

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
Vernald Frank and
Patricia Rodriguez,

Charging Party,

v.

Brandy Tucker,
John Nobel,
Uriel Yossefi,

Respondents.

HUDALJ 09-90-1008-1
HUDALJ 09-90-1009-1

Decided: August 24, 1992

Desley Brooks, Esq.
For the Government

George Weingarten, Esq.

For the Respondents

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

INITIAL DECISION

Statement of the Case

This matter arose as a result of complaints filed by Vernald Frank and Patricia Rodriguez ("Complainants"), alleging discrimination based on race in violation of the Fair Housing Act as amended, 42 U.S.C. §§ 3601, *et seq.* ("the Act"). On February 10, 1992, 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 Secretary") issued two charges against Brandy Tucker, John Nobel and Uriel Yossefi ("Respondents"), alleging that they had engaged in discriminatory practices in violation of Sections 804 and 818 of the Act, 42 U.S.C. §§ 3604 and 3617. Because the factual allegations in the charges were almost identical, the actions were consolidated by Order dated April 1, 1992.

A hearing was held in San Diego, California on May 12-13, 1992. The parties' briefs were timely filed on June 25, 1992.

Findings of Fact

Complainants' Move to Plaza Lagoon

1. Respondent Tucker is the resident manager of the Plaza Lagoon Apartments ("Plaza Lagoon"), a seventeen-unit complex located at 1910 South Broadway, Oceanside, California. (Tr. 347, 400; S.Facts Nos. 1-3).¹ Tucker attended Cyprus College and received a B.A. in languages. (Tr. 395).

2. Respondents Nobel and Yossefi are the owners of Plaza Lagoon. (S.Facts Nos. 1 and 2). Nobel received a high school diploma, graduated with a B.A. from Tehran University, and did graduate studies at Jerusalem University and the University of Southern California. He represents that his current net worth is \$1,328,500.00. (S.Ex. 19). Yossefi graduated from high school. He lists the net value of his one-half interest in Plaza Lagoon at \$47,500.00, and represents that his current net worth is \$38,750.00. (S.Ex. 23).

3. Nobel and Yossefi first hired Tucker as resident manager of Plaza Lagoon in

¹The following reference abbreviations are used in this decision: "Tr." for Transcript, "S.Ex." for Secretary's Exhibit, "R.Ex." for Respondents' Exhibit, and "S.Facts" for Secretary's Statement of Uncontested Facts.

1986 or 1987, and re-hired her in that capacity in or about July 1989. (Tr. 28, 144, 347, 387, 400).

4. In connection with Tucker's duties as resident manager of Plaza Lagoon in 1989, Nobel and Yossefi expressly delegated to Tucker the authority to: issue applications to prospective tenants; screen all applicants; select tenants; issue three-day and thirty-day notices to tenants regarding compliance with Plaza Lagoon rules; contact an attorney to initiate unlawful detainer actions; write rental contracts and leases; make and enforce rules; and contract for certain refurbishing work. (Tr. 400-04).

5. Complainant Rodriguez is white and currently lives alone. She has been employed at Jimmy's Family Restaurant ("Jimmy's") located in Oceanside, California, for eleven years, and currently trains waitresses. (S.Facts No. 7; Tr. 139-40).

6. Complainant Frank is black, and currently lives alone. Since at least February 1989, he has maintained a romantic relationship with Rodriguez. (S.Facts Nos. 6 and 7; Tr. 20-21, 115-117). Until July 1989, Frank worked at the Marine Corps base at Camp Pendleton. (Tr. 74-75). He was unemployed thereafter until February 1990, when he worked briefly at Lamps Plus. His employment with Lamps Plus ended in February 1990, and he remained unemployed until about July 1991. Since then, he has been employed as a disk jockey ("D.J.") at the Full Moon Nightclub located in Encinitas, California. (Tr. 20, 119-21).

7. In February 1989, Frank moved into Rodriguez' apartment at the Carey Street Apartments ("Carey Street"). Later that same month, Rodriguez moved to the Royal Apartments ("the Royal"). Frank remained in the Carey Street apartment until June 1989, at which time he moved into Rodriguez' one-bedroom apartment at the Royal. (Tr. 21-22, 28, 146, 197-98).

8. Tucker was the resident manager of the Royal when Rodriguez moved in. (Tr. 24-25, 140, 198).

9. Tucker and Rodriguez had a cordial relationship while Rodriguez resided at the Royal. Tucker saw Rodriguez at Jimmy's, which Tucker patronized almost daily. Tucker also visited Rodriguez at her apartment. (Tr. 141). While Rodriguez lived at the Royal, she did not hear Tucker make any racially derogatory remarks. (Tr. 190).

10. Before Frank moved into the Royal, Tucker asked Rodriguez if Frank, who occasionally visited Rodriguez at the Royal, was her boyfriend. Rodriguez answered affirmatively, and Tucker said nothing in response. (Tr. 141-42).

11. After she was fired in March 1989 as resident manager of the Royal and locked out of her apartment for refusing to vacate it, Tucker lived at the Royal in her daughter's apartment, and spent two nights in Rodriguez' apartment. (Tr. 176, 198, 263). On one occasion, Frank saw Tucker sleeping on Rodriguez' couch, but he had not met

her and did not know who she was. (Tr. 77-78).

12. Frank was formally introduced to Tucker in June 1989, while Tucker was still residing at the Royal. The meeting occurred at the Royal while Frank was helping Tucker's son-in-law move into the complex. (Tr. 23, 77).

13. Tucker remained at the Royal until July 1989 when she moved to Plaza Lagoon to become its resident manager. (Tr. 27-28).

14. During a July 1989 visit to Rodriguez' apartment, Tucker invited Rodriguez to move to Plaza Lagoon.² Tucker extended the invitation because she "had a nicer apartment and...the rent was good...and she would like to have [Rodriguez] over there." (Tr. 144). Tucker described the available apartment and advised Rodriguez that the rent would be \$500.00 per month. Tucker indicated that \$500.00 per month was less than other tenants were paying for a two-bedroom unit. Tucker further stated that if Frank moved in, an additional \$50.00 per month would be required. Rodriguez indicated to Tucker that the terms proposed were acceptable and that she would move to Plaza Lagoon. (Tr. 144-45, 179-80, 206).

15. Tucker knew Frank was black when she offered the Plaza Lagoon apartment to Rodriguez. (Tr. 206-07).

²According to Tucker, Rodriguez wanted to break away from Frank, and liked the security offered at Plaza Lagoon. (Tr. 349). I do not credit this, or any other uncorroborated testimony offered by Tucker. Her testimony as a whole was glib, rather than candid. She avoided characterizing flatly contradictory testimony by deferring to "the court's judgment." (Tr. 426-27). The five witnesses who gave contradictory testimony were non-parties whose testimony I found to be credible and forthcoming.

16. Prior to Rodriguez' move to Plaza Lagoon, Tucker told her that she was wasting her time with Frank and that she could do better than Frank. Tucker made the comment in the context of her "friendship" with Rodriguez and did not offer a basis for her opinion. At the time, Rodriguez found nothing racial in the statement, but took offense at the remark. (Tr. 145-46, 199-200).

17. By the end of June or beginning of July, Frank completed his purchase of equipment with which he intended to start his own business as an independent disk jockey. Frank paid \$5,000.00 for the equipment, and stored it at Camp Pendleton where he worked. (Tr. 57, 83-84, 93).

18. Rodriguez moved into Unit Q of Plaza Lagoon on July 15, 1989. (Tr. 146). Unit Q was an upstairs apartment, located directly beneath Tucker's. (Tr. 29). The apartment had two bedrooms, a dining area, a full kitchen with a standard-size refrigerator, a bath with a shower, and ample closet space. (Tr. 29-30). Plaza Lagoon had a laundry facility. (Tr. 164).

19. Rodriguez purchased all new furniture for the apartment at Plaza Lagoon. (Tr. 30).

20. Frank helped Rodriguez move into Plaza Lagoon on July 15, 1989. From July 15 to July 22, 1989, Frank remained behind at the Royal, cleaning the apartment so that Rodriguez could recover her security deposit. He slept in the empty apartment, although he occasionally slept at Plaza Lagoon.³ From July 22 to August 4, 1989, Frank lived in his truck. From July 15, 1989 to August 4, 1989, Frank drove Rodriguez to and from work. When he took her to work, he would wait for her in his truck across the street from Plaza Lagoon. (Tr. 29, 80-82, 98-99, 125-26, 180).

21. Tucker continued to frequent Jimmy's after Rodriguez moved to Plaza Lagoon. At Jimmy's, Tucker continued to sit in Rodriguez' work area of the restaurant. Tucker also visited Rodriguez' Plaza Lagoon apartment. Their relationship at this time was friendly. (Tr. 146-47).

22. On one occasion shortly after Rodriguez moved to Plaza Lagoon, Tucker gave Rodriguez a ride to work. When another car nearly hit Tucker's car, Tucker stated, "you might know it would be niggers that were in the car. I hate Niggers." (Tr. 160, 190-91).

23. On or about August 1, 1989, Rodriguez paid rent in the amount of \$500.00 for the month of August. (Tr. 176).

24. In early August 1989, Frank and Rodriguez agreed that Frank would move

³Given the nature of his relationship with Rodriguez, and the testimony of Katherine Ruch and Lori Beattie, discussed *infra* n.4, I infer that Frank stayed overnight at Plaza Lagoon on a few occasions.

permanently into Unit Q at Plaza Lagoon and that they would live there together. (Tr. 29-30, 90-92, 149). Rodriguez did not advise Frank, prior to his moving in, that there would be a \$50.00 additional charge. (Tr. 90-92). Rodriguez assumed they would have to start paying the additional \$50.00 per month as of September 1, 1989. (Tr. 209).

25. Prior to moving into Plaza Lagoon, Frank had had neither a disagreement nor an extended conversation with Tucker. (Tr. 42-43).

26. On August 3, 1989, Tucker served Rodriguez with a three-day notice to comply with the provisions of her rental agreement and the addendum thereto regarding guests. (Tr. 350-53). The notice stated:

* * *

Please comply within 3 days - or see me with explanation, re:
Frankie, your "guest".

Thankyou
Brandy -

P.S.

Trish, I have to go by the rules too. Talk to me!

R.Ex.8.

27. Plaza Lagoon's "House Rules", appended to its apartment lease agreement, state:

GUESTS

1. No person will be permitted to occupy the premises for more than 014 [sic] consecutive days unless he/she is registered at the Business Office. Guests must be accompanied by the Resident under all circumstances, and in no event shall any such guest be allowed to occupy the premises for longer than 014 [sic] consecutive days. After 14th day, there is a charge of \$25.00 per day for 1 wk. Then an eviction notice thereafter.

S.Ex. 34.

28. On August 4, 1989, Rodriguez orally advised Tucker that Frank was going to move into her apartment at Plaza Lagoon. Immediately thereafter, on August 4, Frank moved in. (Tr. 29, 147, 207-08).⁴ That day, Frank moved his D.J. equipment into the

⁴Tucker's testimony was contradictory. She testified that Frank moved into Plaza Lagoon on or about

apartment's second bedroom. (Tr. 29, 86, 93, 180).

29. No other black persons resided at Plaza Lagoon either when Frank moved in or during the time he resided there. (Tr. 54-55, 162).

30. Frank saw Tucker at Plaza Lagoon on August 4, 1989. Frank was entering and Tucker was exiting the complex. At that meeting, they exchanged greetings. Later that day, Frank met Tucker at the Plaza Lagoon mailbox, again while Frank was entering and Tucker was exiting the complex. At this meeting, Tucker stated to Frank, "[i]f I'd have known she [Rodriguez] was going to move that nigger in, I'd have never rented her the apartment." Frank felt hurt and angry, but said nothing in reply and returned to the apartment. (Tr. 31-32, 43, 124). Because Rodriguez was not home when the statement was made, Frank advised her of it that night when she returned from work. (Tr. 88-90).

31. On August 4 or 5, 1989, after the encounter with Tucker at the Plaza Lagoon mailbox, Frank received a notice that had been placed on the screen door to Unit Q. (Tr. 35, 41, 44, 147). The notice was dated August 4, 1989, and was signed "The management, Brandy Tucker, mgr." (S.Ex. 35). The notice stated:

This is a 30-day notice to "Perform Covenants," meaning you have (3) three choices:

1. Vacate premises on your own within 30-days of this notice, or
2. management will serve you with at 30-day notice, or
3. Pay an additional \$50.00 per month starting Sept. 04, 1989 and additional \$50.00 per month every month thereafter if guest continues to

July 18, 1989. (Tr. 349). For support of that testimony Respondents rely on the testimony of Katherine Ruch, a friend of Rodriguez, and Lori Beattie, another tenant at Plaza Lagoon, that Frank was living in the apartment "right after" Rodriguez moved in, or that they moved in "at the same time." (Tr. 305, 313). They also argue that in light of the August 3, 1989, notice, it would be nonsensical to conclude that Frank moved in on August 4. However, that Frank had occasionally stayed overnight at Plaza Lagoon prior to August 4, 1989, is not inconsistent with Frank's and Rodriguez' testimony that Frank moved in permanently on August 4. Under Plaza Lagoon's own guest policy, a tenant could have a guest for up to 14 days without any consequence, and up to an additional 7 days for a charge of \$25.00 per day. (R.Ex. 8). The August 3 notice asks for an explanation of Frank's status. It alleges no consecutive days of occupancy. Finally, the testimony of Ruch and Beattie was not conclusive as to when Frank actually moved in with Rodriguez. It only reflects their assumption that he had moved in, because he was present at their visits.

reside in your apt additional amt. not to exceed
a total of \$550.00 per month.

Id.

32. Frank first learned of the additional \$50.00 charge when he received the notice on August 4 or 5, 1989. (Tr. 90-93). Given Tucker's earlier statement at the mailbox, Frank concluded that he and Rodriguez were being charged an additional \$50.00 per month because he was black. (Tr. 44, 56).

33. Rodriguez saw the second notice on August 5, 1989. She thought it was something all tenants received and was just a reaffirmation of the requirement that she and Frank pay an additional \$50.00 per month. (Tr. 147, 200-01). On or about August 5, 1989, Rodriguez orally advised Tucker that she had received the notice and would pay the additional \$50.00 per month. (Tr. 149-50, 208-09).

34. Frank and Rodriguez received a third notice on August 7, 1989. (Tr. 48, 148). That notice, entitled "Thirty Day Notice to Quit" was dated August 7, 1989, and was signed by "Brandy Tucker, mgr." It provided that 30 days after service, Frank and Rodriguez were to deliver possession of the premises, and that failure to comply would result in institution of legal proceedings to recover possession. (S.Ex. 36). When Frank and Rodriguez received the third notice, they attempted no communication with Tucker, but Rodriguez viewed the notice as the first indication of a problem. (Tr. 48, 209-10).

35. Sometime after the August 4, 1989, encounter, Tucker yelled to Frank "[t]urn that music down, nigger." (Tr. 106-07).

36. On or about August 28, 1989, Rodriguez went to Tucker's apartment to pay the \$550.00 rent for the month of September. Tucker at first refused to come to the door. When she did, she refused to accept any rent payment and slammed Rodriguez' finger in the door. Rodriguez ran back upstairs to her apartment, and was crying. (Tr. 48-49, 94-97, 150-52, 202-06, 210).

37. Nancy Brockman, a white tenant, moved into Plaza Lagoon with a white roommate. Prior to moving in, they each signed the apartment lease. In September 1989, a white friend of Brockman's roommate moved into the apartment. Brockman and her roommate paid an additional \$25.00 per month after the friend moved into the apartment. Brockman was not asked for permission to add anyone to the lease. (Tr. 215-17, 220-22).

38. At some time in August or September Rodriguez and Frank were served with a summons and complaint in an unlawful detainer action brought by Nobel and

Yossefi as the owners of Plaza Lagoon.⁵ (Tr. 49-50; R.Ex. 1).

39. At the end of September 1989, Frank and Rodriguez had an argument with Tucker in the courtyard. Tucker told them that she did not want them at Plaza Lagoon. (Tr. 319-21).⁶

⁵The record does not indicate the date on which they were served.

⁶Beattie testified that there were a number of such arguments and that tension escalated over time. (Tr. 319-21). She recalled one incident during which Frank entered Tucker's apartment and some sort of "physical encounter" ensued. (Tr. 321).

40. The unlawful detainer action was settled by an agreement providing that while Frank and Rodriguez would pay no rent for September or October, they would vacate the Plaza Lagoon apartment by October 24, 1989. (Tr. 49-50, 107, 152-53, 184-85).

41. Frank and Rodriguez each filed a housing discrimination complaint with HUD on October 4, 1990. (S.Ex. 1, 2; Tr. 49-50).⁷

Tucker's Statements to Others About Complainants

42. After Frank moved in, Tucker stopped talking to Rodriguez. Tucker continued to patronize Jimmy's almost daily, but no longer sat in Rodriguez' section, nor spoke directly to her. (Tr. 147, 282). To get Rodriguez' attention, Tucker loudly mentioned Rodriguez' name in conversation with other employees. (Tr. 147, 153-56). One co-worker told Rodriguez that Tucker, referring to Frank, said, "if she had known that that nigger was moving in with [Rodriguez] that she wouldn't have let [Rodriguez] in the complex...", and that "she thought [Rodriguez] could do better", and that Frank "was a loser." (Tr. 155-56).

43. Katherine Ruch was a regular customer at Jimmy's in the Summer of 1989. Ruch had met Rodriguez at Jimmy's and later met Frank through Rodriguez. Ruch considers herself Rodriguez' best friend. (Tr. 296-97, 304). Ruch initially met Tucker in or about June 1989 at Rodriguez' apartment at the Royal. When Ruch met Tucker, Frank had already moved into the Royal apartment. At that meeting, Tucker did not make any racially derogatory comments. (Tr. 296, 301-03). In Ruch's later conversations with Tucker at Jimmy's, Tucker always referred to Frank as a "nigger." (Tr. 297-302). Tucker also made a statement to Ruch which indicated that she disapproved of Rodriguez living with "this nigger", that she did not know what Rodriguez saw in "this 'nigger' that she's living with", and that Rodriguez was "too good" to go out with and live with Frank. (Tr. 298-99). Tucker also told Ruch that she was "making it hard" for Frank and Rodriguez so that Frank would leave Plaza Lagoon, and that she did not want Frank at Plaza Lagoon because he was black. Tucker further stated to Ruch that, in general, she did not "care for" black people, "period." (Tr. 300).

⁷Respondents have renewed their motion to dismiss for failure to comply with the one-year statute of limitations set forth at 42 U.S.C. § 3610(a)(1)(A)(1). See Resp. Brief at 7-8. Respondents' initial motion was denied by Order dated May 5, 1992, and the motion is again denied for the reasons set forth in that Order.

Ruch believes that Tucker is prejudiced. (Tr. 301). On several occasions, Ruch advised Rodriguez of Tucker's comments. (Tr. 302).

44. Tucker stated to Angela Newland, a waitress at Jimmy's, that she did not like black people. Newland worked at Jimmy's from February to November 1989, and served Tucker on a regular basis, approximately five nights per week. Tucker made the statement concerning blacks to Newland between six and ten times. (Tr. 226-27, 230-32, 235-36).⁸

45. On one particular occasion, Newland was so offended by one of Tucker's comments concerning black people that she went to her purse and brought out a picture of her daughter to show Tucker. Newland's daughter is half black, and upon seeing the picture, Tucker was shocked and became silent. Later, Tucker continued to place orders with Newland, but ceased conversing with her. Newland believes that Tucker did not like Frank because he is black and that Tucker is a racist. (Tr. 227-230, 232, 237).

46. In June or July 1989, Tucker stated to Edith Sinclair, the owner and manager of Jimmy's, that Rodriguez was a "nigger-lover." Tucker's comment was made in reference to Rodriguez' relationship with Frank and her relationship with LaVonce, a black foster child who referred to Rodriguez as his mother. Sinclair did not advise Rodriguez of Tucker's comment. (Tr. 281-84, 286-87). During July and August 1989, Tucker told Sinclair that she knew Frank was not Rodriguez' husband, that LaVonce was not Rodriguez' child, and that Rodriguez "flaunted them in that respect." Sinclair believes Tucker is prejudiced against black people and is a racist. (Tr. 285).

47. During the Summer of 1989, Sinclair heard Tucker make statements about Rodriguez to other workers at Jimmy's. Sinclair considered Tucker's conduct to constitute "continual harassment" and believed that because Tucker's presence put Rodriguez under great stress, Rodriguez avoided contact with Tucker. (Tr. 285). On one occasion, Rodriguez saw Tucker coming into the restaurant and said to Sinclair, "I can't take it any more. She's coming in again, I can't take it any more." After this incident, Sinclair barred Tucker from the restaurant. (Tr. 285-86, 292).

48. Lori Beattie, a booking clerk for the San Diego County Sheriff's Department, was a tenant at Plaza Lagoon from February 1989 to September 1990. (Tr. 307-08). Beattie is hispanic. (Tr. 312). She met Rodriguez and Frank at Plaza Lagoon, and knew them as neighbors. (Tr. 307, 317). Tucker stated to Beattie, "if I had known

⁸At hearing, Newland testified that she did not recall advising Rodriguez of Tucker's comments, but assumed she had. (Tr. 232, 235-36). That testimony is an insufficient basis upon which to make a finding that Newland so advised Rodriguez.

[Rodriguez'] husband was black I wouldn't have let them rent here." (Tr. 308-09, 323).⁹

49. In Beattie's presence, Tucker told a mailman that Frank no longer lived at Plaza Lagoon when, in fact, he still did. Nevertheless, after the statement was made, Frank's mail continued to come to Plaza Lagoon. (Tr. 309, 323-24).

50. In the summer of 1990, after Beattie's friends attending a party at her apartment had created a disturbance at the security gate, Tucker told Beattie that "your black friends aren't allowed here anymore." (Tr. 310, 313-15, 323).

51. Beattie has had conversations with Tucker during which Tucker referred to hispanics as "spics" and blacks as "niggers." Beattie believes Tucker is a racist. (Tr. 312, 323).

Tucker's Employment Immediately Before Working at Plaza Lagoon

52. Jay Reid is an owner of Benton Brothers Property Management Company, which owns and, since February 1989, has managed the Royal. Tucker was hired by the previous property management company, but worked for Reid as the resident manager of the Royal for approximately one month after Benton Brothers began to manage the property. (Tr. 248-49).

53. During the month Tucker worked for Reid, Tucker had discussions with Reid concerning the screening of applicants. During one conversation, Tucker stated "that there were not a lot of people to choose from the area, that we'd have to end up renting to Hispanics, even though they had a lot of kids, but even so they were marginally better than black people, but were not as good as whites." (Tr. 254). Tucker also stated several times to Reid that she was attempting to screen out "undesirables", a term Reid

⁹On brief, Respondents request that Tucker be allowed to amend her answer to the complaint filed by Frank that admitted having made this statement to Beattie. Counsel for Tucker alleges that the admission was due only to his inadvertent error. Under the circumstances, that explanation is reasonable and, accordingly, the amendment to the pleading is allowed. However, the finding stands that the statement was, in fact, made, notwithstanding Tucker's denial. Tucker's testimonial denial is not credible, for reasons previously stated; and Beattie's explanation of why Tucker would have made such a comment, given that Tucker knew at the time she rented the apartment to Rodriguez that Frank was black, is credible. In Beattie's view, Tucker, who "talked a lot," made the comment in an attempt to ingratiate herself with Beattie by taking Beattie into her confidence. (Tr. 317, 325-26). Beattie's explanation is consistent with the description by Sinclair, Ruch, and Newland of Tucker's conduct. Sinclair testified that during Tucker's frequent visits to Jimmy's, Tucker's "motives for sitting and chatting with someone were merely to get them to buy her a cup of coffee, solicitation...." (Tr. 295). Ruch and Newland testified that during casual conversation, Tucker freely made racially derogatory comments about Frank and his relationship with Rodriguez. While there is no evidence that Beattie repeated the comment to Rodriguez or Frank at the time the comment was made, her failure to do so is understandable because she did not know Frank and Rodriguez well. (Tr. 319).

understood Tucker to mean "anybody that she did not feel, in her mind, were what she wanted, blacks, Hispanics, specifically." In another conversation with Reid, Tucker stated that a black tenant who had lived at Royal for some time was "a good tenant, for a black person." On two occasions, Tucker used the word "nigger" when referring to black people. (Tr. 258-60).¹⁰

54. While working for Reid, Tucker prepared a memorandum concerning suggested improvements and methods of increasing rental income at the Royal. (S.Ex. 40; Tr. 256, 414-16). In the memorandum, Tucker stated, *inter alia*:

* * *

4. Must stay above Barrio area.

5. Area is mexican, Black & phillipino [sic] - not a lot to choose from -

* * *

S.Ex. 40 (emphasis in original).¹¹

55. Reid fired Tucker as manager of the Royal in March 1989. One of the bases for her termination was Reid's belief that Tucker had discriminated against residents and prospective tenants. (Tr. 258-62).¹²

56. Tucker refused voluntarily to vacate her unit at the Royal after her employment was terminated. She also refused to comply with a writ of possession obtained by the owner in an eviction proceeding, and was locked-out of her apartment. (Tr. 262-63).

¹⁰When asked whether Reid had lied concerning her purported racially derogatory statements, Tucker evaded the question by deferring to the court's judgment. (Tr. 427). I credit Reid's testimony. In direct contrast to his frank and forthcoming testimony, Tucker's testimony was smug and lacked candor.

¹¹At the hearing, Tucker acknowledged that she wrote the document, but claimed, for the first time, that she prepared it in response to Reid's desire to make the Royal an "all white professional building." At her deposition she denied writing the document, representing that she did not "recognize" it. (Tr. 347-48, 413-16). I find no credible evidence to support a finding that Reid solicited Tucker's racially derogatory comments.

¹²Reid testified that although he did not mention Tucker's "discrimination" in the letter, he considered it as a factor in making the termination decision. Reid further testified that on the advice of counsel, he believed there was an "open and shut case" for termination based on Tucker's rental of an apartment to her daughter on a long-term basis at a reduced rate. (Tr. 260-62). The termination letter itself was not introduced into the record, and Tucker denies having received any such letter. (Tr. 345-346). However, I fully credit Reid's un rebutted testimony concerning the circumstances of Tucker's termination.

57. Neither Nobel nor Yossefi contacted Reid, prior to re-hiring Tucker, to determine the reason for terminating her employment at the Royal. (Tr. 263).

Damages Evidence

58. After moving into Plaza Lagoon on August 4, 1989, Frank began developing his D.J. business. While at Plaza Lagoon he began distributing flyers and business cards that listed his phone number at Plaza Lagoon. However, he was unable to develop any bookings or to derive any income from the business. (Tr. 94, 108-10, 182-83).

59. As of October 3, 1989, Rodriguez' gross monthly pay was \$514.26, and her monthly take-home pay and total monthly income amounted to \$469.58. (R.Ex. 5).¹³

60. Rodriguez missed one day of work to attend the court hearing on the unlawful detainer action that was brought by Respondents. (Tr. 152, 174).

61. On October 24, 1989, Frank and Rodriguez moved from Plaza Lagoon to the Seven Gables Motel ("the Seven Gables") where they lived temporarily while looking for more permanent housing. (Tr. 56, 107, 156-57, 168). Two of Rodriguez' friends assisted them with the move. Rodriguez paid them each \$10.00. Rodriguez took two days off from work to move. (Tr. 50, 173-74).

62. When Frank and Rodriguez moved from Plaza Lagoon to the Seven Gables, Rodriguez stored some of her furniture at a friend's storage facility, and some at another friend's carport. Rodriguez paid \$45.00 per month for use of the storage facility for three and one-half months. She paid nothing for use of the carport. (Tr. 159, 164-65, 173-74, 195).

63. The Seven Gables is a large residential motel, with very small rooms. Frank and Rodriguez rented a furnished unit which consisted of one 10-by-15-foot room, including a kitchenette, and a bathroom. They moved their belongings, including Frank's D.J. equipment, into the room. Because the room did not have a telephone, Frank and Rodriguez had to use a telephone located one-quarter block away. Because the room had only a mini-refrigerator with no freezer, Frank and Rodriguez had to purchase food

¹³There is an apparent discrepancy between Rodriguez' testimony that her "income" was approximately \$9500.00 per year while she lived at Plaza Lagoon, and the figures in her application for waiver of court fees and costs, filed on October 3, 1989, in connection with the unlawful detainer action. At hearing, Rodriguez was not asked the basis for the yearly figure, nor was she asked why she did not check a box on the form that indicated that monthly income was variable. (R.Ex.5). See also Tr. 185-88. She testified only that she entered her monthly income for the month of October 1989. Under the circumstances, I find that the information on the form is the best evidence of her income during October of 1989, and that no actual discrepancy in the figures has been proved.

each day in small quantities. Because Frank's truck broke down after moving to the Seven Gables, they had to buy food at a small, expensive market next to the motel. Because the Seven Gables did not have a laundry facility, Frank and Rodriguez had to walk one and one-half blocks to a laundromat to launder their clothes. (Tr. 56, 157-59, 163-64, 167).

64. The Seven Gables is located in a neighborhood frequented by prostitutes. Frank and Rodriguez chose the Seven Gables, despite its location, because it had a unit with a kitchenette. Through the thin walls of the motel, Frank and Rodriguez could hear prostitutes with their clientele. The continual sounds kept Frank and Rodriguez awake at night. Except when she had to leave for work, the market, or the laundromat, Rodriguez stayed inside the room with the door closed at all times because she was concerned about her safety. (Tr. 157-58, 166-67).

65. When Frank and Rodriguez were living at the Royal and at Plaza Lagoon, their relationship was good, for the most part. They had some arguments, mostly about Frank working at nightclubs, but they had an active social life as a couple. (Tr. 79, 130-34). Once they moved to the Seven Gables, their relationship deteriorated. In their 150 square-foot room, they felt that they were living on top of each other, that they had no privacy, and that they were trapped. They argued more often than they had in the past. They argued, in particular, about Frank finding work other than his D.J. business. They no longer went out socially because the high rent at the Seven Gables left them with little money, and because Frank's truck had broken down. (Tr. 57, 130-33, 167-68, 174-75).

66. On February 4, 1990, Rodriguez and Frank had a particular argument concerning their lack of space at the Seven Gables. Rodriguez called the police, who came to the motel and arrested Frank. Frank was charged in connection with the disturbance and spent 10 days in jail. After pleading not guilty, he was convicted and placed on probation for one year. (Tr. 57, 99-105, 128-130, 168).¹⁴

67. Prior to his arrest, Frank began work at Lamps Plus. However, Frank worked at Lamps Plus only long enough to collect one paycheck because he lost the job due to his arrest and incarceration. (Tr. 119-20).

68. After the arrest, Frank sold his D.J. equipment and no longer pursued his own D.J. business. (Tr. 56-57).

69. Rodriguez unsuccessfully tried to get Frank's truck repaired while he was in

¹⁴Respondents assert that discrepancies between the actual record of the criminal action and Frank's hearing testimony concerning his conviction and sentence demonstrate his attempt to deceive this tribunal. See Resp. Brief at 21. However, having considered the demeanor with which Frank testified, I conclude that any discrepancy is attributable to his confusion as to legal terminology, and his reaction to the nature of the cross-examination conducted by Respondents' counsel. See Tr. 99-105, 433-39.

jail. After Frank was released, he sold the truck because he could not afford to repair it. (Tr. 163, 134-36).

70. After Frank's release from jail, he sought employment, and he and Rodriguez continued to try to move from the Seven Gables. Although their relationship began to improve, it was not the same as it was before they moved to the Seven Gables. They continued to have arguments stemming from Frank's arrest and the sale of his D.J. equipment. (Tr. 130, 133-34, 175).

71. Rodriguez' furniture was impounded and auctioned off when her friend failed to pay the storage facility bill. The furniture she stored in her other friend's carport was stolen. (Tr. 165-66).

72. Rodriguez and Frank remained at the Seven Gables for approximately four months. Rodriguez paid the \$180.00 weekly rent. (Tr. 50, 56, 163-64, 178).

73. Rodriguez searched for a new apartment both before and after she and Frank moved into the Seven Gables. She was working six or seven days a week at the time, and visited between 15 and 18 apartments at a rate of at least one per week. (Tr. 168-69, 183-84). She travelled by taxicab or paid a friend to drive her to the available apartments. One cab ride was \$24.00, but most were \$5.00 to \$6.00. (Tr. 169-70). Rodriguez paid between \$20.00 and \$25.00 for each of approximately 15 credit checks that were required to apply for available apartments. (Tr. 171).

74. Frank did not accompany Rodriguez when she made the initial inspection of an available apartment. Rodriguez preferred to look at the apartments herself, and Frank was concerned that "everybody would think the same way [Tucker] does." If Rodriguez found an acceptable apartment, Frank would then go with her "to see if everything was all right, if they would rent to [him], because of [his] race." (Tr. 168-71, 190).

75. After leaving the Seven Gables, Rodriguez and Frank moved to the Vine Street Apartments ("Vine Street"), where they shared a one-bedroom apartment. Rodriguez paid a \$300.00 deposit and \$525.00 per month rent for the Vine Street apartment. She also paid \$25.00 to \$30.00 to initiate utilities services and approximately \$55.00 to begin telephone service. Rodriguez and Frank remained at Vine Street for approximately 10 months. (Tr. 50, 159-60, 171-72, 174).

76. Rodriguez and Frank moved from Vine Street to the Camino Real Apartments, where they resided for approximately one year. Thereafter, Frank and Rodriguez moved into their current separate residences. (Tr. 51, 114-17).

Governing Legal Framework

At issue in this proceeding are the following four provisions of the Fair Housing Act that make it unlawful to:

1. "refuse to...rent...or otherwise make unavailable or deny, a dwelling to any person because of race [or] color...." 42 U.S.C. § 3604(a). By regulation, this prohibition includes "[f]ailing to accept or consider a *bona fide* offer," and "[e]victing tenants because of their race [or] color...or because of the race [or] color...of a tenant's guest." 24 C.F.R. § 100.60(b) (emphasis in original);
2. "discriminate against any person in the terms, conditions, or privileges of...rental of a dwelling...because of race [or] color...." 42 U.S.C. § 3604(b);

3. "make...any...statement...with respect to the...rental of a dwelling that indicates any preference, limitation, or discrimination based on race [or] color, or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c). By regulation, these prohibitions apply to all oral statements made "by a person engaged in the... rental of a dwelling." 24 C.F.R. § 100.75(b); and,
4. "coerce, intimidate, threaten, or interfere 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 section...804 [42 U.S.C. § 3604]...." 42 U.S.C. § 3617. By regulation, these prohibitions extend to visitors or associates of persons protected by the Act. 24 C.F.R. § 100.400(c)(2).

Where direct evidence of discrimination is presented, such evidence, if established by a preponderance of evidence, is sufficient to support a finding of discrimination. *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1452 (4th Cir.), *cert. denied*, ___ U.S. ___, 111 S. Ct. 515 (1990). See also *Secretary of HUD v. Leiner*, 2 Fair Housing-Fair Lending (P-H) para. 25,021, at 25,263 (HUDALJ Jan. 3, 1992); *Secretary of HUD v. Jerrard*, 2 Fair Housing-Fair Lending (P-H) para. 25,005, at 25,087 (HUDALJ Sept. 28, 1990).

Discussion

On August 4, 1989, Tucker stated to Vernald Frank, an African-American, that had she known Patricia Rodriguez was going to move "that nigger" (meaning him) into her apartment, Tucker would not have rented the apartment to Rodriguez. Tucker repeated that comment to a co-worker of Rodriguez. Tucker also stated to Lori Beattie that had she known Frank was black, she "wouldn't have let them rent" at Plaza Lagoon. Discontent with his presence, Tucker told Katherine Ruch that she was "making it hard" for Frank and Rodriguez so that Frank would leave Plaza Lagoon, and that she did not want Frank at Plaza Lagoon because he was black. These unambiguous statements evidence blatant discrimination and constitute archetypical violations of 42 U.S.C. § 3604(c) and 24 C.F.R. § 100.75. Other than Tucker's discredited denials as to some of the statements, Respondents raise nothing in defense or mitigation.

Unable to convince her "friend," Rodriguez, to "do better" than Frank, Tucker took affirmative steps to remove him from Rodriguez' apartment, and from Plaza Lagoon which had no other black tenants. On August 3, the day before Frank actually moved into Plaza Lagoon, Tucker served Rodriguez with a three-day notice to comply with Plaza Lagoon's guest rules, despite the fact that Frank had not yet occupied

Rodriguez' apartment for 14 consecutive days as permitted by those rules.¹⁵ Tucker ignored Rodriguez' oral advice that Frank was going to move in, and she declined to allow the three-day notice to lapse before she served the August 4 notice that purported to give 30 days for Rodriguez to vacate, to pay an additional \$50.00 per month, or to receive yet another 30-day notice. Three days into the 30-day notice period, and despite the fact that Rodriguez had advised Tucker on August 5 that she had received the August 4 notice and would pay the additional \$50.00 per month, Tucker served Rodriguez with a 30-day notice to quit or face eviction.¹⁶ When Rodriguez attempted to pay the September rent, including the additional \$50.00, Tucker refused to accept it, slamming Rodriguez' finger in the door. At Jimmy's restaurant, Tucker undertook a campaign of harassment against Rodriguez that reached such a level of intensity that Tucker was barred from the restaurant by its manager. She avoided Rodriguez' station and declined to speak directly to her. Rather, she loudly mentioned Rodriguez' name to other employees of the restaurant while she made racially derogatory remarks concerning Frank, his relationship with Rodriguez, and his presence at Plaza Lagoon.¹⁷ Tucker's ultimate act to remove both Rodriguez and Frank from Plaza Lagoon was the initiation of the unlawful detainer action which was resolved only when Frank and Rodriguez agreed to leave the complex.

Tucker's actions demonstrate her deeply held racial animus towards blacks in general. That animus was clearly expressed to Reid who, within one month, fired her as the resident manager of the Royal. She repeatedly made racially derogatory comments to him about blacks, used the word "nigger" when referring to blacks, and suggested screening out black applicants as a class she deemed "undesirable." During conversation with Rodriguez, Tucker used the word "nigger," and she had the effrontery not only to address Frank by that epithet, but also, to demean him further by referring to him in the third person, as if he were invisible or not there. During conversations

¹⁵Nothing in the guest rules prohibits occasional visits by guests. The reference in the rule to "consecutive" nights was intended to prohibit de facto permanent tenants. (Tr. 375). The fact that the notice invited Rodriguez to comply with the rules or to see Tucker with an explanation indicates a concession that Frank was not necessarily violating the rules by his presence prior to the date of the notice. Tucker's testimony is consistent with such an uncertainty as to Frank's status. (Tr. 359).

¹⁶Respondents assert that Tucker served this notice in response to Frank's "physical violence" during a confrontation with Tucker. That assertion is not supported by any evidence. The notice made no mention of any violence, and Tucker could not recall when she issued the notice, even after testifying about the alleged altercation. (Tr. 358).

¹⁷Respondents argue that some physical force or violence is necessary to constitute the type of coercion, intimidation, threat or interference prohibited by 42 U.S.C. § 3617. However, the cases they cite hold only that physical force or violence *can* constitute a violation of section 3617, not that they are prerequisites to finding such a violation. *Grieger v. Sheets*, 689 F. Supp. 835 (N.D. Ill. 1988); *Stackhouse v. De Sitter*, 620 F. Supp. 208 (N.D. Ill. 1985). Indeed, liberal construction is mandated by the Act "if the statute is to prohibit effectively 'all forms of discrimination, sophisticated as well as simple-minded.'" *United States v. American Inst. of Real Estate Appraisers of the Nat'l Ass'n of Realtors*, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977), *appeal dismissed*, 590 F.2d 242 (7th Cir. 1978).

with Ruch and Newland, Tucker also expressed her dislike and disparagement of black people, and she advised Beattie that her black friends were no longer allowed at Plaza Lagoon.

The service of the notices, the harassment at the restaurant, the refusal to accept the rent for September, and the eviction of Rodriguez and Frank were all motivated by considerations of Frank's race.¹⁸ The notices were not issued in conformance with Plaza Lagoon's own rules, and they were not even issued in conformance with their own terms. Tucker had no reason for her harassment of Rodriguez at work except for her desire to coerce and intimidate Rodriguez and Frank into moving. Tucker's refusal to speak to Rodriguez or to accept rent for the month of September, was to create a pretext for the institution of the eviction action. Those actions violate 42 U.S.C. § 3617, and 24 C.F.R. § 100.400(b).

Even as she was taking action to evict Rodriguez and Frank, Tucker acted favorably on the request of white tenants to allow them an additional roommate. In September 1989, Tucker allowed Brockman and her roommate, both of whom are white, to pay an additional monthly charge when the roommate's white friend moved into their apartment.¹⁹ Tucker refused to accept the rent and additional charge for the month of September from Rodriguez. Respondents have failed to offer any justification for such disparate treatment. The circumstances compel the inference that the reason was Frank's race. Her refusal to allow Rodriguez to exercise the option of paying the

¹⁸Indeed, Respondents have offered no legitimate basis for any of the actions taken by Tucker against Frank and Rodriguez. Apart from the motion to amend the answer and a motion to dismiss for failure to comply with the statute of limitations, Respondents' entire brief consists only of arguments (1) that the Charge fails to state a cause of action; (2) that the charging party has failed to make a prima facie case; (3) that the testimony of certain witnesses is irrelevant; and (4) that damages, if they exist, are minimal or nonexistent.

¹⁹The monthly charge for the additional white roommate was not the same as that Rodriguez had anticipated paying. However, the record does not contain any evidence comparing the attributes or amenities of the two apartments, or of the nature or duration of the tenancy of Brockman's new roommate. Consequently, there is no evidence upon which a determination can be made as to whether the difference in charges was rational or discriminatory.

additional charge violated 42 U.S.C. §§ 3604(a)²⁰ and (b)²¹. See also 24 C.F.R. §§ 100.60(a) and 100.65(a).

It is beyond cavil that Respondents Nobel and Yossefi are liable for Tucker's discriminatory conduct. As the owners of Plaza Lagoon, they had "the power to control" Tucker's acts. Thus, it is unnecessary to discuss the extent to which Tucker acted with their approval or at their direction. See *Marr v. Rife*, 503 F.2d 735, 741-42 (6th Cir. 1974), citing *United States v. Youritan Constr. Co.*, 370 F. Supp. 643, 649 (N.D. Cal. 1973) (owner liable under doctrine of respondeat superior and because duty to comply with the Act is nondelegable).

Relief

Section 812(g)(3) of 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). That section also provides that to "vindicate the public interest," a civil penalty may be assessed. The Secretary seeks a total of \$206,812.50 to compensate Rodriguez and Frank for their out-of-pocket losses, and their "humiliation, embarrassment, emotional distress, and loss of civil rights". He also prays for injunctive relief and for \$60,000.00 in civil penalties to be assessed against Respondents.

1. Out-of-Pocket Losses

²⁰On brief, the Charging Party asserts that Tucker's refusal to accede to Frank's request to be added as a party to the lease also violates section 3604(a). Only Tucker testified that he made such a request. (Tr. 359-60). However, even crediting her testimony as an admission against interest, there is no clear evidence that Tucker did not act in accordance with the Plaza Lagoon policy that only a lessee can request that someone be added to a lease, or that she enforced that policy in a discriminatory manner. (S.Facts No. 9).

²¹The Charging Party asserts that Tucker's selective enforcement of the Plaza Lagoon guest policy, her proposal to charge more if Frank moved into the apartment than she did for other additional tenants, and her refusal to put Frank on the lease violated section 3604(b). However, neither Brockman's testimony nor Tucker's testimony concerning a Mr. Tanuguchi, another non-black tenant, was sufficient to support a claim of selective enforcement. See Tr. 215-17, 220-22, 374-75. Although both Brockman and Tanuguchi may have had "guests" who stayed at Plaza Lagoon in excess of 14 days, but were not served with any notices, those "guests" eventually became tenants at some unspecified point in time. Brockman did pay an extra charge for her guest, and there is no evidence whether Tanuguchi did so. Therefore, there is no basis upon which to conclude that Tucker acquiesced to any violation of the guest policy by non-blacks.

The Secretary seeks \$5,000.00 to compensate Frank for the out-of-pocket loss he incurred when he had to sell his disk jockey equipment, and \$400.00 to compensate him for lost wages during incarceration following his arrest on February 4, 1990. No evidence supports an award of either amount. While Frank testified that he purchased the equipment for \$5,000.00, no evidence was adduced as to the amount for which he sold it. Consequently, the amount of any loss, or indeed any profit, on the sale cannot be determined. Similarly, the amount of any wages lost cannot be determined on the record. Frank worked at Lamps Plus long enough to collect one paycheck, but there is no evidence of his salary or hourly wage rate.

The Secretary seeks \$680.00 to compensate Rodriguez for the amount of rent at the Seven Gables Motel that was in excess of that she would have paid at Plaza Lagoon; \$20.00 paid to two friends for assistance with the move to the Seven Gables; \$40.00 for the purchase of a mattress; \$100.00 for cabfare to look for a new apartment; \$337.50 for 15 credit checks required by her search for a new apartment; \$85.00 for start-up of utilities and telephone service at Vine Street; and \$150.00 for three days of lost wages.

Rodriguez and Frank resided at the Seven Gables for approximately four months at a cost of \$180.00 per week. Had they resided at Plaza Lagoon under the terms initially offered by Tucker, Rodriguez would have paid \$550.00 per month, or \$170.00 per month less than what she paid at the Seven Gables. Accordingly, Rodriguez is entitled to damages in the amount of \$680.00, the difference in rent over the four month period. She is also entitled to \$20.00 for moving assistance, \$100.00 for the cabfare, \$337.50 for the credit checks, and \$85.00 for start-up of utilities and phone service, all of which were incurred as a result of Respondents' discriminatory actions.²² Although she is entitled to compensation for three days of lost wages, she is not entitled to the amount requested. She was working at least six days a week, and, in October 1989, her monthly take-home pay was \$469.58. Annualized, her take-home pay would amount to \$5,635.00, or \$108.37 per week. Therefore, she is entitled to \$54.19 for one-half week of lost wages.

2. Embarrassment, Humiliation and Emotional Distress

The Secretary seeks \$100,000.00 each for Mr. Frank and Ms. Rodriguez as compensation for the embarrassment, humiliation and emotional distress they suffered as a result of Respondents' unlawful discrimination.²³ Although "courts do not demand

²²Ms. Rodriguez testified that she purchased a mattress for \$40.00. She is not entitled to compensation for purchase of the mattress because the record does not indicate why or when that purchase was made.

²³On brief, counsel for the Charging Party makes passing reference to damages for "loss of civil rights" and "loss of important housing opportunities," in conjunction with the request for damages for embarrassment, humiliation and emotional distress. However, counsel has neither described any such injury with specificity, nor shown that claims for damages under these headings are discrete from the damage claim for emotional distress. Accordingly, a claim under those headings has not been perfected.

precise proof to support a reasonable award of damages [for emotional distress]," *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony. See *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974); see also, *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) para. 25,001, at 25,011-13 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864, 872-73 (11th Cir. 1990). The record in this case provides dramatic evidence of psychic harm to Mr. Frank and Ms. Rodriguez, both as individuals and as a couple.

The evidence demonstrates that their relationship as a couple was like many with their vicissitudes: close and caring, at one time; estranged and angry, at others. They would live together and lead an active social life, and then separate after arguing about money and career choices. While that relationship was not idyllic, it was crushed in a cubicle at the Seven Gables motel. Forced from their two-bedroom apartment, with its dining area, full kitchen, and ample closet space, they spent the next four months living with Mr. Frank's D.J. equipment in a 150-square-foot hovel, without the basic comforts and amenities that had been available to them at Plaza Lagoon, including a telephone, a full-size refrigerator, a nearby full-service market, and a laundry facility. They had to store the new furniture Ms. Rodriguez had purchased when she first moved to Plaza Lagoon, until it was impounded or stolen.

Once they moved to the Seven Gables motel, their relationship became strained and rapidly deteriorated. Strapped financially by the increased rent, unable to afford a social life outside of their four walls, and cramped in the one-room unit, they practically fell over each other as they maneuvered around furniture and their belongings. Lacking privacy and space, the bathroom became their only refuge. Deprived of sleep by the salacious sounds of prostitutes plying their trade, the tension between them grew, as did the frequency and intensity of their arguments. Ms. Rodriguez feared for her safety at the Seven Gables and, except for leaving for work, the laundry or the telephone booth, she remained inside the room with the door locked. Their quarrels reached a crescendo when Ms. Rodriguez felt so trapped inside the room that she called the police to have Mr. Frank arrested. Their relationship improved somewhat after Mr. Frank was released from jail, but they continued to argue, primarily about his arrest, the sale of his D.J. equipment, and his employment prospects. Ultimately, after moving two more times within a year, they chose to live apart. While during the course of the hearing it was apparent that there remains a deep affection between them, Ms. Rodriguez ruefully testified, "It's just not the same anymore." (Tr. 175).

Neither Tucker's disparaging remarks that she could "do better" than Mr. Frank, nor her discriminatory remarks about blacks in general, caused Ms. Rodriguez to realize that there was a genuine problem with the previously friendly Tucker, until Ms. Rodriguez received the third notice in early August. Later, when she attempted to pay the rent for September, Tucker at first refused to come to the door, refused to accept the rent, and then slammed Ms. Rodriguez hand in the door. By that time, Tucker's message was clear. She intended to carry out her threat to "make it hard" for Complainants and to

drive Mr. Frank out of Plaza Lagoon because of his race. Tucker's harassment of Ms. Rodriguez at work was so continual and relentless that, when Ms. Rodriguez told the owner that she couldn't "take it any more," the owner banned Tucker from the restaurant.

As a result of Tucker's efforts to rid Plaza Lagoon of Mr. Frank, even if it meant evicting her as well, Ms. Rodriguez was enervated by the course of events, and, as a result, has become apathetic, lethargic, anhedonic, and reclusive. In describing how she has changed as a result of Respondents' actions, she stated:

I'm just -- I go home, I shut my door. I stay in the house.
I don't go anywhere. I don't do anything. I don't care
anymore and I don't want to care anymore. I just -- it's
just -- I don't know. I just don't care.

(Tr. 175).

As the direct object of Respondents' discriminatory actions, Mr. Frank endured great emotional tribulation. Stung by Tucker's use of the epithet "nigger," he learned that had she known he was actually going to move in with Ms. Rodriguez, Tucker would not have rented the apartment to her. His humiliation and embarrassment at being rejected as a tenant because of his race ripened into a fear that he would face the same type of rejection in the future:

It made me feel very hurt and it made me feel scared to do
anything else or to even go out and look for another
apartment because I thought everybody would think the same
way Brandy [Tucker] does. So a lot of the times Patricia
[Rodriguez] had to go by herself and find the apartment and
then later on I'd have to go in with her to see if everything was
all right, if they would rent to me, because of my race. But it
sticks with me every day, being kicked out of an apartment
because of your color.

(Tr. 58).

He was also angry and upset by the adverse affect Respondents' actions have had on his relationship with Ms. Rodriguez, their home life, and his ambition to become a self-employed businessman.²⁴ He has been deprived of his self-confidence and his self-esteem.

²⁴Mr. Frank testified that his "dream" of becoming self-employed "has gone down the tubes." (Tr. 57). In an attempt to minimize damages, Respondents argue that Mr. Frank's D.J. business was a start-up enterprise that never got off the ground. However, while Mr. Frank may not be able to recover speculative damages for loss of business earnings, he is entitled to recover for the emotional distress caused by Respondents' interference with, and interruption of, his pursuit of that financial independence.

Having considered the extent to which they both have suffered emotional distress, including the inconvenience attendant to their multiple moves and the lack of amenities at the Seven Gables, I conclude that Ms. Rodriguez and Mr. Frank have each been damaged in the amount of \$50,000.00.

3. Civil Penalties

The Charging Party has asked that \$60,000.00 in civil penalties be assessed in this case. Under the Act, where "a respondent has engaged...in a discriminatory housing practice" the administrative law judge may assess a civil penalty "against the respondent...in an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice...." 42 U.S.C. § 3612(g)(3)(A). The language of the Act contemplates assessment of a maximum penalty of \$10,000 against each respondent, where, as in this case, there has been a finding of liability as to all respondents, but there is no evidence of any history of prior discriminatory acts.²⁵

Assessment of a civil penalty is not automatic. See H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). In addition to any history of prior violations, the other elements that must be considered in determining the amount of a penalty are the nature and circumstances of the violation, the degree of culpability, the financial circumstances of the respondent, the goal of deterrence, and other matters as justice may require. *Id.*

The nature and circumstances of the discrimination in this case are particularly egregious. Tucker's conduct was malicious, blatant, public and deliberately orchestrated to injure and to drive Mr. Frank, and Ms. Rodriguez if necessary, from Plaza Lagoon because of Mr. Frank's race.

Respondents are all culpable for the discriminatory acts taken against Complainants. Tucker committed the acts of discrimination. Nobel and Yossefi re-hired her without contacting her previous employer at the Royal to determine the grounds for her dismissal from that employment. Had they done so, they would have learned that, at least in part, her dismissal was based on her propensity to discriminate against blacks and other minorities. When, nevertheless, they delegated to Tucker the unbridled authority to select and retain tenants at Plaza Lagoon, they did so with disregard of whether she would adhere to the fair housing law. There is no evidence that they ever expressed to Tucker any concern for the Fair Housing Act or the regulations promulgated pursuant to the Act.

²⁵The Charging Party cites no authority to support the assertion that despite the language of the Act, which ties imposition of a civil penalty to a respondent having engaged in "a discriminatory housing practice," the maximum penalty should be doubled where the same practice affects more than one complainant.

In view of the egregiousness of Tucker's discriminatory conduct, Nobel's and Yossefi's acquiescence to that conduct, and the lack of any evidence of remorse or reformation, it is unlikely that the goal of deterrence would be served in the absence of a substantial civil penalty. Owners of apartment complexes and their agents need unambiguous notice that active or passive participation in egregious discriminatory conduct cannot be tolerated and deserves severe sanction.

In the absence of any evidence to the contrary, I cannot conclude that Tucker's financial condition adversely affects her ability to pay the maximum civil penalty. Given Nobel's representation that his current net worth is \$1,328,500.00, he also has not demonstrated any inability to pay the maximum civil penalty. However, the evidence

that Yossefi's current net worth is only \$38,750.00 militates against imposition of the maximum assessable penalty.

Upon consideration of all the relevant factors, I conclude that Tucker and Nobel should each be assessed a civil penalty of \$10,000.00, and that Yossefi should be assessed a civil penalty of \$5,000.00.

4. Injunctive Relief

Once a determination of discrimination has been made, injunctive relief may be ordered to remove the lingering effects of prior discrimination and to insure that Respondents do not violate the Act in the future. *Blackwell*, 2 Fair Housing-Fair Lending (P-H) at 25,014. The relief, however, is to be molded to the specific facts of a particular situation. The provisions of the Order set forth below fulfill all of the requirements.

ORDER

Having concluded that Respondents Brandy Tucker, John Nobel and Uriel Yossefi have discriminated against Patricia Rodriguez and Vernald Frank, in violation of Sections 804(a), (b), (c), and 818 of the Fair Housing Act, as amended, and the regulations codified at 24 C.F.R. §§ 100.60(a), 100.65(a), 100.75(a), and 100.400(b), it is hereby, **ORDERED** that:

1. Respondents Brandy Tucker, John Nobel and Uriel Yossefi are permanently enjoined from discriminating against Complainants Vernald Frank and Patricia Rodriguez, or any other person, with respect to housing because of race or color, and from retaliating against or otherwise harassing Complainants for their participation in this case or for any matter related thereto. Prohibited actions include, but are not limited to, those enumerated in 24 C.F.R. Part 100.

2. Respondents Nobel and Yossefi shall institute internal record-keeping procedures with respect to the operation of the Plaza Lagoon Apartments and any other real property owned, managed, or acquired by them, jointly or severally, that are adequate to comply with the requirements set forth in this Order. These procedures shall include keeping all records described in this Order. Respondents shall permit representatives of HUD to inspect and copy all pertinent records at any and all reasonable times and upon reasonable notice. The representatives of HUD shall endeavor to minimize any inconvenience to Respondents occasioned by the inspection of such records.

3. On the last day of every third month beginning December 31, 1992 (or four times per year), and continuing for three years from the date this Order becomes final, Respondents Nobel and Yossefi shall submit reports containing the following information to the United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 880 Front Street, Room 553, San Diego,

California 92188-0100:

a. A duplicate application for all persons who applied for occupancy at any of the properties owned, operated, leased, managed, or otherwise controlled by Respondents Nobel and Yossefi, jointly or severally, during the three month period preceding the report, and a statement of the person's race or color, whether the person was rejected or accepted, the date on which the person was notified of acceptance or rejection, and, if rejected, the reason for such rejection.

b. A list of vacancies during the reporting period at the properties owned, operated, leased, managed, or otherwise controlled by Respondents Nobel and Yossefi, jointly or severally, including: the address of the unit, the date Respondents, their agents or employees were notified that the tenant would or did move out, the actual date the tenant moved out, the date the unit was rented again or committed to a new rental, and the date the new tenant moved in.

c. A list of all persons who inquired, in writing, in person, or by telephone, about the rental of an apartment at a property owned, operated, leased, managed, or otherwise controlled by Respondents Nobel and Yossefi, jointly or severally. The list shall include each person's name and address, the date of his or her inquiry, and the disposition of the inquiry.

d. A list of all tenants upon whom Respondents Nobel and Yossefi, their agents or employees served a termination of tenancy notice, including the tenant's name, apartment number and address, date of such service, and a statement of each reason for the termination notice, whether the tenant terminated the tenancy, and the date of such termination.

e. A description of any changes in rules, regulations, leases, or other documents provided to or signed by current or new tenants or applicants (regardless of whether the change was formal or informal, written or unwritten) made during the reporting period, and a statement of when the change was made, how and when tenants and applicants were notified of the change, whether the change or notice thereof was made in writing, and, if so, a copy of the change and/or notice.

4. Within fifteen (15) days of the date on which this Order becomes final, Respondents Nobel and Yossefi shall inform all their agents and employees of the terms of this Order and shall educate them as to such terms and the requirements of the Fair Housing Act. All new agents and employees shall be informed of such no later than the evening of their first day of employment.

5. Within fifteen (15) days of the date on which this Order becomes final, Respondents shall pay actual damages to Complainant Vernald Frank as follows:

\$50,000.00 for emotional distress.

6. Within fifteen (15) days of the date on which this Order becomes final, Respondents shall pay actual damages to Complainant Patricia Rodriguez as follows: \$1,276.69 for out-of-pocket expenses, and \$50,000.00 for emotional distress.

7. Within fifteen (15) days of the date on which this Order becomes final, Respondent Tucker shall pay a civil penalty of \$10,000.00 to the Secretary, United States Department of Housing and Urban Development.

8. Within fifteen (15) days of the date on which this Order becomes final, Respondent Nobel shall pay a civil penalty of \$10,000.00 to the Secretary, United States Department of Housing and Urban Development.

9. Within fifteen (15) days of the date on which this Order becomes final, Respondent Yossefi shall pay a civil penalty of \$5,000.00 to the Secretary, United States Department of Housing and Urban Development.

10. Respondent shall submit a report to the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 880 Front Street, Room 553, San Diego, California 92188-0100, within fifteen (15) days of the date this Order becomes final detailing the steps taken to comply with this Order.

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/

ALAN W. HEIFETZ
Chief Administrative Law Judge

Dated: August 24, 1992

