

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Andrew Rusinov,

Charging Party,

v.

Jankowski Lee & Associates,
River Park Development
Corporation, John R. Pankratz, and
Sue Sellin,

Respondents.

Respondent.

CORRECTED COPY

HUDALJ 05-93-0517-1

Dated: June 30, 1995

William E. Hughes III, Esquire
For the Respondents

Lewis Nixon, Esquire
Geoffrey T. Roupas, Esquire
Michael Kalven, Esquire
For the Secretary and the Complainant

Thomas J. Erickson, Esquire
For the Complainant-Intervenor

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed on March 8, 1993 by Andrew Rusinov ("Complainant"). (S D) The complaint was filed with the United States Department of Housing and Urban Development ("HUD") and alleges violations of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 120 Stat. 1626 (1988) ("Fair Housing Act" or "Act"). The Complainant alleges that he was discriminated against by Respondents Jankowski Lee and Associates, River Park Development Corporation, John R. Pankrantz, and Sue Sellin, because of his disability.

On September 30, 1994, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD's Assistant General Counsel for the Midwest, in Chicago, issued a Determination Of Reasonable Cause And Charge Of Discrimination against the Respondents, alleging that they had engaged in discriminatory practices on the basis of disability in violation of those sections of the Act that are codified at 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B), and are incorporated into HUD's regulations that are found at 24 CFR 100.202(b) and 100.204 (1989). A hearing was conducted in Milwaukee, Wisconsin on January 31 and February 1, 1995, and the parties were ordered to submit post-hearing briefs by March 20, 1995. By Order dated March 6, 1995, in response to a request by the Secretary, this date was extended to the close of business on April 19, 1995. Respondents' brief was received on the designated date. The Secretary's brief was received on May 1, 1995.² This case therefore became ripe for decision on this last-named date.

¹ The transcript of the hearing is cited as T1 and T2 for the two volumes, plus a page number; (T1 17). The Secretary's exhibits are identified with a capital S and an exhibit letter, also in the upper case; (S D). The Respondent's exhibits are identified with a capital R and an exhibit number; (R 15).

² The Secretary's post-hearing brief is certified to having been served on April 19, 1995. Nonetheless, it was received by this forum on May 1, 1995.

Findings of Fact

The Complainant

1. Andrew Rusinov immigrated to the United States from the former Soviet Union in 1981, and was diagnosed as having multiple sclerosis ("MS") in 1982. (T1 32). He has not been employed since 1982. Dr. David Dahl is a practicing physician and a professor of neurology at the University of Wisconsin Medical School. He has been Complainant's neurologist since 1987. (T2 7). Dr. Dahl described MS as:

[A] disease of the central nervous system, which means the brain and the spinal cord, that is characterized by an extremely variable course. [It] can vary within a given day. Typically people feel fairly good in the morning, are terrible in the afternoon, and have the ability of recovery in the evening Over a longer time base it also varies with what we call remissions and re-exacerbations. The overall course can be charted as a toboggan slide over a hill like 25 years or so, with temporary improvements in the beginning, sometimes back to normal, but as the years go by there's a burden of disability that develops There is no cure There are treatments ... from time to time we can partially beat down the symptoms with drugs. Not all cases [are progressive]

Mr. Rusinov's case ... is slowly progressive ... but he is slowly going downhill and then he has these day to day variations too. (T2 8–10).

2. Complainant's disability is associated with two main afflictions. The first is the MS that he contracted in 1982. The other major problem faced by Mr. Rusinov is aseptic necrosis ("AN"). The AN developed as a side effect of cortisone treatments for the MS. AN causes the cushioning between the bones of the joints to deteriorate, resulting in severe pain of the neck, hips, knees, ankles, elbows, hands, and other joints. (T2 17–18). Complainant has had several operations on his elbows to ease the pain caused by AN, and other operations are being planned for his hips and knees. (T2 19; S B). Mr. Rusinov also has scoliosis which may soon require corrective surgery. (S X³).

3. Because of the MS, Complainant's legs are spastic with hyperactive reflexes.

³ Scoliosis is an abnormal lateral curvature of the spine. *Random House Webster's College Dictionary* 1202 (1992).

This spastic tightness of the limbs is another major cause of pain. (T2 23). Mr. Rusinov cannot sit for more than five minutes without getting painfully stiff. (S K). Additionally,

numbness in his legs makes it difficult for Complainant to walk on uneven surfaces. Snow and ice make it particularly difficult for Complainant to walk. He is immobile in darkness because he must see his walking surface. He is unstable in a wind. (T1 39–40,43).

4. Complainant is among the third of MS patients who suffer from diffuse chronic pain syndrome as part of his MS. Chronic pain syndrome causes pain in his back, neck, and fingers. (T2 23–24). Complainant stated that his whole body hurts from his neck to his toes. (T1 38).⁴

5. Mr. Rusinov also suffers from fatigue syndrome associated with the MS. He can only walk for short distances without resting, otherwise he can lose control of his legs. His energy level is different every day, and throughout the same day. On a good day, with medication, Complainant can only walk short distances because the body heat he generates by movement causes him to fatigue much more quickly than would a healthy person. (T1 38–39).⁵ Because he must spend so much time resting to lower his body temperature, it takes Complainant a long time to accomplish even minor errands and chores. (T2 32).

6. Like the majority of MS patients, Complainant suffers from mental problems caused by the weakening of the brain. (T2 35). Additionally, some of the medications Complainant has taken have had serious psychological consequences.⁶ Complainant's

⁴ Diffuse chronic pain syndrome occurs because of little spots of inflammation in the nervous system that cause "short circuits," sending false pain signals to the brain. (T2 23–24).

⁵ The Secretary made much of the claim that Complainant can only walk 200 feet. Not surprisingly, Respondents made much, including a video, to demonstrate that Complainant has been seen to walk farther than 200 feet. I find neither argument very useful. Clearly, Complainant cannot walk normal distances, and the distances he can walk vary considerably from day to day and over longer periods of time.

⁶ For example, some of the pain-killers complainant is prescribed are addictive, and so he sometimes stops taking them when he feels he can fairly comfortably do so. (T1 26, 80).

mental episodes include depression, anxiety, panic attacks, out-of-body experiences, and somatic delusions bordering on psychosis. (T2 13–15). It has been necessary for Complainant to take very powerful and dangerous antipsychotic drugs to treat the psychological aspects of his disease.

7. Complainant's MS has remained relatively unchanged since 1991, except that his joints have gotten worse. (T2 14). In 1991, Complainant suffered a significant increase in symptoms, but Dr. Dahl did not believe the episode to be an exacerbation of the disease.⁷ The future course of Complainant's disease is unpredictable. He has a very bad case of MS, and he is already disabled by AN. Dr. Dahl's view of Complainant's prognosis is poor; he will have MS for the rest of his life and it will get worse with time. (T2 19, 25–27, 50, 70).

8. Complainant will, in all likelihood, experience periods of increased physical debilitation and fully expects to suffer further exacerbations. The medical record of the inception of Complainant's MS supports this expectation. These records describe a horrible and traumatic period in Complainant's life. While Complainant's symptoms are not as severe as they were before 1992, he is almost certain to revert to the condition of that earlier period, and he is very likely to do so with additional exacerbations. These changes will come without warning, and they will greatly effect his mobility.

9. As per Dr. Dahl's instructions, Complainant attempts to keep as active as possible. (T2 37). Driving his car and the independence it gives him is part of Complainant's therapy. It expands his vistas and his overall feeling of normality. (T2 35). Complainant credibly indicated that if he lost his ability to drive himself it would adversely effect his mental state. (T2 35).

10. Complainant is embarrassed by his condition. He is young, and it embarrasses him to appear disabled to other people. Complainant feels he is treated with less respect and credibility once people see he is disabled. (T2 155). He therefore tries to conceal his disability as much as possible, doing whatever he can to look healthier and closer to normal, in spite of his physical challenges. Thus, for example, Complainant rarely uses a cane to assist him in walking because he feels that others will consider him to be less than equal or treat him like a "disabled person." (T2 147–49).

⁷ According to Dr. Dahl, in the progression of MS, patients experience episodes of more severe symptoms as well as periods of exacerbation. Exacerbation is when new symptoms appear along with the increased severity of symptoms previously noted. Periods of remission, or decreased symptoms, usually follow both types of adverse periods. The doctor believes there is a high probability that Complainant will suffer further exacerbation as well as the more certain episodes of increased symptoms.

River Park Apartments

12. River Park Apartments ("RPA") is a complex of two buildings containing a total of 427 apartment units. (T2 148, 223). Phase I is the building located at 1700 East River Road; Phase II is at 1600 East River Road. RPA is located in Shorewood, Wisconsin, in an attractive setting close to parks, businesses, shopping, and bus transportation. (T2 224).

13. RPA participates in HUD programs through the Wisconsin Housing and Economic Development Authority ("WHEDA"). (T2 226). Most residents of RPA receive Section 8 rental subsidies because of their low income.⁸ (T1 148, 149). WHEDA's contract with RPA is for the accommodation of elderly and disabled persons. (T1 128; T2 223). Most of the residents are quite elderly, averaging approximately 78–80 years of age; 37 residents of the Complainant's building are also known to be disabled. (T2 223).

14. RPA requires tenants parking in its lots to register and obtain a sticker with a number on it. (T1 153; S G).⁹ There were 96 people registered to use the 108 spaces as of December 1994. (T1 157). Thus, by a small number, there are fewer people registered to park than there are spaces for them. The parking policy at RPA has always been first come, first served. (Tenant Handbook, at 23).

15. Until the summer of 1993, visitors were permitted to park in the RPA lot. That summer, Respondents changed the policy, prohibiting visitor parking. This change had nothing to do with Complainant or this case. (T1 151). Other parking is available in the Village of Shorewood lot, where there is a two-hour limit and a permit is required for overnight parking. In the summer of 1993, the Village of Shorewood parking lot was moved from a location across a football field from RPA to a closer location adjoining the RPA lots. (R 2).¹⁰

⁸ Respondents argue that this action is barred because HUD had previously determined that RPA was in compliance with Section 504 of the Rehabilitation Act. Section 504 regulates individuals receiving government assistance, and is unrelated to the adjudication of Complainant's claim in this matter. *Donovan v. Cunningham* 716 F.2d 1455 (5th Cir. 1983) cert. denied, 467 U.S. 1251 (1984).

⁹ Secretary's exhibit G is a list of all tenants in both buildings. It indicates who is registered to park in the lots.

¹⁰ R 2 is a diagram of RPA and its parking lots. While it includes the new location of the municipal lot, it does not include that lot's previous location.

16. The distances from two of the handicapped spaces to the entrance of the 1700 RPA building are 64 and 97 feet. The distance from the closest point of the Shorewood lot to the entrance is 184 feet. The distance from a dumpster in the far corner of the RPA lot to the main entrance is 279 feet, and to the back door of 1700 is 111 feet. (T2 196).

17. In 1986, there was one handicapped space at each RPA building. (T1 52). By March 1993, there were two such spaces at each building. (T1 151). After Complainant filed his HUD complaint, Respondents increased the number of handicapped parking spaces to four at each building. (T1 151). They became available on May 1, 1993. (S E). Respondents created a handicapped van space at the 1600 building during the summer of 1993. This had nothing to do with Complainant. (T1 52). As of December 1994, there were at least 27 RPA residents with handicapped designations on their cars. (S G)¹¹

18. Respondents have never received complaints other than Mr. Rusinov's about the adequacy of parking at RPA, nor have they received any other requests for reserved spaces. (T1 162, 231). RPA employs a security force which polices the parking lots and has the authority to issue warning tickets for violations of the parking rules. (T1 273–276). In addition, the other employees of RPA informally police the parking lots and have authority to issue warning notices. Neither RPA nor the Shorewood police department have ever issued a warning ticket for unauthorized use of a handicapped space. (T1 167; S I).

19. At night, the handicapped spaces and all of the undesignated parking spaces close to the entrance are usually taken. Since October 1994, between 50 and 75% of the handicapped spaces have been filled during the daytime. (T1 169).

Complainant's Parking

20. Complainant applied for tenancy at RPA in January 1984. (T2 51). Because of a significant level of residential applications, he was not able to gain admission to RPA until 1986. (T1 50). He had decided to move to RPA because "it is a beautiful place to live." (R 1, p. 26). When Rusinov moved into RPA, there was only one handicapped-designated parking space in front of each building.

¹¹ It is not precisely known how many residents have handicapped parking permits. Respondents counted them in the parking lot. However, handicapped cards can be moved from car to car, and they are frequently not displayed if the car has not been parked in a handicapped space. (T1 76).

21. Complainant has had a car since he moved into RPA and has had problems parking it sufficiently close to the building entrance since 1986. (T1 51–52). He often arrives at RPA at around 10 p.m., after having spent the evening with his parents who live about 20 miles away.¹² (T1 31, 137). Complainant's typical pattern is to leave RPA at 2 or 3 p.m. and arrive back at RPA by 10 or 11 p.m. When he arrives back at RPA, there are frequently no available handicapped parking spaces or other spaces close to the entrance to his building. (T1 53–54).

22. Complainant always uses a handicapped space if one is available. (T1 90–91, 112, 181; T2 235, 276). Generally, he chooses parking spaces on the basis of closeness to the building entrance and available room to open the car door. (T1 90). When he cannot find a handicapped–designated space, he tries to park next to the electrical junction boxes, even though other spaces are available, because the space is larger. (T1 91). Mr. Rusinov requires the extra space because, to exit his car, he must open the door fully and place both legs on the ground at the same time to maintain his balance. (T1 69). At night, he frequently parks near the dumpster, in the far corner of the parking lot, because all the closer spaces are taken and he can there fully open the car door. The dumpster spaces are usually open because they are the farthest from the front entrance.

23. If the weather is bad or Complainant is feeling particularly poorly, his parents follow him in their car back to RPA. They park in the village lot and meet him to help him walk into his building. Frequently, Complainant is still searching for a parking space when his parents have parked their car and have walked over to meet him. (T1 138). Sometimes Complainant spends the night at his parents' house rather than deal with the parking situation late in the evening, particularly if the weather is bad.

24. Some time before September of 1992, Complainant slipped on ice and fell in the parking lot while walking to the front entrance of the building from the dumpster area. He was able to pull himself up by using his cane. The experience exhausted him and left him nervous over the prospect of a repeat incident. (T1 57). He did not report the incident to RPA management because it was late, no one was in the office, and he felt embarrassed to tell anyone about the incident. (T2 78).

25. Complainant had another incident when he had to park in the municipal lot. This was before the alterations of 1993, while the lot was still located across the football

¹² Complainant has an unusually close and dependent relationship with his parents. They are the only people he knows now who knew him before the onset of his MS. He does not live with his parents because of his need for independence and privacy. However, his parents provide a great deal of his care and help to make independent living possible for him. They are virtually the only people with whom Complainant socializes. (T1 31).

field from RPA. Complainant was walking from the lot to the building when he was blown off balance by the wind and fell, face down, in the snow. He lay in the snow for a while to get rested, and then pulled himself up by using his cane. He did not report this incident to the Respondents because he was suffering exacerbations and he did not feel he had the strength to argue with the management over parking. (T1 59–61).

26. On another occasion, it was winter and Rusinov's condition was such that he needed assistance to get out of his car. He was parked in the area near the dumpster, behind the building. A stranger driving by noticed him struggling and stopped to help him get out of his car and into the building's back entrance. (T1 62–63). All of these incidents occurred prior to September 1992. (T2 78).

27. Complainant has a problem with bladder control. He keeps a urinal near his bed and another in his car. His medical records reveal complaints of frequent accidents.¹³ Because he moves slowly and needs to rest frequently, no matter how carefully he plans his excursions there are times when he is caught too far from a toilet. He once found it necessary to urinate in the RPA parking lot because he would not have gotten to his apartment in time. (T1 63).¹⁴

The Complaint

28. Prior to the summer of 1993, the competition for parking was more intense at RPA because visitors could park in the lot and there were fewer handicapped spaces. Nevertheless, Complainant still faces difficulty parking whenever he comes home, especially late at night. (T1 72).

29. When Complainant moved into RPA in 1986, he informed the management that he is disabled because of MS.¹⁵ (T1 158; G C). RPA manager, Susan Sellin, who has

¹³ Complainant stated that when he gets the urge to urinate he must do so nearly immediately; there is a very limited time. (T2 39). Dr. Dahl's progress notes of 1/6/92 state that Complainant urinates seven times per night and yet he always feels he needs to do so. On 3/23/93 they state, "... can't hold urine very well (not new), noct. accidents 2X/wk." (S J). In 1993, a Dr. Burns states in the medical record, "... marginal control over his bladder and bowels, although he probably has spastic bladder as he states when he gets the urge to void he must void right away." (S J).

¹⁴ Complainant was embarrassed to testify regarding such accidents and so he was not pressed on the issue. (T2 154).

¹⁵ See Government Exhibit C, Mr. Rusinov's 1986 application to RPA, which states that he is disabled because of MS and sometimes uses a cane.

worked at RPA during the entirety of his residency, was aware that Complainant consistently used the handicapped spaces and used the space by the dumpster 5 to 10 % of the time during the day.¹⁶ (T2 269).

¹⁶ Ms. Sellin admitted that she does not know where Complainant parks at night, nor if there are handicapped spots open at night. (T1 166).

30. In the fall of 1992, Complainant and his father, Edward Rusinov, twice visited the RPA management office. They asked Dorothy Broitzman for an assigned space or a "sufficient" number of handicapped spaces to accommodate Complainant's disability. (T1 41). She told them she did not think it was possible and that they needed to speak to Ms. Sellin.¹⁷ After a few months, the Rusinovs returned to the office and told Ms. Sellin that Complainant needed an assigned parking space because of his disability. Although this was the first time that Ms. Sellin spoke personally with Complainant, Ms. Sellin had been informed of Complainant's earlier requests by her assistant, Ms. Broitzman. (T2 288). Without further inquiry, Ms. Sellin told them that she could not assign a reserved space to Complainant.¹⁸ (T1 66–67, 139, 159–60, 169–73, 286–295; T2 232).

31. All of Complainant's requests for accommodation were oral, and he does not recall the dates they were made. Respondents never asked Complainant if he had trouble with his mobility, nor did they attempt to investigate Complainant's need for an individualized space prior to rejecting his request. (T2 164-65). On each occasion, Respondents simply informed Complainant that there was nothing they could do. (T1 61, 65, 81–87). At one point Ms. Broitzman informed Respondent that he would "have to take chances" when seeking out parking. (T1 67).

32. While Ms. Sellin knew that Complainant had MS, she did not know how the disease affected Complainant's mobility. When Complainant requested a reserved space, Ms. Sellin did not inquire about the nature of his disability because she was under the impression that HUD regulations prohibited a landlord from ever asking a tenant about his disability. (T1 170–173).¹⁹ Ms. Sellin also did not investigate Complainant's need for special accommodation because Complainant did not give her any reason to give him an assigned spot. (T1 160). She rejected Complainant's requests for a parking space based solely on her observations of Complainant's comings and goings. Because she frequently

¹⁷ As the office secretary, Ms. Broitzman had no authority to grant the request.

¹⁸ Respondent Sellin gave the following explanation of her decision:

I did not consider it at the time to be a reasonable request or a reasonable accommodation because from what I have seen or did see since 1986, Andrew has not shown or exhibited any problems or incidents with having difficulties walking to his apartment or getting in and out of his car or walking to and from his car. (T1 160–61).

¹⁹ HUD's regulation that is codified at 24 CFR 100.202 makes it unlawful to make an inquiry to determine whether an applicant for a dwelling has a handicap or to make an inquiry of such a person as to the nature or severity of the handicap. The exceptions to the rule include inquiries to determine whether an applicant is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap.

saw Complainant moving about without any apparent difficulty, Ms. Sellin concluded that Complainant was not sufficiently impaired to require a special accommodation. (T1 159–60, 169–73, 181–82). Ms. Sellin admits that she made this decision on her own, without consulting with her superiors at Jankowski Lee & Associates.

33. Complainant Rusinov filed his HUD complaint form on February 18, 1993. In his complaint, he states, "I have asked the management to either increase the number of handicap spots or assign me a parking spot."²⁰ In response to the receipt of Mr. Rusinov's complaint, Respondents Lee and Sellin contacted the Wisconsin Housing Development Authority, which acts as an intermediary between HUD and recipients of federal housing aid in Wisconsin, to inquire as to the proper action to be taken in response to the complaint. (T1 163; T2 226). Representatives of WHEDA informed Respondents that they were not required to assign an individual, designated space to Mr. Rusinov. (T2 314).

34. Shortly after Mr. Rusinov filed his complaint with HUD, in March of 1993, Respondents increased the number of handicapped parking spaces at each building from two to four.²¹ At that time, management had never conducted a survey, and kept no records of the number of disabled tenants or the number of tenants with handicapped stickers on their automobiles. (T1 186). Thus, they did not know how many handicapped parking spaces were adequate to ensure that all disabled residents could park in a handicapped space. (T1 163; 186).²² Respondents' decision to add two extra spaces at each building, as opposed to some other number, was because "[w]e thought [it] a good number to double them 100%" (T1 163).

35. Respondents became concerned that, if they assigned a spot to Complainant, they would have to create an "assigned only" parking lot, and be forced to assign an

²⁰ At the hearing, Complainant stated that he meant that he wanted the handicapped spaces to be increased enough to prevent competition for handicapped spaces between people with handicapped stickers. (T1 69). There was no evidence that he ever made this point clear to management.

²¹ Precisely when or why the so-designated spaces were previously increased from one to two at each building was never entered into evidence.

²² Ms. Sellin stated that 50 to 75% of the time there are empty handicapped spaces when she leaves work at 4:45–5:30 p.m. When she arrives to work at 8:00 a.m. there is sometimes a handicapped space available. She is not there at night and does not know if the handicapped spaces are filled at night. (T1 166).

individual space to each tenant, or at least each handicapped tenant. To allay their apprehension, Respondents consulted with the "504 coordinator" for the Wisconsin Housing and Economic Development Authority to determine whether creating a parking spot for Complainant would be the only reasonable accommodation available to escape liability to him. The 504 coordinator informed Respondent that, under state law, Respondents were required to provide three handicapped spaces per building. (T2 313–14). Soon after the increase of spaces, RPA added a van-accessible handicapped parking space to the lot in front of Complainant's building. (T1 152).

36. As noted, at the time Rusinov filed his complaint, RPA was only required by Wisconsin law to have three accessible parking spaces. (R 19, p. 150–3)²³ Nonetheless, on November 22, 1993, HUD's Office of Fair Housing and Equal Opportunity, Chicago Regional Office, sent a letter to RPA stating that while the apartment's parking policy did not violate Section 504 of the Rehabilitation Act, RPA may have failed to make a "reasonable accommodation" to Rusinov's request. (T2 315; R 14). Respondents, without consultation with Complainant, interpreted Complainant's silence after their space increase to mean that he was satisfied with the accommodation. (T1 77). According to Complainant, although he did not agree that the increase in handicapped spaces remedied his problem, he did not complain or make any additional requests for additional spaces because he was already in the process of pursuing his claim against Respondents with HUD. (T1 73).

Effect on Complainant

37. Complainant often schedules his daily activities around availability of parking at RPA. (T1 55). For instance, although Complainant feels physically stronger at night, he engages in strenuous activities, such as grocery shopping, during the day, when there is a greater likelihood that he will be able to get a handicapped space. Complainant avoids shopping at night because he fears that he will not be able to transport his groceries back to the building from a remote parking spot. (T1 56).

38. Complainant relies upon his parents heavily partly because of the parking problem. At night, Complainant's parents sometimes follow him back to RPA in case Complainant cannot find a parking spot and needs assistance from his car to the building. (T1 74-75). Additionally, Complainant often spends the night at his parents' house because of the uncertainty of parking, and his fear that during inclement weather he will be unable to negotiate a long walk from the parking lot to the entrance of RPA without falling. Complainant is embarrassed by his reliance on his parents because he tries to live as independent a life as possible, even with his disability. (T1 75).

39. Complainant is humiliated by his prior falls and other difficulties caused by his inability to park close to the RPA apartments. (T1 58). His preoccupation with the parking problem has resulted in feelings of greater anxiety and nervousness. (T1 97).

²³ R 19 is the Wisconsin Administrative Code Sec. ILHR 57 (Industry, Labor & Human Relations — Residential Occupancies). See ILHR 57.82(2)(b).

40. Complainant feels humiliated by RPA management's patronizing attitude towards his disability. He characterizes Ms. Sellin and Ms. Broitzman's reception of his problem as one of indifference. (T1 132). On the repeated occasions when he approached Ms. Sellin or Ms. Broitzman about the parking problem, he found them to be unfriendly and uncooperative, so much so that Complainant feared that if he pressed them to act on the parking situation or filed a complaint, they would retaliate against him. (T1 133). Because of this, Complainant put off filing his complaint until March of 1993.

Applicable Law

Congress enacted the Fair Housing Act, which is Title VIII of the Civil Rights Act, to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), *cert. denied*, 422 U.S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, [even] simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio), *aff'd in relevant part*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

On September 13, 1988 Congress amended the Act with Section 804, to prohibit, *inter alia*, discrimination "against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap ..." (42 U.S.C. §3604(f)(2); 24 CFR 100.202(b)). Section 804 further states that discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford [a disabled person] equal opportunity to use and enjoy a dwelling" (42 U.S.C. §3604(f)(3)(B); 24 CFR 100.204). By adding this section, Congress recognized that discrimination against the disabled included not only outright invidious discrimination, but also included the failure by a landlord to take affirmative steps to ensure that disabled tenants enjoy the use of the facility to the same extent as non-disabled individuals. H.R. Rep. No. 711, 100th Cong. 2nd Sess. 25, *reprinted in* 1988 U.S. Code Cong. Admin. News 2186 ("H.R. No. 711"). As such, discrimination on the basis of disability, and specifically "surmountable barrier" discrimination includes, *inter alia*,

[A] refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Prewitt v. United States Postal Service, 662 F.2d 292 (5th Cir. 1981).

Respondents in this case are charged with a failure to make a "reasonable

accommodation," within the meaning of the Act by refusing to provide Complainant a reserved parking space at RPA. The elements of *prima facie* case for this type of charge

were set forth in *HUD v. Dedham Hous. Auth.*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,015 at 25,212 (HUDALJ Nov. 15, 1991):

1. Complainant has a disability or is a person associated with a disabled person;
2. Respondent knew of the disability or could have been reasonably expected to know of it;
3. Accommodation of the disability may be necessary to afford Complainant an equal opportunity to use and enjoy the dwelling, and;
4. Respondent refused to make the requested accommodation.

An accommodation is "reasonable" "if it would not impose an undue hardship or burden upon the entity making the accommodations and would not undermine the basic purpose which the requirement at issue seeks to achieve." *Shapiro v. Cadman Towers*, 844 F. Supp. 116, 125 (E.D.N.Y. 1994), *aff'd* 51 F.3d 328 (2d Cir. 1995). Thus, once the Secretary and the Complainant make out the above *prima facie* case, Respondent may nonetheless prevail if he can demonstrate that an accommodation imposes an undue financial or administrative burden on Respondent or requires a fundamental alteration in the nature of its programs; *i.e.*, that the accommodation would create an undue hardship.

Although a Respondent should not be required to assume undue financial burdens, he may be required to incur reasonable costs. *See Nelson v. Thornburgh*, 567 F. Supp. 369, *aff'd*, 732 F.2d 146 (3rd Cir. 1984), *cert. denied*, 469 U.S. 1188 (1985). Finally, a Respondent's motivation is not a factor in reasonable accommodation cases *HUD v. Ocean Sands, Inc.*, 2 Fair Housing – Fair Lending (P-H), ¶ 25055 (HUDALJ Sept. 3, 1993).

Complainant's Disability

A "disability" under Title VIII is a "physical or mental impairment which substantially limits one or more of ... [a] ... person's major life activities." *Ocean Sands*, 2 Fair Housing-Fair Lending (P-H) at 25,538; 42 U.S.C. § 3602(h)(1); 24 CFR 100.201. This means that the disabled individual is unable to perform, or is significantly limited in performing, an activity that an average person in the general population can perform. Major life activities include, *inter alia*, walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, or caring for one's self. *E.E.O.C. Technical Assistance Manual: The Americans With Disabilities Act* at G:19 (1992). Chronic or episodic disorders, such as Complainant's, that are substantially limiting when active, or have a

high likelihood of recurrence in substantially limiting forms, have been found to be disabilities. *Id.* at G-3. Specifically, Multiple Sclerosis, a disease that is characterized as having periods of relative healthfulness punctuated by debilitating periods and exacerbations, has been found to be a disability under Title VIII. *Shapiro*, 844 F. Supp. at 116; *Dedham*, 2 Fair Housing-Fair Lending (P- H) at ¶ 25,212.

Respondents' assertion that Complainant "appears" to be able to get around adequately is irrelevant for the purposes of determining whether he is disabled under the Act. Complainant's doctor credibly testified that Complainant has experienced severe periods of increased symptoms and exacerbations and, in all likelihood, will continue to suffer unpredictable exacerbations with greater severity into the future, perhaps for the rest of his life. Complainant's illness is unpredictable, and has in the past caused him to lose the ability to walk. Moreover, Complainant's AN causes him a great deal of pain when walking long distances. Based on this evidence, I find that Complainant has shown that he is substantially limited in the life activity of walking. As such, Complainant is a disabled individual under the meaning of the Act.

Respondents' Knowledge of Complainant's Disability

It is well settled that "[a] Respondent must ... know of, or reasonably be expected to know of, the existence of the handicap in order to be held liable for discrimination." *Dedham*, 2 Fair Housing-Fair Lending (P- H) at 25,015, citing *Nathanson v. Medical College of Pennsylvania*, 926 F.2d 1368, 1381 (3rd Cir. 1991). It is not, however, required that the Complainant speak "magic words" to provide some minimum level of documentation of his disability to avail himself of the protections of the law. *Schmidt v. Safeway, Inc.*, 864 F. Supp. 991 (D. Ore. 1994). Once informed of the possibility that a tenant may need an accommodation, it is the landlord's responsibility to explore that need and suggest accommodations. Accommodation of individuals with disabilities is an "informal interactive process" involving cooperation by both landlord and tenant in identifying the causes of the difficulty the tenant is having and exploring possible accommodations. *See generally Rosiak v. U.S. Dep't of Army* 845 F.2d 1014 (3rd Cir. 1988); *Crane v. Lewis*, 551 F. Supp. 27 (D.C.C. 1982).²⁴

²⁴ The case *Heller v. EEB Auto Co* 8 F.3d 1433 (9th Cir. 1993), cited by Respondents, supports the

above contention. In *Heller*, a religious discrimination case, the Ninth Circuit stated:

A sensible approach would require only enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirement.

Since Respondents possess greater knowledge about their facility's ability to provide an accommodation, they bear the responsibility of suggesting reasonable accommodations to Complainant; not vice versa. *Crane*, 551 F. Supp. at 27. As stated by the Fifth Circuit in the employment context:

[T]he burden of proving inability to accommodate is on the employer. The employer has greater knowledge of the essentials of the job than does the handicapped applicant. The employer can look to its own experience, or, if that is not helpful, to that of others who have provided jobs to individuals with handicaps similar to those of the applicant in question. Furthermore, the employer may be able to obtain advice concerning possible accommodations from private and government sources.

Prewitt v. United States Postal Service, 644 F.2d 292, 308 (5th Cir. 1981) (citation omitted).

Mere suspicion that an individual may not actually be disabled is not sufficient to deny an accommodation without further inquiry. For instance, in *Shapiro*, 844 F. Supp. at 121, the plaintiff, who suffered from MS, requested an assigned parking space. This request was denied, in part because of the managing board's skepticism over the existence of plaintiff's mobility problems. The court stated:

[D]iscrimination against the handicapped often begins with the thought that she looks just like me -- that she's normal -- when in fact the handicapped person is in some significant respect different. Prejudice, it bears recalling, includes not just mistreating another because of the *difference* of her outward appearance but also assuming others are the *same* because of their appearance, when they are not.

Id.

This is directly analogous to the instant case. Upon his moving to RPA, Complainant informed RFA's management that he has MS and that the disease causes mobility problems. Moreover, Complainant informed RPA management on several occasions that he required an accommodation "because of his disability." Respondents dismissed Complainant's requests without further inquiry based on their perception of Complainant as mobile. While it is undeniable that Complainant could have elaborated upon the problems caused by his MS in greater detail, his request was sufficient to put

Respondents on notice of his disability and the possibility that an accommodation may be necessary. With that knowledge, Respondents should have explored the possibility of an accommodation with Complainant.

Necessity of Accommodation

Respondents have attempted to show that Complainant does not need his requested accommodation through the use of videotaped evidence of Complainant moving to and from his car during a two-day period in November 1994. Complainant has acknowledged that, at times, he is able to move about with relative ease. However, Complainant's MS is unpredictable and often dramatically effects his ability to walk long distances. Thus, the fact that Complainant may have been able to walk a longer than usual distance on a given occasion is irrelevant because his condition is likely to worsen, further limiting his ability to move.

Over the course of these proceedings, Complainant has narrowed his request for an accommodation because he now feels that the only way to ensure that he obtains suitable parking is through an individually-assigned parking space. Because of the large number of disabled tenants at RPA, Complainant is never guaranteed a space close to the entrance. Increasing the number of handicapped parking spaces to four at each building has done little to improve the situation, as Complainant has found that he must often circle the parking lot and often must park far away from the entrance at night. Moreover, Complainant needs a larger parking space since he must fully open his car door when entering and exiting the vehicle.

Because of the parking problem at RPA, Complainant has become reluctant to use his car for fear that he will not be able to find suitable parking at the RPA lot on his return. This impacts on his ability to lead an independent life, which includes visiting his parents, shopping, and seeing his doctors. Complainant's MS severely limits the distance Complainant can walk from his automobile to the entrance of a building. Thus, to proceed with his life with a level of freedom similar to that of a nondisabled person, Complainant must be ensured that he receives a spot as close to the entrance of the building as possible.

Reasonable Accommodation

An accommodation is considered appropriate when it enables the disabled tenant to enjoy the premises to the same degree as that of a similarly-situated non-disabled

tenant.²⁵ In determining what is a reasonable accommodation for Complainant, I will consider the following factors: 1) the overall size of the housing provider, including the number of residents, number and type of facilities involved, and the size of its budget; 2) the type of facilities involved, including the composition and structure of the residences; and 3) the nature and cost of the accommodation needed. *Dedham*, 2 Fair Housing-Fair Lending (P-H) at ¶ 25,213.

RPA is a large apartment complex with a total of 427 apartment units, a great many of which house elderly or disabled individuals. Since most of the tenants receive some form of assistance, RPA collects government subsidies for many of its residents. The two buildings have a total of 108 parking spaces and 97 tenants registered to use the spaces. There are, as of late 1994, eight handicapped parking spaces, and one van space for a total of 27 tenants registered to park at RPA with handicapped stickers or tags on their cars. Respondents already have in place a registry for those parking in the lots, as well as paid security officers policing the lots for potential violations.

²⁵ Respondents argue that since RPA is a building inhabited by a large number of elderly and mobility-impaired individuals, they need only accommodate Complainant to the extent that his enjoyment of the facility is equal to that of the rest of the tenants in RPA. However, "equality" for the purposes of the Act, is not equal to the average disabled tenant. Rather, any accommodation should place Complainant in the position of a similarly situated nondisabled tenant. Any consideration of the composition of the building and the effect of an accommodation on other tenants will be discussed *infra* in discussing whether providing the accommodation poses an undue hardship. See *Shapiro*, 844 F. Supp. at 119 n. 2, which states:

What the FHAA requires is that the handicapped person be reasonably accommodated so as not to deprive her of an opportunity equal, insofar as possible, to that of the nonhandicapped to use and enjoy her dwelling, an accommodation which to a reasonable degree makes her no more a prisoner in her own home than others who do not suffer from the problems she does.

While the number of parking spaces for nondisabled tenants exceeds the number of nondisabled tenants registered to park in the RPA lots, there is a shortage of parking for the disabled tenants. During the day, handicapped parking may be available, but at night, the competition for spaces close to the building is keen. As such, Complainant has requested that Respondents either assign him his own parking space or increase the number of handicapped spaces.

The latter solution is unacceptable and unnecessary since no other disabled tenant at RPA has requested additional handicapped spaces. Moreover, because handicapped spaces are larger than regular parking spaces, converting a large number of regular spaces into handicapped spaces would decrease the number of parking spaces available at RPA, possibly creating a parking shortage for all tenants. Given Complainant's need for a space close to his building, assigning Complainant his own parking space is a reasonable accommodation consistent with the Act.²⁶

Respondents argue that assigning Complainant his own space would cause severe administrative and enforcement costs. In particular, Respondents cite the potential difficulties of setting up and subsequently policing Complainant's parking space. Respondents, however, have proffered no evidence that such a crisis is imminent. Indeed, the record reflects that RPA already has in place an efficient system for policing the parking lots and issuing citations if necessary. Moreover, Respondents admit that there has never been a parking problem at RPA, and neither they, nor the Shorewood

²⁶In the regulations interpreting the disability provisions of the Act, HUD cites as an example of a reasonable accommodation:

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on *a first come first served* basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of § 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstance.

police, have ever issued a citation for an improperly parked automobile in the RPA lots. Respondents have failed to show how the addition of a single assigned spot to Complainant would cause this smoothly-running system to falter. Thus, the only proven additional cost associated with assigning and enforcing a space for Complainant would be the cost of installing a sign.

Respondents' second argument against assigning Complainant his own parking space is also based upon speculative assumptions. Respondents argue that allowing Complainant to have his own space would create a "domino effect" of requests by disabled tenants for their own parking spot. Accordingly, Respondents argue, assigning Complainant his own spot would effectively require them to abandon their "first come, first served" policy in favor of an "assigned only" parking lot. Given the fact that there is a surplus of parking spaces at RPA and no present enforcement problem, Respondents have failed to sustain this argument. Additionally, Respondent's argument is contrary to prior holdings by both this Office and a Federal District Court. The case *Shapiro v. Cadman Towers, Inc.*, 884 F. Supp 116 (E.D.N.Y 1994), *aff'd*, 51 F.3d 328 (2d Cir. 1995), is particularly instructive. That case involved a request for an assigned parking space in a lot where there existed a scarcity of parking spaces, as well as a great many other disabled tenants. In refusing to consider Defendant's argument that assigning a space would lead to the demise of their "first come first served" policy, the court stated:

I conclude that a "reasonable accommodation" of plaintiff's needs by reason of her handicap will in all probability require modification of defendants' first come/first served policy. In insisting that the policy of first come/first served remain inviolable whatever plaintiff's handicap and needs, defendants display the frame of mind which Congress sought to alter by requiring reasonable accommodations of the needs of the handicapped.²⁷

Respondents' argument effectively asserts that because RPA houses a large number of disabled tenants, they are somehow exempt from the disability provisions of

²⁷ See also *HUD v. Dedham Housing Authority* 2 Fair Housing -- Fair Lending (P-H) ¶ 25,015, 25,214 (HUDALJ Jan. 1, 1992).

Accommodation does not require abrogation of the "first come, first served" rule, or even modification of the rules for those who do not demonstrate similar physical limitations [Complainant] is a member of a "narrow group" for whom a limited exception to the "first come, first served" parking rule could be made without eliminating the application of the rule to those who do not fall within the narrow exception.

the Fair Housing Act. They are not. Despite whatever efforts Respondents have arguably expended modifying RPA to cater to the needs of its disabled tenants, if a tenant requests an accommodation for his disability, Respondents are bound, just like every housing provider, to explore the means of providing one.

In sum, Respondents have failed to show that they are unable to provide Complainant with an accommodation, or that providing an accommodation would create undue costs or otherwise jeopardize RPA's parking policy. As such, Respondents violated 42 U.S.C. §§ 3604(f)(2); 3604(f)(3)(b); and 24 CFR100.202(b) and 100.204 by refusing to assign a parking space as close as possible to the apartment rented by Mr. Rusinov.

Damages

Because Respondents engaged in a discriminatory housing practice, the Complainant is entitled to appropriate relief. This relief may include actual damages and injunctive or other equitable relief. Respondent may also be assessed a civil penalty "to vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Charging Party seeks \$50,000.00 in intangible damages, \$10,000.00 in civil penalties and injunctive relief in the form of a reserved parking space for Complainant.

Injunctive Relief

Injunctive relief may be ordered to insure that Respondent does not violate the act in the future. *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001, 25,014 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864, 872-73 (11th Cir. 1990). The purposes of injunctive relief include eliminating the effects of past discrimination, preventing future discrimination, and positioning aggrieved persons, as close as possible, to the situation they would have been in, but for the discrimination. *See Park View Heights Corp. v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert denied* 422 U.S. 1042 (1975). The relief, however, is to be molded to the specific facts of the case at hand.

The Charging Party has requested that I order Respondents to assign Complainant his own parking spot, as close as possible to the RPA building, with sufficient space for Complainant to fully open his car door. Having found that such an action is a reasonable accommodation for Complainant's disability, I agree that such an order is appropriate, and it will be entered at the end of this initial decision.

Compensatory Damages

A Complainant who is the victim of discrimination may seek redress for both actual and intangible injuries. Intangible injuries may include embarrassment, humiliation and emotional distress. *See, e.g. HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001 at 25,001 (HUDALJ Dec. 21 1989), *aff'd* 908 F.2d 864 (11th Cir. 1990); *HUD v. Murphy*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,002, at 25,055 (HUDALJ July 13, 1990). Damages for emotional distress may be inferred from the circumstances surrounding the discriminatory act, as well as from testimonial proof. *Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977). Because emotional injuries are generally qualitative in nature, it is often difficult to prove them to a precise dollar amount. As such, courts do not require proof of a precise dollar amount as a precondition to an award of emotional distress damages. *See, e.g., Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10th Cir. 1973). Mere assertion of

emotional distress injury is not sufficient to support an award of damages. The record, considered in its entirety, must support the emotional distress award. *Lee Morgan v. Secretary of Housing and Urban Development*, 985 F.2d 1451 (10th Cir. 1993). The amount awarded should make the victim whole, putting him in the place he would have been in absent the discrimination. *Murphy*, 2 Fair Housing-Fair Lending (P-H) at 25,103.

In this case, the Charging Party has requested an aggregate sum of \$50,000 to compensate Complainant for his physical injury, emotional distress and inconvenience caused by Respondent's failure to accommodate his disability. Awards of damages for emotional distress should be fashioned to make the victim whole. In prior cases, emotional distress awards have ranged from extremely high to minimal. *See, e.g., HUD v. Johnson*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,076, 25,710 (July 26, 1994) (awarding a prevailing complainant \$175,000); *HUD v. Murphy*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,002, 25,079 (July 13, 1990) (awarding \$150 to a prevailing Complainant who "suffered the threshold level of cognizable and compensable emotional distress"). In assessing the amount of the damage award for the ordinary Complainant, I consider how a reasonable person would react to the discriminatory conduct. This reaction necessarily varies with the egregiousness of Respondent's conduct. *HUD v. Colber*, 2 Fair Housing - Fair Lending (P-H) ¶ 25,096 25,863 (HUDALJ February 2, 1995). Lastly, respondents take their victims as they find them. Thus, the complainant's individual strengths or weaknesses are important considerations in any award of emotional distress.

It is undeniable that Complainant has suffered inconvenience because of Respondents' refusal to assign him his own parking space. Complainant has modified his schedule around the parking situation at RPA, and has abstained from activities when he felt he did not have the reserve to deal with his difficulty parking at night. Moreover, Complainant must often seek the aid of his parents at night, especially during inclement weather. Complainant worries about the parking situation. He fears that at night, he may not be able to prevent himself from falling because he cannot see the ground. Given this concern for his physical well being, Complainant was intimidated by Respondents' out of hand dismissal of his request for an accommodation.

Complainant's MS, however, has been in relative remission since 1991. During the time in which Complainant has requested accommodations for his disability, he has been physically strong and able to live a very mobile life in spite of the parking problem at RPA. Complainant has not fallen or suffered any physical injury since 1991 because of having to park in a remote space. While Complainant worries about the parking problem, he admits that he can always get a parking spot; just not always as close or as large as he would like one to be. He has not consulted with his psychiatrist about emotional distress related to the parking problem, although he consults with the

psychiatrist on many other issues in his life. Complainant does not plan to move from RPA because of this problem, and has not indicated that he ever considered leaving the complex.

Given these considerations, I conclude that this record does not support the amount of damages requested by the Charging Party. Considering all the circumstances, I find that Complainant was caused emotional distress from the violation in the amount of \$2,500.

Civil Penalty

The Charging Party also seeks a civil penalty of \$10,000 from Respondents. This is the maximum amount possible to assess against a Respondent who, as here, has not been previously found to have committed discriminatory acts.

The Civil Penalty is not an automatic penalty against a losing Respondent. *See* H. Rep. No. 711, 100th Cong. 2d Sess. at 37 *reprinted in* 1988 U.S.C.A.N. 2173 at 2198. Under the Act when "a respondent has engaged ... in a discriminatory housing practice" the ALJ may assess a civil penalty "against the respondent ... in an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice ..." 42 U.S.C. § 3612(g)(3)(A). In addition to any history of prior violations, the nature and circumstances of the violation, the degree of culpability, the financial circumstances of the respondent, the goal of deterrence, and other matters are considered as justice may require. *Id.* There is no record evidence that Respondents have been adjudged to have committed any prior discriminatory housing practice. I therefore turn to a consideration of the other required factors.

The circumstances surrounding the violation of the Act warrant imposition of a penalty, but not of the maximum amount. Complainant's requests for the parking spot were not only vague, they communicated virtually no reason for an accommodation. Moreover, despite having medical records in his possession, Complainant proffered none to bolster his claim for a reserved parking space. Given the fact that RPA management observed Complainant walking to and from his car every day for years, it is not surprising that they would question his need for an accommodation. I also consider that Respondents were twice told by WHEDA that they were not in violation, and were told by HUD officials only that they "may" be in violation.

It should be remembered, however, that Respondents manage an apartment complex specializing in housing disabled and elderly tenants. Knowledge of the special needs of their tenants and the legal requirements they must follow in providing this type of housing should be of high concern. While this does not mean that they are held to a

standard higher than that of any other housing provider in accommodating disabled tenants, it does make their alleged unfamiliarity with the law seem more serious.

Only after Complainant filed his complaint in this matter, Respondents doubled the number of handicapped spaces, not based upon any inquiry into the needs of its disabled tenants, but because "double seemed like a good number." This type of arbitrary action in response to threatened legal action is not the type of "accommodation" envisioned by section 100.202(b). However vague Complainant's request for an accommodation, the onus was on Respondents to explore that request prior to rejecting it.

Thus, a civil penalty will send a clear message to RPA and other housing providers that they cannot dismiss the needs of their disabled tenants out of hand. Rather, housing providers should foster communication between themselves and their disabled tenants to ensure that all may enjoy the facility to an extent equal to the enjoyment of non-disabled tenants.

Respondents have presented no evidence of inability to pay a civil penalty. Since they have the burden of coming forward with evidence of mitigating financial circumstances, I cannot conclude that imposition of a reasonable penalty would create an undue hardship for Respondents. *See Campbell v. United States*, 365 U.S. 85, 96 (1961).

Upon consideration of all factors, I have determined that a civil penalty in the amount of \$2,500 is warranted against Respondents jointly and severally. *See HUD v. Ocean Sands*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,055, 25,547 (Sept. 9, 1993) *HUD v. Riverbay*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,080, 25,743 (Sept. 8, 1994).

ORDER

Having concluded that Respondents Jankowski Lee & Associated, River Park Development Corporation, John R. Pankratz, and Sue Sellin have discriminated against Complainant Andrew Rusinov in violation of 42 U.S.C. §§ 3604(f)(1)-(3), it is hereby **ORDERED** that:

1. Respondents are permanently enjoined from discriminating against Andrew Rusinov or any other person, visitor or associate of such person with respect to housing because of disability. Such discrimination includes, *inter alia*, refusal to make reasonable accommodations in rules, practices and services and/or reasonable modifications when such accommodation may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling, including public and common use areas. Respondents are further enjoined from unlawfully coercing, intimidating and interfering with an individual in the exercise or enjoyment of rights granted or protected by the Fair Housing Act,

including but not limited to retaliating against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act.

2. Within ten (10) days of the date on which this **ORDER** becomes final, Respondents shall assign a parking space in the front parking lot of the 1700 East River Road apartment building. This parking space shall be the regular spot that is closest to the building, or shall, at the option of Respondents, be one of the existing handicapped parking spaces. In the event Mr. Rusinov moves to another building within Respondents' control, Respondents shall reassign him the handicapped or nonhandicapped parking space closest to that subsequent apartment for his sole use. Respondents shall place a sign, no smaller than the handicapped parking signs now in place at the development, with the statement "Reserved - Violators Will Be Towed" near the curb immediately adjacent to the parking space assigned to Mr. Rusinov. Respondent shall take all reasonable steps to ensure that any vehicle other than that belonging to Mr. Rusinov which is parked in the assigned space is promptly removed.

3. Within forty-five (45) days of the date on which this Order becomes final, Respondents shall pay damages in the amount of \$2,500 to Complainant Andrew Rusinov.

4. Within forty-five (45) days of the date on which this Order becomes final, Respondents shall pay a civil penalty of \$2,500 to the Secretary, United States Department of Housing and Urban Development.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 CFR 104.910, and will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary within that time.

ROBERT A. ANDRETTA
Administrative Law Judge