

**STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS**

**STATE DIVISION OF HUMAN RIGHTS**

On the complaint of

**IRIS MILLER,**

Complainant,

-against-

**CARMELLA CAPARELLA,** Owner of Premises,

Respondent.

**NOTICE OF ORDER  
AFTER HEARING**

CASE No: **3507045**

**PLEASE TAKE NOTICE** that the within is a true copy of an Order issued herein by the Hon. Edward A. Friedland, Executive Deputy Commissioner of the State Division of Human Rights, after a hearing held before Administrative Law Judge Margaret A. Jackson. 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, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE ALSO TAKE NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice which 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 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 days after service of this Order. The Petition and Notice of Petition must also be served on all parties, including the Division of Human Rights.

Notice of Order After Hearing  
SDHR Case No. 3507045  
Iris Miller v. Carmella Caparella, Owner of Premises

**PLEASE TAKE FURTHER NOTICE** that a complainant who seeks state judicial review, and who receives an adverse decision therein, may lose his or her right to proceed subsequently under federal law, by virtue of Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982).

DATED: **FEB 27 2007**  
BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS



EDWARD A. FRIEDLAND  
Executive Deputy Commissioner

Notice of Order After Hearing  
SDHR Case No. 3507045  
Iris Miller v. Carmella Caparella, Owner of Premises

To:

Iris Miller  
19 Second Street  
Glen Cove, New York 11542

Anti-Discrimination Center of Metro New York, Inc.  
299 Broadway  
Suite 1820  
New York, New York 10007-1913  
Attention Richard F. Bellman, Esq.

Carmella Caparella, Owner of Premises  
7 Gruber Drive  
Glen Cove, New York 11542

Sordi & Sordi, L.L.P.  
147 Glen Street  
Glen Cove, New York 11542  
Attention Michael C. Sordi, Esq.

Long Island Housing Services, Inc.  
3900 Veterans Memorial Highway  
Suite 251  
Bohemia, New York 11716  
Attention Michelle Santantonio, Executive Director

Caroline Downey, Esq.  
Acting General Counsel  
State Division of Human Rights  
One Fordham Plaza  
Bronx, New York 10458

Hon. Andrew Cuomo  
Attorney General  
120 Broadway  
New York, New York 10271  
Attention Civil Rights Bureau

**STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS**

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On the complaint of

**IRIS MILLER,**

Complainant,

-against-

**CARMELLA CAPARELLA, Owner of Premises,**

Respondent.

CASE No: 3507045

Respondent discriminated against complainant when it denied her housing based on the color of her skin. As a result, Complainant is entitled to mental anguish damages in the amount of \$7,500, punitive damages in the amount of \$5,000, out of pocket expenses in the amount of \$3,000 and her attorneys are entitled to fees in the amount of \$27,972.50.

**PROCEEDINGS IN THE CASE**

On November 3, 2002, Complainant filed a verified Complaint with the State Division of Human Rights ("Division") charging Respondent with an unlawful discriminatory practice relating to housing in violation of the Human Rights Law of the State of New York.

ALJ's Exhibit I is hereby amended to include Respondent's Answer to the Complaint.

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

After due notice, the case came on for public hearing before Margaret A. Jackson, an Administrative Law Judge ("ALJ") of the Division. A public hearing was held on October 26, and 27, 2004.

Complainant and Respondent appeared at the hearing. Complainant was represented by Richard F. Bellman. Michelle Santantonio, a non-attorney, who is the Executive Director of Long Island Housing Services, Inc., appeared as Mr. Bellman's assistant and Complainant's advocate. Respondent was represented by the law firm of Sordi and Sordi LLP, by Michael C. Sordi, Esq., of Counsel.

Leave was granted for the parties to submit post-hearing briefs. On January 19, 2005, Richard F. Bellman, Esq. submitted a post-hearing brief on behalf of Complainant.

On December 2, 2005, ALJ Jackson issued a recommended Findings of Fact, Opinion, Decision and Order ("Recommended Order") for the Commissioner's consideration. Objections to the Recommended Order were filed by Complainant's attorney dated January 19, 2006.

On October 4, 2006, Adjudication Counsel Peter G. Buchenholz, Esq. issued an Alternative Proposed Order ("APO") recommending that the Commissioner find that Respondent discriminated against Complainant. The APO further directed that Complainant's attorney submit a request for fees and provided Respondent's attorney an opportunity to respond. No Objections to the APO were filed with the Commissioner's Order Preparation Unit.

Dated October 18, 2006, Complainant's attorney submitted his fee application. Respondent's attorney did not file any response.

#### FINDINGS OF FACT

1. Complainant alleged that Respondent discriminated against her when it refused to rent her an apartment because of her race. (ALJ's Exhibit I).
2. Respondent denied the allegations. (ALJ's Exhibit I).
3. In April of 2002, Complainant, an African-American female, was looking for an apartment to rent in Glen Cove, Long Island. Respondent owned a property located at 3

Campbell Street. Respondent posted a listing for the upstairs apartment for rent at a local medical school. (Tr. 228, 242, 353-354).

4. Complainant sought the assistance of a friend and fellow church member, Dr. Reverend Thomas Goforth, in her apartment search. (Tr. 228-230, 424, 440). Goforth, a student at the school where the apartment listing was posted, came upon the posting and called the number on behalf of Complainant. He discovered that one of his classmates, Yoko, was residing in the apartment with a roommate. (Tr. 424-425).

5. On May 25, 2005, Goforth contacted Yoko and made an appointment to see the apartment with Complainant. Yoko informed Complainant that the rent was \$1,300 per month. Complainant liked the apartment and Yoko gave Complainant Respondent's name and telephone number. (Respondent's Exhibit A; Tr. 232-234).

2. Complainant contacted Respondent the same day and told her that she had seen the apartment and that she was interested. Respondent made an appointment to meet with Complainant on the following day, May 26. (Tr. 235, 273).

3. On May 26, Respondent contacted Complainant to reschedule the appointment to May 27. Respondent told Complainant that Yoko had highly recommended her for the apartment and that if she wanted it, she should bring a deposit of \$1,300. (Tr. 237, 273).

4. On May 27, 2002, Complainant drove with her husband to 3 Campbell Street to meet Respondent and to provide her with a deposit. (Tr. 279, 293). Complainant told Respondent that she wanted the apartment and offered her the deposit check. (Tr. 288). However, when Complainant introduced herself, Respondent told Complainant, "that there had been a misunderstanding because she was waiting for Amy." Respondent further explained that she had promised the apartment to Amy and was holding the apartment for Amy and waiting for

her deposit. Nonetheless, at Complainant's request, Respondent showed Complainant the apartment again. Complainant inquired about the backyard but was told that the backyard belonged to the downstairs tenants. Complainant asked Respondent if she could call and follow up on whether the apartment remained available to which Respondent assented. (Tr. 238-243, 320-321, 436).

5. According to Respondent, when Complainant originally called about the apartment she told her she had an apartment for rent, "but I promise (sic) this Amy lady, but you want to come and see (sic), I'll let you see the house, okay." (Tr. 320). Later Respondent testified that she did not remember speaking with Complainant. (Tr. 372-375, 379). When Complainant showed up, Respondent claimed that she went up to her and said, "Hi Amy." Complainant then allegedly said, "I'm not Amy," and Respondent replied, "Look, it's mistake (sic). I promised the house to Amy, but I show (sic) you the house anyway." (Tr. 322-323).

6. Respondent claimed that Amy was a student from the medical school and that she called her every day to hold the apartment for her. (Tr. 323). Though she had never met Amy, she further claimed that they had become close friends. (Tr. 400). She claimed that at the last minute, Amy called her and told her she could not take the apartment. (Tr. 325). She testified that two people other than Amy had offered her a deposit for the Campbell Street apartment and then backed out. (Tr. 333). (Tr. 357). Amy allegedly told Respondent, "Please don't give it to somebody. As soon as I can, soon I come (sic) in and bring the money and I (sic) take the house." (Tr. 362). Respondent claimed that she told Amy, "As soon as you come in and give me the check, the house is yours, because I wait (sic) for you until that time. You let me know." (Tr. 363). All Respondent knew about Amy was that she was a student. She was not even sure at which school. (Tr. 370). She did not know who Amy had intended as her roommate. (Tr.

371). She testified that she was not going to rent the apartment to anyone else while she was holding it for Amy. (Tr. 387).

7. Two days later, Complainant called Respondent and was told that Amy had left a deposit and the apartment was no longer available. As a result of this news, Complainant was very upset. (Tr. 243-244, 290).

8. Complainant called Goforth to tell him what happened. Goforth then called Respondent about the apartment and was told that it was available. Thereafter, Goforth called Long Island Housing Services, Inc. and told them about Complainant's difficulties in renting the apartment. (Tr. 244, 247-249, 440-441, 445-446).

9. Subsequently, Long Island Housing Services, Inc. hired four testers who were given a three-hour training course and sent to see whether the Campbell Street apartment was available. Long Island Housing Services paid the testers an hourly rate for their services. (Tr. 32-36).

10. After contacting Respondent, tester Mary E. Jones, an African-American woman, set up an appointment on June 5, 2002, to see the Campbell Street apartment. (Tr. 36, 106). Respondent showed Jones around the apartment. Jones inquired about access to the backyard and was told that she would not have access because it was for the downstairs residents. (Tr. 38). As she was leaving, she was told the deposit would be one month's rent. (Tr. 40, 81-82). Jones credibly testified that she told Respondent that she wanted the apartment and asked if Respondent would contact her. Respondent informed Jones that her husband had promised to show the apartment to another individual later in the day. (Tr. 40). Jones called Respondent the following day and was told the apartment had been given to that other individual who would be bringing a deposit over that afternoon. (Tr. 50).

11. On June 6, 2002, tester Mark Gaven, a Caucasian male, (Tr. 215) made an appointment to see the apartment that evening. He then changed his appointment to the following morning, June 7, 2002. After seeing the apartment, he did not express an interest in renting it, though Respondent indicated it was available. When he called back on June 18, to see if the apartment was available, he was told that a deposit had been left for the apartment, but that if it fell through, he could have it. (Tr. 200-204, 206, 220, 398).

12. On June 6, 2002, tester Gayle Denise Green, a Caucasian female, (Tr. 168) made an appointment with Respondent to see the apartment the following day. (Tr. 153). Respondent told her that someone else had come to see the apartment earlier and that if she wanted the apartment, she would have to get her deposit in first. (Tr. 157). She was told that if she was interested, she could rent the garage. (Tr. 158). Green asked about the backyard and was told that something would need to be worked out with the downstairs tenants, but that they were nice and if something could be worked out, she could use the backyard. (Tr. 160). She was also told that if she rented the apartment, a deposit of one month's rent was required. Green told Respondent she had to discuss it with her husband before she could make a decision about renting the apartment. Tester Green never contacted Respondent after she left. (Tr. 151-152, 158, 168, 176, 181, 183).

13. On June 12<sup>th</sup>, 2002, tester Shahshah G. Cohen, an African-American male, called Respondent to make an appointment to see the apartment. (Tr. 109). Respondent agreed to show the apartment on June 13<sup>th</sup>, but stated that someone else had seen it and was interested. (Tr. 116-117, 121, 138). Respondent showed Cohen the apartment and told him that she would require one month's rent and one month's security deposit. (Tr. 119). Tester Cohen left his cell phone number and asked Respondent to call him back if the apartment was not taken. Tester

Cohen did not call Respondent back about the availability of the apartment and Respondent did not call tester Cohen. (Tr. 120, 142).

14. Respondent claimed at the hearing that shortly after Complainant's visit, Amy contacted her and informed her that she could not take the apartment. On June 17, 2002, Respondent rented the apartment to a Caucasian couple that was referred by a neighbor. The couple left a deposit of one month's rent, signed the lease and moved in on July 15, 2002. (Tr. 325-326, 329, 337, 346, 368, 388, 414, 419).

15. Complainant was upset, hurt and disappointed from being denied the opportunity to rent Respondent's apartment. (Tr. 249). She testified credibly that she felt "violated" because Respondent, "judged [her] on the way that [she] looked instead of asking [her] about [her] finances or if [she] could pay the rent." (Tr. 251). Furthermore, as a result, she was only able to secure an apartment with a rent that was \$100 higher, where she had to park her car on a side street and where there was no washer or dryer. Whereas Respondent's apartment had a driveway and a washer and dryer. Complainant testified that she liked Respondent's apartment. (Tr. 252-254, 256).

#### DECISION AND OPINION

Complainant alleged that Respondent discriminated against her in housing based on her race. The Division finds the Respondent did discriminate against Complainant in violation of the Human Rights Law when it refused to rent her an apartment because of her race.

The Human Rights Law makes it an unlawful discriminatory practice for an owner, managing agent or other person having the right to sell, rent or lease a housing accommodation to discriminate against any person in the terms, conditions and privileges of the sale, rental or lease or

in the furnishing of facilities or services of the housing accommodation because of that person's race. Human Rights Law § 296.5.

A complainant has the burden to establish by a preponderance of the evidence that she was discriminated against. To establish a prima facie case, a complainant must demonstrate that she applied for and was qualified to rent a housing unit denied to her based on her membership in a protected class. The burden then shifts to the respondent to show that the rejection was for legitimate, nondiscriminatory reasons. Together with the prima facie case, the fact finder's disbelief of a respondent's proffered reason may form the basis of a discrimination finding. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 39-40, 377 N.Y.S.2d 471 (1975) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973)); *Broom v. Biondi*, 17 F.Supp.2d 211 (S.D.N.Y. 1997); see also *Ferrante v. American Lung Assoc.*, 90 N.Y.2d 623, 655 N.Y.S.2d 25 (1997) (citing *Texas Dep't of Community Affairs v. Burdine*, 450 U.S.248, 101 S.Ct. 1089 (1981)); *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 120 S.Ct. 2097 (2000).

Complainant has established a prima facie case of discrimination. There is no dispute that Complainant was qualified to rent the apartment. Here, Complainant ended up paying more rent and had more expenses at the apartment she eventually moved into. See *Broom v. Biondi*, 17 F.Supp2d 211, 217 (SDNY 1997). There is also no dispute that she is a member of a protected class. An inference of discrimination is raised by the fact that Respondent overlooked Complainant who expressed interest in the apartment, showed up with the requested deposit and was denied the unit in favor of a white couple.

Respondent claimed that she refused to rent the unit to Complainant because she was holding the apartment for an alleged individual named Amy. Respondent's claim patently lacks creditworthiness. First, Respondent testified that twice before Complainant contacted her, people had expressed their intentions to rent the apartment, left deposits and then backed out at the last minute. Then, according to Respondent's claim, an individual named Amy called her. Respondent had never met Amy. She knew nothing about her but that she was in school, yet did not even know which school she attended. She was not aware of whom Amy intended to bring along as her roommate and, furthermore, was only told that Amy would bring a deposit, "[a]s soon as I can," providing no specific date. Despite all of these facts, Respondent maintained that she promised the apartment to this alleged Amy and would not rent to anyone else. Despite her expressed intention to rent to no one else, Respondent continued to show the apartment and eventually no individual named Amy ever materialized.

Two days after meeting Respondent, Complainant credibly testified that she called to follow up and was told that the apartment was indeed rented to Amy. The record shows that the apartment was never rented to Amy. Additionally, Dr. Reverend Goforth, thereafter telephoned Respondent to inquire about the availability of the apartment and was told that it was still available.

Respondent's credibility is further undermined by her initial testimony that she told Complainant when she initially called that she was holding the apartment for someone though Complainant could still come by to see it, then Respondent subsequently failed to remember having spoken to Complainant at all. It is clear that Respondent indeed spoke with Complainant on the phone and set up an appointment to meet with her and it is, therefore, not credible that she was not expecting Complainant when she arrived for her scheduled appointment.

Respondent's given reasons for her refusal to rent to Complainant lack credence. Additionally, the record evidence regarding Respondent's differential treatment of the testers further lends support to Complainant's claim that she was denied the unit because of her race. The two Caucasian testers were encouraged to get their deposits in quickly. One of those testers was told that access to the garden might be worked out with the downstairs tenants, while Complainant and one of the African-American testers was flatly told that they would not be allowed access to the garden.

On June 6, Respondent informed African-American tester Jones, after meeting her, that the apartment had been rented, when in fact, it had not. In fact, on June 7, Caucasian tester Gaven was told that the apartment was available. Lastly, all of the witnesses were told that one month's security deposit was required, while African-American tester Cohen, was told that an additional one month's rent was required.

The overwhelming evidence in the record demonstrates that Complainant was refused as a tenant by Respondent because of her race.

As a result, Complainant suffered mental anguish damages and is entitled to be compensated for such. An award of compensatory damages to a person aggrieved by an illegal discriminatory practice may include compensation for mental anguish and humiliation and that award may be based solely on the complainant's testimony. *See Matter of Cosmos Forms v. State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989); *Wantagh Union Free School Dist. v. State Div. of Human Rights*, 122 A.D.2d 846, 505 N.Y.S.2d 713 (2d Dept. 1986), *appeal dismissed*, 69 N.Y.2d 823, 513 N.Y.S.2d 1029 (1987). "Where, as here, respondent[s] discriminatory conduct is patent and intentional, the quantum and quality of evidence needed to prove compensatory damages is less than ordinarily required." *State Div. of*

*Human Rights v. Cerminaro*, 63 A.D.2d 855, 405 N.Y.S.2d 860 (4<sup>th</sup> Dept. 1978) (citing *Batavia Lodge No. 196, Loyal Order of Moose v. State Div. of Human Rights*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974)).

Complainant credibly testified that she was upset, hurt, and disappointed from being denied the opportunity to rent Respondent's apartment. She testified that she felt "violated." An award, therefore, of \$7,500 will effectuate the purposes of the Human Rights Law. *Batavia Lodge*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974); see also *Manhattan and Bronx Surface Transit Auth. v. State Div. of Human Rights*, 225 A.D.2d 553, 638 N.Y.S.2d 761 (2d Dept. 1996) (award reduced to \$7,500 where complainant testified he felt "very upset" and "very angry"); *Manhattan and Bronx Surface Transit Auth. v. State Div. of Human Rights*, 220 A.D.2d 668, 632 N.Y.S.2d 642 (2d Dept. 1995) (award reduced to \$7,500 where complainant testified he felt "devastated," lost sleep, gained weight and had high blood pressure. He did not seek treatment and no evidence of the duration of his anguish or that high blood pressure was related to discrimination); *Quality of Care, Inc. v. Rosa*, 194 A.D.2d 610, 599 N.Y.S.2d 65 (2d Dept. 1993) (award reduced to \$5,000 where complainant testified she was "shock[ed]" and "devastated," was "in a real pickle" and felt bad. No evidence as to duration, severity or consequences of her condition or of medical treatment); *School Bd. of Educ. of the Chapel of the Redeemer Lutheran Church v. NYCHR*, 188 A.D.2d 653, 591 N.Y.S.2d 531 (2d Dept. 1992) (award reduced to \$7,500 where complainant testified she became concerned about her economic hardship); *Alverson v. State Div. of Human Rights*, 181 A.D.2d 1019, 581 N.Y.S.2d 953 (4<sup>th</sup> Dept. 1992) (\$7,500 award for mental anguish and humiliation caused by real estate broker who discriminated).

Complainant is also entitled to interest at a rate of nine percent per annum on the mental anguish award from the date of this Order until the date payment is made. *See New York State Div. of Human Rights v. Marcus Garvey Nursing Home*, 249 A.D.2d 549, 672 N.Y.S.2d 130 (2d Dept. 1998).

Section 297(4)(c)(iv) of the Human Rights Law permits the Division to award punitive damages up to \$10,000 in cases of housing discrimination. In light of the Division's broad mandate to fulfill "[t]he extremely strong statutory policy of eliminating discrimination," a punitive award of \$ 5,000 will serve to effectuate the purposes of the Human Rights Law. *Van Cleef Realty, Inc. v. State Div. of Human Rights*, 216 A.D.2d 306, 627 N.Y.S.2d 744 (2d Dept. 1995), *see also Feggoudakis v. State Div. of Human Rights*, 230 A.D.2d 739, 646 N.Y.S.2d 175 (2d Dept. 1996).

Complainant is further entitled to compensatory damages for out-of-pocket expenses she incurred as a result of Respondent's discrimination. Complainant ended up renting an apartment with which she was less happy that cost \$100 more per month and lacked facilities such as a driveway and a washer and dryer which were available at Respondent's apartment. Accordingly, Complainant is entitled to be compensated for the amount requested of \$3,000 for the difference in rent she was required to pay from July of 2002 through January of 2005.

Complainant's counsel is additionally entitled to attorney's fees in an amount to be calculated utilizing the "lodestar" method. *See McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 788 N.Y.S.2d 281 (2004); *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 176 Misc.2d 325, 327, 672 N.Y.S.2d 230 (N.Y. Sup. 1997), *appeal dismissed*, 256 A.D.2d 269 (1<sup>st</sup> Dept. 1998), *appeal dismissed* 93 N.Y.2d 919 (1999), *lv. denied*, 94 N.Y.2d 753 (1999); *see also*

*Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S.Ct. 939, 945 (1989); *Cruz v. Local Union No. 3 of the Intern. Broth. of Elec. Workers*, 34 F.3d 1148, 1159 (2d Cir. 1994); *Cruz v. Local Union No. 3*, 34 F.3d 1148 (2d Cir. 1994); *Wilson v. Nomura Securities International, Inc.*, No. 01 Civ. 9290, 2002 WL 1560614 (S.D.N.Y. 2002).

Complainant's counsel, Richard F. Bellman, Esq., submitted a fee request seeking compensation for 76.3 hours of legal work expended by himself and an additional 6.4 hours expended by his colleague Craig Gurian, Esq. He requests compensation at a rate of \$450 per hour for his work and \$400 per hour for the work of Gurian. He additionally requests \$1,317.50 for expenses incurred with a resultant total fee request of \$38,232.50.

The loadstar method, “. . . estimates the amount of the fee award by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate.” *Blanchard v. Bergeron*, 489 U.S. at 94; *Shannon v. Fireman's Fund Insurance Co.*, 156 F.Supp.2d 279, 299 (S.D.N.Y. 2001). A reasonable attorney's fee is “one calculated on the basis of rates and practices prevailing in the 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, 109 S.Ct. 2463, 2470 (1989) (citation omitted), *see also Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11, 104 S. Ct. 1541 (1984); *Cruz v. Local Union No. 3*, 34 F.3d at 1159; *New York State Nat'l Org. for Women v. Terry*, 737 F.Supp. 1350, 1361 (S.D.N.Y. 1990), (citation omitted), *aff'd in part, rev'd in part on other grounds*, 961 F.2d 390 (2d Cir. 1992).

“. . . a court determining the reasonableness of an attorney's fee should consider the time spent, the difficulties involved, the nature of the services, amount involved, professional standing

of counsel and results obtained.” (citations omitted). *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 176 Misc.2d 325, 327, 672 N.Y.S.2d 230 (N.Y. Sup. 1997). The following framework may be used as a guide in determining fee awards:

(a) Hours reasonably expended.

The court suggested the following formula:

(1) hours which reflect inefficiency or duplication of services should be discounted; (2) hours that are excessive, unnecessary or which reflect “padding” should be disallowed; (3) legal work should be differentiated from nonlegal work such as investigation, clerical work, the compilation of facts and other types of work which can be accomplished by nonlawyers who command lesser rates; (4) time spent in court should be differentiated from time expended for out-of-court services; and (5) the hours claimed should be weighed against the court’s own knowledge, experience and expertise as to the time required to complete similar activities.

(b) Reasonable hourly rate.

The next step in determining attorney’s fees is to arrive at a reasonable hourly charge for each category of services rendered. [T]he reasonable hourly rate should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented. Thus, the hourly rate charged by an attorney will normally reflect the training, background, experience and skill of the individual attorney.

(c) Computation of fee.

The third step is to multiply the number of hours reasonably expended on the litigation by a reasonable hourly rate.

(d) Adjustment to fee.

The initial “lodestar” estimate, which is predicated on an objective assessment of reasonableness, may be reduced (or increased) by the court based on the following factors:

(1) the novelty and difficulty of the questions presented; (2) the skill requisite to perform the legal services properly; (3) the preclusion of other employment by the attorney due to acceptance of the case; (4) whether the fee is fixed or contingent; (5) time limitations imposed by the client or the circumstances; (6)

the nature and length of the professional relationship with the client; (7) the amount involved and the results obtained; (8) the undesirability of the case; and (9) awards in similar cases.

(citations omitted) *Id.* at 328-329.

(a) Hours reasonably expended.

“The party seeking fees bears the burden of showing that the claimed rate and number of hours worked are reasonable.” (citations omitted). *Wilson v. Nomura Securities International, Inc.*, No. 01 Civ. 9290, at \*3. In the instant case, counsel for Complainant claims compensation for 82.7 hours of substantive legal work on this case, plus expenses. Exhibit 1 of Bellman’s fee application breaks down the aforementioned substantive legal work. With the exception of the October 27, 2004, entry of seven hours for the hearing, none of the other specified claims appears excessive. The transcript of the hearing on October 27, 2004, indicates that it commenced at 10:00 a.m. and terminated at 1:10 p.m., a total of 3.2 hours. Accordingly, the number of hours for which fees will be granted is 78.9 hours.

(b) Reasonable hourly rate.

Bellman claims a rate of \$450 per hour for himself and \$400 per hour for Gurian. Bellman states that he has forty-three years of legal experience concentrated in civil rights with an emphasis on housing discrimination. Since October of 2003, he has been Legal Director of the Anti-Discrimination Center of Metro New York. He estimates that he has handled between seventy-five and 100 housing discrimination cases some of which have resulted in precedent-setting decisions. He has lectured on behalf of the United States Department of Housing and Urban Development and served on the advisory board for the Fair Housing-Fair Lending Reporter published by Aspen Press. He lists two cases in which his hourly fee was set by the United States District Court for the Eastern District of New York at \$350 and \$400 per hour in 1997 and 2002 respectively, however, he

provided no decisions for those cases. Bellman similarly failed to submit case law demonstrating that \$450 was the prevailing rate for an attorney of his experience in the Eastern District of New York.

“The fee applicant bears the burden of producing evidence demonstrating that the requested rates are in line with those prevailing in the community. *See Cruz*, 34 F.3d at 1159. In the absence of such evidence, the court may take judicial notice of the rates prevailing within the community for comparable legal services.” *See Tray-Wrap v. Meyer Tomatoes*, 1996 WL 54321, at \*2 (S.D.N.Y. Feb.9, 1996) (*citing Miele v. New York State Teamsters Conference Pension & Retirement Fund*, 831 F.2d 407, 409 (2d Cir.1987)); *Pearson v. Coughlin*, 1995 WL 366463, at \*5 (S.D.N.Y. June 20, 1995).” *Bick v. City of New York*, 1998 WL 190283, at \*28 (S.D.N.Y. Apr 21, 1998).

“In determining a reasonable hourly rate, courts should look to market rates ‘prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.’ *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (*quoting Blum v. Stenson*, 465 U.S. 886, 896 n. 11, 104 S.Ct. 1541 (1984). “In determining the lodestar figure, the ‘community’ to which the district court should look is the district in which the court sits.” *Cruz* at 1159; *Luciano v. Olstern Corp.*, 925 F. Supp. 956 (E.D.N.Y. 1996). In this case, the matter was heard in Nassau County, Long Island which sits in the Eastern District of New York. A brief search reveals the following prevailing rates for the Eastern District of New York:

In 1998, the Second Circuit held that reasonable rates for legal services in the Eastern District were \$ 200.00 for partners, \$ 135.00 for associates, and \$ 50.00 for paralegals. *Savino v. Computer Credit, Inc.*, 164 F.3d 81, 87 (2d Cir. 1998). In 2003 and 2004, district courts in the Eastern District found rates of between \$ 225.00 to \$ 300.00 for partners to be reasonable. *See, Pinner*, 336 F.Supp.2d at 220 (fixing attorney's fee at \$ 250.00 per hour to account for, inter alia, the probable increase in fees since 1998); *Separ v. Nassau County Dep't of Social Servs.*, 327 F.Supp.2d 187,

191 (E.D.N.Y. 2004)(fixing attorney's fees at \$ 250.00); *Hine*, 253 F.Supp.2d at 466 (finding the requested rate of \$ 225.00 per hour to be in line with the market rates in the Eastern District of New York); *Duke*, 2003 U.S. Dist. LEXIS 26536, 2003 WL 23315463, at \*2 (finding the requested rate of \$ 300.00 to be reasonable for an accomplished trial attorney specializing in the practice of civil rights law).

*Levy v. Powell*, 2005 U.S. Dist. LEXIS 42180, 25-26 (E.D.N.Y. 2005). The court in *Levy* set the rate of \$250 for two attorneys, one with thirty-five years of experience including discrimination cases. The court noted that neither lawyer submitted evidence that they had an expertise in civil rights law, nor of their customary rates. *Id.* at 28. The court also noted that evidence was lacking regarding the size of the firm that either attorney belonged to, if any. *Id.* at 27.

It is noted that in the instant case, Bellman indicates that he both has an expertise in the relevant subject matter of the instant litigation and that his customary rate is currently \$450 per hour, though he fails to indicate the size of his firm or provide copies of retainer agreements demonstrating his customary fee.

The court in *Fabbricante v. City of New York*, 2006 U.S. Dist. LEXIS 62906 (E.D.N.Y. 2006), noted that the prevailing rate in the Eastern District was \$200 to \$300 for partners. The fee applicant in that case practiced for over thirty-two years, was an adjunct professor of law at Touro Law School and published a treatise on sex discrimination in the workplace as well as a number of other employment law articles. He had extensive experience in employment litigation and chaired or co-chaired a number of labor and employment law committees over a twelve year period. In consideration of his experience, the court awarded compensation at a rate of \$325 per hour. *Id.* at 14. The *Fabricante* court noted that, “[e]ven in the Southern District of New York,

courts are reluctant to award over \$400 per hour for experienced partners.” (citations omitted) *Id.* at \*12.

In *Burgie v. Euro Brokers, Inc.*, 2006 U.S. Dist. LEXIS 22433 (2006), the court determined that the prevailing rates in the Eastern District ranged from \$200 to \$375. (Citations omitted) *Id.* at \*52. The court awarded the attorney, who was principal of her firm \$300 because she failed to demonstrate the length and breadth of her experience.

Thus, for Bellman, in consideration of his breadth of experience and his success in the instant case, a fee award at the top range of the prevailing rate in the Eastern District of New York, at \$350 per hour is deemed reasonable. *Commission Express Nat'l, Inc. v. Rikhy*, 2006 U.S. Dist. LEXIS 8716 (2006) (\$300); *Aiello v. Town of Brookhaven*, 2005 U.S. Dist. LEXIS 11462 (2005) (\$350); *GMC v. Villa Marin Chevrolet, Inc.*, 240 F.Supp.2d 182 (E.D.N.Y. 2002) (\$315 to \$375); *Creative Resources Group of New Jersey, Inc. v. Creative Resources Group, Inc.*, \_\_\_ F.Supp.2d \_\_\_, 2002 WL 31730596 (E.D.N.Y. Oct 29, 2002) (“for lawyers practicing in the Eastern District . . . the rate of \$300 per hour is found to be reasonable.”)

Since no information regarding Gurian’s experience has been provided, a fee rate at \$200, the bottom range of the prevailing rate for partners is deemed appropriate. *See Nicholson v. Williams*, 2004 U.S. Dist. LEXIS 29933 (2004).

(c) Computation of fee.

A reasonable rate of \$200.00 multiplied by 6.4 hour for Gurian equals \$1,280. For Bellman, \$350 multiplied by the remaining 72.5 hours equals \$25,375. Accordingly, the lodestar amount equal \$26,655. Added to this is the \$1,317.50 in expenses for which, it is noted, no receipt was provided and the initial lodestar calculation equals \$27,972.50.

(d) Adjustment to fee.

There are no outstanding factors warranting an adjustment of the lodestar fee.

Accordingly, Complainant's counsel is entitled to an attorney's fee in the amount of \$27,972.50.

ORDER

Based upon the foregoing Findings of Fact, Decision and Opinion, and pursuant to the provisions of the Human Rights Law, it is

**ORDERED** that Respondent shall cease and desist from discriminating in its provision of housing; it is further

**ORDERED** that Respondent Carmelia Caparella, her agents, representatives, employees, successors and assigns shall take the following affirmative actions to effectuate the purposes of the Human Rights Law:

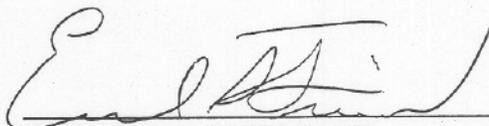
1. Within sixty days of the date of this Order, Respondent shall pay to Complainant compensatory damages for mental anguish and humiliation, without any deductions or withholding whatsoever, in the amount of \$7,500.00. Interest shall accrue at a rate of nine percent per annum from sixty days after the date of this Order until the date payment is made.
2. Within sixty days of the date of this Order, Respondent shall pay to Complainant punitive damages, without any deductions or withholding whatsoever, in the amount of \$10,000.00.
3. Within sixty days of the date of this Order, Respondent shall pay to Complainant \$3,000.00 as compensatory damages for out-of-pocket expenses.
4. Within sixty days of the date of this Order, Respondent shall pay to Complainant's attorney, reasonable attorney's fees in the amount of \$27,972.50 without any withholdings or deductions.

5. The aforesaid payments shall be in the form of four certified checks made payable to the order of Complainant's attorney Richard F. Bellman, Esq. and delivered to his address at Anti-Discrimination Center of Metro New York, Inc., 299 Broadway, Suite 1820, New York, New York 10007-1913, by registered mail, return receipt requested.

Respondent shall simultaneously furnish written proof of the aforesaid payments to Caroline Downy, Acting General Counsel of the Division at her office address of One Fordham Plaza, Bronx, New York 10458 by first-class mail, and shall cooperate with representatives of the Division during any investigation into their compliance with directives contained herein.

DATED: **FEB 27 2007**  
BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS

  
EDWARD A. FRIEDLAND  
Executive Deputy Commissioner