

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
Melanie Kurch,

Charging Party,

v.

HUDALJ 04-94-0227-8
Decided: April 19, 1996

Barry Lewis and Urban
Development Association II, Ltd.,

Respondents.

Barry Lewis, *pro se*

Theresa L. Kitay, Esquire
For the Secretary

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arises out of a complaint filed by Melanie Kurch ("Complainant") alleging that Barry Lewis and Urban Development Association II, Ltd. ("Respondents") violated the Fair Housing Act ("the Act"), 42 U.S.C. § 3601 *et seq.*, by making discriminatory statements with respect to the rental of apartments, and by retaliating against Complainant for her opposition to Respondents' discriminatory rental policies. The Department of Housing and Urban Development ("HUD" or "the Secretary") investigated the complaint, and after deciding that there was reasonable cause to believe

that discriminatory acts had taken place, issued a Charge of Discrimination

against Respondents on October 27, 1995. Upon issuance, the Charge was mailed to Respondents by both certified and regular mail. The Charge alleges that Respondents violated sections 804(c) and 818 of the Act (42 U.S. C. §§ 3604(c) and 3617).

Respondents failed to file an Answer to the Charge of Discrimination. Pursuant to a motion by the Charging Party to which Respondents filed no response, a Default Judgment was entered against Respondents on January 23, 1996, finding that Respondents violated the Act as alleged in the Charge. On February 6, 1996, a hearing was held in Ft. Myers, Florida, for the limited purpose of taking evidence on the appropriate relief to be awarded to the Charging Party. At the close of the hearing, the Charging Party was directed to submit a post-hearing brief, which was filed March 5, 1996.

Respondents did not appear at the hearing. Because Respondents failed to file an Answer to the Charge of Discrimination, the allegations of the Charge are deemed admitted pursuant to the rules of practice governing this proceeding. 24 C.F.R. § 104.420.

Findings of Fact

1. Complainant, who is white, began employment as a leasing agent at River Bend Apartments in Ft. Myers, Florida, on June 2, 1993. Charge ¶ 3; Tr. 9.¹
2. Respondent Barry Lewis, who is also white, is a partner in Respondent Urban Development Association II, Ltd., the former owner of River Bend Apartments. Respondent Lewis lives at River Bend Apartments. Charge ¶ 4.
3. Shortly after Complainant began working as a leasing agent at River Bend apartments, Respondent Lewis reprimanded her for renting an apartment to a black woman. Among other things, Respondent Lewis told Complainant to tell the new tenant that he did not want to see her at the pool or anywhere around Lewis' own apartment at River Bend. Charge ¶ 6. Complainant was outraged by Respondent Lewis' instructions. Tr. 15-16.
4. Complainant went to the new tenant's apartment and told her exactly what

¹"Tr." refers to the transcript of the hearing.

Respondent Lewis had said. Tr. 15.

5. Respondent Lewis instructed Complainant to limit the number of black applicants she accepted and to discourage black and Hispanic prospects from applying. Charge ¶ 7. Specifically, Respondent Lewis told Complainant that he had "met his black quota," and that he wanted "no more niggers" at River Bend. Tr. 13.

6. Respondent Lewis' racial comments "shocked" Complainant. Tr. 14. His racially discriminatory attitudes, statements, and policies were "out of line with" her own beliefs. To her "it doesn't matter what color [people] are. They are all . . . God's people. It doesn't matter . . . [T]hey deserve a place to live, if they can afford to pay and their references check out." Tr. 14.

7. On another occasion, Respondent Lewis instructed Complainant to show a black couple an apartment that was in very bad condition. Tr. 17. Complainant was "humiliated" when the couple were understandably unhappy with the condition of the apartment. Tr. 18. Feeling "claustrophobic" and "trapped," she confronted Respondent Lewis. Tr. 18. Although Complainant was crying and "hysterical" when she spoke to Respondent Lewis, "he was laughing. He just thought that was the funniest thing." Respondent Lewis' derisive attitude toward Complainant's distress made her feel "helpless." Tr. 19.

8. Despite Respondent Lewis' instructions, Complainant subsequently showed an apartment to three black men. When these prospective tenants returned on another day to pay a deposit for the apartment, Respondent Lewis refused to rent to them. Charge ¶ 8.

9. As with the earlier incidents, Complainant confronted Respondent Lewis about the failure to rent to these prospective tenants. Complainant was "upset" and crying, but Respondent Lewis once again laughed at Complainant and told her he had "met his black quota." Tr. 21. When Complainant repeated that she wanted to rent to these prospects, Lewis reacted violently, telling Complainant: "This is my home. This is my apartment complex . . . no more niggers. If you want to rent to niggers you can go somewhere else." Tr. 22.

10. When Complainant became aware that Respondent Lewis had refused to rent to these prospective tenants because of their race, she told them "exactly what had

happened" and referred them to HUD. Tr. 23. Explaining to the prospects that they had been denied rental at River Bend because of their race made Complainant feel "embarrassed, humiliated, and ridiculed." Tr. 23. Complainant testified that "because I'm Caucasian it makes it that much different and that much harder for me to plead to someone of a different race, because . . . they think that I had something to do with it, with this discriminatory act." Tr. 23-24.

11. Complainant spoke to HUD investigators on several occasions regarding the Fair Housing Act complaints subsequently filed by the prospective tenants. Charge ¶ 9; Tr. 24.

12. Respondent Lewis has told other employees and prospective employees that he would rent only to "certain kinds of people," and that he did not like "blacks or Hispanics." Charge ¶ 10. He also told Complainant that the law could not touch him, that nobody could touch him. He said, "This is my property. This is my apartment complex. I will run it the way I see fit, and you will do as I say." Tr. 23.

13. In July 1993, Complainant became temporarily unable to work because of a medical condition. Tr. 24. Respondent Lewis at first assured Complainant that there would be "no problem" when she was ready to return to work. Tr. 25. When approximately ten days later Complainant was physically able to go back to work, Respondent Lewis refused to allow her to return. Tr. 26-27.

14. Complainant suffered both emotional and economic damages as a result of Respondent's discriminatory conduct. Charge ¶ 12.

15. Complainant earned \$7.00 per hour for 40 hours of work per week at River Bend. Tr. 33. She was out of work from July 26, 1993, when she was medically released to return to work, until October 4, 1993, when she found other employment at the Fort Myers Children's Center. Tr. 26, 33. Complainant diligently searched for work when it became clear Respondent Lewis did not intend to allow her to return to River Bend, but her search was hampered by having no money to maintain a telephone or buy gas for her car. Tr. 32. Her lost wages from July 26, 1993, until October 4, 1993 (ten weeks), totalled \$2,800.

16. The loss of her job was devastating to Complainant. Because she is a very private person, Complainant "had no one to talk to." Tr. 30. She "felt like my whole lifeline had been cut," and, to make matters worse, Respondent Lewis "thought it was funny." Tr. 30. Complainant was "furious," "upset," and "hysterical." Tr. 28. Because she had lost her job, Complainant became "frantic" that she would lose everything she

had "worked hard to keep." Tr. 28.

17. As time went on and Complainant was unable to find work, her money ran out. When Complainant finally had no money to buy food, she applied for food stamps, which she described as "the most degrading thing I have ever had to go through." Tr. 31. Losing her job was a traumatic experience for Complainant:

When I did not have a job, when my money had run out and the mental stress of, you know, where am I going to get a dollar. I was sick from not being able to eat for a period of time. No air [conditioning] . . . the electricity was shut off . . . and the whole sense of losing security, something that all of us take for granted until you don't have it . . . I'm capable of handling anything that comes along, but I depend on God, myself and that is it. But when that security is taken from you and you don't know where you are going to eat and you don't know where your next dollar is going to come from or how you are going to pay your bills, or how you are going to get gas for your car to get a job, this time it made me, you know, wish I had closer friends because I had absolutely nobody.

Tr. 36-37.

DISCUSSION

By virtue of the facts admitted by Respondents' failure to file an Answer, Respondents Barry Lewis and Urban Development Association II, Ltd., violated sections 804(c) and 818 of the Act (42 U.S.C. §§ 3604(c) and 3617). Charge ¶¶ 13, 14.

Remedies

Section 812(g)(3) of the Act provides that upon a finding that a respondent has violated the Act, an administrative law judge shall order "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person." 42 U.S.C. § 3612(g)(3). Respondents' violation of section 818 of the Act caused Complainant to lose \$2,800 in wages. In addition, Respondents' violation of sections 804(c) and 818 of the Act caused Complainant considerable distress, humiliation and emotional suffering. To compensate Complainant for her injuries, the Charging Party requests Complainant be awarded \$2,800 for lost wages and \$7,500 for her intangible injuries. The requested damage awards will be granted because they are reasonable and fully supported by the record.

Civil Penalties

To vindicate the public interest, the Act authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (3) respondent's financial circumstances; (4) the degree of respondent's culpability; and (5) the goal of deterrence. *See HUD v. Murphy*, 2 Fair Housing-Fair Lending ¶ 25,002 at 25,058; *HUD v. Blackwell*, 2 Fair Housing-Fair Lending ¶ 25,001 at 25,014-15, *aff'd*, 908 F.2d 864 (11th Cir. 1990); H. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). The Charging Party seeks imposition of the maximum civil penalty of \$10,000 against Respondent Lewis.²

Nature and Circumstances of the

Violation

The nature and circumstances of the violation in this case compel the imposition of the maximum possible penalty. Respondent's racially discriminatory statements were particularly vile and obnoxious. He instructed Complainant to implement his racially discriminating policies and punished her when she did not. His policies directly harmed five known individuals seeking housing, and presumably many others. This blatantly discriminatory conduct requires imposition of the maximum civil penalty. *See HUD v. Jerrard*, 2 Fair Housing-Fair Lending ¶ 25,005 (1990).

Respondent's Record

There is no evidence that Respondent previously has been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against Respondent is \$10,000, pursuant to 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3)(i)(A).

Respondent's Financial Circumstances

Evidence regarding Respondent's financial circumstances is peculiarly within his

²The charging party does not seek a civil penalty against Respondent Urban Development Association II, Ltd. All references to "Respondent" in this section therefore pertain to Respondent Lewis alone.

knowledge, so he had the burden of introducing such evidence into the record. If a respondent fails to produce credible evidence militating against assessment of a civil penalty, a penalty may be imposed without consideration of his financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *HUD v. Jerrard*, 2 Fair Housing-Fair Lending ¶ 25,005 at 25,092. Respondent has introduced no evidence concerning his financial circumstances and must therefore be considered capable of paying the maximum civil penalty without suffering undue hardship.

Respondent's Culpability

Respondent failed to appear and offer any reason why he should not be found fully culpable for the offenses charged. As the owner and operator of a large apartment complex, Respondent must have known that his discriminatory statements, as well as his retaliation against an employee who opposed his illegal policies, violated the Fair Housing Act. Respondent's statement to Complainant that the law could not touch him indicates a callous disregard for his responsibilities under the law as a housing provider. Tr. 23.

Deterrence

Assessment of the maximum civil penalty will send a strong message to Respondent and others in the housing industry that the Secretary will not tolerate either housing discrimination based on race, or retaliation against those who oppose such discrimination. Although the Charging Party believes Respondent is not currently engaged in the housing business, he could reenter the business at any time. A \$10,000 civil penalty is reasonable and appropriate under the circumstances of this case.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). The following Order protects the public interest.

ORDER

It is hereby ORDERED that:

I. If Respondent Lewis reenters the housing business (including but not limited to the rental of residential dwellings subject to the provisions of the Fair Housing Act), Respondent Lewis shall:

1. Notify HUD of such involvement within thirty (30) days. This notification must be in writing, and must at a minimum provide the location of any such business, and must be sent to the Director, Fair Housing Enforcement Center, U.S. Department of Housing and Urban Development, 75 Spring Street, S.W., Room 230, Atlanta GA 30303-3388.

2. Complete a fair housing training course provided or approved by HUD.

3. Require all employees engaged in real estate activities to attend a fair housing training course provided or approved by HUD. Such course shall include, but shall not be limited to, education of employees on the non-retaliation provisions of the Fair Housing Act.

4. Institute internal record-keeping procedures with respect to the operation of any rental properties owned in whole or in part by him. The record-keeping should be adequate to allow Respondent Lewis to make the following reports on a quarterly basis for the first three years of his engagement in the business of residential real estate following the effective date of this Order:

a. A report showing all persons who applied for occupancy at any of the properties owned, operated, leased, managed, or otherwise controlled in whole 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. A duplicate application supporting the report should be maintained for each applicant.

b. Occupancy statistics indicating which units at each property owned, operated, leased, managed, or otherwise controlled in whole or in part by Respondent are occupied by black or Hispanic residents.

c. 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.

d. A list of all people who inquired--in writing, in person, or by telephone--about renting an apartment, including their names, addresses, the date of their inquiry, and the response to their inquiry.

e. A list of all employees of Respondent engaged in real estate activities.

5. Inform all agents and employees hired during the reporting period of the terms of this Order.

II. Respondent is permanently enjoined from causing to be made, printed or published any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race or national origin, or the intent to make such a preference, limitation, or discrimination.

III. Respondent is permanently enjoined from interfering, coercing, threatening, or intimidating any person in the exercise or enjoyment of, 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 or enjoyment of, any right granted or protected by section 3604 of Title 42 of the United States Code.

IV. Within thirty (30) days of the date on which this Order becomes final, Respondent shall pay actual damages of \$10,300 to Complainant, consisting of \$2,800 for lost wages and \$7,500 for emotional distress.

V. Within thirty (30) days of the date on which this Order becomes final, Respondent Lewis shall pay a civil penalty of \$10,000 to the Secretary of HUD.

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

THOMAS C. HEINZ
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION AND ORDER issued by THOMAS C. HEINZ, Administrative Law Judge, in HUDALJ 04-95-0227-8, were sent to the following parties on this 19th day of April, 1996, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Melanie Kurch
7613 Meadow Glen Drive
Orlando, FL 32810

Barry Lewis
River Bend Apartments
2835 Winkler Avenue, #202
Fort Myers, FL 33916

Urban Development Association II, Ltd.
c/o Barry Lewis
2825 Winkler Avenue
Fort Myers, FL 33916

Theresa L. Kitay, Esquire
Office of Counsel
Department of Housing and Urban Development
75 Spring Street, S.W.
Atlanta, GA 30303-3388

INTEROFFICE MESSENGER:

Elizabeth Julian, Acting Assistant Deputy Secretary
for Policy Initiatives
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5100

Washington, D.C. 20410

2

Harry L. Carey, Assistant General Counsel for Fair Housing
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10270
Washington, D.C. 20410

Jonathan Strong, Deputy Assistant General Counsel
for Fair Housing Litigation
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10270
Washington, D.C. 20410