

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
Xiong Lee,

HUDALJ 05-91-0819-1

Charging Party,

Decided: February 18, 1993

v.

Jean Weber,

Michael J. Bonovich, Esq.
For the Respondent

Michael Rudolf, Esq.
For the Complainant

Steven J. Sacks, Esq.
For the Secretary

Before: Paul G. Streb
Administrative Law Judge

INITIAL DECISION AND ORDER

STATEMENT OF THE CASE

On April 18, 1991, Xiong Lee ("the Complainant") filed a complaint against Jean Weber ("the Respondent"). The complaint was filed and processed pursuant to the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* (the "Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104.

The Department of Housing and Urban Development ("the Government" or "HUD") investigated the complaint and issued a charge against the Respondent on July 23, 1992. HUD alleged that the Respondent violated 42 U.S.C. § 3617 by coercing, intimidating, threatening, and interfering with the Complainant

in conjunction with his effort to secure housing.

On August 17, 1992, the Complainant filed a Motion to Intervene that was granted on August 31, 1992. On September 15, 1992, the Respondent filed an answer to the charge; she denied all allegations that she violated the Fair Housing Act and also denied that the Complainant suffered any compensable damages.

A hearing was held in Appleton, Wisconsin on November 6, 1992. The record closed on December 31, 1992, upon the receipt of briefs from the Government and the Respondent; the Complainant did not file a brief.

ANALYSIS, FINDINGS, AND CONCLUSIONS

Background

The Complainant is a member of the Hmong, an Asian ethnic group native to Laos. He was born in Laos in 1966, emigrated with his family to Thailand in 1979, and came to the United States in 1986. In 1990 he lived with his wife and five children in Appleton, Wisconsin as members of the Hmong community. Tr. 32-33; 112.¹

In September 1990, the Complainant and his family were seeking to rent a home. The building in which they were then residing was going to be demolished, and they had to move by the end of October. Tr. 38, 48. The Complainant discussed this matter with his friend, Ross Osgood, who mentioned that his next-door neighbors, the Jacobsons, were moving and might be willing to rent their house at 113 West Atlantic Street in Appleton. He suggested that the Complainant contact the Jacobsons in that regard. Tr. 38, 58, 60, 61.

The Respondent, who is a White person, was the Jacobsons' other next-door neighbor. She lived at 117 West Atlantic Street with her daughter, Roberta Weber, and other family members. Tr. 11, 118-19, 139.

The September 21 Incident

The Government contends that the Respondent's illegal conduct occurred during an encounter with the Complainant on September 21, 1990. At approximately six o'clock that evening, the Complainant went to the Jacobsons' residence at 113 West Atlantic Street to inquire about renting it. He walked up to

¹ The following abbreviations are used in this decision: "Tr." for "Hearing Transcript"; "Ex. S" for "Government's Hearing Exhibit."

the front door and knocked. The Respondent emerged from her house, and recognized that the Complainant was a Hmong. Tr. 141. As she stood on her porch, she asked him what he was doing there. Tr. 40. The Complainant replied that Mr. Osgood had informed him that the owners were moving, and that he (the Complainant) was in an emergency housing situation and wanted to talk with the owners to see if they would rent him the house. Tr. 40-41.

The Respondent then came down from her porch and addressed the Complainant from the common driveway located between 113 and 117 West Atlantic. She said that she did not care who had told him about the property, and that his "people," as well as Mexicans, Blacks, and Vietnamese were not allowed to live on that block. The Complainant replied that he had a right to rent the house. While pointing her finger at him, the Respondent told him that if he did rent the house, he would have "trouble" and she would block the common driveway. When the conversation ended, the Complainant returned to his home. Tr. 40-42.

On September 23, 1990, two days after that incident, the Respondent met Mr. Osgood in front of the Jacobson house. The Respondent told him that she did not want him to bring any more of his Hmong friends around to see the Jacobson house. She said that she did not want any Hmongs, Blacks, or Hispanics living on the street, and that she would block the driveway if members of those groups rented the house. She also informed Mr. Osgood that she had told "that young man that came to rent this house" that she did not want him "or any of his kind" to rent it, and that she would hate to see something happen if they did. Tr. 61-64.

Approximately one to two weeks after his conversation with the Respondent, the Complainant went to the Jacobsons' new home and inquired about renting their house at 113 West Atlantic. However, the Jacobsons decided to sell the house rather than rent it. Eventually, the Complainant found an apartment and moved into it on October 30, 1990. Tr. 27, 43, 47-49.

The Respondent denied making any threatening or derogatory remarks to the Complainant on September 21, or to Mr. Osgood on September 23. She asserted that she merely answered the Complainant's questions concerning the house and, based on her knowledge of the Jacobsons' intent, informed him that "he couldn't rent the house because it wasn't for rent, it was for sale." Tr. 141-45; 148. Roberta Weber asserted that she witnessed the September 21 incident, and that her mother's version of it was correct. Tr. 120-26.

Credibility Of Witnesses

For several reasons, including my observation of the demeanor of the witnesses, I find that the version of the events presented by the Complainant and Mr. Osgood, which is set forth above, was a true description of those events. The Complainant was a very credible witness. His testimony was sincere, convincing, and consistent.

The Complainant's testimony was supported by Mr. Osgood, who was an extremely credible witness. His testimony was sincere and persuasive. Also, he was an independent witness. Although he was the Complainant's friend, he was also "friendly" and "got along well" with the Respondent. Tr. 61. Thus, there is no apparent reason why he would state falsely that the Respondent admitted to him that she made derogatory and threatening remarks to the Complainant.

The Respondent and Roberta Weber were less credible witnesses than the Complainant and Mr. Osgood. Although several witnesses testified in support of the Respondent's character for truthfulness, that testimony is not persuasive in view of other evidence. Tr. 126, 173, 178. Despite the fact that they were aware that HUD was investigating the Respondent, and notwithstanding that a HUD investigator interviewed the Respondent, neither the Respondent nor Roberta Weber made any claim during the investigation that Roberta Weber had witnessed the September 21 incident. Tr. 96, 132-33, 153-54. These facts suggest strongly that Roberta Weber simply constructed her testimony to support her mother.

Moreover, the Respondent's testimony on an important matter was contradicted. She testified that she harbored no ill feelings toward the Hmong as a racial group and never made disparaging remarks about them. Tr. 148, 155. However, it is clear from the testimony of several witnesses that she had made such remarks repeatedly, both before and after the September 21 incident.

Richard Peterson, a volunteer tester for the Fox County Fair Housing Council, spoke with the Respondent while posing as a potential buyer of the Jacobsons' house. She told him that she did not want any Asians or Hmongs living next door to her, even if she had to "go to jail" for expressing that view. Tr. 89-90, 159. Also, while commenting to Mr. Jacobson about having him as a neighbor when he offered to sell her a piece of property behind her garage, the Respondent stated that "at least you're better than Hmongs or niggers." Tr. 15.

Although the Respondent denied making those statements, I found Messrs. Peterson and Jacobson to be very credible witnesses who had nothing to gain by falsely asserting that she made the

statements. Tr. 147, 156. Mr. Peterson's testimony was verified by a tape recording of his conversation with Respondent.² Ex. S-10. Moreover, the Respondent had a good relationship with Mr. Jacobson. Tr. 146.

Also, Mrs. Jacobson recalled being present on numerous occasions when the Respondent, observing Hmongs driving past her house, made disparaging assertions about them having obtained their cars with government assistance. Tr. 26-27. The Respondent made similar disparaging comments about the Hmong to Mr. Osgood on several occasions. Tr. 69.

In addition to causing significant damage to her credibility, Respondent's statements to Mr. Peterson, Mr. Jacobson, Mr. Osgood, and Mrs. Jacobson show that the Respondent was motivated to prevent Hmongs from moving into her neighborhood. Such motivation lends additional credence to the Complainant's version of the September 21 incident.

Two additional factors detract from Roberta Weber's credibility. She was not an independent witness. In addition to being the Respondent's daughter, she had lived with her mother all of her life (21 years). Moreover, Roberta Weber's infant daughter and her boyfriend also lived in her mother's house. Tr. 119. Because of the closeness of that family relationship, Roberta Weber had a strong interest in supporting her mother's testimony.

Moreover, even if Roberta Weber witnessed the September 21 incident, it is doubtful that she would have been able to perceive the incident as clearly as she claimed. She testified that she was able to overhear the entire conversation between her mother and the Complainant, including a question he allegedly put to her mother while he stood on the Jacobson front porch and the Respondent sat on her front porch. However, the witness was approximately 20 feet away from where the Complainant stood, Ex. S-2, 3 & 4, the Respondent's dog was barking constantly throughout the exchange, and the Complainant was speaking in a normal tone of voice, Tr. 129-31.

In sum, the Complainant and his supporting witnesses were

² The Respondent objected to the admissibility of the tape recording on grounds that it would be inadmissible in a state court under Wisconsin statutes. However, the admissibility of evidence in cases under the Fair Housing Act is governed by the Federal Rules of Evidence, not state law. 42 U.S.C. § 3612(c). Because those Rules do not bar admission of the recording, I have accepted it as evidence. Even without the recording, I would find that the Respondent made the remarks in question to Mr. Peterson because I found him to be a very credible witness.

very credible, but the credibility of Respondent and Roberta Weber was significantly impaired. Therefore, I find that the Respondent engaged in the conduct toward the Complainant alleged by the Government.

Legal Analysis

The statute that the Government contends the Respondent violated, 42 U.S.C. § 3617, provides that:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any right granted or protected by [42 U.S.C. §§ 3603-3606].

Because 42 U.S.C. § 3604 prohibits discrimination in the rental of housing on the basis of race and national origin, that section necessarily granted Mr. Lee a right to

attempt to rent a home without being subjected to discrimination. Thus, he was exercising a right granted by that section when he attempted to rent the Jacobsons' house.

The Respondent contends that Mr. Lee's rights were not violated because he spoke with the Jacobsons eventually about renting the house; they did not rent it to him; and he was able to find another home to rent within a very short time. I disagree. A violation of § 3617 can occur in the absence of any corresponding violation of §§ 3603-3606. *Smith v. Stechel*, 510 F.2d 1162, 1164 (9th Cir. 1975) ("§ 3617 . . . deals with a situation where no discriminatory housing practice may have occurred at all . . .").

Moreover, matters such as availability of the house for rent and the Complainant's ability to find another home are immaterial to whether the Respondent violated § 3617. Where a person coerces, intimidates, threatens, or interferes with someone engaged in the exercise of rights protected by the Act, a violation of § 3617 is established. See, e.g., *Stirgus v. Benoit*, 720 F. Supp. 119, 123 (N.D. Ill. 1989) (racially motivated firebombing of plaintiff's home); *Stackhouse v. DeSitter*, 620 F. Supp. 208, 211 (N.D. Ill. 1985) (Black plaintiff's car vandalized in attempt to intimidate him to move from neighborhood).

It is clear that the Respondent's conduct toward the Complainant was coercive, intimidating, and threatening, and that it interfered with his effort to rent the Jacobsons' house. The Respondent verbally assaulted complainant and pointed her finger at him. She made a general threat that there "would be

trouble," and a specific threat that she would block the common driveway if he rented the Jacobson house.

I conclude that the Government has met its burden to prove by the preponderance of the evidence that the Respondent violated 42 U.S.C. § 3617. See *United States v. Balistrieri*, 1992 U.S. App. LEXIS 30960, at *25 (7th Cir. Nov. 24, 1992), *reh'g en banc denied*, 1993 U.S. App. LEXIS 908 (7th Cir. 1993); *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1452 (4th Cir.), *cert. denied*, 111 S. Ct. 515 (1990).

REMEDIES

The Respondent's violation of the Fair Housing Act entitles the Complainant to appropriate relief under the Act, which may include actual damages and injunctive relief. 42 U.S.C. § 3612(g)(3). A civil penalty may also be imposed. *Id.* The Government, on behalf of the Complainant, seeks \$50,000 in compensatory damages for humiliation and emotional distress and a civil penalty of \$10,000. The Government also seeks injunctive relief.

Damages For Emotional Distress And Humiliation

The Government asserts that the Complainant suffered emotional distress and humiliation because of the Respondent's misconduct. Intangible injuries such as those are compensable under the Fair Housing Act. Damages for those injuries can be proven by testimony and inferred from the circumstances of the case. See, e.g., *Secretary of HUD v. Blackwell*, 908 F.2d 864, 872 (11th Cir. 1990).

Although Complainant was injured by the Respondent's actions, they did not have the serious consequences associated with the enormous damage award sought by the Government. As the Seventh Circuit has pointed out, "damages can be no more than what is within reason under the particular circumstances." *Douglas v. Metro Rental Svcs.*, 827 F.2d 252, 256 (7th Cir. 1987) (lowering intangible damage award from \$40,000 to \$10,000). Moreover, a damages award should not provide the injured party with a windfall. See *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

The Respondent's actions toward the Complainant were not repeated, and she did not engage in violence or threats of violence. Her actions did not dissuade the Complainant from contacting the Jacobsons shortly after the incident to inquire about renting their house. He was not denied a house that he coveted or forced to live in unsatisfactory housing. He was able to find other housing and move into it before his former residence was demolished.

However, the Complainant did suffer humiliation and emotional distress as a result of Respondent's actions. The Complainant felt that the Respondent was treating him as less than human. He expressed anger and sorrow about the confrontation, and his relationship with his family suffered for almost two days after the incident.

Tr. 42, 104. Moreover, Complainant continues to be adversely affected by the incident. He thinks about Respondent's actions almost every day, and he suffers memory lapses that affect his concentration while performing his job. Tr. 42, 51-52.

Furthermore, the impact of the Respondent's actions was amplified because of the Complainant's personal history. See *Williams v. Flannery*, No. 89-CV-73, 1989 U.S. Dist. LEXIS 14589, at *17 (N.D.N.Y. Dec. 7, 1989) (plaintiff's troubled past has "some bearing on the proper assessment of the harm suffered by him.") After the American withdrawal from Vietnam, the Complainant's family lived in the Laotian forest for four years, and after escaping to Thailand, lived in a refugee camp for seven years before arriving in this country. Tr. 35-36. The Complainant's moves resulted from the fact that his father, along with many other Hmong, had allied themselves with the United States during the Vietnam conflict and, following the American withdrawal and the fall of South Vietnam in 1975, the North Vietnamese pursued and persecuted them. Tr. 34-35, 105-07. Thus, Complainant was especially sensitive to the Respondent's poor treatment of him because of his race and national origin. Tr. 42-43, 106.

However, some of the anger that Complainant continues to feel is directed toward the Central Intelligence Agency because of his belief that it failed to honor promises to protect the Hmong. Tr. 42. Complainant can not be compensated for that anger because it was not caused by Respondent's conduct.

Moreover, it has not been shown that Complainant's memory lapses are an extremely serious problem. He did not seek counseling or treatment for them, and their impact on his job performance appears to be minimal. He was able to complete a training program successfully and obtain a job. His lack of concentration causes him to ask his supervisor to check his calculations, and she has detected some errors. However, there was no showing that Complainant received a poor performance rating or was even counseled by his supervisor concerning this matter. Tr. 47-52. Thus, the Complainant is not entitled to an extremely large award because of his memory lapses.

In sum, the Complainant was an especially sensitive victim of bigoted remarks and threats that were delivered in a face-to-face confrontation. Also, the Respondent's actions caused him to experience considerable humiliation and emotional distress,

and the confrontation continues to affect him, although not to a significant extent. Upon consideration of all relevant factors, I conclude that \$5,000 is the appropriate amount to compensate the Complainant for his injury.

Civil Penalty

Civil penalties may be imposed on violators of the Act to vindicate the public interest. 42 U.S.C. § 3612 (g)(3)(A); 24 C.F.R. § 104.910(b)(3). Because the Respondent has not previously committed an unlawful discriminatory housing practice, the maximum civil penalty that may be assessed against her is \$10,000. See 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 104.910(b)(3)(i)(A). However, the maximum penalty should not automatically be imposed in every case. See H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). The following factors should be considered in determining the appropriate civil penalty: (1) the nature and circumstances of the violation; (2) the degree of the Respondent's culpability; (3) the Respondent's financial resources;³ (4) the goal of deterrence; and (5) other matters as justice may require. See H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

The Respondent's actions were not serious enough to warrant the \$10,000 penalty sought by the Government. Her actions toward the Complainant were not repeated, and she did not engage in violence or threats of violence. Because \$10,000 is the maximum civil penalty for a first offender, it must be reserved for the most egregious violations. *E.g., Littlefield v. McGuffey*, 954 F.2d 1337 (7th Cir. 1992), *aff'd*, 979 F.2d 101 (7th Cir. 1992) (defendant made death threats, harassed plaintiff at work, frightened plaintiff's sister, and left a menacing note at plaintiff's residence); *Stirgus v. Benoit*, 720 F. Supp. 119, 123 (N.D. Ill. 1989) (racially motivated firebombing of plaintiff's home).

However, a very substantial civil penalty is warranted in this case. The Respondent's offense was serious. She attempted to prevent the Complainant from exercising his rights under the Act and caused him to suffer humiliation and emotional distress. By telling the Complainant that "his people" could not live in the neighborhood, and that if he moved in, there would be "trouble," she deliberately tried to intimidate him through her insulting statements and manner. By stating that she would block the driveway if he moved in, she threatened to take

³ Because there was no evidence concerning the Respondent's current financial resources, I have not considered that factor.

physical action to interfere with Complainant's right to enter and exit the premises. Her violation was flagrant, and she was fully culpable.

The Respondent demonstrated no remorse, and she must be deterred from further intimidation of prospective housing seekers in her neighborhood. The need for deterrence is especially strong because of the Respondent's repeated statements concerning her desire to prevent racial and ethnic integration of her neighborhood even if she has to "go to jail." I conclude that a civil penalty of \$7,000 is necessary to send a strong signal to the Respondent, and any other self-proclaimed neighborhood segregationists, that all neighborhoods in all cities are open to members of all protected classes, and that any interference with this right will be penalized.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell*, 908 F.2d at 875 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983)). I conclude that the injunctive relief detailed in the following order will achieve these goals.

ORDER

1. Respondent Jean Weber is hereby permanently enjoined from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of such person having exercised or enjoyed, or on account of such person having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Act.

2. Within 35 days of the date on which this order becomes final, the Respondent shall pay actual damages to the Complainant in the amount of \$5,000.

3. Within 35 days of the date on which this order becomes final, the Respondent shall pay to the Secretary of HUD a civil penalty of \$7,000.

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

/s/

PAUL G. STREB
Administrative Law Judge

