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 Paul C. Abrahamsen and Diane Abrahamsen, Susannah Braiman, and Carol Iorio,

Charging Party,

v.

Twinbrook Village Apartments, Woodshire Apartments, Dan Daly, Karen Rothstein, and Elan S. Schwarz,

Respondents.

HUDALJ Nos. 02-00-0256-8
02-00-0257-8
02-00-0258-8
Decided: November 9, 2001

Scott de la Vega, Esq.
For the Charging Party

Sheppard A. Guryan, Esq.
For Respondents

BEFORE: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION

This matter arose as a result of a complaint filed by Paul and Diane Abrahamsen, Carol Iorio, and Susannah Braiman, ("Complainants") alleging discrimination based on handicapped status in violation of the Fair Housing Act ("the Act"), as amended, (42 U.S.C. § 3601-3619). Following an investigation and a determination that reasonable cause existed to believe that discrimination had occurred, the Department of Housing and Urban Development ("HUD" or "the Charging Party") issued a Charge of Discrimination

against Twinbrook Village Apartments, Woodshire Apartments, Dan Daly, Karen Rothstein, and Elan S. Schwarz ("Respondents") alleging that they had engaged in discriminatory housing practices in violation of 42 U.S.C. § 3604(f) and 24 C.F.R. §§ 100.65, 100.70 and 100.202, and 24 C.F.R. § 100.204. The Charge, at part D, includes the following contentions:

> 1) Respondents violated the Act by discriminating against Complainants 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 handicap in violation of 42 U.S.C. § 3604(f)(2), and 24 C.F.R. §§100.65, 100.70, and 100.202, and
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> 2) Respondents violated the Act by refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a handicap equal opportunity to use and enjoy a dwelling in violation of 42 U.S.C. § 3604 (f)(3)(b) and 24 C.F.R. §100.204.

A hearing was held July 12, 2001, in New York, New York.[1] Mr. Abrahamsen's and Ms. Iorio's testimony was taken via telephone. Following completion of the hearing the parties filed briefs on September 7, 2001. The case is now ripe for decision.

With their post-hearing brief, Respondents filed a Motion to Dismiss the Charge of Discrimination on the ground, *inter alia,* that there was no credible evidence of record of a refusal to grant the Complainants' permission to install a wheelchair ramp(s) and thus no credible evidence of violation of the FHA. The Motion is hereby *Denied.*

After consideration of the testimony and the documentary evidence in the case, as well as the arguments of all parties, it is the decision of the undersigned that the Charging Party has met its burden, as to both counts alleged, to prove handicap discrimination by a preponderance of the evidence as to all Respondents except Karen Rothstein.[2] Accordingly, the Charge of Discrimination against Respondent Karen Rothstein is hereby *Dismissed.* I find for the Charging Party on both counts as to all other Respondents.

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[1]At trial the Government withdrew the complaint of Diane Abrahamsen. Tr.8 .

[2]The Charging Party alleges that Respondent Karen Rothstein is a manager of Twinbrook Village Apts. Charge ¶9. This allegation was denied by Respondents. (*See* Answer ¶9) and there is no evidence in the record of any involvement in this case by Ms. Rothstein.

STATEMENT OF FACTS

1. Complainant Paul Abrahamsen is handicapped within the meaning of 42 U.S.C. §3602(h). He uses a motorized wheelchair for mobility. He had both hips removed and artificial hips implanted; however, the artificial hips were removed after they became infected, leaving Mr. Abrahamsen bedridden with wounds that require daily care. In addition, he receives kidney dialysis three times a week. He also has a heart problem and has had five-artery bypass surgery. These conditions existed prior to the time of the alleged discriminatory conduct.

2. For the past 18 years Mr. Abrahamsen has resided at Twinbrook Village Apartments, 2131 Aldrin Rd., Apt. 1-A, Ocean, New Jersey 07712. Tr. 279-287.[3] Although Apt 1-A is on the ground level, in 1999 the common walkway and entrance to his apartment had a step 6" high and the path from the landing to the handicapped parking space had a 5" curb and no curb cut. Rx-13.

3. Complainant Susannah Braiman is a handicapped person (leg amputee) within the meaning of 42 U. S. C. § 3602(h). She had a foot amputated in March of 1997, after she suffered a vascular injury to her leg during childbirth. Rx-13, Tr. 89-97. Subsequently, it became necessary to amputate the leg below the knee. She has used a wheelchair and an electric scooter for mobility since March 1997.

4. From 1991 to December 2000, Ms. Braiman resided in a one bedroom apartment at Twinbrook Village Apartments, 2131 Aldrin Rd., Apt. 9-A, Ocean, New Jersey 07712. Apartment 9-A was not wheelchair accessible. The common walkway and entrance to Ms. Braiman's former apartment had a step 5" high and the handicapped parking space had a 5" curb and no curb cut. Rx-14,15. In December 2000, Ms. Braiman moved to a two-bedroom apartment in the same complex (2141 Aldrin Rd, 1-A) when she was determined to be eligible under Section 8 for a medical upgrade to a larger apartment. Tr. 106-22 Tr. 85-140.

5. Complainant Carol Iorio is a handicapped person within the meaning of 42 U.S.C. §3602(h). Her handicap results from multiple sclerosis. At all relevant times, she had trouble walking any distance as her illness affected her balance and gait. She used a cane or walker for mobility and stability, and at times, a wheelchair or electric scooter.

6. Ms. Iorio resided at Twinbrook Village Apartments, 2131 Aldrin Rd., Apt. 11-A, Ocean, New Jersey 07712, for many years until September, 2000, when she moved to St.

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[3]The following abbreviations are used: "Tr." for hearing transcript; Rs' Ans. for Answer to the Charge; "CP #" for Charging Party's exhibits, and "Rs #" for Respondents' exhibits.

Louise, Louisiana, where she resided at the time of trial. Tr. 205-221. Apartment 11-A was not wheelchair accessible. The common walkway and entrance to Ms. Iorio's former apartment had a step 5" high and the handicapped parking space had a 5" curb and no curb cut. Rx-15

7. Respondent Woodshire Apartments ("Woodshire Apts."), located at 200 Central Avenue, Mountainside, New Jersey 07092-1997, is the owner of Twinbrook Village Apartments ("Twinbrook Village Apts.") located at 2152 Aldrin Road, Ocean, New Jersey, 07712. Rx-1, 8-10, 16.

8. Respondent Twinbrook Village Apts. is a privately owned residential apartment complex which was built more than thirty years ago. Rx-10. The complex has 882 garden apartments. Rx-10.

9. Respondent Dan Daly is the Property Manager of Twinbrook Village Apts. Rs' Ans. ¶8; Tr. 226.

10. Respondent Elan S. Schwarz is the manager of Twinbrook Village Apts. Mr. Daly is Mr. Schwarz' employee. In addition to being manager of Twinbrook Village Apts, Mr. Schwarz is a lawyer, licensed to practice in the State of New Jersey. Tr. 225.

11. The Monmouth County Department of Human Services ("Monmouth DHS") is an agency of the County of Monmouth, Monmouth, New Jersey. CP # 2.

12. On or about March, 1999, Complainant Abrahamsen orally requested permission from Respondents to install a ramp leading to his apartment so that he could enter and exit his apartment in a wheelchair. Rs' Ans. ¶11; Rx-12. *See also* Rx-4-9, Rx-11. There is no evidence that Mr. Abrahamsen represented to Respondents in March, 1999, that the ramp was to be built at no cost to Respondents.

13. On or about March 1999, Complainant Iorio orally requested permission from Respondents to install a ramp leading to her apartment so that she could enter and exit her apartment with a wheelchair or an electric scooter. Rs' Ans ¶12; Rx-4-5; Rx-15. There is no evidence that Ms. Iorio represented to Respondents in March, 1999, that the ramp was to be built at no cost to Respondents.

14. On or about April 1997, Ms. Braiman orally requested Respondents to install a ramp so that she could enter and exit her apartment in a wheelchair. She made repeated requests thereafter. Tr. 125. In 1998, in response to her complaints of continuing difficulty in gaining entry and exit from her apartment, Respondents gave Ms. Braiman a

plywood board to use to create a makeshift ramp. The plywood was not sturdy and was hazardous to use. Tr. 87-96.

15. On or about March 1999, Ms. Braiman again requested permission from Respondents to install a ramp leading to her apartment so that she could gain access to her apartment in a wheelchair. Rs' Ans. ¶13; Rx-8-9; Rx-15. Tr. 88, 90, 96, 125. Ms. Braiman did not represent to Respondents in March, 1999, or at anytime prior thereto, that the ramp was to be built at no cost to Respondents. Tr.126.

16. On or about June 7, 1999, the Monmouth DHS orally requested permission from Respondents to have a ramp installed leading to Mr. Abrahamsen's apartment, and to install a second ramp leading to the apartments of Complainants Iorio and Braiman, to be shared by Ms. Iorio and Braiman. Rs' Ans. ¶14; Tr. 21.

17. Monmouth DHS had arranged to have a volunteer group install the two ramps at Twinbrook Village. The ramps were to be installed at no costs to the Complainants or to the Respondents. Monmouth DHS obtained drawings of the ramp to be built and obtained approval and building permits from the appropriate municipality. CP #1; Rx 13-15; Tr.24, 114, 214.

18. Monmouth's oral request was followed with a written request of August 22, 1999. Writing for the County of Monmouth DHS, John Spratford, supervisor, directed his letter to Dan Daly, as property manager of Twinbrook Village Apts. The letter requested permission for the Monmouth County Home Repair/Barrier Free Services Unit to install a wheelchair ramp at 2121 Aldrin Road, Apartment 1A (Paul Abrahamson), and stated that the cost of the permit and installation would be the County's responsibility and that the ramp would meet all code requirements. It sought a prompt response. CP #1. *See also* Rx 4-9; Rx-11, 13-15.

19. Although the August 22, 1999, letter specifically referenced only Mr. Abrahamsen, and there are no corresponding letters of August 22, 1999, in the record for Ms. Iorio and Ms. Braiman, Respondents acknowledged receiving letters from Monmouth County in late 1999 requesting permission to install two wheelchair ramps to accommodate all three Complainants. Rx-12, 14; Tr. 114. *See also* Rx 4-9; Rx- 8-9,11. Both ramps were to be constructed at no cost to Respondents.

20. Respondent Schwarz was and is the owner of Twinwood Village and had the ultimate authority to make the decision whether to permit the installation of the ramps. Tr. 53.

21. Respondent Schwarz acknowledged that Complainants needed the installation of the ramps to allow them equal access to their apartments. Tr. 262-63, 268-69.

22. On August 30, 1999, at the direction of Mr. Schwarz, Mr. Daly sent a letter responding to the Monmouth DHS which stated the following:

> We are granting permission to the county to build a ramp at 2121 Aldrin Road for Paul Abrahamson. We are not responsible for any liability for this ramp should anything occur. It will be tenants responsebilty [sic] to remove said ramp from this property when they vacate apartment.

CP #2 (Rx 1); Rs' Ans. ¶16 ; Tr. 228. This letter was intended to apply to all three Complainants. Tr. 47.

23. In a letter dated September 3, 1999, to Dan Daly the Monmouth DHS expressed concern about the second sentence in the August 30, 1999, i.e., *"we are not responsible for any liability for this ramp should anything occur."* According to the letter, Monmouth considered that language to represent a disclaimer which it thought was "overly broad and non-specific." To satisfy its concerns, Monmouth DHS suggested that Respondents remove the second sentence and insert instead the following language:

> It will be the responsibility of Monmouth County to secure the necessary permits and that its installation complies with all applicable handicap and construction codes. CP #3.

24. Mr. Schwarz and Mr. Daly discussed Monmouth's request. After doing so, they decided to take no action on the request. They were satisfied with the language of the August 30th letter and saw no reason to change it. Tr. 229-30; 253-56.

25. Mr. Daly included the second sentence in the letter to deny Respondents' responsibility and liability for any costs resulting from any injury that might occur during construction of the ramp or from someone falling over the ramp after it was in place. Tr. 25-27. According to Mr. Daly, it was his job to protect his landlord and himself and he included the sentence in the letter to protect himself, the property, and management. Tr. 69.

26. Mr. Daly intended as a condition precedent to approval of the ramps that the Complainants obtain insurance to cover any liability resulting from any injury associated with the ramps. Tr. 26-27, 30-31, 34, 66-69.

27. Mr. Schwarz and Mr. Daly were concerned with the appearance of the ramps as designed. Mr. Schwarz thought that they were too long and wanted them to be smaller, less intrusive, and to look better. Tr.247, 272, Rx-12.

28. Although Mr. Daly acknowledged that Complainants' apartments were not wheelchair accessible, he did not believe that the ramps designed by Monmouth were necessary. Had it been up to him, he would have put in smaller ramps. Tr. 77-78.

29. Subsequent to September 3, 1999, Mr. Spratford from Monmouth and Mr. Daly discussed the ramp matter on several occasions. However, Mr. Spratford was unsuccessful in getting Respondents to remove the problematic language in the letter. Tr. 29-32, 36-7; Tr. 177-78; Rx-13-15.

30. Both Mr. Schwarz and Mr. Daly knew that their refusal to delete the language pertaining to liability in the "permission" letter to Monmouth was holding up construction of the ramp, yet they decided that they needed do nothing further - "we left it at that."[4] CP #3, 6; Tr. 36-7, 64-67, 255-56, 269.

31. As a result of its inability to get Respondents to remove the second sentence in their August 30, 1999, letter, Monmouth DHS terminated its plans to construct the ramps at Twinbrook Apts. and the building permits were canceled. CP #6; Rx 4, 9, 10, 11,13 -15.

32. When the ramps were not built by Monmouth by January 2000, Mr. Schwarz instructed Mr. Daly to make an alternative offer to the Complainants in an effort to accommodate their need for accessibility. The offer was to move each of the Complainants to a new ground floor apartment with no steps. The move would be at no cost to each Complainant. Tr. 231. These offers were made to Ms. Braiman on January 15, 2000 and again on February 10, 2000 and to Ms. Iorio and Mr. Abrahamsen on February 13, 2000. Rx-2, 3; Tr. 231.

33. Respondents represented that the apartments to which they proposed to move the Complainants had no steps (Rx-2-9). In fact, none of the exits to the new apartments offered to the Complainants were flush with the ground. Curb cuts and a ramp were necessary for wheelchair access to each of these alternative units. Rx-12; Tr. 74-5, 84, 195, 231.

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[4]When asked why he just did not delete the second sentence as requested by Monmouth, Mr. Schwarz' answered that he saw no need to because in his mind the letter granted permission, period. Since he thought that the grant of permission was clear and unconditional, he felt no need to do anything about Monmouth's request. Tr. 255-56, 269.

34. All three Complainants rejected Respondents' offer to move. Rx 2,3. Each had been in his or her home for more than 10 years, had come to know his/her neighbors and was attached to his/her home.

35. Mr. Abrahamsen had lived in his apartment for 18 years, was settled there and did not want to move. He had severe health problems and was bedridden. He responded that "with all that is going on, moving is just not something [he] wants to do." Rx-2.

36. Ms. Iorio had lived in her apartment for 16 years. She told Respondents that she would prefer to remain at her address where "she feels most comfortable." Rx-3.

37. Ms. Braiman had lived in her apartment for 10 years and preferred to stay where she was. She had lived there long before her unfortunate injury to her leg. Ms. Iorio was her neighbor and good friend - her son called her "Grandma." Tr. 114. Her other neighbors knew her and her circumstances. If she needed anything, they helped out. They would knock on her door and check to see if she needed anything and would go to the store for her. She had come to depend on her neighbors - their help had been critical to her in the past. In 1998, her son had an emergency. He had fallen and "split" his head. There was no ramp. She could not carry her son and hop on one foot to get her wheelchair off her stoop and onto the ground. She needed help to get out of her apartment to get help for her child. Her neighbors came to her rescue. She could not be sure she would have that support network at a new apartment.

Nevertheless, Ms. Braiman decided not to accept the offer only after looking at the two units offered to her. She decided not to accept the offer because neither new apartment was wheelchair accessible. Both required modification of the curb and a ramp. In addition, in her view, the new apartments were in a less desirable part of the complex. It did not make sense to her to move to a location that was less desirable when wheelchair accessibility would still be a problem. She would have to change her phone number, utilities, etc. Moreover, she was concerned about who would pack and unpack her belongings. Although she was told the move would be at no cost to her, Respondents never informed her that they would take care of the packing and unpacking and she knew she would need lots of help getting that done. Tr. 101-108, 134.

38. The Complainants contacted HUD complaining about Respondents' refusal to grant permission to build the ramps. On February 11, 2000, an employee of HUD telephoned Dan Daly to obtain his response to the allegations. He stated that "he gave permission, but . . . he would not assume liability for the ramp." Tr. 151-53; Rx 13-15.

39. On February 18, 2000, Complainants filed formal complaints with HUD alleging violation of the FHA. Brenda Salas, an Equal Opportunity Specialist, was assigned to investigate the case on behalf of HUD. Tr. Rx 13-15.

40. In March 2000, Complainants Iorio and Braiman also filed a complaint with the State of New Jersey, Civil Rights Division. Lawrence Bethea was assigned to investigate the case for the State of New Jersey. CP #5-6; Tr.17; Rx 14.

41. Ms. Salas spoke to Mr. Schwarz for the first time on May 10, 2000. He told her that he had given Monmouth permission to build the ramps, but said that Respondents "would not be responsible for liability if anything happened." Tr.183-84.

42. Ms. Salas viewed the two new apartments that were being offered to Complainant Braiman. Although each landing/stoop was "closer to the ground" than the entrance to their current apartment, there was still a step between the ground and the stoop, and a step between the stoop and the doorsill. Both apartments needed parking lot curb cuts and both had to be leveled off in some way to permit unobstructed access to the doorway. Tr. 195-96

43. During the summer of 2000, Ms. Salas talked to Mr. Spratford who represented Monmouth DHS. Her ultimate goal was to get the ramps built. Mr. Spratford thought that the County would still consider putting in the ramps. Tr. 185-189; Rx 13-15.

44. On June 7, 2000, Ms. Salas spoke to Mr. Daly. Mr. Daly told Ms. Salas that "the tenants would have to purchase their own insurance . . . to cover the ramp if anything would happen." Tr. 177-78, 198, 202. Between June 7, 2000 and August 30, 2000, Ms. Salas made repeated calls and left messages for Mr. Schwarz. He did not return her calls. She did not speak to him again until August 30, 2000. Tr. 185-88.

45. On July 18, 2000, Mr. Bethea spoke with Mr. Daly. Mr. Daly told Mr. Bethea that the building of the ramps had been stopped as a result of Respondents' position on the issue of liability, i.e., that Complainants would be responsible for liability on the ramp if anything occurred. Mr. Daly told him that their position remained the same - "no insurance, no ramp"and said they would fight the matter in court if they needed to. CP # 5-6; Tr. 32-39, 259. During the conversation Mr. Bethea advised Mr. Daly that since the ramps were going to be built at no cost to Respondents, it was "illegal" for them to condition approval on Complainants' being responsible for liability on the ramp if any injury occurred unless Respondents could show that they would suffer "a cost factor increase in its insurance based on the ramp being in place." When Mr. Bethea asked for documentation, Mr. Daly said he had none. He asked Mr. Bethea to put the request for documentation in writing. On July 18, 2000, subsequent to the his conversation with Mr.

Daly, Mr. Bethea memorialized his conversation in notes he included in his Case Progress Report. CP #6. Mr. Bethea also drafted and sent a letter to Woodshire Apts, to Mr. Daly's attention, requesting that Mr. Daly "supply us with a cost factor involved in the additional insurance coverage Respondent would incur as a result of coverage for ramps being built for Complainants." CP #5. Tr. 31-35. Respondents never responded to Mr. Bethea's request. Tr. 39-40.

46. When Ms. Salas spoke to Mr. Schwarz on August 30th, Mr. Schwarz had changed his earlier (May 10th) position on liability. He told her that Mr. Daly was mistaken about liability coverage being required and that he would talk to his attorney about the issue and get back to her. He also stated that Monmouth's plan for the ramp had to be revised for his approval - the proposed ramps were too long. He again brought up the option of the new apartments. By this time Ms. Salas had viewed the apartments and told him that the new apartments were not wheelchair accessible - that they needed curb cuts at the parking area and a leveling off or slope to the apartments. Mr. Schwarz stated that he was agreeable to making these modifications if Complainants agreed to move into the new apartments. Tr.164-67,175-76,189-220; CP #7. Ms. Salas awaited Mr. Schwarz' contact following his consultation with his attorney. She received no timely reply. On September 14, 2000, she closed her investigation and issued her final investigative report. *See* Rx 13-15.

47. On September 19, 2000, Mr. Schwarz wrote to Ms. Salas describing what he had done to resolve the situation to that point. He stated the following:

> When we spoke at the end of August, I had the impression that we were close to a resolution but for some minor details. I indicated to you that I would need a revised sketch of the proposed ramps to be constructed by the County. In addition, you recommended some changes to the exterior of the offered apartments that would ease the tenants' access. I stated that Woodshire Apartments would make any necessary modifications to allow wheelchair access to these apartments and that, provided they or similar units were available, the tenants could be moved.

CP #7. See also Rx 4-9, 12; Tr. 239.

48. On December 14, 2000, HUD filed the instant Charge of Discrimination, alleging violation of the FHA.

49. By letter dated March 13, 2001 to HUD, Respondents authorized the "immediate installation of access ramps" with respect to the three units in question (two ramps) with the only proviso being that:

> all work shall be subject to the conditions that any work and alterations shall be consistent with all applicable governmental and building codes, and shall not negatively affect the structural integrity of the Unit or building.

Rx 16.

50. The ramps were built in April 2001. They were built by volunteers at no cost to Respondents. Tr. 69, 262-63. According to Mr. Daly, the ramps that were installed are much larger and longer than what he had in mind, but they "look good." Tr. 80-81.

51. During the relevant time period, Mr. Abrahamsen was bedridden and could not use his wheelchair because of the steps outside his apartment. He never went outside except for visits to his doctors or for dialysis. He went to the doctor once or twice a week and to dialysis three times a week. On these occasions he had to be transported by stretcher and ambulance. The same attendants who took him to dialysis took him to his doctors.

Being taken out in a stretcher was not easily accomplished and was stressful for Mr. Abrahamsen. Because he had his hips removed, his legs were bowed and his knees protruded beyond the sides of the stretcher. A secretary sat right next to the door to the facility and his knee would often bump her as he was being carried in and out of the facility on the stretcher. Had he been able to use his wheelchair, this would not have happened. Also, when being carried on the stretcher, getting in and out of his doors was difficult because of the steps - "you ha[d] to wrangle your way out." The way it is now, with the ramp, he can be taken straight out, which is "nice." It is "much, much easier" for him to be taken in and out on the stretcher.

Since installation of the ramp, Mr. Abrahamsen has been able to go outside for the simple pleasure of it. Just the day before the hearing he went outside in his wheelchair and sat with his wife and had dinner. He had gone outside for his daughter's graduation. "That was nice." He went down the ramp and out to the front yard and had a party there with about 15 guests. Doing so would not have been possible before the ramp was installed. Tr. 279-93.

52. Ms. Iorio moved to Louisiana in September 2000, before Respondents permitted the construction of the ramps in April, 2001 because her lease expired and a rental increase was to take effect, and also because her sons lived in Louisiana and would be available to assist her. Accordingly, Respondents' failure to permit the installation of the ramp was not her primary reason for moving. Tr. 212-13.

As a result of her illness (multiple sclerosis), Ms. Iorio has a balance and gait problem which makes it difficult for her to step up to another level without having something or someone to hold onto. During the time Ms. Iorio lived at Twinbrook Apts., she had a

wheelchair which she used on her "bad" days. People pushed her around. On her "good" days, she tried to get around on her own with her cane. Between August 1999 and September 2000, Ms. Iorio often fell while trying to walk from the parking lot to her apartment. During the summer of 2000, Ms. Iorio fell 6 to 7 times, just trying to negotiate the step-up from the ground to the stoop of her apartment. When she fell, she usually had to ask neighbors to help her up and into to her apartment. She suffered bruises during these falls and on one occasion, broken ribs (she fell off her porch when she attempted to step down, and she broke ribs in her left side). Rx-15; Tr.213-15, 218. Her falls were embarrassing. She also felt embarrassed because she could not get around without the help of others. She believes that had the ramp been in place, she would not have fallen while walking and she would have been able to use her wheelchair as often as she desired and without assistance. Tr. 213-221.

53. Ms. Braiman has a four-year old son. Prior to construction of the ramp, she was unable to go outside without assistance. She could not take her son out to play and he could not go to preschool because she was not able to get him to the bus stop. She felt like a "prisoner" in her apartment. She missed physical therapy for herself and doctors appointments for herself and for her son. She constantly worried that she and her child would not be able to escape to the outside should there be a fire in the apartment. She felt guilty when her son cried because he wanted to play outside. He was isolated and developed language and socialization problems. She could not take out the trash and garbage and so she placed her trash, including her son's soiled diapers, outside her door. She was embarrassed when she was asked to stopped doing so. Tr. 85-140.

Ms. Braiman called periodically throughout the years to renew her request for assistance, but often received no response. Her first response occurred when Respondents gave her a piece of plywood to use. However, the plywood did not extend from the stoop to the street. It only extended from the stoop to the curb. She still had to get from the curb to the street. Plus, the plywood would break if she drove her scooter on it. She weighed 270 lbs. and her electric scooter is heavy. Tr. 87-96. The next response was in 2000 when Mr. Daly offered to move her to a different apartment.

Before the ramp was installed, Ms. Braiman could only go to her door and look out. After the ramp was installed, she "just opened the door and drove out" on her motorized scooter. She rode her son all the way around the complex and then to the playground. Her ride out gave her "the best feeling in the world." Tr. 120-21. Now her son plays outside daily. Ms. Braiman feels a sense of independence for the first time since her disability. For the first time in the life of her child, she can take him to the playground without help from anyone else and she can take out her own garbage. Tr. 120-125.

LEGAL FRAMEWORK

Because handicapped persons have special needs, Congress recognized that more than a mere prohibition against disparate treatment was necessary in order that handicapped persons receive equal housing opportunities. *H. R. Rep. No. 711, 100th Cong., 2nd Sess. 25, reprinted in 1988 U. S. Code Cong. and Admin. News, 2186.* Unlike other forms of discrimination proscribed by the Act, Congress recognized that discrimination resulting from failure to accommodate handicaps when it is reasonable to do so, is often the result of "benign neglect" rather than intentional discrimination. *Alexander v. Choate*, 469 U. S. 287, 295 (1985). It recognized that discrimination against the disabled is "most often the product of thoughtlessness and indifference" and in view of this reality, it recognized that the unnecessary exclusion of the handicapped from the American mainstream would not end unless Congress mandated an affirmative duty to equalize housing opportunities for the disabled. H. R. Rep. 711 at 16.

Congress intended that the Act be implemented in a manner consistent with Section 504 of the Rehabilitation Act, H.R. No. 711 at 25, reprinted in 1988 U. S. Code and Admin. News, 2173. Cases interpreting Section 504 hold that an accommodation which permits employees to experience the "full benefit" of employment must be made unless the accommodation imposes an "undue financial administrative burden" on a Respondent or requires a "fundamental alteration" in the nature of its program. *Southeastern Community College v. Davis,* 442 U. S. 397 (1979).

DISCUSSION

The Charging Party alleges that in June 1999, the Complainants sought oral permission from Respondents to build two ramps on the Twinbrook Apts. complex: one leading to Mr. Abrahamsen's apartment and a second leading to the apartments of Ms. Iorio and Braiman, to be shared by them. The requests were made by a Monmouth County DHS representative. The construction was to be done by a volunteer group and the ramps were to be installed at no cost to Respondents. On August 22, 1999, Monmouth submitted the requests in writing. The Charging Party alleges, further, that Monmouth County had obtained the necessary permit and was prepared to build the ramp during the summer of 1999, however, Monmouth County could not install the ramps until April 2001, because Respondents placed unreasonable conditions for approval of the construction of the ramps: 1) that these Complainants obtain liability insurance to cover any liability that might result from injury on the ramp; and 2) that Complainants agree to remove the ramp at the end of each's tenancy. The Charging Party also asserts that Respondents required modification of the proposed design of the ramps as a condition for approval of the ramps. Finally, the

Charging Party alleges that during the period between June 1999 and April 2001 Complainants suffered greatly from their inability to access their apartments.[5]

Respondents deny that they discriminated against the Complainants in the terms and conditions of their tenancy and assert that they, at all relevant times, agreed to make reasonable accommodations for the Complainants. They contend that:

1) they received no request to install a ramp as a reasonable accommodation from Ms. Braiman and Ms. Iorio - only from Mr. Abrahamsen;

2) they gave Monmouth unconditional permission to build the ramps in question and that the ramps were not built until April 2001 as a result of Monmouth's decision not to install the wheelchair ramps, not as a result of any actions or omissions on their part;

3) assuming a finding that their permission was conditional, any conditions placed on the construction of the ramps were reasonable conditions permitted by statute and regulation. The Act does not require a landlord to accommodate a Complainant's handicap if the accommodations sought would require the landlord to incur additional liability expenses which would impose an undue hardship and a substantial burden upon the landlord; and

4) they offered alternative reasonable accommodations to Complainants - to rent them comparable apartments on the ground floor, and to make such additional reasonable modifications as might be needed to make the new apartments wheelchair accessible - however, all Complainants rejected these reasonable accommodations offers.

I. The Reasonable Accommodation Claim

Section 3604(f) prohibits discrimination against handicapped persons in the terms conditions or privileges of rental of a dwelling or in the provision of services or facilities in connection with such a dwelling. It requires a landlord to:

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[5]The Charging Party also argues that Respondents had a policy requiring that requests for reasonable accommodation be made in writing and that the policy violated the Act. There is evidence that Respondents had such a policy (Tr. 68), however there is no evidence that such a policy played any role in this case. Although Monmouth's oral request of June 7, 1999, was not acted upon, there is no evidence to support a finding that Respondents failed to act on the request *because* it was an oral request.

> (B) . . . make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person equal opportunity to use and enjoy a dwelling.

42 U.S.C. § 3604(f)(3).

Under the Act, discrimination includes:

> a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied ...by such person if such modifications may be necessary to afford such person full enjoyment of the premises

42 U.S. C. § 3604(f)(3)(A) (1999). *See also Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (E.D. N.Y. 1993). Although § 3604(f)(3)(A) makes it a violation for a landlord to refuse to permit reasonable modifications "at the expense of the handicapped person," a number of courts have held that the landlord may be required to incur some costs to accommodate a tenant's handicap, provided such accommodations do not pose an undue hardship or substantial burden on the landlord. *See Shapiro v. Cadman Towers, Inc.* 51, F. 3d 328, 335 (2d Cir. 1995); *Oconomowoc Residential Programs, Inc. v. City of Greenfield,* 23 F. Supp 2d 941 (Sept. 30, 1998); *Lyon v. Legal Aid Society* 68 F. 3d 1512, 1517 (2d Cir. 1995); and *Hubbard v. Samson Management Corp.*, 994 F. Supp 187 (S.D.N.Y. 1998). *See also Salute v. Green*, 918 F. Supp 660, 667 (E. D. N.Y. 1996).

To establish a *prima facie* claim of discrimination in a rental unit under § 3604(f)(3)(A) of the Act, a complaining tenant has to show that she sought the landlord's permission to modify the premises to accommodate her disability at no expense to the landlord, and (1) that the tenant is a person with a "handicap" as that term is defined in section 3602(h) of the FHA; (2) that respondents knew or should have known that the tenant had a handicap; (3) that reasonable modifications may be necessary to afford the tenant full enjoyment of the premises (i.e., to have entry and egress from the apartment without significant difficulty); and (4) that respondents refused to permit such reasonable modifications. *See Shapiro v. Cadman Towers, Inc.*, 51 F. 3d 328, 335 (2d Cir. 1995). *See also United States v. California Mobile Home Park Management Co.*, 107 F. 3d 1374, 1380 (9th Cir. 1997).

Additionally, courts have held that the imposition of an unreasonable condition on approval of a reasonable modification may constitute a refusal to permit the modification. *See United States v. Freer*, 864 F. Supp. 324, 326 (W.D.N.Y. 1994). *See also Garza v. Raft*, 2 Fair Housing - Fair Lending (Prentice Hall) ¶16,406 (N. D. Cal. 11-30-99). However, these determinations are fact-specific in nature and must be decided on a case-by-case basis. The court should "balance the [landlord's] interests against the need for an

accommodation in the case." *Smith & Lee Associates v. Cit of Taylor*, 13 F. 3d 920, 931 (6th Cir. 1993); *U. S. v. California Mobile Home Park*, 29 F. 3d 1413, 1418 (9th Cir. 1994) and *Hubbard v. Samson Management Corp.*, 994 F. Supp 187 (S.D.N.Y. 1998).

Respondents' claim that they received no request from Monmouth to install a ramp as a reasonable accommodations from Ms. Braiman and Ms. Iorio - only from Mr. Abrahamsen - is totally meritless. Respondents admitted receipt of such requests in their Answer to the Charge, (Rs' Ans. ¶14), and in documents introduced in evidence by Respondents themselves. *See* Rx 4-9; 11-15. Mr. Daly attached the August 30, 1999, letter as his response to the New Jersey State complaint filed by Ms. Iorio and Ms. Braiman and he told Mr. Bethea that even though the letter referenced only Mr. Abrahamsen, it was intended to apply to Ms. Iorio and Ms. Braiman, as well. Tr. 24. The clear preponderance of the evidence supports such a finding. Accordingly, I find that in June 1999 and again in August 1999 all three Complainants, through Monmouth, sought Respondents' permission to build wheelchair access to their apartments at no cost to Respondents.

The evidence is uncontested that these Complainants are handicapped persons and that Respondents were aware of each of the Complainants' handicapped status and their need for accommodation. The lack of a ramp to make their apartments wheelchair accessible effectively denied these Complainants an equal opportunity to use and enjoy their apartments. Without the ramps Complainants were subjected to isolation, to risk of injury, and to humiliation each time they wanted to leave and to return to their dwelling. The main issues, then, are: 1) whether Respondents conditioned their approval of installation of the ramps; 2) if so, were the conditions reasonable. I turn now to the question of whether Respondents conditioned their approval of the building of the ramps.

A. Respondents imposed conditions for their approval of the building of the ramps

<u>Liability insurance</u>

Respondents' assertion that they gave unconditional permission to Monmouth to build the ramps is not credible and is rejected. The record contains overwhelming evidence to the contrary.

We begin with Mr. Daly's August 30, 1999, letter to Monmouth which states: "We are not responsible for any liability for this ramp should anything occur" and the fact that Mr. Daly and Mr. Schwarz knew that Monmouth considered the letter to grant conditional permission to install the ramp because of that stated language. Mr. Daly's and Mr. Schwarz' decision not to remove the language after being requested to do so by Monmouth strongly suggests that they intended to place a condition on the building of the ramps. However, any doubt on the matter is dispelled by Mr. Daly's numerous statements

that there was a condition that had to be met before Respondents would approve the building of the ramps. Mr. Daly admitted to the condition in his pre-trial deposition and in trial testimony. When asked at the deposition if there were any conditions to the grant of permission on August 30, 1999, he responded: "Yes. We will not accept liability. . .There was a condition if it was concerned with liability." Tr. 66. At trial Mr. Daly gave conflicting testimony. He testified that the permission was unconditional, Tr. 64. But when reminded of his deposition testimony, he responded: "if it's concerned with liability, that's a condition." Tr.67. As to why he imposed the condition, he stated: "Well, it's my job to protect myself. If I just gave them permission, I would be not protecting my company or myself." Tr. 69.

Moreover, the evidence shows that in a conversation with Mr. Bethea, Mr. Daly explained that the second sentence in the August 30, 1999, letter meant that Respondents would not "take on the burden of dealing with any costs if anything happened i.e., if anyone should fall on the ramp after it was in place." Tr .25. Mr. Daly then reiterated his position on the matter, saying: "no insurance, no ramp...we will fight this issue in court." Tr. 31-32; CP #5,6. I find Mr. Bethea's testimony to be highly credible on this issue. Mr. Daly's statements prompted Mr. Bethea to send Mr. Daly a letter requesting documentation of additional costs to Respondents for liability insurance as a result of the building of the ramps. *See* CP #5. Mr. Bethea made a contemporaneous record memorializing his conversation with Mr. Daly. Moreover, in a letter to Mr. Daly dated July 18, 2000, Mr. Bethea recounted Mr. Daly's statement to him CP #6. Mr. Daly's failure to respond to the letter with a denial of the statement alleged therein provides reason to credit Mr. Bethea's testimony and to discredit Mr. Daly's denial. Mr.Daly also told Ms. Salas that the Complainants would have to have their own insurance to cover the ramp before installation of the ramp would be approved. Tr. 177, 198, 203. I credit Ms. Salas' testimony on the matter.

Mr. Schwarz also told Ms. Salas that Respondents required liability insurance as a precondition to approval of the ramps. Tr.164-78, 189-96, 198, 202; Rx 13-15. Mr. Schwarz made the statement to Ms. Salas in a conversation with her on May 10, 2000. However, by the time of their next conversation on August 30, 2000, Mr. Schwarz had changed his position. He told Ms. Salas that he had already given Monmouth permission and that Mr. Daly was mistaken about the liability insurance issue. Mr. Schwarz apparently reconsidered his position as a result of Mr. Bethea's advice about the illegality of the condition and after receiving Mr. Bethea's request for documentation of the additional costs. However, even then he did not give Ms. Salas unconditional permission to have the ramps installed. He told her instead that he intended to discuss the matter with his attorney and get back to her. Although this conversation with Ms. Salas took place on August 30, 2000, Mr. Schwarz did not take action to remove the challenged condition until March 13, 2001.

At trial, Mr. Schwarz testified that Mr. Daly might have required the Complainants to obtain renter's liability insurance, but stated that he never instructed Mr. Daly to do so, nor authorized him to do so. Tr. 259. For the reasons discussed above, his testimony that he was not aware of, and did not condone, Mr. Daly's requirement that Complainants obtain liability insurance before approval of the ramps would be given, is not credible. He was the one with the authority to grant or deny permission to install the ramp and the evidence shows that he was involved in the decision to grant only conditional permission to install the ramps. Tr. 70-71, 183-84. Mr. Schwarz' cannot disassociate himself from Mr. Daly's decision. When he imposed the conditions Mr. Daly was acting as Property Manager of Twinbrook Village Apts. and as an employee of Woodshire Apts. Mr. Schwarz was Mr. Daly's supervisor. The duty to comply with fair housing laws cannot be delegated. *See United States v. Mitchell*, 335 F. Supp. 1004, 1007 (N.D.Ga. 1971) *aff'd sub. nom. United Stated v. Bob Lawrence Realty*, 474 F. 2d 115, (5th Cir., 1973), cert. denied, 414 U. S. 826 (1973). Thus, Mr. Schwarz' is both directly and vicariously responsible for any violations in this case.

Modification of the design of the ramp

Ms. Salas testified that in conversation with her Mr. Schwarz also conditioned permission to install the ramps on changes to the design of the ramp. She testified that Mr. Schwarz told her that the proposed ramps "had to be revised" because they were too long. Tr.167-68; 204. *See also* CP #7. Mr. Schwarz' admitted that he did not like the design but testified that he never told Ms. Salas that he would not agree to the ramps if the design was not modified. I credit Ms. Salas testimony. In his September 19, 2000, letter to Ms. Salas, Mr. Schwarz stated: "I had the impression that we were close to a resolution but for some minor details. I would need a revised sketch of the proposed ramps to be constructed." CP #7; Tr. 164-67, 175-76. His claim that he was simply making inquiries as to whether the plan could be modified is not credible.

Respondents also conditioned their approval of the building of the ramps on agreement that the affected tenants would remove the ramps at the end of their tenancy. *See* Rx 1(CP #2).

In sum, I find that beginning August 1999, Respondents imposed conditions which had to be met before they would grant Monmouth permission to build the ramps. These conditions were not lifted until March 31, 2001, when Respondents authorized the immediate installation of the access ramps.[6] Rx 16.

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[6]Respondents' March 13, 2001 letter sent after this Charge deleted the language in the August 30, 1999, letter that was objectionable to Monmouth and authorized "the immediate installation of access ramps." Monmouth erected the ramps the next month.

B. The conditions imposed by Respondents for the building of the ramps were not reasonable conditions

Under the statute and regulations a landlord may decline to reasonably accommodate a tenant's handicap if it would impose a substantial burden or an undue hardship upon them. *See Shapiro v. Cadman Towers, Inc.,* 51 F. 3d 328 (2d Cir. 1995). Although Respondents asserted both substantial burden and undue hardship, they have proven neither. Respondents submitted no evidence that since April 2001, when the ramps were built, that they in fact incurred, or would have incurred in August 1999, additional liability insurance expense as a result of the construction of the ramps on their property. Moreover, Respondents' concern for the appearance of the complex must be weighed against the needs of these Complainants for wheelchair access to their apartment. In this case, concern for the appearance of the apartment complex does not constitute a legitimate basis to refuse to grant the accommodation.

Accordingly, Respondents have failed to establish that the conditions set on the construction of the ramps between August 1999 and April 2001, were reasonable and I find that the conditions were *un*reasonable. *See HUD v. Country Manor*, 2 FH -FL (Aspen) ¶___(HUDALJ Sept. 20, 2001). Further, I conclude that by conditioning their approval of the building of the ramps Respondents effectively refused to permit the building of the ramps in violation of the Act. *See United States v. Freer*, 864 F. Supp. 324, 326 (W.D.N.Y. 1994). *See also Garza v. Raft*, 2 Fair Housing - Fair Lending (Prentice Hall) ¶16,406 at 16,406.2. (N. D. Cal. 11-30-99) (landlord's approval conditioned on agreement by Garza (handicapped tenant)) to have the ramp removed at Garza's expense at the conclusion of his tenancy held to constitute refusal to permit the ramp in violation of FHA.

C. Assuming, *arguendo*, that Respondents placed no conditions on the installation of the ramps, their actions in this case from August 30, 1999 to March 13, 2001, constituted a refusal to reasonably accommodate Complainants' handicap

Even assuming that Respondents placed no conditions on the installation of the ramps by Monmouth, and that Monmouth simply misunderstood the intent of Respondents' August 30, 1999 "permission" letter as Respondents contend, I find that Respondents' stubborn refusal over a period of 20 months to modify their August 30, 1999, letter as requested by Monmouth or to otherwise make it clear to Monmouth that insurance was not required, thwarted the constructing of the ramps and constituted, under these circumstances, a refusal to reasonably accommodate the Complainants' handicaps. Respondents knew from Monmouth's letter of September 3, 1999, and from subsequent conversations Mr. Daly had with Mr. Spratford, that Monmouth was not going forward with installing the ramps because of its concern with the perceived conditional permission.

In the face of this knowledge, Respondents opted to do nothing to remove the impediment. Their refusal to take action is tantamount to a refusal to reasonably accommodate these Complainants' handicaps.

D. Respondents' alternate proposal was not a reasonable accommodation

I reject Respondents' argument that their offer to Complainants to move them to new apartments, as an alternative to having the ramps built, was a *reasonable* accommodation of Complainants' handicap. The Complainants were not dissatisfied with their apartments and were not asking for a new apartment to accommodate their handicap. What they wanted and needed was wheelchair access to their apartments. Mr. Abrahamsen, who was bedridden because of the severity of his disability, had lived in his apartment for 19 years. He was comfortable there and had no desire to move. So, too, was Ms. Iorio. Ms. Braiman had lived in her apartment for nearly 10 years. For all of those years she lived next door to Ms. Iorio, who was very important to her - her child called Ms. Iorio "Grandma." Both knew their neighbors and had developed a feeling of comfort and safety knowing that they had caring neighbors living around them. For all of them, to move would have required them to seek out new relationships, not knowing whether they would be successful as before. Being without a ramp for so long had imposed an emotional cost on all these Complainants in that it increased their dependence on others. Additionally, Ms. Braiman observed and Respondents subsequently admitted, that the new apartments offered were not wheelchair accessible. In February 2000, when they were offered to these Complainants, Respondents made no offer to modify them as needed; instead they misrepresented them to be ground floor apartment "with no steps." Ms. Braiman saw no reason to go through the major ordeal of a move to another apartment which was itself not handicap accessible. Respondents' agreement to make modifications to the new apartments to make them wheelchair accessible did not come until August 2000, at the prompting of Ms. Salas, and well after the Complainants had rejected the offers.

Further, Respondents' argument is inconsistent with the FHAA's guarantee that the disabled be afforded equal opportunity to live in the residence *of their choice*. *See* H.R. Rep. 711 at 24; *United States v. City of Jackson, Mississippi*, Fair Housing - Fair Lending (P-H) ¶ 16,230 at 16,230.10 (*internal citations omitted*). *See also Erdman v. City of Fort Atkinson*, 84 F. 3d 960 (7th Cir. 1996). Their proposed accommodation was an unsatisfactory one and Complainants were not required to accept the proposal. *See U. S. v. Freer,* 864 F. Supp 324 (W.D.N.Y.1994). *See also Green v. Housing Authority of Clakamas County*, 994 F. Supp. 1253 (D.Oreg.1998).

Finally, Respondents' suggestion that the Complainants and/or the Charging Party were not diligent in securing their approval for the building of the ramps, therefore the

long delay cannot be attributable to them is not persuasive. The Act poses no requirements that Complainants make repeated requests under these circumstances. Respondents knew what the impediments were to Monmouth's building of the ramps and knew that only they could have removed them. The Complainants (as well as Monmouth) requested a ramp and attempted to get it built, and Respondents offered approval subject to a restriction not permitted by the Act. This is sufficient to demonstrate that Respondents violated the Act. *See Garza*, ¶16,406 at 16406.2.

II. Discrimination in the terms, conditions and privileges of rental and in the provision of services or facilities

In this case, the Charging Party alleges Respondents violated 42 U.S.C. §3604(f)(1)(B) by imposing on Complainants different terms, conditions and privileges of rental and in the provision of services or facilities because of their handicap. The Charging Party asserts that by conditioning their grant of permission to erect the ramps on Complainants' obtaining renter's liability insurance, when other tenants were not required to obtain such insurance, Respondents' treated Complainants' differently from tenants who were not wheelchair bound. The Charging Party argues that the conditions explicitly subjected these wheelchair-bound tenants to treatment differing from that of non-wheelchair bound tenants and was facially discriminatory. I agree.

A violation of the FHA may be premised on a theory of disparate impact. *See LeBlanc-Sternberg v. Fletcher*, 67 F. 3d 412, 425 (2d Cir. 1995); *Salute* v. *Stratford Greens*, Fair Housing - Fair Lending (P-H) ¶16,255 at 16,255.7. Under the disparate impact analysis, a *prima facie* case is established by showing that the challenged practice of the respondent discriminates against the handicap on its face and serves no legitimate business interest. *See Bangarter v. Orem City Corp.*, 46 F. 3d 1491, 1501 (10th Cir. 1995). *See also Marriott Senior Living Services, Inc. v. Springfield Township,* 78 F. Supp. 2d 376 (E. D. Pa. 1999); *Huntington Branch, NAACP v. Town of Huntington,* 833 F. 2d 926, 934-35 (2d Cir.), aff'd in part 488 U. S. 15, (1988). *See also HUD v. Country Manor Apartments*, 2 Fair Housing - Fair Lending (Aspen) ¶___, (HUDALJ Sept. 20, 2001).

Once the Charging Party establishes a *prima facie* case of discrimination, the burden shifts to Respondents to prove that their actions further, in theory and in practice, a legitimate, bona fide interest and that no alternative would serve that interest with less discriminatory effect. *Huntington* at 936, *citing Resident Advisory Board v. Rizzo,* 564 F. 2d 126, 148-49 (3rd Cir. 1977). *See also Salute* at 16,255.7.

Discrimination may be proved by direct or circumstantial evidence. Direct evidence of discrimination, if it constitutes a preponderance of the evidence as a whole, is sufficient to support a finding of discrimination. *See, e.g., Pinchback v. Armistead Homes*

Corp., 907 F.2d 1447, 1452 (4th Cir. 1990); *HUD v. Jerrard*, 2A Fair Housing-Fair Lending Rptr. (Aspen) ¶25,005, 25,087 (HUDALJ 1990). A policy that explicitly subjects a protected class to treatment differing from that of non-members of the protected class is facially discriminatory. *Bangertner v. Orem City Corp.*, 46 F.3d 1491, 1500-01 (10th Cir. 1995). To be "explicit," the language of the policy need not specifically identify the mobility impaired tenants if it is clear from the language that they are targeted by the policy. *United States v. M. Westland Co.*, 3 Fair Housing-Fair Lending Rptr. (Aspen) ¶15,941, 15,941.3. (C.D. Cal. 1994).

In this case, each Complainant is a severely mobility-impaired persons who, because of his/her impairment, must use a wheelchair. The condition imposed by Respondents - that these tenants had to obtain renter's liability insurance covering injury related to the ramps - applied on its face, to persons who required wheelchair access to their apartments while it exempted those who did not need wheelchair access (the non-mobility impaired). The condition was facially discriminatory. While all other tenants were given the option to buy homeowners' insurance, the condition set by Respondents required that Complainants (or someone on their behalf) obtain such insurance.

Respondents have failed to provide a business justification for this requirement. The ramps were to built at no cost to Respondents and Respondents introduced no evidence that they incurred any additional liability expenses as a result of construction of the ramp. The only other concern advanced by Respondents was a statement of general concern for the aesthetic appearance of the complex- a concern that the proposed design of the ramps was too long and too intrusive. However, this is not claimed to be a business justification. In any event, there is no evidence that the ramps have marred the appearance of the complex. Mr. Daly stated that they "look good." Further, for more than a year Respondents made no effort to see if the design could be modified to accommodate their concern. Accordingly, I find that Respondents have failed to establish a compelling business necessity for setting the conditions for permission to build the ramps in the instant case. I conclude that the Charging Party has established that Respondents discriminated against the Complainants in the terms and conditions of tenancy because of their handicap.

III. The Parties:

Respondents Woodshire Apartments and Twinbrook Village Apts. may be held vicariously liable for the actions of their agents, Mr. Schwarz and Mr. Daly. In all his actions in this case, Dan Daly was acting as Property Manager at Twinbrook Village Apts. and as an employee of Woodshire Apartments. Mr. Schwarz was Mr. Daly's supervisor and accordingly Mr. Schwarz is vicariously liable for Mr. Daly's statements and actions. Moreover, I find evidence of Mr. Schwarz' direct involvement in the decisionmaking in

this case. I conclude that he both approved and condoned the statements made by Mr. Daly. Thus, Schwarz is directly liable for violating the Act, as well as vicariously liable for the actions of his agent, Dan Daly.

REMEDIES

The Act provides that where an administrative law judge finds that a respondent has engaged in a discriminatory housing practice, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). A civil penalty may also be imposed. *HUD v. Cabusora,* 2 Fair Housing-Fair Lending (Aspen) ¶ 25,026 (HUDALJ, March 23, 1992).

It is well established that the damages that may be awarded under the Act include damages for embarrassment, humiliation and emotional distress caused by acts of discrimination. Such damages can be inferred from the circumstances, as well as proven by testimony. *HUD v. Blackwell*, Fair Housing-Fair Lending (P-H), ¶ 25,001 at 25,011 (HUDALJ December 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990). Because intangible injuries cannot be measured quantitatively, courts do not demand precise proof to support a reasonable award of damages for such injuries. See *Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Block v. R.H. Macy & Co.,* 712 F.2d 1241, 1245 (8th Cir. 1983). Key factors in such a determination are the complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. Schwemm, *Housing Discrimination*, § 25.3(2)(c) (1990).[7]

Emotional Distress, Embarrassment and Humiliation

The goal of a damage award in a housing discrimination case is to try to make the victim whole. The awards of damages for emotional distress in these cases range from a relatively small amount, e.g., $150 in *HUD v. Murphy*, Fair Housing-Fair Lending (P-H) ¶ 25,002, awarded to a party who "suffered the threshold level of cognizable and compensable emotional distress" (at 25,079), to substantial amounts, e.g., $175,000 in *HUD, et al v. Edith Marie Johnson,* 2 FH - FL (Aspen) ¶25,076 (HUDALJ 1994)) and $750,000 in *HUD v. Wilson*, 2 FH - FL (Aspen) ¶25,146 (HUDALJ July 19, 2000). However, these determinations must be made on a fact-specific, case-by-case basis.

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[7] *See generally,* Alan W. Heifetz and Thomas C. Heinz, *Separating the Objective, the Subjective and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications,* 26 J. Marshall L. Rev. 3, (1992).

The Charging Party requests an award for emotional distress of $75,000 for Ms. Braiman, $75,000 for Mr. Abrahamsen, and $60,000 for Ms. Iorio.

Respondents argue that no relief should be granted. Since the wheelchair ramps have been installed, they argue that no equitable relief is required. Further, they argue that at most, all that occurred "was a series of miscommunications and misunderstandings" and that the ramps were not built through no fault of their own. Assuming some liability on their part, Respondents argue that none of the Complainants have demonstrated any "actual damages suffered" other than "some possible inconvenience." Even in that case, they contend that any award should be minimal in light of the fact that the Complainants failed to mitigate their damages by accepting the landlord's offer to relocate them. They argue that Complainants' refusal to accept their offer to relocate them strongly calls into question the Complainants' complaints of distress and embarrassment from lack of the ramps. Surely, they argue, if the Complainants' situation was so unbearable, the inconvenience of moving would have been a small price for them to pay. I reject the Respondents' arguments and conclude that a substantial damage award is appropriate in each Complainants' case.

Ms. Braiman:

Ms. Braiman was a very credible witness. Her testimony as to how she suffered as a result of lack of wheelchair accessibility to her apartment was compelling. The undersigned observed what appeared to be a strong and robust young person who valued her independence and who had been extremely frustrated and angry about the isolation, embarrassment, and humiliation she suffered day after day over a period of nearly two years as a result of being "a prisoner in [her] own home." Her frustration was graphically expressed in the following testimony:

> Do you know what it's like, the freedom that you feel? I mean, you got two feet, and you can walk in and out of the door a hundred times a day if you felt like it, and without a ramp, you get to the doorway and you stop. Without a ramp you stop and all you see from where you are is the parking lot and cars and no way to get to them. Tr. 117.

After having lived at the Twinbrook Village complex for many years, Ms. Braiman experienced a difficult childbirth with complications resulting in the amputation of a foot, then her lower leg. At the time Monmouth made the request for the ramp, she was coping with the recent amputation and a small child. She had made prior requests for a ramp so her need was well known to Respondents. Without the ramp she described that she felt isolated - cut off from the outside world. Also, day after day, over nearly 20 months, she lived in fear that she and her son would be trapped inside during a fire or

some other emergency in her apartment. She imagined that she would have to throw him out a window and hope that he would be caught, but then worried that he would be orphaned because she would not be able to effect her own escape. Daily she felt guilty and totally inadequate as a parent because she could not take her son out to play and watched in pain as he cried from the window, wanting to go outside. She felt guilty, too, because her son could not go to preschool because she was unable to get him to the bus stop. She watched as he suffered from lack of socialization and now fears that he will suffer long term consequences from slow language development. She felt embarrassed and humiliated about being totally dependent on the help of others to go outside. She was embarrassed because she was not able to take her trash to the bin as other tenants did and felt humiliated when she was directed to remove the trash from outside her door where she would put it. She suffered, too, because the lack of a wheelchair ramp caused her to miss physical therapy for herself and doctors appointments for herself and for her son.

Before the ramp was installed, Ms. Braiman could only go to her door and look out. After the ramp was installed, she "just opened the door and drove out" on her motorized scooter. She rode her son all the way around the complex and then to the playground. Her ride out gave her "the best feeling in the world." Tr.120-21. Her freedom had been restored. Ms. Braiman feels a sense of independence for the first time since her disability. Now her son plays outside daily. For the first time in the life of her child she can take him to the playground without help from anyone else. And, now she can take out her own garbage.

Respondents argue that Ms. Braiman's claim of damages resulting from lack of wheelchair access should be given little or no credence because she rejected their offer to move her to a wheelchair accessible apartment in February 2000, but then moved in December 2000 to a new apartment which was not wheelchair accessible when a Section 8 field inspector advised her that she was eligible for a medical upgrade to a larger apartment. Tr.106-22. They found it interesting that Ms. Braiman would conclude that the inconvenience of moving outweighed the potential benefit to her of immediate wheelchair accessibility in February 2000, but it did not outweigh the benefit of moving to a larger apartment which was not wheelchair accessible so long as Section 8 was willing to subsidize the additional rent.

The point of Respondents' observation is not clear other than to cast aspersion on Ms. Braiman's character because of her receipt of Section 8 benefits. Certainly, it cannot be argued that wheelchair accessibility was not necessary in her case. I reject their argument. First of all, Respondents have misrepresented the facts. By Respondents' own admission, the new apartments offered Ms. Braiman were not immediately wheelchair accessible in February 2000. Secondly, the fact that Ms. Braiman, who had a child, would not choose to move to a one-bedroom apartment under the circumstances offered her but

would opt to move to a two-bedroom when the opportunity presented itself, raises no issue of her credibility or her motivation. She offered eminently sound reasons for rejecting Respondents' offer. Respondents' lack of understanding of Complainants' attachment to their own apartment, with familiar neighbors and surroundings and the major inconvenience occasioned by moving from one dwelling to another and the disruption to their lives, is characteristic of the thoughtlessness and indifference they have displayed towards Complainants' needs throughout the pendency of this case.

The "assessment of damage, especially for intangible harms such as humiliation and distress, is inescapably judgmental and subjective to a large degree." *Hunter v. Allis Chalmers Corp.*, 797 F. 2d 1417, 1425 (7th Cir. 1986). *See also Balachowski v. Boidy*, 2 F H- FL (P-H) ¶16,464 at 16,464.9. It has been more than 10 years since Congress passed the Fair Housing Amendment Act, yet persistent housing discrimination against the handicap continues unabated. I agree with the court in *Broome v. Biondi*, 2FH - FL(P-H), ¶16,240 at 16,240.11, (1998) that in the face of continuing discrimination, the genuine emotional suffering associated with such discrimination should not be devalued by unreasonably low compensatory damage awards. Substantial compensatory awards have been granted by this tribunal in egregious cases, e.g., $80,000 and $40,000 in *HUD v. Housing Authority of Las Vegas*, 2 FH - FL (Aspen) ¶25,986 (HUDALJ Nov. 6, 1995); $175,000 in *HUD, et al v. Edith Marie Johnson,* 2 FH - FL (Aspen) ¶25,076 (HUDALJ, July 26, 1994)); and $750,000 in *HUD v. Wilson*, 2 FH - FL (Aspen) ¶25,146 (HUDALJ, July 19, 2000). This is an egregious case. Ms. Braiman suffered severely. The only thing that stood between Ms. Braiman and the outside world that she longed to see was a ramp for wheelchair accessibility. Respondents denied her that ramp. Day in and day out for 20 months she was wanting to go out but could not. It is difficult to quantify an amount which would be just compensation for Ms. Braiman's suffering. What is the price of freedom? The Charging Party has requested $75,000 for her compensation. Over the 20-month period the $75,000 breaks down roughly to $125 per day. I find $125 per day of confinement is reasonable compensation. Accordingly, I grant the Charging Party's request and make that award.

Mr. Abrahamsen:

At the time the request for a ramp was made in August 1999, Mr. Abrahamsen suffered from life-threatening diseases. He was totally dependent on a wheelchair and/or a stretcher for mobility. The lack of a ramp made it difficult for him to exit and enter his apartment during his tri-weekly trips to a medical center for dialysis. It was impossible for him to go by wheelchair and the lack of a ramp complicated his transportation by stretcher. Being taken out in a stretcher caused him distress. Because he had his hips removed, his legs were bowed and his knees protruded beyond the sides of the stretcher. A secretary sat right next to the entrance to the dialysis facility. Often his knees would bump into the

secretary or into the door itself as he was being carried in and out of the facility on the stretcher. He was embarrassed when this happened. Had he been able to use his wheelchair, this would not have occurred. Also, when being carried on the stretcher, getting in and out of his doors was difficult because of the steps. Now that the ramp is in place it is so much easier and less stressful for him to go for dialysis and to his medical appointments. He can drive his motorized wheelchair straight down the ramp.

In addition, the absence of a ramp denied Mr. Abrahamsen the pleasure of going outside simply to enjoy the outdoors. He wanted to go outside, but could not. Although he has a motorized wheelchair, it was "pretty much useless" for outdoor travel - the chair weighs 500 lbs. and is too heavy to carry with him in it. Thus, he never left his apartment except to attend medical appointments. Since the ramp has been built Mr. Abrahamsen has gone outside on a number of occasions just for the sheer pleasure of it. Just the day before the hearing he went outside in his wheelchair and sat with his wife and had dinner. On another occasion, it brought him great pleasure to go outside for his daughter's graduation party. He went down the ramp and out to the front yard and joined in the festivities with about 15 guests. Neither occasion would have been possible before the ramp was built. Mr. Abrahamsen could have been enjoying the outdoors since at least September 1999, instead he was forced to stay in his apartment for another 20 months because of Respondents' indifference to his situation.

Due to his severe physical condition, it is unlikely that Mr. Abrahamsen would have been able to go in and out of his apartment nearly as much as Ms. Braiman - probably a fraction of the time. He did not otherwise have the freedom to go and come as she did. He could only go out as his health permitted and when help was available. It is not clear from this record how often that would likely have been. This makes it difficult to know how much of his confinement to home resulted from Respondents' refusal to permit the installation of the ramp. However, it is clear that he received immense pleasure from being able to go outside to socialize with family and friends, and Respondents' denial to him of this simple pleasure is appalling. In making his award, I have considered all the above factors, especially the importance it must have been to him to have a ramp to go outside on those occasions when he was physically able to do so. I award $40,000.

Ms. Iorio:

Ms. Iorio suffered from the lack of a ramp from September 1999 to September 2000 when she moved to Louisiana. Between September 1999 and September 2000, Ms. Iorio fell quite often while trying to walk from the parking lot to her apartment. She fell 6 to 7 times during the summer of 2000, just trying to negotiate the step-up from the ground

to the stoop of her apartment. When she fell, she usually had to get neighbors to help her get up and get to her apartment. She suffered physical injuries - bruises during these many falls and on one occasion, broken ribs (she fell off her porch when she attempted to step down, and she broke ribs in her left side). She was not only hurt by these falls, but embarrassed and humiliated by the need to wait until someone came to help her up. She believes that had the ramp been in place, she would not fallen while walking (the flat surface of a ramp would have obviated the need to step up to the next landing) and, she would have been able to use her wheelchair or motorized scooter as she desired. Tr. 213-221.

The Charging Party seeks $60,000 in compensation for Ms. Iorio; however, I am not persuaded that that amount is justified based on the evidence. Although Ms. Iorio suffered, she did not suffer as long as did Mr. Abrahamsen and Ms. Braiman while waiting for the Respondents to accommodate her handicap. She moved within a year of the time a valid request was made for the ramp. Moreover, she did not suffer the indignity of being confined to her home unless assisted by others as did Mr. Abrahamsen and Ms. Braiman. She had "good" days and "bad" days. On her good days, she ambulated away from home independently of her wheelchair or scooter, and without assistance from others. On the other hand, consideration must be given to the fact that between September 1999 and September 2000 she suffered bruises on numerous occasions and, on one occasion broken ribs, from falls caused, in large part, by the absence of a ramp. I award $20,000.

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose a civil penalty upon any respondent for each separate and distinct discriminatory housing practice that the respondent committed in violation of the Act. 42 U.S.C. §3512(g)(3)(A); 24 C.F.R. §180.671. A maximum penalty of $11,000 may be assessed if a respondent has not been adjudged to have committed any prior discriminatory housing practice. In a proceeding involving two or more respondents who violate the Act, separate civil penalties may be assessed against each respondent. 24 C.F.R. §180.671(e)(2). Where, as here, Respondents have not been adjudged to have committed any prior discriminatory housing practice, a maximum penalty of $11,000 per Respondent may be assessed. 42 U.S.C. §3612(g)(3)(A); *see also* 24 C.F.R. §180.671(a)(1). However, assessment of a civil penalty is not automatic. Determining an appropriate civil penalty requires consideration of various factors such as the "nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of the Respondent, the goal of deterrence, and other matters as justice may require." *HUD v. Schmid*, 2A FH-FL (Aspen) ¶ 25,139, 26,153 (HUDALJ 1999) (*quoting* H.R. Rep. No. 711, 100th Cong., 2d Sess. 37 (1988)); *HUD v. Johnson*, 2A FH-FL (Aspen) ¶25,076, 25,711 (HUDALJ 1994); *see also* 24 C.F.R. §180.671(c).

The Charging Party seeks a civil penalty of $11,000 against each Respondent for a total of $33,000.[8] It cites the serious nature of the offense, and the fact that Respondents showed little consideration for the dire circumstances of these Complainants. The Charging Party describes Respondents' dilatory tactics as "nothing short of repugnant." It argues that Respondents were motivated by two things: wanting to avoid liability and concern that the ramps would not be aesthetically pleasing and that Respondents gave priority concern about aesthetics of the property at the expense of Complainants health and safety.

Respondents argue that, at most, only a nominal civil penalty is warranted in this case. They argue that in light of the fact that Respondents have never been adjudged to have committed any prior discriminatory housing practices and that their conduct in this case was neither intentional nor reprehensible only minimal damages and a nominal penalty should be imposed.

I conclude that a severe penalty, but not the maximum penalty, is warranty in this case and assess a penalty of $15,000.

Nature and Circumstances of the Violation

The nature and circumstances of the violation in this case warrant imposition of a severe penalty. As housing providers, Respondents were obligated to make the reasonable accommodation to allow these Complainants equal opportunity to use and enjoy their apartments, yet Respondents delayed fulfillment of that obligation for more than 20 months and did so then only after the bringing of this Charge of Discrimination. Respondents have offered no good reason for their conduct in this case.

Degree of Culpability/ Egregiousness

Respondents' degree of culpability is high. Their conduct was egregious. Respondents withheld permission to build the ramps to make Complainants' apartments wheelchair accessible for a period of 20 months. They granted permission then only after this Charge of Discrimination had been filed against them. Respondents have offered no reasonable explanation for causing the 20-month delay in granting the requested accommodation and in depriving these three Complainants of unattended access to the outside world. It is not at all clear to the undersigned why Respondents doggedly refused to give their clear and unconditional permission to the volunteers to install the ramp. This results, in large part, from their dishonest assertion throughout the proceedings that they placed no conditions on the building of the ramps. On this record, their failure to

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[8]It is not clear how the CP arrived at the $33,000 figure.

reasonably accommodate the Complainants' handicap needs can be laid to Respondents' stubborn refusal to change the problematic language in their August 30, 1999, letter to make it acceptable to Monmouth - language which Respondents claimed was meaningless. When the language was deleted the volunteers built the ramps within a month. This stubbornness appears to result from priority concern for the aesthetics of the property over concern for the needs of these severely disabled persons. Respondents' attitude toward the plight of these Complainants can only be described as thoughtless and indifferent. A glimpse into Respondents' attitude about the needs of these Complainants can be seen in its post-trial brief. Despite the fact that Complainants Abrahamsen and Braiman were virtually confined to their homes for nearly two years because they had no ramp access to their apartments, Respondents minimized their predicament and state that they suffered no injury except maybe "*some possible inconvenience." Post-trial brief at p. 18.* This statement is further evidence of the total disregard by Respondents of Complainants' handicap needs throughout the pendency of this case.

History of Prior Violations

There is no evidence that Respondents have been adjudged to have committed any previous discriminatory housing practices. Thus, the maximum civil penalty that may be assessed against each Respondent in this case as is $11,000. 42 U.S.C.§3612(g)(3)(A) and 24 C.F.R. §104.910(b)(3)(i)(A).

Respondents' Financial Circumstances

Evidence regarding Respondents financial circumstances is peculiarly within their knowledge, so they have the burden of producing such evidence for the record. If they fail to produce credible evidence which would tend to mitigate against assessment of a civil penalty, a penalty may be imposed without consideration of financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *HUD v. Blackwell,* 2 Fair Housing-Fair Lending (P-H) 25,001, 25,015 (HUDALJ Dec. 21, 1989), *aff'd* 908 F.2d 864 (11th Cir. 1990). The extent of the Respondents' assets and liabilities are not known and the Respondents did not provide any evidence which establishes that payment of the maximum civil penalty would cause them financial hardship. Accordingly, I find that the record does not support a finding that Respondents could not pay the maximum civil penalty without suffering undue hardship.

Goal of Deterrence

A substantial civil penalty is appropriate as a deterrence to others. Apartment owners, management and those similarly situated as Respondents must be put on notice

that violations of the rights of handicapped persons will not be tolerated and that their failure to honor the protections afforded the handicapped under the Act will be costly.

Mitigating Factors

Respondents assert as a mitigating factor that they offered to move all the Complainants to new apartments which would be made wheelchair accessible at no expense to them. However, at the time of the offers to these Complainants, the apartments were not wheelchair accessible. Respondents offered to make modifications to them more than six months later and then only after Ms. Salas insisted that they were required. Moreover, it is clear that the offers were made for Respondents' convenience, and out of their concern for the aesthetics of their property as opposed to concern for the convenience, health and safety of the Complainants. Rather than being a mitigating factor, their offer shows Respondents' insensitivity and lack of appreciation for the distress that might be caused Complainants by the move and the disruption to their lives. I find that there are no mitigating factors in this case.

Based on consideration of the above five elements, I conclude that a civil penalty of $15,000.00 is warranted.

Injunctive Relief

The administrative law judge may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3623(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 II, supra*, 908 F. 2d at 874 *(quoting Marable v. Walker*, 704 F. 2d at 1219, 1221 (11th Cir. 1983). Injunctive relief is used to eliminate the effects of past discrimination, prevent future discrimination, and position the aggrieved person as closely as possible to the situation he or she would have been in but for the discrimination. *HUD v. Dutra*, 2A FH-FL (Aspen) ¶ 25,124, 26,064 (HUDALJ 1996).

The Charging Party seeks injunctive and other equitable relief in light of the violation. It asks that Respondents be required to rescind the offending policy that 1) requires a handicapped tenant to obtain renter's liability insurance before they will approve the erection of a ramp; 2) requires a written request for reasonable accommodation before they will act on it; and 3) requires a tenant to agree to remove the ramp at the end of his tenancy before they will approve the erection of the ramp. The Charging Party also seeks that Respondents be prohibited from retaliating and harassing either Ms. Braiman or Mr. Abrahamsen who still reside at their complex. Finally, the

Charging Party requests that Respondents be required to have all their employees attend Fair Housing training. These will be granted. I conclude that injunctive relief is necessary to ensure that Respondents do not in the future engage in discriminatory conduct with regard to rental housing. The appropriate injunctive relief for this case is provided in the Order below.

CONCLUSION AND ORDER

The preponderance of the evidence demonstrates that Respondents Twinbrook Village Apartments, Woodshire Apartments, Dan Daly, and Elan S. Schwarz discriminated against Complainants Paul C. Abrahamsen, Carol Iorio and Susannah Braiman, on the basis of their handicap in violation of 42 U.S.C. §3604(f)(2) and (f)(3)(b). It also establishes that as a result of Respondents' unlawful action, the Complainants have suffered injuries which must be remedied by an award of compensatory damages. In addition, to protect and vindicate the public interest, injunctive relief is necessary and a civil penalty must be imposed against Respondents. Accordingly, the following Order is entered:

1. Respondents must rescind the policy requiring wheelchair-bound tenants to purchase renter's liability insurance as a condition to the approval of a ramp; requiring a written request for reasonable accommodation before they will act on it; and requiring a tenant to agree to remove the ramp at the end of his tenancy before they will approve the erection of the ramp.

2. Respondents are permanently enjoined from re-instituting the above-stated policies.

3. Respondents are permanently enjoined from discriminating with respect to housing against persons with disabilities.

4. Respondents are enjoined and prohibited from taking any action of reprisal, retaliation or harassment against either Ms. Braiman or Mr. Abrahamsen or any other person who testified or otherwise participated in the trial of this case.

5. Within forty-five (45) days of the date this Order becomes final, or as soon thereafter as HUD and Respondents can arrange, Respondents Elan Schwarz , Dan Daly, Woodshire Apartments' and Twinbrook Village Apartments' managerial agents and employees shall attend fair housing training, focusing on disability issues, approved in advance by HUD.

6. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of $75,000 to Susannah Braiman. Respondents' liablility to pay this amount is joint and several.

7. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of $40,000 to Paul Abrahamsen. Respondents' liablility to pay this amount is joint and several.

8. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay damages in the amount of $20,000 to Carol Iorio. Respondents' liability to pay this amount is joint and several.

9. Within forty-five (45) days of the date this Order becomes final, Respondents shall pay a civil penalty in the amount of $15,000 to the Secretary of HUD. Respondents' liablility to pay this amount shall be joint and several.

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

CONSTANCE T. O'BRYANT
Administrative Law Judge

So **ORDERED** this 9th day of November, 2001.