UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, U.S. Department of Housing and Urban Development, on behalf of Chicago Lawyers' Committee for Civil Rights Under Law, Inc. and Lolita Lindo, Charging Party, Chicago Lawyers' Committee for Civil Rights Under Law, Inc. Intervenor, v. Janusz Godlewski, Respondent.	HUDALJ No. 07-034-FH FHEO Case: 05-06-0264-8 05-06-1663-8 Decided: July 6, 2007

Janusz Godlewski,
Respondent

W. Bryan Lytton, Esq.
For the Intervenor

Michael Kalven, Esq.
For the Charging Party

Before: Constance T. O'Bryant,
Administrative Law Judge

DEFAULT DECISION AND ORDER

On April 24, 2007, the U.S. Department of Housing and Urban Development ("the Government" or "HUD") issued a Charge of Discrimination ("Charge") in the above-entitled Fair Housing Act ("the Act") case, pursuant to subsection 810(g)(2) of the Act, 42 U.S.C. 3610(g)(2), against Janusz Godlewski ("Respondent"), owner of the property located at 2453 North California Street, in Chicago, Illinois 60647 ("subject property"). The Charge and other documents were served upon Respondent by both first class mail, postage prepaid, and by Federal Express at the subject property. *See* Ex. 1. (Certificate of Service).

The Charge alleged that Respondent engaged in a discriminatory housing practice by posting a discriminatory statement in a "For Rent" sign on her property. The sign stated, in relevant part, "No kids". In violation of Section 3604(c) of the Fair Housing Act.

The Charge was filed on behalf of Complainant Lolito Lindo, a parent of a minor child who observed the sign while seeking housing in the summer of 2005, and The Chicago Lawyer's Committee for Civil Rights Under Law ("CLC"). CLC is a not-for-profit agency that engages in fair housing outreach and enforcement activities including, but not limited to, investigating civil rights complaints through testing activities and interviews. Both parties filed verified complaints with HUD alleging that Respondent violated the Act by advertising in a discriminatory manner.

The Charging Party and the Intervenor seek an Order: 1) declaring that the discriminatory housing practice violated the Act; 2) enjoining Respondent from discriminating because of familial status against any person in any aspect of the rental or sale of a dwelling; 3) awarding damages as will fully compensate the Complainant Lindo for her emotional distress and loss of a unique housing opportunity caused by Respondent's discriminatory conduct; 4) awarding such damages as will fully compensate Intervenor CLC, for its economic loss, inconvenience, and frustration of mission caused by Respondent's discriminatory conduct; and 5) assessing a civil penalty of $11,000 against Respondent for the violation of the Act.

HUD's implementing regulations at 24 C.F.R. § 180.420(a) provides that a Respondent may file an answer within 30 days after the service of the Charge. The regulations give notice to a respondent at 24 C.F.R. § 180.420(b) that:

> failure to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision.

This regulatory provision was highlighted in the Notice sent to Respondent. Section II (A) of the Notice sent to Respondent advised Respondent that he "must file a written answer to the attached charge *within 30 days* of the Charge," or by May 29, 2007. Respondent failed to file an answer to the Charge within the 30 days or at any subsequent time.

On June 6, 2007, the Government filed this motion for default judgment alleging that Respondent failed to file an Answer to the Charge. It seeks a default judgment in favor of the Government and against Respondent and requests that the matter be set for hearing on appropriate damages.

Respondent has not filed a response to either the Charge of Discrimination or the Motion for Default Judgment. Therefore, the Motion for Default Judgment is ripe for decision. The Motion will be GRANTED.

On June 25, 2007, CLC filed a Motion to Compel Discovery. Since I have granted the motion for default, the part of discovery sought to establish facts to support a violation of the Act is moot. CLC may file a modified motion if it deems such necessary.

Based upon Respondent's failure to answer the Charge of Discrimination and to oppose the Motion for Default Judgment, I conclude that the entry of a default judgment is appropriate in this case. Accordingly, Respondent is deemed to have admitted all matters of fact recited in the Charge.

FINDINGS OF FACT

1. At all times relevant to this Charge, Respondent Janusz Godlewski was the sole owner and manager of the property located at 2453 N. California, Chicago, Illinois ("subject property"). Charge. Part II ¶2.

2. The subject property is a three-unit, multi-family dwelling. Respondent resided in one of the units at all times relevant to the Charge. Charge. Part II ¶3.

3. In or around August 9, 2005, Respondent posted or caused to be posted a printed sign with respect to the rental of a dwelling unit at the property in question. Charge. Part II ¶6.

4. Complainant Lindo is the mother of a minor child. She was seeking housing for herself and her child at all times relevant to this Charge. Charge. Part II ¶5.

5. Complainant, CLC, is a not-for-profit Illinois corporation that promotes open housing in Chicago metropolitan region. Its programs and activities include operating a Fair Housing Center and Legal Action Program. Charge. Part II. ¶4.

6. In or around August 9, 2005, Complainant Lindo viewed the "for rent" sign posted by Respondent. She had long admired the subject property and when she noticed a "for rent" sign posted, she approached the sign to take down the contact information. The sign read, "FOR RENT, **for two persons**-apt. 2 bedroom, **No kids, No dog**, III Floor-1500 SQ 773-742-8102." (Emphasis in original.) Charge. Part II ¶6.

7. On or about August 11, 2005, Complainant Lindo contacted CLC and complained that she had suffered housing discrimination based on her familial status. In response to Lindo's complaint, CLC's testing coordinator, Justin Massas, visited the subject property and photographed the sign, confirming Lindo's observation. Thereafter, on November 23, 2005, CLC filed a complaint of discrimination with HUD. On August 1, 2006, Complainant Lindo filed a complaint of discrimination with HUD. Charge. Part II ¶7.

8. Lindo complained that as a result of viewing the sign, she was shocked and angry. The sign brought back painful memories of a rental sign she once saw as a young woman, excluding "blacks" and "Jews." Further, she felt that she had been denied a housing opportunity at the subject property which she considered a unique property in Chicago because of its fenced yard. Charge. Part III¶11.

9. CLC alleges that as a result of Respondent's discriminatory conduct it was forced to divert some of its scarce resources to investigate the Respondent's discriminatory advertisement,

conduct factual research into the ownership of the subject property and other properties owned by Respondent, conduct legal research, counsel Lindo regarding her fair housing rights, conduct education and outreach regarding familial status discrimination and recruit and retain legal counsel for its HUD complaint. It also alleges that it had to delay its efforts to pursue grant opportunities and was forced to delay an attorney training seminar as a result of Respondent's discriminatory conduct. Charge. Part II. ¶12

10. The CLC alleges that as a result of Respondent's discriminatory conduct, an unknown number of prospective tenants with children were discouraged from seeking a rental opportunity at the subject property because of the discriminatory language "No kids" printed on Respondent's rental sign, frustrating CLC's mission to promote diverse and equal housing in the Chicago metropolitan area. Charge. Part II ¶13.

DISCUSSION

The Fair Housing Act was enacted by Congress to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F. 2d 1179 (8th Cir.), *cert denied*, 422 U. S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, sophisticated as well as simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053, (N.D. Ohio 1980), *aff'd in relevant part*, 661 F. 2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982). On September 13, 1988, the Act was amended to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status. 42 U.S.C. §§ 3601-19.

Violation of 42 U.S.C. § 3604(c)

The Charging Party alleges as a violation of 42 U.S.C. § 3604(c) the wording on the posted sign: "No kids, no dog." Section 3604 provides that, as made applicable by § 3603 and except as exempted by §§ 3603(b) and 3607, it shall be unlawful:

> (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling unit 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. § 3604(c). *See also* 24 C.F.R. § 100.75.

As relevant to this case, prohibited actions covered under § 3604(c) include all written notices by a person engaged in the rental of a dwelling unit that indicate a preference, limitation or discrimination because of familial status. *See* 24 C.F.R. § 100.75(b). Actions prohibited include the use of language which conveys that a unit is not available to a particular group of persons because of familial status and expressing to prospective renters a preference or a limitation on any renter because of familial status. 24 C.F.R. §§ 100.75(c)(1) and (2).

Proof of the making of discriminatory statements may be by direct evidence. It is well established that the prohibitions of § 3604(c) apply to advertisements. *See Mayers v. Ridley*, 465 F.2d 630, at 649 (D.C.Cir. 1972) (en banc) (Wilkey, J. concurring). In this case the printed sign showing the words "No kids" is direct evidence of the discriminatory statement. The printed sign clearly conveys that housing is unavailable to Ms. Lindo because she has a child. And, clearly the "For Rent" sign related to the rental of housing property.

Section 3604(c) has been said to be essentially a "strict liability" statute – the only requirement to establish liability is a showing that the challenged statement or advertisement was made with respect to the rental of a dwelling unit and that it indicates discrimination based on a prohibited factor. *See* Schwemm, *Housing Discrimination,* §15.2(1)(2) (1990).

I find that the sign is direct evidence of a discriminatory statement in violation of the Act. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)(b)(c)(1) and (2).

Remedies

The Charging Party requests that the matter be set for hearing on appropriate damages. A hearing date will be set; however, some discussion of an appropriate remedy is warranted in anticipation of the hearing.

The Act provides that where an administrative law judge finds that a respondent has engaged in a discriminatory housing practice, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g) (3). A civil penalty may also be imposed. *HUD v. Cabusora,* 2 Fair Housing-Fair Lending ¶ 25,026, (HUDALJ, March 23, 1992).

The Charging Party asserts that as a result of observing the discrimination sign posted, Complainant Lindo felt emotional distress. The Charging Party also asserts that Complainant Lindo was denied a housing opportunity at the subject property, a unique property in Chicago because of its fenced yard. Thus, it seeks an award of damages as will fully compensate Complainant Lindo for emotional distress *and* for her loss of a unique housing opportunity caused by Respondent's discriminatory conduct. Charge. Part III ¶3.

Complainant Lindo's Emotional Distress Claim

It is well established that the damages that may be awarded under the Act include damages for embarrassment, humiliation and emotional distress caused by acts of discrimination. *HUD v. Blackwell*, Fair Housing-Fair Lending (P-H), ¶ 25,001 at 25,011 (HUDALJ December 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990).

The key to the claim for damages is that the distress or loss must be *caused by the act of discrimination*. Thus, the only appropriate damages that may be awarded Complainant Lindo for emotional distress is an award to compensate her for the emotional distress suffered from

Complainant Lindo is not entitled to any damages she may have suffered as a result of distress caused by the loss of ability to rent a dwelling unit at the subject property.

Loss of Housing Opportunity

Although it is true that is some cases a complainant may recover for loss of housing opportunity, *HUD v. Edelstein*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,018 at 25,240 (1991), the remedy is only available where the loss of housing opportunity was caused by an unlawful denial of housing. In this case, Respondent had a lawful right to rent to anyone he chose -- even to discriminate in doing so. Complainant did not have a right to rent the available unit even if she were otherwise qualified to do so. Accordingly, there has been no denial to Complainant of a right to housing in violation of the Act for which she may be compensated. *See HUD v. Dellipaoli*, HUDALJ 02-94-0465-8 (January 7, 1997).

Thus, at the hearing on damages, evidence will be limited to that relevant to any distress Lindo suffered as a result of observing the posted sign showing "No kids."

CONCLUSION AND ORDER

The regulations governing the implementation of the Fair Housing Act are found at 24 CFR Parts 26 and 30 (2004). Upon the filing of a Charge of Discrimination, if a party does not elect to have the matter heard in U. S. District Court, the Office of Administrative Law Judges ("OALJ") has jurisdiction over the matter pursuant to 24 CFR 26.29. 26.37, and 30.90(b).

The Charge of Discrimination process is commenced when the Government submits a notice to the respondent, informing the respondent of the charges that the Government is filing with the OALJ, the specific violations alleged, the relief being sought, the opportunity to reply in writing within 30 days after receipt of the Charge, and, that failure to respond within the 30-day period may cause the Government to request a default judgment.

In the instant case, the Government served the Charge on Respondent along with required Notices. Respondent therefore had full notice of the contents of the Charge of Discrimination. Yet, Respondent never submitted any response to the Charge. Moreover, Respondent never responded to the Motion for Default Judgment. Therefore, I find Respondent in default. As a result, Respondent is deemed to have admitted the facts as set forth above, and to have committed the violation as found herein.

I find that Respondent made or printed, or caused to be made or printed, and published a notice, statement or advertisement with respect to the rental of a dwelling unit that indicates a preference for renters based on familial status in violation of the Act. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)(b)(c)(1) and (2).

The Government's Motion for Default Judgment is GRANTED. A hearing will be set by further Order for the purpose of establishing damages and civil penalty.

So ORDERED, this 6th day of July, 2007.

Constance T. O'Bryant

CONSTANCE T. O'BRYANT
Administrative Law Judge

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