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
Wanda Hauenstein and
Steffani Wildman,

Charging Party,

v.

John and Juanita Welch,

Respondents.

HUDALJ 10-96-0007-8
Decided: December 2, 1996

John and Juanita Welch, *pro se*

Mona Fandel, Esquire
For the Government

Before: THOMAS C. HEINZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed on September 27, 1995, by Wanda Hauenstein ("Complainant") alleging that John Welch ("Mr. Welch") and Juanita Welch (collectively, "Respondents") violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (sometimes "the Act"), by refusing to rent or negotiate to rent an apartment to her and her two-year-old daughter, Steffani Wildman, because of their familial status. The Department of Housing and Urban Development ("HUD" or "the Secretary") investigated the complaint, and after deciding that there was reasonable cause to believe that

discriminatory acts had taken place, issued a Charge of Discrimination against Respondents on May 17, 1996. The Charge alleges that Respondents engaged in housing discrimination on the basis of familial status in violation of §§ 804(a), (b), and (c) of the Act (42 U.S.C. §§ 3604(a), (b), and (c), and §§ 100.60, 100.65, 100.70, and 100.75 of the regulations (24 C.F.R. §§ 100.60, 100.65, 100.70, and 100.75)).

A hearing was held July 30 and 31, 1996, in Hillsboro, Oregon, at the close of which the parties were directed to file post-hearing briefs. The last brief was received on October 2, 1996.

Findings of Fact

1. Complainant, a woman in her early to mid-twenties, is the mother of a daughter, Steffani Wildman, who was two years old at the time of the events in question. (Tr. 16)[1] When the complaint was filed, Complainant's married name was Hauenstein. She remarried on April 4, 1996, and her name is now Sabatinos. (Tr. 14)

2. Respondents, husband and wife, are a semi-retired couple who own and operate 13 residential rental properties located at one site on Baseline Road in Cornelius, Oregon. (Tr. 247)

3. In September 1995 Complainant separated from Mr. Hauenstein and was looking for housing for herself and her daughter because she was being evicted from an apartment for failure to pay rent. (Tr. 46-48) On September 13, 1995, Complainant telephoned Respondent John Welch in response to an advertisement in the Hillsboro *Argus,* a local newspaper published on Tuesday and Thursday of each week. The advertisement read: "Apartments, $435 to $625, busline, 29th and Baseline, Cornelius. Electric paid, afternoons, 640-3787." (Tr. 19, 23; Gx. 6) Complainant asked Mr. Welch if he accepted Section 8 vouchers.[2] He said that he did. (Tr. 19) After responding affirmatively to her question regarding the availability of a two-bedroom apartment, Mr. Welch asked Complainant how many people would occupy the unit. She stated that her daughter and maybe her husband would also live there, whereupon Mr. Welch asked the age of the daughter. When Complainant gave Steffani's age, Mr. Welch replied that he was sorry but that he did not rent to families with small children because the parking

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[1]The following reference abbreviations are used in this decision: "Tr." for "transcript"; "Gx." for "Government's exhibit"; and "Rx." for "Respondents' exhibit."

[2]So-called "Section 8" vouchers are issued to qualified low-income people under a rental housing subsidy program administered by HUD and local housing agencies.

lot was unsafe. (Tr. 20)

4. Upon concluding her conversation with Mr. Welch, Complainant believed that she had been unlawfully discriminated against. She therefore telephoned HUD to complain. She knew that HUD would address her complaint because she had previously filed a complaint with HUD alleging familial status discrimination by another landlord. (Tr. 25-26)

5. Posing as a potential tenant with a Section 8 voucher and no children, Complainant met Mr. Welch at a restaurant adjacent to the apartments on September 26, 1995. Mr. Welch appeared willing to rent to her if she would deposit approximately $800, but Complainant neither offered to rent an apartment nor filled out an application. She left without inspecting the apartment. (Tr. 28-29; Gx. 12)

6. HUD notified Respondents that a complaint alleging housing discrimination had been filed by Complainant. By letter dated October 18, 1995, Mr. Welch responded to HUD with a copy to Complainant. The letter reads: "It was my thinking that young childern [*sic*] should be raised in residential areas. My property is zoned commercial for a reason. If HUD concludes a two year old would be safe living on my property, please let me know in writing." (Tr. 32; Gx. 2)

7. The apartment Complainant was seeking to rent was eventually rented to a couple without children. (Tr. 269-70)

8. At the time of these events, one of Respondents' apartments was occupied by a family with children that had moved in on July 4, 1995. The children were 7, 8, and 11 years old on March 4, 1996. Pursuant to instructions from Mr. Welch, the parents restricted the children to a fenced area adjacent to their apartment. (Gx. 12)

9. After Mr. Welch turned her away on the telephone in mid-September, Complainant continued to search for rental housing. The search was unsuccessful because she was unemployed, had little money, had bad credit, had been evicted three times in the previous 18 months, and was seeking a landlord in Washington County who would take a tenant with a Section 8 voucher. Many landlords would not. (Tr. 34, 237)

10. Complainant and her daughter moved into a pick-up camper located next to her grandparents' home in late September or early October 1995. They did not move into her grandparents' home because her grandmother was in poor health, and because Complainant and her grandparents had had a difficult relationship from the time she

moved in with them as a child after her mother died and her father went to prison. (Tr. 35-36, 234-235) At some point during the eight months Complainant and her daughter occupied the camper, Mr. Sabatinos, her current husband, joined them. They left the

camper and moved into an apartment during the first week of June 1996. (Tr. 33, 236) Complainant's grandparents did not charge her rent for the use of the camper. (Tr. 33)

11. Respondents' apartments were particularly attractive to Complainant because they are located on a busline (she had no automobile), and because they are near her grandmother, who could babysit Steffani. (Tr. 17-18)

Subsidiary Findings and Discussion

The Congress passed the Fair Housing Act to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. Parma,* 494 F. Supp. 1049, 1053 (N.D. Ohio 1980), *rev'd on other grounds,* 661 F.2d 562 (6th Cir. 1981), *cert. denied,* 465 U.S. 926 (1982). *See also United States v. City of Black Jack,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975); *cf. Griggs v. Duke Power Co.,* 401 U.S. 424 (1971). The Act was designed to prohibit "all forms of discrimination [even the] simple-minded." *Williams v. Matthews Co.,* 499 F.2d 819, 826 (8th Cir. 1974).

On September 13, 1988, the Act was amended to prohibit, *inter alia,* housing practices that discriminate on the basis of familial status.[3] (42 U.S.C. §§ 3601-19) "Familial status," as relevant to this case, is defined by the Act as "one or more individuals (who have not attained the age of eighteen years) being domiciled with ... (1) a parent or another person having legal custody of such individual or individuals...." (*Id.* at § 3602(k); 24 C.F.R. § 100.20) Complainant and her daughter fall within this definition.

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[3]In amending the Act, Congress recognized that "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2d Sess., at 19 (1988). Congress cited a survey finding that 25 percent of all rental units exclude children and that 50 percent of all rental units have policies restricting families with children in some way. *Id., citing* Marans, *Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey,* Office of Policy Planning and Research, HUD (1980). The survey found also that almost 20 percent of families with children were forced to live in undesirable housing due to restrictive housing policies. *Id.* Congress therefore intended the 1988 amendments to remedy these problems for families with children.

The Act makes it unlawful for anyone to:

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

(42 U.S.C. § 3604(a))

Further, it is unlawful to:

> make ... any ... statement ... with respect to the ... rental of a dwelling that indicates any preference, limitation, or discrimination based on ... familial status ... or an intention to make any such preference, limitation, or discrimination.

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

When Mr. Welch told Complainant that he would not rent an apartment to her because she had a small child, he violated both 42 U.S.C. § 3604(a) and 42 U.S.C. § 3604(c). Juanita Welch is vicariously liable for her husband's actions because she was a co-owner of the property. *See Walker v. Grigler*, 976 F.2d 901, 904 (4th Cir. 1992); *United States v. Youritan Construction Co.*, 370 F. Supp. 643, 649 (N.D. Cal. 1973), *aff'd as modified*, 509 F.2d 623 (9th Cir. 1975).[4]

Mr. Welch argues to the effect that Complainant's claim is fraudulent, like other fraudulent claims for money damages that she has made in the past. He contends that she lied when she testified that he rejected her because of her child, because in truth he rejected her because she sought to pay for rental housing with a Section 8 voucher.[5]

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[4]The conclusions that Respondents have violated §§ 3604(a) and 3604(c) of 42 U.S.C. obviate a discussion of the Secretary's contention that they have violated section 3604(b) as well. A finding that Respondents have also violated § 3604(b) would not change the remedy ordered in this case.

[5]If Mr. Welch had taken an application from Complainant and investigated her qualifications, he would have discovered that she was unemployed, had little money, had bad credit, and had been evicted three times in the previous 18 months. She could have been rejected on these legitimate, nondiscriminatory grounds.

These contentions are unconvincing.

Even if Complainant has indeed made fraudulent claims for damages in the past, the preponderance of the credible evidence of record supports her claim of discrimination in this case. During his conversations with HUD's investigator and during the course of this proceeding, Mr. Welch repeatedly demonstrated his fear that his parking lot would pose a safety hazard for young children if they were to live on his property. (Gx. 9, 12) His initial written response to the complaint persuasively shows that he did not want to rent to a family with a small child. In that complaint Complainant stated that she had a two-year-old daughter and alleged that Mr. Welch had stated, "We don't allow children here." In his written response to the complaint he said, "It was my thinking that young childern [*sic*] should be raised in residential areas. My property is zoned commercial for a reason. If HUD concludes a two year old would be safe living on my property, please let me know in writing." (Gx. 2) Mr. Welch would not have made this response if he were willing to accept tenants with small children. In that case, the natural response to the complaint would have been, "I did not tell Wanda Hauenstein that we don't allow children here. On the contrary, we rent to families with children." Moreover, Mr. Welch conceded that this was not the first time he had told a prospective tenant with a child that living in one of his apartments would be unsafe for the child. He testified that he once refused to rent an apartment to a family with a small child out of concern that a heater in the apartment sought by the family posed a safety hazard to the child. (Tr. 271-72; Gx. 9)

The record also shows that Complainant had filed a discrimination complaint with HUD once before. (Tr. 25-26) She therefore knew that HUD would investigate her allegations and that she would have essentially no chance of collecting damages if the results of the investigation did not support her claim. In September 1995 she did not know the history of Respondents' rental practices or the familial status of their current tenants. Under these circumstances it is very unlikely that Complainant would fabricate a charge of housing discrimination that would be instantly undermined if investigation revealed that Respondents had a tenant with a very young child or expressed a willingness to rent to such a tenant.

Respondents' contention that Complainant was turned away because of her Section 8 voucher must be rejected. In September 1995 Respondents had one long-term tenant receiving Section 8 assistance. According to rules governing the Section 8 program in 1995, a landlord with one Section 8 tenant could not reject another prospective tenant simply because the prospective tenant also received aid under Section 8.[6] Mr. Welch was

[6]These rules were changed by the Congress and as of March 1996 no longer obtain. (Tr. 209-210)

aware of these rules in September 1995 because of conversations he had had with Henry Alvarez, Washington County Housing and Tenant Services Manager, Department of Housing Services, regarding one of his tenants with a Section 8 voucher. (Tr. 210-212, 223-24) If Mr. Welch turned away any prospective tenants because of their Section 8 status, he did so with knowledge that he was violating the law.

Mr. Welch argues that the advertisement to which Complainant responded did not proscribe tenants with Section 8 assistance because he occasionally forgets to include the proscription. He testified that he can tell immediately if an ad does not exclude Section 8 tenants because it will elicit an extraordinary volume of inquiries--as many as 30 or 40 a day. (Tr. 274) He also testified that because of the large volume of calls he received in response to the ad in the September 12, 1995, edition of the *Argus* (to which Complainant also responded), he changed the ad as soon as he could. (Tr. 277) This story is not credible. In addition to scattered ads from earlier in 1995, the record contains copies of all of the ads for September 1995, as well as the ads for October 24 and 26. None of them mentions Section 8. (Gx. 6) The only ad from 1995 in the record that includes a proscription against Section 8 tenants appeared in the October 31, 1995, edition of the *Argus*, the first edition published after the subject of Section 8 tenants had come up in a conversation between Mr. Welch and HUD's investigator on October 26, 1995. (Tr. 279; Gx. 6) These facts suggest that Mr. Welch included the "No Section 8" phrase in the ad published on October 31 to create evidence for his defense.

Respondents offered the testimony of their long-term tenant on Section 8 assistance, Helen Guindon, to support their contention that they have long adhered to a policy discriminating against prospective tenants receiving Section 8 aid. Ms. Guindon testified that she had been renting from Respondents for nearly six years, that she had been looking for another apartment for a long time because she is unhappy where she is, that she has been unsuccessful in her search for other housing in part because she receives Section 8 assistance, that she had been long aware of Respondents' policy precluding new Section 8 tenants, that she was the unofficial night manager of the apartments, and that she had seen three or four of Respondents' ads in the *Argus* over the past five years. She said that "some" of those ads did not proscribe Section 8 tenants, and that in September 1995 she telephoned in response to one of the ads (ostensibly in the belief that she was calling another landlord) and was told by Mr. Welch, "no Section 8." (Tr. 290, 296, 298-300)

Ms. Guindon's testimony is not believable. She claimed to be Respondents' unofficial night manager even though Respondents lived at the same location. She also claimed to be unfamiliar with Respondents' telephone number. If she indeed was the

night manager, it seems very unlikely that she would not know Respondents' telephone number. All of Respondents' ads included a telephone number but some did not precisely identify the location of the rental property. If Ms. Guindon was able to identify Respondents' ads through familiarity with the telephone number or some other means, then there would have been no reason to call; she already knew Respondents' policy regarding their properties on Baseline Road, and she was seeking rental housing from someone else. (Tr. 290, 299) Moreover, Ms. Guindon did not explain why she waited until September 1995 to respond to one of Respondents' ads that did not proscribe Section 8 tenants even though the ads appeared over several years during a time when she claimed she was searching for other housing.

In sum, there is no merit to Respondents' defense that Complainant was rejected because of her Section 8 status rather than her familial status. Furthermore, the defense appears to rest on false testimony.

Remedies

Section 812(g)(c) of the Act provides that upon a finding that a respondent has violated the Act, an administrative law judge shall order "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person." 42 U.S.C. § 3612(g)(3). On behalf of Complainant and her daughter, the Charging Party requests an award of $5,000 for lost housing opportunity, $5,000 for emotional damages, and $529.50 for out-of-pocket costs, for a total of $10,529.50.

Complainant's lack of credibility significantly undermines the Charging Party's request for an award of money damages. Her testimony at hearing was internally inconsistent and was often contradicted by other evidence; her demeanor indicated that she was not always telling the truth; and two witnesses testified that she has a reputation in the community among her friends and associates as a person who tells untruths.

Complainant at first testified that she met Mr. Welch in a restaurant adjacent to his rental properties on either September 14 or 15, 1995, a couple of days after she had talked with him on the telephone. (Tr. 27, 77, 79) When confronted with a report prepared by HUD's investigator, she conceded that the meeting occurred on September 26, 1995, nearly two weeks later. (Tr. 80) She also told the investigator that her boyfriend at the time (Mr. Sabatinos) accompanied her in a borrowed car, but that he did not hear the conversation with Mr. Welch. However, at hearing Complainant insisted the she was accompanied by her husband, Mr. Hauenstein, not Mr. Sabatinos. (Tr. 77, 79) Mr. Hauenstein convincingly testified that he was not with Complainant on September 26 because by that time he and Complainant had permanently separated and he was at work

on that day. (Tr. 309-10)

Complainant at first testified that she filed for divorce in late September 1995, but later she changed the filing date to sometime "shortly after" October 24, 1995. (Tr. 15, 84) Her confusion over the date on which she filed for divorce mirrored her confusion about when she and her current husband "got together." (Tr. 58) At one point in the record she testified that she and Mr. Sabatinos were together in late September; at another point she said, "Tim and I did not get together until December 22, 1995." (Tr. 58, 77)

In a sworn affidavit dated December 27, 1995, accompanying a petition to accelerate the 90-day waiting period before her divorce would become effective, Complainant stated as grounds for the petition that she wanted to leave the state. She did not do so and was remarried 99 days later. (Tr. 14, 54-58)

In her complaint filed with HUD, Complainant alleged that Mr. Welch told her on the telephone, "We don't allow children here." (Gx.1) At hearing Complainant testified that Mr. Welch told her that he did not rent to families with small children because the parking lot was unsafe. (Tr. 20) Those are quite different allegations. I have credited the hearing version of the conversation because it is consistent with evidence generated by Respondents, not because Complainant was a credible witness.

On cross-examination, when confronted with inconsistencies and contradictions in her testimony or damaging facts about her rental history, Complainant was by turns sarcastic, flippant, defensive, argumentative, and evasive. When unable to provide a plausible explanation for inconsistencies, she repeatedly resorted to the phrase, "I don't remember." Her performance on the witness stand was decidedly unconvincing. She did not give the impression of a person honestly trying to recall the facts as best she could.

Complainant was asked at hearing how it made her feel when Mr. Welch said that his parking lot was unsafe for small children. In response Complainant put on an exaggerated display of emotional distress that not only appeared calculated but also worked to undermine her credibility in general.

Kyle Hauenstein, Complainant's ex-husband who was married to her for a year and a half, testified that Complainant has a poor reputation for truth and veracity. Although as an ex-husband Mr. Hauenstein's credibility is facially suspect, his testimony was not effectively impeached. That a local court issued an uncontested restraining order against him based on Complainant's allegations of spousal abuse does not, in itself, show that
Mr. Hauenstein lacked credibility in this proceeding. (Tr. 306-09)

Eric Lyons, one of Respondents' tenants, knew Complainant socially for about two years. He also testified that Complainant has a poor reputation for truth and veracity in her community. (Tr. 312-14)

Damages

Complainant's lack of credibility does not, however, entirely preclude an award of damages. Her grandmother, Ruby Childress, corroborated Complainant's testimony that after Mr. Welch turned her away, she was unable to find rental housing and ended up moving into a pick-up camper next to her grandparents' home where she and her young daughter lived for eight months. It is unclear from the record whether Mr. Sabatinos joined her when she first moved in or at some later point. Mrs. Childress testified that she cooked for an additional three people, but the record does not show whether this testimony applied to the entire eight months Complainant stayed in the camper or to some shorter period. In any event, the camper clearly was unsatisfactory housing for a mother and child, let alone three people. It was small and so poorly heated that the baby spent most of the time in the house. Mrs. Childress said that she was distressed by the conflicts generated by close contact with her granddaughter, and Complainant testified that she feared that her grandmother, who had already had several heart attacks, would suffer another as a result of emotional stress.[7] In short, after having been denied housing because of her familial status, Complainant secured alternative housing that was clearly unsatisfactory.

Complainant and her daughter stayed in that unsatisfactory alternative housing for eight months. After Mr. Welch turned Complainant away, she was unable to find other housing because she was unemployed, had little money, had bad credit, had been evicted three times during the year and a half preceding September 1995, and was seeking a landlord who would accept a tenant receiving Section 8 assistance. Many landlords would not. Her Section 8 voucher expired in November, two months after she contacted Mr. Welch in September. It was never renewed, at least in part because she owed the program money that had been paid by the program to cover damage claims by her previous landlord. (Tr. 37, 229-30) In fact, Complainant never acquired satisfactory housing until she married Mr. Sabatinos, thereby acquiring the benefits of his income, credit, and rental history.

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[7] It appears that Respondents' discrimination led to both emotional and financial harm to Complainant's grandparents. But they were not named as parties and therefore cannot recover damages in this proceeding.

The Charging Party argues that Respondents are responsible for all of the damages suffered by Complainant and her daughter while they stayed in unsatisfactory alternative housing. This argument rests on two theories: Mr. Welch would have accepted Complainant but for her daughter even though she had a Section 8 voucher; and Complainant's inability to find alternative housing before her voucher expired was caused solely by her status as a Section 8 recipient. Assuming that Respondents would have accepted Complainant but for her daughter, it is clear that Complainant's difficulties in finding alternative housing were largely of her own making. Respondents were not responsible for the fact that she was an undesirable tenant. Therefore, only a fraction of the inconvenience and emotional distress that Complainant and her daughter experienced while staying in the camper can be attributed to Mr. Welch's conduct. Complainant and her daughter will be awarded $500 for their lost opportunity to live in satisfactory housing.[8] Complainant's poor credibility precludes a separate award to her for emotional distress.

The Charging Party requests an award of $475 for household storage costs that Complainant allegedly incurred while staying in the camper, in addition to $54.50 for utility costs allegedly incurred in the apartment Complainant and Mr. Sabatinos occupied in the two months preceding the hearing. These sorts of expenses normally generate documentation, but none was offered to corroborate Complainant's hearing testimony. Because Complainant's credibility is so poor, no awards can be made for the out-of-pocket expenses allegedly caused by Respondents' discrimination.

Civil Penalties

To vindicate the public interest, the Act authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (3) respondent's financial resources; (4) the degree of respondent's culpability; and (5) the goal of deterrence. *See Murphy* at 25,058; *Blackwell I,* at 25,014-15; H. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Nature and Circumstances of the Violation

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[8]It should be noted that although the alternative housing was unsatisfactory, it was free. If Complainant had rented Respondents' apartment, she would have had to pay $245 for housing out of her monthly welfare check of $395. (Tr. 40, 219) Over the eight months she stayed in the camper, she therefore saved $1,960 in housing costs due to Respondents' discrimination. (8x $245 = $1,960)

The nature and circumstances of the violation in this case do not compel imposition of the maximum penalty possible. There is no evidence that Respondents' unlawful discrimination was motivated by animus toward Complainant personally or against families with children in general. Respondents have often rented to families with children. (Tr. 247-28) Mr. Welch appears to have discriminated against Complainant and her daughter only because he believed that the property presented an unacceptable safety hazard to young children. Complainant and her daughter did not suffer grievous injury, such as an eviction, public humiliation, physical injury, or threats of physical injury at the hands of Respondents.

Respondents' Record

There is no evidence that Respondents previously have been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against Respondents is $10,000, pursuant to 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3)(i)(A).

Respondents' Financial Circumstances

Evidence regarding Respondents' financial circumstances is peculiarly within their knowledge, so they had the burden of introducing such evidence into the record. During a pre-trial conference Mr. Welch indicated that their financial circumstances would permit them to pay the maximum civil penalty without suffering undue hardship.

Culpability

Mr. Welch denies that he turned Complainant and her daughter away because of their familial status, despite evidence generated by his own hand to the contrary. Respondents' contention that Complainant and her daughter were rejected as potential tenants because of Complainant's Section 8 status appears to be a fabricated defense supported by false testimony. These circumstances require imposition of a civil penalty considerably larger than it would otherwise be.

Deterrence

Respondents and other housing providers need to be deterred from engaging in any form of discriminatory conduct based on familial status. They and other similarly

situated landlords must come to understand that they may be guilty of unlawful discrimination even if they do not exclude all children from their rental properties.

* * *

The Charging Party seeks to impose a $10,000 civil penalty against Respondents, the maximum permissible in this case. Maximum penalties should be reserved for the most egregious cases, such as cases where willful conduct causes grievous harm. This case does not fall into that category. A civil penalty of $2,000 will vindicate the public interest.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. (42 U.S.C. § 3612(g)(3)) The Charging Party in its brief requested injunctive relief but did not provide a proposed order. When injunctive relief is sought, it is the duty of the movant to specify in detail the nature of the relief sought. Absent that information, nothing more than a generally prohibitory order will be issued.

Conclusion

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

ORDER

It is hereby ORDERED that:

1. Respondents are permanently enjoined from discriminating against Complainant and her daughter, or any tenant or prospective tenant, with respect to housing because of familial status.

2. Within thirty (30) days of the date on which this Order becomes final,

Respondents shall pay actual damages of $500 to Complainant Wanda Hauenstein.

3. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay a civil penalty of $2,000 to the Secretary of HUD.

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

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THOMAS C. HEINZ
Administrative Law Judge