

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
Donald C. Stokes and Judy Stokes,

Charging Party,

and

Donald C. Stokes and Judy Stokes,

Complainants/Intervenors,

v.

Eugene Gaultney and Ann Gaultney,

Respondents.

HUDALJ 04-88-0587-1

Decided: September 27, 1991

Jan Weiss Haber, Esquire
Steven J. Edelstein, Esquire
For the Secretary

Donald C. Stokes and Judy Stokes, *pro se*

William H. Turner, Esquire
For the Respondents

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DECISION

STATEMENT OF THE CASE

This matter arose as a result of a complaint of racial discrimination filed on September 1, 1988, by Donald C. Stokes against Eugene Gaultney and Anne Gaultney ("the Respondents") pursuant to the Fair Housing Act, 42 U.S.C. Sec. 3601 *et seq.* ("Fair Housing Act" or "Act"). The Department of Housing and Urban Development ("HUD" or "the Government") investigated the complaint, and after deciding that there was

reasonable cause to believe that discriminatory acts had taken place, issued a charge against the Respondents on March 13, 1991; HUD amended the charge on March 14, 1991.

The Government alleged in the charge that Respondents violated 42 U.S.C. Secs. 3604(a) and (b) by refusing to sell a house to Mr. Stokes because of his race (Black) and by requiring different terms of purchase from him than from White persons. Both Mr. Stokes and his wife, Judy Stokes ("the Complainants"), filed motions to intervene as parties, and the motions were granted on April 17, 1991, and June 6, 1991, respectively.

A hearing was held in Atlanta, Georgia on June 11, 1991. The Government's post-hearing brief was filed on July 31, 1991. Respondent Anne Gaultney's brief was filed untimely on August 16, 1991; because she did not request an extension of the July 31, 1991 time limit for filing briefs, I have not considered her brief. No briefs were filed by the Complainants or Respondent Eugene Gaultney.

FINDINGS OF FACT

Gaultneys' Purchase Of The House

During the summer of 1988, Anne and Eugene Gaultney (both White persons) were married, but they were legally separated and in the process of becoming divorced. Tr. 78.¹ Ms. Gaultney was then employed as a real estate broker. Tr. 88; G Ex. 3, p. 4. She had been in that business since 1975, had sold houses to both Black and White persons, and had never been accused of discrimination prior to the present case. Tr. 94.

Mr. Gaultney was then employed as the manager of a nightclub whose employees and patrons were predominantly Black. He had been so employed for approximately 18 years. Tr. 52, 80. Mr. Gaultney also bought and sold real estate from time to time for investment purposes, although not as a broker. Mr. Gaultney had been licensed as a real estate broker, but his license was revoked by the Georgia Real Estate Commission in 1974 for, *inter alia*, misrepresenting the existence of an escrow account, failing to place a \$3,000 earnest money deposit in an escrow account, and failing to account for the \$3,000 deposit. G Ex. 8; Tr. 60. Prior to the present case, there had been no complaints filed against Mr. Gaultney alleging racism. G Ex. 2, p. 11.

In June 1988, the Gaultneys decided to buy a recently built single family house located at 165 Forest Hall Place, Fayetteville, Georgia, as an investment. Tr. 63, G Ex. 2, p. 28. Although the house was purchased in Ms. Gaultney's name, Mr. Gaultney made the arrangements for the transaction and had a financial interest in it. Tr. 63; G Ex. 2, p. 45.

Black persons were the predominant residents of the neighborhood and lived in the houses on either side of the house in question. Tr. 80. The Gaultneys did not inspect the house prior to purchasing it. Instead, Mr. Gaultney relied on bank records showing that all work had been completed on the house. He went on a one-week trip after purchasing the house and did not visit it until sometime after his return. Tr. 66-68.

Gaultneys' Agreement With The Cornwells

Shortly after buying the house, the Gaultneys decided to advertise it for resale, and Mr. Gaultney took

¹The following abbreviations refer to the record in this case: "Tr." for "Hearing Transcript;" "G Ex." for "Government's Hearing Exhibit;" "R Ex." for "Respondents' Hearing Exhibit."

responsibility for finding a buyer. Tr. 63-64. He hired a friend, Elizabeth Clark (a White person), to advertise the house and show it to prospective buyers. With Mr. Gaultney's authorization, she advertised it for sale in the newspaper for \$159,500, with owner financing, and a \$10,000 down payment. Tr. 64; G Ex. 4.

Ms. Clark showed the house approximately twenty times; half of the prospective buyers were minorities. Mr. Gaultney never questioned her concerning the race of the prospective buyers, and she never informed him of their race. She gave Mr. Gaultney the names of approximately five persons, both Black and White, who expressed interest in buying the house. G Ex. 1, Secs. C-3, C-9.

In mid-June 1988, Sheila Cornwell (a White person) made a verbal offer on behalf of her family to buy the house for \$155,000 with a \$10,000 down payment. The Gaultneys verbally accepted that offer. G Ex. 1, Secs. C-4, C-8; G Ex. 2, p. 23-27; G Ex. 3, p. 8-9; Tr. 90-91, 97-98. However, the execution of a contract was delayed because Ms. Gaultney and the Cornwells had difficulty scheduling a meeting for that purpose. G Ex. 3, p. 8.

Sometime after verbally accepting Mrs. Cornwell's offer, Mr. Gaultney visited the house on Forest Hall Place for the first time. He saw that, contrary to what had been represented to him when he purchased the house, all work had not been completed, e.g., there was no air conditioning or roof vents. Also, the garage door had been damaged, and some pipes had to be replaced because of changes in the building code. Tr. 67-68, 98-99; G Ex. 2, p. 8-9; G Ex. 3, p. 10; G Ex. 5; R Ex. 1. Sometime later, the Gaultneys completed that work at a cost of \$5,000-7,000. G Ex. 2, p. 38-39; G Ex. 3 p. 10.

Stokes' Offer To Buy The House

During the delay in the execution of a contract between Ms. Gaultney and the Cornwells, the house remained on the market, and Mr. Gaultney showed it to other families. G Ex. 2, p. 21-22. Mr. and Mrs. Stokes saw the advertisement for the house, visited it, and liked it. Mr. Stokes called Mr. Gaultney and made an appointment to meet him at the house. During the telephone conversation, Mr. Gaultney mentioned the lack of air conditioning and said that the down payment would be \$5,000 more if he installed air conditioning. Tr. 12-13.

Although Mr. Gaultney testified that there was no conversation other than making the appointment, Tr. 65, he did not specifically dispute Mr. Stokes' version of the discussion. Moreover, I find that Mr. Stokes was a more credible witness than Mr. Gaultney. Mr. Stokes had a good recollection of the details of the events in question, and he testified with sincerity. Mr. Gaultney had difficulty remembering some of those events. Tr. 72; G Ex. 2, p. 13-14, 26.

Also, there is inconsistency between Mr. Gaultney's interview with the HUD investigator, his deposition, and his hearing testimony concerning the amount of the Cornwells' down payment. During the interview, he stated that it was \$15,000. G Ex. 1, Sec. C-1. During his deposition, he testified that it was \$12,900. G Ex. 2, p. 30-34. At the hearing, he testified that it was \$10,000. Tr. 70. Although he testified that he corrected his deposition to read \$10,000 in that regard, Tr. 71-72, no such correction was offered into evidence. Finally, the fact that Mr. Gaultney's real estate license was revoked because of his untruthfulness reflects adversely on his credibility, albeit to a minor extent because the revocation occurred 17 years ago.

The Gaultneys had previously planned to go someplace together on the date of Mr. Gaultney's appointment with the Stokes, which was on or about July 18, 1988. When Mr. Gaultney met Ms. Gaultney at her residence that day, she agreed to his request that they first go to the house so he could keep his appointment with the Stokes. That was the first time Ms. Gaultney learned of the Stokes' interest in the house. Tr. 13, 79, 89; G Ex. 3, p. 9. As they drove to the house, she told her husband that she intended to live up to the verbal agreement to sell the house to Mrs. Cornwell, and they argued concerning whether to engage in negotiations with the Stokes. Tr. 93-94.

When the Gaultneys met the Stokes at the house, Mr. Gaultney showed them the house, but Ms. Gaultney did not participate in the discussion. Tr. 14, 89. Mr. Gaultney told Mr. Stokes that he was qualified for financing. Tr. 36. Mr. Gaultney also said that he was seeking a down payment of \$15,000 because of the additional costs he would have to incur to complete the house, install air conditioning, and make repairs. Tr. 68; G Ex. 1, Sec. B-2. Mr. Stokes offered to buy the house at the advertised price of \$159,500 with \$10,000 down, and he stated that he would install the air conditioning himself. Mr. Gaultney rejected that offer and insisted on a down payment of \$15,000. Tr. 14, 35.

Although Mr. Gaultney testified that Mr. Stokes did not make an offer to buy the house or to install the air conditioning, Tr. 68; G Ex. 2, p. 37, I find that the offer was made. As discussed above, I find Mr. Stokes' testimony to be more credible than that of Mr. Gaultney.

Mrs. Stokes called Ms. Gaultney on the evening of July 18, 1988, and reiterated her husband's offer to buy the house at the advertised terms without air conditioning. Tr. 39, 41. However, Ms. Gaultney rejected that offer and explained that she had entered into a verbal contract to sell the house to someone else. Tr. 39, 90.

Sale Of The House To The Cornwells

After rejecting Mrs. Stokes offer, Ms. Gaultney contacted Mrs. Cornwell and sought a higher price for the house. She mentioned the Stokes' offer and explained the additional expenses that had to be incurred to complete the house and make repairs. They agreed to a purchase price of \$157,500, with a \$10,000 down payment and the Gaultneys installing the air conditioning. Tr. 98-99; G Ex. 3, p. 11; G Ex. 1, Secs. C-4, C-8; G Ex. 5.

Sometime after verbally agreeing to sell the house to Mrs. Cornwell, Mr. Gaultney obtained a credit report on the Cornwell family. He was displeased with the report and he considered not proceeding with the sale. However, he decided to honor the verbal agreement and proceed with the transaction. G Ex. 2, p. 29-30. Thereafter, on July 20, 1988, Ms. Gaultney and the Cornwells signed a contract containing the terms to which they had finally agreed. G Ex. 5. Settlement occurred on August 1, 1988. G Ex. 6.

ANALYSIS AND CONCLUSIONS OF LAW

Legal Framework

The Fair Housing Act makes it unlawful, *inter alia*

- (a) To refuse to sell ... after the making of a bona fide offer, or to refuse to negotiate for the sale ... of ... a dwelling to any person because of race
- (b) To discriminate against any person in the terms, conditions, or privileges of sale ... of a dwelling ... because of race

42 U.S.C. Secs. 3604(a), (b).

In cases like the present one where direct evidence of discrimination is not presented, the issue of discrimination may be resolved by applying the three-part analysis formulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See *Secretary of HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990). Under that analysis, the Government has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. If the Government meets that burden, the Respondents have the burden to rebut the prima facie case by articulating some nondiscriminatory reason for their actions. If Respondents satisfy that burden, the Government has the opportunity to prove by a preponderance of the evidence that the legitimate reason asserted by Respondents is in fact a mere pretext for discrimination. See *McDonnell Douglas*, 411 U.S. at 802, 804.

Prima Facie Case

In order to establish a prima facie case of racial discrimination in violation of 42 U.S.C. Secs. 3604(a) and (b), the Government must prove that Respondents took actions which are covered by those statutory provisions and which, if unexplained, would show that such actions were based on the criterion of race. See *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 576 (1978). Based on the following facts, I conclude that a prima facie case has been established as to both Respondents.

The Stokes are Black persons who twice offered to purchase the house on the terms advertised by the Gaultneys, who are White persons. It is clear from the sincerity of the Stokes' testimony and the fact that Mr. Gaultney told them that they were qualified for financing that the offers were bona fide. Although Mr. Gaultney initially indicated a willingness to deal with the Stokes despite his wife's objection, he rejected their offer. Ms. Gaultney also rejected the offer.

Instead, knowing the Stokes' race, they sold the house to the Cornwells, who are White persons, for less than the Stokes had offered to pay. Although Ms. Gaultney held title to the property and conducted the final negotiations with the Cornwells, Mr. Gaultney does not contend that his wife effected the sale contrary to his wishes. Rather, his testimony throughout the proceeding shows that he was a full participant, if not the dominant force, in the sale of the property. See, e.g., Tr. 68; Ex. G-2, p. 29, 45.

Rebuttal Of Prima Facie Case

In order to rebut the prima facie case and avoid a finding of discrimination, Respondents have the burden to articulate a legitimate, non-discriminatory reason for their actions. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254-56 (1981). Respondents need not prove that they did not discriminate; they must produce admissible evidence which would allow the judge rationally to conclude that their actions were not

motivated by discrimination. *Id.*

Respondent Anne Gaultney asserted that she did not sell the house to the Stokes because she wanted to honor her previous verbal agreement to sell it to the Cornwells. G Ex. 1, Secs. C-2, C-7; Ex. G-3, p. 8, 12; Tr. 86-87. That assertion is supported by the testimony of Ms. Gaultney and the statements of Mr. Gaultney and Mrs. Cornwell concerning that agreement.

Respondent Eugene Gaultney gave a different reason for his actions. He asserted that he did not sell the house to the Stokes because he needed a \$15,000 down payment on account of the unexpected expenses that he had to incur to make repairs and install air conditioning. G Ex. 1, Sec. C-1; G Ex. 2, p. 10-12; Tr. 66-68. That assertion is supported by the testimony of Mr. Gaultney and documents showing the need for repairs and air conditioning.

If those were the true reasons for Respondents' refusal to sell the house to the Stokes, I would conclude that their actions were not motivated by discrimination. A seller may refuse an offer to sell a house on any honest basis unrelated to race. *Pughsley v. 3750 Lake Shore Drive Cooperative Bldg*, 463 F.2d 1055, 1056 (7th Cir. 1972); *Madison v. Jeffers*, 494 F.2d 114, 117 (4th Cir. 1974). I conclude, therefore, that Respondents have met their burden to rebut the prima facie case of discrimination.

Pretext -- Ms. Gaultney

In order to prevail, the Government must establish by a preponderance of the evidence that Mr. or Ms. Gaultneys' asserted reason for not selling the house to the Stokes was a pretext for discrimination. *Burdine*, 450 U.S. at 253, 256.

I do not find that Ms. Gaultney's stated reason for rejecting the Stokes' offer was a pretext for racial discrimination. Her testimony concerning her desire to honor the verbal agreement with the Cornwells was sincere and consistent, and she did sell the house to them. The Government argues that Ms. Gaultney's reason was pretextual because she did not honor all aspects of the agreement with the Cornwells, but rather she sought a higher price for the house from them and used the Stokes' offer in an attempt to pressure the Cornwells.

However, the price that had been initially agreed upon was based on the Gaultneys' erroneous understanding concerning the condition of the house when they made the agreement with the Cornwells. Ms. Gaultney's action of seeking a higher price from the Cornwells was based on the discovery that additional expenses would be incurred. Thus, there was a reasonable basis for her failure to honor all terms of the initial agreement with the Cornwells.

I do not find that Ms. Gaultney's mentioning the Stokes' offer during her negotiations with Mrs. Cornwell is evidence of pretext. The offer was a new development that resulted from the absence of a written agreement, and the Gaultneys could have accepted the Stokes' offer if the Cornwells were not able or willing to pay a higher price to compensate the Gaultneys for incurring the additional expenses.

The Government also argues that pretext is shown by Ms. Gaultney's action of continuing to show the house, her failure to mention that the house was under contract when she met the Stokes, and her failure to seek

a "back-up" contract with the Stokes. I disagree. Ms. Gaultney did not show the house to the Stokes or other persons after reaching the verbal agreement with the Cornwells. Although Ms. Gaultney did not mention the agreement with the Cornwells when she first met the Stokes, she did mention it at another appropriate time -- when Mrs. Stokes called her and offered to buy the house. As the record was not developed concerning the feasibility of a "back-up" contract with the Stokes, I will not speculate in that regard.

There is additional evidence of a lack of racial motivation for Ms. Gaultney's actions: her prior sale of houses to Black persons; the absence of other discrimination complaints against her; and the racial make-up of the neighborhood where the house was located.

Pretext -- Mr. Gaultney

The preponderance of the evidence shows that Mr. Gaultney's asserted reason for not selling the house to the Stokes was not his true reason, but rather that it was a pretext for racial discrimination. Despite his insistence that he needed a \$15,000 down payment from the Stokes to cover the cost of repairs and air conditioning, he accepted a \$10,000 down payment from the Cornwells and still bore the cost of the repairs and air conditioning. The Stokes' offer was for the asking price of \$159,500, and Mr. Gaultney had found them to be qualified for financing. However, the house was sold to the Cornwells for only \$157,500, and Mr. Gaultney had serious doubts concerning their ability to pay the mortgage.

There is no evidence that Mr. Gaultney knew or suspected that Mr. Stokes was a Black person during their telephone conversation when Mr. Gaultney said the down payment would be \$15,000 if he installed the air conditioning. However, when he became aware of the Stokes' race, he rejected an offer (\$159,500 sale price; \$10,000 down; without air conditioning) that was tantamount to an acceptance of the terms he set forth during the telephone conversation. In sum, Mr. Gaultney's assertion that his decision not to sell the house to the Stokes was based on a financial reason is inconsistent with his knowledge at the time that a sale to the Cornwells was clearly going to be to his financial disadvantage.

There is some circumstantial evidence of a lack of racial motivation on the part of Mr. Gaultney -- his prior dealings with Black persons without being accused of racial discrimination; the racial make-up of the neighborhood in question; and the fact that he did not ask Ms. Clark about the race of prospective buyers. However, that evidence is heavily outweighed by the evidence that Mr. Gaultney's stated reason for rejecting Mr. Stokes' offer was a pretext for racial discrimination. I conclude therefore, that Mr. Gaultney discriminated against the Stokes on the basis of race in violation of 42 U.S.C. Secs. 3604(a) and (b) by failing to sell the house to them and by requiring different terms of sale from them than he required from the Cornwells.

REMEDIES

Because Respondent Eugene Gaultney has discriminated against the Stokes in violation of the Fair Housing Act, the Stokes are entitled to appropriate relief under the Act, which may include actual damages suffered by them and injunctive and other equitable relief. 42 U.S.C. Sec. 3612(g)(3). A civil penalty may also be imposed. *Id.* The Government, on behalf of the Stokes, seeks: (1) damages totalling \$3,400 to compensate the Stokes for economic loss; (2) damages to compensate them for humiliation, embarrassment, and emotional distress; (3) injunctive and equitable relief prohibiting Mr. Gaultney from violating the Fair Housing Act; and (4) a

civil penalty of \$10,000.

Economic Loss

In addition to wanting to use the house as their residence, the Stokes intended to use it to expand their business of providing rental housing to disabled persons and senior citizens. They owned and operated several other homes for that purpose, and there were three persons on a waiting list seeking to rent rooms from them in July 1988. Because the Gaultneys refused to sell the house to them, they were unable to rent rooms to those three persons until October 1988 when they purchased another house in Riverdale. The Stokes' rental income from three persons in one of their other homes was \$1700 per month in August 1988. Tr. 11, 16-18, 24, 33, 43-48; G Ex. 7. Accordingly, they seek a total of \$3,400 for lost rental income for the months of August and September.

Respondent contends that those damages should not be allowed because the Government introduced no evidence concerning the Stokes' business expenses and thus the claimed damages are speculative. In any event, Respondent argues, the Stokes actually profited as a result of this matter because of they made a \$10,000 profit on the sale of the house in Riverdale. Tr. 49-50.

I do not find that the Government has proved that the Stokes suffered economic loss as a result of the discrimination. The profit on the sale of the Riverdale house is not relevant to the matter of damages because that sale is only tangentially related to the present case. However, I agree with Respondent that the Stokes' economic losses cannot be determined merely by calculating their lost rental income. In the absence of evidence concerning their business expenses, no reasonable conclusion can be drawn that their lost profits were \$3,400.

Humiliation, Embarrassment, And Emotional Distress

The Government contends that the Stokes suffered humiliation, embarrassment, and emotional distress as a result of the discrimination. In this regard, Mrs. Stokes testified that:

I was hurt because at that particular time my husband and I was staying in the home where we housed six people and we had to live in the living room and this, moving from there to this particular place, which was 3,000 square feet as opposed to the 1600 square feet that we were living in of house space, I had so many plans. I had plans to fix the place up to house senior citizens and I was denied this.

...

I was hurt, I felt rejected, I just felt so bad that, you know, at this time we would be denied to live where we wanted to live, at this time and day.

...

We had looked at a lot of houses, but this particular house just caught my attention because it was beautiful, it was new, it had all the amenities that I wanted. The community was prestigious and I just wanted it.

Tr. 40. Mr. Stokes testified that:

Well, ... being in this present time and day, you are not able to go out and purchase things that you are able to purchase and you work hard all of your life and then you come up against stumbling blocks when you are able to make choices and being able to make them, I felt hurt, embarrassed, disappointed....

Tr. 16.

Actual damages in racial discrimination cases may include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination. *See Blackwell*, 908 F.2d at 872. Damages for emotional distress may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof. *Id.*

Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury. *See id.* The amount of damages awarded should compensate for the injury suffered so as to make the injured party whole; it should not provide the injured party with a windfall. *See Albemarle Paper Co. v. Moody* 422 U.S. 405, 418 (1975) (Title VII case).

In essence, the Stokes' undisputed testimony shows that they were humiliated by the discriminatory treatment to which they were subjected, they were disappointed at being unjustly deprived of a very desirable home, and they were distressed by the two-month delay in expanding their business to a location where they and their tenants would have more living space.

There is no evidence that the Stokes' injuries were of such severity or duration to warrant an extremely large monetary award. However, they are sufficiently serious, especially the humiliation caused by the discrimination, to warrant a substantial one. In my judgment, the Stokes are entitled to an award of \$5,000 to compensate them for their intangible injuries.

Civil Penalty

To vindicate the public interest, the Fair Housing Act also authorizes an administrative law judge to impose civil penalties upon respondents who violate it. 42 U.S.C. Sec. 812 (g)(3)(A); 24 C.F.R. Sec. 104.910(b)(3). Determining an appropriate penalty requires consideration of the following factors: (1) the nature and circumstances of the violation; (2) the degree of Respondent's culpability; (3) any history of prior violations; (4) Respondent's financial resources; (5) the goal of deterrence; and (6) other matters as justice may require. See H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Mr. Gaultney's action of engaging in intentional racial discrimination is a very serious offense in and of itself. Moreover, as discussed above, he caused the Stokes to suffer substantial intangible injuries. As Mr. Gaultney bore sole responsibility for the discrimination in this case, he is fully culpable.

There is no evidence that Mr. Gaultney has previously been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against him is \$10,000.00. See 42 U.S.C. Sec. 812(g)(3)(A); 24 C.F.R. Sec. 104.910(b)(3)(i)(A). However, the maximum penalty should not automatically be imposed in every case. See H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Regarding his financial circumstances, Mr. Gaultney testified that he had been unemployed for three months, Tr. 51, and that he lost \$35,000 in conjunction with the sale of the house in question,² Ex. G-2, p. 45. The Government did not dispute that testimony or offer evidence to show that Mr. Gaultney has other financial resources. Therefore, I conclude from Mr. Gaultney's undisputed testimony that his financial circumstances militate against the assessment of a high civil penalty.

Although Mr. Gaultney is no longer a realtor, he has engaged in buying and selling real estate for investment purposes from time to time. Thus there is a need to deter him from engaging in discriminatory conduct in the future. Other similarly situated persons need to know that violating the Act will incur serious consequences.

In my judgment, imposition of a civil penalty of \$5,000 is appropriate in this case. A substantial civil penalty is warranted because Respondent was fully responsible for committing the very serious offense of racial discrimination, and there is a need to deter others from committing similar offenses. However, the amount of the penalty should not be extremely high because Respondent has no prior offenses, and his financial circumstances are inconsistent with the imposition of a high penalty.

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. Sec. 3612(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." *Blackwell*, 908 F.2d at 875 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983)). Although there are no lingering effects of Mr. Gaultney's discrimination in the present case, the injunctive relief provided in the following Order bars him from violating the Act in the future.

CONCLUSION

My conclusions are as follows: The Government did not meet its burden to prove that Respondent Anne Gaultney discriminated against Complainants Donald and Judy Stokes. The preponderance of the evidence shows that Respondent Eugene Gaultney discriminated against the Complainants on the basis of race in

²Because the Cornwells fell behind on their mortgage payments to Ms. Gaultney, she was unable to make her mortgage payments to the bank, and the bank foreclosed on her loan. G Ex. 2, p. 30.

violation of 42 U.S.C. Sections 3604(a) and (b). The Complainants suffered actual damages for which they will receive a compensatory award of \$5,000. Further, to vindicate the public interest, injunctive relief will be ordered, and a civil penalty of \$5,000 will be imposed against Respondent Eugene Gaultney.

ORDER

It is hereby ORDERED that:

1. The charge against Respondent Anne Gaultney is DISMISSED.
2. Respondent Eugene Gaultney is hereby permanently enjoined from discriminating with respect to housing because of race, color, religion, sex, familial status, national origin, or handicap. Prohibited actions include, but are not limited to:
 - a. refusing or failing to sell or rent a dwelling, or refusing to negotiate for the sale or rental of a dwelling, to any person because of race, color, religion, sex, familial status, national origin, or handicap;
 - b. otherwise making unavailable or denying a dwelling to any person because of race, color, religion, sex, familial status, national origin, or handicap;
 - c. discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, national origin, or handicap;
 - d. making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, familial status, national origin, or handicap; and
 - e. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act.
3. Within ten (10) days of the date on which this Order becomes final, Respondent Eugene Gaultney shall pay actual damages of \$5,000 for humiliation and emotional distress to Complainants Donald and Judy Stokes.
4. Within ten (10) days of the date on which this Order becomes final, Respondent Eugene Gaultney shall pay a civil penalty of \$5,000 to the Secretary of HUD.
5. Respondent Eugene Gaultney shall submit a report to this tribunal within fifteen (15) days of the date this Order becomes final detailing the steps taken to comply with it.

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

PAUL G. STREB
Administrative Law Judge

Dated: September 27, 1991.