United States of America
Department of Housing and Urban Development
Office of the Secretary

The Secretary, United States Department of Housing and Urban Development, on behalf of MELISSA D. GARRETT, JAMAAL KING, AMANDA GARRETT, CHRISTOPHER DOSS (A/K/A TOMMY DOSS) AND THREE MINOR CHILDREN,	)	**HUDALJ: 10-M-015-FH4**
Charging Party,	)	
v.	)	
PHILLIP MAZE AND OPAL MAZE,	)	
Respondents.	)	

For the Complainants: **Kathleen M. Pennington, Sylloris Lampkin, and Melissa Anderson, U.S. Dept. of Housing and Urban Development**

For the Respondents: **Clint L. Maze, Attorney, Arab, Alabama**

ORDER ON SECRETARIAL REVIEW

Background and Facts

In February 2009, Complainants (White), sisters Melissa and Amanda Garrett and Amanda Garrett's fiancé, Christopher Doss, rented a two-bedroom, two-bath mobile home for themselves and three minor White children in Arab, Alabama. They rented it from Respondent Phillip Maze, the older White son of Respondent Opal Maze, a White female who owns the trailer, and with whom Phillip Maze lives. The Garretts and Christopher Doss paid rent and half a security deposit directly to Phillip Maze, who was to make certain repairs before they

moved in and who they were to contact when they needed additional repairs or had other related concerns. During the first week of March 2009, they moved in.

On Sunday, March 8, 2009, Complainant Jamaal King, Melissa Garrett's long-time African-American boyfriend, arrived for a five-day visit while on spring break from medical school. The next day, March 9, Phillip Maze was in the Garrett/Doss trailer completing a few remaining repairs when he encountered Jamaal King. Phillip Maze nodded and stared at Jamaal King, but did not speak. He then left the trailer without completing the repairs. That afternoon, Phillip Maze saw Jamaal King in the yard and stared at him, but did not speak to him.

Later that day Phillip Maze told Christopher Doss that there was a problem with Jamaal King staying at the property and "he needs to go." He also told Christopher Doss that "we can't have that here because people will be talking," and he did not want to "keep looking over his shoulder." In addition, he informed Christopher Doss that the people that lived on the other side of Phillip Maze were black, "but there ain't nothing I can do about that." Subsequently, Phillip Maze told Melissa Garrett that he did not like interracial relationships, he did not approve of her relationship with Jamaal King, and he wanted her to move out of the mobile home.

Melissa Garrett got Phillip Maze to agree to let Jamaal King stay until Wednesday, March 11, when she would be off work and could drive Jamaal King back. At 9:30 am on Wednesday, Phillip Maze cut off the water because Jamaal King was still there. He told Melissa Garrett that he would turn the water back on if she and Jamaal King left, that it was time for her to go, and that she could not have her money back. When Melissa Garrett asked him why, and questioned whether it was because she had a black boyfriend, Phillip Maze responded that it was. Phillip Maze turned the water on when he saw Jamaal King leave.

After the incident with the water, Phillip Maze stopped work on the repairs. Instead, he would stand in his yard and stare at the trailer and the Garrett/Doss family. Amanda Garrett and Christopher Doss felt uncomfortable and moved out on or about March 13 or 14, 2009. Melissa Garrett moved out because Phillip Maze had told her to leave on Monday evening and again on Wednesday morning.

<u>Initial Decision</u>

On January 28, 2011, Administrative Law Judge ("ALJ") J. Jeremiah Mahoney issued an Order Granting In Part, and Denying In Part, the Secretary's Charge of Discrimination on behalf of Complainants and aggrieved persons Melissa D. Garrett, Jamaal King, Amanda Garrett, Christopher Doss and three minor children, finding that the Respondent Phillip Maze violated the Fair Housing Act (the "Act"), 42 U.S.C. §§ 3601-31, in four instances.

First, the ALJ, in his Initial Decision ("ID"), found that, by coercing Complainant Melissa Garrett to require her guest, Jamaal King, an African-American, to leave because he was African-American, and turning off the water supply of the mobile home to enforce that unlawful coercion, the Respondent Phillip Maze made the use and enjoyment of the mobile home unavailable to Melissa Garrett in violation of Section 3604(a) of the Act.

Second, the ALJ determined that Respondent Phillip Maze also violated Section 3604(b) of the Act by imposing a more restrictive guest policy on the Complainants because of Melissa Garrett's association with an African-American, Jamaal King, thus applying discriminatory rental terms and conditions and intentionally interfering with the enjoyment of the mobile home by all of the tenants and authorized guests. The ALJ further found that, at no time in his conversations with the Complainants regarding the rental of the mobile home, did Respondent Phillip Maze place any restrictions on visitors to the property or overnight guests. In fact, two White family members stayed overnight in the mobile home without any objection by Respondent Phillip Maze and, before the Complainants moved in, he had also agreed to allow two additional children to live at the mobile home for a period of six weeks, in addition to the one child originally included in the lease, bringing the total number of minor children to three and occupants to six.

Third, the ALJ concluded that Respondent Phillip Maze violated Section 3604(c) of the Act by making numerous racially discriminatory statements with respect to the rental of a dwelling that indicated a preference, limitation or discrimination based on race or color. Specifically, Respondent Phillip Maze told Complainant Christopher Doss that: (1) there was a problem with Jamaal King staying at the property and "he needs to go;" (2) "We can't have that here because people will be talking" and he did not want to "keep looking over his shoulder;" and (3) the people that live on the other side of him were black, "but there ain't nothing I can do about that." In addition, Respondent Phillip Maze told Complainant Melissa Garrett that he did not like interracial relationships, he did not approve of her relationship with Jamaal King, and he wanted her to move out of the mobile home.

Fourth, the ALJ held that, by each of the foregoing violations of the Act, Respondent Phillip Maze also violated Section 3617 of the Act by coercing, intimidating, threatening or interfering with any person, or on account of his/her having aided or encouraged any other person, in the exercise or enjoyment of any right granted or protected by Section 3604 of the Act.

Finally, the ALJ determined that Respondent Opal Maze did not authorize Phillip Maze to act as her agent. The ALJ also concluded that Kenneth Maze, as Respondent Opal Maze's attorney-in-fact, did not authorize Phillip Maze to act as Opal Maze's agent. Accordingly, the ALJ found that Respondent Opal Maze was not vicariously liable for the acts of Respondent Phillip Maze.

<u>Petition for Secretarial Review</u>

On February 11, 2011, the Charging Party filed with the Secretary a Petition for Secretarial Review of the ID, asking the Secretary to reverse, in part, certain of the ALJ's findings, and to remand the case to the ALJ because key aspects of the ID are contrary to law and fact. Specifically, the Charging Party asserts that the ALJ erred in finding that no agency relationship existed between the Respondents Phillip and Opal Maze. The Charging Party also contends that the ID is wrong with respect to emotional distress damages in requiring that the Charging Party "present the Court with a mathematical formula for comparing this case with others, or for computing the dollar value of particular types and amount of intangible injuries suffered in this case," and that the Initial Decision improperly measured damages by the length of time the victim had contact with the Respondent, rather than by the actual injury suffered. No Petition for Secretarial Review or Opposition to the Charging Party's Petition for Secretarial Review was filed by the Respondents.

Upon review of the entire record in this proceeding, including the briefs filed with the ALJ and the Secretary, and based on an analysis of the applicable law, I AFFIRM the ALJ's findings of fact and conclusions of law set forth above, except for his finding that Phillip Maze was not an agent of Respondent Opal Maze, and his standard for determining emotional distress damages, and GRANT the Charging Party's Petition on these points for the reasons set forth below. Pursuant to 24 C.F.R. § 180.675(a) and (g) and 42 U.S.C. §§ 3608(a) and (c), I REMAND this proceeding to the ALJ to enter an Initial Decision on Remand to include appropriate findings concerning the agency relationship between Respondent Opal Maze and Respondent Phillip Maze and the emotional distress damages to the Complainants.

Discussion: Findings of Fact and Conclusions of Law

Most of the essential facts, as set forth in the ID at 1-7, and conclusions of law, as set forth at 7-12, are affirmed by the Secretary, to the extent they are not inconsistent with the corrections below.

Corrections

The following findings of fact and conclusions of law made by the ALJ, however, are not supported by the evidence in the record or the law and are hereby corrected:

1. **The ALJ's finding that an agency relationship did not exist between Respondents Phillip and Opal Maze and that Respondent Opal Maze is not vicariously liable for Respondent Phillip Maze's illegal actions is contrary to the law and the facts.**

Under the Act, a principal is vicariously liable for his or her agent's discriminatory conduct whether or not she or he knew of or authorized the illegal housing discrimination. *Meyer v. Holley*, 537 U.S. 280, 282, 285-86 (2003); *see also City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1096 (7th Cir. 1992); *Coates v. Bechtel*, 811 F.2d 1045, 1051 (7th Cir. 1987).

Opal Maze and her children, Phillip Maze, Kenneth Maze and Brenda Noble, executed a durable power of attorney effective on April 19, 2001. Kenneth Maze, Opal Maze's youngest son, is her designated attorney-in-fact, and Phillip Maze and Brenda Noble are alternates. Through this durable power of attorney Kenneth Maze became his mother's agent, a power he has never given up. Among the duties assigned to Kenneth Maze was the duty to control all aspects of Opal Maze's real property.[1]

Despite the durable power of attorney that was effective in 2001, Respondent Opal Maze continued to manage her rental properties until about 2004. In that year Opal Maze was diagnosed with dementia. By then, the record shows that Phillip Maze was actually handling her

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[1] **The power of attorney states: "To maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgages, subject to deeds of trust, and hypothecate, and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I now own or may hereafter acquire, for me, in my behalf, and in my name and under such terms and conditions, and under such covenants, as my said Attorney in Fact shall deem proper."**

rental and management responsibilities with regard to her two rental mobile homes. The evidence also demonstrates that, up until the time of the hearing in this case, Phillip Maze was meeting with potential tenants, signing leases, collecting rent and security deposits, providing and paying for water service for the trailers, maintaining the trailers, and completing repairs.

It is likewise clear from the record that Kenneth Maze knew that, although he had the power of attorney in this regard, Phillip Maze was actually managing the properties. In fact, as Kenneth Maze admitted in the June 24, 2009, handwritten statement that he gave to HUD's investigator, which was erroneously overlooked by the ALJ: "Phillip Maze (her oldest son) lives with and has assisted Opal Maze in her home on a daily basis, and has managed her trailors [sic] as well for several years."

Opal Maze's durable power of attorney contained no express prohibition on assigning others or appointing a subagent. Based on the record facts set forth above, the Secretary finds that Kenneth Maze exercised his powers under the durable power of attorney to use Phillip Maze as a subagent to control Opal Maze's rental properties. Because the relationship between principal and subagent is also one of agency, Phillip Maze's actions as a subagent bind the principal (Opal Maze) and also impose vicarious liability on the principal. *See Colony Associates v. Fred L. Clapp & Co.*, 300 S.E.2d 37, 40 (N.C.App. 1983); *see also* Restatement (Third) of Agency, § 3.15. Therefore, Phillip Maze had the authority to rent the property in issue because at all relevant times he was acting as a subagent for his mother, Respondent Opal Maze, and he was carrying this duty out with the knowledge and/or acquiescence of his brother Kenneth Maze who, as the attorney-in-fact for his mother, was also her agent.[2]

The ALJ erred in focusing on the particular situation involving the Complainants. This is contrary to agency law, which is not transaction specific, but, instead, looks at the entirety of the agency relationship. It is not relevant whether Kenneth Maze was aware of and approved every single detail surrounding the management of his mother's properties.[3] The agency relationship flows from the authority Kenneth Maze provided to Phillip Maze to control Opal Maze's properties, even if that authority is implied. *See Castillo v. Case Farms of Ohio, Inc.*, 96 F.Supp.2d 578, 593 (W.D.Tex. 1999); *see also* Restatement (Third) of Agency, § 2.02.

The ID also is in error in finding that, under agency principles, Opal Maze did not

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[2] Kenneth Maze never tried to manage Opal Maze's properties. Indeed, he admitted to being negligent in his duties as attorney-in-fact, asserting incredulously that he was not aware that Opal Maze's properties were within the scope of his duties under the durable power of attorney. However, when he signed the power of attorney, the attorney, who prepared it, explained the document to Kenneth and Opal Maze; moreover, the power of attorney clearly covers rental property. Nonetheless, Kenneth did not look for tenants, negotiate lease agreements, establish rents, and/or handle any day-to-day operations with regard to the rental properties, all of which Phillip Maze did. In addition, Phillip Maze received money for his management of Opal Maze's rental properties, which he used to support him and his mother. Indeed, in addition to his signed admission above to the HUD Investigator that Phillip Maze had managed Respondent Opal Maze's trailers for several years, Kenneth Maze stated that he was also aware that Phillip Maze collected rent money from Louise Terrell, a long-term tenant of Opal Maze, which Phillip Maze used for himself and for Opal Maze's groceries, and yet Kenneth Maze did nothing to halt these allegedly unauthorized activities of his brother.

[3] Kenneth Maze sought to differentiate between what he affirmatively authorized and what he chose to ignore, the latter for which he claimed to have no responsibility. However, the record clearly shows that Kenneth chose to count upon Phillip Maze to handle the things he decided to ignore.

have the capacity to authorize Phillip Maze to rent the mobile home to Complainants. There is no question that a durable power of attorney is meant to deal with situations in which the principal becomes incompetent. Alabama law provides that the acts of an attorney-in-fact pursuant to a durable power of attorney during the principal's incompetency bind the principal. *See* Alabama Code § 26-1-2(b) (2010); *see also* Restatement (Third) of Agency, § 3.08(2).

While Opal Maze subsequently became incompetent, it is clear from the evidence that, while she was competent, she selected Kenneth Maze as her attorney-in-fact and gave him the authority to deal with her affairs, including matters relating to her rental properties if she became incompetent. The record also shows that Kenneth Maze chose not to deal with the rental properties but rather impliedly delegated his authority to his brother Phillip. Opal Maze's dementia is irrelevant as to whether or not Phillip Maze was her agent because Kenneth Maze, through his power of attorney, impliedly made Phillip Maze her subagent. Accordingly, Opal Maze is vicariously liable for the actions of her agents and subagents, in this case the illegal conduct committed by Respondent Phillip Maze.

2. <u>The ALJ's legal conclusion with respect to emotional distress damages is contrary to law.</u>

The ALJ stated "the Charging Party does not present the Court with a mathematical formula for comparing this case with others, or for computing the dollar value of particular types and amount of intangible injuries suffered in this case." ID at 13. The Secretary finds that the ALJ's fixation on a mathematical formula is contrary to the law with respect to the computation of intangible damages, which makes it clear that the focus in reaching an appropriate damage award for intangible damages like emotional distress should be on the complainant's injury. Thus, the ALJ improperly measured damages by the length of time the victim had contact with the Respondent, rather than by the actual injury suffered. Instead, the ALJ should focus on the Complainants' complete testimony as to the emotional distress they suffered, none of which the ALJ found unbelievable.[4]

<u>CONCLUSION</u>

The Fair Housing Act makes it unlawful for any person to make housing unavailable, or deny a dwelling to any person of race or color. The Act also prohibits discrimination against any person in the terms, conditions or privileges of rental of a dwelling, or in the provision of related services or facilities because of race or color. In addition, it violates the Act for any person to make any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race or color. Finally, it is illegal for any person to coerce, intimidate, threaten, or interfere with any person, or on account of his/her having aided or encouraged any other person, in the exercise or enjoyment of any right granted or protected by the Act.

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[4] See the seminal article on Fair Housing Act compensatory damages, Alan W. Heifetz and Thomas C. Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudication*, 26 J. Marshall L. Rev. 3, 19 (Fall 1992).

The Secretary FINDS that the evidence shows that: (1) Respondent Phillip Maze violated each of the above Fair Housing Act provisions; (2) he was an agent of Respondent Opal Maze by virtue of the fact that Kenneth Maze, having the power of attorney for his mother, delegated to Respondent Phillip Maze the authority to act as Respondent Opal Maze's agent for maintaining, managing, renting, and leasing her rental properties; and (3) Respondent Opal Maze is vicariously liable for these heinous acts of Respondent Phillip Maze that, sadly, are still being committed over forty years after the passage of the Fair Housing Act.

Upon review of the entire record in this proceeding, including the briefs filed with the ALJ and the Secretary, and based on an analysis of the applicable law, I GRANT the Charging Party's Petition for the reasons set forth above. I FURTHER FIND that, with respect to emotional distress damages, the ALJ erroneously required a mathematical formula for comparing this case with others, or for computing the dollar value of particular types and amount of intangible injuries suffered in this case, and, thus, improperly measured damages by the length of time the victim had contact with the Respondents, rather than by the actual injury suffered as set forth in the Complainants' credible testimony.

Pursuant to 24 C.F.R. § 180.675(a), I SET ASIDE all the ID's factual findings and conclusions of law that are inconsistent with this Order on Secretarial Review, AFFIRM all of the ID's factual findings and conclusions of law that are consistent with this Order on Secretarial Review, and in accordance with 24 C.F.R. §§ 180.675(a) and (g) and 42 U.S.C. §§ 3608(a) and (c), I REMAND this proceeding to the ALJ to enter a Initial Decision on Remand consistent with this Order on Secretarial Review.

IT IS SO ORDERED.

Dated this 25 day of February 2011

Laurel Blatchford
Secretarial Designee