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 Jacqueline, Jaime, Michael, and Shena VanLoozenoord,

Charging Party,

v.

Mountain Side Mobile Estates Partnership, and Mr. and Mrs. R. D. Dalke,

Respondents.

AND

The Secretary, United States Department of Housing and Urban Development, on behalf of Michael Brace,

Charging Party,

v.

Mountain Side Mobile Estates Partnership, and Mr. and Mrs. R. D. Dalke,

Respondents.

HUDALJ 08-92-0010-1
HUDALJ 08-92-0011-1
Decided: December 17, 1993

Dorothy Crow-Willard, Esq.,
Jane S. O'Leary, Esq.,
Sara K. Pratt, Esq.,
Harry L. Carey, Esq.,
Carole W. Wilson, Esq.,
For the Charging Party

Stephen E. Kapnik, Esq.
For the Respondents

Before: William C. Cregar
Administrative Law Judge

THIRD INITIAL DECISION ON REMAND AND ORDER

Statement of the Case

On October 20, 1993, the Secretary of Housing and Urban Development ("the Secretary") issued a Decision and Order granting the Charging Party's Motion to Set Aside the Second Initial Decision and Enter a Final Decision Granting Relief. The Secretary found that the Charging Party had proved under a disparate impact analysis that Respondents' imposition of a three-person occupancy limit discriminated against Complainants, Jacqueline VanLoozenoord, Michael Brace, and Ms. VanLoozenoord's three minor children, based on their familial status in violation of the Fair Housing Act, as amended ("the Act").[1] Accordingly, the Secretary determined that Respondents' three-person occupancy limit violated §§ 804(a) and (b) of the Act and he remanded this case for a determination of damages. *See* 42 U.S.C. § 3604(a) and (b).

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[1]On March 22, 1993, I issued the Initial Decision and Order finding that the Charging Party did not prove discrimination under either a disparate treatment or disparate impact analysis. The Charging Party had alleged that Respondents violated 42 U.S.C. §§ 3604(a), (b), (c) and 3617. On April 21, 1993, the Secretary remanded the Initial Decision to permit consideration of the Charging Party's April 13th Motion for Partial Reconsideration and Respondents' opposition thereto. I again denied the Charging Party's request for relief. Initial Decision and Order on Remand (June 18, 1993).

On July 19, 1993, the Secretary reversed and again remanded portions of the case concerning the disparate impact allegations. The Secretary found that the Charging Party had proved a prima facie case of disparate impact by nationwide statistics and that a "business necessity" test is the standard that Respondents must meet to rebut a prima facie case of disparate impact.

In the Second Initial Decision on Remand, I defined business necessity for Title VIII purposes as follows: (1) the challenged practice must bear a demonstrable relationship to a housing provider's legitimate business interests; and (2) objective evidence must establish that the means selected to serve those interests must be reasonably likely to effectuate those interests and not be otherwise unlawful. Second Initial Decision on Remand at 5 (Sept. 20, 1993). I found that Respondents' imposition of the three-person occupancy limit met the business necessity test and that the Charging Party failed to demonstrate that a less discriminatory alternative to the three-person limit existed. Accordingly, I again determined that the Charging Party failed to prove that Respondents, Mountain Side Mobile Estates Partnership, Robert Dalke, and Marilyn Dalke, engaged in discriminatory conduct.

Summary of Findings of Fact[2]

Mountain Side Mobile Estates ("the Park") is a trailer park located at 17190 Mt. Vernon Road, Golden, Colorado, in unincorporated Jefferson County. The Park is owned by Mountain Side Mobile Estates Partnership ("the Partnership"). The partners consist of the Estate of Leon Brooks, Deena Brooks, Lillian Toltz, the Israel Toltz Trust, and Ruby Simmons. The Brooks-Toltz family has built and developed mobile home parks since 1955. The Partnership employs Prime Management ("Prime") to manage the Park. A married couple, Robert and Marilyn Dalke, have been Prime's resident managers at the Park since December 1989.

The Park has a population of approximately 320 persons, with approximately 30 families with children under 18 years of age. Prior to March 12, 1989, the Park was an "adults only" Park. Respondents determined that it would not be feasible to qualify for the "55 and older" statutory exemption. *See* 42 U.S.C. § 3607 (b)(2).[3] Accordingly, they decided to permit families with children. However, fearing an unlimited expansion of the Park's population, they considered instituting occupancy limits. Respondents imposed a three persons per lot occupancy limit.

Ms. VanLoozenoord and Mr. Brace cohabit and consider themselves to be married for "all intents and purposes." They live with Ms. VanLoozenoord's two daughters, Jaime and Shena, who in the fall of 1991 were, respectively, 10 and 5 years old, and one son, Michael, who was 8 at that time. Mr. Brace has a minor son, Myron, who has resided with Complainants since June 1992.

In the late Summer of 1990, Complainants lived in a one-bedroom, 525 square foot apartment in Arvada, Colorado. Conditions in the apartment were crowded, with the children sleeping in the bedroom and the adults in the living room. Accordingly, they sought larger accommodations. They also wanted to provide the children with a suburban lifestyle, and they believed that areas outside of Denver and closer to the mountains would offer a better education for the children than Arvada's school system. Complainants, however, were unable to qualify financially to buy or rent a single-family home suitable to their needs. Therefore, they considered purchasing a mobile home.

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[2]The Findings of Fact are found in the Initial Decision issued on March 22, 1993. Supplemental Findings concerning damages are set forth below.

The following reference abbreviations are used in this decision: "Res. Ex." for Respondents' Exhibit; "C.P. Ex." for Charging Party's Exhibit; "Tr. 1" and "Tr. 3" for Transcript Volumes I and III.

[3]The Fair Housing Amendments Act of 1988 became effective on March 12, 1989. On that date families with children were included among the protected classes. With the exception of the statutorily exempted "housing for older persons," adult-only parks were prohibited after the effective date.

In mid-August 1991, Ms. VanLoozenoord and Mr. Brace read a newspaper advertisement for the sale of a mobile home located in the Park and owned by Carmel Reavey and her son, James Neely. The Reavey/Neely trailer was over 1000 square feet and included an addition. The original trailer had two bedrooms. The addition included an extra bedroom, as well as a utility room. The mobile home also had an enclosed front porch. Complainants found the Reavey/Neely trailer's overall appearance appealing and well maintained.

Complainants had seen no other trailers in the area that were as spacious and inexpensive. They considered the Park to be well preserved, and they liked the country setting. In addition to offering the children the benefits of a suburban community, the Park was within a mile of both schools Mr. Brace attends.[4] The rent for the trailer lot was $248 a month, the same amount as the rent for their one-bedroom apartment.

On August 17, 1991, Ms. VanLoozenoord purchased the home for $5000. She paid $4000 down, and the remaining $1000 upon taking possession of the home on September 15, 1991. Complainants were "ecstatic" about their new living arrangements.

Shortly before Ms. VanLoozenoord purchased the trailer, Mr. Dalke had informed Ms. Reavey that any prospective buyers must apply for tenancy at the Park. Mr. Brace knew from a conversation with Ms. Reavey and from his own prior experiences that he would need to communicate with the Park owners at some point. Despite this knowledge neither Mr. Brace nor Ms. VanLoozenoord contacted Park management prior to purchasing the home.[5]

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[4]During the day, Mr. Brace cares for the children and attends two schools where he takes computer courses and strives to overcome learning disabilities. He hopes to achieve his long term goal of acquiring a better job and earning a college degree. His studies are financed by a state program. Tr. 1, pp. 93-96. Mr. Brace worked in asbestos removal before becoming a student. Prior to that job, he was employed as a mechanic. Tr. 1, p. 125.

[5]In addition to the oral communication from Mr. Dalke to Ms. Reavey concerning the need to apply for tenancy, since at least as early as December 1989, there has been a sign, approximately 20 inches by 20 inches, in the window at the front entrance to the Park building containing the management office and clubhouse. The sign states:

NOTICE
IF YOU SELL MOBILE HOME,
BUYER & SELLER MUST COME
TO OFFICE - AS BUYER HAS
TO BE APPROVED ... DO NOT
CLOSE DEAL UNTIL BUYER
HAS BEEN APPROVED
*
IF MOBILE HOME IS SOLD,TO
BE MOVED OUT OF PARK,
SELLER & BUYER COME TO

Approximately a week after Complainants moved into the trailer, Mr. Dalke contacted Mr. Brace and inquired as to the number of residents in the trailer. Mr. Brace informed him that there were five occupants. Mr. Dalke notified Complainant of the three-person limit and told him that he and his family would have to vacate.

Complainants received a letter dated October 4, 1991, from Mr. Dalke informing them that they violated park regulations by purchasing a home without first applying for residency and by exceeding the three-person limit. The letter notified Complainants that unless they could negotiate a refund of their purchase money, they would have to remove the trailer from the Park. On October 7, 1991, Complainants filed complaints of housing discrimination with HUD based on familial status.

Complainants were served with a notice to vacate dated October 14, 1992, that demanded that they move by November 14, 1992. In addition, a summons dated November 8, 1992, was posted on Complainants' door ordering them to appear in Jefferson County district court to answer the eviction complaint. A notice of the eviction hearing was served on Complainants on November 26, 1992.

The eviction hearing was held on January 6, 1992, before a Jefferson County district court judge. The Partnership, as plaintiff, and Ms. VanLoozenoord and Mr. Brace, as defendants, were represented by counsel. The judge ruled in favor of the Partnership because Complainants never applied for residency at the Park. On February 3, 1992, Ms. VanLoozenoord and Mr. Brace were served with a Notice of Court Decision and Entry of Judgment ordering that they remove their home from the Park within 48 hours.

In March of 1992, the parties signed an interim agreement permitting Complainants to remain in the Park pending the resolution of these proceedings.

Supplemental Findings of Fact

1. In response to the 48-hour eviction notice, Ms. VanLoozenoord telephoned various companies to find out about moving the mobile home. However, none could move the trailer within such a short time. Tr. 1, p. 168. Various park managers told her

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OFFICE TO CHECK IF ALL
RENT IS PAID

Ms. Reavey told Mr. Brace that he would have to sign a lease. Mr. Brace acknowledged that he knew before he moved in that they were not buying real property and that they would have to communicate with Respondents.

Since December of 1989, there have been approximately six instance when individuals have purchased a home at the Park prior to being approved as tenants. However, with the exception of Complainants, no one has ever purchased a home without first obtaining an application for tenancy or without some prior contact with Park management.

that they could accept only the original portion of the trailer, and not the addition. Because the home was stationary, it could not be moved without destroying almost half of it. Any attempt to reconnect the home's parts would require new construction to bring it up to the standards of today's codes. This reconstruction would have cost more than the $5,000 purchase price. Tr. 1, pp. 64-65, 174.

2. Until early 1992, Complainants made efforts to sell their home and find acceptable, affordable housing in other Parks. However, all of the interested purchasers had families exceeding the three-person limit. Tr. 1, pp. 76, 129.

3. Complainants made numerous trips in search of alternative housing. They traveled approximately 20 miles around the Golden area. They also traveled once to Elizabeth (59 miles), Broomfield (14 miles), and Thornton and adjacent Northglenn (21 miles), and to Watkins (30 miles) twice. The total roundtrip mileage for these excursions was 328 miles.[6] Tr. 1, pp. 78-80, 162-63. Complainants discovered that it was impossible to find another affordable trailer that was as spacious as their own. Tr. 1, p. 81.

4. Ms. VanLoozenoord missed a day of work to file the discrimination complaint. She lost two days of work for the eviction hearing, one day for the actual hearing and a day to recover from the proceedings because she was "really stressed." She also missed three hours of work in order to obtain the eviction hearing transcript from the courthouse. Finally, in response to the 48-hour notice, she lost a day of work while she called companies in an attempt to have the home moved. Her wages were $8.03 per hour at that time, and she worked eight hour days. Tr. 1, p. 160-61.

5. Ms. VanLoozenoord missed four hours of work for her deposition and two days of work for the hearing in this proceeding. At that time, her wages were $8.35 per hour, and she worked eight hour days. Tr. 1, p. 161.

6. Complainants paid $108 for the transcript of the eviction hearing and $500 to their counsel in the eviction hearing. Because funds were short, they cashed in their children's savings bonds to pay for the attorney's fee. Tr. 1, pp. 162, 167.

7. Ms. VanLoozenoord wept upon receiving the October 4th letter. She reacted similarly to the notice to vacate. Tr. 1, pp. 164-66. Mr. Brace also was upset upon receiving these documents. Tr. 1, pp. 81-82. The distractions resulting from the eviction proceedings prevented Complainants from fully enjoying the Thanksgiving and Christmas holidays. Tr. 1, pp. 76, 166.

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[6]The mileage was computed by the Charging Party based on the 1991 Rand McNally map of Colorado (deluxe edition). *See* Charging Party's Post-hearing Brief, Appendix 2. I took official notice of these distances. Tr. 3, p. 35.

8. Ms. VanLoozenoord withdrew from her family and coworkers. She spent less time with her children because of tension she experienced while at home. She abandoned her nightly practice of reading to her son who is having difficulty reading. A tutor now performs that task. Tr. 1, pp. 179-81. The stress she experienced made "every little thing seem like a mountain rather than a molehill." Tr. 1, p. 180. For example, she called her son's school at least twice to complain about minor injuries he received at school. Normally, she would have "thought nothing about" these incidents. Tr. 1, p. 179.

9. Their fear of further confrontation with Park management resulted in their unwillingness to take advantage of the Park's amenities. Ms. VanLoozenoord did not feel free to sit outside and enjoy her morning coffee. The children were not often allowed to play outside at the Park. Rather, Mr. Brace took them on outings to the river, for example, to get them away from the Park. Both Ms. VanLoozenoord and Mr. Brace became short tempered with the children. Tr. 1, pp. 84, 181-82, 203, 210.

10. Mr. Brace has a learning disability. He has difficulty processing auditory and visual information. The stress resulting from his fear of being evicted slowed his processing of visual information and made it more difficult for him to understand verbal instructions. His response time on a computerized reading program decreased from 1900 milliseconds to 1100 milliseconds. Tr. 1, pp. 95, 183; Tr. 3, pp. 65-77, 87.[7]

11. Ms. VanLoozenoord's eldest child, Jaime, wrote a letter to her family stating that "she was going to leave because if she left then everyone else could stay." Tr. 1, pp. 186-87.

12. Complainants retained Jerry Ritchie as a housing consultant to discuss possible conciliation. Because Mr. Ritchie advised them (incorrectly) that any documents used in conciliation could not later be introduced as exhibits during these proceedings without the consent of both parties, Complainants decided not to engage in conciliation with Respondents. Rather, any communications with Respondents were made only by, and because of the Charging Party.[8] Tr. 1, pp. 92-93, 211-13, 217-19. Complainants paid Mr. Ritchie a $40 consultant fee. Tr. 1, p. 162.

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[7]Ms. Karen Hossack, a learning disabilities specialist who worked with Mr. Brace, credibly testified concerning the effect that the stress had on his disability. She worked with Mr. Brace since August of 1991 in classes of no more than three students, knew him since January of 1991 when he first entered the program for learning disabilities, had many conversations with him, and is familiar with the effect of stress on learning ability. Tr. 3, pp. 59-63; 67-76.

[8]The record makes clear that Complainants' failure to conciliate was not a course of action that HUD participated in or recommended. The Charging Party, in fact, made attempts to mediate this dispute and successfully negotiated the agreement that allowed Complainants to remain in the Park pending resolution of these proceedings. Tr. 1, pp. 92-93, 97, 211.

13. Respondents and HUD previously settled two other cases based on the parties' conciliation efforts. As a result of one of these conciliations, Respondents removed a $15 surcharge that they imposed for each third tenant per lot when they originally instituted the three-person limit. Neither of HUD's conciliation efforts required Respondents to eliminate or modify the three-person limit. Tr. 1, pp. 246-47; Tr. 3, p. 47; Res. Ex. 7. Before establishing the three-person limit, Respondents contacted HUD, along with legal counsel and representatives of the mobile home industry, to determine whether the occupancy limit would be legal under the amendments to the Fair Housing Act. The company also made later efforts to ensure its legality by renewed communications with these same parties. At no time did any of the parties which Respondents contacted, including HUD, advise that the occupancy limitation of three persons per unit violated the Act. Tr. 1, pp. 233-34, 242-43.

Discussion

The Charging Party requests $1,178.05 in economic damages for travel costs in search of alternate housing, lost wages, and fees incurred to defend the eviction action and to pursue this proceeding. It also seeks awards of $50,000 each for Ms. VanLoozenoord and Mr. Brace, and $5,000 for Jaime VanLoozenoord for emotional distress.[9] Respondents generally allege that Complainants failed to mitigate their damages, and accordingly, argue that Respondents should not be held liable for any harm suffered by Complainants.

The Act provides that Complainants are entitled to "such relief as may be appropriate, which may include actual damages. . . and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). I find that Complainants have suffered injury from Respondents' discriminatory actions and are entitled to receive compensation. However, I also find that Complainants were, in part, responsible for their own emotional distress by failing to conciliate with Respondents. I have considered Complainants' actions in determining the damage award.

Monetary Damages

Complainants are entitled to their out-of-pocket expenses resulting from Respondents' discriminatory policy and the ensuing eviction proceeding. *See, e.g., HUD v. Morgan,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,008, 25,138 (HUDALJ July 25, 1991), *modified on other grounds,* 985 F.2d 1451 (10th Cir. 1993). Because of the threatened eviction, Complainants sought alternative housing. Complainants' costs associated with

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[9]My award of damages for "emotional distress" includes damages resulting from any embarrassment, humiliation, and inconvenience, as well as stress.

While the Charging Party originally sought civil penalties against Respondents, it discontinued this demand later in these proceedings. Charging Party's Memorandum in Support of Charging Party's Motion to Reverse, Modify and/or Set Aside the Second Initial Decision on Remand at p. 39 n.15 (Oct. 5, 1993).

their search are fully compensable. *See Hamilton v. Svatik*, 779 F.2d 383 (7th Cir. 1985). The Charging Party seeks recompense for Complainants for the 328 miles that they traveled, at a rate of $.25 a mile,[10] for a total of $82. Complainants are entitled to recoup their costs and accordingly, I award Complainants $82.

Complainants are also entitled to recover their other expenses incurred from the eviction process, i.e., the transcript fee and legal expenses. *See HUD v. TEMS Ass'n, Inc.* 2 Fair Housing-Fair Lending (P-H) ¶ 25,028, 25,311 (HUDALJ Apr. 9, 1992). Finding the requested amounts to be reasonable and supported by the record, I award Complainants $108 for the transcript fee and $500 for the attorney's fee. In addition, a consultation fee of $40 to Mr. Ritchie is also reasonable and Complainants are entitled to that award as well.

Finally, Complainants are entitled to any lost wages caused by Respondents' illegal actions, including lost wages incurred because of their defense of the eviction proceeding and their participation in these proceedings. *See TEMS Ass'n*, 2 Fair Housing-Fair Lending at 25,311; *HUD v. Murphy*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,002, 25,054 (HUDALJ July 13, 1990); *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001, 25,010 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990). Ms. VanLoozenoord missed four hours of work for her deposition and two days for the hearing in this proceeding. She also lost a day's income to file the discrimination complaint. Concerning the eviction action, she missed a day of work because of her attempts to have the trailer moved. She lost three hours of pay to obtain the transcript. In addition, she lost two day's salary because of the hearing.[11] In all, Ms. VanLoozenoord missed 55 hours of work and accordingly, Complainants are entitled to damages in the amount of $448.05.

Failure to Conciliate and Emotional Damages

Although "courts do not demand precise proof to support a reasonable award of damages [for emotional distress]," *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony. *See HUD ex rel. Herron v. Blackwell*, 908 F.2d 864, 872-73 (11th Cir. 1990); *Seaton v. Sky Realty Co., Inc*, 491 F.2d 634, 636 (7th Cir. 1974). Key factors in determining the amount of compensation for emotional

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[10]This rate is the current Government rate set forth in the Federal Travel Regulations. *See* 56 Fed. Reg. 28,824 (1991) (to be codified at 41 C.F.R. § 301-4.2(a)(2)).

[11]I find that Ms. VanLoozenoord should be compensated for her lost wages for the day after the eviction hearing. She credibly testified that she was "stressed" and unable to "function at work." Tr. 1, p. 160. Accordingly, she took the additional day off. It is not an unreasonable reaction given that the court had just informed her that she may have as little as 48 hours in which to find alternative living arrangements for her family. *See* C.P. Ex. 6, numbered page 52.

distress are the complainant's reaction to the discriminatory conduct and the egregiousness of respondent's behavior. *HUD v. Properties Unlimited,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,009, 25,151 (HUDALJ Aug. 5, 1991).

Complainants' reaction to the discriminatory conduct was intensified by their failure to participate in the conciliation process upon the advice of Mr. Ritchie.[12] Just as a Fair Housing complainant has a duty to mitigate out-of-pocket damages, the same duty exists for emotional distress damages. A complainant's failure to so mitigate will result in a reduction of emotional distress damages. *Cf. Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 71 (D. Md. 1978) (plaintiff's out-of-pocket damages were reduced because she failed to accept defendant's later offer of an apartment); *Morgan,* 2 Fair Housing-Fair Lending at 25,139 (damages reduced because complainant failed to purchase a less expensive home when offered the opportunity).

By failing to conciliate, Complainants denied themselves an opportunity to discuss a possible solution to the impending eviction process and their precarious housing situation. Accordingly, the failed to alleviate the emotional distress resulting from the impending eviction and the uncertainty over their future.

Nevertheless, Complainants constantly worried about the impending eviction and the uncertainty over their ability to maintain a convenient, affordable, and spacious residence. The timing of the eviction process understandably affected their enjoyment of the Thanksgiving and Christmas holiday seasons. Because of their fear of further confrontation with Park management, they were unwilling to take advantage of the Park's amenities. Further, they experienced repeated frustration in their efforts to remedy their situation by either selling their mobile home, relocating to another park, or moving their trailer.

Anxiety caused Ms. VanLoozenoord to overreact to what she would normally consider life's minor disturbances. She also became withdrawn and neglected some of the parental activities that she ordinarily participated in and enjoyed. Both adults became short with the children. Mr. Brace's and Ms. VanLoozenoord's consternation was further conveyed to the children as evidenced by Jaime's letter. Her letter indicates that Jaime suffered emotional distress. A ten-year old's threat to run away from home to assist her family in their predicament demonstrates that she was experiencing fear and

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[12]"While a respondent is certainly not entitled to a successful conciliation, he is entitled to an objectively reasonable effort. . . ." *Baumgardner v. HUD ex rel. Holley,* 960 F.2d 572, 579 (6th Cir. 1992). *See also* 42 U.S.C. § 3610(b); 24 C.F.R. § 103.300; H.R. Rep. No. 711, 100th Cong., 2d Sess. (1988) at 34 ("The Committee intends for conciliation to remain a primary feature of fair housing enforcement."). Although the Charging Party attempted reasonable efforts, its actions were effectively paralyzed by Complainants' failure even to discuss the possibility of conciliation with Respondents. Because of the necessity of Complainants' cooperation, *see, e.g.,* 24 C.F.R. §§ 103.300(b), 103.310, the Charging Party could not provide any meaningful conciliation without it.

anxiety over her housing situation. While the record does not reflect that Mr. Brace suffered to the same extent as Ms. VanLoozenoord, the manifestations of his learning disability intensified under the stress of their housing situation. Because he needed to complete his studies in hopes of employment, the setback, although not major, was significant to him.

Finally, an award for emotional distress must take into account the appropriateness of a complainant's reaction to the discrimination in light of the egregiousness of a respondent's conduct. The record does not reflect egregious conduct on the part of Respondents. They had no intent to discriminate; rather, they enforced a neutral policy, albeit one with a disparate impact on families with children. Respondents contacted HUD prior to and after implementation of their policy to obtain guidance on its legality. In addition, they conciliated two other cases with HUD, the results of which did not require elimination or modification of their policy. They did not threaten or harass Complainants. In implementing the discriminatory policy they utilized the legal means available to them, i.e., the eviction process. Respondents stood ready to conciliate with Complainants, and in fact, the interim conciliation agreement provides a written assurance that Complainants could maintain their residency pending resolution of this proceeding.

Having considered Complainants' emotional distress, their refusal to conciliate, and the lack of egregious conduct on the part of Respondents, I conclude that Ms. VanLoozenoord is entitled to compensation for emotional distress in the amount of $4,000, Mr. Brace is entitled to compensation for emotional distress in the amount of $3,000, and Jaime VanLoozenoord is entitled to compensation for emotional distress in the amount of $1,000.[13]

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[13]In reaching this determination, I have considered the range of awards for emotional distress in other familial status cases. *See, e.g., U.S. v. Lepore,* 2 Fair Housing-Fair Lending (P-H) ¶ 15,807 (M.D. Pa. Dec. 23, 1991) ($500 awarded to wife, who along with her husband and newborn baby, were subject to the threat of eviction from a mobile home park because of a two-person occupancy limit); *HUD v. Ocean Parks Condominium Ass'n, Inc.,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,054, 25,525-27 (HUDALJ Aug. 20, 1993) ($5,000 awarded to complainant who experienced physical manifestations of stress, decreased job performance and a deterioration in a personal relationship; and $7,500 awarded each to complainant/husband who experienced blackouts due to stress and complainant/wife who worried about her husband's health, witnessed his blackouts, and changed from being "warm, happy, and open to agitated, unhappy and preoccupied"), *appeal pending* (11th Cir.) (No. 93-5058); *HUD v. Jeffre,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,020, 25,258 (HUDALJ Dec. 18, 1991) ($1,500 emotional injury award against a housing provider who denied a rental opportunity because of familial status); *HUD v. Guglielmi,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,004, 25,077-79 (HUDALJ Sept. 21, 1990) ($2,500 awarded to complainant where respondents' "adults only" policy and other rules effectively prevented the sale of her trailer); *Murphy,* 2 Fair Housing-Fair Lending at 25,055-57 (awards from $150 up to $5000 for complainants who were prevented from selling their mobile homes because of an "adults only" restriction in the park).

Injunctive Relief

The Act also authorizes "injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). The purposes of injunctive relief are to eliminate the effects of past discrimination, prevent future discrimination, and return aggrieved persons to the positions they would have been in absent the discrimination. *See Blackwell,* 908 F.2d at 874; *Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033, 1036 (8th Cir. 1979), *cert. denied,* 445 U.S. 905 (1980). In its proposed injunctive order, the Charging Party requests a five-year reporting period, reporting requirements for all properties owned by the Partnership, and specific training courses for Respondent's employees. Charging Party's Memorandum in Support of Charging Party's Motion to Reverse, Modify and/or Set Aside the Second Initial Decision on Remand, pp. 40-43. Because there has been no showing that any of these proposed remedies are necessary to serve the goals of injunctive relief, I have not incorporated them into the following Order. *See Morgan,* 985 F.2d at 1461.

ORDER

Because Respondents Mountain Side Mobile Estates Partnership, Robert Dalke, and Marilyn Dalke violated provisions of the Fair Housing Act that are codified at 42 U.S.C. §§ 3604(a) and (b), and regulations of the U.S. Housing and Urban Development that are codified at 24 C.F.R. §§ 100.50(b)(1)-(3), 100.60(a) and (b)(1)-(2), it is hereby

ORDERED that,

1. Respondents Mountain Side Mobile Estates Partnership, Robert Dalke, and Marilyn Dalke are permanently enjoined from discriminating because of familial status against persons protected by the Fair Housing Act, including Complainants, and from interfering with their exercise or enjoyment of rights protected by that Act. Respondents are prohibited from:

a. implementing or enforcing the three-person per lot occupancy restriction at Mountain Side Mobile Estates, and

b. evicting or refusing to accept tenants (including Complainants) based on the three-person per lot occupancy restriction or familial status at Mountain Side Mobile Estates.

2. Respondents shall revise their Mobile Home Lot Agreements for Mountain Side Mobile Estates to eliminate the language that all residents must be adults and change tenant information sheets for Mountain Side Mobile Estates to reflect that the Park is a family park, not "mostly retired and semi-retired."

3. Respondent Mountain Side Mobile Estates Partnership shall institute internal recordkeeping procedures with respect to the operation of Mountain Side Mobile Estates that are 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.

4. On the last day of every third month beginning with the month this Decision and Order becomes final and continuing for three years, Respondent Mountain Side Mobile Estates Partnership shall submit reports containing the following information regarding the previous three months, for Mountain Side Mobile Estates, to HUD's Denver Regional Office of Fair Housing and Equal Opportunity, 1405 Curtis Street, Executive Tower Building, Denver Colorado 80202-2349, provided that the director of the office may modify this paragraph of the 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 to lease any mobile home lots, including the number of persons in the household and their approximate ages, 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 Mountain Side Mobile Estates, including the address of the unit, the date of the termination notification, the date moved out, the number of persons in the former occupant's household and their approximate ages, the date the unit was next committed to occupancy, the number of persons in the new occupant's household and their approximate ages, and the date that the new occupant moved in;

c. a list of all persons who inquired in any manner about renting a mobile home lot at Mountain Side Mobile Estates, including their names, addresses, the number of persons in their household and their approximate ages, and the dates and dispositions of their inquiries;

d. a list of all tenants upon whom Respondent served a termination notice, including the tenant's name, address, the number of persons in the household and their approximate ages, date of the notice, reason for the notice, whether such termination occurred, and the date of the termination;

e. any written or oral changes (whether formal or informal) in rules, regulations, leases, or other documents provided to or signed by current or new tenants or applicants made during the reporting period, the date the change was made, how and when tenants and applicants were notified of the change, and if the change was in writing, a copy of it.

5. Within ten days of the date that this Decision and Order becomes final, Respondents shall inform all its agents and employees of the terms of this Order and shall educate them as to the requirements of the Fair Housing Act. Employees and agents hired subsequent to that day shall be similarly informed and educated before they undertake any responsibilities in connection with their employment.

6. Within forty-five days of the date on which this Decision and Order becomes final, Respondent Mountain Side Mobile Estates Partnership shall pay damages in the amount of $1,000.00 to Jaime VanLoozenoord to compensate her for emotional distress that resulted from Respondents' discriminatory activity.

7. Within forty-five days of the date on which this Decision and Order becomes final, Respondent Mountain Side Mobile Estates Partnership shall pay damages in the amount of $4,000.00 to Jacquelyn VanLoozenoord to compensate her for emotional distress that resulted from Respondents' discriminatory activity.

8. Within forty-five days of the date on which this Decision and Order becomes final, Respondent Mountain Side Mobile Estates Partnership shall pay damages in the amount of $3,000.00 to Michael Brace to compensate him for emotional distress that resulted from Respondents' discriminatory activity.

9. Within forty-five days of the date on which this Decision and Order becomes final, Respondent Mountain Side Mobile Estates Partnership shall pay Complainants damages in the amount of $1,178.05 to compensate them for their losses that resulted from Respondents' discriminatory activity.

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

William C. Cregar
WILLIAM C. CREGAR
Administrative Law Judge

Dated: December 17, 1993.