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HAWAI'I CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

MARCUS L. KAWATACHI, Executive Director, on behalf of the Complaint filed by	)	DOCKET NO. 25-001-H-F
	)	
BRANDIE PAYNE and GREGORY PAYNE,	)	HEARINGS EXAMINER'S FINDINGS OF
Complainants,	)	FACT, CONCLUSIONS OF LAW AND
	)	RECOMMENDED ORDER
	)	
vs.	)	
	)	
PEARY G. WAGNER, individually,	)	<u>Hearings Examiner:</u> Jo-Ann M. Adams
Respondent.	)	<u>Date of Hearing:</u> Friday, January 30, 2026
	)	

HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION, AND RECOMMENDED ORDER

I. INTRODUCTION

The Complainants filed with the Hawaii Civil Rights Commission (*hereinafter* "HCRC" or "Commission") on March 2, 2021. This case was docketed for a contested case hearing on May 5, 2025 and assigned HCRC docket number 25-001-H-F. The original contested case hearing was scheduled to be heard before Hearings Examiner Karl K. Sakamoto on October 6, 2025. On August 18, 2025, Respondent filed a motion to continue discovery deadlines to September 23,

2025. On September 9, 2025, pursuant to Hawai‘i Administrative Rules § 12-46-46, the Commission granted an extension to hold a contested case hearing to on or before May 31, 2026. On September 22, 2026, this case was reassigned to Hearings Examiner Jo-Ann M. Adams. Further, a motion for summary judgment had been filed by the Executive Director to be heard on November 7, 2025, which clarified the scope of the case to the “discriminatory statements that indicated an intent to limit, and a preference against, Complainant’s family status”. The summary judgment motion was heard and granted, and the order limited the hearing to: 1) damages incurred as a result of the discriminatory statements by Respondent, and 2) any other amounts the parties believe to be relevant in determining damages.

The hearing on damages was rescheduled for January 30, 2026. In the “Executive Director’s Motion for the Damages, Memorandum of Law in Support of Motion for Damages; Certification of Service”, filed January 2, 2026, by the HCRC for the hearing, no mention was made of punitive damages. In closing arguments, the Enforcement Attorney asked for punitive damages¹ and left it to the Hearing Examiner to determine the amount.² This had the legal effect of widening the scope to include all factors affecting punitive damages.

II. PROCEDURAL HISTORY

The HCRC is empowered by Hawai‘i Revised Statutes (*hereinafter* “HRS”) §§ 368-11 and 368-13 to take jurisdiction over complaints of unlawful discriminatory practices in real property transactions pursuant to HRS § 515-9. The property located at 904 Mililani Street, Unit B, Hilo, Hawai‘i 96720, is a housing accommodation within the meaning of HRS § 515-2 and Hawai‘i

¹ Pililaau: “... when you take in the context of the situation, the Paynes’ financial situation at the time, what the world was going through at the time, we would be asking for punitive damages.” TR at 70:17-20

² Pililaau: “... what those punitive damages would be, Your Honor, we will leave it up to you.” TR at 70:22-23.

Administrative Rules (“HAR”) § 12-46- 302.

On March 2, 2021, BRANDIE PAYNE and GREGORY PAYNE (*hereinafter* collectively known as “Complainants”) filed a written complaint (*hereinafter* “Complaint”) with the Commission alleging that PEARY G. WAGNER (*hereinafter* “Respondent”), subjected Complainants to unlawful discrimination in a real property transaction in violation of HRS § 515-16(7). The Complaint was timely filed pursuant to HRS § 368-11(c) having been filed within one hundred eighty (180) days of the last occurrence in a pattern of ongoing discrimination.

Respondent is the owner and landlord of the subject property, and thus is a “person” engaging in a real property transaction within the meaning of HRS § 515-2 and HAR § 12-46-302.

The Commission, through its Enforcement Section, conducted an investigation pursuant to HRS § 515-9(a)(1). The investigation could not be completed within 180 days from the date of filing. Therefore, the Commission granted extensions to investigate the Complaint pursuant to HAR § 12-46-17 and HRS § 368-13(b), and extensions were granted through June 2022. On June 28, 2022, the Executive Director issued a finding of reasonable cause to believe that discrimination occurred.

The case was docketed for a contested case hearing on May 5, 2025, and a first scheduling conference was held on June 3, 2025. A second scheduling conference was held on July 1, 2025. On September 9, 2025, the Executive Director, on behalf of the Complainants, filed the “Executive Director’s Motion for Summary Judgment ...” positing that Respondent discriminated against Complainants by subjecting Complainants to discriminatory statements that expressed an intent to limit, and a preference against, Complainants’ familial status in violation of HRS § 515-16(7). A third scheduling conference was held on October 6, 2025 setting the date of November 7, 2025 for a hearing on the Executive Director’s motion for summary judgment.

On November 12, 2025, the Hearings Examiner filed her Order granting the Executive Director's motion and ordered that the hearing set for May 21, 2026 be limited to damages. A fourth scheduling conference was held on November 14, 2025, and the hearing on damages was rescheduled for January 30, 2026. The hearing on damages was held in Hilo, Hawai'i. Enforcement Attorney Eric Pililaau, on behalf of the Executive Director, and Respondent Peary G. Wagner, *pro se*, participated during the in-person hearing. Complainants Brandie Payne and Gregory Payne, participated as witnesses.

On February 5, 2026, the Hearings Examiner reopened the hearing for additional memoranda from parties regarding punitive damages. Respondent submitted a response on proposed punitive damages. The Executive Director did not submit any additional memoranda. The hearing was officially closed on February 24, 2026.

III. FINDINGS OF FACT

Based on the materials received into evidence and the testimony presented at the evidentiary hearing, the following findings of fact are made:

1. On February 4, 2020, the Complainants and the Respondent signed a "RENTAL AGREEMENT", marked as Exhibit ED-1, and incorporated by reference herein:

- a. The apartment was rented to two (2) people;
- b. That moving in additional people will cause the rent to increase or may result in immediate eviction;³
- c. That the Unit was located at 904 Mililani Street, Apt B;

³"Moving in additional people will cause the rent to increase \$200 per person OR MAY RESULT IN AN IMMEDIATE EVICTION." Transcript of 1/30/26 Hearing.

d. That all binding agreements must be in writing on paper;⁴

2. On February 4, 2020, Complainants moved into the Unit on the subject property after signing a rental agreement with Respondent as landlord.

3. On May 9, 2020, Complainants received a text message from Respondent, marked as Exhibit ED-2, and incorporated by reference herein:

a. Complainants were informed that following the birth of their child, rent would be increased by \$100.⁵

b. Respondent wrote that he normally does not rent a one-bedroom apartment to three people, and offered to show Complainants a two-bedroom apartment that would be \$1,200 in monthly rent.

4. On August 16, 2020, Complainants received a text message from Respondent, marked as Exhibit ED-3, and incorporated by reference herein. Respondent offered to move Complainants into a two-bedroom apartment (Unit F) with no increase in monthly rent.⁶

5. At the hearing held on January 30, 2026, all parties testified that no one followed up on Respondent's offer to move Complainants into Unit F at their current rate.

a. Complainant Gregory Payne testified that Respondent offered to show them the unit, and as they were walking down to see the unit, Respondent drove away.

⁴ "Emails & Texts are not a Legal or binding form of Communication. All Legal Bilateral Agreements ... MUST BE in writing on PAPER." See Exhibit ED-1. See also Exhibits RP 1-5, which contain examples of written rent increase letters written to other tenants.

⁵ "Right now your apartment is \$1,000 for two people. When your baby is born your apartment will be \$1,100". Exhibit ED-2.

⁶ "I would like to offer you the opportunity to move into Apartment 904-F. It is a two bedroom apt and you can have it for the same price as your existing rent of \$1070. You can move in immediately. It is right next to your truck. I can show it to you today or tomorrow." Exhibit ED-3.

They never saw the unit. They never accepted or rejected the offer.⁷

b. Complainant Brandie Payne also testified that they neither accepted or rejected the offer.⁸

c. Respondent Peary Wagner testified that he offered to show it to them, and they never responded to the offer. He could not recall if he offered a second time.⁹

6. On September 28, 2020, Complainants brought their newborn child home from the hospital.

7. Brandie Payne testified that there were several factors contributing to her stress during this pregnancy:

a. Risk of pregnancy: Brandie was pregnant with “high risk pregnancy, even

⁷ Pililaau: “... in that August 16, 2020 text message from Mr. Wagner, Mr. Wagner had offered, because you were having a baby, to move your family into a two-bedroom unit but at your current monthly rate. Did you accept that offer?”

Gregory: “Uh, no, we did not accept that offer.”

Pililaau: “Why not? What happened?”

Gregory: “... [W]e called Mr. Wagner to show us the apartment ... set up a date and time ... he stated that he was on his way to show us the apartment ... he let us know that he was on his way. When he got to the property, he let us know that he was there. As we were getting ready to come down to look at the apartment ... as we were walking towards the apartment, we saw Mr. Wagner ... back out his truck and pull away. And so, we never got a chance, at that time, um, even to see the apartment ...”.

Pililaau: “... So, after that day, when you say that Mr. Wagner just drove off and never showed the unit, did Mr. Wagner ever follow back up with you folks about.”

Gregory: “No, he did not.” Transcript at 20: 12-21:10.

⁸ Pililaau: “Brandie, in that text message from Mr. Wagner, he offered, because you were having a baby, to move your family into a two bedroom unit but at your current monthly rate. Did you and Greg accept that offer?”

Brandie: “No. We didn’t accept it or decline it.”

Pililaau: “Why not? What happened?”

Brandie: “... from what I can recall is, I sent a text message. I prefer texting over verbal phone calls. Um, I believe he had texted he was here ... on our way, coming down, and off he drove. So, we weren’t really given the opportunity to accept it and we weren’t given the opportunity to deny it, as we were never showed ...”.

Pililaau: “Did Mr. Wagner ever follow up ... about this offer of moving you folks into a two bedroom ...?”

Brandie: “Um, no.” Transcript at 48:19-49:17.

⁹ Wagner: “About that two bedroom apartment. I offered to show them the two-bedroom apartment, they never responded to that, not at all. I don’t know if I offered a second time. I don’t remember that, but I know, uh, I did offer, and I know they never responded.” Transcript at 63: 12-16.

though I was 37 and they called it a geriatric pregnancy, um, you know, you are considered high risk.” Transcript at 47:25-48:3.

- b. The COVID pandemic: “... you have COVID, right? People are dying left and right. I have no friends. I have no family social distancing mandated.” Transcript 48:3-5.
- c. Husband’s limited ability to bring in income: “Then, my husband, ... trying to get him on disability due to his income and his job. And so, it kind of fell on me to be able to try and support the family on one income.” Transcript at 47:13-16.

8. On February 10, 2021, Complainants and Respondent attended a court hearing in Hilo at the Circuit Court of the Third Circuit, State of Hawai'i; a transcript of the February 10, 2021, hearing is marked as Exhibit ED-4, and incorporated by reference herein.

- a. This hearing was regarding a complaint filed by Complainants against Respondent alleging that he cut off the gas supply to the Unit from January 12-21, 2021.¹⁰
- b. During the February 10, 2021 hearing, *when asked by the Court* for his understanding of what is in the rental agreement, Respondent stated, "The apartment is rented to two people. Moving in additional people will cause the rent to increase by \$200 per person or may result in immediate eviction. So, they're increasing the population with their baby, an application must be filed for an additional tenant. They haven't filed an application."

¹⁰ In the Transcript from the 1/30/2026 hearing, Gregory Payne testified incorrectly that the shutoff was for 444 days. Transcript at 30:9. The correct duration for the shutoff is 10 days.

c. Complainants' attorney followed up on Respondent's statement, stating, "The additional person you mention is a minor"; Respondent replied, "Could be any age".¹¹

9. Complainants have continued residing in the Unit, and Respondent has not sent any written letter to formally increase the Complainants' monthly rent.¹²

10. Brandie Payne has given birth to a second child, their son Oliver, who is now three years old.¹³

11. There was no evidence presented by either party that Respondent complained in any way about a second child in the Unit.

12. There was significant, persistent contention between Complainants and Respondent, which was referred to by all parties in their testimony.¹⁴

After review and consideration of the persistent contention between the Complainants and Respondent, it is evident that there were three pivotal points in this case:

- a) the text sent by Respondent to Complainants on May 9, 2020;
- b) the text sent by Respondent to Complainant on August 16, 2020, offering a two-bedroom unit, at the same rent Complainants were currently paying;
- c) the statement made by Respondent on February 10, 2021 was made in the context

¹¹ MR. WAGNER: "The apartment is rented to two people. Moving in additional people will cause the rent to increase ... So they're – they're increasing the population". Exhibit 4 [HCRC 0260].

Q: "... And the additional ... person ... is a minor, correct?" A. "Could be any age." Exhibit 4 [HCRC 0263].

¹² Pililaau: "Where were you living at the time?" Transcript at 44:7

Brandie: "...where I currently reside, which is 904, Unit B, Mililani Street, in Hilo, Hawaii." Transcript at 44:8.

Wagner: "... to raise the rent, I would – would give them a letter of the rent being raised, and – and I never did that. That's why I brought some examples for all of you to look at and see how I managed the apartment buildings." Transcript at 3:11-15. RP'S Exhibits 1-5.

¹³ "[O]ur son Oliver is three," Transcript at 43:15. Also see footnote 12.

¹⁴ eCourt Kokua shows a total of eleven (11) cases involving Brandie Payne and/or Gregory Payne against Peary Wagner (or his assistant Victoria Denis-Silva). Seven of the cases involve both Brandie and Gregory Payne; the other four involve Brandie Payne or Gregory Payne.

of a court hearing on a separate matter (the gas shutoff at the Unit).

IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the pleadings in this case, and the applicable law, Hearings Examiner Adams makes the following Conclusions of Law:

1) The HCRC has jurisdiction over complaints of unlawful discriminatory practices in real estate transactions under HRS § 515-9(a).¹⁵

2) More particularly, the HCRC has jurisdiction over complaints of discrimination based on familial status under HRS § 515-3(a).¹⁶

3) In an order dated November 12, 2025, the Hearings Examiner granted the Executive Director's motion for summary judgment motion finding that Respondent discriminated against Complainants in violation of HRS § 515-16(7) by subjecting Complainants to discriminatory statements that indicate an intent to limit, and a preference against, Complainant's familial status and limited this hearing to the issue of damages incurred as a result of the discriminatory statements made by Respondent.

4) Respondent made two explicit statements which violated HRS § 515-16(7).

a) The first statement sent in a text dated May 9, 2020, "Right now your apartment is \$1,000 for two people. When your baby is born your apartment will be \$1,100". See Exhibit ED-2. This statement tied a proposed \$100 increase in the monthly rent to the birth of their first child. The rent increase was not part of a neutral policy, because the policy stated in the

¹⁵ §515-9 Enforcement. (a) The civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter.

¹⁶ §515-3. Discriminatory practices. (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection. [Emphasis added.]

Rental Agreement was “moving in additional people will cause the rent to increase \$200 per person”.

(1) Under Hawai‘i law, a newborn child cannot be treated as a basis for eviction or rent increase even if the landlord attempts to count the child as an additional occupant. This protection is based on the definition of “Familial Status”, as found in HRS § 515-2 and HAR 12-46-302:

(2) **“Familial status”** means the status of children under eighteen years old in a family, including, but not limited to, a person having custody and domiciled with a minor child or children; a person domiciled with a minor child or children who has written or unwritten permission from the legal parent, such as a hanai relationship; a person who is pregnant; or any person who is in the process of securing legal custody of a minor child or children. Each of the parties testified that they did not see the “occupancy” provision as applying to newborns. Complainants testified that they could not fathom that the language in the Rental Agreement regarding “moving in” additional occupants applied to the birth of a child. Respondent even testified that this language does not apply to the birth of a child.¹⁷ In addition, the proposed amount of the increase was \$100 not \$200 as stated in the Rental Agreement. Consequently, Respondent’s text of May 9, 2020, was an arbitrary attempt by the landlord to increase the rent based on the birth of Complainants’ newborn.

b) The second discriminatory statement cited by the Complainants was in a hearing on February 10, 2021, where Respondent repeated and amplified the statements in court: “The apartment is rented to two people. Moving in additional people will cause the rent to increase

¹⁷ “Mr. Wagner: “Moving in additional people will cause the rent to increase \$200,00 per person. Uh, I’m talking about other people moving in. I’m not talking about their family growing.” Transcript at 6:14-17.

by \$200 per person or may result in immediate eviction. So, they're increasing the population with their baby, an application must be filed for an additional tenant. They haven't filed an application." [Emphasis added.]

5) In researching damage award for emotional damages, there appeared to be a pattern between the amount of the award and the type of evidence submitted. These awards appeared to be grouped based on the severity of the emotional damage, and the type witnesses providing the evidence/

a) Emotional Distress. It is based on testimony of the emotional distress experienced by the parties because of the discriminatory action with no corroborating testimony from other witnesses introduced and no medical treatment sought or involved. The typical testimony may include terms like “embarrassment”, “humiliation”, “anger”, “upset”, “frustration”, “feeling insulted”, “loss of sleep for short period”.

b) Significant Emotional Distress: Personal testimony is usually supported with the testimony given by corroborating witnesses (family, coworkers). There may be evidence of therapy or counseling. The typical testimony demonstrates more significant emotional distress and includes terms like “persistent anxiety”, “depression”, “stress affecting relationships”, “insomnia lasting months”, “loss of enjoyment of life”.

c) Severe/Egregious Emotional Distress: In addition to personal testimony and corroborating witnesses, there is usually testimony given by expert witnesses. There may be evidence of a psychological diagnosis, prescription medication, and therapy records. The typical testimony indicates severe emotional distress and includes terms like “panic attacks”, “PTSD symptoms”, “suicidal ideation”, “long-term depression”, “inability to work”, “physical manifestations”.

d) Six HCRC cases were analyzed for comparison to this case wherein emotional damages were awarded. The analysis included: (1) Type of testifier (*e.g.*, parties, corroborating witnesses, experts); (2) Level of professional involvement in providing evidence (*e.g.*, psychological diagnosis, prescription medication, and therapy records); (3) Verbiage used to describe the severity of the emotional distress, (4) Amount of award for emotional damages (“ED”). The six HCRC cases analyzed:

> Kyi-Yim v. Morning Hill Foods:¹⁸

- (1) Type of testifier: Complainant;
- (2) Type of Evidence: Complainant testimony only;
- (3) Words describing severity: mad, outraged;
- (4) Amount of ED Award: \$1000;

> Shaw v. Sam Teague:¹⁹

- (1) Type of testifier: Complainant;
- (2) Type of Evidence: Complainant testimony;
- (3) Words describing severity: very upset, cried, worried about losing her job, nervous at work, knots in her stomach, friction between Complainant and her husband;
- (4) Amount of ED Award: \$5,000;

> Gould v. Simich:²⁰

- (1) Type of testifier: Complainant, co-worker, life partner;
- (2) Type of Evidence: knots in the stomach, constipation, diarrhea, snapped at life partner, lost interest in socializing with friends;
- (3) Words describing severity: upset, tense, red-in-the-face, humiliated, embarrassed, offended, uncomfortable;
- (4) Amount of ED Award: \$40,000.

> Aho v. City & County of Honolulu:²¹

¹⁸ Hoshijo, Exec. Dir., on behalf of Serena Kyi-Yim v. Morning Hill Foods, LLC, Dkt. No. 16-002-E-A, at 32–35 (Haw. Civ. Rts. Comm’n Dec. 12, 2017).

¹⁹ Tseu, Exec. Dir., on behalf of Shaw v. Sam Teague, Ltd., Dkt. No. 94-001-E-P, at 29–32 (Haw. Civ. Rts. Comm’n Mar. 3, 1995); 95-012-E-SH.

²⁰ Tseu/Gould v. Dr. Robert Simich, [formerly dba Dr. Robert L. Simich and Associates, also formerly dba Kailua Family and Urgent Medical Care; and Dr. Harold Steinberg) Affirmed, Hawaii Supreme Court in Steinberg v. Hoshijo, 88 Haw. 10 (1998)].

²¹ Tseu/Aho; v. Department of Parks and Recreation, City and County of Honolulu, Dkt. No. 94-0-2-E-D, 394 P.3d 775 (Haw. Haw. Civ. Rts. Comm’n Dec. 20, 1994)

- (1) Type of testifier: Complainant, three doctors (including two cardiologists)
- (2) Type of Evidence; testimony, results of medical testing (echocardiogram and thallium treadmill), depended on daughters to support him, very hurt, upset, lost sleep;
- (3) Words describing severity: great stress, embarrassment, loss of face, loss other job opportunities (civil service and contractual employment), could no longer support his family and had difficulty paying the mortgage, stress, embarrassment, loss of face for three years
- (4) Amount of ED Award: \$50,000;

> Boyd v. Primack:²²

- (1) Type of testifier: Complainant, Third Party Witnesses, Expert on bias crimes;
- (2) Type of Evidence: Testimony from Complainant, corroborating witnesses, police report, crisis center;
- (3) Words describing severity: disbelief, horrified, afraid for her life; almost physically ill, emotional wreck, could not stop crying, not eating, not sleeping for about a year, depress, reclusive;
- (4) Amount of ED Award: \$75,000;

> Bate v. RCUH:²³

- (1) Type of testifier: Complainant, third parties;
- (2) Type of Evidence: complaints about harassment, discharged in retaliation;
- (3) Words describing severity of emotional and mental distress: emotional breakdown, humiliated, cried, upset, stomach aches, problem sleeping, broke out in skin lesions, experienced over the course of nearly two years of discriminatory harassment
- (4) Amount of ED Award: \$200,000.

e) The testimony and evidence provided at the hearing fall almost exclusively into Emotional Distress (rather than Significant Emotional Distress or Severe/Egregious Emotional Distress). Complainants each offered testimony of their own emotional damage; there

²² Hoshijo, Exec. Dir., on behalf of Kiona E. Boyd v. Jeffrey David Primack, Dkt. No. 18-001-H-S (Haw. Civ. Rts. Comm'n August 15, 2018).

²³ Research Institute for Hawaii USA v. Bate, 139 Hawai'i 545 394 P.3d 771 (2017).

was no corroborative testimony. There was no testimony regarding medical treatment, counseling, or therapy. There was no third-party or expert witness testimony. No medical records were in evidence. Both Complainants indicated that the texts and statements made by Respondent caused them anger, frustration, stress, and anxiety. Neither mentioned bodily symptoms from emotional damage.

V. REMEDIES

A. COMPENSATORY DAMAGES

Pursuant to HRS § 368-17, the HCRC has the authority to award compensatory damages for any pain, suffering, embarrassment, humiliation, or emotional distress Complainants suffered as a result of Respondent's discriminatory written and oral statements.

The amount of compensatory damages awarded by the Commission in cases involving emotional distress can be categorized, depending on the severity of the emotional damage (the stress, fear, embarrassment), the duration of the distress, whether there was corroboration (such as spousal testimony or medical evidence).

1. Here, both Gregory and Brandie testified to that they felt anger, frustration stress, and anxiety. The severity of the distress was complicated by several other factors: a) the threat of a rent increase was an unexpected expense and above and beyond the expected expense of a having a newborn, b) COVID had reduced the number of hours that Gregory was working, c) COVID reduced the availability of supportive resources when Brandie gave birth to their first child; 4) this pregnancy was considered "high risk" due to her age.²⁴

²⁴ Quotes from Gregory regarding the severity of the damage: "quite taken aback" TR at 16:14; "my understanding was, bringing somebody in like a roommate or a relative, something of that nature, and not the birth of a child" TR at 16:18-22; "I just could not wrap my mind around a birth of a child as moving a person in" TR at 19:20-22. "how we're gonna be coming up with ... extra money for -- you know ... we're gonna have extra expenses with the baby" TR at

2. Respondent testified that he never raised the rent on the Complainants and emphasized that he had only sent text messages. The Rental Agreement clearly states that texts and emails have no legal effect.

3. The duration of the distress is more complicated to determine, because the tension among the parties escalated concomitantly due to the court filings between the parties,²⁵ but at a minimum the duration was from May 9, 2020 when the first text was sent to the court August 16, 2020, when Respondent offered “the opportunity to move into a two bedroom apartment” at their current rent;

i. When reviewing the transcript for context, it became clear this statement was made in response to a question asked of Respondent by the Court about the terms of the contract. Respondent quoted the term from the Lease Agreement and opined how the Complainants breached that provision of the contract. The result was a second statement which violated HRS § 515-17.

ii. The Complainants were present at this hearing. Complainant Brandie testified that the about the statement, “it caught me off guard”. “We had no -- no hot water, and I was cloth diapering. And so, to say you were gonna charge us rent for a child or evict it -- evict us, because we didn’t fill out an application, while facing how am I gonna do laundry, how am I gonna heat up water for my child.”

4. The spouses each testified to their individual distress, but the Enforcement Attorney did not solicit corroboration between the spouses. Further, there was no medical

17: 11-13; “we were still operating, thank god, but I pretty much had a reduction in hours at that time, thereby also causing a financial stress and anxiety -- more anxiety.” TR at 18:10-17.

²⁵ This hearing was regarding a complaint filed regarding a gas shutoff by the Respondent. By the time of the hearing, there was already in place a TRO on the Respondent by Complainant Brandie Payne, which meant that all communication had to be through Gregory Payne. Also, during this period, the Respondent filed yet another claim against the Complainants which was dismissed for failure to pay court fees.

evidence of Emotional Damage introduced.

5. As noted in the Findings of Fact, the Complainants have since had a second child. There was no evidence submitted that the Respondent made any statements regarding the second child. This serves as a mitigating factor.

6. Respondent did not mention “eviction” in either of the texts to Complainants or in the statement made in the court hearing. This also serves as a mitigating factor, because there was no “loss of housing” threatened due to familial status.

7. The Hearing Examiner balanced the credible testimony of (at most) three months of stress about a proposed increase in rent against lack of evidence of severe distress, lack of medical evidence of emotional distress, and no loss of housing, and awards \$3,000 in compensatory damages.

B. PUNITIVE DAMAGES

On January 2, 2026, the Executive Director filed the “Executive Director’s Motion for Damages; Memorandum of Law in Support of Motion for Damages, Certificate of Service”. The prayer in that motion was for an order declaring, “Respondent’s discrimination against Complaints in violation of § HRS 515-16 (7) caused Complaints to suffer emotional distress, and an award of \$10,000 in compensatory damages”. The Executive Director made no written request for punitive damages.

When the hearing began, evidence was admitted based on the limited scope that this hearing was for compensatory damages. Evidence was admitted on that basis.²⁶ The Enforcement Attorney asked for punitive damages at the hearing during closing arguments. The amount was

²⁶ Only Pages 18 to 21 were admitted at the hearing. Transcript: 9:4:10. However, the entire transcript was filed with the Commission as part of the evidentiary record.

left to the discretion of the Hearings Examiner.²⁷

After the hearing, particularly in light of the request by the Executive Director for punitive damages, the Hearing Examiner issued an Order as to Additional Memoranda, which read in pertinent part: “IT IS HEREBY ORDERED that the parties are permitted to submit additional memoranda on proposed punitive damages, proposed findings of fact, and proposed conclusions of law, to be filed no later than Tuesday, February 24, 2026 at 4:00 p.m. – at which time, the hearing shall be closed.”

Complainants and the Executive Director did not file an additional memorandum. Respondent did.

“Punitive damages are assessed in addition to compensatory damages to punish a respondent for aggravated or outrageous misconduct, and to deter respondent and others from similar conduct in the future.” *Hoshijo, Exec. Dir., on behalf of Serena Kyi-Yim v. Morning Hill Foods, LLC*, Dkt. No. 16-002-E-A, at 25 (Haw. Civ. Rts. Comm’n Dec. 12, 2017) citing *Masaki v. General Motors Corp.*, 71 Haw. 1, 6 (1989). The standard of proof is “clear and convincing evidence” that Respondent acted “intentionally, or wantonly, or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some willful misconduct or entire want or care that would raise the presumption of a conscious indifference to consequences.” *Id.*, at 25.

The evidence in the record includes the following. The rental agreement indicating that

²⁷ Pililaau: “So, in closing, Your Honor, we will ask for damages, emotional distress damages that the Paynes suffered by Mr. Wagner’s discriminatory statements, and we would be asking for \$10,000.00. And we also will be asking for punitive damages, because, again, when you take in the context of the situation, the Paynes’ financial situation at the time, what the world was going through at the time, we would be asking for punitive damages.”

Hearings Examiner Adams: “Was that in your motion?”

Pililaau: “No, Your Honor. Um, and what those punitive damages would be, Your Honor, we will leave it up to you. And that’s it. Thank you.” Transcript: 70:12-24.

the rent will be raised by \$200 for any additional occupant. The text on May 9, 2020, which states that the rent will go up \$100 when the Complainants bring home their newborn child. The text on August 21, 2020, which offers to show the Complainants a two-bedroom unit for the same rent as the are currently paying. Respondent's testimony from the hearing on February 10, 2021 where, when questioned by the court, he quoted from his rental agreement and provided his interpretation of the agreement, which included terms of limitation based on familial status.

Respondent has claimed repeatedly that he did not know that his statement regarding a rental increase due to the birth of a child was illegal. Even at the hearing, he focused on the rent increase as the crux of the problem as if he had no awareness that his written and oral statements were illegal.²⁸ He further claimed that his text, which violated HRS § 515-16, was not a binding agreement. He cited the terms of the rental agreements and submitted five exhibits of "valid" rent increases, all of which were written on paper (not emails or texts) as specified in his rental agreement. *See* Exhibits RP1-5.

Respondent's statements, in both the rental agreement and the text of May 9, 2020, were explicit statements of possible a rent increase or eviction based on an increased number of individuals living in the unit. What was not explicit in the rental agreement was whether that clause applied to newborns, which was made clear in Respondent's text of May 9, 2020.

No evidence was provided about whether other tenants were treated similarly.

There is evidence that Respondent took corrective action. On August 16, 2020, he sent a text that offered a two-bedroom apartment with no rent increase. The testimony by all parties is

²⁸ TR at 2:10: "...is this is about me raising the rent on them?"; 2:20: "I never raised the rent on them"; 2:24-25: "I always write them up, type them up, and give them to the tenant"; 3:8: "I never raised the rent on them." 6:14-17: "Here's what I wrote. Moving in additional people will cause the rent to increase \$200.00 per person. Uh, I'm talking about other people moving in. I'm not talking about their family growing." 27:13-14: "... what does all this have to do with the raising the rent?"; 31:21-22: "... this is not relevant to the \$100.00 raise in the rent."

that the offer was made, and none of the parties followed through to accept, reject or withdraw the offer. Respondent emphasized at the hearing that he never raised the rent on the Complainants.²⁹ He underscored that he texted the proposed rent change rather than sending it in writing on paper because pursuant to the terms of the Rental Agreement, emails and texts are not “legally binding”.³⁰ The fact that the rent was not raised does not negate that an illegal statement was made, but it can have a mitigating effect on damages.

The Complainants claim that the statement made by Respondent at the hearing on February 10, 2021, was Respondent’s effort to “persist” in the discrimination. However, as indicated, Respondent’s statement was made in response to a question by the Court about the terms of the contract. It was also noted above that Complainants have a second child and offered no evidence that Respondent made any remarks about the second child.

None of these communications, separately or collectively, constituted clear and convincing evidence, that Respondent intentionally, or wantonly, oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations. Therefore, the Executive Director failed to meet its evidentiary burden. Consequently, no award for punitive damages will be made.

VI. RECOMMENDED ORDER

Based on the foregoing findings of fact and conclusions of law, I recommend that the Commission find and conclude that:

1. Discrimination based on familial status is proven by the preponderance of

²⁹ Wagner: “Well, my final statement is, I never raised the rent on them. That’s why we’re here, because I raised the rent on them, but I never raised the rent on them.” Transcript at 75:10-12.

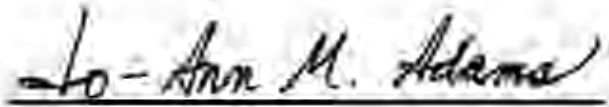
³⁰ The last paragraph of the rental agreement states, “Emails & Texts are not a Legal or binding form of Communication. All Legal Bilateral Agreements, i.e., communication between Owner/Manager and Tenant/Renter MUST BE in writing on PAPER. Notice to move out must be in writing on paper. When in doubt put it in writing.”

the evidence.

2. Compensatory damages in the amount of \$3,000 be awarded in total.
3. No Punitive damages be awarded.
4. Respondent shall view the entire 2025 Fair Housing Conference training, which can be found at <https://www8.honolulu.gov/dcs/fair-housing-conference/>. This virtual training was held during Fair Housing Month in April 2025. Respondent will provide the Hawai'i Civil Rights Commission, c/o Executive Director, 830 Punchbowl Street, Room 411, Honolulu, Hawai'i 96813 or by e-mail to eric.k.pililaau@hawaii.gov, with the date of completion of the training within 90 days of the Commission's final decision and order.
5. HCRC shall issue a press release regarding the results in this matter, the publication of which shall be paid by Respondent.

Dated: Honolulu, Hawai'i, April 24, 2026.

HAWAI'I CIVIL RIGHTS COMMISSION

A handwritten signature in black ink that reads "Jo-Ann M. Adams". The signature is written in a cursive, flowing style.

Jo-Ann M Adams, Hearings Examiner

Copies sent to:

Enforcement Attorney, Eric Pililaau
Complainants Brandie Payne and Gregory Payne
Respondent Peary Gene Wagner

Docket no: 25-001-H-F

Hearing Examiner's Findings of Fact, Conclusions of Law, Decision, and Recommended Order.