

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY**

The Secretary, United States Department of Housing and Urban Development, Charging Party on behalf of Lawrence J. Chrum, and his minor children,)	
Complainants,)	
)	
v.)	
)	
Felder Peter King Estate of Ward Protectee, Daniel J. Felder as Co-Guardian and Conservator of the Felder Peter King Estate of Ward Protectee, Andrea Williams as Co-Guardian and Conservator of the Felder Peter King Estate of Ward Protectee, and Eric Felder,)	21-AF-0247-FH-029
Respondents.)	
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ORDER ON SECRETARIAL REVIEW

On December 23, 2022, Felder Peter King Estate of Ward Protectee, Daniel J. Felder as Co-Guardian and Conservator of the Felder Peter King Estate of Ward Protectee, Andrea Williams, as Co-Guardian and Conservator of the Felder Peter King Estate of Ward Protectee (collectively "Estate") and Eric Felder (collectively "Respondents") filed an Appeal to the Secretary of the United States Department of Housing and Urban Development ("HUD") of the Initial Decision and Order ("Initial Decision") issued by Deputy Chief Administrative Law Judge ("ALJ") Alexander Fernández-Pons on December 9, 2022. The Initial Decision ordered Respondents Eric Felder and Estate to jointly and severally pay Complainant Lawrence Chrum ("Complainant") the sum of \$10,200.00 consisting of \$7,200.00 for Complainant's alternative housing costs, and \$3,000 for Complainant and his minor children's emotional distress. Further, Respondent Eric Felder was ordered to pay a \$500.00 civil money penalty and Respondent Estate was ordered to pay a \$5,000.00 civil money penalty.

Upon review of the entire record in this proceeding, Respondent's Appeal is **DENIED** and the ALJ's Decision is **AFFIRMED** for the reasons set forth below.

BACKGROUND

On February 2, 2020, Respondent Eric Felder advertised on Craigslist a 2-bedroom rental dwelling located at 618 Tompkins Street, Charles, MO. Government Exhibit 22. The dwelling is a unit in a duplex on a subdivided lot with three buildings: two duplexes, with the addresses 612, 614, 616 and 618 Tompkins Street; and a three-story brick residence at 407 S. 6th Street. Government Exhibits 17 & 18. The property was owned by Respondent Estate. *See* Government Exhibit 18. Respondent Felder was responsible for managing the properties. Eric Felder's Amended Answers at 8.

On the same day the advertisement was placed on Craigslist, Complainant replied to it and exchanged text messages with Respondent Felder concerning the property at 618 Tompkins Street. Government Exhibit 1. On February 3, 2020, Respondent Felder notified Complainant that he was renting unit 618 to another applicant who had been the first to apply, but unit 614 would become available in March or April 2020 and he would have "first dibs for sure." *Id.* Respondent Felder and Complainant exchanged several text messages throughout February and March concerning unit 614 and, on March 18, Respondent Felder asked Complainant to confirm he had one daughter. *Id.* Complainant responded he had four children, but only two would be staying at the property "a couple nights a week." *Id.* Respondent Felder texted Complainant that he had to "run all this by [his] Mom." *Id.* Later that day, Respondent Felder texted Complainant that his mother said no and "is against little kids in such a small place..." *Id.* Complainant later signed a lease at another property in August 2020 for \$300 more than the subject property. Government Exhibit 19.

PROCEDURAL HISTORY

On August 30, 2021, the United States Department of Housing and Urban Development ("Charging Party") filed a Charge of Discrimination against the Respondents on behalf of Complainant and two of his minor children. The Charge alleged that (1) Respondents Eric Felder and Estate refused to rent to Complainant because of his familial status; (2) Respondents Eric Felder and Estate discriminated in the terms, conditions, or privileges of rental of a dwelling against Complainant because of his familial status; and (3) Respondent Eric Felder made discriminatory statements relating to Complainant's familial status on behalf of Respondent Estate by refusing to rent an apartment to Complainant based on Complainant's familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3601 et seq. ("the Act").

On September 22, 2021, the ALJ issued a Notice of Hearing and Order setting several procedural deadlines, including that Respondents file an answer to the Charge by October 1, 2021. On October 13, 2021, Respondent Eric Felder filed an answer to the Charge on behalf of all Respondents.

On January 28, 2022, Charging Party moved for summary judgment, and on February 16, 2022, Respondent Eric Felder filed a response to the Motion for Summary Judgment. On March 1, 2022, the ALJ issued an Order Granting Partial Summary Judgment ("Summary Judgment Order") in favor of the Charging Party, finding Respondents Eric Felder and Estate violated sections 804(a) and (c) of the Act, and set the remaining issues regarding whether there was a

violation of section 804(b) and whether Respondents Daniel Felder and Andrea Williams were co-guardians and conservators of Respondent Estate for hearing.

On July 11, 2022, a hearing was held via videoconference regarding the remaining issues. On August 3, 2022, the Court issued a Post-Hearing Order requiring the submission of post-hearing briefs by September 7, 2022, which were timely filed by the Charging Party and Respondent Eric Felder.

On December 9, 2022, ALJ Fernández-Pons issued an Initial Decision and Order, finding Respondent's jurisdictional challenge under the "Mrs. Murphy" exemption was not valid because the owner of the property is a legal entity which cannot reside in one of the units and even if the legal entity could reside in one of the units, the relevant property consists of more than four units. Initial Decision at 3. The ALJ further found state records demonstrate Respondents Daniel Felder and Andrea Williams were co-guardians and conservators of Respondent Estate. *Id.* at 4.

Finally, the ALJ found Complainant did not violate Section 804(b) of the Fair Housing Act, which makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status." 42 U.S.C. § 3604(b). Since Complainant never actually applied for the property, but instead was outright refused the possibility of rental, the ALJ found there was no specific discrimination of terms and conditions. Initial Decision at 4-6.

The ALJ then calculated the relief to be granted for the violations of Sections 804(a) and 804(c) that he had previously found in his Summary Judgment Order. 42 U.S.C. § 3612(g)(3). The ALJ ordered Respondents Eric Felder and the Estate to jointly and severally pay Complainant \$10,200 in damages and further ordered Respondent Estate to pay \$5,000 and Respondent Eric Felder to pay \$500 in civil money penalties. Initial Decision at 13.

On December 23, 2022, Respondent Felder submitted a "Formal Objection and Appeal to the Initial Decision and Order" ("Appeal") on behalf of himself and his deceased mother, Suzanne M. Felder. In the Appeal, Respondent contends the ALJ erred when granting Complainant's Motion for Summary Judgment pursuant to 42 U.S.C. § 3604(a) and (c), objects to HUD's jurisdiction in this matter, and requests the case be dismissed. *See Appeal.* Respondent challenges many of the factual underpinnings of the case and maintains the "Mrs. Murphy" exemption applies. *Id.* He also challenges the penalties applied in the case. *Id.*

On December 30, 2022, HUD filed "Charging Party's Statement in Opposition to Respondent's Request for Review of the Administrative Law Judge's Initial Decision and Order" ("Opposition"). HUD contends Respondent has "provided no grounds meeting the standard for Secretarial review", stating the "material facts underlying the ALJ's holdings are supported by substantial evidence in the record; the legal conclusions are sound; the decision is in accordance with the law, rules, and legal precedent; and no prejudicial error of procedure was committed." Opposition at 4.

DISCUSSION

I. The ALJ Correctly Found the “Mrs. Murphy” Exemption Under Section 803(b) Was Inapplicable.

In his appeal, Respondent Felder continues to claim the “Mrs. Murphy” exemption is applicable. Appeal at 4. However, he has not provided any information to support his contention other than a vague assertion that the local officials may have colluded with HUD to ensure adjacent properties were considered one property for purposes of the Fair Housing Act. *Id.*

The “Mrs. Murphy” exemption applies to rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies such living quarters as his residence. 42 U.S.C. § 3603(b)(2). In the ALJ’s Initial Decision, he found that because the owner of the property, Respondent Estate, is a legal entity, it cannot reside in one of the units. Initial Decision at 3. Additionally, even if a legal entity could reside in one of the units, the ALJ previously found the property consisted of five units not four or less units. *Id.* In the Summary Judgment Motion, the ALJ ruled it was not in dispute that Respondent Estate owns the property consisting of two duplexes comprising four units, and the single-family residence at 407 S. 6th Street for a total of five units. This is confirmed by the property survey. *See* Government Exhibit 18.

The Charging Party claims Respondent’s continued argument regarding “Mrs. Murphy” is not grounds on which he may seek review because the ALJ previously ruled upon it in the Initial Decision. Opposition at 5-6. Under 24 C.F.R. § 180.675(b), Respondent may appeal findings of fact and legal conclusions. Respondent’s contention about the number of units and the applicability of the “Mrs. Murphy” exemption meets this standard because Respondent is challenging the factual findings of the ALJ in regards to the number of units and his legal conclusion that the “Mrs. Murphy” exemption does not apply. While the Charging Party raises compelling reasons why Respondent’s appeal does not have merit, the nature of Respondent’s assertions meet the appeal requirements.

After review, I agree with the ALJ’s finding that the “Mrs. Murphy” exemption does not apply because Respondent Estate is the owner of the property and a legal entity cannot reside in one of the units. Further, even if the “Mrs. Murphy” exemption had applied to Respondents’ 804(a) violation, Respondents were also found to have violated section 804(c), which is not subject to the exemption. 42 U.S.C. § 3603(b).

II. The ALJ Correctly Found Violations of Sections 804(a) and 804(c).

In its Appeal, Respondent challenges HUD’s jurisdiction and asserts the ALJ erred by granting in part the Charging Party’s Motion for Summary Judgment. Appeal at 7. The ALJ found Respondent violated § 804(a) and § 804(c) in a Summary Judgment Order based on Respondent Felder’s text messages to Complainant. The Charging Party contends the text messages provide substantial evidence that Respondent violated the Fair Housing Act. Opposition at 5.

Section 804(c) of the Act makes it unlawful for a person “to make ... any ... statement ... with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on ... familial status ... or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C. § 3604(c). Discriminatory statements include using words or phrases which convey dwellings are not available to a particular group of persons due to familial status. 24 C.F.R. § 100.75(c)(1). Discriminatory statements also include expressing to prospective renters a preference or limitation because of familial status. 24 C.F.R. § 100.75(c)(2). To prove a violation under Section 804(c), the Charging Party must present evidence that (1) the respondent made the statement; (2) the statement was made with respect to the rental of a dwelling; and (3) the statement indicated a preference, limitation, or discrimination against Complainant on the basis of familial status. *Collier*, 2019 U.S. App. LEXIS 2102, at *56 (citing *White v. HUD*, 475 F.3d 898, 904 (7th Cir. 2007)). It is well-established that the standard by which a statement should be evaluated in order to determine whether it indicates a preference, limitation or discrimination, or is so intended, is whether an ordinary listener or reader would understand the statement as suggesting that a “particular [protected group] is preferred or dispreferred for the housing in question.” *Jancik v. HUD*, 44 F.3d 553, 556 (7th Cir. 1995) (quoting *Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2nd Cir. 1991)).

Section 804(a) of the Act makes it unlawful to, among other things, “refuse to rent after the making of a bona fide offer ... or otherwise make unavailable or deny, a dwelling to any person because of ... familial status.” 42 U.S.C. § 3601. To prove a violation under section 804(a), the Charging Party must demonstrate Complainant’s familial status was a significant factor in Respondents’ decision to refuse or deny rental of the subject rental property to them. *Collier*, 2019 U.S. App. LEXIS 2102, at *13 (citing *Kormoczy v. HUD*, 53 F.3d 821, 823 (7th Cir. 1995)).

In this case, Respondent Felder’s text message of March 18, 2020, stated: “Hate to say it . . . but my Mom gave me a firm ‘No’. She’s against little kids in such a small place and [s]ays she’s had trouble in the past. Sorry man — Good Luck.” The Respondent does not deny making these statements. From the language used, an ordinary reader would understand a family with small children was dispreferred for the rental unit. *See Jancik*, 44 F.3d at 556. As a result, I find there is a showing of discrimination based on familial status and there is no genuine dispute of material facts in the record on this point.

III. The ALJ Correctly Calculated Damages and Penalties.

In its appeal, Respondent challenges the assessment of civil money penalties, claiming the Estate should not have to bear the “inherited burden” resulting from his mother’s passing. Appeal at 5. In its Initial Decision, the ALJ ordered Respondents to jointly and severally pay \$10,200 in damages. Initial Decision at 13. Specifically, \$7,200 in alternative housing costs and \$3,000 in emotional distress damages. *Id.* Additionally, Respondent Estate must pay \$5,000 and Respondent Eric Felder must pay \$500 in civil money penalties. *Id.* The Charging Party claims Respondent failed to provide legal authority supporting the request for review, including as it relates to damages and civil money penalties. Opposition at 6.

Upon finding a respondent has engaged in a discriminatory housing practice, the Court is authorized to issue an order providing appropriate relief. 42 U.S.C. § 3612(g)(3). Such relief may include “actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent.” *Id.*

The burden of producing evidence of financial resources falls upon the Respondents, because such information is peculiarly within the Respondents’ knowledge. *HUD v. Godlewski*, 2007 HUD ALJ LEXIS 67 at *25. A civil penalty may be imposed without consideration of a respondent’s financial situation if the respondent fails to produce evidence that would tend to mitigate the amount to be assessed. *Id.*, see also *Campbell v. United States*, 365 U.S. 85, 96 (1961).

The ALJ’s reasoning for assessing damages and civil monetary penalties is sound and supported by the record. Respondent has not demonstrated otherwise or offered any reasonable justification for mitigating the damages and penalties. Moreover, Respondent Estate refused to participate in the proceeding to provide any credible evidence of ability to pay. Initial Decision at 12. Therefore, I agree with the ALJ’s determination on the matter of damages and civil penalties.

CONCLUSION

Upon review of the entire record of this proceeding, as well as applicable statutes and regulations, the Appeal is **DENIED** for reasons set forth above. Pursuant to 24 C.F.R. § 180.675, the ALJ’s December 9, 2022, Initial Decision is **AFFIRMED**.

Dated this 6 of January, 2023



Deputy Secretary Adrienne Todman

CERTIFICATE OF SERVICE

I hereby certify on January 6, 2023, the *Order on Secretarial Review*, issued by Adrienne Todman, Secretarial Designee, in *HUD v. Felder Peter King Estate of Ward Protectee 21-AF-0247-FH-029*, was served on the following parties in the manner indicated:

Jessica Wimberly

Jessica Wimberly
Secretarial Review Clerk

INTEROFFICE MAIL AND EMAIL

HUD Office of Administrative Law Judges
Office of Hearing and Appeals
451 7th Street, S.W. Room B-133
Washington DC 20410
Email: alj.alj@hud.gov

Kathleen M. Pennington
Assistant General Counsel for Fair Housing
Enforcement
Office of General Counsel
U.S. Department of Housing and Urban
Development
451 Seventh Street, SW, Room 10270
Washington, DC 20410
kathleen.m.pennington@hud.gov

Heather M.F. Ousley
Trial Attorney
U.S. Department of Housing and Urban
Development
heather.m.ousley@hud.gov

Amy M. Frisk
amy.m.frisk@hud.gov

VIA FIRST CLASS MAIL AND EMAIL

Respondent(s):
Felder Peter King Estate of Ward Protectee
701 Tompkins Street
St. Charles, MO 63301
ercfeld@hotmail.com

Respondent:

Eric Felder

701 Tompkins Street

St. Charles, MO 63301

ercfeld@hotmail.com

Complainant:

Lawrence J. Chrum

551 Barbour Street

St. Charles, MO 63301

larry@chrumlaw.com

FIRST CLASS MAIL

Daniel J. Felder, Co-Guardian

and Conservator

Felder Peter King Estate of Ward Protectee

407 S. Sixth Street

St. Charles, MO 63301

Andrea Williams, Co-Guardian and Conservator

Felder Peter King Estate of Ward Protectee

10 Austin Terrace Court

St. Charles, MO 63301