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 Edythe M. Mousley, Charging Party, v. Vallee Guglielmi and Happy Acres Mobile Park, Inc. Respondents.	HUDALJ 02-89-0450-1 Decided: September 21, 1990

Richard P. Tonetta, Esquire
For the Respondents

Holley Cohen Cooper, Esquire
For the Secretary
and the Complainant

Before: ROBERT A. ANDRETTA
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed by Edythe M. Mousley ("Complainant"), alleging that she had been prevented by a mobile home park and its owner from selling her mobile home to a family with children in violation of the Fair Housing Act, 42 U.S.C. sections 3601, *et seq.*, as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1626 (1988) ("Fair Housing Act" or "Act"). This matter is adjudicated in accordance with section 3612(b) of the Act and the regulations that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On February 13, 1990, following an investigation of the allegations and a determination that reasonable cause existed to believe that a discriminatory act had

taken place, the General Counsel of the Department of Housing and Urban Development ("HUD") issued a Determination of Reasonable Cause And Charge Of Discrimination against Vallee Guglielmi and Happy Acres Mobile Home Park, Inc., ("Respondents") alleging that they had engaged in discriminatory practices on the basis of familial status in violation of sections 804(a), (b), (c) and (d) and 818 of the Act. A hearing was held in Vineland, New Jersey on May 23 and 24, 1990, and post-hearing briefs were timely submitted by July 24, 1990. Thus, this case became ripe for decision on this last named date.

Findings of Fact and Applicable Law

Respondent Happy Acres Mobile Home Park, Inc. ("Happy Acres" or "the park") is a New Jersey corporation and the owner of the mobile home park at 1267 Northeast Boulevard in Vineland, New Jersey, that bears the same name. Throughout all times relevant to this proceeding, Respondent Vallee Guglielmi was the president, registered agent, and park manager of Happy Acres. He and his wife, Rosalie Guglielmi, are sole stockholders of Happy Acres.

Complainant Mousley owns a mobile home and has rented a space for her home at Happy Acres since 1972. Her then minor daughter lived with her in this mobile home from 1972 through 1979. It is a 1972 Zimmer Mobile Home, Princess Model, measuring 50 feet in length, including the towing hitch, by 12 feet in width. It was manufactured to be a two-bedroom home with gross living area of 540 square feet (T2 - 233).[1] The secondary bedroom has 54 square feet of living area (T2 - 236). In 1987 the City of Vineland requested all landlords to notify the City auditor of the number of bedrooms in each structure. In response to this inquiry, Mrs. Mousley gave a note dated March 2, 1987 to Mr. Guglielmi in which she stated that her home originally had two bedrooms, but that she had converted one of them into a sewing and storage room eight years earlier (R.- 1).

In February of 1983, the Respondents issued park rules which, at number 9, disallowed children from access to the utilities buildings unless accompanied by an adult from their own families and from the yards of other tenants without permission of the tenants. As a result of a tenant vote, rule 28 prohibited the sale of a mobile home without children in residence to a family with children. The full text of this rule 28 is as follows:

> Management must approve the purchaser of any mobile home which is to be left on the site. No children will be permitted to live in any mobile home where there are presently no children. Therefore, people who wish to sell such mobile homes should not sell to anyone with children.

[1] Throughout this decision, the transcript of the proceedings conducted on May 23, 1990 is cited as "T1 - #," with the number symbol standing for the page number. The transcript of the proceedings conducted on May 24, 1990 is cited as "T2 - #." The Secretary's exhibits are referred to as "S. - #," and the Respondents' exhibits are referred to as "R. - #."

> Sales of mobile homes may be permitted to people with children in cases where there are presently children in the mobile homes. Any home that was sold prior to birth of any children will be considered a childless lot at the time of sale.

There is also an unwritten park rule that allows families with children to live on one side of a road through a new section of the park while prohibiting such families from living on the other side of the road.

On July 15, 1987, pursuant to the mandates of New Jersey law N.J.S.A. 40:49-5.1, the City of Vineland adopted, as Ordinance 87-26 (R.- 6), "The BOCA National Existing Structures Code/1987" as published by Building Officials and Code Administrators (BOCA) International, Inc. (R.-3; T2 - 237). Among other things, this ordinance sets minimum bedroom occupancy standards for occupancy of existing structures at 70 square feet for one person and 50 square feet per person for two or more people. HUD's Manufactured Home Construction And Safety Standards codify the same standards at 24 CFR 3280.110(b)(2).

Respondent Mousley retired in 1988 and soon thereafter determined that she could no longer afford her own home, including lot rent for lot 17A at Happy Acres. She decided to move to low-cost senior citizen housing and made application to a few of these in March and April 1989, with the earliest one being dated March 22, 1989 (S.- 6). Shortly thereafter, she told Respondent Guglielmi of her plans to sell her trailer and move to other housing. He reminded her that she was required to give two weeks' notice and that hers was a childless lot under park rules (T1 - 74; T2 - 133).

In late August of 1989, Mrs. Mousley was offered an apartment at one of the senior citizen housing projects to which she had applied. She immediately accepted the offer, and informed Carol Morris, the Respondents' secretary, that she would be moving and selling her home. The next day, she gave the same notice in writing (T1 - 81-84). After seeking the advice of friends and reading newspaper advertisements for other mobile homes, Mrs. Mousley put a sign in the window of her trailer stating that it was for sale for $17,000 (T1 - 84-89).

In late August and early September, two couples with children came to inspect Mrs. Mousley's home. Both couples seemed "extremely interested" (T1 - 92) in the trailer. Mrs. Mousley explained to both families that they were required to complete an application and obtain park approval before they could buy the home. She also told them that Mr. Guglielmi had said that she could not sell to families with children but that she felt that she could do so by law. She gave the second couple a photocopy of the Fair Housing Amendments Act of 1988 (T1 - 92-94). Neither of these families was ever heard from again, and neither of them ever applied to the park to rent lot 17A (T1 - 93). On or about September 7, 1989, Mrs. Mousley lowered her selling price to $15,900 (T1 - 97), ran advertisements in the *Vineland Daily Journal* (S.- 10), changed the sign in her window, put up notices on shopping center bulletin boards, and told "everyone [she]

could think of" that her trailer was for sale (T1 - 97, 120).

Some time in August, 1989, Mrs. Mousley complained to the mayor of Vineland that she was being discriminated against on the basis of age. On September 19, 1989, the City Solicitor, Carl Cavagnaro, wrote to Mr. Guglielmi asking whether there were any age restrictions at Happy Acres (R.- 4). Guglielmi responded by letter dated September 29th, that there were no age restrictions; that "we have people living in our park ranging from new born to people in their eighties" (R.- 5). Also in September, some time prior to the 14th, Mrs. Mousley consulted with a Vineland attorney, Alan Geibner, an associate of the law firm of Buonadonna & Benson, regarding her situation at the park. He advised her to complain to HUD, and she filed the complaint that resulted eventually in this proceeding on September 14, 1989 (T1 - 114). Meanwhile, unknown to Mousley or Geibner, Anthony Buonadonna, a named partner in the firm, had been representing Guglielmi on unrelated matters. In an informal conversation in the firm's offices, Buonadonna learned of Geigner's conversation with Mousley and determined to have Geigner decline representation because of the inherent conflict. He also spoke twice by phone with Guglielmi about the situation. In the first conversation, he told Guglielmi that he may be in violation of the Fair Housing laws and that he should speak to his attorney for Happy Acres matters (T2 - 271). Mr. Guglielmi followed this advice, learned of the Fair Housing Amendments from his attorney, and initiated the second conversation with Buonadonna (T2 - 273). Guglielmi told Buonadonna in this conversation that he did not believe any discrimination was taking place with regard to Mrs. Mousley but that, nonetheless, he would not interfere with the sale of the trailer. This information was given to Geibner by Buonadonna (T2 - 279), and to Mousley by Geibner (S.- 33).

Soon after beginning to advertise the trailer at the lower price, Mrs. Mousley was contacted by one Amy Garmen. Garmen was married to Daniel Garmen and had two children who were three and five years old at that time. The Garmens had lived together in a mobile home which measured 65 feet in length by 12 feet in width, at Little Flower Mobile Home Park in Vineland, New Jersey, until June of 1989. At that time, the Garmens separated. On Daniel's refusal to move out of the trailer, Amy and the children went to live with Amy's family. This was in a three-bedroom home of modest proportions which also housed Amy's parents, brother, and sister. Thus, it was a crowded situation and a temporary measure.

Terry Garmen is Daniel Garmen's stepmother. She and her husband resolved to buy a trailer for Amy and the children to live in on the understanding that Amy would pay them back (T2 - 66-68). Amy's search for a mobile home brought her to four of them that were unsuitable before she came to see Mousley's home on September 9, 1989. She liked the Mousley trailer and decided she wanted to buy it (T2 - 72). Amy offered Mrs. Mousley a deposit, but this was refused (T2 - 74). Mousley warned Amy about there being a rule against selling the trailer to a family including children, and showed Amy a copy of part of the Fair Housing Act indicating that such a prohibition is illegal (T2 - 78, 79). While Terry Garmen told Amy to go ahead and fill out an application,

they had previously agreed that it would be necessary for the mother-in-law to see and approve the purchase of any trailer that Amy would select (T2 - 97). Since the park office had closed for the weekend it was necessary for Amy to come back on

Monday, September 11, 1989, to obtain and fill out an application. Amy told Jean Smith, a part-time employee working in the park office, that she intended to buy Mrs. Mousley's trailer and asked for an application. She was given one to fill out without any questions as to her financial or familial status (T2 - 77), because Guglielmi retained sole authority to approve or disapprove an application to rent a trailer lot (T2 - 181).

Mrs. Garmen left the office without asking any questions of her own, and came upon Guglielmi, who asked if he might help her. She explained that she wanted to buy the Mousley trailer, and Guglielmi acknowledged this with a nod of his head (T2 - 78). She further stated, without being asked about her circumstances, that she has two children (T2 - 89). Thereupon, Guglielmi told her she could fill out the application, but she would probably not be accepted (T2 - 147). She complained that she was being discriminated against (T2 - 90), and Guglielmi denied that his decision of whether to accept her application would be based on discrimination (T2 - 90). Garmen stated that she was aware of her rights and would get a lawyer, and Guglielmi suggested that she not waste her time and money (T2 - 80). He gave her no further explanation because she was agitated and "arrogant in her manner" (T2 - 193), and he determined to await the arrival of the application before discussing other factors (T2 - 193).

Amy Garmen testified that Terry Garmen and Mrs. Mousley placed a number of calls to Guglielmi to try to discuss their desire to make a deal on the trailer (T2 - 80, 81), however, Guglielmi's efforts to return the only call for which there is a phone message slip were not successful (S-12). Soon thereafter, Daniel and Amy Garmen reached an agreement that Amy could take over the trailer at Little Flower and live there with the children, which she did on or about September 14, 1989 (T2 - 87, 94). The Garmens put their agreement by which Amy bought Daniel's interest in the trailer into writing on September 21, 1989. The trailer at Little Flower is 15 feet longer than the one at Happy Acres; *i.e.*, it contains 180 more square feet of living space (T2 - 97-99).

Roberta Patton is the daughter that Mrs. Mousley raised in the trailer at Happy Acres. Soon after Thanksgiving of 1989, and one week after HUD's investigator visited Mrs. Mousley and the trailer park (T1 - 213), she, her husband, and her daughter returned from a one-and-a-half-year stay in Fort Lauderdale, Florida. The husband resumed the job he had previously held in Croyden, Pennsylvania, which is, according to Patton, about a 40-minute drive from Vineland (T1 - 260), although I take notice that it is an approximately 60-mile drive from Vineland, via Camden and Philadelphia (Rand McNally, *Road Atlas*, p. 63, 1990 ed.).

Mrs. Patten testified that she had tried to buy the trailer next door to her mother's trailer before moving to Fort Lauderdale in 1987, but had been turned down by the park because she has a child. She further testified that she and her husband wanted to buy

her mother's trailer on their return from Florida for the asking price of $15,900, but that the secretary at Happy Acres would not even give her an application because of her having a child and the "childless" nature of the lot her mother's trailer occupies. (T1 - 264, 268). Roberta Patten testified that it was the Pattens' plan that Mr.

Patten would commute daily to his job in Pennsylvania by driving. She further testified that she was acutely aware of her mother's efforts to sell the trailer, her mother's complaint that she could not do so because of the "childless" nature of the lot it occupies, and the extreme stress the situation was causing her mother (T1 - 254-258, 266).

The Secretary and the Complainant offered Mr. James Sullivan as an expert to render his opinion as to the value of the Mousley trailer. Sullivan is not an appraiser of mobile homes, does not have specific training in appraising mobile homes, is not certified as an appraiser, and does not belong to any appraisers' professional societies (T2 - 22-23). He does not make use of ordinary appraisers' forms, and, while he listed the exact exterior dimensions of the trailer (S - 30), he merely estimated the sizes of its rooms (T2 - 50-52). Sullivan's estimates of trailer value are based upon his experience buying and selling them for tenants in parks he owns, and he testified that such values vary with the park (T2 - 36, 56). Sullivan reached a wholesale value of the Mousley trailer of $10,198 and a fair market value of "15,000 +/-" (S - 30; T2 - 60, 61).

Respondent offered Mr. Walter Sauers as an expert to testify with regard to the value of the trailer. Sauers has been an appraiser of mobile homes by profession for ten years. He works for himself and for an appraising corporation, and he typically does 100 or so appraisals per year (T2 - 224-226). He also has 25 years of experience constructing, developing, buying and selling, financing, and doing claims adjusting on mobile homes (T2 - 226). He has attended the appropriate appraising schools, regularly attends courses in housing valuation, and is licensed to do real estate and mobile home appraisals by, as well as being a member of, the appropriate professional organizations (T2 - 227).

Sauers did the usual, detailed appraisal report, including a diagram, that one expects to get from an appraiser (R - 7). The report includes the characteristics of three comparable, but larger, trailers at Happy Acres which had been recently sold at the time of his inspection. The asking and actual sales prices of these three comparable trailers were $14,000/$14,000; $15,000/$12,000; and $11,500/$10,500, respectively. The report includes a detailed description of each as well as of the subject trailer. The report concludes that the wholesale value of the Mousley trailer was $6,675, and that the fair market value was $11,300, as of the May 9, 1990 report date (R - 7; T2 - 237). In his testimony, Sauers stated that the Mousley trailer is "functionally obsolete" because the second bedroom, having only 56 square feet of space, falls 14 square feet short of minimum standards for mobile home bedrooms according to New Jersey law, national standards, and the HUD Manufactured Housing Construction Standards (T2 - 235, 237). He stated that the most he would have listed the trailer for as of the time of the appraisal is $11,800 in hopes of actually getting the fair market value of $11,300; any higher price would "chase people away" (T2 - 252). Finally, Mr. Saures defined fair market value as "the price that an educated buyer would pay for a home in an arm's length transaction" (T2 - 249).

On September 13, 1988, Congress passed the Fair Housing Amendments Act to prohibit, *inter alia*, discrimination in housing on the basis of familial status.[2] The following prohibitions of the Act more specifically relate to the facts of this case by rendering it unlawful:

> 1. "... 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."[3] 42 U.S.C. Sec. 3604(a); 24 CFR 100.60 (1989);
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> 2. "... to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status." 42 U.S.C. Sec. 3604(b); 24 CFR 100.65;
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> 3. to "make, print or publish ... 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." 42 U.S.C. Sec. 3604(c); 24 CFR 100.75;
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> 4. or "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed ... any right granted or protected by the Act." 42 U.S.C. Sec. 3618; 24 CFR 100.400.

There are exemptions in the Act for housing that qualifies as being for "older persons," who are defined as being 55 years of age or older, and the legislative history of the Act reveals that the exemptions apply to mobile home communities. 42 U.S.C. Sec. 3607(2)(c); 134 Cong. Rec. S10551 (daily ed. August 2, 1988) (Sen. Wilson). Finally, the Preamble To Final Rule Implementing Fair Housing Amendments Act of 1988 makes it clear that both rental lots in mobile home parks and the mobile homes themselves are "dwellings" within the meaning of the Act. *See* 24 CFR Ch. I, Subch. A, App. I at 548 (1989)

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[2] "Familial status" is defined as "one or more individuals (who have not attained the age of 18 years) being domiciled with ... a parent or another person having legal custody of such individual or individuals." *See*, 42 U.S.C. Sec. 3602(k).

[3] A "dwelling" includes "... any vacant land which is offered for sale or lease for the ... location thereon of any ... building, structure or portion thereof." 42 U.S.C. Sec. 3602(b); 24 CFR 100.20 (1989).

Discussion

HUD's Chief Administrative Law Judge, Alan W. Heifetz, articulated the burden of proof test to be applied in housing discrimination cases brought under the Fair Housing Act in *HUD v. Blackwell*, Fair Housing - Fair Lending (P - H) para. 25,001 at p. 25,005 (HUDALJ No. 04-89-0520-1, Dec. 21, 1989) (hereinafter cited as *Blackwell*). This statement of law was upheld by the United States Court of Appeals in *Secretary, HUD On Behalf Of Herron v. Blackwell*, No. 90-8061 (11th Cir. Aug. 9, 1990). It is that the well-established three-part test that is applied by the federal courts to employment discrimination cases which are brought under Title VII of the Civil Rights Act, as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), should also be applied to housing discrimination cases that are brought before this forum. *See, e.g., Politt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1987). *See also*, R. Schwemm, *Housing Discrimination Law*, 323, 405-10 & n. 137 (1983). That burden of proof test is as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence .... Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, undiscriminatory [sic] reason" for its action .... Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext ....

Pollitt, supra, at 175, citing *McDonnell Douglas, supra*, at 802, 804.

The allegations in the Complaint appear to come down to two counts of unlawful conduct: first, that the Respondents committed unlawful discrimination because of familial status which injured Edythe Mousley by making her mobile home unavailable for sale to families with children in violation of the "prohibitions of the Act" numbered 1, 2, and 4, above; and, second, making and disseminating discriminatory rules and statements in violation of prohibition 3. To establish a prima facie case in the first allegation, the government must prove that: (1) at least one of Complainant's potential buyers was a bona fide buyer and a family with children; (2) the buyer or buyers were qualified to purchase the trailer and lease the lot; (3) the buyer(s) applied for leasing of the lot or were credibly dissuaded from doing so; (4) Respondents rejected the buyer(s); and (5) after the rejection, the property remained available. *See Blackwell, supra,* at 25,005, and cases cited.[4] To establish a prima facie case in the second allegation, the

[4] *Phillips v. Hunter Trails Community Ass'n.,* 685 F.2d 184, 190 (7th Cir. 1982); *Robinson v. 12 Lofts Realty, Inc.,* 610 F.2d 1032, 1038 (2nd Cir. 1979); *Williams v. Matthews Co.,* 499 F.2d 819, 826 (8th Cir.), *cert. denied*, 419 U.S. 1021, 1027 (1974); *Politt, supra,* at 175; *Davis v. Mansards,* 597 F. Supp. 334, 345 (N.D. Ind. 1984).

government must prove that Respondents made, disseminated, and maintained rules and made statements that indicate a limitation on the availability of Happy Acres lots based upon familial status.

If established, the prima facie case creates a rebuttable presumption that unlawful discrimination has occurred. *See, e.g.*, *Williams, supra*, at 826; *see also, Texas Dep't. of Community Affairs v. Burdine*, 450 U.S. 248, 257 (1981). Once a prima facie case is established, the burden of production shifts to Respondent to articulate a legitimate, nondiscriminatory reason for his actions. *Blackwell, supra,* at 25,005, and cases cited.[5] To meet this burden, the evidence offered by Respondents must raise a "genuine issue of fact" as to whether they discriminated against Complainants. *See Burdine, supra,* at 254-55. Furthermore, that evidence must be admissable and must enable the trier of fact "rationally to conclude" that Respondents' actions have not been motivated by "discriminatory animus." *Id. at 257; op. cit.,* at 25,005-6.[6]

If the Respondents meet this shifting burden of production, the government must demonstrate that the reasons given by the Respondents for their actions are pretextual and that familial status in fact played a part in their decision not to permit tenancy. The government does not need to prove that familial status was the sole factor motivating the Respondents. It only must show, by a preponderance of the evidence, that familial status is one of the factors that motivated the Respondents in their dealings with the Complainant. *Id.* at 25,006, and cases cited.[7]

Mrs. Mousley's first two interested buyers appeared in late August or early September. Mousley claims they were very positive about the trailer and interested in buying it at the then full asking price of $17,000 (T1 - 94). However, they gave her no deposit and never applied to rent the lot from the park. Mrs. Mousley doesn't know who they were, nor did she get their addresses and phone numbers (T2 - 159). Nothing is known about their qualifications to buy the trailer; *e.g.*, whether they could have borrowed the money to do so. They were never rejected as potential buyers of the trailer and renters of the lot because they never applied, although they may have been dissuaded from doing so by Mrs. Mousley's telling them of the park rules and the designation of her lot as childless (T1 - 94; T2 - 159, 285). This set of events and circumstances clearly does not rise to the requirements needed to make out a prima facie case because it cannot be shown that these people were actual buyers intending to buy

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[5] *Burdine, supra,* at 253; *McDonnell Douglas, supra,* at 802; *Pollitt, supra,* at 175.

[6] *Robinson, supra,* at 1042; *United States v. Mitchell,* 580 F.2d 789, 791 (5th Cir. 1978); *Pollitt, supra,* at 176. *See also Fields v. Clark University,* 817 F.2d 931, 936-937 (1st Cir. 1987) ("motivating factor"); *Berl v. Westchester County*, 849 F.2d 712, 714-715 (2nd Cir. 1988) (discriminatory animus played a substantial part).

[7] *See Price Waterhouse v. Hopkins*, __ U.S. __; 109 S. Ct. 1775 (1989) at n. 2. Disagreement among the circuits on the question of the standard to be applied.

the trailer.

Mrs. Mousley's next major potential buyer[8] was Amy Garmen. Respondent says that it was actually her mother-in-law, Terry Garmen, that was the potential buyer since she intended to buy a trailer for Amy and her grandchildren (T2 - 96). Since both women played roles in the search for housing for Amy and her children, it is necessary to look at whether they, together, were a bona fide buyer. Amy testified that she liked the trailer better than the one she had left and believed the price, which was by then $15,900, to be a fair one (T2 - 74-76). However, Terry testified in her deposition that Amy had told her that the Mousley trailer was not as nice as the one at Little Flower and that she did not believe Amy to be competent to evaluate the financial deal. Moreover, Terry had reserved for herself the final decision-making on the purchase of any trailer. While Amy told Mrs. Mousley that she wanted the trailer, and that Terry would come down with a check to buy it (T2 - 75), Terry Garmen never came to see the Mousley trailer, and never made an appointment to do so. Moreover, Terry testified that she had no intention of simply bringing a check but, rather, would have to see the trailer and have proper papers drawn up for the purchase. None of this was done.
While Amy Garmen testified that she did not pursue the Mousley trailer because Guglielmi would not return her mother-in-law's calls, it is obvious that at the time this was taking place, Amy, Terry, and Daniel Garmen were resolving to have Amy and the children move back to the trailer at Little Flower park since that is what they did within three days.

Nonetheless, it is also clear that Guglielmi's conversation with Amy and the park rules, as described to her by Mousley, helped to dissuade her from the Mousley trailer purchase. Thus, while it is possible to assume that these purchasers were qualified and to find that they were dissuaded from applying for a lease on the lot, it is not possible to find that the Garmen women ever actually rose to the status of potential buyers; too much points to their being simply interested parties at one time who decided to make other arrangements. Mere contemplation by these parties to make a purchase which they otherwise could make but for the probability that their application would be denied on the basis of familial status is not sufficient to form a prima facie case of discrimination resulting in direct harm to the Complainant. Thus, I conclude that, while there was discriminatory conduct, there is no prima facie case that the Respondents prevented the sale of Mrs. Mousley's trailer to the Garmens because of familial status.

The government's final offering of a witness-purchaser was Roberta Patton, Mrs. Mousley's daughter. Although I find that she was directly told that she could not apply to lease lot 17A, I also find that she was not a bona fide purchaser and, therefore, could not have been prevented from buying Mousley's trailer on the basis of familial status. Thus, as with the Garmen situation, I conclude that a prima facie case that Respondents

[8] Mousley claimed that "a little over 50" people came to see her trailer and that "at least three quarters" of that number had children (T1 - 123). These numbers were not substantiated.

prevented the Complainant from selling her trailer on the basis of familial status is lacking.

Determining whether the Respondents are liable for making and disseminating discriminatory rules and making discriminatory statements does not require use of the analysis set forth in *McDonnell Douglas, supra,* since the Complainant and the government have produced direct evidence of such discriminatory rules and statements. *See Trans World Airlines, Inc. v. Thurston,* 469 U.S. 111, 121 (1984), *citing Teamsters v. U.S.,* 324, 358 n. 44 (1977). The shifting burdens of proof format from *McDonnell Douglas*, which is spelled out above, is designed to assure that the "plaintiff [has] his day in court despite the unavailability of direct evidence." *Id., citing Leob v. Textron, Inc.,* 600 F.2d 1003, 1014 (1st Cir. 1979). Here, there is direct evidence of discrimination by rules and statements. Happy Acres rule 28 prohibits the sale of trailers where no children are in residence to new owners with children. Guglielmi himself, and his clerical staff, stated on more than one occasion that Mrs. Mousley's and other lots were childless lots in accordance with rule 28. Moreover, in spite of Respondents' desire to have us believe that rule 28 was changed to comply with the law as soon as Guglielmi learned that it had been newly made illegal, there is no evidence that he changed the rule, and disseminated such a change to his tenants, nor that he stopped enforcing it with any certainty or consistency. Finally, the evidence shows, and the Respondents do not dispute, that in the new section of the trailer park, families with children are only permitted to rent lots on one side of the road. Clearly, rule 28 violates the Act and HUD's regulations, and Respondent Guglielmi's efforts to correct the situation when he learned of the illegality of the rule were too feeble to begin to exonerate himself and the park.

It would appear unreasonable to find, and there was no evidence to show why it should be found, that park rule 9 is either discriminatory or applied in a discriminatory manner. Reasons are both legally-based and well-grounded in our way of life for prohibiting children access to utility rooms without an accompanying adult and access to neighbors' yards without the neighbors' permission. Thus, I find that rule 9 is not in violation of the Act or HUD's regulations.

Ultimate Conclusions

By making lot 17A and others unavailable for rental to families with children, Respondents have violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Sec. 3604(a) and HUD's regulations that are codified at 24 CFR 100.60(b)(2).

By making a childless familial status a condition for the rental of lot 17A and others, or the sale of any trailer occupying lot 17A or others, Respondents have violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Sec. 3604(b) and HUD's regulations that are codified at 24 CFR 100.65.

By establishing, printing and disseminating park rule 28 and the policy prohibiting

families with children from occupying lots on one side of the street in the park's new section, Respondents have violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Sec. 3604(c) and HUD's regulations that are codified at 24 CFR 100.75.

By telling Mrs. Mousley that hers is a childless lot, by not later correcting this information so that she would know that she could in fact sell to a family with children, and by attempting to dissuade Amy Garmen from applying for lot 17A, Respondents have violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Sec. 3618 and HUD's regulations that are codified at 24 CFR 100.400.

Remedies

Section 812(g)(3) of the Act provides that where an administrative law judge finds that a respondent has engaged in discriminatory practices, 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. 2613(g)(3). That section further states that the "order may, to vindicate the public interest, assess a civil penalty against the respondent." *Id*. The maximum amount of a civil money penalty is dependent upon whether the respondent has been adjudged to have committed prior discriminatory housing practices. *Id*. Where, as in this case, the respondent has not been adjudged to have committed any prior discriminatory housing practices, the civil money penalty assessed against the respondent cannot exceed $10,000. *Id; see also* 24 CFR 104.910(b)(3).

The government, on behalf of the Complainant, has prayed for: (1) damages of $2,755.11 to compensate Mrs. Mousley for expenses incurred during the period she has been unable to sell her trailer; (2) damages of $50,000 to compensate Mrs. Mousley for embarrassment, humiliation, emotional distress, and loss of civil rights caused by Respondents' discrimination; (3) injunctive and equitable relief requiring Respondents to purchase Mrs. Mousley's trailer for her original asking price of $17,000; (4) the imposition of the maximum civil penalty of $10,000; and (5) other equitable and injunctive relief, to include ordering Respondents: (a) to amend park rules prohibiting the sale of trailers on lots without children to families with children, and providing for families with children to live in certain sections of the park, to delete all discriminatory language and policies, and to disseminate such amendments; (b) to inform all residents of the park that they may have been injured by the unlawful rules and how to file complaints with HUD; (c) to cease all discriminatory practices; (d) to cease all discriminatory language; *e.g.*, "childless lot" and "adult section;" (e) to post a fair housing poster; (f) to refrain from discriminatory or retaliatory action against Mrs. Mousley or any witness in this proceeding; (g) to institute internal record-keeping to ensure compliance with these orders and to permit reasonable HUD inspection of the records; (h) to submit quarterly reports to HUD for a three-year period; (i) to inform and educate all employees and agents of the park concerning this proposed order and the Fair Housing Act; and, (j) to provide Mrs. Mousley's lot to her rent free from the time this proposed order becomes final.

1. Expenses Incurred

The Complainant in a case brought under the Act is entitled to any damages directly incurred as a result of the Respondent's discriminatory actions. *See Blackwell, supra, at 25,010.* However, while it has been found that Respondents engaged in discriminatory conduct with regard to Mrs. Mousley and her attempts to sell her trailer, it cannot be said that such conduct resulted in the inability to sell it during the long period it has been offered for sale. The evidence shows that the original asking price of $17,000 was simply too high to attract serious prospects and that the lowered price of $15,900 remained too high as well. The government was only able to describe four prospective buyers, all of whom were in contact with Mrs. Mousley early in her attempts to sell, and none of them could be shown to have been bona fide buyers intent on purchasing the trailer. No one else applied for the lot in the park, no one made a deposit on the trailer, and only two of the four prospects, one of which is the Complainant's daughter, can be cited by name by the government. It simply stretches credibility to say that Mrs. Mousley would have sold her trailer but for the conduct of Respondents. Accordingly, there will be no relief for the expenses incurred by Mrs. Mousley during her attempts to sell the trailer.

2. Intangible Damages

The Government seeks damages for Mrs. Mousley as compensation for embarrassment, humiliation, emotional distress, and loss of civil rights caused by Respondents' acts of discrimination. It is well established that the amount of compensatory damages which may be awarded in a civil rights case is not limited to money losses or other damages directly incurred, but includes intangible damages suffered as a result of the discriminatory activity. *See, e.g., Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). These damages can be shown by testimony and other evidence and can also be inferred from the circumstances of the case. *See Marable, supra*, at 1220; *Gore v. Turner,* 563 F.2d 159, 164 (5th Cir. 1977)

In *Blackwell, supra,* at 25,011, Chief Judge Heifetz stated that "[b]cause of the difficulty of evaluating emotional injuries which result from deprivation of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries." *Citing Block v. R. H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983). He also found circumstances in *Marable* to be applicable to *Blackwell* and stated, at 25,012, that

> ... 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.

In the case at hand, it was shown that Mrs. Mousley's lack of success in selling her trailer contributed significantly to the emotional distress that she suffered for a number of reasons during the period in question. She became so fearful of her financial status that she cancelled plans to travel and collected cans to sell to recyclers. She was embarrassed to admit to friends, who often inquired, that she was still without a buyer and still suffering acute financial difficulty. She also felt strongly about her right to sell to a family with children because of difficulties she had had when her own daughter was young, and was consequently much distressed by the deprivation of others' rights as well as her own that was imposed by the park rules.

While the failure to sell has been found to be more a consequence of Mousley's high asking prices than any other reason, it is clear that she believed she was unable to sell her trailer because of park rules. Guglielmi did little to disabuse her of her belief that she could not sell to a family with children even after learning that it is unlawful for him to so restrict the sales of his tenants' trailers. His claim that he let her know in September that she could sell to anyone would be more telling had he taken the steps necessary to ensure that she received the message and understood it. Moreover, he should have taken immediate steps to disseminate the required changes to the park rules. Had Guglielmi taken such reasonable steps it is probable that Mrs. Mousley would have searched for reasons other than park rules and Guglielmi's conduct for her failure to sell the trailer. On the contrary, he not only failed to ensure she understood his change of mind and purported change in the rules, but he reinforced the view that the rules were unchanged by his and his clerk's conduct with regard to Amy Garmen and Roberta Patton. His claim that he was merely acting within state and federal laws regarding sleeping space per person is pretextual. He hardly knew that such limitations exist prior to the events of this case, and, moreover, he never made clear to Mrs. Mousley that she was limited by such laws rather than by park rules.

Thus, clearly, Guglielmi and the park rules contributed significantly to Mrs. Mousley's actual and perceived loss of civil rights, feelings of embarrassment and humiliation, and general emotional distress. The difficulty now is to assess the amount of those damages in terms that can be paid to Mrs. Mousley. As recognized in *Shaw v. Cassar*, 558 F. Supp. 303, 315 (E.D. Mich. 1983), there is no formula for determining intangible damages, and consequently, the determination must be left to the discretion and judgment of the trier of fact, guided by the circumstances of the particular case.[9]

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[9] As stated in R. Schwemm, *Compensatory Damages in Federal Fair Housing Cases*, 16 Harv. C.R.C.L. Law Rev. 83 (1981):

> The federal fair housing laws became effective in 1968. Since then, courts have often awarded damages to victims of housing discrimination, but their decisions have provided little guidance for assessing the amount of such awards. There is a great range of awards, with some courts awarding only nominal damages of $1 and others setting awards of over $20,000.

Blackwell, supra, at 25, 013.

As a general rule, while the amount of damages awarded should compensate for the injury suffered, it should not provide the injured party with a windfall. *See Albemarle Paper Co. v. Moody,* 422 U.S. 405, 418 (1975). To that I would add that there must also be a rational relationship between what the Respondents did to the Complainant and how much they are made to suffer as a consequence.

The Government, on behalf of Mrs. Mousley, seeks $50,000 as compensation for her embarrassment, loss of civil rights, and emotional distress. Its rationale in support of this figure does not show how it was reached except by comparison to other cases. A review of relevant case law is not very helpful since it reveals a large range of awards.[10] However, one case cited by the government appears more relevant than others. It is *United States v. Oakmont Community Association*, (E.D. Pa. No. 89-5668, Mar. 5, 1990). There, a community organization had told a couple with a six-month old child that the child was not welcome in its condominium development because of a bylaw prohibiting families with children under thirteen that pre-dated the amendments to the Act. The family nonetheless moved in as renters, in spite of the association's threats to bar them from the common areas. In September of 1989, the association eliminated its prohibition against families with children. In March, 1990, a consent order was entered under which the respondent association agreed to pay $10,000 in damages to the family, $2,500 to the owner who had rented to the family, and a $2,500 civil penalty. Of interest here are the facts that $10,000 in intangible damages was agreed to for a family that had suffered direct discrimination, and $2,500 in intangible damages was agreed to for the owner whose renting of his condominium would have been thwarted by the association.

Another element which must be considered in this part of the analysis is the newness of the applicable law and regulations. Here, the effective date was in March, 1989, and the activities complained of followed in the summer and autumn of that year. While the adage that ignorance of the law is no excuse is useful, its application must be tempered with reasonableness, especially when, as here, the prohibited activity is not evil on its face but rather simply has been made unlawful. This brings up the final consideration, and that is that Guglielmi was enforcing a park rule that had been decided by democratic process by his tenants. Its intent was to foster a peaceful life style for people, especially elderly people, without children; that is to say, the purpose of the rule was to protect, not to deprive, even if the latter was a consequent spill-over. This contrasts sharply with the situation in *Blackwell* where a family was refused purchase of a home specifically on the basis of its race, which is an inherently evil practice that is widely known to have been illegal for the past 25 years. Based on this review of the relevant

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[10] *See, e.g., Block v. R.H. Macy & Co., Inc.,* 712 F.2d 1241 (8th Cir. 1983) ($12,402 award for plaintiff's mental anguish, humiliation, embarrassment and stress); *Grayson v. S. Rotundi & Sons Realty Co.,* 1 Fair Housing-Fair Lending (P-H) para. 15,516 (E.D.N.Y. Sep. 5, 1984) (compensatory damage awards of $40,000 and $25,000 for two plaintiffs' embarrassment and humiliation); *Parker v. Shonfeld, supra* ($10,000 compensation award for embarrassment, humiliation, and anguish). *Cf. Ramsey v. American Air Filter Co., Inc.,* 772 F.2d 1303 (7th Cir. 1985) (in employment discrimination case, jury award of $75,000 as compensatory damages for plaintiff's mental distress found excessive, and $35,000 awarded based on the record). *Id.*

case law and the described consideration of the facts and circumstances of this case, I conclude that the Complainant is entitled to an award of $2,500 from Respondents Happy Acres Mobile Park, Inc. and Vallee Guglielmi.

3. Equitable Relief

The government has asked, on behalf of Mrs. Mousley, that Respondents be ordered to purchase the Complainant's mobile home at the original asking price of $17,000. The concept here is that courts should take affirmative steps to make victims of discrimination whole by putting them in the conditions they would have been in but for the discrimination. *Cf. Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033 (8th Cir. 1979), *cert. denied,* 445 U.S. 905 (1980); *Moore v. Townsend,* 525 F.2d 482 (7th Cir. 1975) (affirming order of specific performance and stating that "it matters not whether there was a specific contract or not; otherwise the very purpose of the Act would be completely frustrated."). Moreover, as was stated by the court in *Marable, supra* at 1221,

> Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination .... The relief must be tailored in each instance to the needs of the particular situation, a matter peculiarly within the discretion of the district judge.

Here, of course, it has been found that Mrs. Mousley's failure to sell her trailer was less a function of the Respondents' actions than of her asking price. As was pointed out above, however, if Respondents had been more forthcoming regarding their reasons and less obstructive of Mrs. Mousley's efforts, her state of mind may have brought her to the conclusion that lowering the price could produce the sale she wanted.

As to the price, the credible evidence is that the trailer's fair market value is only $11,300 and that it is obsolete in terms of accommodating families with children. At any rate, the real lesson of the cases cited is that affirmative actions should be taken to mold solutions. On consideration of all of the facts and circumstances, I conclude that it is appropriate to order the Respondents, either in their own name or the name of Vineland Mobile Home Sales, under which they buy and sell mobile homes, to offer to buy Mrs. Mousley's trailer for not less than what I deem to be a fair compromise price of $13,600, and to provide her lot (17A) free of rent until the trailer is sold or until one year has passed, whichever is sooner.

4. Civil Penalty

The Government has also asked for the imposition of a civil penalty of $10,000, which is the maximum that can be imposed on a respondent who has not been adjudged to have committed any prior discriminatory housing practices. *See* 42 U.S.C. Sec. 3612

(g)(3)(A); 24 CFR 104.910 (b)(3). In addressing the factors to be considered when assessing a request for imposition of a civil penalty, the House Report on the Fair Housing Amendments Act of 1988 states:

> 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, and 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 reasoning required by the Congress is not unlike that applied above in paragraph 3.

Based upon a consideration of these factors, and to vindicate the public interest, I conclude that it is appropriate in this case to impose a civil penalty of $2,000 upon Respondents Guglielmi and Happy Acres. This amount contrasts appropriately with the maximum permissible penalty of $10,000 that was imposed in *Blackwell*, and is in accord with the $2,000 civil penalty that was imposed in *HUD v. Murphy,* (Fair Housing - Fair

Lending (P - H) para. 25,002 (HUDALJ Nos. 02-89-0202-1, *et cet.*, Jul. 13, 1990) where it was found that the Respondents discriminated against families with children in an erroneous attempt to qualify for the exemption from the Act for housing for older persons that is provided at 42 U.S.C. Sec. 3607(b).

5. Injunctive Relief

As was noted earlier, injunctive relief should be structured in a way that not only removes the effects of the violations committed, but also helps to ensure that the Act will not be similarly violated in the future. To that end, the Government has requested that the Respondents be ordered to cease certain activities and undertake specific actions, as listed (a) through (i) above.[11] Substantially all of these requests are reasonably nonburdensome to the Respondents and are deemed appropriate under the totality of the circumstances of this case. Accordingly, for the most part, they will be imposed, and the specific provisions of injunctive relief are set forth in the Order issued below.

Order

[11] The equitable relief requested in (j), the provision of Mrs. Mousley's lot to her free of rent, was granted above in paragraph 5.

Having concluded that Respondents, Vallee Guglielmi and Happy Acres Mobile Home Park, Inc., violated provisions of the Fair Housing Act that are codified at 42 U.S.C. Sections 3604(a), (b), and (c), and 3618, as well as the regulations of the U.S. Department of Housing and Urban Development that are codified at 24 CFR 100.60, 100.65, 100.75, and 100.400 (1989), it is hereby

ORDERED that,

1. Within 45 days of the date upon which this Order becomes final, the Respondents shall amend their park rules to eliminate all discriminatory language, and, especially to eliminate Rule 28 and the policy of limiting families with children in the new section of the park to one side of the street. Respondents shall notify all residents of Happy Acres and all owners of trailers in Happy Acres that these rules and policies have been changed. This notice shall include information on how persons who believe they were harmed by Respondents' unlawful rules may file complaints with HUD. Respondents shall provide applicants to Happy Acres with a notice of non-discrimination in housing that complies with applicable state and federal laws.

2. The respondents shall cease to employ any policies, practices, rules or regulations that discriminate against families with children and shall cease to use any written documentation or advertisements that indicate a preference or limitation based on familial status.

3. The respondents shall cease to use language that indicates a preference for or against certain people on the basis of familial status; *e.g.,* "childless lot," and "adult section."

4. The respondents shall prominently display and maintain a fair housing poster (*See* 24 CFR 110.25) at the Happy Acres rental office and at each office or place of business where mobile homes or mobile home spaces are offered for rent.

5. The respondents are permanently enjoined from taking retaliatory action against Mrs. Mousley or the witnesses at the hearing, and from discriminating against them or anyone else with respect to housing on the basis of familial status.

6. On the last day of every third month beginning December 31, 1990, and continuing for three years from the date this initial decision becomes final, the respondents shall submit reports, that are sworn to be true under the penalties for perjury, containing the following information to HUD's New York Regional Office of Fair Housing and Equal Opportunity, 26 Federal Plaza, New York, NY 10278-0068:

> a. a photocopy of every application from persons who applied for occupancy at any property owned by the respondents with a statement of each person's familial status, whether the person was accepted or rejected, including the reason for any rejection, and the date of notification of the

acceptance or rejection;

b. a list of vacancies during the reporting period at all properties owned by the respondents, including the departing tenants' familial status and the date the lot was vacated;

c. current occupancy statistics indicating which lots at each property owned by the respondents are occupied by families with children and which are occupied by people without children;

d. samples or transcripts of advertisements published, posted, or broadcast during the reporting period or a statement to the effect that no advertising was done; and

e. a copy of any changes in park rules or forms and a description of how the changes were disseminated.

7. The respondents shall inform all employees and agents of the park and all other of their income properties of the terms of this Order and shall educate them regarding the requirements of the Fair Housing Act.

8. Within forty-five days of the date this Order becomes final, Respondents Guglielmi and Happy Acres shall pay $2,500 to Complainant Edythe Mousley.

9. Within forty-five days of the date this Order becomes final, Respondents shall offer to purchase the mobile home belonging to the Complainant for not less than $13,600, and if such sale is agreed to by the Complainant, they shall sign all documents necessary to effectuate this sale, including a document releasing the Complainant from her tenancy at the park and from any obligation to pay lot rent after this Order becomes final and until the trailer is sold, or for one year, whichever is sooner.

10. The respondents shall pay a civil penalty of $2,000 to the Secretary, United States Department of Housing and Urban Development, within forty-five days of the date upon which this Order becomes final.

11. Within 60 days of the date this Order becomes final, the respondents shall submit a report to HUD's New York Regional Office of Fair Housing and Equal Opportunity detailing the steps they have taken to comply with this Order.

This Order is entered pursuant to section 812(g)(3) of the Fair Housing Act and the regulations that are codified at 24 CFR 104.910 (1989), and will become final upon the expiration of 30 days or affirmance, in whole or in part, by the Secretary within that time. *See* section 812(h) of the Fair Housing Act; 24 CFR 104.930.

/S/
_____
ROBERT A. ANDRETTA
Administrative Law Judge

Dated: September 21, 1990.