

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 Emily Paredes, William Paredes, Aja Marie Van Hook, and Long Island Housing Services
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Charging Party,

v.

Jill L. Chetta and Carl Chetta,

Respondents.

HUDALJ 02-00-0074-8

Decided: September 18, 2002

Jill L. Chetta and
Carl Chetta, *pro se*

Louis Smigel, Esq., and
Scott A. de la Vega, Esq.
For the Charging Party and the Aggrieved Persons

Before: Robert A. Andretta,
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed by Emily Paredes, William Paredes, Aja Maria Van Hook, and Long Island Housing Services (“Aggrieved Persons”), alleging that they had been told that housing owned and held out for lease by Jill L. Chetta and Carl Chetta (“Respondents”) was unavailable to them because of the familial status of their family including child. Such speech is in violation of the Fair Housing Act, as

amended. 42 U.S.C. §§ 3601 - 19 (“Act”). This case is adjudicated in accordance with Section 3612(b) of the Act and the regulations of the Department of Housing and Urban Development (“HUD”) that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On May 8, 2001, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD’s Assistant General Counsel for New York/New Jersey issued a Charge of Discrimination against the two named Respondents. The Charge alleges that the Chettas engaged in discriminatory conduct on the basis of familial status by making oral statements with respect to the rental of a dwelling that indicated and expressed their intention to make a preference and limitation, and thus to commit discrimination, based on the presence of a child, in violation of 42 U.S.C. § 3604(c).

The Charge of Discrimination was accompanied by a document styled, in part, “Important Legal Documents.” This set of documents includes a notice of “The Following Important Rights and Responsibilities” regarding the Charge, including a requirement to file an Answer to the Charge of Discrimination within 30 days of the service of the Charge; i.e., by June 7, 2001. It further provided the types of statements that are required to be part of the Answer. Finally, the notice warned the Respondents that failure to file an Answer within the time period specified would be deemed an admission of all matters of fact recited in the Charge and could result in the entry of a default decision. An Answer was never received.

On July 13, 2001, the Secretary filed a Motion To Enter default Judgment based upon the Respondents’ failure to file an Answer in the required amount of time. Respondents also failed to respond to the Motion. In response to the Motion, I issued an Order To Show Cause on August 1, 2001. The Order required Respondents to file their Answer along with a statement to show cause why they should not be held liable by default for failure to timely file an Answer to the Charge. The Order warned that failure to respond adequately and timely to the Order would constitute Respondents’ consent to entry of a default judgment in which all material facts alleged in the Charge would be deemed to be true. Since no responses had been received from the Chettas, on August 3, 2001, I ordered the Secretary’s counsel to ensure actual service of all pertinent documents through use of a process server. Personal service of Carl Chetta was made by delivering the documents to his adult brother at their mutual place of business on August 20, 2001, and of Jill L. Chetta via the service to her husband.

By Order dated August 22, 2001, I extended the time within which the Respondents could file an Answer to August 30, 2001, and warned them again that failure to adequately and timely respond would constitute their consent to entry of a default judgment as provided by the regulation that is codified at 24 CFR 189.420(2)(b). This Order and all later documents in the case were served on Carl Chetta at his place of business as well as mailed to that location and the Respondents' residence. No response to the Order was made, and on September 10, 2001, I issued a default judgement in the case. In the Order of Default Judgment I stated that a telephone conference would be conducted in the near future to set a date for a hearing on the limited issue of what damages should be awarded.

Because the attacks on New York and Washington of September 11, 2001, made the logistics for a New York hearing impossible for the foreseeable future, further action in this case was suspended indefinitely. On February 20, 2002, attempts to reach the Chettas by phone to arrange a hearing date were resumed. Messages were left on their answering machine, but they did not respond. On February 25, 2002, a letter was sent to them stating that it was imperative for them to contact this forum to provide a valid phone number and to arrange a hearing date. They did not respond. On May 14, 2002, the Respondents were informed by letter that a conference call to set a hearing date had been scheduled for May 20, 2002. They did not respond, nor did they participate in the conference call. On May 23, 2002, I issued the resultant Order scheduling the hearing for June 6, 2002.

This hearing, for the sole purpose of determining damages in the case, was conducted in New York as scheduled. LIHS was represented at the hearing by its executive director. Respondents and the remaining Aggrieved Persons failed to appear at the hearing. Post-hearing briefs were ordered to be filed by August 19, 2002. The Charging Party filed its Post-Hearing Memorandum Of Law on August 16, 2002. Thus, the record was closed and this case was ripe for decision on this last-named date.

Findings of Fact by Default From the Charge of Discrimination

1. Respondent Jill L. Chetta was at all times relevant to this matter the owner of the subject property, 34 Sheridan Road, Babylon, NY, where she resided with her

husband, Respondent Carl Chetta. (C 5).¹ At all times relevant to this matter Emily and William Paredes were a married couple who sought housing in September, 1999. Mrs. Paredes is the mother of Aja Marie Van Hook, who was an infant girl under the age of 18 years in September, 1999. (C 6).

2. On September 1, 1999, a classified advertisement appeared in the South Bay's Newspaper. The advertisement read: "BABYLON Waterfront: Living Room With Loft, Full Kitchen, Bathroom, Yard, Private Entrance, Parking, Laundry Room, Satellite, Must Be Available To Babysit Evenings. \$650. Month - 376-0835." (C 7). On September 2, 1999, Emily Paredes called the telephone number included in the advertisement and a woman answered. The woman asked who would be living in the apartment. Ms. Paredes answered, "Myself, my husband, and our baby." The woman responded by stating that she only wanted one person. Mrs. Paredes asked, "Is it because the bedroom is too small?" The woman replied, "No. I just want one person." On that same day Ms. Paredes reported the refusal to rent the subject property based on familial status to Long Island Housing Services ("LIHS"). (C 7 - 9).

3. Also on September 2, 2002, LIHS's Tester A called the number in the advertisement and the woman who answered the phone asked who the apartment would be for. Tester A replied that it was for herself only. The woman asked, "No children then?" and Tester A replied in the negative. The woman asked if Tester A would be available to occasionally babysit her three-year-old daughter, and Tester A said that she could. After further discussing about the apartment an appointment was made for tester A to see the apartment. The woman stated that many people were interested in the apartment and, in fact, she was going to show it to a single person and a couple that evening. The woman provided directions to the subject property and identified herself as Jill Chetta, the owner, and stated that her husband's name is Carl. (C 10).

¹ The Secretary's exhibits are identified with a capital S and an exhibit number; those of the Respondents are identified with an R. Facts from the Charge of Discrimination are identified with a capital C and a paragraph number. The transcript of the hearing is cited with a capital T and a page number. The Secretary's Post-Hearing Memorandum Of Law is cited with an M and a page number.

4. Moments after the phone call cited in paragraph three, above, LIHS's Tester B called the same phone number. The woman who answered the phone asked who the apartment was for and Tester B replied, "me and my son." The woman stated that she could not believe the number of calls she was getting from single women with children. She further stated, "I didn't know there were so many single women with children." The woman asked for the age of the child, and Tester B stated that he was two years old. The woman then stated that she really did not want anyone with children. The woman explained that the apartment has stairs and that she feared a child might fall down. She then stated that she was allowing all the single people with no children to do a "walk-through." If none of the single people qualified she would call back those with children. She further stated that if she decided to choose someone with children she might close off the stairs and convert it to storage area. (C 11).

5. On November 17, 1999, a HUD Fair Housing investigator called the Respondents to discuss the Aggrieved Persons' allegations. Jill Chetta referred the matter to her husband. Carl Chetta stated that the reason they do not want children in the apartment is that it is too small. He said that according to the town code he is only allowed one person in their studio apartment. When the investigator asked to pay a visit to measure the subject unit Mr. Chetta initially agreed and stated that if it was determined the apartment was big enough he would rent to people with children. On January 27, 2000, the HUD investigator phoned the Respondent for additional information. Ms. Chetta repeated that the apartment was small and that decisions are made about to whom to rent it based on its size. On December 8 and 13, 2000, the HUD investigator left telephone messages for Respondent Jill Chetta to return the call so they could agree on a date for the investigator to visit for the purpose of measuring the subject property. (C 12 - 14).

6. On December 14, 2000, Respondent Carl Chetta returned the HUD investigator's calls and left a telephone message stating:

This is Carl Chetta of Babylon. Let me tell you something right now. We don't know who you are and why you are calling, and you are not allowed here and if you don't stop calling we are going to sue you for harassment. If I catch you on this property I am going to have you arrested for trespassing. So, unless you have a search warrant or unless you want to take us to court, I don't want to have nothing to do with you. I don't know who you are and why you are calling. So that better be the last call. Okay? And if I catch you here I am going to press charges against you.

On December 15, 2000, the HUD investigator received an e-mail message from Carl Chetta in which he apologized for not taking this matter seriously in the past and for

ignoring the investigator's phone calls and letters. He stated that he was represented by counsel. On December 18, 2000, the HUD investigator replied to Respondent Chetta's e-mail and asked to make contact with Chetta's attorney. Despite attempts by HUD to investigate and resolve this matter, neither the Chettas nor the mentioned attorney ever communicated with HUD after this date. (C 15 - 17; M 5).

On June 6, 2002, the hearing to determine damages was conducted in New York. At the start, the Secretary moved to withdraw paragraph 17 of the Charge of Discrimination which alleged a loss of housing opportunity. (T 10). Near the end of the hearing the Secretary moved to withdraw William Paredes and the child Aja Marie Van Hook as parties to the case based upon the facts that they did not hear the statement of discrimination nor were they alleged to have been effected by those statements. (T 43). Both Motions were granted. The Aggrieved Person, Emily Paredes, did not attend the hearing in spite of her stated plans to do so. The Respondents also failed to attend the hearing. Thus, LIHS was the only party to attend the hearing.

Discussion

The regulation found at 24 CFR 180.429(b) authorizes judgment by default for failure to timely answer a Charge Of Discrimination under the Act. The filing of an Answer within 30 days after the service of the Charge is required, and any allegation in the Charge that is not denied is deemed admitted. *HUD v. Cabusora*, FH-FL, para. 25,026 at p. 25,288, *aff'd*, 9 F. 3d 1550 (9th Cir. 1993). Since a default judgment has been entered in this matter, the only remaining issues are to determine whether the facts constitute a violation and, if so, the appropriate amount of damages and other remedies to be ordered.

Violation of 42 U.S.C. § 3604(c)

The Charging Party alleges as a violation of 42 U.S.C. § 3604(c) Jill Chetta's statement that she and her husband only wanted one person to occupy their apartment, this having been said right after Emily Paredes informed her that her husband and baby would be occupying the apartment with her. At the hearing, the Charging Party withdrew Mr. Paredes as an Aggrieved Person since the Respondents were in fact showing the apartment to couples.

The Fair Housing Act at § 3604 provides that it shall be unlawful:

(c) To make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference,

limitation, or discrimination based on ... familial status ... or an intention to make any such preference, limitation, or discrimination.

Prohibited actions covered under § 3604(c) include all written and oral notices or statements by a person engaged in the rental of a dwelling that indicate a preference, limitation or discrimination because of familial status. *See* 24 CFR 100.75(b). Prohibited actions include the use of the words or phrases which convey that dwellings are not available to a particular group of persons because of familial status and expressing to prospective renters or any other persons a preference or a limitation on any renter because of familial status. 24 CFR 100.75(c)(1) and (2).

The test used to determine whether a statement is discriminatory is whether it suggests to an “ordinary listener” that a particular protected class is preferred or “dispreferred” for the housing.² *HUD v. Gwizdz*, Fair Housing - Fair Lending (P - H) ¶ 25,086 at 25,793 (Nov. 1, 1994) *citing* *Soules v. HUD*, 967 F. 2d 817, 824 (2nd Cir. 1992); *Guider v. Bauer*, 865 F. Supp. 492, 495 (N.D. Ill., 1994). The precedent in this forum for holding a Respondent liable for statements indicating a familial status preference in violation of § 3604(c) is found in *HUD v. Dellipaoli*, Fair Housing - Fair Lending (P - H) ¶ 25,127 at 26,073 (Jan. 7, 1997). In *Dellipaoli*, the HUD administrative law judge found that the Respondent’s statement that she did not want to rent to anyone with teenagers violated the Act. The judge asserted that utterances that suggest to an ordinary listener that a particular protected group is preferred or “dispreferred” for the housing in question violate the Act. *Citing Jancik v. HUD*, 44 F. 3d 553, 556 (7th Cir. 1995) (quoting from *Ragin v. New York Times Co.*, 923 F. 2d 995 at 1002 (2nd Cir. 1991)).

Respondent Jill Chetta violated the Act when she made it clear to Emily Paredes that she did not desire a tenant with a child. Mrs. Chetta’s statement, “No. I just want one person.” was made immediately after Mrs. Paredes informed the Respondent that she required housing for herself, her husband, and her baby. Mrs. Paredes, an ordinary listener, understood the statement to mean that no children were allowed. That Paredes’s understanding of the statement was accurate is evidenced by the fact that both LIHS testers confirmed that the Respondent did not want children in the apartment.

Remedies

Damages for Emotional Distress

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

Upon finding that a respondent has violated the Act, the Administrative Law Judge assigned to the case shall order appropriate relief, including “actual damages suffered by the aggrieved person[s].” 42 U.S.C. § 3612(g)(3). The purpose of an award of actual damages in a fair housing case, as in civil litigation generally, is to put the aggrieved person in the same position, so far as money can do it, as he would have been had there been no injury or breach of duty; *i.e.*, to compensate the aggrieved person for the injury sustained. Schwemm, *Housing Discrimination: Law & Litigation*, p. 25, and cases cited therein. Actual damages that are compensable include tangible losses, emotional distress, and inconvenience. In the instant case, the Aggrieved Person did not appear at the hearing to testify regarding any tangible losses or other losses attributable to inconvenience.

As to Respondent’s injuries due to emotional distress, courts have long recognized the “indignity associated with housing discrimination.” *Phillips v. Hunter Trails Community Assn.*, 685 F. 2d 184 (7th Cir. 1982); *Miller v. Apts. and Homes*, 646 F. 2d 101 (3rd Cir. 1981). Because emotional distress is difficult to quantify, courts have not required proof of the actual dollar value of that injury. Heifetz and Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 J. Marshall L. Rev. 3, 17 (1992). Judges are afforded wide discretion in ascertaining emotional distress damages, limited by two critical factors: the egregiousness of the Respondent’s behavior and the effect of that behavior on the Aggrieved Person. *HUD v. Sams*, FH - FL, ¶ 25,069 at p. 25, 651 (Mar. 11, 1994); *see, e.g., Marable v. Walker*, 704F. 2d 1219, 1220 (11th Cir. 1983); *Block v. R.H. Macy & Co.*, 712 F. 2d 1241, 1245 (8th Cir. 1983).

The application of these two factors produce awards for damages for emotional distress in these cases in a range from a relatively small amount; *e.g.*, \$150 in *HUD v. Murphy*, FH-FL ¶25,002, at p. 25,079, awarded to a party who “suffered the threshold level of cognizable and compensable emotional distress” to substantial amounts; *e.g.*, \$175,000 in the case of *HUD et al. v. Edith Marie Johnson*, FH - FL 25,076 at 24,704 (Jul. 26, 1994). In *HUD v. Dellipaoli*, FH - FL 25,127 at 26,072 (Jan. 7, 1997), the administrative law judge awarded the Aggrieved Person \$500 for her emotional reaction to the Respondent’s discriminatory statement regarding familial status. In that case, as in the instant case, the Respondent was caught in the anomalous situation of being exempt from the requirements of the Act to rent to all classes of people because the subject dwelling was an apartment in the Respondent’s residence, and yet banned by § 3604(c) from stating a preference, *e.g.*, for a single tenant with no children. As in *Dellipaoli*, Respondents’ behavior in the instant case is not considered egregious.

As to the effect of Respondent’s behavior on the Aggrieved Person, the HUD investigator, a trained and objective third party, testified that on a visit to Mrs. Paredes at the latter’s place of employment in September of 1999 she found the Respondent to be upset

and humiliated as a result of the Respondent's statement that she preferred a single tenant. (T 41). Since this appears to be the same sort of damage suffered in the *Dellipaoli* case there is no call for a major amount of compensation. Given that Respondent herself failed to attend the hearing so as to describe the emotional effects that she suffered I conclude that she is deserving of the threshold level of cognizable compensation. Accordingly, the amount of \$150 is awarded and will be ordered at the end of this Initial Decision to be paid by the Respondents to the Aggrieved Person, Emily Paredes.

Compensation for Diversion of Resources

The Charging Party seeks \$4500 in compensation for Long Island Housing Services, Inc. ("LIHS"), a private, not-for-profit fair housing advocacy and enforcement agency serving the Nassau and Suffolk counties of Long Island. (T 12). This organization assisted Emily Paredes by advising her of her right not to be discriminated against while seeking housing for herself and her family and guided her in filing a fair housing complaint with HUD. (T 12 - 14). LIHS also conducted testing to determine and confirm whether the Respondents were in fact violating the Fair Housing Act by making discriminatory statements. (T 12 - 34). The LIHS executive director ("ED") attended the hearing and testified about the Aggrieved Person's emotional state and the costs incurred by her organization.

A fair housing organization such as LIHS has standing in a fair housing case and has a right to compensation for the diversion of its resources which could have been used for other purposes. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Spann v. Colonial Village, Inc.*, 899 F. 2d 24, 29 (D.C. Cir. 1990) (organization had standing in alleging "concrete drains on their time and resources"); *Saunders v. General Services Corp.*, 455 659 F. Supp. 1042 (E.D. Va. 1987). The ED explained the time and expenses that LIHS incurred in handling the case. (T 12 - 34). She explained that staff time is calculated at \$125 per hour and that various LIHS employees, including herself, spent a total of 36.85 hours on the case, which she rounds down to 36. (T 17 - 21). This amount is excessive for two short phone calls, a few interviews and the other assistance rendered to the Aggrieved Person, as described in the ED's testimony, including attendance at the hearing. I find that compensation for ten hours' efforts would not only be adequate, but generous, and thus \$1,250 will be ordered at the end of this Initial Decision to be paid by the Respondents to Long Island Housing Services.

Injunctive Relief

Finally, the Charging Party requests an injunction prohibiting Respondents from making discriminatory statements with regard to rental housing. Once a violation of the Fair Housing Act has been established, the administrative law judge may order injunctive or

other equitable relief to make the aggrieved person whole and to protect the public interest. 42 U.S.C. § 3612(g)(3). In Fair Housing cases, injunctive relief is used to “eliminate the effects of past discrimination, the prevention of future discrimination, and the positioning of the aggrieved persons as close as possible to the situation they would have been in but for the discrimination.” *Park View Heights Corp. v. City of Black Jack*, 605 F. 2d 1033, 1036 (8th Cir. 1979), *cert. denied*, 44 U.S. 905 (1980).

Respondents are not in the business of renting housing except that they make a small apartment in their residence available for rental. Also, the Charging Party has not asked for reporting or other major equitable relief. Thus, the usual reporting required of commercial landlords will not be imposed upon them. Accordingly, as part of the order at the end of this Initial Decision, Respondents will be enjoined from stating that their apartment is limited as to classes of people that may apply to rent it and from retaliating or otherwise harassing the Aggrieved Person and her family.

Civil Penalty

Since the Charging Party has not requested a civil penalty none will be ordered.

ORDER

Having concluded that Respondents Jill L. Chetta and Carl Chetta violated provisions of the Fair Housing Act that are codified at 42 U.S.C. § 3604(c) as well as the regulations of the U.S. Department of Housing and Urban development which are codified at 24 CFR 180.420 (2)(b) it is hereby

ORDERED that

1. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondents Jill L. Chetta and Carl Chetta shall pay damages in the amount of \$150 to Emily Paredes to compensate her for the losses that resulted from Respondents’ discriminatory conduct.
2. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondents Jill L. Chetta and Carl Chetta shall pay damages in the amount of \$1,250 to the Long Island Housing Services to compensate it for the diversion of its resources that resulted from this case.
3. Respondents are permanently enjoined from discriminating against the Aggrieved Party, Emily Paredes, or any member of her family, with respect to housing and from retaliating against or otherwise harassing her or any member of her family.

This Order is entered pursuant to the applicable section of the Fair Housing Act, which is codified at 42 U.S.C. § 3612(g)(3), and HUD's regulation that is codified at 24 CFR 180.680, and it will become final upon expiration of 30 days or the affirmation, in whole or in part, by the Secretary for housing and Urban Development within that time.

/s/

ROBERT A. ANDRETTA
Administrative Law Judge

Dated: September 18, 2002