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 Carol A. Taylor, Charging Party, v. Clayton Carter, d/b/a Carter Mobile Home Park, Respondent.

HUDALJ 03-90-0058-1

Decided: May 1, 1992

John E. High, Esquire
For the Respondent

James Tichenor, Esquire
Leslie I. Goldberg, Esquire
For the Secretary

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DECISION AND ORDER

STATEMENT OF THE CASE

This matter arose as a result of a complaint of discrimination based on familial status filed on or about November 2, 1989, by Carol A. Taylor ("the Complainant")[1] against Clayton Carter ("the Respondent"). The complaint was filed and processed pursuant to the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. Section 3601, *et seq*. (the "Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104.

The Department of Housing and Urban Development ("the Government" or "HUD") investigated the complaint and issued a charge against Respondent on

[1]After filing the complaint, Complainant remarried; her last name is now Taylor-D'Annunzio.

September 27, 1991. HUD alleged in the charge that Respondent discriminated against Complainant in violation of 42 U.S.C. Secs. 3604(a), (b), (c), and (d) in conjunction with her attempt to sell a home that was situated in a mobile home park owned by Respondent.

HUD also alleged in the charge that Respondent violated 42 U.S.C. Sec. 3617 by intimidating and interfering with Complainant and her prospective buyers in the exercise and enjoyment of rights protected by the Act. Respondent denied all of the allegations in the charge, and he contended that he was exempt from the Act's prohibition against familial status discrimination.

On December 17 and 18, 1991, a hearing was held in West Chester, Pennsylvania. On January 16, 1992, the parties deposed a witness who was unable to attend the hearing.

It was ordered that briefs be mailed not later than February 28, 1992. The Government's brief was mailed on that date and received on March 2, 1992, when the record closed. Respondent's brief was untimely mailed on March 30, 1992, and received on April 7, 1992. Because Respondent did not request an extension of time for filing his brief or show good cause for his delay, I have not considered his brief.

ANALYSIS, FINDINGS, AND CONCLUSIONS OF LAW

Background

Respondent owns and manages the Carter Mobile Home Park ("the Park"), which is also known as Loretta's Mobile Home Park. Tr. II, 123; Ex. G-5; Ans.[2] It is located in Downingtown, Pennsylvania. Ans. Respondent also sells new mobile homes. Tr. II, 132-33. The Park consists of approximately 57 spaces that are leased to mobile home owners. Ans. There are approximately 120 residents in the Park. Ex. G-3. A homeowner at the Park may sell his or her mobile home to anyone, but the home must be removed from the park unless Respondent agrees to enter into a lease with the buyer. Ans.; Ex. G-11.

In early 1986, Complainant was seeking to purchase a new home for herself, her 12-year-old daughter, and her son. She saw and responded to a newspaper advertisement for the Park. Although the advertisement stated that the Park was an "adult park," Complainant visited it and bought a mobile home ("the home") from Respondent. Tr. I, 37-39. Despite the advertisement's statement that the Park was an "adult park," Respondent leased a space to Complainant. When she moved into the

[2]The following abbreviations refer to the record in this case: "Ans." for "Answer to Charge"; "Tr." for "Hearing Transcript"; "Ex. G" for "Government's Hearing Exhibit"; "Ex. R" for "Respondent's Hearing Exhibit"; "Stip." for "Stipulations Of Fact."

Park in April 1986 with her children, Respondent told her that he intended to impose an age restriction in the future, so if she sold her home, the buyer would have to be 55 years old or older. Tr. I, 37-39, 107-08; Tr. II, 131-32.

In August 1988, Complainant became engaged to be remarried and decided to sell her home. In December 1988, she notified Respondent in writing of her intent to sell the home. Tr. I, 39-40. While she was attempting to sell the home in 1988 and early 1989, Respondent had not yet instituted a rule that limited buyers to age 55 or older. Tr. I, 97.

In January 1989, Timothy Hellings and his wife, Melynda Ulrich-Hellings visited the home and agreed orally with Complainant to buy it for $25,000. The Hellings were both under age 55. It was agreed that the sale would be completed in March 1989. The Hellings planned to live in the Park for approximately 4 months with Mrs. Ulrich-Hellings' nine-year-old son from a previous marriage, Donald, then move the home to another location. Tr. I, 40-43, 94, 117-20; Tr. II, 4-8.

However, sometime after entering into that oral agreement, Complainant told the Hellings that having Donald live with them would be a problem. She stated that the other residents in the area did not have children, and there was a concern about the noise level and bike-riding. Tr. II, 7-8. Apparently, Complainant made those statements because she feared that Respondent would enforce the previously advertised "adults only" policy. Although Complainant testified that Respondent informed her that the Hellings could not have children reside in the Park, it was not clear from her testimony whether she meant that Respondent actually made such a statement to her or whether she reached that conclusion after learning that Respondent was instituting a "55 or over" age restriction in the Park. Tr. I, 96-97.

Because of Complainant's statement about children, Mrs. Ulrich-Hellings made arrangements for Donald to live with her previous husband during the week. Although not ideal, that solution was acceptable because the Hellings planned to live in the Park for a short time. Tr. II, 8.

The Hellings made several attempts to reach Respondent in order to seek his agreement to enter into a lease, but they were unable to reach him. Therefore, Complainant sent him a letter on March 5, 1989, stating that the Hellings had bought her home and wanted to occupy it in the Park temporarily. The letter also stated that, "There are no children." Tr. I, 41; Ex. G-1.

On March 9, 1989, Respondent sent a constable to deliver to Complainant a revised copy of the "Rules For Carter's Mobile Home Park." The revision consisted of the words "55 or over" in Respondent's handwriting at the bottom of the document. Ans.; Tr. I, 45; Ex. G-11. The revision reflected Respondent's new policy that required new residents of the Park to be age 55 or over. However, if the buyer was in that age group, his or her children under the age of 18 were permitted to reside in the Park. Stip. 1. Respondent's stated reason for that policy was that there were drug problems in the Park.

Tr. II, 130. Respondent enforced that policy against all persons including Complainant. Stip. 2.

On March 10, 1989, Complainant's attorney wrote a letter to Respondent stating that both Complainant and the Hellings had made numerous unsuccessful attempts to speak with him concerning the sale of the home, that the sale would be completed no later than April 1, 1989, and that, unless Complainant heard differently from him, they would deem that Respondent approved of retaining the Hellings as residents. Ex. G-2; Ans.

Sometime later, Respondent had separate conversations (discussed below) with Mrs. Ulrich-Hellings, with an employee where Mr. Hellings worked, and with Mr. Hellings. It is reasonable to infer that those conversations occurred on or after March 10 because the letter from Complainant's attorney bearing that date stated that the Hellings had not yet been in contact with Respondent. However, the precise dates on which the conversations occurred were not established. Thus, it is unclear if they occurred on or after March 12, 1989, when the Act's prohibition against familial status discrimination became effective.

According to Mrs. Ulrich-Hellings, during the first of those conversations, she told Respondent that she and her husband wished to live in the Park for a while, that they had made arrangements for her son, Donald, to live with his father, that they had received financing for the purchase of the home, and that they had good jobs and paid their bills.

Respondent responded that, "Well, I don't want your kind....[M]y people here, we don't need the parties, the drinking, the carousing, and then you start having a pack of kids." Although Mrs. Ulrich-Hellings urged Respondent to call her references to "find out what kind of people we were," Respondent terminated the conversation. Tr. II, 8-10.

Respondent denied that he had the conversation with Mrs. Ulrich-Hellings described above; he also denied knowing that she had a child. Tr. II, 129. However, for the following reasons, I find that Mrs. Ulrich-Hellings' testimony is more credible than that of Respondent.

Although Mrs. Ulrich-Hellings had reason to be upset with Respondent for refusing to allow her family to reside in the Park, there was no evidence that her testimony, which was given nearly 2 years after that refusal occurred, was tainted by any ill will toward him. Unlike Respondent, Mrs. Ulrich-Hellings has no financial interest in the outcome of this case; although she could have requested to intervene in the proceeding in an effort to obtain damages against Respondent, she did not do so.

In addition, Mrs. Ulrich-Hellings demonstrated a very clear recollection of the details of her conversation with Respondent, and her testimony was sincere, consistent, and convincing. Although Respondent also testified sincerely, it is not likely that he would be able to recall all of his conversations with prospective tenants. However, it is

highly likely that Mrs. Ulrich-Hellings would have been able to recall accurately a conversation relating to a major purchase such as a home.

After his conversation with Mrs. Ulrich-Hellings, Respondent called Mr. Hellings at work and questioned the person who answered the phone about Mr. Hellings' age and whether Mrs. Ulrich-Hellings was pregnant. Ans. Respondent then visited Mr. Hellings at work and told him that he would not lease a lot to him because he was converting the Park into a retirement community and the Hellings were under age 55. Tr. I, 117-20; Tr. II, 138-39; Ans.

On March 20, 1989, Respondent sent Complainant a note stating that he would not approve her buyers because "they have to [be] 55 or over." The letter also stated that, if the buyers moved into the Park, he would consider them to be trespassers. Complainant was unable to sell the home to the Hellings because of Respondent's "55 or over" age restriction. Tr. I, 53; Ex. G-10; Ans.

In an April 25, 1989 letter from Respondent's attorney to the Better Business Bureau in response to a complaint from Complainant, it was stated that Respondent was converting the Park into a retirement community because of problems regarding drugs, noise, and vandalism. Ex. G-5. On May 25, 1989, Respondent issued a revised set of rules for the Park. The revision consisted of a new rule stating that, "Anyone moving in to the park must be 55 years old or older."[3] Ex. G-12; Ans.

"Housing For Older Persons" Exemption

The Fair Housing Act prohibits discrimination on the basis of familial status. 42 U.S.C. Sec. 3604. The Act defines the term "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with ... a parent ...." *Id*. Sec. 3602(k). However, the Act provides that housing that qualifies as "housing for older persons" is exempt from the Act's prohibitions. *Id*. Sec 3607(b)(1).

Respondent contends that the Park was exempt from the Act's prohibition against familial status discrimination because it qualified as "housing for older persons" (age 55 or older) under 42 U.S.C. Sec. 3607(b)(2)(C). Respondent has the burden to prove that he qualifies for that exemption. *Cf. United States v. Columbus Country Club*, 915 F.2d 877, 882 (3d Cir. 1990), *cert. denied*, 111 S. Ct. 2797 (1991) (defendant has burden to prove entitlement to exemption in section 3607(a) for religious organizations and private clubs). To meet that burden, Respondent must show:

> (i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of

[3]It appears that Respondent eliminated the "55 or over" age restriction in 1991. Tr. I, 64-65; Tr. II, 25-26.

> such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and
>
> (ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and
>
> (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

42 U.S.C. Sec. 3607(b)(2)(C); 24 C.F.R. Sec. 100.304. If a housing facility does not meet the "80 percent" rule of subsection (ii) because of persons living there on the date of the Act's enactment, September 13, 1988, who do not meet the age requirements, it can still qualify for the exemption under a "transition" provision. Under that provision, at least 80 percent of the units that become occupied after that date must have at least one resident 55 years old or older. 42 U.S.C. Sec. 3607(b)(3)(A); 24 C.F.R. Sec. 100.304(d)(1).

Respondent did not prove that the Park met the requirements of the "80 percent" rule. There was testimony that the "bulk" of the residents were senior citizens and were 55 years of age or older. Tr. II, 64, 119. However, those vague statements do not establish that the required percentage of older persons lived in the Park.

Moreover, HUD's investigator requested Respondent to provide a list showing the names and ages of the residents of each unit in the Park. Although there were approximately 120 residents living in approximately 57 homes in the Park, Ex. G-3, Respondent furnished a list containing the ages of only 54 persons. Only 61 percent of the listed persons were age 55 or older. Tr. II, 89-90. Thus, even if the list contained the ages of the oldest person in each home occupied at that time, it does not show that the Park met the requirements of the "80 percent rule."

Respondent offered no evidence to show that the Park qualified for the exemption under the "transition" provision. Specifically, he failed to show that the Park did not meet the "80 percent" rule because of persons living there on September 13, 1988, who did not meet the age requirements; and that at least 80 percent of the units that later became occupied were occupied by at least one person 55 years old or older.

Because it is clear that the Park did not meet the requirements of either the "80 percent" rule or the "transition" provision, it is unnecessary to determine whether it met the requirements of subsections (i) and (iii). I conclude that the Park did not qualify for the "housing for older persons" (age 55 or older) exemption under 5 U.S.C. Section 3607(b)(2)(C). Accordingly, Respondent is subject to the Act's prohibition against familial status discrimination.

Sections 3604(a) And (b)

The Government contends that Respondent violated the following provisions of 42 U.S.C. Secs. 3604(a) and (b), which make it unlawful:

> (a) To ... make unavailable or deny a dwelling to any person because of ... familial status ....
>
> (b) To discriminate against any person in the terms [and] conditions ... of ... rental of a dwelling ... because of familial status ....

Mobile home spaces constitute "dwellings" under the Act. *Id*. Sec. 3602(b). The Government contends that Respondent violated those provisions by adopting an age restriction on tenants that had a discriminatory effect on families with children under 18 years of age. The Government also contends that Respondent engaged in intentional discrimination by refusing to approve the Hellings as tenants in the Park when Complainant sought to sell her mobile home to them.

Discriminatory Effect

Under the discriminatory effect standard, a violation exists if a practice that is "fair in form" is shown to be "discriminatory in operation." *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). The application of the discriminatory effects standard in cases under the Fair Housing Act is well established.[4]

Under that standard, the Government must prove that Respondent's "55 or over" age policy had a discriminatory effect on families with children under age 18. Such a showing shifts to Respondent the burden to show a justification for the policy that served his legitimate, bona fide interest, and that no alternative course of action could be adopted that would enable that interest to be served with less discriminatory impact. *See Resident Advisory Board v. Rizzo*, 564 F.2d 126, 146-49 (3d Cir. 1977), *cert. denied,* 435 U.S. 908 (1978).[5]

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[4]"By 1988 ... a strong consensus had developed among the Circuits that the proper meaning of Title VIII included a discriminatory effect standard. Only the First, Tenth, and D.C. Circuits have not been heard from on this issue. Not a single court of appeals currently espouses the view that the effect theory is inappropriate for Title VIII cases." R. Schwemm, *Housing Discrimination Law*, Sec. 10.4(1) at 10-21 (Oct. 1991).

[5]I have utilized the test adopted in the Third Circuit because that is the area where the present case arose. In *Wards Cove Packing Co. v. Antonio*, 109 S. Ct. 2115, 2121-27 (1989), the Supreme Court adopted a stricter test for applying the discriminatory effects standard in Title VII cases. However, it is unclear if *Wards Cove* applies to Title VIII cases, and the viability of the *Wards Cove* test is unclear in view of the Civil Rights Act of 1991. However, it is unnecessary to decide those issues here because the Government would prevail in the present case even if the *Wards Cove* test were utilized.

The Government has shown that Respondent's "55 or over" age policy had a significant discriminatory impact on families with children under 18 years of age. The Government demonstrated that the Park's age restriction precluded 93.6 percent of the families with such children in the Park's market area from becoming tenants.

That percentage is derived from statistics from the 1980 Census showing households in the applicable Standard Metropolitan Statistical Area (SMSA). That SMSA includes the county in which the Park is located and several surrounding counties. That area constitutes the Park's market area; the Hellings lived in that area before attempting to move into the Park. Tr. II, 3-4, 94-98; Ex. G-14.

The statistics show that 467,840 families with children under age 18 lived in the SMSA. Only 29,901 of those families were headed by persons age 55 or older. The vast majority of families with children under age 18 (437,939) were headed by persons under age 55. By limiting occupancy in the Park to families headed by persons age 55 or older, Respondent made the Park unavailable to 93.6 percent of the families with children under age 18. Ex. G-14.

Thus Respondent's policy had a significant discriminatory effect on such families. *Cf. Betsey v. Turtle Creek Associates*, 736 F.2d 983, 988 (4th Cir. 1984) (landlord's "adults only" policy had disparate impact on non-whites because 74.9% of them received eviction notices, while only 26.4% of the whites received such notices). Accordingly, I conclude that the Government has established a prima facie case of discrimination.

Because Respondent is not a public entity, it is not necessary to show evidence of intent to discriminate under the discriminatory effects theory. *See Betsey,* 736 F.2d at 988 n.5. However, Respondent's stated concern that Ms. Ulrich-Hellings would have "a pack of kids" upon moving into the Park is strong evidence that his motive for the "55 or over" policy was to exclude families with children.

Respondent has failed to show a business justification for the policy that served his legitimate, bona fide interest. Respondent asserted that he adopted the policy to "get away from the drug problem." Tr. II, 130-31. The "drug problem" at the park consisted of drug dealings involving one home at the Park for one year. Tr. II, 63, 68-70.

Although Respondent had a legitimate interest in maintaining a drug-free park, he failed to show that the "55 or over" policy actually served that interest. Because the year in which the drug problem occurred was not established, Tr. II, 68, it is unclear if the policy was instituted to remedy an existing problem. Virtually all of the Park residents who testified praised the Park as a nice, quiet one.

Respondent also failed to show that no alternative course of action could have been adopted that would have enabled his interest in having a drug-free park to be served with less discriminatory impact. Although Respondent asserted that the police were

unable to solve the drug problem, he did not show that he unsuccessfully attempted to evict the family in question.

Thus Respondent has failed to rebut the Government's prima facie case that his "55 and over" policy discriminated against families with children under age 18. Therefore, I conclude that Respondent violated sections 3604(a) and (b) by implementing that policy.

Intentional Discrimination

The Government also contends that Respondent engaged in intentional discrimination in violation of sections 3604(a) and (b) by rejecting the Hellings as tenants because of their familial status. Government's brief at 30-41. However, the Government has not established that Respondent's actions in that regard were covered by the Fair Housing Act.

The Act's prohibition against discrimination based on familial status became effective on March 12, 1989. 42 U.S.C. Sec. 3601 note. Thus, actions that occurred prior to that date are not covered by it. As discussed above, Respondent informed Mr. Hellings orally on or after March 10, 1989, that he would not accept his family as tenants. However, the Government did not show that conversation occurred on or after March 12, 1989.

As the Government recognizes, Respondent's rejection of Complainant's buyers is an essential element of its prima facie case of intentional discrimination. *See, e.g., Phillips v. Hunter Trails Community Ass'n.*, 685 F.2d 184, 190 (7th Cir. 1982); Government's brief at 31. However, the Government did not show that Respondent's rejection of the Hellings occurred at a time when familial status discrimination was prohibited. Consequently, I conclude that the Government has not established a prima facie case of intentional discrimination.

Section 3604(c)

The Government has also alleged that Respondent violated 42 U.S.C. Section 3604(c). Government's brief at 57. That section makes it unlawful:

> To make, print, or publish ... any notice, statement, or advertisement, with respect to the ... rental of a dwelling that indicates any preference, limitation, or discrimination based on ... familial status ... or [that indicates] an intention to make any such preference, limitation, or discrimination.

The Government contends that Respondent violated this provision by telling

Ms. Ulrich-Hellings that, "I don't want your kind.... we don't need the parties, the drinking, the carousing, and then you start having a pack of kids." Tr. II, 8-10.

I found above that Respondent made that statement to Mrs. Ulrich-Hellings on or after March 10, 1989. However, the Government did not show that it was made on or after March 12, 1989, when the prohibition against familial status discrimination became effective. Consequently, the Government has not shown that those statements are subject to the Act's prohibitions.

The Government contends further that Respondent violated section 3604(c) by including in the Park rules a rule that, "Anyone moving into the park must be 55 years old or older." That rule was included in a "Notice To All Tenants" entitled "Rules For Carter's Mobile Home Park," which was signed by Respondent and delivered to Complainant on May 25, 1989. Ex. G-12; Ans.

Thus, it is clear Respondent published a notice after March 12, 1989, that contained rules concerning the rental of mobile home spaces, which constitute dwellings under the Act. Because the rule in question mandated that "anyone" moving into the Park be 55 years old or older, it necessarily indicated that families with children under age 18 were not acceptable as tenants. Thus, the rule indicated a limitation and discrimination based on familial status in violation of section 3604(c).

Because Respondent actually allowed families with children under age 18 to become tenants if one family member was age 55 or older, the published rule was inaccurate. However, a notice need not be truthful to constitute a violation of section 3604(c).

42 U.S.C. Sec. 3604(d)

The Government next contends that Respondent violated 42 U.S.C. Sec. 3604(d), which makes it unlawful:

> To represent to any person because of ... familial status ... that any dwelling is not available for ... rental

when such dwelling is in fact so available.

The Government contends that Respondent violated that section by telling the Hellings that he would not lease a mobile home space to them. Government's brief at 57-58. I found above that Respondent told the Hellings in separate conversations on or after March 10, 1989, that he would not lease a space to them. However, the Government did not show that those statements were made on or after March 12, 1989, when the prohibition against familial status discrimination became effective. Consequently, the Government has not shown that those statements are subject to the Act's prohibitions.

The Government also contends that Respondent violated section 3604(d) by informing Complainant that her home was not available to families with children unless the buyer was 55 years old or older. Government's brief at 57-58. Respondent's March 20, 1989 note to Complainant stated that he would not approve her buyers because "they have to [be] 55 or over." Ex. G-10.

The plain meaning of the statutory provision in question is that it prohibits the making of a false representation to any person, because of familial status, that a dwelling is not available for rental. That provision confers on all persons a right to truthful information about available housing. *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 373 (1982).

Respondent's March 20 note to Complainant did not constitute a false representation that her mobile home space would not be available for rental when she sold her home. Respondent did not provide false information in the note about the availability of her space for rental. Rather, the note constituted a truthful statement that Respondent would not lease the space to the Hellings because they did not meet the Park's age requirement. The note clearly implied that the space was available for rental to persons who met the age requirement.

Thus, the Government has not shown that Respondent engaged in conduct that was prohibited by section 3604(d).[6] Therefore, that allegation in the charge is not sustained.

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[6]The Government did not allege in the Charge or argue in its brief that Respondent's conduct in this

42 U.S.C. Sec. 3617

The Government next contends that Respondent violated 42 U.S.C. Sec. 3617, which provides that:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of... any right granted or protected by section 803, 804, 805, or 806 of this title [42 U.S.C. Sections 3603-3606].

The Government asserts that Respondent committed several acts that intimidated Complainant and interfered with her exercise and enjoyment of the right to sell her home to persons of her choice, including families with children. Government's brief at 58. Because 42 U.S.C. Sec. 3604 prohibits discrimination in the rental of housing on the basis of familial status, that section necessarily grants a right to a home owner residing in a mobile home park to sell his or her home to a family with children that wishes to reside in the park. Thus Complainant was exercising a right granted by that section when she attempted to sell her home to the Hellings.

The Government first contends that Respondent violated section 3617 by sending his March 20 note informing Complainant that he would not approve the Hellings as tenants. In that note, Respondent also stated that, "[W]hen you move out, if they go on that property, their [sic] trespassing." Respondent added the following postscript to the note: "See all the lawyers you want." Ex. G-10.

By notifying Complainant that he would not approve the Hellings as tenants, Respondent interfered with her exercise of her right to sell her home to a family with children. Respondent's other statements in the note indicated his intention to treat the Hellings as trespassers if the sale occurred. Those statements were intimidating and they interfered with Complainant's right to sell her home because they implied that Respondent might take some action either to prevent the sale or to invalidate it.

The Government next contends that Respondent violated this section by sending the police to question Complainant when she moved back into her home after moving out briefly. On June 12, 1989, at approximately 9:00 p.m., Complainant's son and some of his friends were moving her possessions back into her home. When Respondent noticed that activity, he called the police and told them that someone was moving into the home without authorization. The police came and stopped the activity until Complainant arrived. Ex. G-7; Tr. I, 55-56, 106-07.

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regard violated 24 C.F.R. Sec. 100.80. Therefore, I have not considered that issue.

I do not find that Respondent's actions in this matter constituted a violation of section 3617. First, it has not been shown that Respondent intimidated or interfered with Complainant *in the exercise or enjoyment of her right to sell her home to a family with children*. There was no evidence that Complainant's move back into her home was related to her attempt to sell it. Moreover, the Government did not contend that Respondent's actions were taken in reprisal for Complainant's exercise of a right under 42 U.S.C. Sections 3603-3606.

In any event, there was no evidence that Respondent knew that the person in charge of the activity was Complainant's son or that the items belonged to Complainant. Thus, there is no reason to believe that Respondent had any motive other than to bring a suspicious nighttime activity involving Complainant's home to the attention of the lawful authorities.

The Government next contends that Respondent violated section 3617 by contacting and intimidating Mr. Hellings. As discussed above, Respondent contacted Mr. Hellings on or after March 10, 1989. However, the Government did not show that Respondent communicated with him on or after March 12, 1989, when the prohibition against familial status discrimination became effective. Consequently, the Government has not shown that Respondent's actions and statements during his conversation with Mr. Hellings are subject to the Act's prohibitions.

The Government next contends that Respondent violated this section by parking his trucks in front of Complainant's home and blocking her driveway. None of the evidence concerning that allegation established when the alleged incident occurred. Tr. I, 29-30, 47-52, 98-100; Tr. II, 125-26, 144-45. Because the Government did not show that Respondent took that alleged action on or after the March 12, 1989 effective date of the Act, the Government has not shown that action was subject to the Act's prohibitions.

REMEDIES

Because Respondent has violated the Fair Housing Act, Complainant is entitled to appropriate relief under the Act, which may include actual damages suffered by her and injunctive and other equitable relief. 42 U.S.C. Section 3612(g)(3). A civil penalty may also be imposed. *Id*. The Government, on behalf of the Complainant, seeks: (1) an amount totaling $4,000 to compensate Complainant for economic loss; (2) a substantial (unspecified) amount to compensate her for embarrassment, humiliation, inconvenience, and emotional distress; (3) injunctive relief designed to protect the public interest in eliminating housing discrimination against families with children; and (4) a civil penalty of $2,500.

Compensatory Damages

Actual damages for violations of the Act may include damages for economic loss as well as intangible injuries such as embarrassment, humiliation, inconvenience, and emotional distress caused by the violations. *See, e.g., Secretary of HUD v. Blackwell,* 908 F.2d 864, 872 (11th Cir. 1990). Damages for emotional distress may be based on inferences drawn from the circumstances of the case, as well as on testimonial proof. *Id*.

The claim of $4,000 for economic loss is based on the difference between the price that the Hellings had agreed to pay for Complainant's home ($25,000) and the price that she was able to sell it for later ($21,000). Tr. I, 79-80, 114; Tr. II, 4-5. Complainant and the Hellings had agreed orally to complete the sale; the Hellings had obtained financing and were seeking Respondent 's approval; and the March 10 letter from Complainant's attorney letter indicated that the sale would be completed on or before April 1, 1989. Although Mr. Hellings did not believe that financing had been sought, his wife's testimony that it had been sought and approved is more persuasive because she managed the family's financial matters. Tr. I, 118; Tr. II, 4-5, 14. The sale to the Hellings did not occur because neither of them was 55 years old.

Thus it is reasonable to conclude that the sale to the Hellings would have been completed but for Respondent's adoption of the "55 or over" policy, which had a discriminatory effect on families with children like the Hellings. Therefore, Complainant is entitled to $4,000 for her economic loss relating to the sale of the home.

The Government also asserts that Complainant suffered humiliation, embarrassment, emotional distress, and inconvenience because she was unable to sell the home to the Hellings and because Respondent intimidated her by stating in his March 20 note that he intended to treat the Hellings as trespassers if the sale occurred. Complainant suffered a significant amount of stress and anxiety because of Respondent's discriminatory and intimidating actions. She took medication and received counseling for 6 months. As a result of her stress and anxiety, her work performance was adversely affected, and her wedding was postponed. Tr. I, 54, 69-71, 87-89; Ex. G-6.

However, there were other factors that contributed to the stress and anxiety that Complainant suffered during this period. For example, she was upset about financial problems and matters involving her children. Tr. II, 71-72; Ex. G-6. Nonetheless, Respondent's actions were undoubtedly a major cause of Complainant's stress and anxiety. Tr. II, 75; Ex. G-6. Upon consideration of the various factors that contributed to Complainant's stress and anxiety, I conclude that $6,000 is the appropriate amount to compensate her for the humiliation, embarrassment, emotional distress, and inconvenience that resulted from Respondent's illegal actions.

Civil Penalty

To vindicate the public interest, the Fair Housing Act also authorizes an administrative law judge to impose civil penalties upon respondents who violate it. 42 U.S.C. Sec. 3612 (g)(3)(A); 24 C.F.R. Section 104.910(b)(3). Determining an appropriate penalty requires consideration of the following factors: (1) the nature and circumstances of the violation; (2) the degree of Respondent's culpability; (3) any history of prior violations; (4) Respondent's financial resources; (5) the goal of deterrence; and (6) other matters as justice may require. *See* H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

I conclude that imposition of the $2,500 civil penalty requested by the Government is warranted. Respondent was fully responsible for several violations of the Act; he did not assert that he was unaware that the Act prohibited discrimination against families with children.

Respondent's offenses were serious. There was strong evidence that his "55 or over" policy was motivated by a desire to exclude families with children from the Park. In addition to committing discriminatory acts, he engaged in intimidating conduct. As a result of his actions, Complainant suffered substantial damages.

There is no evidence that he has previously been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against her is $10,000.00. *See* 42 U.S.C. Section 812(g)(3)(A); 24 C.F.R. Sec. 104.910(b)(3)(i)(A). However, the maximum penalty should not automatically be imposed in every case. *See* H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Because no evidence was presented concerning Respondent's financial circumstances, that factor cannot be considered. Because Respondent rents mobile home spaces on a regular basis, there is a need to deter him from discriminating when selecting tenants. Other similarly situated persons need to know that violating the Act will incur serious consequences.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. 42 U.S.C. Section 3612(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell*, 908 F.2d at 875 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983). The injunctive relief provided in the following Order accomplishes those goals by prohibiting Respondent from violating the Act in the future and by requiring him to submit reports to HUD so it can ascertain whether he is engaging in discriminatory conduct.

CONCLUSION

My conclusions are as follows: The preponderance of the evidence shows that Respondent violated 42 U.S.C. Secs. 3604(a), (b), and (c), and 42 U.S.C. Sec. 3617. The Complainant suffered actual damages for which she will receive a compensatory award of $10,000. Further, to vindicate the public interest, injunctive relief will be ordered, and a civil penalty of $2,500 will be imposed against Respondent.

ORDER

It is hereby ORDERED that:

1. Respondent is hereby permanently enjoined from discriminating with respect to housing because of familial status. Prohibited actions include, but are not limited to:

a. refusing or failing to sell or rent a dwelling, or refusing to negotiate for the sale or rental of a dwelling, to any person because of familial status;

b. otherwise making unavailable or denying a dwelling to any person because of familial status;

c. discriminating 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;

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 indicates any preference, limitation, or discrimination based on familial status; and

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.

2. Respondent must make quarterly reports to HUD's Region III Office Of Fair Housing And Equal Opportunity for a period of five years. The reports must include:

a. a list of all persons who applied for residency at the Park during the quarter preceding the report, indicating the name and address of each applicant, the number and age of the persons to reside in the unit, whether the applicant was accepted

or rejected, the date on which the applicant was notified of acceptance or rejection, and if rejected, the reason for such rejection;

b. a list of vacancies at the Park during the reporting period, including: the lot number, the date the tenant gave notice of an intent to move out, the date the tenant moved out, the date the lot was rented again or committed to new rental, and the date the new tenant moved in;

c. a list of all persons who inquired, in writing, in person, or by telephone, about renting a space at the Park, including their names, addresses and ages, the date of their inquiry, and the disposition of their inquiry; and

d. a description of any changes in rules, regulations, leases, or other documents provided to or signed by current or new tenants or applicants (regardless of whether the change was formal or informal, written or unwritten) made during the reporting period, and a statement of when the change was made, how and when tenants and applicants were notified of the change, whether the change or notice thereof was made in writing and, if so, a copy of the change and/or notice.

3. Within thirty-five (35) days of the date on which this Order becomes final, Respondent shall pay actual damages of $10,000 to Complainant.

4. Within thirty-five (35) days of the date on which this Order becomes final, Respondent shall pay a civil penalty of $2,500 to the Secretary of HUD.

5. Respondent shall submit a report to this tribunal within thirty-five (35) days of the date this Order becomes final detailing the steps taken to comply with it.

This Order is entered pursuant to 42 U.S.C. Section 3612(g)(3) of the Fair Housing Act and the regulations codified at 24 C.F.R. Section 104.910, and it 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/

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PAUL G. STREB
Administrative Law Judge

Dated: May 1, 1992.