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 Michael and Pamela Keys, and Katherine Beard, Charging Party, v. Chris Hope, Respondent.	HUDALJ 04-99-3640-8 HUDALJ 04-99-3509-8 Decided: May 8, 2002

John M. Collette, Esq.,
For the Respondent

Steven J. Edelstein, Esq.,
For the Secretary and
The Aggrieved Parties

Before: ROBERT A. ANDRETTA
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of Complaints filed by Pamela and Michael Keys, and Katherine Beard ("the Aggrieved Parties") under the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq*. ("the Act"), alleging discrimination on the basis of race. On November 29, 2000, the Secretary of Housing and Urban Development ("the Secretary" and "the Charging Party") issued a Determination Of Reasonable Cause And Charge Of Discrimination on behalf of the Aggrieved Parties in which it is alleged that the

Respondent, Chris Hope, is responsible for intimidating, threatening and interfering with the Aggrieved Parties, such that the Keys were deterred from completing their purchase (HUDALJ 04-99-3640-8) and Katherine Beard was prevented from completing her sale (HUDALJ 04-99-3509-8) of a home, in violation of the Act. More specifically, the U.S. Department of Housing and Urban Development ("HUD") alleged that there was reasonable cause to believe that the Respondent violated 42 U.S.C. § 3617 by unlawfully interfering with the Aggrieved Parties' exercise of housing rights that are granted and protected under 42 U.S.C. § 3604 because of the Keys' race.

Because the two cases arose from the same facts, they were consolidated for disposition. A hearing was held in Jackson, Mississippi, December 5 - 6, 2001. The parties' post-hearing briefs were to be filed by April 15, 2002, after Respondent's unopposed Motion For Extension Of Time was granted in my absence by the Acting Chief Judge. The parties' post-hearing briefs were then timely filed, and this case therefore became ripe for decision on the last-named date. It is adjudicated in accordance with Section 3612(b) of the Act and the regulations of the Department of Housing and Urban Development that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

Statement of Facts

Pamela and Michael Keys, who are both black, have been married for approximately seven years. (T 146).[1] They are the parents of three young children who live with them in a home that they purchased in Brandon, Mississippi, several weeks after the incident that is the subject of this consolidated pair of cases. (S 12, p.9). Mrs. Keys has lived in the area all her life, having been brought up by her parents and with her siblings in a small trailer home in the nearby small town of Evergreen. (T 143 - 4, 149). She was not exposed to racism during her lifetime prior to the incident that will be described later. She attended the integrated Brandon High School and associated with both black and white friends. (T 144, 182). Her neighbors were of both races and she always found everyone to be "neighborly." (T 145). Mr. Keys also grew up in Brandon, attended Brandon High School, and had both white and black friends. (T 260). He has a

[1] The Secretary's exhibits are identified with an S and the exhibit number. The Respondent's exhibits are identified with an R and the number. References to the transcript of the hearing are made with a T and the transcript page number.

speech impediment and therefore tends to be soft-spoken and reticent, but this caused no problem in the hearing. (T 259, 261).

Katherine Beard, who is white, is a licensed realtor, broker and appraiser doing business as Beard Real Estate and Appraisals in Brandon. (T 28). She grew up in South Jackson, Mississippi, which is a rural community. (T 29). Although the high school she attended in the 1950's was segregated at the time, her community was integrated and she enjoyed both black and white friends. (T 31). Ms. Beard has been selling real estate in the Brandon area for 28 years, she is self-employed, and she maintains her office in her home. (T 34).

Respondent Chris Hope, who is white, owns and resides in a single-family house next door to the subject property, located at 104 Dana Street, Brandon, Mississippi. The neighborhood of which Dana Street is a part is predominantly, if not exclusively, white. (T 326 - 28; Charge ¶ B.2).

In February of 1999 Earl and Deborah Carter, who are white, listed their house at 104 Dana Street for sale with Katherine Beard. (T 31). On March 15, 1999, after the Keys obtained an approval letter from Countrywide Mortgage, they hired their own realtor, Michele Nesbitt. With Ms. Nesbitt's help the Keys signed a contract to buy the Carters' house for $83,000. (T 44; G 2). Although there were contingencies attached to the sales agreement, all of them were satisfied in advance of the closing, which was scheduled to take place on April 26, 1999. (T 44 - 46). Only the final "walk-through" inspection remained to be done, and it was scheduled for April 20, 1999.

The walk-through went very well, things worked as they should, and the Keys were very happy to be buying the house. (T 155 - 56). The only problem they noticed was that during their tour of the back yard two dogs were barking fiercely behind the next-door fence, in Respondent's back yard. (T 160). The dogs were more than a little frightening to Ms. Keys, but the walk-through continued in a light vein with the Keys couple, Michelle Nesbitt and the sellers' daughter, Angela Osborne, "talking, laughing and smiling." (T 263).

As the outdoor tour continued and they reached the front driveway, Respondent drove up to his house and got out of his car. (T 157). Seeing his arrival, Ms. Nesbitt went over to the Respondent and invited him to come "meet your new neighbors." He agreed to do so, came over to the group, and shook hands all around. (T 157; 195). The Keys introduced themselves to him. (T 157).

Initially, Respondent's demeanor was friendly. He held a smile on his face and spoke not unpleasantly. However, within a few moments his manner and voice had turned to indicate anger. He stated a number of times, "You're kidding me," and he

stated with incredulity, "You just bought this house." He repeated these statements a few times. As his voice began to indicate anger, he asked Mr. Keys why he would want to live there. Upon Mr. Keys' stating that it is a quiet street in a quiet neighborhood and a nice place to raise children, Respondent Hope stated words to the effect of, "Yeah. It is. It's an all-white neighborhood." Hope then asked, "Why . . . man, why do you want to move here? This is an all white neighborhood. We don't want blacks here. That's why my wife had to go hold the dogs. They were going crazy, and they don't like blacks, either." (T 267).

Mrs. Keys stated that the Keys are Christian people and were going to have their children catching the school bus there. Respondent Hope stated that he was also Christian, but that "we don't want blacks here." He asked why the Keys did not go back to South Jackson, which is a black neighborhood, whereupon Ms. Keys responded, "Sir, we didn't come from South Jackson. We live less than three minutes from here." Respondent then continued to ask why they would want to live there, referring once to the neighborhood as a "redneck" neighborhood. He also turned around and pointed to his neighbor's house, stating that his neighbor "who owns a gun shop, feels the same way I do."[2] (T 157 - 59; 327 - 28).

At that time Respondent started backing away while continuing to make like statements. He waved his arms and pointed at the dogs. He pointed at the neighbor's house and said that he was going over to tell the neighbor who owns the gun shop. (T 163 - 64, 220). The Keys were frightened and departed. (T 220).

Katherine Beard had remained in the house while the Keys and Ms. Nesbitt left the house to tour the yard. (T 47). She was not aware of the confrontation in the driveway until Ms. Nesbitt knocked at the door and told her she had better come out because a "neighbor has just threatened the Keys." (T 47 - 48). As she came out of the house, Respondent Hope began shouting at her. He was "visibly angry," and he was waving his hands and yelling. (T 48). Respondent said to Ms. Beard that he did not know why blacks wanted to move into the neighborhood, that he did not like blacks, that his dogs did not like blacks, that his neighbors did not like blacks, and that his next door neighbor, who owned a gun shop, did not like blacks. Respondent acted "shocked in disbelief" that the Keys intended to move into the house next to his. By that time Mrs. Keys was "shaking

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[2] The Respondent's next door neighbor at the time was Gray ("Grumpy") Graham, who as of the time of the hearing still owned the Brandon Gun and Pawn shop. (T 49).

and crying." (T 47, 87).

Fearing Respondent's intent when he started moving back towards the dogs and the neighbor's house, and not knowing what he might do next, the Keys got into their car and "got out of there as soon as [they] could." (T 163). As they drove away from the house they were extremely upset, and they quickly decided that they and their children could not live next door to the Respondent. (T 163; 279). They sought comfort at Mr. Key's mother's house in Brandon, and when they had regained their composure they went to the Brandon Police station to file an incident report. (T 237). Meanwhile, because Katherine Beard "felt uncomfortable" leaving Ms. Osborne alone at the house, she remained there while the latter went into the house and phoned the police. The Brandon Police came to the house and took Ms. Beard's statement about the incident. (S 12, pp. 10, 28).

That evening the Keys phoned Michelle Nesbitt who in turn phoned Katherine Beard to report that the Keys had decided they could not buy the house on Dana Street because of the confrontation with Respondent Hope earlier that day. (T 58). At Ms. Nesbitt's request the Keys wrote a letter to the Carters to formally notify them of their decision. In the letter they stated that they were not going to buy the home because they feared for their lives and well-being to live next door to a person who exhibited "such hatred" and who instills "such fear" in others. They stated that they were harassed and felt threatened by Mr. Hope. They further stated that they were convinced that if they went through with the purchase they "would be signing [their] lives, children and family to a lifetime of threats, insults, harassment and possibly death." They asked the Carters to understand their fears and apologized for not being able to go through with the purchase of the house. (S 4).

While the Carters expressed some sympathy for what the Keys had gone through, Mrs. Carter's response to the Keys' letter was to tell Pamela Keys that she would be "seeking legal advice." (T 167 - 68). For several days the Keys worried that the Carters might sue them. Ultimately there was no law suit, but the Keys were forced to surrender their $500 earnest money deposit. (T 169). A few months later the Carters sold their house to a single white woman for $82,000. Aware that their loan commitment from the mortgage company would soon expire, the Keys found it necessary to quickly find another house to buy. (T 169 - 170).

While Katherine Beard saw the Respondent the next day and he stated that he would like to apologize, the only telephone number he asked for was that of the Carters, which she refused to give to him. (T 51 - 2, 113). After she filed her complaint with HUD, the Respondent phoned her to say that she "needed to get a lawyer because [she]

would be thrown in jail for lying." (T 53). Respondent made tepid apologies to the Carters and Ms. Nesbitt (S 12, p. 7), but he never contacted the Keys. (T 170).

Discussion

The Charging Party has the burden of proving by a preponderance of the evidence that the respondent discriminated against the Aggrieved Parties. Where there is direct evidence that constitutes a preponderance of the evidence, such evidence is sufficient to support a finding of discrimination. *Pinchback v. Armistead Homes Corp.,* 907 F. 2d 1447, 1452 (4th Cir.), *cert. denied*, 111 S. Ct. 515 (1990); *HUD v. Leiner,* Fair Housing - Fair Lending (FH - FL) ¶ 25,021 (HUDALJ 1992); *HUD v. Jerrard,* FH - FL ¶ 25,005 (HUDALJ 1990). Respondent Hope intentionally interfered with the purchase of the subject property on the basis of the Keys' race. Thus, the uncontested evidence shows that the Charging Party carried his burden of proof that housing discrimination occurred in this case, and I find that Respondent Chris Hope violated the Act as charged.

Remedies

The Charging Party asks that the following amounts be awarded to the Aggrieved Parties for the intangible harm caused by the Respondent's discriminatory conduct: $75,000 to Pamela Keys, $50,000 to Michael Keys, and $7,500 to Katherine Beard. The Charging Party further asks for reimbursement of tangible loses in the amounts of $1,900 for the Keys and $640 for Katherine Beard. Finally, the Charging Party requests that the maximum civil penalty of $11,000 be imposed on the Respondent.

After finding a Respondent liable for violating the Act, the presiding Administrative Law Judge may order "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person." (42 U.S.C. § 3612(g)(3)). Appropriate relief includes damages for intangible injuries, such as emotional distress, embarrassment, humiliation and inconvenience, as well as damages for tangible "out of pocket" losses caused by the discrimination. *See* Schwemm, *Housing Discrimination: Law & Litigation* § 25:4 (rev. Sept. 2001). The amount of damages awarded by the judge should make the victim whole. *HUD v. Blackwell* Fair Housing - Fair Lending Rep. ¶ 25,001 (HUDALJ 1989), affirmed 908 F. 2d 864, 872 (11th Cir. 1990). Courts have also recognized that the "indignity associated with housing discrimination" while compensable, is also difficult to quantify. *See Phillips v. Hunter Trails Community Ass'n.,* 685 F. 2d 184 (7th Cir. 1982). As a result, the Charging Party is not required to prove the actual dollar value of an Aggrieved Party's intangible injuries. *See* Heifetz and Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 J. Marshall L. Rev. 3, 17 (1992).

The Administrative Law Judge is also afforded broad discretion in ascertaining the amount of emotional distress damages to award, and is guided in doing so by considering the effect that the Respondent's behavior had on the Aggrieved Party or Parties. *HUD v. Kocerka*, Fair Housing - Fair Lending Rep. ¶ 25,138 (HUDALJ 1999), *citing HUD v. Sams,* Fair Housing - Fair Lending Rep. ¶ 25,069 at p. 25,651 (HUDALJ 1994). As discussed below, it is clear from the testimony in the instant case that the Aggrieved Parties are entitled to substantial damages for their intangible injuries.

Intangible Effects of the Discrimination

When Pamela and Michael Keys began looking for a house to buy in early 1999 they and their then two young children were living in a small apartment (T 148). Not only was the apartment too small for them, but they planned to have additional children; thus getting into larger accommodations was important for them. (T 148 - 49). Buying a house was also an exciting decision for them since they had never lived in a family-owned home nor had Pamela ever lived in a house at all. (T 148 - 52). She had been raised with four siblings in a small trailer, so her buying a house was exciting for her and also for her family. (T 149).

The Keys were practical in their approach to home buying. First they went to Countryside Mortgage Company to get pre-approval for a mortgage loan. (T 149). After gaining approval they enlisted Michele Nesbitt as their agent and began looking in Brandon for a house they liked and could afford. (T 150). Their careful approach soon uncovered the subject property. (T 151). According to Pamela Keys the house was all she could think about. It was big enough, it had a back yard, a front foyer and a two-car garage, it was close to the children's school, close to work, and in a great location. Thus, they signed a contract without delay to buy the house. (T 151 - 52; S 2).

After they had contracted to buy the house, they frequently drove by to admire it and to show their family the house in which they would live. Pamela felt particularly good when she drove past and saw the "sold" sign in the yard. (T 192). The positive feelings they had about the house intensified as the closing date of April 26, 1999, drew nearer. (T 153). On their way to the house on April 20, 1999, to do the final inspection they were elated and relieved that everything was falling into place for them. (T 154). That the inspection itself went very well added to their joy and excitement. Ms. Keys stated that, "Everything was good. We were in a good mood. We were happy. Just couldn't wait to move into our house; elated and happy." (T 155 - 56). Then, when they were walking to their car after the inspection and "in a great mood," Respondent in a few minutes transformed their joy and excitement into a nightmare and a life-altering experience. (T 157).

At first, as Respondent started his tirade, Pamela Keys did not completely understand, but was stunned into silence by what Respondent was saying. (T 158). She understood pretty quickly and she "couldn't even breathe . . . . And as he's talking, I'm just crying, because I'm just . . . the only thinking in my mind is just what am I going to do." (T 158 - 59). While the Respondent's racist comments reduced Pamela to tears, the statements he made about his dogs struck fear in her heart about her own and her family's safety if they moved into the house, especially the safety of her children. (T 161). She imagined her daughter, who is friendly and will approach anyone, walking up to Respondent only to have dogs unleashed on her and her brother. (T 161). Even though out of view behind the fence, the dogs' menacing behavior, coupled with Respondent's threatening remarks, painted a clear picture of a threat of harm to the Aggrieved Parties and their children. (T 161). The dogs' behavior conjured up images in the Keys' minds of police dogs attacking black protesters in earlier times in Birmingham. (T 208 - 09). I find that Respondent made a credible threat of grave personal harm to the Keys and that the Keys reasonably experienced great fear as a result of the Respondent's words and actions.

Respondent's statements that his neighbor shared Respondent's racist beliefs, including a desire to keep the neighborhood white, and that he owned a gun shop caused Pamela Keys to fear for her life. (T 213). When Respondent said that his neighbor who owns a gun shop feels the same and then "headed towards that way, like he's going to go tell something or he's going to do something," Ms. Keys feared for her life to be in the presence of Respondent Hope right then and not only when she would move into the house. (T 216 - 222). The terror she felt continued even after she and Mr. Keys fled the scene in their car. Pamela Keys "tried to compose [herself] because [she] was kind of hysterical." When she later went to the police station it made here feel as though she had done something wrong. (T167 - 68).

The shock of encountering race discrimination usually associated with an earlier time in America was traumatic for the Keys couple. While they had previously encountered "a little racial tension," nobody had ever done anything like telling them they could not live where they wanted because of their race. (T 181 - 82). In addition to the fear and humiliation caused to the Keys during the incident, they had to endure the additional embarrassment of having to explain to family and friends why they were not, after all, buying the house they had said previously that they so wanted. (T 177). They were further made to suffer by having to explain to their nine year old son what had happened. It was hurtful to do so. They had never had to tell him of such things before. (T 177 - 78). The boy was also upset to see his parents so affected by the incident. The son pressed to know what was wrong; he had never seen his mother so upset. Thus, the Keys felt compelled to tell him. (T 179; 264 - 65).

At the time of the hearing, Mrs. Keys was visibly upset by having to tell the story. For a while she was unable to testify. When she did, she told of many sleepless nights in the two years since the incident. Mr. Keys felt the same emotions as his wife. (T 263). He was "shocked and frightened," and he was very upset over the emotional impact on his wife. (T 258; 264). Mr. Keys also finds that his outlook has been changed by the incident. While he was growing up his friends were both white and black and "things were peaceful;" he "never thought that something like that could happen to him." The incident made him feel that "it's kind of hard to tell who your friends are." (T 276). He also feels that "it might take a while" to get over the fear and anger that he felt. (T 281).

A white police officer who knew the Keys as friends from when he had been the resident manager of their apartment building corroborated the Keys' testimony regarding their emotional state on the evening of the incident. (T 293). He saw them at the police station and saw that they were extremely upset. He had never seen them so upset and had always viewed Pamela Keys as a strong person. However, that evening he was concerned about her emotional condition. (T 297 - 98).

The Keys were concerned that their mortgage loan commitment would expire and so they quickly turned their attention to finding another house. The house they found is also in Brandon, but not near the Respondent's house. It is smaller and was less expensive than the house on Dana Street. (T 235). Although the Keys are relatively happy with their house, there are significant differences between it and the Dana Street house. The new house has a carport whereas the Dana Street house has a two-car garage. Both houses have three bedrooms, but their residence has only one and a half bathrooms, while the Dana Street house has two full baths. (T 173). Also, the rooms are smaller in their residence than in the house they had hoped for and the Keys will probably have to move again to secure better space. (T 173 - 74).

The Keys also suffered some inconvenience. Vacation time previously planned for the move had to be used for a further house search. "Spending time on the phone with the loan people," and making phone calls to the real estate agents "making sure [they] would not be sued by the sellers" consumed the vacation time and caused them to move during evenings. (T 173). What was supposed to be a happy time for the Keys became a chore. (T 176 - 78).

Although real estate agents and brokers are customarily involved in Fair Housing cases to recover lost profits and business expenses, in this case Katherine Beard was also a victim of the Respondent's verbal tirade and threatening conduct. She was incensed and embarrassed by the Respondents' conduct and she "felt like she had to do something" about conduct that was so wrong. (T 63 - 4). She talked with the police right after the

Keys had left and waited at the location to speak with them. She followed her real estate board's guidance in filing a complaint with HUD. After she filed her complaint, the Respondent phoned her to tell her that she "needed a lawyer because she would be thrown in jail for lying." (T 66). Further, she endured "remarks within the town of Brandon about . . . filing a Fair Housing statement." (T 64). Although she knew that such incidents occur, she was made "ashamed of [her] race" that it had happened in her presence and to people who were her clients. (T 67 - 8).

In the seminal case of racial discrimination adjudicated by this forum, *HUD v. Blackwell*, FH-FL, para. 25,001 (1989), the Respondent real estate agent refused to sell his house to the prospective buyers, a black couple with children. On appeal, the court upheld the award of $40,000 made by the Administrative Law Judge to compensate the couple for their embarrassment, humiliation, and emotional distress. *Secretary, HUD On Behalf Of Heron v. Blackwell* , 908 F.2d 864 (11th Cir. 1990). In *Banai v. HUD*, 102 F.3d 1203 (11th Cir. 1997), Respondent refused to rent a house to a black couple. It was the first overt discrimination that either aggrieved party had personally experienced, and they were devastated and angry when they learned that the housing was refused to them because they were black. The circuit court upheld a compensatory award of $35,000 to each of the aggrieved parties.

In *Broom v. Biondi*, 17 F. Supp. 211 (SDNY 1997), an interracial couple sought to sublet an apartment. The husband, who was black, was interviewed by the condo board and felt the members' hostility. There was no direct evidence of racial hostility. The jury awarded each of the couple $114,000 for emotional distress, and the reviewing court found there was enough evidence to sustain the award. In *Portee v. Hastava*, 853 F. Supp. 597 (EDNY 1994) *aff'd.* 104 F.3d 349 (2d Cir. 1996), the white woman of an interracial couple, with a five-year-old child, made a contract with the defendant Realtors to lease a dwelling. When the man of the couple, who was black, came to sign the lease, the realtors backed out of the deal. The jury awarded $208,000 to the interracial couple and their son for compensatory damages. The court found the amount to be unconscionable and, on retrial, reduced it to $101,000. In *Grayson v. Rotundi*, FH-FL, para. 15,516, (EDNY 9-5-1984; CV 83-0844) two black women separately were denied housing when they tried to rent an apartment from the Respondents in that case. In both situations, the aggrieved women thought that these things did not happen anymore and were shocked to have it happen to them. The court upheld jury compensation damage awards of $40,000 and $25,000, and an award of $250,000 for each of them in punitive damages.

More recently, in *HUD v. Kocerka*, Fair Housing - Fair Lending Rep. ¶ 25,138 (HUDALJ), I awarded a total of $90,000 to a couple for intangible losses they suffered after the owner of an apartment they wanted to rent told the woman over the telephone that

he did not want blacks in his building. In that case, as mentioned, the contact was by phone; not in person. The refusal to rent was simply that and contained no threats. In contrast, the actions of Respondent in the instant case included credible threats of harm and constituted a refusal to allow the Keys to live next door. In light of the evidence regarding the emotional injuries suffered by the Aggrieved Parties because of the Respondent's discriminatory conduct, and comparing the circumstances of the awards in other cases, it is reasonable to grant the Charging Party's request by awarding $125,000 to the Keys couple and $7,500 to Katherine Beard in the Order that will be issued at the end of this Initial Decision.

Tangible Losses

The Keys are entitled to $1,400 in damages, the amount they paid to replace the carpeting in their new house. The carpeting was old, dirty and worn out as compared to the new carpeting in the Dana Street house. (T 173). This award is rendered more than fair by Mrs. Keys having shopped for the "best deal" she could get on the carpet. The Keys are also entitled to recover the $500 in earnest money that they were required to surrender to the sellers of the Dana Street house. (T 169). These amounts will be ordered paid at the end of this Initial Decision.

Because it was necessary for Katherine Beard to market the Dana Street house a second time, her tangible losses include $200 for additional newspaper advertising, color brochures, signs and other items. (T 60; S 7 - 9). Ms. Beard is also entitled to recover the amount of commission that she lost because of the home's subsequent sale at a lower price than the Keys had agreed to pay. Had the house been sold to the Keys, Katherine Beard would have earned a three percent commission on the sales price of $83,000; thus $2,490. Instead, she was entitled to a commission of only two and one half percent on the final sales price of $82,000; thus $2,050. (T 60 - 1). As a result, Katherine Beard is entitled to the difference of $440 and that will be so ordered.

Civil Penalty

The Charging Party has also asked for the imposition of a civil penalty of $11,000. This is the maximum that can be imposed on a Respondent who has not been adjudged to have committed any prior discriminatory housing practices. 42 U.S.C. § 3612 (g)(3)(A); 24 CFR 180.670(b)(3)(iii). In accordance with the last-cited regulation, determination of an appropriate penalty requires consideration of five factors: 1. the nature

and circumstances of the violation; 2. the degree of the Respondent's culpability; 3. the goal of deterrence; 4. whether the Respondent has been previously adjudged to have committed unlawful housing discrimination; and 5. the Respondent's financial resources.

A sixth factor, applicable in cases where a Respondent's discriminatory conduct constitutes a "housing-related hate act" can be found at 24 CFR 180.671(c)(2)(i). The regulation that is codified at subparagraph (ii) of the cited section defines a "housing-related hate act" as:

> any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied or characterized by actual violence, assault, bodily harm, and/or harm to property; intimidation or coercion that has such elements; or the threat or commission of any action intended to assist or be part of any such act.

When the administrative law judge determines that the Respondent's discriminatory conduct falls within this definition, the regulation cited instructs the judge to consider the presence of that factor as favoring the imposition of the maximum civil penalty. Considering this mandate and the other required factors, I conclude that the public interest requires imposition of the maximum allowable civil penalty against Respondent Hope.

First and foremost, Hope's actions constituted an assault.[3] It was the most egregious form of racial discrimination short of inflicting actual physical harm, in that it combined the deprivation of housing with credible threats of personal harm of a nature long associated with racial bigotry and discrimination. Respondent soon after the incident offered tepid apologies to his neighbors, although not to the Keys. Thus, there is no doubt that he was completely aware of the gravity of what he had done. Such behavior was decided by Congress as not any longer acceptable in this country, and the goal of deterrence where education fails is a valid one for the Charging Party to seek. Respondents found liable in Fair Housing cases have the burden of showing that they are unable to pay a civil penalty without "undue hardship." However, no evidence of

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[3] Respondent's actions need not be considered criminal for 42 U.S.C. Section 3617 to apply. Nonetheless, Brandon police Lt. Ruth testified that, based on the contents of the police reports on the incident, Respondent's conduct "could be considered a simple assault" under Mississippi state law. (T 303 - 04, 310).

Respondent's financial condition was produced at trial and therefore the Respondent's financial condition is not a factor in determining the penalty to assess against him. *See*

HUD v. Perland, Fair Housing - Fair Lending Rep. ¶ 25,136 at p. 26,131 (HUDALJ 1988). There is no evidence that Respondent Hope has been found guilty of committing a prior discriminatory housing practice. Therefore the maximum allowable civil penalty that can be assessed against him is $11,000. In view of the other factors to be considered, this amount will be ordered at the end of this Initial Decision.

Injunctive Relief

Once a violation of the Fair Housing Act has been established, injunctive or other equitable relief may be ordered to insure that a Respondent does not violate the Act in the future. 42 U.S.C. § 3612(g)(3). In this case, the Charging Party has asked that the court permanently enjoin the Respondent from discriminating against the Aggrieved Parties or any member of their families, on the basis of race or any other category protected under the Act, and from retaliating or otherwise harassing or threatening them or their families. This request is both reasonable and responsible given Mr. Hope's conduct and statements, and it will be so ordered.

Order

Having concluded that Respondent Chris Hope violated provisions of the Fair Housing Act that are codified at 42 U.S.C. § 3617 and the HUD regulation that is found at 24 CFR 180.67(c) it is hereby

ORDERED that:

1. Respondent is permanently enjoined from discriminating against the Aggrieved Parties, Pamela and Michael Keys, and Katherine Beard, or any members of their families, with respect to housing, because of race, color or any other category forbidden by the Act, and from retaliating against or otherwise harassing them or any member of their families.

2. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondent Hope shall pay damages in the amounts of $126,900 to Pamela and Michael Keys, and $8,140 to Katherine Beard, to compensate them for the losses that resulted from Respondent Hope's discriminatory conduct.

3. Within forty-five days of the date on which this Initial Decision and Order becomes final, Respondent Hope shall pay a civil penalty of $11,000 to the Secretary, United States Department of Housing and Urban Development.

This Order is entered pursuant to the applicable section of the Fair Housing Act, which is codified at 42 U.S.C. § 3612(g)(3), and HUD's regulation that is codified at 24 CFR 180.680, and it will become final upon the expiration of 30 days or the affirmation, in whole or in part, by the Secretary for Housing and Urban Development within that time.

ROBERT A. ANDRETTA
Administrative Law Judge