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 Sheila Stover, Charging Party, v. Joseph Gruzdaitis and Ana Gruzdaitis, Respondents.	HUDALJ 02-96-0377-8 Decided: August 14, 1998

Joseph Gruzdaitis and Ana Gruzdaitis, *pro se*

Julia Solo, Esq.
For the Government

Before: THOMAS C. HEINZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed by Sheila Stover ("Complainant" or "Ms. Stover") alleging that Joseph Gruzdaitis ("Mr. Gruzdaitis") and Ana Gruzdaitis ("Mrs. Gruzdaitis") (collectively "Respondents") violated the Fair Housing Act, 42 U.S.C. §3601 *et seq.* (sometimes "the Act"), by discriminating against Complainant because of her race/color (Black). The Department of Housing and Urban Development ("HUD" or "the Secretary") investigated the complaint, and after deciding that there was reasonable cause to believe that discriminatory acts had taken place, issued a Charge of Discrimination against the Respondents on January 6, 1998. The Charge was later withdrawn, amended slightly, and then reissued on March 16, 1998.

Respondents failed to file an Answer to the Charge of Discrimination. Pursuant to a motion by the Charging Party, a Default Judgment was entered against Respondents on May 5, 1998. On May 26, 1998, pursuant to order, the Charging Party filed a Motion for Default Order specifying the relief sought in this proceeding. Thereafter the Secretary filed an affidavit from the Complainant in support of the Motion. Respondents failed to file a response to the Motion for Default Order despite notice that failure to do so would waive their right to object to the Motion as well as their right to an oral hearing regarding the relief sought by the Charging Party. Because Respondents failed to file an Answer to the Charge of Discrimination, the allegations of the Charge are deemed admitted pursuant to section 180.420 of the Rules of Practice governing this proceeding. (24 C.F.R. §180.420)

Findings of Fact

1. Complainant, a Black woman, resides at 458 Jefferson Avenue, Buffalo, New York. (Charge, ¶ 2; affidavit ¶ 1)

2. Respondents own a building ("the Building") containing two apartments at 24 Woltz Avenue, Buffalo, New York. They live in one apartment and rent out the other. (Charge, ¶ 3)

3. On or about May 12, 1995, in response to a sign reading "Apartment for Rent" posted at the Building, Complainant stopped at the Building to inquire. She was greeted through an open window by an elderly White man, Mr. Gruzdaitis, who asked what she wanted. When she replied that she was inquiring about the apartment for rent, he said angrily, "Not for you, not for you." Complainant then asked whether the apartment was available or not, whereupon Mr. Gruzdaitis replied: "Not for you, no blacks. Fuck you, they don't pay rent." (Charge, ¶¶ 4, 5, 6; affidavit ¶¶ 3, 4)

4. Mr. Gruzdaitis then asked Complainant to move closer to him. When she did, he spit at her and said: "Fuck you all, you don't pay your rent. Get off my porch, get off my property." (Charge, ¶ 7; affidavit ¶ 4)

5. As a result of Mr. Gruzdaitis' statements and conduct, Complainant suffered severe emotional distress, economic loss, embarrassment, and humiliation. (Charge, ¶ 12)

Additional Findings

The following findings are based on uncontroverted statements in Complainant's affidavit submitted in support of the Motion for Default Order.

6. In May, 1995, Complainant, a 26-year-old single mother of two, was seeking a larger apartment. Complainant's sister and her sister's children had recently moved in with her, and her apartment was too small to accommodate everyone. Some of the children were sleeping on the floors and sofa. Complainant was looking for a larger apartment to provide adequate living and sleeping space for both families. (Affidavit, ¶ 2)

7. Complainant describes being both physically and emotionally "shocked" and "shaken" as a result of Mr. Gruzdaitis' behavior. Overwhelmed, she immediately recoiled with embarrassment, put her head down and looked at the ground. She reports that after Mr. Gruzdaitis spit at her, she briefly "froze" on the front porch, then quickly turned and walked away, her head down all the while. She felt threatened and feared for her safety. Her shame and humiliation were particularly acute because the attack came without warning in her own neighborhood, where she was accustomed to feeling comfortable and secure. (Affidavit, ¶¶ 5, 6)

8. Complainant reports that never before had anyone threatened her and told her that because of her race, she "could not do something." She asserts: "I was trying to improve the situation of myself and my family. I was trying to find room for my sister and her family. In the process, this man screamed, yelled and even spit at me, all because I am Black." (Affidavit, ¶ 7)

9. Complainant states that she did nothing to provoke Mr. Gruzdaitis; she simply asked about the apartment for rent. Upon hearing her inquiry, he asked no questions and immediately began screaming at her. (Affidavit, ¶¶ 8, 9)

10. The events on the Respondents' porch on or about May 12, 1995, left Complainant shaken and crying. She remembers having difficulty sleeping and concentrating for several months thereafter. (Affidavit, ¶ 10)

11. After the incident, Complainant became depressed, lost her appetite and felt nauseated all the time. She asserts that after a few weeks her young son begged her to eat because he was concerned for her health. (Affidavit, ¶¶ 11,14)

12. Complainant states that she felt a great deal of stress and anxiety as a result of her experience on Respondents' porch. She believes that she "took out" much of her stress on her children by being short with them, snapping at them, and losing her patience. Although she spoke with her sister and cousin about what happened, her children bore the

brunt of her feelings of frustration and anxiety, she believes. That aspect of the entire incident causes her the most regret. (Affidavit, ¶ 12)

13. As a result of Mr. Gruzdaitis' conduct, Complainant felt incapable of inquiring about any other apartment for nearly a month. (Affidavit, ¶ 13)

14. Although she has since found new housing and moved, she frequently remembers the experience. Those memories are always accompanied by painful feelings of humiliation, anger, and anxiety. "It is something that will always remain with me, regardless of how hard I try to forget it." (Affidavit, ¶ 14)

15. The Charging Party asserts that representatives of the Secretary repeatedly attempted to investigate and conciliate Complainant's charges, both through the mail and on the telephone. All attempts were ignored or rebuffed. When contacted by telephone, Mr. Gruzdaitis refused to cooperate and ended the conversations with profane language, according to the Charging Party's investigator. Respondents have not responded to any document served upon them during the pendency of this case. (Motion for Default Order, p. 9)

16. Respondents had been found to have committed an unlawful discriminatory housing practice against one of their tenants before the instant case arose. On September 9, 1997, an Administrative Law Judge of the New York State Division of Human Rights issued a Notice of Recommended Findings of Fact, Decision, Opinion, and Order concluding that Respondents Joseph and Anna Gruzdaitis on several occasions in 1990, in violation of the New York State Human Rights Law, discriminated against a Black tenant because of her race by harassing her and denying her the peaceful enjoyment of a property she had leased from the Respondents. The complainant in that case was awarded compensatory damages of $10,000 and punitive damages of $10,000. The decision noted that Respondents failed to appear for a two-party investigatory conference, failed to appear for a prehearing conference, failed to appear for a preliminary conference, and failed to appear at the hearing, despite having received timely notices of the conferences and the hearing. (*State Division of Human Rights on the Complaint of Altheria Anderson, Complainant, against Joseph and Anna Gruzdaitis O/P, Respondents*, Case No: 7-H-MR-90-144656)[1]

Discussion

[1]According to the Charging Party, Mrs. Gruzdaitis' given name is spelled "Ana." In the New York case her name is spelled "Anna."

Section 804(c) of the Act (42 U.S.C. §3604(c)) makes it unlawful to:

> make ... any ... statement ... with respect to the ... rental of a dwelling that indicates any preference, limitation, or discrimination based on ... race [or] color ... or an intention to make any such preference, limitation, or discrimination.

Because Respondents failed to file an Answer to the Charge of Discrimination, they are deemed to have admitted that Mr. Gruzdaitis made racially discriminatory statements in violation of section 804(c) of the Act.

Among other things, section 804(c) gives a Black person the right to inquire about the availability of housing from a housing provider without having to endure racially discriminatory statements. Section 818 of the Act (42 U.S.C. §3617) provides in part that it "shall be unlawful 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 section 803, 804, 805, or 806." By failing to file an Answer to the Charge of Discrimination, Respondents are deemed to have admitted that when Mr. Gruzdaitis learned that Complainant sought to rent housing from them, he asked her to step closer and then spit at her. Such conduct violated section 818 by intimidating, threatening, or interfering with Complainant in the exercise, or on account of her having exercised, her right under section 804(c) to inquire about the availability of housing without being subjected to racially discriminatory statements.

Because Respondents occupy one half of a two-unit dwelling that they own, they are exempt from all of the provisions of section 804 except subsection (c). *See* 42 U.S.C. §3603(b)(2). In other words, Respondents enjoy an exemption under the Act that allows them to discriminate with impunity against a prospective tenant, provided that during the process of renting their apartment, they do not make discriminatory statements based on race, color, religion, sex, handicap, familial status, or national origin. Respondents are not, however, exempt from the provisions of section 818.

As co-owners of the Building, Mr. and Mrs. Gruzdaitis are at the same time principals of their rental operation and agents for each other. When Mr. Gruzdaitis spoke to Complainant, he acted as Mrs. Gruzdaitis' agent, making her vicariously liable for his conduct. In other words, Mrs. Gruzdaitis' liability rests solely on her status as co-owner of the Building. The record does not show that she made unlawfully discriminatory statements to Complainant, knew about her husband's conduct, or ratified it. *See Walker v. Crigler,* 976 F.2d 900, 904-05 (4th Cir. 1992); *Hamilton v. Svatik,* 779 F.2d 383, 388 (7th Cir. 1985); *United States v. Youritan Construction Co.,* 370 F.Supp. 643, 649

(N.D.Cal. 1973), *modified on other grounds,* 509 F.2d 623 (9th Cir. 1975), *cert. denied,* 421 U.S. 1002 (1975).

Remedies

Section 812(g)(3) of the Act provides that upon a finding that a respondent has violated the Act, an administrative law judge shall order "such relief as may be appropriate, which may include damages suffered by the aggrieved person." (42 U.S.C. §3612(g)(3)) In the instant case, Respondents have violated the Act through statements and conduct by Mr. Gruzdaitis that have caused actual, compensable damages to Complainant.

Complainant's Damages

Actual damages in housing discrimination cases may include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination.[2] Damages for emotional distress may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof.[3] Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury.[4] The amount awarded should make the victim whole.[5]

Racial discrimination strikes at the heart of a person's identity. Race and skin color are immutable characteristics irrelevant to whether someone is qualified to buy or rent housing. As racial discrimination has been unlawful in this country for many years, it is reasonable to expect that a person of color would suffer deep frustration, anger, and

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[2]*See, e.g., HUD v. Blackwell,* 2 Fair Housing-Fair Lending(P-H) ¶25,001 (hereinafter *Blackwell I*) at 25,011; *HUD v. Murphy,* Fair Housing-Fair Lending (P-H) ¶25,002 at 25,055 (HUDALJ July 13, 1990); *See also Smith v. Anchor Bldg. Corp.,* 536 F.2d 231 (8th Cir. 1976); *Steele v. Title Realty Co.,* 478 F.2d 380, 384 (10th Cir. 1973); *McNeil v. P N & S. Inc.,* 372 F. Supp. 658 (N.D. Ga. 1973).

[3]*Blackwell II,* 908 F.2d 864, 872 (11th Cir. 1990); *Murphy* at 25,055; *See also Marable v. Walker,* 704 F.2d 1219, 1220 (11th Cir. 1983); *Gore v. Turner,* 563 F.2d 159, 164 (5th Cir. 1977).

[4]*See, e.g., Block v. R.H. Macy & Co.,* 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.,* 478 F.2d at 384; *Blackwell I* at 25,011. *See also Blackwell II,* 908 F.2d at 872-73 (recovery for distress is not barred because amount of damages is incapable of exact measure).

[5]*See Murphy* at 25,056; *Blackwell I* at 25,013.

humiliation upon experiencing discrimination during a search for housing. Complainant's response to Mr. Gruzdaitis' bigotry falls within the range of typical reactions to racial discrimination. Surprised and intimidated by his profane and threatening rejection of her as a potential tenant, she walked away crying, her head bowed in humiliation. For weeks thereafter she had difficulty sleeping, concentrating, and eating. During this period her children suffered from her trauma-induced bad temper, a fact that causes her deep regret. She was so upset by the experience on Respondents' porch that she discontinued her search for new housing for a month. Consequently, Mr. Gruzdaitis' racially discriminatory conduct extended by a month the time that Complainant had to live in unsatisfactory, overcrowded housing.

The emotional damage that Complainant suffered, although severe, appears to have left no permanent scars. Apart from the temporary harm caused to her relationship with her children, Complainant's other relationships with family, friends, co-workers, and White people in general apparently have not been impaired as a result of her experience with Mr. Gruzdaitis. Furthermore, even during the period when her emotional wounds were fresh, Complainant did not seek the aid of medical or psychological experts. Finally, the record does not show that Complainant was particularly sensitive to racial discrimination because she had endured racial attacks in the past or for other reasons, and she appears to have fully recovered except for occasional painful memories. Under these circumstances, the Charging Party's request for an award of $50,000 cannot be justified. The record demonstrates that Complainant's intangible injuries were sufficiently severe to support an award of $25,000.

Civil Penalties

To vindicate the public interest, the Act authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. (42 U.S.C. §3612(g)(3)(A); 24 C.F.R. §104.910(b)(3)) Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (3) respondent's financial resources; (4) the degree of respondent's culpability; and (5) the goal of deterrence. *See Murphy* at 25,058; *Blackwell I* at 25,014-15; H. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Nature and Circumstances of the Violation

This case illustrates the need for civil rights laws. A Black woman sees a sign in a window advertising an apartment for rent. The advertisement invites inquiry. In response to the invitation, the woman enters the property and approaches the landlord, a complete

stranger to her, for the purpose of getting information. She civilly asks whether the apartment is available and is instantly assaulted with profanities and racially abusive language. When she persists in her right to inquire about the availability of housing, the landlord asks her to come closer, repeats his racist epithets, and then, in a degrading and humiliating gesture of contempt, spits at her.

This is not a scene out of an earlier shameful era; it is the case before me. I conclude that the public interest requires Mr. Gruzdaitis to pay the severest possible penalty for his outrageous conduct.

Previous Violations

Respondents engaged in unlawful housing discrimination before this case arose. In September 1997 an Administrative Law Judge for the State of New York issued a decision finding that Respondents discriminated against one of their tenants based on race. The tenant, a Black woman, testified in that case that on numerous occasions Mr. Gruzdaitis discriminated against her in the terms, conditions, and privileges of renting an apartment. She said, among other things, that Mr. Gruzdaitis caused the arrest for robbery of a visiting male cousin who was later released without being charged; that Mr. Gruzdaitis repeatedly prevented a boyfriend from visiting her; and that on one occasion he accosted her in the presence of visiting relatives and friends with small children, calling her a "Black bitch," a "Black mother fucker," and a "whore." On this occasion he swung his fists at her and yelled, "No Black people, no Black people on property. Black people are dirty, filthy, they bring roaches and rats and stink." On a later occasion Mr. Gruzdaitis physically attacked a female cousin of the tenant, spit upon the tenant, punched her in the face with his fist, and swung a rake at one of her cousin's children. (*New York State Division of Human Rights on the Complaint of Altheria Anderson, Complainant, against Joseph and Anna Gruzdaitis O/P, Respondents,* Case No: 7-H-MR-90-144656.)

Respondents' Financial Resources

Evidence regarding Respondents' financial circumstances is peculiarly within their knowledge, so they had the burden of introducing such evidence into the record. If a respondent fails to produce credible evidence militating against assessment of a civil penalty, a penalty may be imposed without consideration of his financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *HUD v. Jerrard*, Fair Housing-Fair Lending (P-H) ¶25,005 at 25,092; *Blackwell* at 25,015. Respondents have introduced no evidence concerning their financial circumstances and must therefore be considered capable of paying the maximum civil penalty without suffering undue

hardship.

Degree of Respondents' Culpability

The record does not show that Mrs. Gruzdaitis made unlawfully discriminatory statements to Complainant, knew about her husband's conduct, or ratified it. In other words, Mrs. Gruzdaitis bears no culpability in fact for the violations complained of. Her husband, on the other hand, is fully culpable. Nothing in the record mitigates Mr. Gruzdaitis' offense.

Deterrence

Mr. Gruzdaitis' treated Ms. Stover abominably. His behavior cannot be tolerated in a civilized society. Mr. Gruzdaitis and others in the housing industry must be made to understand that if they make racially discriminatory statements to a prospective tenant, or if they threaten, humiliate, and degrade a person of color exercising his or her right to inquire about the availability of housing, they will pay dearly. The goal of deterrence requires imposition of the severest possible penalty in this case.

It should also be noted that Respondents failed to cooperate during the investigation of the complaint and have not responded to any pleading served upon them during the pendency of this case. Their contempt for the adjudicatory process mirrors Mr. Gruzdaitis' contempt for the Complainant's civil rights.

* * *

The Charging Party requests imposition of a civil penalty of $27,500 against each of the Respondents. After amendment in 1988, the Act authorized a maximum civil penalty of $25,000 against a respondent adjudged to have committed one other discriminatory housing practice within five years of the charge of discrimination. Pursuant to the Debt Collection Improvement Act of 1996, HUD promulgated regulations increasing that amount to $27,500, effective November 4, 1996. However, the increased penalty can apply only to violations that occur after November 4, 1996. *See* Pub. L. 104-134, Title III, §31001(s)(1), 110 Stat. 1321-373 (Apr. 26, 1996), amending 28 U.S.C. §2461; 61 *Fed. Reg.* 5227 (Oct. 4, 1996) (promulgating 24 C.F.R. §180.670(b)(3)(iii)). The violations that gave rise to this case occurred in 1995. Accordingly, the maximum penalty that may be imposed against a Respondent in this case is $25,000.

Although Mr. Gruzdaitis will be ordered to pay a civil penalty of $25,000, no penalty will be imposed against Mrs. Gruzdaitis, either individually or jointly. She bears

no culpability for her husband's conduct. The mere fact that she co-owned the building is insufficient ground to justify making her pay a penalty. The goal of deterrence would not be served by imposing a penalty upon someone who has not been shown to have been responsible for the violative conduct, ratified it, or even been aware of it.

Conclusion

Respondents have violated sections 804(c) and 818 of the Fair Housing Act. (42 U.S.C. §§ 3604(c) and 3617) As a result of those violations, Complainant suffered actual damages for which she will receive a compensatory award. Further, to vindicate the public interest, an injunction will be ordered against Respondents as well as a civil penalty against Mr. Gruzdaitis.

ORDER

It is hereby ORDERED that:

1. Respondents are permanently enjoined from making unlawfully discriminatory statements related to the rental or sale of housing, and from coercing, intimidating, threatening, or interfering with any person on account of that person's having exercised or enjoyed any right protected by the Fair Housing Act;

2. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay actual damages of $25,000 to Complainant Sheila Stover; and

3. Within thirty (30) days of the date on which this Order becomes final, Respondent Joseph Gruzdaitis shall pay a civil penalty of $25,000 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. §3612(g)(3) of the Fair Housing Act and the regulations codified at 24 C.F.R. §180.670, and will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary within that time.

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THOMAS C. HEINZ
Administrative Law Judge