

13-3278

To Be Argued By:
NDIDI N. MOSES

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 13-3278

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

DEMECHIA WILSON,
Intervenor- Plaintiff-Appellee,

JERMAINE BILBO,
Intervenor - Plaintiff-Counter-Defendant-Appellee,

TAIKA BILBO,
Intervenor - Plaintiff- Counter-Defendant - Appellee,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES OF AMERICA

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D.E. WILSON, D.A. WILSON,
Intervenors-Plaintiffs,

-vs-

CLIFTON HYLTON, MERLINE HYLTON,
HYLTON REAL ESTATE
MANAGEMENT, INC.,
Defendants –Counters-Claimants-Appellants,

LAW OFFICES OF NAIR & LEVIN P.C.,
Interested Party.

Table of Contents

Table of Authorities	iv
Statement of Jurisdiction	ix
Statement of Issues.....	x
Preliminary Statement.....	2
Statement of the Case.....	3
A. The parties	4
B. Rental of 5 Townline Road	4
C. Attempt to sublease 5 Townline Road	5
D. Subsequent events and the investigation by HUD	7
Summary of Argument	9
Argument.....	11
I. The district court did not commit clear error in finding that the defendants discriminated on the basis of race.....	11
A. Governing law and standard of review.....	11
1. The Fair Housing Act	11
2. Standard of review.....	13
B. Relevant facts	14

C. Discussion	15
II. The district court did not commit clear error in finding that Mrs. Hylton and HREM were vicariously liable	19
A. Governing law and standard of review.....	19
B. Relevant facts	20
C. Discussion	21
III. The district court did not commit clear error in finding that Mrs. Hylton was not exempt	23
A. Governing law and standard of review.....	23
B. Relevant facts	24
C. Discussion	25
IV. The district court did not commit clear error or abuse its discretion in its awards of damages and injunctive relief.....	29
A. Governing law and standard of review.....	29
B. Relevant facts	31
1. Compensatory damages.....	31
2. Punitive damages	33
3. Equitable relief	34
4. Attorney’s fees.....	35

C. Discussion	35
Conclusion	41
Rule 32(a)(7)(C) Certification	
Addendum	

Table of Authorities

Pursuant to “Blue Book” rule 10.7, the Government’s citation of cases does not include “certiorari denied” dispositions that are more than two years old.

Cases

<i>Anderson v. City of Bessemer City</i> , 470 U.S. 564 (1985)	13
<i>Banai v. HUD</i> , 102 F.3d 1203 (11th Cir. 1997)	37
<i>BMW of North America, Inc. v. Gore</i> , 517 U.S. 559	30
<i>Broadnax v. City of New Haven</i> , 415 F.3d 265 (2d Cir. 2005)	38
<i>Cabrera v. Jakobovitz</i> , 24 F.3d 372 (2d Cir. 1994)	12, 20
<i>City of Edmonds v. Oxford House, Inc.</i> , 514 U.S. 725 (1995)	11, 23, 27
<i>Cleveland v. Caplaw Enter.</i> , 448 F.3d 518 (2d Cir. 2006)	19, 23
<i>Corey v. HUD</i> , 719 F.3d 322 (4th Cir. 2013)	18
<i>Davis v. New York City Housing Auth.</i> , 278 F.3d 64 (2d Cir. 2002)	24

<i>Feingold v. New York</i> , 366 F.3d 138 (2d Cir. 2004).....	17
<i>Henry v. Gross</i> , 803 F.2d 757 (2d Cir. 1986).....	29, 36
<i>HUD v. Blackwell</i> , 908 F.2d 864 (11th Cir. 1990)	36
<i>Johnson v. Hale</i> , 13 F.3d 1351 (9th Cir. 1994)	37
<i>Kolstad v. Am. Dental Ass’n</i> , 527 U.S. 526 (1999)	29
<i>Krueger v. Cuomo</i> , 115 F.3d 487 (7th Cir. 1997)	37
<i>LeBlanc-Sternberg v. Fletcher</i> , 143 F.3d 748 (2d Cir. 1998).....	31
<i>LeBlanc-Sternberg v. Fletcher</i> , 67 F.3d 412 (2d Cir. 1995).....	30, 31
<i>Lore v. City of Syracuse</i> , 670 F.3d 127 (2d Cir. 2012).....	24
<i>Mathie v. Fries</i> , 121 F.3d 808 (2d Cir. 1997).....	30, 37
<i>McDonnell Douglas v. Green</i> , 411 U.S. 792 (1973)	12

<i>Meyer v. Holley</i> , 537 U.S. 280 (2003)	19
<i>Michigan Prot. and Advocacy Serv., Inc. v. Babin</i> , 18 F.3d 337 (6th Cir. 1994)	26
<i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998)	17
<i>Parris v. Pappas</i> , 844 F. Supp. 2d 271 (D. Conn. 2012)	37
<i>Patterson v. Balsamico</i> , 440 F.3d 104 (2d Cir. 2006)	29
<i>Ragin v. Harry Macklowe Real Estate Co.</i> , 6 F.3d 898 (2d Cir. 1993)	29, 30, 31, 37, 38
<i>Robinson v. 12 Lofts Realty, Inc.</i> , 610 F.2d 1032 (2d Cir. 1979)	12
<i>Saint Francis College v. Al-Khazraji</i> , 481 U.S. 604 (1987)	17
<i>Samaritan Inns, Inc. v. District of Columbia</i> , 114 F.3d 1227 (D.C. Cir. 1997)	36
<i>Schnabel v. Trilegiant Corp.</i> , 697 F.3d 110 (2d Cir. 2012)	36, 38
<i>Trafficante v. Metropolitan Life Ins. Co.</i> , 409 U.S. 205 (1972)	11

<i>Trans World Airlines, Inc. v. Thurston</i> , 469 U.S. 111 (1985)	12
<i>Travellers Int’l, A.G. v. Trans World Airlines, Inc.</i> , 41 F.3d 1570 (2d Cir. 1994).....	38
<i>United States v. Balistrieri</i> , 981 F.2d 916 (7th Cir. 1992)	39
<i>United States v. Hylton</i> , 944 F. Supp. 2d 176 (D. Conn. 2013).....	4
<i>United States v. Hylton</i> , No. 3:11CV1543 (JCH), 2013 WL 3927858 (D. Conn. July 26, 2013)....	4
<i>United States v. Space Hunters, Inc.</i> , 429 F.3d 416 (2d Cir. 2005).....	24, 29, 33, 39
<i>United States v. Yonkers Bd. of Ed.</i> , 837 F.2d 1181 (2d Cir. 1987).....	13

Statutes

28 U.S.C. § 1291 (2012)	ix
28 U.S.C. § 1331 (2012)	ix
28 U.S.C. § 1345 (2012)	ix
42 U.S.C. § 3013 (2012)	30
42 U.S.C. § 3601 (2012)	11
42 U.S.C. § 3603 (2012)	24, 25, 26, 27

42 U.S.C. § 3604 (2012) 2, 12, 23, 26, 38
42 U.S.C. § 3612 (2012) ix, 29
42 U.S.C. § 3613 (2012) 29

Rules

Fed. R. Civ. P. 52 13

Statement of Jurisdiction

The United States District Court for the District of Connecticut (Janet C. Hall, J.) had subject matter jurisdiction over this civil case pursuant to 28 U.S.C. §§ 1331 & 1345 and 42 U.S.C. § 3612(o). Judgment entered on August 1, 2013. *See* Joint Appendix (“A”) 15. On August 30, 2013, the defendant filed a timely notice of appeal pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure. *See id.* This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

**Statement of Issues
Presented for Review**

- I. Whether the district court committed clear error in finding that defendant Clifton Hylton engaged in discrimination in violation of the Fair Housing Act (FHA), where Mr. Hylton refused to sublease a property to plaintiff DeMechia Wilson on account of her race?
- II. Whether the district court committed clear error in finding that defendants Merline Hylton and Hylton Real Estate Management (HREM) were vicariously liable for the discriminatory conduct of her husband Clifton Hylton, where her husband and HREM acted as her agents in renting the subject property?
- III. Whether the district court committed clear error in finding that defendant Merline Hylton was not exempt under the FHA as the owner of three or fewer single-family residences, where she failed to prove that she rented the property in question “without the use in any manner” of the sales or rental facilities of any real estate agent or any person in the business of renting homes?
- IV. Whether the district court committed clear error or abused its discretion in its awards of damages and injunctive relief for the defendants’ violations of the FHA?

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HYLTON REAL ESTATE

MANAGEMENT, INC.,

Defendants-Counters-Claimants-Appellants,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

During a telephone call on June 22, 2010, defendant Clifton Hylton agreed to allow the tenants of 5 Townline Road (“the Property”), Jermaine and Taika Bilbo, to sublease the Property to DeMechia Wilson. When Mr. Hylton learned that Ms. Wilson was black, however, he rejected the sublease because he “didn’t want too many black people living there” and because “the neighbors wouldn’t want too many black people living there.” A 105; *see also* Government Appendix (“GA”) 20 (instructing Mr. Bilbo to find “good white people” to rent the Property). Mr. Hylton subsequently rented the Property to a white couple, who paid \$100 less in rent than Ms. Wilson had been willing to pay. *See* A 175-76, 209-12; Special Appendix (“SPA”) 41.

Following a two-day bench trial, the district court (Janet C. Hall, J.) concluded that Merline Hylton, as the owner of the Property, and Mr. Hylton and Hylton Real Estate Management, Inc. (HREM), as her agents, had violated the FHA in three respects: by refusing to rent the Property on the basis of race; by discriminating in the “terms, conditions, or privileges” of a rental on the basis of race; and by making a statement with respect to the rental that “indicates any preference, limitation, or discrimination” on the basis of race. SPA 44-51; *see* 42 U.S.C. § 3604 (2012). The district court awarded compensatory and punitive damages to Mr. and

Mrs. Bilbo and to Ms. Wilson, granted in part the plaintiffs' motion for attorney's fees, and entered an injunction against the defendants. *See* SPA 60-67, 70-78, 84-89.

On appeal, the defendants argue that the district court committed clear error with respect to several issues of fact relating to liability and compensatory damages and that the district court abused its discretion in awarding punitive damages and injunctive relief. Because the record firmly supports the findings made by the district court, the defendants' arguments should be rejected.

The judgment of the district court should be affirmed.

Statement of the Case

The United States of America filed this action under the Fair Housing Act (FHA) against defendants Merline Hylton, Clifton Hylton, and Hylton Real Estate Management, Inc., alleging discrimination on the basis of race in connection with a proposed sublease of the Property. Taika and Jermaine Bilbo, former tenants at the Property, and DeMechia Wilson, the prospective sublessee, intervened.

Following a two-day bench trial, the district court entered judgment against the defendants, awarding compensatory and punitive damages, attorney's fees, and injunctive relief. *See* SPA 35-

68 (reported at *United States v. Hylton*, 944 F. Supp. 2d 176 (D. Conn. 2013)); SPA 69-83 (reported at *United States v. Hylton*, No. 3:11CV1543 (JCH), 2013 WL 3927858 (D. Conn. July 26, 2013)).

This appeal followed.

A. The parties

Mrs. Hylton is the owner of 5 Townline Road in Windsor Locks, Connecticut (“the Property”), as well as two other properties. *See* A 150-51, 169. Mr. Hylton, her husband, is in the business of renting real estate. *See* A 181. He owns four additional multi-family properties in Connecticut and is the sole owner of a real estate management company known as Hylton Real Estate Management, Inc. (HREM). *See* A 181-82, 192-94. All of the properties owned by Mrs. Hylton are “listed” under HREM. A 155-56. Mr. and Mrs. Hylton are black. *See* GA 15; SPA 36.

In April 2010, Mr. and Mrs. Bilbo rented the Property. *See* A 94. Mr. Bilbo is black, and Mrs. Bilbo is white. *See* A 84

In June 2010, Ms. Wilson sought to sublease the Property through Mr. Bilbo. Ms. Wilson is black. *See* A 67.

B. Rental of 5 Townline Road

In April 2010, Mr. and Mrs. Bilbo rented the Property from Mr. Hylton and HREM. *See* A 94,

132. During the rental application process, Mr. and Mrs. Bilbo dealt solely with Mr. Hylton, who advertised the Property, showed them the Property, provided them with the application, signed the lease, and appeared to have full authority to rent the Property. *See* A 86-88, 93, 162. Their application to rent and their lease were both prepared using HREM forms. *See* A 160, 191, 234-36. Indeed, Mr. and Mrs. Bilbo never even met Mrs. Hylton. *See* A 129, 162-63, 236-37.

Mr. and Mrs. Bilbo paid a monthly rent of \$1750. *See* A 93. The rent was paid to Mr. Hylton, not Mrs. Hylton. *See* A 166. At her deposition, Mrs. Hylton acknowledged that Mr. Hylton “was acting kind of as [her] agent or representative” with respect to the Property. A 165.

C. Attempt to sublease 5 Townline Road

Shortly after moving in to the Property, Mr. and Mrs. Bilbo decided to buy a house of their own and contacted Mr. Hylton about breaking the lease. *See* A 96-98. Mr. Bilbo offered to find a replacement tenant for the Property. *See* A 101. Through an online advertisement, Mr. Bilbo identified Ms. Wilson as “a good prospect” to rent the Property. A 101-02.

On June 22, 2010, Mr. Bilbo showed the Property to Ms. Wilson. *See* A 102; *see also* A 63. Ms. Wilson expressed her interest in renting it. *Id.* Mr. Bilbo had Ms. Wilson fill out a rental ap-

plication disclosing her income and providing references. *See* A 78, 246.

That same day, Mr. Bilbo and Mr. Hylton spoke by phone. *See* A 104. Mr. Bilbo told Mr. Hylton that he had found somebody who “could move in as soon as I move out, so he would not lose any money on the rental . . .” *Id.* After initially hesitating, Mr. Hylton “agreed to sublet the [Property] if [Mr. Hylton] could get his 1750 [rent] from [Mr. Bilbo] and [Mr. Bilbo] . . . would worry about getting the 1750 from [Ms. Wilson].” *Id.*; *see also* A 147-48. Mr. Bilbo agreed. *See* A 104.

Mr. Bilbo reminded Mr. Hylton that the lease required written permission to sublease the Property, and he asked Mr. Hylton to provide written permission to sublet to Ms. Wilson. *See* A 104-05. At that point, Mr. Hylton asked whether Ms. Wilson was “white or black.” *Id.* Upon learning that Ms. Wilson was black, Mr. Hylton stated that “he didn’t want too many black people living there,” that “he only rented to [Mr. Bilbo] because [his] wife was white,” and that “the neighbors wouldn’t want too many black people” at the Property. A 105. Mr. Hylton also asked Mr. Bilbo to find “good white people” to rent the Property. GA 20. After some more discussion, Mr. Hylton refused to allow Ms. Wilson to sublease the Property. *See* A 105-06.

After speaking with Mr. Hylton, Mr. Bilbo called Ms. Wilson, told her that he would not be

able to sublease the Property to her, and apologized to her. *See* A 106-07; *see also* A 64-65. Mr. Bilbo was very upset, very angry, and confused. *See* A 108. Shortly thereafter, he called his wife and wrote an email message about the discrimination that he had just experienced; he also made several contemporaneous posts on his Facebook account. *See id.*; *see also* A 118-21, 123-24; GA 19-22.

That same day, Mrs. Bilbo submitted a complaint to the Connecticut Fair Housing Center, which subsequently filed a complaint with the U.S. Department of Housing and Urban Development (HUD) on behalf of Mr. Bilbo, Mrs. Bilbo, and Ms. Wilson. *See* A 244-245, 316; GA 6-9, 22. Mr. and Mrs. Bilbo moved out of the Property on or about July 1, 2010. *See* A 207.

D. Subsequent events and the investigation by HUD

After Mr. and Mrs. Bilbo moved out, the Property was rented to white tenants. *See* A 166-67, 209-12. Again, the rental of the Property was handled by Mr. Hylton, not Mrs. Hylton. *See* A 166, 168-69; *see also* A 163. The application to rent and the lease were prepared on HREM forms. *See* A 160-61, 191. The rent for the Property was \$1650 per month, *see* A 175-76, which was \$100 less than Ms. Wilson had been willing to pay.

Sometime after moving out, Mr. Bilbo encountered Mr. Hylton at the grocery store. *See* A 126. When Mr. Hylton brought up the broken lease, Mr. Bilbo responded that Mr. Hylton had rejected a prospective tenant “because she was black.” *Id.* Mr. Hylton answered that Mr. Bilbo “tried to put some hooligans in my house” *Id.*

In May 2011, an investigator from HUD interviewed Mr. Hylton. *See* A 318-19. During the interview, Mr. Hylton told the investigator, “[I]f you rent to a Puerto Rican today, I guarantee there will be 10 people there tomorrow based on the culture.” A 318-19. During a subsequent interview, Mr. Hylton told the investigator that he would have sued Mr. Bilbo already if Mr. Bilbo were “a white man.” A 329; GA 17 (“[I]f it was a white man he would just sit back and relax and just sue them.”).

During the HUD investigation, Mrs. Hylton submitted a letter based in part on information provided to her by Mr. Hylton. *See* A 168-69. The letter falsely represented that Mr. and Mrs. Hylton had interviewed Ms. Wilson before refusing to rent from her. *See id.*; *see also* A 68, 231.

Summary of Argument

I. Clifton Hylton, acting as an agent for Mrs. Hylton and in his capacity as the sole owner of HREM, violated three provisions of the Fair Housing Act when he refused to sublease to Ms. Wilson because she was black. The credible evidence presented during the two-day bench trial established that (i) Mr. Hylton revoked his permission to allow his current tenants to sublet to Ms. Wilson when he found out Ms. Wilson was black; (ii) he discriminated against Ms. Wilson and the Bilbos in the terms, conditions, or privileges of renting the Property; and (iii) he made discriminatory statements with respect to the rental of the Property. Thus, the district court properly held that Mr. Hylton violated the FHA.

II. Mrs. Hylton and HREM were vicariously liable for the discriminatory conduct of Mr. Hylton. Mrs. Hylton, the sole owner of the Property, knowingly employed the services of Mr. Hylton and his company, HREM, to handle all aspects of the rental of the Property. Mr. Hylton, advertised the property, interviewed potential tenants, and co-signed the lease with Mrs. Hylton. All of the rental applications and leases bore the name “Hylton Real Estate Management.” Therefore, as the principal, Mrs. Hylton was vicariously liable for the actions of Mr. Hylton.

III. Mrs. Hylton was not exempt under the FHA as the owner of three or fewer single-family residences, where she rented the Property using the services of a person and a company in the business of renting homes, namely Mr. Hylton and his management company HREM.

IV. The district court properly awarded compensatory damages, punitive damages, injunctive relief, and attorney's fees. Mr. Bilbo, Mrs. Mrs. Bilbo, and Ms. Wilson were entitled to compensatory damages where the evidence established actual damages as a result of Mr. Hylton's discriminatory conduct. The evidence also showed that Mr. Hylton's actions were egregious and outrageous, therefore justifying an award of punitive damages. The injunctive relief was necessary to protect potential tenants from the discriminatory conduct of Mr. Hylton, Mrs. Hylton, and HREM. Finally, Mr. Bilbo, Mrs. Bilbo, and Ms. Wilson, as the prevailing parties, were entitled to attorney's fees.

Argument

I. The district court did not commit clear error in finding that the defendants discriminated on the basis of race

A. Governing law and standard of review

1. The Fair Housing Act

The Fair Housing Act was enacted to provide “for fair housing throughout the United States.” 42 U.S.C. § 3601 (2012). The language of the FHA is “broad and inclusive” and must be given a “generous construction.” *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972).

The FHA provides, in pertinent part, that it is unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of race

(c) To make . . . any . . . statement . . . with respect to the sale or rental of a dwelling that indicates any preference,

limitation, or discrimination based on race

42 U.S.C. § 3604 (2012).

The burden of proving discrimination rests on the plaintiffs. *See Cabrera v. Jakobovitz*, 24 F.3d 372, 382 (2d Cir. 1994). In this case, the plaintiffs relied on “direct evidence” of discrimination to meet that burden. *Cf. Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121-22 (1985) (explaining that the framework set forth in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973), does not apply where there is direct evidence of discrimination).

Accordingly, the plaintiffs were entitled to prevail if (1) the defendants failed to rebut the evidence of discrimination, or (2) the defendants’ reason for the adverse action was not believed by the finder of fact. *See Cabrera*, 24 F.3d at 381-82. If there was evidence that the adverse decision was motivated by more than one reason, it was the defendants’ burden to establish, as an affirmative defense, “that the defendant would have taken the adverse action on the basis of a permissible reason even if the impermissible reason had not existed.” *Id.* at 382; *see also Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1042 (2d Cir. 1979) (“The denial [of housing] violates [the FHA] if race is even one of the motivating factors.” (citing cases)).

2. Standard of review

A district court's findings as to discrimination and intent to discriminate are findings of fact, subject to review only for "clear error." *United States v. Yonkers Bd. of Ed.*, 837 F.2d 1181, 1218 (2d Cir. 1987) (reviewing findings of district court following bench trial on FHA claims).

"Assessments of the credibility of the witnesses are peculiarly within the province of the district court as trier of fact and are entitled to considerable deference." *Id.* (citing Fed. R. Civ. P. 52(a)). "Thus, 'when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error.'" *Id.* (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985)).

Even when a district court's findings are based on documentary evidence or on inferences from other facts, the Court "must accept those findings if they adopt a permissible view of the evidence; the appellate court may not conduct a *de novo* review." *Id.* "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson*, 470 U.S. at 574.

B. Relevant facts

The district court found that Mr. Hylton committed three violations of the FHA.

First, the district found “clear evidence” that Mr. Hylton refused to sublet the Property to Ms. Wilson on the basis of her race. SPA 46. The district court also found no evidence of a legitimate reason for refusing to sublet the Property. *See id.*

Second, the district court found that Mr. Hylton discriminated in the terms, conditions, and privileges of the rental on the basis of race. *See* SPA 47-48. With respect to Mr. and Mrs. Bilbo, the court found that Mr. Hylton prevented Mr. and Mrs. Bilbo from subleasing the Property. *See id.* (“[I]t is clear that Mr. Hylton would have allowed the Bilbos to sublet to Ms. Wilson had she been white.”). With respect to Ms. Wilson, the court found that Mr. Hylton prevented her from assuming residency and enjoying the privilege of renting the Property. *See* SPA 48-49.

Third, the district court found that, based on the testimony and other evidence adduced at trial, Mr. Hylton made discriminatory statements on the basis of race. *See* SPA 49-51. The court found that the statements were made to Mr. Bilbo directly, that the statements caused “significant emotional distress” when relayed to Mrs. Bilbo, and that the statements amounted to a

“discriminatory attack” that also injured Ms. Wilson. SPA 50-51.

C. Discussion

The district court did not commit clear error in finding that Mr. Hylton engaged in housing discrimination and violated the FHA in three respects: (1) by refusing to sublet to Ms. Wilson; (2) by discriminating against Ms. Wilson, Mr. Bilbo, and Mrs. Bilbo in the “terms, conditions, or privileges” of the rental, *i.e.*, by not permitting Ms. Wilson to sublet the Property from Mr. and Mrs. Bilbo; and (3) by making discriminatory statements with respect to the rental of the Property.

The violations hinged primarily on the phone call between Mr. Bilbo and Mr. Hylton on June 22, 2010. According to Mr. Bilbo, Mr. Hylton initially agreed to permit the sublet to Ms. Wilson, but Mr. Hylton then refused to do so and made discriminatory statements after learning that Ms. Wilson was black. *See* A 104-06. According to Mr. Hylton, no such conversation took place. *See* A 204-06 (claiming that the testimony of Mr. Bilbo was “all fabricated”).

The district court credited the testimony of Mr. Bilbo, not Mr. Hylton. *See* SPA 46 (“In fact, Mr. Hylton agreed to sublet to Ms. Wilson and only changed his mind once he learned of her race, showing that there could have been no other reason for the denial than Ms. Wilson’s

race.”); SPA 50 (describing discriminatory statements). On this record, the district court’s findings cannot be overturned.

In particular, there was substantial evidence in the record to corroborate Mr. Bilbo, including evidence that he immediately related his conversation with Mr. Hylton to Ms. Wilson and his wife, *see* A 64-65, 68-69, 106-08, and he immediately memorialized the conversation in an email message and in Facebook postings, *see* A 108, 119; GA 19-22.

Conversely, there was substantial evidence in the record discrediting Mr. Hylton, including the evidence that he made additional racist statements to a HUD investigator, *see* A 318-19, 329, as well as his obstreperous conduct while testifying, *see, e.g.*, A 186-87 (claiming not to understand question of whether he created letterhead for HREM); A 192-96 (claiming that the Property was managed by Mr. and Mrs. Bilbo and then recanting); A 209 (claiming that he no longer worked with a certain attorney and then recanting); A 210-11 (admitting that the current tenants at the Property are white although he told HUD investigator that the tenants were “a black and white couple”); *see also* A 379, 381-83. Mr. Hylton also caused Mrs. Hylton to send a letter to the HUD investigator providing false information. *See* A 168-69 (representing falsely that Ms. Wilson was interviewed before she was re-

fused permission to sublet the Property); A 231 (denying any involvement with Ms. Wilson).

On appeal, the defendants ask the Court to overturn the district court's credibility assessment, arguing that the defendants themselves are black and that they were motivated only by Ms. Wilson's ability to pay. The defendant's arguments are meritless.

First, the defendants are not entitled to a presumption that they would not discriminate against others of their own race. "Because of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group." *See Feingold v. New York*, 366 F.3d 138, 155 (2d Cir. 2004) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998)). Moreover, intra-racial discrimination can occur between different subgroups within the same race, such as discrimination between African Americans and those of West Indian descent. *See* A 276-78 (expert testimony of Professor Lance Freeman); *see also Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 609-13 (1987) (rejecting claim that one Caucasian cannot discriminate against another).

Second, the defendants' claim—that they were motivated by Ms. Wilson's ability to pay—is undermined by their failure to obtain, or even request, financial documentation from her, *see* A

231 (denying any involvement with Ms. Wilson), and by the fact that they ultimately rented the property to tenants for \$100 less per month than Ms. Wilson, *see* A 175-76; *see also* *Corey v. HUD*, 719 F.3d 322, 327 (4th Cir. 2013) (“To begin with, [the prospective tenant’s] ability to pay could not possibly have motivated [the defendant’s] conduct, as he learned of [her] income only *after* he imposed the discriminatory conditions.”)

Third, the defendants are simply not entitled to have this Court re-assess *de novo* the credibility of the witnesses (or the thoroughness of the HUD investigation). Because the testimony of Mr. Bilbo was coherent, facially plausible, and not contradicted by extrinsic evidence—indeed, it was corroborated by extrinsic evidence, including the testimony of the HUD investigator—it was not clear error for the district court to rely on it.

The defendants complain, however, that the district court overlooked the testimony of Mr. Hylton that he was motivated only by a tenant’s “ability to pay.” His testimony was wholly conclusory, *see* A 226, 231, and the district court was entitled to disregard it (together with the rest of Mr. Hylton’s testimony) as not credible. *See* SPA 39-40, 45-50 (crediting Mr. Bilbo’s version of the events). Therefore, it was not error, much less clear error, for the district court to find that Mr. Hylton had violated the FHA.

II. The district court did not commit clear error in finding that Mrs. Hylton and HREM were vicariously liable

A. Governing law and standard of review

The FHA incorporates traditional rules of vicarious liability. *See Meyer v. Holley*, 537 U.S. 280, 285 (2003). Those rules make “principals or employers vicariously liable for acts of their agents or employees in the scope of their authority or employment.” *Id.*

An agency relationship requires proof of three elements: (1) the “manifestation of consent” by the principal for the agent to act on his or her behalf; (2) the agent’s “acceptance of the undertaking”; and (3) the “understanding . . . that the principal is to be in control,” even if that control is not always exercised or is ineffective at times. *Cleveland v. Caplaw Enter.*, 448 F.3d 518, 522 (2d Cir. 2006).

Whether an agency relationship exists is “highly factual” and can depend on many factors, including “the situation of the parties, their relations to one another, and the business in which they are engaged; the general usages of the business in question and the purported principal’s business methods; the nature of the subject matters and the circumstances under which the business is done.” *Id.*

Accordingly, this Court will give deference to the finder of fact as to the existence *vel non* of an

agency relationship, “review[ing] the District Court’s conclusion on the issue only to see whether plaintiffs introduced evidence which, if credited by the jury, would justify a finding of agency.” *Cabrera*, 24 F.3d at 386.

B. Relevant facts

The district court found that Mrs. Hylton and HREM were vicariously liable for the discriminatory conduct of Mr. Hylton.

With respect to Mrs. Hylton, the district court found that Mr. Hylton acted as her agent, observing that Mrs. Hylton had no direct involvement in renting the Property, either to Mr. and Mrs. Bilbo or to the current tenants. *See* SPA 52. Instead, “[s]he had Mr. Hylton handle all aspects of the rental.” *Id.* Accordingly, “Mrs. Hylton gave Mr. Hylton authority to act on her behalf and Mr. Hylton accepted such authority.” *Id.* Moreover, Mrs. Hylton discussed with Mr. Hylton his actions with respect to the Property; she co-signed the leases, “indicating her approval and agreement” with his actions; and she admitted that he did not act alone. *Id.*; *see also* A 165 (admitting that she was working with Mr. Hylton when renting the Property to Mr. and Mrs. Bilbo); A 177 (admitting that she talked to Mr. Hylton about renting the Property).

With respect to HREM, the district court found that Mr. Hylton managed the Property as an agent of HREM. *See* SPA 54. In particular,

the district court observed that Mr. Hylton used rental applications and leases bearing the name of “Hylton Real Estate Management, Inc.,” and that he co-signed the leases even though the Property was solely owned by Mrs. Hylton. *See id.* The district court stated that there was “no reason” for Mr. Hylton to sign “unless he was signing . . . in his capacity as property manager.” *Id.* Because HREM was in the property management business, and Mr. Hylton performed all the functions of a property manager, the district court concluded that HREM was vicariously liable for Mr. Hylton’s discriminatory conduct. *See id.*

C. Discussion

The district court did not commit clear error in finding that Mr. Hylton was the agent of both Mrs. Hylton and HREM, rendering them vicariously liable for his discriminatory conduct. Indeed, the district court’s determination with respect to HREM is not challenged on appeal.

With respect to Mrs. Hylton, the record firmly established her “manifestation of consent” and Mr. Hylton’s “acceptance of the undertaking” based on the fact that she permitted him to handle all aspects of renting the Property, and he in fact undertook to do so. *See, e.g.*, A 86-87 (showing the Property to Mr. and Mrs. Bilbo); A 93 (signing lease); A 95 (establishing landlord-tenant relationship); A 162-63, 166 (establishing

that Mr. Hylton handled all aspects of renting the Property). The record also demonstrated the “understanding” that Mrs. Hylton could exercise control over the rental of the Property, based on the fact that she was the sole owner of the property, *see* A 169, as well as the fact that she co-signed the leases and discussed the rentals with Mr. Hylton, *see* A 160-61, 177.

On appeal, Mrs. Hylton claims that her “uncontroverted testimony” established that she collected the rent for the Property. This is incorrect. Although Mrs. Hylton testified that she received the rent from her current tenants, *see* A 175, she testified that the rent from Mr. and Mrs. Bilbo was paid to Mr. Hylton. *See* A 166.

Mrs. Hylton also claims that she gave “uncontroverted testimony” that Mr. Hylton was not her agent. Again, this is incorrect. Although she denied at trial that Mr. Hylton was her agent, *see* A 163-64, she admitted in her sworn deposition that he was. *See* A 165 (“Question: Okay. He was acting kind of as your agent or representative? Answer: Right.”).

The district court was entitled to disregard Mrs. Hylton’s self-serving trial testimony, particularly when it was contradicted by her deposition testimony. Although Mrs. Hylton claims that the district court committed clear error by not giving dispositive weight to her dubious trial testimony, she offers no authority to support her claim. To the contrary, in making the “highly

factual” determination of whether an agency relationship existed, the district court correctly relied on all of the circumstances surrounding the relationship between Mrs. Hylton and Mr. Hylton and their rental activities. *See Cleveland*, 448 F.3d at 522. Based on the entire record, the district court did not commit error, much less clear error, in finding that Mrs. Hylton was vicariously liable for the discriminatory conduct of Mr. Hylton.

III. The district court did not commit clear error in finding that Mrs. Hylton was not exempt

A. Governing law and standard of review

Because the FHA is given a “broad and inclusive” construction, its exemptions must be read “narrowly in order to preserve the primary operation” of the statute. *City of Edmonds*, 514 U.S. at 731-32. One such exemption provides, in pertinent part, that Sections 3604(a) and (b) do not apply to:

any single-family house sold or rented by an owner: Provided, . . . That . . . the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented . . . without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facil-

ities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person

42 U.S.C. § 3603(b)(1) (2012).

The exemption under Section 3603(b)(1) constitutes an affirmative defense, *see United States v. Space Hunters, Inc.*, 429 F.3d 416, 426 (2d Cir. 2005), as to which the defendants bear the burden of proof, *see Lore v. City of Syracuse*, 670 F.3d 127, 149 (2d Cir. 2012).

This Court reviews findings of fact for clear error. *See Davis v. New York City Housing Auth.*, 278 F.3d 64, 79 (2d Cir. 2002). Questions of law, or mixed questions of fact and law, are reviewed *de novo*. *See id.*

B. Relevant facts

The district court found that Mrs. Hylton did not qualify for an exemption under Section 3603(b)(1) because she rented the Property using the services of Mr. Hylton in his capacity as a property manager and officer of HREM. *See* SPA 56-58.

The district court largely relied on the same facts that established the existence of an agency relationship between Mrs. Hylton and HREM on the one hand, and Mr. Hylton on the other: Mr. Hylton acted as a property manager, by meeting with prospective tenants, selecting tenants, and

collecting rent; in doing so, he “shielded” Mrs. Hylton from having to perform those tasks; he used application forms and leases that bore the name “Hylton Real Estate Management, Inc.”; and he signed the leases, even though Mrs. Hylton was the sole owner of the Property. *See id.*

The court specifically rejected Mr. Hylton’s testimony that his use of the HREM leases was a “mere ‘coincidence.’” SPA 57 (quoting A 228); *see* A 228 (testifying that it “[j]ust so happened” that he “had some leases in [his] truck”). As the district court observed, Mr. Hylton also used rental applications bearing the name of HREM, and he continued to use the HREM documents when renting the Property to the current tenants. *See* SPA 57.

Finally, the district court held, as a matter of law, that Mr. Hylton and HREM did not qualify for the exemption because neither Mr. Hylton nor HREM was the owner of the Property. *See* SPA 55.

C. Discussion

The district court correctly concluded that Mrs. Hylton, Mr. Hylton, and HREM did not qualify for the exemption under 42 U.S.C. § 3603(b). The district court’s conclusion is not challenged on appeal with respect to Mr. Hylton and HREM, nor is there any argument on appeal that the exemption applies with respect to Mrs.

Hylton's liability under Section 3604(c) for the discriminatory statements. *See* 42 U.S.C. § 3603(b) (2012) (excluding Section 3604(c) from the exemption).

Mrs. Hylton was ineligible for the exemption because the district court found that she rented the Property using the services of Mr. Hylton "in his capacity as an officer of HREM." Its finding was firmly supported by the record, which established that Mr. Hylton was in the business of managing and renting property; that he acted as a property manager with respect to the Property; that he represented himself as an agent of HREM by using application forms and leases bearing the name of Hylton Real Estate Management, Inc.; and that he co-signed the leases, presumably as an agent, since he did not have any ownership interest in the Property.

In its decision, the district court distinguished *Michigan Prot. and Advocacy Serv., Inc. v. Babin*, 18 F.3d 337 (6th Cir. 1994). In *Babin*, defendant Hammonds was a real-estate agent, employed by Century 21, who sold a home that she owned. *See id.* at 341. The home was not listed through Century 21, nobody else from Century 21 was at the closing, and no commission was paid to the agency. *See id.* Although the closing documents bore the Century 21 logo, the documents were provided by and the responsibility of the title company, which had the forms to facilitate their business with Century 21. *See id.*

at 342. On that record, the Sixth Circuit held that Hammonds was not ineligible for the exemption. “Even though the statutory language, ‘in any manner,’ is very broad, Hammonds did not use the ‘facilities’ or ‘services’ of a real estate service or broker Although Hammonds used the Century 21 forms, she acquired the documents directly from [the title company].” *Id.* Because Century 21 had no other involvement in the transaction, “the closing documents appear to be nothing more than form papers necessary to perfect title,” and “Hammonds’s use of the[] documents [did] not vitiate the exemption provided by § 3603(b).” *Id.* at 342-43.

Babin is inapplicable here for several reasons. First, Mrs. Hylton was using an agent, Mr. Hylton, not conducting the transaction herself. Second, her agent was responsible for substantially all aspects of the transaction, such as advertising the Property, selecting tenants, and signing leases; he did not merely use forms with the name or logo of a real estate agency. Third, the forms used were not independently provided by a third party; they were created, provided by, and used by her own agent. Under those circumstances, Mrs. Hylton is not eligible for the exemption because she does not satisfy the very narrow exemption in Section 3603(b)(1). *See City of Edmonds*, 514 U.S. at 731-32.

Mrs. Hylton’s only argument on appeal is that the district court should have given more

weight to her testimony, rather than the entirety of the circumstances surrounding her relationship with Mr. Hylton and the rental of the Property. Mrs. Hylton repeats the claim that the HREM forms were “mistakenly used,” which was discredited by the district court, and the claim that she “personally collected all rents,” which was contradicted by her own testimony. Her argument provides no basis for upsetting the findings and conclusions of the district court.

Accordingly, the district court did not err in concluding that Mrs. Hylton did not qualify for the exemption.

IV. The district court did not commit clear error or abuse its discretion in its awards of damages and injunctive relief

A. Governing law and standard of review

When a violation of the FHA has been established, the FHA authorizes the award of actual and punitive damages, injunctive relief, and attorney's fees. *See* 42 U.S.C. §§ 3612(o)(3), (p) & 3613(c) (2012).

In awarding actual damages, a court may award compensation for monetary losses, such as out-of-pocket expenses, and for injuries resulting from emotional distress. *See Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 907 (2d Cir. 1993); *Henry v. Gross*, 803 F.2d 757, 768 (2d Cir. 1986) (“It is a basic principle of tort law in general, and of civil rights law in particular, that compensable injuries may include . . . injuries such as ‘personal humiliation’ and ‘mental anguish.’”). Proof of medical treatment is not required to establish an injury based on emotional distress. *See Patterson v. Balsamico*, 440 F.3d 104, 120 (2d Cir. 2006).

A court may award punitive damages when “the [defendant] has engaged in intentional discrimination and has done so with malice or with reckless indifference to the federally protected rights of an aggrieved individual.” *Space Hunters*, 429 F.3d at 427 (quoting *Kolstad v. Am. Dental Ass’n*, 527 U.S. 526, 529-30 (1999)) (al-

teration in original). The requisite state of mind can be proven “with evidence (1) that the defendant discriminated in the face of a perceived risk that its actions violated federal law, or (2) of egregious or outrageous acts that may serve as evidence supporting an inference of the requisite evil motive.” *Id.* (citations and internal quotation marks omitted).

A district court’s factual findings when calculating damages are reviewed for clear error. *See Ragin*, 6 F.3d at 907; *see also Mathie v. Fries*, 121 F.3d 808, 813 (2d Cir. 1997). Absent any factual error, a district court’s award of compensatory or punitive damages can be overturned as excessive only if “the award is so high as to shock the judicial conscience and constitute a denial of justice.” *Id.*; *see also BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996) (articulating “guideposts” to consider in reviewing award of punitive damages).

A court may enter an injunction to prevent a defendant from engaging in a discriminatory housing practice, as well as an order to provide “such affirmative action as may be appropriate.” 42 U.S.C. § 3013(c)(1) (2012); *see LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 434 (2d Cir. 1995) (*LeBlanc-Sternberg I*) (holding that district court abused its discretion in declining to enter injunction to prevent application of discriminatory zoning code). The scope of a district court’s injunction or order is reviewed for abuse

of discretion. *See Ragin*, 6 F.3d at 909; *LeBlanc-Sternberg I*, 67 F.3d at 432.

An award of attorney's fees is proper under the FHA if the plaintiffs "succeeded on any significant issue in the litigation." *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 757 (2d Cir. 1998) (*LeBlanc-Sternberg II*) (holding that failure to award attorney's fees was an abuse of discretion). The most important factor in determining a reasonable fee is the degree of success obtained. *See id.* at 760. Where a plaintiff has obtained "excellent results," his attorney "should recover a fully compensatory fee" even if the plaintiff did not prevail on every claim that was based on the same core of facts and law. *See id.* at 762. A reasonable fee is usually obtained using the "lodestar" method, *i.e.*, multiplying the number of hours spent on the litigation by a reasonable hourly rate. *See id.* at 763-64. An award of attorney's fees is reviewed for abuse of discretion. *See id.* at 757.

B. Relevant facts

1. Compensatory damages

The district court awarded compensatory damages as follows:

- \$1,750.00 to Mr. and Mrs. Bilbo for a wrongfully withheld security deposit, *see* SPA 60;

- \$10,000.00 to Mr. Bilbo for the shock, pain, and anger that Mr. Hylton’s comments caused him, as corroborated by the postings that he made on Facebook immediately after speaking to Mr. Hylton, *see* SPA 62-63;
- \$5,000 to Mrs. Bilbo for the pain that she experienced, as the wife and mother of an African-American husband and children, upon learning of Mr. Hylton’s comments, *see* SPA 63;
- \$4,341.05 to Ms. Wilson for the costs associated with the extra distances she had to drive because she continued to live in Hartford rather than at the Property in Windsor Locks, *see* SPA 60-62; and
- \$20,000 to Ms. Wilson, for the damages that she suffered as a result of “lost housing opportunities,” *i.e.*, being denied the opportunity to live in Windsor Locks rather than in Hartford, SPA 64-65.

With respect to the lost housing opportunities suffered by Ms. Wilson, the district court relied on the testimony of Lance Freeman, a professor at Columbia University, which the district court found to be “credible and compelling.” *Id.*; *see also* A 252.

Professor Freeman testified that the neighborhood where someone lives has an effect on the quality of that person's life, including job and business opportunities. *See* A 258-59. Professor Freeman examined the Hartford neighborhood where Ms. Wilson resided with her children and the Windsor Locks neighborhood where the Property was located, comparing data on racial composition, segregation, and other demographic factors; unemployment rates, home ownership, and other economic indicators; crime rates; and quality of schools. *See* A 262-75. Professor Freeman concluded that the differences between the two neighborhoods were "stark" and "dramatic." A 300. In particular, the neighborhood where Ms. Wilson resided with her children was "a particularly disadvantaged area" relative to Windsor Locks, and Ms. Wilson and her children would have had "much more opportunities" and "greater upward mobility" had they moved to Windsor Locks. *See* A 275-76; *see also* A 298-99.

2. Punitive damages

The district court awarded punitive damages of \$15,000.00 to Mr. and Mrs. Bilbo and \$20,000.00 to Ms. Wilson. *See* SPA 66-67. The court found that the conduct of Mr. Hylton was so egregious that it was indicative of his "evil motive." SPA 66; *see Space Hunters*, 429 F.3d at 427 (stating that "egregious or outrageous acts" may be sufficient to establish the "requisite evil motive" to support an award of punitive damag-

es). The court also found that Mr. Hylton “showed no remorse for his conduct when he continued to make discriminatory comments to the HUD investigator” SPA 66.

The court, however, held that Mrs. Hylton was not liable for the punitive damages, since there was no evidence that she knew of Mr. Hylton’s discriminatory statements. *See id.*

3. Equitable relief

The court also granted equitable relief, requiring for a three-year period that the defendants:

- refrain from future violations of the FHA, *see* SPA 84-85;
- provide notice to tenants and prospective tenants about the defendants’ obligations not to discriminate and the available legal remedies for any perceived discrimination, *see* SPA 85-86;
- undergo three hours of training on the FHA each year, *see* SPA 87;
- maintain all rental records and permit the government’s inspection thereof on request and with reasonable notice, *see* SPA 88;
- inform the government promptly of any complaints or allegations of discrimination, *see id.*; and

- provide an annual compliance report to the government, *see* SPA 88-89.

The court found that the equitable relief was necessary “to prevent the recurrence of discriminatory conduct,” in light of the egregious nature of Mr. Hylton’s conduct and his subsequent, discriminatory statements to the HUD investigator. SPA 79-80 (internal quotation marks omitted).

4. Attorney’s fees

Finally, the court awarded \$37,422 in fees to the attorney who represented Mr. Bilbo, Mrs. Bilbo, and Ms. Wilson at trial. *See* SPA 74. The court found that an hourly rate of \$225 was appropriate for an attorney with five to six years of housing law experience. *See* SPA 71. Although the attorney’s billing records reflected approximately 208 hours of work on the case, the court reduced the fee by 20% because some of the records were not sufficiently detailed. *See* SPA 72-74.

C. Discussion

The district court did not commit clear error, nor abuse its discretion, in its awards of compensatory damages, punitive damages, injunctive relief, and attorney’s fees; moreover, its compensatory and punitive damages awards do not “shock the conscience.” The defendants’ arguments to the contrary are meritless.

The defendants first challenge the compensatory damages awarded to Mrs. Bilbo and Ms. Wilson, arguing that Mr. Bilbo was responsible for relaying the discriminatory statements to Mrs. Bilbo and Ms. Wilson. The defendants did not make this argument below. *See* A 390-92 (addressing court on issue of damages). Accordingly, the defendants' argument has been forfeited. *See Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 129-30 (2d Cir. 2012) (declining to address argument raised for the first time on appeal). Moreover, the argument is meritless, as it was reasonably foreseeable that Mr. Bilbo would tell Mrs. Bilbo and Ms. Wilson about the discriminatory statements. *See Samaritan Inns, Inc. v. District of Columbia*, 114 F.3d 1227, 1234 (D.C. Cir. 1997) (holding that plaintiff is entitled to recover for damages under FHA that defendant "could reasonably have foreseen"); *see also Henry*, 803 F.2d at 768 (applying principles of tort law to damages under FHA). Accordingly, the defendants are liable for the damages to Mrs. Bilbo and Ms. Wilson, even though the discriminatory statements were not made directly to them. *See, e.g., HUD v. Blackwell*, 908 F.2d 864, 872-73 (11th Cir. 1990) (upholding award of compensatory damages where discriminatory statements were made to plaintiffs' agent).

The defendants also minimize the emotional distress suffered by Mr. and Mrs. Bilbo. This argument should be rejected, because the district

court heard the trial testimony of Mr. and Mrs. Bilbo and made a nuanced determination as to the extent of emotional distress that they suffered. *See* SPA 62-63 (granting less compensation for emotional distress than was requested because Mr. Bilbo did not suffer emotional distress for a prolonged time and Mrs. Bilbo did not establish that all of her emotional distress was attributable to the discrimination). Moreover, the district court's awards for emotional distress were comparable to the awards made in similar cases and therefore do not "shock the conscience." *Mathie*, 121 F.3d at 813; *see* SPA 62 (noting awards ranging from \$5,000 to \$125,000); *see, e.g., Krueger v. Cuomo*, 115 F.3d 487, 492 (7th Cir. 1997) (affirming award of \$20,000 for emotional distress); *Banai v. HUD*, 102 F.3d 1203, 1207-08 (11th Cir. 1997) (affirming two awards of \$35,000 for embarrassment, humiliation, and damage to plaintiffs' relationship); *Parris v. Pappas*, 844 F. Supp. 2d 271, 278-79 & n.9 (D. Conn. 2012) ("Garden variety emotional distress claims generally merit \$30,000 to \$125,000 awards." (citing cases)); *see also Johnson v. Hale*, 13 F.3d 1351, 1353-54 (9th Cir. 1994) (holding that district court committed clear error in failing to award at least \$3,500 in case involving overt refusal to rent based on race).

The defendants' reliance on *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898 (2d Cir.

1993), is misplaced. In *Ragin*, the Court upheld awards of \$2,500 for emotional distress where the plaintiffs had not been actively looking for an apartment, *see id.* at 904-05, based solely on a violation of Section 3604(c), *i.e.*, the publication of discriminatory advertisements, *see id.* at 901. Indeed, the awards of \$2,500 twenty years ago in *Ragin* actually support the reasonableness of the awards of \$10,000 and \$5,000 for emotional distress in this case, where Mr. and Mrs. Bilbo were actual tenants of the defendants whose “terms, conditions, or privileges” of renting the Property were adversely impacted by Mr. Hylton’s discriminatory conduct. Accordingly, the district court did not commit error in its award of compensatory damages to Mr. and Mrs. Bilbo.

The defendants also dispute the compensatory damages awarded to Ms. Wilson on the ground that there was insufficient evidence that she made further efforts to relocate to Windsor Locks, *i.e.*, to mitigate damages. This argument fails because the defendants did not plead a failure to mitigate damages, *see Travellers Int’l, A.G. v. Trans World Airlines, Inc.*, 41 F.3d 1570, 1580 (2d Cir. 1994); because the burden of proof was on the defendants to establish a failure to mitigate, *see Broadnax v. City of New Haven*, 415 F.3d 265, 268 (2d Cir. 2005); and because the defendants have forfeited this argument by failing to raise it below, *see Schnabel*, 697 F.3d

at 129-30; *see also* A 390-92 (addressing court on issue of damages).

The defendants also challenge the awards of punitive damages, claiming that there was no “pattern or practice” of discrimination, that the discriminatory conduct was not the result of “ill will toward Ms. Wilson,” and that Mr. Hylton was not “even aware of Ms. Wilson’s federally protected rights.” An award of punitive damages, however, does not require a pattern or practice of discrimination. What is required is “intentional discrimination . . . with malice or with reckless indifference to the federally protected rights of an aggrieved individual.” *Space Hunters*, 429 F.3d at 427. Here, Mr. Hylton possessed the necessary “malice” and intent to discriminate. Even if he did not know Ms. Wilson, or bear ill will towards her in the usual sense, he blatantly refused to rent to her on account of her race, thus demonstrating “reckless indifference” to her federally protected rights. And Mr. Hylton’s purported ignorance of those rights is simply no excuse. *See United States v. Balistreri*, 981 F.2d 916, 936 (7th Cir. 1992) (remanding on issue of punitive damages under FHA because it was not required that defendant know he was violating the law).

The defendants contend that the injunctive relief was excessive, claiming that they have only a “mom and pop operation.” This claim is belied by the record, which establishes that the de-

defendants own and rent at least seven different properties, *see* A 192-194, consisting of multiple units, with a corporate structure that includes HREM and various limited-liability companies, *see* A 182. Given the number of properties owned and operated by the defendants, the injunctive relief in this case was not an abuse of discretion.

Finally, the defendants ask the Court to remand the attorney's fees for reconsideration, but only if the Court does not uphold the other remedies awarded by the district court. Because the other remedies should be upheld, the attorney's fees should be upheld as well.

Conclusion

Based on the forgoing, the judgment of the district court should be affirmed.

Dated: April 22, 2014

Respectfully submitted,

DEIRDRE M. DALY
UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT

A handwritten signature in black ink, appearing to read "Ndidi Moses". The signature is written in a cursive, flowing style with a large initial 'N'.

NDIDI N. MOSES
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**Federal Rule of Appellate Procedure
32(a)(7)(C) Certification**

This is to certify that the foregoing brief complies with the 14,000 word limitation of Fed. R. App. P. 32(a)(7)(B), in that the brief is calculated by the word processing program to contain approximately 8,495 words, exclusive of the Table of Contents, Table of Authorities, Addendum, and this Certification.

A handwritten signature in black ink, reading "Ndidi Moses". The signature is written in a cursive, flowing style with a large initial 'N'.

NDIDI N. MOSES
ASSISTANT U.S. ATTORNEY

Addendum

42 U.S.C. § 3603.

...

(b) Exemptions

Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided further, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented

(A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and

(B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title;

but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title . . .

...

42 U.S.C. § 3604.

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

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