

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
Lisa M. Soliz,

Charging Party,

v.

Dolores Rollhaus,

Respondent.

HUDALJ 07-90-0309-1
Decided: December 9, 1991

Carl Polster, Esquire
For the Respondent

Patrick H. Hearn, Esquire
For the Department

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DECISION AND ORDER

STATEMENT OF THE CASE

This matter arose as a result of a complaint of discrimination based on sex and familial status filed on April 24, 1990, by Lisa M. Soliz ("the Complainant") against Dolores Rollhaus ("the Respondent"). The complaint was filed and processed pursuant to the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. Section 3601, *et seq.* (the "Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104.

The Department of Housing and Urban Development ("the Government" or "HUD") investigated the complaint and issued a charge against Respondent on May 30, 1991. HUD alleged in the charge that Respondent discriminated against Complainant in conjunction with her attempt to rent a house from Respondent in violation of 42 U.S.C. Sections 3604(a), (b), and (c). Respondent denied that allegation.

A hearing was held in St. Louis, Missouri on August 27, 1991. The record was closed on October 10, 1991, upon the filing and receipt of briefs.

ANALYSIS, FINDINGS, AND CONCLUSIONS OF LAW

Background

Respondent resides in Georgia. She owns three rental properties in Missouri -- a house in Wright City; a small apartment house in the city of Louisiana; and a house in the city of Kirkwood. Tr. 104-05; Ex. G-7 at 5.¹

Respondent's property in Wright City is a 5-room, single-family house with a basement and a yard. Tr. 21, 116. During the Spring of 1990, she was seeking to rent that house for \$300 per month with a \$300 security deposit. Respondent arranged to have Mark Fox, the next-door neighbor, show it to prospective tenants. Tr. 111, 113; Stip. 5.

At that time, Complainant was seeking to rent federally subsidized housing for herself and her 14-month old daughter, and she responded to a newspaper advertisement for Respondent's house in Wright City. On April 3, 1990, Mr. Fox showed

¹The following abbreviations refer to the record in this case: "Tr." for "Hearing Transcript"; "Ex. G" for "Government's Hearing Exhibit"; "Ex. R" for "Respondent's Hearing Exhibit"; "Stip." for "Stipulations Of Fact."

the house to Complainant and told her to call Respondent if she wanted to rent it. Tr. 20-23. Complainant went to her mother's house and, in her mother's presence, called Respondent and spoke with her for approximately 15 minutes in an unsuccessful attempt to rent the house. Tr. 24, 52, 57.

The next day, Complainant spoke to Tammy Hamlin, a Housing Field Representative for the Northeast Community Action Corporation (NECAC) about her unsuccessful attempt to rent the house. Tr. 31, 66, 71. Ms. Hamlin had previously issued a voucher to Complainant for HUD's "Section 8" subsidized housing program and had counseled her concerning physical and emotional abuse by her husband. Tr. 29, 70, 76.

Complainant asked Ms. Hamlin, who was a single parent with three children, to call Respondent to determine if she would rent the house to her (Hamlin). Tr. 31, 72. Ms. Hamlin called Respondent and attempted unsuccessfully to rent the house. Tr. 31, 72-74. On May 3, 1990, Respondent rented the house to a man without children. Tr. 108; Stip. 8.

Sections 3604(a) And (b)

The Fair Housing Act makes it unlawful:

- (a) To refuse to ... rent after the making of a bona fide offer ... for the ... rental of ... a dwelling to any person because of sex [or] familial status
- (b) To discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling ... because of sex [or] familial status

42 U.S.C. Sections 3604(a), (b). The Act defines the term "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with ... a parent" *Id.* Section 3602(k).

Complainant is covered by the familial status provisions of the Act because her child was less than 18 years old. Complainant's offer to rent the house was bona fide because she was truly seeking to rent the house. See *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528, 530 (7th Cir. 1973) (plaintiffs' offer to buy home was bona fide because they were actual home seekers); 114 Cong. Rec. 5515 (1968) (remarks of Senators Allot and Mondale) (offer is bona fide if person really wants to rent a property).

Because the Government has shown that Complainant's sex and familial status were motivating factors for Respondent's decision not to rent the house to her, and Respondent has presented evidence that she would have made the same decision for legitimate reasons even if she had not considered the impermissible factors, the

framework for analyzing the evidence is established by *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

Under *Price Waterhouse*, once a plaintiff presents direct evidence that an illegitimate factor played a motivating part in the defendant's decision, the burden of proof shifts to the defendant, who "may avoid a finding of liability only by proving that it would have made the same decision even if it had not allowed [the improper considerations] to play ... a role" in the decision. *Id.* at 244-45 (footnote omitted). The defendant must show by a preponderance of the evidence "that its legitimate reason, standing alone, would have induced it to make the same decision." *Id.* at 252-53.²

Direct Evidence Of Discrimination

In explaining a plaintiff's burden to prove that gender played a motivating part in a decision, the Supreme Court stated in *Price Waterhouse* that:

In saying that gender played a motivating part in an employment decision, we mean that, if we asked the employer at the moment of the decision what its reasons were and if we received a truthful response, one of those reasons would be that the applicant or employee was a woman.

...

The plaintiff must show that the defendant actually relied on her gender in making its decision. In making this showing, stereotyped remarks can certainly be *evidence* that gender played a part.

²Although *Price Waterhouse* was an employment discrimination case governed by Title VII, the propriety of applying such precedents to cases under the Fair Housing Act is well established. *E.g.*, *Secretary of HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990). Moreover, the underlying basis for the holding in *Price Waterhouse* was the balance created by Title VII between employee rights and employer prerogatives. *See Price Waterhouse*, 490 U.S. at 239, 242. The Act created a similar balance between the rights of owners/landlords and buyers/renters. *See, e.g., Madison v. Jeffers*, 494 F.2d 114, 117 (4th Cir. 1974) (a seller may refuse to sell a house on any honest basis unrelated to race); 134 Cong. Rec. H4681, H4683, H4687 (daily ed. June 23, 1988) (remarks of Representatives Glickman, Pelosi, and Synar) (Act prohibits discrimination against families with children but protects rights of owners and landlords by allowing them to reject anyone not otherwise qualified to rent).

Id. at 250-51.

I find that Complainant's sex and familial status played a motivating part in Respondent's decision not to rent the house to her because Respondent stated at the time of her decision that she preferred to rent it to a man and that she did not rent the house to single mothers, and she made stereotyped remarks concerning the ability of single mothers to be good tenants.

When Respondent asked Complainant if she had a husband and children, Complainant stated that she was separated from her husband, and that her "little girl" would be living with her. Tr. 26, 113. Respondent told Complainant that she preferred to rent the house to a single man, and she believed that Complainant, as a single woman, could not take care of the place. Ex. G-2 at 3.

Respondent told Complainant that she "could not do it," and that "a woman was not capable of it." Complainant replied that previously she had taken care of a house, yard, and garden while caring for her child without help from her husband. However, Respondent told Complainant that she "had to have a man because men can do things that women can't do," that Respondent's grandchildren "keep her hopping," that if Complainant was anything like Respondent's daughter, Complainant's child would "run wild," "tear up the house," and "color on the walls just like her grandchildren," and that Complainant "couldn't be responsible enough." Tr. 26-28; 35-36.

Moreover, Respondent made similar comments to Ms. Hamlin the following day when she attempted to rent the house. In response to Respondent's inquiries about the size of her family and whether she was married, Ms. Hamlin stated that she was a single mother with three children. Respondent did not ask her if she had a job or if she could afford to pay the rent or the deposit.

Instead, Respondent told Ms. Hamlin that she did not rent to single mothers because it was her experience that they could not take care of the property or afford to rent it. Tr. 72-74. Ms. Hamlin asserted that she had been able to afford and maintain a house with a yard previously. Tr. 78. However, Respondent refused to discuss the matter further. Tr. 73. Although Respondent testified that the house was too small for four persons, Tr. 116-17, there is no evidence that she mentioned that to Ms. Hamlin.

Respondent's recollection of her conversation with Ms. Hamlin was different than Ms. Hamlin's version, which is described above. Respondent testified that she believed Ms. Hamlin's call was "some kind of a phony deal" because she "gave no information." However, Respondent's recollection of the conversation was not good, and she did not specifically dispute Ms. Hamlin's version of it. Tr. 116. Moreover, Ms. Hamlin was trained in conducting investigations, Tr. 69, and her relationship with Complainant was a professional one. Thus, she was an objective and disinterested witness. Therefore, I find Ms. Hamlin to be a more credible witness than Respondent.

Respondent testified that she was concerned about Complainant's ability to maintain the yard because of its size (narrow but 150-180 ft. deep) and because the grass was long. Tr. 136, 142. However, there was no evidence showing that Respondent had reason to believe that Complainant, due to her sex or familial status, was not able to maintain a yard of that size. *Cf. Dothard v. Rawlinson*, 433 U.S. 321, 332 n.14 (1977) ("a discriminatory employment practice must be shown to be necessary to safe and efficient job performance to survive a Title VII challenge").

Similarly, there was no evidence showing that Respondent had reason to believe that Ms. Hamlin, due to her sex and familial status, was unable to pay the rent or maintain the property. Thus, it is clear that Respondent's remarks to Complainant and Ms. Hamlin were based on stereotyping, not on a reasoned judgment concerning their ability to be good tenants.

Therefore, Respondent's statements to Complainant and Ms. Hamlin show that Complainant's sex and familial status played a motivating part in her decision not to rent the house to Complainant. *See Terbovitz v. Fiscal Court of Adair County, Ky.*, 825 F.2d 111, 114-17 (6th Cir. 1987) (defendant's statements to plaintiff that it would not hire a woman for job established that sex was motivating factor in defendant's decision not to hire her).

Evidence Of Legitimate Motive

Respondent contends that she rejected Complainant as a tenant because she was unable to pay the rent and the security deposit. However, I find that Respondent has not shown by a preponderance of the evidence that she would have rejected Complainant for that reason even if she had not considered the improper factors.

It is true that Respondent expressed concern to Mr. Fox about the ability of prospective tenants to meet their financial obligations related to the tenancy. Her only statement to him regarding the type of tenant she was seeking for the house was that she wanted someone who could "pay the bills." Stip. 5. Respondent was concerned in that regard because she was in Georgia recovering from surgery, and she did not have a property manager for the house. Tr. 112-13, 138-39. Her instructions to the manager of her apartment house in Louisiana, Mr. Shannon Wright, were similar. The only statement she made to him in that regard was that she wanted persons who would pay the rent on time. Tr. 87.

Complainant's statements to Respondent show that she had limited financial resources. When Respondent asked her where she worked, Complainant stated that she had been hired by the Canteen Corporation and was supposed to start working in February, but her starting date had been delayed and she had not been given a definite date when she would start. Tr. 25, 44-45, 135-36. Complainant told Respondent that she had been approved for federally subsidized housing and that her parents would pay

the difference between the \$275 per month subsidy and the \$300 rent and would give her other financial assistance if she needed it. Tr. 25.

Respondent testified that she believed, because Complainant was not working, that she would not be able to pay the \$25 per month difference between the subsidy and the rent, and the gas and electric bills. Tr. 114, 132, 134. Respondent testified that she did not want to rely on Complainant's parents to pay those expenses because her contractual relationship would have been with Complainant, and she did not want to take a chance that Complainant's parents might later withdraw their financial support. Tr. 137.

Respondent testified that she had similar concerns about Complainant's ability to pay the security deposit. Respondent and Complainant had discussed the fact that the house was in need of cleaning, painting, and repairs. A window and several locks were broken; two steps had to be replaced; there was water in the basement; the driveway needed to be recovered with gravel; the grass was high; and there were tall weeds around the house. Tr. 22, 136.

Complainant asked Respondent if she could do the repairs and painting, which were not considered part of a tenant's normal maintenance responsibilities, instead of paying the security deposit. She explained that she was capable of doing the repairs and painting, and that her father owned a construction company and would help with the repairs. Tr. 26-27; 63.

Respondent declined that request. She testified that she had a policy of not hiring tenants to work for her because of prior unsuccessful experiences in that regard. Tr. 141.

In addition to the evidence summarized above, the record shows that Respondent has rented her properties, including the house in question, to many women and families with children. The first of the four tenants in the Wright City house was a woman (Cathleen Phegley), who was selected by Respondent as a tenant in November 1984. Tr. 109-110; Ex. R-4. The second and third tenants were both single men. Tr. 108, 110, 129; Ex. R-2. After learning of the complaint in this matter, Respondent personally rented the Wright City house to the fourth tenant -- a woman with a child (Wanda Buchek) in May 1991. Tr. 106, 110, 123; Ex. R-1.

On March 1, 1990, Respondent personally rented the house in Kirkwood to a man with a child, the man's mother, and his sister (the Calderons). Tr. 110, 143; Ex. G-7 at 5; Ex. R-5. Many of the tenants of Respondent's apartment house in Louisiana were women and persons with children. Tr. 83, 92, 93, 117. They included a woman (Juanita Weber), Tr. 83; a woman with one or two children and a friend (Pat Preston), Tr. 92, 93; Ex. G-7 at 5; a woman with three children (Peggy Henry), Ex. G-7 at 5; a woman

with several children (Jane Motley), Tr. 144; Ex. R-11; and couple with two children (the Niffens), Tr. 91; Ex. R-10.

When Mr. Wright began managing the apartment house and selecting the tenants in August 1990, Tr. 85, 91, the tenants continued to include women and persons with children. For example, Mr. Wright rented apartments to a woman (Linda Lafferty), Tr. 88; Ex. R-6; and three couples with one child each (the Buchanans), Tr. 88, 89; Ex. R-7; (the Tungates), Tr. 89; Ex. R-8; (the Charltons), Tr. 90; Ex. R-9.

Although Mr. Wright asserted that he obtained Respondent's approval before selecting some of those tenants, he told HUD's investigator that he did not consult her, and Respondent did not recall being consulted concerning those tenants. Tr. 121-23, 147-48; Ex. G-1 at 8. In view of that inconsistency in Mr. Wright's explanations of the selection process and the absence of corroboration for his testimony, I find it more likely that he did not consult Respondent before selecting those tenants.

However, because Mr. Wright was Respondent's agent, his decision to select those tenants has some probative value despite Respondent's lack of involvement in the selection process. See *Village of Bellwood v. Dwayne Realty*, 482 F. Supp. 1321, 1334-35 (N.D. Ill. 1979) (fact that realty firm's agent showed home in racially integrated neighborhood to White person was evidence that firm did not engage in racial steering).

Based on her conversation with Complainant, Respondent undoubtedly had a legitimate concern about Complainant's ability to pay the rent and security deposit, and she would have been justified if she had rejected Complainant as a tenant for that reason. However, proving that Respondent *would have been justified* in rejecting Complainant is not the same as proving that Respondent *would have* rejected her. See *Price Waterhouse*, 490 U.S. at 252. Moreover, Respondent may not meet her burden of proof by merely showing that she was motivated only in part by a legitimate reason. See *id.* Respondent instead must show by a preponderance of the evidence that the legitimate reason, standing alone, would have induced her to make the same decision. See *id.*

I do not find that Respondent met that burden. First, there is no evidence that Respondent told Complainant that she was rejecting her as a tenant because of a concern about her ability to pay the rent and the security deposit. The only reason she gave Complainant was that she preferred to rent the house to a man, and she made stereotyped remarks concerning the ability of single mothers to be good tenants.

Similarly, there is no evidence that Respondent expressed any concern about Ms. Hamlin's ability to pay the rent or the security deposit. Respondent did not even ask her if she had a job or if she could afford to pay the rent or the deposit. The only reason she gave Ms. Hamlin for rejecting her was that she did not rent to single mothers.

Moreover, some of the rentals to women and families with children, including Respondent's rental of the Wright City house to a woman with a child (Wanda Buchek), occurred after Respondent became aware of the complaint in this case. Thus, they deserve minimal weight. Despite Respondent's prior history of renting her properties to women and families with children, it is obvious from her statements to Complainant and Ms. Hamlin that she intended to deviate from that pattern in the present case.

Although it is not necessary to determine Respondent's reason for that deviation, it most likely occurred because of her dissatisfaction with her first female tenant in the house. When Respondent told Ms. Hamlin that she did not rent to single mothers, her stated reason was that it was her experience that they could not take care of the property or afford to rent it. Respondent's decision to exclude all single mothers from consideration as tenants for the house based on an unsatisfactory experience with one tenant constitutes a classic display of prejudice.

Section 3604(c)

The Government has also alleged that Respondent violated 42 U.S.C. Section 3604(c). That section makes it unlawful:

To make ... any ... statement ... with respect to the ... rental of a dwelling that indicates any preference, limitation, or discrimination based on ... sex [or] familial status ... or [that indicates] an intention to make any such preference, limitation, or discrimination.

I find that Respondent violated Section 3604(c) by stating to Complainant that she preferred to rent the house to a single man, and by stating to Ms. Hamlin that she did not rent to single mothers. Those statements were made with respect to the rental of the house, and they indicated a preference based on sex and familial status, as well as a limitation and discrimination based on those factors.

I find that Respondent also violated Section 3604(c) by stating that Complainant, as a single woman, could not take care of the place; that "a woman was not capable of it;" that Complainant "had to have a man because men can do things that women can't do;" that if Complainant was anything like Respondent's daughter, Complainant's child would "run wild," "tear up the house," and "color on the walls just like her grandchildren;" and that Complainant "couldn't be responsible enough." Those statements were made with respect to the rental of the house. Because they constituted stereotyped remarks concerning the inability of single mothers to be good tenants, they indicated discrimination based on sex and familial status.

REMEDIES

Because Respondent has violated the Fair Housing Act, Complainant is entitled to appropriate relief under the Act, which may include actual damages suffered by her and

injunctive and other equitable relief. 42 U.S.C. Section 3612(g)(3). A civil penalty may also be imposed. *Id.* The Government, on behalf of the Complainant, seeks: (1) damages totalling \$2,290 to compensate Complainant for economic loss; (2) damages totalling \$30,000 to compensate her for humiliation, embarrassment, emotional distress, and loss of civil rights; (3) injunctive relief designed to prohibit Respondent from violating the Fair Housing Act in the future; and (4) a civil penalty of \$5,000.

Complainant has not alleged that she was harmed by Respondent's statement to Ms. Hamlin that violated Section 3604(c), and no damages have been sought on Ms. Hamlin's behalf in conjunction with that violation. Thus, Complainant's relief is limited to the injuries that she incurred as a result of Respondent's failure to rent the house to her and Respondent's statements to her that violated Section 3604(c).

Compensatory Damages

Actual damages for violations of the Act may include damages for economic loss as well as intangible injuries such as embarrassment, humiliation, and emotional distress caused by the violations. *See Blackwell*, 908 F.2d at 872. Damages for emotional distress may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof. *Id.*

In my judgment, Complainant is entitled to \$360 in compensatory damages for her economic loss and \$2,500 in compensatory damages for the humiliation, emotional distress, embarrassment, and loss of civil rights that resulted from Respondent's violations of the Act.

Complainant clearly suffered emotional distress as a result of Respondent's illegal actions. She became upset and cried after her conversation with Respondent, Tr. 29, 58. Her distress was intensified because Respondent stressed her need for a husband, yet her former husband had abused her physically and emotionally. Tr. 29.

She also lost the opportunity to live in a "nice, safe, comfortable" home of her choice in familiar area near friends who could have helped her if she had additional problems with her husband. Tr. 30. However, there was no evidence that, except for its location, the house into which Complainant moved after being rejected by Respondent was less desirable than Respondent's house. After continuing to live with her parents "for a while," she obtained subsidized housing in Warranton, which was 12 miles from Wright City, and lived in a house there for 3 months. Tr. 39. There was no evidence that the Warranton house was less spacious or lacked the amenities of Respondent's house.

However, Complainant incurred an additional expense due to the lost housing opportunity. While she lived in Warranton, she had to drive 24 more miles per day to work than she would have had to drive if she had rented Respondent's house. Tr. 39.

Based on the federal mileage rate (25 cents per mile), that amounts to a cost of \$360 (60 work days x 24 miles x 25 cents).

The Government also seeks damages for Complainant's loss of the use of some possessions that she had to store in her parent's basement when she moved to Warrenton. However, those items were not identified, and their value to Complainant is questionable because she ultimately "had to end up getting rid" of them because her father was remodeling the basement. Tr. 40. Thus, the loss of those items is not compensable.

The Government also seeks damages for Complainant's distress that allegedly resulted from the bad memories concerning both the incident and her abuse by her husband that arose when she had to respond to questions during discovery. As a result, she "broke down" and went to a hospital emergency room in August 1991. A doctor told her not to work for 2 weeks and counseled her for 7 mornings in the hospital. She also spent a week at a "stress center." She did not believe that those events would have occurred if this case had not come up because she had been to counseling in February 1990 and had "put it all behind [her]." Tr. 37-39, 46-47.

The connection between the violations in April 1990 and the stress allegedly caused by the discovery more than a year later is too attenuated to warrant a finding that the stress was related to the violations. There was no medical evidence showing that the stress was related to the discovery. Moreover, Complainant's description of her need for counseling suggests that there were additional reasons for it. She stated that she found herself feeling that "maybe I'm not capable of taking care of myself and my daughter," and that she went to the counseling with her daughter to "try and learn about being a single parent with a child to see if [she was] okay." Tr. 38-39. Further, another disturbing event that could have contributed to her distress occurred at some (unspecified) time between July 1990 and the time of Complainant's medical treatment -- her husband moved back into her home against her wishes and began abusing her again. Tr. 32-33.

The Government also contends that Complainant should be reimbursed for the cost of her medical treatment and prescription drugs and for the wages that she lost while receiving the treatment. However, for the reasons stated above, those items are not compensable. Moreover, there is no evidence of the cost of the treatment, Complainant did not testify that she lost wages on the days in question, and her wage rate during that period is not in the record. Although the Government asserts that Complainant's wage rate is set forth in her answer to an interrogatory, those answers were not introduced into evidence.

Civil Penalty

To vindicate the public interest, the Fair Housing Act also authorizes an administrative law judge to impose civil penalties upon respondents who violate it. 42 U.S.C. Section 812 (g)(3)(A); 24 C.F.R. Section 104.910(b)(3). Determining an

appropriate penalty requires consideration of the following factors: (1) the nature and circumstances of the violation; (2) the degree of Respondent's culpability; (3) any history of prior violations; (4) Respondent's financial resources; (5) the goal of deterrence; and (6) other matters as justice may require. See H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Respondent's violations are serious offenses. Statements that indicate a preference for single men as tenants tend to discourage other persons protected by the Act from seeking to rent the applicable properties. As a result, housing opportunities for those persons are limited in contravention of the intent of the Act. See *Mayers v. Ridley*, 465 F. 2d 630, 653 (D.C. Cir. 1972) (concurring opinion). Respondent's statements and failure to rent the house to Complainant caused her to have some injuries. As Respondent bore sole responsibility for her statements to both Complainant and Ms. Hamlin, she is fully culpable.

Respondent was unaware of the Act, Tr. 142, and there is no evidence that Respondent has previously been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against her is \$10,000.00. See 42 U.S.C. Section 812(g)(3)(A); 24 C.F.R. Sec. 104.910(b)(3)(i)(A). However, the maximum penalty should not automatically be imposed in every case. See H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). As Respondent owns three rental properties as well as her own home, her financial circumstances do not preclude the imposition of an otherwise appropriate penalty.

Because Respondent rents three properties on a regular basis, there is a need to deter her from discriminating when selecting tenants and from making prohibited statements that would dissuade women and families with children from seeking to rent from her. Other similarly situated persons need to know that violating the Act will incur serious consequences.

In my judgment, imposition of a civil penalty of \$3,000 is appropriate in this case. Some penalty is warranted because Respondent was fully responsible for several violations of the Act, and there is a need to deter others from committing similar offenses. However, the amount of the penalty should not be extremely high because Respondent has no prior offenses, and she has a history of renting her properties to women and families with children.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. 42 U.S.C. Section 3612(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell*, 908 F.2d at 875 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983)). Although there are no lingering effects of Respondent's

violations, the injunctive relief provided in the following Order bars Respondent from violating the Act in the future.

The Government has requested that the injunctive relief include the requirement that Respondent maintain and allow HUD to inspect records concerning her tenants and prospective tenants so HUD can ascertain whether she is engaging in discriminatory conduct. In view of the nature of Respondent's violations, such provisions are appropriate.

CONCLUSION

My conclusions are as follows: The preponderance of the evidence shows that Respondent violated 42 U.S.C. Sections 3604(a), (b), and (c). The Complainant suffered actual damages for which she will receive a compensatory award of \$2,860. Further, to vindicate the public interest, injunctive relief will be ordered, and a civil penalty of \$3,000 will be imposed against Respondent.

ORDER

It is hereby ORDERED that:

1. Respondent is hereby permanently enjoined from discriminating with respect to housing because of race, color, religion, sex, familial status, national origin, or handicap. Prohibited actions include, but are not limited to:

a. refusing or failing to sell or rent a dwelling, or refusing to negotiate for the sale or rental of a dwelling, to any person because of race, color, religion, sex, familial status, national origin, or handicap;

b. otherwise making unavailable or denying a dwelling to any person because of race, color, religion, sex, familial status, national origin, or handicap;

c. discriminating 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, color, religion, sex, familial status, national origin, or handicap;

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, color, religion, sex, familial status, national origin, or handicap; and

e. coercing, intimidating, threatening, or interfering 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 the Fair Housing Act.

2. Within ten (10) days of the date on which this Order becomes final, Respondent shall pay actual damages of \$2,860 for humiliation, emotional distress, embarrassment, and loss of civil rights to Complainant.

3. Within ten (10) days of the date on which this Order becomes final, Respondent shall pay a civil penalty of \$3,000 to the Secretary of HUD.

4. For a period of 3 years from the date of this Order, Respondent shall develop and maintain records showing the names, addresses, sex, and familial status of all tenants, applicants, and persons who inquired about renting any of her properties, as well as the dates and disposition of the inquiries. Respondent shall keep all rental applications. Respondent shall allow HUD's Kansas City Regional Office of Fair Housing and Equal Opportunity, 400 State Avenue, Kansas City, Kansas, 66101, to review those documents every 3 months.

5. Respondent shall submit a report to this tribunal within fifteen (15) days of the date this Order becomes final detailing the steps taken to comply with it.

This Order is entered pursuant to 42 U.S.C. Section 3612(g)(3) of the Fair Housing Act and the regulations codified at 24 C.F.R. Section 104.910, and it will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary within that time.

/s/

PAUL G. STREB
Administrative Law Judge

Dated: December 9, 1991.

