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 Quillistine Frazier, Charging Party, v. Martha Cabusora Felino Cabusora, Respondents.	HUDALJ 09-90-1138-1 Decision issued: March 23, 1992

Melissa Hope Young, Esq.
R. Faye Austin, Esq.
For the Charging Party.

Lawrence M. Vergun, Esq.
John N. Kitta, Esq.
For the Respondents

Before: WILLIAM C. CREGAR
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of a complaint of discrimination based upon race in violation of the Fair Housing Act as amended, 42 U.S.C. Secs. 3601, et seq. ("Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104. An amended complaint was filed with the Department of Housing and Urban Development ("the Department" or "HUD") on April 16, 1991 . A Determination of Reasonable Cause was made and a Charge of Discrimination filed on behalf of the Complainant by the Secretary of the Department ("Charging Party", or "Secretary") on August 15, 1991. Respondents failed timely to answer the Charge. A hearing was held in San Francisco, California, on December 9-10, 1991. At the hearing, the parties jointly requested a ruling from the bench on the Charging Party's September 27, 1991, Request to Enter Default, the Respondents' October 16, 1991, Declaration in Response to Order to Show Cause, and

the Charging Party's opposition thereto. Sec. Exs. 5, 6, 9; Res. Ex. 1.[1] After hearing evidence and argument, I granted the Charging Party's request and entered a default against Respondents. The reasons for granting the request are set forth in this Initial Decision and Order. After granting the Request, a hearing was held to determine whether and to what extent, if any, Quillistine Frazier ("Complainant") was damaged by Respondents' acts.[2] Post-hearing briefs were filed by the parties on January 24, 1991.[3]

As a consequence of their default, I find that Respondents Martha and Felino Cabusora committed unlawful discrimination by making a single family dwelling unavailable to Complainant; by imposing different terms and conditions on the rental of a single family dwelling; and by attempting to coerce, intimidate, threaten and interfere with Complainant in the exercise and enjoyment of her dwelling because of her race (black). 42 U.S.C. Secs. 3604(a),(b), and 3617.

The Charging Party seeks $50,000 as damages for emotional distress, $25,000 in damages for pain and suffering, and a civil penalty in the amount of $20,000. Sec. Post-hearing Brief, p. 10. Respondents state that only nominal damages should be awarded. Res. Post-hearing Brief, p. 9. For the reasons set forth below, I determine that Complainant is entitled to an award in the amount of $25,000 for emotional distress, and that Respondents should be assessed civil penalties totaling $20,000.

Respondents' Default

Background

[1]The following reference abbreviations as used in this decision: "Sec. Ex." for Secretary's or Charging Party's Exhibit; "Res. Ex." for Respondents' Exhibit; "Ex." for exhibit, "Atch." for attachment, "Nos." for numbers; and "Tr." for transcript. Some of the Secretary's exhibits attach documents which are also identified as either exhibits or attachments. I have retained these designations in referring to these documents. For example, a Secretary's Exhibit followed by an exhibit which includes a declaration which in turn attaches an exhibit would be referred to as Sec. Ex. 3 (Declaration of John Smith, Ex. 4).

[2]Alleged damages are not specifically quantified in the Charge. Specific amounts are claimed in the Charging Party's Post-hearing Brief.

[3]The date originally set for the filing of Post-hearing briefs was January 10, 1992. Because the transcript of the hearing was not received by the parties on the originally scheduled date, I granted Respondent's requests to extend this date, first to January 17, 1992, and a second time to January 24, 1992.

On November 27, 1989, E. Herman Wilson, Director of the Compliance Division, Northern California, HUD Office of Fair Housing and Equal Opportunity, sent Respondents a letter notifying them that a complaint of discrimination had been filed by Quillistine Frazier. Sec. Ex. 5 (Declaration of Paul Berg, Ex. A). The letter provides notification of the initiation of the investigation of Ms. Frazier's discrimination complaint and subsequent procedures. It mentions that if the investigation produces evidence of unlawful housing discrimination, and if conciliation efforts prove unsuccessful, a charge of discrimination would be issued together with a notification. The letter also identifies the possibility of civil penalties being assessed up to a maximum of $100,000 for multiple offenses. It specifies possible maximum civil penalties of $10,000 in an administrative hearing for the first offense and $50,000 for a first offense if the matter is referred to a U.S. District Court, together with damages and injunctive relief. Following a telephone call with Mr. Wilson, on December 2, 1989, Ms. Cabusora sent a handwritten response stating her position. *Id*., Ex. B. She did so because she believed the matter to be important. Tr. p. 68.

On August 15, 1991, the Regional Counsel for Region IX, U.S. Department of Housing and Urban Development, issued a Determination of Reasonable Cause and Charge of Discrimination. Accompanying the Determination are two introductory "cover sheets" and a "Notice".

The first "cover sheet" begins with an underlined statement in upper case letters: "THESE ARE IMPORTANT LEGAL DOCUMENTS PLEASE READ THEM CAREFULLY." The document mentions that two important documents are included: the first, the Determination of Reasonable Cause and Charge of Discrimination and the second, the Notice. Below the uppercase words, "IT (the charge) CHARGES THAT THE RESPONDENTS IN THIS CASE HAVE VIOLATED THE FAIR HOUSING ACT," the cover sheet explains the Notice as follows:

> The Notice includes explanations of important deadlines for filing documents with HUD's Office of Administrative Law Judges. Some of these deadlines require you to act quickly, so it is important that you read the Notice promptly. As explained in greater detail in the Notice, if you are a respondent, you must file a response in order to avoid a default judgment.

Sec. Ex. 7 (First Cover Sheet).

The second "cover sheet" contains instructions on returning the certified mail receipt. It begins with the sentence:

> These are important legal documents regarding a charge of housing discrimination filed with the U.S. Department of Housing and Urban Development (HUD).

Id. (Second Cover Sheet).

The Notice begins with the underlined statement in uppercase letters, "IMPORTANT NOTICE." Included among the items in the Notice is a listing of the "procedural rights and responsibilities for administrative proceedings." The first right and responsibility described is the "Answer" about which the following instruction is given:

> If you are the respondent in the administrative proceeding you *must* file a written answer to the attached charge by September 16, 1991, (within 30 days of the service of the charge). The answer must include:
>
> 1. A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted.
>
> 2. A statement of each affirmative defense and a statement of the facts supporting each affirmative defense.

Id. (Notice), p. 4 (emphasis added).

The Notice concludes:

> If there is anything in this Notice that you do not understand or if you have additional questions, contact R. Faye Austin.[4]

Id.

The two cover sheets, the Determination of Reasonable Cause and Charge of Discrimination and the Notice were sent by certified mail and received by Ms. Cabusora on August 17, 1991. She signed the return receipt. Sec. Ex. 13. Mr. Cabusora did not read these documents. Tr. p. 81. Ms. Cabusora read them but did not file an answer until after receiving an Order to Show Cause, well after expiration of the time for filing an answer. Mr. Cabusora does not recall being aware of the investigation or the Notice. Sec. Ex. 6, Atch. G (Deposition of Felino Cabusora), p. 11; Tr. p. 79.

On September 11, 1991, the Chief Administrative Law Judge issued a Notice and Order which informed Respondents that the time for electing to proceed in U.S. District Court had passed and set a hearing date of November 6, 1991. Sec. Ex. 8. Ms. Cabusora also received this document. Tr. p. 71.

[4]Ms. Austin's address is listed elsewhere in the notice.

On September 27, 1991, the Charging Party filed a request for default based upon Respondent's failure to file an answer on or before September 16, 1991. Sec. Ex. 9. On September 30, 1992, I ordered Respondents to show cause, on or before October 9, 1991, why they failed to timely file an answer. Sec. Ex. 10. On October 8, 1991, Ms. Cabusora called R. Faye Austin, attorney for the Department, and requested her assistance in obtaining an extension of time in which to file. She claimed that she and her husband were in the process of obtaining a divorce, and that she had expected him to handle the matter. Ms. Austin suggested she contact the Chief Docket Clerk, Office of Administrative Law Judges. Sec. Ex. 5 (Declaration of R. Faye Austin). On that date Ms. Cabusora also wrote to the Office of Fair Housing and Equal Opportunity, at an address given in the Notice, requesting one week to answer the charges and the Order to Show Cause. She stated that her delayed response resulted from a "death threat". Sec. Ex. 12.

The Cabusoras responded to the Order to Show Cause on October 15, 1991. Ms. Cabusora admits that on or about August 17, 1991, she received the Determination of Reasonable Cause and Charge of Discrimination, but that because she was not a native of the United States, she "did not understand these documents and was unable to protect [her] rights." Res. Ex. 1.[5]

Respondents were born in the Philippines. Ms. Cabusora has lived in the United States for 31 years; Mr. Cabusora, for 35 years. Both learned English while in the Philippines. Sec. Ex. 6, Atch. F (Deposition of Martha Cabusora), pp. 6-7; Atch. G (Deposition of Felino Cabusora), p. 8. Both use dictionaries when they do not understand the meaning of an English word. Sec. Ex. 6, Atch. F (Deposition of Martha Cabusora), p. 8; Atch. G (Deposition of Felino Cabusora), p. 8; Tr. p. 33.

Martha Cabusora is a registered nurse. In 1952 she received a B.A. in nursing from the University of Santo Tomas, Manila, Republic of the Philippines. She has practiced nursing since 1952 and has been licensed to practice in California since 1985. As an Assistant Staff Nurse at the Alta Bates-Herrick Hospital, she works in the Respiratory Care, Intensive Care, and Coronary Care Centers, earning $1,800 per month during the relevant period. Sec. Ex. 6, Atch. B (Martha Cabusora's Answers to Interrogatories), Nos. 3, 6; Tr. pp. 32, 37, 253. She administers bedside care to stroke victims and patients with life-threatening heart conditions. Tr. p. 252. She discusses patient's symptoms with them, and describes these symptoms to treating physicians. Physicians' diagnoses are based, in part, on these descriptions. Tr. pp. 253, 256. Also, as part of her duties she administers drugs to patients. Tr. p. 253. In carrying out these duties she speaks and reads English.

Felino Cabusora was employed as a distribution clerk at a U.S. Post Office from

[5]Respondents' Declaration in Response to Order to Show Cause and Answer were sent via facsimile machine and were unsigned. The signed documents were received in this office on October 25, 1991.

May 23, 1977, until October 31, 1991.[6] He attended Chabot College, Hayward, California from 1982-1987, majoring in "Administration of Justice". Sec. Ex. 6 Atch. B (Felino Cabusora's Answers to Interrogatories), Nos. 3, 6.

Mr. and Ms. Cabusora own four single-family dwellings and rent three of them. Tr. p. 36. Ms. Cabusora testified that she understands lease provisions. Tr. p. 22. They have been involved in small claims litigation and have had no difficulty understanding the documents involved in that proceeding. Tr. p. 23. Both have responded to and submitted documents written in English to the small claims court, and Ms. Cabusora has responded in English to HUD during the investigation of this case. Sec. Ex. 5 (Declaration of Paul Berg, Exs. B,D,G,H); In a November 27, 1991, deposition Ms. Cabusora stated that she understood the meaning of the terms, "respondent" and "damages", and that a response to the Notice was required. Sec. Ex. 6, Atch. F (Deposition of Martha Cabusora), pp. 9, 12; Tr. p. 35.

[6]The parties have not furnished evidence of any present employment income or his salary in the Spring of 1989.

Discussion

Regulations governing these proceedings found at 24 C.F.R. Part 104 implicitly authorize a judgment by default. The filing of an answer within 30 days of the filing of the charge is required, and any allegation in the Charge not denied is deemed admitted. 24 C.F.R. Sec. 104.420. In addition, the Administrative Law Judge has the authority to regulate the course of the hearing, and the conduct of the parties, and to exercise such powers as are vested in the Secretary appropriate for the conduct of the hearing. 24 C.F.R. Sec. 104.110(f),(j).

Defaults are generally disfavored; cases should be decided on their merits. *Direct Mail Spec. v. Eclat Computerized Tech.* 840 F.2d 685, 690 (9th Cir. 1987); *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987); *Schwab v. Bullock' Inc.*, 508 F.2d 353, 355 (9th Cir. 1974). On the other hand, inexcusable failures to cooperate and comply with regulatorily mandated requirements and specific written orders cannot be condoned. Permitting parties to escape the consequences of engaging in such conduct could eventually result in these proceedings not being taken seriously.

Respondents have demonstrated no legitimate reason for failing timely to respond to the Charge. Accordingly, I conclude that Respondents' conduct was inexcusable.

Having heard the Cabusoras speak English at the hearing, I conclude that they are fluent in English and that they understood the Notice and the Charge of Discrimination. Other evidence also establishes that Respondents understood the Notice. Respondents write English as well as they speak it. The record contains examples of their handwritten English. Sec. Ex. 5, Ex. B. Ms. Cabusora's job duties require the routine use of English. The record demonstrates that they are familiar with legal proceedings and terminology, including the terms in the Notice. They also knew how to retain an attorney.[7] Mr. Cabusora attended a California institution of higher learning, majoring in justice administration. Ms. Cabusora is familiar with the requirements of ownership and rental of real estate and with the language contained in lease clauses. Tr. p. 22. Even if Respondents were, as they assert, unfamiliar with particular, unspecified legal terms contained in the Notice, they could have immediately requested assistance from the HUD attorney, whose name and address appear in the Notice.

[7]In her deposition Ms. Cabusora claimed that "they did not know where to get any help" and that they could not afford an attorney. *Id.*, pp. 15, 28. In fact, Respondents retained an attorney on at least one prior occasion. Sec. Ex. 6, Atch. F (Deposition of Martha Cabusora), p. 27. The claim that they could not afford an attorney is discussed *infra*.

Respondents' assertion that they did not realize the significance of the Notice is inconsistent with their previous actions during the investigation of this matter, and with the plain words on the face of the Notice. Ms. Cabusora responded to Mr. Wilson's letter because she believed it to be important. Upon receiving the Notice, she could not have believed that this matter had become less important. The Notice plainly states that it is an important document. It also states that Respondents are required to respond to avoid a default judgment. Finally, it contains the name and address of a HUD attorney in the San Francisco Office to contact in the event the recipient has any questions.

Even assuming, *arguendo,* that Respondents failed to understand the legal significance of the Notice because they lacked counsel, they have not met their burden to demonstrate that their failure to retain counsel was due to insufficient financial resources. Like other evidence of financial circumstances, proof of Respondents' inability to afford an attorney to assist them in understanding and preparing a response to the Notice is peculiarly within Respondents' sphere of knowledge. *See e.g., Campbell v. United States*, 365 U.S. 85, 96 (1961); *Secretary of HUD v. Jerrard,* Fair Housing-Fair Lending (P-H) para. 25.005 at 25,092; *Secretary v. Morgan, supra* at 15,141; *Secretary of HUD v. Properties Unlimited*, Fair Housing-Fair Lending (P-H) para. 25,009 at 25,153 (Aug. 5, 1991); *Secretary of HUD v. George*, Fair Housing-Fair Lending (P-H) para. 25,101 at 25,169 (Aug. 16, 1991).[8]

Statement of Facts

By virtue of granting the Charging Party's Request for Default, the following factual allegations set forth in the Charge of Discrimination have been established:

1. Complainant is Quillistine Frazier. She is a black single mother with two minor children, her son Douglas Stanford; and her daughter, Shamyla Frazier.

2. The Respondents are Martha Cabusora and Felino Cabusora. They own and manage a single family dwelling, the subject dwelling, located at 32305 Pegasus Court, Union City, California.

3. About and before mid-May 1989, Complainant was a recipient of housing assistance payments pursuant to Section 8 of the U.S. Housing Act of 1937. ("Section 8").

4. On or before mid-May 1989, the Complainant asked Ms. Cabusora about

[8]The only evidence Respondents advance in support of this claim in addition to their bare assertion that they had insufficient funds is that they lack a bank account. Tr. p. 37. In contrast, the record reveals that at the time of the events in dispute Respondents owned four homes, three of which were rented; Ms. Cabusora had a monthly income of $1,800 and Mr. Cabusora also had an income of an undisclosed amount. Tr. pp. 36-38. Respondents also owned four automobiles of various makes and ages Tr. p. 35. No evidence was introduced of Respondents' liabilities.

renting the subject dwelling to her, subject to the provisions of Section 8.

5. Respondent informed Complainant that she did have a dwelling available for rent.

6. Respondent Ms. Cabusora was familiar with the Section 8 program and had rented to Section 8 recipients in the past.

7. On May 18, 1989, pursuant to Complainant's request, Ms. Cabusora signed an inspection agreement with the Section 8 provider, Alameda County Housing Authority.

8. Respondent offered the subject dwelling at a rental price of $975 per month.

9. On May 23, 1989, the Respondent agreed that Complainant could move into the dwelling and pay the prorated rent for the remainder of the month, along with a $175 deposit; thereafter, Complainant would pay a portion of the rent, and the remainder of the rent would be paid directly from the Alameda Housing Authority, pursuant to Section 8.

10. Pursuant to that agreement, on May 23, 1989, Complainant and her family moved in and paid Respondent a $175 deposit and $279 rent for the month of May 1989.

11. On May 31, 1989, the Alameda Housing Authority approved Complainant's Section 8 request and sent Respondent a contract reflecting their obligation to pay $600 of the $975 rent.

12. On June 9, 1989, Respondent demanded that Complainant sign an agreement to pay an additional deposit and all of the $975 rent per month, in addition to signing the Alameda Housing Authority's Section 8 agreement.

13. Complainant refused to sign the additional agreement and refused to pay the above-mentioned amounts.

14. Respondents' other Section 8 tenants, who are not African American, were not asked to sign an additional rental agreement.

15. On or about June 12, 1989, the Alameda Housing Authority disapproved Complainant's Section 8 application for the subject dwelling because the Respondent wanted the Complainant to sign an additional rental agreement that did not comply with Section 8 rental assistance requirements.

16. On and after June 12, 1989, Respondent posted on Complainant's front door a three-day notice to pay or quit.

17. On and after June 13, 1989, Respondent continually demanded that Complainant sign an agreement separate from the Alameda Housing Authority's Section

8 agreement.

18. On and after June 13, 1989, Respondent continuously demanded, in a threatening manner, that Complainant pay the full rent and additional deposit.

19. On or about June 20, 1989, Respondent called the Union City Police Department, requesting their assistance in obtaining rent from Complainant.

20. On or about June 20, 1989, police officers, in the presence of Complainant's guest, demanded that Complainant pay rent or move.

21. As a result of Respondents' conduct, Complainant has suffered damages resulting from emotional distress.[9]

Accordingly, Respondents committed unlawful discrimination by making unavailable a single family dwelling to Complainant based on her race, in violation of 42 U.S.C. Sec. 3604(a) and 24 C.F.R. Secs. 100.50(b)(3), 100.60 and 100.70(b); by imposing different terms and conditions of the rental of a single family dwelling on Complainant in violation of 42 U.S.C. Sec. 3604(b) and 24 C.F.R. Sec. 100.50(b)(2); and by attempting to coerce, intimidate, threaten, and interfere with Complainant in the exercise and enjoyment of a dwelling because of race in violation of 42 U.S.C. Sec. 3617 and 24 C.F.R. Sec. 100.400.

Based on the record, I find the following additional facts:

Complainant selected the Cabusora property in order to live in a better school district and in a neighborhood free from shootings and drugs. Tr. pp. 144-145. She and her children liked their new residence and the schools.[10] Tr. p. 147.

Ms. Cabusora first asked for an additional rental agreement some time prior to June 9, 1989. Even if she could have paid the extra amount demanded by Ms. Cabusora, Complainant feared the loss of her Section 8 entitlement if she did so. Tr. p. 150. Accordingly, she refused, and requested that Ms. Cabusora call the office responsible for administering the Section 8 program. She thought this was the end of the matter. Tr. p. 151. On or about June 9, 1989, she received another demand from Ms.

[9]In the Charge the Charging Party asserts that Complainant suffered economic loss and damages from loss of civil rights. There is no evidence of any damage flowing from economic loss or loss of civil rights, nor does the Charging Party seek such damages in the Post-hearing brief. Accordingly, none are awarded.

[10]Ms. Frazier could not testify as to the quality of education in the Oakland School District. Tr. p. 146. However, I credit her testimony that her children had problems with teachers not teaching in Oakland and did not experience similar problems during the short time she was in Union City. Tr. pp. 147-148.

Cabusora. This call was followed that week by four or five telephone calls per day and about four personal visits. Ms. Frazier became upset and her children observed her crying. Tr. p. 153. Seeing their mother cry and fearing a prospective move, the Frazier children also became upset. The distress of her children caused Ms. Frazier further anxiety. Tr. pp. 152-153, 158.

As stated in the Charge, Ms. Cabusora notified the police before visiting the Frazier residence. Prior to visiting the Frazier residence on June 20, 1989, Ms. Cabusora called and spoke to nine-year-old Shamyla. Tr. p. 240. After Shamyla spoke with Ms. Cabusora, Ms. Frazier who "thought the landlord was going to start some trouble," also called the Union City Police. The police officer who received the call told Ms. Frazier that the police had already been called by the owner. Upon learning that she had been described by the owner as "very aggressive", that she was accused of owing money and, therefore, should have moved out of the house, Ms. Frazier became upset and cried. Tr. pp. 159-160.

Contrary to Ms. Cabusora's usual practice, which is to notify tenants prior to showing her houses, on or about June 20, 1989, she brought prospective tenants to view the house without notifying Complainant. Tr. p. 263-264.

Complainant's Godmother, her future husband, her children, and her neighbors observed the arrival of five police squad cars. The police told her that she owed Ms. Cabusora rent and was supposed to be out of the house in three days. After inviting the police officers into the house, Ms. Frazier gave her version of the facts. As a result, the police then told Ms. Cabusora that she would have to take an eviction action through the courts. Tr. pp. 160-164. Ms. Frazier was embarrassed by this incident. Tr. p. 166. Immediately afterwards, she and her daughter began to cry. Her Godmother tried to calm Ms. Frazier. Ms. Frazier was admitted to a hospital complaining of a headache and chest pains. She received a sedative and was discharged. Tr. pp. 167, 234.

Constrained to move, Complainant began her search for a new residence on or about June 12, 1989. She actually left the Cabusora property and moved to her present residence on or about June 21, 1989. Tr. pp. 170-171, 216, 218. During her search she was required to supply Respondents' names to prospective landlords. Her present landlord, Susan Baines, spoke with Ms. Cabusora who informed Ms. Baines that Ms. Frazier was not a good tenant, did not pay her rent, and is very loud. She recommended against renting to Ms. Frazier. Tr. pp. 223-224. Ms. Baines called Ms. Frazier back stating that she was unwilling to rent to her. Ms. Frazier requested that she call Don Steele at the Alameda Housing Authority. Because she had other properties under Section 8, Ms. Baines knew Mr. Steele. Following her discussions with him, she reversed her decision and rented to Ms. Frazier.[11] Tr. pp. 224-225.

[11]Respondents question Ms. Baines' credibility because she was in the hearing room during the testimony of Ms. Frazier. Res. Post-hearing Brief, pp. 5-6. Ms. Baines was not known by sight to Respondent's counsel or myself and was unobserved by the parties. Tr. pp. 226-227. Having observed

Ms. Frazier brought an action against Respondents in small claims court to recover excess rent and her security deposit. She appeared on July 13, 1989, only to find that Respondents had not appeared and the case had been reset for July 27, 1989.[12] She wrote a letter to the court in which she stated that she was very upset and nervous and that, for her peace of mind, she wished to get the matter over with. Sec. Ex. 14.

Remedies

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her demeanor and because there is no apparent reason why she would be inclined to testify falsely, I credit her testimony.

[12]Mr. Cabusora submitted a written request for a delay. He stated that he and his wife needed to travel to Seattle, Washington, to attend his sick brother. Sec. Ex. 6, Atch E. In fact, Respondents were in San Francisco on July 13, 1989. Sec. Ex. 6, Atch. C, D (Secretary's First Set of Requests for Admissions and Respondents' Response, Nos. 15, 16).

Because Respondents violated 42 U.S.C. Secs. 3604(a), (b) and 3617, Complainant is entitled to appropriate relief under the Act. The Act provides that where an administrative law judge finds that a Respondent has engaged in a discriminatory 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. Sec. 3612 (g)(3).

The Act further provides that the "order may, to vindicate the public interest, assess a civil penalty against the Respondents." 42 U.S.C. Sec. 3612 (g)(3). The maximum amount of such civil penalty is dependent upon whether Respondents have been adjudged to have committed prior discriminatory housing practices.

The Charging Party seeks $50,000 as compensation for emotional distress and "harassment"; $25,000 for physical injuries resulting from Respondents' conduct, and injunctive equitable relief. Finally, the Charging Party seeks a $10,000 civil penalty against each Respondent.

Injury and Pain

The Charging Party seeks damages for "physical manifestations of discrimination," experienced by Complainant. Sec. Post-hearing Brief, pp. 8-9. Ms. Frazier experienced severe headaches and stomach pains so severe that she sought medical treatment following her dealings with Ms. Cabusora on June 20, 1989. Tr. pp. 167-168. She also experienced headaches and chest pains during the small claims court proceeding. Tr. p. 172. She underwent testing to determine if she had an ulcer. Tr. p. 185. She received injections for treatment of these medical problems. Tr. p. 191-192. She never experienced these pains prior to moving into the Cabusora property, and she continued to experience them until the date of the hearing. Tr. pp. 192-193. Finally, she suffered back pain which she claims was caused by this litigation. Tr. p. 209.

It is not possible to determine whether Ms. Frazier's ailments were caused by Ms. Cabusora's conduct or had other origins. In this regard, the record reflects that Ms. Frazier was treated at Washington Hospital on May 28, 1989, for sore throat, swollen glands, low back pain, and coughing up blood. Tr. p. 209. In addition, she had returned from a visit to the hospital on June 20, 1989, just prior to the visit by the police. Tr. p. 158. The visit on May 28, 1989, preceded any confrontation between Ms. Frazier and Ms. Cabusora. The medical treatment she sought after the confrontation on June 20, 1989, could have resulted from the medical conditions for which she had received treatment earlier that same day.

Under these circumstances, the question of whether Ms. Cabusora's acts manifested themselves in Ms. Frazier's ailments is a scientific matter far removed from the usual and ordinary experience of the average man, and expert testimony is necessary to prove the cause of Complainant's physical condition. *See, e.g., Loudermill v. Dow Chemical Co.*,

863 F.2d 566 (8th Cir. 1988); *Charleston National Bank v. Hennessey*, 404. F.2d 539 (5th Cir. 1968); *Secretary of HUD v. Dedham Housing Authority*, Fair Housing-Fair Lending (P-H) Para. 25,015 at 25214 (November 15, 1991). Since such expert testimony is lacking to establish causation, no damages are awarded for these particular claims of injury and pain.

Emotional Distress

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

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

In *Marable, supra,* where the defendant challenged the plaintiff's claim for compensatory damages on the basis that it was based solely on mental injuries and that there was no evidence of "pecuniary loss, psychiatric disturbance, effect on social activity, or physical symptoms," the court stated:

> It strikes us that these arguments may go more to the amount, rather than the fact, of damage. That the amount of damages is incapable of exact measurement does not bar recovery for the harm suffered. The plaintiff need not prove a specific loss to recover general, compensatory damages, as opposed to actual or special damages.

704 F.2d at 1220-21.

The record establishes that Respondents constructively evicted Ms. Frazier and her family because of her refusal to enter into a side agreement to pay Respondents an additional security deposit and rent, and that she was subjected to this additional fee requirement solely because of her race. If she were to pay the additional amounts, she believed she would have lost her Section 8 entitlement. She found the Cabusora property to be superior to the crime-ridden neighborhood and poor schools that she left. As a result of losing the Cabusora house, she feared having to return to her former living conditions. Ms. Cabusora's repeated phone calls and visits to the Frazier residence also caused her stress and anxiety. Ms. Cabusora's visit on June 20, 1989, with prospective white tenants and the arrival of the police was witnessed by her friends, children and

neighbors and caused her humiliation and mental anguish.[13] Finally, Ms. Frazier's also experienced stress as a result of observing the emotional pain her children suffered. Ms. Cabusora continued to cause Ms. Frazier stress by furnishing unwarranted negative recommendations to landlords who were contacted by Complainant and by forcing her to bring a small claims action to recover excess rent and a security deposit.

[13]Respondents argue that Ms. Frazier could not have been embarrassed because she also called the police. Res. Post-hearing Brief, p. 4. I disagree. Ms. Cabusora's actions caused Ms. Frazier to call the police. In addition, summoning the police and expecting their arrival did not make their arrival any less embarrassing.

Ms. Frazier's testimony regarding the humiliation and anxiety she experienced is consistent with what an ordinary person subjected to discriminatory acts similar to those endured by Ms. Frazier would have suffered.[14] Accordingly, I conclude that Ms. Frazier suffered considerable mental distress resulting from the repeated confrontations with Ms. Cabusora; the effect of these acts on her children; the public humiliation she endured; the disruption in her life resulting from having to move out of her chosen home; the litigation to recoup what was unjustly taken from her; and the fear that she might not be able to obtain acceptable housing due to Ms. Cabusora's continued unfavorable references. Based on the above considerations, I conclude that Ms. Frazier is entitled to $25,000 as compensation for emotional distress.

Injunctive Relief

An administrative law judge may order injunctive relief, *inter alia*, to insure that the Act is not violated in the future. *Secretary of HUD v. Properties Unlimited, supra* at 25,155 n. 25; *Secretary of HUD v. Blackwell,* 908 F.2d 864, 875, *quoting Marable,* 704 F.2d at 1221. In this case, injunctive and associated equitable relief is appropriate and necessary to eliminate the effects of past discrimination and prevent future discrimination on the part of Respondents. The injunctive relief set forth in the attached Order serves this purpose.

Civil Penalties

The Act authorizes an administrative law judge to impose a maximum civil penalty in the amount of $10,000 against a respondent who, as this one, has not been adjudged to have committed a prior discriminatory housing practice. 42 U.S.C. Sec. 3612(g)(3-)(A). In addressing the factors to be considered when assessing a civil penalty under 42 U.S.C. Sec. 3612 (g)(3), the House Report on the Fair Housing Amendments Act of 1988 states:

[14]In an apparent attempt to attribute all of her stress to Respondents' actions, Ms. Frazier testified that Respondents' actions caused the serious medical conditions described above in connection with her claim for injury and pain, while the medical conditions, themselves, did not cause her any stress. The medical conditions which she claims caused her no stress include coughing up blood resulting in the hospital visit of May 28, 1989, discussed above; a disc problem resulting in another hospital visit on July 15, 1989; ear pain in August 1990; again coughing up blood in December 1990; and a ruptured ovarian cyst in July 1991. Tr. pp. 209-213. Most of these conditions are so serious that the claim that they caused her no stress is simply not believable. Accordingly, I have weighed Complainant's lack of credibility on this point in determining the actual amount of emotional distress she may have experienced as a result of Respondents' acts.

> The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When determining the amount of a penalty against a Respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of that Respondent and the goal of deterrence, and other matters as justice may require.

H. Rep. No. 100-711, 100th Cong., 2d Sess. 37 (1988).

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

Nature and Circumstances of the Violation
and Degree of Culpability

Ms. Cabusora's racially motivated acts began with insistence on additional rental payments to which she was not entitled and were followed by acts of relentless and purposeful harassment. These acts included frequent telephone calls and personal visits, culminating in the public humiliation of Ms. Frazier on June 20, 1989 and her constructive eviction. These acts of harassment did not cease with the eviction, but continued with Ms. Cabusora's subsequent refusal to repay Ms. Frazier's overpayment of rent and security deposit, her forcing Ms. Frazier to resort to small claims court, and her unwarranted adverse references to Ms. Frazier's prospective landlords. These acts are serious in nature because they were intentional and repeated, caused Ms. Frazier and her family to lose their home, and inflicted significant mental distress upon Ms. Frazier.

Ms. Cabusora is liable for these serious acts of intentional discrimination. In addition, despite the lack of direct evidence that Mr. Cabusora participated in, or knew of them, Ms. Cabusora's acts can be imputed to Mr. Cabusora because she acted as manager of the property on his behalf as well as her own. *See*, *Marr v. Rife*, 503 F.2d 735, 741 (6th Cir. 1974); *Davis v. Mansards*, 597 F.Supp. 334, 344 (N.D. Ind. 1984).

Respondent's Financial Circumstances and Deterrence

Respondents do not assert that their present financial circumstances preclude their payment of a civil penalty, nor have they furnished evidence to this effect.

The assessment of the maximum civil penalty against both Respondents under the

circumstances of this case serves the goal of deterrence. The imposition of this penalty under the circumstances of this case will demonstrate to Respondents and others that engaging in similar acts of misconduct is not only unlawful, but also expensive. *Jerrard, supra* at 25,092.

ORDER

Having concluded that Respondents violated 42 U.S.C. Secs. 3604(a), (b), and 3617, it is hereby ORDERED that:

1. Respondents Martha Cabusora and Felino Cabusora, and their agents and employees are hereby permanently enjoined from discriminating with respect to housing because of race. Prohibited actions include, but are not limited to:

a. Refusing or failing to sell or rent or refusing to negotiate for the sale or rental of a dwelling to any person because of race;

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

c. discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services in connection therewith, because of race;

d. making, printing or publishing, or causing to be made, printed or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicate any preference, limitation, or discrimination based on race;

e. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act;

f. retaliating against Complainant Quillistine Frazier or anyone else for their participation in this case or for any matter related thereto.

2. Martha Cabusora and Felino Cabusora shall refrain from using any lease provision, rules and regulations, and other documentation or advertisements that indicate a discriminatory preference or limitation based on race.

3. Consistent with 24 C.F.R. Part 109, Respondents shall display the HUD fair housing logo and slogan in all advertising and documents routinely provided to the public. Consistent with 24 C.F.R. Part 110.

4. Respondents shall institute internal record-keeping procedures with respect to

any real property managed, leased, or acquired by Respondents, which are adequate to comply with the requirements set forth in this order. These will include all records described in this Order. Respondents will permit representatives of HUD to inspect and copy all pertinent records at any and all reasonable times and upon reasonable notice. Respondents will also permit representatives of HUD to inspect and copy all pertinent records once each year upon reasonable notice. Representatives of HUD shall endeavor to minimize any inconvenience to Respondents resulting from the inspection of such records.

5. On the last day of every six-month period beginning with date this decision becomes final, and continuing for three years from that date, Respondents shall submit reports containing the following information to the HUD San Francisco Regional Office of Fair Housing and Equal Opportunity, Phillip Burton Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California:

a. A log of all persons who applied for occupancy at any of the properties owned, operated, leased, managed, or otherwise controlled in whole or in part by Martha Cabusora, Felino Cabusora or any successor entity during the six-month period proceeding the report, to include the name, address, race and familial status of each applicant, the address of the unit applied for, whether the applicant was rejected or accepted, the date on which the applicant was notified of acceptance or rejection, and if rejected, the reason for rejection. All applications described in the log shall be maintained at Respondents' office;

b. a list of vacancies during the reporting period at properties owned, operated, leased, managed, or otherwise controlled in whole or in part by Martha Cabusora, Felino Cabusora or any successor entity, including the address of the unit, the date Respondents were contracted by the unit's owner to lease it (if applicable), the date Respondents were notified that the former tenant would or did move out, the date the unit was again rented or a commitment made to enter into a rental, and the date the new tenant moved in;

c. sample copies of advertisements published during the reporting period, specifying the dates and media used or, if applicable, a statement that no advertisements have been published during the reporting period;

d. a list of all people who inquired in writing, in person, or by telephone about renting a unit, including their names and addresses, the date of their inquiry, the address and description of the unit, and the disposition of their inquiry.

6. Respondents shall post at any offices associated with Respondents or any successor entity, a list of all available units, specifying for each unit its address, rent, and date of availability.

7. Within ten days of the date this Order becomes final, Respondents shall pay compensatory damages to Quillistine Frazier as follows: $25,000 for emotional distress.

8. Within ten days of the date this Order becomes final, Respondents shall inform any agents and employees of the terms of this Order and educate them as to such terms and the requirements of the Act. All new employees shall be informed of such no later than the evening of the first day of employment.

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

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

This ORDER is entered pursuant to 42 U.S.C. Sec. 3612(g)(3) and 24 C.F.R. Sec. 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/

William C. Cregar
Administrative Law Judge

Dated: March 23, 1992