UNITED STATES OF 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 Imogene Porter, Charging Party, v. Maria Gwizdz, Respondent.

HUDALJ 05-92-0061-1
Decision Issued: November 1, 1994

Maria Gwizdz, *pro se*.

John G. Caruso, Esq.
For the Charging Party

Before: William C. Cregar
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of a complaint of discrimination based upon familial status, race, and color, in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* ("Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104. Complainant, Imogene Porter filed a complaint with the United States Department of Housing and Urban Development ("HUD" or "the Charging Party") on September 27, 1991. On March 10, 1994, HUD's Regional Counsel issued a Determination of

Reasonable Cause. A hearing was held in Chicago, Illinois on June 21, 1994.[1] The Charging Party timely filed its post-hearing brief on August 12, 1994.[2]

The Fair Housing Act makes it illegal to "refuse to sell or rent, or to otherwise make unavailable a dwelling. . . because of race, color, [or] familial status" or to "make. . . any. . .statement . . with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on. . . familial status. . . or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. §§ 3604(a) and (c).[3]

The Charging Party alleges: (1) that Respondent violated 42 U.S.C. § 3604(a) by refusing to rent an apartment to Complainant because of her race, color, and familial status; and (2) that Respondent made certain statements with respect to rental of her apartment, expressing a preference, limitation, or discrimination based on familial status in violation of 42 U.S.C. § 3604(c). It seeks damages on behalf of Complainant for economic loss and emotional distress, in addition to a civil penalty. Respondent denies both allegations.

Findings of Fact

1. In the summer and fall of 1991 Complainant Imogene Porter, a black woman, resided with her two grandchildren, Charnelle and Frederick. Her grandchildren were, respectively, 14 and 9 years old at that time. Ms. Porter had been accepted into a "Section 8" program administered by the Leadership Council of Chicago. Under this program, participants are required to find housing in communities with 30 percent or less minority residents. To remain eligible, she was required to locate a qualifying apartment

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[1]The hearing was originally scheduled to commence on May 24, 1994. Ms. Gwizdz was expecting the birth of her child at this time. Accordingly, I extended the hearing date.

[2]At the hearing, Respondent filed a motion to dismiss this case. On June 27, 1994, the Charging Party sought leave to respond to the motion. I granted this request by issuance of an order directing the Charging Party to file a response by July 22, 1994, and Respondent to file any reply by August 5, 1994. The Charging Party timely responded. Respondent, however, requested an extension of time in which to file a reply. I granted her an extension until September 2, 1994.

[3]The Charge also alleges that Respondent discriminated against Complainant in the terms, conditions, and privileges of rental because of her race, color and familial status in violation of 42 U.S.C. § 3604(b). The Charging Party has withdrawn this allegation. *See* C. P. Post-hearing Brief at 12 n. 6.

by the first week of December 1991. Tr. p. 21.[4] Because her employer (Jewish Vocational Services) is located on the north side of Chicago, apartments meeting both the Section 8 program guidelines and her own needs were located in the northside suburbs which include Evanston, Niles, Lincolnwood, and Skokie. Tr. p. 22.

2. Respondent Maria Gwizdz and her husband own a two-unit apartment building located at 8301 North Trumbull in Skokie, Illinois ("the apartment"). Together with her husband, she manages and rents the property. She also shows the apartments and answers most inquiries concerning them. Tr. p. 46. Ms. Gwizdz and her husband also own a single family dwelling in DesPlaines, Illinois.

3. The North Trumbull property is a two-story building. Each apartment occupies an entire floor and has three bedrooms and one and one-half baths. During the summer and fall of 1991, the first level apartment was occupied by the Newmans, an elderly, white couple. The second floor apartment was vacant. Ms. Gwizdz intended to rent it for $810 per month. C.P. Exs. 2 and 23, at 13; Tr. pp. 55-56.

4. In the second week of August 1991, Respondent advertised the second floor apartment in *Lerner's Classified Ad Week*. Ms. Porter dialed the number listed in the ad and spoke to Ms. Gwizdz. Ms. Porter stated that she was interested in the apartment. Ms. Gwizdz asked Ms. Porter to identify her nationality. She stated that she was black. Ms. Gwizdz stated that the apartment was not ready and that she would call her back. Ms. Porter supplied her name and phone number. Ms. Gwizdz did not call her back. Tr. pp. 24-25, 69; C.P. Ex. 15, at 3.

5. Several days later, Ms. Porter again reached Ms. Gwizdz by telephone and inquired about the apartment. This time Ms. Porter disguised her voice. Ms. Gwizdz asked Ms. Porter if she had any children and Ms. Porter replied that she did. Ms. Gwizdz then asked their ages and Ms. Porter responded. Ms. Gwizdz replied that she needed quiet tenants because her parents lived downstairs.[5] Ms. Porter explained that the children were in school most of the day, were well behaved, and did not make a lot of noise. Ms. Gwizdz told Ms. Porter that "the children would make noise and that [she

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[4]The following reference abbreviations are used in this decision: "Tr." followed by a page number for the hearing transcript, and "C. P. Ex." for the Charging Party's Exhibit.

[5]In a letter to the HUD investigator, Respondent also referred to Mr. Newman, the downstairs tenant, as her uncle. C.P. Ex. 11. In fact, the Newmans are unrelated to Respondent. This is established by her testimony describing them as "nice people" and as "the tenants downstairs," rather than as her parents, aunt and uncle or any other relative. Tr. p. 54.

couldn't rent to her.]" C.P. Ex. 11; Tr. pp. 25-26. Ms. Porter then told Ms. Gwizdz that it was illegal to discriminate against families with children, to which Ms. Gwizdz replied that the building was hers and that she could do what she wanted. *Id.*

6. Following her second conversation with Ms. Gwizdz, Ms. Porter contacted the Leadership Council of Chicago, a fair housing organization. On September 5, 1991, John Kuhnen, a Council employee, made an appointment with Ms. Gwizdz to view the apartment. He informed her that only his wife would be coming. Ms. Porter visited the apartment that evening, claiming to be Mr. Kuhnen's wife. Ms. Gwizdz perfunctorily showed her the apartment. Ms. Porter requested a lease application and Ms. Gwizdz told her that she had run out of them. Ms. Gwizdz did not attempt to obtain any tenant qualifying information from Ms. Porter. C.P. Ex. 23, at 18-19; Tr. pp. 30-32.

7. Several days after her visit to the apartment, Ms. Porter called Respondent. Ms. Gwizdz told her the apartment had been rented. On September 7, 1991, Respondent rented the apartment to Conrad and Phillis Weil, a white couple. No minor children reside with the Weils. C.P. Exs. 11, 16, at para. 16; Tr. pp. 32-33, 93.

8. Ms. Porter wanted to find housing before September 1991 so that her grandchildren would not have to change schools during the school year. In addition, to maintain her Section 8 eligibility, she had to locate a residence by the first week in December. Despite these considerations, Ms. Porter delayed her housing search because she was "anxious that [she] would run into that kind of treatment in the marketplace again." Tr. p. 34. Ms. Porter continued her search for an apartment, devoting approximately eight hours per week to her search until November 1, 1991. On that date, she rented her present apartment. The monthly rent was $850 for the first year and $860 for the second year. In March 1994, the monthly rent was reduced to $820. Tr. pp. 21, 34-35.

Discussion

Respondent's Motion to Dismiss

Respondent filed a Motion to Dismiss this case based on HUD's failure to (1) comply with the Act's 100-day time limit, (2) notify Respondent of the reasons for the delay, and (3) conciliate this case adequately. I deny the Motion.

The Act provides that within 100 days after filing of the complaint, HUD shall complete its investigation and make its reasonable cause determination "unless it is

impracticable to do so." 42 U.S.C. §§ 3610 (a)(1)(B)(iv), (a)(1)(C), and (g). When HUD is unable to meet the 100-day time limit, HUD must notify the parties of any reason for

the delays. *Id.* at (a)(1)(C) and (g). Respondent asserts that HUD failed both to meet the deadline and to notify Respondent of the delay.

I conclude that Respondent received notification of the delay and, accordingly, HUD complied with the Act despite the fact that the investigation exceeded 100 days. The Charging Party filed a Memorandum in Opposition to Respondent's Motion to Dismiss. While admitting that HUD did not meet the 100-day deadline, the Memorandum attaches a declaration from Douglas A. Coleman, Computer Assistant in HUD's Management Information System Division, a computer generated document, and copies of the letters sent to the parties which establish that Respondent was notified of the delay. There is no evidence to the contrary; accordingly, I find that she received the notification.

Respondent also alleges that HUD failed to provide her an adequate opportunity to conciliate this case. The Act requires that HUD "shall, to the extent feasible, engage in conciliation." 42 U.S.C. § 3610 (b). The HUD investigator twice attempted conciliation with Respondent. She twice expressed an unwillingness to participate. Tr. pp. 87-89, and 96. Respondent has failed to demonstrate that HUD's efforts were inadequate. Accordingly, the Motion to Dismiss is denied.

Governing Legal Framework

Congress passed the Fair Housing Act to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio 1980), *rev'd on other grounds,* 661 F.2d 562 (6th Cir. 1981), *cert. denied,* 465 U.S. 926 (1982). *See also United States v. City of Black Jack*, 508 F.2d 1179, 1184 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975).

On September 13, 1988, the Act was amended, effective March 12, 1989, to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status.[6]

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[6]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., 2d Sess., 19 (1988). Congress cited a survey finding that 25 percent of all rental units exclude children and that 50 percent of all rental units have policies restricting families with children in some way. *Id. (citing* Marans, *Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey*, Office of Policy Planning and Research, HUD

42 U.S.C. §§ 3601-19. "Familial status," as relevant to this proceeding, is defined as:

> [O]ne 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. . . .

Id. at § 3602(k)(1). *See also* 24 C.F.R. § 100.20(b).

The Act makes it unlawful, inter alia,

> (a) To refuse to. . . rent. . . or to refuse to negotiate for the. . . rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color [or] familial status. . . .
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> * * *
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> (c) To make. . . any. . . statement. . . with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on. . . familial status. . . or an intention to make any such preference, limitation, or discrimination."

42 U.S.C. 3604(a) and (c). *See also* 24 C.F.R. §§ 100.60, 100.75.

The legal framework to be applied in a case under 42 U.S.C. § 3604(a) depends on whether the evidence offered to prove the alleged violation is direct or indirect. Direct evidence, if it constitutes a preponderance of the evidence as a whole, will support a finding of discrimination. *See HUD v. Morgan,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,008, 25,134 (HUDALJ July 25, 1991), *aff'd*, 985 F.2d 1451 (10th Cir. 1993); *HUD v. Jerrard,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,005, 25,087 (HUDALJ Sept. 28, 1990). However, in the absence of direct evidence of discrimination, the analytical framework to be applied in a fair housing case is the same as the three-part test used in employment discrimination cases under Title VII of the Civil Rights Act, as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See, e.g., HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990); *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1451 (4th Cir.), *cert. denied*, 111 S.Ct. 515 (1990). Under that test:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. . . . Second, if

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(1980)). The survey also found that almost 20 percent of families with children were forced to live in undesirable housing due to restrictive housing policies. *Id.* Congress therefore intended the 1988 amendments to remedy these problems for families with children.

> the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for its action. . . .Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance [of the evidence] that the legitimate reasons asserted by the defendant are in fact mere pretext. . . .

Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987), *(citing McDonnell Douglas Corp.,* 411 U.S. at 802, 804). *See also Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981). However, pretext alone does not necessarily prove discrimination. The Charging Party still maintains the burden to demonstrate that an asserted reason, even though pretextual, evidences an intent to discriminate. *See St. Mary's Honor Center v. Hicks,* 113 S.Ct. 2742; 125 L.Ed. 2d 407 (1993).

Statements by "a person engaged in the sale or rental of a dwelling" that (1) convey that housing is unavailable because of familial status or (2) express a preference for or limitation on renters because of familial status violate the Act. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a), (b), (c)(1) and (2). The test used to determine whether a statement is discriminatory is whether it suggests to an "ordinary listener" that a particular protected class is preferred or "dispreferred" for the housing. *Soules v. HUD*, 967 F.2d 817, 824 (2d Cir. 1992). *See also, Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2d Cir.), *cert. denied,* 112 U.S. 81 (1991).

42 U.S.C. Section 3604(a)

Race and Color Discrimination

Under the circumstances of this case, a prima facie case of race discrimination would be demonstrated by proof that: 1) Imogene Porter is a member of a protected class; 2) she attempted to apply for and was qualified to rent the apartment; 3) she was denied the housing; and 4) Respondent subsequently rented the subject property to a non-black. Record evidence indirectly[7] establishes that Respondent's denial of the apartment

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[7]Direct evidence establishes a proposition directly rather than inferentially. Examples of direct evidence are found in *Pinchback,* 907 F.2d at 1452 (Applicant was told that blacks were not allowed in the housing development.) and *Cato v. Jilek,* 779 F. Supp. 937 (N.D. Ill. 1991) (Apartment owner stated that he "would like to kill [a white woman] for bringing a black man" to his property.).

The Charging Party contends that Ms. Gwizdz' request that Ms. Porter identify her "nationality" is direct evidence of racial discrimination because Ms. Porter interpreted the inquiry as requesting that she identify her race. C.P. Post-hearing Brief, pp. 1 n. 1, 12-13. I disagree. While the inquiry served no apparent legitimate purpose, and may evidence an intent to discriminate based on national origin, it is not

to Ms. Porter was racially motivated.

Ms. Porter is black. Therefore, she belongs to two protected classes: race and color. *See* 42 U.S.C. § 3604. Ms. Porter attempted to rent the apartment by responding to the advertisement and by inspecting the apartment. Her qualification to rent the apartment is established by her employment with the Jewish Vocational Services and her acceptance into the Section 8 program. Indeed, Respondent has never alleged that Ms. Porter was not qualified. Ms. Gwizdz denied the apartment to Ms. Porter. After learning that she was black, she stated that the apartment was not ready. Even though she had Ms. Porter's phone number, she did not call her.[8] Finally, the record establishes that following Ms. Porter's rejections, Respondent rented the apartment to the Weils, a white couple.

Because the Charging Party established a prima facie case of discrimination, the burden of production shifts to the Respondent to articulate a legitimate nondiscriminatory reason for denying the home to Ms. Porter. During Ms. Porter's first telephone inquiry, Ms. Gwizdz told her that the apartment was not ready. I conclude that this claim is pretextual. Respondent presented no evidence that any remodeling or reconditioning took place during or after the date the apartment was advertised. In addition, Ms. Gwizdz never informed either Ms. Porter (when she called disguising her voice) or Mr. Kuhnen that the apartment was not available. Moreover, Respondent's claim is highly unlikely. The former tenants moved out of the apartment on or about June 1, 1991. In the beginning of August 1991, Respondent advertised the apartment in *Lerner's Classified Ad Week*. It makes little business sense to advertise a unit that is not ready for immediate occupancy unless the advertisment states this fact and indicates a future occupancy date. In addition, it makes no business sense to allow an apartment to remain vacant and unrepaired for a long period of time. Were any repainting or remodeling required, it would have most likely occurred in the two months that the apartment was empty.

The record evidence further establishes that Ms. Gwizdz harbored an intent to discriminate based on race and color. *See St. Mary's Honor Center,* 113 S.Ct. 2742. Ms. Gwizdz's claim that the apartment was "not ready," immediately followed

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direct evidence that Respondent discriminated against Complainant based on her race because before finding such racial discrimination, inferences must be made from the predicate facts.

[8]Because Ms. Porter disguised her voice, Ms. Gwizdz would have no reason to know that the same black woman who previously called her was making a second call. Having listened to Ms. Porter, I conclude from her accent only that she could be identified as someone from the Chicago metropolitan area. Accordingly, the second call does not tend to prove that Ms. Porter was denied the apartment because of her race.

Ms. Porter's declaration that she was black. Ms. Gwizdz never called Ms. Porter as she had agreed to do. When Ms. Porter visited the apartment posing as "Ms. Kuhnen," Ms. Gwizdz, observing Ms. Porter's race, perfunctorily showed her the apartment and claimed that she had no blank rental applications. Even if she had no applications, but was truly considering her as a potential tenant, Ms. Gwizdz could have asked "Ms. Kuhnen" for the qualifying information and written it on a blank piece of paper. I conclude that the false claim that the apartment was not ready, the failure to telephone Ms. Porter, the perfunctory showing of the apartment, and the statement that she lacked applications were tactics specifically intended to convey a message that the apartment was not available to blacks and hence, to discourage Ms. Porter from continuing to seek to rent the apartment. These tactics evidence an intent to discriminate based on Complainant's race. Accordingly, I conclude that the record establishes that Respondent refused to rent and negotiate for the rental of the apartment to Ms. Porter because of her race and color in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. § 100.50(b)(1).

Familial Status Discrimination

After learning that Ms. Porter would be living with two children, Ms. Gwizdz stated that she could not rent to Ms. Porter because the children would make too much noise. C.P. Ex. 11; Tr. pp. 25-26. This statement, together with the fact that Ms. Gwizdz neither rented nor negotiated the rental of the apartment with Ms. Porter, establish by direct evidence that Ms. Gwizdz refused to rent and refused to negotiate for the rental because of familial status in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. § 100.50(b)(1). *See HUD v. Gutleben,* 2 Fair Housing-Fair Lending (P-H) ¶ _____ (HUDALJ Aug. 15, 1994).

42 U.S.C. Section 3604(c)

Ms. Gwizdz violated this section by telling Ms. Porter that she could not rent to Ms. Porter because the children would make too much noise. The statement by Ms. Gwizdz, the owner and manager of housing, was made while responding to a potential applicant, and accordingly, was uttered by a "person engaged in the rental of a dwelling." The statement expressed a preference not to rent to families with children and a limitation on and discrimination against families with children. Accordingly, the statement violated 42 U.S.C. § 3604(c) and 24 C.F.R. § 100.50(b)(4).

Remedies

Alternate Housing Costs

The Charging Party seeks $1,170 as the difference between the rent of the dwelling made unavailable by the unlawful discrimination and the cost of the more expensive housing. Damages for the amount reasonably expended on alternate housing are appropriate where the Complainant has made a demonstration that such higher housing costs were incurred. *See Hamilton v. Svatik*, 779 F.2d 383, 388-89 (7th Cir. 1985); *Miller v. Apartments and Home of N.J., Inc.,* 646 F.2d 101, 112 (3d. Cir. 1981); *Morgan,* 2 Fair Housing-Fair Lending at ¶ 25,138-39. In this case, the Charging Party failed to prove that Ms. Porter actually incurred these higher costs. Ms. Porter testified that there was a difference totalling $1,170, between the rent of Respondent's apartment and her present dwelling, from the date she was denied the housing until February 1994.[9] She did not testify that she actually paid that amount, and no other evidence establishes that she did. Tr. pp. 34-35. Ms. Porter received a housing subsidy pursuant to a Section 8 program administered by the Leadership Council. Details concerning the terms and conditions of this program are absent. Specifically, the record is silent as to the amount of her subsidy and whether the amount of this subsidy varied depending upon her personal financial circumstances or other factors. *See generally* 24 C.F.R. Parts 813, 887. Without this information, I cannot conclude that she, rather than the government, incurred costs for the higher rental. Accordingly, I disapprove the Charging Party's claim for alternate housing costs.

Emotional Distress and Inconvenience

Although "courts do not demand precise proof to support a reasonable award of damages [for emotional distress]," *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony. *See Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974); *see also HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001, 25,011-13 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864, 872-73 (11th Cir. 1990). Racial discrimination against blacks, because it is one of the "relics of slavery" is the type of action that would reasonably be likely to humiliate or cause emotional distress. *Seaton,* 491 F.2d at 636.

The Charging Party seeks $7,000 in emotional distress damages on behalf of Ms. Porter. I conclude that the record supports this claim. Ms. Porter was rejected by Ms. Gwizdz on three occasions. Two of these instances involved the humiliation of race discrimination. In the first telephone conversation Ms. Gwizdz left no doubt in Ms. Porter's mind that her race made her unacceptable. This occurred when Ms. Gwizdz

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[9]The Charging Party is not claiming alternate housing costs beyond February 1994. C.P. Post-hearing Brief, at 22.

made a transparently false claim that an advertised apartment was "not ready" immediately upon learning that Ms. Porter was black. Ms. Gwizdz' second rejection was based solely upon the fact that Ms. Porter was caring for her two grandchildren. Ms. Gwizdz rejected Ms. Porter based upon a stereotypical assumption that any children would be noisy despite Ms. Porter's protestations that her grandchildren were quiet. The third rejection was once again based on race. Upon meeting Ms. Porter (i.e., "Ms. Kuhnen") for the first time, Ms. Gwizdz invented yet another transparent excuse for rejecting Ms. Porter. Her claim that she had no applications for an apartment that she was advertising and showing is simply incredible and was insulting to Ms. Porter.

I conclude that Respondent's actions, particularly those motivated by Complainant's race caused Complainant emotional distress consisting of "shock" and a fear of future rejection. *See* Tr. pp. 26, 33-34. Her fear of experiencing further discrimination was so intense that she risked losing her Section 8 entitlement by temporarily discontinuing her housing search.

While Ms. Porter experienced emotional distress, there is no evidence of severe physical or emotional trauma. Accordingly, I conclude that the amount sought by the Charging Party is reasonable. *C.f., e.g., HUD v. Jeffre,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,020, 25,258 (HUDALJ Dec. 18, 1991) ($1,500 emotional injury award against housing provider who, at one time, denied a rental opportunity because of familial status); *HUD v. Cabusora,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,026, 25,292 (HUDALJ Mar. 23, 1992) ($25,000 awarded for, *inter alia,* racially motivated constructive eviction and public humiliation). Accordingly, Ms. Porter is entitled to compensation in the amount sought by the Charging Party, $7,000, for emotional distress.[10]

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law

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[10]The Charging Party also seeks $500 for lost time and inconvenience as a result of her search for alternative housing. Complainants who are unlawfully denied housing may be compensated for such time, expense and inconvenience. *See HUD v. Edelstein,* 2 Fair Housing - Fair Lending (P-H) ¶ 25,236, 25,241 (HUDALJ Dec. 9, 1991). While the record demonstrates that Ms. Porter experienced inconvenience, there is no evidence that she lost time from work or incurred actual monetary expenses. Thus, there is no support for the figure claimed by the Charging Party. However, in determining the amount to be awarded her for emotional distress, I have considered the fact that she experienced some inconvenience.

judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 3612 (g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the goal of deterrence; (3) whether a respondent has previously been adjudged to have committed unlawful housing discrimination; (4) a respondent's financial resources; and (5) the degree of a respondent's culpability. *See, e.g., HUD v. Jerrard,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,005, 25,092 (HUDALJ Sept. 28, 1990); *Blackwell*, 2 Fair Housing-Fair Lending at ¶ 25,014-15; House Comm. on the Judiciary, *Fair Housing Amendments Act of 1988,* H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). The Charging Party seeks imposition of a $6,000 civil penalty against Ms. Gwizdz.

Nature and Circumstances of the Violation and Culpability

The nature and circumstances of this violation merit a substantial civil penalty. Respondent's race and familial status discrimination was knowing and intentional. The reasons Ms. Gwizdz gave for not renting the apartment were pretextual. Her actions caused Ms. Porter considerable inconvenience and justifiable anger, frustration and discouragement. Ms. Gwizdz was primarily responsible for renting the apartment and committed the discriminatory acts in this case. Accordingly, there is no issue of vicarious responsibility.

Deterrence

Respondent is a co-owner of two multi-family units. Accordingly, there is a need to insure that she is deterred from committing further acts of housing discrimination. In addition, the imposition of a civil penalty will serve the goal of deterring others inclined to commit similar violations. Substantial penalties send the message to violators that housing discrimination is not only unlawful, it is expensive. *Jerrard,* 2 Fair Housing-Fair Lending at ¶ 25,092. Because of the blatant, unmitigated nature of these violations, a substantial civil penalty is appropriate to deter Respondent and other housing providers from committing similar acts.

Lack of Previous Violations

There is no evidence that Respondent has previously been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against Respondent is $10,000, pursuant to 42 U.S.C. § 3612 (g)(3)(A) and 24 C.F.R. § 104.910 (b)(3)(i)(A).

Respondent's Financial Circumstances

Evidence regarding Respondent's financial circumstances is peculiarly within her knowledge, so she has the burden of introducing such evidence into the record. If she fails to produce credible evidence militating against assessment of a civil penalty, a penalty may be imposed without consideration of her financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *Jerrard,* 2 Fair Housing-Fair Lending at ¶ 25,092; *Blackwell,* 2 Fair Housing-Fair Lending at ¶ 25,015. There is no evidence that the imposition of a substantial civil penalty would cause her an undue hardship. After consideration of the five factors, I determine that imposition of a penalty is warranted in the amount sought by the Charging Party - $6,000.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. 42 U.S.C. § 3612 (g)(3). The purposes of injunctive relief include the following: eliminating the effects of past discrimination, preventing future discrimination, and positioning 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); *see also Blackwell,* 908 F.2d at 874. Once a judge has determined that discrimination has occurred, he or she 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) (citations omitted). The injunctive provisions of the following Order serve all of these purposes.

Conclusion

The preponderance of the evidence shows that Respondent Maria Gwizdz discriminated against Complainant on the basis of race, color, and familial status in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. § 100.50(b)(1), and on the basis of familial status in violation of 42 U.S.C. § 3604(c) and 24 C.F.R. § 100.50(b)(4). Complainant Imogene Porter suffered actual damages for which she will receive compensatory awards. Further, to vindicate the public interest, injunctive relief will be ordered, as well as a civil penalty against Respondent Maria Gwizdz.

ORDER

It is hereby ORDERED that:

1. Respondent's Motion to Dismiss is *denied.*

2. Respondent Maria Gwizdz is permanently enjoined from discriminating with respect to housing because of race, color, or familial status. Prohibited actions include, but are not limited to:

a. refusing or failing to rent a dwelling, or refusing to negotiate for the rental of a dwelling, to any person because of race, color, or familial status;

b. otherwise making unavailable or denying a dwelling to any person because of race, color, or familial status;

c. making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status;

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

e. retaliating against Complainant Imogene Porter or anyone else for their participation in this case or for any matter related thereto.

3. Consistent with 24 C.F.R. Part 109, Respondent shall display the HUD fair housing logo and slogan in all advertising and documents routinely provided to the public. Consistent with 24 C.F.R. Part 110, Respondent shall display the HUD fair housing poster alongside any "for rent" signs posted in connection with any dwellings that she owns, manages, or otherwise operates, as of the date of this Order and subsequent to the entry of this Order.

4. Respondent shall institute internal record-keeping procedures, with respect to any operation she owns and any other real property acquired by her that are adequate to comply with the requirements set forth in this Order. These will include keeping all records described in paragraph 4 of this Order. Respondent will permit representatives of HUD to inspect and copy all pertinent records at any and all reasonable times and upon reasonable notice. Representatives of HUD shall endeavor to minimize any inconvenience to Respondent occasioned by the inspection of such records.

5. On the last day of every third period, beginning 30 days after this decision becomes final (or four times per year), and continuing for three years from the date this Order becomes final, Respondent shall submit reports containing the following information to the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 77 West Jackson Boulevard, Chicago, Illinois 60604, provided that the director of that office may modify this paragraph of this Order as he or she deems necessary to make its requirements less, but not more, burdensome:

a. a duplicate of every written application, and a log of all persons who applied for occupancy at any of the properties owned, operated, managed, or otherwise controlled in whole or in part by Respondent indicating the race and familial status of each applicant, whether the applicant was rejected or accepted,

the date on which the applicant was notified of acceptance or rejection, and, if rejected, the reason for such rejection. Respondent shall maintain the originals of all applications described in the log.

b. A list of vacancies at properties owned, operated, managed, or otherwise controlled in whole or in part by Respondent during the reporting period, including: the address of the unit, the date the tenant gave notice of an intent to move out, the date the tenant moved out, the date the unit was rented again or committed to a new rental, the date the new tenant moved in, and the race and familial status of the former and new tenant.

c. a copy of all rules, regulations, leases, or other documents provided to or signed by current or new tenants or applicants.

6. Within forty-five (45) days of the date on which this Order becomes final, Respondent Maria Gwizdz shall pay Imogene Porter $7,000 in actual damages to compensate her for emotional distress and inconvenience.

7. Within forty-five (45) days of the date on which this Order becomes final, Respondent Maria Gwizdz shall pay a civil penalty of $6,000 to the Secretary of HUD.

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

WILLIAM C. CREGAR
Administrative Law Judge

Dated: November 1, 1994.