

CITY OF NEW YORK  
COMMISSION ON HUMAN RIGHTS

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In the Matter of

Complaint No.: M-H-KD-15-1031186

COMMISSION ON HUMAN RIGHTS ex rel.  
LYNN BLUE and B.T.,

Petitioner,  
-against-

OATH Index No. 1624/16

MILENA JOVIC and PEDRAG JOVIC,

Respondents.  
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**DECISION AND ORDER**

On October 27, 2014, the Law Enforcement Bureau of the New York City Commission on Human Rights (the “Bureau”) filed a verified complaint (“Complaint”), initiating this housing discrimination case on behalf of Complainant Lynn Blue and her minor daughter with disabilities, Complainant B.T.<sup>1</sup> (together, “Complainants”), against their landlords Ms. Milena Jovic and Mr. Predrag Jovic<sup>2</sup> (together, “Respondents”). (*See generally* Compl., Bureau Summ. J. Mot. Ex. A, Compl.)<sup>3</sup> The Complaint alleges that Respondents refused to grant Complainants’

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<sup>1</sup> B.T.’s name has been redacted to protect her privacy interests, in light of discussion of her medical history and her status as a minor. *See, e.g., In re Comm’n on Human Rights ex. rel. Carol T. v. Mutual Apartments, Inc.*, OATH Index No. 2399/14, Report & Recommendation, 2015 WL 1431880, at \*1 n.1 (Mar. 13, 2015) (collecting cases).

<sup>2</sup> Predrag Jovic’s first name is improperly spelled in the case caption as “Pedrag.” (Resp’t’s Comments at 2.) In addition, as discussed below, Mr. Jovic predeceased the filing of the Complaint and is therefore not a proper respondent in this case.

<sup>3</sup> The Bureau’s summary judgment motion in this case includes 19 exhibits, labeled A through S, and is attached, in full, as exhibit C to the Bureau’s September 29, 2016 comments to the Report and Recommendation. For the sake of clarity, this Decision and Order refers to all exhibits to the Bureau’s comments on the Report and Recommendation *other than exhibit C* as “Bureau Comments Ex. X,” and refers to the exhibits to the summary judgment motion as “Bureau Summ. J. Mot. Ex. X.” The evidence introduced by the Bureau during the administrative hearing is referred to as “Bureau Hearing Ex. X.”

request for a smaller bathtub that B.T. could enter and exit safely, and refused to engage in an interactive process about Complainants' accommodation request. (See Compl. ¶¶ 6, 8, 9.) In addition, the Complaint alleges that after Complainants made their accommodation request, Respondents retaliated against them and

made false allegations to the police that Complainants and/or their guests were doing drugs on the subject premises, created a nuisance at the subject premises by making excessive noise, sought to terminate [Complainants'] tenancy by initiating an action in landlord-tenant court based on those false allegations, interrogated and intimidated Complainant[s'] guests by aggressively asking them what they were doing at the subject premises, and have encouraged other tenants to harass them by complaining that [B.T.'s] leg brace made too much noise in the hallways.

(Compl. ¶ 7.) In addition to a claim for retaliation, the Complaint asserts claims under §§ 8-107(5), 8-107(15), and 8-107(20) of the NYCHRL, for disability discrimination, failure to accommodate a disability, and associational discrimination. (Compl. ¶ 9.)<sup>4</sup>

Ms. Jovic, through counsel, filed a Verified Answer on November 17, 2014 (Bureau Summ. J. Mot. Ex. C, Verified Answer), but otherwise refused to cooperate with the Bureau's investigation. Ms. Jovic failed to provide information requested by the Bureau through investigatory demands on January 13, 2015, and subsequently failed to comply with the subpoena issued by the Bureau on August 21, 2015. (Bureau Summ. J. Mot. Ex. D at ¶¶ 8-10.) On November 30, 2015, the Bureau served a motion to compel, seeking an order from the Office of the Chair of the Commission on Human Rights ("the Commission") requiring Respondents to provide full responses to the subpoena and, in the absence of full compliance with the subpoena,

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<sup>4</sup> Although the Complaint alleged retaliation, it did not cite § 8-107(7) of the NYCHRL. As discussed below, the retaliation claim was ultimately withdrawn at trial.

an order for adverse inferences and other relief against Respondents. (*Id.* at Ex. D, sub-Ex. 12.)<sup>5</sup> After Ms. Jovic failed to respond to the motion to compel, the Commission issued an order on March 1, 2016, granting the Bureau's motion and imposing the following sanctions: striking Respondents' defenses related to materials they refused to produce; precluding Respondents from introducing evidence or asserting arguments on the issue of whether they had taken steps to assess the architectural or economic feasibility of Complainants' accommodation request; precluding Respondents from introducing evidence or testimony of alleged nuisances caused by Complainants or their guests at the subject premises; adopting an adverse inference that the information withheld by Respondents was withheld willfully and in an effort to obstruct the Bureau's investigation; and adopting an adverse inference that the materials Respondents failed to produce were unfavorable to them. (*See* Bureau Summ. J. Mot. Ex. H.)

On March 2, 2016, the Bureau issued a Notice of Probable Cause and of Intent to Proceed to Public Hearing on the Complaint, and the case was then referred to the Office of Administrative Trials and Hearings ("OATH") for a hearing and a recommended determination by an administrative law judge ("ALJ"). (*See* Bureau Summ. J. Mot. Exs. R & S.)

The Bureau moved for summary judgment on June 16, 2016 and, once again, Ms. Jovic failed to respond. (*See generally* Bureau Summ. J. Mot.) On June 30, 2016, the Honorable John B. Spooner issued a Memorandum Decision, granting the Bureau's summary judgment motion in part as to Respondents' liability for failure to accommodate B.T.'s disability and denying the motion in part as to the retaliation claim and the issue of relief, finding that there were issues of

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<sup>5</sup> Exhibit D of the Bureau's summary judgment motion is the supporting affirmation of Andrew K. Sonpon, Jr., which includes exhibits numbered 1 through 16. For the sake of clarity, the exhibits to the Sonpon affirmation are referred to herein as "sub-Ex."

material fact that required a hearing. *In re Comm'n on Human Rights ex rel. Blue v. Jovic*, OATH Index No. 1624/16, Mem. & Dec., 2016 WL 3920704, at \*1 (Jun. 30, 2016).

An administrative hearing was held on July 7, 2016, but Ms. Jovic again did not appear. (Tr. of OATH Hearing (“Tr.”) at 4:15-5:19; *see also* Bureau Hearing Ex. 1.) According to the Bureau, after having received no response from Ms. Jovic’s attorney, the Bureau called Ms. Jovic directly to notify her of the hearing date, but Ms. Jovic hung up and refused to speak. (Tr. at 8:15-17.) At the hearing, the Bureau withdrew the retaliation claim and the hearing proceeded as an inquest. (*Id.* at 6:7-9.) Following the hearing, Judge Spooner issued a report and recommendation dated August 19, 2016 (“Report and Recommendation” or “R&R”): (1) finding that Respondents were properly served with the petition and notice of trial; (2) finding that Respondents had violated § 8-107(5) of the NYCHRL by refusing to provide Complainants with a new bathtub as a reasonable accommodation for B.T.’s disability; (3) recommending an award of emotional distress damages of \$50,000.00 for Ms. Blue and of \$30,000.00 for B.T.; (4) recommending a civil penalty of \$40,000.00; and (5) recommending that Respondents be ordered to replace Complainants’ bathtub, post anti-discrimination fliers in the apartment building where Complainants reside, and undergo anti-discrimination training. (R&R at 6, 11.)

Ms. Jovic and the Bureau each submitted written comments and objections to the Report and Recommendation within twenty days after the Commission commenced consideration of the Report and Recommendation. *See* 47 RCNY § 1-76. For the reasons set forth in this Decision and Order, the Commission adopts the Report and Recommendation, except as indicated below.

## **I. STANDARD OF REVIEW**

In reviewing a report and recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the ALJ. Though the

findings of an ALJ may be helpful to the Commission in assessing the weight of the evidence, the Commission is ultimately responsible for making its own determinations as to the credibility of witnesses, the weight of the evidence, and other assessments to be made by a factfinder. *In re Comm'n on Human Rights v. A Nanny on the Net*, OATH Index Nos. 1364/14 & 1365/14, Dec. & Order, 2017 WL 694027, at \*2 (Feb. 10, 2017); *In re Comm'n on Human Rights ex rel. Spitzer v. Dahbi*, OATH Index No. 883/15, Dec. & Order, 2016 WL 7106071, at \*2 (July 7, 2016); *In re Comm'n on Human Rights v. CU 29 Copper Rest. & Bar*, OATH Index No. 647/15, Dec. & Order, 2015 WL 7260570, at \*2 (Oct. 28, 2015). The Commission is also tasked with the responsibility of interpreting the NYCHRL and ensuring the law is correctly applied to the facts. *See Spitzer*, 2016 WL 7106071, at \*2; *In re Comm'n on Human Rights ex rel. Howe v. Best Apartments, Inc.*, OATH Index No. 2602/14, 2016 WL 1050864, at \*2 (Mar. 14, 2016); *In re Comm'n on Human Rights v. Crazy Asylum*, OATH Index Nos. 2262/13, 2263/13, 2264/13, 2015 WL 7260568; at \*3 (Oct. 28, 2015). Therefore, the Commission has the final authority to determine “whether there are sufficient facts in the record to support the Administrative Law Judge’s decision, and whether the Administrative Law Judge correctly applied the New York City Human Rights Law to the facts.” *N.Y.C. Comm'n on Human Rights v. Ancient Order of Hibernians in Am., Inc.*, Compl. No. MPA-0362, Dec. & Order, 1992 WL 814982, at \*1 (Oct. 27, 1992); *see also In re Cutri v. N.Y.C. Comm'n on Human Rights*, 113 A.D.3d 608, 609 (2d Dep’t 2014) (“As the Commission bears responsibility for rendering the ultimate determination, it was not required to adopt the recommendation of the Administrative Law Judge assigned to the proceeding . . .”); *In re Orlic v. Gatling*, 44 A.D.3d 955, 957 (2d Dep’t 2007) (“it is the Commission, not the Administrative Law Judge, that bears responsibility for rendering the ultimate factual determinations”).

When parties submit comments, replies, or objections to a report and recommendation pursuant to 47 RCNY § 1-76, the Commission must review the comments, replies, or objections in the context of the Commission's other factual determinations and conclusions of law. Accordingly, the Commission reviews the report and recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law. *In re Comm'n on Human Rights ex rel. Stamm v. E&E Bagels*, OATH Index No. 803/14, Dec. & Order, 2016 WL 1644879, at \*2 (Apr. 20, 2016); *Howe*, 2016 WL 1050864, at \*3; *CU29 Copper Rest. & Bar*, 2015 WL 7260570, at \*2.

## **II. THE EVIDENTIARY RECORD**

For purposes of this Decision and Order, knowledge of the facts described in the Report and Recommendation, the Bureau's summary judgment motion, and the ALJ's June 30, 2016 Memorandum and Decision on the summary judgment motion is generally assumed.

### **A. Summary Judgment**

On June 16, 2016, the Bureau filed a motion for summary judgment on the claims of failure to accommodate a disability and retaliation. Respondents defaulted on the motion. The Bureau's motion established that Ms. Jovic admitted in her Verified Answer that B.T. has a disability and that, in or about March 2014, Ms. Jovic received notice of Complainants' request for a new bathtub as an accommodation for B.T.'s disability. (Bureau Summ. J. Mot. at 5 & Ex. C, Verified Answer ¶¶ 1, 4, 6; *see also id.* at Ex. A, Compl. ¶¶ 1, 4, 6, Ex. L, Ex. M.)

In support of its motion, the Bureau also proffered the June 9, 2016 affidavit of Ms. Blue. (*Id.* at Ex. B.) In her affidavit, Ms. Blue noted that B.T. is about five feet tall and 135 pounds, and has disabilities that "prevent her from walking without the aid of another person or the use of a leg brace." (*Id.* at ¶¶ 3, 5.) Ms. Blue also explained:

With the current configuration of the bathroom of the Subject Apartment, [B.T.] cannot enter the bathroom, climb into the bathtub to bathe herself, and climb out of the tub without my assistance. Even with my assistance, bathing [B.T.] is almost impossible to do without great effort. The bathroom is small and it is hard to navigate [B.T.], without her brace, and lift her into the tub; she regularly bangs her head as I struggle to lift her in and out of the tub. The accommodation – a walk-in shower or similar accommodation – would allow me to bathe her safely and without risk or actual harm.

(*Id.* at ¶ 5.)

Ms. Blue stated that, after receiving Complainants' request for a reasonable accommodation, Ms. Jovic "interrogated and intimidated [Complainants'] guests by aggressively asking them what they were doing at the subject apartment" and on at least two occasions denied Complainants' guests entry to the building. (*Id.* at ¶ 7; *see also id.* at Ex. Q.) Ms. Blue also asserted that Ms. Jovic "regularly made false allegations to the police that someone was smoking marijuana or other drugs" in Complainants' apartment, and made "false noise complaints to the police," though no charges were ever filed or arrests made by the police who responded to the complaints. (*Id.* at Ex. B ¶ 8.)

In her affidavit, Ms. Blue stated that, in retaliation for Complainants' request for a reasonable accommodation, Ms. Jovic sought to terminate their tenancy by initiating eviction proceedings based on the false allegations of drug use and noise. (*Id.*) After Ms. Jovic initially won a jury verdict against Complainants in housing court, Complainants succeeded in having the verdict overturned. (*Id.* at Exs. O & P.) According to Ms. Blue, as of June 9, 2016, Respondents still had not provided an accommodation for B.T.'s disability. (*Id.* at Ex. B ¶ 13.)

The Bureau also proffered the expert report of an architectural consulting firm, which noted that the lip of the current bathtub is 22 inches off the floor, and opined that the tub could be replaced either with a shower or a walk-in tub and shower that would better accommodate

B.T.'s disability at a cost of between \$8,500.00 and \$10,000.00. (*Id.* at Ex. K; *see also id.* at Ex. J.) As previously noted, the ALJ granted the Bureau's motion for summary judgment in part, finding Respondents liable for failing to accommodate B.T.'s disability. However, the ALJ reserved for trial the questions of liability on the claim of retaliation and of appropriate relief. *In re Comm'n on Human Rights ex rel. Blue*, 2016 WL 3920704, at \*1.

### **B. The Administrative Hearing**

During the hearing on July 7, 2016, Ms. Jovic failed to appear, despite evidence from the Bureau that she had been properly served with notice of the hearing. (Bureau Hearing Ex. 1.) The Bureau stipulated to withdraw the retaliation claim and the hearing proceeded as an inquest, upon a finding of Ms. Jovic's default. (Tr. at 6:7-9, 9:22-24.)

Ms. Blue testified that she provides full-time care for B.T. and relies on Social Security and child support for income. (*Id.* at 14:24-15:2.) She and her daughter reside in an apartment on the third floor of Ms. Jovic's 12-unit building in Queens, New York. (*Id.* at 15:5-24; *see* Bureau Summ. J. Mot. Ex. K.) Ms. Blue testified that, since about 2006, Ms. Jovic has regularly harassed her for storing B.T.'s wheelchair in the first-floor hallway, even after the New York City Commission on Human Rights intervened on Complainants' behalf in or about 2006. (*See id.* at 21:18-23:2; *see also* Bureau Summ. J. Mot Ex. B at ¶ 4.)

B.T.'s disabilities include a seizure disorder, a thyroid disorder, a submucous cleft palate, a missing patella in her left leg, and lack of any cartilage in her knee. (*Id.* at 16:11-20.) She is non-verbal and relies on signs, gestures, facial expressions, and sounds such as yelling and grunting to communicate. (*Id.* at 18:19-19:18.) She also requires assistance with virtually every activity of daily life, including toileting, dressing, cleaning, and brushing her teeth and her hair. (*Id.* at 20:24-21:3.) To walk, B.T. must wear a leg brace and rely on physical assistance from



another person. (*Id.* at 16:20-25.) Without her leg brace, she must crawl or use a wheelchair. (*Id.* at 16:21-17:7.)

In order to bathe B.T., Ms. Blue testified that she or a home health aide must hold her under one arm, assist her through the narrow space to the tub, and help her in, one leg at a time, in a process that can take anywhere from 15 to 45 minutes, depending on B.T.'s compliance. (*Id.* at 27:8-29:3.) To exit the tub, the person assisting B.T. must help her from a seated position to her knees, "which is painful" for her (*id.* at 29:14), and then assist her in stepping out of the tub, with additional assistance from a handrail. (*Id.* at 29:10-20.) The large size of the tub limits Ms. Blue's ability to move around the bathroom while assisting her daughter, and the height of the bathtub makes the process of getting B.T. in and out particularly difficult. (*See id.* at 30:12-20.) Ms. Blue explained that bathing her daughter becomes more difficult as B.T. continues growing. (*Id.* at 30:21-31:7.) In addition, Ms. Blue suffers from arthritis and degenerative bone disease that make it difficult for her to physically assist her daughter. (*Id.* at 16:5-8; 19:25-20:3.)

The difficulties of bathing B.T. leave Ms. Blue feeling "frustrated, anxious" and nervous that her daughter might fall. (*Id.* at 31:12-19.) The complicated bathing process has also had a negative impact on Ms. Blue's relationship with her daughter and causes them to fight more than usual. (*Id.* at 32:5-9.) Ms. Blue explained that it's "a physical battle. She's swinging at me and very angry because of the situation. We're both frustrated because it's dangerous constantly." (*Id.* at 32:9-12.) According to Ms. Blue, B.T. accidentally bumps her head on the wall and injures herself getting in or out of the tub several times each week. (*Id.* at 33:16-24.) On one occasion, B.T. also suffered a bad fall into the space between the tub and the toilet bowl, which caused her to cry. (*Id.* at 34:3-9.)

After completing the process of bathing B.T., Ms. Blue typically feels exhausted, frustrated, and in pain. (*Id.* at 34:12-14.) To cope with the pain, she must take medication every day. (*Id.* at 34:18-21.) As of about May 2016, B.T. also began having seizures. (*Id.* at 35:11-22.) For nearly one week after experiencing a seizure, B.T. was too scared to bathe, so Ms. Blue and the home health aides cleaned her with sponge baths. (*Id.* at 36:11-21; *see also* Bureau Summ. J. Mot. Ex. I.) According to Ms. Blue, B.T.'s doctors indicated that it is likely that she will experience more seizures, given her medical history. (Tr. at 39:4-7.) Ms. Blue worries that if her daughter were to suffer a seizure while in the bathtub, she could be injured and Ms. Blue would not be able to readily extract her from the tub or to administer her medication to halt the seizure. (*Id.* at 38:2-16.)

According to Ms. Blue, replacing the existing bathtub with a roll-in shower or similar accommodation would improve Complainants' life "tremendously." (*Id.* at 40:6.) As she explained, "if it was something that she could get in and out easily. . . it would make a big difference for being frustrated at bath time." (*Id.* at 40:11-13.)

### **III. DISCUSSION**

#### **A. Legal Standard**

The NYCHRL expressly provides that it "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of [the NYCHRL] have been so construed." N.Y.C. Admin. Code § 8-130. Pursuant to the Local Civil Rights Restoration Act of 2005, "[i]nterpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state

civil rights laws as a floor below which the City’s Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.” Local Law No. 85 (2005); *see also* Local Law No. 35 (2016). Similarly, case law interpreting analogous anti-discrimination statutes under state and federal law, though perhaps persuasive, is not precedential in the interpretation of the NYCHRL. *See Albunio v. City of N.Y.*, 23 N.Y.3d 65, 73 (2014) (“the New York City Council’s 2005 amendment to the NYCHRL was, in part, an effort to emphasize the broader remedial scope of the NYCHRL in comparison with its state and federal counterparts and, therefore, to curtail courts’ reliance on case law interpreting textually analogous state and federal statutes”).

**B. The Claims Against Deceased Respondent Predrag Jovic Are Dismissed**

Generally, a legal action may not be commenced against a dead person. *Jordan v. City of N.Y.*, 23 A.D.3d 436, 437 (2d Dep’t 2005). Here, there is no dispute that Respondent Predrag Jovic died approximately two years before the Complaint was filed. (Bureau Summ. J. Mot. Ex. C, Verified Answer at 1; Tr. 4:23-5:1.) The claims against him are therefore dismissed.

**C. Respondent Milena Jovic Fails To Identify a Valid Basis To Set Aside Her Default**

Following issuance of the Report and Recommendation, the Commission received notice from Ms. Jovic that she was seeking new counsel to replace the attorney who had represented her since the start of the case. (Letter from Milena Jovic to ALJ Spooner, dated Sept. 1, 2016.) In addition, Ms. Jovic attached an email that she had received from her former attorney, indicating that the attorney was undergoing medical treatment. (*Id.*)

In the comments to the Report and Recommendation that Ms. Jovic later filed through new counsel, she argues that she “should not be penalized for the failures of her attorney” and that her former attorney’s medical issues constitute a “basis for ‘law office failure,’ which would entitle [her] to a vacatur” of the Report and Recommendation. (Resp’t’s Comments at 3-4.) Ms.

Jovic also asserts that she “was not aware nor was she notified of the trial date either by the Human Rights Commission or her attorney.” (*Id.* at 2.) In addition, she proffers a financial quote from a building contractor, dated January 30, 2015, related to the possibility of renovating Complainants’ bathroom, as evidence of her alleged good faith effort to conciliate this case. (*See id.* at 3-4 & Ex. 1.)

A party seeking to restore a case for trial following a default “must meet the criteria normally associated with a motion to open a default.” *Rodriguez v. Middle Atl. Auto Leasing, Inc.*, 122 A.D.2d 720, 722 (1st Dep’t 1986). To do so, the party must “demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action.” *State Farm Mut. Auto. Ins. Co. v. Knish Hacking Corp.*, 52 Misc. 3d 132(A) (2d Dep’t 2016). Ms. Jovic fails to satisfy either prong of that test. As an initial matter, the assertion that Ms. Jovic was not aware of the trial date because she was not notified by the Bureau is not credible. In fact, a Bureau attorney stated during the hearing that she had called Ms. Jovic directly, after receiving no response from Ms. Jovic’s former attorney, to notify her about the hearing, but Ms. Jovic refused to speak with the Bureau attorney and hung up the phone – a point that Ms. Jovic does not refute. (*See Tr.* at 8:15-17; *see also* Resp’t’s Comments.)

There is also no merit to Ms. Jovic’s assertion that her default should be excused based on law office failure. “It is well settled that in the context of civil litigation, an attorney’s errors or omissions are binding on the client.” *Saren v. Palma*, 263 A.D.2d 544, 545 (1st Dep’t 1999); *see Karen E. v. Yoram E.*, 144 A.D.3d 1081, 1081 (2d Dep’t 2016). Furthermore, a “claim of law office failure should be supported by a ‘detailed and credible’ explanation of the default at issue . . . and conclusory and unsubstantiated claims of law office failure are insufficient.” *Byers v. Winthrop Univ. Hosp.*, 100 A.D.3d 817, 818 (2d Dep’t 2012). Here, conclusory and

unsubstantiated claims are all that Ms. Jovic has offered. She did not provide a sworn statement from her prior attorney or from the attorney's doctor but, instead, speculates as to why prior counsel failed to engage in the investigatory and hearing processes. (See Resp't's Comments at 4); see also *BBCN Bank v. 12th Ave. Rest. Grp., Inc.*, 144 A.D.3d 494, 494 (1st Dep't 2016).

Under the circumstances, the record suggests that Ms. Jovic's default in this case was inexcusable. See *Edwards v. Feliz*, 28 A.D.3d 512, 513 (2d Dep't 2006); *Willis v. Keeler Motor Car Co.*, 121 A.D.3d 1373, 1375 (3d Dep't 2014).

Furthermore, the financial quote from a building contractor that Ms. Jovic submitted with her comments to the Report and Recommendation as "evidence of [her] willingness to mediate and correct the issue of the bathtub" (Resp't's Comments at 3) is insufficient to carry her burden of showing "the unavailability of any safe and reasonable accommodation" or establishing a meritorious defense. See *Stamm*, 2016 WL 1644879, at \*6 (quoting *Jacobsen v. N.Y.C. Health & Hosps. Corp.*, 22 N.Y.3d 824, 835 (2014)). Accordingly, the Commission finds that there is no basis to excuse Ms. Jovic's default in this case.

#### **D. Liability of Respondent Milena Jovic**

In the Complaint, the Bureau asserted discrimination claims against the Respondents under §§ 8-107(5), 8-107(15), and 8-107(20) of the NYCHRL, as well as a retaliation claim that was later withdrawn. (Compl. ¶ 9; Tr. 6:7-9.) The Bureau reasserted those same claims in its motion for summary judgment. (See generally Bureau Summ. J. Mot. Mem. of Law.) However, in his Memorandum and Decision on the summary judgment motion and the Report and Recommendation, Judge Spooner addressed only the claim of a failure to provide a reasonable accommodation, citing § 8-107(5) of the NYCHRL. (R&R at 6; Bureau Comments Ex. D at 4.)

In its comments to the Report and Recommendation, the Bureau now urges the Commission to consider the issue of liability under § 8-107(15). (Bureau Comments at 2.) Although not discussed in the Bureau's comments, it is clear from the Bureau's presentation of its case and from the record as a whole that the Bureau has not abandoned its claims on behalf of Ms. Blue for associational discrimination under § 8-107(20) of the NYCHRL. *See Norex Petroleum Ltd. v. Blavatnik*, 48 Misc. 3d 1226(A) (Sup. Ct. N.Y. Cnty. 2015). Accordingly, the Commission now considers Ms. Jovic's liability under §§ 8-107(5), 8-107(15), and 8-107(20) of the NYCHRL.

**1. Respondent Milena Jovic Discriminated Against Complainants in the Terms, Conditions, and Privileges of Their Rental in Violation of § 8-107(5) and § 8-107(20)**

In relevant part, § 8-107(5)(a) of the NYCHRL makes it an “unlawful discriminatory practice for the owner . . . of a housing accommodation . . . [t]o discriminate against any person because of such person's actual or perceived . . . disability . . . in the terms, conditions or privileges of . . . rental or lease of any such housing accommodation . . . or in the furnishing of facilities or services in connection therewith.” N.Y.C. Admin. Code § 8-107(5)(a)(2). Section 8-107(20) of the NYCHRL extends the protections of § 8-107, including those of § 8-107(5)(a), to prohibit unlawful discriminatory practices based on a person's relationship to or association with a person with an actual or perceived disability. *Id.* at § 8-107(20).

A housing accommodation is defined to include “any building, structure, or portion thereof which is used or occupied or intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings,” and “[e]xcept as otherwise specifically provided, such term shall include a publicly assisted housing accommodation.” N.Y.C. Admin. Code § 8-102(10). The term “disability” is defined as “any physical, medical,

mental or psychological impairment, or a history or record of such impairment,” *id.* at

§ 8-102(16)(a), and the term “physical, medical, mental, or psychological impairment” means:

- (1) An impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or
- (2) A mental or psychological impairment,

*id.* at §§ 8-102(16)(b)(1), (2).

To establish a *prima facie* case of disability discrimination under § 8-107(5)(a)(2), the Bureau must show that: (1) the complainant has an actual or perceived disability; (2) respondent is a covered entity under the NYCHRL; (3) respondent denied or interfered with the terms, conditions or privileges of the sale, rental or lease of a housing accommodation to complainant; and (4) respondent acted in such a manner and circumstances as to give rise to the inference that its actions constituted discrimination. N.Y.C. Admin. Code § 8-107(5)(a)(2); *see Howe*, 2016 WL 1050864, at \*5 (discussing housing discrimination based on lawful source of income).

To establish a *prima facie* case of associational housing discrimination based on disability, the Bureau must make the same showing except that, rather than showing that the complainant has an actual or perceived disability, it must establish that the respondent knew of the complainant’s relationship or association with a person with an actual or perceived disability and the complainant suffered an independent injury. N.Y.C. Admin. Code § 8-107(20); *see Bartman v. Shenker*, 5 Misc. 3d 856, 860 (Sup. Ct. N.Y. Cnty. 2004); *see Jing Zhang v. Jenzabar, Inc.*, No. 12-CV-2988, 2015 WL 1475793, at \*12 (E.D.N.Y. Mar. 30, 2015) (“To maintain a claim for association discrimination, [plaintiff] must simply allege that it suffered an

independent injury because of its relationship with [a person] who alleges unlawful discriminatory practices related to her terms, conditions, or privileges of employment.”). “Once the Bureau establishes a *prima facie* case of discrimination, respondent may advance a legitimate, non-discriminatory reason for its actions. If the respondent articulates a clear and specific non-discriminatory reason for its actions, the burden shifts to the Bureau to demonstrate that discriminatory animus was at least a factor in the adverse action.” *Howe*, 2016 WL 1050864, at \*5 (citations omitted).

Here, there is no dispute that B.T. has a disability or that Ms. Blue was known by Ms. Jovic to be related to B.T. (Bureau Summ. J. Mot. Ex. C, Verified Answer ¶¶ 1 & 4.) There is also no dispute that Ms. Jovic is covered by the NYCHRL as the owner of the building (*id.* at ¶ 2), which is a housing accommodation as defined by the NYCHRL, *see* N.Y.C. Admin Code § 8-102(10).

Furthermore, the Commission finds that Ms. Jovic treated Complainants in a manner that directly interfered with the conditions and privileges of their rental, under circumstances giving rise to an inference of discrimination. Ms. Blue testified that Ms. Jovic had, for example, harassed Complainants on an ongoing basis since 2006 about storing B.T.’s wheelchair on the first floor of the building. (*See* Tr. at 21:18-23:2; Bureau Summ. J. Mot. Ex. B at ¶ 4.) It is also undisputed that Ms. Jovic made and encouraged other tenants to make complaints to the police about the noise caused by B.T.’s leg brace as she walks through the hall. (Bureau Summ. J. Mot. Ex. B ¶ 8.) Based in part on the record of noise complaints, Ms. Jovic then sought, unsuccessfully, to obtain an order of eviction against Complainants. (*Id.* at Ex. B at ¶¶ 7, 11 & Ex. P.) Each of these actions shows a connection between B.T.’s disability and Ms. Jovic’s negative treatment of Complainants. Ms. Blue also attested that Ms. Jovic “interrogated and



intimidated [their] guests by aggressively asking them what they were doing at the [] apartment [and] on at least two [] occasions . . . denied entry to the [building] to [their] guest.” (*Id.* at ¶ 7; *see also id.* at Ex. Q.) Overall, the record shows a concerted campaign of harassment by Ms. Jovic against Complainants, motivated at least in part by B.T.’s disability. There is, moreover, nothing in the record to suggest that Ms. Jovic treated any other tenant in the manner that she treated Complainants.

Based on the foregoing, the Commission finds that the Bureau has established a *prima facie* case of disability discrimination under § 8-107(5), and of associational discrimination under § 8-107(20) of the NYCHRL. *See Awad v. City of N.Y.*, No. 13-civ-5753, 2014 WL 1814114, at \*7 (E.D.N.Y. May 7, 2014); *accord Bartman*, 5 Misc.3d at 860-61. By defaulting, Ms. Jovic forfeited her opportunity to rebut the Bureau’s *prima facie* case. Moreover, as set forth in the Commission’s March 1, 2016 order, the Commission has adopted an adverse inference that any materials or testimony that Ms. Jovic might have presented would prove unfavorable to her. (Bureau’s Summ. J. Mot. Ex. H at ¶ d.) Accordingly, the Commission holds that Ms. Jovic discriminated against the Complainants in violation of § 8-107(5) and § 8-107(20) of the NYCHRL.

**2. Respondent Milena Jovic Discriminated Against Complainants by Failing To Provide a Reasonable Accommodation in Violation of § 8-107(15) and § 8-107(20)**

Section 8-107(15) of the NYCHRL requires that covered entities, including housing providers, “make reasonable accommodation to enable a person with a disability to . . . enjoy the right or rights in question provided that the disability is known or should have been known by

the covered entity.” N.Y.C. Admin. Code § 8-107(15).<sup>6</sup> “The term ‘reasonable accommodation’ means such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity’s business.” *Id.* § 8-102(18); *Stamm*, 2016 WL 1644879, at \*6 (“An accommodation is only unreasonable if it causes an undue hardship.”).

To establish liability under § 8-107(15) of the NYCHRL, the Bureau must show that:

(1) complainant has a disability; (2) respondent knew or should have known of the disability; (3) an accommodation would enable complainant to use or enjoy a housing accommodation; and (4) respondent refused to provide an accommodation. *See Stamm*, 2016 WL 1644879, at \*6 (discussing places of public accommodation). A covered entity has the burden of establishing undue hardship and that a reasonable accommodation is unavailable. *Stamm*, 2016 WL 1644879, at \*6.

The Commission has recognized that an award for damages may be premised on a failure to reasonably accommodate the disability of a relative or associate of the complainant. *See In re Torres v. Prince Management Corp.*, OATH Index No. 301/98, R&R, 1997 WL 1129224 (Aug. 14, 1997), *adopted*, Dec. & Order, 1997 WL 34613064 (Oct. 27, 1997) (mother awarded damages for independent injury arising from failure to accommodate children with disabilities); *accord Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 278 (2d Cir. 2009) (reinstating NYCHRL claim of children who suffered a direct, independent injury because of the need to

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<sup>6</sup> Although several cases decided after § 8-107(15) was added to the NYCHRL in 1991 have recognized a claim for failure to accommodate a disability under § 8-107(5), *see, e.g., Comm’n on Human Rights v. Hudson Overlook, LLC*, OATH Index No. 2094/04, Dec. & Order (Mar. 23, 2005), *available at* <http://a820-isys.nyc.gov/ISYS/> (finding liability for failure to accommodate under §§ 8-107(5)(a)(2) & 8-107(15)(a)); *In re Comm’n on Human Rights ex rel. Thomas v. Mut. Apartments Inc.*, OATH Index No. 2399/14, Mem. & Dec., 2014 WL 4815262, at \*1 (Sept. 2, 2014) (discussing failure to accommodate under §§ 8-107(5)(a) & 8-107(15)(a)), such claims are best understood as now residing under § 8-107(15).

provide sign-language interpretation services to their parent with disabilities when hospital failed to provide reasonable accommodation). A claim of associational discrimination under § 8-107(20) of the NYCHRL based on a failure to provide a reasonable accommodation is essentially the same as a claim for failure to accommodate under § 8-107(15), except that, rather than showing that the complainant has an actual or perceived disability, the Bureau must show that the respondent knew of complainant's relationship or association with a person with an actual or perceived disability and that the complainant suffered a direct, independent injury as a result of the respondent's failure to provide a reasonable accommodation. *See* N.Y.C. Admin. Code § 8-107(20); *Jing Zhang*, 2015 WL 1475793, at \*12.

As discussed above, there is no dispute that Ms. Jovic was aware that B.T. has a disability and is related to Ms. Blue, or that Ms. Jovic refused to replace Complainants' bathtub as a reasonable accommodation for B.T.'s disability. (*See, e.g.*, Bureau Summ. J. Mot. Ex. C, Verified Answer ¶ 8; Resp't's Comments.) Ms. Jovic also failed to establish that providing the requested accommodation would amount to an undue hardship. (*See* Bureau Summ. J. Mot. Ex. H; Bureau Comments Ex. D at 3.) In fact, undisputed evidence from the Bureau's architectural expert affirmatively shows that a reasonable accommodation of B.T.'s disability is available. (*See* Bureau Summ. J. Mot. Ex. K.)

Ms. Jovic's failure to replace Complainants' bathtub has interfered with B.T.'s enjoyment of her home, causing her physical injuries on a regular basis, and adding unnecessary strains to her relationship with her mother. Ms. Blue also suffered independent physical and emotional injuries because of Ms. Jovic's failure to provide a reasonable accommodation, separate and apart from the injuries experienced by her daughter. Among other things, the process of helping B.T. in and out of the current tub has strained Ms. Blue's relationship with her daughter,

exacerbated the pain from her arthritis and degenerative bone disease, and caused her anxiety about potential injury to her daughter. For these reasons, the Commission finds that Ms. Jovic is liable for violating § 8-107(15) and § 8-107(20) of the NYCHRL by failing to provide Complainants with a reasonable accommodation.

#### **IV. DAMAGES, CIVIL PENALTIES, AND REMEDIAL ACTION**

Where the Commission finds that respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to order respondents to cease and desist from such practices and order such other “affirmative action as, in the judgment of the commission, will effectuate the purposes of” the NYCHRL. N.Y.C. Admin. Code § 8-120(a). The Commission may also award damages to complainants. *See id.* § 8-120(a)(8). In addition, the Commission may impose civil penalties of not more than \$125,000.00, unless the “unlawful discriminatory practice was the result of the respondent’s willful, wanton or malicious act,” in which case a civil penalty of not more than \$250,000.00 may be imposed. *Id.* § 8-126(a); *see In re Comm’n on Human Rights ex rel. Cardenas v. Automatic Meter Reading Corp.*, OATH Index No. 1240/13, Dec. & Order, 2015 WL 7260567, at \*15 (Oct. 28, 2015) (finding \$250,000.00 civil penalty appropriate where respondent engaged in willful and wanton sexual harassment over a three-year period). Civil penalties are paid to the general fund of the City of New York. N.Y.C. Admin. Code § 8-127(a).

##### **A. Compensatory Damages**

“Compensatory damages, including emotional distress damages, are intended to redress a specific loss that the complainant suffered by reason of the respondent’s wrongful conduct,” and should – insofar as monetary compensation can ever compensate for emotional harm – correspond to the complainant’s specific injuries, as supported by the record. *See Howe*, 2016

WL 1050864, at \*6. To support an award of emotional distress damages, the record “must be sufficient to satisfy the Commissioner that the mental anguish does in fact exist, and that it was caused by the act of discrimination.” *Id.* An award for compensatory damages may be premised on the complainant’s credible testimony alone, or other evidence including testimony from other witnesses, circumstantial evidence, and objective indicators of harm, such as medical evidence. *See In re Comm’n on Human Rights ex rel. Agosto v. Am. Constr. Assocs.*, Am. Dec. & Order, 2017 WL 1335244, at \*7 (Apr. 5, 2017) (collecting cases).

In light of the “strong anti-discrimination policy spelled out” in the NYCHRL, and because the rights afforded therein are statutory and protect the public interest as well as private rights, the quality and amount of evidence required to prove a claim for compensatory damages under the NYCHRL is less than would be required, for example, under traditional common law tort principles. *Batavia Lodge No. 196 v. N.Y. State Div. of Human Rights*, 359 N.Y.S.2d 25, 27-28 (1974) (discussing New York State Human Rights Law (“NYSHRL”). Thus, “[t]he fact that the damages are somewhat speculative and evanescent should not serve to limit the legislative authority vested in the Commissioner to make awards under the Human Rights Law.” *Batavia Lodge No. 196, Loyal Order of Moose v. N.Y. State Div. of Human Rights*, 43 A.D.2d 807, 810 (4th Dep’t 1973) (discussing NYSHRL). Nevertheless, “the evidence of emotional distress should be ‘demonstrable, genuine, and adequately explained.’” *Town of Hempstead v. State Div. of Human Rights*, 233 A.D.2d 451, 453 (2d Dep’t 1996) (discussing damages under the NYSHRL) (quoting *Price v. City of Charlotte*, 93 F.3d 1241, 1252 (4th Cir. 1996)).

The NYCHRL places no limitation on the size of compensatory damages awards. N.Y.C. Admin. Code § 8-120(a)(8). When valuing compensatory damages in a particular case, the Commission assesses the nature of the violation, the amount of harm indicated by the evidentiary

record, and awards that have been issued for similar harms. *See Sch. Bd. of Educ. of Chapel of Redeemer Lutheran Church v. N.Y.C. Comm'n on Human Rights*, 188 A.D.2d 653, 654 (2d Dep't 1992). Other factors that may be relevant to valuing emotional distress damages include "the duration of a complainant's condition, its severity or consequences, any physical manifestations, and any medical treatment." *N.Y.C. Transit Auth. v. State Div. of Human Rights*, 78 N.Y.2d 207, 218 (1991) (discussing damages under the NYSHRL).

In the Report and Recommendation, Judge Spooner recommends that the Commission award emotional distress damages of \$30,000.00 to B.T. and \$50,000.00 to Ms. Blue. (R&R at 6, 11.) The Bureau recommends that the Commission adopt the recommendation on damages (Bureau Comments at 2), while Ms. Jovic's comments are silent on the issue (*see generally* Resp't's Comments). Because the Bureau did not present evidence of Complainants' economic damages, damages here are limited to emotional distress damages.

**1. B.T.**

In light of B.T.'s disabilities and her inability to testify on her own behalf, the evidence of her damages comprises testimony from her mother about the observable impact that Ms. Jovic's conduct has had on her. Ms. Blue reported that, because of false complaints that Ms. Jovic made or encouraged other tenants to make, Complainants received repeated visits from the police, which scared B.T. because "she associated the uniformed police with the various times uniformed people came to [their] apartment in medical emergencies." (Bureau Summ. J. Mot. Ex. B ¶ 8.) Ms. Blue also reported that Ms. Jovic harassed Complainants' guests to such an extent that guests stopped visiting. (*Id.* at Ex. B ¶ 10.) As a result, B.T.'s "quality of life deteriorated rapidly. She became bored and [had] no one but [her mother] to interact with." (*Id.*)

Ms. Blue also described the physical and emotional impact that navigating through bath time has had on B.T. over the nearly three years since Complainants first requested a reasonable accommodation. Although B.T. is generally happy once in the bath water, she constantly protests and is frustrated during the grueling process of getting into and out of the tub. (Tr. at 27:1-7, 32:22-33:8.) Typically, B.T. will accidentally bang her head on the bathroom wall “a few times a week” while entering or exiting the tub, and on at least one occasion took a bad fall that left her crying on the bathroom floor. (*Id.* at 33:16-24.) Ms. Blue also observed that her daughter experienced visible pain when transitioning from a seated position to a kneeling position in the tub, due to the lack of cartilage in her knee. (*Id.* at 29:10-15, 29:22-30:3.) According to Ms. Blue, the struggle of getting into and out of the tub caused B.T. to become angry and led the two of them to fight, placing an undue strain on their relationship. (*Id.* at 32:5-15.)

After B.T. began to have seizures, she became too scared to go in the bathtub for nearly a week. (*Id.* at 36:4-12.) Ms. Blue testified: “[E]very time I would tell her you have to take a bath, she would say no, no, no, no. And she would start saying she’s sad, and making, you know, sounds like she just didn’t want to go in the tub. So we had to sponge bath her.” (*Id.* at 36:15-19.) Ms. Blue observed that this left her daughter “on the sad side,” because she was unable to enjoy playing in the water. (*Id.* at 37:3-4.)

The case of *In re Russell v. Chae Choe*, OATH Index No. 09-1021033, Dec. & Order, 2009 WL 6958753 (Dec. 10, 2009), offers notable parallels to the facts in this case. In *Russell*, the respondent was held liable for violating the NYCHRL after refusing for over one year to replace the petitioner’s tub with a shower as a reasonable accommodation for her disability. The petitioner testified in that case that she had “an increasing fear that she would fall and hurt herself, especially since she fell while getting out of the tub two years earlier.” *Id.* at \*1. She

described the complicated process that she went through to maneuver into and out of the tub, and stated that she would sometimes skip bathing out of fear of injury, which then left her feeling “dirty, depressed and unwilling to leave her apartment.” *Id.* The Commission awarded the petitioner \$30,000.00 in compensatory damages in *Russell. Id.* at \*2.

While the fear and frustration that the petitioner described in *Russell* appears somewhat similar to what B.T. has experienced because of the lack of a reasonable accommodation, there are several exacerbating factors that suggest that a higher damages award is appropriate in this case. First, B.T. has been without a reasonable accommodation for nearly three times as long as the petitioner in *Russell*. Second, she has experienced greater physical injury than that described by the petitioner in *Russell*. Specifically, although B.T. and Ms. Russell each suffered a significant fall, B.T. has also endured continual minor injuries to her head and knees on a weekly basis. Third, B.T.’s relationship with her mother, her primary caretaker, has weathered strains unlike anything described in *Russell*. Lastly, B.T. and her mother have been subjected to an ongoing campaign of intentional discrimination by Ms. Jovic, which was not the case in *Russell*. As previously noted, because of Ms. Jovic’s discriminatory conduct, B.T. has become sad, lonely, and bored because of fewer visitors to her home. She also has been frightened by unwarranted police visits triggered by Ms. Jovic’s false complaints. While it is unclear, based on the evidence and in light of her disabilities, to what extent B.T. appreciates the totality of Ms. Jovic’s concerted efforts to harass Complainants, there is no doubt that she has repeatedly suffered significant emotional injury because of Ms. Jovic’s unlawful conduct.

Based on a review of the relevant caselaw, the Commission holds that an award of \$45,000.00 in compensatory damages is appropriate for B.T. *Accord In re ISS Action Security v. N.Y.C. Comm’n on Human Rights*, 114 A.D.3d 943, 944 (2d Dep’t 2014) (upholding award of



\$20,000.00 for mental anguish for a single incident denying complainant access to a public accommodation due to his disability, triggering humiliation, depression, crying, inability to leave his home for two days, and weight loss); *In re 119-121 East 97<sup>th</sup> Street Corp. v. N.Y.C. Comm'n on Human Rights*, 220 A.D.2d 79, 85-87 (1st Dep't 1996) (upholding \$100,000.00 award for mental anguish where landlords subjected complainant with disabilities to indignities, insults, threats of eviction, and interference with his employment, in an "agenda of spite, malice and bias" over one and half years).

## 2. Ms. Blue

Ms. Blue testified to the physical and emotional impact that Ms. Jovic's failure to provide a reasonable accommodation has had on her for nearly three years. She explained that the cumbersome process of bathing her daughter without a reasonable accommodation leaves her feeling frustrated and anxious (Tr. at 31:12-19), and has taken an emotional toll on her relationship with her daughter, leading them to fight more than usual (*id.* at 32:5-12). Because B.T. is getting bigger, and because she has recently begun having seizures, Ms. Blue's frustration and fear about the bathing process has also increased with time. (*Id.* at 30:21-31:3.) Indeed, at the hearing, Ms. Blue broke down in tears when discussing the possibility that her daughter might suffer a seizure in the bathtub, and that Ms. Blue might not be able to easily rescue her. (*Id.* at 36:4-10, 38:3-5.) Overall, the bathing process is physically exhausting for Ms. Blue and causes her enough pain that she must take medication every day. (*Id.* at 34:12-21.)

Ms. Blue also described the significant impact that Ms. Jovic's discrimination has had on her since about March 2014. She explained that the constant harassment – including unnecessary visits from the police and the decline in visits from friends who were put off by Ms. Jovic's hounding – left her feeling “on edge, uncomfortable in her apartment, and afraid to come home.”

(*Id.* at ¶ 9.) Ms. Jovic’s failed efforts to have Complainants evicted from their apartment in 2015 also had a significant impact on Ms. Blue. She explained that the “uncertainty surrounding the possibility of losing my apartment that I have lived in all my life was difficult for me and caused me to experience a great deal of stress including loss of sleep, loss of appetite, extreme nervousness, and made me feel physically ill.” (*Id.*)

As a whole, the record suggests that Ms. Blue’s emotional distress has been somewhat greater than that of her daughter, particularly since she bore the brunt of Ms. Jovic’s intentional discrimination. Moreover, her emotional distress has been compounded by her concerns for the welfare of her child. Under the circumstances, the Commission agrees with the ALJ’s recommendation of an award of \$50,000.00 in emotional distress damages for Ms. Blue. *Accord DeCutris v. Upward Bound Int’l, Inc.*, No. 09-civ-5378, 2011 WL 4549412, at \*4-5 (S.D.N.Y. Sept. 27, 2011) (\$100,000.00 award where plaintiff suffered ongoing employment discrimination and retaliation, where she felt constantly stressed, nervous and unable to sleep, lost self-esteem and self-confidence, and feared losing her job); *In re 119-121 East 97<sup>th</sup> Street Corp.*, 220 A.D.2d at 85-87 (\$100,000.00 award); *Russell*, 2009 WL 6958753, at \*2 (\$30,000.00 award); *In re Torres*, 1997 WL 1129224, at \*6.

#### **B. Civil Penalties**

Judge Spooner recommended a civil penalty of \$40,000.00 in this case (R&R at 11), which the Bureau argues should be increased to a maximum penalty of \$250,000.00 (Bureau Comments at 2). Ms. Jovic does not address the issue of civil penalties in her comments to the Report and Recommendation. (*See generally* Resp’t’s Comments.)

In assessing whether the imposition of civil penalties will vindicate the public interest, the Commission may consider several factors, including, but not limited to: (1) respondent’s

financial resources; (2) the sophistication of respondent's enterprise; (3) respondent's size; (4) the willfulness of the violation; (5) the ability of respondent to obtain counsel; and (6) the impact on the public of issuing civil penalties. *See, e.g., A Nanny on the Net*, 2017 WL 694027, at \*8; *CU 29 Copper Rest. & Bar*, 2015 WL 7260570, at \*4. The Commission also considers the extent to which respondent cooperated with the Bureau's investigation and with OATH, *see, e.g., A Nanny on the Net*, 2017 WL 694027, at \*9; *Howe*, 2016 WL 1050864, at \*8; *Cardenas*, 2015 WL 7260567, at \*15; *Crazy Asylum*, 2015 WL 7260568, at \*6, as well as the amount of remedial action that respondent may have already undertaken, *see, e.g., A Nanny on the Net*, 2017 WL 694027, at \*8; *CU 29 Copper Rest. & Bar*, 2015 WL 7260570, at \*4 (holding "civil penalties are not necessary to deter Respondents from future violations of the NYCHRL, as they have committed to publishing advertisements that comply with the law").

**1. Respondent Milena Jovic's Size, Sophistication, Financial Resources, and Ability To Obtain Counsel**

The record shows that the building in which Complainants reside is a 12-unit residential building and that Ms. Jovic is represented by legal counsel. (*See, e.g., Bureau Summ. J. Mot. Ex. C, Verified Answer & Ex. K at 1; Resp't's Comments.*) In addition, as set forth in the Commission's order dated March 1, 2016, Ms. Jovic's failure to produce any financial records warrants the strongest inference against her which is supported by evidence in the record concerning her finances. (*See Bureau Summ. J. Mot. Ex. H*); *see also Noce v. Kaufman*, 2 N.Y.2d 347, 354 (1957). Based on these factors, the Commission concludes that Ms. Jovic is a sophisticated business owner, with a moderately sized business. *See Comm'n on Human Rights v. Tantillo*, OATH Index Nos. 105/11, 106/11 & 107/11, Dec. & Order, 16 (May 23, 2011) (holding that owners of 17 housing units "are not the largest of housing providers" but "are not

the smallest either”).<sup>7</sup> On their own, these considerations weigh in favor of a mid-level civil penalty. However, as discussed below, other factors in this case dictate the need for higher penalties. *See Agosto*, 2017 WL 1335244, at \*11; *Tantillo*, OATH Index Nos. 105/11, 106/11 & 107/11 at 16-17.

## **2. Willfulness of the Violations by Respondent Milena Jovic**

As Judge Spooner found, the record here also shows that Ms. Jovic willfully discriminated against Complainants. (R&R at 9.) Since about 2006, Ms. Jovic has continually harassed Complainants about the storage of B.T.’s wheelchair, even after receiving warnings to stop from the New York City Commission on Human Rights. (*See Bureau Summ. J. Mot. Ex. B* at ¶ 4.) Ms. Jovic has also targeted Complainants for false complaints to the police and has hassled Complainants’ visitors in a manner seemingly designed to discourage Complainants’ ongoing residence in Ms. Jovic’s building. Such willful and wanton abuse ultimately culminated in Ms. Jovic filing an apparently unwarranted eviction proceeding against Complainants. This record of intentional misconduct over a sustained period warrants the imposition of significant civil penalties. *See N.Y.C. Admin. Code § 8-126(a)*; *Cardenas*, 2015 WL 7260567, at \*15.

## **3. Respondent Milena Jovic’s Lack of Cooperation with the Investigation and Hearing Process**

Ms. Jovic’s level of cooperation throughout this case has been woefully deficient. After filing an answer at the start of the case, Ms. Jovic refused to participate in subsequent proceedings for a year and a half. She failed to produce documents requested by the Bureau through investigatory demands and then through subpoena, failed to respond to the Bureau’s motions to compel and for summary judgment and to the decisions issued on those motions. She

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<sup>7</sup> Available on OATH’s website at <http://a820-isys.nyc.gov/ISYS/>.

then failed to appear for the hearing at OATH. Indeed, Ms. Jovic only sought to reengage in the case after the Report and Recommendation was issued. The Commission has repeatedly held that such “steadfast refusal to take this process seriously militates in favor of a higher penalty ‘[b]ecause it is in the public interest to have individuals respond and participate in a process designed to cure discriminatory practices.’” *Howe*, 2016 WL 1050864, at \*8 (quoting *Crazy Asylum*, 2015 WL 7260568, at \*6); see *Agosto*, 2017 WL 1335244, at \*11.

#### **4. Impact of Civil Penalties on the Public**

The record in this case suggests that there is a need for considerable civil penalties. As noted above, Ms. Jovic operates at least a moderately sized business, which is likely to impact a fair number of New York City residents. See, e.g., *Tantillo*, OATH Index Nos. 105/11, 106/11 & 107/11 at 16. Equally importantly, civil penalties are necessary to deter Ms. Jovic from future violations of the NYCHRL, since she has repeatedly engaged in discrimination against Complainants, apparently even after receiving notice about her obligations under the law from the New York City Commission on Human Rights. See *Howe*, 2016 WL 1050864, at \*10. There is also a need to deter other potential respondents from refusing to cooperate with the Bureau’s investigation and the OATH hearing process as Ms. Jovic has done. See, e.g., *id.* at \*8; *Tantillo*, OATH Index Nos. 105/11, 106/11 & 107/11 at 16.

The Commission agrees with Judge Spooner’s general observation that *Russell* offers a useful guide for assessing civil penalties in this case, but disagrees with the conclusion that the factors here are “slightly less egregious” than in *Russell*. (See R&R at 11.) Rather, the Commission finds that the facts in this case militate in favor of a higher penalty than the \$50,000.00 fine imposed in *Russell*. As discussed above, the violations in this case took place for nearly three times as long as those in *Russell*. In addition, there is evidence in this case, unlike in

*Russell*, that Ms. Jovic was put on notice by the New York City Commission on Human Rights about her obligations under the NYCHRL, prior to engaging in willful violations of the law. Furthermore, the respondent in *Russell* was found only to have denied the petitioner a reasonable accommodation and not, like Ms. Jovic, to have also engaged in a concerted campaign of intentional harassment against Complainants.

Based on the foregoing considerations, and based on the strong public interest in ensuring accountability under the law, the Commission concludes that a civil penalty of \$60,000.00 is appropriate in this case. However, because there is also a strong public interest in encouraging Ms. Jovic's prompt compliance with the NYCHRL and ensuring that Complainants receive a reasonable accommodation without any further delay, the civil penalty will be reduced to \$10,000.00 provided that, within 90 days, Ms. Jovic complies with the requirement to make a reasonable accommodation as described below.

**C. Remedial Action**

Ms. Jovic is required to make a reasonable accommodation for B.T.'s disability, as set forth below, and is prohibited from passing onto Complainants the cost of providing the reasonable accommodation. *See Phillips v. City of N.Y.*, 66 A.D.3d 170, 177 n.5 (1st Dep't 2009) ("the City HRL . . . requires the housing provider to make the change, and does not shift the cost to the person with a disability (unless the housing provider demonstrates undue hardship)"), *overturned on other grounds by Jacobsen*, 22 N.Y.3d at 838.

The Commission has frequently required individuals who have been found liable for violations of the NYCHRL to attend Commission-led trainings to strengthen their understanding of their obligations under the law. *See, e.g., Spitzer*, 2016 WL 7106071, at \*10; *In re Comm'n on Human Rights ex rel. Jordan v. Raza*, OATH Index No. 716/15, 2016 WL 7106070, at \*11 (July

7, 2016); *Stamm*, 2016 WL 1644879, at \*11. As set forth below, the Commission orders Ms. Jovic to attend such a training. In addition, Ms. Jovic must post a notice of rights in the central hallway of her building, as set forth below.

## V. CONCLUSION

FOR THE REASONS DISCUSSED HEREIN, IT IS HEREBY ORDERED that Respondent Milena Jovic immediately cease and desist from engaging in discriminatory conduct.

IT IS FURTHER ORDERED that no later than 10 calendar days after service of this Order, the Bureau shall provide Respondent Milena Jovic with written notice concerning which specific reasonable accommodation it is demanding of the two options outlined in the May 31, 2016 architectural expert report of Edward I. Mills + Associates (*see* Bureau Summ. J. Mot. Ex. K). The Bureau shall simultaneously serve a copy of such notice on the Commission.

IT IS FURTHER ORDERED that no later than 90 calendar days after service of this Order, Respondent Milena Jovic shall replace the existing bathtub in Complainants' apartment with the reasonable accommodation specified in the Bureau's written notice. Consistent with §§ 8-102(18) and 8-107(15)(a) of the NYCHRL, Respondent Milena Jovic shall bear the full cost of providing the reasonable accommodation and is prohibited from passing directly or indirectly any portion of that expense onto Complainants through any fee, rent increase, or other charge. *See Phillips*, 66 A.D.3d at 177 n.5. Within seven (7) calendar days of completion of the installation project, Respondent Milena Jovic shall submit to the Commission a signed affidavit stating the date of project completion. The signed affidavit should include the case name and number, and should be sent to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries.

IT IS FURTHER ORDERED that, if Respondent Milena Jovic complies with the requirement to replace the existing bathtub in Complainants' apartment within the required 90 days from service of this Order, she shall, within 105 calendar days after service of this Order, pay a reduced civil penalty of \$10,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 1624/16. If, however, Respondent Milena Jovic fails to provide Complainants a reasonable accommodation within 90 days of service of this Order, she shall, within 105 calendar days after service of this Order, pay an unreduced penalty of \$60,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 1624/16.

IT IS FURTHER ORDERED that no later than 90 calendar days after service of this Order, Respondent Milena Jovic pay Complainant Blue \$50,000.00 in emotional distress damages, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to Lynn Blue, including a written reference to OATH Index No. 1624/16.

IT IS FURTHER ORDERED that no later than 90 calendar days after service of this Order, Respondent Milena Jovic pay B.T. \$45,000.00 in emotional distress damages, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to [REDACTED], including a written reference to OATH Index No. 1624/16.



IT IS FURTHER ORDERED that no later than 90 calendar days after service of this Order, Respondent Milena Jovic shall attend a Commission-led training on the NYCHRL. A schedule of available trainings may be obtained by calling the Director of Training and Development at (212) 416-0193 or emailing [trainings@cchr.nyc.gov](mailto:trainings@cchr.nyc.gov).


IT IS FURTHER ORDERED that within 90 calendar days of service of this Order, and for a period of no less than two (2) years, Respondent Milena Jovic conspicuously post a copy of the enclosed notice of rights, also available at [http://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR\\_NoticeOfRights2.pdf](http://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_NoticeOfRights2.pdf), in the central hallway of her building at 1736 Stephen Street, Queens, New York, 11385.

Failure to timely comply with any of the foregoing provisions shall constitute non-compliance with a Commission Order. In addition to any civil penalties that may be assessed against her, Respondent Milena Jovic shall pay a civil penalty of \$100.00 per day for every day the violation continues. N.Y.C. Admin. Code § 8-124. Furthermore, failure to abide by this Order may result in criminal penalties. *Id.* at § 8-129.

Dated: New York, New York  
May 26, 2017

**SO ORDERED:**

**New York City Commission on Human Rights**



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Carmelyn P. Malalis  
Commissioner/Chair

