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 Adam Hoeker, Joshua Goldlust, Sean Scollins, Robert Welby, Richard Stettner, Samit Patel, Jonathan Cherry, and Craig Maidrand, Charging Party, v. Yankee Development Associates; and Gordon Hilliard, Respondents.	HUDALJ 01-93-0212-8 Decided: June 28, 1994

Thomas Rodrick, Esq.
For the Charging Party

Lynn D. Morse, Esq.
For the Respondents

Before: Samuel A. Chaitovitz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

A complaint was filed by eight male students (collectively referred to as "Complainants") of the University of New Hampshire ("UNH") alleging that they were denied apartments at the Strafford Place apartment complex in Durham, New Hampshire, because they were male.

After an investigation the Secretary, United States Department of Housing and Urban Development ("HUD"), issued a Determination of Reasonable Cause and Charge of Discrimination on December 7, 1993, alleging that Respondents, Yankee Development Associates ("YDA") and Gordon Hilliard, violated § 3604 (a), (b), (c), and (d) of the Fair Housing Act (the "Act"). 42 U.S.C. §§ 3604(a), (b), (c), and (d). Respondents timely filed an

Answer.

A hearing in this matter was held in Dover, New Hampshire on March 1 and 2, 1994. All parties filed post-hearing briefs on May 6, 1994, and the record is closed.

Based upon this record, including my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following findings.

Findings of Fact

A. Respondents and the Strafford Place Complex

1. YDA is a partnership which owns an apartment complex in Durham, New Hampshire known as Strafford Place. Charge ¶ 7, Answer ¶ 7.

2. YDA is a general partnership formed under Chapter 108A of Massachusetts General Laws, consisting of three partners, William J. Hicks, David J. Skinner and Wesley L. Millet. Secretary's Exhibit ("S. Ex.") 6.

3. Mr. Hicks is the managing partner of YDA and has had a dispute with his partners and is currently the only active partner. Transcript pages ("Tr.") 325, 344.

4. Mr. Hilliard is employed by YDA as the on-site manager of Strafford Place. Charge ¶ 8; Answer ¶ 8.

5. Mr. Hilliard's duties as on-site manager included daily maintenance of the Strafford Place complex and responsibility for renting the rooms and apartments at Strafford Place. Tr. 307, 377-378.

6. Prior to assuming his rental responsibilities at the Strafford Place complex, Mr. Hilliard had no rental management experience and he has been given no formal training since being hired. Tr. 378.

7. Mr. Hilliard is supervised by Jack Burwick, a realtor who was hired by YDA as off-site manager. Tr. 291-292.

8. The Strafford Place complex is composed of two buildings, a three-level one with 75 dormitory rooms, and a three story building with twelve two-bedroom apartments. Respondents' Exhibit ("R. Ex.") C at page 10; S. Ex. 3a-3l; and Tr. 311-312. The building with the twelve apartments is the subject of this proceeding and will be referred to as the Strafford Apartments.

9. The Strafford Place complex is located near the UNH campus and most, if not all, of the tenants are UNH students. S. Ex.1; R. Ex. C at page 28; Tr. 400; Charge ¶ 9; Answer ¶ 9.

10. The twelve two-bedroom at Strafford Apartments are rented on a semester basis; and each two-bedroom apartment is generally occupied by four students; and each of the students in each apartment signs a separate lease. S. Ex. 3a-3l; Tr. 296.

B. Apartment Rental Procedures and Background

11. Although Respondents occasionally place vacancy advertisements for vacancies in the UNH newspaper, they rely mainly upon word-of-mouth advertising. Tr. 294-295.

12. Respondents fill apartments on a first-come, first-served basis. All students are qualified to rent apartments if they are able to pay a $250 security deposit at the time they sign a lease and pay their rent at the beginning of the semester. Tr. 296, 402, 436.

13. When prospective tenants inquire about an apartment at Strafford Apartments, they are asked to sign their names and telephone numbers to a list kept in the Strafford Place office. The prospective tenants are to indicate the roommates they wish to live with, and the semester for which they wish to rent. Tr. 38, 68, 86, 118-119, 155-156, 173, 184, 208, 249, 361, 393. Respondents did not use application forms or do background checks of prospective tenants. Tr. 296.

14. The purpose of the list, with its names and telephone numbers, was for Mr. Hilliard to contact the prospective tenants, when there was a vacancy. Tr. 393.

15. During the 1991-1992 academic year, the Respondents rented two of the twelve apartments at Strafford Apartments to male students. Both of these apartments received substantial damage and, as a result, the Respondents kept the tenants' security deposits. Tr. 305, 315.

16. During the 1992-1993 academic year, all twelve of the apartments at Strafford Apartments were rented to female tenants and none were rented to males. Tr. 243, 303.

17. Mr. Burwick believes that female tenants get along better, reside together better, are cleaner, are less trouble, do less damage, and drink less than male tenants. Tr. 304-305, 322.

18. Mr. Hilliard admits (1) that he has had trouble with male tenants; (2) that such trouble might make him prefer to rent to women; and (3) that he finds that men are generally more trouble than women. Tr. 406, 428.

C. Complainants

19. The Complainants are eight male students at UNH, located in Durham, New Hampshire. Tr. 34, 64, 83, 102, 116-117, 152, 203.

20. During the 1992-1993 academic year at UNH, the Complainants were all sophomores living in Williamson Hall, a UNH dormitory. Tr. 35, 65, 83, 103, 117, 152, 205.

21. At the time of the hearing Complainants Adam Hoeker, Joshua Goldlust[1], Richard Stettner, Samit Patel, Jonathan Cherry and Craig Maidrand were juniors at UNH residing in off-campus housing in an apartment building referred to as the Coops. Tr. 34, 82-83, 102, 116-117, 151-152, 203-204.

22. At the time of the hearing Complainant Sean Scollin was a junior at UNH residing in a UNH apartment building called the Gables. Tr. 64-65.

23. At the time of the hearing Complainant Robert Welby was a junior at UNH on an internship with Walt Disney, in Florida. From September 1993, to January 1994, he lived at the Coops and then, in January 1994, he went to Florida. Tr. 34, 116.

24. The Complainants have not had trouble with their landlords, have not had parties, have paid their rents on time, and have not been threatened with eviction.
Tr. 60, 124, 130.

D. Attempts to Rent an Apartment for 1993-1994

26. At the beginning of the 1992-1993 academic year, Complainants, decided to live off-campus during their junior year, the 1993-1994 academic year. Tr. 36-37, 66.

27. The Complainants wanted to live at Strafford Apartments because, unlike other off-campus apartments, it is furnished, carpeted, has a microwave, refrigerator, a study lounge, a television lounge, and an on-site laundromat. Tr. 36, S. Ex. 5.

28. Strafford Apartments is a short walk (two minutes) to the nearest dining hall and a short walk to the academic buildings on campus. S. Ex. 1; Tr. 36, 46-47, 90, 107, 128, 163, 219.

29. In September of 1992, Mr. Stettner and Mr. Scollin went to Strafford Apartments to inquire about the application process and to learn more about the facilities. At that time they met Mr. Hilliard who told them it was too early to apply for the next academic year because he did not yet know who was leaving at the end of the year. He suggested that they return in about a month. Mr. Hilliard warned Mr. Stettner and Mr. Scollin that he did not like renting to "guys"

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[1]Mr. Goldlust had been at UNH for three years and will graduate in Spring of 1995, so he could be considered a first semester senior. Tr. 116.

because he had trouble with guys in the past, they caused damage and had torn up a "place." Tr. 37, 66-67.

30. During October of 1992, Mr. Cherry, Mr. Hoeker, Mr. Patel, and Mr. Goldlust, having decided to live off-campus for their junior year, utilized UNH's community commuter center, a housing resource, and selected Strafford Apartments as their choice. Tr. 84, 117, 153, 205.

31. During the first week of November of 1992, Mr. Goldlust, Mr. Stettner, Mr. Patel, Mr. Cherry and Mr. Welby went to Strafford Place and met with Mr. Hilliard to inquire about renting two apartments for the next academic year for themselves and three friends, also Complainants herein. At Mr. Hilliard's request the five Complainants signed a waiting list and signed the names of Mr. Hoeker, Mr. Scollin and Mr. Maidrand, who were at class and could not attend the meeting. The five Complainants who were at Strafford Place signed their names and those of their friends, placed their telephone numbers next to their names, grouped their names into two groups of four so as to indicate they were applying for two four-person apartments ("quads") and wrote that they were applying for the 1993-1994 academic year. Tr. 39, 85-86, 118, 155.

32. When the Complainants signed the list in early November of 1992, there were two names, Lauren Woods and Laurie Larson, above the Complainants on the list. Lauren Woods and Laurie Larson had applied for a two person room, but later added two friends' names to the waiting list and changed their application from a double to a four person apartment. Tr. 118, 155.

33. At the time the Complainants signed the waiting list they were the first and second groups to apply for apartments, but, after the two female applicants above them on the list added the two friends and switched their request to an apartment, the Complainants became two and three on the list for apartments for the 1993-1994 academic year. Tr. 87, 121.

34. In early December of 1992, Mr. Goldlust, Mr. Welby and Mr. Cherry returned to Strafford Place, with a friend and fellow student Holly Jewkes. That day Ms. Jewkes signed her name and telephone number to the waiting list indicating that she and three friends were applying for an apartment for the 1993-1994 academic year. She signed the waiting lists below the names of the Complainants. Tr. 87-88, 121, 253. Ms. Jewkes did not indicate to Mr. Hilliard whether she knew any tenants at Strafford Apartments and he never asked if she knew any tenants. Tr. 250.

35. On or about January 18, 1993, after returning from the semester break, Mr. Goldlust contacted Mr. Hilliard and was told that Mr. Hilliard did not know what was happening and Mr. Goldlust should check back later. Tr. 122.

36. On or about February 1, 1993, Mr. Patel called Mr. Hilliard to find out when he and his friends might be offered apartments and was told by Mr. Hilliard that he would not know of

any vacancies until April. Tr. 157.

37. On or about February 10, 1993, Mr. Hoeker called Mr. Hilliard to inquire if any apartments had become available. Mr. Hilliard stated that he does not like renting to men and that Mr. Hoeker and his friends were three and four on the waiting list.
Tr. 207-209.

E. Complainants' Apartment Rentals, Expenses and Conditions

38. Because Mr. Hilliard had told the Complainants that he did not like to rent to men and that he would not know about vacancies until April, Complainants felt they were getting the run-around and were unsure about getting apartments at Strafford Apartments. So, in early February they sought other housing. Tr. 40, 89, 138-139,
158-159, 209-210.

39. Seven of the Complainants, all except Mr. Scollin, signed leases for the Coops in early February 1993. Had they been offered apartments at the Strafford Apartments after they had signed the leases at the Coops, they would have rescinded or forfeited those leases at the Coops because they preferred to live at Strafford Apartments. Tr. 63, 68-69, 90, 112, 116, 130-31, 167, 210-211.

40. In February 1993, Mr. Scollin signed a lease for an apartment at the Gables, a UNH apartment complex. Had he been offered an apartment at Strafford Apartments he would have been able to break his lease at the Gables prior to March 7th or 8th, 1994, when deposits were due, in order to live with his friends at Strafford Apartments. Tr. 68-69 .

41. Apartments at the Coops are not furnished and do not have the amenities offered by Strafford apartments. As a result the seven Complainants who moved into the Coops were forced to purchase furniture for their apartments. Mr. Stettner paid $280 for a mattress and lumber to build a loft. Tr. 49, 126-127. Mr. Cherry paid $80 for a bed. Tr. 91. Mr. Maidrand paid $80 for a bed. Tr. 108. Mr. Goldlust paid $562 for a mattress, lamp, desk, chair, carpet and lumber for a loft. Tr. 124-126. Mr. Patel paid $40 for lumber to build a loft. Tr. 163. Mr. Hoeker paid $550 for a mattress, desk, carpet, and lumber for a loft. Tr. 212-213, 221.

42. The Coops required the seven Complainants who chose to live there to sign full year leases, from June 1, 1993 through May 31, 1994, even though they would not use the apartments during the summer months. S. Ex. 2a and 2b; Tr. 131-132. The monthly rental fee for apartments at the Coops during the academic year is about the same as the rental fee for Strafford Apartments. Tr. 131.

43. The seven Complainants who lived at the Coops subleased their Coop apartments during the summer at a loss of $395 per person. Thus, these seven Complainants paid $395 more per person for living at the Coops than they would have paid at Strafford Apartments. Tr. 132.

44. The residents at the Coops pay their own utilities which average about $40 per month per apartment, or about $10 per person per month. Tr. S. Ex. 7, Tr. 132, 444.

45. The Coops is located about one-half mile farther from the UNH campus and dining hall than the Strafford Apartments. Thus, the seven Complainants living there must walk farther to and from campus than if they had obtained housing at Strafford Apartments. Tr. 50-51, 60-61, 90, 107, 128, 211-212, 219. Travelling these distances to and from campus is uncomfortable, especially in light of the harsh New Hampshire winters. Tr. 59-60. Additionally, because the Coops does not have on-site laundry facilities, the seven Complainants who live there are forced to travel to do their laundry. Tr. 47-48, 108, 164.

46. The apartments in the Coops are inferior to the apartments in Strafford Apartments. In addition to the distance from campus, the fact that they were not furnished and they lacked amenities made the apartments at the Coops less desirable than those at Strafford Apartments. The Coops' apartments not only lack adequate parking, but also have water leaks, uncontrollable heat, bugs in the kitchen and thin walls. Tr. 42, 90-91 107, 164.

47. Mr. Scollin's housing at the Gables is located much farther off campus than the Strafford Apartments and requires him to travel about one hour a day longer between the Gables and campus. S. Ex. 1; Tr. 71.

F. Strafford Apartment Rentals for the 1993-1994 Academic Year

48. In February of 1993, Mr. Hilliard called Ms. Jewkes and offered her and her friends an apartment. They signed leases for apartment number 12 at Strafford Apartments on February 22, 1993 for the fall semester beginning in September 1993.
S. Ex. 3d; Tr. 250.

49. Mr. Hilliard told Ms. Jewkes and her friends, while they were signing their leases, that he generally does not like to rent to guys because they are messier and loud. Mr. Hilliard said he was renting an apartment to guys he knew from his hometown so Ms. Jewkes and her friends should feel safe. Tr. 251.

50. In late January 1993, Christine Foggia and her friends went to Strafford Apartments and put their names and telephone numbers on the waiting list for an apartment. Soon thereafter Mr. Hilliard offered Ms. Foggia and her friends an apartment on or about February 12, 1993. They signed leases for apartment number 3 at Strafford Apartments on February 19, 1993. S. Ex 3c; Tr. 186-187. Ms. Foggia knew a couple of girls living at the Strafford Apartments at the time Ms. Foggia was seeking an apartment at Strafford Apartments, but she is pretty sure her acquaintances had not spoken to Mr. Hilliard about Ms. Foggia as a prospective tenant. Tr. 189.

51. In late January or early February of 1993, Julie Adams and her roommates inquired about renting an apartment at Strafford Apartments. During this visit

Mr. Hilliard offered Ms. Adams and her roommates a choice of three or four apartments that were available. Ms. Adams and her roommates entered into leases for apartment number 8 at Strafford Apartments on February 17, 1993. S. Ex. 3b; Tr. 195-196.

52. The apartments at Strafford Apartments were rented for the fall semester, on the following dates:

Apartment Number	Date of Lease	Sex of Tenants
5	February 16, 1993	F
8	February 17, 1993	F
3	February 19, 1993	F
12	February 22, 1993	F
2	March 4, 1993	M
6	March 8, 1993	F
7	March 10, 1993	F
4	March 25, 1993	M
1	March 26, 1993	F
11	March 31, 1993	F
9	April 7, 1993	F
10	July 1, 1993	F

Apartment 5 was leased by tenants who renewed their lease. S. Ex 3, 3a-3l.

53. Apartments 2 and 4 were rented to male tenants. Apartment 4 was rented to a group of male students, two of whom Mr. Hilliard had coached in football at Somersworth High School. S. Ex. 3h; Tr. 440, 446. Mr. Hilliard rented apartment 2 to male tenants after the girl friend of one of the male students, who was herself a tenant at Strafford Apartments, intervened on behalf of this group. S. Ex. 3e; Tr. 235-236, 263.

54. Mr. Hilliard told Jake Sorofman and Jack Rent, two of the male students that rented apartment 2, that there was an unwritten policy that they would not rent to men,

that guys do not pay their rent on time, guys make noise, guys tend to have more parties, and guys are more destructive. Tr. 240-241, 263.

55. On or about March 20, 1993, Gwynne Schnaittacher, a female friend of Mr. Hoeker, telephoned Mr. Hilliard and stated she was interested in renting an apartment for the next school year and asked if there were any apartments available. Mr. Hilliard told her that he did have an apartment available and that if she and her friends were interested they could view the apartment and sign leases two days later.
Tr. 269-270.

G. Background

56. There were 10,196 undergraduate students registered at UNH for the first semester 1993-1994. Of these students, 4,434 or 43.4% were male and 5,762 or 56.5% were female. Tr. 276.

57. The tenant mix in the Respondents' dormitory building, not the apartment building, is historically about 50% male and 50% female. Tr. 303.

H. Credibility

In reaching the foregoing findings of fact, I found Mr. Hilliard not to be a credible witness. I discredited him and found his testimony totally unreliable. Thus, on almost every issue of substance, his testimony was contradicted by other credible testimony and his testimony appears dictated by what he perceived helpful to him and not by what actually occurred. Thus Mr. Hilliard denied he ever stated that he preferred not to rent to males, although he testified that a female tenant jokingly said that
Mr. Hilliard would not want to rent to her boyfriend, because he would rather rent to girls. Mr. Hilliard testified he just laughed and said that maybe she could say that.
Tr. 397-398. He later indicated some confusion about what exactly occurred. Tr. 433-434. Mr. Stettner, Mr. Scollin, Mr. Patel, Mr. Sorofman, Mr. Rent, and Ms. Jewkes all testified that Mr. Hilliard told each of them that he preferred not renting to men, that he had trouble with male tenants, and they were more trouble than women. Tr. 37, 67, 251, 263. The latter three witnesses are not parties to this proceeding and have no interest in this proceeding. Mr. Hilliard admitted that he had a poor memory and trouble remembering names. Tr. 389.

In light of the foregoing I find Mr. Hilliard is not a credible witness and I do not find reliable any of his testimony that is clearly to his benefit.

Discussions and Conclusions of Law

I. Legal Framework

The Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, (the "Act") was enacted to ensure the removal of artificial, arbitrary, and unnecessary barriers which operate invidiously to discriminate on the basis of impermissible characteristics. *United States v. City of Black Jack,* 508 F.2d 1179, 1184 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975). The Act was designed to prohibit "all forms of discrimination, sophisticated as well as simple-minded." *Williams v. Mathews Co.*, 499 F.2d 819, 826 (8th Cir. 1974), *cert. denied,* 419 U.S. 1021, 1027 (1974).

The Act was amended in 1974 to prohibit discrimination on the basis of sex. Pub. L. No.

93-383 (Aug. 22, 1974). The intent of the 1974 amendment is to end housing practices based on sexual stereotyping. *HUD v. Baumgardner,* 2 Fair Housing-Fair Lending Rptr. (P-H) ("FH-FL") ¶ 25,006, 25,096 (HUDALJ Nov. 15, 1990) *aff'd in part, rev'd in part on other grounds, Baumgardner v. HUD ex rel Holley,* 960 F.2d 572 (6th Cir. 1992). The Act mandates that the sex of home seekers, just as the race of home seekers, must be irrelevant to a housing decision. *Cf. Price Waterhouse v. Hopkins,* 409 U.S. 228, 239-240 (1989) (A Title VII employment case).

The Charging Party alleges that Respondents violated 42 U.S.C. §§ 3604(a), (b), (c), and (d) as they relate to sex. 42 U.S.C. § 3604 provides, in relevant part:

> ". . . it shall be unlawful--
>
> (a) To refuse to . . . rent after the making of a bona fide offer, or to refuse to negotiate for the . . . rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . sex . . . .
>
> (b) To discriminate against any person in the terms, conditions, or privileges of . . . rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . sex . . . .
>
> (c) To make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the . . . rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . sex . . .or an intention to make any such preference, limitation, or discrimination.
>
> (d) To represent to any person because of . . . sex . . . that any dwelling is not available for . . . rental when such dwelling is in fact so available."

II. Discrimination in Refusing to Rent Apartments to Complainants

HUD must prove its charges that Respondents violated §§ 3604(a), (b), (c), and (d) of the Act by a preponderance of the evidence. *HUD v. Leiner,* 2 FH-FL ¶ 25021 (HUDALJ January 3, 1992). The record contains direct evidence of violations of the Act.

Mr. Hilliard, YDA's on-site manager and the person responsible for renting the apartments,[2] advised some of the Complainants as well as others that they preferred not to rent apartments at Strafford Apartments to males, and that males were destructive and less desirable tenants than females. These sentiments taint all the other actions of Respondents.

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[2] Mr. Hilliard's duties as on-site manager included, among other duties, the showing and renting of the apartments. He clearly represented and spoke for YDA.

Complainants, eight males, were eager to live at Strafford Apartments and put their names on the waiting lists very early in November of 1992 for the 1993-1994 academic year. They were the first and second groups on the waiting list[3] for the two bedroom apartments for four people. They were later bumped to the second and third places when the two earlier applicants who had applied for a double combined with two others and sought a quad. Although Complainants continued to visit and call
Mr. Hilliard to express their continued interest in renting the apartments, they were told there were no apartments available. They were never called and offered apartments. Yet women who put their names on the list after the Complainants were called and offered apartments. Other women who presented themselves after Complainants had signed the waiting list were also offered apartments, and a women who called on the phone was advised, over the telephone, of the availability of a quad and was invited to come down and sign a lease. Mr. Hilliard's conduct, especially in light of his comments, establish that he was favoring females tenants and refusing to rent to Complainants because they were males. Further, the record fails to establish that Complainants were undesirable tenants or that they were less desirable tenants than those to whom apartments were rented.

With respect to the two apartments that were rented to men, one involved men who were vouched for and recommended by women who were already tenants at Strafford Apartments and the other involved men that Mr. Hilliard knew from his hometown. No credited evidence was submitted to indicate that prospective women tenants needed such recommendations or had to know Mr. Hilliard.

Respondents argued that all prospective tenants were rented apartments if they were either known to Mr. Hilliard or vouched-for by current tenants. The only evidence submitted to support these contentions was Mr. Hilliard's testimony, which, as discussed above, is totally unreliable and is not credited or given any weight. In this regard, I also note that where it was presumably possible to corroborate his assertions, the corroborating witnesses were not called to testify by Respondents. Further, the record establishes that Mr. Hilliard never told Complainants or prospective women tenants that they should get recommendations from current tenants. Accordingly, I conclude that Respondents' contentions are not supported by credited testimony or other evidence.

Respondents, however, admit that they desired to receive more information regarding the suitability of male tenants than prospective female tenants because of the problem with damage done to apartments by male tenants in prior years. Resp. Brief
p. 6.

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[3]Respondents contend that no waiting list was maintained. Resp. Brief p.4. This argument is rejected because the overwhelming weight of credible testimony establishes that a waiting list was maintained and used in renting apartments at Strafford Apartments.

Mr. Hilliard repeatedly stated that he did not wish to rent to males, and that males are more trouble and less desirable tenants than women. He rented apartments to women who signed the waiting list or presented themselves after Complainants did. He constantly told Complainants that there were no apartments available[4] and failed to offer them an apartment. He rented apartments only to those males whom he knew or who were recommended by female tenants. Accordingly, I conclude that Respondents have different and more stringent standards for prospective male tenants than for prospective female tenants, and that Complainants were not offered apartments because they were male. YDA, the owner of the Strafford Place complex, is responsible for the acts of its agent, Mr. Hilliard. *Hamilton v. Svatik*, 779 F.2d 383, 388 (7th Cir. 1985), *HUD v. Properties Unlimited*, 2 FH-FL ¶ 25,009 (HUDALJ 1991).

Respondents argue that the more stringent standards applied to prospective male tenants, as compared to prospective female tenants, because of the damage done to apartments by males, serves a business necessity to protect the apartments and is sufficiently compelling to justify the difference in treatment based on sex. *Betsey v. Turtle Creek Assoc.,* 736 F.2d 983 (4th Cir. 1984). This case is inapposite and this argument is rejected. Respondents can not rely on negative stereotyping to justify their discriminatory conduct. Thus if Respondents were worried about damage to apartments, all prospective tenants, without respect to the sex of prospective tenants, could be held to
the same standards to minimize the incidents of damage. Thus, Respondents could easily have achieved the desired business result without resorting to discriminatory conduct.

Based on all of the foregoing, I conclude that Respondents violated 42 U.S.C. §§ 3604(a), (b), (c), and (d) by Mr. Hilliard's conduct and statements, and by discriminating against the Complainants by denying them rental accommodations at Strafford Apartments because of their sex. *See Baumgardner.*

Remedies

Having found that Respondents engaged in discriminatory housing practices, Complainants are entitled to appropriate relief. This relief may be actual damages and injunctive or other equitable relief. Respondents may also be assessed a civil penalty to "vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Charging Party seeks $19,114 in tangible and intangible damage, a total of $7,000 in civil penalties, and certain injunctive relief.

I. Actual Damages

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[4]Respondents argue that Complainants did not have appreciable contacts with Mr. Hilliard and did not pursue renting apartments at Strafford Apartments. Resp. Brief. p. 5. This argument is groundless. The record establishes that Complainants visited the Strafford Apartments on a number of occasions and had telephone communications with Mr. Hilliard on a number of occasions. On each such occasion the Complainant speaking with Mr. Hilliard was put off by being told that Mr. Hilliard did not know yet if there would be any vacancies. Complainants were quite diligent in pursuing contacts with Mr. Hilliard in their attempt to rent apartments at Strafford Apartments.

A. Tangible Damages

The record fails to establish that Mr. Scollin suffered any out of pocket expenses and loss as a result of Respondents' unlawful conduct.

With respect to the seven Complainants who lived in the Coops, as a result of Respondents' discriminatory actions, the record established that all but Mr. Welby spent their own funds to buy furniture and lumber for lofts, because they were unable to move into the furnished apartments at Strafford Apartments. The record does not establish the value these items would have at the end of the 1993-1994 academic year. Thus at the end of the academic year these Complainants would own furniture and material that presumably has substantial value. Thus, although, these Complainants did suffer losses equivalent to the full amount of their out of pocket expenses, since the record fails to establish the amount of this residual value, it is too speculative to determine the amount of damages suffered by the Complainants as a result of their purchase of furniture and lumber.

The rents paid at the Coops were about the same as the rents at the Strafford Apartments. However they did have to pay about $10 a month per tenant a month for utility expenses for the nine month academic year, except for Mr. Welby who was only a resident of the Coops for one semester of about four months, which they would not have paid had they rented an apartment at Strafford Apartments. Thus Mr. Welby suffered out of pocket expenses of $40 and Mr. Hoeker, Mr. Goldlust, Mr. Stettner, Mr. Patel, Mr. Cherry, and Mr. Maidrand each suffered out of pocket expenses of $90 because they were denied rental opportunities at Strafford Apartments. Although the rents at the Coops and Strafford Apartments were about the same on a monthly basis, the Strafford Apartments rented by the semester and did not require the tenants to pay for the summer months, whereas the Coops required a yearly lease and the tenants had to pay for the summer months. The record herein establishes that each of the tenants at the Coop, other than Welby, after deducting for a summer sublet, had an out of pocket loss of $395.

In light of the foregoing I find that the Complainants suffered the following out of pocket damages, which Respondents will be ordered to pay:

Complainant	Out of Pocket Damages
Mr. Hoeker	$485
Mr. Goldlust	$485
Mr. Stettner	$485
Mr. Patel	$485
Mr. Cherry	$485
Mr. Maidrand	$485
Mr. Welby	$40
Mr. Scollin	0

B. Intangible Damages

The Charging Party is seeking $1800 for each of the eight Complainants to compensate them for the emotional distress and inconvenience they suffered as a result of Respondents' unlawful conduct.

Complainants are entitled to recover damages for intangible injuries such as embarrassment, humiliation and emotional distress. *See e.g., HUD v. Blackwell,* 2 FH-FL ¶ 25,001 at 25,011 (HUDALJ Dec. 21, 1989) (hereinafter *Blackwell I*), *aff'd* 908 F.2d 864 (11th Cir. 1990) (*Blackwell II*); *HUD v. Murphy,* 2 FH-FL ¶ 25,002 at 25,055 (HUDALJ July 13, 1990); *see also Smith v. Anchor Bldg. Corp.,* 536 F.2d 231 (8th Cir. 1976); *Steele v. Title Realty Co.,* 478 F.2d 380, 384 (10th Cir. 1973); *McNeil v. P-N & S. Inc.,* 372 F. Supp. 658 (N.D. Ga. 1973). Damages for emotional distress may be based on inferences drawn from the circumstances of the case, as well as testimonial proof. *Blackwell II* at 872; *Murphy* at 25,055. Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury. *See e.g., Block v. R. H. Macy & Co.,* 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.* at 384; *Blackwell I* at 25,011; *Blackwell II* at 872-873. The amount awarded should make the victim whole. *See HUD v. Murphy* at 25,056; *Blackwell I* at 25013. Thus, although this tribunal is accorded wide discretion in setting damages for emotional distress, the key factors in determining the size of the award is the egregiousness of the respondent's behavior and the victim's reaction to the discriminatory conduct. The record, as a whole must support an emotional distress award. *See Lee Morgan v. Secretary of Housing and Urban Development,* 785 F.2d 1451 (10th Cir. 1993).

All the Complainants realized they had been victims of sex discrimination. When Complainants learned that female students who had applied after them were signing leases, they were angered and bothered [Scollin, Tr. 80-81; Cherry, Tr. 98-99; Maidrand, Tr. 106; Goldlust, Tr. 124; Patel, Tr. 161; Hoeker, Tr. 219], felt distressed and upset [Scollin, Tr. 77; Cherry, Tr. 98-99; Maidrand, Tr. 106; Hoeker, Tr. 209], frustrated [Goldlust, Tr. 124], cheated [Goldlust, Tr. 130], and stereotyped [Patel, Tr. 161]. Such reactions are reasonable in light of the nature of the discrimination. There was no testimony as to any continuing emotional effects or reactions to the discriminatory conduct. There is no evidence as to the emotional reaction of Mr. Welby.

All the Complainants were subjected to continuing and daily inconvenience as a result of the discriminatory refusal of Respondents to rent apartments to the Complainants. Those who lived in the Coops were in apartments that were located less conveniently, and were less desirable and pleasant than the apartments at Strafford Apartments and the Coops' apartments lacked some of the amenities present at Strafford Apartments. Again, with respect to Mr. Welby, there is no testimony setting forth, although exposed to all of these same inconveniences and unpleasantness, how much he found living at the Coops to be less desirable and more inconvenient than living at Strafford Apartments.

Mr. Scollin, who lived in apartment at the Gables, is located substantially farther from campus than Strafford Apartments and, instead of living with his friends, he is living with three people he did not know well and whom he does not fully trust. Tr. 78.

Noting all of the above, and the total circumstances, I award each of the Complainants, except Mr. Welby, $500 for emotional distress and inconvenience. *See Baumgardner* at 25,100-25,101. With respect to Mr. Welby, I note that these injuries may be inferred from the circumstances, as well as established by testimony. *See e.g., Littlefield v. McGuffey,* 954 F.2d 1337 (7th Cir. 1992). Accordingly taking into consideration the shorter time he lived at the Coops before going to Florida, the lack of his own assessment of his emotional distress and inconvenience, and the total circumstances, I award him $100 for his emotional distress and inconvenience.

II. Civil Penalties

The Charging Party seeks a civil penalty of $5,000 against Yankee Development Associates and a civil penalty of $2,000 against Gordon Hilliard. Under the Act, an administrative law judge may assess a maximum civil penalty of $10,000 against each respondent, where, as here, there has been a finding of liability, but no history of any prior discriminatory acts. 42 U.S.C. § 3612(g)(3)(A).

Assessment of a civil penalty is not automatic. In determining the amount of a penalty, an administrative law judge must consider the nature and circumstances of the violation, the degree of culpability, the financial circumstances of the respondent, the goal of deterrence, and other matters as justice may require. *See* H. Rep. No. 711, 100th Cong., 2d Sess. at 37, reprinted in 1988 U.S. C.C.A.N. 2173 at 2198.

As the owner of Strafford Apartments, Yankee Development Associates is bound to know and adhere to the Act and is responsible for the acts of its agent, Mr. Hilliard, even if it was unaware of his unlawful conduct. *See Properties Unlimited.*

Mr. Hilliard and Mr. Burwick, both agents of Yankee Development Associates, harbored derogatory stereotypes about male tenants. Tr. 304-305, 322, 406, 428.
Mr. Hilliard not only harbored these derogatory stereotypes, he acted upon them by having stricter and different standards in renting apartments to males, resulting in the denying apartments to the Complainants. This harboring and acting in accordance with derogatory stereotypes is the very conduct that civil penalties are meant to discourage.

Although neither Mr. Burwick nor Mr. Hilliard could credibly claim they were ignorant of the Act making illegal discrimination on the basis of sex [Tr. 429], the record fails to establish that Mr. Hilliard, when he became responsible for renting apartments, received any training with respect to the Act and its practical application. Tr. 347.
Mr. William J. Hicks, the managing partner of Yankee Development Associates, instructed Mr.

Hilliard not to discriminate or violate the Act. Tr. 350.

Although there was some evidence submitted as to some financial reverses suffered by Mr. Hicks, the record is not sufficient to establish that he is unable to pay a reasonable civil penalty. In this regard I note he earns about $100,000 per year, and that he and his wife own their home and a ski lodge in Vermont. Tr. 342, 349, 352. Further the other partners, Wesley Millett and David Skinner, did not appear or offer any evidence to support claims of inability to pay a civil penalty. The evidence regarding inability to pay a civil penalty is peculiarly within the knowledge of the individual partners and they have the burden of producing such evidence. *HUD v. Morgan,* 2 FH-FL ¶ 25,008, 25,141 (HUDALJ July 25, 1990). With respect to Mr. Millett and Mr. Skinner, therefore the civil penalty will be imposed without consideration of their financial circumstances. *See HUD v. Ocean Sands, Inc.,* 2 FH-FL ¶ 25,055, 25,547 (HUDALJ Sept. 3, 1993).

Mr. Hilliard earns $8.00 an hour for his work at Strafford Apartments and receives a small stipend for coaching teams in his home town. I conclude he would be unable to pay a large civil penalty.

In light of all of the foregoing I conclude that Yankee Development Associates should be assessed a civil penalty of $2,500, and that Mr. Hilliard should be assessed a civil penalty of $250.

III. Injunctive Relief

Once a determination of discrimination has been made, injunctive relief may be ordered to insure that Respondents do not violate the Act in the future. *Blackwell I* at 25,014. The relief, however, is to be molded to the specific facts of the particular situation. The provisions of the Order set forth below will ensure against any future violation.

ORDER

Having concluded that Respondents Yankee Development Associates and Gordon Hilliard have violated 42 U.S.C. §§3604(a), (b), (c), and (d), it is hereby

ORDERED that:

1. Respondents are permanently enjoined from discriminating against Complainants or any other persons, with respect to housing, because of sex, and from retaliating against or otherwise harassing Complainants. Prohibited actions include, but are not limited to, all those enumerated in 24 C.F.R. Part 100.

2. Respondents shall institute record-keeping of the operation of its rental properties which is adequate to comply with the requirements set forth in this Order, keeping all records necessary to prepare the quarterly reports described in paragraph 3 of this Order. Respondents

shall permit representatives of HUD to inspect and copy all pertinent records at reasonable times after reasonable notice.

3. To prevent the occurrence of future discriminatory housing practices, Respondents must institute record-keeping procedures with respect to the Strafford Place Complex to allow it to make quarterly reports to HUD's New England Office of Fair Housing and Equal Opportunity, 10 Causeway Street, Boston, Massachusetts 02222, for a period of three years. The report shall contain a list of all persons who applied for rental of an apartment or other housing at the Strafford Place complex during the three months preceding the report, indicating the sex of each applicant; whether the applicant was rejected or accepted; and, if rejected, the reason for rejection.

4. Yankee Development Associates shall inform and advise all their agents and employees, including on-site and off-site managers, of the terms of this Order. In addition, within ten days of the date on which this Initial Decision and Order becomes final, Respondents shall require their agents and employees to satisfactorily complete a

training course in the requirements of the Fair Housing Act, which course shall be approved by HUD's New England Office of Fair Housing and Equal Opportunity.

5. Within 10 days of the date on which this Order becomes final, Respondents shall pay Complainant Adam Hoeker $985, Complainant Joshua Goldlust $985, Complainant Sean Scollin $500, Complainant Robert Welby $140, Complainant Richard Stettner $985, Complainant Samit Patel $985, Complainant Jonathan Cherry $985, and Craig Maidrand $985, for tangible damages and damages as a result of emotional distress and inconvenience.

6. Within 10 days of the date on which this Order becomes final, Respondent Yankee Development Associates shall pay a civil penalty of $2,500 to the Secretary, United States Department of Housing and Urban Development.

7. Within 10 days of the date on which this Order becomes final, Respondent Gordon Hilliard shall pay a civil penalty of $250 to the Secretary, United States Department of Housing and Urban Development.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 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.

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SAMUEL A. CHAITOVITZ
Administrative Law Judge