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: MELISSA D. GARRETT, JAMAAL KING, AMANDA GARRETT, CHRISTOPHER DOSS (A/K/A TOMMY DOSS) AND THREE MINOR CHILDREN, Charging Party, v. PHILLIP MAZE AND OPAL MINNIE MAZE, Respondents.	HUDALJ 10-M-015-FH4 January 28, 2011

Appearances

For the Complainants: Donnie Murray, Sylloris Lampkin, and Melissa Anderson, Attorneys, United States Department of Housing and Urban Development, Atlanta, GA

For the Respondents: Clint L. Maze, Attorney, Arab, AL

INITIAL DECISION AND ORDER

BEFORE: J. Jeremiah MAHONEY, Administrative Law Judge

Background. In March of 2009, sisters Melissa and Amanda Garrett and Amanda's fiancé, Christopher Doss (collectively the "Complainants"), sought to rent a residence for themselves and Amanda's infant child. Melissa Garrett was staying temporarily with a friend in Phillip Maze's neighborhood in Arab, Alabama. Melissa noticed nearby a vacant mobile home, rented years ago by her older sister from Opal Maze. Melissa contacted Opal's elder son, Respondent Phillip Maze, who agreed to repair and rent the mobile home. Opal Maze owns three single-family dwellings, including that mobile home, which is adjacent to her house, where she resides with her son, Phillip. Opal Maze owns a third dwelling, another mobile home, that has been rented by Louise Terrell for over 12 years. Now in her mid-80s, Opal Maze was diagnosed with dementia in 2004.

Opal Maze's younger son, Kenneth Maze, lives about ten miles from Arab, Alabama, and is named as Opal's attorney-in-fact in a durable power of attorney. Respondent Phillip Maze and

his sister, Brenda Noble, are named as alternates to Kenneth Maze in the event that Kenneth is unavailable, unable, or unwilling to act as attorney-in-fact. However, none of those contingencies have occurred.

Phillip Maze, who resides with his mother as her caretaker, has been handling the maintenance for the dwelling occupied by Louise Terrell. Phillip also began collecting the rent from Louise Terrell as his mother's mental condition declined. In negotiating the terms of the rental agreement for the vacant mobile home—which was in need of repair—the Complainants approached Phillip Maze, and dealt with him exclusively. Phillip told the Complainants that rent would be $345 per month, including water. A verbal rental agreement was reached in February, 2009, and Phillip agreed to complete the necessary repairs before Amanda's family and Melissa moved in. As the repairs took longer than expected, Kenneth Garrett, the father of Melissa and Amanda, assisted with the repairs to expedite the move-in.

In early March 2009, Amanda Garrett, Christopher Doss, and their infant daughter moved into the mobile home; Melissa Garrett moved in on March 6, 2009. On Sunday, March 8, 2009, Melissa Garrett drove to Trusssville, Alabama to pick up Jamaal King, an African-American medical student who was going to spend his spring break with her.

The following morning, March 9, 2009, Phillip Maze was in the Complainants' mobile home to complete some repairs when he encountered Jamaal King in the kitchen. Phillip nodded and stared at Jamaal, but did not speak, and left the mobile home without completing the repairs. That afternoon Phillip encountered Jamaal King in the yard, and stared at him, but again did not speak.

Later that day, Phillip Maze came over to the mobile home and asked to speak to "the man of the house." (Tr. 181).[1] Amanda Garrett brought Christopher Doss to speak to Phillip Maze. (Tr. 181). Phillip told Christopher that there was a problem with Jamaal King staying at the property and "he needs to go." (Tr. 24-25). Phillip Maze stated, "We can't have that here because people will be talking" and he did not want to "keep looking over his shoulder." (Tr. 25). In addition, Phillip Maze stated that the people that live on the other side of him are black, "but there ain't nothing I can do about that." (Tr.79). After Phillip left, Christopher told Amanda about the conversation, and Amanda called her sister Melissa at work to inform her about what occurred. (Tr. 100-101, 182). That evening, Jamaal King received a call from Melissa Garrett, asking him to pick her up from work. (Tr. 280).

As he walked out of the mobile home to pick Melissa up at work, Jamaal King noticed Christopher Doss and Phillip Maze talking on the front porch. They stopped talking as he walked out. (Tr. 279-280). The two men were blocking the steps, so as Jamaal King walked off the porch he said "excuse me," and Christopher stepped to the side. (Tr. 280). Phillip Maze, however, just stood in place looking at Jamaal King. (Tr. 280). Jamaal King said "excuse me," but again, Phillip Maze did not move. (Tr. 280-81). Jamaal King had to squeeze by him to get down the steps. When he got to the car, he observed that Phillip Maze continued to stare at him. (Tr. 280-81).

[1] The following abbreviations are used: Tr. (Transcript of Hearing); JE (Joint Exhibit); GE (Government Exhibit); and SF (Stipulated Fact).

Jamaal King drove to pick up Melissa from work. When he arrived at her workplace, she told him that Phillip Maze had a problem with him being there. (Tr. 281-82). He suggested that they go back to the house, figure out the situation, and try to resolve it calmly and without any further problems. (Tr. 282). They drove back to the mobile home and spoke to Christopher Doss about the situation. After speaking with Christopher, Melissa went next-door to speak with Phillip Maze. (Tr. 101, 282-283). They stood in front of Phillip Maze's house during the conversation (Tr. 46), and Phillip told Melissa that he did not like interracial relationships, and that he wanted her to move out of the mobile home. (SF 31; Tr. 101, 153). Melissa Garrett explained that Jamaal King was just visiting for spring break and was not moving into the mobile home. (Tr. 103, 495). During their conversation, Phillip Maze continued to stare at Jamaal King, who was across the lot, on the mobile home's front porch. (Tr. 104).

Melissa explained to Phillip Maze that she was not in a position to move because she had just begun caring for her niece and nephew. She asked Phillip Maze whether she could stay, if she took Jamaal King home. Phillip agreed. She asked him if it would be okay if she took Jamaal King back on Wednesday because she was not off work until then. He told her to just make sure she did it. (Tr. 101-102).

At no point in his conversations with Christopher Doss, Melissa Garrett, or Amanda Garrett regarding the rental of the mobile home did Phillip Maze place any restrictions on visitors to the property. (Tr. 20, 89-90, 167). Prior to Jamaal King's visit, Phillip Maze had never advised the Complainants of any limits on overnight visits by any of their family or guests. (SF 23). In addition, Phillip Maze expressed no issue with the visit of two white family members who had already stayed overnight at the subject property. (SF 14-16).

On Wednesday morning, March 11, 2009, Melissa Garrett was in the kitchen, washing dishes. (Tr. 104). At about 9:30 a.m., Phillip Maze cut off the water supply to the mobile home. (Tr. 505, SF 24). Christopher Doss went next-door to see if Phillip Maze's water was also off. (Tr. 25). On the way back to the mobile home, he saw a key sticking out of the water meter, which he had not previously noticed. (Tr. 25). Melissa also went over to Phillip Maze's house to see if his water was on. When she asked, Phillip stated that he did not have any idea what was going on and denied that he turned off the water. (Tr. 105). Next, Melissa visited another neighbor to see if his water was on, and discovered it was. (Tr. 106). She immediately went back to Phillip Maze's house, accompanied by Amanda, and asked Phillip again if his water was on. (Tr. 106, 182). Phillip claimed not to know. Melissa asked if he would check to see if his water was on. Then she asked if Phillip had cut off the water because Jamaal King was still at the mobile home. Phillip Maze stated "yes," and Melissa Garrett asked him whether he would turn the water back on if she and Jamaal King left. Phillip stated "yes." (Tr. 106).

After making several calls – to the water company, the police, and the U.S. Department of Housing and Urban Development (Tr. 107, 287), Melissa left to drive Jamaal King back to his home near Birmingham. (Tr. 108). When he saw the car leave, Phillip turned the water to the mobile home back on. (SF 34, Tr. 183). The water had been off for at least two hours. (SF 32).

On her way back from dropping Jamaal King off in Trussville, Melissa Garrett experienced a panic attack and, pulled off the road, and called her father. (Tr. 110). She had

trouble breathing and felt stressed. (Tr. 111). In addition, she began to worry about any visits by her own children, who are biracial, because of Phillip Maze's reaction to Jamaal King's presence at the property. She felt that her bi-racial children would not be welcomed as visitors. (Tr. 117).

After the incident with the water, Phillip stopped work on the repairs, and returned to the mobile home only once. (Tr. 26, 188). However, Phillip stood in his yard and stared toward the mobile home and the Garrett/Doss residents. (Tr. 26, 188). Amanda Garrett and Christopher Doss felt uncomfortable remaining at the property, and they moved out of the mobile home on March 13 or 14, 2009. (Tr. 26-27, 183-84). Since they needed the time to find a new apartment in Arab and to save enough money to pay for the first month's rent and to turn on the utilities, they moved in with Amanda Garrett's grandmother in Arab for approximately two weeks and then they moved to Nashville to stay with Christopher Doss's sister for approximately two and a half weeks. (Tr. 184-86).

Melissa Garrett also moved out because Phillip Maze told her to leave on Monday evening, and again on Wednesday morning. (Tr. 101, 106, 113, 153). On Monday evening, he told her that she could have part of her money back if she left. (Tr. 101). On Wednesday, after he turned off the water, he told her it was time for her to go, and she could not have any money back. (Tr. 153). Melissa and her niece and nephew stayed in the mobile home for one or two more nights, but she was scared and could not sleep. (Tr. 109). She slept with a knife under the pillow because she felt intimidated by Phillip Maze and what he might do. (Tr. 109). After she moved out, Melissa Garrett and her niece and nephew stayed with her father in Arab. (Tr. 111-12). During the last week of March, Melissa Garrett removed her belongings from the mobile home and into an apartment she rented in Arab, Alabama. (Tr. 113).

Applicable Law. On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968, which is now referred to as the Fair Housing Act.[2] The Act expanded on the Civil Rights Act of 1964 to prohibit discrimination regarding the sale, rental, and financing of housing based on race, color, religion, and national origin.

Procedural History. The Department of Housing and Urban Development (HUD) is a Federal Executive Department of the United States Government.[3] As part of its functions, HUD is responsible for enforcing the Fair Housing Act.[4]

On December 17, 2009, the Secretary of the United States Department of Housing and Urban Development (the "Charging Party") issued a Determination of Reasonable Cause and Charge of Discrimination on behalf of Complainants and aggrieved persons Melissa Garrett, Jamaal King, Christopher Doss, Amanda Garrett, and three minor children, alleging that Respondents Phillip Maze and Opal Maze violated the Fair Housing Act (the "Act"), 42 U.S.C. §§ 3601-31. Specifically, the Charging Party alleges that Respondents denied housing to Complainants, discriminated in the terms and conditions of their rental, made discriminatory statements, and interfered with Complainants' tenancy, because of race and/or color, in violation

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[2] Pub. L. No. 90-284, 82 Stat. 73, 81 (1968) (codified as amended at 42 U.S.C. §§ 3601-3631).

[3] 42 U.S.C. § 3532.

[4] The Fair Housing Act, as amended in 1998, 42 U.S.C. § 3601 et seq.

of 42 U.S.C. §§ 3604(a), (b), (c), and 3617. The Complainants seek civil money penalties totaling $200,000.00.

None of the parties exercised the right to have this matter heard in federal district court, so the matter was ripe for hearing before an administrative law judge. On May 25 and May 26, 2010, the undersigned conducted a hearing in this matter in the City Council chambers, in Arab, Alabama. Over the course of two days, the Court heard the testimony of: 1) Christopher ("Tommy") Doss; 2) Melissa Garrett; 3) Amanda Garrett; 4) Kenneth Garrett; 5) Natasha Watson; 6) Jamaal King; 7) Ralph King; 8) Natasha Watson; 9) Louise Terrell; 10) Willie Pollock; 11) Kenneth Maze; 12) Dr. Robert Hargraves; and 13) Phillip Maze. The parties filed Post-Hearing Briefs on July 16, 2010 and Reply Briefs on July 30, 2010. Accordingly, this case is ripe for decision.[5]

FINDINGS OF FACT

Based on a thorough and careful analysis of the entire record, including evidence in the form of testimony and documents adduced at the hearing, the Court finds the facts as described above, and further finds and takes cognizance of the following facts:

1. Complainants Melissa Garrett, Amanda Garrett, Christopher Doss, and all three children, who lived with them at 244 County Road 1840, Arab, Alabama 35016, are White. (SF ¶ 1);

2. Complainant Jamaal King is African-American. (SF ¶ 2);

3. Respondent Phillip Maze is White. (SF ¶ 3);

4. Respondent Opal Maze is White. (SF ¶ 4);

5. Phillip Maze resides with and cares for his mother, Opal Maze, in her house at 224 County Road 1840, Arab, Alabama 35016. (SF ¶ 5);

6. Aside from her residence, Opal Maze owns two rental dwellings located at 244 County Road 1840, and at 209 County Road 1840, both in Arab, Alabama 35016. (SF ¶ 6);

7. Kenneth Maze is Opal Maze's son and Phillip Maze's younger brother. (SF ¶ 7);

8. Kenneth Maze has been Opal Maze's attorney-in-fact since 2001, when she gave him a general power of attorney (SF ¶ 8); under Alabama law, it is a "durable" power of attorney;

9. Opal Maze managed the two rental properties at 244 County Road 1840 and 209 County Road 209 until approximately 2004. (SF ¶ 9);

10. Since 2004, and at all times relevant to the issues in this matter, Opal Maze has not been competent to conduct any business transactions or enter any contractual agreements due to medically confirmed and worsening dementia (Tr.473-480);

[5] A Notice Regarding Issuance of Decision pursuant to 42 USC § 3612(g)(2), was filed with Secretary and the parties on November 9, 2011.

11. The water supply for the rental mobile home at 244 County Road 1840 is provided by an extension from the metered water supply for Opal Maze's nearby home at 224 County Road 1840. (SF ¶ 10);

12. By verbal agreement between Phillip Maze and Melissa Garrett and Christopher Doss, the Complainants rented the mobile home at 244 County Road 1840 (SF ¶ 13), and the water supply was included in the rent to be paid by the Respondents. (SF ¶ 11);

13. Melissa Garrett and Christopher Doss paid rent and part of the security deposit to Phillip Maze prior to moving to 244 County Road 1840. (SF ¶ 17-19);

14. Two adult white visitors stayed overnight at the mobile home early in the Complainants' tenancy. (SF ¶ 14);

15. Phillip Maze expressed no issue with the two white visitors' overnight stay. (SF ¶ 15);

16. Phillip Maze did not turn the water supply off to the mobile home when the two white visitors stayed overnight during the Complainants' tenancy. (SF ¶ 16);

17. Phillip Maze agreed to allow two additional children to live at the mobile home with the Garrett/Doss family for a period of six weeks, bringing the total number of occupants to six. (SF ¶ 29);

18. During their tenancy, the Complainants did not receive any lease violation notices from Respondents. (SF ¶ 21);

19. Phillip Maze made repairs at the mobile home on or around March 10, 2009. During this time, he observed Jamaal King at the mobile home. (SF ¶ 22);

20. Phillip Maze took issue with Melissa and Jamaal King sleeping together while unmarried and their interracial relationship. (SF ¶ 12);

21. Phillip Maze does not approve of interracial relationships (SF ¶ 27) and told so to Melissa Garrett. (SF ¶ 31);

22. Phillip Maze did not approve of Melissa Garrett's relationship with Jamaal King. (SF ¶ 28);

23. Phillip Maze did not limit overnight visitation at the mobile home except when Jamaal King visited. (SF ¶ 23);

24. Phillip Maze turned off the water supply to the mobile home. (SF ¶ 24);

25. Phillip Maze did not return the security deposit to Melissa Garrett or Christopher Doss after they moved out of the mobile home. (SF ¶ 20);

26. Prior to Jamaal King's visit at the mobile home, Phillip Maze had not previously turned off the water supply to the mobile home. (SF ¶ 25);

27. Phillip Maze turned the water supply to the mobile home off for approximately two hours, until Jamaal King left the property. (SF ¶ 32-33);

28. Phillip Maze told HUD's investigators that no federal law will tell him to whom to rent. (SF ¶ 30);

29. None of Opal Maze's dwellings has been rented to African-Americans (SF ¶ 35,36), but there is no evidence that any African-Americans ever sought to rent there, or were refused.

DISCUSSION

This Court has considered all issues raised, and all documentary and testimonial evidence in the record and presented at the hearing. Those issues not discussed herein are not addressed because the Court finds they lack materiality or importance to the decision.

The Lease. A preliminary issue is whether the oral lease agreement between the Complainants and the Respondents is valid. The parties did not expressly raise this issue, but the validity of the lease is germane to determining whether the Act was violated. The existence of a valid rental contractual relationship for the mobile home hinges on the law of Alabama, where the agreement was entered into and the rental mobile home was located.[6] Under Alabama law, a lease for a term over one year is void under the Statute of Frauds unless it is in writing. Ala. Code 1975 § 8-9-2(5); Hackney v. Griffin, 244 Ala. 360 (1943). The verbal rental agreement at issue was not for a period longer than one year (Tr. 89), and thus the lease is not void under the Statute of Frauds.

Moreover, under Alabama law, if a tenant goes into possession (even under an invalid lease) and the landlord accepts one or more monthly rent payments, a monthly tenancy is generally implied. Callis v. Colonial Properties, Inc., 597 So. 2d 660, 662 (Ala.1991), (JJ. Almon and Steagall concurring) (citing 49 AM.JUR.2D, Landlord and Tenant 47, 50 (1970)). In the case at bar, the Complainants went into possession of the mobile home on or about March 1, 2009 (R. 23), and Respondent Phillip Maze accepted at least one rent payment on February 4, 2009. (JE 4, SF 19). No lease duration was discussed, but it was agreed that the Respondent would rent the mobile home to the Complainants for $345 a month. (Tr.89). Thus, the Court concludes that Phillip Maze—although he had no ownership interest in the mobile home—entered into an apparently valid agreement with the Complainants for month-to-month rental of the mobile home.

Agency. The Complainants argue that Opal Maze is liable for Phillip Maze's discriminatory conduct under the principles of vicarious liability. The Complainants assert that

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[6] See Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938) ("In federal courts, except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state"); Boseman v. Connecticut General Life Insurance Co., 301 U.S. 196, 202 (1937) ("In every forum a contract is governed by the law with a view to which it was made").

Opal Maze authorized Phillip Maze to act as her agent, or alternatively, Kenneth Maze, as Opal's attorney-in-fact, authorized Phillip Maze to act as Opal's agent. The Respondents, on the other hand, contend that—given Opal Maze's mental incapacity—she cannot be held to have authorized Phillip Maze's conduct, or be held liable for it.

Was Phillip Maze Opal's agent? Based upon the facts presented at the hearing, Opal Maze was incapacitated well before Phillip rented her mobile home to the Complainants. According to Dr. Robert Hargraves, Opal Maze's family practitioner, Opal Maze was first diagnosed with dementia in about 2004. (Tr.473). Dr. Hargraves also testified that in his medical opinion, Opal Maze was not competent to make any business transaction or contractual agreement when he saw Ms. Maze in 2008 and again in July 2009. (Tr.475). And the dementia Ms. Maze suffered from was "generally just progressively worsening." (Tr.473,476). On these facts, the Court concludes that Opal Maze was mentally incompetent in January or February 2009, when Phillip Maze entered into an agreement to rent the mobile home to the Complainants, and in March 2009 when the alleged discrimination occurred (Tr.472-475,480).

The evidence before the court is that the Complainants had no contact with Opal Maze, and understandably she was not called as a witness by either side, even though Dr. Hargraves testified that she could possibly have periods of non-dementia (Tr. 475). The preponderance of evidence suggests that at all times relevant to this matter, Opal Maze did not have capacity to authorize Phillip Maze to rent the mobile home to the Complainants, or to collect rent payments from the Complainants. Moreover, Phillip Maze testified that Opal Maze never authorized him to rent out the mobile home to the Complainants (Tr. 480), and that he never had power of attorney from Opal Maze.

Was Phillip Maze an agent of Opal's Attorney-in-Fact? The Complainants contend that Kenneth Maze, as attorney-in-fact, authorized Phillip Maze to act as Opal Maze's agent: "Phillip Maze's authority flowed first through Opal Maze and then through Kenneth Maze as he stepped into Opal Maze's place as her Attorney-in-Fact." However, Kenneth did not exercise his power as attorney-in-fact to authorize Phillip Maze to act as an agent to manage Opal Maze's rental properties, or to rent the mobile home to Complainants. (Tr. 480).

The power of attorney document at issue states, "If [Kenneth] shall be unavailable, unwilling or unable to act as such attorney in fact, or having acted, to thereafter die, resign, become incapacitated, in the event [Opal] nominate and appoint Phillip Ray Maze and Brenda Maze Noble as alternates herein under." (Tr. 441-42; Power of Attorney, JE 6.)

Kenneth Maze was not specifically aware, before this Complaint arose, that control of Opal Maze's rental properties was included in his authority as attorney-in-fact (Tr. 440), and he acknowledged he had never exercised his authority to control Opal's properties. Nonetheless, as already indicated, Kenneth was not unavailable, unwilling or unable to act as attorney-in-fact since the inception of the power of attorney, signed on April 19, 2001. (Tr. 506-507; 462).

The Complainants suggest that implied authority may be inferred from Kenneth Maze allowing Phillip Maze to rent the mobile home to the Complainants, but no evidence establishes that Kenneth was aware of Phillip's rental of the mobile home until after the matters complained of in this action. Agency may be implied based on communications and contacts between the

principal and the agent.[7] However, there is no evidence of any such contacts between Phillip and Kenneth with respect to the rental of Opal's mobile home to Complainants.

Although Kenneth Maze did not expressly authorize Phillip Maze to do so, he acknowledges that Phillip was "managing" the properties owned by Opal Maze. Kenneth testified that "[i]t would appear to be that [Phillip] was managing the properties." (Tr.435, 458). Kenneth was aware that Phillip Maze collected rent, made repairs for the dwelling occupied by Louise Terrell, and delivered tax payments for the mobile home. (Tr.425). Kenneth testified the rent is "usually cash money and it goes in [Phillip's] pocket." (Tr.452).

Kenneth's knowledge and inaction with respect to Phillip's maintenance services and collection of rent from Louise Terrell amounts to tacit approval of such actions. However, Kenneth lived some distance away and he had no apparent reason to intercede when Phillip was on-scene and assuming caretaker duties as Opal Maze's cognitive state degenerated.

While one might infer some delegation in Kenneth's condonation of Phillip's actions regarding the Terrell rental, no such condonation can be inferred about Phillip's rental of the mobile home to the Complainants, which happened outside of Kenneth's presence, and without his knowledge. Kenneth Maze never authorized Phillip to rent the mobile home. (Tr.449). Second, an agency relationship cannot be implied because Kenneth had no actual or constructive knowledge of the rental of the Mobile home to the Complainants. The rental agreement was entered into verbally. The mobile home was leased and occupied for only a few days before the alleged discriminatory acts occurred. Kenneth Maze was not aware of the incident that led to the charges by HUD against the Respondents until the end of May 2009, well after the Complainants left the mobile home. (Tr.426).

Was Phillip acting under the apparent authority of Opal Maze? The Court has considered the theory of apparent authority raised by the Respondents (Respondents' Post-Hearing Brief, p.11), but concludes that it does not apply in this case. Creation of apparent authority focuses on the effect the principal's conduct or communications has on a third party. RESTATEMENT (SECOND) OF AGENCY § 27 (1958). As to the mobile home rented to Louise Terrell, apparent authority could be inferred due to communication and contact between Louise Terrell and Opal Maze. (Tr. 409). As to the mobile home Phillip rented to the Complainants however, the record establishes that the Complainants had no contact with Opal Maze or with Kenneth Maze in the formation of the lease. Thus, the Court concludes that Philip Maze had no apparent authority to act on behalf of Opal Maze with respect to rental of the mobile home to the Complainants.

The Court concludes that Opal Maze cannot be held liable for Phillip Maze's actions under agency principles because she had no capacity to authorize, and did not actually or apparently authorize Phillip to rent the mobile home to the Complainants, nor did she have the capacity to take the racially discriminatory actions complained of in this action.

Exemption. The Respondents contend that Opal Maze is exempt from liability under the

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[7] See generally, RESTATEMENT (SECOND) OF AGENCY § 26 (1958). "An agency may be proven not only by direct evidence of an agreement between the parties but also by circumstantial evidence, such as their words and conduct, from which the intention to create an agency may be fairly implied." AgriStor Leasing v. Farrow, 826 F.2d 732, 737 (8th Cir. 1987) (citing Walnut Hills Farms, Inc. v. Farmers Cooperative Co., 244 N.W.2d 778, 781 (Iowa 1976)).

Fair Housing Act (the "Act") under Title 42 U.S.C. § 3603(b)(1). This provision of the Act exempts from liability owners of: 1) no more than three single-family houses; 2) who do not use in any manner the rental facilities or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of renting dwellings, or of any employee or agent of such broker, agent, salesman, or person.[8]

In response, the Complainants contend that Opal Maze is not entitled to the statutory exemption because, *inter alia*, she used an agent—Phillip Maze—to rent the mobile home.

The Court concludes that the statutory exemption is inapplicable, but for a different reason. As stated above, the Court finds no evidence to establish that Phillip was acting as the agent of Opal Maze, or acting with her apparent authority, or even acting with her consent in the establishment of the rental agreement at issue. Likewise, there is no evidence establishing that Phillip was acting as Opal Maze's attorney-in-fact in renting the mobile home to Complainants.

As established by the evidence, the mobile home was owned solely by Opal Maze. The statutory exemption applies only to owners of the rented dwelling. Singleton v. Gendason, 545 F.2d 1224 (9th Cir. 1976). Thus, while the statutory exemption might be available to Opal—if she rented the mobile home to the complainants personally, through an agent, or by the action of her attorney-in-fact—but, as established above, she did not. As for Phillip, he had no ownership interest in the mobile home. Therefore he is not exempt from the statutory provisions, and is personally accountable for any prohibited discriminatory actions.

Standing. The Respondents contend that Jamaal King lacks standing to assert any claims under the Fair Housing Act because he did not buy or rent the mobile home. (Post-Hearing Brief, p.12). However, the standing requirement under the Act only requires injury in fact. Here, Mr. King alleges that as a result of Phillip Maze's actions in violation of the Act, he has suffered a "distinct and palpable injury." Havens Realty Co. v. Coleman, 455 U.S. 363, 372 (1982).

To initiate an administrative process under the Act, an "aggrieved person" can file a complaint within one year after an alleged discriminatory housing practice with the HUD Secretary. 42 U.S.C. § 3610(a)(1)(A)(1). An "aggrieved person" under the Act is broadly defined to include any person who, *inter alia*, "claims to have been injured by a discriminatory housing practice." 42 U.S.C. § 3602(i).

Courts have held that claims under the Act are to be judged under a liberal standing requirement: "Congress intended standing under [the Fair Housing Act] to extend to the full limits of Article III and . . . courts accordingly lack the authority to create prudential barriers to standing in suits brought under that section." Havens Realty Co., supra, 455 U.S. at 372.

In Havens Realty, for example, a black tester with no intention of actually renting housing had standing to sue for damages as he suffered an injury to his statutory right to accurate

[8] There is a third exclusion from the exception, when the mobile home has been advertised for rent. 42 U.S.C.A. § 3604(c). That exclusion is not here applicable, because the mobile home was not advertised for rent. The contact resulting in this rental was solely through prior knowledge and word-of-mouth.

information concerning the availability of housing. A white tester in Havens Realty, on the other hand, was not a victim of a discriminatory misrepresentation as he was correctly informed that the apartments were available.[9] In the case at hand, Jamaal King was neither a tenant nor occupant but a mere guest. Nonetheless, he has standing to pursue damages under the Act. Jamaal King is an "aggrieved person" as defined under 42 U.S.C. § 3602(i).[10] Thus, the Court concludes that Mr. King has standing for the purposes of the Fair Housing Act.

Motivation. The Respondents argue that Phillip Maze did not engage in discriminatory housing practices under 42 U.S.C. § 3604(a), (b), and (c) or 42 U.S.C. § 3617 because his actions were motivated by the excessive number of people staying in the mobile home rather than racial discrimination. (Tr. 491). The Complainants, on the other hand, argue that the Respondents' claim is belied by circumstances establishing that Phillip Maze knew that Jamaal King was merely a guest, and that Phillip's true motivation was based on Jamaal King's race.

The evidence is that Phillip Maze himself told Melissa Garrett that he did not like interracial relationships. (Tr.494). Phillip Maze claims to have discussed with Melissa the need for Jamaal King to leave "[b]ecause they had more people living in the trailer than we had agreed to" (Tr. 503) and "[b]ecause [Phillip] was the seventh person, the last person to show up there" (Tr.504, 507). Notwithstanding that concern, Phillip clearly expressed to Melissa his disapproval of her interracial relationship with Jamaal King. (Tr.494; SF 27, 28.) He also expressed to Christopher his concern about having an African-American on the property.

Based upon the facts established in this record, the Court concludes that Phillip Maze's motivation in turning off the water on Wednesday morning was because Jamaal King was African-American and he had not yet departed the property as Melissa had agreed.

The Court does not lightly dismiss the Respondent's claim that the number of occupants and guests in the mobile home was a violation of the lease agreement. Phillip testified that at the time he made a rental agreement with the Complainants, he understood that Christopher, Amanda, their infant child and Melissa would reside in the two-bedroom, one-bath, mobile home. (Tr. 480-81) But Phillip later agreed to Melissa's niece and nephew staying with them. (Tr. 482) Later, Phillip again did not object to Jamie, Melissa's sister, and her husband spending a night at the mobile home. (Tr.482-83) Phillip states that he consented to the additional two people beyond that he agreed to originally because "it was to be limited to six weeks and they were just children, they needed a place to live, and they . . . were just little darling kids." (Tr. 482-83)

Phillip also states that he allowed Jamie and her husband to stay because they "were the kids' parents" even though he did not feel the mobile home was big enough for all the people.

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[9] While the white tester's "tester" claims were dismissed, he argued, irrespective of his status as a tester, he should have "neighborhood" standing because he was deprived of the benefits that result from living in an integrated community. The question then was whether the plaintiff suffered actual injury as a result of the defendant's conduct. The court remanded the case to allow the plaintiff an opportunity to sufficiently allege an injury in fact.

[10] Complainant King claims to have been injured by a discriminatory housing practice on the part of the Respondents, specifically in the form of emotional distress. He filed a complaint with HUD within one year after the alleged discriminatory housing practice, as required to initiate the administrative process under 42 U.S.C. § 3610(a)(1)(A)(1). Since then, the matter asserted by Complainant King has been investigated by HUD, which has determined that the Charge should be brought on his behalf, in accordance with 42 U.S.C. § 3610(a).

(Tr.482-83). In sum, Phillip allowed four additional people to temporarily live in the mobile home, beyond the number agreed in the verbal lease. Phillip allowed as many as four extra people in the mobile home at once, but expressed concern about having one more person in the mobile home, about whom he had made racially discriminatory comments.

Allowing for the legitimacy of Phillip Maze's concern that too many people were staying in the mobile home, the clear weight of the evidence establishes that Phillip's actions in requiring Jamaal King to leave—and in turning off the water to the mobile home when he did not leave as expected—were based on prohibited racial discrimination.[11]

Violations of the Fair Housing Act. In view of the foregoing, the Court concludes that Respondent Phillip Maze has violated several provisions of the Fair Housing Act, as charged.

1. The Act makes it unlawful to refuse to rent after the making of 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 race or color. 42 U.S.C. § 3604(a). By coercing Melissa to require her guest to leave because he was African-American, and turning off the water supply to the mobile home to enforce that unlawful coercion, Phillip Maze made the use and enjoyment of the Mobile home unavailable to Melissa in violation of Section 3604(a). (Tr.101, 106, 153).

2. Phillip Maze also violated Section 3604(b), which prohibits discrimination against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race or color. 42 U.S.C. § 3604(b). By imposing a more restrictive guest policy on the Complainants because of Melissa Garrett's association with an African-American, Jamaal King, Phillip Maze applied discriminatory rental terms and conditions in violation of the Act and intentionally interfered with the enjoyment of the mobile home by all of the tenants and authorized guests.

3. As discussed above, Phillip Maze made numerous racially discriminatory statements in violation of Section 3604(c), which makes it unlawful for any person to make any statement with respect to the rental of a dwelling that indicates any preference, limitation or discrimination based on race or color.

4. Finally, in each of the foregoing violations of the Act, Phillip Maze also violated Section 3617 of the Act by coercing, intimidating or interfering with any person in the exercise or enjoyment of any right granted or protected by Section 3604 of the Act.

REMEDY

Damages for Emotional Distress. The Complainants request $200,000 in emotional distress and inconvenience damages, broken down as follows: $55,500 for Melissa Garrett, $55,500 for Jamaal King, $40,000 for Christopher Doss, $40,000 for Amanda Garrett, and $3,000 for each minor child. In particular, the Complainants claim that Amanda Garrett and

[11] As the Complainants argue in reply to Respondent's post hearing brief, "the proper recourse for too many residents is a notice of lease violation, not depriving the residents of water."

Christopher Doss experienced inconvenience and stress in losing their housing (Post Hearing Brief 15.); that Melissa Garrett experienced stress when learning that Phillip Maze had an issue with her African-American boyfriend Tr. 110); that Jamaal King's emotional stress affected his sleep (Tr. 294-95), relationships with others (Tr. 294, 351) and his academic grades (Tr. 298-99); that Jamaal and Melissa's relationship was impacted by Phillip Maze's discrimination (Tr.160.); and that the minor children experienced stress in having to move out of their new home (Tr.112).

The Charging Party's post-hearing memorandum of points and authorities presents a clear summary of the testimony bearing on the emotional trauma caused to the Complainants, and summarizes awards in other, arguably similar, cases. (Post-Hearing Brief, 14-18) However, the Charging Party does not present the Court with a mathematical formula for comparing this case with others, or for computing the dollar value of particular types and amount of intangible injuries suffered in this case. The Court's function is to put the aggrieved persons in the same position they would have been without the violations of the Fair Housing Act, insofar as that can be accomplished with money. The Court acknowledges that each of the individual Complainants experienced—to varying and subjective degrees—inconvenience, stress, insult, humiliation and emotional trauma due to Phillip Maze's racially discriminatory words and acts, but the experience was limited to a short period of time, and there were few or no interactions by Phillip Maze with the individual Complainants. The mobile home had been occupied by the leasing Complainants for mere days prior to Jamaal's visit.

Christopher Doss, who is seeking $40,000 in emotional distress damages, interacted with Phillip just one time when Phillip discussed the number of people living in the mobile home and stated he did not approve of interracial relationships. Christopher was not even home when the water was cut off. Jamaal and Amanda barely had any direct interaction with Phillip. For Jamaal, the testimony disclosed a disruption of his relationship with Melissa and others, in addition to the direct effect of Phillip Maze's unlawful racial discrimination, which was to shorten Jamaal's visit with Melissa. The incidents at issue took place over the course of two days, from Monday morning to Wednesday morning, during Jamaal King's stay at the mobile home. Although the effect of Phillip's discriminatory actions lingered afterwards, the Complainants moved out of the mobile home shortly thereafter.

Amanda Garrett and Christopher Doss allege inconvenience and stress because they had to find a new place to live so soon after they "settled" into the mobile home. However, the facts show they moved frequently prior to living in the mobile home, where they resided for fourteen days. Amanda and Christopher lived in three different places in about an eight-week period of time. For all of the aforementioned reasons, and based upon the totality of the evidence, the total emotional distress damages awarded Complainants will be limited to $37,500.00.

Out-of-Pocket Expenses. The Complainants argue that they suffered inconvenience and financial loss as a result of the Respondents' discriminatory acts. The Complainants request the Court to order the Respondents to pay $1,318.75 to Melissa Garrett, and $4,020.95 to Christopher Doss and Amanda Garrett for various out-of-pocket losses related to rent and security deposit for the rental of the mobile home, moving expenses, and rent and starting utilities at a new dwelling. The Complainants, however, allege excessive out-of-pocket damages, including $1,852.50 in rent expense incurred by Christopher Doss and Amanda Garrett from May 2009 until the hearing in May 2010.

Upon considering all the exhibits and documentary evidence, this Court finds that an award of $737.50 to Melissa Garrett[12] and $927.50 to Christopher Doss and Amanda Garrett[13] in damages will adequately compensate the Complainants for the pecuniary losses they sustained as a result of the discriminatory housing practices.

Injunctive Relief. The administrative law judge may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3623(g)(3). "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." Marable v. Walker, 704 F. 2d 1219, 1221 (11th Cir. 1983). The purposes of injunctive relief in housing discrimination cases include: 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. The relief is to be molded to the specific facts of the case.

The Complainants seek injunctive and other equitable relief in light of the violation. The Court concludes that the requested injunctive relief will serve to rectify past harm and to deter prohibited discrimination by Phillip Maze and others. Therefore the requested injunctive relief shall be ordered.

Civil Money Penalty. As Charging Party, HUD seeks civil penalties in the amount of $16,000 to be assessed against Phillip Maze and $5,000 against Opal Maze. To vindicate the public interest, the Fair Housing Act authorizes an administrative law judge to impose a civil penalty upon a respondent who has been found to have discriminated in violation of the Act. 42 U.S.C. § 3512(g)(3)(A); 24 C.F.R. § 180.670(b)(3)(iii)(2007). Assessment of a civil penalty requires a consideration of five specific factors: 1) the nature and circumstances of the violation; 2) the degree of culpability; 3) any history of prior violations; 4) the financial circumstances of the Respondent; and 5) the goal of deterrence, and other factors as justice may require. See HUD v. Jerrard, 2 Fair Hous. – Fair Lend. (P-H) ¶¶ 25,005, 25,092 (HUDALJ, Sept. 28, 1990).

The Court finds that the nature and circumstances of Respondent Phillip Maze's violations merit the imposition of a civil money penalty. In considering the nature and circumstances of his violations, the Court notes that they occurred in the period of just a few days during Jamaal King's curtailed stay at the mobile home. Culpability for the violations rests solely with Phillip Maze. Opal Maze—having no culpability in the matter—is not subject to a civil penalty.

Although Phillip Maze referred to the rental "business" as a fourth generation business (Tr. 382), in fact the Respondents have not had significant experience with rental transactions as they manage only two single-family rental dwellings without the use of any agent or real estate

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[12] The damages for Melissa covers the $250 rent and security deposit for the rental of the mobile home from Phillip Maze, the $172.50 rent for March 2009, and the $315 first-month's rent at her new apartment.

[13] The damages for Christopher and Amanda cover the rent and security deposit for the rental of the mobile home from Phillip Maze, plus the ensuing $165 hotel stay and the $25 storage fee incurred during the first month after the move.

brokerage firm. The mobile home at issue was vacant for almost three years prior to the rental to the Complainants. There is no history of prior violations of the Act, or allegations that Phillip Maze previously engaged in any discriminatory housing practices.

The Court has been provided no direct evidence bearing on the financial circumstances of Phillip Maze, but notes he has no regular outside employment, and that Kenneth Maze assumed that rental proceeds were the source of support for Phillip Maze in maintaining a household for himself and his mother. Nonetheless, evidence regarding the Respondents' financial circumstances is peculiarly within his control; Respondents had the opportunity and the burden to introduce such evidence on the record to have it considered. See Jerrard, supra, at 14. In the absence of evidence to the contrary, the Court may presume that Phillip Maze can pay the civil penalty, without suffering undue hardship.

Finally, an award of some civil penalty is appropriate to serve as deterrence to others. Those similarly situated to Respondent Phillip Maze must be put on notice that violations of the Fair Housing Act will not be tolerated. Based on consideration of the foregoing factors, the Court concludes that assessment of a civil penalty in the amount of $10,000 should be assessed against Phillip Maze.

CONCLUSION

The preponderance of the evidence establishes that as a result of Respondent Phillip Maze's unlawful action, Complainants Melissa Garrett, Jamaal King, Amanda Garrett, Christopher Doss and three minor children suffered injuries which must be remedied by an award of compensatory damages. In addition, to protect and vindicate the public interest, a civil penalty must be imposed upon Respondent Phillip Maze. Accordingly, the following Order is entered.

ORDER

Having concluded that Complainants Melissa Garrett, Jamaal King, Amanda Garrett, Christopher Doss and three minor children suffered injuries resulting from Respondent Phillip Maze's discriminatory housing practice in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a), (b) and (c), and § 3617, the Court hereby ORDERS that:

1. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay to Complainant Melissa Garrett $737.50 for tangible losses and inconvenience;

2. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay to Complainants Christopher Doss and Amanda Garrett $927.50 for tangible losses and inconvenience;

3. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay to the Complainants for emotional distress a total of $37,500, apportioned as follows: Melissa Garrett, $12,000; Jamaal King, $11,000; Amanda Garrett, $6,000; Christopher Doss, $4,000; and the three minor children, $1,500 each.

4. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay a civil penalty of $10,000 to the Secretary, United States Department of Housing and Urban Development;

5. Respondent Phillip Maze is hereby permanently enjoined from discriminating based on race, color, religion, national origin, sex, familial status, or disability, in violation of the Fair Housing Act;

6. Respondent Phillip Maze shall not rent any dwelling unless he has first: (1) undergone training on the Fair Housing Act conducted by a qualified independent party; and (2) provided the HUD Regional Office notification of the name, address and telephone number of the trainer and or training organization and a copy of a certification confirming his training;

7. Respondent Phillip Maze, if he completes such training, and chooses to engage in the rental of any dwelling, shall provide to the Complainant HUD Regional Office, for purposes of monitoring such rental activity: (a) copies of any advertisements or notices of rental vacancies; (b) copies of any written lease applications; (c) a statement as to each applicant's status protected by the Act, if any; (d) if any applicant is rejected, a statement as to the date and reason for such rejection; and (e) a copy of any executed lease agreement(s), which shall be in writing.

J. Jeremiah Mahoney
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675 (2009). This Initial Decision and Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review must be received by the Secretary within 15 days after the date of this Initial Decision and Order. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this Initial Decision and Order.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024
Facsimile: (202) 708-3498
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 180.680.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision pursuant to 42 U.S.C. 3612(1). The petition must be filed within 30 days after the date the HUD decision becomes final.

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER, issued by J. Jeremiah Mahoney, Administrative Law Judge, in HUDALJ 10-M-015-FH/4, were sent to the following parties on this 28th day of January, 2011, in the manner indicated:

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