Annual Update: Key Fair Housing Cases (June 2017—June 2018)

National Fair Housing Alliance Annual Meeting
Baltimore, Maryland – June 10, 2018

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Introduction and Overview

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Introduction and Overview

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Properties Covered and Exemptions

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Transactions Covered

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   - Fair Housing Center of Central Indiana v. MH Leasing, LLC
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   - Morris v. West Hayden Estates First Addition Homeowners Ass’n, Inc.
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   - Geraci v. Union Square Condo. Ass'n
   - Morgan v. Carrington Mortgage Services
   - Belcher v. The Grand Reserve MGM, LLC
   - Cederberg v. NW Priority CU
   - Haws v. Norman
   - Jimenez v. Tsai
   - Mariano v. Villa
   - Trostenetsky v. Keys Condominium Owners Association
Transactions Covered

H. Harassment and Interference Claims: § 3617 (cont.)

3. Retaliation; Different Focus re: “On Account of…” (cont.)
   - United States v. Trumbull Metro. Housing Authority
   - Welch v. McNeil
   - West v. DJ Mortgage, LLC

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The “Old” Bases of Discrimination

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- Tejada v. LittleCity Realty LLC

B. Religion

- Chabad Jewish Center of Toms River, Inc. v. Township of Toms River
- Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY
- Morris v. West Hayden Estates First Addition Homeowners Ass’n, Inc.
C. Sex and Sexual Harassment (cont.)

- *Cederberg v. NW Priority CU*
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- *West v. DJ Mortgage, LLC*
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Handicap/Disability

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   - Oxford House, Inc. v. Browning

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   - Valencia v. City of Springfield, Illinois
   - Blake Gardens, LLC v. State of New Jersey
   - Community Services for the Developmentally Disabled-Buffalo v. Town of Boston
   - Cornerstone Residence, Inc. v. City of Clairton, Pennsylvania
Handicap/Disability

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- *New Horizons Rehabilitation, Inc. v. Indiana*
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- *Rehabilitation Support Services, Inc. v. City of Albany, New York*
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      ▪ *Baird v. 1600 Church Road Condominium Ass’n*
      ▪ *Boffoli v. Swalko*
      ▪ *Entine v. Lissner*
      ▪ *Freidel v. Park Place Community LLC*
      ▪ *Giardiello v. Marcus, Marcus, Errico, Emmer & Brooks, P.C.*
      ▪ *Gill Terrace Retirement Apartments, Inc. v. Johnson*
      ▪ *Haws v. Norman*
C. Reasonable Accommodations: § 3604(f)(3)(B) (cont.)

2. Traditional Cases (cont.)
   a. Animals (cont.)
      ▪ *Hintz v. Chase*
      ▪ *Houston v. DTN Operating Co.*
      ▪ *Siler v. Abbott House, Inc.*
      ▪ *United States v. 111 E. 88th Partners*
   b. Parking
      ▪ *Del Rio Gordo v. Hospital Ryder Memorial, Inc.*
Handicap/Disability

C. Reasonable Accommodations: § 3604(f)(3)(B) (cont.)

3. Other Claims
   - *Binns v. City of Marietta, Ga.*
   - *Stein v. Creekside Seniors L.P.*
   - *Tull v. New York City Housing Authority*
   - *Fair Housing Center of Central Indiana v. MH Leasing, LLC*
   - *Fair Housing Justice Center, Inc. v. Allure Rehabilitation Services LLC*
   - *Floyd v. City of Sanibel*
C. Reasonable Accommodations: § 3604(f)(3)(B) (cont.)

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- Moore v. Equity Residential Management, L.L.C.
- Schaw v. Habitat for Humanity of Citrus County, Inc.
- Simmons v. T.M. Associates Management, Inc.
- Trostenetsky v. Keys Condominium Owners Association
- United States v. Trumbull Metro. Housing Authority
- Welch v. McNeil
Handicap/Disability

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   - *Evans v. ForKids, Inc.*

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   - *Cross v. HFLP-Dolphin Beach, LLC*
   - *Daniels v. HUD*
   - *D.K. by L.K. v. Teams*
Handicap/Disability

F. Other Disability Issues under the Fair Housing Act (cont.)

- *Freidel v. Park Place Community LLC*
- *HOPE, Inc. v. Alden Gardens of Bloomingdale, Inc.*
- *Sanders v. SWS Hilltop, LLC*
Handicap/Disability

G. Americans with Disabilities Act: Relevance to Housing

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   - Cross v. HFLP-Dolphin Beach, LLC
   - Entine v. Lissner

2. Title III: Public Accommodations Re: Housing
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   - Trostenetsky v. Keys Condominium Owners Association
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Familial Status

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   - Barry Farm Tenants and Allies Ass’n, Inc. v. District of Columbia Housing Auth.
   - Belcher v. The Grand Reserve MGM, LLC

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   - Fair Housing Center of Washington v. Breier-Scheetz Properties, LLC

C. § 3604(c): Advertising/Statements
   - Fair Housing Center of Central Indiana v. MH Leasing, LLC

D. Housing-for-Older-Persons Exemption: § 3607(b)
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Other Bases

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   1. Fair Housing Act
   2. Section 8
      ▪ Inclusive Communities Project, Inc. v. Lincoln Property Co.
      ▪ National Fair Housing Alliance v. Travelers Indemnity Co.
      ▪ Open Communities Alliance v. Carson
   3. State and Local Laws
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C. Sexual Orientation and Related Status
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   ▪ **Hively v. Ivy Tech Community College of Indiana**
   ▪ **Whitaker v. Kenosha Unified School District**
   ▪ **Zarda v. Altitude Express, Inc.**

D. U.S. Citizenship

E. Others
VIII. The Standards of Proof ("Because of race, . . .")
Standards of Proof

A. Discriminatory Intent Cases ("Disparate Treatment")

1. Direct Evidence
   - Sanders v. SWS Hilltop, LLC

2. Circumstantial Evidence: The Prima Facie Case Concept
   - Get Back Up, Inc. v. City of Detroit, Michigan

3. Other Sources of Intent Evidence
   - Congregation Rabbinical College of Tartikov v. Village of Pomona, NY
   - Greater New Orleans Fair Housing Action Center, Inc. v. Hotard
B. Discriminatory Effect Cases (“Disparate Impact” and “Segregative Effect”)


1. HUD-DOJ Developments


2. Court Cases

   - *Ellis v. City of Minneapolis*
   - *Avenue 6E Investments, LLC v. City of Yuma, Arizona*
   - *Belcher v. The Grand Reserve MGM, LLC*
Standards of Proof

B. Discriminatory Effect Cases ("Disparate Impact") (cont.)

2. Court Cases (cont.)

- City of Philadelphia v. Wells Fargo & Co.
- County of Cook, Illinois v. Bank of America Corp
- County of Cook, Illinois v. HSBC North America Holdings Inc.
- County of Cook, Illinois v. Wells Fargo & Co.
- Fair Housing Center of Washington v. Breier-Scheetz Properties, LLC
- Horne v. Harbour Portfolio VI, LP
- Inclusive Communities Project, Inc. v. Lincoln Property Co
- Lowe v. Planning and Zoning Comm’n of the Town of Mansfield
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B. Discriminatory Effect Cases ("Disparate Impact") (cont.)

2. Court Cases (cont.)
   - MHANY Management, Inc. v. County of Nassau
   - National Fair Housing Alliance v. Federal National Mortgage Ass’n
   - National Fair Housing Alliance v. Travelers Indemnity Co.
   - Oviedo Town Center II v. City of Oviedo, Florida
   - Paige v. New York City Housing Authority
   - Schaw v. Habitat for Humanity of Citrus County, Inc.
   - 62-64 Kenyon Street, Hartford LLC v. City of Hartford
   - TBS Group, LLC, v. City of Zion, Illinois

3. Issues
Standards of Proof

C. § 3604(c) Cases (see III-C-3)

D. § 3604(f)(3): Special Disability Cases (see V-C, -D, and -E)

E. § 3617 Retaliation Cases (see III-H-3)

F. “Pattern or Practice” Standard in DOJ’s § 3614 Cases
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1. In General
   - *City of Philadelphia v. Wells Fargo & Co.*
   - *County of Cook, Illinois v. HSBC North America Holdings Inc.*
   - *Dayton Veterans Residences v. Dayton Metropolitan Housing Authority*
   - *Elliott v. QF Circa 37, LLC*
   - *Giardiello v. Marcus, Errico, Emmer & Brooks, P.C.*
   - *Moore v. Equity Residential Management, L.L.C.*
   - *Morgan v. Western Rim Investors 2013-3, L.P.*
A. Plaintiffs (cont.)

2. § 3604(c) Claims (see III-C-4)

3. Fair Housing Organizations and Testers
   - *Oregon Bureau of Labor and Industries v. Chandler Apartments, LLC*
   - *Fair Housing Center of Washington v. Breier-Scheetz Properties, LLC*
   - *Fair Housing Justice Center, Inc. v. Allure Rehabilitation Services LLC*
   - *Greater New Orleans Fair Housing Action Center, Inc. v. Hotard*
   - *HOPE, Inc. v. Alden Gardens of Bloomingdale, Inc*
Plaintiffs and Defendants

A. Plaintiffs (cont.)

3. Fair Housing Organizations and Testers (cont.)
   - *Inclusive Communities Project, Inc. v. Abbott*
   - *Jimenez v. Tsai*
   - *Miami Valley Fair Housing Center, Inc. v. Metro Development LLC*
   - *National Fair Housing Alliance v. Federal National Mortgage Ass’n*
   - *National Fair Housing Alliance v. Travelers Indemnity Co.*
Plaintiffs and Defendants

B. Defendants

1. Principal-Agent
   - *Oregon Bureau of Labor and Industries v. Chandler Apartments, LLC*
   - *Hintz v. Chase*
   - *Mariano v. Villa*
   - *Metropolitan Fair Housing Council of Oklahoma, Inc. v. Pelfrey*

2. Condos, Coops, and Other Self-Contained Communities
   - *Welch v. McNeil*
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3. Housing Provider’s Liability for Tenant’s Harassment

4. Liability Insurers

5. Federal, State, and Local Defendants; Immunity Issues
   - Blake Gardens, LLC v. State of New Jersey
   - D.K. by L.K. v. Teams
   - Daniels v. HUD
   - HOPE, Inc. v. Eden Management LLC
   - Inclusive Communities Project, Inc. v. Abbott
   - New Horizons Rehabilitation, Inc. v. Indiana

6. Others
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A. Substantial Equivalency
   1. About 40 States and 70 Localities (80% of complaints to HUD)
   2. De-Certification
      ▪ Missouri

B. Investigation and Charge; Timing

C. Conciliations
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D. The Election-to-Court Option
   ▪ United States v. 111 E. 88th Partners
   ▪ United States v. Trumbull Metro. Housing Authority

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Other Procedural Issues

A. Evidence; Defendant’s Dealings with Others in Protected Group

B. Statutes of Limitations

- Premium Properties Unlimited, LLC v. Mercantile Bank Mortgage Co.
- Chappell v. National City Corp.
- City of Philadelphia v. Wells Fargo & Co.
- County of Cook, Illinois v. HSBC North America Holdings Inc.
- County of Cook, Illinois v. Wells Fargo & Co.
- Frances v. Accessible Space, Inc.
- Tejada v. LittleCity Realty LLC
Other Procedural Issues

C. Jury Trials
   - New West v. City of Joliet

D. Collateral Estoppel and Res Judicata; the *Rooker-Feldman* Doctrine
   - Berry v. Wells Fargo Bank, N.A.
   - Chellappa v. Summerdale Court Condominiun Ass'n
   - Morgan v. Carrington Mortgage Services
   - New West v. City of Joliet
   - Alexander v. Pauloski
   - City of Philadelphia v. Wells Fargo & Co.
D. Collateral Estoppel and Res Judicata; the *Rooker-Feldman* Doctrine (cont.)

- *Rajapakse v. Lexington Asset Management*

E. Discovery

- *City of Philadelphia v. Wells Fargo & Co.*
- *McFadden v. Meeker Housing Authority*
- *Winfield v. City of New York*

F. Class Actions

- *Borum v. Brentwood Village, LLC*
- *Soderstrom v. MSP Crossroads Apartments LLC*
Other Procedural Issues

G. Pleading Standards

1. Upheld (Adequate)
   - *HOPE, Inc. v. Alden Gardens of Bloomingdale, Inc.*

2. Dismissed (Inadequate)
   - *Glenn v. Wells Fargo Bank, N.A.*
   - *Pintea v. Gurvey*
   - *United States v. Trumbull Metro. Housing Authority*
Other Procedural Issues

H. Miscellaneous

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A. Actual/Compensatory Damages

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2. Legal Principles

3. Significant Awards
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   - *United States v. DeFaffele*
Relief

B. Punitive Damages

1. Legal Principles
   - *Fair Housing Center of Washington v. Breier-Scheetz Properties, LLC*
   - *Holland v. The Related Companies, Inc.*

2. Significant Awards
   - *Fair Housing Center of Washington v. Breier-Scheetz Properties, LLC*
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C. Civil Penalties
   1. Legal Principles
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      - United States v. DeFaffele

D. Injunctive Relief and Civil Contempt
   - Valencia v. City of Springfield, Illinois
   - Belcher v. The Grand Reserve MGM, LLC
   - Entine v. Lissner
   - New Horizons Rehabilitation, Inc. v. Indiana
Relief

E. Attorney’s Fees and Costs
   - Affordable Recovery Housing v. City of Blue Island

F. Other Issues
XIII. Settlements
Settlements

- **Baltimore Regional Housing Campaign v. State of Maryland**
  - $225,000 (to help locate 1500 family units in communities of opportunity)
  - Conciliation Agreement (9-17)
  - Maryland (HUD Conciliation)
  - Race, National Origin, and Familial Status (LIHTC-subsidized apartment sites)
  - [reported at Fair Housing-Fair Lending Rptr. ¶10.13 (Oct. 1, 2017)]

- **Broadway Triangle Community Coalition v. Bloomberg**
  - $2,400,000 (organization for fair housing work); $1,300,000 (attorney’s fees)
  - Settlement Order (12-5-17)
  - New York, N.Y. (N.Y. state court)
  - Race + National Origin (apartment construction)
  - [reported at Fair Housing-Fair Lending Rptr. ¶12.5 (Dec. 1, 2017)]
Settlements

- **Equal Rights Center v. The Lenkin Company Management, Inc.**
  - $125,000 (fair housing organization + attorney’s fees); $24,000 (testing by P-org.)
  - Consent Agreement (11-30-17)
  - Washington, D.C. (D.C. Superior Court)
  - Source-of-Income and Race (apartment rentals; terms + conditions)
  - [reported at Fair Housing-Fair Lending Rptr. ¶12.5 (Dec. 1, 2017)]

- **Fair Housing Center of Central Indiana v. Housing Authority of City of Anderson**
  - $230,000 (organization and two individuals; plus attorney’s fees)
  - Consent Order (9-26-17)
  - Anderson, Indiana (S.D. Ind.)
  - Race, Sex, and Disability (apartment rentals)
  - also: United States v. Housing Authority of City of Anderson
  - $70,000 (to seven individual victims)
  - [reported at Fair Housing-Fair Lending Rptr. ¶9.7 (Sept. 1, 2017)]
Settlements

- **Fair Housing Justice Center, Inc. v. Kosova Properties, Inc.**
  - $620,000 (organization and four individuals; plus attorney’s fees)
  - Settlement Agreement (9-25-17)
  - New York, New York (S.D. N.Y.)
  - Race + Source of Income (apartment rentals)
  - [reported at Fair Housing-Fair Lending Rptr. ¶10.10 (Oct. 1, 2017)]

- **Fair Housing Justice Center, Inc. v. Martin Rankell LP**
  - $107,500 (damages for organization and four tester-plaintiffs + attorney’s fees)
  - Settlement Agreements (6-17)
  - Brooklyn, New York (E.D. N.Y.)
  - Race (apartment rental; terms + conditions)
  - [reported at Fair Housing-Fair Lending Rptr. ¶7.9 (July-Aug. 1, 2017)]
Settlements

- **Fair Housing Justice Center, Inc. v. Sentosacare LLC et al.**
  - $172,500 (damages + attorney’s fees)
  - Settlement Agreements (3-9-18)
  - New York City area, New York (E.D. N.Y.)
  - Disability (refusal by nursing homes/assisted living facilities to use sign language services for deaf residents)

- **Fair Housing Justice Center, Inc. v. Ulster Savings Bank**
  - $275,000 (damages for organization + 3 tester-plaintiffs); $200,000 (attorney’s fees)
  - Settlement Agreements (8-31-17)
  - Kingston (Hudson Valley), New York (S.D. N.Y.)
  - Race (mortgages financing; terms + conditions)
  - [reported at Fair Housing-Fair Lending Rptr. ¶10.10 (Oct. 1, 2017)]
Settlements

- **Hart v. Premier Apartments, LLC**
  - $1,000,000 ($645,100 to two plaintiffs; 354,900 in attorney’s fees + costs)
  - Judgment based on Settlement Agreement (11-27-17)
  - Los Angeles, California (C.D. Cal.)
  - Disability (apartment rental terms-and-conditions; refusal to accommodate)
  - [reported at Fair Housing-Fair Lending Rptr. ¶12.5 (Dec. 1, 2017)]
Settlements

- **Independent Living Center of Southern California et al. v. City of Los Angeles**
  - $8,750,000 (accessibility spending); $3,000,000 (three organizational plaintiffs);
  - $2,250,000 (attorney’s fees); $160,000 (future monitoring)
  - Judgment based on Settlement Agreement (9-7-17)
  - Los Angeles, California (C.D. Cal.)
  - Disability (lack of accessibility features)
  - [reported at 2017 WL 3976623]
  - This is in addition to last year’s settlement with the City for $200,000,000 (10-year accessibility spending); $4,500,000 (organizational plaintiffs); $20,000,000 (attorney’s fees)
  - [reported at Fair Housing-Fair Lending Rptr. ¶9.8 (Sept. 1, 2017)]
Settlements

- **Long Island Housing Services, Inc. v. Village of Mastic Beach, N.Y.**
  - $387,500 ($48,000 to each of five victims; and attorney’s fees)
  - Settlement Agreement (8-23-17)
  - Mastic Beach, New York (E.D. N.Y.)
  - Race + National Origin (harassment by town officials of Sec. 8 voucher users)
  - [reported at Fair Housing-Fair Lending Rptr. ¶9.7 (Sept. 1, 2017)]

- **Metro. Fair Housing Council of Oklahoma, Inc. v. Pelfrey and Collins v. Pelfrey**
  - $800,000 (organization and fourteen victims + attorney’s fees)
  - Consent Order (12-7-17)
  - Oklahoma City and surrounding area, Oklahoma (W.D. Okla.)
  - Sex (harassment in apartment rentals)
  - [reported at Fair Housing-Fair Lending Rptr. ¶12.5 (Dec. 1, 2017)]
Settlements

- **National Fair Housing Alliance v. Travelers Indemnity Co.**
  - $450,000 (for organization + attorney’s fees)
  - Settlement Agreements (2-23-18)
  - Race, Sex + Familial Status (insuring landlords who rent to Sec.8 voucher holders)
  - [reported at Fair Housing-Fair Lending Rptr. ¶3.9 (Mar. 1, 2018)]

- **Sams v. American Apartment Management Co., Inc. [Savannah Fair Housing Center]**
  - $357,500 (damages for plaintiffs and attorney’s fees)
  - Consent Agreement (11-22-17)
  - Savannah, Georgia (S.D. Ga.)
  - Race + National Origin (apartment rentals: ban on tenants with criminal records)
  - [reported at Fair Housing-Fair Lending Rptr. ¶1.5 (Jan. 1, 2018)]
Settlements

- **Serrano & Westchester Residential Opportunities v. Mamaroneck Gardens, Inc.**
  - $182,500 (individual + organizational plaintiffs; plus attorney’s fees)
  - Settlement Agreement and Order (3-28-18)
  - Westchester County, New York (S.D. N.Y.)
  - Familial status (co-op’s occupancy standards)
  - [reported at Fair Housing-Fair Lending Rptr. ¶4.9 (April 1, 2018)]

- **Soderstrom v. MSP Crossroads Apartments LLC**
  - $300,000 (class members); $200,000 (housing organizations); $110,000 (fees+costs)
  - Settlement Agreement (2-18-18)
  - St. Paul, Minnesota (D. Minn.)
  - Race + National Origin (apartment complex’s withdrawal from Sec. 8 program)
  - [reported at 2018 WL 692912 (D. Minn. Feb. 2, 2018) and Fair Housing-Fair Lending Rptr. ¶3.9 (Mar. 1, 2018)]
Settlements

[Justice Department settlements described below are available at Justice’s web site at http://www.justice.gov/crt/about/hce/]

- **United States v. 505 Central Avenue Corp.** [from Westchester Res. Opportunities]
  - $120,000 (victim’s compensation) and $5,000 (civil penalty)
  - Settlement Agreement (7-20-17)
  - White Plains, N.Y. (S.D. N.Y.)
  - Disability (housing coop sale/refusal to make reasonable accommodation)

- **United States v. Ginsburg Development Companies** [from Fair Hous. Justice Center]
  - $125,000 (victim’s compensation); $50,000 (civil penalty); extensive retrofits
  - Settlement Agreement (4-18)
  - Haverstraw, N.Y. (S.D. N.Y.)
  - Disability (apartment rentals terms + conditions: lack of accessibility features)
Settlements

- **United States v. Kansas City, Kansas Housing Authority**
  - $360,000 (fourteen victims); $5,000 (civil penalty)
  - Settlement Agreement (9-29-17)
  - Kansas City, Kansas (D. Kan.)
  - Sex (harassment in apartment rentals)

- **United States v. Tjoelker**
  - $140,000 (ten victims); $10,000 (civil penalty)
  - Settlement Agreement (10-3-17)
  - Grand Rapids, Michigan (W.D. Mich.)
  - Sex (harassment in apartment rentals)
Settlements

- **United States v. Walden**
  - $500,000 (victims’ compensation fund): $100,000 (civil penalty)
  - Consent Decree (7-16-17)
  - Morgantown, West Virginia (W.D. W.Va.)
  - Sex (harassment in apartment rentals)

- **United States v. Webb** [from Metro. St. Louis Equal Hous. & Opportunity Council]
  - $600,000 (fifteen victims); $25,000 (civil penalty)
  - Settlement Agreement (3-19-18)
  - St. Louis, Missouri (E.D. Mo.)
  - Sex (harassment in apartment rentals)