

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
Theodore W. Paul, Darlene Paul,
Meridith Paul, Theodore Paul,
Emily Paul, Matthew Paul, and
Barbara Paul,

Charging Party,

v.

Goldie Sams and Andrew Brooks,

Respondents.

HUDALJ 03-92-0245-1
Decided: March 11, 1994

Jon M. Seward, Esq.
For the Charging Party

C. Blaine Myers, Esq.
For the Respondent

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This matter arose as a result of a complaint filed on March 5, 1992, by Theodore Paul. The complaint was amended on September 21, 1992, to include as additional Complainants Mr. Paul's wife, Darlene Paul, and their five children. It was filed with the United States Department of Housing and Urban Development ("HUD" or the "Charging Party"), and alleged that Respondents Goldie Sams and Andrew Brooks discriminated against the Pauls on the basis of their familial-status in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* ("the Act").

After an investigation, HUD issued a Determination of Reasonable Cause and Charge of Discrimination on June 29, 1993, and an amended Determination and Charge, pursuant to

24 C.F.R. § 104.440(a), on July 29, 1993.¹ The amended Charge alleged that Respondents Goldie Sams and Andrew Brooks violated sections 804(a) and 804(c) of the Act twice, and that respondent Brooks also violated section 805(a) of the Act twice, by refusing to rent a dwelling to Complainants because of familial status, making discriminatory statements in connection with the rental of a dwelling, and engaging in an unlawful real estate-related transaction because of familial status.

After a Motion for Continuance was filed by Respondents and granted, a hearing in this matter was held in Parkersburg, West Virginia on October 19, 1993.² Ms. Sams did not attend. At the close of the hearing the parties were instructed to file post-hearing briefs by December 3, 1993. Respondents filed a Motion for Extension which I granted. The Charging Party moved to extend its time to file a response to Respondents' brief. I granted this Motion as well. On January 18, 1994, the Charging Party filed its Response, and the record closed.

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

Findings of Fact

1. In August 1991, Complainants Theodore W. and Darlene Paul, and their children, Meridith, Theodore, Emily, Matthew, and Barbara³ sought to rent a house in West Virginia. Transcript ("Tr.") 24, 29, 30.

2. At the time, Complainants lived in Fredonia, New York. For approximately six years, they lived in a three bedroom mobile home. Tr. 24, 36.

3. In the mobile home, Mr. and Ms. Paul slept in one bedroom with their youngest child in a crib. Their two boys slept on bunk beds in one room, and their girls slept on bunk beds in the other room. Tr. 36.

4. Complainants were moving to West Virginia because Mr. Paul had been transferred by Radio Shack to manage a store in Parkersburg. Tr. 28.

5. In 1991, his salary was approximately \$18,000.00 with a \$1,500.00 bonus. Currently his salary is \$21,000.00. He is the family's sole source of income. Tr. 79.

¹The Charging Party and Respondents have stipulated that adequate conciliation attempts were made during the course of this matter. Transcript, page 135.

²Respondents filed a Motion to View Subject Premises. At the hearing's conclusion, all parties present, their counsel, and I viewed the property.

³Since the filing of the complaint, the Pauls had two more children. They are not complainants.

6. According to Mr. Paul, Radio Shack routinely paid a hotel bill of 30 days for a transferring manager while he or she secured housing, but under "extenuating circumstances," the company will pay the hotel bill for an additional 30 days. Tr. 28, 30.

7. Complainants desired housing secluded from busy traffic, and close to shopping and other activities. They could not afford a house that rented for more than \$400.00 monthly. Tr. 29, 30.

8. Mr. Paul conducted an extensive search for housing in Parkersburg that included rejecting some properties as too expensive or lacking a fenced-in back yard. He also considered mobile home parks. Tr. 32. He worked approximately 13 hours a day and usually had two evenings per week to look for housing. Tr. 31.

9. Darlene Paul and their five children stayed in New York during Mr. Paul's search for housing. Tr. 29. The oldest Complainant child was 11 years old and the youngest was less than one year old. Tr. 36, 82.⁴

10. Mr. Paul responded to a newspaper advertisement to rent the subject house at 705 56th Street in Vienna, West Virginia. Tr. 32. Respondent Andrew Brooks' phone number was listed in the ad. Tr. 33.

11. The subject house is located in a residential neighborhood and is secluded from heavy traffic. It has a small front yard and a large, fenced-in back yard. Tr. 34, 43. There is also a garage. Tr. 35. The lot extends from 56th Street to 57th Street. Tr. 177.

12. Respondent Goldie Sams has owned the property for at least 26 years. Tr. 177. She was 80 years old at the time of the hearing. Tr. 21.

13. The house has two floors, an attic and a basement. The top floor has three rooms and a bathroom. The bottom floor has a kitchen, a laundry room, a dining room, a living room, and two smaller rooms. Tr. 34.

14. Ms. Sams, who lives in Kentucky, asked Mr. Brooks in approximately 1990 to take care of her property when her property manager became ill. Mr. Brooks had known Ms. Sams for several years at the time. Tr. 5, 141, 156.

15. Mr. Brooks teaches junior high mathematics. He has been a teacher for over ten years. Tr. 141.

16. Mr. Brooks makes sure any repairs that are needed at the house are completed.

⁴The children's ages in the Charge were higher than when the refusal to rent occurred. Ms. Paul testified to their birthdates, and, therefore, set an accurate benchmark for the children's ages. The Charging Party moved that the Charge be amended to conform to the actual ages of the Paul children. Because no objection was raised, the motion is Granted.

Additionally, if the house is vacant, he advertises and shows it to prospective renters. He then tells Ms. Sams who is interested in the house. Tr. 142, 163.

17. In advertisements to rent the house, Mr. Brooks places no restriction on the number of children, nor was he directed to do so by Ms. Sams. Tr. 143.

18. He does not require a written application to rent. Ms. Sams does not require Mr. Brooks to ask any particular questions about a prospective renter. Tr. 168.

19. He gives Ms. Sams his impression of prospective tenants and Ms. Sams relies upon Mr. Brooks' opinion. Tr. 158, 169. This impression is based on conversations Mr. Brooks has with the prospective renter. Tr. 170, 171. Ms. Sams also asks Mr. Brooks if he thinks potential tenants are "nice people" and if he thinks they will take care of the property. Tr. 173, 174.

20. Ms. Sams also asks Mr. Brooks about the potential renter's family composition. Mr. Brooks tells her if there is a husband, wife, and children. Tr. 174.

21. Mr. Brooks signs the leases on behalf of Ms. Sams. His signature, placed on the line for "LESSOR" reads, "Andrew W. Brooks, Agent for" Goldie Sams. Tr. 163, 165, Charging Party's Exhibit ("CP-Ex.") 7.

22. Tenants send rent checks to Mr. Brooks. He forwards these checks to Ms. Sams. Tr. 166.

23. Ms. Sams pays Mr. Brooks \$25.00 per month for his services, and when he rents the property, one-half of the first month's rent. Tr. 142, 166.

24. Mr. Brooks has no ownership interest in the property, and is not related in any way to Ms. Sams. Tr. 158.

25. When Mr. Brooks began managing the property, a wife, husband, and two children occupied the house. The renters after that had one child with another expected. After those renters left, Complainants attempted to rent the property. Tr. 143, 144.

26. Mr. Paul telephoned Mr. Brooks and told him that he, Mr. Paul, was interested in the house, and that he would like to bring his video camera to make a tape of the house to send to his family still living in New York. Mr. Brooks agreed. Tr. 33, 155.

27. On Saturday, August 31, Mr. Paul visited the subject house in Vienna. Tr. 33. It rented for \$375.00 per month. Tr. 36, 44. He was excited about the property and told

Mr. Brooks that he needed to send the tape to his family, and that he would call Mr. Brooks on Monday.⁵ Tr. 37, 44.

28. Sometime during that visit, Mr. Paul told Mr. Brooks that he had five children. Tr. 46, 155.

29. Mr. Brooks told Mr. Paul that Respondent Sams would make the decision whether or not to rent to Complainants. Tr. 156.

30. When Ms. Paul and the family viewed the video tape, they were very enthusiastic, especially about the dining room and back yard. Tr. 45, 87. Ms. Paul also liked the sidewalks by the house for the children to ride their bicycles. Tr. 88, 106.

31. Ms. Paul and her children viewed the video several times. She would tell the children that the subject house was where they were going to live, and that their father was already there. Tr. 90. She used the tape to get the children accustomed to the idea of moving from New York. They were very excited about moving into the house. Tr. 91.

32. The house was larger than Complainants' home in New York, and met their requirements for space and safety. Tr. 34-35, 75.

33. The master bedroom measures 15 feet, four inches by nine feet, the second bedroom measures nine feet, one inch by 13 feet, two inches, and the third bedroom measures nine feet, six inches by nine feet. CP-Ex. 10.

34. The Pauls educate their children at home rather than at public schools. They planned to use their dining room for home schooling. Tr. 40, 81.

35. Although no final decision had been made about using the house's space, Mr. Paul thought that one of the rooms on the first floor, one with three windows and a door to the outside, would be used by their children as a play room, and the smaller room next to it would be used as an office. Ms. Paul thought that either might be used as a bedroom. Tr. 40, 41, 89, 121.

36. The home is approximately five minutes from the church Complainants attend, and from the place the children take piano lessons. A mall, supermarkets, and restaurants are nearby. Tr. 105.

37. Complainants did not anticipate any obstacle to renting the subject house based on Mr. Paul's conversation with Mr. Brooks. Tr. 92.

⁵There is no evidence of the duration of a lease Complainants would have signed if a lease had been offered. See Tr. 63.

38. On Monday, Mr. Paul telephoned Mr. Brooks to tell him that they wanted to rent the subject house and that he would bring him the security deposit and rent that week. Tr. 45.

39. Mr. Brooks spoke with Ms. Sams about the Complainants. He said he had a favorable impression of them. When he told her how many children were in Complainant family, Ms. Sams said she would not rent to them because there were too many children. Tr. 174, 175.

40. On Tuesday, Mr. Paul called Mr. Brooks to arrange a meeting for the security deposit. Mr. Brooks said that there was a problem, that the owner of the property would not rent to Complainants because they had too many children.⁶ Tr. 47, 157, 175.

41. When Mr. Brooks told Mr. Paul that he could not rent the subject house because the Pauls had too many children, Mr. Paul's "stomach just sank." He expressed his disbelief in the refusal to Mr. Brooks and tried to assure Mr. Brooks that there would be no damage to the property. Tr. 47-48, 176. Eventually, he asked to speak to the owner, Respondent Sams. Tr. 48.

42. Ms. Paul thought at first, the denial of housing was "silly," but then felt "shocked." Tr. 92.

43. Mr. Paul then telephoned Ms. Sams in Kentucky to discuss the refusal and try to persuade her to change her mind. Tr. 48. She asked him how many children he had and their sexes. Tr. 49.

44. Ms. Sams also asked if their mother worked, and how the children behaved. Ms. Sams expressed concerns that if Ms. Paul worked, the children would be unattended. Ms. Sams said she did not like renting to large families because there previously had been damage to the house. Tr. 49, 68.

45. Mr. Paul answered all her questions, including an assurance that his children were not "ruffians," and offered to take out an insurance policy to protect her house against any damage. Tr. 49, 50.

⁶In his initial testimony, Mr. Brooks stated that he wasn't sure he told Mr. Paul that he could not rent him the house specifically because there were too many children. He further testified that the reason he gave Mr. Paul essentially focused on there being too many people for the house. Tr. 157. On cross examination, Mr. Brooks admitted that what he remembered most about the conversation was tying the denial to the number of children. Tr. 175. Given this and other testimony, I find that Mr. Brooks told Mr. Paul that the denial was based on the number of children in the family. See Tr. 47.

46. At the end of the telephone call, she told Mr. Paul that she would consider changing her mind, but that she would talk to Mr. Brooks and leave the final decision to him. Tr. 50.

47. When Ms. Sams told Mr. Paul that Mr. Brooks would make the final decision, Mr. Paul was relieved because he had developed a good rapport with Mr. Brooks. Tr. 50.

48. After her husband told her that Ms. Sams would leave the decision to rent up to Mr. Brooks, Ms. Paul felt that they "had a good shot at renting" the subject house. Tr. 94.

49. On Wednesday or Thursday, Mr. Paul telephoned Mr. Brooks for the final decision. Mr. Brooks told him that Ms. Sams would not allow them to rent the house because they had too many children. Tr. 51, 92.

50. Ms. Sams made the decision not to rent to Complainants.⁷ Tr. 159.

51. When Mr. Brooks told Mr. Paul that Ms. Sams would not allow the rental, Mr. Paul felt as though "the wind [was] knocked out of [him]." He felt "shell-shocked," "sucker punched," and "in a daze." Mr. Paul had been unprepared for rejection because Ms. Sams led him to believe that Mr. Brooks would decide. Tr. 50.

52. At work, Mr. Paul would "[go] around the store in just a daze" from thinking about the refusal and trying to find housing. He felt "distraught." Tr. 53, 54.

53. When she was informed of the final decision not to rent, Ms. Paul felt humiliated. Tr. 95.

54. Because his wife remained in New York, Mr. Paul felt additional stress when he could not comfort her after the denial. Tr. 54.

55. Ms. Paul felt that Mr. Paul was "tense," "grouchy," and "depressed" when he came to New York on the weekend. Tr. 99.

56. Mr. Paul expected stress from moving to West Virginia and being separated from his family while he searched for housing, but did not expect being denied housing because of the size of his family. Tr. 73. He feels that the denial of housing exacerbated the stress he was already enduring. Tr. 79.

⁷ Given that Mr. Brooks was a credible witness, that Ms. Sams was the owner of the property, and despite Ms. Sams telling Mr. Paul that the final decision to rent the house was being left to Mr. Brooks, I credit Mr. Brooks' testimony that Ms. Sams made that decision.

57. After she refused to rent to Complainants, Ms. Sams directed Mr. Brooks to begin using a lease that limited rental of the property to no more than two adults and two children. Tr. 152, 165, CP-Ex. 7.

58. Under the new lease, the house was finally rented to a couple with no children. They pay \$375.00 per month in rent, and continued to occupy the house at the time of the hearing. Tr. 144-45, CP-Ex. 7.

59. After the final rejection, the thirty day period that Radio Shack paid for Mr. Paul's temporary housing was about to expire. Mr. Paul told his district manager he was having difficulty finding housing, and was told that Radio Shack would continue to pay his hotel bill until he found a place to live. Tr. 31, 53.

60. Mr. and Ms. Paul's lives are focused primarily on their children; caring for them is "the center of [their] marriage." Tr. 60, 95, 112. The children were very disappointed because they had seen the videotape. After their parents told them why they could not move into the house, the children were confused because it was larger than their mobile home. Tr. 97.

61. After the denial, Ms. Paul feared they would never be able find a home they could afford to rent because of the number of family members. Tr. 97, 98.

62. Tension arose in the marriage because of the denial of housing specifically beyond the tension of the Pauls being apart. Tr. 100, 119, 122.

63. Ms. Paul became impatient and tense with her children because she was unsure if they could secure housing. Tr. 100, 120, 122. She also worried about the expenses of her husband travelling between West Virginia and New York. Tr. 100. 64. Complainants secured housing approximately one week later. Tr. 55.

65. Complainants currently reside at the Abbey Village Apartments on Route 9 in Parkersburg, West Virginia. They have lived there since September 1991. Tr. 23-25. The apartment has the same number of bedrooms as the subject house. Tr. 41.

66. The rent has been \$400.00 per month since Complainants moved into the apartment. Tr. 44, 101, CP-Ex. 10.

67. The apartment's master bedroom measures 12 feet by 12 feet. The two other bedrooms measure 12 feet by nine feet and nine feet by eleven feet. Mr. and Ms. Paul sleep in the master bedroom with a crib; their daughters and sons sleep separately in the other bedrooms in bunkbeds and cribs. Tr. 41, 107, 108.

68. The kitchen is smaller than the subject house's, and there is no separate dining room. However, there is an "eating area" which is smaller than the subject house's dining room. Tr. 42, 108, 109.

69. From September 1991 until September 1993, Complainants used approximately 8,500 gallons of water per month at \$67.57 per month. CP-Ex. 4. During the same period, the water bill at the subject house would have been \$27.72 per month, \$39.85 less per month. CP-Ex. 6.

70. Complainants' current apartment is located at the end of a row of apartments. The road to those apartments runs alongside and behind Complainants' apartment, creating a continual flow of traffic. There is a lawn for Complainants' children to play on at their current residence, but it is not private or fenced-in. Tr. 43, 109.

71. The proximity of traffic causes Ms. Paul anxiety; she worries that if she does not watch her youngest children constantly, they may wander into the traffic. Tr. 110.

72. Other apartments in the complex had been broken into during the summer of 1993, and there were burglaries in the neighborhood in autumn 1992. In the apartment next to Complainants, approximately six different parties moved into the premises in the period Complainants lived in Abbey Village. It is "not the kind of environment [Mr. and Ms. Paul] wanted for [their] family." Tr. 106-107.

73. The apartment is approximately thirty minutes from the church Complainants attend, and from the place the children take piano lessons. Tr. 105.

74. Complainants chose this apartment because they wanted to sell their mobile home in New York, and needed to move out to sell it. They could not afford to support two households, and wanted to begin the sales process in New York as quickly as possible. Tr. 56.

Discussion and Conclusions of Law

The Fair Housing Act prohibits, in part, the refusal to rent a dwelling to any person because of their familial status.⁸ 42 U.S.C. § 3604(a). With that prohibition, Congress recognized that "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2d Sess. 19, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2180. It cited a survey that found that 50 percent of all rental units have restrictive policies that limit the ability of families to live in those units and that almost 20 percent of families were living in less desirable housing because of those policies. *Id.* (citing Marans, *Measuring Restrictive Rental*

⁸"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. § 3602(k); 24 C.F.R. § 100.20.

Practices Affecting Families with Children: A National Survey, Office of Policy Planning and Research, Department of Housing and Urban Development (1980) ("the Marans survey")).

The Charging Party alleges that Respondent Goldie Sams twice violated 42 U.S.C. §§ 3604(a) and (c), and Respondent Andrew Brooks twice violated 42 U.S.C. §§ 3604(a), (c) and 3605(a), as they relate to familial status.⁹ HUD must prove these charges by a preponderance of the evidence. *HUD v. Leiner*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,021 (HUDALJ Jan. 3, 1992).

The record demonstrates direct evidence of violations of the Act. Mr. Brooks, at Ms. Sams' direction, told Mr. Paul that he could not rent to him because he had too many children. After Ms. Sams raised the possibility that Complainants could rent the house, Mr. Brooks again told Mr. Paul it was unavailable because he has too many children. The Pauls constitute a family with children; they sought to rent the subject house; and, the subject house was unavailable to them because of their familial status.

Respondents argue that the refusal to rent the subject house to the Complainants was based on their desire to establish a reasonable occupancy limit, and that the presence of children was irrelevant to this limit. They make much of Ms. Sams' previous rentals to families with children to show that she does not discriminate on the basis of familial status. Respondents further argue that Andrew Brooks should not be liable because he is not engaged in the rental business, but rather was assisting Goldie Sams, a family friend.¹⁰

Their arguments are faulty. In his initial conversation with Mr. Paul, Mr. Brooks never indicated that the number of persons in Complainant family was a barrier to renting. Only after speaking to Ms. Sams did Mr. Brooks tell Mr. Paul there was a limit on the size of families to whom he could rent. Any doubt that this limit was based on the presence of children, rather than the number of persons, was erased when Mr. Paul telephoned Ms. Sams to plead for another chance at renting the house. She questioned him about the children's behavior and whether they would be properly supervised. Ms. Sams also expressed to him her belief, based on previous experience, that large families were destructive. Even after he assured her that his children were not destructive, and offered to take out an insurance policy to protect the home, Ms. Sams denied the housing because the

⁹Section 3604(c) prohibits the making of any "statement . . . with respect to the . . . rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . familial status . . ." Section 3605(a) makes it unlawful for "any person . . . whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction . . . because of . . . familial status."

¹⁰On October 15, 1993, Respondents filed two motions to dismiss the charges against both Respondents, and against Andrew Brooks individually. The Motions essentially claim Respondents are not liable. This claim is properly resolved by a hearing. Therefore, I deny these Motions, but to the extent that arguments within them supplement Respondents' brief, I will consider them. Additionally, I will consider the Charging Party's arguments in its Opposition to the Motions.

Pauls had too many children. Additionally, after Complainants were denied housing, Ms. Sams directed Mr. Brooks to change the lease for the subject house to limit occupancy to two adults and two children. No rationale was offered for this restriction. This limit is additional evidence of Ms. Sams' bias against families with large numbers of children. Furthermore, Ms. Sams' previous rentals to families with children do not shield her from my finding a violation. It is enough that she discriminated in the instant case. *See Davis v. Mansards*, 597 F. Supp. 334, 345 (N.D. Ind. 1984).

Ms. Sams' stereotypical view of children motivated her discriminatory conduct and deprived the Pauls of the housing they desired and could afford. It is precisely this type of assumption about a protected class that produced the results reflected in the Marans survey. Respondents suggest in their brief that the aims of the Act are not served by HUD bringing this case against an elderly woman and her friend. I disagree. The Act is designed to vindicate the rights of people who have been denied housing for unlawful reasons, not to overlook discrimination because of the housing provider's sympathetic or benign circumstances.

I also disagree with Respondents' characterization of Andrew Brooks as merely Ms. Sams' helper. Mr. Brooks is her agent and is also tainted by the discriminatory acts. Although caring for Ms. Sams' house is not his primary profession, he acts as her paid property manager. Mr. Brooks shows the property, advertises it when it becomes vacant, interviews potential tenants, serves as the sole source of information for Ms. Sams on those potential tenants, and forwards rent checks to her. Additionally, he has signed a lease as "Agent for" Ms. Sams. While his helping out Ms. Sams may be admirable, he carried out her orders to deny housing to the Pauls because of their familial status. Therefore, he also discriminated against the Complainants. *See Jeanty v. McKey & Pogue, Inc.*, 496 F.2d 1119, 1120-21 (5th Cir. 1979).

Accordingly, I find that Respondents Goldie Sams and Andrew Brooks violated 42 U.S.C. §§ 3604(a) and (c). I also find that Respondent Brooks violated 42 U.S.C. § 3605(a).

Remedies

Having found that Respondents engaged in discriminatory housing practices, Complainants are entitled to appropriate relief. This relief may include actual damages and injunctive or other equitable relief. Respondents may also be assessed a civil penalty "to vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Charging Party

seeks \$32,621.00 in tangible and intangible damages, a total of \$11,500.00 in civil penalties, and certain injunctive relief.

Actual Damages

The Charging Party seeks \$625.00 in reimbursement for the \$25.00 rent differential between the subject house's rent, \$375.00 per month, and Complainants' current rent, \$400.00, extended over 25 months, the period between the unlawful denial of housing and the hearing date. It also seeks \$996.25 in reimbursement for the monthly difference in water and sewer costs between the two properties, \$39.85, extended over 25 months.

Respondents do not dispute the monthly amounts for either the rent or the water and sewer differential, but argue against calculating the total reimbursement over the 25 month period. Rather, Respondents urge the economic damages be calculated for only 12 months. They base this figure on the length of a standard lease they claim Complainants would have signed had they rented. Respondents argue that because Complainants might have moved after the year was through, or Ms. Sams might not have renewed the lease, any damage beyond the year would be speculative. I disagree.

Respondents did not prove that the lease would have only been for one year. Even if they had proven the length of the initial lease, there is no evidence that Complainants would have moved from the subject house. They have remained in less desirable housing for over a year, so it is unlikely they would have vacated the housing they originally desired. Additionally, Respondents offered no evidence for their speculative assertion that Ms. Sams would have either canceled the lease or raised Complainants' rent. Their assertion is even more suspect given that there is no evidence that the family who rented the subject house instead of Complainants, and who have occupied the house for over a year, has had its rent raised. Therefore, I find that the proper period to calculate economic damages is 25 months. Respondents will be ordered to pay Complainants \$1,621.25 (\$625 rent differential plus \$996.25 water and sewer differential) in out of pocket damages.

The Charging Party also seeks \$2,500.00 each for Mr. and Ms. Paul, and \$1,000.00 to each of their five children for lost housing opportunity. Additionally, it seeks an award of \$7,500.00 each for Mr. and Ms. Paul, and \$1,500.00 to each of the four oldest Paul children for emotional distress resulting from the denial of housing. Respondents argue the Charging Party did not prove any intangible loss.

Complainants' search for housing was consonant with Theodore and Darlene Paul's placement of their children at the center of their lives. Their goal was to find housing in a secluded neighborhood close to their children's activities, and with a yard where the children could play safely. They also wanted a house designed to be amenable to their practice of home schooling. The subject house fulfilled these goals. Because Respondents denied Complainants the desired housing, the Pauls were forced to find a less

satisfactory apartment. The transient nature of the apartment building, the traffic near their apartment, and the incidents of crime in the neighborhood emphasize the gap between the housing Complainants wanted and the housing Respondents' action forced them to obtain. Furthermore, the apartment is far away from the family's activities and shopping, and has no fenced-in area for the children to play. Both Complainant parents and Complainant children lost the opportunity to live in, what was for them, an ideal environment, and they must be compensated for that lost opportunity.

Entirely separate from the intangible difference in value between the subject house and the alternative housing, is the emotional impact the discriminatory act had on Complainants. There is wide discretion to set emotional distress damages, limited by two critical factors: the egregiousness of Respondents' behavior and the effect of that behavior on the Complainants. As the court stated in *Morgan v. Secretary of Housing and Urban Development*, 985 F.2d 1451, 1459 (10th Cir. 1993), "more than mere assertions of emotional distress" are required to support an award for that type of intangible damage. Rather, the record as a whole must demonstrate the need for the amount awarded.

In the instant case, the Pauls were twice denied housing. After Mr. Paul's initial conversation with Mr. Brooks, Complainants anticipated no problem in renting. The family began to plan their move into the more spacious subject house and property. Without warning, they were denied the housing on the day Mr. Paul telephoned Mr. Brooks to finalize the rental. After absorbing the shock of the initial, unexpected refusal, the Pauls were given reason to believe they would ultimately get the subject house when Ms. Sams told Mr. Paul the final decision would be made by Andrew Brooks. This hope was misplaced. Within two days, Mr. Brooks told Mr. Paul that Goldie Sams refused to rent Complainants the house, upsetting and unsettling Complainants further. There was no explanation for Ms. Sams' bewildering misdirection of Mr. Paul and I find that this behavior enhanced the family's emotional distress.

Complainants endured Respondents' actions at an especially vulnerable time. Mr. Paul was separated from his family, starting a new job, and, even though his temporary housing was paid for, struggling to pay his living expenses in West Virginia and his family's expenses in New York. His reaction to the denial was not atypical--he was upset and unsettled, distraught at work and peevish with his family. Ms. Paul had comparable stresses during her husband's search for housing, and was similarly chagrined by the twin denials. She was shocked, snapped at her children, and argued with her husband. The children were disappointed and confused. When they moved into the less desirable housing, the Pauls' were concerned about the neighborhood, the safety of the children, and the undesirable environment they were living in. The Pauls reasonably and rightly perceived the denial of housing to be a direct attack on the size of their family which also enhanced their emotional distress damages.

If Complainants had been able to rent the subject house, no housing opportunity would have been lost and no emotional distress would have been suffered. Considering the evidence presented of the severity of Respondents' acts and the reaction of Complainants, I award Mr. and Ms. Paul \$7,500.00 each for emotional distress and loss of housing opportunity. I award the four oldest Complainant children \$2,000.00 each for emotional distress and loss of housing opportunity, and the youngest Complainant child \$1,000.00 for loss of housing opportunity, for a total of \$24,000.00 in actual intangible damages.

Civil Penalties

The Charging Party seeks a civil penalty of \$10,000.00 from Goldie Sams and \$1,500.00 from Respondent Brooks. Specifically, the Charging Party seeks a civil penalty for Ms. Sams composed of four separate penalties of \$2,500.00 for each violation of the Act, two each for 42 U.S.C. §§ 3604(a) and (c). It seeks six separate penalties of \$250.00 for Mr. Brooks' violations. Though each Respondent had multiple violations of the Act, for purposes of civil penalties, I consider this case as a single discriminatory housing practice. Under the Act, an administrative law judge may assess a maximum civil penalty of \$10,000.00 against each respondent, where, as here, there has been a finding of liability, but no history of any prior discriminatory acts. 42 U.S.C. § 3612(g)(3)(A).

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

As the owner of a rental property, Respondent Goldie Sams is bound to know and adhere to the Fair Housing Act. Ms. Sams' treatment of Complainants was unlawfully based on stereotypes of children. Furthermore, her dangling the possibility of Mr. Brooks making the house available was plainly mean-spirited and led to additional emotional turmoil in Complainants' lives. However, there is evidence that she has rented to families with children in the past. A significant civil penalty will deter this Respondent from limiting the rental of her house based on the number of children in a family. Ms. Sams presented no evidence to show that her financial condition would preclude her from paying a civil penalty. Upon consideration of the relevant factors, I conclude that Goldie Sams should be assessed a civil penalty of \$5,000.00.

Respondent Andrew Brooks, as property manager, is also bound by the Act. Though he did not act egregiously, he is still culpable for carrying out Ms. Sams' discriminatory orders. There is no evidence that he acted with discriminatory intent; in fact, there is evidence that he encouraged Ms. Sams to rent to Complainants. Therefore, a modest civil penalty will deter Mr. Brooks from following discriminatory direction in

the future. He also presented no financial evidence to show he could not pay a civil penalty. I conclude that Andrew Brooks should be assessed a \$250.00 civil penalty.

Injunctive Relief

Once a determination of discrimination has been made, injunctive relief may be ordered to insure that Respondents do not violate the Act in the future. *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001, at 25,014 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864, 872-73 (11th Cir. 1990). The relief, however, is to be molded to the specific facts of a particular situation. The provisions of the Order set forth below will ensure against any future violations.

ORDER

Having concluded that Respondents Goldie Sams and Andrew Brooks have violated 42 U.S.C. §§ 3604(a) and (c), and Respondent Andrew Brooks violated 42 U.S.C. § 3605(a), it is hereby

ORDERED that:

1. Respondents Goldie Sams and Andrew Brooks are permanently enjoined from discriminating against any other person with respect to housing because of familial status. Prohibited actions include, but are not limited to, those enumerated in 24 C.F.R. Part 100.
2. Consistent with 24 C.F.R. Part 110, Respondent Goldie Sams shall display the HUD fair housing poster alongside any "for rent" signs posted in connection with any dwellings she owns, manages, or otherwise operates within 10 days of the date on which this Order becomes final.
3. Within 10 days of the date on which this Order becomes final, Respondents Goldie Sams and Andrew Brooks shall pay Complainants Theodore W. and Darlene Paul \$1,621.25 for out of pocket damages, and \$7,500.00 each for loss of housing opportunity and emotional distress damages.
4. Within 10 days of the date on which this Order becomes final, Respondents Goldie Sams and Andrew Brooks shall pay Complainants Meridith, Theodore, Emily, and Matthew Paul \$2,000.00 each for loss of housing opportunity and emotional distress damages, and Complainant Barbara Paul \$1,000.00 for loss of housing opportunity.
5. Within 10 days of the date on which this Order becomes final, Respondent Goldie Sams shall pay a civil penalty of \$5,000.00 to the Secretary, United States Department of Housing and Urban Development.

6. Within 10 days of the date on which this Order becomes final, Respondent Andrew Brooks shall pay a civil penalty of \$250.00 to the Secretary, United States Department of Housing and Urban Development.

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

SAMUEL A. CHAITOVITZ
Administrative Law Judge