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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 D. L. Bridges and Hershey Barnett-Bridges, Charging Party, v. Bernhard Ineichen, Respondent.	HUDALJ 05-93-0143-1 Decided: April 4, 1995

Bernard Ineichen, pro se

Steven Schaefer, Esquire
For the Intervenors

Konrad Rayford, Esquire
For the Secretary

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed by D.L. Bridges ("Complainant D.L. Bridges" or "Mr. Bridges") and Hershey Barnett-Bridges ("Complainant Barnett-Bridges" or "Mrs. Bridges") alleging that Bernhard Ineichen ("Respondent") violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (sometimes "the Act"), by refusing to rent or negotiate to rent an apartment because of Complainants' race and familial status. The Department of Housing and Urban Development ("HUD" or "the Secretary") investigated the complaint, and after deciding that there was reasonable cause to believe that discriminatory acts had taken place, issued a Charge of Discrimination against Respondent

on August 2, 1994. The Charge alleges that Respondent engaged in housing discrimination on the basis of familial status in violation of sections 804(a), (b), (c), and (d) of the Act (42 U.S.C. §§ 3604(a), (b), (c), and (d)), and sections 100.60, 100.65, 100.75, and 100.80 of the regulations (24 C.F.R. §§ 100.60, 100.65, 100.75, and 100.80).[1]

On September 9, 1994, Complainants' unopposed joint motion to intervene was granted.

Respondent failed to file an Answer to the Charge of Discrimination. Pursuant to motion by the Charging Party to which Respondent filed no response, a Default Judgment was entered against Respondent on November 22, 1994. On December 14, 1994, a hearing was held in Madison, Wisconsin, for the limited purpose of taking evidence on the appropriate relief to be awarded to the Charging Party. Respondent appeared *pro se* at the hearing, at the close of which the parties were directed to file post-hearing briefs. The last brief was received on February 3, 1995. Because Respondent failed to file an Answer to the Charge of Discrimination, the allegations of the Charge are deemed admitted pursuant to section 104.420 of the Rules of Practice governing this proceeding. 24 C.F.R. § 104.420.

In addition to filing a complaint with HUD, Complainant D.L. Bridges filed a complaint with the Equal Rights Division of the Department of Industry, Labor and Human Relations, State of Wisconsin, alleging that Respondent had violated the Wisconsin Open Housing Act by refusing to rent to him on the basis of race and familial status. The allegations of discrimination on the basis of familial status were dismissed because at the time the discriminatory acts allegedly occurred, the Equal Rights Division did not have jurisdiction over complaints based on familial status. After an evidentiary hearing at which both Complainant D.L. Bridges and Respondent appeared, a Wisconsin State administrative law judge on March 4, 1994, issued findings of fact, conclusions of law, and an order dismissing the allegations of race discrimination. Pursuant to a motion by the Charging Party and the Intervenors, I take judicial notice of the findings of fact issued by the Wisconsin State administrative law judge as noted below.

Findings of Fact

1. Complainants D.L. Bridges and Hershey Barnett-Bridges are husband and wife. Mr. Bridges is a social worker for Dane County Human Services who earned $11.41 per

[1]The Secretary concluded that there was no reasonable cause to believe that Respondent had engaged in housing discrimination on the basis of race or color.

hour in 1992. Mrs. Bridges is a public health nurse for the City of Madison, Wisconsin, who earned $19 per hour in 1992. They have four children who ranged in age from 9 to 16 years old in late June of 1992.[2] Charge, ¶ II. 6; TR. 16-17, 62.

2. At all times material herein, Respondent owned seven residential housing units in two adjacent townhouses on Turbot Drive in Madison, Wisconsin. Charge, ¶ II.8.

3. In June of 1992 Complainant D.L. Bridges saw a listing for a three-bedroom townhouse apartment at 2962 Turbot Drive in a computer printout obtained from "Rent Search," an organization that lists housing for rent. The apartment was particularly attractive to Complainants because it was located a block from the apartment where they were then living. Charge, ¶ II. 9; Wisconsin Finding of Fact (hereinafter "W. F.of F.") number 3.

4. On or about June 19, 1992, Complainant D.L. Bridges telephoned Respondent and inquired about renting the apartment at 2962 Turbot Drive. Respondent said that he would call back that evening or the next day to schedule an appointment to show the property. During this conversation Respondent asked how many people would be living in the unit, to which Complainant D.L. Bridges responded, "Two adults and four children." Charge, ¶ II. 9; W. F.of F. 4.

5. Because Respondent did not return Complainant D.L. Bridges' telephone call as promised, on June 22, 1992, Complainant D.L. Bridges telephoned Respondent a second time. During this conversation Respondent said, "you are the one with the four children," and claimed the townhouse apartment had only two bedrooms, and had already been rented. Charge, ¶ II. 10; W. F.of F. 5.[3]

6. After that telephone conversation, Complainant D.L. Bridges visited the subject property and learned from a neighbor that the unit at 2962 had three bedrooms and that it remained available for rent. Thereafter Mr. Bridges called Respondent a third time and asked to see the unit. Respondent told him that only two-bedroom units were available. When Mr. Bridges informed Respondent that he was aware that the subject unit was a

[2]Inasmuch as Complainants' children are not named as parties to this case, the Charging Party may not seek recovery on behalf of the children.

[3]W. F.of F. 5 places this telephone call on June 21 rather than June 22.

three-bedroom unit and was still available, Respondent stated that the unit was too small for Complainants' family and refused to let them view it. Charge, ¶ II. 11; W. F.of F. 6, 7.[4]

7. Respondent limited to four the number of persons who could occupy any of his three-bedroom townhouse units located on Turbot Drive. Charge, ¶ II. 12.

8. The apartment at 2962 Turbot Drive has a total living area of approximately 679 square feet, consisting of a living room measuring 195 square feet, a kitchen of 99 square feet, an alcove of 18 square feet, and three bedrooms measuring approximately 191 square feet, 96 square feet, and 80 square feet. Charge, ¶ II. 13.

10. In June 1992 Respondent also had a three-bedroom unit available for rent at 2972 Turbot Drive. Charge, ¶ II. 17.

11. Respondent's three-bedroom rental units at 2962 and 2972 Turbot Drive would have accommodated Complainants' family without violating the City of Madison minimum occupancy standards or the State of Wisconsin minimum occupancy standards. Charge, ¶ II. 15, 17.

12. The rental unit at 2962 Turbot Drive was available for inspection and rental as advertised at the time Mr. Bridges spoke to Respondent about it. Respondent subsequently rented it to an adult couple with two children, who began their occupancy on or about July 1, 1992. Charge, ¶ II. 16.

13. Respondent's policy prohibiting more than four persons from occupying the three-bedroom townhouse apartments on Turbot Drive was more restrictive than applicable governmental occupancy codes, and operated unreasonably to limit or exclude families with children. Charge, ¶ II. 19

14. At the time Complainants sought to rent from Respondent, they were living in an apartment on Traceway Drive, Madison, Wisconsin, that rented for $665 per month. They were told in June 1992 that they had to move by the end of July because the property had been sold to a new owner who wanted to have a member of his family occupy the apartment. Transcript (hereinafter "TR.") 16, 18, 66.

[4]According to W. F.of F. 7, Respondent also told Mr. Bridges during their third telephone conversation, "I can rent to whoever I want to rent to."

15. Respondent's rental property at 2962 Turbot Drive abuts the apartment on Traceway Drive where Complainants lived. Had Respondent rented to Complainants, their children could have continued to attend schools in the same district where they had been going to school for five years, and family members could have easily maintained their relationships with neighbors, neighborhood civic organizations, and their church. TR. 21-22.

16. Complainants were unable to find suitable housing in the Traceway Drive area, and after spending many hours searching, they moved into an apartment that rented for $525 per month on Carling Drive in Madison, where they lived for one year beginning on or about August 1, 1992. TR. 16, 22, 23, 25, 26, 55, 56, 59, 66.

17. Complainants suffered emotional stress as a result of living in the apartment on Carling Drive. After the move, two of the children, who had been able to walk to school before, now had to ride buses to new schools where they had difficulty adapting. That difficulty distressed their parents. TR. 34-36. While at the Carling Drive location, Complainants and their children were troubled by repeated roach infestations, noisy neighbors who partied and played loud music late into the night, neighbors engaged in illegal drug trafficking, trash strewn about the building, repeated fights between neighbors causing police visits, vandalism of their clothes washer, lack of a safe place for the children to play, and unresponsive property managers. TR. 26, 29, 31, 33, 43, 44.

18. During the period Complainants lived on Carling Drive, they both had longer commutes to and from work than they would have had had they been able to rent Respondent's apartment. Mr. Bridges' commute was five miles longer each way, and Mrs. Bridges' commute was six miles longer each way. TR. 18, 38, 39, 61.

19. After living for a year on Carling Drive, the Bridges family moved to another location in Madison, where the conditions were better. This move cost $240 for truck rental, gasoline, and hired help. TR. 25, 40-43, 59.

20. Respondent's property on Turbot Drive was in excellent condition and well-maintained. All of the parties testified that, as far as they could tell, Respondent's tenants on Turbot Drive were not subjected to drug problems, police visits, or inconsiderate neighbors. Within walking distance were stores, shops, banks, and a place for children to play. TR. 43-46, 74-75.

Subsidiary Findings and Discussion

The 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,* 456 U.S. 926 (1982). *See also United States v. City of Black Jack,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975); *cf. Griggs v. Duke Power Co.,* 401 U.S. 424 (1971). The Act was designed to prohibit "all forms of discrimination [even the] simple-minded." *Williams v. Matthews Co.,* 499 F.2d 819, 826 (8th Cir. 1974), *cert. denied,* 419 U.S. 1021, 1027 (1974).

On September 13, 1988, the Act was amended to prohibit, *inter alia,* housing practices that discriminate on the basis of familial status.[5] 42 U.S.C. §§ 3601-19. "Familial status," as relevant to this case, is defined by the Act as "one or more individuals (who have not attained the age of eighteen years) being domiciled with ... (1) a parent or another person having legal custody of such individual or individuals ...." *Id.* at § 3602(k); 24 C.F.R. § 100.20. Complainants and their children fall within this definition.

The Act makes it unlawful for anyone to:

> refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status ....

42 U.S.C. § 3604(a). The Act also prohibits a housing provider from "discriminat[ing] against any person in the terms, conditions, or privileges of sale or rental of a dwelling ... because of familial status ..." 42 U.S.C. § 3604(b).

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[5] 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., at 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 (1980). The survey found also 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.

Further, it is unlawful to:

> make ... any ... statement ... with respect to the ... 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.

Id. at § 3604(c). This provision applies to all written or oral statements made by a person engaged in the rental of a dwelling. 24 C.F.R. § 100.75(b), (c)(1) and (2).

Finally, 42 U.S.C. § 3604(d) makes it unlawful to "represent to any person because of ... familial status ... that any dwelling is not available for ... rental when such dwelling is in fact so available."

By refusing to rent a three-bedroom townhouse unit on Turbot Drive to Complainants because of the size of their family, Respondent denied or otherwise made unavailable a rental unit based on familial status in violation of 42 U.S.C. § 3604(a). Charge, ¶ II. 20. By applying an occupancy policy that unreasonably limited the number of people who may occupy three-bedroom units on Turbot Drive, Respondent applied differential terms and conditions based on familial status in violation of 42 U.S.C. § 3604(b). Charge, ¶ II. 21. When Respondent told Complainant D.L. Bridges that the apartment at 2962 Turbot Drive had only two bedrooms and that it was too small for Complainants' family, Respondent expressed a preference, limitation, or discrimination based on familial status in violation of 42 U.S.C. § 3604(c). When Respondent falsely stated that the apartment at 2962 Turbot Drive had been rented, he violated 42 U.S.C. § 3604(d).

In his post-hearing brief Respondent argues to the effect that, in his judgment, the apartment was too small for Complainants' family, that Complainants could have afforded a much larger apartment with their income, that the Madison Area Apartment Association has stated that "the laws allow landlords to determine their own reasonable guidelines" regarding occupancy limits, and that this case should be dismissed as it was dismissed by the State of Wisconsin. Inasmuch as a Default Judgment was issued against Respondent on November 22, 1994, the arguments addressing the merits of the case come much too late to be credited. But even if the Default Judgment had not been issued, Respondent's arguments would still be rejected. Landlords may impose *reasonable* occupancy limits only. Respondent has offered no rationale to support his conclusion that his occupancy limit for the three-bedroom apartments on Turbot Drive was reasonable. The fact that the City of Madison and the State of Wisconsin permit an adult couple with four children to occupy the Turbot Drive apartments undermines the argument that Respondent's more restrictive limit was reasonable. Respondent's subjective conviction is not enough to

satisfy his burden to prove the reasonableness of his occupancy limit.

Respondent likewise misses the mark with his argument regarding the size of apartment that Complainants could afford to rent, because Complainants were free to spend whatever percentage of their disposable income on housing that they chose. That decision was not for a prospective landlord to make. Finally, that Complainants' allegations of discrimination were dismissed in the Wisconsin State administrative proceeding is irrelevant in this proceeding. The State proceeding was dismissed upon a finding that there was no merit to the complaint of housing discrimination based on race. That proceeding did not reach the merits of Complainants' charge of housing discrimination based on familial status, the issue in this proceeding.

Remedies

Section 812(g)(c) of the Act provides that upon a finding that a respondent has violated the Act, an administrative law judge shall order "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person." 42 U.S.C. § 3612(g)(3). In the instant case, Respondent has violated the Act through conduct that has caused actual, compensable damages to Complainants.

Complainants' Damages

Out-of Pocket Expenses

Complainants are entitled to compensation for the tangible expenses caused by Respondent's denial of housing. *See, e.g., HUD ex rel. Herron v. Blackwell,* 908 F.2d 864, 873 (11th Cir. 1990)(hereinafter *Blackwell II); Thronson v. Meisels,* 800 F.2d 136, 140 (7th Cir. 1986). The Intervenors request a total of $5,313.15 in damages for out-of-pocket expenses, consisting of:

(1) Additional travel to and from work for Mr. Bridges: 12 miles x 5 days per week x 50 weeks per year x $.26 per mile =	$ 780.00
(2) Truck rental for moving = 240.00	
(3) Wage loss for Mr. Bridges seeking alternative housing: $11.41 per hour x 150 hours =	1,711.50
(4) Repair of washer =	300.00

(5) Wage loss for Mr. Bridges pursuing claim:
$11.41 per hour x 65 hours = 741.65

(6) Additional travel to and from work for
Mrs. Bridges: 12 miles x 5 days per week x 50 weeks
per year x $0.26 per mile = 780.00

(7) Wage loss for Mrs. Bridges seeking alternative
housing: $19.00 per hour x 40 hours = 760.00

The Charging Party requests a total of $5,244.25 in damages for out-of-pocket expenses, consisting of:

(1) Additional travel to and from work for
Mr. Bridges: 11 miles x 240 days x $0.30 per mile = $ 792.00

(2) Moving expenses ($240 truck rental, gasoline,
movers, and $760 for 40 hours of Mrs. Bridges'
time) =

1,000.00

(3) Wage loss for Mr. Bridges pursuing claim:
$11.50 per hour x 32.5 hours = 373.75

(4) Wage loss for Mrs. Bridges pursuing claim:
$19.00 per hour x 32.5 hours = 617.50

(5) Additional travel to and from work for
Mrs. Bridges: 6 miles x 240 days x $0.30 per mile =
432.00

(6) Time spent searching for alternative housing
by Mr. Bridges (150 hours x $11.50 per hour) = 1,725.00

(7) Time spent searching for alternative housing
by Mrs. Bridges (16 hours x $19.00 per hour) = 304.00

Complainants who are unlawfully denied housing may receive compensation for

time spent looking for alternative housing and additional expenses associated with living in alternative housing. *Brown v. Ballas*, 331 F. Supp. 1033 (N.D. Tex. 1971); *HUD v. Edelstein*, Fair Housing-Fair Lending (P-H) ¶ 25,236 at 25,241 (HUDALJ Dec. 9, 1991). Complainants' alternative housing on Carling Drive was five miles further from Mr. Bridges' work and six miles further from Mrs. Bridges' work than Respondent's apartments on Turbot Drive.[6] Complainants will be awarded damages for the longer commutes they had to and from work during the year they lived on Carling Drive. Compensation will be at the rate of $0.25 per mile (the federal mileage compensation rate during that year) times 240 days (5 days per week x 4 weeks per month x 12 months per year), for a total of $600 for Mr. Bridges and $720 for Mrs. Bridges.

Complainant D.L. Bridges testified that he spent about 150 hours looking for alternative housing. Mr. Bridges did not describe his search in detail. For example, he did not demonstrate how many three-bedroom apartments were advertised in local newspapers during the period of his search, the number of telephone calls he made, the number of apartments he viewed, the number he applied for, the price range he was looking in, or the reasons he rejected whatever number of three-bedroom apartments that were on the market at that time in that price range. In the absence of credible evidence showing exactly what Mr. Bridges did during his search for alternative housing, I find incredible the claim that he spent 150 hours looking for another apartment during the month following Respondent's denial of housing.[7] One hundred fifty hours amounts to nearly 19 eight-hour days. That is an unreasonable amount of time based on this record. Accordingly, Complainant D.L. Bridges will be compensated at the rate of $11.41 per hour, his wage at that time, for 100 hours spent looking for alternative housing.[8]

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[6]Complainant Hershey Barnett-Bridges testified that the Carling Drive apartment was 12 miles from her work and the Traceway Drive apartment (which abutted Respondent's apartments on Turbot Drive) was six miles from her work. TR. 39. Although somewhat inconsistent, the thrust of Complainant D.L. Bridges' testimony on this point was that he drove an additional five miles each way to and from work as a result of living on Carling Drive rather than in the Traceway Drive-Turbot Drive neighborhood. TR. 61, ll. 1-8.

[7]The record indicates Complainants found alternative housing during the month following the rejection by Respondent on June 22, 1992. They lived on Carling Drive for a year ending July 31, 1993, and Mrs. Bridges said she spent about a week packing and moving after finding the new apartment. TR. 25. Complainants therefore must have selected the Carling Drive apartment by July 24, 1992.

[8]At page 55 of the transcript, Mr. Bridges testified that he earned "about 11.50 per hour," but on page 62 he testified more precisely, saying that he earned $11.41 per hour.

Complainant Hershey Barnett-Bridges testified that she took off two days from work to look for another place to live after her husband was turned away by Respondent. TR. 25, 56. She will be compensated at the rate of $19 per hour, her wage at that time, for the 16 hours she spent looking for alternative housing. She cannot be compensated for the time she said she spent packing and moving to the Carling Drive apartment because that was time she would have had to spend if Respondent had agreed to rent the Turbot Drive apartment to Complainants. No claim has been made for the time spent packing and moving from the Carling Drive apartment.

While living on Carling Drive, Complainants' clothes washer was vandalized. Intervenors request an award of $300 to cover the repair of the washer. However, the record will not support the requested award. Mr. Bridges did not testify that he actually spent any money to repair the washer. Rather, he estimated that it would cost from $150 to $300 to fix it. TR. 158. But Mr. Bridges was not shown to have any commercial expertise in the repair of clothes washers. Therefore, even if we assume for purposes of argument that Respondent "caused" this injury by refusing to rent to Complainants, Mr. Bridges' testimony does not justify an award for repair of the clothes washer.

Both the Charging Party and Intervenors request an award of $240 to cover the cost of a rented truck, gasoline, and hired help for the move from Carling Drive, a move they would not have had to make if Respondent had rented the apartment on Turbot Drive to Complainants. The requested amount will be awarded.

Victims of housing discrimination may recover for lost wages and other incidental expenses associated with preparation for and participation in the hearing leading to their recovery. *See, e.g., HUD v. Murphy,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,002 at 25,054; *HUD v. Blackwell,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,001 (hereinafter *Blackwell I*) at 25,010, *aff'd,* 908 F.2d 864 (11th Cir. 1990). Intervenors request an award to Mr. Bridges based on an assertion that he spent 65 hours pursuing this claim. The Charging Party asks that both Complainants receive awards, alleging that each spent 32.5 hours pursuing this claim. These requests are excessive and unreasonable. The parties have known that this is a default case since at least November 22, 1994, when the Default Judgment was issued. The issues addressed at the December hearing were simple and straightforward. Presentation of all testimony took less than two hours. No exhibits were introduced, and the transcript of the hearing covers a scant 81 pages. In these circumstances, Complainants will each be compensated for 20 hours spent pursuing this claim.[9]

[9]Exaggerated claims for out-of-pocket expenses tend to undermine the general credibility of claimants, including requests for the award of intangible damages.

Emotional Damages

Actual damages in housing discrimination cases are not limited to out-of-pocket losses, but may also include damages for intangible injuries such as embarrassment, humiliation, and emotional distress caused by the discrimination.[10] Damages for emotional distress may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof.[11] 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.[12] The amount awarded should make the victim whole.[13]

The Charging Party requests awards of $7,500 each to Complainants to compensate them for their emotional damages, plus an award of $2,500 for a lost housing opportunity. Intervenors request a total of $30,000 for Mr. and Mrs. Bridges. They will be awarded $4,000 each for emotional damages and a lost housing opportunity.

Complainants' requests for emotional damage awards rest on their very unpleasant experiences living in alternative housing on Carling Drive. The household was disrupted by roach infestations that required repeated professional treatment and by noisy, slovenly, quarrelsome, and lawless neighbors whose behavior prompted at least three police visits. Late-night noise, including drug busts, interfered with Mr. Bridges' sleep to the point that his performance at work deteriorated. Mrs. Bridges said that they complained about conditions to the building manager at least once a month during their tenancy to little avail. She also testified that she was particularly concerned that there was no safe place near the Carling Drive apartment for the children to play where she could keep an eye on them, and that unlike the Turbot Drive apartment, there were no friendly neighbors to supervise their children after school until she and her husband came home from work. If Complainants

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[10] *See, e.g., Blackwell I* at 25,011; *HUD v. Murphy,* Fair Housing-Fair Lending (P-H) ¶ 25,002 at 25,055 (HUDALJ July 13, 1990); *See also Smith v. Anchor Bldg. Corp.,* 536 F.2d 231 (8th Cir. 1976); *Steele v. Title Realty Co.,* 478 F.2d 380, 384 (10th Cir. 1973); *McNeil v. P N & S Inc.,* 372 F. Supp. 658 (N.D. Ga. 1973).

[11] *Blackwell II,* 908 F.2d 864, 872 (11th Cir. 1990); *Murphy* at 25,055; *See also Marable v. Walker,* 704 F.2d 1219, 1220 (11th Cir. 1983); *Gore v. Turner,* 563 F.2d 159, 164 (5th Cir. 1977).

[12] *See, e.g., Block v. R.H. Macy & Co.,* 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.,* 478 F.2d 380, 384 (10th Cir. 1973); *Blackwell I* at 25,0ll. *See also Blackwell II,* 908 F.2d at 872-73 (recovery for distress is not barred because amount of damages is incapable of exact measure).

[13] *See Murphy* at 25,056; *Blackwell I* at 25,013.

had been able to live in Respondent's apartment on Turbot Drive, the youngest children would have been able to continue walking to and from school. While on Carling Drive, they had to take the bus. This complication to the children's routine compounded Mrs. Bridges' worries about her children's safety throughout the year they lived on Carling Drive.

When Respondent refused to rent to them, Complainants were forced to find new housing in a relatively short time and move out of a neighborhood with valued amenities where they had lived for many years and where they had established solid, nurturing relationships with friends, neighbors, schools, and other institutions. This would have been a wrenching experience for the family even if the alternative housing had been satisfactory. But it was not. As Mrs. Bridges put it:

> The kids were having a terrible time dealing with it. We couldn't get the roach problem straightened out. I mean ... the drug busts, the police, the neighbors, the property managers who weren't dealing with anything. We just couldn't stay there. [TR. 42.]

This evidence will support substantial damage awards to Complainants for the emotional distress they suffered while living on Carling Drive and for their lost opportunity to rent Respondent's apartment, but the record is not strong enough to justify the amounts sought by the Charging Party and Intervenors. Complainants' damages claims rest entirely on their move into unsatisfactory alternative housing. They do not claim to suffer any continuing or permanent emotional injuries. Despite the unwholesome environment at Carling Drive, neither Complainant suffered any physical harm or permanent psychological injury as a result of living there. They did not require intervention by medical or psychological experts. A good share of Complainants' distress was caused by their neighbors, but noisy, quarrelsome, even lawless neighbors can be encountered anywhere. Furthermore, at least some measure of Complainants' discomfort with the Carling Drive apartment must be attributed to the fact that it was more than 20 percent less expensive than their apartment on Traceway Drive (and less than half as expensive as the apartment where they now live).[14] In other words, the Carling Drive apartment was a significantly less desirable place to live than the Traceway Drive apartment, and victims of housing discrimination cannot be compensated for living in less desirable alternative housing as such.[15] The record does not show that alternative housing comparable in

[14]The Traceway Drive apartment rented for $665 per month, whereas the Carling Drive apartment cost $525 per month. Complainants and their children now live in an apartment than rents for $1,100 per month. TR. 66.

[15]It is unclear from the record what rent Respondent charged for the Turbot Drive apartment. On brief he contends that the rent was $540 per month, but appended to his brief is a copy of HUD's investigation report indicating that the rent for 2962 Turbot Drive was $575 per month

quality to the denied housing was unavailable in July of 1992 and that Complainants had no choice but to take the apartment on Carling Drive. Considering the record as a whole, I conclude that an award of $4,000 each will adequately compensate Complainants for their emotional distress and lost housing opportunity.

Civil Penalties

To vindicate the public interest, the Act authorizes an administrative law 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) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (3) respondent's financial resources; (4) the degree of respondent's culpability; and (5) the goal of deterrence. *See Murphy* at 25,058; *Blackwell I*, at 25,014-15; H. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Nature and Circumstances of Violation

The nature and circumstances of the violation in this case do not compel imposition of the maximum penalty possible. There is no evidence that Respondent's unlawful discrimination was motivated by animus toward Complainants personally or against families with children in general. He has often rented to families with children. He discriminated against Complainants only because he believed that the apartment at 2962 Turbot Drive was too small for their family. Further, the harm done to Complainants, although significant, was not extreme. They and their children did not suffer grievous injury, such as an eviction, public humiliation, physical injury, or threats of physical injury at the hands of Respondent.

Respondent appears to have cooperated fully with HUD during the investigation of this matter.

Respondent's Record

There is no evidence that Respondent previously has 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).

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beginning July 1, 1992, and $600 per month for 2972 Turbot Drive beginning September 1, 1992.

Respondent's Financial Circumstances

Evidence regarding Respondent's financial circumstances is peculiarly within his knowledge, so he had the burden of introducing such evidence into the record. Respondent testified that his financial circumstances would permit him to pay the maximum civil penalty without suffering undue hardship. TR. 72-73.

Culpability

Respondent does not deny that he turned Complainants away because of the size of their family, but he contends that his occupancy policy was reasonable and that he was unaware of the law requiring him to rent the apartment on Turbot Drive to Complainants. TR. 78. Although Respondent apparently is not a full-time housing provider (he is a carpenter by profession), in the fall of 1992 he owned 18 housing units, and he has been a landlord for many years. (Exhibit to Respondent's Brief) He must therefore be held to the highest standards of conduct.[16] Respondent sincerely (but mistakenly) believed that an occupancy policy deemed reasonable by him would necessarily be deemed reasonable in the eyes of the law.

Deterrence

Respondent and other housing providers need to be deterred from engaging in any form of discriminatory conduct based on familial status. He and other similarly situated landlords must come to understand that they may be guilty of unlawful discrimination even if they do not exclude all children from their rental properties. They have a duty to ensure that their occupancy policies are reasonable.

* * *

The Charging Party seeks to impose a $10,000 civil penalty against Respondent, the maximum permissible in this case. Maximum penalties should be reserved for the most egregious cases, where willful conduct causes grievous harm--that is, where all factors argue for the maximum penalty. This case does not fall into that category. A civil penalty of $3,500 will vindicate the public interest.

[16]The civil penalty would be considerably lower if Respondent had not untruthfully told Complainant D.L. Bridges during their second telephone conversation that the apartment at 2962 Turbot Drive had only two bedrooms and that it was no longer available for rent.

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 Charging Party in its brief requested injunctive relief but did not provide a proposed order. When injunctive relief is sought, it is the duty of the movant to specify in detail the nature of the relief sought. Absent that information, nothing more than a generally prohibitory order will be issued.

Conclusion

Respondent has violated sections 804(a), (b), (c), and (d) of the Fair Housing Act. 42 U.S.C. §§ 3604(a), (b), (c), and (d). As a result of Respondent's conduct, Complainants suffered actual damages for which they will each receive a compensatory award. Further, to vindicate the public interest, an injunction will be ordered against Respondent as well as a civil penalty.

ORDER

It is hereby ORDERED that:

1. Respondent is permanently enjoined from discriminating against Complainants, any member of their family, or any tenant or prospective tenant, with respect to housing because of familial status.

2. Within thirty (30) days of the date on which this Order becomes final, Respondent shall pay actual damages of $6,209.20 to Complainant D.L. Bridges, consisting of $4,000 for emotional distress and a lost housing opportunity, $600 for additional commute expenses, $240 for moving expenses, $1,141 for time spent looking for alternative housing, and $228.20 for time spent pursuing this claim.

3. Within thirty (30) days of the date on which this Order becomes final, Respondent shall pay actual damages of $5,404 to Complainant Hershey Barnett-Bridges, consisting of $4,000 for emotional distress and a lost housing opportunity, $720 for additional commute expenses, $304 for time spent looking for alternative housing, and $380 for time spent pursuing this claim.

4. Within thirty (30) days of the date on which this Order becomes final, Respondent shall pay a civil penalty of $3,500 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) of the Fair Housing Act

and the regulations codified at 24 C.F.R. § 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.

/s/

_____
THOMAS C. HEINZ
Administrative Law Judge

Dated: April 4, 1995.