

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 John Fallon,  
Paul and Emma Maghan,  
Irwin H. Willenberg,  
Frances Becker,  
Joyce Verzi,  
Henry and Deborah Berkebile,  
Robert Ramsey,  
Denis DuBois,  
and Kevin and Barbara McDermott,

Charging Party,

v.

William J. Murphy and  
Pollution Control Industries,  
Redhen Corporation,  
d/b/a/ Friendly Village of Riverwood,

Respondents

HUDALJ 02-89-0202-1  
02-89-0203-1  
02-89-0204-1  
02-89-0205-1  
02-89-0206-1  
02-89-0209-1  
02-89-0212-1  
02-89-0213-1  
02-89-0243-1

Christopher J. Hanlon, Esq.  
For the Respondents

David H. Enzel, Esq.  
Kathleen M. Pennington, Esq.  
For the Secretary

Before: William C. Cregar  
Administrative Law Judge

**INITIAL DECISION AND ORDER**

This matter arose as a result of nine complaints alleging discrimination based upon familial status in violation of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act" or "Act"), Pub. L. 100-430, 102 Stat. 1619

(1988), 42 U.S.C. Sec. 3601, *et seq.* The complaints were filed on April 12, 1989, April 27, 1989, April 29, 1989 and May 17, 1989. Res. Exs. 1-9. A Determination of Reasonable Cause was made and a Charge of Discrimination filed on behalf of these Complainants on November 15, 1989. Res. Ex. 10.<sup>1</sup> A hearing was held in Dover Township, New Jersey, on March 12-14, 16 and April 2-4, 1990. Post-hearing briefs were filed by the parties on May 25, 1990.

The Government alleges that Complainants were discriminated against by the imposition of age restrictions imposed by Respondents on sales of their mobile homes. These restrictions, according to the Government, had the effect of precluding sales to buyers willing and able to consummate these sales. The Government requests compensatory damages for economic losses and emotional distress, injunctive relief, and imposition of the maximum civil penalty. Respondents contend that they did not discriminate as the mobile home park qualifies as "housing for older persons", which is specifically exempted from the requirements of the act prohibiting familial status discrimination. 42 U.S.C. Sec. 3607 (b)(2) and (3). Accordingly, Respondents contend the restrictions they placed on the sale of mobile homes by Complainants were lawful and the complaints should be dismissed.

Respondents further contend: 1) that there is no jurisdiction to adjudicate these cases because the charge was filed beyond the period of time permitted by statute and without proper notice having been given as to why the investigation would not be completed within that limit (*See* 42 U.S.C. Sec. 3610 (g)(1) and (2));<sup>2</sup> and 2) that the Complainants lack standing.

An "aggrieved person" under the Act is broadly defined to include any person who, *inter alia*, "claims to have been injured by a discriminatory housing practice". 42 U.S.C. Sec. 3602 (i); *see also Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 208 (1972).

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<sup>1</sup> Complainant, Francis Becker, did not appear at the hearing, nor has she made any effort to prosecute her complaint. (Res. Brief, p. 2; Sec. Brief, p. 2, n.1) Accordingly, her complaint is dismissed for lack of prosecution.

<sup>2</sup> Respondents argue that the Secretary violated 42 U.S.C. Sec. 3610 (a)(1)(B)(iv) because he did not complete the investigation within 100 days and issue a notice to them setting forth the reasons why it was impracticable to do so. According to Respondents, the action should be dismissed. Res. Brief pp. 68-73; Res. Answer pp. 1, 2, 4. In its brief at n.2, the Department argues that it was impracticable for the Secretary to complete the investigation within 100 days because of the complexity of the case.

It is undisputed that the Department has yet to comply with the requirements of Section 3610 (a)(1)(B)(iv). While the Department should have complied, its non-compliance is not grounds for dismissal of the action. That section relates to the Department's investigatory function and not to the Department's right to institute an action in this forum. It contains neither a statute of limitations nor a jurisdictional requirement, because it does not contain an express time limit for the issuance of the notice, and because it states an exception to the intended time period for completion of the investigation. Thus it is distinguishable from the statutes and cases on which Respondents rely.

The McDermotts allege that they suffered emotional distress, loss of civil rights, and economic losses as a result of Respondents' discriminatory conduct against them as a family. The McDermotts did not lawfully reside in FVR when they filed their complaint against Respondents. However, at the time the charge was issued by the Department against Respondents, the McDermotts had become lawful residents. They therefore are "aggrieved persons" and have standing in this action.

The remaining Complainants allege that they suffered emotional distress, loss of civil rights, and economic losses as a result of the Respondents' discriminatory conduct against families who may have been potential purchasers of their homes. These Complainants, therefore, claim to have been injured by a discriminatory housing practice, and are therefore "aggrieved persons" within the Act and have standing in this proceeding. See *Trafficante, supra* at 208; *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071, 1079-81 (D. N.J. 1976).

In *Trafficante, supra*, the Court concluded that the language of the Fair Housing Act manifests "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution...insofar as tenants of the same housing unit that is charged with discrimination are concerned." The Court noted that:

The dispute tendered by this complaint is presented in an adversary context.... [citations omitted] Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the Constitution. The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong. Rec. 2706, and as Senator Mondale who drafted [section] 810(a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns."

Respondents rely on *Gorski v. Troy*, 714 F. Supp. 367 (M.D. Ill. 1989), to show that the Complainants lack standing because they are "just *potential* sellers to persons having familial status" and therefore neither have familial status nor can claim familial status discrimination. Res. Brief pp. 73-74 (emphasis in original). In *Gorski*, however, the court found that the plaintiffs did not qualify for familial status as defined in section 3602 (k) of Title VIII. In the instant case, the McDermotts have familial status and were affected by Respondents' discriminatory conduct, and the other Complainants can claim familial status discrimination for the injuries resulting from the effect that discrimination had on their ability to sell their homes. Accordingly, the Complainants have standing.

## Findings of Fact

### General Background

1. Friendly Village of Riverwood ("FVR") is a mobile home community located at Highways 70 and 527 in Toms River, Ocean County, New Jersey. FVR is licensed to operate as a mobile home park by Dover Township, New Jersey. Respondents' Answer to the Secretary's Determination of Reasonable Cause and Charge of Discrimination ("Answer"), at para. 5; Tr. pp. 975-76. FVR is comprised of 178 mobile home spaces on 23 acres; one mobile home sits on each space. Secretary's Exhibit ("Sec. Ex.") 44; Respondents' Response to Secretary's First Request for Admissions ("Admissions"), No. 2; Tr. p. 976. The owner of the property owns all the land and improvements. The improvements consist of a clubhouse and appurtenant facilities, the streets, utilities servicing the common area clubhouse, facilities and the mobile homes, the mobile home supporting pads and driveways.

2. FVR is owned and operated by PCI, Redhen Inc. ("PCI"). PCI is the proper corporate name for the named Respondent, Pollution Control Industries. PCI and the business office for FVR are located at One Fairfield Crescent, West Caldwell, New Jersey. Answer, para. 6; Tr. pp. 838, 976. PCI purchased FVR on February 1, 1978. Tr. pp. 871-72, 969-70, 985, 1179. PCI has a net worth of approximately \$50,000.00. Tr. p. 909 (Stipulation).

3. William J. Murphy is the President and Treasurer of PCI and is responsible for the business operations of FVR. Answer, para. 7; Tr. pp. 838, 969, 971. He has been President of PCI for seven years and was Vice President for six years prior to that. Tr. pp. 839, 872. Mr. Murphy spends approximately two hours per month at FVR. Tr. pp. 839, 1635. Mr. Murphy has a net worth of approximately \$50,000.00. Tr. p. 909 (Stipulation).

4. Ralph A. Tarantino is an employee of PCI and has been Park Manager of FVR since May 19, 1989. Tr. p. 1314. The Park Manager is responsible for maintenance of the common areas of FVR, collecting the rent, providing lease applications, accepting completed lease applications, and interviewing applicants. He is also responsible for enforcing the policies, rules and regulations of FVR, as mandated by PCI. Answer, para. 8; Sec. Ex. 45 (Interrogatories) para. 3; Tr. pp. 97, 848-49, 850, 1052, 1055, 1057, 1178, 1313-14, 1340.

5. Harold "Mickey" Meyer was Park Manager of FVR from June of 1973 until May 19, 1989. Tr. pp. 97, 1057, 1140, 1177.

6. Other PCI employees at FVR are: Alice Tarantino (no relation to Ralph A. Tarantino), a secretary for PCI who works in the clubhouse office (Tr. p. 1057); Tom Monahan, the evening manager of the clubhouse, who cleans and maintains the clubhouse (Tr. pp. 757, 850, 874, 1055); and Anne DeRoxtro, the weekend manager of the clubhouse (Tr. pp. 580, 851).

7. FVR was initially developed as a mobile home community for families. There

were then no age restrictions. Tr. pp. 353, 389, 468, 573, 684, 979. The original owners were American Mobile Home Corp., followed by JMB Realty. Tr. p. 1178. In 1971 or 1972, 52 new spaces were designated and restricted to residents age 45 or older ("45-45 policy"). These spaces are lot numbers 76 through 116, and 168 through 178. Sec. Ex. 66; Tr. pp. 1179-80, 1310.

8. Respondent PCI acquired the park in February 1978. Tr. p. 985. On May 1, 1980, the restrictions on the rear section were maintained and a further restriction was placed on the 126 other units. Each of these 126 units was required to have at least one resident 45 or older, and all other persons had to be 21 or older ("45-21 policy"). Sec. Ex. 66; Res. Ex. 14; Tr. pp. 74-75, 783, 869, 1194-95, 1216, 1310, 1396, 1418.

### Implementation of the 55 or Older Policy

9. After becoming aware of the Fair Housing Amendments Act of 1988, Mr. Murphy discussed FVR's situation with the PCI Board. The question he presented to the Board was whether FVR should become a family park or whether it should convert to a park for "older persons". Tr. pp. 870, 1009. The decision was left to him. Tr. p. 998. Prior to making his decision he attended meetings of the New Jersey Manufactured Housing Association, a mobile home park-related industry association, and reviewed available information on the requirements of the Act.<sup>3</sup> This process occurred between October and December 1988. Tr. p. 997. He made the "final" decision to convert FVR to a 55 or older community by December 1988. Sec. Ex. 106; Tr. pp. 1106, 1140, 1155.<sup>4</sup>

10. Mr. Murphy made the decision to convert FVR to a park for "older persons" based upon the following considerations: 1) Mr. Murphy believed there was an overall commitment made to residents<sup>5</sup> (Tr. pp. 999-1000); 2) the 55 or older exemption was easier for FVR to obtain than the 62 and older exemption -- in this regard he believed FVR was close to meeting the 80 percent requirement, discussed below (Sec. Ex. 106; Tr. p. 1144); and 3) based upon his review of available information concerning the Fair Housing Amendments Act of 1988, he concluded that FVR could also meet the "significant facilities and services" test discussed below (Tr. pp. 1001-1008).

11. No vote was taken of FVR residents to determine their wishes. This was not unusual. PCI management never had a practice of polling the residents. Tr. p. 1142.

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<sup>3</sup> Mr. Murphy states he discussed the situation with Ms. O'Neill, the President of the FVR Mobile Home Owners Association, prior to making the decision. This testimony is contradicted by that of Ms. O'Neill. She states the rule change was not discussed until after the complaints in this case were filed. Tr. p. 1418. I credit her testimony on this point. She obviously agreed with the PCI decision; therefore, her testimony was contrary to the position she wanted to see prevail. Tr. p. 1417. Mr. Murphy was also very vague as to when this occurred. Tr. p. 870.

<sup>4</sup> Mr. Murphy was unclear on exactly when the decision to convert was made. He variously stated that it occurred in November (Tr. p. 1091), September (Sec. Ex. 106), and December (Tr. p. 1106).

<sup>5</sup> Teenage vandalism had played a significant role in the decision to impose age restrictions in 1980. Sec. Ex. 106; Tr. pp. 870, 1195.

12. The facilities and services which Mr. Murphy believed enabled FVR to qualify for the exemption were the following: 1) a clubhouse, 2) mail pick up, 3) "meals on wheels" provided by Toms River and Ocean County, 4) laundry facilities, 5) kitchen facilities, 6) maintenance of common areas, 7) handicap accessibility to the clubhouse, and 8) public bus service. Tr. pp. 1001-1008.

13. FVR operates under a set of rules and regulations which are provided to residents at the time that they move into the park. Res. Ex. 12; Tr. p. 980. The same document has been utilized since February 1976 to make these rules and regulations known to FVR tenants. The document has not been revised. Any rule change is noted through an addendum to the original document. A tenant acknowledges receipt of the rules and regulations. Res. Exs. 12, 26, 31 34; Tr. pp. 981, 984-87, 990-91, 1019.

14. Among the rules to which tenants must agree are those requiring that owners must live in the park and that guests may stay no more than two weeks. The rules also include provisions: 1) limiting the number of children residing in a mobile home to three and the total number of people living in a home to five (Rule 1); 2) charging additional occupants \$5.00 per month after two weeks occupancy (Rule 2); 3) requiring children who are residents and 14 years of age or younger to be escorted by a resident adult in order to use the clubhouse and pool (Rule 34); and 4) permitting use of the billiard room by residents age 14 to 18, but only if escorted by a parent (Rule 33). Res. Ex. 12; Tr. p. 169.

15. By memorandum dated December 22, 1988, Mr. Murphy instructed Mr. Meyer to send FVR residents a "Notice to Quit" and an explanatory letter regarding this rule change by certified mail. Sec. Ex. 82.

16. On January 19, 1989, Mr. Meyer mailed to the tenants of FVR a letter, signed by Mr. Murphy and dated January 3, 1989, notifying them that the Fair Housing Act had been amended "to cover families with children" and outlining PCI's options. These options were stated to be: 1) "[a]llow families with children of any age to locate in [FVR], limited only by state and local laws on residents/sq. ft."; and 2) "[p]ermit age restrictions as long as stated residents have at least one person in the home the age of 55 or older." Mr. Murphy stated that FVR "should be kept an adult community" and that, effective March 1, 1989, "each resident must be 55 or older, allowing however, the right of an additional person to reside in the home who has attained the age of 21 or greater" ("55 or older policy"). Mr. Murphy further stated that "[n]o present resident will be forced to remove themselves from the Park because they do not meet the new residency requirements." Sec. Exs. 1, 3, 82; Res. Ex. 41; Tr. pp. 68, 71-73, 175, 217, 354, 469, 590-91, 747, 995-96, 1110-11, 1140, 1143, 1197-98, 1307.

17. Also on January 19, 1989, Mr. Meyer transmitted to the residents of FVR a "Notice to Quit," signed by Mr. Murphy and dated January 3, 1989, stating that, effective March 1, 1989, any tenant who did not agree to PCI's rule change requiring "future residents/tenants to be age 55 or older" must vacate his or her mobile home space. Sec. Exs. 2, 82; Res. Ex. 41; Tr. pp. 68, 71-72, 73, 175, 218, 355, 387-88, 469, 591, 747-48, 839, 996, 1092, 1140-42, 1196-98, 1307, 1387, 1390.

18. A "Notice to Quit" and demand for possession is required by New Jersey law in order to effect a change in the terms of a month to month tenancy unless the parties agree to amend the lease. Tr. pp. 1386-1388. The letter delivered with the "Notice to Quit" states:

We are required to issue a NOTICE TO QUIT by New Jersey statute when changes are made to rules and regulations. This notice, however, is not meant to alarm or disturb you in any way. I thank you for your continued residency.

Sec. Ex. 1.

19. PCI transmits to the residents of FVR a "Notice to Quit" whenever a rent increase is being made. The alternative of obtaining 178 lease amendments is obviously much more cumbersome. Rent increases were annual events. Accordingly, most tenants were familiar with this type of notice. Tr. pp. 176-77, 266, 661, 1197, 1388.

20. After March 1, 1989, Mr. Meyer began requiring proof of age. Each prospective tenant was to show a driver's license or birth certificate. Tr. pp. 1196, 1314. Copies of the title to each mobile home are contained in the FVR tenant files. Tr. p. 1368. Copies of driver's licenses or birth certificates of residents of FVR are neither contained in tenant files nor maintained by PCI. Tr. pp. 1102, 1163, 1368.<sup>6</sup> Most of the FVR tenant files do not contain evidence of the age of the tenants. Res. Ex. 19; Tr. pp. 1196, 1217-18.<sup>7</sup>

21. An FVR homeowner may not sell his or her mobile home unless PCI or the park manager has approved the prospective purchaser's application to lease. If a sale occurs without such approval, PCI may evict the purchaser. Answer, para. 22; Tr. pp. 1015, 1017, 1195-96.

22. Mobile homes are sold directly by the owner, rather than through real estate agents. Typically a mobile home owner may place a "For Sale" sign in the window of the home, post signs in grocery stores, place newspaper advertisements, and verbally inform others that the home is for sale. Tr. pp. 66, 265, 284, 287, 377, 581, 727, 792.

23. Mobile home owners who wish to sell their homes cannot utilize the services

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<sup>6</sup> Although Mr. Murphy testified that in 1980 he instructed Mr. Meyer to keep copies of driver's licenses in tenant files, he admitted that he knew that this was never done. Tr. p. 1162.

<sup>7</sup> According to Respondents' Exhibit 19, the ages of the occupants of only 45 of the 178 units could be determined from the tenant files. This exhibit contains handwritten notations of the ages of the FVR tenants. It also contains a notation made by Mr. Meyer that this notation was made based upon either 1) a review of the tenant files, or 2) upon Mr. Meyer's personal or telephone contact with the resident. The personal and telephone contacts were directed by PCI after the complaints in the instant cases were filed and it was done for the purposes of this litigation. There is no indication that Mr. Meyer required proof of age when he made these contacts. Tr. pp. 1612-1614. Finally, there is no way of determining which entries were made as a result of telephone or which resulted from personal contact. This exhibit is insufficiently reliable to constitute proof of the ages of the tenants.

of a real estate agent. Tr. pp. 237, 377, 445. Mobile homes are not included in real estate agents' multiple listings of available housing. Tr. p. 1500. Financing of mobile homes is spread over a 20 year rather than a 30 year period. Sec. Ex. 45 (Interrogatories, para. 11).

24. Often, individuals who are interested in purchasing a mobile home, but who have no prior knowledge that any mobile homes may be for sale, drive into and around a mobile home park. They often visit the clubhouse to request information about homes which are for sale. Tr. pp. 139, 262, 377, 446, 490-91, 529, 581, 674, 792.

25. At least three or four prospective purchasers, who have no prior knowledge that mobile homes may be for sale, drive into FVR each week and speak to Mr. Tarantino in the FVR clubhouse. Tr. pp. 1368-69.

26. When prospective purchasers enter the FVR clubhouse and ask for information about the park, Mr. Tarantino asks them their ages. If they are over the age of 55, he will refer them to the list of homes for sale posted in the clubhouse and tell them to drive around the park looking for "For Sale" signs. If they are under the age of 55, he tells them that FVR is an "adult park" and that they cannot live in the park. These individuals then leave the park. Tr. pp. 1369-70.

27. Persons under age 55 or who have children under the age of 18 who visit the manager's office located in the clubhouse on weekends are informed by Ms. DeRoxtro that they cannot purchase a home in FVR. Tr. p. 580.

28. From March 1, 1989, until the hearing, Mr. Murphy and PCI have refused to lease mobile home spaces in FVR to families with children under the age of 21 and to individuals under the age of 55. Sec. Ex. 44 (Admissions, No. 1); Answer, para. 23; Tr. pp. 1018, 1199, 1307-08, 1314.

29. From March 1, 1989, until the hearing, families with children under the age of 18 and persons under the age of 55 who have requested applications to lease mobile home spaces at FVR have been denied such applications by Mr. Meyer, Mr. Tarantino, Mr. Murphy and PCI. Answer, para. 30; Tr. pp. 1199, 1305-08, 1370.

30. Moving a mobile home off of its pad is very expensive and is rarely done. Tr. pp. 179, 274, 409, 462, 1015-16, 1208.

31. Policies such as the 55 or older policy which involve restrictions based on age decrease the market in which such a home may be sold. Tr. pp. 147, 152-153, 381-382, 1457, 1459-62.

#### Facilities

32. In exchange for his or her rent payment, a resident of FVR: 1) leases the the mobile home space on which the home sits; 2) receives water, sewerage, trash collection; and 3) has use of the swimming pool and clubhouse. Tr. pp. 178, 216, 356-57, 434, 589-90, 656-57, 747. The resident pays for electricity, natural gas, and the telephone. Tr. pp. 178, 356, 884.

33. The clubhouse, which consists of 4,265 square feet, contains the park manager's two-room office,<sup>8</sup> a large "universal room" with tables and chairs, a billiard room with two pool tables, a kitchen, mailboxes for all tenants, two sets of men's and women's restrooms, and washing machines and dryers. Sec. Exs. 11-19, 44 (Admissions No. 14 and 15); Res. Exs. 21B-N, 23; Tr. pp. 80, 89, 225, 362, 474, 664, 829, 977, 1003, 1036, 1039-43, 1049, 1121-22, 1148-49, 1184-86, 1443-44, 1662.

34. The office is open from 9:00 a.m. to 5:00 p.m. on Monday through Friday. Res. Ex. 23; Tr. p. 873.

35. The clubhouse is open on Monday through Saturday from 9:00 a.m. until 9:00 p.m., and on Sunday from 1:00 p.m. until 9:00 p.m. The clubhouse is closed on holidays. Res. Ex. 23; Tr. pp. 691, 850, 873-74, 1055-56.

36. The clubhouse is infrequently used. Tr. pp. 367, 474, 577, 757, 830-31, 1370.

37. The FVR clubhouse does not have a radio or a television set. Tr. p. 91.

38. The United States Postal Service delivers all mail for the residents of the FVR to mailboxes located in the clubhouse. A resident of the FVR can pick up his or her mail only by entering the clubhouse. Very few people use the clubhouse for purposes other than to pick up their mail.<sup>9</sup> Res. Ex. 21G; Tr. pp. 90, 93, 95, 109, 225, 228, 366, 436-37, 474, 510, 577, 595, 601, 664, 751, 1001, 1208, 1370.

39. The pool tables in the clubhouse are seldom used. In addition, the pool cues provided at the FVR cannot be used because they are warped and need to be re-tipped. Residents who want to play pool must bring their own pool cues. Generally, only two men play pool at the clubhouse. Res. Ex. 21AA-BB; Tr. pp. 89-90, 364, 596, 667-68, 756, 1049, 1186-88, 1340-1341.

40. The restrooms at the FVR clubhouse are not accessible to the handicapped; they do not have wide doors for wheelchair access; nor are they equipped with grab bars. Tr. pp. 90, 603, 828. The doorways into the front restrooms measure 23 inches. Tr. p. 828. The restrooms are not equipped with soap or paper towels. Tr. pp. 1342-43.

41. From sometime before March 12, 1989, until the last week of February of 1990, the washing machines in the laundry room did not have hot water. Tr. pp. 94, 363, 411, 1192, 1215, 1341-42.

42. The kitchen in the FVR clubhouse contains a sink, an oven, a stove, a refrigerator, a dishwasher and counter space. Since 1979 until the present, by order of the fire department, the stove has not been used because there is no fire suppression system.

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<sup>8</sup> One of these rooms can be used for playing cards. It also contains a filing cabinet and a copying machine. Res. Exs. 21E-F; Tr. pp. 1121, 1148.

<sup>9</sup> The postal service will not deliver mail to individual homes and will not allow the landlord to do this. (Tr. p. 1208)

Many residents of the FVR believe that they are not allowed to use the kitchen. Residents rarely cook in the kitchen. Res. Exs. 21L, 23; Tr. pp. 92-93, 224, 363, 395-96, 665, 689-90, 761, 1042-43, 1192, 1220-21, 1341.

43. New upholstered furniture was placed in the clubhouse in January or February of 1990. Res. Ex. 21I-K; Tr. pp. 77, 357, 821, 1038, 1040-41. The furniture that it replaced was in poor condition. Tr. pp. 179, 1041.

44. The "universal room" is approximately 45' by 30'. It can be and is used for meetings, card games, Tenants Association parties, etc. It is also used by the tenant group known as the "Sociables" for bi-monthly bingo, and by individual residents for parties. It was used by Complainant Emma Maghan for her daughter's shower celebration. Tr. p. 395. It cannot be used for commercial activities, "Chinese auctions", fleamarkets or "Tupperware" parties. The reason given for this is that such activities attract people from outside the park. Sec. Exs. 104, 105; Tr. pp. 898, 1061, 1191.

45. FVR has a 1000 square foot swimming pool. Sec. Ex. 44 (Admissions, No. 13). The pool is adjacent to the clubhouse and is enclosed by a five or six foot high chain-link fence that has two gates. Both gates are locked at all times except during those hours during which the pool is open. Tr. pp. 83, 1045-46; Sec. Exs. 16-17, 85, 87; Res. Exs. 21O-P. During 1989, the pool was open from Memorial Day until Labor Day, and from 12:00 a.m. until 5:00 p.m., and from 6:00 p.m. until 8:00 p.m. each day. Tr. pp. 102, 230, 361, 473, 827, 1192-93, 1343-44. At times, the lifeguard does not report for work, and the pool is closed. Tr. pp. 230, 361-62.

46. Four or five tables are located at the swimming pool area. FVR does not provide chairs at the swimming pool area, and residents who wish to sit must bring their own chairs. However, chairs may be stored in the pool area. Res. Exs. 21O-P, 23; Tr. pp. 105, 230-31, 361, 594, 601, 634-35, 663, 900, 1045, 1208-09, 1344.

47. Near the swimming pool is a "putting green" made of indoor-outdoor carpeting. In its present condition, the putting green is not usable. It has been in the same condition for at least three years. Residents of FVR have not used the putting green for years. One effort in the Summer of 1989 was made to contract for the repair of the putting green, but at the time of the hearing, the putting green was still in a state

of disrepair. Sec. Exs. 86-87; Res. Ex. 23; Tr. pp. 87-88, 368, 476, 577, 597, 751, 1100-01, 1122-23, 1164-67, 1215, 1315-16, 1379-80, 1661, 1664-67.

48. Also near the pool is a shuffleboard court which is cracked and faded. From the photographs it appears that it cannot not be used. Residents of FVR do not use the shuffleboard court. Res. Exs. 21T, 23; Tr. pp. 103, 205, 368, 475-76, 576, 597, 751, 1048, 1122, 1215, 1344, 1667-68. PCI provides the shuffleboard equipment, but the equipment is worn out or broken. Tr. pp. 385-86, 475-76. Many residents of FVR are unaware of the shuffleboard courts' existence. Tr. pp. 103, 205-206, 231, 439, 596, 669, 1665-67.

49. FVR has a swing set frame without the swings. Sec. Exs. 20, 88-89; Tr. 84, 232, 373, 472, 579, 683, 762. The swings were removed in about 1986. Tr. pp. 472. There is also a basketball court which is in dilapidated condition. The pole on the court does not hold a backboard or basketball hoop. Sec. Exs. 21, 83-84; Tr. pp. 85-86, 232, 373, 472. FVR also has a metal jungle gym and a metal slide for children. Sec. Exs. 84, 89; Tr. pp. 86, 232, 373, 472. Glass and bottle caps are strewn on the ground in the playground area. Tr. pp. 373, 472, 541, 554, 724, 736, 762.

50. At least 17 children currently reside in the FVR. Tr. pp. 85, 245, 267, 448, 520, 593, 684, 734, 1320.

51. Entry through the front door to the clubhouse requires an individual to climb up three steps. The entranceway is comprised of two doors, each being half the entranceway. One door is locked. The door which opens contains a panic bar. From the edge of this bar to the locked door, the entranceway is 26 inches wide. An individual in a wheelchair cannot enter the clubhouse through this door. Sec. Exs. 11-14; Res. Ex. 21C; Tr. pp. 81, 365, 601, 602, 665, 825, 829-30, 888, 1005, 1543.

52. Entry through the side door to the clubhouse also requires an individual to climb up three steps, but because this entrance is contained within the fenced-in pool area, it can be used only when the gate is unlocked, that is, when the pool is open. An easel stands inside the clubhouse in front of this door and, therefore, an individual in a wheelchair cannot enter the clubhouse through this door. Sec. Exs. 16-17; Res. Exs. 21G-H; Tr. pp. 83-84, 226, 365, 665, 888, 1545.

53. Entry through the rear door into the laundry area can be gained only by climbing up one step of approximately five inches in height. The doorway is 35 inches wide. An individual in a wheelchair cannot enter the clubhouse through this door because it is too narrow. Sec. Exs. 18-19; Res. Ex. 21S; Tr. pp. 83-84, 198-99, 365, 396, 407, 759-60, 822-23, 825, 834, 888, 1043-1044, 1048, 1545.

54. Entry through two rear doors located in the fenced-in pool area can be made without climbing any steps. The doors and the gate to the pool area are locked whenever the pool is closed. An individual in a wheelchair cannot enter the clubhouse through these doors because he or she must cross a drainage ditch. Res. Exs. 21I, 21P, 21S; Tr. pp. 181, 183, 226, 365, 396, 407-08, 595, 759-60, 826-27, 833-34, 886, 888, 1044, 1046, 1048, 1545.

55. In or about March of 1989, a handrail was placed along the steps at the front entrance to the FVR clubhouse. Sec. Exs. 11-15; Res. Ex. 21C; Tr. pp. 76-77, 80, 357, 592-93, 1005-06, 1194, 1323. Since December of 1989, the handrail has been loose. Tr. pp. 358, 829, 1323-24, 1348-49.

56. FVR contains paved roads; alongside each road is a concave drainage ditch which is two feet wide and three and one-half inches deep. The entire park, including the clubhouse, is surrounded by this drainage ditch. Sec. Exs. 10-11, 13, 16-17, 22; Res. Exs. 21Q-Z; Tr. pp. 81-82, 83, 407, 536-37, 665, 886-88, 1049, 1542, 1546, 1321, 1371. An individual in a wheelchair cannot cross the drainage ditch without assistance. FVR contains no ramps enabling an individual in a wheelchair to avoid these drainage ditches. Tr. pp. 81-82, 407, 536-37, 549, 561, 665, 886-88, 1321, 1348.

57. FVR lacks sidewalks throughout the park. Sidewalks exist only around three sides of the clubhouse, on Camino Hermosa, from units 37 and 32 to unit 14, and on Camino Roble, from units 30 and 11 to about unit 131. Sec. Ex. 66; Res. Exs. 21Q-R, 21T-Z; Tr. pp. 81, 232, 369-72, 669. Residents must walk in the street where sidewalks are not available. Tr. p. 372.

58. Approximately five residents of FVR use wheelchairs. Tr. pp. 366, 397-98, 889, 1542-46. One resident, Bernice Black, has a porch lift for her wheelchair on her mobile home. Tr. p. 1546.

### Services

59. PCI maintains the mobile home foundations, and the utilities up to the point of connection with the mobile homes. It also maintains the clubhouse and swimming pool areas, the roads, and the electric, water and sewer lines which are not on a resident's mobile home space. Res. Ex. 23; Tr. pp. 1003-04, 1052, 1178, 1201-04, 1212, 1313, 1366-67. Mr. Tarantino may be telephoned 24 hours a day for maintenance of the sewers and main water line. Tr. 1051, 1365-66. PCI is responsible for removing dead trees from a resident's mobile home space. Res. Ex. 23; Tr. pp. 101, 233, 670, 896, 1004.

60. PCI plows the streets of FVR in the event of snow. Tr. pp. 100-101, 216, 233, 373, 434, 436, 439, 598, 657, 895, 1206, 1322. While there were complaints about the adequacy of the plowing, PCI has never been charged with a violation of applicable codes. Tr. pp. 1207, 1322. The plow often lifts snow onto the mobile home spaces and driveways of FVR residents which then must be removed by FVR residents themselves. Tr. pp. 101-102.

61. Residents of FVR perform all necessary upkeep and maintenance on their mobile homes and mobile home spaces. Sec. Ex. 44 (Admissions No. 11); Tr. pp. 101, 232-33, 762, 1004, 1052-1053, 1200-01, 1212, 1366-67; Res. Ex. 12. Residents of FVR are responsible for maintaining their own lawns and any trees and shrubs on the mobile home spaces. Tr. pp. 98, 100-101, 102, 232-33, 374, 439-40, 598, 603, 670-71, 854, 894, 896, 1212. Residents of FVR are responsible for removing snow from their mobile home spaces, including their driveways and steps. Tr. pp. 100, 894.

62. In December of 1989 or January of 1990, Mr. Tarantino prepared a list of businesses that residents may contact and hire to perform maintenance of their mobile homes. Res. Ex. 24; Tr. pp. 849, 1004-05, 1053, 1200, 1316, 1347. They are considered dependable since they have worked on mobile homes in the past. PCI has no financial interest in any contractual relationships which may be created by the tenants' use of this referral list. Res. Ex. 24. Prior to the compilation of this list, Mr. Meyer maintained a rolodex with such information, which residents requested only occasionally. Tr. pp. 1200, 1204, 1218, 1316, 1347.

63. Neither PCI nor any other entity provides emergency or preventive health care programs or services for FVR residents. Sec. Ex. 44 (Admissions, No. 7); Tr. pp. 106, 231, 285, 291 (Stipulation), 891.

64. FVR is not located within walking distance of any medical facilities. Tr. pp. 672, 900, 1125.

65. FVR does not have congregate dining facilities for residents. Sec. Ex. 44 (Admissions, No. 19); Tr. pp. 106, 231, 291 (Stipulation), 439.

66. Some residents of FVR receive meals on wheels. This service is provided by Ocean County for a fee and is available to all residents of the county. Neither PCI nor any other entity at FVR provides or assists in arranging this service. Tr. pp. 360, 597, 635, 1003, 1343, 1424.

67. Homemaker services are not provided at FVR by PCI or any other entity. Tr. pp. 106, 231, 291 (Stipulation), 1424-25.

68. Continuing education programs are not provided at FVR by PCI or any other entity. Tr. pp. 105-06, 231, 291 (Stipulation).

69. Counseling designed to aid residents is not provided at FVR by PCI or any other entity. Sec. Ex. 44 (Admissions, No. 8); Tr. pp. 106, 231, 291 (Stipulation).

70. Homemaker services are not provided at FVR by PCI or any other entity. PCI does not provide transportation for FVR residents. Tr. pp. 106, 233-34, 271, 351 (Stipulation), 374, 598, 671, 1410.

71. There is no transportation service within FVR. Tr. pp. 374, 598. In March of 1989, as a result of the efforts of Mr. Murphy and other local landlords, Ocean County began to provide bus service. Residents were picked-up at FVR and taken to the Ocean County Mall once a week and to a shopping center with a major supermarket, bank and post office once a week. After only a few months, bus service to the Ocean County Mall ceased because of lack of use. Those who use the bus must pay a fee. Sec. Ex. 42; Res. Exs. 22-23; Tr. pp. 107-08, 394, 578, 598-99, 762, 1007-09, 1050, 1098-99, 1210, 1221, 1309-10, 1318-19, 1344, 1409.

72. A bus, provided by St. Luke's Church transports residents of FVR to church services on Sunday mornings. Tr. pp. 671, 1093-94, 1099, 1319, 1344, 1410, 1425.

Neither FVR, PCI, nor any other entity has provided or arranged for this bus service. Tr. pp. 1344-45. School buses also transport children from FVR to Dover Township schools. Tr. p. 1319.

73. The closest public bus stop is three or four miles from the park. Tr. pp. 671-72.

74. The nearest grocery store to FVR is approximately two miles from the park. Tr. pp. 234, 375, 601, 900.

75. A bank is not located within walking distance of FVR. Tr. p. 601.

76. FVR does not have any security guards. Tr. p. 1125.

77. Respondents do not organize, offer or advertise social or recreational activities for the residents of FVR (Tr. pp. 223, 229, 248, 285, 367, 576, 579, 596, 664, 666, 668, 757, 761, 848, 849, 858, 1215, 1346), or employ an activities coordinator or social director (Tr. pp. 95-97, 229, 848, 1213).

78. The only regularly-held activities at the FVR clubhouse are twice-monthly bingo and the monthly Mobile Home Owners Association ("MHOA") meetings. Tr. p. 1346.

79. Bingo, which is played in the FVR clubhouse, is organized by a club of women called the "Sociables". Approximately 12 or 13 people play bingo. Players must pay for the bingo cards that they use. Bingo is not arranged by PCI. Tr. pp. 95-96, 228, 362, 578, 594, 664, 668, 751, 787, 892-94, 905-06, 1402.

80. The "Sociables" hold occasional meetings in the clubhouse and have luncheons paid for by the members of the club and the club treasury twice a year. Tr. pp. 894, 906, 1189, 1403.

81. The MHOA occasionally sponsors a bus trip to Atlantic City or to the theatre. Tr. pp. 96, 794-95, 1401, 1422. The MHOA sponsors a yearly Christmas party. PCI does not organize or contribute to these trips or the Christmas party. Tr. pp. 282, 367, 411-12, 436, 475, 664, 793, 1191, 1401, 1422.

82. A few residents gather to play cards, or clip coupons in the clubhouse. This activity is not organized by PCI or any other entity of FVR. Tr. pp. 91, 367, 474, 578, 1190-91, 1402.

83. An easel stands in the clubhouse lobby. On March 13, 1990, the easel contained information about a pancake dinner given by the fire department, two plays and a dance. No activity listed on the easel was sponsored by PCI or an entity of FVR. Res. Ex. 21H; Tr. pp. 827-28, 1037.

84. Dover Township operates a senior center. The Senior Center offers activities such as crafts, dance instruction, yoga and exercise classes, and billiards to all residents of

Dover Township who are 60 years of age or older. The Senior Center is at least 12 to 15 miles from FVR. Res. Exs. 23, 25; Tr. pp. 1058, 1124-25, 1316-18, 1345, 1404, 1406-07, 1423. Ms. O'Neill, President of the MHOA, places copies of the Dover Township Senior Center schedule of events in the FVR clubhouse foyer. Interested residents of FVR may take such schedules. The Dover Township Senior Center owns two vans and can transport senior citizens to medical appointments, shops and the Center itself. Tr. pp. 1404-06. In allocating such vans, transportation to a medical appointment is given top priority. Tr. p. 1423. Neither PCI nor its employees arranges for or assists in the provision of services at the Senior Center. Tr. p. 1345.

#### Expenses Dedicated to Providing Facilities and Services

85. The monthly base rental fee at FVR for 1990 ranges from \$175.00 to \$205.43. Many tenants pay a \$5.00 additional monthly fee above these amounts for each child, roommate, dog, or boat. The average monthly fee per mobile home space is approximately \$200.00. Tr. pp. 64, 152, 208, 216, 259, 355-56, 466, 540, 589, 641, 745, 846-47, 1011, 1013, 1416.

86. For the fiscal year ending April 30, 1989, operating expenses for FVR were \$328,674.00. Sec. Ex. 94; Tr. pp. 843-846. The expense per mobile home space is \$1,846.48 per year or \$153.87 per month. Tr. p. 846. For each mobile home space, no specific amount has been identified as being spent on facilities and services specifically for older persons.<sup>10</sup> Tr. pp. 848-65, 874-76.

87. The rent charges for mobile home spaces at FVR are controlled by the Dover Township Rent Leveling Board. Rental increases can be based on: 1) the lesser of the consumer price index or 3.5 percent of the previous year's rent; 2) a passthrough to recover the costs of tax or utility expenses for the previous year; 3) hardship considerations; 4) recovery of the expense of capital improvements; and 5) a negotiated increase with the agreement of a majority of the tenants. Sec. Exs. 100-02; Tr. pp. 410, 1010-11, 1117-20, 1144-47, 1158-59.

88. At no time has Mr. Murphy attempted to negotiate a rent increase with FVR residents in order to provide for additional facilities and services at the park. Tr. pp. 1171-72.

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<sup>10</sup> The Government contends that, based upon Mr. Murphy's testimony, only \$2.52 per month can be allocated for "facilities and services for older persons". Mr. Murphy disputes the accuracy of this figure, but could not supply an accurate alternative figure. Tr. pp. 875-876. Accordingly, no finding can be made that any amount is actually allocated to elderly facilities and services, or specifically dedicated to them.

## Practicability of Providing Facilities and Services

### Other Communities for Older Persons

89. PCI owns a second mobile home park known as Fountain View Estates in Tampa, Florida, where mobile home spaces rent for approximately \$200.00 per month. Fountain View also requires that all newly leased mobile home spaces have one resident age 55 or older. A sign outside the park advertises it as an "adult community". Fountain View is approximately the same age as FVR, but has three times the number of residents. PCI provides the following facilities and services at Fountain View: two clubhouses, two swimming pools, a tennis court, three shuffleboard courts, a basketball court, a kitchen with a new stove, a pool table, weekly bingo, aerobics classes, cooking classes, a Crime Watch group, blood pressure screening, a travel club, a woodworking shop, a social club, and a monthly newsletter to inform residents of activities. These activities are scheduled through an Activities Committee, which operates independently of PCI and the park manager. The clubhouses at Fountain View can be entered without climbing any steps. Tr. pp. 866, 1094-96, 1130-33, 1150-53, 1160-61, 1167-71.

90. Complainant Barbara McDermott lived with her mother, Patricia DiMarsico, in a mobile home park in Clearwater, Florida. Both now own homes in that park. Mrs. DiMarsico currently lives in that park. Tr. pp. 603, 619-20. At the Clearwater mobile home park, many activities are provided for the residents, including line dancing, arts and crafts, ceramics, and aerobics in the swimming pool and clubhouse. The park has 12 shuffleboard courts. The park provides hot meals to Mrs. DiMarsico, and the cost of these meals is included in her monthly rent. The park provides maintenance services for its residents, including lawn mowing and bush trimming. The park has its own bus that tips to allow for handicapped access. The park also employs another driver to transport residents on individual trips. The mobile home park provides chairs at the swimming pool area and lockers in the clubhouse. In addition, the entrances to the clubhouse have wheelchair ramps, and the bathrooms in the clubhouse contain features for handicapped persons, including higher toilets and grab bars. Tr. pp. 603-04, 635-36. Some of these features were added when the park revised its admissions policy to require that at least one resident be 55 years of age or older. Tr. p. 621.

91. The Original Leisure Village ("OLV"), created in 1963, is a senior citizen condominium complex in Lakewood, Ocean County, New Jersey. There are over 4,000 residents. At least one occupant of each unit must be 55 years of age or older. OLV is comprised of 2,433 condominiums, including both one- and two-bedroom units and one- and two-story units, on 500 acres. Sec. Ex. 29 at pp. 2, 6; Sec. Ex. 30 at pp. 8, 14; Tr. pp. 911-12, 914, 930, 935-36. OLV is approximately three to six miles from FVR on Route 70. Tr. pp. 125, 912. Unlike, FVR it is owned by the residents. Tr. p. 911. Also, unlike FVR, the management is employed by the residents. It has a yearly budget in excess of \$3.6 million.

92. OLV has two main recreational halls, each containing a library, wood-working shop, machine shop, dance floor, card room, and billiard room. There are two swimming pools, a nine-hole golf course, two bocce courts, and one-hundred shuffleboard courts. Sec. Ex. 30; Tr. pp. 126-27, 763-65, 787-88, 914-15. There are seven lakes on the property. OLV provides boats for use on the lakes. Residents can also fish in the lakes. Sec. Ex. 30 at p. 44; Tr. p. 915. OLV has also set aside areas of land to be used by its residents for gardening and farming. Tr. p. 915.

93. OLV contracts with aerobics, water ballet and other instructors to teach residents of the community (Tr. pp. 919, 945-46), employs lifeguards for its pools (Tr. p. 927), and offers classes in swimming and arts and crafts (Tr. p. 920).

94. OLV has over 40 groups which engage in social and civic activities. Tr. p. 919. These groups include the following: the Art League, the Boating and Fishing Club, the Bocce Club, three bowling groups, a camera club, a chess club, the Coin and Metal Club, four dance groups, the Deborah Group, the Tom Dooley Heritage Group, a drill team, the Farmers' Club, the "Foundation", two golf clubs, a book discussion club, the Medical Center Auxiliary, the Kiwanis, the Ladies Health Club, two travel groups, a singing group, two religious groups, a men's club, a nature club, a public safety group, a shuffleboard club, a singles' group, the Square Club, a stamp club, the Swim Committee, the Tennis Club, and a wood carvers' club. These groups hold regular meetings and sponsor activities related to their areas of interest during the year. Sec. Exs. 30, 32, 95; Tr. pp. 919, 944.

95. Residents of OLV are made aware of activities at OLV through several publications, including the OLV Handbook, the Manager's Newsletter published twice monthly, a monthly newspaper, and the Activities Coordinator's Letter, all of which are hand-delivered to each home. Sec. Exs. 30, 32, 97-98; Tr. pp. 920-21, 931-34.

96. OLV employs an activities coordinator to arrange trips to the theatre, shopping, Atlantic City, and tourist areas. Sec. Ex. 98; Tr. p. 918. This coordinator organizes activities within OLV, including golf tournaments, swimming shows, dances, cafe nights, movies, and bingo. Tr. pp. 918, 943-44. The coordinator, in conjunction with an activities committee, also works with the individual clubs and social and civic groups to develop new activities. Sec. Ex. 30 at p. 38; Tr. pp. 919-20.

97. OLV has security 24 hours per day, including gates at the entrances to the complex and patrols during the night-time hours. Sec. Ex. 30 at p. 30; Tr. pp. 922, 949-950.

98. The following commercial entities are located within OLV: a bank, an attorney's office, a travel agency, a real estate agency and a stockbroker. Only OLV residents may use these services. Tr. pp. 193, 923-24, 952.

99. OLV provides lawn care for its residents. Residents are responsible for the three-foot area immediately surrounding their homes which is typically comprised of shrubbery. OLV provides trash collection and snow removal on all property of its residents. OLV is responsible for maintenance within the residents' homes of the following systems: plumbing, electrical, air conditioning, and heating. OLV also performs maintenance on refrigerators, washing machines and dryers, ranges, hinges, locks, and windows. Residents are responsible for the painting of the interior of their units, and OLV is responsible for painting the exterior. If a resident needs to purchase a new major appliance, he or she may contact the OLV receptionist, who will arrange for its purchase and delivery. Sec. Ex. 30 at pp. 20-27; Tr. pp. 192, 916, 927, 938-40, 953.

100. If an OLV resident requires maintenance which is not provided by the complex, he or she may pay an employee of OLV to perform the maintenance work. Tr. 917, 940-43. OLV also maintains a listing of insured contractors who have previously performed work within OLV. Residents seeking an outside contractor may contact the OLV office for a recommendation from such listing. Tr. p. 917.

101. An individual in a wheelchair can access any portion of OLV except an upper story unit. The entrances to all common buildings in OLV are ramped, and the doors are wide enough to accommodate a wheelchair. The sidewalks throughout the complex are ramped at intervals and corners to allow persons in wheelchairs to avoid curbs. All common bathrooms have railings. Tr. pp. 132, 915-16, 959-60, 963-64.

102. The OLV "Foundation" provides emergency nursing services to residents of OLV 24 hours per day. The nursing staff has an office in the OLV Administration Building which is provided by OLV rent-free. Tr. pp. 922-23, 951-52.

103. The OLV Kiwanis provides hot meals for residents of OLV who require it. Tr. pp. 922, 950-51.

104. OLV owns two large buses which pick up residents throughout the complex and provide transportation both within OLV and to shopping centers and medical facilities. However, they are not accessible by wheelchair. Sec. Ex. 96; Tr. pp. 126, 921-22, 930-31, 946-49, 955-56.

105. Residents of OLV contribute to the expenses of the administration, maintenance of the common areas of the complex, and the Association through payment of a monthly maintenance fee. These fees range from \$73.00 to \$149.50 and average about \$80.00 per month. Sec. Exs. 29 at pp. 12, and 30 at pp. 18-19, 31; Tr. 924, 927.

106. Residents of OLV pay real estate taxes. Tr. p. 926. They also pay a \$500.00 fee when moving into OLV. Tr. pp. 944-45.

107. Condominiums at OLV sell for approximately \$38,000.00 to \$120,000.00. Tr. pp. 928, 1495-96, 1503. Homes at OLV are affordable to residents of FVR. Tr. p. 201.

#### Comparable Housing in Ocean County

108. Approximately 38 communities for persons age 55 or older exist in Ocean County, New Jersey. These communities include single-family residential homes, townhouses, condominiums, and cooperatives, as well as mobile home parks. Several of these communities are located in proximity to FVR. Tr. pp. 124-25, 199-200, 705-06, 763, 769, 1446, 1491-93, 1504.

109. The average mobile home in Ocean County ranges in price from approximately \$20,000.00 to \$60,000.00. Tr. pp. 1499-1500. The mobile homes in FVR range in price from approximately \$25,000.00 to \$65,000.00. Tr. pp. 136, 236, 261, 282-83, 376-77, 444, 482, 674, 683, 701-02, 733, 772, 1416.

110. Supply greatly exceeds demand for mobile homes in the Ocean County area. Tr. p. 1498.

111. The homes in these Ocean County communities for older persons, excluding mobile home parks, are affordable and are cheaper than those in the northern counties of New Jersey. Tr. p. 1493. The prices of such homes, excluding mobile homes, range from approximately \$38,000.00 to \$100,000.00. Tr. pp. 928, 1495-96, 1493, 1503. Not all of these homes in communities for older persons are sold through a real estate agent. Tr. p. 1504.

112. The typical mortgage term on a home other than a mobile home in a residential community for older persons is 30 years. Tr. p. 1505. The typical interest rate on a loan to purchase such a unit is about 10 or 10 1/2 percent. Tr. p. 1496.

113. On March 1 and 2, 1990, the following units in OLV were advertised for sale in the *Asbury Park Press*: 1) a one-bedroom apartment for \$36,700.00; 2) a two-bedroom unit for \$46,500.00; 3) a one-bedroom unit for \$36,500.00; 4) a two-bedroom condominium for \$50,000.00; and 5) a two-bedroom unit for \$45,000.00. Sec. Exs. 79-80; Tr. pp. 798-807.

### **Eighty Percent Requirement**

#### Overall Test

114. The following table sets forth the ages of the residents of FVR by the unit occupied, as of March 12, 1989, and the date the hearing began.

<u>Unit Number</u>	<u>March 12, 1989</u>	<u>Hearing</u>
1	under 55	under 55
2	Proof of age based on lay opinion testimony; over 55 <sup>11</sup>	over 55
3	under 55	under 55
4	over 55	over 55
5	over 55	over 55
6	Decedent's estate	Decedent's Estate
7	No proof of age; presumed under 55	under 55
8	No proof of age; presumed under 55	under 55
9	under 55	under 55
10	under 55	under 55
11	over 55	over 55
12	under 55	under 55
13	over 55	over 55
14	over 55	over 55
15	under 55	under 55
16	over 55	over 55
17	No proof of age; presumed under 55	under 55
18	under 55	under 55
19	over 55	over 55
20	over 55	over 55
21	Proof of age based on lay opinion testimony; over 55	over 55

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<sup>11</sup> Mr. Meyer, the former manager of the park for 17 years, testified as to his opinion of the ages of at least one individual in units 2, 21, 30, 42, 72, 75, 91, 109, 116, 135, 137, 155, and 178. He based this testimony on his review of a list of the tenants' ages which he had compiled from his own telephone inquiries and personal contacts begun after the initiation of this litigation. The personal contacts occurred when individuals picked up their mail near the FVR office. The "survey" (Res. Ex. 19) was made necessary by the lack of complete age data for FVR residents. There is no question that it was prepared in anticipation of this litigation. This document was admitted by the consent of both parties, but it is insufficiently reliable, in itself, to establish the age of the listed individuals. *See supra* n.7. However, I have relied upon Mr. Meyer's direct testimony as to the ages of the individuals in these units with the exception of the resident of unit 133. *See infra* n.16. Mr. Meyer demonstrated a long standing familiarity with most of these individuals. In fact, he was able to identify and describe many of them without the assistance of the list which he prepared. I have also considered the fact that he is no longer employed by PCI and has no apparent interest in the outcome of this case.

In their brief, Respondents attributed testimony to Mr. Meyer, concerning the ages of various individuals in three other units besides those listed above. These are, Roy Nesse in unit 7, James Slocum in unit 17, and Mr. McLaughlin in unit 67. Res. Brief, pp. 15, 16, 19. Mr. Meyer did not, furnish testimony as to the ages of these individuals.

Respondents also acknowledge in their brief that Mr. Meyer had no present recollection as to the occupants of units 73, 141, and 147. Although Mr. Meyer entered ages on Respondents' Exhibit 19, he did not testify concerning these individuals on the record except inferentially by his testimony as to the accuracy of that exhibit. There is no testimony that he actually compared the physical appearance of these individuals with the ages which they gave him, or even whether the information was obtained by personal contact or over the telephone.

There is insufficient proof as to the ages of the individuals living in these six units. Accordingly, these units are presumed to be unoccupied by any individual 55 or older.

	until 1-2/90 then Decedent's Estate <sup>12</sup>	
22	over 55	over 55
23	over 55	over 55
24	over 55	over 55
25	over 55	over 55
26	over 55	over 55
27	over 55	over 55
28	over 55	over 55
29	under 55	under 55
30	Proof of age based on lay opinion testimony; over 55	over 55
31	over 55	over 55
32	over 55	over 55
33	under 55	under 55
34	under 55	under 55
35	under 55	under 55
36	under 55	under 55
37	over 55	over 55
38	over 55	over 55
39	over 55	over 55
40	over 55	over 55
41	under 55 until 12/22/89 <sup>13</sup> then over 55	over 55
42	Proof of age based on lay opinion testimony; over 55	over 55
43	over 55	over 55
44	under 55	under 55
45	under 55	under 55
46	over 55	over 55
47	under 55 until 11/26/89 then over 55	over 55
48	under 55	under 55
49	over 55	over 55
50	over 55	over 55
51	over 55	over 55
52	over 55	over 55
53	under 55	under 55
54	over 55	over 55
55	under 55	under 55
56	under 55	under 55
57	over 55	over 55
58	under 55	under 55
59	under 55	under 55
60	under 55	under 55
61	over 55	over 55
62	under 55	under 55
63	over 55	over 55

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<sup>12</sup> This tenant vacated FVR on January 6, 1990. Res. Ex. 18.

<sup>13</sup> The senior occupant turned 55 on that date.

64	over 55	over 55
65	under 55 until 6/30/89 then over 55	over 55
66	over 55	over 55
67	No proof of age; presumed under 55	under 55
68	over 55	over 55
69	over 55	over 55
70	over 55	over 55
71	over 55	over 55
72	Proof of age based on lay opinion testimony; over 55	over 55
73	No proof of age; presumed under 55	under 55
74	over 55	over 55
75	Proof of age based on lay opinion testimony; over 55	over 55
76	over 55	over 55
77	over 55	over 55
78	over 55	over 55
79	over 55	over 55
80	under 55	under 55
81	over 55	over 55
82	over 55	over 55
83	over 55	over 55
84	under 55 until 12/31/89 <sup>14</sup> then over 55	over 55
85	over 55	over 55
86	over 55	over 55
87	under 55 until 6/14/89 then over 55	over 55
88	over 55	over 55
89	over 55	over 55
90	over 55	over 55
91	Proof of age based on lay opinion testimony under 55	over 55
92	under 55	under 55
93	over 55	over 55
94	over 55	over 55
95	Decedent's Estate until 8/7/89, then over 55	over 55
96	over 55	over 55
97	over 55	over 55
98	over 55	over 55
99	under 55 until 12/31/89 then over 55	over 55
100	over 55	over 55
101	over 55	over 55
102	over 55	over 55
103	over 55	over 55
104	over 55	over 55
105	over 55	over 55
106	over 55	over 55

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<sup>14</sup> Only the year of birth (1934) has been supplied for the senior occupants of units 84, 99, and 153. Since the Respondents have the burden of proof on this issue, the date is presumed to be the last day of that year.

107	over 55	over 55
108	over 55	over 55
109	Proof of age based on lay opinion testimony; over 55	over 55
110	over 55	over 55
111	Decedent's Estate until 11/30/89, then over 55	over 55
112	under 55	under 55
113	over 55	over 55
114	over 55	over 55
115	over 55	over 55
116	Proof of age based on lay opinion testimony; over 55	over 55
117	over 55	over 55
118	over 55	over 55
119	over 55	over 55
120	over 55	over 55
121	over 55	over 55
122	under 55	under 55
123	under 55	under 55
124	under 55 until 1/2/90 <sup>15</sup> then over 55	over 55
125	under 55	under 55
126	over 55	over 55
127	over 55	over 55
128	under 55	under 55
129	under 55	under 55
130	under 55 until 12/3/89 then over 55	over 55
131	over 55	over 55
132	over 55	over 55
133	No Reliable Proof of Age; <sup>16</sup> presumed under 55	under 55
134	over 55	over 55
135	Proof of age based on lay opinion testimony; over 55	over 55
136	over 55	over 55
137	Proof of age based on lay opinion testimony; over 55	over 55
138	under 55	under 55
139	Proof of age based on lay opinion testimony; over 55	over 55
140	over 55	over 55
141	No proof of age; presumed under 55	over 55
142	over 55	over 55
143	over 55	over 55
144	Decedent's Estate until April 4, 1990	
145	over 55	over 55
146	over 55	over 55
147	No proof of age; presumed under 55	under 55
148	over 55	over 55

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<sup>15</sup> The senior occupant became 55 on that date.

<sup>16</sup> Mr. Meyer testified that the resident of unit 133 appeared to be in her "mid-fifties". This testimony is too imprecise to make a finding that she was over 55. Tr. p. 1618.

149	over 55	over 55
150	under 55	under 55
151	over 55	over 55
152	over 55	over 55
153	under 55 until 12/31/89 then over 55	over 55
154	under 55	under 55
155	Proof of age based on lay opinion testimony; over 55	over 55
156	over 55	over 55
157	over 55	over 55
158	over 55	over 55
159	over 55	over 55
160	under 55	under 55
161	over 55	over 55
162	over 55	over 55
163	over 55 until 6/7/89 <sup>17</sup> then under 55	under 55
164	over 55	over 55
165	over 55	over 55
166	over 55	over 55
167	over 55	over 55
168	under 55	under 55
169	over 55	over 55
170	over 55	over 55
171	over 55	over 55
172	over 55	over 55
173	over 55	over 55
174	over 55	over 55
175	over 55	over 55
176	over 55	over 55
177	under 55	under 55
178	Proof of age based on lay opinion testimony; over 55	over 55

115. As of March 12, 1989, 125 units<sup>18</sup> out of 178, or 70 percent, met the requirement that one of the residents be 55 or older.<sup>19</sup> As of the date of the hearing this requirement was still not met. On the hearing date, three of the units were unoccupied decedent's estates. These have been counted as qualifying. The right hand column indicates that out of 178 units, 134, or 75 percent, met the test. Thus as of March 12, 1989, only 70 percent of the units met the statutory test. This had improved by the date of

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<sup>17</sup> The occupant, over 55, vacated leaving a resident under 55 on that date.

<sup>18</sup> The four unoccupied units have been included as qualifying.

<sup>19</sup> Even if the entries made on Respondents' Exhibit 19 to which Mr. Meyer did not testify are counted, only 73.5 percent of the units would have been occupied by one person 55 or older and Respondent would still not meet the overall test (131 units divided by 178).

the hearing to 75 percent, still not sufficient to satisfy the statutory requirement.<sup>20</sup>

116. On March 12, 1989, Mr. Murphy was aware that, on and prior to that date, less than 80 percent of the mobile homes at FVR had at least one occupant aged 55 or older. Tr. pp. 1115, 1144, 1634-35.

117. By letter dated June 26, 1989, Mr. Murphy informed Mary Haith, a HUD investigator, that at that time, 78.74 percent of the units in FVR were occupied by at least one person aged 55 or older. Sec. Ex. 41; Tr. pp. 815-16, 1116.

### Transition

118. A new resident of FVR typically moves in after he obtains title to the mobile home and then meets with the park manager. At this meeting the manager makes a copy of the title, and the new resident is required to sign a copy of the FVR rules and regulations. It is rare for a new resident to move in on the day that they acquire title. Tr. pp. 1220, 1367-68, 1374.

119. FVR tenant files contain documentation specifying the move-in dates of new residents of FVR. Res. Ex. 18; Sec. Exs. 41, 47-48, 50-53, 55-56, 62; Tr. p. 1604 (Stipulation).<sup>21</sup>

120. There were 14 sales of mobile homes between September 13, 1988, and the date the hearing began. Each of these is discussed below in chronological order.

121. Robert Blunck, who is under the age of 55, acquired title without the manager's knowledge on September 12, 1988. He moved into the mobile home on unit 122 on or about October 1, 1988, and has continued to live there until the hearing. Title to the home was transferred to Mr. Blunck on September 12, 1988. Mr. Blunck's rental application contains no evidence of his age. He was later approved and offered a lease by Mr. Meyer on October 4, 1988. Sec. Exs. 41, 46-49; Res. Exs. 18 (Stipulation), 19, 40; Tr. pp. 1102-04, 1134-37, 1160, 1204-06, 1219-20, 1312.

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<sup>20</sup> Even if those individuals listed on Respondents' Exhibit 19 to which Mr. Meyer did not testify are counted as having one person over 55, 79 percent of the units qualified as of the date of the hearing (140 units divided by 178).

<sup>21</sup> Some of the tenant files indicate that a few of them moved into their homes before acquiring title, but according to the Respondents, this is unlikely. *See infra* n. 22.

122. William Sivil moved into the mobile home on unit 40 on November 1, 1988, and has continued to live there until the hearing. Mr. Sivil was over the age of 55 at the time he moved into the park. Title to the home was transferred to Mr. Sivil on October 22, 1988. Sec. Exs. 50-51; Res. Exs. 18 (Stipulation), 19.

123. Richard Young, born in 1935, is under the age of 55 and moved into the mobile home on unit 80 on December 1, 1988. He has continued to live there until the hearing. Title to the mobile home was transferred to Mr. Young on November 17, 1988. Sec. Exs. 41, 52; Res. Exs. 18 (Stipulation), 19, 39; Tr. pp. 1088-90, 1114-15.

124. Ralph Rocco moved into the mobile home on unit 114 on March 1, 1989, and has continued to live there until the hearing. Mr. Rocco was over the age of 55 at the time he moved into the park. Title to the home was transferred to Mr. Rocco on February 3, 1989. Sec. Ex. 53; Res. Exs. 18 (Stipulation), 19.

125. Mr. Patsy Ferro and Joan Lupardo moved into the mobile home on unit 163 on June 9, 1989. They purchased the home from Harrison Bailey, who was born in 1913. Mr. Ferro and Ms. Lupardo obtained title to the home on June 7, 1989. On or about January 5, 1990, Mr. Ferro, who was born in 1929 and is over 55, moved from unit 163 and sold his interest in the mobile home to Ms. Lupardo. Ms. Lupardo, who was born in August of 1938, and is under 55, continues to reside in the home. The rental application for Mr. Ferro and Ms. Lupardo contains no evidence of their ages. Sec. Exs. 54-57; Res. Exs. 18 (Stipulation), 19; Tr. p. 1157.

126. FVR documentation indicates that Lily DeMicco moved into the mobile home on unit 65 on July 1, 1989, and has continued to live there until the hearing. She purchased the mobile home from Marie Eccles, who was under the age of 55 at the time of the sale. Ms. DeMicco was over the age of 55 at the time she moved into the park. Title to the home was transferred to Ms. DeMicco on July 8, 1989; therefore Ms. DeMicco is deemed to have moved into the home sometime after that date.<sup>22</sup> Res. Exs. 18 (Stipulation), 19.

127. FVR documentation indicates that Virginia Black and her son Edward Black moved into the mobile home on unit 174 on July 7, 1989. They have continued to live there until the hearing. When the Blacks purchased the mobile home, it was a decedent's estate unit and had no occupant. The home had been owned by Barney Trautvetter, who was over the age of 55 at his death. Mr. Trautvetter died sometime after May of 1989. Mrs. Black was over the age of 55 when she moved into the park. Title to the home was transferred to the Blacks on July 20, 1989; therefore they are deemed to have moved into the home sometime after that date. Mrs. Black's rental application contains no indication

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<sup>22</sup> There are several instances where the move-in date in the records is earlier than the date title passed. This is unlikely actually to have occurred. Respondents' witnesses testified that it is rare for a new tenant to move in even on the date that title is acquired. Tr. pp. 1220, 1367-68, 1374. There is also paperwork which must be completed by the FVR manager and which can only be accomplished after title has passed. The documentation used in registering new tenants specifically requires proof of title prior to moving in. Res. Ex. 13. Accordingly, in those situations, the move-in has been deemed to have occurred later than the passage of title.

of her age. Sec. Ex. 58; Res. Exs. 18 (Stipulation), 19; Tr. pp. 1157, 1631-32.

128. FVR documentation indicates that Anthony and Charlotte Simonelli moved into the mobile home on unit 95 on August 5, 1989, and have continued to live there until the hearing. Between September 13, 1988, and the date on which Mr. and Mrs. Simonelli purchased the mobile home, the home was a decedent's estate unit and was unoccupied. Mr. and Mrs. Simonelli were both over the age of 55 when they moved into the park. They acquired title to the home on August 7, 1989, and they are therefore deemed to have moved into the home sometime after that date. Res. Exs. 18 (Stipulation), 19.

129. Rocco and Pauline Constable and their son Thomas purchased the mobile home on unit 18 on August 22, 1989. The Constables purchased the home from Lawrence and Beverly Winslow, who were both under the age of 55 at the time of the sale. On September 1, 1989, Thomas Constable, who is 31 years of age, moved into the home. His parents, who are over the age of 55, have never lived in the mobile home.<sup>23</sup> Sec. Exs. 59-61; Res. Exs. 18 (Stipulation), 19; Tr. pp. 499-500, 517, 1334, 1335-36, 1363-65, 1374, 1376, 1429.

130. Jean Penic moved into the mobile home on unit 111 on December 1, 1989, and has continued to reside there until the hearing. Between September 13, 1988, and the date on which Ms. Penic purchased the mobile home, the home was a decedent's estate unit and was unoccupied. Ms. Penic was over the age of 55 at the time she moved into the park. Title to the home was transferred to Ms. Penic on November 15, 1989. Sec. Ex. 62; Res. Exs. 18 (Stipulation), 19.

131. Edward Anisko moved into the mobile home on unit 47 on November 27, 1989. Edward Anisko was over the age of 55 when he moved in. He purchased the home from Frances Becker, who was under the age of 55 at the time of the sale. Title to the home was transferred to Mr. Anisko on November 21, 1989. Res. Exs. 18 (Stipulation), 19; Tr. pp. 1336-37.<sup>24</sup>

132. FVR documentation indicates that Blanche Petenbrink moved into the mobile home on unit 30 on January 1, 1990. Ms. Petenbrink was over the age of 55 when she moved into the mobile home. She purchased the home from Blanche Chase. Title to the

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<sup>23</sup> On November 20, 1989, Mr. Tarantino sent Mr. and Mrs. Constable a letter stating that complaints had been received that they were not living in the park. Sec. Ex. 60; Tr. p. 1363. In November of 1989, Mr. Constable informed Mr. Tarantino that he and his wife did not live in the home. Tr. p. 1377. By letter dated December 5, 1989, to Mr. and Mrs. Constable at 78 Sherman Avenue, Bayville, New Jersey, Mr. Tarantino noted that he had left a returned rent check in the door of their mobile home for their son. Sec. Exs. 60, 61; Tr. pp. 1364-65. No action has been taken by FVR to evict the younger Constable.

<sup>24</sup> Mr. Tarantino transmitted two notices to Edward Anisko that unauthorized tenants were residing in his home: 1) on or about January 8, 1990, Mr. Tarantino warned Mr. Anisko that he had violated park rules, and 2) on or about January 26, 1990, Mr. Tarantino reported to Mr. Anisko that persons under the age of 21 cannot reside at FVR. By letter dated February 4, 1990, Edward Anisko notified PCI that his wife, son and daughter had moved into the mobile home. A "Notice to Cease - Breach of Lease" has been sent to the Anisko family by Steven P. Russo, attorney for PCI, because of the children. Sec. Exs. 63-65; Tr. pp. 1332-33, 1337, 1359, 1360-62, 1379.

home was transferred to Ms. Petenbrink on January 6, 1990. Therefore, she is deemed to have moved into the home sometime after that date. Res. Exs. 18 (Stipulation), 19.

133. Peter Juras, Sr., and his son Peter, Jr., moved into the mobile home on unit 153 on February 1, 1990. The senior Mr. Juras was over the age of 55 when he moved into the mobile home. He purchased the home from Diane Kampfer and her mother, Roselma Kampfer, who was born in 1934. Title to the home was transferred to Peter Juras, Sr., on January 16, 1990. Sec. Ex. 42; Res. Exs. 18 (Stipulation), 19.

134. The following table summarizes the information relating to the turnover of mobile homes in FVR between September 13, 1988 and the date the hearing began.

<u>Move-in Date</u>	<u>Unit</u>	<u>Age</u>	<u>Total Percentage Over 55</u>
October 1, 1988	122	under 55	0%
November 1, 1988	40	over 55	50%
December 1, 1988	80	under 55	33%
March 1, 1989	114	over 55	50%
June 9, 1989	163	over 55	60%
July 9, 1989	65	over 55	67%
or thereafter			
July 21, 1989	174	over 55	71%
or thereafter			
August 8, 1989	95	over 55	75%
or thereafter			
September 1, 1989	18	under 55	67%
December 1, 1989	111	over 55	70%
November 27, 1989	47	over 55	73%
January 5, 1990	163	under 55	67%
January 7, 1990	30	over 55	69%
or thereafter			
February 1, 1990	153	over 55	71%

#### Advertising and Publication of Intent to Provide Housing for Older Persons

135. A billboard stands outside the entrance to FVR at the intersection of Routes 70 and 527. The billboard, FVR's only advertisement, states that the park is an "Adult Mobile Home Park." The billboard originally stated that FVR was a "Family/Adult Mobile Home Park," but in April of 1989, the word "Family" was painted over in black paint by Mr. Meyer because FVR "was no longer a family park." There is no indication on the billboard of PCI's 55 or older policy or that PCI has been reserved for older persons. Sec. Exs. 8-9, 66; Tr. pp. 78-79, 222-23, 359-360, 392-94, 471, 593, 663, 749-50, 1180-84, 1213-15, 1308-09.

136. A sign containing the words "Friendly Village of Riverwood" and containing the PCI logo stands at the entrance to FVR on Route 70. The sign, which was placed at

the entrance after March 12, 1989, does not indicate PCI's 55 or older policy or that FVR provides housing for older persons. Sec. Ex. 10; Res. Ex. 21A; Tr. pp. 79, 359, 470-71, 509, 593, 663, 985-86, 1129.

### Individual Complainants

#### John Fallon

137. John Fallon, born on July 5, 1928, owns a mobile home located on unit 76 in FVR. Answer, para. 9; Tr. pp. 63-64. He moved into FVR in January of 1987. Tr. p. 169. At the time he moved into FVR, his mobile home was subject to the 45-45 policy. He leases a mobile home space from PCI and is subject to the rules and regulations of FVR. Answer, para. 9; Sec. Ex. 66; Tr. pp. 64, 169.

138. Mr. Fallon pays a monthly base rent of \$196.00 plus \$15.00 per month -- \$5.00 for his daughter, age 28, and \$5.00 for each of his two dogs. Tr. pp. 64, 152. Mr. Fallon has been paying the additional \$5.00 monthly fee for his daughter since September or October of 1989. Tr. p. 65.

139. Mr. Fallon's mobile home is 12' x 60-65'. It has a tip out that creates an 18' x 20' living room, a dining room, a kitchen, two bedrooms, two walk-in closets, and one and one-half bathrooms. The mobile home sits on wheels. Tr. pp. 134-35, 197. Since purchasing the mobile home, Mr. Fallon has made substantial alterations to it, including new furniture, carpet, drapery, mini-blinds, and customized drapery. Tr. pp. 196-97.

140. Mr. Fallon suffers from arthritic deterioration of the spine, two herniated disks in the neck, arthritis of the hip joints, multiple nerve damage and has limited walking ability. Tr. pp. 67, 150, 205. He is interested in moving from FVR to a drier climate. Tr. pp. 149-50.

141. From January 4, 1989, until the hearing, Mr. Fallon's mobile home has been for sale. Tr. pp. 135, 172. Mr. Fallon placed a "For Sale" sign in the window of his home. Mr. Fallon's asking price is \$38,000 unfurnished and \$42,000 furnished. Tr. p. 136.

142. From March 12, 1989, until the hearing, the following potential purchasers expressed an interest in Mr. Fallon's home: 1) a woman, age 55, with two daughters, ages 20 and 19; 2) a man and woman with two sons under the age of 18; 3) Donna Cramer, age 39 years, and her two daughters, ages 8 and 12; 4) a man, age 35, and his wife, age 40, with two daughters, under the age of 18; and 5) a woman who was over the age of 55. Tr. pp. 136, 138-146, 193-95. In each case, Mr. Fallon informed the potential buyer of the PCI policy that one person in each home must be 55 or older and all other residents of the home must be 21 or older. Tr. pp. 139, 144, 194. He also informed most of these individuals that the Respondents' age-restrictive policy was being challenged. Tr. pp. 145, 194-95.

143. On May 12, 1989, a man, with children under the age of 18, telephoned the FVR office and informed the office secretary that he wished to purchase Mr. Fallon's home. When asked his age, the prospective purchaser stated that he was under the age of

55. The FVR secretary then informed the man that he could not purchase in the park. Sec. Ex. 78; Tr. pp. 140, 144, 1116-17, 1304-05.

144. On August 21, 1989, Mrs. Cramer was informed by Mr. Tarantino that she and her family could not purchase a home in FVR. Sec. Ex. 43; Answer, para. 26; Tr. pp. 141, 819-20.

145. Mr. Fallon has willed his home to his daughter. However, under PCI rules, she would not be able to reside in the home and would have to sell it. Tr. pp. 152-53.

146. On or about April 21, 1989, Mr. Fallon filed a complaint with HUD alleging that Respondents violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 18. Sec. Ex. 7; Tr. pp. 151-52, 972.

147. Mr. Fallon claims that he was hurt "very bad" by the need to reject families with children under the age of 18. Tr. pp. 146-47, 152. Mr. Fallon testified that he was emotionally distressed by the PCI policy that each mobile home have one resident age 55 or older and that any other residents must be at least 21. Because of this policy, he was "locked in" at FVR and lost repeated sales. He also claims that he was "disgusted" and "scared"<sup>25</sup> by the notice of the conversion of FVR to a 55 or older community. Tr. p. 72. There is no evidence that Mr. Fallon suffered any psychological problems resulting from PCI's policies.

148. Mr. Fallon made two 140-mile trips to New York City by car and one trip of approximately 50 miles to Newark, New Jersey, by car for purposes of the instant case. He also spent \$4.00 on train fares. He also made several telephone calls to New York City and Washington, D.C., totalling approximately \$10.00. Tr. pp. 165-66, 167.

#### Paul and Emma Maghan

149. Paul and Emma Maghan, born, respectively, on January 13, 1927 and November 22, 1929, own a mobile home located on unit 131. They moved into FVR in 1973 and have leased a mobile home space from PCI since 1978. At the time they moved into FVR, their mobile home was not subject to any age restriction. Their three children were raised in FVR. The Maghans' daughter, Paula Sibole, born February 17, 1952, is also a registered tenant. Sec. Ex. 66; Tr. pp. 352-53, 355, 723.

150. Mr. and Mrs. Maghan are retired. Tr. p. 355. Since November 1, 1989, the Maghans have been living in a travel trailer park in Deerfield Beach, Florida. Tr. pp. 386, 394, 402, 405, 409, 414, 726. They pay \$400.00 rent per month in Florida. Tr. pp. 405, 414. During this period, Mrs. Sibole, her husband and son have lived in the Maghan's mobile home. Tr. pp. 402-03, 572, 722-23, 725, 737.

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<sup>25</sup> Because the Notice was required under New Jersey law, similar language had been contained in every notice of a rent increase. The letter accompanying the Notice also contained the specific statements that the Notice is required by law and is not intended to disturb the recipient. Accordingly, testimony by any Complainant that the Notice caused emotional distress is implausible and is rejected.

151. Mr. and Mrs. Maghan pay a monthly base rent of \$196.07 plus an additional \$5.00 monthly fee for Mrs. Sibole. They have paid that amount since moving into FVR. Tr. pp. 355-56.

152. Mr. and Mrs. Maghan's mobile home is 12' x 70', with a 7' x 12' extension. It has a living room, one and one-half bathrooms, three bedrooms, and an eat-in kitchen. Tr. pp. 375-76.

153. The Maghans wish to move to Florida. Tr. pp. 376, 382, 581.

154. From the end of March of 1989, until the hearing, Mr. and Mrs. Maghan's mobile home has been for sale. Tr. pp. 376, 575, 732. They placed a "For Sale" sign in the window of the home, and placed signs in five grocery stores, one school, and the FVR clubhouse. They orally notified people that the home was for sale. Tr. pp. 377, 399-400. They are asking \$36,000.00 for their home. Tr. pp. 376-77, 733.

155. Mr. and Mrs. Maghan have had several prospective purchasers for their mobile home, including: 1) a couple in their late thirties with two children ages 12 and 16, willing to pay \$36,000 who, in April of 1989, were rejected as lease applicants by Mr. Tarantino; 2) a woman, age 47, also willing to pay \$36,000, who was rejected by Mr. Tarantino in May of 1989; 3) a 52-year-old man and his wife, in May of 1989, who upon being informed of PCI's age restriction, stated that "[t]here is no sense in me even bothering" and left FVR; 4) a couple under the age of 55, who, in July of 1989, were informed by Mrs. Maghan that because they were not yet 55, they could not purchase the home. The Maghans notified all the above individuals and others that they would have to complete an application to lease and be approved by PCI before they could purchase the home. Tr. pp. 379-81, 382, 412-13, 574-75.

156. Mr. and Mrs. Sibole were also interested in purchasing the Maghans' mobile home. Tr. pp. 406, 732.

157. On or about April 21, 1989, Mr. and Mrs. Maghan filed a complaint with HUD alleging that Respondents violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 21. Sec. Ex. 34; Tr. pp. 383-84, 973-74. They believe PCI's age restriction has limited their ability to sell. Tr. pp. 382, 574, 580, 583.

158. Mr. and Mrs. Maghan were upset by the Notice to Quit and its mandate that residents either agree to the new 55 or older policy or move; they had no chance to move from FVR before the policy was implemented and believe they have been unable, as a result of the policy, to sell since the policy was implemented. Tr. pp. 355, 387-89, 575. They claim they felt "bad" that families could not live at FVR "just because they had children." Tr. p. 575. The Maghans were upset that they had to inform potential buyers who were under the age of 55 that they would not be approved by PCI and, therefore, they could not sell their home to them. Tr. pp. 381-82.

159. Mr. and Mrs. Maghan traveled approximately 1,400 miles from Florida to attend the hearing in this matter. They testified that they spent approximately \$300.00 on lodging, tolls, food and gas during the trip and expect to have the same expenses on their return trip to Florida after the hearing. Tr. pp. 384-85. Since November, 1989, their daughter, son-in-law and grandchild have lived in the mobile home in FVR.

### Irwin Willenberg

160. Irwin H. Willenberg, 64 years of age, owns a mobile home on unit 167. He and his wife, who died in April of 1988, moved into the park in August of 1984. At the time they moved into FVR, the mobile home was subject to the 45-21 policy. Mr. Willenberg leases a mobile home space from PCI and is subject to the rules and regulations of FVR. Answer, para. 11; Sec. Ex. 66; Tr. pp. 744, 746, 772, 778. Mr. Willenberg is a retired New York City firefighter. Tr. pp. 745-46.

161. Mr. Willenberg pays a monthly base rent of \$196.07 and an additional \$5.00 fee per month because his brother-in-law, age 57, lives with him. Tr. p. 745.

162. Mr. Willenberg's mobile home is the only "triple-wide" unit in FVR and has four bedrooms, two full bathrooms, a screened-in porch, a family room, a living room, a dining room, a kitchen, a pantry, and a laundry room. Tr. pp. 728, 733, 739, 770-71, 777-78. It is 36'x 70'. Tr. p. 770. Mr. Willenberg has made improvements to the home during his ownership, including putting in new kitchen counters and a sink, carpeting the entire home, and hanging new drapes throughout the home. Tr. p. 792.

163. Mr. Willenberg would like to sell his home because it is too large for him. He would like to move to Florida. Tr. pp. 771-72. However, he admits that has had made no serious effort to sell it. Tr. p. 782.

164. Mr. Willenberg's home has been for sale since April 1988, and was still for sale at the time of the hearing. To market his home, Mr. Willenberg has been telling people that the home is for sale and, at the end of 1989, posted a sign in a grocery store. Tr. pp. 771-72, 780-81, 790-91. Mr. Willenberg is asking \$65,000.00 for his home. Tr. p. 772.

165. In early July of 1989, Paula Sibole visited Mr. Willenberg's home. Mrs. Sibole was interested in purchasing the home for an amount in the \$60,000.00 - \$69,000.00 range. She and her husband were able to make a down payment of approximately \$15,000.00. Mr. Willenberg informed Mrs. Sibole that she had to complete

an application to lease and be approved by the park manager before she could purchase the home. She and Mr. Willenberg then went to the FVR clubhouse to request an application to lease. Tr. pp. 727, 731, 733, 742-43, 773. She requested that Mr. Tarantino provide her with an application to lease a mobile home space for her husband and herself and their child, age 14 months. Mrs. Sibole's son was with her at the time, and the Siboles were also expecting a second child. Mr. Tarantino refused to give Mrs. Sibole an application to lease because she and her husband were not age 55 or older and they had a child under the age of 21. Tr. pp. 730-31, 773-74. At the time Mrs. Sibole requested the application, she and Mr. Willenberg were still negotiating and had not agreed on a price. Tr. p. 743.

166. In November or December of 1989, a woman under the age of 55 with a daughter under the age of 18 expressed an interest in Mr. Willenberg's home, but he told her that he could not sell to her. Tr. p. 774. Whenever anyone under the age of 55 telephoned Mr. Willenberg, he notified them that he could not sell to them because of Respondents' 55 or older policy. Tr. pp. 774-75. In addition, since late 1989, a few individuals over the age of 55 telephoned Mr. Willenberg, but they said that because of its size, they were not interested in purchasing the home. Tr. pp. 774.

167. On or about April 27, 1989, Mr. Willenberg filed a complaint with HUD alleging that Respondents violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 21. Sec. Ex. 23; Tr. pp. 775-76.

168. Mr. Willenberg would like to will his home to his children upon his death or give it to his children, but he cannot because they are under the age of 55. He testified that this is very frustrating and aggravating to him. Tr. pp. 748-49, 775-76.

#### Joyce Verzi

169. Joyce Verzi, born on October 15, 1933, owns a mobile home on unit 49. She moved into FVR in August 1986, and currently resides with her fiance and his 18-year-old son, Eric. She leases a mobile home space from PCI and is subject to the rules and regulations of FVR. At the time she moved into FVR, her mobile home was subject to the 45-21 policy. Answer, para. 13; Sec. Ex. 66; Tr. pp. 207-208, 215, 259, 1378.

170. Ms. Verzi pays a monthly base rent of \$196.02. She also pays an additional \$10.00 per month. Tr. pp. 208, 216, 259, 283.

171. Ms. Verzi's mobile home is double-wide, with three bedrooms, one and one-half bathrooms, a living room, a dining room, a laundry room, and a kitchen. Tr. pp. 207, 235, 272, 278. It has aluminum siding. Tr. p. 274. Since purchasing the home, Ms. Verzi has redone the plumbing and electrical systems and has purchased a new dishwasher. Tr. p. 282.

172. Ms. Verzi and her fiance have a home-based security business, American Eagle Security, which employs 10 security guards. She and her fiance would like to move to a house because the success of this business requires the ownership and use of guard dogs. Tr. pp. 236-37, 241-42, 281, 289. At the time she testified, she was employed as a security guard at the Freehold Race Track.

173. From July 6, 1988, until the hearing, Ms. Verzi's mobile home has been for sale. Sec. Ex. 5; Tr. pp. 235-36, 261. To sell her home, Ms. Verzi has placed a "For Sale" sign in the window of the home, placed notices on bulletin boards in two grocery stores, and told people that the home was for sale. Tr. pp. 236, 264. Ms. Verzi is asking \$60,000.00 for her home but is willing to accept no less than \$50,000.00 for the home. Tr. pp. 236, 261, 282-83.

174. Her efforts to sell her mobile home began in July 1988. Tr. p. 236. Since March 12, 1989, Ms. Verzi was visited by several individuals, including: 1) an older woman who was not well physically, and, in the opinion of Ms. Verzi, could not have bought the house because of her ill health; 2) in September or October of 1989, a man and woman with two children, ages approximately 7 and 10, who said that they were going to visit the clubhouse to ask about leasing in FVR and who did not contact Ms. Verzi again; 3) in December of 1989, a woman, age approximately 48 or 49, with a 16-year-old daughter, who was never heard from again; and 4) in January of 1990, a woman, age 54, who informed Ms. Verzi that she had visited the FVR office and "[t]hey won't even talk to me." Tr. pp. 238-40, 277-80, 285. Other individuals stopped to visit Ms. Verzi's home after noticing her "For Sale" sign while driving through the park. Tr. pp. 262-63. Ms. Verzi informed all of these individuals that they had to be approved by PCI before they could purchase the home. Tr. p. 279.

175. In January or February of 1990, Ms. Verzi informed Mr. Tarantino that a prospective buyer was interested in her mobile home. Mr. Tarantino stated that any purchaser had to be age 55 or older. Tr. pp. 220-21.

176. On or about April 27, 1989, Ms. Verzi filed a complaint with HUD alleging that Respondents had violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 21. Sec. Ex. 4; Tr. pp. 246-47, 809, 972. Ms. Verzi is frustrated by her inability to sell; she feels that her "hands are tied" by the FVR age restriction. Tr. pp. 219, 241, 265-66. She believes that PCI's 55 or older policy has hindered her ability to sell her home. Tr. pp. 246-47, 281.

177. By letter dated May 2, 1989, Stanley Seidenfeld, Director of Fair Housing and Equal Opportunity for HUD's New York Regional Office, notified Mr. Murphy that Ms. Verzi had filed a Fair Housing Act complaint against him and PCI. Sec. Ex. 92; Tr. pp. 809-811.

178. On June 19, 1989, during the investigation of the instant case, Ms. Haith and Olga Diaz, HUD investigators, met with Mr. Murphy, Mr. Tarantino and counsel for the Respondents, Christopher Hanlon, at the FVR clubhouse. Tr. pp. 813-15, 1066.

179. On or about November 29, 1989, Mr. Tarantino delivered to Ms. Verzi a "Warning Notice -- Violation of Park Rules" stating that she was in violation of three separate park rules relating to children under the age of 21, to pets, and to improperly parked automobiles. In the Notice, Mr. Tarantino stated that "it has come to my attention that you have a dog and two young adults that are not registered living in your home." Sec. Ex. 6; Tr. pp. 209, 1324-27, 1349-52, 1373, 1378.

180. Ms. Verzi's son, who is 28 years of age, has lived with her since she moved into FVR and was a registered resident of the park. Tr. pp. 208-09, 1375.

181. Ms. Verzi owns two cars and her fiance's son owns one car. Tr. 209. One or two cars are usually parked in her driveway and two or three cars may at times be parked directly in front of her home. Tr. p. 210.

182. FVR rules provide that there shall be no on-street parking. Res. Ex. 12; Tr. pp. 251, 1325. However, residents of FVR regularly park their automobiles in the street. Tr. pp. 210, 249, 251, 252-53, 283.

183. Ms. Verzi felt harassed by the Warning Notice from Mr. Tarantino. She believes that she received the Notice because she filed a Fair Housing Act complaint in this case. Tr. pp. 210-11.

184. The Warning Notice of November 29, 1989, was sent to Ms. Verzi after PCI learned that Ms. Verzi had filed a discrimination complaint. However, after issuing the Notice, Mr. Tarantino spoke with her. She agreed to comply with the registration requirements. The problem was resolved at that time. Tr. p. 1351.

185. Ms. Verzi is paid approximately \$60.00 per day, and she took one day off from work to appear at the hearing in this matter. Tr. p. 247.

#### Henry and Deborah Berkebile

186. Henry and Deborah Berkebile, both age 37, own a mobile home on unit 15. They moved into FVR in 1979. At that time, their mobile home was subject to no age restriction. The Berkebiles currently live with their two children, ages 6 and 17. These children grew up in the park. Answer, para. 14; Sec. Ex. 66; Tr. pp. 465, 467, 525-26, 528.

187. Mr. and Mrs. Berkebile are both employed at Marlboro Psychiatric Hospital in Marlboro, New Jersey. Mrs. Berkebile is a dental assistant. Tr. pp. 466, 526. Mr. Berkebile had reconstructive knee surgery and in 1984 required the use of a wheelchair. Tr. pp. 532-34.

188. The Berkebiles pay a monthly base rent of \$203.72 and an additional \$5.00 per month for each of their children. Tr. pp. 466, 540.

189. The Berkebile's mobile home is a 12' x 68' single-wide unit with a 12' x 16' addition. Tr. p. 512. It has three bedrooms and a screened-in porch. Tr. p. 545. Since

purchasing the home, the Berkebiles have built an addition which consists of a bedroom and a half bathroom. They also added a new furnace, hot water heater, wall oven, dishwasher and central air conditioning, laid linoleum in the kitchen and bathroom, carpeted the rest of the home, upgraded the electrical system, put a shed in the yard and vinyl siding on the home, and placed five tons of stone around the yard. These improvements cost about \$29,000.00. Tr. pp. 521-22, 545.

190. In February of 1989, after receiving the Notice dated January 3, 1989, the Berkebiles put their home up for sale because they did not want their children to grow up in an "adult community". They wanted their children to live near other children. Tr. pp. 470, 477, 543.

191. The Berkebile's home was still for sale at the time of the hearing. To market their home, the Berkebiles put two "For Sale" signs in the windows of the home, posted signs in seven grocery stores and the FVR clubhouse, placed advertisements in the *Asbury Park Press* for 10-day periods on three separate occasions, and telephoned real estate agents and asked them whether they were aware of anyone interested in purchasing a mobile home. Sec. Exs. 90, 91; Tr. pp. 477-81, 510-512. The first advertisement, placed in the *Asbury Park Press* in February 1989, cost the Berkebiles \$61.50. Sec. Exs. 90, 91; Tr. 479-80. They are asking \$55,000.00 for their home. Tr. p. 482.

192. The Berkebiles have had several potential buyers. Tr. p. 482. A 47-year-old man decided that he wanted to purchase the home in late February 1989, but was unable to acquire financing before the 55 or older policy went into effect at FVR. Tr. pp. 486-87. A gentleman named Tony Brito, 46, expressed an interest in purchasing the home in late February of 1989 for his son and daughter-in-law who were both in their early twenties. Tr. pp. 487-89. Mrs. Berkebile informed Mr. Brito that she was unable to sell to him because of PCI's age restriction. Tr. pp. 488-89, 513. On separate occasions during the Spring of 1989, two families with young children under the age of 18 visited the Berkebile's home, but Mrs. Berkebile told them that they could not buy her home because they had children. Tr. pp. 489, 491-92. A woman, age 60, visited the Berkebile's home in the summer of 1989, but, when informed by Mrs. Berkebile that her grandchildren could visit for no longer than a two-week period, the woman lost interest in the home. Tr. pp. 492-93. In the Summer of 1989, two young couples without children visited the home on separate occasions. Tr. pp. 493-94. Several other individuals under the age of 55 stopped at the mobile home, but left FVR upon being informed by the Berkebiles about the instant case and the 55 or older policy. Tr. pp. 494-95, 529-31, 546.

193. On February 4, 1989, based upon their expectation that their mobile home would be sold to the unnamed 47 year old man described above, the Berkebiles signed an Agreement of Sale to buy a ranch style house, with three bedrooms, two bathrooms, a living room, kitchen and garage, for \$135,000.00. The house was located in a good neighborhood, approximately 2,000 feet from FVR. The Berkebile children would have attended the same schools if the family had moved. In addition, Mr. Berkebile required a unit without steps because of his knee condition. The Agreement of Sale, which was contingent upon the sale of the Berkebile's mobile home, expired on April 5, 1989. Sec. Exs. 38, 39; Tr. pp. 496-499, 514-16, 543-44. This house is no longer for sale, and according to Mrs. Berkebile, has appreciated by \$4,900.00. Tr. pp. 504-05, 516-17.

194. In the Fall of 1989, Mr. Berkebile began to build a clubhouse for his son after receiving permission to do so from Mr. Tarantino. In February of 1990, Mr. Tarantino told him to stop building the clubhouse because he had received complaints about it. Tr. pp. 503, 542, 555-57, 1337-38, 1340. Recently, a neighbor of the Berkebiles in FVR built a wooden deck on his space. Tr. p. 542.

195. On or about April 27, 1989, Mr. and Mrs. Berkebile filed a complaint with HUD alleging that Respondents violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 21. Sec. Ex. 37; Tr. pp. 518-519, 558-59, 974. They believe that their ability to sell their home has been restricted by PCI's 55 or older policy. Tr. pp. 504, 544.

196. Mr. and Mrs. Berkebile have been aggravated and upset both by their inability to sell their mobile home and the effect upon their children of PCI's policy of excluding children. Tr. pp. 503-04, 538, 544, 554. Mr. Berkebile stated, "when you start being rotten to me, I can live a little bit more, but when you start being rotten to my kids, I can't take it." Tr. p. 544. They do not want their family to live in a community of older persons. Tr. pp. 504, 539. Their marriage has been strained as a result of being unable to sell their mobile home. Tr. pp. 506, 538. Mr. Berkebile has high blood pressure that has been aggravated by his inability to sell his home. Tr. p. 539.

197. Mr. and Mrs. Berkebile were absent from work on three and one-half days because of the instant case. He earns \$77.00 per day. She earns \$70.00 per day. Tr. pp. 466, 561-62.

#### Robert Ramsey

198. Robert Ramsey was born on January 24, 1929. He owns a mobile home on unit 50. He moved into the park in 1978, and at that time, no age restriction applied to his mobile home. Answer, para. 15; Sec. Ex. 66; Tr. pp. 655-656.

199. Mr. Ramsey is employed as the supervisor of heating, venting, air conditioning and refrigeration at Fort Monmouth, New Jersey. Tr. p. 656. He has been employed at Fort Monmouth since about 1956. Tr. pp. 681, 700-01. Mr. Ramsey was absent from work on two days for the hearing in the instant case. He makes approximately \$126.00 per day. Tr. pp. 656, 686, 708, 710-12, 719-20.

200. Mr. Ramsey pays \$196.07 rent per month. Tr. p. 656. Mr. Ramsey's mobile home is a 12'x 75' single-wide model and has three bedrooms, a living room, one and one-half bathrooms, and a wrap-around porch. Tr. pp. 672, 692.

201. Mr. Ramsey suffers from arthritis in the legs. Tr. p. 673. He is affected by cold weather and would like to move to the warmer climate of Florida. Tr. pp. 673, 682.

202. His home has been for sale since November of 1988, and was still for sale at the time of the hearing. Sec. Ex. 36. Mr. Ramsey placed a "For Sale" sign, with his telephone number, in the window of his home, posted signs in the FVR clubhouse, and told people that his home was for sale. Tr. pp. 673-74, 699-700. Mr. Ramsey is asking

\$42,000.00 for his home, but is now willing to accept \$32,000.00. Tr. pp. 674, 683, 701-02.

203. A man approximately age 55 and his wife approximately age 45 expressed an interest in his mobile home in June 1989. This couple had a son who was about 17 years of age. At that time, Mr. Ramsey did not know the age of the child. The man offered to purchase the home and was ready to give Mr. Ramsey a check for \$42,000.00. However, Mr. Ramsey informed the man that he had to be approved by PCI. Mr. Ramsey asked the man if he was sure that he wanted to purchase the home because, if so, Mr. Ramsey would begin to pack his belongings. The man said that he was sure about the purchase. Mr. Ramsey then informed his supervisor at Fort Monmouth that he would be resigning his employment and began to pack for the move. About three weeks later, the man telephoned Mr. Ramsey and told him that his family would not be purchasing the home because they had been denied an application to lease by the manager of FVR. Tr. pp. 674-78, 680, 683, 692, 694-95, 697, 708, 710-11, 714-19.

204. In February of 1990, a woman, age 53, with two daughters over the age of 21, visited Mr. Ramsey's home. Mr. Ramsey instructed them to go to the clubhouse office to request an application to lease; Mr. Ramsey did not hear from these people again. Tr. pp. 678-79, 712-13. Several individuals with children under the age of 18 have also visited or telephoned Mr. Ramsey's home, but he informed them that they would not be allowed to move into FVR. Tr. pp. 674, 679. Two individuals who described themselves as "seniors" telephoned Mr. Ramsey about the home, but did not purchase it because it was too large. Tr. pp. 692-93. A couple over the age of 55 offered to purchase the home for \$26,000.00, but Mr. Ramsey rejected the offer as too low. Tr. pp. 679, 692-94.

205. On or about April 27, 1989, Mr. Ramsey filed a complaint with HUD alleging that Respondents violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 21. Sec. Ex. 35; Tr. pp. 685, 703-04, 974. Mr. Ramsey feels that it is just "not right" to exclude families with children. Tr. p. 684.

206. Mr. Ramsey was distressed that he was unable to sell his home to the couple with the 17 year old son. He had to withdraw his resignation at work, and believes he has lost credibility with his employers. He has not been offered a contract for next year. Tr. pp. 681-82, 720.

207. Mr. Ramsey did not receive written notification from PCI regarding the implementation of the 55 or older policy. Res. Ex. 41; Tr. pp. 660-61, 1197-98. He first became aware of the policy when Mr. Meyer informed him of it at the clubhouse in the Spring of 1989. Tr. p. 662.

#### Denis DuBois

208. Denis DuBois, born on March 22, 1926, owns a mobile home located on unit 100. He moved into FVR sometime in 1987, at which time his mobile home was subject to the 45-45 policy. Answer, para. 16; Sec. Ex. 66; Tr. 432-33. Mr. DuBois pays \$204.00 rent per month. Tr. p. 434.

209. Mr. DuBois is disabled and does not work. Prior to becoming disabled, Mr. DuBois was a garage supervisor for East Brunswick, New Jersey. He suffers from a memory loss problem. Tr. pp. 433-34.

210. Mr. DuBois' mobile home is 24' x 50'; it has one and one-half bathrooms, two bedrooms, a dining room and a kitchen. Tr. p. 444.

211. Mr. DuBois owns a second mobile home in Wallanpaupak, Pennsylvania, which he often visits. Tr. pp. 433, 436, 461. He would like to sell his home in FVR and move permanently to this Pennsylvania home to enjoy boating. Tr. pp. 444-45, 448.

212. Mr. DuBois' mobile home has been for sale since June 16, 1988. Tr. p. 451. It was still for sale at the time of the hearing. Tr. pp. 444, 451. Mr. DuBois placed a "For Sale" sign in the window of the home, has posted signs in the clubhouse and one grocery store, and has placed advertisements in the *Asbury Park Press* on two occasions at a cost of \$26.00 or \$27.00 for each advertisement. Tr. pp. 445, 446, 450, 458-61. His original asking price was \$38,000.00; he later lowered his asking price to \$35,000.00. He is now willing to accept an offer less than \$35,000.00. Tr. p. 444.

213. Mr. DuBois has had several potential buyers. A 46 year old woman with a son, age 20, and a daughter, age 16, was very interested in the home. Mr. DuBois informed this woman of PCI's age restriction, and she indicated that she would wait until the instant case is resolved. Tr. pp. 445-46. If FVR becomes a family park, this woman has offered to purchase Mr. DuBois' home for \$32,000.00. Tr. pp. 446, 463. Mr. DuBois has also had approximately 10 young people visit his home; however, when informed of PCI's age restriction by Mr. DuBois, they left the park. Tr. p. 446. Other individuals under the age of 55 telephoned Mr. DuBois about the home, but hung up when informed of the age restriction. Tr. p. 454. In about February of 1990, a woman who was over the age of 55 also inspected the home, but she did not purchase it. Tr. pp. 452-54, 464.

214. On or about April 27, 1989, Mr. DuBois filed a complaint with HUD alleging that Respondents had violated the Fair Housing Act by refusing to rent spaces in FVR to families with children under the age of 21. Sec. Ex. 33; Tr. pp. 449, 973. He believes that the 55 or older policy has affected his ability to sell his home. Tr. p. 447. He further believes that he could sell it much more easily to a young person. Tr. p. 449.

#### Kevin and Barbara McDermott

215. Kevin and Barbara McDermott, who were born on July 6, 1962, and July 10, 1961, respectively, reside in a mobile home on unit 59. The space on which their mobile home sits is leased to Mrs. McDermott's mother, Patricia DiMarsico, who was born on August 19, 1939. Answer, para. 17; Res. Exs. 33-35; Tr. pp. 587-88, 618, 622. The McDermotts live with their child, Meghan, who was born on November 27, 1989. Tr. p. 588.

216. Mr. McDermott is employed as a truck driver, and Mrs. McDermott, who is not currently employed in a wage earning capacity, raises their child. Tr. p. 588.

217. Mr. and Mrs. McDermott currently pay a base rent of \$180.66 per month, plus a \$5.00 fee per month for their daughter. Tr. p. 589.

218. In June of 1988, Mrs. McDermott, who was then separated from her husband, and her mother moved into the mobile home. At the time they moved in, the mobile home was subject to the 45-21 policy. Sec. Ex. 66; Tr. pp. 587, 599-600, 619. Title to the home was placed in Mrs. DiMarsico's name because she was over the age of 45. Tr. pp. 600, 626. Mrs. DiMarsico is disabled and suffers from scleroderma, a crippling skin disease. Tr. pp. 600-01, 620, 645. Because of her condition, she needed Mrs. McDermott to live with her. Tr. pp. 635, 642. Mrs. McDermott intentionally failed to disclose to the management of FVR that she had moved into unit 59.

219. In August of 1988, Mr. and Mrs. McDermott reconciled. Tr. p. 600. At the end of August or beginning of September 1988, Mrs. DiMarsico moved out of FVR because, with her disability, she could not live there. Tr. pp. 600-01, 627. The McDermotts failed to advise the management of FVR that Mr. McDermott had moved in or that Mrs. DiMarsico had moved out until November of the following year. Sec. Ex. 27.

220. On April 18, 1989, Mr. Meyer visited the McDermott's mobile home and told Mr. McDermott that he and his wife could not live in FVR. Sec. Ex 25; Tr. pp. 630, 640, 1210, 1221-22. Mr. Meyer had received complaints from neighbors that the McDermotts were living in the mobile home. Mr. McDermott told Mr. Meyer that he and his wife did not live in the home. Tr. pp. 640, 643, 1210, 1221-22, 1224-25. At about this time, Mr. Meyer informed Mr. Tarantino that he believed that the McDermotts were residing in the mobile home. Tr. p. 1329.

221. On or about May 17, 1989, Mrs. McDermott, who was then pregnant, filed a complaint with HUD alleging that Respondents had violated the Fair Housing Act by refusing to rent a mobile home space to her and her husband based on their familial status. Sec. Ex. 25; Tr. pp. 607-08, 616, 637, 811.

222. By letter dated May 25, 1989, Stanley Seidenfeld, Director of Fair Housing and Equal Opportunity for HUD's New York Regional Office, notified Mr. Murphy that

Mr. and Mrs. McDermott had filed a Fair Housing Act complaint against him and PCI. Sec. Ex. 93; Tr. pp. 811-13, 972-74.

223. In early June of 1989, Mr. Tarantino sent to Mrs. DiMarsico a "Notice to Tenant - Breach of Lease Provision," dated June 2, 1989, alleging that unregistered tenants resided in her mobile home. Res. Ex. 36; Tr. pp. 610, 637, 1329-30.

224. After receiving Mr. Tarantino's June 2, 1989, Notice, Mrs. DiMarsico informed Mr. Tarantino that Mr. and Mrs. McDermott lived in the mobile home. The McDermotts then met with Mr. Tarantino and became registered residents of the home. Tr. pp. 610, 1330, 1358-59. In June 1989, the McDermotts began to pay an additional \$10.00 fee to live in their mobile home. They also paid \$110.00 -- \$10.00 for each of the previous eleven months. The McDermotts paid this monthly fee until December 1989. Answer, para. 34; Sec. Ex. 27; Tr. pp. 641, 1330.

225. When Mrs. DiMarsico moved out of the park, she did not transfer title to Mrs. McDermott. Tr. pp. 605, 616-17, 628, 631. On August 16, 1989, title to the mobile home was transferred from Mrs. DiMarsico to Mrs. McDermott. Sec. Ex. 27; Tr. pp. 605, 627.

226. In late November of 1989, Mr. Tarantino delivered a letter, dated November 20, 1989, to Mrs. DiMarsico stating that owners of mobile homes in FVR "must be a certain age and must live in the Park" and further indicating that "[w]e have received complaints...that you are not complying with the lease agreement." Sec. Ex. 26; Tr. pp. 606-07, 1331, 1353-56. The letter was prompted by his receipt of checks made out by Mrs. McDermott, rather than Mrs. DiMarsico, and anonymous phone calls from other homeowners. Tr. p. 1353.

227. After receiving Mr. Tarantino's November 20, 1989, letter, Mrs. McDermott sent a letter to Mr. Tarantino stating that she and her husband would no longer pay the \$10.00 fee in addition to their base rent. She also enclosed a copy of the title to the mobile home. This was the first time the McDermotts informed PCI that the title had been transferred from Mrs. DiMarsico to them. Sec. Ex. 27; Tr. pp. 609-10, 1331-32.

228. By "Notice to Cease - Breach of Lease" dated December 19, 1989, Mr. Russo, the PCI attorney, informed Mrs. McDermott that she was in breach of her lease because the mobile home had been sublet without prior approval of the landlord and because she was living with a child under the age of 21. The letter noted that eviction proceedings would be postponed pending the outcome of the instant Fair Housing Act case. Sec. Ex. 28; Tr. pp. 611-12, 1017-18, 1333-34, 1356-58, 1361-62.

229. A "Notice to Cease - Breach of Lease" was also sent to Mr. Anisko. His purported offenses were constructing an unauthorized shed and having children under 18 residing with him. Sec. Ex. 64. Mr. Anisko did not file a housing discrimination complaint. He did have children under the age of 18 residing with him. Tr. p. 1361. Similar notices were not sent to either Mr. Constable or Joan Lupardo. In both of their cases, FVR management had knowledge of rule violations. In the case of Mr. Constable, he did not live in the unit. Joan Lupardo, like Mrs. McDermott, was under 55 and had purchased a home without permission. Sec. Ex. 57. Neither Mr. Constable nor Ms.

Lupardo had children under 21 residing with them, and they are being allowed to remain in FVR.

230. Upon receiving Mr. Russo's Notice, Mrs. McDermott felt angry, upset, frustrated, and annoyed. She testified that she was afraid because she had a new baby and nowhere else to go. She further testified, "[y]our roof over your head is threatened." Her marriage suffered because of these feelings. Tension developed, and arguments resulted. Mrs. McDermott does not understand "why everybody can't live together." Tr. pp. 600, 603, 612-13, 617.

231. Mrs. McDermott attended the hearing in this matter for five days, and paid approximately \$30.00 per day for a babysitter for her daughter. Tr. p. 588.

### Discussion

#### Introduction

On September 13, 1988, Congress amended the Fair Housing Act to prohibit, *inter alia*, practices that discriminate on the basis of familial status. 42 U.S.C. Sec. 3601, *et seq.* (1989). Congress noted that a HUD survey found that 25 percent of all rental properties exclude children, 50 percent of all rental units have policies restricting families with children in some way, and almost 20 percent of families were living in homes they considered less desirable because of restrictive practices. H.R. Rep. No. 711, 100th Cong. 2d. Sess. at 19, *citing* Marans, "*Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey*," Office of Policy Planning and Research, HUD (1980); 134 Cong. Rec. H4684 (daily ed. June 23, 1988) (remarks of Rep. Morella). This survey found that nearly 20 percent of families with children were forced to live in less desirable housing because of restrictive housing policies. 134 Cong. Rec. H4684. Members of Congress noted that the problem was particularly acute among the homeless and in areas where there is a shortage of housing. *Id.* at H4683-84.

On June 23, 1988, the House of Representatives debated an amendment introduced by Congressman Shaw which would have removed the provision relating to familial discrimination from the Fair Housing Amendments Act. Mr. Shaw's concern was that the problem had been insufficiently studied, and would cost so much that it would put senior citizen housing outside the ability of many older persons to pay. 134 Cong. Rec. H4680 (daily ed. June 23, 1988). This proposed amendment was defeated. The discussion of the Shaw amendment and the legislative history in general indicates that, although Congress did not intend by this legislation to eliminate existing legitimate senior housing,<sup>26</sup> or to require additional expenditures on the part of older persons living in existing senior

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<sup>26</sup> Congressman Synar stated, "... the bill contains language aimed at protecting senior citizen retirement communities, those that are intended for and principally occupied by the elderly, and I think it is safe to say that the aim of the committee is not to disrupt the lives of senior citizens or the operation of legitimate retirement communities; rather, Mr. Chairman we seek to expand the availability of rental units for young families without arbitrary exclusions and without limitations. 134 Cong. Rec. H4682 (daily ed. June 23, 1988).

communities,<sup>27</sup> it clearly favored making increased housing available for families with children.

The Act's specific prohibitions include the following:

1. "to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling<sup>28</sup> to any person because of . . . familial status."<sup>29</sup> 42 U.S.C. Sec. 3604 (a); 24 C.F.R. Sec. 100.60 (1989);

2. "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status." 42 U.S.C. Sec. 3604 (b); 24 C.F.R. Sec. 100.65;

3. to "make, print or publish . . . any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . familial status, . . . or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. Sec. 3604 (c); 24 C.F.R. Sec. 100.75;

4. "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed . . . any right granted or protected by the Act." 42 U.S.C. Sec. 3618; 24 C.F.R. Sec. 100.400.

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<sup>27</sup> Senator Kennedy, discussing the 55 and over exception, stated: ". . . it was never intended to be a requirement that additional kinds of services would be necessary in order to enjoy the provisions and protections of the act." 134 Cong. Rec. S10543 (daily ed. August 1, 1988).

<sup>28</sup> A "dwelling" includes "any vacant land which is offered for sale or lease for the . . . location thereon of any . . . building, structure or portion thereof." 42 U.S.C. Sec. 3602 (b), (c); 24 C.F.R. Sec. 100.20.

<sup>29</sup> "Familial status" is defined as "one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such individual or individuals." 42 U.S.C. Sec. 3602 (k). "The familial status protection extends to pregnant women." *Id.*

There are exceptions in the Act for housing that qualifies as being for "older persons".<sup>30</sup> The exemption claimed by the Respondents is based upon their claim that they furnish housing for persons 55 or older.

Title 42, Section 3607 (b) provides that "housing for older persons" means housing

(2)(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections (2)(B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsection (2) (B) or (C); or

(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsection (2)(B) or (C).

The first sentence of Section (b)(2)(C) cannot be read as an independent exemption in light of the sentence which follows it. Thus, even if Respondents demonstrated that the units were intended and operated for occupancy by at least one person 55 years of age or older per unit, FVR could not qualify for an exemption if after the promulgation of HUD's regulations, it did not satisfy at least the three factors listed in Section 3607 (b)(2)(C). The exemption for housing for older persons 62 or older found in Subsection (b)(2)(B) contains no similar requirements.<sup>31</sup> Thus, Congress intended to mandate criteria which must be satisfied in order to prevent the 55 or older exemption from being used as a ruse to discriminate against families with children.<sup>32</sup>

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<sup>30</sup> The legislative history demonstrates that the exemptions in Section 3607 apply to mobile home communities: "[A]n elderly mobile home community can remain as such if it meets one of two exemptions [enacted as Section 3607 (2)(C)]." 134 Cong. Rec. S10551 (daily ed. August 2, 1988) (remarks of Senator Wilson).

<sup>31</sup> Section 3607 (b)(2)(B) defines "housing for older persons" as including housing ". . . intended for, and solely occupied by, persons 62 years of age or older".

<sup>32</sup> In opposing the Shaw Amendment, Congressman Miller stated: "This amendment [the Fair Housing Amendment, not the Shaw Amendment] in fact protects senior citizen villages, senior citizen housing, senior citizen complexes. What this amendment does not allow you to do is use it as a subterfuge to deny families with children their housing." 134 Cong. Rec. H4685 (daily ed. June 23,

In order to qualify for this exemption, three independent criteria must be satisfied. First, Respondents must demonstrate that FVR had significant facilities or services specifically designed to meet the physical or social needs of older persons; or, if it did not meet this test, that it is impracticable to provide such facilities or services, and that the housing is necessary to provide an important housing opportunity. Second, they must demonstrate that at least 80 percent of all units were occupied by at least one person 55 years of age or older per unit, or that at least 80 percent of the units that became occupied by new tenants after September 13, 1988, were occupied by at least one person age 55 or older. Finally, they must demonstrate that they published and adhered to policies and procedures demonstrating their intent to provide housing for persons aged 55 or older. 42 U.S.C. Sec. 3607 (b)(2), (b)(3)(A); 24 C.F.R. Secs. 100.300, 100.304 (d)(1).

The three part test is phrased in the conjunctive rather than the disjunctive. Thus, once a case of discrimination has been made out, to prove its affirmative defense that the housing for older persons exemption applies, Respondents have the burden of satisfying each and every one of these requirements. *Cf. Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), *citing Teamsters v. U.S.*, 431 U.S. 324, 358 n.44 (1977). *See also Price Waterhouse v. Hopkins*, \_\_\_ U.S. \_\_\_, 109 S. Ct. 1775, 1789 (1989); *Dothard v. Rawlinson*, 433 U.S. 321, 333 (1977).

HUD regulations required by Section 3607 (b)(2)(C) were promulgated on January 23, 1989, and became effective on March 12, 1989. 54 Fed. Reg. 3232 (Jan. 23, 1989). The only exception to the March 12, 1989 effective date is a statutory provision which permits an exception for "grandfathering" individuals living in these communities who were under 55 as of September 13, 1988, provided that any new occupants meet the 55 or older requirement. 42 U.S.C. Sec. 3607 (3).

### Significant Facilities and Services

The legislative history sets forth a list of facilities and services for elderly persons. These include:

congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilities, access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them.

H.R. Rep. No. 711 at 32; 134 Cong. Rec. H4680 (daily ed. June 23, 1988) (remarks of Rep. Shaw).

The regulations implementing the Fair Housing Amendments Act are substantially the same. The regulations provide:

Significant facilities and services specifically designed to meet the physical or social needs of older persons include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them the (housing facility need not have all of these features to qualify for the exemption under this subparagraph).

24 C.F.R. Sec. 100.304 (b)(1).

In responding to comments to its proposed regulations HUD stated:

The Department wishes to stress that a housing facility may have significant facilities and services designed to meet the physical or social needs of older persons who live very independently. A housing facility, for example, need *not* necessarily have congregate dining facilities for an accessible physical environment in order to qualify. In fact, many of the facilities and services on the list can readily be associated with active older persons. These include social and recreational programs, preventive health care, information and counselling, recreational services, and transportation to facilitate access to social services. Moreover the list of services on this list was not intended to be exclusive.

\* \* \*

The facilities and services designed to meet the physical or social needs of older persons must be "significant" in order to satisfy paragraph (b)(1). It is not possible for the Department to define precisely what services and facilities must be present before they are considered "significant". The services and facilities will necessarily vary based upon the geographic location and the needs of the residents.

54 Fed. Reg. 3256. (Emphasis in original).

Congress did not establish an unqualified right for older persons to live in childless surroundings. The three part statutory test is intended to require the party claiming the exemption to prove by objective evidence that the special needs of the older persons residing in the community are such that they legally justify and permit the exclusion of families with children. To make this showing, the housing provider must demonstrate that the structures and amenities have been designed, constructed, or adapted to meet the particularized needs of older persons. The factors identified in the HUD regulation reflect certain characteristics which are common to older persons. First, older persons tend to suffer from physical limitations and health problems to a greater degree than younger

persons.<sup>33</sup> Second, older persons tend to have more leisure time than younger persons.<sup>34</sup>

Respondents have failed to demonstrate that the facilities and services at FVR are unique to the living styles and requirements of the older persons living in that community.<sup>35</sup> First, there is very limited provision made for the handicapped or infirm.<sup>36</sup> Second, although some physical facilities exist which older persons can use to occupy their time, the actual use of these facilities by older persons is infrequent to non-existent. Each of the facilities and services which Respondents hold forth as "significant" is discussed below in terms of these considerations. *See Res. Brief, pp. 28-33.*

The facilities and services identified by Respondents do not indicate significant design, construction, or adaptation for the handicapped or infirm. The large clubhouse, with its newly furnished universal room, kitchen, laundry room, billiard room, and card room, cannot be reached by an unassisted handicapped or infirm person. Even if an unassisted person confined to a wheelchair could cross the ditch which parallels the street, it would be impossible for this person to enter the clubhouse unless a particular gate by the swimming pool were unlocked. This gate is only unlocked in the summer when the pool is open. There is no seating at the pool for the disabled. The rail for the handicapped along the sidewalk entry to the clubhouse is loose and has been in that condition since December 1989. The lavatories in the clubhouse have no fixtures for the handicapped, nor are they accessible by wheelchair.

There is nothing about the pool or its use which demonstrates any design or adaptation to the living situations of the senior population of FVR. It has no physical characteristics which make it particularly accessible or useful to older persons. Users must

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<sup>33</sup> The House Report states: "[t]he community should be designed to meet the functional and safety needs of aging persons over time." H.R. Rep. No. 711, 100th Cong., 2d Sess., at 32.

<sup>34</sup> HUD recognized that there are "active" seniors. In responding to comments to the proposed regulations, it noted that any test involving active seniors would focus more on the existence of leisure time activities and preventive health care rather than on facilities and services for the handicapped or infirm. 54 Fed. Reg. 3256. This is also reflected in the statutory phrase, "physical or social needs". 42 U.S.C. Sec. 3607 (2)(C)(i) (emphasis added). The term "social needs" also relates to the increased physical limitations of older persons. Those who suffer from physical limitations may desire social contacts notwithstanding any lack of proximity or access to other people.

<sup>35</sup> With the exception of a demonstration that facilities have been adapted for access by the handicapped and infirm, facilities cannot typically be demonstrated to be unique to seniors. What is usually more easily demonstrated is the use made of the facility by older persons. Thus, a swimming pool may have a ramp or railing which permits access by a handicapped or infirm person. However, even without such specific adaptations, a swimming pool can be a "significant facility". For example, specific periods of time can be reserved for the use of the pool by older persons for swimming or instructional classes geared to older persons. Another adaptation might be the setting aside of a specific area of the pool for use by older persons.

<sup>36</sup> While seniors are not necessarily handicapped, the natural result of the aging process is debilitation. Thus, accommodations for the handicapped and provision for access by the infirm tend to demonstrate that the facilities are directly related to the unique living circumstances of older persons.

even carry their own chairs to the pool.<sup>37</sup> Neither blocks of time nor specific physical areas of space have been reserved for use by older persons.

The mail boxes in the clubhouse serve as an information center. Respondents are unable to deliver the mail to the individual mobile homes. However, since the mail boxes and bulletin boards are in the clubhouse, the same barriers to infirm and handicapped older persons discussed above apply to someone getting his or her mail or reading the bulletin board.

The facilities and services identified by Respondents do not indicate significant use by or for older persons. Respondents do not offer any social or recreational activities at the clubhouse. There is no television or radio. Bi-weekly bingo, occasional parties, and MHOA meetings are organized by groups of tenants themselves. Bingo is attended by only 12 or 13 residents. The MHOA also sponsors an occasional bus trip to Atlantic City, and an annual Christmas party. The "Sociables" hold occasional meetings in the clubhouse and have twice-yearly luncheons. Small groups of residents occasionally gather to play cards or cut coupons. There are no flea markets, "Chinese auctions", or other organized events. While the facility is available for any group or resident to use for non-commercial purposes, its infrequent use by the residents evidences a failure by Respondents to demonstrate that it is actually used to occupy the available leisure time of older persons. Such activities as take place in the clubhouse offer very little variety to older persons, are infrequent, and are lightly attended.<sup>38</sup> These activities do not establish that the use of this facility demonstrates an adaptation to the particularized needs of older persons.

What is true of the clubhouse is also true of the kitchen and laundry. The stove in the kitchen cannot be used. This has been the situation for years. For a long period of time there was no hot water in the laundry room. The shuffleboard court and putting green are not used at all. In fact, they are in such poor condition that they are unusable. The billiard room and pool tables are seldom used. Until before the hearing the cue sticks were unusable.

No instructional or exercise activities geared to older persons take place in the pool.

The bulletin board is used to distribute useful information such as the activities at the Senior Center, a list of "recommended" contractors, and the county bus schedule. However, much of this information relates to activities outside FVR which any senior resident of Dover County can use.

The facilities and services discussed above which Respondents assert are

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<sup>37</sup> Chairs may be stored near the pool. However, an unassisted handicapped or infirm person would still be required to move them to the pool and set them up.

<sup>38</sup> While the law does not require Respondents to organize these activities, in order for them to make a demonstration that any services available at the premises are "significant", such activities must, of course, exist.

"significant" do not meet the statutory test. The record also establishes that most of the other factors listed in 24 C.F.R. Sec. 100.304 (b)(1) regarding the lack of facilities for the infirm or handicapped are absent in FVR.

Facilities and services listed in the regulation are not reflected in FVR. There are sidewalks only in certain parts of the park, and, paralleling the sidewalks is a gutter which poses an insurmountable barrier to individuals in wheelchairs. FVR residents are responsible for removing snow on their own premises and must provide for maintenance of their own dwellings and areas outside the common grounds. There is no emergency or preventive health care, informational services or counselling provided. FVR is not within walking distance of any health care facilities. There are no homemaker services provided. There are no congregate dining facilities. The nearest grocery store is about two miles from the park. There is no transportation within the park. The closest county bus stop is three or four miles from the park, and there is no way to get there except to walk. The County supplies only one bus per week. Finally, there are no services within the park such as those which exist in OLV.

The activities listed in the regulation are also not reflected in FVR. There is no coordinator or organizer of activities. Nor are there any educational programs or social or recreational activities other than those described above.

Respondents also rely on the availability of facilities and services furnished by others to buttress their claim that significant facilities and services are available. These include the Dover County Senior Center which is 10 to 15 miles from FVR, and the "meals on wheels" provided by the County. As stated above, these facilities and services are available to any older person in Dover County regardless of where he or she lives. As a general rule, the availability of senior centers elsewhere in the same geographic location does not tend to set a particular community apart. Vicarious use of these facilities by particular communities would give any "community" the right to claim the right to discriminate against families if it met the other tests.<sup>39</sup> This construction could lead to situations where large numbers of communities exclude families with children, basing their claims on the availability of the identical public facilities. This would vitiate the facilities and services requirement. Accordingly, such evidence cannot be relied upon by the housing provider to meet its burden.

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It is possible to imagine a situation where the location of a senior facility available to the public is so integrally related to the community claiming the exemption that it is, in effect, on the premises. The Dover County Senior Center does not bear such a relation to FVR. It is not in close geographic proximity, and transportation to the facility is not provided by FVR.

It is clear from the record that, other than the expressed wishes of a few of the Complainants for more facilities and social activities, the majority of FVR residents like things the way they are. *See* Res. Ex. 27. They virtually all own or have ready access to cars, many of them are fully employed, and there is very little interest in the myriad facilities and activities which abound in OLV. Respondents contend that to require them to impose additional facilities and services "would only require that this landlord, who has experience dealing with these older persons for the last decade or more, should spend money on programs which his experience tells him will not be used or taken advantage of by these residents." Res. Brief p. 91. Respondents are correct in their contention that lack of interest is largely responsible for the lack of facilities and services and that spending money on these programs will not result in their use by the residents. However, this does not mean that FVR is a community for older persons. Rather, it tends to show that FVR is not a community constructed, designed, or adapted for older persons, even though many of its residents are older persons. On the contrary, it is a community composed of a majority of residents of what was formerly an "adult" community which seeks to continue its exclusion of families with children. The desire to exclude families with children, alone, is not a legitimate basis for establishing a community for older persons under the Fair Housing Act.

#### The "Practicability" and "Important Opportunity" Tests

Even if Respondents fail to meet the "significant facilities and services" test, they can prevail if they can demonstrate that the provision of such facilities and services is "impracticable" *and* that "such housing is necessary to provide important housing opportunities for older persons." 24 C.F.R. Sec. 100.304 (b)(2).<sup>40</sup>

HUD regulations identify seven factors to be considered in applying this two part test. 24 C.F.R. Sec. 100.304 (b)(2)<sup>41</sup> Applying these factors to the facts in this case, it is

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<sup>40</sup> This alternative was created for "those unusual circumstances where housing without such facilities and services provides important housing opportunities for older persons." 134 Cong. Rec. S10456, S10469 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding their Substitute Amendment). The exception is "to be narrowly used only when it can be demonstrated that the costs of providing the facilities and services would result in depriving low and moderate income persons of needed and desired housing. 134 Cong. Rec. S10549 (daily ed. August 2, 1988) (remarks of Sen. Kennedy).

<sup>41</sup> These factors are:

- (i) whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.
- (ii) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.
- (iii) The income range of the residents of the housing facility.
- (iv) The demand for housing for older persons in the relevant geographic area.
- (v) The range of housing choices for older persons within the relevant geographic area.

clear that Respondents do not meet these tests.

As discussed above, Respondents have not met the statutory test in the first part of Section 3607 (b)(2)(C)(i). However, the regulation permits an owner or manager of the housing facility to demonstrate that it has "endeavored" to provide those facilities and services. Mr. Murphy's testimony makes clear that he thought "significant facilities and services" existed in FVR when he made the decision to convert the park to a community for older persons. Tr. pp. 1001-1008. The record does not reveal any efforts made to provide additional facilities or services.<sup>42</sup> Respondents do not assert that the expense of adding facilities and services has made it impracticable to do so. They have supplied no financial data regarding the costs of providing additional facilities or their ability or inability to meet those costs.<sup>43</sup>

Respondents' argument as to impracticability relies on: 1) the lack of interest on the part of residents in additional facilities and services, and 2) the lack of physical space for expansion. Res. Brief p. 92. The first argument confuses a lack of willingness with inability. This provision comes into play when the "significant facilities and services" burden has not been met by the community. It is designed for the situation where a respondent would otherwise provide these services where they do not yet exist, but is prevented from doing so. The argument that Respondents cannot meet the burden because the residents of FVR are not interested in acquiring additional facilities or expanding their leisure time activities has nothing to do with whether Respondents are able to provide additional facilities or facilitate additional leisure time activities. The second argument misapprehends the nature of the test. Respondents are not necessarily required to invest in new buildings or structures. It might be sufficient if they had made modifications to existing structures. These modifications could have been designed to relate to the physical needs of older persons and to facilitate their increased use by older persons. The same can be said for the lack of activities. Respondents have not demonstrated that they were prevented from taking steps to facilitate the establishment of activities of interest to older

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(vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of paragraph (b)(2) of this section.

(vii) The vacancy rate of the housing facility.

<sup>42</sup> Respondents rely on Senator Kennedy's statement that the Act was "... never intended to be a requirement that additional kinds of services would be necessary in order to enjoy the provisions and protections of the act." *See n.27, supra*; Res. Brief p. 93. This statement must be interpreted as applying to communities which meet the test in Section 3607 (b)(2)(C)(i). Otherwise, this section would be virtually meaningless. This statement merely expresses the Congressional intention not to force bona fide communities for older persons to incur additional expenses to qualify under the Act. It cannot be read as "grandfathering" every existing community wishing to exempt itself from the provisions of the Act.

<sup>43</sup> The record reflects that FVR is subject to rent control. However, there is no contention that it was prevented from establishing additional facilities or services by their cost or that these costs could not be absorbed. *See Res. Brief p. 92.*

persons.<sup>44</sup>

The remaining six factors relate to whether the housing is necessary to provide an important housing opportunity. These factors are: 1) the amount of rent charged, 2) the income range of the residents, 3) the demand for housing for older persons in the area, 4) the range of housing choices available for older persons, 5) the availability of similarly priced housing for older persons in the area, and 6) the vacancy rate in the community claiming the exemption. These factors bear on the question of whether older persons living in the community have nowhere else to go after it has been determined: 1) that significant facilities and services for older persons are not available in the community, and 2) that it is impracticable to provide significant facilities and services for those older persons. This test only comes into play if the "impracticability" test has been satisfied. It is designed to deal with the unusual situation where a community not meeting the tests in Section 3607 (b)(2)(C) will still be allowed to exclude families with children because the older persons in the area are deprived of affordable housing.<sup>45</sup> The six factors focus on the following three reasons why older persons might need this housing: 1) older persons in the community claiming the exemption are unable to afford to relocate, 2) alternative housing for older persons is not available outside the community claiming the exemption, or 3) the housing is uniquely suitable for older persons wishing to move into the community claiming the exemption. If any of these three situations exist, the community will have successfully demonstrated that it affords an "important housing opportunity" for older persons.

The rent in FVR ranges from \$175 to \$205.43 with an additional fee of \$5 for children, live-in companions, pets, and boat storage. There is no direct evidence of the income range of the residents; however, based on the evidence furnished by Complainants, it appears that most have low to moderate incomes. There is little demand for this housing by persons 55 or older. With the exception of the McDermotts, the Complainants testified that they were unable to obtain buyers in that age group despite the fact that their homes had been for sale for a considerable time. There was also a great deal of evidence that potential buyers with children were plentiful. The record also reflects that there are about 38 communities for persons 55 or older in Ocean County. These include single-family homes, residential homes, townhouses, condominiums, and cooperatives as well as other mobile home parks. Housing priced similarly to mobile homes is available. The prices on the multiple listings for real estate agencies range from \$60,000 to \$180,000 for single

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<sup>44</sup> According to Mr. Murphy, FVR's sister park, Fountain View, has many of these activities including aerobics and cooking classes, blood pressure screening, a travel club, and woodworking. Respondents' expert witness, Mr. Landy, testified that mobile home parks do not provide these facilities. That testimony is contradicted by Mr. Murphy's testimony, as well as by the testimony of Mrs. McDermott regarding Clearwater Park. Mr. Landy's experience is primarily with family parks. He has not visited a senior mobile home park since the effective date of the Act.

<sup>45</sup> This alternative was established to avoid limiting housing for older persons where low or moderate housing is otherwise unavailable. 134 Cong. Rec. H6498 (daily ed. August 8, 1988) (remarks of Rep. Edwards).

family homes. Tr. p. 1495. However, many units in OLV sell for less than \$60,000.<sup>46</sup> Even a \$60,000 home financed over 30 years is not greatly in excess of the monthly principal and interest payment for a \$40,000 mobile home in FVR which has to be paid off in 20 years.<sup>47</sup> Because mobile home owners own and live in their homes until they are sold, there is no vacancy rate as such at FVR.

These facts do not establish that seniors in FVR are unable to relocate. The income range of the tenants has not been demonstrated to preclude them from purchasing condominiums at OLV or in any of the other approximately 37 communities in Ocean County. Second, there has been no demonstration that alternative suitable housing for older persons is unavailable outside FVR. OLV is nearby and has vacancies. There has been no demonstration that housing in the 37 other senior communities is unavailable. Third, the facts do not demonstrate that the housing is uniquely suitable for older persons wishing to move into FVR. Older persons who did visit FVR did not evince much interest in purchasing housing there. In some cases, they rejected homes as being too large and, hence, too much to take care of.

#### The Overall Test

The "overall test" requires that at least 80 percent of the units in the housing facility be occupied by at least one person 55 years of age or older per unit on the date of the discrimination. 42 U.S.C. Sec. 3607 (b)(2)(C)(ii); 24 C.F.R. Sec. 100.304 (c)(1). The House of Representatives originally passed a bill requiring 90 percent of the units to have been occupied by at least one person 55 years of age or older per unit. This was believed to be too restrictive and the present 80 percent requirement was substituted for it. 134 Cong. Rec. H6498 (daily ed. August 8, 1988) (remarks of Rep. Edwards). The 80 percent requirement constitutes a "floor" or minimum. The difference between total occupancy and 80 percent was provided to allow a 20 percent flexibility for changes in the composition of the individual units over time. For example, if in a given unit an older person died leaving a person younger than 55 in sole possession of the premises, Congress envisioned that such a reversion to under 55 status would not cause the community to lose its exempt status. Similarly, unoccupied units will not count against the community claiming the exemption if all such units are reserved for occupancy by at least one person 55 or older.

Respondents have not demonstrated that they met the overall test. On March 12, 1989, when the Act went into effect and Respondents were obligated to meet the statutory tests of Section 3607, Respondents admit to having only 78 percent of their units occupied

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<sup>46</sup> I credit Mr. Savage's testimony rather than that of Mr. Rosetto on this point. Mr. Savage was the manager of OLV and monitored the price of OLV units as part of his duties. In addition, the asking prices in newspaper advertisements support his testimony. Sec. Exs. 79, 80.

<sup>47</sup> The monthly principal and interest payment for a \$40,000 mobile home at an interest rate of 10 percent for 20 years would be \$386. This is exclusive of the cost of rent and utilities. The monthly principal and interest payment for a \$60,000 condominium financed at 30 years at an interest rate of 10 percent would be \$526. An association fee (\$80 at OLV) and real estate taxes would be extra. The same principal and interest payment which would finance a \$60,000 condominium with a 30 year note would finance a \$54,000 mobile home with a 20 year note.

by at least one person 55 years of age or older per unit. In fact, only 70 percent of the units met the requirement. There were 125 units which qualified,<sup>48</sup> including the 4 unoccupied decedent's estates. This number, 125, divided by 178, equals 70 percent, 10 percent short of the requirement. Even on the date of the hearing, if the 3 unoccupied decedent's estates are counted, 178 divided into 134 qualifying units yields a percentage of 75 percent, or 5 percent short of the requirement. There is no evidence from which to conclude that between these two dates, 80 percent or more of the units in FVR were occupied by at least one person 55 or older.

### The Transition Test

This test was designed to "grandfather" individuals residing in units where there was not at least one person over the age of 55.<sup>49</sup> 134 Cong. Rec. S104456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter), 134 Cong. Rec. H6497 (daily ed. August 8, 1988) (remarks of Rep. Edwards). The date used for the beginning of the period in which the transition was to occur is September 13, 1988, the date of the enactment of the Amendments. 42 U.S.C. Sec. 3607 (b)(3)(A); 24 C.F.R. Sec. 100.304 (d)(1). From that date forward, a community claiming the exemption must demonstrate that 80 percent of any new occupancies met the 55 or older requirement of Section 3607 (b)(2)(C).

The crucial date for the application of the test is when the unit becomes "occupied", not when passage of title occurs, or when a lease becomes effective, or some other time.

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<sup>48</sup> The Department contends that the unoccupied units must be subtracted from the total number of units and that there is a separate test for unoccupied units as part of the "overall test". For this proposition it cites 24 C.F.R. Sec. 100.304 (d)(2) as well as the Memorandum of Senators Kennedy and Specter. Sec. Brief p. 144; 134 Cong. Rec. S10456-57 (daily ed. August, 1, 1988). There is nothing in the plain language of the statute, itself, to suggest that this is a two part test. However, if the party claiming the exemption purportedly fails to meet the overall test because unoccupied units were included, the statute permits the exclusion of these unoccupied units for purposes of meeting the test if all of them have been set aside for occupancy by at least one person 55 or older. Thus, the Kennedy-Specter Memorandum states that "vacant units *need not be counted* so long as they are reserved for occupancy by persons who meet the age requirements of the bill." *Id.* (emphasis added). The record establishes that FVR attempted to enforce a 55 or older restriction and, consistent with that attempt, set all unoccupied units aside. Accordingly, the unoccupied units have been treated as qualifying units in arriving at the result.

<sup>49</sup> The "transition" test set forth in Section 3607 (b)(3) is stated as follows:

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:  
 (A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of subsection (2)(B) or (C).

(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsection (2)(B) or (C).

The Secretary contends that subsection (B) which sets forth the proviso for unoccupied units also applies to the transition test in section (A). That it does not is indicated by the placement of the unoccupied unit proviso in a separate subsection from the transition test, separated by the word "or". Hence, the "transition" and the "unoccupied unit" subsections are independent exceptions to the three part test in Section 3607 (2).

"Occupants", "unoccupied", and "occupancy" are all used in Section 3607 (b)(3).<sup>50</sup> Use of the date of occupancy reflects actual conditions. Otherwise, it would be possible to count absentee owners who are over 55, even though no one that age or older is actually living on the premises.<sup>51</sup>

Occupancy occurs when an individual actually occupies or moves into the unit. The tenant records of FVR identify move-in dates or these dates can be approximately reconstructed. On March 12, 1989, when Respondents' discriminatory policies became illegal, unless it met the tests in Section 3706 (b)(2)(C), only 50 percent of the "transition" units qualified. As of the date the hearing began, Respondents still did not demonstrate that they met the 80 percent requirement. Respondents have failed to demonstrate that they met the test at anytime between those two dates.

### Publication and Adherence to Policies and Procedures

The third part of the statutory test is whether the housing provider published and adhered to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons age 55 or older. HUD regulations set forth six factors which are to be considered in determining whether the housing provider has met this burden. These are: 1) the manner in which the housing facility is described to prospective residents; 2) the nature of any advertising designed to attract prospective residents; 3) age verification procedures; 4) lease provisions; 5) written rules and regulations; and 6) the actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations. 24 C.F.R. Sec. 100.304 (c)(2). These tests are designed to establish whether a housing provider has demonstrated an intent to provide housing for persons 55 or older by its adoption and adherence to policies and procedures which manifest that intent. The focus of the tests is on whether: 1) the housing provider holds itself out as providing housing for persons 55 or older, and 2) the housing provider has demonstrated that it has consistently done so.

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<sup>50</sup> Senators Kennedy and Specter stated that, "current residents whose presence in a community would otherwise cause the community to fall outside the exemptions. . . are not counted in calculating whether these exemptions apply, if the community applies the age requirements to all persons *moving in* after the passage of the act." 134 Cong. Rec. S10456 (daily ed. August 1, 1988)(Memorandum of Sens. Kennedy and Specter)

<sup>51</sup> FVR illustrates that this is not an unusual occurrence. Mrs. DiMarsico moved out of the park, and her daughter and son-in-law, both under 55, remained. In addition, Mr. Constable, the owner of unit 18, never lived there.



Respondents have referred to FVR as an "adult" park. They have consistently described it as such. Sec. Exs. 1, 3; Tr. pp. 999-1000, 1105, 1108, 1369-70. The billboard outside the entrance to FVR advertises the park as an "Adult Mobile Home Park". The sign at the FVR entrance does not describe the park as one for persons 55 or older. Sec. Exs. 8-10; Res. Ex. 21A. HUD regulations specifically provide that the term "adult" conveys an overt or discriminatory preference or limitation since, as usually understood, it means anyone 18 years of age or older. 24 C.F.R. Sec. 109.20.<sup>52</sup> The billboard is FVR's only advertising. Respondents' age verification procedures were implemented sporadically. Tenant files for only 45 out of 178 units contained the ages of the residents. Res. Ex. 19. Three of the lease applications submitted after September 13, 1988, do not indicate the ages of the occupants. Sec. Exs. 46, 49, 54, 58. Copies of birth certificates or driver's licenses were not placed in the files and maintained. The provisions of the lease and the written rules and regulations of FVR do provide indicia that FVR intended to operate as a park for persons 55 or older. Sec. Exs. 1, 2, 3. As actually implemented, however, the Respondents have initiated eviction efforts against families with children, while not taking such actions where an individual is under 55 but does not have children. Thus, the McDermotts and Aniskos have been provided with notices<sup>53</sup>, but Mr. Constable, who is under 55, has not been provided with such a notice despite the fact that Respondents knew that his father does not actually live in the unit. Sec. Exs. 60, 61.

Respondents have not demonstrated that FVR holds itself out as a provider of housing for persons 55 or older. FVR is not described as housing for persons 55 or older in any advertising. What little advertising there is contains the word "adult", a clear signal that children are excluded from the premises, without any further countervailing explanation that the actual age of at least one resident in each mobile home must be at least 55 or older.

Respondents have failed to demonstrate that they have consistently implemented policies and practices which establish that they intend the park to be run as a community for persons 55 or older, as set forth in the lease agreement and written rules of the park. This is established by Respondents' sporadic collection of age data, the poor maintenance of records, and the inconsistent enforcement of the lease agreement and rules. Accordingly, Respondents have failed to meet the third part of the test in Section 3607 (b)(2)(C).

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<sup>52</sup> There is testimony that the term is a local, commonly understood euphemism for "senior" or "over 45". Tr. pp. 109, 191. Notwithstanding any purported local understanding, the HUD regulations recognize that the term "adult" does not connote a universally accepted age category.

<sup>53</sup> Respondents have stated in the eviction letters that they would hold off any actual evictions pending the outcome of this proceeding. Sec. Exs. 28, 63.

## The Retaliation Claims

The Act prohibits a housing provider from "coercing, intimidating, threatening or interfering with anyone in the exercise or enjoyment of, or on account of his having exercised or enjoyed any right granted or protected by the Act. 42 U.S.C. Sec. 3617. The Government asserts that Respondents retaliated against Joyce Verzi and Barbara McDermott because they filed complaints with HUD.<sup>54</sup>

Cases applying the anti-retaliation provision of Title VII of the Civil Rights Act of 1964 can be looked to for guidance. 42 U.S.C. Sec. 2000e. Those cases apply a three part test which a claimant must meet in order to establish a *prima facie* case of retaliation. These are: 1) that an employee was engaged in activity protected by the statute, 2) that the employer took an "adverse employment action" against the claimant, and 3) that a causal connection exists between the protected activity and the adverse action. *See, e.g.; Zanders v. National R.R. Passenger Corp.*, 898 F.2d 1127, 1135 (6th Cir. 1990); *Dwyer v. Smith*, 867 F.2d 184, 190-91 (4th Cir. 1989); *Williams v. Cerberonics, Inc.*, 871 F.2d 452, 457 (4th Cir. 1989); *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985). For the reasons below, the government has failed to make a *prima facie* case of retaliation against either Ms. Verzi or the McDermotts.

The claimed retaliation against Ms. Verzi is based on the sending of a Notice dated November 29, 1989, that she violated three FVR rules. Sec. Ex. 6. The three alleged violations were: 1) unauthorized tenants in the unit, 2) unauthorized pets,<sup>55</sup> and 3) unauthorized parking. These purported violations were specified by means of direct handwritten "x's" placed next to a printed listing of violations and a handwritten note regarding a dog and unregistered young adults.

Printed at the bottom of the Notice in capital letters is the following: **"IF YOU HAVE ANY QUESTIONS PLEASE DO NOT HESITATE TO CONTACT ME AT THE OFFICE DURING REGULAR OFFICE HOURS. THANK YOU FOR YOUR COOPERATION."** The notice was issued approximately two weeks after the issuance by HUD of the formal Charge in this case on November 15, 1989. However, it was six months after the first notification to Respondents that Ms. Verzi had filed a complaint against them. Sec. Ex. 92; Tr. pp. 809-811. This notification that a discrimination complaint was filed was received on or about May 10, 1989. Tr. p. 972. A meeting between Respondents and the HUD investigator also occurred in June 1989. Ms. Verzi testified that she knew of one other person who received a notice of a violation. Tr. p. 254. Mr. Tarantino testified that he had sent rule violation notices to others. If true, these infractions were prohibited by FVR rules. Res. Ex. 31; Tr. p. 1327. There is

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<sup>54</sup> The Government was permitted to amend the original charge adding these allegations because they were reasonably within the scope of the original charge and were tried by the express and implied consent of the parties. 24 C.F.R. Sec. 104.440 (a)(3).

<sup>55</sup> Pets were restricted to certain areas of the park. (Res. Ex. 31, Rule 25).

unrebutted testimony that after the warning notice was issued, Ms. Verzi went to the FVR office, explained the entire situation, and the matter was dropped. Tr. p. 1351.

Regardless of the truth or falsity of the statements in the notice and their timing, the Government failed to make out a *prima facie* case of retaliation against Ms. Verzi. One of the three elements of a *prima facie* case is that there was an adverse action taken against her by the Respondents. In the absence of such a finding, a retaliation claim fails as a matter of law. *Evans v. Davie Truckers, Inc.* 769 F.2d 1012 (4th Cir. 1985). The notice itself is advisory, invites the recipient to visit FVR management to discuss the matter, and thanks the recipient in advance for cooperation. It does not threaten any action. In addition, the matter was completely resolved after the issuance of the notice. No further action by FVR management was taken. Under these circumstances, the notice was perhaps "ill advised but essentially harmless". *Berger v. Iron Workers*, 843 F.2d 1395 (D.C. Cir. 1988), *cert. denied*, \_\_\_ U.S. \_\_\_, 109 S. Ct. 3155 (1989). Accordingly, this allegation is dismissed.

Mrs. McDermott's retaliation claim is based upon the following: After learning of the filing of the discrimination complaint by the McDermotts sometime in late May or early June of 1989, Respondents sent the McDermotts a "Notice to Tenant - Breach of Lease" dated June 2, 1989. Res. Ex. 36. Following this, the McDermotts became registered tenants. After the issuance of the formal Charge on November 15, 1989, Respondents delivered a letter dated November 20, 1989, to the McDermotts which advised that it is a breach to sublet to anyone. Sec. Ex. 26. Subsequently, Respondents' attorney, Mr. Russo, delivered a "Notice to Cease - Breach of Lease" dated December 19, 1989. A child was born to the McDermotts on November 27, 1989.

The record establishes that the parties had reached an accommodation following the June 2, 1989, letter. Prior to this time, Mrs. McDermott was living in the DiMarsico mobile home as an unregistered tenant in violation of FVR's rules and had no legal right to be there. After receiving permission to live there and paying the back rental payments, again without telling FVR management and in violation of its rules, Mrs. DiMarsico conveyed the mobile home to Mrs. McDermott on August 16, 1989. Mr. Tarantino suspected a transfer had occurred since Mrs. McDermott's checks were being used to pay the rent. There were also anonymous complaints from the residents. The checks and the complaints prompted the November 20, 1989, letter. The letter advises Mrs. McDermott of a requirement in the FVR lease. It does not require or threaten any action. It also contains the following statement: "Please be so kind as to notify this office of your intentions." The December 19, 1989 letter states: "[T]he landlord will refrain from taking any enforcement action of the Rule violation until such time as a determination has been entered in the HUD action."

Again, the Government has failed to make out a *prima facie* case of retaliation. The situation giving rise to the June 2, 1989, letter was resolved by letting Mrs. McDermott remain as a tenant, although there was no legal requirement that Respondents do so. Once she was accepted as a tenant, however, she was protected from retaliatory actions. The letter of November 20, 1989, is merely an attempt to afford Mrs. DiMarsico the opportunity to explain what she intended to do. The final letter, in effect, states that no action will be taken until and unless it is determined that Respondents have the right to

take that action. It contains the clear inference that no action will be taken if it is determined that Respondents cannot legally do so. Separately, or taken together, these transactions do not amount to an adverse action against the claimant. The record also fails to demonstrate a causal connection between the filing of the complaint and Respondents' acts. Mrs. McDermott was permitted to live on the premises after it was known that she had filed a complaint of discrimination. The next two letters were the result of suspecting and then learning that she was the owner of the mobile home. These actions resulted from the presence of a child under 18, not from her having filed a complaint of discrimination. As noted above, actions were selectively proposed by Respondents against rule violators who had children under 18. This is illegal, but is not retaliation. Accordingly, this claim is also dismissed.

### Conclusions of Law

The shifting burdens of proof analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), is inapplicable where the complainant presents direct evidence of discrimination. See *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), citing *Teamsters v. U.S.*, 431 U.S. 324, 358 n.44 (1977). The shifting burdens of proof are designed to assure that the "plaintiff [has] his day in court despite the unavailability of direct evidence." *Id.*, citing *Loeb v. Textron, Inc.*, 600 F.2d 1003, 1014 (1st Cir. 1979) (disapproved in *Trans World Airlines, Inc.*, *supra*, on other grounds).

In this case, there is direct evidence that Respondents' 55 or older policy is discriminatory on its face. In implementing their 55 or older policy to try to satisfy the exemption for housing for older persons, Respondents admittedly excluded persons under 21 years of age from residing in FVR. Therefore, Respondents' policy discriminates against protected individuals on the basis of familial status and thereby violates the Act.<sup>56</sup>

Respondents contend that the 55 or older policy is justified by an affirmative defense set forth in the Act, *i.e.*, the exemption for housing for older persons. 42 U.S.C. Sec. 3607 (b)(2)(C). For reasons set forth above, Respondents failed to meet their burden of proving that they satisfied the three statutory criteria for the exemption. The exemption defense is, therefore, unavailable to Respondents.

Without qualifying for the exemption, Respondents refused to rent dwellings to purchasers because of familial status and therefore interfered with the sales of the mobile homes. Those actions also constituted discrimination against persons in the terms, conditions, or privileges of sale or rental of a dwelling because of familial status.

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<sup>56</sup> There is also circumstantial evidence of familial status discrimination. Respondents applied the policy inconsistently, attempting to enforce it against families with children under 21 but not against other persons who failed to satisfy the 55 or older requirement. In addition, Respondents precluded Mr. Berkebile from building a clubhouse for his son, and maintained the playground in an unsafe and unusable condition, thereby discouraging children from using it.

Accordingly, Respondents violated 42 U.S.C. Sec. 3604 (a) and (b) and 24 C.F.R. Secs. 100.60(a) and 100.65(a).

By sending the November 20 and December 6 notices to Mrs. McDermott, Respondent interfered with the terms, conditions, or privileges of rental of a dwelling and therefore violated 42 U.S.C. Sec. 3604 (b) and 24 C.F.R. Sec. 100.65 (a).

By precluding the Berkebiles from building a clubhouse for their children and maintaining the playground in an unsafe and unusable condition for children, Respondents discriminated against persons in the terms, conditions or privileges of rental of a dwelling and in the provision of facilities in connection therewith based on familial status. Those actions violated 42 U.S.C. Sec. 3604 (b) and 24 C.F.R. Sec. 100.65 (a).

The Department failed to prove, however, that Respondents' implementation of Rules 1, 2, 33 and 34 constituted discrimination against persons in the terms, conditions, or privileges of rental of dwellings and in the provision of facilities in connection therewith because of familial status. Those rules serve the legitimate purpose of maintaining safety and the condition of existing facilities, and the Department has not shown them to discriminate on the basis of familial status. Respondents' implementation of these rules, therefore, did not violate 42 U.S.C. Sec. 3604 (b) or 24 C.F.R. Sec. 100.65 (a).

By using the word "adult" without further explanation in an advertisement about the FVR community, Respondents published, or caused to be published, a statement or advertisement with respect to the sale or rental of dwellings indicating a preference, limitation, or discrimination based on familial status. Respondents, therefore, violated 42 U.S.C. Sec. 3604 (c) and 24 C.F.R. Sec. 100.75 (a).

The Department failed to prove, however, that Respondents coerced, intimidated, threatened, or interfered with the McDermotts or Ms. Verzi because they exercised their right to file complaints under the Act. Accordingly, Respondents did not violate 42 U.S.C. Sec. 3618 and 24 C.F.R. Sec. 100.400 (b).

### **Remedies**

Because Respondents violated and are in violation of 42 U.S.C. Secs. 3604(a), (b), and (c) and 3818 and 24 C.F.R. Secs. 100.60, 100.65, 100.75 and 100.400, Complainants are entitled to appropriate relief under the Act.<sup>57</sup> The Act provides that where an administrative law judge finds that a respondent has engaged in a discriminatory practice, the judge shall issue an order "for such relief as may be appropriate, which may include

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<sup>57</sup> Respondents PCI, Redhen, and Mr. Murphy are jointly and severally liable for the compensatory damages awarded pursuant to this Decision. *See, e.g., Harrison v. Otto G. Heinzerth Mortgage Co.*, 430 F.Supp. 893, 897-98 (N.D. Ohio 1977)(where employee's discriminatory actions were in violation of his duties and employer's instructions, punitive damages were assessed against the employee, but compensatory damages were rendered against the employee, the company's president and owner, and the company jointly and severally because the duty not to discriminate is non-delegable).

actual damages suffered by the aggrieved person and injunctive or other equitable relief. 42 U.S.C. Sec. 3612 (g)(3).<sup>58</sup> See also 24 C.F.R. Sec. 104.910 (b)(1), (b)(2).

The Act further provides that the "order may, to vindicate the public interest, assess a civil penalty against the Respondents". 42 U.S.C. Sec. 3612 (g)(3). The maximum amount of such civil penalty is dependent upon whether Respondents have been adjudged to have committed prior discriminatory housing practices. *Id.* See also 24 C.F.R. Sec. 104.910 (b)(3).

The Department, on behalf of the Individual Complainants, asks for: 1) damages totalling \$7976.60 to compensate Complainants for economic loss;<sup>59</sup> 2) \$275,000.00 in damages to compensate Complainants for "emotional distress and loss of civil rights";<sup>60</sup> 3) injunctive and equitable relief requiring, *inter alia*, that Respondents, their agents and employees cease to employ any policies or practices, including their 55 or older policy, that discriminate against families with children; and, 4) the imposition of the maximum civil penalty, totalling \$80,000.00. Sec. Brief pp. 164-93 and Proposed Order attached thereto.

Respondents contend that, any damage award to compensate Complainants for their economic losses should be limited to \$257.60.<sup>61</sup> Res. Brief, p. 108. Respondents also contend that none of the Complainants is entitled to any compensation for damages for embarrassment, humiliation or emotional distress because the only reason they were upset was because they were finding it difficult to sell their homes. Thus, Respondents contend that "[t]here is no significant emotional trauma here." *Id.*<sup>62</sup>

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<sup>58</sup> As discussed *supra*, the Complainants come within the definition of "aggrieved person."

<sup>59</sup> This figure includes: \$131.60 for Mr. Fallon, \$1162.00 for the Maghans, \$90.00 for Mr. Willenberg, \$215.00 for Ms. Verzi, \$5,779.00 for the Berkebiles, \$252.00 for Mr. Ramsey, \$52.00 for Mr. DuBois, and \$295.00 for the McDermotts. Sec. Brief, pp. 164-69.

<sup>60</sup> The Department seeks damages for emotional distress and loss of civil rights in the amount of \$25,000.00 per individual Complainant.

<sup>61</sup> This figure includes: a "140 miles travel allowance, \$1.00 train fare" for Mr. Fallon, "[l]ost pay of \$60.00" for Ms. Verzi, "\$26.00 for advertisements" for Mr. DuBois, and "\$77.00 for his lost pay" for the Berkebiles, and "\$60.00 for babysitting" for the McDermotts. According to Respondents, the Maghans, Mr. Ramsey and Mr. Willenberg are not entitled to any damages for economic losses. See Res. Brief, p. 108.

<sup>62</sup> Respondents make several additional arguments with regard to specific Complainants. First, Respondents argue that all the Complainants except the Maghans were able to reside in the properties they could not sell and therefore enjoyed a benefit. Second, Respondents argue that Mr. Fallon, Ms. Verzi, Mr. DuBois, Mrs. McDermott, Mr. Ramsey and Mr. Willenberg moved into FVR "knowing full well that the age restriction was in effect", and that the new law "gives them an opportunity to expand their re-sale market." Third, Respondents argue that because Mrs. McDermott "moved in under false pretenses", the fact that she "got trouble" should not "be visited upon the landlord in the form of damages." Fourth, Respondents argue that the complaints the Berkebiles have received from neighbors concerning children "are not the fault of the respondent." Finally, Respondents argue that the Berkebiles "have not provided sufficient proof...to demonstrate that but for the landlord's policies they would be moved to a house and all their family struggles would be solved."

Respondents do not dispute that, if they are liable, injunctive and equitable relief are appropriate. Res. Brief, p. 111. Such relief, Respondents agree, would include prohibiting any efforts directed at evicting tenants because they have children." *Id.* pp. 111-12.

Finally, Respondents argue that mitigating factors preclude the imposition of any civil penalty in this case because a civil penalty will not vindicate the public interest. However, if a such a penalty is deemed appropriate, it should be limited to "a single fine, under the \$10,000.00 limit" and should be assessed against PCI Redhen Corp., the entity which owns the real estate. *Id.* pp. 115-116.

### Economic Loss

Complainants are entitled to any wages they lost as a result of Respondents' actions. See *HUD v. Blackwell*, Fair Housing-Fair Lending (P-H) para. 25,001 at 25,010 (HUDALJ No. 04-89-0520-1, Decided Dec. 21, 1989). Ms. Verzi missed one day of work due to her attendance at the hearing before this tribunal. She is therefore entitled to one-day's lost wages at her employment rate of \$60.00 per day. Mr. and Mrs. Berkebile have each missed three and one-half days of work. Since Mr. and Mrs. Berkebile's wages are \$77.00 per day and \$70.00 per day, respectively, they are entitled to \$514.50 in lost wages for the three and one-half days of missed work. Mr. Ramsey missed two days of work due to his attendance at the hearing. Mr. Ramsey's employment rate is \$126.00 per day; he is, therefore, entitled to \$252.00 in lost wages.

In order for Mrs. McDermott to attend the hearing, she hired a babysitter at the rate of \$30.00 per day. She attended the hearing for five days, and is therefore entitled to \$150.00.<sup>63</sup>

Mr. Fallon incurred travel-related and telephone expenses which constitute compensable damages. Mr. Fallon is entitled to \$67.20, as compensation for the two 140-mile car trips he made to New York City, calculated at the government rate of \$.24 per mile. He is also entitled to \$24.00, as compensation for the approximately 50-mile car trip he took to Newark, New Jersey, calculated at the same government rate. Mr. Fallon is entitled to be reimbursed \$4.00 for the train fares he paid and \$10.00 for the telephone calls he made in connection with this case.

Mr. and Mrs. Maghan are also entitled to damages for the travel-related expenses they incurred in order to attend the hearing. Those expenses include \$672.00 as compensation for their 2,800-mile round-trip, by car, between Florida and FVR, calculated at the government rate, and \$300.00 as compensation for the cost of lodging, food and tolls

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See Res. Brief, pp. 108-09.

<sup>63</sup> Since Mr. McDermott did not testify in this proceeding, there is no basis for awarding him compensatory damages.

incurred during that round-trip.<sup>64</sup>

Mr. Fallon, Mr. and Mrs. Maghan, Mr. Willenberg, Ms. Verzi, Mr. and Mrs. Berkebile, and Mr. and Mrs. McDermott also seek damages for the additional monthly fees of \$5.00 or \$10.00 they have been charged. As discussed *supra*, these fees do not discriminate against families with children, and therefore, are not compensable.

Mr. and Mrs. Berkebile and Mr. DuBois seek damages for the costs of classified advertisements in which they offered their mobile homes for sale. The Berkebiles are entitled to compensation for the costs associated with placement of these advertisements because those costs flowed from Respondents' discriminatory conduct. The Berkebiles decided to sell their home after receiving the Notice to Quit because they did not want their children to grow up in an "adult community". In an effort to sell the home, they placed advertisements in the local paper on three separate occasions at a total cost of \$184.50. Paying for those advertisements was reasonable because of lack of a multiple listing service or other means to contact potential purchasers. Mr. DuBois, however, is not entitled to damages as compensation for the advertising costs he incurred because his decision to sell his home was not related to Respondents' discriminatory conduct. He wanted to sell his home and move to his other home in Pennsylvania permanently to enjoy boating.

Finally, the Berkebiles seek damages in the amount of \$4,900.00 as compensation for the profits they lost as a result of lost appreciation of the house for which they had executed an Agreement of Sale. The sale was contingent upon the sale of their mobile home. The amount requested is the purported amount by which the house they sought to purchase has appreciated since the Agreement of Sale expired on April 5, 1989.

The Berkebiles, however, are not entitled to compensation for such "lost profits" because they did not provide sufficient proof of such damages. Compensation principles applicable to tort law generally govern damage awards in fair housing cases. *See Curtis v. Loether*, 415 U.S. 189, 195 (1974). *See also* R. Schwemm, *Compensatory Damages in Federal Fair Housing Cases*, 16 Harv. C.R.C.L. Law Rev. 83, 89-90 (1981). In order to recover damages, the party seeking recovery must prove that the damages were sustained with "reasonable certainty." This means that a claimant must "establish by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit." *See Restatement (Second) Torts*, Sec. 912 (1979). The claimant also has the burden of proving by a preponderance of the evidence that the wrongful conduct was a "substantial factor" in producing the harm. *Id.* at Sec. 912 comment a. This standard of "reasonable certainty" ensures that the damages are reasonably ascertainable, and that neither their existence nor extent is based on speculation." *See* M. Minzer, *Damages in Tort Actions*, Sec. 3.33[2][a][i] (1989).

Mrs. Berkebile testified that she and her husband were planning to obtain a

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<sup>64</sup> Mrs. Maghan testified that they spent \$300.00 for one-night's lodging, tolls and food during the trip from Florida to FVR. Tr. p. 384. That sum is undocumented and appears to be excessive. It has, therefore, been reduced by half.

\$90,000.00 mortgage in order to purchase the house, but that they never applied for that mortgage. Tr. p. 514. The Berkebiles therefore did not prove with "reasonable certainty" that they would have qualified for the mortgage. Accordingly, they did not demonstrate that they could have purchased the house or that they would have realized any profits resulting from appreciation of the property.

### Emotional Distress and Loss of Civil Rights

All of the Complainants seek damages as compensation for emotional distress and loss of civil rights. It is well established that the amount of compensatory damages which may be awarded in a Civil Rights Act case is not limited to out-of-pocket losses, but includes damages for the embarrassment, humiliation and emotional distress caused by the discrimination. *See, e.g., Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Such damages can be inferred from the circumstances of the case, as well as proved by testimony. *See Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977).

As stated in *Blackwell, supra*, "[b]ecause of the difficulty of evaluating emotional injuries which result from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries." Fair Housing-Fair Lending (P-H) at 25,011, quoting *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983). As further stated in *Blackwell, supra*, at 25,011-012,

Thus, in *Marable, supra*, where the defendant challenged the plaintiff's claim for compensatory damages on the basis that it was based solely on mental injuries and that there was no evidence of "pecuniary loss, psychiatric disturbance, effect on social activity, or physical symptoms", the court stated:

It strikes us that these arguments may go more to the amount, rather than the fact, of damage. That the amount of damages is incapable of exact measurement does not bar recovery for the harm suffered. The plaintiff need not prove a specific loss to recover general, compensatory damages, as opposed to actual or special damages.

704 F.2d at 1220-21.

After the 55 or older policy was announced, all the Complainants, except the McDermotts, turned away, or had PCI turn away for them, potential purchasers solely because of the ages of the potential buyers or members of their families. As discussed below, for those Complainants who had either moved into FVR under no age-restrictive policy, or under a policy less restrictive than the 55 or older policy, the impediment of an age restriction exacerbated the stresses typically associated with the sale of one's home. Those Complainants, therefore, as a threshold matter, suffered some cognizable and compensable emotional distress. The amount, while not amenable to precise

measurement<sup>65</sup> should attempt to make the victim whole, while not providing a windfall. *See Blackwell, supra*, at 25,013. *See also Albermarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975) (Title VII case); *Shaw v. Cassar*, 558 F. Supp. 303, 315 (E.D. Mich. 1983)

The Complainants who moved into FVR under the 45-45 policy that was at least as restrictive<sup>66</sup> as the 55 or older policy are not entitled to damages for the emotional distress associated with the inability to sell their homes. Respondents' 55 or older policy did not put these Complainants in a worse position than they otherwise would have been in under the previous 45-45 policy. Therefore, insofar as these Complainants base their claims of emotional distress on the contention that Respondents' 55 or older policy resulted in their inability to sell their mobile homes, the claims lack credibility.

When Mr. and Mrs. Maghan, Mr. and Mrs. Berkebile, and Mr. Ramsey moved into FVR, their homes were not subject to an age-restrictive policy. When they bought their homes, they had no reason to believe that their ability to resell would be restricted because of the purchaser's age. Therefore, their claims of emotional distress and loss of civil rights as a result of Respondents' actions are more persuasive than those of the other Complainants and warrant greater compensation.

The Berkebiles desired to move because they did not want their family to live in a community for older persons. They were upset by their inability to sell and the effect of the policy on their children. Their marriage was strained, and Mr. Berkebile's high blood pressure was aggravated. They also entered into a contract to purchase a ranch-style home that was contingent upon the sale of their mobile home. They were unable to sell their mobile home, and the contract expired. They desired to leave a discriminatory environment, they acted affirmatively on that desire, and their actions were frustrated by Respondents' discriminatory conduct.<sup>67</sup> Accordingly, they are entitled to \$5,000.00 as compensation for emotional distress and loss of civil rights.

Although the Maghans felt "bad" that families could not live at FVR, and were

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<sup>65</sup> Guidance can, of course, be gleaned from a review of the relevant case law. *See, e.g., Seaton v. Sky Realty Co.*, 491 F.2d 634, 637-38 (7th Cir. 1974) (\$500 for embarrassment and humiliation); *Wright v. Owen*, 468 F. Supp. 1115, 1118 (E.D. Mo. 1979) (\$100 for actual damages taking into consideration emotional distress and humiliation); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D. Md. 1978) (\$1000.00 for emotional distress); *Harrison v. Otto G. Heinzerth Mortgage Co.*, 430 F.Supp. 893, 897-98 (N.D. Ohio 1977) (\$5,000.00 for plaintiff "upset and troubled" by a "very painful experience"). However, as noted in *Blackwell, supra*, such guidance is limited because there has been "a great range of awards, with some courts awarding only nominal damages of \$1 and others setting awards of over \$20,000." Fair Housing-Fair Lending (P-H) at 25,013 n.18, quoting R. Schwemm, *Compensatory Damages in Federal Fair Housing Cases*, at 83.

<sup>66</sup> In one section of the park, every resident had to be 45 or older. This can be viewed as more restrictive than a policy which requires that only one occupant of a unit be 55 or older and that all other occupants be 21 or older.

<sup>67</sup> Although the lack of evidence that the Berkebiles would have qualified for a mortgage prevented them from demonstrating entitlement to economic losses for the amount the ranch-style home purportedly appreciated, the absence of such evidence does not defeat the claim that they suffered emotional distress.

upset that they had to inform potential buyers who did not meet the age requirement that they could not buy their home, their testimony did not establish that these feelings were sufficiently damaging to justify anything but the award of a nominal sum. They did not lose sleep or demonstrate an inability to carry out daily functions. However, the inconvenience and stress they experienced in attempting to sell their home while in Florida was a direct result of Respondents' discriminatory policies. Accordingly, they are entitled to compensation in the amount of \$800.00 for emotional distress and loss of civil rights.

Mr. Ramsey suffers from arthritis, is affected by the cold weather, and would like to move to Florida. He testified that he packed his belongings and resigned his job on the assumption that he could sell his home to a particular purchaser. He claims that, when he discovered that Respondents denied the purchaser's application to lease, he was distressed, withdrew his resignation and lost credibility with his employers. He was not offered a contract for the following year.

Even if he were unaware of Respondents' 55 or older policy at the time he began to pack,<sup>68</sup> Mr. Ramsey's actions were premature and unreasonable. He knew that, regardless of the 55 or over policy, a purchaser had to be approved by PCI prior to the sale of the home. Therefore, he is not entitled to recover for any emotional distress that may have flowed from his premature actions.<sup>69</sup> Mr. Ramsey is entitled, however, to recover \$400 for the compensable emotional distress and loss of civil rights he suffered as a result of the restriction on his ability to sell resulting from Respondents' conduct.

Mr. Willenberg and Ms. Verzi resided in the section of FVR to which the 45-21 policy applied. They, therefore, moved in knowing there would be some restriction on their ability to sell. Although the 45-21 policy was less restrictive, these Complainants' claims of emotional distress for the inability to sell their homes under the 55 or older policy are weakened by their acquiescence to this prior age restriction.

Mr. Willenberg would like to sell his home and move to Florida. His home is too large for him. He claims that he is frustrated and aggravated because he would like to will his home to his children upon his death or give it to them, but under present FVR policies, he cannot because they are under the age of 55. His children, however, are under 45. The claim that he suffered emotional distress because he cannot will or give the home to his children is not credible because he could not have willed or given the home to his children under the 45-21 policy to which he agreed when he moved in to FVR. Tr. p. 796. In addition, he admitted that he has made no serious effort to sell his home. However, because he moved into FVR under the 45-21 policy, and made some effort to sell his home, he suffered the threshold level of cognizable and compensable emotional distress. Accordingly, Mr. Willenberg is entitled to \$150.00 in damages for emotional distress and loss of civil rights.

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<sup>68</sup> Mr. Ramsey did not receive a copy of Respondents' January 3, 1989 Notice. However, he learned of the existence of the 55 or older policy in the Spring of 1989 from Mr. Meyer.

<sup>69</sup> Further, there is no evidence that the non-renewal of Respondent's contract was caused by the withdrawal of his resignation.

Ms. Verzi would like to sell her home so that she and her fiance can have a place to keep guard dogs. She testified that she is frustrated by her inability to sell, and feels that her "hands are tied by the 55 and older policy." Ms. Verzi is entitled to recover \$400 for the compensable emotional distress and loss of civil rights she suffered as a result of the restriction Respondents placed on her ability to sell.

Mr. Fallon and Mr. DuBois also moved into the section of FVR to which the 45-45 restriction applied. They, therefore, moved in accepting a policy that was at least as restrictive as the 55 or older policy. Moreover, they have not produced any credible evidence of emotional distress.<sup>70</sup> Accordingly, these claimants are not entitled to any recovery for emotional distress or loss of civil rights based upon claims of an inability to sell their homes under the 55 or older policy.

Because Mr. and Mrs. McDermott did not seek to sell their mobile home after the 55 or older policy was announced, but intended to continue residing in it with their child, the nature of Mrs. McDermott's claim of emotional distress and loss of civil rights is different from that asserted by the other Complainants. Mrs. McDermott testified that as a result of Respondents' 45-21 policy and later, Respondents' discriminatory 55 or over policy, she feared that she and her family would be evicted. This fear resulted in her emotional distress. She also testified that this emotional distress adversely affected her marriage.

Mrs. McDermott's fear and emotional distress is compensable for a period from early June 1989 when FVR agreed to her tenancy, until approximately December 19, 1989, the date on which she received the "Notice to Cease - Breach of Lease". After receipt of the December 19th Notice, any fear experienced by Mrs. McDermott would have been unfounded because the Notice indicated that no action would be taken against her pending the outcome of this proceeding. Mrs. McDermott did not demonstrate that her fear manifested itself in loss of sleep, inability to carry out daily functions, or the need to seek marriage counseling. She also failed to demonstrate why her fear of eviction was not ameliorated by the fact that she owned another mobile home in Florida, and, therefore, apparently had another place to live. Accordingly, she is entitled to \$1,000 as damages for emotional distress and loss of civil rights.

### Injunctive and Other Equitable Relief

In light of Respondents' discriminatory conduct, most of the injunctive and equitable relief requested by the Government, which would prohibit or direct certain actions by Respondents is appropriate. As stated by the court in *Marable, supra* at 1221,

Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future

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<sup>70</sup> Mr. Fallon wants to move to a drier climate and claims that he felt "very bad" about rejecting families with children. Mr. DuBois wants to move to another home he owns so he can enjoy boating and believes that he could sell his home more easily to a young person. Rejection of families with children was required in the section of the park they moved into at the time they moved in.

and removing any lingering effects of past discrimination....  
The relief must be tailored in each instance to the needs of the particular situation, a matter peculiarly within the discretion of the district judge.

The specific provisions of that relief, as adopted by this Decision, are set forth in the Order below, and include injunctions ordering Respondents, their agents and employees, unless and until they meet the statutory requirements of 42 U.S.C. Sec. 3607(b)(2) and (b)(3) to cease: 1) interfering with the efforts of Mr. Fallon, Mr. and Mrs. Maghan, Mr. Willenberg, Ms. Verzi, Mr. and Mrs. Berkebile, Mr. Ramsey, and Mr. DuBois to sell their mobile homes; 2) interfering with the tenancy of Mr. and Mrs. McDermott and their daughter, and cease any eviction proceeding against them; 3) employing any policies or practices, including their 55 or older policy, that discriminate against families with children; 4) using or posting any lease provisions, rules and regulations, billboards and any other written documentation or advertisements that indicate a discriminatory preference or limitation based on familial status; 5) advertising or referring to FVR as an "adult" community. They are to remove the word "adult" from the billboard which stands outside FVR.

The relief afforded pursuant to this Decision further includes an injunction ordering Respondents to allow Mr. and Mrs. Berkebile to build a clubhouse for their son on their mobile home space. Respondents, their agents and employees are also permanently enjoined from discriminating against the Complainants or anyone else with respect to housing because of familial status. Examples of such prohibited actions are set forth in the accompanying Order, and include retaliation against any of the Complainants or anyone else for their participation in this case or for any matter related thereto. Respondents shall also inform all their agents and employees of the terms of the attached Order and educate them as to such terms and the requirements of the Fair Housing Act and implementing regulations.

Although not requested by the Department, the following additional equitable relief is necessitated by Respondents' conduct, and is included in the Order below. First, Respondents shall repair the playground at FVR in order to make it safe and usable for children, and shall maintain the playground in a safe and usable condition. Such repairs shall include, but are not limited to, repair of the swingset, basketball backboard and hoop, and removal of glass and bottlecaps. Second, Respondents shall prepare a notice, to be delivered to all owners and residents of mobile homes in FVR, which states that PCI and Redhen will no longer institute policies and practices which discriminate against families with children, unless and until such policies and practices comply with the Fair Housing Act and implementing regulations. That notice shall also be posted in a conspicuous fashion in the FVR clubhouse and any other areas where notices intended for viewing by current and potential owners and residents are typically posted.

### Civil Penalties

In addressing the factors to be considered when assessing a request for imposition of a civil penalty under 42 U.S.C. Sec. 3612 (g)(3), the House Report on the Fair Housing Amendments Act of 1988 states:

The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When determining the amount of a penalty against a respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of that respondent and the goal of deterrence, and other matters as justice may require.

H. Rep. No. 100-711, 100th Cong., 2d Sess. 37 (1988).

Based upon a consideration of these factors, it is appropriate in this case, in order to vindicate the public interest, to impose a civil penalty of \$2000.00 under the Act.<sup>71</sup>

First, the nature and circumstances of the violation and Respondents' lack of culpability demonstrate that Respondents acted in good faith, although erroneously, in interpreting the statutory and regulatory provisions concerning the exemption for housing for older persons. However, in putting into effect the policies which resulted from that

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<sup>71</sup> In its brief at 191 n.47, the Department argues that the \$10,000.00 maximum penalty amount for a respondent who has not been adjudged to have committed any prior discriminatory housing practice should be applied to each of the eight complaints which were "consolidated by HUD for administrative efficiency." In their brief at 115, Respondents argue that if a civil money penalty is imposed, the \$10,000.00 maximum applies, and the penalty should be imposed upon PCI Redhen and not upon Mr. Murphy.

Because a \$2000.00 civil penalty is appropriate in this case, it is unnecessary to reach the issue of whether \$10,000.00 or \$80,000.00 is the maximum penalty which could have been imposed. With regard to whether Respondents are jointly and severally liable for the civil penalty, it is noteworthy that Respondents have not cited any authority for their proposition that any civil penalty should be assessed against PCI Redhen rather than PCI and Mr. Murphy jointly. Moreover, while Mr. Murphy made the decision to convert FVR to a 55 or older community, the PCI Board had left that decision to him and thereby delegated to him the authority to do so. Therefore, for the same reasons discussed above with regard to Respondents' joint and several liability for the compensatory damages awarded pursuant to this Decision, Respondents' liability for the civil penalty is joint and several.

good faith interpretation, Respondents impermissibly discriminated against families with children.

Respondents believed that they were not acting in violation of the statute and regulations for the following reasons: 1) although they were not in compliance with the 80 percent requirements of the overall and transition tests, they were close to compliance; 2) there was no definitive standard for applying the significant facilities test; and 3) most significantly, the residents of FVR lacked an interest in expanding the number and variety of activities, services, or facilities, and Respondents could obtain little in the way of legal guidance as to whether a housing provider had to create facilities if the residents were not going to use them; and 4) HUD regulations provide that use of the term "adult" in advertisements to refer to the residents of a particular community *may*, depending on the circumstances, constitute evidence of familial status discrimination. Because Respondents believed that the term "adult" was understood by persons living in their geographic area to mean 55 or older, they considered its usage to be in compliance with the law.

From the start, Respondents' goal was to provide housing for persons age 55 or older, and thereby to exclude families with children. That goal was legitimate, provided they satisfied the statutory and regulatory requirements that would enable them to do so. However, Respondents were confronted with the difficult task of interpreting a new, complex statute and regulations that set forth those requirements. Thus, under the circumstances, Respondents' actions were not entirely without reason, and constituted a good faith attempt to comply with the spirit and intent of the statute and regulations.

However, Respondents' differing treatment of families with children who did not satisfy the 55 or older policy, from persons without children who did not satisfy the policy, demonstrates that Respondents executed their interpretation of the statute and regulations in a manner which discriminated against families with children. As discussed above, the McDermotts and the Aniskos, both families with children, were the only residents of FVR for which there was record evidence of receipt of a "Notice to Cease - Breach of Lease". There was no evidence that any of the residents who did not have children, but failed to satisfy the 55 or older policy, received such a notice. This discriminatory execution of the 55 or older policy warrants imposition of some civil penalty in this case.<sup>72</sup>

Respondents' execution of their interpretation of the Act and regulations in a manner which discriminates against families with children is further evidenced by the fact that Respondents denied the Berkebiles permission to build a clubhouse for their son on their mobile home space, and that Respondents maintained the playground in a state of disrepair. Had Respondents lawfully implemented the 55 or older policy, the children of those residents who were grandfathered in under the policy would have been permitted to reside at FVR. By refusing to allow the Berkebiles to build the clubhouse, and by failing to maintain the playground in a safe and usable condition, Respondents went beyond the

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<sup>72</sup> Respondents contend that because they were "well intentioned" and that there was no precertification procedure, a civil penalty is unwarranted in this case. See Res. Brief pp. 112-113. Because Respondents executed their 55 or older policy in a discriminatory manner, I need not address this argument. Respondents' good faith interpretation of a new law and regulations was considered in assessing the civil penalty in this case.

scope of permissible restrictions related to families with children which are within the confines of the Act and regulations. This, too, demonstrates that Respondents executed the 55 or older policy in a discriminatory manner, and further warrants imposition of a civil penalty.

Second, Respondents have no history of having committed any prior fair housing violations. Sec. Brief p. 191; Res. Brief p. 110.

Third, there is nothing in the record evidence to indicate that Respondents' financial circumstances militate against the imposition of a civil penalty. Indeed, Respondents have stipulated that together, they have a net worth of approximately \$100,000.00.

Fourth, the goal of deterrence would not be served by the imposition of a large civil penalty in this case. As stated above, Respondents attempted, in good faith, to comply with, rather than circumvent, a newly enacted statute and newly promulgated set of regulations that were less than clear. Imposition of a large civil penalty would tend to discourage housing providers from good-faith attempts to satisfy the law. Although Respondents executed their interpretation of the 55 or older policy in a manner which discriminated against families with children, the occasions on which they did so were somewhat isolated and do not demonstrate an extensive practice of discrimination.

The inappropriateness of imposing a civil penalty any greater than \$2000.00 in this case is perhaps best understood when contrasted with the appropriateness of imposing the maximum civil penalty of \$10,000.00 in *Blackwell*. Mr. Blackwell refused to sell his house to a black couple solely because of their race. There was no statutory exemption by which his conduct could have been considered anything but discriminatory. Rather, he acted in total disregard of the fair housing laws and engaged in conduct that was blatantly discriminatory and undertaken in bad faith. Respondents, on the other hand, attempted to interpret and apply a complex new law and regulations that specifically allow for exceptions to conduct that would otherwise be prohibited.

### **Order**

Having concluded that Respondents William J. Murphy and Pollution Control Industries, Redhen Corporation Industries, Redhen Corporation, d/b/a Friendly Village of Riverwood, violated 42 U.S.C. Secs. 3604(a), (b) and (c) and 3618, and the regulations codified at 24 C.F.R. Secs. 100.60, 100.65, 100.75 and 100.400, it is hereby

#### **ORDERED, that**

1. Respondents and their agents and employees shall refrain from interfering in anyway with the efforts of John Fallon, Paul and Emma Meghan, Irwin H. Willenberg, Joyce Verzi, Henry and Deborah Berkebile, Robert Ramsey, and Denis DuBois to sell their mobile homes.
2. Respondents and their agents and employees shall refrain from interfering in any way with the tenancy of Kevin and Barbara McDermott and their daughter, and shall refrain from pursuing any eviction proceedings against them.

3. Respondents and their agents and employees shall cease to employ any policies or practices, or implement any rule or regulation, including their 55 or older policy, that discriminate against families with children.
4. Respondents and their agents and employees shall refrain from using any lease provisions, rules and regulations, billboards and any other written documentation or advertisements that indicate a discriminatory preference or limitation based on familial status.
5. Respondents and their agents and employees shall cease to advertise or refer to Friendly Village of Riverwood ("FVR") as an "adult" community and shall remove that word from the billboard which stands outside FVR.
6. Respondents shall allow Henry and Deborah Berkebile to build a clubhouse for their son on their mobile home space.
7. Respondents shall repair the playground at FVR in order to make it safe and usable for children, and shall maintain the playground in a safe and usable condition. Such repairs shall include, but are not limited to, repair of the swingset, basketball backboard and hoop, and removal of glass and bottlecaps.
8. Respondents shall prepare a notice, to be delivered to all owners and residents of mobile homes in FVR, which states that they will no longer institute policies and practices which discriminate against families with children, unless and until such policies and practices comply with the Fair Housing Act and implementing regulations. That notice shall also be posted, in a conspicuous fashion, in the FVR clubhouse and any other areas where notices intended for viewing by current and potential owners and residents are typically posted.
9. Respondents and their agents and employees are hereby permanently enjoined from discriminating against John Fallon, Paul and Emma Maghan, Irwin H. Willenberg, Joyce Verzi, Henry and Deborah Berkebile, Robert Ramsey, Denis DuBois, Kevin and Barbara McDermott, or anyone else, with respect to housing because of familial status. Prohibited actions include, but are not limited to:
  - a. refusing or failing to sell or rent or refusing to negotiate for the sale or rental of a dwelling to any person because of familial status;
  - b. otherwise making unavailable or deny, a dwelling to any person because of familial status;
  - c. discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;
  - d. making, printing or publishing, or causing to be made, printed or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on familial

status;

e. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act and implementing regulations.

f. retaliating against John Fallon, Paul and Emma Maghan, Irwin H. Willenberg, Joyce Verzi, Henry and Deborah Berkebile, Robert Ramsey, Denis DuBois, Kevin and Barbara Mrs. McDermott, or anyone else, for their participation in this case or for any matter related thereto.

10. Respondents shall pay actual damages to John Fallon in the amount of \$71.60, to compensate for the following:

Amount	Description
\$67.20 --	Two 140-mile car trips to New York City at \$.24 per mile
\$24.00 --	One approximately 50-mile car trip to Newark, New Jersey at \$.24 per mile
\$4.00 --	Train fares
\$10.00 --	Telephone calls
<u>\$105.20</u> --	Total

11. Respondents shall pay actual damages to Paul and Emma Maghan in the amount of \$1772.00, to compensate for the following:

Amount	Description
\$672.00 --	Car trip of 2,800 miles from Florida to FVR and back again at \$.24 per mile
\$300.00 --	Cost of lodging, tolls and food on trip to and from Florida
\$800.00 --	Emotional distress and loss of civil rights
<u>\$1772.00</u> --	Total

12. Respondents shall pay actual damages to Irwin H. Willenberg in the amount of \$150.00, to compensate for the following:

Amount	Description
\$150.00 --	Emotional distress and loss of civil rights
<u>\$150.00</u> --	Total

13. Respondents shall pay actual damages to Joyce Verzi in the amount of \$460.00, to compensate for the following:

Amount	Description
\$60.00 --	One day of lost wages
\$400.00 --	Emotional distress and loss of civil rights
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\$460.00 --	Total

14. Respondents shall pay actual damages to Henry and Deborah Berkebile in the amount of \$5699.00, to compensate for the following:

Amount	Description
\$514.50 --	Three and one-half days lost wages for each (\$77.00 per day for Mr. Berkebile and \$70.00 per day for Mrs. Berkebile)
\$184.50 --	Cost of three classified advertisements in the <i>Asbury Park Press</i>
\$5000.00 --	Emotional distress and loss of civil rights
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\$5699.00 --	Total

15. Respondents shall pay actual damages to Robert Ramsey in the amount of \$652.00, to compensate for the following:

Amount	Description
\$252.00 --	Two days lost wages at \$126.00 per day
\$400.00 --	Emotional distress and loss of civil rights
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\$652.00 --	Total

16. Respondents shall pay actual damages to Barbara McDermott in the amount of \$1,150, to compensate for the following:

Amount	Description
\$150.00 --	Five days of babysitting costs at \$30.00 per day
\$1000.00 --	Emotional distress and loss of civil rights
<u>\$1150.00</u> --	Total

17. Respondents shall pay a civil penalty of \$2,000.00 to the Secretary, United States Department of Housing and Urban Development.

18. Respondents shall inform all their agents and employees of the terms of this Order and shall educate them as to such terms and the requirements of the Fair Housing Act and regulations.

19. The Secretary's Charge regarding Ms. Frances Becker is dismissed.

20. This Order is entered pursuant to 42 U.S.C. Sec. 3612 (g)(3) and the regulations codified at 24 C.F.R. Sec. 104.910, and will become final upon the expiration of 30 days or upon affirmance, in whole or in part, by the Secretary within that time. *See* 42 U.S.C. Sec. 3612 (h); 24 C.F.R. Sec. 104.930.

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William C. Cregar  
Administrative Law Judge

Dated: July 13, 1990