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 Dierdre Isaac, Charlie Isaac, Regina Patterson, Jeanette Watson-Burns and Long Island Housing Services, Charging Party v. Margaret Roberts, a.k.a. Margaret McKenna, a.k.a. Margaret Drummond, Respondent

HUDALJ 02-98-0775-8
02-99-0042-8
02-99-0043-8
Decided: January 19, 2001

Margaret Roberts,
Pro se

Iris Springer, Esquire
For the Secretary

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of complaints filed by Regina Patterson, Dierdre Isaac, Charlie Isaac, Jeannette Watson-Burns, and the Long Island Housing Services (“LIHS”) ("Complainants"), alleging discrimination in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619. On July 25, 2000, following an investigation and a determination that reasonable cause existed to believe that discrimination had occurred, the Department of Housing and Urban Development ("HUD" or "the Charging Party") issued three separate charges against Respondent Margaret Roberts, a.k.a. Margaret McKenna, a.k.a. Margaret Drummond (“Respondent” or “Mrs. Roberts”), alleging that she had engaged in a discriminatory housing practice in violation of 42 U.S.C. § 3604 (c) of the

Fair Housing Act ("Act") and 24 C.F.R. §§ 100.75 (a),(b), and (c)(1). The charges alleged that Respondent violated the Act when Mrs. Roberts made statements to Complainants Regina Patterson, Dierdre Isaac, and to Jeanette Watson-Burns, and to representatives of the LIHS with respect to the rental of a dwelling that indicated a limitation or preference based on race.[1]

Upon service of each Charge of Discrimination ("Charge") Respondent was notified that she was required to file a written answer to the Charge by August 24, 2000 (within 30 days of the service of the Charge). When as of September 26, 2000, Respondent had not filed an answer to each Charge, the Charging Party filed a Request to Enter Default Judgment. Respondent did not reply to the request for default judgment. On October 13, 2000, the undersigned, finding that a default order was appropriate pursuant to 24 C.F.R. §180.420(b), granted the Secretary's motion and entered an Initial Decision, in Part, and an Order which deemed admitted those matters of fact alleged in the Charges of Discrimination. Accordingly, the following facts are established by default.

FINDINGS OF FACT

1. Respondent Margaret Roberts, a.k.a. Margaret McKenna, a.k.a. Margaret Drummond, is White. She lives at the property in question located at 45 High Street, Locust Valley, New York. She possesses a life estate in the property, specifically, the property deed grants Margaret Drummond "the right to occupy and possess" the subject dwelling "for the remainder of her natural life...." Charge (HUDALJ 02-98-0775-8) ¶7.

2. Complainant Regina Patterson is Black. Ms. Patterson sought to rent the property in question. Charge (HUDALJ 02-98-0775-8) ¶6.

3. Complainants Dierdre Isaac and Charlie Isaac are husband and wife. Mrs. Dierdre Isaac is White and Mr. Isaac is Black. Mrs. Isaac, on behalf of herself and her husband, sought to rent the property in question, located at 45 High Street, Locust Valley, New York. *Id.*

4. Complainant Jeanette Watson-Burns is Black. She telephoned the Respondent on July 7, 1998, in response to an advertisement for a room for rent. Charge (HUDALJ 02-99-0042-8) ¶5.

[1] The property in question is exempt from the prohibitions in 42 U.S.C. §§ 3604(a) and (b), based on the so-called "Murphy" exemption. *See* 42 U.S.C. § 3603(b).

5. Complainant LIHS is a private not-for-profit Corporation, organized under the laws of New York State, with its principal place of business at 1747-42A, Veterans Memorial Highway, Islandia, New York. LIHS is a fair housing advocacy and counseling organization on Long Island. Its primary objectives are to promote racial integration and equal housing opportunities throughout Long Island, to encourage the development of low-income and affordable housing, and to educate and assist the public regarding housing rights and opportunities in the region. LIHS also conducts fair-housing testing and advocacy, makes presentations to the public, and serves as a clearinghouse for information and literature regarding housing issues. Charge (HUDALJ 02-99-0043-8) ¶5.

6. Near the end of May or early June 1998, Complainant Patterson telephoned the Respondent in response to an advertisement for a room for rent in the Glen Cove area. The advertisement was placed in the Pennysaver the week of May 13, 1998. During the conversation the Respondent inquired about Complainant Patterson's race. When the Complainant informed Respondent that she was Black, Respondent told Ms. Patterson that the apartment had been rented within the hour. Charge (HUDALJ 02-98-0775-8) ¶8.

7. On June 2, 1998, Complainant Mrs. Dierdre Isaac called the Respondent to inquire about the same room for rent. The Respondent asked her about her race.
Mrs. Isaac informed the Respondent that she was White. The Respondent then proceeded to give her details about the property and explained that the property was ready to be moved in. *Id*. ¶9.

8. On June 9, 1998, Complainant Mrs. Isaac telephoned the Respondent again to ask whether the apartment was big enough for two people. The Respondent stated that it was. Based upon past experience, Complainant Mrs. Isaac volunteered to Respondent that her husband was Black. Upon hearing this, the Respondent stated, "Oh no, I cannot have that! This is a White neighborhood." *Id*. ¶10.

9. On June 9, 1998, Complainant Dierdre Isaac contacted the LIHS regarding the Respondent's discriminatory statements. Charge (HUDALJ 02-98-0075-8) ¶12 and Charge (HUDALJ 02-99-0043-8) ¶7.

10. The LIHS conducted several tests with the Respondent regarding the subject property. On June 9, 1998, a White tester telephoned in response to the advertisement. The Respondent told the tester that she had a deposit on that room but also had a furnished attic room to rent. Respondent did not ask the tester about race. *Id.*

11. On June 9, 1998, a second tester called the Respondent. This tester was a Black male. The Respondent asked the tester his name and what ethnic group or nationality he was. His response was "Afro-American." The Respondent then stated that she had a

deposit on the apartment in the advertisement. *Id.*

12. The LIHS conducted a third test on June 10, 1998. The third test was conducted by the first White tester. The tester asked the Respondent to see the attic room. The Respondent stated that it would have to be after 4 p.m. She agreed to 4:45 p.m. and gave the tester directions to the property. *Id.* ¶13 and ¶8.

13. On June 15, 1998, the same White tester that conducted the first and third tests telephoned the Respondent and apologized for not keeping the June 10, 1998, appointment. The tester told the Respondent that she found a room but had a friend who was also looking. The Respondent informed the tester that the room was still available. The Respondent then asked the tester to identify her friend's race. The tester told the Respondent that her friend was White. The Respondent replied, "That's okay." *Id*. ¶14 and ¶9.

14. When the Complainant telephoned the Respondent to inquire about a room for rent which had been advertised in the July 7, 1998, edition of the Glen Cove Pennysaver, the Respondent asked the Complainant about her nationality. Complainant Watson-Burns stated that she was "Black," at which time the Respondent replied, "I do not rent to Blacks," and hung up the telephone. Charge (HUDALJ 02-99-0042-8) ¶7.

15. Complainant Watson-Burns called the Respondent back immediately and the telephone was picked up by an answering machine. The Complainant then called again and Respondent answered the phone. Complainant Watson-Burns then proceeded to tell Respondent Roberts that her statement was discriminatory and illegal. Respondent Roberts again hung up the telephone. *Id.* ¶8.

16. On August 11, 1998, Complainant Watson-Burns asked the LIHS to investigate Respondent for race discrimination. Charge (HUDALJ 02-99-0042) ¶11 and Charge (HUDALJ 02-99-0043) ¶10.

17. The LIHS began its investigation of the Watson-Burns' allegations on August 12, 1998. On Wednesday, August 12, 1998, in a taped telephone conversation the first tester, a Black female, called the Respondent and inquired about the subject room for rent. The tester provided her full name and was asked by the Respondent if her name was "English" and what her nationality was. The tester told the Respondent that she was African-American. The Respondent then told the tester that the room was not yet available and could not be shown. *Id.* ¶12 and ¶11 & 12.

18. Some time later on August 14, 1998, a second tester who was White telephoned the Respondent. Respondent asked this tester her name and questions about her place of

employment. However, she did not ask about her race. The Respondent then gave the White tester information about the neighborhood, the rental, and driving directions to the property. *Id.* ¶13.

DISCUSSION

The Fair Housing Act was enacted by Congress to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), *cert denied*, 422 U. S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, sophisticated as well as simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053, (N.D. Ohio 1980), *aff'd in relevant part*, 661 F. 2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982). On September 13, 1988, the Act was amended to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status. 42 U.S.C. §§ 3601-19.

Violation of 42 U.S.C. § 3604(c)

The Charging Party alleges as a violation of 42 U.S.C. § 3604(c) Margaret Robert's inquiries into the race or nationality of the prospective tenants and her statements to the effect that she did not rent to African-Americans. I find that the violations have been established.

Section 3604 provides that, as made applicable by § 3603 and except as exempted by §§ 3603(b) and 3607, it shall be unlawful:

> (c) To make, print, or publish, or cause 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 ... or an intention to make any such preference, limitation, or discrimination.

Prohibited actions covered under § 3604(c) include all written and oral notices or statements by a person engaged in the rental of a dwelling that indicate a preference, limitation or discrimination because of race. *See* 24 C.F.R. § 100.75(b). Actions prohibited include the use of words or phrases which convey that dwellings are not available to a particular group of persons because of race and expressing to prospective

renters or any other persons a preference or a limitation on any renter because of race. 24 C.F.R. §§ 100.75(c)(1) and (2).

The test used to determine whether a statement is discriminatory is whether it suggests to an "ordinary listener" that a particular protected class is preferred or "dispreferred" for the housing."[2] *HUD v. Gwizdz,* Fair Housing-Fair Lending (Aspen) ¶25,086 at 25,793 (HUDALJ, Nov. 1, 1994) *citing Soules v. HUD*, 967 F. 2d 817, 824 (2d Cir. 1992); *Guider v. Bauer*, 865 F. Supp. 492, 495 (N.D. Ill. 1994); *Trafficante v. Metropolitan Life Ins.*, 409 U.S. 205, 212 (1972). *See also, Ragin v. New York Times Co.*, 923 F. 2d 995, 999-1002 (2nd Cir.), *cert. denied*, 502 U.S. 821 (1991); *HOME v. Cincinnati Enquirer, Inc.*, 943 F. 2d 644, 646-48 (6th Cir. 1991); *HUD v. Gutleben*, 2 Fair Housing-Fair Lending (Aspen) ¶ 25,078, 25,725 (HUDALJ Aug. 13, 1994).

Since Mrs. Roberts defaulted, her alleged statements must be taken as established facts. Thus, it is established that she made the following statements:

(1) When Regina Patterson called to inquire, Mrs. Roberts asked Ms. Patterson what was her race.

(2) After Dierdre Isaac told Mrs. Roberts that her husband was Black, Mrs. Roberts said, "Oh no, I cannot have that! This is a White neighborhood."

(3) On June 9, 1998, a tester from LIHS called the Respondent. This tester was a Black male. The Respondent asked the tester his name and what ethnic group or nationality he was. His response was "Afro-American." The Respondent then stated that she had a deposit on the apartment advertised.

(4) On June 15, 1998, a tester who had previously called the Respondent called again and told Respondent that she had found a room but had a friend who was looking for a room. Respondent informed the tester that the room was still available. Respondent then asked the tester to identify her friend's race. When the tester told the Respondent that her friend was White, Respondent replied, "That's okay."

(5) The Respondent asked Complainant Watson-Burns about her nationality. Complainant Watson-Burns stated that she was "Black," at which time the Respondent replied, "I do not rent to Blacks," and hung up the telephone.

[2]The "ordinary listener" is "neither the most suspicious nor the most insensitive." *Ragin v. New York Times Co.*, 923 F. 2d 995 at 1002 (2nd Cir. 1991).

(6) A tester from LIHS called the Respondent. After the tester gave her name she was asked by the Respondent if her name was “English” and what her nationality was. The tester told the Respondent that she was African-American. The Respondent then told the tester that the room was not yet available and could not be shown.

Section 3604(c) has been said to be essentially a "strict liability" statute -- all that is required to establish liability is that the challenged statement was made with respect to the rental of a dwelling and that it indicates discrimination based on a prohibited factor. *See* Schwemm, *Housing Discrimination*, §15.2(1)(2) (1990).

After considering all the evidence, and the "ordinary listener" test as applied to the facts in this case, I conclude the statements made by Respondent were discriminatory statements under § 3604(c). Respondent’s statement to Dierdre Isaac - “Oh no, I cannot have that! This is a White neighborhood” and to Jeanette Watson-Burns - “I do not rent to Blacks” - are unequivocal statements of racial preference or dispreference. Her inquiries into the race of Regina Patterson and some of the testers violated §3604(c) as well. They served no legitimate purpose. Her inquiries about the prospective tenants’ race was not reasonably related to their qualification for housing rental. And, a reasonable person when asked by a housing provider to state his/her race would naturally assume that race was being used as a factor in determining eligibility. See *Jancik v. HUD*, 44 F.3d 553, 556 (7th Cir. 1995) (*quoting from Ragin v. New York Times Co.*, 923 F. 2d 995 (2nd Cir. 1991)). *See also HUD v. Blackwell* , 2 Fair Housing -Fair Lending (Aspen) ¶25,001, 25008 (HUDALJ 12/21/89) *aff’d* 908 F. 2nd 864 (11th Cir. 1990).
I conclude that an ordinary listener would interpret Mrs. Roberts’ inquiries as expressing a preference or dispreference for renting to people of a certain race.

Further, I find that Mrs. Roberts made the statement while engaging in a conversation with regard to the rental of housing property. Mrs. Roberts is the owner and occupant of the property in question and made the statement while talking to the Complainants who were either prospective tenants or posed as prospective tenants. Accordingly, I find that Respondent made a statement of preference with respect to the rental of property in violation of § 3604(c) in each of the instances alleged in the Charges of Discrimination.

Remedies

The Act provides that where an administrative law judge finds that a respondent has engaged in a discriminatory housing practice, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). A civil penalty

may also be imposed. *HUD v. Cabusora*, 2 Fair Housing-Fair Lending (Aspen) ¶ 25,026 (HUDALJ, March 23, 1992).

The Charging Party asserts that the discrimination against Complainants took the form of discrimination based on race and requests an award for emotional distress of $500 for Complainant Regina Patterson, $1,500 for Complainants Dierdre and Charlie Isaac, and $1,500 for Complainant Watson-Burns. Complainant Watson-Burns also seeks $1,000 for out-of-pocket expenses she incurred as a result of her decision to relocate to another city which she says was caused by Respondent's discriminatory conduct. The Charging Party seeks $4,125 for the LIHS for expenses it incurred as a result of the Respondent's discriminatory statements.

Respondent has not replied to the Charging Party's request for relief, nor has she requested an opportunity to be heard on the matter.

Emotional Distress, Embarrassment and Humiliation

It is well-established that the damages that may be awarded under the Act include damages for embarrassment, humiliation and emotional distress caused by acts of discrimination. Such damages can be inferred from the circumstances, as well as proven by testimony. *HUD v. Blackwell*, Fair Housing-Fair Lending (Aspen) ¶ 25,001 at 25,011 (HUDALJ December 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990). Because intangible injuries cannot be measured quantitatively, courts do not demand precise proof to support a reasonable award of damages for such injuries. *See Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983). Key factors in such a determination are the complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. Schwemm, *Housing Discrimination*, § 25.3(2)(c) (1990).[3] Racial discrimination against Blacks, because it is one of the "relics of slavery," is the type of action that would reasonably be likely to humiliate or cause emotional distress. *Jancik v. HUD*, 44 F.3d 553, 556 (7th Cir. 1995).

The goal of a damage award in a housing discrimination case is to try to make the victim whole. The awards of damages for emotional distress in these cases range from a relatively small amount, e.g., $150 in *HUD v. Murphy*, Fair Housing-Fair Lending

[3] *See generally*, Alan W. Heifetz and Thomas C. Heinz, *Separating the Objective, the Subjective and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 J. Marshall L. Rev. 3, (1992).

(Aspen) ¶ 25,002, awarded to a party who "suffered the threshold level of cognizable and compensable emotional distress" (at 25,079), to substantial amounts, e.g., $175,000 (*See HUD, et al. v. Edith Marie Johnson*, HUDALJ 06-93-1316-8 (July 26, 1994)) .

Regina Patterson:

Mrs. Roberts' inquiry about Ms. Patterson's race made Ms. Patterson feel that she was inferior, and Ms. Patterson felt embarrassed and frustrated that she allowed Mrs. Roberts to treat her with such disrespect. She seeks an award of $500 for emotional damages. I conclude that $500 is reasonable and award that amount.

Dierdre and Charlie Isaac:

Complainants Dierdre Isaac and her husband, Charlie Isaac, seek an award for emotional damages in the amount of $1,500. In support of the request for an award of $1,500, the Charging Party asserts that Mrs. Isaac suffered significant damages as a result of Mrs. Roberts' act of discrimination. Mrs. Isaac's statement shows that she reacted to the statement with hurt and humiliation. She suffers from depression as a result of it. She still finds it difficult to accept the inconsiderate and rude comments and behavior she experienced in her conversations with the Respondent simply because her husband is Black. Mr. Isaac feels angry and hurt that his wife was considered for renting the apartment until she disclosed the fact that he was Black. He feels that he and his wife were unfairly treated simply because of his race and the color of his skin. I conclude that for Mr. and Mrs. Isaac's emotional reaction to Mrs. Roberts' statement, an award of $1,500 is reasonable compensation. I therefore award $1,500 for emotional damages.

Jeanette Watson-Burns:

Complainant Watson-Burns seeks an award for $1,500 in emotional damages and an award for lost of housing opportunity and out-of-pocket costs relating to relocation expenses in the amount of $1,000. I award $1,500 for emotional damage. Her claim for $1,000 for lost housing opportunity and out-of-pocket expenses will be dealt with below.

Complainant Watson-Burns' claim for emotional distress is compensable. She states that she experienced a tremendous emotional blow when the Respondent told her that she would not rent to her because she is Black. She was a person who had never operated in a color-oriented way, and she was shocked and disheartened, depressed and despondent by the blatant racism shown by the Respondent. Mrs. Roberts' act of discrimination took a great toll on her mental and emotional state. She felt frustration, embarrassment and humiliation. She felt discouraged and "devastated." She withdrew from her usual social contacts. The incident, she said, "put a scar in my heart" and mind that

will never go away. She sought the help of a mental health counselor to help her through the aftermath of the event. She hopes never to have this experience again. I find that $1,500 is reasonable compensation in this case.

Complainant Watson-Burns also asserts a claim for out-of-pocket expenses relating to her decision to move from the area of Glen Cove to Albany, New York, as a result of her treatment by Mrs. Roberts. Ms. Watson-Burns states that at the time Mrs. Roberts made the discriminatory statement to her, she was in the process of regaining custody of her son and obtaining an apartment was one way to show that she was stable and independent and could take care of her son. Being denied the unit by Mrs. Roberts caused a delay in obtaining custody of her son. She decided to leave the area of Glen Cove and to move to Albany, New York.

I find no basis to award Complainant Watson-Burns for lost housing opportunity or for related out-of-pocket expenses. Although complainants may recover for a lost housing opportunity where housing is made unavailable by unlawful discrimination, *HUD v. Edelstein*, 2 Fair Housing-Fair Lending (Aspen) (HUDALJ) ¶25,018 at 25,240 (1991), such is not the case before us. In this case, the Respondent had a right to rent to anyone she chose -- even to discriminate in doing so. The Complainants did not have a right to rent any unit in the Respondent's two-unit home. Accordingly, there has been no denial to the Complainant of a right to housing for which compensation may be awarded. *See HUD v. Dellipaoli*, 2 Fair Housing-Fair Lending (Aspen) (HUDALJ ¶25,127 at 26,079 (1997).

Diversion of Resources

Long Island Housing Services:

The LIHS is a not-for profit agency whose goal is to promote fair housing. It seeks actual damages incurred in its effort to investigate the complaints of discrimination brought to them by Complainants Dierdre Isaac and Jeanette Watson-Burns in June 1998 and August 1998.

If a fair housing organization can show injury through frustration of mission that is fairly traceable to the Respondent's unlawful conduct, it is entitled to recover damages. *Havens Realty Corp. v. Coleman*, 455 U. S. 363 (1982) . *See also Central Alabama Fair Housing Center, Inc. v. Lowder Realty Co., Inc*. 2000 WL 1868145 (11th Cir. (Ala.) Dec. 21, 2000); *Alexander and Fair Housing Partnership of Greater Pittsburgh, Inc. v. Riga*, 3 Fair Housing-Fair Lending (Aspen) ¶16,427 at 16,427.4 (3rd Cir. (Pa.) March 22, 2000) and *Village of Bellwood v. Dwivedi*, 895 F. 2d 1521 (7th Cir. 1990).

The evidence shows that LIHS' resources were drained during the investigations in

this case. In its attempts to help the Complainants resolve their problems with the Respondent, LIHS spent substantial manpower on the case. It expended approximately 57 hours to design a testing program, select the testers, perform the test, and communicate with the complainants and prepare the case for trial. Although the total actual damages incurred amounts to $7,125, the Charging Party only seeks to recover damages in the amount of $4,625, which represents the expenses incurred in investigating and pursuing the complaint in Complainant's Watson-Burns' case. I find that amount reasonable and award $4,625 as compensation to LIHS for injuries it incurred as a result of the Respondent's conduct.

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose a civil penalty upon a respondent who has been found to have discriminated in violation of the Act. 42 U.S.C. § 3512(g)(3)(A); 24 C.F.R. § 104.910(b)(3). A maximum penalty of $11,000 may be assessed if a respondent has not been adjudged to have committed any prior discriminatory housing practice. 42 U.S.C. § 104.910(b)(3)(i)(A). However, assessment of a civil penalty is not automatic. To ascertain the amount of the civil penalty, this tribunal should consider the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of the Respondent and the goal of deterrence, and other matters as justice may require. H.R. Rep. N. 711, 100th Cong. 2d Sess. at 37 (1988). *See also HUD v. Jerrard*, Fair Housing-Fair Lending (Aspen) ¶ 25,000 at 25,096 (HUDALJ Sept. 28, 1990).

The Charging Party seeks a civil penalty of $3,000, based on Respondent's refusal to participate in these proceedings and her failure to answer the charges or to respond to any of the pleadings in the case, including the request for a default judgment.

Nature and Circumstances of the Violation

The nature and circumstances of the violation in this case warrant imposition of a modest penalty. Although the Respondent's conduct was serious, it does not warrant the maximum penalty. The evidence shows that Mrs. Roberts lived in the downstairs apartment and that she understood that she could rent to whomever she wanted. Although she could lawfully refuse to rent to any person, the means by which she communicated her decision not to rent violated the law.

Degree of Culpability

Respondent is not a real estate broker, and by all indications owns only one dwelling. Further, she understood that she had a right to rent that one unit to anyone she wanted to and could reject an applicant for any reason. She was aware of only part of the law regarding owner-occupied rental of less than four units. There is no evidence that she acted with careless disregard for the Fair Housing Act. *See Morgan v. HUD*, 985 F. 2d 1451 (1993).

History of Prior Violations

There is no evidence that Respondent has been adjudged to have committed any previous discriminatory housing practices. Thus, the maximum civil penalty that may be assessed against Respondent in this case is $11,000. 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3)(i)(A).

Respondents' Financial Circumstances

Evidence regarding Respondent's financial circumstances is peculiarly within her knowledge, so she has the burden of producing such evidence for the record. If she fails to produce credible evidence which would tend to mitigate against assessment of a civil penalty, a penalty may be imposed without consideration of financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (Aspen) 25,001, 25,015 (HUDALJ Dec. 21, 1989), *aff'd* 908 F.2d 864 (11th Cir. 1990). There is evidence that Mrs. Roberts is elderly and may be disabled. However, the extent of the Respondent's assets and liabilities is not known and the Respondent did not provide any evidence which establishes that payment of the maximum civil penalty would cause her financial hardship. Accordingly, I find that the record does not support a finding that Respondent could not pay the maximum civil penalty without suffering undue hardship.

Goal of Deterrence

A civil penalty is appropriate as a deterrence to others. Those similarly situated as Respondent must be put on notice that violations of the Fair Housing Act will not be tolerated. Owners, including those who are protected by the so-called *Murphy's*

exemption, must be made aware that making discriminatory statements to prospective tenants will incur penalties.

Based on consideration of the elements discussed above, I conclude that a civil penalty of $3,000 is warranted.

Injunctive Relief

The administrative law judge may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3623(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell II, supra*, 908 F. 2d at 874 *(quoting Marable v. Walker*, 704 F. 2d at 1219, 1221 (11th Cir. 1983).

The purposes of injunctive relief in housing discrimination cases include: eliminating the effects of past discrimination, preventing future discrimination, and positioning the aggrieved persons as close as possible to the situation that they would have been in but for the discrimination. *See Park View Heights Corp. v. City of Black Jack*, 605 F. 2d 482, 485 (7th Cir. 1975). The relief is to be molded to the specific facts of the case.

The Charging Party seeks injunctive and other equitable relief in light of the violation. It asks that Respondent be permanently enjoined from discriminating in rental transactions on the basis of race in violation of § 3604(c). I conclude that injunctive relief is necessary to ensure that Respondent does not in the future engage in the making of discriminatory statements with regard to rental housing. The appropriate injunctive relief for this case is provided in the Order below.

CONCLUSION AND ORDER

The fact demonstrate that Respondent Margaret Roberts discriminated against Complainants Regina Patterson, Dierdre and Charlie Isaac, and Jeanette Watson-Burns, on the basis of race in violation of 42 U.S.C. § 3604(c). The facts also establish that as a result of the need for investigation, LIHS suffered a frustration of its mission and a diversion of its resources. As a result of Respondent's unlawful statements, the Complainants have suffered injuries which must be remedied by an award of compensatory damages. In addition, to protect and vindicate the public interest, injunctive relief is necessary and a civil penalty must be imposed against Respondent. Accordingly, the following Order is entered.

ORDER

Having concluded that the Respondent discriminated against Complainants in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act, it is hereby **ORDERED** that:

1. Respondent is permanently enjoined from making, printing, 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 or on any other basis prohibited by the Fair Housing Act; preference, limitation, or discrimination based on familial status, or on any other basis prohibited by the Fair Housing Act;

2. Within thirty (30) days of the date on which this Order becomes final, Respondent Margaret Roberts shall pay actual damages in the amount of $500 to Complainant Regina Patterson;

3. Within thirty (30) days of the date on which this Order becomes final, Respondent Margaret Roberts shall pay actual damages in the amount of $1,500 to Complainants Dierdre and Charlie Isaac;

4. Within thirty (30) days of the date on which this Order becomes final, Respondent Margaret Roberts shall pay actual damages in the amount of $1,500 to Complainant Jeanette Watson-Burns;

5. Within thirty (30) days of the date on which this Order becomes final, Respondent Margaret Roberts shall pay actual damages in the amount of $4,625 to Complainant Long Island Housing Services; and

6. Within thirty (30) days of the date on which this Order becomes final, Respondent Roberts shall pay a civil penalty of $3,000 to the Secretary, United States Department of Housing and Urban Development.

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/

CONSTANCE T. O'BRYANT
Administrative Law Judge