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 Nancy I. Austin,

Charging Party,

v.

Virginia Jerrard

Respondent.

HUDALJ 04-88-0612-1

Decided: September 28, 1990

Edward W. Gadrix, Jr., Esq.
For the Respondent

David H. Enzel, Esq.
Jon M. Seward, Esq.
For the Secretary

Before: William C. Cregar
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of a complaint of discrimination based upon race in violation of the Fair Housing Act of 1968, 42 U.S.C. Sec. 3601, et seq ("Fair Housing Act" or "Act") and was processed in accordance with the Fair Housing Amendments Act of 1988, Pub. L. 100-430, 102 Stat. 1619 (1988) and 24 C.F.R. Parts 103 and 104. The complaint was filed with the Department of Housing and Urban Development ("the Department" or "HUD") on September 2, 1988. A determination of Reasonable Cause was made and a Charge of Discrimination filed on behalf of the Complainant by the

Secretary of the Department ("Secretary") on February 21, 1990. A hearing was held in Cartersville, Georgia, on June 13-14, 1990. Post-hearing briefs were to have been filed by the parties on or before July 30, 1990. Only the Secretary has filed a post-hearing brief.

The Government alleges that Complainant and her family were discriminated against by having been subjected to extraordinary rental increases resulting in her eviction from an apartment which she rented from Respondent (a white person) because she and her children (white persons) had black persons as guests both in the rented apartment and on the apartment grounds. The Government requests compensatory damages in the amount of $641.56, damages for embarrassment, humiliation, emotional distress and loss of civil rights in the amount of $75,000, and a maximum civil penalty in the amount of $10,000. In addition, the Government requests injunctive and associated relief.

Respondent admits that she raised Complainant's rent and evicted the Complainant and her children. However, she claims these actions were not the result of any associations Complainant and her children had with black persons, but, rather, resulted from damage to the apartment and several disturbances caused by Complainant's children. Respondent also raises a claim that the action is barred because of an "accord and satisfaction" purportedly established by a settlement reached in the eviction proceeding brought by the Respondent against the Complainant. This claim was made for the first time at the hearing in this matter.

Findings of Fact

Respondent, Virginia Jerrard, is a 64 year old white woman and the sole owner of property located at 30 Porter Street, Cartersville, Georgia. Tr. pp. 176,192. The Porter Street property is a building containing four identical two-bedroom apartments on a large lot with a driveway and a large area behind the building. Tr. p. 26. Respondent has been renting the property since 1974. She has never rented these apartments to black persons. Tr. pp. 177,201.

Complainant, Nancy Austin, is a white, recently-married[1] woman with two sons, Jason (12) and Douglas (9), both white. Tr. p. 25. Prior to moving to Cartersville, Complainant had lived in Florida. In February, 1988, she underwent psychiatric treatment in a South Florida mental institution for an emotional breakdown after learning of allegations that her first husband had sexually molested the two boys. Tr. pp. 108-109. Complainant felt betrayed by him because she had trusted him so completely. Her therapy consisted of learning what precautionary steps to take prior to placing her whole trust in people. Tr. p. 134.

Ms. Austin's aunt, Merita Beyer, of Kingston, Georgia, agreed to take custody of

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[1]Complainant was divorced and had not remarried at the time of the events which are the subject of this action.

the children while Complainant was institutionalized. Ms. Austin subsequently joined her aunt and children in Kingston, Georgia, and, in June, 1988, moved to nearby Cartersville. Tr. pp. 116-117.

Complainant and her aunt met Respondent at 30 Porter Street on July 1, 1988. Respondent expressed an interest in renting Apartment 4. This apartment was suitable to Complainant's needs. There was a large lot for the children to play on, it was within walking distance of their church, was on the school bus route, and the rental of $250 per month was within Complainant's means. Tr. p. 33. Respondent did not require Complainant to supply any credit references. Respondent merely inquired of Ms. Beyer whether she knew Respondent's daughter who also lived in Kingston. Ms. Beyer stated she had heard of her. Tr. pp 33-34. This information was sufficient to satisfy Respondent. The next day Complainant gave Respondent a $100 security deposit to cover any damages to the apartment. Sec. Ex. 3; Tr. pp. 35,212,238. The apartment was to be painted prior to occupancy. Ms. Austin did not move into the apartment until July 11, 1988, as she is allergic to paint fumes. Tr. p. 35. On that date Complainant also made her first rental payment of $250. Sec. Ex. 4; Tr. p. 47. Her second payment, also in the amount of $250, was made on August 5, 1990. Sec. Ex. 6.

Complainant was formerly employed as a sewing machine operator at Morello's, a sewing factory in Cartersville, from June 20 to August 18, 1990. She was paid an hourly wage of $4 per hour ($160 per week). There was no overtime and no way of increasing her earnings above that rate. Accordingly, on August 18th she began employment at Nantucket, another sewing factory. She was paid a base rate of $29.20 per day, but could increase her earnings to $40 per day by increased output. She could also receive pay for overtime work. After two weeks at Nantucket she increased her salary from $140 per week to as high as $200 per week. Tr. pp. 30-32. This was accomplished by leaving for work an hour early, staying an extra hour in the afternoon, and working between six and eight hours on Saturday. Tr. p. 71.

During the month of August, Complainant and her children received numerous visitors including several black persons. These included Perry Johnson, characterized by Ms. Austin as a "big brother" to her children, who visited nearly every day during August. Tr. pp. 51,118-119. Rhonda Cooley, a co-worker, visited Complainant with her two children on August 9th or 10th. Tr. p. 53. Ms. Cooley also visited Complainant with other co-workers two or three times during their lunch hour. Tr. p. 52. Gwen Cook, another co-worker, visited on one occasion between August 20th and 23rd. Tr. p. 55.

Ms. Cook's cousin, Richard Patton, a black person, visited on two occasions between August 18th and 24th. Tr. p. 54. Mr. Patton had dinner in the apartment on his first visit. When he went to leave, his car wouldn't start and had to be left at the apartments. Two days later, Mr. Patton accompanied by two friends, also black, removed the car. Tr. pp. 54-55.

Upon returning from work on August 10, 1988 Complainant entered her

apartment and found Respondent "checking the carpet".[2] Tr. p. 58. Respondent mentioned a broken cinder block, which served as a step into the apartment[3], and complained about the way the apartment was being maintained[4]. She also complained about clothes hanging out on the clothes line[5]. She told Complainant that she "lived worse than hogs," that if they were going to get along, she "should live in the projects". Finally, Respondent stated that she didn't like the idea of "those people" coming around and that if Complainant were going to associate with "those people", she should live with them. Tr. p. 59.

Respondent left the apartment for a short time. Upon her return, Perry Johnson had returned from a visit to the store with the children and was playing with them in the front yard. Tr. p. 64. Respondent told Complainant that she was "keeping kids".[6] Complainant denied this, claiming she could not babysit children because of her eight-hour workday.[7] Tr. pp. 65,222. Mr. Johnson, having overheard this conversation, approached Respondent and told her that it was not possible for Complainant to keep children because she worked full time. Respondent told him to leave her property and if he did not, *he* would be another reason to evict Ms. Austin. Sec. Ex. 13.[8]

The next day, August 11th, Respondent sent Complainant a letter increasing her rent to $350 per month beginning September 5th. The letter states, "All other apartments this nice rent for a lot more than this. I will expect it to be paid on the due date." Sec. Ex. 7; Tr. p. 224. On August 25th Respondent again visited Complainant to make sure Complainant received the letter. Complainant denied having received it.[9]

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[2]The carpet was 13 years old and in need of replacement. Tr. p. 16.

[3]There is no evidence that Complainant's children broke the cinder block. Complainant, however, subsequently replaced it. Tr. p. 62.

[4]Complainant acknowledges that the children's toys were scattered about, that she had no clothes hangers for their clothes which were laid on the floor of the closets. Tr. p. 60.

[5]Complainant subsequently purchased a washer and dryer and took the clothes line down. Tr. p. 66.

[6]One of the neighbors made this remark to Respondent. Tr. p. 222.

[7]During the day, Complainant's children went to the pool with her aunt.

[8]Mr. Johnson did not testify. This account is contained in a handwritten statement which Mr. Johnson furnished to the Department on February 27, 1990. However, because no objection was made to its admission and it is corroborated by Complainant's testimony, I have credited the handwritten statement. Tr. pp. 41-42.

[9]Complainant admits that this was lie. She had in fact received the letter, but she believed she could get an additional 30 days by forcing Respondent to send another letter. She needed this time raise the additional rent. Tr. p. 72.

This reply made Respondent "mad". She went to the Post Office before it closed, wrote another letter to Complainant, and sent it by certified mail. Tr. pp. 225-226. This second letter increases the rent by an additional $50 per month ($400) beginning September 25, 1988.[10] It states, "No one else in town rents apartments this nice for less than $400.00. I will expect the rent on the due date." Sec. Ex. 8.

On September 7, 1988, Respondent visited Ms. Austin to collect the rent for September. Tr. p. 226. Complainant, referring to the last sentence of the August 25th letter, told Respondent she thought the September rent was not due until September 25th. Tr. p. 75. Respondent replied that she wanted $299.90 on September 5th and $400 on September 25th. Tr. p. 76. Complainant stated she could not afford $699.90 in one month's time, but could pay the $299.90 for the month of September. Tr. p. 76. Respondent denies that this offer was made, however, she acknowledges the Complainant stated that she did not have the money to make the payment. Tr. p. 226. Respondent did not offer to extend the payment date or to arrange any other accommodation with Complainant.

The next day, the $299.90 not having been paid, Complainant received a dispossessory warrant and a summons to appear at a dispossessory hearing at the Bartow County Magistrate's Court on September 23, 1988. Sec. Ex. 10; Tr. p. 79. Complainant sent a written response, dated September 20, 1990. In her response she states: "Each time i (sic) received visitors of the Black race (sic) she writes me an increase. Even so I feel very harassed by her constant increases and verbal assaults at my door." Sec. Ex. 11.

Complainant discussed her problem with Gerald Verzaal, a white, Georgia attorney, and a member of Complainant's church. Mr. Verzaal is a friend of the family. He visited the family four or five times in August and September and helped Jason earn a Boy Scout religious emblem award. Sec. Ex. 14, Tr. pp. 159,161. She showed him a newspaper advertisement for an apartment at 30 Porter Street. The rent being asked was $300. Tr. pp. 80,151-152. Mr. Verzaal thought that Respondent may have been attempting to rent the Austin apartment before Complainant had been evicted. Tr. p. 152. Hoping to establish that Respondent was prematurely attempting to rent the apartment and use this information at Complainant's dispossessory hearing, he called Ms. Jerrard, expressed an interest in renting the apartment, and arranged to meet with her.

Upon arriving at 30 Porter Street and meeting with Respondent, Mr. Verzaal learned that the apartment which had been advertised was not the Austin apartment. He then told Respondent that he was an attorney and friend of Ms. Austin and wanted some information regarding her case. Tr. p. 154. As the discussion continued, Respondent became very "angry". Mr. Verzaal asked why the listed rental price for the

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[10]Gerald Verzaal, the Georgia attorney whose disputed testimony is related below, furnished undisputed testimony that, under Georgia law, rental increases for month to month tenancies must be at least one month apart. Tr. pp. 163-164.

advertised apartment was less than Ms. Austin's new rent. At this point "in a loud voice" Respondent summarized her grievances against Complainant. She said there were complaints about the children, that she was keeping children, and "some of them were black children". She stated that Ms. Austin had "black boyfriends" coming over to the house and "you know what they are doing in there". She complained that the Austin children were playing with black children and that she didn't rent to black people because they don't take care of the premises and "tend to be dirtier than white people." She mentioned that she had an hispanic resident who was "good and clean" and that this demonstrated that she rented to minorities. Tr. pp. 155-157. Sometime during the course of this conversation she also made a statement that Ms. Austin was "running a business with men", and that "black people were not allowed to visit in her apartments." Sec. Ex. 14.[11]

On September 23, 1988, the county presiding magistrate issued a decision in the dispossessory proceeding which took into account the wishes of the Complainant and the Respondent. Tr. p. 129. Complainant expressed a willingness to vacate the premises on October 2, 1988, and did not require the return of her security deposit, as some damage had been done to the apartment. Respondent, in return, agreed to waive all unpaid rent. Tr. pp. 81-82. There was no trial of the underlying facts. Tr. p. 129. Although the decision was based upon the consent of the parties, there is no indication in the record of any settlement agreement having been executed.

On October 2, 1988, Complainant and her sons moved to a public housing project at 223 Stonewall Street. Tr. pp. 26,81.[12] As a result of the move, Complainant had to spend $50 for a utilities deposit and $70 to disconnect and reconnect her telephone. Tr. p. 83. She lost 26 hours of regular time as a result of her need to look for a new dwelling, obtain emergency rental assistance and stay with the children in the event they were visited by Respondent.[13]. Complainant worked 10 hours of overtime during the

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[11]Respondent denies having made these statements in her conversation with Mr. Verzaal. Tr. p. 251. Her account is that she complained that Complainant locked her children out of the apartment while she was receiving visitors and that, although there were references to black persons made during the conservation, they were made by Mr. Verzaal and not herself. She claims she questioned why he was bringing race into the conversation. Tr. pp. 229,249.

I credit Mr. Verzaal's version for a number of reasons. First, there was and is, in fact, an Hispanic (Guamanian) tenant, Lourdes Brown, residing at 30 Porter Street. Tr. p. 276. Mr. Verzaal could not have learned of the existence of an Hispanic resident except from Respondent. Second, Respondent admitted elsewhere in the record that she was told by a neighbor that Complainant was keeping children. Tr. p. 222. Third, Mr. Verzaal is an attorney licensed to practice law who, as an officer of the court, is under a higher duty than an ordinary citizen to testify truthfully. He risks loss of his professional livelihood if he were to be convicted of perjury. Fourth, I observed nothing in his demeanor inconsistent with candor.

[12]Respondent left the Stonewall Street residence in February 1990, and moved to another public housing project at 52 Aubrey Street where she, her husband, and her sons presently reside. Tr. pp. 24-26.

[13]On August 25, 1988, Respondent repeatedly knocked on the door of Apartment 4 when Ms. Austin's sons were alone in the house. Complainant did not want this to happen again, and took at least four Saturdays off. Tr. pp 85-87.

week for five weeks and seven hours on each of four Saturdays. Tr. pp. 85-86. Her need to stay with the children resulted in a loss of 78 hours of overtime at a rate of $5.47 per hour. Tr. p. 87.

While Complainant and her children were living at the Stonewall street residence, their bicycles were stolen, and Complainant once observed the children being pushed while they were waiting for the school bus. They asked their mother if living in public housing meant they were poor. They also became conscious for the first time about racism. Tr. pp. 90-100. Complainant had been a Cub Scout "Den Mother" during the time she resided on Porter Street. The parents of other Scouts ceased their visits after the move to public housing. Tr. p. 102. Relatives and friends also ceased all but brief visits. These visits ceased because the parents of the Cub Scouts and the relatives and friends were concerned for the safety of their cars. Tr. p. 103.

Complainant felt embarrassed by the implications of the statement made to Mr. Verzaal that she may have been a prostitute. Tr. p. 104. She was also upset by the various statements made to her, by the rental increases, and the eviction. She is no longer willing to rent from a private landlord, as she is afraid of what he or she might do. She is unwilling to place her trust in a private landlord and run the risk of having to move again. Tr. pp. 105, 130-131.

Respondent has been employed at Spring City, a garment manufacturer, for 37 years. She repairs clothing discovered to have been defective during the manufacturing process. Tr. pp. 193-194. Her supervisor for the last 12 years is Thelma McConnell, a black woman. Another black woman, Levon Ward, is a supervisor at Spring City and Respondent's acquaintance for 22 years. Respondent regularly eats lunch with blacks and socializes with Ms. McConnell, Ms. Ward and other blacks but only at work-related functions. Tr. pp. 302-303,306,309,314. Ms. McConnell was invited by Respondent to her home but "never did make it" Tr. p. 308. She visited 30 Porter Street in 1989. Tr. p. 309. One other black, Onetha Hill, visited 30 Porter Street. The record does not reflect when Ms. Hill's visit occurred. Tr. p. 199.

In the sixteen years Respondent has owned the apartments at 30 Porter Street, she has not rented to a single black tenant. Respondent's black co-worker, Levon Ward, estimated that blacks comprise between 25 percent and 35 percent of the population of Cartersville. Tr. p. 316. Respondent has required credit references of black applicants, but has not always required similar references of white applicants.[14] Tr. p. 242. Only one other tenant had black visitors during the time the Austin family resided in Apartment 4. This was Jimmy Brown, whose black co-worker visited him on two occasions in the evening. Tr. p. 286.

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[14]Respondent claims she has asked black rental applicants for credit references because she has not known anything about them. However, all she knew about Complainant was that her aunt lived in Kingston and that she had heard of Respondent's daughter. Jimmy Brown, a white tenant, testified that he did not know the Respondent before he answered an advertisement and was not asked for credit references by Respondent. Tr. pp. 287-288. Accordingly, the record establishes that Respondent has applied a credit reference requirement sporadically to whites and always to blacks.

Complainants sons damaged the screen door with the handlebars of their bicycles. Tr. pp. 72-73. This damage was not extensive. At the time of the hearing the damage to the screen doors had not been repaired by Respondent. In addition, there were small holes in the walls caused by the use of staples and nails to hang pictures because adhesive hangers, originally used for this purpose, did not hold. At the time she moved in Respondent told Complainant not to use "big" nails. Respondent testified that other tenants were allowed to use nails to hang up pictures. The record fails to establish that the use of staples, which do not make large holes, or nails, significantly damaged the apartment.

During August 1988, Respondent claims to have received complaints about disturbances caused by Complainant and her sons from various tenants "day and night". Tr. p. 214. However, the record reveals only complaints by tenants, Jimmy Brown and Helen Stacy. Jimmy Brown complained to Respondent that his water hose was left running, causing the back yard to be flooded and that he observed Ms. Austin's children climbing on his truck. Complainant also claims to have received a complaint from Ms. Hames that the Austin children had torn the flag off the Hames' mailbox. Tr. p. 218. Ms. Hames denies ever having observed Ms. Austin's children damage the property or having complained about them to Ms. Jerrard. Tr. p. 320. Helen Stacy, who lived in the apartment adjacent to Apartment 4, testified that Ms. Austin's children played the television loudly and rode their bicycles in the yard. I credit Complainant's testimony that she did not own a stereo or a television and only began renting a television around August 26, 1988. Tr. pp. 73-74. Accordingly, any complaints about loud music could only have occurred after the rent had been increased. With the exception of Mr. Brown's observation of Ms. Austin's children on the truck, there is no evidence connecting Ms. Austin's children with these complaints.

In August 1988, Respondent charged a rental of $250 per month for the other identical apartments at 30 Porter Street.[15] Tr. p. 257. After Complainant moved out of Apartment 4 in October, 1988, Respondent rented it for $250.

There is evidence of only one prior instance in which Respondent raised rent after damage was sustained to one of her properties. Respondent had to replace a septic tank at a cost of $1,000. As a result, Respondent increased the rent from $400 per month to $425.

Respondent had three previous experiences with undesirable tenants. Tr. pp. 206-207,210. However, Respondent did not raise the rent of these individuals because they vacated the premises at her request. Tr. p. 240.[16]

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[15]The one exception was the apartment which Mr. Verzaal asked about. It subsequently was rented for $300.

[16]Respondent denies that she raised Complainant's rent in order to force her to leave. Tr. pp. 255-256.

Discussion

Accord and Satisfaction

For the first time, and not until after the Secretary presented his case-in-chief, Respondent moved for a "directed verdict" to dismiss the case on the theory that this action is barred by the order terminating the dispossessory action which, she contends, is an "accord and satisfaction".[17] Respondent contends that Complainant raised the issue of racial discrimination in the dispossessory hearing and that this claim was, therefore, included in the resolution of this matter by the county magistrate. The defense of "accord and satisfaction" does not appear in Respondent's *pro se* answer, nor has Respondent, through counsel, sought to file an amended answer raising this defense.[18]

The regulations governing this proceeding make no provision for "directed verdicts". *See*, 24 C.F.R. Part 104. Assuming that a right to file such a motion exists by analogy to Rule 41(b) of the Federal Rules of Civil Procedure (FRCP), Rule 8(c) of the FRCP would preclude it from being granted. The defense of accord and satisfaction is specifically enumerated as an affirmative defense in Rule 8(c). Generally, a failure to plead an affirmative defense results in a waiver of that defense and its exclusion from the case. *Fed. R. Civ. Pro.* 8(c); 5 Wright & Miller, *Federal Practice and Procedure*, Sec. 1278 (1969 & Supp. 1982); *Troxler v. Owens-Illinois, Inc.* 717 F.2d 530, 532 (11th Cir. 1983); *Freeman v. Chevron Oil*, 517 F.2d 201, 204 (5th Cir. 1975). The policy behind Rule 8(c) is to put a party on notice well in advance of trial that a defendant intends to present a defense in the nature of an avoidance. *Hardin v. Manitowoc-Forsythe Corp.* 691 F.2d 449 (10th Cir. 1982). Respondent's attorney knew of the availability of this possible defense prior to the hearing.[19] He should not be allowed to "lie behind the log" until it is too late for his opponent to do anything about it. *Bettles v. Stonewall Insurance Co.*, 480 F.2d 82 (5th Cir. 1973).

Even if the Federal Rules of Civil Procedure are not applied, there has been a demonstration that permitting this affirmative defense to be raised would result in actual prejudice to the Secretary's case. The Secretary was precluded from conducting discovery on this issue. In addition, Mr. Verzaal and the Complainant could have been questioned at the hearing concerning their knowledge as to whether there was a

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[17]Although requested to do so, Respondent's attorney did not brief this issue. Tr. p. 191.

[18]Respondent spent some time locating an attorney. However, after she had located one, that attorney had sufficient time and information to file other motions. There is no indication, nor is it claimed, that Respondent could not have raised this defense much earlier in this proceeding.

[19]At the hearing Respondent's attorney cited authority in support of his motion.

"meeting of the minds"[20] and other elements required for the formation of a contract under Georgia law. *Blum v. Morgan Guarantee Trust Co. of New York*, 709 F.2d 1463, 1467 (11th Cir. 1983). Accordingly, this Motion is denied and this defense is stricken.

Governing Legal Framework

Respondent has been charged with having violated 42 U.S.C. Secs. 3604(a),(b) and (c) and 3617.[21] Among other things, these sections prohibit certain actions by housing providers taken "because of race" as well as interfering with persons in the enjoyment of rights granted or protected by Section 3604.

The Government contends that direct evidence of discrimination establishes that the Act was violated. In the alternative, the Secretary contends that discrimination is demonstrated by the application of the three-part burden of proof test of *McDonnell Douglas Corp. v. Green*, 411 U..S. 792 (1973).

Where direct evidence of discrimination is presented, such evidence, if established by a preponderance of evidence, is sufficient to support a finding of discrimination. *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984); *Teamsters v. U.S., 431 U.S.* 324, 358, n. 44 (1977).

If direct evidence is not presented, discrimination can also be established using the three-part analysis of *McDonnell Douglas*. This analysis is designed to assure that a plaintiff has his day in court despite the unavailability of direct evidence of discrimination. The analysis can be summarized as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence.

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[20]This would necessarily include an agreement on the part of the Complainant to waive her discrimination claim. There is no evidence in the record that this issue was actually considered by the county magistrate in the dispossessory action or that it formed a basis for the order disposing of that matter. Tr. pp. 80-81,179. In fact, there is no evidence that Respondent received a copy of either Complainant's response to the dispossessory warrant or notification of the HUD complaint until after the dispossessory hearing. Accordingly, it was unlikely that the issue of discrimination was even discussed.

[21]Title 42 U.S.C. Section 3604(a) makes it unlawful "(t)o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale of, or otherwise make unavailable or deny, a dwelling to any person because of race. . . ."

Section 3604(b) makes it unlawful "(t)o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race. . . ."

Section 3604(c) makes it unlawful "(t)o make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on race. . . ."

Section 3617 makes it unlawful "(t)o coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605 or 3606 of this title."

> Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext. *Pollitt v. Bramel* 669 F.Supp. 172, 175 (S.D. Ohio 1987) (*quoting McDonnell Douglas*, 411 U.S. at 802, 804.

Specifically, in the circumstances of this case, a prima facie case would be demonstrated by proof that: 1) Complainant, a white person had black visitors; 2) Complainant was the only one of Respondent's tenants who received black visitors, or the only one who did so with any frequency; 3) Respondent took an action adversely affecting Complainant, e.g., multiple rent increases; and 4) no similar action was taken against other tenants. If a prima facie case is established, the burden of production shifts to Respondent to articulate a legitimate, non-discriminatory reason for taking the adverse action(s). *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1978). In this case, Respondent claims that Complainant and her children damaged her property and disturbed her other tenants, thereby posing an increased risk to her property. If the articulation of this legitimate, non-discriminatory reason raises a genuine issue of fact, the burden again shifts to the Secretary to demonstrate that the articulated reason is a mere pretext. Accordingly, the Secretary is required to demonstrate that the articulated reason (posing an unacceptable risk to her property) was a mere pretext.

Under both HUD and 11th Circuit decisional law, if either analysis establishes by a preponderance of evidence that race was one of the motivating factors in Respondent's action to increase Complainant's rent and evict her and her sons, a violation of the act has been established. *Secretary of HUD v. Blackwell*, Fair Housing-Fair Lending (P-H) para. 25,001 at 25,006 (HUDALJ Dec. 21, 1989), *affd.* 908 F.2d 864 (11th Cir. 1990); ; *United States v. Mitchell*, 580 F.2d 789, 791 (5th Cir. 1978); *United States v. Peltzer Realty Co.* 484 F.2d 438, 443 (5th Cir. 1973).

Direct Evidence of Discrimination

Direct evidence of discrimination is established by statements made by the Respondent to the Complainant, Mr. Johnson, and Mr. Verzaal. I credit Complainant's testimony[22] that Respondent told Complainant that she didn't like the idea of "those people" coming around and if she was going to associate with "those people", she should live with them. These statements, coupled with the fact that they followed visits by

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[22]Complainant was a credible witness. Complainant's testimony was uncontradicted by other evidence in the record. Her claim regarding the minor damage to the screen was supported by Respondent's admission that she never sought to have it repaired. She also admitted to having lied to Respondent when she told Respondent she did not receive the notice of the first rental increase. This admission against interest provides a further indication that she was being forthright in her testimony. Tr. pp. 119, 147.

black persons, establishes that the remarks were meant to disparage those visitors based on their race and to prevent her from allowing the visits to continue. I do not accept Respondent's explanation that she was merely suggesting that Complainant might be more comfortable living "where her rent would be cheaper". Tr. p. 234. There is no ready explanation for Respondent's having made such a suggestion. She did not need to point out the obvious, i.e., that public housing was cheaper. This conversation occurred before any rental increases were imposed and nothing indicates that Complainant's economic circumstances were involved in the conversation.[23]

Respondent's statement to Mr. Johnson that *he* would be another reason to evict Ms. Austin, meant that his continued presence would lead to her eviction. There is no evidence of misconduct on Mr. Johnson's part or any other apparent reason, other than his race, which would have caused Respondent to make such a statement.

Respondent's statements to Mr. Verzaal provide even more direct evidence of Complainant's racial motivation. She told him that Ms. Austin was not a suitable tenant because her children were playing with black children, that she had black male visitors, that she was keeping children for money, that some of those children were black, and that she did not rent to black people because [in contrast with the "clean" Hispanic resident] they "tend to be dirtier than white people." She also acknowledged that she did not permit blacks to visit her apartments. Some of her statements imply the Complainant had illicit sex with blacks and was a prostitute.

Indirect Evidence of Discrimination

The Secretary has established a prima facie case of discrimination. The record establishes that Complainant had black visitors, that she was the only tenant who did so with any frequency,[24] that Respondent increased Complainant's rent on two occasions, and that no similar action was taken against other tenants.

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[23]Significant portions of Respondent's testimony were not credible. First, she exaggerated the number of complaints she received as well as the extent of damage to the apartment. Second, her explanation that she was suggesting that Complainant live in public housing because the rent would be cheaper does not make sense because there would have been no reason to make such a statement. Third, she could not explain her admittedly false statement in the notices to Complainant that other units "this nice" rented for more. She claims that she made this statement on the notices because she was afraid Complainant "would get her" if she said "anything about the children" in writing. However, when directly asked how Complainant would "get her", she stated, "I spoke to her about, you know, the way they was (sic) doing, but I didn't put it in writing". Tr. p. 256. This explanation merely repeats the answer to the first question and is unresponsive. Respondent's belief that she could avoid legal difficulties so long as she did not put things in writing also may explains why she was so candid about her racial views during her conversation with Mr. Verzaal. Fourth, Respondent's statement that she did not raise Complainant's rent on the two occasions by 60 percent in order to force Complainant's eviction is, in a word, unbelievable.

[24]The only other black person, reported to have visited one of the tenants at 30 Porter Street was Jimmy Brown's co-worker, who stopped by on two occasions, one of which was for 30 minutes. Tr. pp. 280,286.

Respondent has articulated two reasons for raising the rent. The first reason, which she stated in her notices to Complainant, was that other apartments similar to those at 30 Porter Street rented for either "a lot more than this" ($250 per month) or that "no one else in town rents apartments this nice for less than $400.00". This reason is clearly false. Respondent did not increase the rent of the other apartments. In addition, Complainant's apartment was rented to her successor for $250.00.

The second reason,[25] averred in testimony at the hearing, was that Complainant and her children damaged the apartment and disturbed the other residents. This is an articulation of a legitimate, non discriminatory reason. There also was evidence submitted on this contention which raises a "genuine issue of fact", and shifts the burden to the Secretary to demonstrate that the reason is a mere pretext. The Secretary has, by a preponderance of evidence, made that demonstration.

First, there is no evidence that the Complainant's children significantly damaged the property. Respondent never actually observed, nor is there any other evidence, that Complainant's sons inflicted anything but minor damage. Thus, there was no evidence that Ms. Austin's children broke the cinder blocks,[26] tore the flag off the Hames' mailbox, or left the hose running. The evidence is unpersuasive that the use of staples and nails to hang pictures because the adhesive-backed hooks did not hold either violated Respondent's instruction not to put "big" nails in the wall, or resulted in damage to the walls greater than that caused by other tenants. Some damage to the screens was caused by the children's bicycles. However, despite the fact that Respondent was permitted to keep the Complainant's $100.00 damage deposit, Respondent did not view this damage as serious enough to have warranted repair when she again rented the apartment.

Second, there is no credible support for Respondent's claim that the disturbances purportedly caused by Ms. Austin's children resulted in complaints "day and night", or that there was a significant risk that other tenants would vacate. Tr. pp. 214,238. Respondent admits that none of her "good tenants" told her they would leave. Tr. p. 239. Although Helen Stacy testified that the Complainant's children played the television loudly, she could not state when this occurred. Since Ms. Austin did not have a television set on the premises prior to August 26, 1988, any complaint made by Ms.

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[25]As discussed in note 23, *supra*, Respondent explained that she didn't write the "real" reason because she was afraid Complainant "would get her" if she put it in writing. When asked what she meant, her answer was unresponsive. Tr. p. 256. Where, as here, a Respondent first adopts one purported legitimate non-discriminatory reason, discards that reason, and then adopts a totally different purported legitimate non-discriminatory reason without a satisfactory explanation, this, in itself, provides strong evidence that either or both of the claimed reasons is pretextual.

[26]The cinder block steps were replaced by Complainant. The record does not reflect her reason for doing so. More than one inference can be drawn from their replacement. It could be an acknowledgement by Complainant that the children caused the damage, or that broken cinder blocks posed a safety hazard requiring immediate attention.

Stacy could not have played a part in the decision to raise the rent. The only person who actually observed any mischief on the part of the children was Jimmy Brown who observed them running across the hood of his truck. However, he could not recall when this occurred. Tr. p. 286.

Third, Respondent has no history of justifying a rent increase on the basis of disruptive conduct by tenants. The only prior instance of Respondent's raising rent to compensate for extraordinary expenses involved the replacement of a septic tank. In that instance she raised the rent from $400 to $425 to compensate for a $1000 expenditure. This was merely a six percent increase. By contrast, damage purportedly caused by Ms. Austin's children was so minor that it was not even repaired despite the availability of a security deposit; yet, Complainant's rent was increased from $250 to $400 per month, a 60 percent increase. Finally, rather than raise their rent, Respondent either suggested or requested that disruptive tenants in three units vacate the premises. Tr. pp. 206-207,210,240.

Race as a Motivating Factor

In order to prevail, the Secretary need not demonstrate that the race of Complainants visitors was the sole motivation for raising Complainant's rent. It is sufficient that there be a demonstration that race of her visitors was one of the factors. *Woods-Drake v. Lundy* 667 F.2d 1198, 1202 (5th Cir. 1982). The statements made by Respondent to Mr. Verzaal, Complainant, and Mr. Johnson not only constitute direct evidence of discrimination, but also compelling evidence that the race of Complainant's visitors was a very significant reason for raising her rent. The statements demonstrate a negative stereotypical view of blacks amounting to racial animus. Racial animus is demonstrated by such remarks as "some of the children are black", that Complainant had "black boyfriends" and "you know what they are doing in there", and that blacks "tend to be dirtier than white people". By telling Complainant that she should "live in the projects", Respondent suggested that a failure on the part of Ms. Austin to refrain from having black visitors would result in her eviction. Although Respondent claims that this statement merely suggested that Complainant could live more cheaply in the projects, she has not satisfactorily explained her reason for making such a statement. Accordingly, the most likely inference to be drawn by a person hearing this statement is that that person should no longer associate with blacks. A racially motivated threat was also made to Mr. Johnson who was told that *he* might be another reason for Ms. Austin's eviction. Finally, Respondent supplied direct proof of racial motivation when she told Mr. Verzaal that "black people were not allowed to visit the apartments" and Complainant that she did not like "those people" coming around.

In addition to this direct evidence, the following indirect evidence, compels inferences that the rental increases were, at least in part, racially motivated:

First, the timing of the rent increases supports the inference that they were motivated by the presence of black visitors. Mr. Johnson visited nearly every day. Rhonda Cooley and her children visited on August 9th or 10th. The Cooley's visit was followed by the August 10th conversation and the first rent increase. Gwen Cook visited

between August 20th and 23rd. Richard Patton visited on two occasions between August 18th and 24th. The second rent increase occurred on August 25th following this visit.

Second, in the 16 years Respondent has rented the property she has never rented to a single black family despite the fact that Cartersville has a population that is estimated to be between 25 and 30 percent black.[27] In housing cases a history of not renting to blacks is relevant in proving racial discrimination. *Marable v. Walker and Associates*, 644 F.2d 390, 397, n. 20 (5th Cir. 1981); *United States v. Reddoch* 467 F.2d 897, 899 (5th Cir. 1972).

Third, Respondent's procedure for screening rental applicants differed according to the race of the applicants. She asked all black applicants to submit credit references, but did not require this of all white applicants. Her claim that she required such references because she did not know the applicants is plainly contradicted by her ready acceptance of both Complainant and Jimmy Brown without credit checks. Employment of a credit check ruse together with a history of not renting to blacks is a sufficient basis upon which to conclude that a pattern or practice of racial discrimination exists. *Id.*

Conclusions of Law

These facts establish violations of Title 42 U.S.C. Sections 3604(a), and (b) and 3617. Section 3604(a) makes it illegal to "otherwise make unavailable," a dwelling "because of race." Respondent's racially-motivated rent increases were calculated to affect the eviction of Complainant and her sons, and, thereby, cause her dwelling to become "unavailable" in violation of this section of the statute.

Section 3604(b) makes it unlawful to discriminate against persons in the "terms, conditions, or privileges" of the "rental of a dwelling". This section was violated as a result of Respondent's two racially motivated rent increases, the resulting eviction, and the threats that she made to Complainant and Mr. Johnson. The amount of rent is a "term or condition" of the rental. Conditioning occupancy on her discontinuing visits by black persons, discriminated in the terms, conditions, and privileges of the free enjoyment of her dwelling, i.e, her right lawfully to entertain and associate with persons of her choosing and that of her children.

The record does not establish a violation of Section 3604(c) which makes it unlawful to make, print, or publish notices statements or advertisements with respect to the rental of a dwelling which indicate a racial preference.

Section 3617 makes it unlawful to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having

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[27]There is no evidence of turnover rates in the record. However, there is some evidence of turnover and that blacks applied and were rejected.

exercised or enjoyed. . .any right granted or protected by (the Act)". Among the rights granted and protected by the Act are the rental of a dwelling and enjoyment of terms, conditions or privileges of rental of a dwelling free from racial discrimination. Coercion, intimidation, threats or interference with those rights violate this section. By imposing two rental increases calculated to lead either to the eviction of Complainant and her family, or to exact a higher price for the enjoyment of Complainant's lawful rights, Respondent coerced, intimidated, and threatened her and interfered with the exercise and enjoyment of rights protected by the Act, i.e., the right to lawfully associate and entertain persons of her own choosing, in violation of Section 3617. By threatening Complainant with eviction unless she and her children discontinued visits of black persons to 30 Porter Street, Respondent also coerced, intimidated, threatened her and interfered with the lawful enjoyment of their dwelling in violation of this section.

Remedies

Because Respondent violated 42 U.S.C. Secs. 3604(a), (b), and 3617, Complainants are entitled to appropriate relief under the Act. The Act provides that where an administrative law judge finds that a Respondent has engaged in a discriminatory practice, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. 42 U.S.C. Sec. 3612 (g)(3).

The Act further provides that the "order may, to vindicate the public interest, assess a civil penalty against the Respondents". 42 U.S.C. Sec. 3612 (g)(3). The maximum amount of such civil penalty is dependent upon whether Respondents have been adjudged to have committed prior discriminatory housing practices.

The Department, on behalf of Complainant, asks for: 1) damages totalling $641.56 to compensate Complainant for economic loss; 2) $75,000.00 in damages to compensate Complainant for "emotional distress, humiliation, and loss of civil rights"; 3) injunctive and equitable relief requiring, inter alia, that Respondent cease to employ any policies or practices that discriminate against Complainant or anyone else because of race; and, 4) the imposition of the maximum civil penalty of $10,000.00.

Economic Loss

Complainant is entitled to any wages lost as a result of Respondent's actions. *See HUD v. Blackwell*, Fair Housing-Fair Lending (P-H) para. 25,001 at 25,010 (HUDALJ No. 04-89-0520-1, Decided Dec. 21, 1989). In addition, she is entitled to out-of-pocket expenses resulting from the move to Stonewall Street. Complainant missed 26 hours from her job at Nantucket as a result of her efforts to deal with her housing situation. Tr. p. 84. Her hourly wage was $3.65 per hour. She also stopped working overtime because she was concerned about Respondent's bothering her children while she was absent. Complainant worked 10 hours of overtime during the week for five weeks and seven hours on four Saturdays. Tr. pp. 85-86. Thus, she lost 78 hours of overtime at a rate of $5.47 per hour. Accordingly, she is entitled to $521.56 in lost wages.

In addition, Complainant was required to expend $70.00 for transferring and reconnecting her telephone when she moved to Stonewall Street. Complainant is not entitled to be compensated for her deposit for utilities since she should have recouped this amount when she moved to her present residence. The record does not reflect the amount of any utility deposit at her new address. Thus, there is insufficient proof to warrant a recoupment of the utility deposit. Accordingly, Complainant is entitled to $591.56 for economic loss.

Emotional Distress, Humiliation and Loss of Civil Rights

It is well established that the amount of compensatory damages which may be awarded in a Civil Rights Act case is not limited to out-of-pocket losses, but includes damages for the embarrassment, humiliation and emotional distress caused by the discrimination. See, *e.g.*, *Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Such damages can be inferred from the circumstances of the case, as well as proved by testimony. See *Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977).

As stated in *Blackwell, supra*, "[b]ecause of the difficulty of evaluating emotional injuries which result from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries." Fair Housing-Fair Lending (P-H) at 25,011, *quoting Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983).

In *Marable, supra,* where the defendant challenged the plaintiff's claim for compensatory damages on the basis that it was based solely on mental injuries and that there was no evidence of "pecuniary loss, psychiatric disturbance, effect on social activity, or physical symptoms", the court stated:

> It strikes us that these arguments may go more to the amount, rather than the fact, of damage. That the amount of damages is incapable of exact measurement does not bar recovery for the harm suffered. The plaintiff need not prove a specific loss to recover general, compensatory damages, as opposed to actual or special damages.

704 F.2d at 1220-21. Complainant and her sons, as a threshold matter, suffered some cognizable and compensable emotional distress. While not amenable to precise measurement, any award should attempt to make the victims whole while not providing a windfall. *Blackwell, supra* at 25,013.

Complainant was seriously damaged by these actions. Her life was disrupted because she had to move out of her chosen home. She suffered from a preexisting emotional problem resulting in not being able to easily trust others. This experience has resulted in her unwillingness to move out of public housing because she is afraid to trust another private landlord. Thus, the range of housing choices available to her has been considerably narrowed. She was also embarrassed by the statements Respondent made

to Mr. Verzaal including the implication that she was a prostitute. This statement was, in part, racially motivated as the statement implies illicit sexual activity after noting that black adults visited Complainant's home. Sec. Ex. 14. Finally, Complainant suffered social rebuffs from the other Cub Scout parents and her friends who did not want to place their cars at risk by visiting the public housing. Based upon a review of the case law,[28] I conclude that Complainant is entitled to an award of $15,000, as compensation for the embarrassment, humiliation and emotional distress and the loss of civil rights she[29] suffered.

Injunctive Relief

Injunctive relief is also appropriate. The specific provisions of this relief as adopted by this decision are set forth in the Order below and include an order to Respondent to 1) cease discriminating against Complainant and her sons or anyone else with respect to housing because of race; 2) issue a written notice to all tenants advising them of their right to file complaints of discrimination under the Act; 3) initiate internal record-keeping procedures as specified in the Order; 4) submit reports to the HUD Atlanta Regional Office of Fair Housing and Equal Opportunity; and 5) inform all agents and employees that she may hire during the period of this Order of the terms of the Order and of the requirements of the Act.

Civil Penalties

In addressing the factors to be considered when assessing a request for imposition of a civil penalty under 42 U.S.C. Sec. 3612 (g)(3), the House Report on the Fair Housing Amendments Act of 1988 states:

> The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When determining the amount of a penalty against a Respondent, the ALJ should consider the nature and circumstances of the violation, the degree

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[28]See, e.g., *Blackwell*, supra ($10,000 for embarrassment, humiliation and emotional distress); *Hamilton v. Svatik* 779 F.2d 383 (7th Cir. 1985)(affirming jury award of $12,000 for intangible damages); *Phillips v. Hunter Trails Community Association* 685 F.2d 184 (7th Cir. 1984)(reducing award to each plaintiff from $25,000 to $10,000); *Block v. Macy Co., Inc.* 712 F.2d 1241 (8th Cir. 1983) ($12,402 awarded for plaintiff's mental anguish, humiliation, embarrassment and distress); *Pollit v. Bramel* 669 F.Supp. 172 (S.D. Ohio 1987)($25,000 in compensatory damages).

[29]The Secretary introduced evidence of damage to Complainant's children solely through Complainant's testimony. The children have not been named as parties to this proceeding. Accordingly, there is no basis for an award of damages to them. Alleged damages to the children include their stolen bicycles, being pushed by other children, becoming aware of Complainant's economic situation, and developing an awareness of racial prejudice. Even if the children had been named as parties to this proceeding, the evidence would be insufficient to support an award of damages to the children because these occurrences have not been demonstrated to be a foreseeable result of Respondent's acts, and there was no testimony by the purported victims.

of culpability, any history of prior violations, the financial circumstances of that Respondent and the goal of deterrence, and other matters as justice may require.

H. Rep. No. 100-711, 100th Cong., 2d Sess. 37 (1988). Based upon a consideration of these factors, it is appropriate in this case, in order to vindicate the public interest, to impose the maximum civil penalty of $10,000.00.

Respondent's actions were serious, and egregious. Knowing that Complainant and her family were people of modest means, she, without lawful justification, used economic coercion to insure that Complainant would be forced to vacate her apartment.

There is no history of prior violations. Consideration of this factor is built into the statutory scheme set forth in section 812(g)(3). Thus there is a limit of $10,000 where there is no history of prior violations.

The record establishes that Respondent owns three properties in addition to the four apartments at 30 Porter Street. Tr. pp. 176,200,318. There is no evidence that she is unable to pay the maximum civil penalty. This evidence is peculiarly within her sphere of knowledge and, accordingly, it is her burden to produce such evidence. *Campbell v. United States*, 365 U.S. 85, 96 (1961).

Imposition of the maximum civil penalty under the circumstances of this case also serves the goal of deterrence. Respondent's actions evidenced racial animus, were unprovoked, and had a devastating effect on the Complainant. Under these circumstances the award of the maximum civil penalty will act to deter others by demonstrating that actions such as this are not only unlawful but expensive.

ORDER

Having concluded that Respondent, Virginia Jerrard, violated 42 U.S.C. Secs. 3604(a), (b), and 3617 of Title 42 of the United States Code, it is hereby

ORDERED that,

1. Respondent is hereby permanently enjoined from discriminating against complainant, Nancy Austin, or any member of her family or anyone else, with respect to housing, because of race. Prohibited actions include, but are not limited to:

a. refusing or failing to show, sell, or rent a dwelling to any person because of race;

b. otherwise making a dwelling unavailable or denying a dwelling to any person because of race;

c. discriminating against any person in the terms, conditions, or privileges of sale

or rental of a dwelling, or in the provision of services in connection therewith, including services relating to the financing of such dwelling and the provision of information regarding the dwelling, because of race;

d. making, printing, or publishing, or causing to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race;

e. representing to any person, because of race, that any dwelling is not available for inspection, sale, or rental when the dwelling is in fact available;

f. for profit, inducing, or attempting to induce, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race;

g. discriminating against any person in making available residential real estate-related transactions, including the selling, brokering, or appraisal of real estate, because of race;

h. interfering, coercing, threatening, or intimidating any person in the exercise enjoyment, or on account of that person's having exercised or enjoyed, or on account of that person's having aided or encouraged any other person in the exercise of enjoyment of, any right granted or protected by Section 3604 of Title 42 of the United States Code; and

i. retaliating against or otherwise harassing Complainant or any member of her family for his or her participation in this matter or any matter related thereto.

2. At the earliest possible time, and in no event more than forty-five days after this initial order becomes final, Respondent shall deliver a written notice to all people who currently are, or at any time since March 12, 1989 (the effective date of the Fair Housing Amendments Act of 1988) have been, tenants in one of Virginia Jerrard's properties or applicants for apartments there. This written notice shall state that all individuals who believe they have been injured by unlawful conduct of Respondent under the Fair Housing Act can file complaints with the United States Department of Housing and Urban Development (HUD). The notice shall set forth directions for filing a compliant, including the address and telephone number of HUD's Atlanta Regional Office of Fair Housing and Equal Opportunity, and shall state explicitly that no retaliation will be taken against anyone who files a complaint.

3. Respondent shall institute internal record-keeping procedures, with respect to the operation of her rental properties, which are adequate to comply with the requirements set forth in this order. These will include keeping all records described in paragraph 4, below. Respondent shall permit representatives of HUD to inspect and copy all pertinent records of Respondent at any and all reasonable times and upon reasonable notice. The representative of HUD shall endeavor to minimize any inconvenience to Respondent from the inspection of such records.

4. On the last day of every third month beginning three months from the date this order become final, and continuing for three years thereafter, Respondent shall submit reports containing the following information to HUD's Atlanta Regional Office of Fair Housing and Equal Opportunity, Richard B. Russell Federal building, 75 Spring Street, S.W., Atlanta, Georgia 30303-3388:

a. A duplicate application for all persons who applied for occupancy at any of the properties owned, operated, leased, managed, or otherwise controlled in who or in part by Respondent during the period before the report, and a statement of the person's race, whether the person was rejected or accepted, the date on which the person was notified of acceptance or rejection, and, if rejected, the reason for such rejection.

b. A list of vacancies during the reporting period at properties owned, operated, leased, managed, or otherwise controlled in whole or in part by Respondent, to include: the tenant's race; the date Respondent was notified that the tenant would move out; the date the tenant moved out; the date the unit was rented or committed to rental; and the date the new tenant moved in;

c. Current occupancy statistics indicating which units at each property owned, operated, leased, managed, or otherwise controlled in who or in part by Respondent are occupied by black families;

d. Sample copies of advertisements published during the reporting period, with disclosure of dates and media used or, when applicable, a statement that no advertisements have been published during the reporting period;

e. A list of all people who inquired; in writing, in person, or by telephone, about renting an apartment, including their names, addresses, and race; the date of their inquiry; and the disposition of their inquiry;

f. A description of any changes in rules, regulations, leases, or other documents provided to or signed by current or new tenants or applicants (regardless of whether the change was formal or informal, written or unwritten) made during the reporting period, and a statement of when the change was made, how and when tenants and applicants were notified of the change, whether the change or notice thereof was made in writing, and, if so, a copy of the change and/or notice.

5. Respondent shall inform all agents and employees that she may hire during the period of this order of the terms of this order and shall educate them as to such terms and the requirements of the Fair Housing Act.

6. Within forty-five days of the date on which this initial order becomes final, Respondent shall pay actual damages to complainant, Nancy Austin, in the amount of $15,591.56, to compensate for the following injuries:

AMOUNT	-	DESCRIPTION OF INJURY
70.00	-	Telephone transfer and reconnection Charges
94.90	-	26 hours lost wages at $3.65 per Hour
273.50	-	50 Hours lost Overtime during thee Week (5 weeks, 10 hours/week) at $5.47 per hour
153.16	-	28 hours lost overtime for four Saturdays at $5.47 per hour
$15,000	-	Embarrassment, humiliation, emotional distress and loss of civil rights
$15,591.56	-	TOTAL

7. Respondent shall pay a civil penalty of $10,000 to the Secretary, United States Department of Housing and Urban Development.

8. Respondent shall submit a report to this tribunal, within fifteen days of this order becoming final pursuant to section 812(h) of the Act, detailing the steps she has taken to comply with this order.

This order is entered pursuant to section 812(g)(3) of the Fair housing Act and the regulations codified at 24 CFR 104.910, and is immediately subject to review by the Secretary of the United States Department of Housing and Urban Development (the Secretary) under section 812(h). This order will become final and enforceable upon completion of the Secretary's review or the expiration of thirty (30) days, whichever comes first. See section 812(h) of the Act.

William C. Cregar

WILLIAM C. CREGAR
Administrative Law Judge

Dated: September 28, 1990