

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
Rhonda K. Tilford,

Charging Party,

v.

Edward Jeffre and Helen Jeffre,

Respondents.

HUDALJ 05-90-0258-1
Decided: December 18, 1991

Edward J. Jeffre, *pro se*
For the Respondents

Geoffrey T. Roupas, Esquire
Michael Kalven, Esquire
For the Secretary

Before: ROBERT A. ANDRETTA
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed by Rhonda K. Tilford ("Complainant"), alleging that she had been denied rental of an apartment by the apartment house manager on the basis of her familial status in violation of the Fair Housing Act, 42 U.S.C. Sections 3601, *et seq.*, as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-143, 120 Stat. 1626 (1988) ("Fair Housing Act" or "Act"). It is adjudicated in accordance with Section 3612(b) of the Act and the regulations of the Department of Housing and Urban Development ("HUD") that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On April 17, 1991, following an investigation of the allegations and a determination that reasonable cause existed to believe that a discriminatory housing practice had taken place, HUD's Chicago Regional Counsel issued a Determination Of Reasonable Cause And Charge Of Discrimination against Edward Jeffre and Helen Jeffre ("Respondents") alleging that they had engaged in discriminatory practices on the basis of familial status in violation of sections 804(a) and (c) of the Act, which are codified at 42 U.S.C. Sections 3604(a) and (c), and 3602, and incorporated into HUD's regulations that are found at 24 CFR 100.60 and 100.75 (1989). A trial was conducted on August 6, 1991, in Cincinnati, Ohio, and final briefs were submitted by October 22, 1991. Thus, this case became ripe for decision on this last named date.

Findings of Fact

Rhonda Tilford is a temporary clerk and lives with her parents in Cincinnati, Ohio. (T 8).¹ She is a single mother of a daughter who was three years old at the time of the hearing. (T 9). She is also a sophomore at Xavier University. (T 9).

The Tilford apartment is rented in the Golf Manor area of Cincinnati. (T 10). Respondent's sister also lives with the family. (T 11). Since her mother uses one of the four bedrooms as an office for her at-home employment, as of the relevant time of this matter there were five people sharing three bedrooms. (T 11). Respondent and her daughter shared one of them and she paid her parents \$150 per month for this accommodation. (T 11).

Because of the number of people living so closely, Ms. Tilford was not comfortable living with her parents. (T 27, 29). Her job was stressful, and she felt a need for a quiet home. (T 26). Instead, she also found home to be stressful because of the number of people living with her. (T 25).

In November, 1989, Ms. Tilford was a medical secretary at the Barrett Center for Cancer Research and could afford to get out of her uncomfortable situation. She was looking for an apartment of her own for herself and her daughter to move into, and intended to find a one-bedroom apartment with at least a kitchen, bathroom, living room, and bedroom. It was important to her to remain near her parents' home and close to a bus line so she could easily get to their home and could commute by bus to work whenever her unreliable car did not work. (T 11, 12, 28). She confined her search for an apartment to Bond Hill, Pleasant Ridge, Roselawn, and Oakleaf, which are all Cincinnati neighborhoods near her parents' home. (T 12).

Respondent Edward Jeffre is Respondent Helen Jeffre's son. He owns a four-unit apartment building at 2725 Oakleaf Avenue in Cincinnati (T 54, 56). He also owns his personal residence elsewhere in the city, but owns no other real property. (T 54). He is employed as an engineer at Jeffre Technical, Inc., an engineering company that he owns. (T 68).

¹Capital T stands for the transcript of the hearing, and the number is the applicable page in the transcript. The Secretary's exhibits are identified with a Capital S and an exhibit number.

Respondent Helen Jeffre lives at 2725 Oakleaf Avenue, the building at issue in this case. She manages the building, but she has no ownership interest in it and owns no other real property. (T 55). In return for managing the apartment house, she pays no rent for her own apartment. (T 66). The telephone number listed in all rental advertisements for apartments in the building is Ms. Jeffre's own number, and she is the only person who answers that phone. (T 57).

The building at 2725 Oakleaf Avenue is a four-unit apartment house. All four units are one-bedroom apartments and have the same floor plan. (T 56; S 6). Although the diagram on exhibit S 6 was done by Edward Jeffre, an engineer, it mistakenly shows each apartment to be of 340 square feet. Each apartment actually has 440 square feet of space. (T 47, 49). As mentioned above, Helen Jeffre lives in one of the units and has done so for eleven years.

When Respondent Tilford first called about the Oakleaf Avenue apartment, she had been looking for an apartment for about two weeks. (T 14). She sought places to check by looking for "For Rent" signs and by scanning the rental advertisements in the Cincinnati Enquirer newspaper. (T 12). She found about four other possible places before calling the Jeffre number. Of these other places, only one person told her that children were acceptable as residents in their apartments. The people discussing the others told her that they did not accept children. Tilford inspected the one apartment that would accept children, but it did not appear to her to be sanitary, so she did not apply for it. (T 14-16). At one other apartment, she filed an application, but she never heard back from the management. (T 17).

As a result of these experiences, Tilford filed several complaints alleging discrimination based upon familial status with a local fair housing organization called Housing Opportunity Made Equal ("HOME"). She had originally learned about HOME from its advertisements on television and radio. (T 24).

On November 6, 1989, in response to an apartment rental advertisement in the Cincinnati Enquirer, Ms. Tilford called Helen Jeffre to make inquiries about the available apartment. The apartment was listed in the Pleasant Ridge section of the rental advertisements, one of Tilford's favored areas to seek housing. This neighborhood was attractive to her because it is within walking distance to her parents' apartment. When Tilford called, she asked for the address, how much the rent would be, and whether children were accepted. (T 21). She considered the amount of rent to be reasonable. (T 19, 20). But when Tilford asked Respondent Jeffre whether she accepted children, Jeffre responded, according to Tilford, "singles only." (T 20, 25, 29).²

After being denied housing availability by Jeffre, Tilford called HOME to complain. (T 24). The people there told her to call again to determine whether

²I take notice that the ordinary meaning of "singles" is unmarried people, and I made this clear during the hearing. Nonetheless, Tilford testified that she understood "singles only" to mean no children. She further testified that in her experience as an apartment seeker the term was used in that way. (T 24, 32). Later in the hearing, Helen Jeffre testified that she has a policy against accepting children and that she so informs prospective tenants. (T 57, 61). Thus, in spite of the problem in terminology, I find that Jeffre did indicate in one way or another to Tilford that she would not make an apartment available to her and her daughter.

the building met the exception from the Act for housing reserved for people 55 and over.³ (T 33). Tilford did so, and to her request to know whether Jeffre had any age requirements, Jeffre responded that she rented to people of all ages. (T 30, 31; S 1). Both of these phone conversations were very short and were terminated by Tilford's hanging up the phone. (T 68-69).

In November 1989, one Steven Erhardt was a field investigator working for HOME. (T 34). On November 10, 1989, he tested the Jeffre apartment house for HOME. (T 35). First, he telephoned Helen Jeffre to make an appointment. He told her that he was married, and she asked him if he and his wife had parties at night or made a lot of noise. (T 36). He responded that they did not, and she made an appointment for him to view the apartment. (T 36). She did not tell him the apartment was for "singles only."

Soon thereafter, Erhardt went to see the apartment. Helen Jeffre told him the rent was \$265, including heat and electricity, and that the security deposit would be due upon moving in. (T 37). Erhardt said that he needed to discuss it with his wife and have her come over to see the apartment before he could make a decision on it, and Jeffre responded that was fine. (T 37). She gave him an application and lease to take with him. (T 38, S 7). She also lowered the rent required to \$260, without request or explanation, in spite of having been told that two would be renting the apartment. (T 37, 38). On the lease, a standard form, there is a blank to be filled in with the maximum number of people who would be permitted to live in the apartment, and it was filled in with a number "one." (S 7). When Erhardt pointed this out to Jeffre, she nonetheless told him that she would allow him and his wife to rent an apartment. (T 40).

Helen Jeffre testified that it was her policy to tell people who inquired about the apartments on Oakleaf Avenue that she rents to singles only and that she does not rent to people with children. (T 57). She has made only one exception to the rule when she rented to a person with a "seventeen year old" daughter who later turned out to be only fifteen and moved in by herself. (T 57). According to Ms. Jeffre, this caused her "problems." She does not ordinarily rent to people with children because the apartments are small and there is a lot of "confusion," which she defines as noise and childlike activities, when children are visiting in the building. There is "a lot of running in and out and up and down the stairs" and a lot of noise. She has had children visiting for a couple of weeks at a time and has found it very annoying. (T 61).

The "singles only" policy is also because of problems she has encountered in the past. (T 60). She has always filled the blank space on the lease that was mentioned before with a "1" to limit the number of people in each apartment and in the building. (T 60). Nonetheless, "single" people have frequently moved other people in with them. (T 57). One of them, a Mr. Beech, brought in a girlfriend, and they lived there together for a year. (T 58). A "single girl" moved in and she then moved in three couples and two children with her. (T 64). Another person got married while he was living there. He and his wife had a

³The Act, as codified at 42 U.S.C. Section 3607(b)(1), exempts housing for persons 55 and older from the prohibitions against discrimination on the basis of familial status.

baby, and they moved out five months later because they could not fit a crib into the bedroom with them. (T 62-63).

Edward Jeffre is aware of his mother's policies of not renting to people with children and giving rental preference to singles. (T 74). He also expressed some reservations about more than one person per apartment because the apartments are small and the rent includes utilities, but these issues were not pursued. (T 65, 69, 70).

After her short conversations with Ms. Jeffre, Complainant called one or two more apartments and still did not find suitable housing. She stopped looking for apartments because she felt like she was being continually discriminated against. (T 23). After the incident with Jeffre she stayed with her parents until February, when she found an apartment. (T 26). She stayed in the apartment until she went back to school the following fall and then she moved back in with her parents. (T 18). She was still living with her parents at the time of the hearing. She felt that the incident with Helen Jeffre was unfair and that she had been excluded. She was disappointed that she had not had an opportunity to show her credentials and felt helpless to change the policy. (T 21).

Applicable Law

Congress enacted the Fair Housing Act to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), *cert. denied*, 422 U.S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, [even] simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio), *aff'd in relevant part*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

On September 13, 1988 Congress amended the Act to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status.⁴ 42 U.S.C. Sections 3601-19. In amending the Act, Congress recognized that "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2nd Sess. (1988) ("House Report"). In addition, Congress cited a HUD survey that found 25% of all rental units exclude children and that 50% of all rental units have policies that restrict families with children in some way. See Marans, *Measuring Restrictive Rental Practices Affecting Families With Children: A National Survey*, Office of Policy, Planning and Research, HUD, (1980). The HUD survey also revealed that almost 20% of families with children were forced to

⁴The term "familial status" is defined in the Act, at 42 U.S.C. Section 3602(k), as

- ... one or more individuals (who have not attained the age of 18 years) being domiciled with --
- (1) a parent or another person having legal custody of such individual or individuals; or
 - (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

live in less desirable housing because of restrictive policies. Congress recognized these problems and sought to remedy them by amending the Fair Housing Act to make families with children a protected class.

Accordingly, the amended Act and HUD regulations make it unlawful, *inter alia*:

(1) to refuse to ... rent after making a bona fide offer, or to refuse to negotiate ... for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status ...⁵ 42 U.S.C. Section 3604(a); 24 CFR 100.50(b)(1) and (3), and 100.60(b)(1) and (2).

* * * * *

(3) to make, print, or publish, or cause to be made, printed, or published, any notice [or] statement ... with respect to the ... rental of a dwelling that indicates any ... limitation or discrimination based on ... familial status, ... or an intention to make any such ... limitation or discrimination. 42 U.S.C. Section 3604(c); 24 CFR 100.50(b)(4) and 100.75 (a)-(c).

The Act provides two exemptions for "housing for older persons" from its bar against discrimination on the basis of familial status. These exemptions are for housing for persons 62 years of age or older and housing for persons 55 years of age or older, and each exemption has its own tests. These exceptions are not at issue in this case.

HUD's Chief Administrative Law Judge, Alan W. Heifetz, articulated the burden of proof test to be applied in housing discrimination cases brought under the Fair Housing Act in *HUD v. Blackwell*, Fair Housing - Fair Lending (P-H) para. 25,001, 25,005 (HUDALJ No. 04-89-0520-1, Dec. 21, 1989) (hereinafter cited as "*Blackwell*"). This statement of law was upheld by the United States Court of Appeals in *Secretary, HUD On Behalf Of Heron v. Blackwell*, 908 F.2d 864 (11th Cir. 1990) ("*Blackwell II*"). It is that the well-established three-part test that is applied by the federal courts to employment discrimination cases which are brought under Title VII of the Civil Rights Act, as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), should also be applied to housing discrimination cases that are brought before this forum. See, e.g., *Politt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1989). See also, Schwemm, *Housing Discrimination Law*, 323, 405-10 & n. 137 (1983). That burden of proof test is as follows:

First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the

⁵A "dwelling" includes "any building, structure, or portion thereof which is occupied as, or intended for occupancy as, a residence by one or more families." 42 U.S.C. Section 3602(b).

defendant to "articulate some legitimate, undiscriminatory [sic] reason" for its action Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext

Politt, supra, at 175, citing *McDonnell Douglas, supra*, at 802, 804.

The shifting burdens of proof format from *McDonnell Douglas*, which is spelled out above, is designed to assure that the "plaintiff [has] his day in court despite the unavailability of direct evidence." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), citing *Loeb v. Truxton, Inc.*, 600 F.2d 1003, 1014 (1st Cir. 1979) (disapproved on other grounds in *Trans World Airlines, Inc., supra*). Therefore, it was further established in this forum that where Complainant and the Government can produce direct evidence of discrimination, the shifting burdens of proof analysis set forth in *McDonnell Douglas* need not be applied. *HUD v. Murphy*, Fair Housing - Fair Lending (P-H) para. 25,018 (HUDALJ No. 01-89-0202-1, July 13, 1990), Citing *Trans World Airlines, supra*, at 121; see also *Teamsters v. U.S.*, 431 U.S. 324, 358, n. 44 (1977).

Discussion

In this case, there is direct evidence that Respondents discriminated on the basis of familial status by not permitting Tilford to inspect and apply for the apartment, if she had so chosen, and by telling her and others that the apartment was available for singles only. Respondent Helen Jeffre stated that it is her policy not to rent to people with children. Respondents do not dispute that Ms. Tilford called Ms. Jeffre to inquire about the availability of an apartment that had been advertised in the newspaper. Respondents' own testimony recounts the discriminatory content of the conversation.

The existence of this policy was further supported by the HOME test. The test demonstrated Helen Jeffre's willingness to rent the one-bedroom apartment to two married adults or to one adult with the explicit understanding that the prospective tenant was married and that his wife would be living with him. Ms. Jeffre also admitted that she never rented to an adult and child, with one exception. From her own testimony it is clear that her "singles only" policy is a sham in that it really means "no children."

The burden of proof is on the Respondents. They presented no evidence and made no argument that the building qualified for one of the exemptions for housing for older persons or that the units were unsuitable for more than one person because of any reasonable local, state, or federal restrictions for occupancy by more than one person, pursuant to 42 U.S.C. Section 3607(b)(1). They also did not invoke any economic or physical limitations of the building to justify their policies beyond the mere assertion that they included utilities costs within the monthly rent. Indeed, even if they had made any of these defensive assertions, they would have failed to meet their burden by virtue of their willingness to violate their own policy to allow a married couple access to the apartment that was denied Ms. Tilford and her daughter.

Ultimate Conclusions

The Secretary has established that the respondents denied Ms. Tilford her right to apply for and, if qualified, to rent one of their apartments on the basis of Ms. Tilford's having a minor child. The Secretary has also established that the respondents maintain a policy against children occupying any of their apartments in the building on Oakleaf Avenue.

More specifically, by refusing to make an apartment available to Complainant because of her familial status, Helen Jeffre violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Section 3604(a). HUD regulations state that the prohibitions of 42 U.S.C. Section 3604(c) apply "to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling." 24 CFR Section 100.75(b). By stating that "singles only" were permitted in response to Tilford's question as to whether Respondents accepted children, Helen Jeffre made a statement with respect to the rental of a dwelling that indicates a preference, limitation, or discrimination based on familial status or an intention to make such a preference, limitation or preference, in violation of Section 3604(c) of the Act. *HUD v. Baumgardner*, Fair Housing - Fair Lending (P-H), para. 25,006 at 25,097 (1990).

While authority may be delegated, responsibility may not. In this case, Edward Jeffre delegated his authority to manage the apartment house, but the responsibility for how it is managed remains his; *i.e.*, the duty not to discriminate is nondelegable. *United States v. Mitchell*, 335 F. Supp. 1004, 1007 (N.D. Ga. 1971), *aff'd sub. nom.*, *United States v. Bob Lawrence Realty*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973) (holding a principal liable even though it neither instructed its agent to discriminate nor ratified that discrimination). As the owner of the property, Edward Jeffre is liable for his mother's discriminatory acts. *HUD v. Properties Unlimited*, Fair Housing -Fair Lending (P-H), para. 25,009 at 25,154 (1991) (an owner "is responsible as a matter of law for his employees' unlawfully discriminatory conduct, even if he was unaware of, or did not explicitly ratify, that conduct.").⁶

Remedies

Section 812(g)(3) of the Act provides that where an administrative law judge finds that a respondent has engaged in discriminatory practices, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or equitable relief." 42 U.S.C. Sec. 2613(g)(3). That section further states that the "order may, to vindicate the public interest, assess a civil penalty against the respondent." The maximum amount of a civil money penalty is dependent upon whether the respondent has been adjudged to have committed prior discriminatory practices. Where, as in this case, the respondents have not been adjudged to have committed any prior discriminatory practices, any civil money

⁶The fact that Edward Jeffre was aware of and condoned Helen Jeffre's discriminatory policy is not a necessary element to his liability. It merely serves, in this case, to make more obvious the liability of the owner for the actions of the manager.

penalty assessed against the respondents cannot exceed \$10,000. *See also* 24 CFR 104.910(b)(3) (1990).

The government, on behalf of itself and the complainant, has prayed for: (1) an award of damages to compensate Complainant for inconvenience, emotional injury, and the lost housing opportunity; (2) the imposition of a substantial civil penalty; and (3) injunctive relief to ensure that Respondents do not engage in unlawful housing practices in the future.

Damages

The Fair Housing Act provides that relief may include actual damages suffered by the Complainant because of the actions of the respondent. 42 U.S.C. Section 3612(g)(3). In this case, while Ms. Tilford would be compensated for any actual economic losses had she suffered any, neither she nor the government made any such claim. In addition to actual damages, a Complainant is entitled to recover damages for inconvenience and emotional distress caused by a Respondent's discrimination. *See, e.g., Blackwell, supra*, at 25,001; *Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Because these abstract injuries are not subject to being quantified, courts have ruled that precise proof of the actual dollar value of the injury is not required. *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.*, 478 F. 2d 380, 384 (10 Cir. 1973).

Because of Respondents' discrimination, Complainant was forced to remain in the uncomfortable living conditions of her parents' apartment and to continue looking for suitable housing. She called Helen Jeffre on November 6, 1989, and she eventually found an apartment in February of 1990. But for the Jeffres' discrimination, she would not have had to endure this period of discomfort and frustration, as well as the additional time and energy required to continue her search. Ms. Tilford credibly testified that the rent was reasonable and the location was good, so I find that she would have qualified for and taken the apartment if it had been made available to her. She was also required to file this lawsuit and participate in it. For these inconveniences, the Secretary asks for an award of \$500. Given the circumstances of this case and the fact that I awarded \$750 for inconvenience in a case where there was more of it demonstrated,⁷ this is not an unreasonable demand, and Complainant will be awarded \$500 for her inconvenience in the Order below.

The administrative law judge assigned to decide a case of housing discrimination is accorded wide discretion in setting damages for emotional distress, and is guided in determining the size of the award by the egregiousness of the Respondent's behavior and the Complainant's reaction to the discriminatory conduct. R. Schwemm, *Housing Discrimination Law*, 260-62 (1983). Awards for emotional distress in relevant federal case law range far and wide,

⁷*See, HUD v. Holiday Manor Estates Club, Inc., et al*, HUDALJ 05-89-0533-1 (November 26, 1991), at p.21.

depending on the circumstances.⁸ Therefore, a review of federal cases is not very helpful as guidance here.

However, awards of damages for emotional distress have already been made by this forum in housing discrimination cases, and these can be looked to for some guidance. In *Blackwell*, \$40,000 was awarded to a black couple for the embarrassment, humiliation, and emotional distress of having been denied a house because of their race. This was a clear case of open and blatant racial discrimination perpetrated by a real estate agent. In *Murphy, supra*, awards of \$150, \$400, \$800, \$1,000, and \$5,000 were made for emotional distress and loss of civil rights, with the award of \$150 being made to a party who "... suffered the threshold level of cognizable and compensable emotional distress." (at 25,057). In *HUD v. Guglielmi and Happy Acres Mobile Home Park, Fair Housing - Fair Lending (P-H)*, para. 25,070 at 25,079, I awarded \$2,500 to the Complainant where I found that the Respondents had "... contributed significantly to [Complainant's] actual and perceived loss of civil rights, feelings of embarrassment and humiliation, and general emotional distress" for the better part of a year, and in *HUD v. Baumgardner, Fair Housing - Fair Lending (P-H)*, para. 25,094 at 25,101, I awarded \$500 to a young man who had been discriminated against on the basis of sex "because men are messy tenants". He did not appear to be a man of vulnerable constitution, but he said that he was angry, hurt, and frustrated by the denial of the house he wanted and that it was a source of anger and distress for a few months. Finally, in *HUD v. Riverbend, et al, HUDALJ 01-89-0676-1 (Oct. 15, 1991)*, at p. 18, I awarded \$2,000 to a complainant who had been denied a two-bedroom apartment for himself, his wife and two infant boys because of an occupancy standard limiting occupancy of a two-bedroom apartment to three people.

Ms. Tilford was distressed and discouraged by the repeated discrimination that she suffered, culminating in the acts of Helen Jeffre. She stopped looking for an apartment for a while after her conversation with Jeffre. It made her lose self respect in that she could not live independently from her parents. She was required to stay in the uncomfortable, stressful situation in her parents' home rather than having her own home. She wanted to start living independently, but the Jeffres' illegal discrimination frustrated her attempt to do so. It also created greater stress in her relationship with her daughter, and it made having a child into a disadvantage.

The discrimination against Ms. Tilford took the same form as that committed against the complainant in *Baumgardner*. In both cases, the complainants were denied the opportunity to even inspect the property in a short phone conversation. In *Baumgardner*, I held that the emotional injury from such

⁸ See, e.g., *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241 (8th Cir. 1983) (\$12,402 award for plaintiff's mental anguish, humiliation, embarrassment and stress); *Grayson v. S. Rotundi & Sons Realty Co.*, 1 Fair Housing-Fair Lending (P-H) para. 15,516 (E.D.N.Y. Sep. 5, 1984) (compensatory damage awards of \$40,000 and \$25,000 for two plaintiffs' embarrassment and humiliation); *Parker v. Shonfeld, supra* (\$10,000 compensation award for embarrassment, humiliation, and anguish); *Phillips v. Hunter Trails Community Ass'n.*, 685 F.2d 184 (7th Cir. 1982) (allowance of \$10,000 to each plaintiff at a time when that court had never before exceeded \$5,000). Cf. *Ramsey v. American Air Filter Co., Inc.*, 772 F.2d 1303 (7th Cir. 1985) (in employment discrimination case, jury award of \$75,000 as compensatory damages for plaintiff's mental distress found excessive, and \$35,000 awarded based upon the record).

an action is not limited to the length of time of the conversation, but continues for an indefinite time thereafter. In *Baumgardner*, the complainant did not appear to be a person of vulnerable constitution, and he said himself that the emotional distress caused by the Respondent "was kind of easy to get over." Here, Ms. Tilford also did not appear to be a person of vulnerable constitution, but her injury was greater because she is a single parent responsible also for the well being of a child rather than a single adult. And, although the government has not made such a claim, the child's uneasiness can only be compensated here through compensation to the parent. In the light of these considerations, the Secretary's request for \$1,500 in compensation for Tilford's emotional injury is reasonable and will be awarded in the Order below.

The government also seeks \$2,500 in damages for the complainant's loss of housing opportunity. The federal courts have held that damage from the deprivation of a constitutional right can be presumed "even in the absence of evidence that the complainant has suffered any emotional distress, embarrassment, or humiliation." Citing *Hodge v. Seiler*, 558 F.2d 284 (5th Cir. 1977). It is also relevant that it has been held that the amount of compensatory damages should be adequate to redress the deprivation of a complainant's civil rights. See *Corriz v. Narajo*, 667 F.2d 892 (10th Cir. 1981). However, as a general rule, while the amount of damages awarded should compensate for the injury suffered, it should not provide the injured party with a windfall. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

In *Baumgardner*, I determined that Respondent's denial of Complainant's right to choose where and under what conditions he would live was a compensable injury, and I awarded \$2,500 in damages. The discrimination in this case took the same form as that in *Baumgardner*, and again, the effect was to take away the Complainant's right to choose where and under what conditions she would live with her daughter. Thus the government's demand is deemed appropriate and \$2,500 will be awarded in the Order below.

Civil Penalty

The Government has also asked for the imposition of a civil penalty of \$2,000.00, which is one-fifth of the maximum that can be imposed on a respondent who has not been adjudged to have committed any prior discriminatory housing practices. See 42 U.S.C. Section 3612(g)(3)(A); 24 CFR 104.910(b)(3). In addressing the factors to be considered when assessing a request for imposition of a civil penalty, the House Report on the Fair Housing Amendments Act of 1988 states:

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

There is no evidence that the respondents in this case have been adjudged to have committed any prior discriminatory housing practice. Consequently, the maximum civil penalty that may be imposed in this case is \$10,000.

The Secretary argues that the nature and circumstances of Respondents' violation merit a substantial civil penalty. Respondents' actions are serious. The evidence is clear that they maintained and enforced an occupancy policy that prohibited families with children from occupying their apartments. This is not disputed. The direct effect known here was to deny housing to Ms. Tilford and her daughter, but the policy also denied an unknown number of other prospective tenants with children the housing available at the Jeffres' apartments even though it may have been their choice where to live.

As to the degree of culpability, Respondents are small landlords, who control only four units, only three of which are available to persons other than Helen Jeffre. It is believable that in November of 1989 they did not know that excluding people with children is illegal. While ignorance is no excuse, the effect of a new law on people who's rental business is a minor aside to their ordinary business can be considered. Nevertheless, well after the filing of Ms. Tilford's HUD complaint on December 8, 1989, Respondents continued to follow their policy. (S 1). In addition, no evidence was adduced at the hearing to indicate that Respondents' policy with regard to children had changed since they learned about the familial status provisions of the Fair Housing Act. Indeed, their stubbornness was apparent at the hearing where Helen Jeffre stated her preference for not having children around as a current thing, and Edward Jeffre lamely defended the policy by stating that he included the cost of utilities in the rent.

As noted above, the congress desired that the civil penalty be imposed in part to achieve the goal of deterring like conduct. To ensure that Respondents and others get the message and understand that discriminatory occupancy standards are outlawed by the Act, a substantial civil penalty should be assessed. In that way, housing providers will realize that conduct such as Respondents' is "not only unlawful but expensive." *HUD v. Jerrard*, Fair Housing - Fair Lending (P-H) para. 25,005, at 25,092 (1990).

The final factor to be considered in calculating a civil penalty is the respondent's financial circumstances. Because evidence regarding their financial circumstances is peculiarly within respondents' knowledge, respondents in Fair Housing cases have the burden of producing such evidence. *Blackwell*, at 25,015; *Jerrard*, at 25,092. In this case, Respondents entered some evidence of their financial circumstances. Edward Jeffre owns a total of four apartments and his own residence; Helen Jeffre does not own any real property and is retired. Aside from the real property, Edward Jeffre owns an engineering firm of unknown size or assets. But there is no indication of affluence in this case. Taking all of these things into consideration, the Secretary's request for a civil penalty of \$2,000 appears reasonable and will be imposed in the Order that follows later.

Injunctive Relief

Section 812(g)(3) of the Fair Housing Act also authorizes the administrative law judge to order injunctive or other equitable relief to make the

complainant whole and to protect the public interest in fair housing. "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell II*, 908 F.2d 864, at 874 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983)).

The purposes of injunctive relief in housing discrimination cases include the elimination of the effects of past discrimination, the prevention of future discrimination, and the positioning of the aggrieved persons as close as possible to the situation they would have been in but for the discrimination. See, *Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033, 1036 (8th Cir. 1979), *cert. denied*, 445 U.S. 905 (1980). Once a judge has determined that discrimination has occurred, he has "the power as well as the duty to 'use any available remedy to make good the wrong done'." *Moore v. Townsend*, 525 F.2d 482, 485 (7th Cir. 1975) (citation omitted).

Here, injunctive relief is necessary to ensure that Respondent will not conduct himself in like manner. To that end, the Government has requested that the Respondent be ordered to cease certain activities and undertake certain other actions. Substantially all of these requests are reasonable and are deemed appropriate under the totality of the circumstances of this case. Accordingly, for the most part, they will be imposed, and the specific provisions of injunctive relief are set forth in the Order issued below.

Order

Having concluded that Respondents, Edward Jeffre and Helen Jeffre, violated provisions of the Fair Housing Act that are codified at 42 U.S.C. Sections 3604 (a), and (c), as well as the regulations of the U.S. Department of Housing and Urban Development that are codified at 24 CFR 100.60 and 100.75, it is hereby

ORDERED that,

1. Respondents are permanently enjoined from discriminating against Complainant, Rhonda K. Tilford, or any member of her family, with respect to housing, because of race, color, or familial status, and from retaliating against or otherwise harassing Complainant or any member of her family. Prohibited actions include, but are not limited to, all those enumerated in the regulations codified at 24 CFR Part 100 (1989).

2. Respondent Edward Jeffre shall institute record-keeping of the operation of his rental properties which are adequate to comply with the requirements set forth in this Order, including keeping all records described in paragraph four of this Order. Respondent shall permit representatives of HUD to inspect and copy all pertinent records at reasonable times after reasonable notice.

7. Within forty-five days of the date that this Initial Decision and Order is issued, Respondent Edward Jeffre shall pay a civil penalty of \$2,000 to the Secretary, United States Department of Housing and Urban Development.

8. Within fifteen days of the date that this Order is issued, Respondent Edward Jeffre shall submit a report to HUD's Chicago Regional Office of Fair Housing and Equal Opportunity that sets forth the steps he has taken to comply with the other provisions of this Order.

This Order is entered pursuant to section 812(g)(3) of the Fair Housing Act, which is codified at 42 U.S.C. Section 3612(g)(3), and HUD's regulations that are codified at 24 CFR 104.910. It will become final upon the expiration of thirty days or the affirmance, in whole or in part, by the Secretary within that time.

Robert A. Andretta
Administrative Law Judge

Dated: December 18, 1991.