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 Karen Rounds, Charging Party, v. Marilyn Frisbie, Respondent.

HUDALJ 07-91-0027-1
Decided: May 6, 1992

Stanley I. Dale, Esquire
Candace J. Barnes, Esquire
For the Respondent

Joseph James, Esquire
Lois Hoover, Esquire
For the Secretary and Complainant

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed on October 22, 1990, and amended on November 11, 1990, by Karen J. Rounds, ("Complainant"). (S 3, 4).[1] The complaint was filed with the U.S. Department of Housing and Urban

[1] The transcript of the hearing is cited with a capital T and a page number. The Secretary's exhibits are identified with a capital S and an exhibit number; those of the Respondent are identified with an R.

Development ("HUD") and alleges violations 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, 120
Stat. 1626 (1988) ("Fair Housing Act" or "Act") based on familial status.[2] It is adjudicated in accordance with Section 2612(b) of the Act and HUD's regulations that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On September 20, 1991, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD's Regional Counsel in Kansas City, Kansas, issued a Determination Of Reasonable Cause And Charge Of Discrimination against Marilyn Frisbie ("Respondent") alleging that she had engaged in discriminatory practices on the basis of familial status in violation of sections 804(a) and (c) of the Act, which are codified at 42 U.S.C. Sections 3604(a) and (c) and incorporated into HUD's regulations that are found at 24 CFR 100.60 and 100.75 (1989). A trial was conducted in Kansas City on January 28, 1992, and the parties were ordered to submit post-hearing briefs by March 13, 1992. The briefs were timely submitted, and, thus, this case became ripe for decision on this last named date.

Findings of Fact

The dwelling[3] that is involved in this case is a basement apartment at 218 North 17th, St. Joseph, Missouri. Respondent is the owner of 17 apartments, six of which are located at the address of the subject dwelling. (T 155). During all times relevant to this proceeding, Respondent supported herself with the rent she received for her apartments. (T 143).

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[2] The term "familial status" is defined in the Act, at 42 U.S.C. Section 3602(k), as

> ... one or more individuals (who have not attained the age of 18 years) being domiciled with --
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> (1) a parent or another person having legal custody of such individual or individuals; or
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> (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

[3] A "dwelling" includes "any building, structure, or portion thereof which is occupied as, or intended for occupancy as, a residence by one or more families." 42 U.S.C. Section 3602(b).

In the autumn of 1990, Complainant was seeking housing for herself and her nine-year-old son, Dustin.[4] (T 22-3). She felt that she needed to move out of her marital home to secure her own safety and that of her son from an abusive husband against whom she had obtained a 90-day *ex parte* order to keep him from harming her. (T 42, 51; R 1).[5] On October 19, 1990, Complainant saw an advertisement in a local newspaper for an apartment at the address of the subject dwelling. (T 145). That apartment was initially appealing to her since it was within her price range and included a garage in which she could park her car. She wanted to be able to hide the car because she felt that this would help prevent her husband from locating her and monitoring her activities. (T 23).

Complainant called the number listed in the advertisement to inquire about the unit. The woman who answered the telephone advised Complainant that the unit was available and that she could go to the address to view it because the owner was there cleaning it. (T 24). Complainant approached the unit in the location described to her by the woman on the phone and discovered that it was not vacant, but was, by coincidence, occupied by one Janet Hughes, a former coworker of Complainant. (T 24).

Complainant told Hughes that she was interested in a vacant unit which was advertised at the address and that she had been told she could view the unit because the owner was there cleaning it. (T 24). Hughes told Complainant that the owner had left a little while earlier and invited her in to call the owner from her phone. (T 24, 89). Complainant placed the call and told the woman who answered that she was telephoning from the property and was interested in viewing the vacant unit that was advertised.
(T 25).

Respondent asked Complainant how many people would be residing in the unit. (T 25, 149). Complainant stated that it would be for herself and her nine-year-old son. (T 25). Respondent answered that she did not rent to children, although she had mothers with infants as tenants before. (T 25). Complainant informed Respondent that she believed her statement about not renting to children was discriminatory. (T 25). Respondent stated that the property belonged to her and that she would do whatever she pleased. (T 25). Complainant said that she

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[4] Complainant has two other sons who were 18 and 15 years of age during the relevant period and do not live with her. These sons are from different marriages than Dustin, and none of Complainant's sons are from her current marriage. (T 14).

[5] There is a history of violence in Complainant's marriages, including her being twice charged with and once convicted for assault. (T 59-63).

had some legal training and would pursue the matter. The two agree that the Respondent then stated, "You would be a fine one to rent to," and that Respondent answered, "Yes ma'am, I would." (T 25, 149). The parties agree that the conversation ended abruptly, when Respondent hung up the phone, and that Complainant never saw the unit. (T 25, 149).

Complainant was embarrassed and angry about being denied the opportunity to rent Respondent's apartment. (T 47). She filed a housing discrimination complaint with the Human Rights Commission of the City of St. Joseph, Missouri. It was investigated by the HUD Office of Fair Housing and Equal Opportunity in Kansas City, Missouri, because of the familial status allegation, and it resulted in this proceeding. (T 119).

After the altercation with Respondent, Complainant was discouraged in her attempt to find housing and continued to reside in her marital home where she and her son were exposed to the "continued tirades" of her estranged husband. (T 48-9). The house was being remodeled and was missing some windows. The furnace did not work properly, and she and her son became ill when it was turned on. (T 41). City inspectors ultimately ordered Complainant not to use the furnace and the two had to live without heat for a few days. The city then cited the house for a number of violations, forcing Complainant to again search for suitable housing for herself and her son. (T 43).

For a few days, Dustin lived with a friend while Complainant remained in the unheated house. The only housing Complainant was able to obtain was in a shared house with friends in a setting which Complainant felt was unsuitable for Dustin. (T 44). Complainant's son therefore relocated to Kansas City to live with his father, one of Complainant's previous spouses, until Complainant could get their own housing. (T 44-5, 47). At the time of the hearing, Complainant and Dustin were living in a trailer which she and her husband had repossessed and which he had signed over to her.

Applicable Law

Congress enacted the Fair Housing Act 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, [even] simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio), *aff'd in relevant part*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

On September 13, 1988 Congress amended the Act to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status. 42 U.S.C. Sections 3601-19. In amending the Act, Congress recognized that "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2nd Sess. (1988) ("House Report"). In addition, Congress cited a HUD survey that found 25% of all rental units exclude children and that 50% of all rental units have policies that restrict families with children in some way. *See* Marans, *Measuring Restrictive Rental Practices Affecting Families With Children: A National Survey*, Office of Policy, Planning and Research, HUD, (1980). The HUD survey also revealed that almost 20% of families with children were forced to live in less desireable housing because of restrictive policies. Congress recognized these problems and sought to remedy them by amending the Fair Housing Act to make families with children a protected class.

Accordingly, the amended Act and HUD regulations make it unlawful, *inter alia*:

> (1) to refuse to ... rent after making a bona fide offer, or to refuse to negotiate ... for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status .... 42 U.S.C. Section 3604(a); 24 CFR 100.50(b)(1) and (3), and 100.60(b)(1) and (2).
>
> (2) to discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status .... 42 U.S.C. Section 3604(b); 24 CFR 100.50(b)(2) and 100.65 (1990).
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> (3) to make, print, or publish, or cause to be made, printed, or published, any notice [or] statement ... with respect to the ... rental of a dwelling that indicates any preference, limitation or discrimination because of ... familial status, ... or an intention to make any such ... limitation or discrimination. 42 U.S.C. Section 3604(c); 24 CFR 100.50(b)(4) and 100.75 (a)-(c).
> (4) 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. 42 U.S.C. Section 3604(d); 24 CFR 100.50(b)(5) and 100.80.
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> (5) to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of [that

> person] having exercised or enjoyed, ... any right granted or protected [under the Act]. 42 U.S.C. Section 3617; 24 CFR 100.400(b).

The Act provides two exemptions for "housing for older persons" from its bar against discrimination on the basis of familial status. These exemptions are for housing for persons 62 years of age or older and housing for persons 55 years of age or older, and each exemption has its own tests. These exemptions are not applicable in this case.

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, 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 Heron 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 1989). *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 ....

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

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." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), citing *Loeb v. Truxton, Inc.*, 600 F.2d 1003, 1014 (1st Cir. 1979) (disapproved on other grounds in *Trans World Airlines, Inc.,*

supra). Therefore, in *HUD v. Murphy Fair Housing - Fair Lending (P-H) para. 25,002,* it was further established that where Complainant and the Government can produce direct evidence of discrimination, the shifting burdens of proof analysis set forth in *McDonnell Douglas* need not be applied. *Citing Trans World Airlines, supra*, at 121; *see also Teamsters v. U.S.*, 431 U.S. 324, 358, n. 44 (1977).

In this case, the statements made by Respondent to Complainant during their short telephone conversation constitute direct evidence of Respondent's discrimination on the basis of familial status. Complainant says that Respondent told her that she did not rent to children, which is as direct a case of discrimination as is possible. Respondent claims that she said that she had only rented to adults with infants before.[6] Such a statement indicates a purpose to advise Complainant that older children were excluded. If older children, such as Complainant's nine-year-old, were eligible to be residents of Complainant's apartment house, there would be no need for Respondent to offer such a statement. Even if this statement simply represented Respondent's musing aloud, it is a statement of preference that is disallowed by the Act.

Ultimate Conclusions

The Secretary has established that Respondent denied Complainant the opportunity to apply for housing for herself and her son in Respondent's apartment house because she did not allow children to be residents in the property. By not allowing residence by an adult with a child, Respondent has violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Section 3604(a). By making a statement indicating a preference not to have Complainant's nine-year-old son as a tenant, Respondent has violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. Section 3604(c).

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 equitable relief." 42 U.S.C. Sec. 2613(g)(3). That section further states that the "order may, to vindicate the public interest, assess a civil penalty against the respondent." The maximum amount of a civil money penalty is dependent upon whether the

[6] As noted earlier, I have found that, in one form or another, both statements were made.

respondent has been adjudged to have committed prior discriminatory practices. Where the respondent has not been adjudged to have committed any prior discriminatory practices, any civil money penalty assessed against the respondent cannot exceed $10,000. *See also* 24 CFR 104.910(b)(3) (1990). Otherwise, the maximum allowable civil money penalty is $25,000.

The government, on behalf of itself and the complainant, has prayed for: (1) an award of damages to compensate Complainant for her inconvenience in the amount of $3,500, for emotional injury in the amount of $5,000, and for loss of housing opportunity in the amount of $4,500; (2) the imposition of a civil penalty of $5,000; and (3) injunctive relief to ensure that Respondent does not engage in unlawful housing practices in the future.

Damages

The Fair Housing Act provides that relief may include actual damages suffered by the Complainant. 42 U.S.C. Section 3612(g)(3). In this case, Complainant did not produce specific expense items to verify, or even claim, economic loss. Thus, no damages may or will be awarded for actual losses.

In addition to actual damages, a Complainant is entitled to recover damages for inconvenience and emotional distress caused by a Respondent's discrimination. *See, e.g., Blackwell, supra*, at 25,001; *Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Because these abstract injuries are not subject to being quantified, courts have ruled that precise proof of the actual dollar value of the injury is not required. *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.*, 478 F. 2d 380, 384 (10 Cir. 1973). In this case, the Secretary states that Complainant has suffered inconvenience, emotional distress, and a loss of housing opportunity as a result of Respondent's actions.

The administrative law judge assigned to decide a case of housing discrimination is accorded wide discretion in setting damages for emotional distress, and is guided in determining the size of the award by the egregiousness of the Respondent's behavior and the Complainant's reaction to the discriminatory conduct. *Schwemm, supra, at* 260-62. Awards for emotional distress in relevant federal case law range far and wide, depending on the circumstances.[7] Therefore, a review of federal cases is not very helpful as guidance here.

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[7] *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); *Phillips v. Hunter Trails Community Ass'n.*, 685 F.2d 184 (7th Cir. 1982) (allowance of $10,000 to each plaintiff at a time when that court had never before exceeded $5,000). *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 upon the record).

However, awards of damages for emotional distress have been made by this forum in housing discrimination cases, and these can be looked to for some guidance. In *Blackwell*, $40,000 was awarded to a black couple for the embarrassment, humiliation, and emotional distress of having been denied a house because of their race. This was a clear case of open and blatant racial discrimination perpetrated by a real estate agent. In *Murphy, supra*, awards of $150, $400, $800, $1,000, and $5,000 were made for emotional distress and loss of civil rights, with the award of $150 being made to a party who "... suffered the threshold level of cognizable and compensable emotional distress." (at 25,057). In *HUD v. Guglielmi and Happy Acres Mobile Home Park*, Fair Housing - Fair Lending (P-H), para. 25,070 at 25,079, I awarded $2,500 to the Complainant where I found that the Respondents had "... contributed significantly to [Complainant's] actual and perceived loss of civil rights, feelings of embarrassment and humiliation, and general emotional distress" for the better part of a year, and in *HUD v. Baumgardner*, Fair Housing - Fair Lending (P-H), para. 25,094 at 25,101, I awarded $500 to a young man who had been discriminated against on the basis of sex "because men are messy tenants." He did not appear to be a man of vulnerable constitution, but he said that he was angry, hurt, and frustrated by the denial of the house he wanted and that it was a source of anger and distress for a few months. Finally, in *HUD v. Jeffre*, Fair Housing - Fair Lending (P-H), para. 25,020, *et seq*., I awarded $500 for inconvenience, $1,500 for emotional injury, and $2,500 for loss of housing opportunity to a complainant who had been denied an apartment for herself and a minor daughter on the basis of her familial status.

In this case, Complainant's visit to Respondent's apartment house is apparently the only effort she made to find alternative housing until her local government forced her to move out of her house. She then had to separate herself from her son for a period while she lived with friends. Later, she moved into the trailer with Dustin, but she had all along sought to move once with him into alternative housing. Given the circumstances of this case, and the fact that I awarded $750 in *Baumgardner* and $500 in *Jeffre* for inconvenience, where the amounts of inconvenience shown in the records were similar, $500 will be awarded to Complainant for her inconvenience in the Order below.

Complainant says that she was embarrassed and angry over being denied the opportunity to rent Respondent's apartment. However, Janet Hughes is the only person of record to know of Complainant's problem with Respondent, and the two women only spent a few moments together. That she would remain angry and distressed over the incident for a longer period is clear.

The discrimination against Complainant took the same form as that committed against the complainants in *Baumgardner* and *Jeffre*. In all three cases, the complainants were denied the opportunity to even inspect the property in a short phone conversation. In *Baumgardner*, I held that the emotional injury from such an action is not limited to the length of time of the conversation, but continues for an indefinite time thereafter. In *Baumgardner*, the complainant did not appear to be a person of vulnerable constitution, and he said himself that the emotional distress caused by the Respondent "was kind of easy to get over." In *Jeffre*, the Complainant also did not appear to be a person of vulnerable constitution, but I found that her injury was greater because she is a single parent responsible also for the well being of a child rather than a single adult. I also found that, although the government did not make such a claim, the child's uneasiness can only be compensated under these circumstances through compensation to the parent. In light of the fact that I awarded $1,500 for emotional injury in *Jeffre*, where a much greater amount of emotional distress was described than in this case, $1,000 in compensation for Complainant's emotional injury is deemed reasonable and will be awarded in the Order below.

The government also seeks $4,500 in damages for the complainant's loss of housing opportunity. The federal courts have held that damage from the deprivation of a constitutional right can be presumed "even in the absence of evidence that the complainant has suffered any emotional distress, embarrassment, or humiliation." *Citing Hodge v. Seiler*, 558 F.2d 284 (5th Cir. 1977). It is also relevant that it has been held that the amount of compensatory damages should be adequate to redress the deprivation of a complainant's civil rights. *See Corriz v. Narajo*, 667 F.2d 892 (10th Cir. 1981). However, 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. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

In *Baumgardner* and *Jeffre*, I determined that the respondents' denial of the complainants' right to chose where and under what conditions they would live was a compensable injury, and I awarded $2,500 in damages in each case. The discrimination in this case took the same form as that in *Baumgardner* and *Jeffre*, and again, the effect was to take away Complainant's right to choose where and under what conditions she would live with her son. Thus $2,500 will be awarded in the Order below.

Civil Penalty

The Government has also asked for the imposition of a civil penalty of $5,000, which is one-half of the maximum that can be imposed on a respondent who has not been previously adjudged to have committed discriminatory housing practices. *See* 42 U.S.C. Section 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 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.

There is no evidence that the respondent in this case has been adjudged to have committed any prior discriminatory housing practice. Consequently, the maximum civil penalty that may be imposed in this case is $10,000.

The Secretary argues that the nature and circumstances of Respondent's violation merit a substantial civil penalty. Respondent's actions are serious. The evidence is clear that she maintained and enforced an occupancy policy that prohibited families with children from occupying her apartments. The direct effect known here was to deny housing to Complainant and her son, but the policy also denied an unknown number of other prospective tenants with children the housing available at Respondent's apartments even though they may have been their choice where to live.

As to the degree of culpability, Respondent is a small landlady, who controls only seventeen units. It is believable that in the autumn 1990 she did not know that excluding people with children is illegal. While ignorance is no excuse, the effect of a new law on people can be considered. However, renting apartments is Respondents' sole business, and the events here took place a year and a half after the effective date of the Act and, thus, Respondent should have known that she could not discriminate in this manner. In addition, no evidence was adduced at the hearing to indicate that Respondent's policy with regard to children had changed since she learned about the familial status provisions of the Fair Housing Act.

As noted above, the congress desired that a civil penalty be imposed in part to achieve the goal of deterring like conduct. To ensure that Respondents and

others get the message and understand that discriminatory occupancy standards that exclude children are outlawed by the Act, a substantial civil penalty should be assessed. In that way, housing providers will realize that conduct such as Respondent's is "not only unlawful but expensive." *HUD v. Jerrard*, Fair Housing - Fair Lending (P-H) para. 25,005, at 25,092 (1990).

The final factor to be considered in calculating a civil penalty is the respondent's financial circumstances. Because evidence regarding their financial circumstances is peculiarly within respondents' knowledge, respondents in Fair Housing cases have the burden of producing such evidence. *Blackwell*, at 25,015; *Jerrard*, at 25,092. In this case, Respondent stated during discovery that her net worth is $50,000. She owns a total of 17 apartments, which she evidently does not include in her net worth, and nothing else is known of her wealth. However, there is no indication of affluence in this case; indeed, Respondent does the apartment cleaning between tenants herself. Taking all of these things into consideration, a civil penalty of $2,000, the amount imposed in *Jeffre*, appears reasonable and will be imposed in the Order that follows later.

Injunctive Relief

Section 812(g)(3) of the Fair Housing Act also authorizes the administrative law judge to order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. "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 II*, 908 F.2d 864, at 874 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983)).

The purposes of injunctive relief in housing discrimination cases include the elimination of the effects of past discrimination, the prevention of future discrimination, and the positioning of the aggrieved persons as close as possible to the situation they would have been in but for the discrimination. *See, Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033, 1036 (8th Cir. 1979), *cert. denied*, 445 U.S. 905 (1980). Once a judge has determined that discrimination has occurred, he has "the power as well as the duty to use any available remedy to make good the wrong done." *Moore v. Townsend*, 525 F.2d 482, 485 (7th Cir. 1975) (citation omitted).

Here, injunctive relief is necessary to ensure that Respondent will not conduct herself in like manner. To that end, the Government has requested that the Respondent be ordered to cease certain activities and undertake certain other

actions. These requests are reasonable and are appropriate under the totality of the circumstances of this case. Accordingly, they will be imposed, and the specific provisions of injunctive relief are set forth in the Order issued below.

Order

Having concluded that Respondent, Marilyn Frisbie, violated provisions of the Fair Housing Act that are codified at 42 U.S.C. Sections 3604(a), and (c), as well as the regulations of the U.S. Department of Housing and Urban Development that are codified at 24 CFR 100.60 and 100.75, it is hereby

ORDERED that,

1. Respondent is permanently enjoined from discriminating against Complainant, Karen Rounds, or any member of her family, with respect to housing, because of race, color, or familial status, and from retaliating against or otherwise harassing Complainant or any member of her family. Prohibited actions include, but are not limited to, all those enumerated in the regulations codified at 24 CFR Part 100 (1989).

2. Respondent shall institute record-keeping of the operation of her rental properties which is adequate to comply with the requirements set forth in this Order, including keeping all records described in paragraph four of this Order. Respondent shall permit representatives of HUD to inspect and copy all pertinent records at reasonable times after reasonable notice.

3. Consistent with 24 CFR Part 110, Respondent shall display the HUD fair housing poster in a prominent common area in all the buildings in which she maintains rental units.

4. On the last day of every third month beginning June 30, 1992, and continuing for three years, Respondent shall submit reports containing the following information regarding the previous three months, for all properties owned or otherwise controlled by Respondent, to HUD's Kansas City Regional Office of Fair Housing and Equal Opportunity, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101-2406, provided that the director of that office may modify this paragraph of this Order as deemed necessary to make its requirements less, but not more, burdensome:

   a. a duplicate of every written application, and written description of every oral application, for all persons who applied for occupancy of all such Respondent's property, including a statement of the person's familial status,

whether the person was rejected or accepted, the date of such action, and, if rejected, the reason for the rejection;

b. a list of vacancies at all such Respondent's properties including the departed tenant's familial status, the date of termination notification, the date moved out, the date the unit was next committed to rental, the familial status of the new tenant, and the date that the new tenant moves in;

c. current occupancy statistics indicating which of the Respondent's properties are occupied by families with children;

d. sample copies of advertisements published or posted during the reporting period, including dates and what, if any, media was used, or a statement that no advertising was conducted;

e. a list of all persons who inquired in any manner about renting one of Respondent's units, including their names, addresses, familial status, and the dates and dispositions of their inquiries; and

f. a description of any rules, regulations, leases, or other documents, or changes thereto, provided to or signed by any tenants or applicants.

5. Respondent shall inform all her agents and employees, including resident managers, of the terms of this Order and shall educate them as to these terms and the requirements of the Fair Housing Act.

6. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondent shall pay damages in the amount of $4,000 to Complainant to compensate her for the losses that resulted from Respondent's discriminatory activity.

7. Within forty-five days of the date that this Initial Decision and Order is issued, Respondent shall pay a civil penalty of $2,000 to the Secretary, United States Department of Housing and Urban Development.

8. Within fifteen days of the date that this Order is issued, Respondent shall submit a report to HUD's Kansas City Regional Office of Fair Housing and Equal Opportunity that sets forth the steps she has taken to comply with the other provisions of this Order.

This Order is entered pursuant to section 812(g)(3) of the Fair Housing Act, which is codified at 42 U.S.C. Section 3612(g)(3), and HUD's regulations that are codified at 24 CFR 104.910. It will become final upon the expiration of thirty days or the affirmance, in whole or in part, by the Secretary within that time.

/s/

Robert A. Andretta
Administrative Law Judge

Dated: May 6, 1992.