

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

Pamela McDuffie,	:	
Complainant	:	
	:	
v.	:	PHRC Case No. 201703946
	:	HUD Case No. 03-18-9183-8
Tunic Group, LLC,	:	
Respondent	:	
	:	

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RECOMMENDATION OF HEARING EXAMINER

FINAL ORDER

STATEMENT OF THE CASE

TAMARA SHEHADEH-COPE, HEARING EXAMINER. A public hearing was held virtually in this matter on April 17 and 18, 2024. Complainant Pamela McDuffie (hereinafter “McDuffie” or “Complainant”) filed a Complaint in PHRC Case No. 201703946 on June 7, 2021, against Tunic Group, LLC (hereinafter “Respondent”). The Complaint alleged that Respondent discriminated against Complainant on the basis of disability when it failed to provide Complainant with the following requested accommodations: (1) transfer to an A-level apartment; (2) a reserved handicapped-accessible parking space; (3) enforcement of Respondent’s anti-dumping policies or implementation of remedial measures that would have permitted Complainant full functional use of a reserved accessible parking space; and (4) a functional intercom system. Respondent filed a timely answer on or about June 16, 2021, denying the allegations set forth in the Complaint. Complainant was represented by Obinna I. Abara, Esquire, and Respondent was represented by Andrew J. Feltzin, Esquire. Stephanie Chapman, Esquire, represented the Commonwealth’s interest in the case.

FINDINGS OF FACT¹

1. The Complainant herein is Pamela McDuffie (“McDuffie” or “Complainant”).
2. The Respondent herein is Tunic Group, LLC (“Respondent”).
3. Sam Miller (“Miller”) is the owner of Respondent. Tr. 353, 413.
4. Moses Klein (“Klein”) is an Office Manager employed by Respondent.
5. Matt Twersky (“Twersky”) is a Regional Manager employed by Respondent. J.S. ¶ 32.²
6. The address of the property at issue, Tustin Court Apartments, is 8410 Bustleton Avenue, Philadelphia, PA 19152. J.S. ¶ 1.
7. Respondent is the company hired by Tustin Court Apartments to manage the property for them. Tr. 376.
8. Respondent is the agent for landlord Tustin Apartments, LP. C.E. 2; Tr. 412.
9. Respondent has a contractual relationship with Swift Apartment Rentals (“Swift”). C.E. 31; Tr.410-411.
10. Swift handles the rental properties managed by Respondent, specifically marketing the apartment to prospective tenants and “filling them up with tenants”. Tr. 376-77.
11. Swift also handles the transferring of tenants and answers questions pertaining to the rental properties. Tr. 354-355.
12. Sam Miller is also the registered agent of Swift. C.E. 45; Tr. 428.

¹ Explanation of Abbreviations

Tr.= Hearing Transcript

J.E.= Joint Exhibit

C.E.= Complainant Exhibit

R.E.= Respondent Exhibit

J.S. = Joint Stipulations

² The document referred to as “Joint Stipulations” was originally submitted as “Respondent Stipulations” and still bears that title. The Hearing Examiner conferred with the parties start of the public hearing, who jointly confirmed agreement to the stipulations set forth (except where otherwise marked).

13. The registered office of Swift is listed as 7 Glenwood Avenue, Suite 419D, East Orange, New Jersey. *Id.*
14. The main business address of Swift is listed as PO Box 297257, Brooklyn, New York. *Id.*
15. At all times relevant to PHRC Case No. 201703946, Complainant is an individual with a disability. J.S. ¶ 3.
16. In 2017, Complainant suffered from coronary artery disease, which affected her ability to walk distances and traverse stairs. Complainant also had a brain tumor, was in therapy due to collapsed vocal cords, and was in physical therapy due to cervical and lumbar spine injuries. Tr. 42.
17. Complainant's various diagnoses include morbid obesity, coronary artery disease, paradoxical vocal cord motion, pharyngoesophageal dysphasia, and history degenerative joint disease of neck and spine. C.E. 7; Tr. 64-65.
18. Complainant develops shortness of breath on exertion as well as pain in her neck and back, limited abilities to climb stairs, lift heavy items, speak for long periods, and walk long distances. Her chronic pain limits most normal activities of daily living. C.E. 7, 24; Tr. 65-66, 68-69.
19. Complainant learned about Tustin Court Apartments through an advertisement on Craigslist. Tr. 20.
20. There were two Tustin Court apartments advertised on Craigslist, Apartment A-10 and A-15. Tr. 20.
21. The Craigslist advertisement noted that the subject property had an intercom/security system. Tr. 20.

22. In or around June 2017, Complainant set up an appointment to meet with a maintenance employee named Gerald and fill out an application. Tr. 21.
23. Gerald Cross (“Cross”) was the Superintendent and worked for Tustin Custodial. Cross performed maintenance at Tustin Apartments and his responsibilities included maintaining the apartment building. Tr. 410; J.S. ¶¶ 63, 64.
24. Cross was supervised by Twersky and acted at his discretion. Tr. 354.
25. Cross showed Complainant Apartments A-10 and A-15 prior to Complainant filling out an application. Tr. 21.
26. Complainant was interested in Apartments A-10 and A-15 because there were fewer stairs, and she knew that stairs were difficult for her to maneuver. Tr. 22.
27. In order to access A-level apartments at the subject premises, an individual must ascend a half flight of stairs. J.S. ¶ 4; C.E. 35.
28. The subject premises also contains a basement and/or garden level, which require an individual to descend half a flight of stairs. J.S. ¶ 6; C.E. 35.
29. Complainant informed Cross upon their first meeting that she was disabled. Tr. 242.
30. The Complainant further informed Cross she had collapsed vocal cords and that she had difficulty walking at the time she filled out her rental application. Tr. 243.
31. Cross confirmed that during the June 2017 walk-through, Complainant demonstrated visible and obvious breathing difficulties. C.E. 32.
32. On June 29, 2017, Complainant applied for Apartment A-15 of the subject premises. C.E. 1; J.S. ¶ 7.

33. On the rental application, under “Employment Information”, the Complainant listed monthly Social Security Disability income of \$486.00 as well as additional income. J.S. ¶ 8.
34. Complainant was required to pay a security deposit in the amount of \$799.00 to reserve the apartment. J.S. ¶ 9.
35. Complainant did not submit the application fee on the same day that she applied for Apartment A-15. She tried to return to Tustin Court Apartments to submit the application fee to Cross, but he was not there so she brought the application fee back the following week. Tr. 29.
36. On July 14, 2017, apartment A-15 was no longer available. J.S. ¶ 10.
37. Cross did not advise Complainant that Apartment A-15 was no longer available before Complainant returned to tender the application fee. Tr. 29.
38. Complainant was informed by Respondent’s employee, Hannah, that she could not move into Apartment A-15 because it was rented to someone else. Tr. 33.
39. Hannah advised Complainant that Apartment B-4 was available. *Id.*
40. Complainant then viewed available apartment B-4 and submitted the required security deposit to hold B-4. J.S. ¶ 11.
41. In order to access B-level apartments at the subject premises, an individual must ascend one and one-half flights of stairs. J.S. ¶ 6.
42. While Cross was showing her Apartment B-4, Complainant informed Cross that she could not maneuver stairs, that she was short of breath all the time, and her legs and spine would not allow her to continue to do those stairs all the time. Tr. 34.

43. Complainant testified that she ultimately decided to move into B-4 because she needed a place to go and could not be on the street. Tr.33.
44. On July 26, 2017, Apartment A-10 became vacant. J.S. ¶ 72.
45. On August 31, 2017, a lease agreement was executed between another individual and Respondent for Apartment A-10, set to begin on September 1, 2017. J.S. ¶ 17, C.E. 52, Tr. 417.
46. On August 4, 2017, Complainant signed a 12-month residential lease agreement with Respondent for apartment B-4, with a start date of August 1, 2017 and an end date of July 31, 2018. J.S. ¶ 13.
47. Complainant testified that, the day before she moved into Apartment B-4, she signed the lease with an individual named Jay, the manager of Tustin Court Apartments. Tr. 36, 354.
48. Complainant informed Jay that she had medical issues, that she could not maneuver stairs well, and that she needed to be downstairs on the lower level. Tr. 39.
49. Jay responded that Apartment A-15 was already rented out, but that another apartment would be available on the A-level in two weeks. Tr. 39.
50. Jay told Complainant that she could move into the A-level apartment, but it would cost her \$1,000.00 more. Tr. 39.
51. Office Manager Moses Klein testified that it was Respondent's standard practice that if a tenant was requesting a transfer, they would have to produce a security deposit. Tr. 420.
52. Jay told Complainant that the A-level apartment was the same size as Apartment B-4. Tr. 40.
53. When Complainant asked him why she was paying \$1,000.00 more, Jay responded that they do not normally move tenants from one apartment to another apartment. Tr. 40.

54. Complainant stated to Jay, “but this is an accommodation,” and explained that she was supposed to be on the A-level from the beginning, but she was moved upstairs to the B-level where she would have to climb many more steps. Tr. 40.
55. Jay reiterated that Complainant had to pay the thousand dollars. Tr. 40.
56. During the time that Complainant resided in Apartment B-4, she experienced “excruciating” leg pain from traveling the stairs, a racing heart, and breathlessness. Tr. 165.
57. Complainant’s physical pain was such that she could not do the stairs and would sit down and scoot down the steps to answer the door instead. Tr. 71-72. Complainant experienced pain in her rear from sliding up and down the steps as a result. Tr. 165.
58. When she had to traverse the additional steps, Complainant testified to being depressed and staying home more often because she could not easily go up and down the stairs. Tr. 159.
59. Complainant missed medical appointments because she experienced difficulty descending the steps. *Id.*
60. Complainant also stopped going to church and engaging in her chaplaincy work, as well as volunteering with the police department because of her residence in Apartment B-4 and difficulty in using the stairs. Tr. 158, 166.
61. Complainant spent money looking for other apartments that would accommodate her. Tr. 160-161.
62. Complainant had to rely on the assistance of children, friends, and strangers to assist with taking groceries to her apartment for her, or would otherwise leave the groceries in her car. Tr. 159, 164.

63. Complainant's longtime friend, Marilyn Webb, testified that Complainant "was in a great deal of pain" as a result of having to go up and down the steps to her B-level apartment, and that she was very upset and distressed. Tr. 184-185.
64. On August 29, 2017, Complainant submitted a ticket/service order stating that the intercom needed to be connected to her buzzer and doorbell. J.S. ¶ 14. C.E. 21.
65. Complainant submitted the service order because she could not let people into her apartment and would have to go to the door and let them in. Tr. 71.
66. Complainant would occasionally be left behind by medical transportation coming to transport her to doctor's appointments, because they would not receive a response over the intercom. Tr. 72.
67. Complainant also stopped inviting people to her apartment because there was no functioning intercom and she would not be able to easily walk to the front door. Tr. 162.
68. On August 29, 2017, Respondent was unaware that there was an intercom system at the subject premises. J.S. ¶ 16.
69. Complainant's August 29, 2017 service order was marked by Respondent as "closed" and under "Work Performed" it stated, "No intercom". C.E. 31; R.E. 26; J.S. ¶ 48.
70. On or around September 11, 2017, Complainant sent two letters to Respondent requesting a transfer to apartment G-4, a lower-level apartment, and handicap parking space. Tr. 58.
71. The address on the letter requesting handicap parking was 361 Park Avenue, Orange, NJ. The letter addressed to the Park Avenue address included Complainant's handicap placard. Tr. 61; C.E. 24.

72. The address on the letter requesting a lower-level apartment was 7 Glenwood Avenue, Orange, NJ and matched the address listed on Respondent's website. This letter also requested handicap parking Tr. 58; C.E. 3; C.E. 4.
73. Complainant included a copy of her completed Philadelphia Housing Authority Applicant Accommodation/Modification Request and Release Form with her letter addressed to 7 Glenwood Avenue. Tr. 51; C.E. 5. Complainant also included her handicap placard and application for her handicap placard with the letter. Tr. 54.
74. Complainant mistakenly mailed the letter addressed to 361 Park Avenue to P.O. Box 297257, Brooklyn, New York 11229. Tr. 60; C.E. 4.
75. In September 2017, Tunic Group, LLC used P.O. Box 297257, Brooklyn, New York 11229 as one of its mailing addresses. J.S. ¶ 18.
76. Complainant received a Certified Mail Return Receipt indicating that the letter mailed to New York had been received by "C. Miller". Tr. 60; C.E. 4.
77. Complainant received no response from Respondent to either of her September 11, 2017 letters. Tr. 70.
78. Respondent admits it received a copy of the Complainant's letter dated September 11, 2017 on March 26, 2018. J.S. ¶ 21.
79. On February 23, 2018, apartment A-3 became vacant. J.S. ¶ 19
80. In January or February of 2018, Complainant called Respondent's office and spoke to an individual named Chaya about Apartment A-3. Tr. 73-74.
81. Chaya Brown was an employee of Respondent. Tr. 432.
82. Chaya informed Complainant that she would have to pay an additional \$1,000 to move into the apartment and that the rent was also increased for the apartment. Tr. 73.

83. Chaya also informed Complainant that she would need to see documentation confirming Complainant's disability and need for an accommodation. Tr. 75.
84. On March 12, 2018, Complainant called Chaya to request an apartment transfer because of her disability. Chaya transferred her to an individual named Tahara, who works at Swift. Tr. 384; J.S. ¶¶ 66, 70.
85. On March 12, 2018, Complainant sent a letter to Chaya confirming that she would provide the documentation proving her disability and need for accommodation. Tr. 74; C.E. 8.
86. Complainant's March 12, 2018 cover letter states, in part "Per our conversation on 3/12/2018 and your request for proof of disability...please forward a letter stipulating requirements for moving into A3...and exiting B4...". J.S. ¶ 20.
87. On March 15, 2018, Chaya e-mailed Complainant stating "Regarding the requirements necessary to move into apartment A-3 you would have to be in contact with the rental department." Tr. 76-77; C.E. 9.
88. Complainant then called the rental office and was informed that she would have to speak with the office in New York because she was an existing tenant. Tr. 78.
89. Complainant called the office in New York and again spoke with Chaya, who again told Complainant that she would need to pay an additional thousand dollars. Tr. 78-79.
90. Complainant intended to pay the thousand dollars in order to be transferred to apartment A-3. Tr. 81.
91. On March 26, 2018, Chaya Brown sent an email to Matt Twersky asking if there was handicap parking in Tustin Court. J.S. ¶ 22. Twersky called Chaya back and advised her that Tustin Apartments did not have handicap parking. J.S. ¶ 67.

92. On March 29, 2018, Complainant sent a letter to Respondent, drafted with the assistance of Ms. Capastrano of the Housing Equality Center, requesting a reasonable accommodation to: 1) Respondent's policy and practice of requiring reapplication and income verification when transferring to a new unit, and 2) a reasonable accommodation to the requirement to pay any fees associated with the transfer. Tr. 83; C.E. 12.
93. In or around March 2018, Complainant filed a complaint with the Department of Housing and Urban Development ("HUD"). Tr. 86-88; C.E. 11.
94. On April 10, 2018, Complainant was given the option to transfer from apartment B-4 to apartment A-17. J.S. ¶ 24.
95. A transfer to A-17 would have moved Complainant to the opposite side of the building from the dumpster, thereby requiring her to ascend/descend additional steps outside the building, before beginning a route completely around the building in order to access the dumpster. J.S. ¶ 25. Complainant could not physically maneuver this route. Tr. 94.
96. Complainant also testified that apartment A-17 was dirty and in a state of disrepair, and would not be rehabilitated in any way. Tr. 97. She therefore did not accept the offer to move into apartment A-17. Tr. 93.
97. On April 16, 2018, Complainant mailed a letter to Richard Lew of HUD detailing her reasonable accommodation requests and Respondent's failure to accommodate. Complainant states that she was offered apartment A-17 as well as a basement-level apartment by Avi Aurbach³, who is employed by Swift Apartment Rentals. Tr. 379, C.E. 13.

³ Mr. Aurbach's name has been misspelled throughout the transcript. His name appears as "Ovi Arabat" in the hearing transcript. The correct spelling of his full name is Avi Aurbach.

98. Complainant testified that the basement-level apartment was dirty, had holes in the wall, and still had furniture. Tr. 92-93. She was informed by Aurbach and Cross that it would not be rehabbed. Tr. 93, 99.
99. On April 30, 2018, apartment A-14 became vacant. J.S. ¶ 26.
100. On May 1, 2018, another tenant(s) moved into apartment A-3. J.S. ¶ 27.
101. On May 1, 2018, Respondent received a letter from the state in association with Complainant's HUD discrimination complaint, with respect to Complainant's request for a handicapped parking space. J.S. ¶ 28
102. On July 9, 2018, another tenant(s) moved into apartment A-14. J.S. ¶ 29.
103. On August 9, 2018, the Complainant accepted a transfer to apartment A-6. J.S. ¶ 30. C.E. 23.
104. Tustin Apartment Units were available during the following periods:
- a. A-3 – Vacated 2/23/2018, Move in occurred 5/1/2018
 - b. A-6 – Vacated 5/15/2018, Plaintiff moved into the unit.
 - c. A-10- Vacated 7/26/2017, Move in occurred on 8/31/2017
 - d. A--14- Vacated 4/30/2018, Move in occurred on 7/9/2018
 - e. A-17- Vacated 4/1/2018, Move in occurred on 6/1/2018
 - f. A-19 – Vacated 6/2/2017, Move in occurred on 7/1/2017 J.S. ¶72
105. Complainant also received a handicap parking spot in 2018. Tr. 279.
106. Complainant experienced challenges navigating the parking space because of cracks and holes in the space. Tr. 105; C.E. 16-20.

107. Between August 2019 through November 2019, there was no designation on the handicap parking spot for Complainant. The parking spot consisted of a sign with faded paint around the spot. Tr. 129, 130. C.E. 38.
108. Other cars continued to park in the handicap parking space. Tr. 130; Tr. 148-149; C.E. 38. This included individuals coming to do work on the apartment building. Tr. 157.
109. In 2019, Respondent moved its dumpster beside Complainant's handicap parking space. Tr. 139. C.E. 38.
110. In the dumpster's previous location, there was a fence around the dumpster. Tr. 362.
111. Per Twersky, there was no fence around this dumpster because no one had requested one. Tr. 363.
112. After the dumpster was moved to beside Complainant's parking space, Complainant faced challenges accessing and leaving her parking space because of trash, furniture, and other debris in and around the space. Tr. 138-144; C.E. 38.
113. On January 31, 2019, Complainant submitted a service order asking for the intercom to be fixed. Tr. 130; C.E. 31.
114. On June 30, 2021, Complainant submitted a service order complaining of trash in and around her handicap parking space. Tr. 122; C.E. 31.
115. On July 22, 2021, Complainant submitted a service order complaining of trash in her handicap parking spot. *Id.*
116. Complainant's service orders would "sometimes" be responded to after a few days. Tr. 123.

117. On June 20, 2022, Complainant submitted another service order complaint of trash overflowing into her parking space. Tr. 122; C.E. 31.
118. No action was taken by Respondent with respect to her June 20, 2022 service order. Tr. 125.
119. Complainant testified to a number of conversations with management and maintenance regarding the trash in her space, and asked Respondent several times to put a gate around the dumpster. Tr. 143-144.
120. Complainant ceased to entertain company because she was embarrassed by the constant presence of trash in her parking space. Tr. 162.
121. Mrs. Webb also testified that Complainant was emotional and upset when not being able to get out of her parking space to see a specialist due to the debris occupying her space. Tr. 193.
122. Mrs. Webb testified to witnessing Complainant calling the landlord and police several times because of the state of the parking lot. Tr. 204.
123. As of April 17, 2024, the date of the hearing, Complainant continued to experience trash overflowing into her space, and cars parked in her designated handicap parking spot which is not clearly marked. Tr. 156, 157.
124. Complainant's car experienced numerous scratches and dents because of the impact of furniture and other debris overflowing from the dumpster. *Id.*
125. On April 17, 2024, Complainant testified that the intercom system did not work. Tr. 119.
126. Throughout her entire tenancy at the subject premises until April 18, 2024, the intercom has never worked for Complainant. Tr. 309.

127. On April 18, 2024, the second day of public hearing, Twersky testified that he spoke with Respondent's the night prior and the issue of the intercom had come up. He further testified that as of the morning of April 18, 2024, the intercom had been repaired. Tr. 366-367.⁴
128. Mr. Twersky did not receive any mandatory training on reasonable accommodation, the requirements of the Fair Housing Act, or the requirements of the PHRA. Tr. 350; J.S. ¶¶ 31-35.
129. Respondent did not have required mandatory training regarding the Fair Housing Act. Tr. 250; J.S. ¶¶ 44-45.
130. Respondent did not have a written reasonable accommodation policy in 2017, 2018, or 2019. J.S. ¶ 57-59.
131. Respondent did not have a written policy regarding discrimination. Tr. 404.

CONCLUSIONS OF LAW

1. The PHRC has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing in this case.
3. Pamela McDuffie is a person within the meaning of the Pennsylvania Human Relations Act ("PHRA").
4. Tunic Group, LLC, is a person within the meaning of the PHRA.

⁴ Following Twersky's testimony relating to the overnight call with Respondent's attorney, the Hearing Examiner conferred privately with the parties and requested that any motions for sanction be filed alongside post-hearing briefs. Complainant subsequently filed a motion for sanction against Respondent alleging violation of the Hearing Examiner's sequestration order. While the Hearing Examiner agrees that the violation of the sequestration order is serious and improper conduct on the part of Respondent's counsel, it denies Complainant's motion on the basis that there is no significant impact on the testimony of the witness nor on the outcome of the trial.

5. Pennsylvania courts generally interpret the PHRA "as identical to federal anti-discrimination laws except where there is something specifically different in its language requiring that it be treated differently.”
6. Section 5(h)(3.2) of the PHRA makes it an unlawful discriminatory practice “for any person to: [r]efuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation”.
7. The language of Section 5(h)(3.2) of the PHRA is identical to that in Section 804(f)(3)(B) of the Fair Housing Act (FHA) (42 U.S.C. 3604(f)(3)(B)).
8. To establish a prima facie case of discrimination by refusing to provide a reasonable accommodation, Complainant must show:
 - A. She is a person with a disability;
 - B. Respondent knew or reasonably should have known that Complainant is a person with a disability;
 - C. Complainant requested an accommodation in Respondent’s rules, policies, practices, or services;
 - D. The requested accommodation may be necessary to afford Complainant an equal opportunity to use and enjoy the dwelling; and
 - E. Respondent refused to make the accommodation requested or failed to respond or delayed in responding to the request such that it amounted to a denial.
9. Complainant has established that Respondent denied or refused her reasonable accommodation request in violation of Section 5(h)(3.2) of the PHRA.

10. To successfully defend a violation of PHRA Section 5(h)(3.2), Respondent must show that Complainant's accommodation request was unreasonable.
11. Respondent has failed to show that Complainant's accommodation request was unreasonable.
12. The PHRC has broad discretion in fashioning a remedy and their actions are entitled to deference by a reviewing Court.
13. The PHRC may award actual damages, including damages caused by embarrassment and humiliation.
14. Embarrassment and humiliation damages encompass claims of emotional distress.

OPINION

This case arises out of a Complaint filed by Pamela McDuffie (“McDuffie” or “Complainant” against Tunic Group, LLC (“Respondent”). Complainant’s PHRC Complaint was filed on or about June 7, 2021, at PHRC Case Number 201703946. The Complainant alleged that Respondent discriminated against her on the basis of her disability when it failed to provide Complainant with the following requested accommodations: (1) transfer to an A-level apartment; (2) a reserved handicap accessible parking space; (3) enforcement of Respondent’s anti-dumping policies or implementation of remedial measures that would have permitted Complainant full functional use of a reserved accessible parking space; and (4) a functional intercom system.

PHRC staff investigated the Complaint and found probable cause to credit Complainant’s allegations of discrimination. The PHRC and the parties attempted to resolve the case through conference, conciliation, and persuasion. The hearing was held on April 17 and 18, 2024 virtually via Microsoft Teams. Complainant was represented by Obinna I. Abara, Esquire, and Respondent was represented by Andrew J. Feltzin, Esquire. Stephanie Chapman, Esquire, represented the Commonwealth’s interest in the case. The parties submitted post-hearing briefs in June of 2024.

Section 5(h)(3.2) of the PHRA provides in relevant part,

It shall be an unlawful discriminatory practice... for a person to refuse to make reasonable accommodations in rules, policies, or practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation.

Pennsylvania courts generally interpret the PHRA “as identical to federal anti-discrimination laws except where there is something specifically different in its language requiring that it be treated differently.” *Fair Hous. Rights Ctr. v. Morgan Props. Mgmt. Co, LLC*, No. 16-4677, 2017 U.S. Dist. LEXIS 55249, at *8 n.2 (E.D. Pa. Apr. 11, 2017). In this case, the

language of the relevant provision of the PHRA outlined above is identical to Section 804(f)(3)(B) of the Fair Housing Act (FHA).

To establish a *prima facie* case of a refusal to provide a reasonable accommodation, Complainant must show by a preponderance of the evidence that (1) she is a person with a disability; (2) Respondent knew or reasonably should have known that she is a person with a disability; (3) Complainant requested an accommodation in the rules, policies, practices, or services of Respondent; (4) the requested accommodation may be necessary to afford Complainant an equal opportunity to use and enjoy the dwelling; and (5) Respondent refused her request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997). This framework maps out the structure of a prima facie case under both FGA §3604(f)(3) and PHRA §955. *Jones v. School Dist. Of Philadelphia*, 19 F. Supp. 2d 414, 417 (E.D. Pa. 1998)(Pennsylvania courts generally interpret the PHRA in accord with its federal counterparts).

I. Complainant is a person with a disability

The PHRA defines the term “handicap or disability” with respect to a person, as: (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment. 43 P.S § 954.

It is undisputed that Complainant is a person with a disability, and that Respondent knew of her disability. This was jointly stipulated to by the parties. J.S. ¶ 3. At the public hearing, Complainant testified that in 2017, she suffered from coronary artery disease, which affected her ability to walk distances, climb stairs, and affected her activities overall. Tr. 42. Complainant

also had a brain tumor and was in therapy. *Id.* Complainant's vocal cords had also collapsed, which affected her breathing and caused spasms to occur in her vocal cords. *Id.* Complainant was also in physical therapy due to her cervical and lumbar spine injuries and was receiving injections and treatments to her spine. Tr. 42. Complainant also presented documentation from her rheumatologist indicating that her diagnoses and chronic pain limit most normal activities of daily living. Therefore, Complainant satisfies the first element of the *prima facie* case.

II. Respondent knew or reasonably should have known that Complainant is a person with a disability.

Regarding element two, Respondent's knowledge of Complainant's disability is evidenced by the joint stipulation that at all times relevant to the case, Complainant was an individual with a disability. J.S. ¶ 3. Complainant also notified Respondent and agents of Respondent of her disability on several occasions. Complainant's June 2017 rental application for apartment A-15 indicated that she was receiving Social Security Disability benefits. Tr. 25; C.E. 1. Complainant also notified apartment Superintendent Gerald Cross of her disabilities upon her first walk-through of apartment B-4 and upon first completing her rental application for apartment A-15. Tr. 33-34; Tr. 242-243. As superintendent of Tustin Court Apartments at the time, Cross acted at the direction and discretion of Respondent's Regional Manager Matt Twersky. Tr. 354, 410. Complainant also notified a number of Respondent's employees of her disability. Between the time that Cross showed Complainant apartment B-4 and upon signing the lease for apartment B-4, Complainant had informed an individual named Hannah who was employed by Respondent that she could not maneuver the stairs due to her injuries and medical conditions. Tr. 36, 38. Upon signing the lease for apartment B-4, Complainant informed property manager Jay that she had medical conditions, that she could not maneuver stairs well, and that

she needed to be downstairs on the lower level. Tr. 39. After executing the lease for apartment B-4, Complainant called Swift's office in Orange, NJ and spoke to an individual named Tahara regarding her need for a lower-level apartment. Tr. 44. Complainant also spoke to an employee of Respondent named Chaya Brown in January or February of 2018 to notify her that she suffered from disabilities and required an accommodation. Tr. 73-74. Complainant also testified to mailing a number of letters to Respondent in 2017 and 2018 informing Respondent of her disabilities and the need for reasonable accommodation. C.E. 3; C.E.4; C.E. 12. We find that Complainant has clearly satisfied the second element of her *prima facie* case and that Respondent knew or should have known that she was an individual with a disability.

III. Complainant requested an accommodation in the rules, policies, practices, or services of Respondent.

Complainant also satisfies the third element of her *prima facie* case, as the record shows that she requested accommodations for her disabilities numerous times both preceding and throughout her residence at Tustin Court Apartments.

a. Request for Lower-Level Apartment

After Complainant was notified that Apartment A-15 was not available and while being shown Apartment B-4, she informed Gerald Cross that her legs and spine would not allow her to walk the stairs to Apartment B-4. Tr. 34. Complainant also requested a reasonable accommodation when she met with Jay to sign the lease for Apartment B-4 on July 31, 2017. At the time of signing, Complainant informed Jay that she had medical issues that prevented her from maneuvering stairs well, and that she needed to be downstairs on a lower level. Tr. 39. After Jay explained that Complainant needed to pay an additional \$1,000.00 in order to move into a lower-level apartment, Complainant replied, "but this is an accommodation." Tr. 40.

On or around February 2018, Complainant spoke to Respondent employee Chaya Brown to request a transfer to apartment A-3. Tr. 73-74. Brown informed Complainant that she would have to pay the additional \$1,000.00, and also provide documentation relating to her disability and need for accommodation. Tr. 75. On March 12, 2018, Complainant sent a letter to Brown referencing her previous requests for accommodation as well as the required documentation requested by Brown. C.E. 8.

Related to the request for a lower-level apartment is also Complainant's request for a reasonable accommodation to Respondent's policy and practice of requiring reapplication, income verification, and payment of additional fees when transferring to a new apartment unit. Complainant requested this in a letter dated March 29, 2018 to Respondent. C.E. 12.

b. Request for Functioning Intercom System

Complainant also requested accommodations with respect to the intercom system at the subject premises. After moving into Apartment B-4, Complainant submitted a service order on August 29, 2017 requesting that the intercom system be repaired due to her inability to traverse the steps to let people in. Tr. 71; C.E. 31. On January 31, 2019, Complainant submitted a service order asking for the intercom to be fixed. Tr. 122, C.E. 31.

c. Request for Handicap Parking

Complainant also requested a functional and accessible handicap parking space. On September 11, 2017, Complainant mailed Respondent two letters again disclosing that she is disabled and requesting accommodations in the form of a lower-level apartment and a handicap parking space. The address on the letter requesting handicap parking was 361 Park Avenue, Orange, NJ. Tr. 61; C.E. 24. The address on the letter requesting a lower-level apartment was 7 Glenwood Avenue, Orange, NJ and matched the address listed on Respondent's website. This

letter also requested handicap parking Tr. 58; C.E. 3; C.E. 4. The letters included documentation from medical providers as well as Complainant's handicap placard and placard application.

C.E.3; C.E.4. Complainant testified that she mailed the letters to two different addresses- one to 7 Glenwood Avenue, Orange, NJ, and the other to P.O. Box 297257, Brooklyn, N.Y. Tr. 58-60.

The letter mailed to Brooklyn was the letter containing the Park Avenue address. The Brooklyn address is also one of Respondent's mailing addresses. Complainant presented a Certified Mail Return Receipt indicating that the letter she sent to Respondent's Brooklyn address was signed

for and received by "C. Miller". C.E. 4. Moses Klein testified that it is possible that one of Respondent owner Sam Miller's kids went down to pick up the mail and signed for the packet.

Tr. 382. Respondent alleges that they did not receive any requests relating to Complainant's disability prior to March of 2018. In fact, Respondent stipulated to having received the

September 11, 2017 letter on March 26, 2018. J.S. ¶ 21. Respondent also points to

Complainant's testimony that she was not sure which of the two letters was confirmed to have arrived in Brooklyn. Tr. 259-260. However, this is irrelevant as both letters contained a request for handicap parking and either letter would have notified the Respondent of this reasonable accommodation request. Therefore, we find that Respondent was on notice of Complainant's request for parking accommodation.

On June 30, 2021, Complainant also requested an accommodation when she submitted a service order complaining of trash in and around her handicap parking space. Tr. 122, C.E. 31. She made another request relating to the trash in her parking spot on July 22, 2001, and again on June 20, 2022. *Id.*

IV. The requested accommodation may be necessary to afford Complainant an equal opportunity to use and enjoy the dwelling.

Complainant also succeeds in showing that her requested accommodations may be necessary to afford her an equal opportunity to use and enjoy the dwelling, thus satisfying element 4. The Third Circuit has held that the term “necessary” in the context of the Fair Housing Act requires that the accommodation be essential, not just preferable, , and that it be gauged in light of the goal of achieving equal housing opportunity. *Vorchheimer v. Philadelphian Owners Ass’n*, 903 F. 3d 100, 107 (3d Cir. 2018).

Complainant provided ample testimony relating to her medical conditions and inability to traverse stairs, thus necessitating transfer to a lower-level apartment. Complainant testified to a number of ailments corroborated by documents from her medical provider which included but was not limited to morbid obesity, coronary artery disease, paradoxical vocal cord motion, pharyngoesophageal dysphasia and history degenerative joint disease of neck and spine. Tr. 64; C.E. 7. These ailments limited her abilities to climb stairs, lift heavy items, speak for long periods of time, and walk long distances. *Id.* Complainant testified to having to sit and scoot up and down the stairs because of the shortness of breath and the pain she experienced in her neck and back. Tr. 65. She also shared that during her tenancy in B-4, she would leave groceries in her trunk and not bring them in at once because she could not carry them up the steps. Tr. 65; Tr. 159. Complainant testified to having to miss doctor’s appointments because she would have difficulty getting down the steps. Tr. 159.

Complainant also testified to the need for a reserved handicap parking space free of other vehicles and debris, also necessitated by her disabilities and ambulatory limitations. As noted above, Complainant was limited in her ability to walk long distances without experiencing pain

and required a reserved parking space in close proximity to the entrance closest to her apartment. Courts have looked to regulations promulgated by HUD for examples of a reasonable accommodation. The Court in *Shapiro v. Cadman Towers, Inc.*, 51 F. 3D 328 (1995) cited 24 C.F.R. § 100.204(b), a regulation promulgated by HUD that provides an example of a “reasonable accommodation” under the FHAA. The example states that the duty to make “reasonable accommodations” obligates building management to reserve a parking space for a mobility-impaired tenant near that tenant’s apartment. *Id.* Per the court in *Shapiro*, this regulation “makes it clear that the use and enjoyment of a parking space cannot be considered in isolation from the tenant’s ability to use and enjoy her dwelling place, a right specifically protected by the FHAA.”. Complainant also requested that a parking space be clear of trash and other debris so that she could utilize and enjoy the parking accommodation.

Similarly, Complainants request for a functioning intercom system was also necessary in order for Complainant to allow individuals to enter without her having to navigate the stairs to let them in. The intercom system would also enable Complainant to have her medications delivered. Complainant testified that deliveries containing her medications would turn away and leave because they would not be able to reach Complainant via a working intercom. Tr. 103. Complainant also testified to being left behind by medical transportation coming to transport her to doctor’s appointments, because they would not receive a response over the intercom. Tr. 72.

Complainant has thus successfully shown that the requested accommodations were necessary to afford her an equal opportunity to use and enjoy the dwelling.

V. Respondent refused Complainant’s request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial.

The final element requires that Complainant establish that Respondent refused to provide the requested accommodation, or failed to respond or delayed responding to the requests such that it amounted to a denial.

Respondent, through its numerous agents described above, denied Complainant's requests for reasonable accommodation on several occasions. With regards to the Complainant's request for a lower-level apartment, agents of the Respondent were notified from Complainant's first visit that she experienced a number of physical ailments that necessitated a lower-level apartment. Although Complainant was unable to move into Apartment A-15 which she had initially seen, another A-level apartment had become available that was not offered to Complainant. She instead signed on for Apartment B-4. When Complainant again requested a lower-level apartment due to her disability, she was told that she would be given the apartment on the condition that she paid an additional \$1,000 and a higher monthly rent. Complainant's request to a revision of Respondent's policies and procedures relating to the additional fees went unaddressed and were thus denied. The charging of an additional deposit as a condition for granting a reasonable accommodation is expressly addressed and prohibited per the Joint Statement of the Department of Housing and Urban Development and the Department of Justice on *Reasonable Accommodations under the Fair Housing Act* (May 17, 2004). Similarly, absent undue administrative or financial burden on the Respondent, it would also be a reasonable accommodation for Respondent to waive a policy or practice in order to allow Complainant equal access and enjoyment of the property. *Id.* Complainant was not offered an A-level apartment until April 2018, almost one year later, and during which time Apartments A-10, A-3, and A-14 became available but were not offered to Complainant. This delay in transferring

Complainant to a lower-level apartment when other apartments became available amounts to a denial of reasonable accommodation.

Regarding Complainant's request for an accessible handicap parking space, Complainant did not receive a handicap parking space until 2018, and there was no designation that the handicap parking space was for Complainant specifically until 2019. Photos were provided by both Complainant and Respondent showing that the space simply contained a handicap sign and faded paint. C.E. 35; R.E. 3. Complainant testified to the state of the parking space, stating that other vehicles, including those without handicap placards, continued to occupy the parking space, particularly in the evening, because there was no way to distinguish between the handicap and non-handicap spaces due to the faded paint. Tr. 130, 131. Complainant also testified to the trash and debris in and around her parking space, due to Respondent having moved the dumpster beside the space in 2019, after Complainant had been provided the spot. Tr. 122; . Photos admitted by Complainant show the dumpster and debris, including but not limited to large pieces of furniture. C.E. 35; C.E. 38. Complainant entered a number of service requests asking for the debris to be cleared from her space and that a second dumpster be installed to address the issue of excess trash. Tr. 122-123; C.E. 31. However, not all requests were addressed in a timely manner per Complainant, who testified that it would sometimes take days for the service order to be addressed. Complainant also testified to suggesting to Respondent that a second dumpster be acquired or that a gate be placed around the dumpster as it had been in the old location. However, there was no evidence to show that Respondent implemented any mechanisms that would have deterred or limited the amount of trash that was dumped in Complainant's parking space. Tr. 122-123. Complainant also confirmed that as of the date of hearing, individuals

continued to park in her space, including individuals coming to work on the building, and that there was no fluorescent paint for the demarcation of the parking space. Tr. 157.

Similarly, Complainant testified that she submitted a number of service orders relating to the nonfunctioning intercom since 2017, and alerted Respondent to the need to repair it numerous times. C.E. 31. However, the intercom was not repaired until the second day of the public hearing on April 18, 2024- over 6 years later. Respondent's undue delay in addressing Complainant's reasonable accommodation requests of a lower-level apartment, accessible handicap parking space, and functioning intercom amount to a denial of the aforementioned requests. Therefore, this element is satisfied.

VI. Respondent failed to show that the accommodations requested were unreasonable.

Since Complainant has established a *prima facie* case of discrimination, the burden shifts to Respondent to show that the accommodations requested were unreasonable. *Lapid-Laurel*, 284 F.3d at 457. This inquiry is highly fact-specific, requiring a case-by-case determination. *Id.* At 462. In order to establish that the accommodations requested were unreasonable, Respondent is required to prove that it could not have granted the accommodations without (1) imposing undue financial and administrative burdens; (2) imposing an "undue hardship" or (3) requiring a fundamental alteration in the nature of the program. *Id.* See also *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996).

Respondent alleges that Complainant was not credible, and points to Complainant's testimony relating to the letters drafted in September 11, 2017 requesting a lower-level apartment and handicap parking. Respondent argues that one certified read receipt form was returned to Complainant for two letters sent, and that Complainant testified that she was not

sure which letter was received by Respondent. Respondent seems to allude that they did not receive any reasonable accommodation requests from Complainant prior to March of 2018, when they received Complainant's letter. Respondent simultaneously questions Complainant's decision to mail letters as opposed to submitting a service ticket, and suggests that based on discrepancies in font size, dates, and addresses, that Complainant might not have sent either letter to Respondent. To this point, we find that the Complainant testified credibly overall and that Respondent's allegations are unsupported by the record. As discussed above, Complainant informed Respondent on numerous occasions before March 2018 that she was disabled, was limited in her mobility, and required a reasonable accommodation in the form of an A-level apartment. With regards to the letters, Respondent has provided no evidence other than speculation to show that Complainant's September 11, 2017 letters were not the ones mailed to Respondent. Complainant also testified consistently regarding the drafting and mailing of the letters, and made numerous mention of the September 11, 2017 letters in her later correspondence with agents of Respondent and when filing her HUD complaint in 2018. Moshe Klein also testified that a certified letter had been received from Complainant requesting a lower-level apartment. Regarding handicap parking specifically, either letter received by Respondent would have alerted them to Complainant's request for a parking space, because Complainant mentioned this request in both her letters.

Respondent also points to Complainant's failure to disclose that she was in eviction proceedings and that the Court of Common Pleas had awarded possession of her unit on June 2, 2017, prior to her June 28, 2017 rental application. Tr. 233. Complainant credibly testified that she had an appeal in this matter pending and therefore was unsure whether she in fact would have to vacate her prior residence. Tr. 233-234. Further, because we have already

found Complainant's testimony to have been credible, we reject this and Respondent's other allegations relating to the credibility of Complainant's testimony.

Respondent also alleges that they have acted reasonably to accommodate Complainant, once it had learned in March 2018 that Complainant claimed disability. Respondent points to internal correspondence about handicap parking and plans to offer a ground level apartment to Complainant. Respondent also states that anytime a maintenance request was entered for the intercom or parking lot, it was addressed by someone. Tr. 346. Respondent states that after April 2021, they never received another service request for the intercom and did not know of the broken intercom until Complainant testified on April 17, 2024, the first day of public hearing. Respondent alleges that if issues with the intercom, dumpster, and parking spot persisted, it was because it went unreported by Complainant.

We do not agree with Respondent's characterization of the requests (or lack thereof), nor do we find that Respondent acted reasonably to accommodate Complainant, primarily because of the undue delay in addressing Complainant's requests. Again, Complainant informed Respondent of her disability almost a year prior to the receipt of her letters in 2018 and continued to contact Respondent and request a lower-level apartment on the basis of that disability, to which she was told that she would have to pay \$1,000 and possibly a higher rent on a number of occasions by different agents of Respondent. Complainant's requests for a lower-level apartment were not honored until she enlisted the assistance of HUD and the PHRC, over a year later. Regarding the intercom, Respondent claims that Complainant did not care for an intercom and that she had not bothered to ask about it until after she moved in. Whether the Complainant knew about the intercom before moving in is not relevant, as there was in fact a non-functioning intercom on the premises

that Complainant requested fixed as a reasonable accommodation after moving into her apartment. Further, the past documented and unaddressed service orders relating to the intercom from Complainant make it unlikely that Respondent would have addressed the intercom issues had Complainant filed one more service order. The intercom was not fixed until April 18, 2024, the day after Complainant testified at public hearing and over 6 years after her initial service order was entered. Finally, Complainant continues to struggle with having a truly accessible parking space due to the debris and parking by other vehicles in the handicap parking spot.

Respondent also alleges that the evidence relating to Complainant's medical conditions were hearsay. Though this argument was made in Respondent's reply brief and not their original post-hearing brief, we nonetheless address it as Respondent did make a number of objections to this point during hearing. Tr. 55. We find Complainant's evidence relating to her medical conditions to be admissible as it is relevant, reliable, and material to determining the specific nature of her disabilities and need for accommodation. We also note that the parties have previously stipulated to Complainant's status as a disabled person and that Complainant has testified credibly to her numerous ailments.

Aside from these claims, Respondent has provided no evidence or testimony to show that Complainant's requests were unreasonable, or that providing the requested accommodations posed any financial or administrative burden on Respondent. We therefore find that Respondent has failed to meet its burden.

Since Complainant established a *prima facie case* and Respondent failed to meet its burden of showing the requested accommodation was unreasonable, we find in favor of Complainant on this reasonable accommodation claim. We now turn to the issue of damages.

VII. Remedies

Section 9(f)(1) of the PHRA provides in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to reimbursement of certifiable travel expenses in matters involving the complaint,... and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(h)... the Commission may award actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

The purpose of the remedy is not only to restore the injured party to their pre-injury status and make her whole but also to discourage future discrimination. *Williamsburg County School District v. Pa. Human Relations Comm'n*, 512 A.2d 1339 (Pa. Comwlth 1986). In her post-hearing brief, the Complainant requested the following relief: \$300,000 in emotional distress damages; \$25,000 in punitive damages; The imposition of a civil penalty against Respondent; and \$108,868.30 in attorney's fees and \$2,242.80 in costs.

a. Actual Damages

In determining whether the evidence of emotional distress is sufficient to support an award, we must look at both the direct evidence of emotional distress and the circumstances of the act that allegedly caused the distress. *McGlawn v. Pa. Human Rels. Comm'n*, 891 A.2d 757, 777. Courts have held that the size of an intangible damage award is largely intuitive and is a matter over which the jury or the trial judge sitting without a jury has a great deal of discretion. *Laudon v. Loos*, 694 F. Supp. 253, 255 (E.D. Mich. 1988). In *Cole v. Todd Toms, et. al.* PHRC # 202102052, the Commission summarized some of the most important factors it uses in

determining an amount for emotional distress damages. (1) Whether Complainant suffered physical harm or threat of physical harm in addition to harm to their mental health; (2) The nature of the evidence offered to describe the harm (e.g. testimony by the Complainant, testimony by others, expert testimony); (3) Whether Complainant sought or otherwise received treatment for the injury; (4) Whether the discrimination was a single act or was ongoing; and (5) Whether the Complainant was particularly susceptible to being injured by discrimination due to their personal history. We also consider the overall egregiousness of Respondent's behavior toward Complainant in determining the extent of emotional distress suffered.

In looking at the evidence and circumstances of the act and taking into account the aforementioned factors, it is apparent that factors 1, 2, and 4 weigh in favor of awarding Complainant emotional distress damages. Complainant provided ample testimony relating to the physical and emotional hardships that she endured as a result of Respondent's failure to properly address her reasonable accommodation requests. She presented documentation and testimony demonstrating that she suffered from a number of physical ailments that made ambulating difficult and placed her at increased risk of injury whenever she had to walk far distances. Complainant testified that because she was unable to traverse the steps from her apartment, she stayed home more often and was depressed. Tr. 159. Complainant testified that she would miss medical appointments because she would have difficulty getting down the steps, and that she would have to sit and "scoot" herself up and down the steps because she had no other choice. *Id.* She shared that she felt "humiliation that I can't explain" by having to do that. Tr. 156. Complainant was paying people to help get her groceries to her apartment from her car, otherwise she would leave food in her car. Tr. 159. Complainant also testified to no longer venturing away from her home because of the instability of her parking situation. Where she had

once served as a community chaplain, Complainant testified that she no longer attended church functions because she was unsure if she would return to a vacant parking space. Tr. 158.

Complainant also testified to no longer inviting people over because of not having a functioning intercom and having to navigate to let them in. Tr. 162. She also stopped entertaining because the trash in and around her parking space was embarrassing and humiliating. *Id.* Complainant's testimony was corroborated by Mrs. Webb, Complainant's longtime friend. Mrs. Webb testified to Complainant's physical pain in leaving her apartment for appointments and returning, providing assistance to Complainant by carrying her groceries, and to Complainant's increasingly despondent demeanor throughout her time at Respondent. Tr. 182-188. Regarding whether the discrimination was a single act or ongoing, Complainant testified to residing without a functioning intercom system since 2017 despite having placed service orders for repair⁵ and continued to deal with a cluttered parking space. That Respondent continued to deny Complainant's requests for accommodation show the ongoing nature of the discrimination.

Complainant also highlighted what she viewed as callous statements on behalf of Respondent in their Answer to the Complaint and at hearing. Complainant highlights a specific portion of the Answer wherein Respondent states, "Respondent cannot understand why if the Complainant were disabled to the point where she could not easily climb stairs that she chose to live at this Property rather than somewhere with no stairs." Such a statement stands in contravention both to the purpose of reasonable accommodation which is to enable a disabled individual to fully participate in housing opportunities, and Complainant's freedom of choice in determining where she would like to reside. We find that this voiced attitude towards

⁵ The intercom was said to be fixed on April 18, 2024, the second day of public hearing.

Complainant and similarly situated individuals was reflected in Respondent's actions and also contributed to the egregiousness of their actions.

For these reasons, the Commission finds that \$60,000 is an appropriate amount in emotional distress damages.

b. Punitive damages

Complainant also requests \$25,000 in punitive damages due to Respondent's continuing failures to accommodate Complainant over six years, as well as the aforementioned statement by Respondent in their Answer, "Respondent cannot understand why if the Complainant were disabled to the point where she could not easily climb stairs that she chose to live at this Property rather than somewhere with no stairs." We agree with the unsavory nature of this statement. However, in the absence of express statutory language or any further legislative guidance, punitive damages are not available under the Pennsylvania Human Relations Act. *Hoy v. Angelone*, 554 Pa. 134, 146 (1998). We therefore do not award punitive damages in this case.

c. Civil Penalty

Complainant requests the imposition of a civil penalty against Respondent. Section 9(f)(2) of the PHRA provides in pertinent part:

Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Sections 5(h) or 5.3 of this Act (i) in an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice..."

In determining the amount of a civil penalty, the factors to consider are: (1) the nature of the violation; (2) the degree of culpability; (3) Respondent's financial resources; (4) the goal of deterrence; and (5) other matters as justice may require. *McGlawn v. Pennsylvania Hum. Rela. Comm'n*, 891 A.2d 757, 779.

The burden of producing evidence of financial resources falls upon Respondent, because such information is peculiarly within Respondent's knowledge. A civil penalty may be imposed without consideration of a Respondent's financial situation if Respondent fails to produce evidence that would tend to mitigate the amount to be assessed. *Campbell v. United States*, 365 U.S. 85, 96 (1961).

Here, the evidence establishes that the Respondent discriminated against Complainant on the basis of her disability when they refused to provide a number of the reasonable accommodations requested. Respondent has not provided evidence of financial resources and therefore the exact financial circumstances of Respondent are unknown, but we note Moses Klein's testimony that Respondent was in a contractual relationship with Swift Apartment Rentals. When asked about the role of Swift Apartment Rentals, Klein states "Swift Apartment Rentals handles all the rentals of the properties that [Tunic Group] manage", indicating management of several apartment buildings. Tr. 376, 377. There is no evidence showing that Respondent has a history of violations. Therefore, \$5,000 is the appropriate amount for the civil penalty.

d. Attorney's Fees and Costs

Section 9(f.1) of the PHRA provides in part:

If, upon all the evidence at the hearing, in those cases alleging a violation of section 5(d), (e), (h) or 5.3 where the underlying complaint is a violation of section 5(h) or 5.3, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney fees and costs to prevailing complainants.

The Hearing Examiner permitted Complainant to submit information regarding attorney's fees as part of their post-hearing brief instead of at hearing. The Hearing Examiner also provided both parties the opportunity to file reply briefs. In her post-hearing brief, Complainant requested

\$108,868.30 in attorney's fees and \$2,242.80 in costs. Respondent did not object or otherwise dispute Complainant's request for attorney's fees in either its post-hearing brief or its reply brief.

In *Harris II v. Cupani and Tamalonis*, Docket No. H6571 (1997), this Commission addressed the issue of awarding attorneys' fees to complainants. In *Harris II*, the Commission required the complainant to file "a fee application with sufficient information upon which to assess an appropriate award" by affidavit or certification. The Commission gave respondents 10 days to file counter affidavits. The Commission further described the factors it would consider when evaluating fee requests:

Unless adequate supporting evidence is submitted, an attorney fee award will not be made. Consideration will be given to time and labor required; the difficulty of the questions involved in this case; the requisite skill to perform the legal services rendered; [Complainant's] attorney's customary fee; the hourly rate for legal services in the community; the amount of the claim involved and the results obtained; the experience, reputation, and ability of an attorney; whether a contingency arrangement was in place; and the size of awards in similar cases.

In the instant case, while Complainant's attorney did submit a detailed fee application, the Commission finds the amount of \$108,868.30 to be unreasonable in that it is almost twice the amount of the award to Complainant for the emotional distress that she experienced by Respondent. The Commission finds \$60,000.00 in fees to be appropriate and comparable to awards in similar cases before the Commission. Regarding costs, parties were provided with a copy of the hearing transcript via e-mail at the same time the briefing schedule was issued, so the Commission will not reimburse Complainant's Counsel with the requested \$1,440.80 for the transcript of proceedings. Therefore, the Commission finds it appropriate to award Complainant's attorney \$802.00 in costs, which amount represents the service of out-of-state subpoenas upon Swift Apartment Rentals at two separate locations, and the deposition transcripts of Matt Twersky and Moses Klein.

e. Mandatory trainings

Witnesses for the Respondent testified a number of times about the lack of fair housing training received. Mr. Twersky testified to not having received any training, mandatory or otherwise, regarding reasonable accommodation. Tr. 350. Mr. Klein testified that Respondent did not have a written policy regarding discrimination. Tr. 404. Per the joint stipulations, Respondent did not have required mandatory training regarding the Fair Housing Act, nor did it have a written reasonable accommodation policy in 2017, 2018, or 2019. Tr. 250; J.S. ¶¶ 44-45; J.S. ¶¶ 57-59. The Commission therefore finds it appropriate to require the Respondent to attend Fair Housing training within sixty (60) days of the date of this Order. The Commission further requires Respondent to create and implement a written policy regarding discrimination and requiring mandatory fair housing compliance training for staff. An order follows.

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

Pamela McDuffie,	:	
Complainant	:	
	:	
v.	:	PHRC Case No. 201703946
	:	HUD Case No. 03-18-9183-8
Tunic Group, LLC,	:	
Respondent	:	
	:	

RECOMMENDATION OF THE HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Hearing Commissioner finds that Complainant has proven that Respondent discriminated against her by denying her request for reasonable accommodation in violation of Section 5(h)(3.2) of the PHRA. It is, therefore, the Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Hearing Examiner further recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

Pamela McDuffie,	:	
Complainant	:	
	:	
v.	:	PHRC Case No. 201703946
	:	HUD Case No. 03-18-9183-8
Tunic Group, LLC,	:	
Respondent	:	
	:	

FINAL ORDER


AND NOW, this 27th day of January, 2025, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approved the foregoing Findings of Fact, Conclusions of Law, and Opinion of the Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the Complaint and hereby

ORDERS


1. Respondent Tunic Group, LLC cease and desist from denying a reasonable accommodation to tenants who require them due to their disability.
2. That within sixty (60) days of the effective date of this Order, Respondent take Fair Housing Training.
3. That Respondent create and implement a written policy regarding discrimination and requiring regular fair housing compliance training for staff.

4. That Respondent shall pay Complainant the lump sum of \$120,802.00, which amount represents compensatory damages of embarrassment and humiliation Complainant suffered and attorney's fees and costs.
5. That, within sixty (60) days of the effective date of this Order, Respondents shall deliver to PHRC Counsel, Stephanie Chapman, a check payable to the Commonwealth of Pennsylvania, in the amount of \$5,000.00, which represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.
6. That, within sixty (60) days of the effective date of this Order, Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Stephanie Chapman, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 333 Market St., 8th Floor, Harrisburg, PA 17112.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 

M. Joel Bolstein
Chairperson

Attest:


O/B/O Commissioner Mayur Patel