BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

In the Matter of: **Jim McNeeley Real Estate & Property Management, Inc., Kyle Hayes, an individual, Hayes Team, LLC, Andrew Macdonald, an owner, and Kristen Macdonald, an owner**, Respondents.	Case No. **116-24** **AMENDED** FINDINGS OF FACT CONCLUSIONS OF LAW OPINION ORDER AS TO JIM MCNEELEY REAL ESTATE & PROPERTY MANAGEMENT, INC.[1]

SYNOPSIS

In a default case, the forum concluded that the Respondent Jim McNeeley Real Estate & Property Management, Inc. violated ORS 659A.421(2)(f); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5) when it failed to take immediate and appropriate corrective action in response to the unlawful harassment of the Complainant by other residents. The forum awarded Complainant $50,000 in damages for mental and emotional distress and $7,320 in out-of-pocket expenses, plus prejudgment interest on out-of-pocket expenses accrued. The forum also assessed a civil penalty of $11,000 in accordance with ORS 659A.855(2)(a)(A).

[1] This Amended Final Order is being issued to add language in the Order section regarding the civil penalty found to be due in this matter and to correct citations and the address referenced in the Order section. (See pages 38 - 39,) The remaining portions of the Final Order remain unchanged.

The above-entitled case came on regularly for hearing before Caroline A. Holien, designated as Administrative Law Judge ("ALJ") by the Commissioner of the Bureau of Labor and Industries ("BOLI" or "the Agency") for the State of Oregon. The hearing was held on June 2, 2026, at the offices of BOLI in Portland, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Administrative Prosecutor Anita Smith, an employee of the Agency. Complainant Ryan Stroud was present throughout the hearing. The Respondent Jim McNeeley Real Estate & Property Management, Inc. ("Respondent" or "McNeeley") did not appear at hearing.

The Agency called Stroud as a witness. The forum received into evidence Administrative exhibits X1 through X11 and Agency exhibits A1 through A22b.

Having fully considered the entire record in this matter, I, Christina Stephenson, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Conclusions of Law, Opinion, and Order. [2]

FINDINGS OF FACT – PROCEDURAL

1) On or about February 6, 2023, Stroud filed a verified written complaint with the Agency alleging that he was discriminated against by the Respondents when the Respondents failed to act after receiving notice that he was being harassed by another tenant because of his race and sexual orientation. (Ex. A2)

2) After investigation, the Agency's Civil Rights Division issued a Notice of Substantial Evidence Determination that found "substantial evidence of an unlawful housing practice" on the basis of race and sexual orientation in violation of ORS 659A.421. (Ex. A14)

[2] The Ultimate Findings of Fact required by ORS 183.470 are subsumed within the Findings of Fact – The Merits.

3) On February 5, 2026, the forum issued a Notice of Hearing to the Respondent, the Agency, and Complainant stating the hearing would begin on April 14, 2026, at 9:00 a.m., and would be held via Zoom. Together with the Notice of Hearing, the forum sent a copy of the Formal Charges, a document entitled "Summary of Contested Case Rights and Procedures" containing the information required by ORS 183.413, a document entitled "Servicemembers Civil Relief Act (SCRA) Notification," a multi-language notice explaining the significance of the Notice of Hearing, and a copy of the forum's contested case hearings rules, OAR 839-050-000 to 839-050-0445. (Ex. X2)

4) The Formal Charges included the following allegations:

"* * * * *

"Discrimination: Race

28.

"Respondent McNeeley discriminated against Complainant by failing to act when Complainant was being harassed by another tenant because of Complainant's race, in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5).

"* * * * *

"Discrimination: Sexual Orientation

33.

"Respondent McNeeley discriminated against Complainant by failing to act when Complainant was being harassed by another tenant because of Complainant's sexual orientation, in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5).

"* * * * *

"Constructive Eviction

38.

"Respondent McNeeley constructively evicted Complainant by failing to act when Complainant was being harassed by another tenant based on race and sexual orientation, in violation of ORS 659A.421(2)(f), (9); OAR839-005-0205(1)(f), (g); and OAR 839-005-0206(5)."

(Ex. X2a)

5) The Formal Charges included a request for an award for economic damages "in an amount to be proven at hearing, estimated to be at least $30,000, plus interest at the statutory rate of 9% from the December 31, 2022, until paid." The Formal Charges also included a request for an award of damages for physical, mental, or emotional distress and impaired dignity "in an amount to be proven at hearing, estimated to be at least $250,000, plus interest at the statutory rate of 9% from the date of the Final Order is issued until paid." The Formal Charges also included a request for a civil penalty in the amount of $11,000. (Ex. X2a, Requests for Relief (b), (c), (d))

6) On February 20, 2026, ALJ Kari Furnanz issued an Interim Order Requiring Case Summaries and Conventional Filing Procedures, which directed the parties to file their Case Summaries no later than March 31, 2026. (Ex. X3)

7) Respondents Kyle Hayes, Hayes Team, A. Macdonald and K. Macdonald timely filed Answers and Affirmative Defenses. (Ex. X11)

8) Respondent McNeeley did not timely file an Answer and Affirmative Defenses to the Formal Charges. (Hearing Record; Ex. X4)

9) On March 5, 2026, the Agency filed a Motion for Default requesting that the Forum find that Respondent McNeeley was served and was in default having failed to timely file an answer to the Formal Charges. Respondent did not file a response to the motion. (Ex. X4)

10) On March 26, 2026, ALJ Furnanz issued an Interim Order re Agency's Motion for Default Against Respondent McNeeley and Notice of Default:

> "On March 5, 2026, the Agency filed a Motion for Default. The motion requested that the forum find that Respondent Jim McNeeley Real Estate & Property Management, Inc. ('McNeeley') was served and is in default. McNeeley did not file a response to the motion."

"OAR 839-050-0130(4) requires that 'a party must file an answer within 20 days after service of the [Formal Charges].' OAR 839-050-0030(1) describes the methods of serving Formal Charges and states, in pertinent part:

> "'* * * [T]he charging document [in a BOLI contested case] will be served on the party or the party's representative by personal service or by registered or certified mail. Service of a charging document is complete upon the earlier of:
>
> '(a) Receipt by the party or the party's representative; or
>
> '(b) Mailing when sent by registered or certified mail to the correct address of the party or the party's representative.'"

"OAR 839-050-0330(1)(a) provides that default may occur when '[a] party fails to file a required response, including * * * an answer, within the time specified in the [Formal Charges]."

"The Agency submitted documentation from the Oregon Secretary of State, Corporation Division, for the entity identified as 'Jim McNeeley Real Estate & Property Management, Inc.' that identified '1519 SW Marlow Ave., Portland, OR 97225' as the address for its principal place of business, registered agent, president and secretary. (Agency Attachment A-2) As there is no evidence in the record of any other address for McNeeley, the forum infers that this is the corporation's correct address.[3]

"The Agency also supplied evidence that on February 5, 2026, BOLI's Contested Case Coordinator sent the Notice of Hearing and Formal Charges to McNeeley by certified mail to "1519 SW Marlow Ave., Portland, OR 97225." (Agency Attachment A-1)

"A USPS Domestic Return Receipt postcard addressed to '1519 SW Marlow Ave., Portland, OR 97225' contained the signature of 'Sarah Burnett,' and was received by the Contested Case Coordinator on February 12, 2026. (Agency Attachment A-4)

"The Agency's motion further represents that 'the Agency Case Representative' spoke with Michelle Hayes, the registered agent for McNeeley, and that Hayes stated that McNeeley was represented by attorney Charles Kovas. However, as of this date, the forum has not received any filings from McNeeley or from anyone on its behalf. If McNeeley is to be represented by an attorney in this proceeding, a notice of appearance should be filed with the Contested Case Coordinator."

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[3] *See In the Matter of Moho Enterprises, LLC*, 38 BOLI 284, 296 (2022) (noting that 'the forum has long held that evidence includes inferences').

"The documentation submitted by the Agency, therefore, establishes that the Notice of Hearing and Formal charges were sent by certified mail to McNeeley's correct address. Thus, service was complete on February 5, 2026, pursuant to OAR 839-050-0030(1)(b). Because more than 20 days have passed since the date of service and McNeeley has not yet filed an answer, it is in default and the Agency's motion is GRANTED."

Notice of Default

"Relief from default may be granted if McNeeley shows good cause, within ten days after the date of this order, for failing to timely file an answer. A request for relief must be in writing and accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting the claim of good cause. OAR 839-050-0340. Because McNeeley is a corporation, any document filed by McNeeley should be submitted by an attorney or should be filed together with a statement indicating that the person filing the document is an authorized representative[4] of the party. *See* OAR 839-050-0110(1), (2)."

"IT IS SO ORDERED"

(Ex. X5)

11) On March 30, 2026, ALJ Furnanz issued an Interim Order – ALJ Transfer transferring the case to ALJ Caroline Holien. (Ex. X6)

12) On March 30, 2026, the Agency timely filed its Case Summary. (Ex. X7)

13) On April 1, 2026, the Agency filed a Synopsis of Settlement Agreement resolving the allegations made as to Respondents Kyle Hayes, the Hayes Team, A. Macdonald, and K. Macdonald. (Ex. X9)

14) On April 6, 2026, the forum issued an Interim Order Canceling Hearing and Case Deadlines as to Respondents Kyle Hayes, the Hayes Team, A. Macdonald and K. Macdonald. (Ex. X10)

15) On April 6, 2026, the Agency filed a fully executed Settlement Agreement as to Kyle Hayes, the Hayes Team, A. Macdonald and K. Macdonald. Respondents

[4] Parties may contact BOLI's Contested Case Coordinator at BOLI.CaseCoordinator@boli.oregon.gov to obtain an authorized representative form to be used for this purpose.

Kyle Hayes, the Hayes Team, A. Macdonald and K. Macdonald agreed to pay a gross amount of $25,000 as part of the Settlement Agreement. (Ex. X11)

16) On April 7, 2026, the Forum issued a Final Order Incorporating Informal Disposition:

> "On February 5, 2026, the Commissioner of the Bureau of Labor and Industries ('Commissioner' or the 'Agency') issued Formal Charges and a Notice of Hearing against Respondents Jim McNeeley Real Estate & Property Management, Inc. ('McNeeley'), Kyle Hayes ('Hayes'), Hayes Team, LLC ('Hayes Team'), Andrew Macdonald ('A. Macdonald'), and Kristen Macdonald ('K. Macdonald').
>
> "The Formal Charges and Notice of Hearing were based upon a complaint filed by Complainant Ryan Stroud alleging that Respondents discriminated against the Complainant and constructively evicted the Complainant by failing to act when the Complainant was being harassed by another tenant because of Complainant's race and sexual orientation. Respondents McNeeley, Hayes, Hayes Team, A. Macdonald, and K. Macdonald were each served with the Formal Charges and Notice of Hearing, along with information about the contested case process."
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> "On February 25, 2026, Jonathan D. Phillips, attorney at law, filed an Answer and Affirmative Defenses on behalf of Respondents Hayes and Hayes Team."
>
> "On March 16, 2026, Tim O'Donnell, attorney at law, filed an Answer and Affirmative Defenses on behalf of Respondents A. Macdonald and K. Macdonald. On March 26, 2026, the forum issued an interim order granting the Agency's motion for entry of default against Respondent McNeeley."
>
> "On April 1, 2026, the Agency filed a Synopsis of Settlement Agreement with the forum pertaining to Respondent Hayes, Respondent Hayes Team, Respondent A. Macdonald, and Respondent K. Macdonald."
>
> "On April 6, 2026, the Agency filed a Settlement Agreement with the forum that fully resolved all the allegations in the Formal Charges against Respondent Hayes, Respondent Hayes team, Respondent A. Macdonald, and Respondent K. Macdonald."
>
> "By signing the Settlement Agreement, the Agency and Respondents Hayes, Hayes Team, A. Macdonald, and K. Macdonald have waived their rights to a contested case hearing. This Final Order is not subject to ORS 183.470, is not subject to judicial review under ORS 183.480, and may be set aside only as

follows: "Within 60 days after such final order is issued, a participant may petition the agency to set aside the order on the ground that the informal disposition was obtained by fraud or duress." OAR 839-050-0220(9)(d)."

"The terms of the Settlement Agreement are hereby adopted by the Commissioner and incorporated into this Final Order in their entirety as to Respondents Hayes, Hayes Team, A. Macdonald, and K. Macdonald. Under ORS 183.417(3), the Agency and Respondents Hayes, Hayes Team, A. Macdonald, and K. Macdonald. having fully executed the attached Settlement Agreement, the record of this matter is hereby closed."

"The hearing scheduled to begin at 9:00 a.m. on Tuesday, April 14, 2026, will proceed as scheduled as to the allegations against Respondent McNeeley. Because default has been entered against Respondent McNeeley, Respondent McNeeley may attend the hearing but will not be permitted 'to participate in any manner in the hearing, including, but not limited to, presentation of witnesses or evidence on the own party's own behalf, examination of Agency witnesses, objection to evidence presented by the Agency, making or motions or argument, or filing exceptions to the Proposed Order." OAR 839-050-0330(3). Any document filed by Respondent McNeeley should be submitted by an attorney or should be filed together with a statement indicating that the person filing the document is an authorized representative of the party. See OAR 839-050-0110(1), (2).'

"IT IS SO ORDERED."

(Ex. X12)

17) On April 10, 2026, the forum received a letter from the attorney for Respondent McNeeley requesting a postponement of the hearing and a motion for relief from the entry of default. (Exs. X14-X17)

18) On April 13, 2026, the forum issued an Interim Order Granting Respondent Jim McNeely Real Estate's Request to Postpone Hearing:

"**A. Procedural Background**

"On April 10, 2026, Respondent Jim McNeeley Real Estate & Property Management, Inc., ('Respondent Jim McNeeley Real Estate'), by and through its attorney, filed a Motion for Relief from Default and to Reschedule Hearing. In a declaration accompanying the motion, James McNeeley represented that he was the owner and President of Respondent Jim McNeeley Real Estate. James McNeeley further represented that he had lost his wife of 52 years on January

22, 2026, after a lengthy illness, which caused him considerable emotional distress as her sole caregiver. James McNeeley further represented that he had arthroscopic heart surgery on April 9, 2025, which resulted in a stent being implanted and medical advice that he reduce his stress levels as he recovered from surgery.

"On April 10, 2026, the Agency filed its objection to the motions. The Agency argued that James McNeeley demonstrated an ability to handle the affairs of the Respondent when he left a voicemail message for Michael Sterner, manager of BOLI's Fair Housing Unit, Civil Rights Division, in which he did not request additional time to file an answer to the Formal Charges that were issued with the Notice of Hearing served on February 5, 2026. The Agency argues that Respondent Jim McNeeley Real Estate has not shown good cause to postpone the hearing that is scheduled to begin at 9:00 a.m., Tuesday, April 14, 2026.

"On April 13, 2026, the Administrative Law Judge held a prehearing conference with Anita Smith, Administrative Prosecutor, appearing on behalf of the Agency, and Matt Malmsheimer, Attorney at Law, appearing on behalf of Respondent Jim McNeeley Real Estate."

"**B. Discussion**

"Due to the timelines in this case, this interim order will address only the Respondent's motion to postpone the hearing. The ALJ will issue a separate interim order addressing the Respondent's motion for relief from the default entered by the forum on March 26, 2026.

"In a case in which a default has been entered, the ALJ 'will take evidence of prima facie case from the Agency at hearing,' but the defaulted party is not permitted to participate in the hearing. OAR 839-050-0330(3). However, the defaulted party is permitted to attend the hearing.

"Respondent Jim McNeeley Real Estate has shown that James McNeeley the owner and President of the business underwent significant surgery approximately five days prior to the scheduled start of hearing. As a result of that surgery, James McNeeley has been advised by his health care provider to minimize his stress levels while he recovers from surgery.

"OAR 839-050-0150(5)(a) provides:

> "(a) Any participant making a request for a postponement of any part of the contested case proceeding must state in detail the reason for the request. The Administrative Law Judge may grant the request for good cause shown. In making this determination, the Administrative Law Judge will consider:

(A) Whether previous postponements have been granted;
(B) The timeliness of the request;
(C) Whether a participant has previously indicated it was prepared to proceed;
(D) Whether there is a reasonable alternative to postponement; for example, submitting a sworn statement of a witness; and
(E) The date the hearing was originally scheduled to commence.

"Postponements have not previously been granted in this case. The request was filed one day after James McNeeley's surgery and four days prior to the scheduled start of hearing. The declaration of James McNeeley indicates that he has experienced a good deal of emotional distress as a result of the passing of his wife. While Respondent Jim McNeeley Real Estate is currently in default, it does have the right to attend the hearing. As such, there is not a reasonable alternative to postponement. Respondent Jim McNeeley Real Estate has shown good cause for its postponement request. Therefore, Respondent Jim McNeeley Real Estate's request to postpone the hearing scheduled to be held on April 14, 2026, is GRANTED."

"The parties agreed to a potential hearing date during the prehearing conference. Based upon that agreement, the hearing is rescheduled to begin at 9:00 am on Tuesday, June 2, 2026. The hearing will be held using Zoom, with the ALJ sending meeting invitations to the parties prior to hearing. Case summaries shall be filed no later than May 19, 2026. OAR 839-050-0210(1)."

"**C. Email Service Consent**[5]

"The parties consented to accepting filings by email in emails sent to the forum on April 10, 2026. The parties confirmed their consent to accepting filings by email during the prehearing conference held on April 13, 2026. The forum has the following email addresses for the parties:

anita.c.smith@boli.oregon.gov
mmalmsheimer@hk-law.com
jbenson@hk-law.com

"The parties are responsible for notifying the forum if the information above is incorrect or if the email recipients change while the case is pending."

"The parties may file documents by email only, without the need to file the original document with BOLI's Contested Case Coordinator. Email filings must be

[5] Respondents Kyle Hayes, Hayes Team, LLC, Kristen Macdonald, and Andrew Macdonald are not being served this interim order as a Final Order Incorporating Informal Disposition was issued on April 7, 2026, pertaining to those Respondents thereby leaving Respondent Jim McNeeley Real Estate as the sole remaining Respondent.

sent to all parties, ALJ Caroline Holien (Caroline.Holien@boli.oregon.gov) and BOLI's Contested Case Coordinator (BOLI.CaseCoordinator@BOLI.oregon.gov).

"Parties may still file documents in the manner provided in BOLI's contested case rules, but must also provide courtesy email copies to the other parties. Any documents filed by email must be submitted no later than 11:59 p.m. PDT/PST on the due date in order to be considered timely filed. These provisions will remain in effect until further notice from the ALJ."

"**IT IS SO ORDERED**."

(Ex. X21)

19) On April 13, 2026, the Agency filed an Amended Case Summary. (Ex. X20)

20) On April 23, 2026, the forum issued an Interim Order Regarding Respondent Jim McNeeley Real Estate's Request for Relief from Default:

"**A. PROCEDURAL BACKGROUND**

"On or about February 15, 2026, the Notice of Hearing and Formal Charges were served upon Respondent Jim McNeeley Real Estate & Property Management, Inc. ("Respondent Jim McNeeley Real Estate") via Regular and Certified Mail. Both the Notice of Hearing and the Formal Charges included notice that the Respondents were required to file answer to the Formal Charges within 20 days after service of the Formal Charges and that failure to do so may result in the Respondent being held in default.

"Also included with the Notice of Hearing and the Formal Charges:

1. A Summary of Contested Case Rights and Procedures for Housing Cases, Civil Rights Division, which is a five-page document that sets forth OAR 839-050-0040, which requires that an answer be filed within 20 days after service of the Formal Charges; and

2. A copy of the Division 50 Rules, which is a complete set of the forum's contested case hearing rules, and which includes OAR 839-050-0040.

"(Notice of Hearing and Formal Charges, issued 02/05/2026)

"On February 10, 2026, Jim McNeeley, President of Jim McNeeley Real Estate, left a voice mail message for Michael Sterner, who is the manager of

BOLI's Fair Housing Enforcement Unit, Civil Rights Division, and who approved the Substantial Evidence Determination issued by the Fair Housing Enforcement Unit.[6] (Decl. of M. Sterner, dated 04/10/2026)

"On March 5, 2026, the Agency filed a Motion for Default against Respondent Jim McNeeley Real Estate on the grounds that it had failed to timely file an answer to the Formal Charges. The motion was sent to the Respondent via first class mail, at "1519 SW Marlow Ave, Portland, OR 97225," which was the same address used for service of the Notice of Hearing and Formal Charges[7]

"On March 26, 2026, ALJ Kari Furnanz issued a Notice of Default against Respondent Jim McNeeley Real Estate. The Notice of Default included the following:

"'**Notice of Default"**

> "'Relief from default may be granted if McNeeley shows good cause, within ten days after the date of this order, for failing to timely file an answer. A request for relief must be in writing and accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting the claim of good cause. OAR 839-050-0340. Because McNeeley is a corporation, any document filed by McNeeley should be submitted by an attorney or should be filed together with a statement indicating that the person filing the document is an authorized representative3 of the party. See OAR 839-050-0110(1), (2)

"On March 30, 2026, the case was transferred to ALJ Caroline Holien.

"On April 1, 2026, the Agency and Respondents Kyle Hayes, Hayes Team, LLC, Andrew Macdonald and Kristen Macdonald filed a notice containing the substantive terms of a settlement agreement that complied with OAR 839-050-0220(5). The forum issued an interim order canceling the hearing and the prehearing deadlines for those Respondents on April 3, 2026. The interim order included the following:

> "'Pursuant to the Notice of Default issued on March 26, 2026, Respondent McNeeley may file a written request within ten days after the date of the issuance of the Notice of Default stating any facts supporting a claim of good cause and any supporting documents for Respondent McNeeley's

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[6] Sterner's declaration references a recording for the voice mail message which was referred to as Agency Exhibit A-1. The recording was not submitted with the Agency's objection, which the forum received via email on April 13, 2026, nor was it included with a paper copy of the objection found by the Contested Case Coordinator on a shared work desk at BOLI's Portland offices on April 17, 2026.

[7] All filings and interim orders have been sent to Respondent Jim McNeeley Real Estate at the Marlow Avenue address.

failure to timely file an answer to the formal charges issued in this matter. OAR 839-030-0340 (1), (2). If good cause is not shown and relief from the default entered has not been granted, Respondent McNeeley may attend the hearing scheduled to begin at 9:00 a.m. on Tuesday, April 14, 2026, but will not be permitted "to participate in any manner in the hearing, including, but not limited to, presentation of witnesses or evidence on the own party's own behalf, examination of Agency witnesses, objection to evidence presented by the Agency, making or motions or argument, or filing exceptions to the Proposed Order." OAR 839-050-0330(3). Because Respondent McNeeley is a corporation, any document filed by Respondent McNeeley should be submitted by an attorney or should be filed together with a statement indicating that the person filing the document is an authorized representative of the party. See OAR 839-050-0110(1), (2).'

"On April 7, 2026, ALJ Holien issued a Final Order Incorporating Informal Disposition ('FOID') as to Respondents Kyle Hayes, Hayes Team, Andrew Macdonald, and Kristen Macdonald. The FOID was sent to Jim McNeeley Real Estate at the Marlow Avenue address via regular mail. The FOID included notice that the hearing scheduled to begin at 9:00 a.m. on Tuesday, April 14, 2026, would proceed as scheduled, and reminded the parties of the requirements of OAR 839-050-0330(3) and OAR 839-050-0110(1), (2).

"On April 10, 2026, the forum received a letter from James McNeeley ('McNeeley') on behalf of Respondent Jim McNeeley Real Estate appointing Matt Malmsheimer, Attorney at Law ('Malmsheimer'), as the representative for Respondent Jim McNeeley Real Estate. Included with McNeeley's letter were Respondent's motions to postpone and for relief from default.

"In a series of email between the Agency, Malmsheimer, and ALJ Holien, the parties agreed to a prehearing conference at noon on Monday, April 13, 2026. The Agency indicated that it intended to file an objection to the Respondent's motions.

"On April 13, 2026, the ALJ conducted a prehearing conference with Anita Smith, Administrative Prosecutor, and Malmsheimer. The parties agreed to a potential future hearing date if the Respondent's motion to postpone was granted. Smith indicated that she had sent the Agency's objection to Malmsheimer that morning and agreed to send a copy of the objection to the ALJ, who had not yet received a copy of the objection.

"On April 13, 2026, the ALJ issued an interim order granting the Respondent's motion to postpone the hearing to the agreed upon date of June 2, 2026, and setting May 19, 2026, as the deadline for filing case summaries.

"B. DISCUSSION

"'OAR 839-050-0340(1)(b) provides that a party seeking relief from default must file a written request for relief within 10 days after a notice of default has been issued.

"The record shows that Respondent's attorney filed a written request for relief from default on April 10, 2026, which was 15 days after the issuance of the Notice of Default on March 26, 2026. As such, the request for relief from default is not timely. OAR 839-050-0340(1)(b).

"OAR 839-050-0050(1) provides that the ALJ may disregard any document that has been filed beyond the established number of days for filing. If a party requires additional time, they are required to file a written request for an extension of time 'no later than the date set for filing the document in question.' OAR 839-050-0050(2).

"Respondent Jim McNeeley Real Estate did not file a written request for an extension of time for filing the request for relief from default prior to the 10 day deadline provided for under OAR 839-050-0340(1)(b).

"Even if the forum found that Respondent Jim McNeeley Real Estate's failure to timely file its request for relief from the default was for 'good cause,' as defined under OAR 839-050-0020(16), the forum does not find good cause has been established for the failure to timely file an answer to the Formal Charges in this matter.

"OAR 839-050-0340(2) provides:

> "'Relief from default may be granted when the party's written request for relief from default shows good cause for the party's action or inaction that caused the default. The party's request should state any facts supporting the party's claim of good cause and include any documents that support the party's claim."

"OAR 839-050-0020(16) defines 'good cause' as meaning that 'a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. 'Good cause' does not include a lack of knowledge of the law, including these rules.'"

"In his declaration that accompanied the request for relief form default, McNeeley states that he suffered the loss of his wife on January 22, 2026, and he had been her sole caregiver. McNeeley states that it was due to the illness and the passing of his wife that he was unable to timely file an answer to the Formal Charges."

"There is no evidence showing that Respondent Jim McNeeley Real Estate did not receive the Notice of Hearing and Formal Charges that were issued on February 5, 2026. Further, there is no evidence showing that Respondent Jim McNeeley Real Estate did not receive the interim orders that the forum has issued in the weeks following the issuance of the Notice of Hearing, including the Notice of Default that was issued on March 26, 2026. While sympathetic to McNeeley circumstances, the forum notes that Respondent is a business operating in Oregon and has the duty to conduct business according to its laws. The forum does not find that the failure to file a timely answer to the Formal Charges was for good cause. OAR 839-050-0340(2). Therefore, the request for relief from default is hereby DENIED.

"Relief from default having not been granted, Respondent Jim McNeeley Real Estate may attend the hearing scheduled to begin at 9:00 a.m. on Tuesday, June 2, 2026. However, McNeeley will not be permitted 'to participate in any manner in the hearing, including, but not limited to, presentation of witnesses or evidence on the own party's own behalf, examination of Agency witnesses, objection to evidence presented by the Agency, making or motions or argument, or filing exceptions to the Proposed Order.' OAR 839-050-0330(3).

"IT IS SO ORDERED"

(Ex. X22)

21) At the start of the hearing, the ALJ orally advised the Agency of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing. Respondent McNeeley did not appear at hearing. (Hearing Record)

FINDINGS OF FACT – THE MERITS

1) At all times material herein, Respondent McNeeley was an active domestic business corporation, with its principal place of business located in Portland, Oregon. Jim McNeeley is the President and Registered Agent of the business. (Ex. A7, p. 1; Ex. A17)

2) On January 4, 2022, Stroud entered into a rental agreement for a unit that was one of two units in a duplex located at 6604 NE Emerson Street ("NE Emerson property"), in Portland, Oregon, with a monthly rent of $1,750. The duplex is owned by

Respondent McNeeley, Kristen Macdonald and Andrew Macdonald. (Testimony of Stroud; Ex. 2a)

3) The NE Emerson property is managed by Kyle Hayes and the Hayes Team as the agent of Respondent McNeeley. (Testimony of Stroud; Exs. A4, A7)

4) Included with Stroud's rental agreement was a Criminal Activity Addendum, which prohibits residents from engaging in criminal activity at the property or threatening harm toward another person on the property. The Addendum also requires residents to conduct themselves "in a manner that will not disturb the neighbors' peaceful enjoyment of the Premises." (Testimony of Stroud; Ex. A7, p. 11, Ex. A18)

5) Stroud's unit had a ground floor entry with living space on both the ground floor and basement. Stroud's unit had a separate front porch and separate entry from the other tenant's porch and entry. The two units shared a common front yard. (Testimony of Stroud)

6) Stroud rented the unit, in part, to create a safe and peaceful home for his two children, who were 10- and 12-years-old at the time. Stroud and his wife had recently separated, and Stroud was focused on providing a safe and nurturing home for his children. (Testimony of Stroud)

7) Capreshe Tarrant ("Tarrant") and her adult son Tyree Burks ("Burks") lived in the other unit of the duplex. (Testimony of Stroud)

8) Stroud is white and identifies as bi-sexual. (Testimony of Stroud)

9) Hayes Team, LLC ("Hayes Team") was the management company who Stroud worked with when renting the NE Emerson unit. Stroud understood that he was required to talk with Kyle Hayes about any issues he had concerning the NE Emerson property. Stroud further understood that the Hayes Team and Kyle Hayes had the authority to act on behalf of the owner of the NE Emerson property. (Testimony of Stroud)

10) During the first three weeks of Stroud's occupancy at the NE Emerson property, Tarrant and Burks hosted several "incredibly loud gatherings" that continued through the early morning hours. Stroud frequently observed 30 or more people coming in and out of the unit, with most people drinking alcoholic beverages and yelling and speaking in loud voices. Stroud often observed large groups of people fighting in the common front yard. These gatherings, which frequently occurred during the week, interfered with the ability of Stroud's children to sleep. (Testimony of Stroud)

11) Stroud approached Tarrant about the disturbances on at least two occasions. On one occasion, Stroud was disturbed by the sounds of a loud party at Tarrant's unit and knocked on her door at approximately midnight. Stroud spoke to a man who he did not know but who had opened Tarrant's door. The man proceeded to call Stroud a "cracker," "f*****," and the "n-word" when Stroud asked for them to keep the noise down. (Testimony of Stroud)

12) Stroud was upset that such slurs were used against him, because he considers himself to be a strong ally of the African American community. Stroud proudly comes from a multi-cultural family, which exacerbated his distress at being called racial slurs. (Testimony of Stroud)

13) On April 9, 2022, Stroud reported multiple disturbances at the other tenant's unit to property manager Kyle Hayes of the Hayes Team:

> "Weekend after weekend the neighbor on the other side of the duplex wall throws parties that go on until all hours of the night, waking my children and disrupting my sleep as well. Tonight there are at least twenty people there yelling and playing loud music, and every time I ask them to keep it to a reasonable level they close the door in my face and resume their yelling and loud music.
>
> "This has gone on long enough. I have resisted going to the police, but that will be my next step unless you as a landlord representative have another solution. I look forward to hearing from you about this matter.
>
> "I've requested the neighbor keep it down between 11pm and 2 am at least six times. All to no avail. When they want to party they party and they completely disregard my request for quiet hours.
>
> "So tonight it has happened again; they are currently as I text this carrying on loudly, yelling and playing loud music, and I've asked them to keep it down as they've woken my children. It's 11:45, and they've slammed the door in my face and continue to party suuuuuuper loudly."

(Testimony of Stroud; Ex. A8)

14) Stroud included audio and video proof of the noise level at the other tenant's unit in his text message to Hayes. Stroud told Hayes that he would consider the lease broken if the matter was not resolved. Stroud concluded his message with, "This is no longer tenable." (Testimony of Stroud; Ex. A8)

15) On April 10, 2022, Stroud sent a message through the tenant portal, a website used by the property manager for messages to and from the tenants and for rent payments, outlining his concerns regarding the behavior of the other tenants:

> "At least six times since I moved in, the neighbors on the other side of the duplex have thrown parties that have gone on until all hours of the night, waking my children and disrupting my sleep. Tonight there are at least twenty people there yelling and playing loud music, and every time I ask them to keep it to a reasonable level, they close the door in my face and resume their yelling and loud music. I have video evidence. This is no longer tenable. I recently spoke with my attorney about this and they asserted this is a lease violation. So I am

> notifying you that I am moving this matter forward and asserting the lease is being broken. Either the neighbors can move or I will, but if I do I will seek damages. Please advise. I am more than happy to share the videos, they're pretty crazy."

(Testimony of Stroud; Ex. A9)

16) Stroud sent his message at approximately 11:00 a.m. on April 10, 2022. Stroud's message was labeled a "maintenance request" and was canceled on April 13, 2022. (Testimony of Stroud; Ex. A9)

17) On April 12, 2022, at approximately 11:45 a.m., Stroud sent another message through the tenant portal:

> "Last (Monday, 4/11) night there was a physical fight next door, and loud yelling that went on last [sic] 10pm. I am sending this to continue the documentation of what I have been dealing with ever since I moved in."

(Testimony of Stroud; Ex. A10)

18) At approximately 11:46 a.m., Stroud received a text message from Kyle Hayes that read, "Just got your latest email. You're going to start calling the cops if fights are happening." (Testimony of Stroud; Ex. A10)

19) Stroud sent Kyle Hayes videos of fights happening in the front yard and the threatening and abusive behavior that the other tenant and her guests were directing toward him. Stroud responded to Hayes' message directing him to contact law enforcement, stating:

> "I do not feel comfortable calling the cops on my neighbors as I fear that may lead to retribution. There is gang activity in this neighborhood, and I've learned the local gang actually tried to execute someone on what is now my front lawn last year. I'm not sure who is in a gang and who isn't, but the neighbor's son who lives with her part time hangs out with the people who's [sic] friend was killed(?)/almost killed(?). So calling the cops is out of the question unless I'm targeted personally.

> "If you want to offer a way for me to get out of my lease and move without paying a financial penalty I'm all ears. In the meantime I'm just going to keep recording and reporting as I've been advised by both my lawyer and my cop friend."

(Testimony of Stroud; Ex. A10)

20) On May 12, 2022, Stroud sent a message through the tenant portal after a confrontation with a guest of the other tenant. A man whose vehicle was parked in front of Stroud's driveway called Stroud a "cracker," when Stroud asked him to move the vehicle. The man waived a handgun in Stroud's direction when he observed Stroud watching him from his living room window. Stroud's report included:

> "Today I noted the duplex neighbor had two people visiting, one of who was parked in front of my driveway. One guy went into the neighbor's unit, then came out and did some kind of exchange with the guy parked in front of my driveway, then went back inside the neighbor's unit. I went outside and asked the guy parked in front of my driveway to move, and he said no. So I walked back inside, I was sitting on my couch in the living room watching what looked like a drug deal happen, and as the guy drove away he saw me looking out the window and pulled a semiautomatic handgun and waved it at me.
>
> I called 911 and filed a police report (case #22-125837). I assert this is a third and final lease violation and am moving as soon as I find another place. I expect I will not be asked to give up my security deposit or pay any penalties given the circumstances. If you disagree we should discuss."

(Testimony of Stroud; Ex. A11)

21) Stroud's message was labeled a maintenance request and was canceled on the tenant portal on May 24, 2022. (Testimony of Stroud)

22) Stroud was growing increasingly frustrated at the lack of response from the property owner and property manager. Stroud was upset at being called a "cracker" by the individual parked in front of his driveway and scared due to the escalation of the confrontations with the neighbor and her guests. Stroud and his children spent much of

their time in the basement of the unit to avoid any further issues with the neighbors and due to Stroud's concerns for the safety of his children. (Testimony of Stroud; Ex. A11)

23) Between May of 2022 and September of 2022, Tarrant and Burks hosted several loud and disruptive gatherings, several of which erupted in violence in the front yard shared with Stroud's unit. Stroud was frustrated and upset at the lack of response by the property manager regarding his concerns. (Testimony of Stroud)

24) On September 25, 2022, Stroud sent Hayes the following text message:

> "Kyle, the neighbors on the other side of the duplex had a rip-roaring fight last night. Sounds like the whole family was involved. They were yelling – and at times screaming – at each other for three or four hours. Imagine me trying to raise kids in this environment. The two videos attached are of them yelling and swearing at each other around 3am. This is untenable. This is also my third complaint. There are other incidents which have not been reported because I'm not a Karen and do believe in patience and compassion. But my kids and I no longer feel safe in our own home. Also remember to put this in context; one of their house guests once pulled a gun on us for asking him not to block our driveway. There's a police report number which I sent you at the time. Thanks."

(Testimony of Stroud; Ex. A12)

25) On November 9, 2022, Stroud returned home with his son after dropping his daughter off at her mother's home. A vehicle was parked in front of his driveway, and Tarrant and Burks were in the yard. Stroud asked them to move the vehicle so he could use the driveway. Burks "came unglued." Burks began yelling at Stroud and calling him a "cracker," a "f***** a** bitch," and "f***** a** white boy." Burks threatened to knock Stroud "on his a**," and directed other threats of physical harm toward Stroud. Burks' abusive and threatening conduct made Stroud fearful for both his and his son's physical safety. As Stroud began recording the incident with his cell phone, a female unknown to Stroud approached him and sprayed him with pepper spray. Someone then grabbed Stroud's phone and threatened to "f*** him up." The other guests of Tarrant

and Burks were yelling profanities and slurs directed at Stroud during the Stroud's assault. At least one person in the group yelled to Stroud's son that his father was "a coward" and directed other slurs at Stroud and his son. Stroud's son could see and hear the confrontation from inside the home. (Testimony of Stroud)

26) Law enforcement reported to the scene a short time later. The female who pepper sprayed Stroud was interviewed and allowed to go home. The female was ultimately convicted of a misdemeanor charge of unlawful use of mace and a misdemeanor charge of harassment after a criminal trial held on December 1, 2022, at which Stroud testified. (Testimony of Stroud, Ex. A14, p. 10)

27) On November 9, 2022, at approximately 7:23 p.m., Stroud sent the following message to the property manager through the tenant portal:

> "Two incidents occurred this evening. Tyree, one of the residents in the attached unit of the duplex, threatened me with physical violence. This is a direct violation of the Multifamily NW Criminal Activity Addendum of our lease agreement. Additionally, one of their guests came into my yard, tried to grab my phone, and pepper sprayed me. The [Portland Police Bureau] case number is 22-300303. I have five minutes of video of the incident. All of this because I asked them to please move their car which was partially blocking my driveway. According to ORS 90.396, Owner/Agent, after 24 hours' written notice specifying the cause, may immediately terminate the Rental Agreement for this type of situation. This follows an incident months ago when one of their house guests pulled a gun on me. I must insist you deal with his now. If you do not I will be seeking litigation via an advocacy rights group, and I will be seeking damages."

(Testimony of Stroud; Ex. A13)

28) On November 9, 2022, at approximately 11:18 p.m., Stroud sent an email to Hayes and Jim McNeeley Real Estate listing the various incidents involving his neighbor that he had reported and notifying them that the he intended to file a complaint with BOLI and/or HUD. Among other things, Stroud stated in the email that:

- "My neighbor has used racial and homophobic slurs against me, and the case it being investigated by the Portland Police Bureau as a possible hate crime.
- My neighbor has threatened physical violence against me.
- My neighbor has made intrusive comments about one of my children.
- My neighbor had a house guest over who pulled a gun out and pointed it at me * * *
- My neighbor had a house guest over that physically assaulted me."

(Testimony of Stroud; Ex. A13, p. 3)

29) Michelle Hayes, Principal Broker and Property Manager for Jim McNeeley Real Estate ("M. Hayes"), responded the next day with an email that read:

> "Thank you for all of your contact on this matter and keeping us in the loop. It sounds like you have taken the right steps with your neighbor by contacting the police. Please keep us posted on the police cases you mentioned in your email below. We will continue to do what we can on our end."

(Testimony of Stroud; Ex. A13, p. 4)

30) Stroud was upset and disappointed with what he considered to be an indifferent response to his repeated and serious complaints. Stroud became increasingly upset that no representative from either McNeeley or its agent, Hayes Management, had any direct or "face to face" contact with him to discuss his safety concerns. As a result, Stroud continued to worry that he would have to face another situation with the other tenants where he was subjected to slurs based on his race and sexual orientation and that his children could be in a position to observe the harassment. Stroud lived in constant fear throughout the remainder of his tenancy at the NE Emerson property that the other tenants or their guests would physically assault him or, worse, physically harm his children. (Testimony of Stroud; Ex. A13, p.4)

31) Stroud's lease was set to end December 31, 2022. Stroud decided to move out of the unit on or about December 20, 2022, due to the serious safety concerns he had for himself and his children due to the disruptive and threatening behavior of his neighbors and their guests. (Testimony of Stroud, Ex. A7)

32) Stroud did not have sufficient financial resources to immediately find a stable living situation for him and his children. Stroud's children returned to their mother's home, and Stroud stayed with friends and family when he could. Stroud ultimately found temporary housing in a friend's tool shed, where he had to "live in the rough." Stroud was without a stable home for more than two years following his move from the NE Emerson Street duplex. Stroud's effort to find stable employment was also complicated as a result of his housing situation. (Testimony of Stroud)

33) Stroud incurred expenses that he would not have had if he had been able to remain at the NE Emerson property, including a storage until that he rented for approximately two years at a monthly rate of $175 beginning on or about December 21, 2022. Stroud was also required to purchase prepared food and live a "day to day" existence due to the lack of stable housing. (Testimony of Stroud; Ex. A18)

34) In mid- to late-August 2023, Stroud found stable housing in Columbia City, Oregon, which is approximately 30 miles north of Portland. From August 2023 through January 2025, Stroud paid a monthly rent of $2,500 for the Columbia City rental property. (Testimony of Stroud)

35) Stroud was required to drive back and forth to Portland from his Columbia City home in order to see his children and to get them to and from school when they stayed with him, which resulted in transportation costs of approximately $30 per week.

Stroud would not have had to incur these additional expenses if he had been able to remain at the NE Emerson Street duplex as he had planned. (Testimony of Stroud)

36) Stroud's children were greatly affected by the interruption in their housing situation. Stroud's daughter was humiliated at her father's living situation and required mental health treatment due to the stress the change in her living conditions caused her to experience. Stroud's daughter, who already had a shaky relationship with her mother, experienced worsening mental health struggles while living with her mother due to the home not being as stable and nurturing as the home Stroud had created for his children. Stroud felt his relationship with his daughter grew more strained and was profoundly harmed as a result of the disruption in his living situation. Stroud continues to work on improving his relationship with his daughter. (Testimony of Stroud)

37) Stroud considers his son "more resilient" than his daughter, but he expressed feelings of fear and sadness to his father based on what he had experienced with Stroud's neighbors. Stroud was upset that his son's life had been disrupted due to his experiences at the NE Emerson property. (Testimony of Stroud)

38) Stroud continues to experience feelings of fear and frustration as a result of the behavior of his neighbors and the inaction of the property manager and Respondent McNeeley. Stroud "breaks out in a sweat" when he drives in his former neighborhood. Stroud also continues to experience anxiety and sadness as a result of the impact his housing situation had on his children. Stroud felt his life was derailed as a result of the hostile living conditions at the NE Emerson property, and he has struggled to get his life back on track. and struggled to find a job when he was without a stable living situation. (Testimony of Stroud)

39) In the Spring of 2025, Stroud was able to secure stable housing for him and his children, who returned to living with him on a full-time basis, in Multnomah County. (Testimony of Stroud)

40) Stroud's sworn and uncontroverted testimony is credible. Stroud's testimony when describing the various incidents involving his neighbors was measured and showed no signs of exaggeration. Stroud testified in detail about the efforts he made to resolve the issues peacefully with his neighbors before approaching the property owner and management company with his concerns. Stroud further testified in detail about the impact the situation had on himself and his children.

OPINION AND CONCLUSIONS OF LAW

The Agency's Formal Charges alleged the following violations by Respondent McNeeley:

> "* * * * *
>
> "Discrimination: Race
>
> 28.
>
> "Respondent McNeeley discriminated against Complainant by failing to act when Complainant was being harassed by another tenant because of Complainant's race, in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5).
>
> "* * * * *
>
> "Discrimination: Sexual Orientation
>
> 33.
>
> "Respondent McNeeley discriminated against Complainant by failing to act when Complainant was being harassed by another tenant because of Complainant's sexual orientation, in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5).

"* * * * *

"Constructive Eviction

38.

"Respondent McNeeley constructively evicted Complainant by failing to act when Complainant was being harassed by another tenant based on race and sexual orientation, in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5)."

(Findings of Fact – Procedural #4)

ORS 659A.421(2)(f) provides that "[a] person may not, because of the race * * * or sexual orientation * * * [a]ssist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section." OAR 839-005-205(1)(f), (g) further provides that a person may not, because of race, color, or sexual orientation "assist, induce, incite or coerce another person to commit an act" that violates the Oregon Fair Housing Act or the federal Fair Housing Act ["FHA"] or "coerce, intimidate, incite or interfere with any individual in the exercise or enjoyment of any right * * * granted by the ORS 659A.145, 659A.421, the federal FHA, or these rules.

OAR 839-005-0206(5) provides:

"Tenant-on-tenant harassment: A housing provider is liable for a resident's harassment of another resident when the housing provider knew or should have known of the conduct, unless the housing provider took immediate and appropriate corrective action."

Unlawful Harassment Based on a Protected Class in Housing

The Agency alleged that Respondent McNeeley discriminated against Complainant by failing to act when Complainant was being harassed by another tenant because of Complainant's race and sexual orientation, in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5).

OAR 839-005-0206(4) concerns when harassment on the basis of a protected class is an unlawful practice in housing. More specifically, OAR 839-005-0206(4) provides, in part, that harassment on the basis of a protected class is an unlawful practice in housing, among other instances, when:

> (1) There is conduct of a verbal or physical nature relating to a protected class;
>
> (2) Substantial evidence of the elements of intentional discrimination, as described in section OAR 839-005-0206(2) is shown; and
>
> (3) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an intimidating, hostile, or offensive environment.

The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it. OAR 839-005-0206(4)(b).

Stroud is white and identifies as bi-sexual. Stroud testified that his neighbors and their guests called him "cracker," "f*****," and other slurs related to his race and sexual orientation frequently throughout his tenancy. The conduct at issue was of a verbal or physical nature relating to a protected class of Stroud. The first element is satisfied. OAR 839-005-0206(4)(a).

Given the slurs directed at Stroud based on his race and sexual orientation, there is substantial evidence that Stroud's neighbors and their guests knowingly and purposefully discriminated against Stroud and treated Stroud differently based on a protected class under either a Specific Intent Theory or a Different or Unequal Treatment Theory of Discrimination. OAR 839-005-0206(2)(a), (b); (4)(a). The second element referenced above regarding substantial evidence of intentional discrimination is also satisfied.

The unwelcome conduct included threats of physical violence and, on at least one occasion, included the physical assault of Stroud by a guest of the other tenant. (Findings of Fact – The Merits #25). Stroud provided video evidence of the conduct by his neighbors and their guests, including an incident where slurs based on Stroud's race and sexual orientation can be heard, in addition to threats of physical violence, all of which apparently occurred in the presence of Stroud's son. Stroud experienced this type of abuse from the other tenants and/or their guests on a regular basis throughout his tenancy at the NE Emerson property. Stroud and his children grew increasingly fearful as a result of the unlawful harassment by the other tenants and their guests and spent most of their time in the basement due to their safety concerns.

Stroud's living conditions at the NE Emerson property were made even more difficult due to the circumstances of the property itself. Stroud and his children lived in one half of a duplex that shared a common wall and a single front yard with the alleged harassers. The severity and pervasiveness of the unlawful harassment by Stroud's neighbors is obvious given Stroud and his children had nowhere to go when the slurs and threats of violence began.

The preponderance of the evidence shows that a reasonable person in the circumstances faced by Stroud would perceive the unlawful harassment Stroud endured from his neighbors was sufficiently severe or pervasive to create a hostile, intimidating, and offensive environment. Therefore, the Agency has established the third element to show harassment on the basis of a protected class in housing. OAR 839-005-0206(4)(a)(A), (b).

Respondent McNeeley's liability for the unlawful harassment in housing

There are several potential theories of liability for unlawful harassment in housing. Applicable here is whether Respondent McNeeley is liable for the "resident

on resident" harassment analyzed above. As noted above, OAR 839-005-0206(5) instructs as follows regarding liability for "resident on resident" harassment:

> "A housing provider is liable for a resident's harassment of another resident when the housing provider knew or should have known of the conduct, unless the housing provider took immediate and appropriate corrective action."

Stroud's documentary evidence, coupled with his credible testimony, shows that he reported his concerns regarding his neighbor's discriminatory conduct to Kyle Hayes, the property manager, who served as the agent for Respondent McNeeley in the management of the NE Emerson property.

Stroud reasonably understood that Kyle Hayes and the Hayes Team had the authority to act on behalf of Respondent McNeeley to address his concerns as a tenant of the NE Emerson property. Stroud's frustration intensified when it became clear that neither Respondent McNeeley nor its agent(s), the Hayes Team, were going to take any corrective action despite Stroud's repeated reports of harassment by another tenant.

The preponderance of the evidence shows that as of November 9, 2022, Respondent McNeeley knew or should have known that Stroud was being subjected to unlawful harassment from the other tenants of the duplex based upon his race and his sexual orientation. Specifically, on November 9, 2022, Stroud informed Respondent McNeeley and Kyle Hayes, among other things, that his neighbor had used racial and homophobic slurs against him and threatened physical violence against him. The record shows that Respondent McNeeley knew of the message because Michelle Hayes, Principal Broker and Property Manager for Respondent McNeeley, responded to Stroud's message on November 10, 2022, at 9:35 am.

The record does not show that Respondent McNeeley, or its agent, took *any* corrective action, let alone immediate and appropriate corrective action as required

under OAR 839-005-0206(5), after receiving notice of the tenants' unlawful harassment of Stroud on November 9, 2022.

The Agency has established unlawful harassment based on a protected class in housing under OAR 839-005-0206(4). The Agency has also established that Respondent McNeeley is liable for that unlawful harassment based on a protected class in housing under OAR 839-005-0206(5). The forum concludes that Respondent McNeeley's failure to take immediate and appropriate corrective action upon receiving notice of unlawful resident on resident harassment assisted the continuation of the effects of the unlawful harassment in violation of ORS 659A.421(2)(f) and OAR 839-005-0205(1)(f) and interfered with Stroud's exercise and enjoyment of housing free from unlawful harassment in violation of OAR 839-005-0205(1)(g). OAR 839-005-0206(5).

Respondent McNeeley committed an unlawful practice against Stroud by failing to take immediate and appropriate corrective action when Stroud was being harassed by another resident because of his race and his sexual orientation in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5).[8]

DAMAGES

Economic Damages

The forum has consistently held that out-of-pocket expenses that are directly attributable to an unlawful practice are recoverable from a respondent as a means to eliminate the effects of any unlawful practice found. *In the Matter of Garden Resort, LLC*, 40 BOLI ____ (2024), citing *In the Matter of Oregon Truck Painting, LLC*, 37 BOLI 87, 114 (2018).

[8] The forum concludes that the record shows that Stroud left the NE Emerson property due to the unlawful harassment referenced herein. Due to this conclusion, the forum does not find it necessary to analyze the Agency's allegations of constructive eviction in addition to the unlawful harassment allegations.

Stroud was required to rent a storage unit for approximately two years when he was without stable housing at a monthly rate of $175. Stroud also incurred transportation costs of approximately $30 per week during a two-year period related to his being able to see his children who were living with their mother in Portland and to get them to and from school when they stayed with him. Stroud incurred these expenses as a result of the unlawful harassment referenced herein. Therefore, the forum awards $4,200 ($175 x 24 months) and $3,120 ($30 x 104 weeks) for a total of $7,320 in out-of-pocket expenses. The forum concludes, for purposes of calculating per annum interest under ORS 82.010 on the out-of-pocket expenses, that Stroud began to accrue the expenses for the storage unit on December 21, 2022, when he entered into the contract for the storage unit after he vacated the NE Emerson property. These expenses for the storage unit continued accruing for 24 months at $175 per month so that the full $4200, without interest, would have accrued by November 21, 2024. (Findings of Fact – the Merits #32). Similarly, Stroud began to accrue expenses of approximately $30 per week in August 2023 (estimated to have started accruing on August 15, 2023) and those expenses continued accruing for 104 weeks at $30 per week so that the full $3,120, without interest, would have accrued by August 5, 2025. The forum concludes that interest will be calculated at the statutory rate of 9% per annum on the $4200 for the storage unit costs plus prejudgment interest on amounts accrued in $175 monthly increments between December 21, 2022, and November 21, 2024, totaling $363.54, starting on November 22, 2024, until paid.[9] The forum

[9] Prejudgment interest for the storage unit costs to be calculated as follows: $4200 + $363.54 in prejudgment interest on accrued expenses = $4563.54 starting on November 22, 2024, at 9% per annum until paid.

concludes that interest will be calculated at the statutory rate of 9% per annum on the $3120 for transportation costs plus prejudgment interest on amounts accrued in $30 weekly increments between August 15, 2023, and August 5, 2025, totaling $277.34, starting on August 6, 2025, until paid.[10] *See Ogden v. Bureau of Labor and Industries*, 299 Or. 98, 105, 699 P2d 189, 193 (1985) (prejudgment interest on expenses incurred by the complainant as a result of the unlawful practice is allowable when the expenses are actually accrued by the complainant).

Emotional Distress Damages

The Agency seeks damages on behalf of Stroud in the amount of at least $250,000 for emotional, mental, and physical suffering. Pursuant to ORS 659A.850, the Commissioner of the Bureau of Labor and Industries has the authority to award money damages for emotional, mental, and physical suffering sustained. *In the Matter of Garden Resort*, LLC, 40 BOLI ____ (2024). The Commissioner has the authority to eliminate the effects of the discrimination.

In determining an award for emotional, mental and physical suffering, the forum considers the type of discriminatory conduct, and the duration, frequency, and severity of the conduct. It also considers the type and duration of the mental distress and the vulnerability of the aggrieved persons. A complainant's testimony, if believed, is sufficient to support a claim for mental suffering damages. *Id*., citing *In the Matter of Dr. Andrew Engel, DMD, PC*, 32 BOLI 94, 1441 (2012). *See also In the Matter of Hye I*

[10] Prejudgment interest for the transportation costs to be calculated as follows: $3120 + $277.34 in prejudgment interest on accrued expenses = $3397.34 starting on August 6, 2025, at 9% per annum until paid.

Dickinson, 37 BOLI 117, 130 (2019) ($300,000 in emotional distress damages awarded to Complainant who suffered "significant distress" in a housing discrimination case).

Stroud sent approximately seven messages to Kyle Hayes, either as a text message or a message through the tenant portal, reporting the behavior of the other tenants. (Findings of Fact – the Merits, ## 13, 15, 17, 19, 20, 24 and 27). Stroud sent at least three messages in which he described the threats of violence and even provided video evidence of the slurs, threats, and the actual violence he endured as a result of the unlawful harassment by the other tenants and/or their guests. (Findings of Fact – the Merits ## 20, 24, 27). Stroud testified that there were other occasions when his neighbors directed slurs at him based upon his race and sexual orientation. (Findings of Fact – the Merits ## 11, 20). However, those incidents were not noted in many of the messages sent by Stroud to the property manager that were received into evidence. On November 9, 2022, Stroud informed Kyle Hayes and Respondent McNeeley, among other things, that his neighbor had used racial and homophobic slurs against him; threatened physical violence against him; had a house guest over who pulled a gun out and pointed it at him; and had a house guest over who physically assaulted Stroud. (Findings of Fact – the Merits ## 25).

Stroud testified in detail about the impact this situation had on himself and his children, who could often hear the slurs being used against their father, and, on at least one occasion, his young son was in a position to observe his father being threatened and called derogatory names in the front yard of their home.

Stroud's daughter experienced mental health issues that were exacerbated by the loss of a stable home and watching her father trying to eke out a day-to-day

existence during his roughly two years of being essentially homeless. Stroud's son, while apparently less affected, was still upset as a result of the abuse and threats his father suffered at the hands of his neighbors. Stroud has experienced anxiousness and sadness as a result of the upheaval in his living situation and his inability to find stable housing for him and his children.

The Agency has shown and the forum concludes that Stroud is entitled to a damage award for the physical, mental, or emotional distress and impaired dignity based on the failure of Respondent McNeeley or its agents to take immediate and appropriate corrective action in response to the unlawful harassment of Stroud.

The forum credits Stroud's testimony that the tenants in the second part of the duplex owned by Respondent McNeeley regularly subjected him to slurs and insults based on his race and sexual orientation and, on at least three occasions, subjected him to threats of physical violence and an actual physical assault. The forum further credits Stroud's testimony that these hostile living conditions had a long lasting negative impact on himself and his children.

The type of discrimination Stroud endured is particularly severe given that it occurred at his home. Stroud had no escape from the abuse he was experiencing given the realities of living in a duplex that shared a common yard. This unlawful harassment occurred throughout Stroud's tenancy and escalated from name calling to a physical assault without any corrective action being taken by either Respondent McNeeley and/or its agent, Kyle Hayes and the Hayes Team. Respondent McNeeley clearly had notice of the racial and homophobic slurs used against Stroud as of November 9, 2022, as well as previous notice of the threats of violence and physical assault of Stroud, and

yet the record is devoid of any corrective action taken by Respondent McNeeley or its agents. Given that the discriminatory conduct occurred on a regular basis throughout the time that Stroud lived at the NE Emerson property and the lack of any corrective action by Respondent McNeeley following notice of the discriminatory conduct that included not only the repeated use of slurs based upon Stroud's race and sexual orientation but also included threats of violence and an actual physical assault, the forum finds Respondent McNeeley is liable for an award of $50,000 for the emotional, mental, and physical suffering experienced by Stroud as a result of Respondent McNeeley's unlawful practices.

CIVIL PENALTY

ORS 659A.855(2)(a) allows for civil penalties in housing discrimination cases where the Commissioner has found that a respondent has engaged in an unlawful practice under ORS 659A.145 or ORS 659A.421. The Commissioner may assess against the respondent, in addition to any other relief available, a civil penalty in an amount not exceeding $11,000. ORS 659A.855(2)(a)(A).

The forum has concluded that Respondent McNeeley engaged in unlawful housing discrimination in violation of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5). Given the disregard shown by the Respondent McNeeley regarding Stroud's reports of harassment based on race and sexual orientation, a civil penalty in the amount of $11,000 is appropriate in accordance with ORS 659A.421 and ORS 659A.855(2)(a)(A).

OTHER REQUESTED REMEDIES

In the Formal Charges, the Agency also seeks a cease and desist order against Respondent McNeeley requiring it to stop committing any unlawful housing practices the forum concluded occurred. BOLI's Commissioner is authorized to issue an appropriate cease and desist order reasonably calculated to eliminate the effects of any unlawful practice found. ORS 659A.850(4). Among other things, that may include requiring a respondent to

> "(a) Perform an act or series of acts designated in the order that are reasonably calculated to:
>
> (A) Carry out the purposes of this chapter;
>
> (B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged in, including but not limited to paying an award of actual damages suffered by the complainant and complying with injunctive or other equitable relief; and
>
> (C) Protect the rights of the complainant and other persons similarly situation[.]"

The forum finds that the Agency's requested cease and desist order and other relief to be appropriate relief in this case.

EXCEPTIONS TO THE PROPOSED ORDER

After consideration of the Agency's Exceptions, the forum grants the Exceptions as reflected in this Final Order, as appropriate. Any exception not expressly addressed or incorporated is denied.

ORDER

A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS 659A.850(4), and to eliminate the effects of the violations of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5)by **Respondent Jim McNeeley Real Estate & Property Management, Inc.,** and as payment of the damages awarded, the Commissioner of the Bureau of Labor and Industries hereby orders **Respondent Jim McNeeley Real Estate & Property Management, Inc.,** to deliver to the Administrative Prosecution Unit of the Bureau of Labor and Industries, 1800 SW First Avenue, Suite 500, Portland, OR 97201, a certified check payable to the Bureau of Labor and Industries in trust for **Ryan Stroud** in the amount of:

1) FOUR THOUSAND FIVE HUNDRED AND SIXTY-THREE DOLLARS AND FIFTY-FOUR CENTS ($4,563.54), for economic damages and prejudgment interest, plus interest at the applicable statutory rate per ORS 82.010(1) of 9% per annum beginning November 22, 2024, until paid.[11]

2) THREE THOUSAND THREE HUNDRED AND NINETY-SEVEN DOLLARS AND THIRTY-FOUR CENTS ($3,397.34), for economic damages, plus interest at the applicable statutory rate per ORS 82.010(1) of 9% per annum beginning August 6, 2025, until paid.[12]

3) FIFTY THOUSAND DOLLARS ($50,000) for compensatory damages for emotional and physical suffering experienced by Complainant as a result of Respondent's unlawful practices found herein plus interest at the applicable statutory rate per ORS 82.010(1) of 9% per annum starting from the date of this Final Order until paid.

B. NOW, THEREFORE, as authorized by ORS 659A.855(2)(a)(A), as a civil penalty for the unlawful practice(s) under ORS 659A.421(2)(f), (9); OAR 839-005-

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[11] *See* ALJ Ex. A for the interest calculation.

[12] *See* ALJ Ex. B for the interest calculation.

0205(1)(f), (g); and OAR 839-005-0206(5), the Commissioner of the Bureau of Labor and Industries hereby orders Respondent Jim McNeeley Real Estate & Property Management, Inc., to deliver to the Administrative Prosecution Unit of the Bureau of Labor and Industries, 1800 SW First Avenue, Suite 500, Portland, OR 97201, a certified check payable to the Bureau of Labor and Industries in the amount of ELEVEN THOUSAND DOLLARS ($11,000), plus interest at the applicable statutory rate per ORS 82.010(1) of 9% per annum starting from the date of this Final Order until paid.

C. NOW, THEREFORE, as authorized by ORS 659A.850, and to eliminate the effects of violations of ORS 659A.421(2)(f), (9); OAR 839-005-0205(1)(f), (g); and OAR 839-005-0206(5) by **Respondent Jim McNeeley Real Estate & Property Management, Inc.,** the Commissioner of the Bureau of Labor and Industries hereby orders **Respondent Jim McNeeley Real Estate & Property Management, Inc.,** to:

1) At Respondent's expense, undergo training conducted by the Fair Housing Council of Oregon, or another trainer approved by the Agency, every year for a period of five (5) years, along with its employees, on the correct interpretation and application of Oregon laws pertaining to housing discrimination, including discrimination based on harassment.

2) Ensure that all agents engaged in management or oversight of any of Respondent's properties complete training conducted by the Fair Housing Council of Oregon, or another trainer approved by the Agency, on the correct interpretation and application of Oregon laws pertaining to housing discrimination, including discrimination based on harassment once a year for a period of five (5) years.

3) Respondent shall contact the Fair Housing Council of Oregon, or another trainer approved by the Agency, within ten (10) days of the date of the Final Order to schedule the training and provide proof of registration to Diane Anicker, Administrative Prosecution Coordinator (Diane.Anicker@boli.oregon.gov).

4) Respondent shall complete the initial training within sixty (60) days from the issuance date of the Final Order.

5) Respondent shall complete the training in each subsequent year within thirty (30) days of the anniversary date of the Final Order for a period of five (5) years.

6) Respondent shall provide proof of completion of each training session, consisting of a certificate of completion or equivalent documentation provided by the trainer to Diane Anicker, Administrative Prosecution Coordinator (Diane.Anicker@boli.oregon.gov) within thirty (30) days of completion. The documentation shall include the names, titles, and contact information for all attendees.

7) Cease and desist from violating laws pertaining to unlawful discrimination in housing.



Christina Stephenson, Commissioner
Bureau of Labor and Industries

ISSUED ON: November 3, 2026