

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
George White and Theresa White,

Charging Party,

v.

Christopher Kocerka and
Maria Kocerka

Respondents.

HUDALJ 05-94-0537-8
Decided: May 4, 1999

Christopher Kocerka and
Maria Kocerka, *pro se*.

Lewis Nixon, Esq.,
Geoffrey T. Roupas, Esq., and
Michael Kalven, Esq.,
For the Secretary and the Complainants.

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed by George White and Theresia¹ White (“Complainants” or “Aggrieved Parties”), alleging that they had been denied housing in an apartment building by Christopher Kocerka and Maria Kocerka (“Respondents”), on

¹ Theresia White's name is spelled without the “T” throughout the Charging Party's papers regarding this case. Since she spells her name as in the first word of this sentence in her signatures that appear on the Complaint and on the State of Illinois Charge of Civil Rights Violation, I have adopted her spelling of her name in this Initial Decision.

the basis of race or color, in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-19 ("Act"). It is adjudicated in accordance with Section 3612(b) of the Act and the regulations of the Department of Housing and Urban Development ("HUD") that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On August 25, 1998, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD's Assistant General Counsel for the Midwest issued a Charge of Discrimination against the two named Respondents, alleging that they had engaged in discriminatory practices on the basis of race or color, in violation of 42 U.S.C. §§ 3604(a), (c), and (d) of the Act, which are codified at 24 CFR 100.60, 100.75, and 100.80, respectively.

The Charge of Discrimination was accompanied by a document entitled "Important Notice." This Notice, *inter alia*, states that the named Respondents were required to file an Answer to the Charge of Discrimination within 30 days of the service of the Charge: *i.e.*; by September 24, 1998. It further provided the types of statements that are required to be part of the Answer. And, finally, the Notice warned Respondents that failure to file an Answer within the time period specified would be deemed an admission of all matters of fact recited in the Charge, and could result in the entry of a default decision. An Answer was never received.

On October 1, 1998, the Secretary filed a Motion For Entry Of Default Decision, based upon Respondents' failure to file an Answer in the required amount of time. In response to that Motion, I issued an Order To Show Cause on October 14, 1998. The Order required Respondents to file their Answer, along with a statement to show cause why their Answer should be accepted as a late entry into the record of the case, by October 29, 1998. This Order warned again that a failure to file an adequate response to the Order To Show Cause would constitute Respondents' consent to entry of a default judgement against them. No response was received by this forum. Accordingly, on November 13, 1998, I entered a Default Judgement into the record, and ordered that the allegations in the Charge of Discrimination were deemed admitted.

A hearing was conducted in Chicago on December 17, 1998, for the sole purpose of determining damages. Post-hearing briefs were ordered to be filed by February 8, 1999, and the Secretary did so on February 9, 1999. On March 12, 1999, the Secretary filed a Motion For Leave To Amend Post-Trial Brief along with Amendments to the brief. By Order of March 12, 1999, I granted the Motion, and accepted the Amendments into the record. Thus, the record was closed, and this case was ripe for decision on this last-named date.

**Findings of Fact by Default
From the Charge of Discrimination**

1. Complainant George White is a black person. Complainant Theresia White is a white person. They are married and were married at all times relevant to this case. Charge, ¶4.

2. At all times relevant to this case, Respondents, Christopher Kocerka and Maria Kocerka, were contract purchasers of and managed the twelve-unit dwelling building at 8510 West 95th Street, Hickory Hills, IL (“the building”). Charge, ¶5.

3. On or about October 19, 1993, after seeing a “For Rent” sign on the lawn in front of the subject building, Complainant Theresia White telephoned the number on the sign and made an appointment to see the unit with a man who identified himself as Mr. Kocerka, the owner. The appointment was for 10:00 a.m. on October 20, 1993. Theresia and George White arrived for the appointment at the scheduled time. They observed a man waiting in the entrance of the building. When they got out of their car, this man sent another man to tell them that the unit had been rented. Charge, ¶6.

4. About one hour after leaving the building, Ms. White phoned the same number she had previously called and asked a woman who answered to speak with Mr. Kocerka. When he came onto the line, she asked if the unit was still available. He told her it was available. He then asked her whether she was black or white. She told him she was white. He stated that he did not want blacks in the building. She made another appointment to see the unit, but it is unknown whether she kept it. Charge, ¶7.

5. Complainants, who then rented a unit in the general neighborhood of the building, drove by the building regularly. They observed that the “For Rent” sign remained in front of the building for about four months after October 20, 1993. Charge, ¶8.

6. The unit that Complainants sought in the building remained available until it was rented to a white person on January 12, 1994. Charge, ¶9.

**Findings of Fact
From the Fair Housing Hearing**

1. Complainant George White is of mixed African American and American Indian heritage and identifies himself as a black person. Theresia White is of German and Irish

heritage. (T 6, 69)². The Whites have been married for 25 years, and they have three children: Sheree, age 24; George, Jr., age 19; and Michael, age 6; these ages being at the time of the hearing. The children have the complexion and appearance of African Americans. (T 6, 55).

2. In October, 1993, the Whites were living at 6616 S. Stewart Street, in the Engelwood neighborhood of Chicago, which is nearly solidly black. While living there, they did not suffer any racial discrimination problems. Prior to living in Engelwood, the Whites had lived in Buffalo, NY, where they also had never experienced any racial discrimination. (T 10). In October, 1993, Mr. and Ms. White decided to move because street gangs were trying to recruit George, Jr. (T 10-11).

3. On October 19, 1993, Ms. White was working at a restaurant in Hickory Hills, directly across the street from the subject building, and the Whites were looking for an apartment to rent in that area. It was while returning from viewing another apartment that they saw the "For Rent" sign described earlier. (T 11).

4. When she called about the availability of the advertised unit, Theresia White also learned that the rent was \$525 per month, including utilities. (T 13; C 6). As of that time, the Whites knew very little about Hickory Hills. (T 13).

5. About one month after the incident at the subject building, Theresia White left the job at the restaurant. (T 20). At about that time, the Complainants found another apartment to rent at 8636 West 85th Street, Apartment 202. This is in Justice, Illinois, and it was the Whites' current address at the time of the hearing. (T 22). When they moved into the apartment in 1993, the rent was \$600 per month, not including heat. The rent, as of the time of the hearing, had risen to \$770 per month. (T 24).

6. Justice, Illinois, is a contiguous suburb to Hickory Hills. The subject building is on a main thoroughfare, and Ms. White frequently passes it as she shops and runs other errands. She sees the "For Rent" sign in front of the building "at least six times per year." (T 23). Every time she sees that sign, Ms. White gets upset again. (T 26).

² The Secretary's exhibits are identified with a capital S and an exhibit number; those of the Respondents are identified with an R. Facts from the Charge of Discrimination are identified with a capital C and a paragraph number. The transcript of the hearing is cited with a capital T and a page number.

7. After her final conversation with Mr. Kocerka, Ms. White was very angry, and even wanted to “go visit” Kocerka regarding the incident. George White is better at containing his anger, and although he too was upset, he calmed his wife down. (T 15-16). Mr. White was more upset with himself than with what had happened, because he had not prepared his children for such an incident. (T 17). The children, and particularly George, Jr., could tell their father was upset “from the look ... on his face.” (T 50-51).

8. During the evening after the incident, Ms. White phoned her mother, her sister, and her brother, in Buffalo, to discuss what had happened. (T 16). She also phoned her daughter, Sheree, who was away at college, and the two women cried on the phone together over the fact that such a thing had been done to them. (T 17).

9. Theresia’s brother was a police officer and also had three children who are biracial. (T 16). He committed suicide about a year and a half prior to the hearing. (T 26-27). Throughout the period between the incident and her brother’s death, Theresia was trying to convince her brother to move to Chicago. (T 26).

10. Theresia told her brother about the incident the night that it happened. He had decided to move to Chicago with his family, but when she told him of the incident, he changed his mind. (T 16).

11. Every time Theresia thinks about her brother, she thinks that he might have come to Chicago if she had not told him of the racial incident. (T 26). She tells herself that if she had not told her brother of the incident, maybe he would still be alive. (T 61-62).

12. The Whites tried to protect their children from the incident, but that tactic soon broke down, and the children learned about it. (T 17). George, Jr., reacted with a lot of anger. (T 51). Michael, who was a baby when the incident occurred, later became aware of the incident because he overheard family discussions about it.

13. The incident is still a topic of family discussion. When the family talks about it, they still try to send Michael away, but he “remembers” the incident as far back as his memory goes. (T 56).

14. George, Jr., states that the incident has had a profound effect on him personally, as well as on the family in general. (T 72). He sometimes thinks or imagines that adverse things happen to him because of race, whereas he did not previously think in those terms. (T 68, 75).

15. Anna Rios is of Puerto Rican descent. She lived in the subject building from January 1993 to July 1997. She has two sons who lived with her during that time. One

was 15 years old in 1993, and the other was in sixth grade. During the period they lived

in the building, Ms. Rios and her children were the only non-white people who lived there. (T 30).

16. The Rios boys had black friends. Soon after Ms. Rios moved into the building with her sons, Mr. Kocerka asked her if the boys had black friends. When she said that they did, he told her he did not want any black people in the building. (T 31).

17. According to Rios, the apartments in the building are beautiful and desirable. (T 38).

Discussion

The regulation found at 24 CFR 180.420(b) authorizes judgment by default for failure to timely answer a charge of discrimination under the Act. The filing of an answer within 30 days after the service of the Charge is required, and any allegation in the Charge that is not denied is deemed admitted. *HUD v. Cabusora*, FH-FL, para. 25,026 at p. 25,288, *aff'd*, 9 F.3d 1550 (9th Cir. 1993). Since a default judgment has been entered in this matter, the only remaining issue is to determine the appropriate amount of damages and other remedies to be ordered.

Damages

Upon finding that a respondent has violated the Act, the Administrative Law Judge assigned to the case shall order appropriate relief, including “actual damages suffered by the aggrieved person[s].” 42 U.S.C. Section 3612(g)(3). The purpose of an award of actual damages in a fair housing case, as in civil litigation generally, is to put the aggrieved person in the same position, so far as money can do it, as he would have been had there been no injury or breach of duty, *i.e.*, to compensate the aggrieved person for the injury sustained. Schwemm, *Housing Discrimination: Law & Litigation*, p. 25, and cases cited therein. Actual damages that are compensable include tangible losses, emotional distress, and inconvenience.

Courts have long recognized the “indignity associated with housing discrimination.” *Phillips v. Hunter Trails Community Assn.*, 685 F.2d 184 (7th Cir. 1982); *Miller v. Apts. and Homes*, 646 F.2d 101 (3rd Cir. 1981). Because emotional distress is difficult to quantify, courts have not required proof of the actual dollar value of that injury. Heifetz and Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 J. Marshall L. Rev. 3, 17 (1992). Judges are afforded wide discretion in ascertaining emotional distress damages, limited by two critical factors: the egregiousness of the respondent’s behavior

and the effect of that behavior on the aggrieved party. *HUD v. Sams*, FH-FL, para. 25,069 at p. 25,651.

Theresa White

Theresa White has suffered extraordinary emotional distress, including guilt over the suicide of her brother, loss of self respect, and embarrassment as result of Respondents' act. Her distress has extended five years from the date of the incident to the present, and indications are that it will continue to haunt her. This incident released a poison in Ms. White's life that has caused her to suffer excruciating guilt and concern. She is a white woman married to a black man and the mother of three children who all appear to be black. She is a sensitive and loving mother who helped steer her family clear of the effects of discrimination until she looked into renting the subject apartment. She feels that she failed her family when she exposed it to the discriminatory acts of Respondents, and it is particularly hurtful to her that she was discriminated against not because of her own race and color, but because of the race and color of those she loves and those she brought into the world. It haunts her that she did so, every time she sees a "For Rent" sign at the building that turned her away.

Ms. White blames herself for her brother's suicide because she told him of the incident when it occurred, which he stated, caused him to change his plans to move to Chicago. She believes that her brother would not have done this deed if he had lived in Chicago and been near her and her family. It is not important that this forum has no way to determine with certainty whether or not what Theresa told her brother influenced his decision to stay in Buffalo or whether or not his coming to Chicago would indeed have prevented his suicide. The important facts are that White believes that these links are solid and that this forum is persuaded of the profound psychological damage that this belief has caused Ms. White.

One of the reasons that the incident was so damaging to Theresa White was her prior complete lack of cynicism about race. Nothing like this had ever happened to the White family before. The family did not experience racial discrimination during the period they lived in the mostly-black Engelwood area of Chicago. And they had not experienced it when they lived in Buffalo prior to their move to Chicago. Their neighborhoods were made up of mostly working class black people, and it says a lot about Theresa White that she never felt prejudice in these settings. But, while it says a lot about this family and how they deal with the world around them, this ability to get along and feel free of discrimination is also a reason why the incident with the Respondents has cut so deeply and lasted so long. It is as though they have lost their innocence. They are evidently still good and loving people, but this incident has changed their lives.

As to Theresa White in particular, the incident still haunts her and is likely to

continue to do so. As soon as she tried to move her family into a mostly white neighborhood, she was forced to suffer the turmoil and humiliation of being told, in effect, that while she was an acceptable person, her husband of twenty years and her much-loved children were not. Theresia is a white person, but she has lived with and among black people for many years without discriminating or being discriminated against. The color of her skin, and its difference from that of her husband and children, makes no difference to her or to the love that exists among them. But this incident dealt a blow to this view of her place in the world and to her self-respect as a person, a wife, and a mother.

The incident remains a common topic of conversation in the White household; it comes up once or twice per month. Sometimes, Theresia will say that she drove by the subject building, and the "For Rent" sign was up again. She then describes to her family the anguish and pain that it causes her to see it. That sign says to the family, and in particular to Theresia White, "This apartment is for rent, but you can't live here because your husband and children are black." It is humiliating for her that her husband's and children's race can be used as an impediment to gaining a better place to live. It is a sharp rebuke to the otherwise good life that she has with her family. She was traumatized. After five years, it has remained her personal obsession. Her reactions show she was hurt more deeply than she is able to describe. She blames herself for the pain and suffering her husband and children have endured. She blames herself for her brother's suicide. She blames herself that her children now know the adverse parts of what it is like to be black.

People who commit housing discrimination must take their aggrieved parties as they find them. *Stewart v. Closson*, 1 FH-FL, para. 15,596 (D. Tenn. 1988) (Plaintiff was poor, powerless and suffered deeply.); *HUD v. Kelly*, 2 FH-FL, para. 25, 034 (HUDALJ 1992); *Kelly v. HUD*, aff'd in part, vacated in part, and remanded in part (damages reduced), 3 F. 3d 951 (6th Cir. 1993); aff'd in part; rev'd in part, 97 F. 3d 118 (6th Cir. 1996) (Damage award gave consideration to the fact that complainant was sensitized by past discrimination.). The judge in a given case must take into consideration the susceptibility of the victim to injury. Heifetz and Heinz, *id.* at p. 21. Based on her reactions to this incident, and the web of guilt, shame, and distress that it built, it is clear that Theresia White was especially susceptible to the injury and has suffered an extraordinary amount as a consequence.

George White, Sr.

Mr. White also suffered substantial injury from the incident. Other family members testified that his reticence to describe the events and his feelings about them is an indicia of the seriousness of his injury. According to them, he is generally reluctant to express anger and he is particularly reluctant to describe his injury in this case for fear that it will cause more anger and fear for his family. George White, Sr., is black, he is married

to a white woman, and his three children are black, and identify themselves as such. Theresia and George, Jr., testified that he has worked to keep his family a loving unit, and that he has sent the eldest to college. In their view, he is a caring father who always sought to shield his family from discrimination.

When the incident occurred, Mr. White sought to calm Theresia, and strongly urged her not to confront Kocerka. He even made light of it, at first, to try to diminish its effect on the family. But this incident threatened the life he had built, his marriage, and his family. It made George, Sr's., skin color a problem that disadvantaged his family for the first time. Theresia stated that it was humiliating and damaging to his self respect. He was made to worry about what effect the incident would have on his children. According to his wife, George, Sr., also blamed himself for not adequately preparing his children for a world where racism occurs and does so in hurtful ways.

Worse, the incident and its effects remain a threat. It has upset Theresia for all these years, with no sign of abatement. Aside from the fears and humiliation and guilt that George, Sr., apparently feels directly as a result of the incident, he has lived and suffered with the greater ill effects on Theresia. See *Davis v. Mansards*, 597 F. Supp. 334, 347-348 (N.D. Ind. 1984), wherein the court awarded damages for the emotional distress suffered by a black tester in a racial discrimination case, and then also awarded damages to the tester's husband, who "suffered through his wife's depression while sustaining his own reopened wounds."

Under the Fair Housing Act, emotional stress and humiliation can be inferred from the circumstances, as well as established by testimony, even in the absence of economic or financial loss, or medical evidence of mental or emotional effects. *Seaton v. Sky Realty*, 492 F.2d 634, 636 (7th Cir. 1974) (unnecessary to provide evidence of economic or financial loss, or medical evidence of mental or emotional impairment, for an award of compensatory damages arising from humiliation). According to the Charging Party, Mr. White was not present for, and could not testify at the hearing, because the Whites' youngest child suffered an emergency asthma attack early that day, and Mr. White stayed with him. Nonetheless, it is established from his wife's and his son's testimony, and in any event can be inferred, that George, Sr., suffered humiliation, embarrassment, and a loss of self-respect because of the circumstances of the incident. The injuries to him were because the family had never before experienced racial discrimination. Then, the first time they tried to move from a black neighborhood to a majority white neighborhood, they were rebuked because he is black and his children are black. The inference of the effects of this on Mr. White is easily made.

The Whites' Children

The Complainants can be awarded damages for the distress they experienced as a result of witnessing the distress that the Respondents' conduct caused their children to suffer. The Whites had tried to protect their children from discriminatory conduct. The three children had not experienced racial discrimination prior to this incident. They had been raised in a world where race made no difference. This incident forced an exposure to racism upon them in spite of their parents' best efforts.

The incident shook the world of the three young Whites. The eldest, daughter Sheree, was the first to share her mother's grief. They spoke by phone, and they cried together. The two women still share the hurt and distress caused by the incident. Sheree still talks with her mother about Theresia's belief that she caused her brother's death. Clearly, Sheree has been adversely effected by the incident.

George, Jr., a seemingly quiet and peaceful soul, was initially uncharacteristically angry over the incident. He spoke of seeking revenge, although he never made an attempt in that direction. Having previously lived a fairly happy and unconcerned life, with little or no thought of race, he became a bitter young man, frequently seeing racial unfairness in his daily affairs where it did not always exist. Only now, some five years later, is George, Jr., regaining his previous composure and perspective.

Michael, the youngest child of the Whites, was only one year old when the incident happened. Although the older Whites tried not to talk about it in front of him, they were unsuccessful. He knows of the incident as family lore, to the point that he believes that he remembers it himself. Thus, he never had that period of innocence that his older siblings enjoyed; that period during which race never mattered that his parents had so carefully constructed for their children.

Before the incident, the White children did not have knowledge of racism because they were raised to not care about race. It did not matter to them. One might think that the parents here were derelict in not preparing their children for reality, but surely there is no requirement to expose one's children to a nasty element of life when it would appear unnecessary. Moreover, the Act legislates against the sort of racism that overtook these people. As the court said fifteen years ago in *Davis v. Mansards*, 597 F. Supp. 334, 347-48 (1984), a case brought under the Act for refusal to rent on the basis of race, "In 1984, no one should have to toughen themselves to racial discrimination."

Damages to these parents of interracial children for the grief that they suffered from seeing their children's emotional distress as a result of the incident are appropriate. *Stewart v. Closson*, 1FH-FL, para. 15,596 (D. Tenn. 1988) (infant cannot suffer emotional distress from denial of housing, but mother of interracial child awarded damages for her grief over "hardships the child would endure from unfair prejudice often aimed at a child born to an interracial couple").

REMEDIES

Damages

Intangible Damages

The Charging Party has requested damage awards for intangible losses to both Theresia White and George White, Sr., in the amounts of \$50,000 and \$40,000, respectively. In *Broome v. Biondi*, FH-FL, para 16,240 at pp. 16,240.8-.11, 17 F. Supp. 2d 211 (EDNY 1997), an interracial couple sought to sublet an apartment. The husband, who was black, was interviewed by the condo board and felt the members' hostility. There was no direct evidence of racial hostility. The jury awarded each of the complainants \$114,000 for emotional distress, and the reviewing court found there was enough evidence to sustain the award. In *Portee v. Hastava*, 853 F. Supp. 597 (EDNY 1994) *aff'd*. 104 F.3d 349 (2d Cir. 1996), the white woman of an interracial couple, with a five-year-old child, made a contract with the defendant realtors to lease a dwelling. When the man of the couple, who was black, came to sign the lease, the realtors backed out of the deal. The jury awarded \$208,000 to the interracial couple and their son for compensatory damages. The court found the amount to be unconscionable and, on retrial, reduced it to \$101,000. In *Grayson v. Rotundi*, FH-FL, para. 15,516 (EDNY 1984), two black women separately were denied housing when they tried to rent an apartment from the Respondents. In both cases, the aggrieved women thought that these things did not happen anymore. The court upheld jury compensation damage awards of \$40,000 and \$25,000, and an award of \$250,000 for each of them in punitive damages.

In the seminal case of racial discrimination adjudicated by this forum, *Hermon v. Blackwell*, FH-FL, para. 25,001 (1989), Respondent real estate agent refused to sell his house to the prospective buyers, a black couple with children. On appeal, the court upheld the award of \$40,000 made by the Administrative Law Judge to compensate the couple for their embarrassment, humiliation, and emotional distress. *Secretary, HUD On Behalf Of Heron v. Blackwell*, 908 F.2d 864 (11th Cir. 1990). In *Banai v. HUD*, 102 F.3d 1203 (11th Cir. 1997), Respondent refused to rent a house to an unmarried black couple. It was the first overt discrimination that either aggrieved party had personally experienced, and they were devastated and angry when they learned that the housing was refused to them because they were black. The circuit court upheld a compensatory award of \$35,000 to each of the aggrieved parties.

After the incident in the instant case, the Whites stayed in the apartment they had wanted to leave for an additional month while searching further for alternative housing. They were forced to stay in the neighborhood that they were trying to escape because of its

adverse effect upon and threats to George, Jr. They were very unhappy about having to stay this extra month. It was Respondents' illegal activity that forced them to do something they did not want to do and that the Act should have protected them against having to do. This is a distinct injury from the initial shock of being discriminated against. It is also a distinct injury from the repeated shock of seeing the "For Rent" sign at the subject apartment house, months after being told they could not rent there because they are black. The aggrieved parties experienced a real feeling of loss of their right to live where they chose, and suffer further from the reminder every time that sign goes back up on display.

In the instant case, the evidence of discrimination is direct, *i.e.*, the Whites were told they could not rent because they were black. In terms of the emotional impact, the evidence of the Whites' distress, and particularly of Theresia White's continuing distress because of the incident is compelling. The amounts requested by the Secretary are well below those awarded by some courts in similar circumstances. They are in accord with the amounts deemed proper in prior cases adjudicated by this forum, and approved on appeal, and they are reasonable. Thus, failing there being any argument against the amounts of damages for intangible losses that are requested by the Charging Party on behalf of the Aggrieved Parties, these amounts need not be altered. Accordingly, the amounts of \$50,000 to Theresia White and \$40,000 to George White, Jr., will be awarded in the Order at the end of this initial decision.

Tangible Damages

The Whites also have out-of-pocket losses as a result of the illegal discrimination. Within about a month, they found the unit where they now live. The distance between the subject building and where the Whites live now is about five minutes. There is no appreciable difference between the two locations in the distances to jobs or other amenities.

The tangible damage is attributable to a difference in rent. Theresia White stated that Respondent Kocerka had quoted the rent for her desired unit at \$525 per month, inclusive of utilities. Since one month after the incident, the Aggrieved Parties have been living in another apartment, in Justice, Illinois. The rent there is \$600 per month; \$75 per month more than the amount they should have been able to pay. The Charging Party requests \$3,000 to compensate the Whites for this difference in rent for the forty months that passed between the incident and the hearing, and there is no reason shown for any

different amount to be adjudged. Accordingly, \$3,000 for tangible damages will be ordered to be paid to the Whites in the Order at the end of this initial decision.

Civil Penalty

The Charging Party has also asked for the imposition of a civil penalty of \$11,000. This is the maximum that can be imposed on a respondent who has not been adjudged to have committed any prior discriminatory housing practices. 42 U.S.C. § 3612 (g)(3)(A); 24 CFR 180.670(b)(3)(iii). In accordance with the last-cited regulation, determination of an appropriate penalty requires consideration of five factors: 1. the nature and circumstances of the violation; 2. the degree of the Respondent's culpability; 3. the goal of deterrence; 4. whether the Respondent has been previously adjudged to have committed unlawful housing discrimination; and 5. the Respondent's financial resources.

The public interest requires a substantial civil penalty against the Kocerkas. It has been 30 years since the Civil Rights Movement and the resulting legislation, which included the Fair Housing Act. In spite of that, and their long-time engagement in apartment rentals, the undisputed evidence is that it was Respondents' systematic policy to discriminate against black applicants who sought housing in their building. Respondent Christopher Kocerka told Theresia White that he did not want blacks living in the building. He told Anna Rios that he did not want blacks in the building, not even to visit. While the "For Rent" sign was frequently displayed at the building, there were no black people living in it during the three and a half years Rios lived there. The Respondents practiced a solid pattern of racial discrimination, and they illegally imposed on the public interested in renting an apartment in their building, a message in contradiction and defiance of the legislated public interest providing for fair housing throughout the United States.

Respondents ignored the Charge of Discrimination and, thus, HUD's authority to enforce the Act, as well as this forum's jurisdiction to adjudicate charges that arise from violation of the Act. They ignored their own responsibility under the Act by defaulting on their right to defend themselves against the charges brought in this case. See *HUD v. Wagner*, FH-FL, case 25,032, at p. 25,339 (1992) (imposing maximum civil penalty against owner who defaulted by failing to answer the Charge of Discrimination). By so defaulting, Respondents waived their right to refute the inferences that can be derived from the facts, as well as the Charging Party's arguments in favor of an award of damages.

The goal of deterrence could not be more important than it is in this case, where people's race, with nothing further, was used as a reason to bar them from the housing they desired. Twenty years after passage of the Act, there was undisputable evidence that

racial discrimination in housing was still rampant in this country.³ Thus, there is a continuing need for deterrence, and a substantial civil penalty serves that very important goal.

Evidence regarding Respondents' financial circumstances is within their knowledge, so they have the burden of introducing such evidence into the record. If they fail to produce credible evidence against assessment of a civil penalty, the penalty may be imposed without consideration of their financial circumstances. *Gerard*, FH-FL at 25,092. Because the Respondents in this case defaulted, there is no evidence of record about their financial circumstances. Furthermore, because Respondents defaulted, there is no evidence in the record as to whether they have been previously adjudged to have committed unlawful housing discrimination.⁴

The Charging Party requests "the maximum \$11,000 civil penalty," but does not specify its request as being for each Respondent. Since a spouse cannot be liable for a civil penalty in the absence of evidence of personal involvement in the incident, I take this request to mean that the Charging Party requests that a civil penalty of \$11,000 be imposed on Respondent Christopher Kocerka. Such will be part of the Order at the end of this initial decision.

Injunctive Relief

That part of the Fair Housing Act that is codified at 42 U.S.C. § 3612(g)(3) also authorizes the Administrative Law Judge to order injunctive or other equitable relief. Here, injunctive relief is necessary to ensure that the Respondents will not again conduct themselves in like manner. To that end, the Charging Party has requested that I enter a permanent injunction against Respondents that restrains them from further violations of Title VIII and appropriate affirmative relief to protect against recurrence of the Respondents' discriminatory conduct. This request is well taken, however, the Charging Party has not provided any guidance as to the nature of the relief requested. Thus, injunctive relief of this forum's own design will be set forth as part of the Order that follows.

ORDER

³ An Urban Institute housing study conducted in 1989 found that 53% of black renters and 59% of black home buyers could be expected to encounter one or more incidents of discrimination while looking for housing. Cited in *Broome v. Biondi*, *supra*, para. 16,240 at fn.10.

⁴ HUD's investigation shows no such previous HUD charge.

Having concluded that Respondents Christopher Kocerka and Maria Kocerka violated provisions of the Fair Housing Act that are codified at 42 U.S.C. §§ 3604(a), and (d), as well as the regulations of the U.S. Department of Housing and Urban Development which are codified at 24 CFR 100.60, 100.75, and 100.80, respectively, it is hereby

ORDERED that,

1. Respondents are permanently enjoined from discriminating against the Aggrieved Parties, Theresia White and George White, Sr., or any member of their family, with respect to housing, because of race, color or any other category forbidden by the Act, and from retaliating against or otherwise harassing them or any member of their family.

2. Respondents Kocerka shall institute record-keeping of the operation of the subject building and all other rental units which they may own, which is adequate to comply with the requirements set forth in this Order, including keeping all records described in paragraph 3 of this Order. Respondents Kocerka shall permit representatives of HUD to inspect and copy all pertinent records at reasonable times after reasonable notice.

3. On the last day of every third month beginning June 12, 1999, and continuing for three years, Respondents Kocerka shall submit reports containing the following information regarding the previous three months, for all properties owned or otherwise controlled by Respondents, to HUD's Office of Assistant General Counsel for the Midwest, 77 West Jackson Blvd., Chicago, Illinois 60604, provided that the Assistant General Counsel may modify this paragraph of this Order, as deemed necessary to make its requirements less, but not more, burdensome:

a. a duplicate of every written application, and written description of every oral application, for all persons who applied for occupancy of all Respondents' housing units, including a statement of each person's race, whether the person was rejected or accepted, the date of such action, and, if rejected, the reason for the rejection;

b. a list of vacancies at all Respondents Kocerka's housing units, including the departed person's race, the date of termination notification, the date moved out, the date the unit was next committed to occupancy, the race of the new occupant, and the date that the new occupant moved in;

c. current occupancy statistics indicating which of Respondents Kocerka's housing units are occupied by families or groups including at least

one person of non-white race;

d. sample copies of advertisements published or posted during the reporting period, including dates and what, if any, media was used, or a statement that no advertising was conducted;

e. a list of all persons who inquired in any manner about renting or buying one of Respondents Kocerka's housing units, including their names, addresses, races, and the dates and dispositions of their inquiries; and

f. a description of any rules, regulations, leases, or other documents, or changes thereto, provided to or signed by any applicants for rental of a Kocerka-owned housing unit.

4. Respondents Kocerka shall inform all their agents and employees, including any officers and board members of their businesses, of the terms of this Order and shall educate them as to these terms and the requirements of the Fair Housing Act.

5. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondents Kocerka shall pay damages in the amount of \$51,500 to Theresia White and \$41,500 to George White, Sr., to compensate them for the losses that resulted from Respondents' discriminatory activity.

6. Within forty-five days of the date that this Initial Decision and Order becomes final, Respondents Kocerka shall pay a civil penalty of \$11,000 to the Secretary, United States Department of Housing and Urban Development.

7. Within fifteen days of the date that this Order becomes final, Respondent Christopher Kocerka shall submit a report to HUD's Office of Assistant general Counsel for the Midwest that sets forth the steps it has taken to comply with the other provisions of this Order.

This Order is entered pursuant to the applicable section of the Fair Housing Act, which is codified at 42 U.S.C. Section 3612(g)(3), and HUD's regulation that is codified at 24 CFR 180.680, and it will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the Secretary for Housing and Urban Development within that time.

/s/

ROBERT A. ANDRETTA
Administrative Law Judge

