

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
Lillye Clay, Larry Pickett, Teandra
Pickett,
and Lillye Clay as next friend
of Rendell Pickett, Sophia Pickett
and Jasmine Pickett,

Charging Party,

v.

Joseph Lashley and
Mark Matthews,

Respondents.

1992

HUDALJ 04-90-0766-1
Decided: December 7,

Joseph Lashley, pro se
Mark Matthews, pro se

Theresa L. Kitay, Esq.
For the Department

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DECISION AND ORDER

Lillye Clay, on behalf of herself and her children, Larry Pickett, Teandra Pickett, Rendell Pickett, Sophia Pickett, and Jasmine Pickett,¹ filed a complaint alleging violation of the Fair Housing Act as amended, 42 U.S.C. §§ 3601, *et seq.* ("Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104. She charged that she and her family had been harassed and intimidated because of their race. On May 22, 1992, the Department of

¹ The case's original caption referred incorrectly to the children as having "Clay" for their last name. This error was corrected at the hearing on damages.

Housing and Urban Development ("HUD," "the Secretary," or "the Government") issued a Determination of Reasonable Cause and Charge of Discrimination against Joseph Lashley and Mark Matthews. The Secretary alleged that the Respondents had violated § 818 of the Act, 42 U.S.C. § 3617.

Neither Respondent answered the charge. The Secretary moved for a default judgment on July 24, 1992. I granted HUD's motion on August 7, 1992, and issued a default judgment on the issue of liability, after finding that the Secretary properly served the Charge on the Respondents, and that the Respondents failed to answer the charge pursuant to 24 C.F.R. § 104.420. Under that regulation, all undenied allegations are deemed admitted. Therefore, all allegations made in the Charge were admitted by Mr. Lashley and Mr. Matthews.

On August 18, 1992, I conducted a hearing solely on the matter of damages. The Respondents were present, but unrepresented by counsel. Before opening arguments, Respondents requested a continuance to secure counsel. I did not grant the continuance because Respondents had adequate notice of the hearing, but recessed the hearing for an hour to allow Mr. Lashley and Mr. Matthews to contact the local bar association for assistance. When they were unable to secure such assistance, I proceeded with the hearing. At the hearing's close, I explained to Respondents that the transcript of the hearing would be available by September 2, 1992. Mr. Lashley and Mr. Matthews had until October 2, 1992, to submit any evidence, documents, or affidavits. All briefs and motions had to be submitted by November 2, 1992. When the record closed, Respondents had submitted nothing.

Given the Respondents' default on the matter of liability, and the evidence and testimony presented at the hearing, I make the following findings of fact and conclusions of law.

Findings of Fact

Liability

Complainant Lillye Clay is a single mother with five children. The children are her sons Larry (20) and Rendell (17), and her daughters Teandra (19), Sophia (9) and Jasmine (2).² T. 19.³ All five children, including Jasmine, a newborn, lived with Ms. Clay during the relevant period. Id. All the Complainants are African-American. Charge ¶ 3.

²As the events that precipitated the filing of the complaint took place over two years prior to the hearing, the children would have been two years younger at that time.

³ "T." designates the hearing transcript. "Charge" designates the Determination of Reasonable Cause and the Charge of Discrimination.

In December 1989, the Complainants moved to 6503 Putman Avenue in Riverside Gardens, a predominantly white area of Louisville, Kentucky. They obtained this rental house with a Section 8 certificate issued by the Housing Authority of Jefferson County. Charge ¶ 4.

The Complainants were continually harassed by neighbors while they lived at Riverside Gardens. This harassment included being called "niggers," white families refusing to allow their children to play with the Complainant children, and tapping on the Complainants' windows at night. Charge ¶ 5.

On or about June 3, 1990, the Complainants discovered a bottle under their home, filled with flammable liquid, and a wick. Charge ¶ 6.

After discovering the bomb under their home, the Complainants believed they could no longer live in Riverside Gardens. In June 1990, the Complainants moved to Newburg, a mostly black area of Louisville and incurred significant expense and inconvenience. Charge ¶ 11.

Respondents Joseph Lashley and Mark Matthews are former residents of Riverside Gardens. They both are white. Charge ¶ 7.

Both Respondents gave statements to the police implicating themselves in the attempted bombing of the Complainants' home. Charge ¶ 8.

On June 27, 1990, both Respondents were indicted by the Jefferson County grand jury on one count each of Criminal Facilitation to Arson I and six counts each of Wanton Endangerment, based on the attempted bombing of the Complainants' home. Charge ¶ 9.

On August 1, 1990, both the Respondents pled guilty to all the charges. The Jefferson County Circuit Court, Sixth Division sentenced Mr. Lashley and Mr. Matthews on September 24, 1990. Mr. Lashley received a sentence of three years for each count of the indictment to run concurrently, and Mr. Matthews received a sentence of two years for each count of the indictment (to run concurrently). Charge ¶ 10.

Damages

The Riverside Gardens house was well-suited to the Complainants. It was large and newly renovated; it had a big kitchen and spacious front and back yards. T. 20-21; 49. The house was conveniently located, with two grocery stores within walking distance.⁴ T. 19. The older Pickett boys enjoyed a neighborhood basketball court.

⁴ The store's proximity was particularly valuable to the Complainant's because no one in the family owned a car at that time. (T. 20)

T. 19; I.21; 46. Sophia Pickett made friends with the children across the street, and played on their swing set. T.21. Lillye Clay had relatives living near Riverside Gardens. T. 22; 24.

The Complainants moved to a house in the Newburg area within two to three days after discovering the bomb. T. 24. In those days before the Newburg move, Ms. Clay and her family watched for further harassment and listened for intruders. T. 25. Larry Pickett, Lillye Clay's oldest child, feared a second attempt to bomb the house; he believed "if you try something, and if you don't succeed, you try again." T. 46.

Lillye Clay and her family lost a significant amount of property, including clothes, furnishings, food, and supplies for the baby due to their quick departure from Riverside Gardens. T. 38-39; 60. Ms. Clay borrowed approximately \$2000 to replace the lost property. T. 38.

In Newburg, the Complainants had less satisfactory housing than in Riverside Gardens. The new house was smaller, and in disrepair. The doors and windows were broken, and, unlike the Riverside Gardens house, the Newburg house was very hot in the summer. T. 27; 50. Grocery stores were now far away, and because they did not have a car, shopping was more inconvenient for the Complainants. T. 28-29. Newburg was far enough from Lillye Clay's relatives that she rarely sees them since moving from Riverside Gardens. T. 29.

The Complainants' school choices were also affected by the move. Larry Pickett had been ready to begin his senior year at Western High School, a school he liked and attended for three years while living at Riverside Gardens. Newburg, however, was in the Moore High School district. T. 48. In contrast to Western, Moore had a "bad reputation" for guns, drugs, and gangs. T. 49; 61. Because of this reputation, and his previous attendance at Western, Larry arranged to continue at Western while he and his family were living in Newburg. This arrangement involved a fifty minute bus commute each way, which both Larry and Rendell endured to avoid attending Moore. T. 48.

While living in Riverside Gardens, Teandra Pickett had attended Williams Junior High School. Ms. Pickett felt that Williams, like Western, was a desirable school. T. 61. Upon moving to Newburg, Teandra was unwilling to make the long commute back to Riverside Gardens, and, therefore, enrolled at Moore. T. 62.

Because the house in Newburg was unacceptable, the Complainants moved twice more. The family first moved to an apartment, but it proved too small. Then they

moved to their current home, which also is unsuitable. Lillye Clay has not yet been able to find housing for her family that is as appropriate as the house in Riverside Gardens. T. 37.

Following the attempted bombing of their home, the Complainants all experienced great fear and anxiety. T. 22-25; 44; 58. They were scared and tense, and concerned about each other's safety. See e.g. T. 23; 44. Lillye Clay was particularly anxious because she had just had the baby, Jasmine. T. 23.

Larry Pickett feared for his life, and for the lives of his family. T. 44. He was afraid and confused, and felt "scared to do anything." T. 45. As a result of the incident, he found his lifestyle and daily activities drastically altered. He stopped walking around the Riverside Gardens neighborhood and playing basketball in the park. He, like the rest of the family, would not leave the house alone, only going out by twos and threes. T. 46. When he was away from home, he worried about the safety of his mother and the rest of the family. T. 54.

Larry was also upset by the publicity the incident received from the news media. T. 50-51. Stories about the attempted bombing were on television and in the newspapers; the television cameras were present even when the family moved to Newburg. As Larry explained,

I didn't feel too good about that . . . we didn't want nobody to see us, . . . we were scared and felt embarrassed. And it was just a rough time.

T. 52. The attention distracted Larry from his work and contributed to his feelings of alienation. T. 50-51.

Teandra Pickett, too, was frightened and upset by the bomb, and "knowing that we could have died." T. 58. She continued to be disturbed by lingering fears that "they could do it again and we probably could still die from it." T. 59. She also altered the way she lived her life. Teandra testified that before the bomb was found, "I was comfortable. I could go anywhere. Talk to anybody." T. 61. Now, however, she will not go anywhere alone, and stays home much more than when she lived at Riverside Gardens. T. 59; 63.

Both Larry and Teandra have become apprehensive and mistrustful of white people. As Teandra testified,

I am not really afraid of white people. But . . . when I am . . . at home and stuff and we see . . . white people walking down the street late at night, . . . I get scared. I can't even sit

in there like real late, because . . . white people walks through and I see them, so I don't even stay up late.

T. 62. Teandra no longer associates with white people at all, although she did before the bombing. T. 64. Similarly, Larry continues to have difficulty relating to white people, particularly his college classmates, and traces this difficulty to the attempted bombing of his family's home. T. 53-54.

At the hearing, Lillye Clay described such mistrust of white people as a reaction common to all her children, and even, to some extent, herself. T. 36-37. One of her younger children, Sophia Pickett, has had a particularly strong response to the situation. Since the discovery of the bomb, Sophia refuses to play with white children, and her mother has not "been able to make her feel comfortable about white people since that happened." T. 31-32. If any of her mother's white friends come to the house, Sophia will stay in her bedroom and refuse to come out. Sophia tells her mother not to trust white people, and even told her not to meet with counsel for the Secretary to prepare for the hearing. As Lillye Clay testified, "it has had a great effect on [Sophia] . . . more than anybody." T. 34.

Lillye Clay herself used to feel comfortable around white people. T. 33. Now

we always feel that they are going to do something . . . I am not really afraid of white people, but I just have this feeling about them that they are not . . . truthful. They might say one thing and then they might do another . . . they don't really like us for real.

T. 35.

Discussion

Damages

Having issued a default judgment against the Respondents with respect to liability, the only issue remaining is to determine the proper damage award. At the hearing, Lillye Clay, Larry Pickett, and Teandra Pickett each testified about the damages the Complainants suffered due to the Respondents' actions. Their testimony revealed the attempted bombing's consequences: physical and economic inconvenience, and the emotional toll taken on the Complainant's lives.

Compensatory damages in a Civil Rights Act case include damages for the emotional distress caused by the discrimination. *See, e.g., Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Such damages can be inferred from the circumstances of the case, as well as proved by testimony. *See Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977). Because of the

difficulty of evaluating emotional injuries resulting from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries. *Secretary of HUD v. Blackwell*, Fair Housing-Fair Lending (P-H) ¶ 25001 at 25,011; *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983).

The bomb underneath Lillye Clay's house caused no physical damage, but as the testimony clearly shows, it affected the Complainants' lives in a similarly destructive fashion. HUD asks that Lillye Clay and her family be compensated for their economic and emotional losses in the following amounts:

- * \$25,000 for Lillye Clay for tangible economic damage, emotional distress, humiliation, inconvenience, and loss of housing opportunity;
- * \$10,000 each for Larry Pickett, Teandra Pickett, Rendell Pickett, and Sophia Pickett for emotional distress, humiliation, inconvenience, and loss of housing opportunity; and,
- * \$2,000 for Jasmine Pickett for loss of housing opportunity.

The Complainants' testimony demonstrates the great upheaval in their lives after the bombing. They suffered the great emotional distress of having their lives threatened and their home attacked. Forced to stay in the Riverside Gardens house for two to three days after the bombing, the family spent this stressful period waiting for further attacks. The family still worries if such an attack can occur again. Their emotional damage has asserted itself in their suspicion of others and their loss of security.

Additionally, Lillye Clay and her family were subjected to intense media scrutiny of the bombing and its aftermath. This attention only added to the stress the family was under and the humiliation they felt as the victims of a racially-motivated crime.

Furthermore, Lillye Clay and her family lost \$2,000 worth of personal items in their rush to move to safer housing. They also lost the security of living in convenient, safe, and comfortable housing. Lillye Clay and her family lost their privacy, their proximity to desirable schools, stores, and relatives, and their trust of white people. For these losses in their lives and lifestyles, losses clearly articulated in the Government's case, the Complainants are awarded all the damages requested by the Government.⁵

⁵ The Government did not break down its damage request into discreet categories, and opted instead for a catch-all approach. This technique was acceptable in the instant case, given the clarity of the Complainants' testimony, and the lack of opposition from the Respondents, but would not be as effective in a different situation.

This award is consistent with other awards based on outrageous conduct causing substantial intangible damage. See *HUD v. Tucker*, Fair Housing-Fair Lending (P-H), ¶ 25033 (HUDALJ Aug. 24, 1992) (Complainants awarded \$50,000); *HUD v. Jerrard*, Fair Housing-Fair Lending (P-H), ¶ 25,005 (HUDALJ September 28, 1990) (Complainant awarded \$15,000).

Civil Money Penalty

The Fair Housing Act authorizes an administrative law judge ("ALJ") to impose a maximum civil penalty in the amount of \$10,000 against a first-time violator of the Act. 42 U.S.C. § 3612(g)(3)(A). When determining the amount of the civil penalty, the ALJ should consider "the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of that Respondent and the goal of deterrence, and other matters as justice may require." H. Rep. No. 100-711, 100th Cong., 2d Sess. 37 (1988).

The record establishes 1) that the nature and circumstances of Respondents' discriminatory acts are serious; 2) that these acts were intentional and caused significant emotional distress; 3) that there is no history of Respondents having committed similar violations; 4) that Respondents have failed to demonstrate any financial circumstances precluding the award of a civil penalty against them; and 5) that the imposition of civil penalties under these circumstances will serve the goal of deterrence.

Nature and Circumstances of the Violation and Degree of Culpability

Mr. Lashley and Mr. Matthews endangered the lives of an entire family with their racially motivated actions. Because of the harassment's severity, the Complainants were forced to leave a home where they were happy to move into less adequate housing. From the moment the bomb was discovered, Lillye Clay and her family felt endangered by outsiders, and had to face the additional strain of having their travails covered by the media. The Complainants suffered tremendous emotional distress which may never cease to affect them. Mr. Lashley and Mr. Matthews acted intentionally and viciously to force the Complainants from Riverside Gardens. They are culpable and responsible for their actions.

Respondent's Financial Circumstances and Deterrence

Evidence regarding respondents' financial circumstances is peculiarly within their knowledge, so they have the burden of producing such evidence. If they fail to do so a penalty may be imposed without consideration of their financial circumstances. See *Jerrard* at 25,092. Respondents do not assert that their present financial circumstances preclude their payment of a civil penalty, nor have they furnished evidence to this effect.

Assessing the maximum civil penalty against the Respondents will serve the goal of deterrence. This penalty will demonstrate to the Respondents and others that discriminatory acts, even those done casually or spontaneously, will also have far-reaching effects on the actor, as well as the victims of the actor's misconduct. Accordingly, a civil penalty of \$10,000 is assessed against each, Mr. Lashley and Mr. Matthews.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). The purposes of injunctive relief include eliminating the effects of past discrimination, preventing future discrimination, and positioning aggrieved persons, as close as possible, to the situation they would have been in, but for the discrimination. The injunctive remedies provided herein will serve these purposes.

ORDER

Having concluded that Respondents violated 42 U.S.C. § 3617, it is hereby **ORDERED** that:

1. Respondents Joseph Lashley and Mark Matthews are hereby permanently enjoined from discriminating with respect to housing because of race. Prohibited actions include, but are not limited to:

a. 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; and,

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

c. retaliating against the Complainants or anyone else for their participation in this case or for any matter related thereto.

2. Within ten days of the date this Order becomes final, Respondents shall pay compensatory damages to Lillye Clay as follows: \$25,000 for economic damage, emotional distress, humiliation, inconvenience, and loss of housing opportunity.

3. Within ten days of the date this Order becomes final, Respondents shall pay compensatory damages to Larry Pickett, Teandra Pickett, Rendell Pickett, and Sophia Pickett as follows: \$10,000 *each* for emotional distress, humiliation, inconvenience, and loss of housing opportunity.

4. Within ten days of the date this Order becomes final, Respondents shall pay compensatory damages to Jasmine Pickett as follows: \$2,000 for Jasmine Pickett for loss of housing opportunity.

5. Within forty-five (45) days of the date on which this Initial Decision and Order becomes final, Joseph Lashley shall pay a civil penalty to the United States in the amount of \$10,000.

6. Within forty-five (45) days of the date on which this Initial Decision and Order becomes final, Mark Matthews shall pay a civil penalty to the United States in the amount of \$10,000.

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

/s/

SAMUEL A. CHAITOVITZ
Administrative Law Judge