wonder out loud that "if she had sex with him she would have more money for other things", and she also overheard discussions about Lawrence Werner's sexual comments and behavior. Mattea Smith had previous work experience in a battered women's shelter; she sensed that her daughter was being abused. Mattea Smith told her daughter, and Lisa Lee that Lawrence Werner's attitude and sexual comments were not "okay" for a landlord.

12. After Complainant Teresa Little had lived in the apartment for a while, she noticed cracks in the walls; from time to time she had no heat in the apartment and the carpet in some places had bad stains or tears. The refrigerator in the apartment did not work properly, and at one time the freezer compartment malfunctioned, causing her to lose all of the items in the freezer compartment. After unsuccessful efforts to get Respondent Lawrence Werner to make the necessary repairs to the apartment, she began to withhold rent. As a result of her withholding rent, Respondent initiated an unlawful detainer action which resulted in her being evicted from the apartment.

13. Complainant was evicted from her apartment in July 1996. Her rent at that address was \$390 per month. She moved in July to an apartment that had a monthly rental of \$450. She lived at the subsequent apartment for six months until the building was sold and she was required then to move back in with her mother. The approximate cost for moving from Respondent's apartment building to the subsequent apartment was \$500.

14. Respondent Lawrence Werner's sexually harassing conduct impacted her relationships with her daughter and her boyfriend. She was very "short" with her daughter and yelled at her. Her boyfriend began to wonder if she was doing things to encourage Respondent, and she argued with her boyfriend about this.

15. Mattea Smith observed her daughter, Teresa Little, before and after her contacts with Lawrence Werner. She believed her daughter was being stressed out by the situation and described Complainant as "getting weird". She initially noticed the change when she was invited to the apartment for dinner where she heard Complainant yell at her daughter, Raenicia. Mattea Smith was surprised and concerned about this. She also observed more arguments with Complainant's boyfriend.

16. Several months after Complainant Teresa Little was evicted, and after living for about six months in another apartment building, she moved back into her mother's house. Mattea Smith attempted to help Complainant find another place to live. One of the places she recommended to Complainant had a man as a caretaker. Complainant told her mother: "Mom, I'm not renting from a man."

17. Respondent Lawrence Werner no longer is engaged in the management or rental of real property in the State of Minnesota. He is now retired.

18. Complainant was represented by Horton & Associates and David R. Kett. Both counsel were retained under a contingency fee agreement. Both labored with no guarantee of being paid for any of their efforts. See Affidavit of Donald E. Horton and Affidavit of David R. Kett.

19. Attorney David R. Kett represented Complainant during the initial stages by presenting Teresa Little's claim of sexual harassment discrimination in real property to Respondent Lawrence Werner and attempting to negotiate a resolution of the matter. After settlement discussions were unsuccessful, Attorney David R. Kett assisted Complainant in filing a charge of discrimination with the Minnesota Department of Human Rights. A summary of the time spent on the case by Attorney David R. Kett is attached to his affidavit as Exhibit A. Exhibit A indicates that Attorney David R. Kett worked 10.85 hours in his representation of Teresa Little. The time (number of hours) charged appear reasonable and reasonably necessary and consistent with the representation of Teresa Little at the initial stages of her Complaint of discrimination. Counsel's per hour charge of \$100 also appears reasonable and an appropriate hourly rate. The total fees requested by David R. Kett amounts to \$1,085. See Affidavit of David R. Kett.

20. Attorney David R. Kett apparently became associated with the law firm of Horton & Associates sometime in March 1997. When Attorney Kett joined the Horton & Associates firm, his hourly fee increased to \$135 an hour. See Affidavit of Donald E. Horton

21. Attorney Kett continued to provide the pretrial representation of Complainant for a total of 8.64 hours (except .75 hours apparently billed by a law clerk for sending letters to all residents of the apartment building to get potential witnesses -- this could also have been done by a paralegal. This work was billed at a rate of \$85 per hour).

Total charges by Attorney Kett for the law firm of Horton & Associates amounts to \$1,128. See Affidavit of Donald E. Horton

22. The actual litigation of this case was done by Donald E. Horton, who bills his time at \$240 per hour. He was assisted by Laurie A. Cylkowski, whose time is billed at a rate of \$135 per hour. Attorney Horton claims 17.25 hours for trial preparation and trial time or \$4,140. Attorney Cylkowski claims 6.02 hours, or a total of \$812.70. Total attorney's fees claimed by the law firm of Horton & Associates amounts to \$6,080.25. The number of hours charged by the law firm of Horton & Associates is reasonable and appropriate. Affidavit of Donald E. Horton and Affidavit of David R. Kett.

23. The time (number of hours) charged appear reasonable and reasonably necessary and consistent with the representation of Teresa Little at the trial stage of her Complaint of discrimination. Counsel's per hour charge of \$240 also appears reasonable and appropriate considering the risk of attorney office resources and consistent with encouraging the provision of legal services to a person of very limited means such as Complainant.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has authority to consider the issues raised by the Complainant's discrimination charge under Minn. Stat. §§ 363.071, subds. 1a and 2 and 14.50 (1994).

2. The Notice of and Order for Hearing was proper as to form, content and execution, and all other relevant substantive and procedural requirements of law or rule have been satisfied.

3. At all times relevant to this proceeding Respondent Lawrence Werner acted as an "owner" or "managing agent" of real property rented at 3537 - 11th Avenue South in Minneapolis, Minnesota. Pursuant to Minn. Stat. § 363.03, subd. 2(1), Respondent Lawrence Werner is an owner or managing agent with the right to rent or lease real property located at 3537 - 11th Avenue in Minneapolis, Minnesota.

4. The Minnesota Human Rights Act prohibits an owner or managing agent from discriminating against any person or group of persons because of . . . sex . . . in the terms, conditions or privileges of the . . . rental . . . of any real property or in the furnishing of facilities or services in connection therewith Minn. Stat. § 363.03, subd. 2(6) establishes that it is an unfair discriminatory practice:

for a person to coerce, intimidate, threaten or interfere with a person in the exercise or enjoyment of, or on account of that person exercised or enjoyed, or on account of that person have aided or encouraged a third person in the exercise or enjoyment of, any right granted or protected by this subdivision.

5. Complainant has the burden of proof to establish by a preponderance of the evidence that Respondent Lawrence Werner committed unfair discriminatory practices in violation of Minn. Stat. § 363.03, subd. 2.

6. By repeatedly making comments of a sexual nature to Complainant and other female tenants while engaged in the collection of rent or while making repairs at the apartment building, Respondent engaged in conduct that constitutes sexual harassment. Respondent's sexual harassment of Complainant and other female tenants constitutes an unfair discriminatory practice. Minn. Stat. §§ 363.01, subd. 41 and 363.03, subd. 2(1)(b).

7. Complainant has proved by a preponderance of the evidence that Respondent Lawrence Werner committed unfair discriminatory practices by subjecting her to unwelcome sexual comments and advances which affected the terms, conditions or privileges of her tenancy in violation of Minn. Stat. § 363.03, subd. 2(1)(b).

8. Minn. Stat. § 363.03, subd. 2(6) does not appear to apply to the facts of this case and the Judge is not persuaded that this provision creates a separate and independent method of imposing liability on an owner or managing agent who is determined to have committed an unfair discriminatory practice.

9. Complainant has failed to prove by a preponderance of the evidence that Respondent's conduct constituted coercion, intimidation and threats to Complainant Teresa Little's exercise and enjoyment of a right to be free from his harassment on the basis of sex in the area of real property in violation of Minn. Stat. § 363.03, subd. 2(6).

10. Minn. Stat. § 363.071, subd. 2, permits an award of compensatory damages up to three times the amount of actual damages sustained by the victim of discrimination. As a victim of discrimination, Complainant is entitled to compensatory damages if compensatory losses can be proved. Complainant has failed to prove that her relocation and moving expenses are due to the Civil Rights violation instead of the unlawful detainer action. Therefore, no compensatory damages will be awarded.

11. Under Minn. Stat. § 363.071, subd. 2, victims of discrimination are entitled to compensation for mental anguish and suffering from discriminatory practices. In this case, Complainant suffered mental anguish and suffering as a result of Respondent's conduct and, therefore, is entitled to compensation for the mental anguish and suffering she sustained in the amount of \$1,500.

12. Under Minn. Stat. § 363.071, subd. 2, the standards set forth in Minn. Stat. § 549.20, punitive damages may be awarded for discriminatory acts where there is clear and convincing evidence that the acts show a deliberate disregard for the rights or safety of others. In this case, Complainant is entitled to punitive damages in the amount of \$3,000.

13. Minn. Stat. § 363.071, subd. 2 requires the award of a civil penalty to the State when a public accommodation violates the provisions of the Human Rights Act. Taking into account the seriousness and extent of the violation, the public harm occasioned by it, the financial resources of the Respondent, and whether the violation was intentional, Respondent should pay a civil penalty to the State in the amount of \$1,000.

14. Minn. Stat. § 363.071 authorizes the Administrative Law Judge to order Respondent to pay Complainant's reasonable attorney's fees. Reasonable attorney's fees incurred by Complainant amount to \$7,165.25.

15. Minn. Stat. § 363.071, subd. 7 requires an award of litigation and hearing costs incurred by the Department of Human Rights unless payment of the costs would impose a financial hardship on Respondent. The Department of Human Rights' litigation and hearing costs will be awarded subject to Respondent's claim of financial hardship.

16. These Conclusions are made for the reasons set forth in the Memorandum which follows. The Memorandum is incorporated herein by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. This Order is not the **final decision** in this proceeding; a final decision will be issued after the Department of Human Rights hearing and litigation costs have been considered.

2. Within 30 days after issuance of the final decision Respondent shall pay Complainant \$1,500 as damages for mental anguish and suffering.

3. Within 30 days after issuance of the final decision Respondent shall pay Complainant \$3,000 as punitive damages.

4. Within 30 days after issuance of the final decision Respondent shall pay a civil penalty to the Minnesota State Treasurer \$1,000 for deposit in the General Fund of the State of Minnesota.

5. The Department of Human Rights shall identify its litigation and hearing costs by letter to the Administrative Law Judge no later than April 6, 1998. A copy of the letter shall also be sent to the Parties at the addresses identified on page 1 of this Order.

6. By April 24, 1998, Respondent shall present written argument in a letter why the (a) \$1,000 civil penalty award and (b) an award of litigation and hearing costs as claimed by the Department of Human Rights would impose a financial hardship on Respondent. Any interested person including the Department of Human Rights may respond by submitting a written reply by May 10, 1998.

7. Within 30 days after issuance of the final decision Respondent shall pay as attorney's fees \$1,085 to Attorney David R. Kett and \$6,080.25 to the law firm of Horton & Associates.

Dated this 19th day of March, 1998.

ALLEN E. GILES
Administrative Law Judge

Reported: Taped.

MEMORANDUM

Introduction

Complainant Teresa Little, asserts in her Complaint that Respondent Lawrence Werner engaged in sexually harassing conduct and behavior while she was a tenant at the apartment building he owned and managed. She claims that Respondent's conduct affected terms, conditions or privileges of her tenancy and constituted sex discrimination in the area of real property in violation of Minn. Stat. § 363.03, subd. 2(1)(b). She also asserts that Respondent's sexually harassing conduct constituted "coercion, intimidation and threats" in Complainant's "exercise and enjoyment of her right to be free from his harassment on the basis of sex in the area of real property in violation of Minn. Stat. § 363.03, subd. 2(6)." Complainant prays for judgment against Respondent for damages pursuant to Minn. Stat. § 363.071, subd. 2, including compensatory damages, statutory damages, punitive damages, civil penalty, attorney's fees, costs, interest and disbursements. Respondent Lawrence Werner denies the allegations of the Complainant.

Respondent Lawrence Werner claims that Complainant Teresa Little never complained to him about sexual harassment. He asserts that he never knew she had problems of this nature with him until he instituted the unlawful detainer proceeding to evict her. Respondent also stated that he believed that there was nothing wrong with telling a female tenant she has nice legs. He considers it a "compliment" and he believes that such a statement "has nothing to do with sexual harassment".

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Assessment of Testimony

Complainant Teresa Little and Lisa Lee, testified at the hearing. Both were tenants in the apartment building during the relevant time period. Both testified that Respondent made comments of a sexual nature while at the premises of the apartment building. Mattea Smith, Complainant's mother, testified regarding discussions she had with her daughter and other female tenants during the time that her daughter lived in the apartment building. The details of the testimony by these three women are not substantially challenged by any other testimony heard at the hearing.

Respondent made a general denial at the hearing in which he stated several times that he "never traded sex for rent". Respondent maintained at the hearing that the human rights action against him is a response to his evicting Complainant from the apartment building. He concluded his testimony with a statement that expressed his belief that it was appropriate for him as a landlord to make a "compliment" to a female tenant regarding her physical attributes.

Respondent appeared at trial without counsel. He was carefully informed of his rights to cross-examination and presentation of evidence supportive of his position on the issues. He was asked whether he wanted to proceed without counsel. Respondent chose to proceed without counsel.

The Judge believes that Respondent appeared at the apartment building on at least a weekly basis; two or more times a month he appeared to collect rent and one or more times a month to make repairs. On each of these occasions, Respondent had an opportunity to affect the housing environment. By his own admission, Respondent did not see a problem with complimenting a female tenant about her physical attributes. Respondent Lawrence Werner made sexual comments often enough for him to acquire a reputation for making such comments. Respondent's conduct and behavior created an offensive housing environment.

Legal Analysis

Minn. Stat. § 363.03, subd. 41 defines sexual harassment as follows:

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

(1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

(2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or

(3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

Respondent's frequent sexual comments to female tenants at the apartment building constitute "sexual harassment" as that phrase is defined above. Comments such as "I can see your nipples", "hey sexy", "does your boyfriend jump your bones" are comments of a sexual nature inappropriate to the relationship that Respondent had with Complainant or other female tenants at the apartment building. The frequent use of sexual comments directed at Complainant and other female tenants by Respondent had the effect of creating an offensive housing environment. Because of complaints by Complainant, Respondent knew or should have known that his sexual comments created an offensive housing environment. Respondent took no remedial action to correct the offensive housing environment.

Respondent also engaged in quid pro quo sexual harassment, that is Respondent implied that a positive response to his request for sexual favors would result in an impact on the terms and conditions of use and enjoyment of housing. By implying to Complainant and other female tenants that a rental payment would be waived or a ceiling fan would be installed if they had sex with him, he engaged in quid pro quo sexual harassment in housing.

For the foregoing reasons Respondent committed unfair discriminatory practices by engaging in sexual harassment discrimination in the area of housing or real property.

Minnesota courts have also determined that discrimination charges arising under the MHRA must be analyzed in accordance with a method of analysis first set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973) for use in cases arising under Title VII of the Federal Civil Rights Act of 1964. See, e.g., Danz v. Jones,

263 N.W. 2d 395, 399 (Minn. 1978); Sigurdson v. Isanti County, 386 N.W.2d 715, 719 (Minn. 1986). This approach consists of a three-part analysis which first requires a complainant to establish a prima facie case of disparate treatment based upon a statutorily prohibited discriminatory factor. Once a prima facie case is established, a presumption arises that the respondent unlawfully discriminated against complainant. The burden of producing evidence then shifts to respondent who is required to articulate a legitimate, non-discriminatory reason for its treatment of the complainant. If respondent establishes a legitimate, non-discriminatory reason, the burden of production reverts to complainant to demonstrate that respondent's claimed reasons are pretextual. Anderson v. Hunter, Keith, Marshall and Co., 417 N.W.2d 619, 613 (Minn. 1989). The burden of proof remains at all times with complainant. Fisher Nut Co. v. Lewis ex rel. Garcia, 320 N.W. 2d 731 (Minn. 1982); Lamb v. Village of Bagley, 310 N.W.2d 508, 510 (Minn. 1981).

The elements of a prima facie case of discrimination vary depending upon the type of discrimination alleged. A prima facie case of sexual harassment in employment is established by showing that:

- (1) The employee is a member of a protected class;
- (2) The employee was subjected to unwelcome sexual harassment;
- (3) The harassment complained of was based on sex;
- (4) The harassment affected a term, condition, or privilege of employment or created an intimidating, hostile, or offensive working environment; and
- (5) The employer is liable for the harassment that occurred based on its actual or imputed knowledge of the harassment and its failure to take appropriate remedial action.

Johnson v. Ramsey County, 424 N.W.2d 800, 808 (Minn. Ct. App. 1988); Klink v. Ramsey County, 397 N.W.2d 894, 901 (Minn. Ct. App. 1986). Drawing from these standards, a prima facie case of sexual harassment in the context of Real Property may be established as follows:

- (1) The purchaser or lessor is a member of a protected class;
- (2) The purchaser or lessor was subjected to unwelcome sexual harassment;
- (3) The harassment complained of was based on sex;

(4) The harassment affected a term, condition, or privilege of the use or enjoyment of the real property or created an intimidating, hostile, or offensive environment; and

(5) The owner or managing agent is liable for the harassment that occurred based on actual or imputed knowledge of the harassment and the failure to take appropriate remedial action.

Complainant established a prima facie case of sexual harassment. Teresa Little is a member of a protected class. She received unwelcome sexual harassment from Respondent. The harassment consisted of comments of a sexual nature directed at her or other female tenants. The harassment created an intimidating, hostile or offensive housing environment for her and other female tenants. The offensive verbal conduct of Respondent constitutes actionable sexual harassment.

In the employment context, an employer may rebut an employee's prima facie showing of a hostile work environment either by (1) proving that the elements did not take place or (2) showing that they were isolated or trivial. These issues relate to whether a hostile environment was in fact created by the employer. Stacks, 27 F.3d at 1326.

The Judge has found that Respondent's conduct created an equivalent hostile housing environment. This record does not support a finding that the comments were isolated or trivial. Respondent is liable because he failed to stop the conduct after being told the conduct was offensive.

Complainant therefore accomplished her ultimate burden of persuasion: that Respondent had actual or imputed knowledge of the harassment but failed to take appropriate remedial action.

Mental Anguish and Suffering

Minn. Stat. § 363.071, subd. 2 authorizes the Administrative Law Judge to award damages for mental anguish and suffering. An award of damages for mental anguish in cases arising under the Human Rights Act may be based on subjective testimony. A Minnesota Appellate Court stated that "recoverable pain and suffering does not have to be severe or accompanied by physical injury. Gillson v. State Department of Natural Resources, 492 N.W.2d 835, 842 (Minn. Ct. App. 1992).

The subjective testimony regarding mental anguish and suffering in this case comes from Complainant and her mother. They describe how the offensive housing environment adversely affected Complainant's relationships with her daughter Raenicia and her boyfriend. Complainant's experience in this case also affected her willingness to rent from a man in the future.

Complainant was not fearful of Respondent; her change of the door locks had more to do with privacy than fear. Although Complainant was not personally fearful of Respondent, she was concerned about losing her housing. She had limited housing options. If she offended Respondent her housing options might be diminished further. Respondent recognized his advantage and control of the housing options of Complainant and other female tenants. Because of his power and control over the housing space, Respondent exercised a certain license to be offensive.

Upon consideration, the Judge believes that \$2,500 is the appropriate compensation for Complainant's mental anguish and suffering.

Punitive Damages

Minn. Stat. § 363.071, subd. 2 authorizes the Administrative Law Judge to award punitive damages to a victim of unfair discriminatory practices. The Judge is required to consider factors set out in Minn. Stat. § 549.20. Section 549.20, subd. 1 authorizes an award for punitive damages when there is "clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others."

Minn. Stat. § 549.20, subd. 3 provides as follows:

Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, including the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

As previously stated Respondent recognized his advantage and control of the housing options of Complainant and other female tenants. Because of his power and control over the housing space, Respondent exercised a certain license to be offensive. After Complainant complained to Respondent he knew or should have known that his conduct was offensive. Nevertheless he continued.

Applying the standards from above, the Judge believes that the attitude and conduct of Respondent as manifest in his continuing to make offensive sexual comments, and his taking advantage of his power to affect the limited housing options

of Complainant and other female tenants shows a deliberate disregard for the Human Rights Act requirement that housing environments be free of sexual harassment. Based on the foregoing, the Judge concludes that Respondent acted in deliberate disregard for the rights of Complainant and that an award of \$2,500 as punitive damages is appropriate in this case.

Civil Penalty

Complainant Teresa Little has a Civil Right to housing free of sexual harassment and sex discrimination. Minn. Stat § 363.12, subd. 1 declares the Human Rights policy of the State Of Minnesota. That provision states in part: "It is the public policy of this state to secure for persons in this state, freedom from discrimination; (2) In housing... because of . . . sex," Subdivision 2 of this section announces:

The opportunity to obtain employment, housing, and other real estate, and full and equal utilization of public accommodations, public services, and educational institutions without such discrimination as is prohibited by this chapter is hereby recognized as and declared to be a civil right.

(Emphasis added.) In order to preserve and enforce the Civil Rights declared by this section, Minn. Stat. § 363.071, subd. 2 mandates that the Administrative Law Judge assess a civil penalty against a respondent who commits unfair discriminatory practices. That provision provides, in part, as follows:

The Administrative Law Judge shall order any respondent found to be in violation of any provision of section 363.073 to pay a civil penalty to the state. This penalty is in addition to compensatory and punitive damages to be paid to an aggrieved party. The Administrative Law Judge shall determine the amount of the civil penalty to be paid, taking into account the seriousness and extent of the violation, the public harm occasioned by the violation, whether the violation was intentional, and the financial resources of the respondent. Any penalties imposed under this provision shall be paid into the general fund of the state.

To determine an appropriate amount for a civil penalty award, the Judge must apply the following criteria established by the legislature for determining the size of civil penalty awards: "the seriousness and extent of the violation, the public harm occasioned by the violation, whether the violation was intentional, and the financial resources of the respondent." Minn. Stat. § 363.071, subd. 2 (1996).

Respondent had a reputation for making offensive sexual comments among the tenants of the apartment building. All the tenants in the apartment building had a Civil

Right to a housing environment free of sex discrimination and sexual harassment. The purpose of a civil penalty is to deter any further conduct inconsistent with the public policy being protected. However, Respondent is no longer engaged in the housing rental business in Minnesota. Under the circumstances the Judge believes that a nominal civil penalty of \$250. is appropriate.

Litigation and Hearing Costs

Minn. Stat. § 363.071, subd. 7 requires that the Administrative Law Judge order a respondent who engaged in unfair discriminatory practices to reimburse the Minnesota Department of Human Rights for “all appropriate litigation and hearing costs expended.” The Judge has directed the Department of Human Rights to supply an accounting of the litigation and hearing costs incurred by the Department in connection with this proceeding. Appropriate litigation and hearing costs will be awarded by the Judge subject to the financial hardship imposed upon Respondent.

Attorney’s Fees

Minn. Stat. § 363.071, subd. 2 authorizes the Administrative Law Judge to make an award of attorney’s fees. For the reasons indicated in the findings it is reasonable and appropriate to award \$7,165.25 as reasonable attorneys fees in this proceeding.

In making the attorney fee award the Judge acknowledges and recognizes the risk of time and resources made by Complainant’s Counsel in this case --a case that involves only nominal compensatory damages. Despite the nominal compensatory losses, representation in this case was undertaken on the basis of a contingency fee arrangement. The Judge believes that access to justice is served by encouraging counsel to undertake the risks taken by Complainant’s counsel in this proceeding. Otherwise, discriminatees with limited financial resources similar to Complainant would have fewer private attorneys willing to pursue their causes of action.

AEG