



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

VIRGINIA HOUGH,

Complainant,

v.

TOMS POINT LANE CORP.,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10173211

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on April 13, 2016, by Robert M. Vespoli, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any

member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **JUN 24 2016**
Bronx, New York



HELEN DIANE FOSTER
COMMISSIONER



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on the Complaint of

VIRGINIA HOUGH,

Complainant,

v.

TOMS POINT LANE CORP.,

Respondent.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10173211**

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against her when it denied her request to keep her dog in her apartment as a reasonable accommodation for her disability. Complainant has proven her case, and she is entitled to an award for mental anguish. Respondent shall cease and desist from enforcing its rule prohibiting dogs against Complainant, and it shall also pay reasonable attorney's fees to Complainant's counsel.

PROCEEDINGS IN THE CASE

On January 21, 2015, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Robert M. Vespoli, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on November 18-19, 2015.

Complainant and Respondent appeared at the hearing. Complainant was represented by Stephen D. Haber, Esq. Respondent was represented by Bruce W. Migatz, Esq.

The parties filed timely post-hearing briefs.

By letter dated January 15, 2016, the presiding ALJ provided Complainant’s counsel with an opportunity to supplement his request for attorney’s fees. In this letter, the presiding ALJ also provided Respondent’s counsel with an opportunity to respond to any submission by Complainant’s counsel. The letter from the presiding ALJ dated January 15, 2016, is received in evidence as ALJ’s Exhibit 6. Complainant’s counsel submitted a timely Affirmation of Legal Services dated January 27, 2016. This submission is received in evidence as ALJ’s Exhibit 7. Respondent’s counsel submitted a timely Memorandum of Law in Opposition to Complainant’s Application for Attorney’s Fees and Costs dated February 11, 2016. This submission is received in evidence as ALJ’s Exhibit 8.

FINDINGS OF FACT

1. Respondent is a cooperative corporation. (Tr. 15)
2. Complainant is currently a residential owner of one of Respondent’s garden apartments, apartment 3-B (“the Apartment”). When Complainant first moved into the Apartment forty-

eight years ago, she rented the Apartment. Sometime in the early 1980s, the building became a housing cooperative. At that time, Complainant became one of Respondent's shareholders and continued to reside in the Apartment. (Tr. 15-16)

3. During the forty-eight years that she has resided in the Apartment, Complainant has "always had dogs." (Tr. 17-18)

4. In 1995, Respondent implemented a rule prohibiting dogs. (Tr. 18-19, 108-09)

5. Around this time, Complainant adopted a dog named Feather, a twelve-pound poodle. Respondent allowed Complainant to keep Feather in the Apartment because she adopted Feather before Respondent implemented the rule prohibiting dogs. (Tr. 16-18, 26, 91)

6. When Complainant adopted Feather, she resided in the Apartment with her husband and daughter. (Tr. 50-51, 91)

7. After Complainant's daughter left the Apartment in 1995, Complainant resided in the Apartment with her husband and Feather. (Tr. 51, 55, 90)

8. Complainant's husband died in September 2012. (Tr. 91)

9. Feather died in June 2014. (Tr. 19)

10. After Feather died, Complainant felt "major stress." At that time, Complainant experienced chest pains, had difficulty sleeping, cried "all the time," and isolated herself in the Apartment. (Tr. 20-21, 96)

11. Although Complainant had experienced anxiety-related problems for most of her life, these problems became more severe after Feather died. (Tr. 21, 96-97)

12. Because of her deteriorating condition, Complainant initially sought treatment from her primary care physician, Dr. Holly Bienenstock. (Tr. 21-22, 97)

13. At that time, Dr. Bienenstock prescribed Valium to Complainant. Complainant did not respond well to Valium, so she stopped taking the medication. (Tr. 22-23)

14. Dr. Bienenstock provided Complainant with a letter dated August 4, 2014, stating that Complainant suffered from an anxiety-related illness which “meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.” In her letter, Dr. Bienenstock stated that she had prescribed an emotional support animal for Complainant “to enhance her ability to live independently and to fully use and enjoy the dwelling unit.” (Complainant’s Exh. 1)

15. Sometime in the middle of August 2014, Complainant adopted a four-pound white poodle named Treasure. This dog currently resides with Complainant in the Apartment. (Tr. 16, 25-26)

16. Both Complainant and her daughter confirmed that Complainant’s feelings of anxiety and distress were greatly diminished because she adopted Treasure. (Tr. 26-27, 98-99, 103-04)

17. Complainant did not ask Respondent for permission to adopt Treasure. (Tr. 28)

18. In September 2014, Barbara Healy, a resident and a member of Respondent’s board of directors (“BOD”), saw Complainant with Treasure on Respondent’s grounds. (Tr. 115, 140)

19. By letter dated October 8, 2014, Respondent’s counsel notified Complainant that she was in violation of House Rule 16 because she was harboring a dog in the Apartment. This letter threatened to terminate Complainant’s proprietary lease if she continued to violate this rule. (Complainant’s Exh. 2)

20. On November 14, 2014, Complainant began treatment with a psychologist, Dr. Daniel P. Kremin, for her current condition. At that time, Dr. Kremin received Complainant’s background information and performed a mental status examination pursuant to the applicable

Diagnostic and Statistical Manual (“DSM-5”) established by the American Psychiatric Association. (Tr. 176-78, 188; Complainant’s Exh. 7)

21. Dr. Kremin observed that Complainant was “a highly anxious individual” who exhibited typical somatic responses to an anxiety disorder including restlessness, pressured breathing, and difficulty speaking. Complainant reported to Dr. Kremin that she had difficulty sleeping, did not eat well, and had become withdrawn from social interactions. (Tr. 179-80)

22. Dr. Kremin determined that these symptoms were affecting Complainant for more than six months and were “more on than off.” (Tr. 180-81)

23. Dr. Kremin diagnosed Complainant with generalized anxiety disorder. At the time of the public hearing, Complainant continued to suffer from this condition, which has persisted for an extended period of time. (Tr. 179-81, 193-94)

24. As part of his diagnosis of generalized anxiety disorder, Dr. Kremin determined that Complainant’s condition had a significant impact on her major life functions, including the residential aspect of her life. (Tr. 180, 188)

25. Dr. Kremin prescribed a treatment plan for Complainant which included ongoing cognitive behavioral psychotherapy and a therapy dog. (Tr. 182)

26. Prior to the date of the public hearing, Dr. Kremin held thirty-two psychotherapy sessions with Complainant. (Tr. 190-91; Complainant’s Exh. 7)

27. By letter dated December 2, 2014, Complainant’s counsel sent a letter to Respondent’s BOD requesting that Complainant be allowed to keep Treasure in the Apartment, with reasonable restrictions, as a reasonable accommodation for her generalized anxiety disorder. (Complainant’s Exh. 3)

28. In his December 2, 2014, letter, Complainant's counsel attached a letter from Dr. Kremin dated November 24, 2014. Dr. Kremin's letter addressed the lengthy history of Complainant's "anxiety related difficulties" which were exacerbated by the death of her husband and the death of her dog. In his letter, Dr. Kremin stated that he diagnosed Complainant with generalized anxiety disorder and that he recommended that Complainant continue with regular psychotherapeutic treatment. Dr. Kremin also wrote that he recommended that Complainant "continue to maintain a companion dog in the capacity of a service animal to assist in the abatement of her anxiety related discomfort which has become disabling to her." (Complainant's Exh. 3)

29. In his December 2, 2014, letter, Complainant's counsel offered to provide "any further information or documentation" required to assist Respondent's BOD in responding to Complainant's request for a reasonable accommodation. (Complainant's Exh. 3)

30. Respondent summarily denied Complainant's request for a reasonable accommodation without any inquiry or investigation. By letter dated December 19, 2014, Respondent's counsel stated that "The explanation of [Complainant's] disability and need for a companion dog, is not sufficient to establish entitlement to a reasonable accommodation." This letter further stated that Complainant must remove her dog from the Apartment or Respondent would move to terminate her lease. (Tr. 142-43; Complainant's Exh. 4)

31. By letter dated January 9, 2015, Respondent sent Complainant a notice seeking to terminate her proprietary lease because she continued to keep a dog in the Apartment. (Complainant's Exh. 5)

32. At the public hearing, Dr. Kremin testified that Complainant required the assistance of Treasure in order to use and enjoy the Apartment. Dr. Kremin opined that without Treasure,

Complainant would not benefit from the occupancy of her home because she would have great difficulty eating, sleeping, relaxing, taking care of herself, and having social interactions in her home. (Tr. 188-90, 196)

33. In November 2014, Dr. Kremin believed that Complainant required the assistance of Treasure in order to use and enjoy the apartment. However, he did not specifically state this in his November 24, 2014, letter because he believed it was unnecessary “legalese” for an initial letter to a BOD most likely comprised of laypeople. (Tr. 190; Complainant’s Exh. 3)

34. At the public hearing, Respondent proffered testimony from a psychiatrist, Frank G. Dowling, M.D., contradicting Dr. Kremin’s diagnosis of Complainant’s mental condition. Notably, Dr. Dowling never directly examined Complainant. Instead, Dr. Dowling relied exclusively on Dr. Kremin’s notes in arriving at the conclusion that Complainant did not suffer from generalized anxiety disorder. Dr. Dowling also concluded that Complainant “does not suffer from a disability that prevents her from enjoying her apartment.” (Tr. 266-71, 273; Complainant’s Exh. 7; Respondent’s Exh. 9)

35. Dr. Kremin’s notes are summary in nature; he typically prepares such notes in order to “familiarize [himself] with what had gone on during the previous session.” Dr. Kremin’s notes are not verbatim notes; he did not prepare his notes to establish a detailed justification for his opinion in contemplation of litigation. (Tr. 177, 247-49; Complainant’s Exh. 7)

36. Based on the evidentiary record, I credit Dr. Kremin’s thorough analysis of Complainant’s mental condition, and I find that his testimony is more reliable than the testimony of Dr. Dowling.

37. During the summer of 2015, Complainant visited Respondent’s swimming pool on fifty occasions for approximately one hour on each occasion. Because Respondent’s rules prohibit

dogs in the pool area, Complainant did not bring Treasure with her to the pool. When she visited the pool, Complainant felt comforted because Treasure was in the Apartment, “which was not very far away.” (Tr. 66, 68, 85, 104-05, 111)

38. Dr. Kremin “would question” his diagnosis if he learned that Complainant visited Respondent’s pool without Treasure on fifty occasions during the summer months for thirty to sixty minutes each visit. (Tr. 256-57)

39. Dr. Kremin also opined that it was consistent with a diagnosis of generalized anxiety disorder for Complainant to leave the Apartment for a period of time without Treasure when she felt comfortable. Dr. Kremin believed that Complainant could use Treasure “as her therapy” in such situations: Treasure would function as a “backup plan” for Complainant in the event that she began to feel overwhelmed by anxiety. (Tr. 192-93)

40. Respondent has allowed a blind resident to keep a service dog. (Tr. 150)

41. Respondent has also allowed residents to keep cats and other small animals. (Tr. 139)

42. A cat could not offer Complainant the same therapeutic effect as a dog. In light of Complainant’s close relationship with dogs over the course of many years, Dr. Kremin opined that a dog was the most effective comfort animal for Complainant to keep in the Apartment. Dr. Kremin also explained that cats, unlike dogs, generally fear people and would not be suitable comfort animals for Complainant. (Tr. 42-43, 182-84)

43. Respondent’s denial of Complainant’s request for a reasonable accommodation and its threats of eviction have exacerbated Complainant’s symptoms of generalized anxiety disorder. Dr. Kremin noted that these events acted as a “significant trigger” causing her condition to regress. (Tr. 191-92, 250-51; Complainant’s Exh. 7)

44. Complainant's daughter observed that Complainant became upset, anxious, and overwhelmed by the events surrounding Respondent's denial of her request to keep Treasure in the Apartment. (Tr. 99, 103-04)

OPINION AND DECISION

In 1995, Respondent implemented a rule prohibiting dogs. New York courts have upheld the validity of such a rule and have determined that a violation of such a rule may be considered a substantial breach of the lease agreement. *See Crossroads Apartment Assoc. v. LeBoo*, 152 Misc.2d 830, 578 N.Y.S.2d 1004 (Rochester City Ct. 1991).

Nevertheless, it is unlawful for Respondent "to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a] person with a disability equal opportunity to use and enjoy a dwelling." *See* N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.18(2).

Through her attorney, Complainant asked that she be allowed to keep Treasure in the Apartment, with reasonable restrictions, as a reasonable accommodation for her generalized anxiety disorder. Respondent summarily denied Complainant's request for a reasonable accommodation without any inquiry or investigation. The record does not show that Respondent had a formal policy or procedure to be used by a resident seeking such an accommodation.

In order to establish that Respondent violated the Human Rights Law, Complainant must show that "[she is] disabled, that [she is] otherwise qualified for the tenancy, that because of [her] disability it is necessary for [her] to keep the dog in order for [her] to use and enjoy the apartment, and that reasonable accommodations could be made to allow [her] to keep the dog." *Kennedy St. Quad. Ltd. v. Nathanson*, 62 A.D.3d 879, 880, 879 N.Y.S.2d 197, 198 (2d Dept.

2009), *leave to appeal denied*, 13 N.Y.3d 714, 895 N.Y.S.2d 313 (2009) (citations omitted).

A disability is defined in the Human Rights Law as “a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.” A disability may also be a record of such impairment or the perception of such impairment. Human Rights Law § 292.21.

In August 2014, Dr. Bienenstock, Complainant’s primary care physician, diagnosed Complainant as having an anxiety-related illness which “meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.” In November 2014, Dr. Kremin, Complainant’s psychologist, specifically diagnosed Complainant as having generalized anxiety disorder using medically accepted clinical diagnostic techniques. Dr. Kremin provided a clinical assessment of Complainant’s symptoms based on his observations and Complainant’s self-reporting. Ultimately, Dr. Kremin arrived at his diagnosis using the DSM-5. Dr. Kremin held thirty-two psychotherapy sessions with Complainant before he testified as an expert witness in these proceedings.

Respondent’s expert witness, Dr. Dowling, contradicted Dr. Kremin’s diagnosis of Complainant’s mental condition. Notably, Dr. Dowling never directly examined Complainant. Instead, Dr. Dowling relied exclusively on Dr. Kremin’s notes, which are merely summary in nature, in arriving at the conclusion that Complainant did not suffer from generalized anxiety disorder.

As the trier of fact, the Division determines the weight of expert testimony. *See Felt v. Olson*, 51 N.Y.2d 977, 979, 435 N.Y.S.2d 708, 709 (1980). I credit Dr. Kremin’s thorough analysis and his familiarity with Complainant’s mental condition. I find that the testimony of Dr.

Kremin is more reliable than the testimony of Dr. Dowling. At one point during his testimony, Dr. Kremin appeared to question his diagnosis in light of Complainant's frequent visits to Respondent's swimming pool last summer. However, Dr. Kremin did not recant his diagnosis of Complainant's mental impairment, and his testimony established that Complainant's conduct in this regard is consistent with a diagnosis of generalized anxiety disorder.

Therefore, I conclude that Complainant suffers from generalized anxiety disorder and that Complainant is disabled as that term is defined in the Human Rights Law.

Complainant began residing in the Apartment forty-eight years ago. In the early 1980s, Complainant became one of Respondent's shareholders, and she continues to reside in the Apartment. Therefore, Complainant is otherwise qualified for the tenancy and her status as one of Respondent's shareholders.

Complainant has established that her disability requires that she keep Treasure in order to use and enjoy the Apartment. Through Dr. Kremin, Complainant has presented the requisite "psychological evidence to demonstrate that the dog was actually necessary in order for [her] to enjoy the apartment." *See Kennedy St. Quad, Ltd.* at 880, 879 N.Y.S.2d at 198. Dr. Kremin opined that without Treasure, Complainant would not benefit from the occupancy of her home because she would have great difficulty eating, sleeping, relaxing, taking care of herself, and having social interactions in her home. These activities involve some of the fundamental components of the use and enjoyment of a home. Dr. Kremin's testimony is bolstered by empirical evidence. Both Complainant and her daughter credibly confirmed that Complainant's feelings of anxiety and distress in her home were greatly diminished because she adopted Treasure.

Dr. Dowling provided contradictory testimony on this issue based on his review of Dr. Kremin's session notes. For the reasons discussed more fully above, I credit the testimony of Dr. Kremin over the testimony of Dr. Dowling.

Finally, Respondent could make reasonable accommodations to allow Complainant to keep Treasure. Respondent allowed Complainant to keep her prior dog, Feather, in the Apartment for nineteen years. There is nothing in the record showing that Respondent could not accommodate Complainant in a similar fashion by allowing her to keep Treasure, a much smaller dog than Feather, in the Apartment. The record also shows that Respondent has allowed a blind resident to keep a service dog. Respondent has also allowed residents to keep cats and other small animals.

The record shows that a cat could not offer Complainant the same therapeutic effect as a dog. In light of Complainant's close relationship with dogs over the course of many years, Dr. Kremin opined that a dog was the most effective comfort animal for Complainant to keep in the Apartment. Dr. Kremin also explained that cats, unlike dogs, generally fear people and would not be suitable comfort animals for Complainant.

Respondent has not shown that making a limited exception to its rules to accommodate Complainant's disability by allowing her to keep Treasure would cause it to suffer an undue hardship.

Accordingly, the complaint is sustained.

The "make whole" provisions of the Human Rights Law allows various remedies to compensate victims of unlawful discrimination, including directing that a respondent cease and desist from unlawful discriminatory practices. Human Rights Law § 297.4(c)(i).

Where appropriate, a complainant may be awarded damages owing to his or her emotional distress in housing discrimination cases. *See Mozaffari v. New York State Div. of Human Rights*, 63 A.D.3d 643, 881 N.Y.S.2d 437 (1st Dept. 2009).

Complainant provided evidence showing that Respondent's denial of her request for a reasonable accommodation and its threats of eviction have exacerbated her symptoms of generalized anxiety disorder. However, the record also shows that Complainant has a lengthy history of anxiety-related mental illness that predates Respondent's unlawful conduct. Under these circumstances, an award of \$1,000.00 for mental anguish will effectuate the purposes of the Human Rights Law. *See id.*

The Human Rights Law permits the Division to award punitive damages in cases of housing discrimination. Human Rights Law § 297.4(c)(iv). However, an award of punitive damages requires more than a mere showing that the law has been violated. There must be a finding that Respondent acted "wantonly or willfully or [was] motivated by ill will, malice, or a desire to injure [Complainant]." *See Broome v. Biondi*, 17 F. Supp. 2d 211, 228 (S.D.N.Y. 1997) (citations and internal quotation marks omitted).

In the instant case, Respondent did not act in a wanton, willful, or malicious manner. Complainant adopted Treasure in violation of Respondent's rules without first asking for permission to do so. Respondent acted to enforce its rules after it learned that Complainant was keeping Treasure in the Apartment. The record shows that Respondent has allowed a blind resident to keep a service dog. Respondent has also allowed residents to keep cats and other small animals. In light of the circumstances of this case, Complainant has not established that Respondent acted with the requisite state of mind that would warrant an award of punitive damages.

Human Rights Law § 297.4(e) requires that “any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” The additional factors that determine the appropriate amount of a civil penalty are the goal of deterrence, the nature and circumstances of the violation, the degree of Respondent’s culpability, any relevant history of Respondent’s actions, Respondent’s financial resources, and other matters as justice may require. *Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. New York State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009).

For the reasons discussed more fully above, the nature and circumstances surrounding Respondent’s misconduct does not warrant the assessment of civil fines or penalties against it. Respondent’s misconduct was not egregious. Respondent has a duty to protect the rights of its residents by enforcing its rules, and it has provided accommodations for other disabled residents. Therefore, no civil fines or penalties will be assessed.

Complainant is entitled to recover reasonable attorney’s fees expended in litigating this matter. *See* Human Rights Law § 297.10.

The standards for determining reasonable attorney’s fees under the Human Rights Law are consistent with federal precedent. *See McGrath v. Toys “R” Us, Inc.*, 3 N.Y.3d 421, 429, 788 N.Y.S.2d 281, 284 (2004). Attorney’s fees are to be calculated utilizing the “lodestar” method which calculates the amount of the fee award “by multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* at 430, 788 N.Y.S.2d at 285.

When seeking to determine the number of hours reasonably expended by counsel on a given case, the Division should discount duplicative or inefficient hours; disallow excessive,

unnecessary, or “padded” hours; and utilize the Division’s inherent knowledge, experience and expertise regarding the typical time required to complete similar activities. *See McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 176 Misc. 2d 325, 328, 672 N.Y.S.2d 230, 232 (N.Y. Sup. Ct. 1997), *appeal dismissed*, 256 A.D.2d 269, 682 N.Y.S.2d 167 (1st Dept. 1998), *appeal dismissed*, 93 N.Y.2d 919, 691 N.Y.S.2d 383 (1999), *lv. denied*, 94 N.Y.2d 753, 700 N.Y.S.2d 427 (1999).

In the instant case, Complainant’s counsel seeks compensation for forty-six (46.0) hours of substantive legal work on this case, plus \$561.00 in disbursements for a copy of the public hearing transcript. (ALJ’s Exh. 7) The amount of hours expended by Complainant’s counsel includes eight (8.0) hours spent preparing legal documents and appearing in New York State Supreme Court, Nassau County, seeking to stay the eviction of Complainant pending a determination by the Division in this case.

Complainant’s counsel submitted a description of the services he rendered and the time he expended representing Complainant. However, Complainant’s counsel did not submit contemporaneous time records in support of his claim for attorney’s fees. An application for a fee award “should generally be documented by contemporaneously created time records that specify, for each attorney, the date, the hours expended, and the nature of the work done.” *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998). Nevertheless, in the absence of contemporaneous time records, the Division “should look at the big picture to see if the total time expended for each portion of the case was reasonable.” *See McIntyre* at 329, 672 N.Y.S.2d at 232 (citations omitted).

With the exception of the eight (8.0) hours expended by Complainant’s counsel on non-Division matters, the specified claims appear reasonable. *See Rosario v. Inwood Terrace, Inc.*,

et al., DHR Case No. 10147184 (September 28, 2012) (determining that thirty-five (35.0) hours expended on a similar case was reasonable). Under the circumstances of this case, the expenditure of thirty-eight (38.0) hours by Complainant's counsel is reasonable.

A reasonable attorney's fee "is one calculated on the basis of rates and practices prevailing in the relevant market, *i.e.*, in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation, and one that grants the successful civil rights plaintiff a fully compensatory fee, comparable to what is traditional with attorneys compensated by a fee-paying client." *Missouri v. Jenkins*, 491 U.S. 274, 286 (1989) (citations and internal quotation marks omitted).

In determining the lodestar amount, the community to which the Division should look is the district in which the case is litigated. *See Huges v. Kimso Apartments, LLC*, 852 F. Supp. 2d 281, 298 (E.D.N.Y. 2012). The instant case was heard in Suffolk County, which falls within the Eastern District of New York.

Complainant's counsel affirms that he possesses nearly twenty-nine years of experience practicing law in New York State and that his customary hourly rate is \$400.00 per hour. Courts in the Eastern District of New York "have determined that reasonable hourly rates in this district are approximately \$300–\$450 per hour for partners, \$200–\$300 per hour for senior associates, and \$100–\$200 per hour for junior associates." *See id.* at 298-99 (collecting cases). The highest rates are reserved for experienced civil rights attorneys practicing in this district. *See id.* at 300.

Complainant's counsel has not described his experience litigating civil rights cases. However, I must also consider "the relationship between the amount of the fee awarded and the results obtained" in fashioning an appropriate fee award. *McGrath* at 430, 788 N.Y.S.2d at 285.

Accordingly, I conclude that a reasonable hourly billing rate for Complainant's counsel is \$300.00, the low range of the prevailing rate for partners in this district.

A reasonable rate of \$300.00 per hour multiplied by thirty-eight (38.0) hours amounts to \$11,400.00. Added to this is the \$561.00 in disbursements for a copy of the public hearing transcript for which, it is noted, no receipt was provided. As a result, the total award for attorney's fees due and owing to Complainant's counsel is \$11,961.00 (\$11,400.00 + \$561.00).

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that Respondent, and its agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in housing; and

IT IS FURTHER ORDERED, that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Respondent is hereby directed to cease and desist from enforcing any rules or policies prohibiting dogs against Complainant, Virginia Hough;

2. Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay Complainant an award of compensatory damages for mental anguish in the amount of \$1,000.00. This payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant, Virginia Hough, and delivered by certified mail, return receipt requested, to her attorney, Stephen D. Haber, Esq., 1325 Franklin Avenue, Suite 235, Garden City, New York 11530. Interest shall accrue on the award at the rate of nine (9) percent per annum from the date of the Commissioner's Order until payment is actually made by Respondent;

3. Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay to Complainant's attorney, Stephen D. Haber, Esq., reasonable attorney's fees in the amount of \$11,961.00. This payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant's attorney, Stephen D. Haber, Esq., and delivered by certified mail, return receipt requested, to Stephen D. Haber, Esq., 1325 Franklin Avenue, Suite 235, Garden City, New York 11530. Interest shall accrue on the award at the rate of nine (9) percent per annum from the date of the Commissioner's Order until payment is actually made by Respondent;

4. Respondent shall simultaneously furnish written proof of its compliance with the directives contained within this Order to Caroline J. Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458; and

5. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: April 13, 2016
Hauppauge, New York

A handwritten signature in black ink that reads "Robert M. Vespoli". The signature is written in a cursive, flowing style.

Robert M. Vespoli
Administrative Law Judge