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 Debbie Maze, Charging Party, v. Lyle Krueger, Respondent.	HUDALJ 05-93-0196-1 Decided: June 7, 1996

Gerald A. Goldman, Esquire
Jonathan Goldman, Esquire
For the Respondent

Elizabeth Crowder, Esquire
For the Secretary

Before: William C. Cregar
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of a complaint filed by Debbie Maze ("Complainant") alleging discrimination based on sex in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("the Act"). On August 30, 1995, following an investigation and a determination that reasonable cause existed to believe that discrimination had occurred, the Department of Housing and Urban Development ("HUD" or "the Charging Party") issued a charge against Lyle Krueger ("Respondent") alleging that he had engaged in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(b) and 3617; and 24 C.F.R. §§ 100.65(a) and 100.400(b).

A hearing was held in Chicago, Illinois on December 11, 1995. The parties were to

have filed post-hearing briefs by February 2, 1996. However, I granted the parties' joint motion for an extension of time until April 1, 1996, to file post-hearing briefs. Both parties filed their briefs on April 1, 1996. Accordingly, this case is ripe for decision.

Statement of Facts

1. Debbie Maze is a single mother of three children. At the time of the hearing, her children were seven, six, and two years old. Her youngest child was born June 15, 1993. Tr. 217, 237-39.[1]

2. Lyle Krueger owns, manages, and maintains ten rental apartments in the Kenosha, Wisconsin area. He is retired from the Dynamedic company in Kenosha, Wisconsin, where he worked for more than 44 years. Tr. 9, 245-46. He maintains an office in a basement where he displays HUD Fair Housing posters. The office contains a steel workbench, but no desk or other office furniture. Tr. 17, 88.

3. Ms. Maze is of a slight build, weighing no more than 120 pounds and is approximately five feet, four inches tall. Mr. Krueger is a large man approximately five feet, 10 inches tall and weighing in excess of 200 pounds.[2]

4. In the Spring of 1992, Mr. Krueger sought a tenant for one of his units, a three-bedroom apartment with a half a basement, located at 1921 61st Street, Kenosha, Wisconsin. Tr. 196. The apartment is on the second floor of a two-story building. Tr. 10, 12. The exterior door to the apartment is on the first floor. A flight of stairs leads up to the interior door to the apartment. Tr. 97.

5. In April of 1992, Debbie Maze and her two children,[3] ages four and three at the time, were living with her sister, her sister's boyfriend, and her sister's four children in a two-bedroom apartment in Kenosha, Wisconsin. Tr. 117, 196, 201-02, 239. Ms. Maze had searched for housing for approximately three months. She was anxious to move because she was not getting along with her sister in the crowded apartment, and her two-

[1]The following reference abbreviations are used in this decision: "Tr." followed by a number for the hearing transcript and page number and "C.P. Ex." for the Charging Party's exhibit.

[2]These findings are estimates based upon my observations of their appearances at the hearing.

[3]Her third child had not yet been born. Tr. 217.

bedroom housing certificate from the Kenosha Housing Authority ("KHA") was to expire the end of May 1992.[4] Tr. 117-18, 201-02, 232.

6. In the spring of 1992, there was a shortage of affordable housing in Kenosha, particularly for families seeking Section 8 housing.[5] Tr. 119, 203. After looking at approximately fifteen apartments without success, in April of 1992, Ms. Maze saw a "for rent" sign for Mr. Krueger's vacant second story apartment. Tr. 196. She went into the apartment where she saw Mr. Krueger readying it for occupancy. Tr. 9-10, 196.

7. When Ms. Maze inquired about the apartment's availability, Mr. Krueger gave her a rental application and told her that they would discuss the application over breakfast at a restaurant. Tr. 196-97.

8. The next day Complainant and Respondent met for breakfast to discuss the apartment and Complainant's application. Tr. 197. He told her that the rent for the three-bedroom apartment was approximately $547. Tr. 13-14, 16, 198-99, 248-49. Ms. Maze received a monthly housing voucher of $395 for a two-bedroom apartment; she was responsible for paying an additional $52. C.P. Ex. 7. Thus, she could only afford an apartment that leased for $447 a month ($395 + $52). Tr. 12-13, 198; C.P. Ex. 7. Because she could not afford the additional $100 rent, Respondent denied Ms. Maze the apartment. Tr. 13-14, 198-99, 248-49.

9. Several days later, Respondent contacted Complainant's sister, Barbara Maze, who happened to be one of his former tenants, to reestablish contact with Complainant to discuss the apartment again.[6] Tr. 153, 160-61, 197.

10. Complainant's sister told Respondent that he could find Ms. Maze at the Women, Infants and Children Office ("WIC"), a government office that provides food stamps and other aid to families. Tr. 161, 197, 232. Respondent went to WIC, found Complainant, and told her that he had changed his mind about rejecting her application. Tr. 198.

---

[4]The certificate was for a housing assistance voucher under HUD's Section 8 Existing Housing and Voucher Programs. *See* 42 U.S.C. § 1437f.

[5]Participation in the Section 8 program is voluntary, and those landlords who are not current participants in the program need not accept Section 8 tenants. *See* 42 U.S.C. § 1437(t).

[6]Respondent denies contacting Complainant's sister; rather, he states that Complainant called him "begging to rent the apartment." Tr. 18. Indeed, Respondent contradicts much of Complainant's testimony. For the reasons discussed *infra,* I find Complainant more credible than Respondent and have accepted her version.

11. At a second breakfast meeting, Respondent and Complainant discussed the apartment and her application. Tr. 16, 198. Mr. Krueger again told Ms. Maze that the rent for the three-bedroom apartment was around $547 per month, $100 more than she could afford. Tr. 13-14, 198-99. Ms. Maze told Mr. Krueger that she wanted a place of her own and that her Section 8 certificate was expiring soon. Tr. 233. Mr. Krueger told Ms. Maze she could rent the apartment. However, to reimburse him for the additional $100, he stated that she could pay extra money on the side or she could "fool around or something." Tr. 199. She replied, "[N]o, no, I'm not going to do that." *Id.*

12. They left the restaurant together. Because Ms. Maze did not have a car, Respondent gave her a ride. In the car, he rubbed her leg and thigh and said, "[W]e're going to be close." Tr. 199. Ms. Maze asked him not to touch her. *Id.*

13. On or around May 11, 1992, Ms. Maze and Mr. Krueger went to KHA to sign a lease. In the elevator on the way up to the KHA office, Mr. Krueger touched Complainant and tried to kiss her. She pushed him off and asked him not to touch her. In reply, he laughed. Tr. 200.

14. At the KHA office, they signed the papers finalizing the lease. Tr. 200. While Respondent and Complainant were leaving the office, Respondent told Complainant, "[W]e [are] going to be real close." Tr. 200. Complainant asked him what he meant and he responded "[Y]ou'll know." *Id.*

15. Later that same day, Complainant returned to the KHA office and told Paula Lattergrass, Ms. Maze's KHA Occupancy Specialist, about Respondent's advances. Tr. 117, 200-01. Ms. Lattergrass tried to discourage Ms. Maze from taking the apartment because Complainant felt so uncomfortable. Tr. 126. Ms. Maze repeated several times that if she had more time to find an apartment she would not move into Respondent's building. However, she decided to take the apartment because she had less than two weeks before her housing certificate expired, she had been rejected for housing several times before, and she was anxious to find a home for herself and her family. Tr. 125, 201. Ms. Lattergrass, nevertheless, encouraged Ms. Maze to file a complaint with the Urban League or the Police Department. Tr. 126.

16. Within days, Ms. Maze filed a complaint with, *inter alia,* the Urban League and HUD. Tr. 130.

17. Because KHA must inspect each apartment prior to a Section 8 tenant's residency, on May 11, 1992, Ms. Lattergrass inspected Ms. Maze's future apartment. Tr. 120-21; C.P. Ex. 1. With the exception of the sink in the bathroom, the apartment was nearly ready for occupancy. The drain in the bathroom sink was sluggish. Tr. 121, C.P.

Ex. 1 at 2 and 5. Mr. Krueger informed Ms. Lattergrass that a previous tenant had put sand down the drain and that he would try to fix it by "snaking" the drain. Tr. 121. On May 13th, Ms. Lattergrass returned to the apartment to determine whether the necessary repairs had been made. Mr. Krueger told Ms. Lattergrass that although he had "snaked" the drain, it was still a little sluggish and that if, after Ms. Maze moved in, she had a problem with the sink, he would fix it at that time. Tr. 122, 137; C.P. Ex. 1 at 5.

18. Ms. Maze moved into the apartment around May 13, 1992. C.P. Ex. 7.

19. During Ms. Maze's tenancy, Mr. Krueger made physical advances by grabbing or touching her. Tr. 204. He once grabbed her while her children were present. She asked him not to make advances in front of her children. He laughed in response. Tr. 204, 238. He once told her to take her children to her mother's residence so that the two of them could go away together to a trailer home. She responded that she did not leave her children in someone else's care. Tr. 204.

20. Mr. Krueger asked Ms. Maze if they were "going to do good in bed," and he told her that "we're going to be real close." Tr. 204, 230. When Ms. Maze told him that she was not interested, he responded that he could have rented the apartment to someone else for full rent, and that he was losing money by having her as a tenant. Tr. 204. He asked her out for drinks. Ms. Maze, who is black, responded that although she wasn't prejudiced, she did not date white men. Tr. 204-05. Mr. Krueger reported to KHA that Ms. Maze was biased against whites and he wrote a letter to Complainant containing this accusation. Tr. 205.

21. Mr. Krueger entered Ms. Maze's apartment approximately three times a week without her permission. On some of these occasions, she was in the bathtub or in bed. Tr. 228-29. He said that he was there to make repairs. Tr. 203, 238. Although he sometimes knocked once at the downstairs entrance, he never gave Ms. Maze time to respond, to get downstairs, or to open the door. Immediately after knocking, he simply used his key to enter. Tr. 228-29. On his fifth or sixth unannounced visit, Ms. Maze met him on the stairway to her apartment and screamed at him to stop intruding. Tr. 35, 96, 228-30, 251.

22. On approximately four occasions, Respondent parked outside of Complainant's apartment for as much as 40 minutes at a time. From her window, she observed him looking up at her apartment. Tr. 208-09.

23. Ms. Maze became pregnant in October 1992. Tr. 213. Despite knowing that she was pregnant, Mr. Krueger continued to make sexual comments and advances. *Id.*

24. Ms. Maze discussed Mr. Krueger's behavior with her mother and sisters. Tr. 221. She also reported Mr. Krueger's actions to Ms. Lattergrass, and inquired whether KHA could intervene on her behalf to stop Mr. Krueger's unannounced visits. Tr. 231, 238. Because Ms. Maze wanted to minimize contact with Respondent, she brought her portion of the monthly rent to the KHA office for forwarding to Mr. Krueger. Tr. 129-30, 211.

25. On one occasion, Ms. Maze ran outside to the mailbox. She had left the stove on. Her two year old child closed the inside door at the top of the stairs and locked Ms. Maze out of the apartment. A neighbor was not at home, and she did not know anyone else in the area who could telephone for help. The lock did not have a key because it was an inside door. Ms. Maze broke the door lock to get to her child. Tr. 97, 128, 224-26. Anticipating difficulty with Mr. Krueger, Ms. Maze contacted Ms. Lattergrass to inspect the door. Upon inspecting the door, Ms. Lattergrass opined that the lock needed to be replaced. Tr. 128.[7]

26. Respondent called a plumber when Ms. Maze's sink and toilet both overflowed. Tr. 128-29. Respondent replaced the bathroom tiles and payed for the water damage to items in the apartment of the downstairs tenant. Tr. 139-40.

27. Several days after the broken lock incident, Ms. Maze and Mr. Krueger went to Ms. Lattergrass' office to discuss the damage to the lock, as well as other repairs for the toilet and sink. The KHA Director attended the meeting to assist in mediating the dispute over what, if anything, Ms. Maze should pay. Tr. 128-29.

28. Mr. Krueger sought reimbursement only for the damage to the door and the plumbing bill for the sink and toilet. Tr. 128-29. When Ms. Lattergrass found out that Mr. Krueger had replaced the entire door, she suggested that Ms. Maze reimburse Mr. Krueger for half of the cost of the new door, approximately $60. Tr. 129. Ms. Maze agreed that because one of her children had caused the problem in the toilet, she would pay for that portion of the plumbing bill. Tr. 128-30. In all, Ms. Maze agreed to pay approximately $110 of the $212 total sought by Mr. Krueger. Tr. 129, 139.

[7] Mr. Krueger, however, installed a new door. Tr. 253. Mr. Krueger testified that it was cost effective to replace the entire door because Ms. Maze did not merely break the lock; rather, she split the door "right down the middle." Tr. 98. Both Ms. Maze and Ms. Lattergrass emphatically testified that the door was not split. Tr. 138-39, 225. I credit their testimony and not Respondent's concerning the door.

29. Although Ms. Lattergrass considered Ms. Maze's offer to be a fair resolution, Mr. Krueger refused to accept the offer, stating that he wanted nothing from Ms. Maze. Tr. 128-29, 139, 142, 226-27. However, Mr. Krueger began deducting a portion of Ms. Maze's rent from his repair bills, thus causing her to be "delinquent" on her rent, and subjecting her to eviction. Tr. 130, 211, 257. Ms. Maze always paid her rent fully and on time. Tr. 211. Nevertheless, Respondent notified her in writing four times that she was subject to eviction for delinquent "rent." Tr. 130, 256-57; C.P. Exs. 2, 3. The correspondence is dated July 14, 1992, July 27, 1992, September 1, 1992, and October 22, 1992. C.P. Exs. 2-5.

30. The July 14th letter states:

> *[B]ecause of the charges* you have filed against me our line of communications is not too good. . . we [will] talk as least (sic) as possible. . . .
>
> As a rule I have very good relationship[s] with my tenants but *because of the charges* you have filed against me I will be doing everything by the book. . . .
>
> * * *
>
> . . . . I had already contacted an attorney about starting eviction action.

C.P. Ex. 2 (emphases added).

31. The July 27th letter states:

> May I suggest you think about moving . . . .
>
> Before you moved in you were very friendly and you phoned me a number of times and we went out for breakfast a couple of times and talked about going out for dinner or a few drinks, you were a pleasure to be with *and then you filed sex harassment charges. . . .*
>
> * * *
>
> As I suggested at the start of this letter I suggest you move and we have a talk with the Kenosha Housing Authority.

C.P. Ex. 3 (emphasis added).

32. On September 1, 1992, Mr. Krueger sent Ms. Maze a letter which states:

> YOU ARE THE WORS[T] TENANT I HAVE!!!!!!! AND AGAIN IF YOU DO STAY THE FULL YEAR YOUR LEASE WILL NOT BE RENEWED!!!!
>
> * * *
>
> When you want (sic) to rent the apartment you were very war[m], friendly and nice. You said you were. . . about to lose your housing certificate so I felt sorry for you and rented to you. . . . Any time you wish to move I will be very happy to break the lease.

C.P. Ex. 4.

33. On October 22, 1992, Mr. Krueger's attorney served Ms. Maze with a "Notice to Pay Rent or Vacate Premises." C.P. Ex. 6. The notice states: "This. . . terminates your tenancy and requires you to remove from the premises. . . on or before five (5) days from date of service, exclusive of the day of service, unless you pay the unpaid rent of $156.00 which was due on October 1, 1992." *Id.*

34. In addition, a letter dated October 20, 1992, notified Ms. Maze that her apartment needed to be repainted because the existing paint contained lead. C.P. Ex. 5; Tr. 210. The letter stated:

> PER THE KENOSHA HEALTH DEPARTMENT YOUR CHILDREN WERE TESTED FOR LEAD IN THEIR BLOOD. . . AND IT WAS HIGH SO. . . I HAVE BEEN ORDERED TO TAKE `IMMEDIATE CORRECTIVE ACTION'. . . . YOU CAN NOT LIVE THERE AND YOUR FURNITURE MUST BE MOVED OUT WHILE I TAKE CORRECTIVE ACTION. I REQUEST YOU TO MOVE VOLUNTAR[IL]Y. . . . IF YOU DO NOT WISH TO MOVE VOLUNTAR[IL]Y I WILL BE FORCED TO TAKE EVICTION ACTION THRU THE COURT SYSTEM. . . . IF I'M FORCED TO USE THE COURT SYSTEM AND THE SHERIFF MOVES YOU OUT. . . YOUR FURNITURE IS PUT IN STORAGE SO TO GET YOUR FURNITURE BACK YOU WILL HAVE TO PAY STORAGE FEES PLUS A LIEN. . . . [NEITHER] YOU NOR YOUR FURNITURE CAN . . . BE IN THE

APARTMENT WHILE `CORRECTIVE ACTION' IS BEING DONE. . . .

C.P. Ex. 5. Mr. Krueger merely painted over the existing paint. The painting took approximately three days, during which Ms. Maze and her children spent the daytime at her mother's apartment, but they returned home at night to sleep. Tr. 107, 210, 243-44.

35. Ms. Maze brought each piece of correspondence to KHA. Tr. 205-06, 234-35.

36. On various occasions, Mr. Krueger went to Ms. Maze's apartment to ask her to leave. Tr. 205, 207, 208. Ms. Maze told him that she did not feel that she had to move out because she refused to sleep with him. Tr. 208. During one instance, he threatened to contact the State Police to evict her because she wouldn't "cooperate." Tr. 205-06. Ms. Maze began to spend a lot of time at her mother's apartment. Tr. 208.

37. In February of 1993, Ms. Maze moved out of the apartment. Ms. Maze asked KHA to allow her to break the lease; the agency consented. Tr. 207, 211-212, 236.

38. Prior to Complainant's tenancy, her sister Barbara was Respondent's tenant for approximately five months. She lived in the same building as Complainant, but in the downstairs apartment. Tr. 152, 153. Mr. Krueger also took Barbara to breakfast to discuss her rental application. Tr. 154-55. When Barbara brought along a girlfriend, Mr. Krueger told her, "Don't take anyone with [you] when we're doing business." Tr. 155-56, 163.

39. While Barbara was a tenant, Mr. Krueger entered her apartment twice without her permission. Early one morning around 5:00 or 6:00 a.m., without ringing the doorbell, he brought workers to winterize the apartment. Tr. 156-57. The second occasion was during the night while Barbara was in bed. She heard noises, got up, found her back door open, and saw Mr. Krueger in the basement. Tr. 157.

40. Mr. Krueger made at least two sexual advances towards Complainant's sister. On one occasion he held her waist from behind. On another occasion, he tried to hold her hand. Tr. 157, 165. She moved away or threw down her hand and told him that she did not "appreciate him trying to come on to [her]." Tr. 157. He also rubbed his body against hers. Tr. 165. He made the following comments: "I bet you are good in bed," and "[your] boyfriend couldn't do the things that [I'd] do to [you]." Tr. 158. When Barbara rebuffed him, he laughed. *Id.*

41. Barbara noticed Respondent sitting in his car parked outside of her apartment. She never saw him parked outside of the apartment when her boyfriend's car was there.

Tr. 159-60. She observed Respondent drive by the apartment; if her boyfriend's car was parked outside, Respondent would not stop. *Id.*

42. Because of Mr. Krueger's actions, Barbara moved out of the apartment after only five months of her one year lease. Tr. 153, 154, 159. She did not file a complaint against Respondent; he did not send or threaten her with any eviction notices. Tr. 167.[8]

43. Mr. Krueger had a sexual relationship with one of his former tenants, Geraldine Johnson. Tr. 263-64.

44. After leaving Mr. Krueger's apartment, Ms. Maze and her two children moved into her mother's apartment. Tr. 214-15, 236. Her mother had a two-bedroom apartment where she lived with Ms. Maze's stepfather and her brother. Tr. 215. Ms. Maze paid some young boys $120 to move her possessions. Tr. 219.

45. Ms. Maze paid her mother anywhere from $150 to $200 monthly rent. Tr. 219. She lived with her mother for approximately three months, during which time she continued to look for alternative housing. Tr. 215. Because Ms. Maze was pregnant at the time and did not own a car, she had to wait for rides rather than walking, to search for a home. She inspected approximately a dozen apartments. Tr. 145-46, 215-16.

46. Around May of 1993, Ms. Maze began leasing a two-bedroom apartment owned by Ms. Lattergrass' landlady. Tr. 146, 216, 218. Ms. Maze's moving costs were $125. Tr. 220.

47. Ms. Maze's share of the rent at her new apartment was around $60 a month. After her third child was born in June of 1993, her rent increased to $90. Tr. 217. At the time of the hearing, Ms. Maze was paying rent of $229 per month. *Id.* Unlike Mr. Krueger's apartment, her new apartment does not have a dining room, a good heating system, or a large bedroom. Tr. 218.

---

[8]Mr. Krueger denies that he made advances toward Complainant's sister or entered her apartment without appropriate notice. Tr. 261-62. I credit Barbara Maze's testimony rather than Respondent's for the reasons discussed *infra.* In addition, I found Barbara Maze to be a credible witness who furnished consistent precise testimony. For example, during direct examination, she stated that Respondent would make statements about "going to bed," but he never explicitly asked her for "sex." Tr. 157-58.

48. Mr. Krueger's written and oral comments that Ms. Maze was a bad tenant made her feel like a "bad person." His lewd comments and actions made her feel "dirty." Tr. 212-13. She felt "real dirty" when he continued his conduct during her pregnancy. Tr. 213. He "scared" her. Tr. 206, 213. She was also afraid that his unannounced visits would frighten her children who often sat in the front room of the apartment. Tr. 228-30.

Discussion

Inadmissibility of Out-of-Court Statements

During the hearing, the Charging Party offered the Final Investigative Report ("FIR") as an exhibit. Tr. 179-80. The FIR contains notes of statements made to the HUD investigator by Mr. Krueger's other tenants. Respondent objected to the FIR's admission arguing, *inter alia,* that the report contains inadmissible hearsay. Tr. 178. Although I admitted the FIR under Federal Rule of Evidence 803(8), which states that "public records and reports" are not excluded by the hearsay rule, I ordered the parties to brief whether the out-of-court statements made to the investigator are admissible, and I notified them that I might reconsider the ruling after filing of briefs. Tr. p. 180. Further consideration prompts me to modify my initial ruling and to conclude that the out-of-court statements made to the investigator are inadmissible hearsay.[9] The hearsay rule is designed to insure that testimony is subject to cross examination and the evaluation of credibility by the fact-finder. Except in certain clearly delineated situations where the reliability of the out-of-court statements can be reasonably assured, out-of-court statements offered to prove the truth of the matters asserted in those statements are not admissible. Permitting the use of out-of-court statements merely because they are contained in an otherwise admissible report would effectively eliminate Respondent's right to conduct cross examination and circumvent evaluation by the fact finder.

Governing Legal Framework

[9] *See, e.g., United States v. Sallins,* 993 F.2d 344, 347-48 (3d Cir. 1993) ("[W]hile Rule 803(8)(B) would permit the defendant to introduce the reports themselves, which ordinarily would be considered hearsay, a separate exception was required for the third parties' out-of-court statements."); *United States v. Smith,* 521 F.2d 957, 964-65 (D.C. Cir. 1975) ("[A] police record. . . is admissible as substantive evidence to show the date a crime was reported, or the fact that a crime was reported at all[, but not] the complaining witness' description of the crime, recorded by the police officer. . . ."); *United States v. Burruss,* 418 F.2d 677, 678 (4th Cir. 1969) ("The record. . . was merely a memorandum of the fact that a report was made, but does not bear witness to the truth of what is in the report.").

The Fair Housing Act is intended to eliminate discrimination in housing based on "impermissible characteristics." *United States v. Parma,* 494 F. Supp. 1049, 1053 (N.D. Ohio 1980), *rev'd on other grounds,* 661 F.2d 562 (6th Cir. 1981), *cert. denied,* 465 U.S. 926 (1982); *see also United States v. City of Black Jack,* 508 F.2d 1179, 1184 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975). One may not discriminate on the basis of sex nor engage in any form of sexual harassment. *See* 42 U.S.C. § 3604; *Meritor Savings Bank v. Vinson,* 477 U.S. 57 (1986); *Honce v. Vigil,* 1 F.3d 1085, 1089 (10th Cir. 1993) (citing *Hicks v. Gates Rubber Co.,* 833 F.2d 1406, 1413 (10th Cir. 1987)).

The Charging Party asserts that Respondent (1) conditioned Ms. Maze's tenancy upon her compliance with his requests for sexual favors, thus subjecting her to different housing conditions because of sex; (2) harassed Complainant, thereby interfering with her tenancy; and (3) retaliated against Ms. Maze for her filing of a Fair Housing complaint. *See* 42 U.S.C. §§ 3604(b) and 3617; *see also* 24 C.F.R. §§ 100.65(a) and 100.400(b). Respondent denies that he made sexual advances toward, or otherwise harassed, Complainant.

Sexual harassment cases fall into one of two recognized categories: *quid pro quo* or hostile environment. *See, e.g., Honce,* 1 F.3d at 1089; *Henson v. City of Dundee,* 682 F.2d 897 (11th Cir. 1982). The Charging Party relies exclusively on the *quid pro quo* theory.[10] The essence of a *quid pro quo* claim is that a housing provider either explicitly or implicitly conditions the terms, conditions, or privileges of housing or tenancy upon submission to requests for sexual favors. *See Honce,* 1 F. 3d at 1089; *Shellhammer v. Lewallen,* 1 Fair Housing-Fair Lending (P-H) ¶ 15,472, at 137 (N.D. Ill. 1983), *aff'd,* 770 F.2d 167 (6th Cir. 1985); *Grieger v. Sheets,* No. 87 C 6567, 1989 WL 38707, *2 (N.D. Ill. Apr. 10, 1989); *Grieger v. Sheets,* 689 F. Supp. 835, 836, 840-41 (N.D. Ill. 1988). "The gravamen of a *quid pro quo* claim is that a tangible [housing] benefit or privilege is conditioned upon [a tenant's] submission to sexual blackmail and that adverse consequences follow from the [tenant's] refusal." *Carrero v. New York City Housing Authority,* 890 F.2d 569, 579 (2d Cir. 1989).

[10]During the hearing, the Charging Party waived assertion of a hostile environment sexual harassment theory. Tr. 7. Accordingly, I have disregarded that portion of its brief arguing that this is a hostile environment case. *See* Charging Party's Post-hearing Brief at 23-24.

To prove a *quid pro quo* sexual harassment case under the Act, the Charging Party must prove that: 1) the tenant belongs to a protected class; 2) the tenant was subject to an unwelcome demand or request for sexual favors; 3) the unwelcome demand or request complained of was based on sex; and 4) the tenant's reaction to the unwelcome demand or request affected tangible aspects of the terms, conditions, or privileges of housing, in that the tenant was denied housing or one of its benefits because of the tenant's response to the landlord's demand or request. *See Shellhammer,* 1 Fair Housing-Fair Lending at 137; *New York ex rel. Abrams v. Merlino,* 694 F. Supp. 1101, 1104 (S.D. N.Y. 1988); *see also Chamberlin v. 101 Realty, Inc.*, 915 F.2d 777 (1st Cir. 1990); *Jones v. Flagship Int'l,* 793 F.2d 714, 721-22 (5th Cir. 1986), *cert. denied,* 479 U.S. 1065 (1987); *Hicks,* 833 F.2d 1046; *Highlander v. K.F.C. Nat'l, Management Co.*, 805 F.2d 644 (6th Cir. 1986); *Moylan v. Maries County,* 792 F.2d 746 (8th Cir. 1986); *Henson,* 682 F.2d 897.

Because the Charging Party does not allege that Respondent *explicitly* stated that he would rent the apartment to Ms. Maze and let her stay only on condition that she had relations with him, the Charging Party alleges *implicit quid pro quo* harassment. Thus the Charging Party must employ indirect evidence to prove the fourth element,[11] *i.e.*, that Complainant's "reaction to sexual harassment had an adverse effect upon her tenancy." *Shellhammer,* 1 Fair Housing-Fair Lending at 137. In other words, "evidence of a causal connection" between Complainant's reaction to the harassment and the denial of housing benefits may be proved by the shifting burdens analysis set forth in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), and *Texas Dep't of Community Affairs v. Burdine,* 450 U.S. 248 (1981). *Honce,* 1 F.3d at 1090; *see Shellhammer,* 1 Fair Housing-Fair Lending at 137.

The shifting burdens analysis requires that the Charging Party first establish a *prima facie* case of discriminatory intent. Once it has done so, the burden of production shifts to Respondent to articulate a legitimate, nondiscriminatory reason for the eviction or other adverse effect. The Charging Party may then prevail if it can demonstrate that the asserted reason is pretextual. *See Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1451 (4th Cir.), *cert. denied,* 111 S.Ct. 515 (1990); *Blackwell,* 908 F.2d. 864, 870 (11th Cir. 1990). However, pretext alone does not necessarily prove discrimination. The Charging Party still maintains the burden to demonstrate that an asserted reason, even though pretextual, evidences an intent to discriminate. *See St. Mary's Honor Center v. Hicks,* 113 S.Ct. 2742; 125 L.Ed. 2d 407 (1993).

Prima Facie Case of Implicit *Quid Pro Quo* Sexual Harassment

[11]The other three elements may be proved by direct evidence which is defined as evidence that "proves [the] existence of [the] fact in issue without inference or presumption." *Black's Law Dictionary* 413-14 (spec. 5th ed. 1979).

The first element is established because, as a woman, Ms. Maze belongs to a protected class. *See* 42 U.S.C. § 3604; *Henson*, 682 F.2d at 903. The second and third elements turn on credibility because Respondent's and Complainant's accounts directly contradict each other. Ms. Maze testified that she was subjected to Mr. Krueger's lewd comments, physical advances, and constant demands for sexual favors and that his actions and comments were unwelcome. Mr. Krueger denies making any sexual advances - welcome or otherwise. For the reasons set forth below, I have credited Ms. Maze's testimony.

Ms. Maze's testimony was straightforward, consistent, and credible throughout. In addition, both her sister and Ms. Lattergrass corroborate her testimony. I am particularly persuaded by the observations of Ms. Lattergrass, a disinterested witness, who testified that when Ms. Maze was recounting the event in the elevator outside the KHA office, she

was upset, agitated, nervous, and uncomfortable at having been subjected to Respondent's behavior. Tr. 124, 126.

In addition, Ms. Maze's actions confirm that Mr. Krueger did, indeed, harass her. Although she was desperate for housing, Ms. Maze reported Mr. Krueger's advances to Ms. Lattergrass before she moved into the apartment, at the risk of losing the apartment. *See* Finding of Fact No. 15. Respondent argues that "no reasonable woman would have rented the apartment if the Respondent had acted [as Complainant alleges]." Respondent's Post-hearing Brief (Apr. 7, 1996) at 7. I disagree. Ms. Maze was fearful of losing her voucher; she had been rejected by numerous landlords; there was a shortage of affordable available housing; and she was not getting along with her sister in the crowded apartment. Thus, although accepting the apartment was not without problems, by the spring of 1992, it appeared to be the lesser of two evils.

In contrast to Ms. Maze's straightforward and consistent testimony, Mr. Krueger's testimony is riddled with inconsistencies. He testified that at their second breakfast meeting Ms. Maze propositioned him, offering him sexual relations to compensate for the $100 difference. Tr. 259-60; *see also* Tr. 14-15. However, he also testified that they *"never"* discussed sex at the second morning of breakfast, or anytime. Tr. 16, 57-58. He stated that he entered Complainant's apartment without her permission only once. Tr. 30-31. However, immediately thereafter, Respondent stated that he did *not* enter without her permission because he had received Ms. Maze's permission prior to her residency. Tr. 35. He testified that when he asked Ms. Maze out for drinks, she did not refuse him; rather, she was considering his offer and she "never said a word." Tr. 39, 95. He then contradicted himself by stating that she informed him that she had a boyfriend. Tr. 94-95. Although he had earlier testified that "the sink drain was sluggish" before Complainant

moved in, he later stated that there was nothing wrong with the sink drain before Complainant moved into his building. *Compare* Tr. 45 *with* Tr. 89, 253-54. He testified that Ms. Maze's filing of her complaint did not create "hard feelings" and that it was *not* a "hostile" action. Tr. 266-67. However, he again contradicted himself, when he testified, "Well all right, that's a *hostile* thing [and] if we're not friendly, move out and move on." Tr. 266-67 (emphasis added). In addition, the text of the July 14th letter demonstrates that he considered the filing of the complaint to be a hostile act. *See* C.P. Ex. 2. He falsely testified that he did not try to evict Ms. Maze after she filed the complaint. Tr. 27-28; *see also* Tr. 39. His testimony contradicts his admission that his attorney sent her the notice of eviction after her filing of the complaint. Tr. 47-48; *see* C.P. Ex. 6. When asked by his attorney whether he went through Barbara Maze's apartment without notice or her consent, he responded, "I would say no." Tr. 261. Immediately thereafter he admitted that he "probably" did so. *Id.* He denied engaging in sexual relations with Geraldine Johnson *while she was his tenant*, a statement he later contradicted. *Compare* Tr. 72-73, 84 *with* Tr. 263-64. He also denied attempting to evict Ms. Johnson; rather, he stated that she left by "mutual agreement." Tr. 77. He later changed his testimony stating that he did, in fact, evict her. Tr. 264-65. He twice testified that he "never touched" or "felt" any woman's leg. Tr. 12, 259. However, he acknowledged that he touched Ms. Johnson's leg. Tr. 263-64.

Moreover, portions of Respondent's testimony simply are not believable. Respondent explained that he met Ms. Maze at a restaurant, as opposed to his office, because the office was "very crude" and therefore, inappropriate for meeting applicants. Tr. 17, 88-89. Yet he admitted to meeting applicants at the office "[i]f they come there . . . ." Tr. 17. In addition, Fair Housing posters were on display in the office. These posters are intended to notify prospective tenants of a landlord's commitment to the Fair Housing Act. If Respondent did not use his office to meet with applicants, he would have no ostensible reason to display the posters. In addition, while admitting to meeting prospective applicants in the office, he never took a male applicant to a restaurant. Tr. 11.

Respondent claimed that when he visited Ms. Maze's and her sister's respective apartments, it was merely to transit them in order to reach the basement to do maintenance work. *See, e.g.*, Tr. 163-65, 251, 258, 261. However, the building had a separate entrance with access to the basement that did not require trespassing through their apartments. Tr. 162, 166. Respondent's explanation for not using the separate entrance was that he did not have the key. Tr. 261. I find his explanation that he had the keys to enter into the sisters' apartments, but not the key to the outside entrance to the basement, simply implausible.

Under the circumstances of this case, satisfaction of the fourth element (that

Complainant's reaction to the unwelcome advances affected housing terms, conditions, and privileges) has been established by the timing, sequence, and continuity of Mr. Krueger's comments and actions, and Ms. Maze's reactions to them. *See Nichols v. Franks*, 42 F.3d 503, 513 (9th Cir. 1994). Initially, he offered her the apartment at a reduced rate, stating that she could pay extra money or "fool around" to compensate for the difference. After her rejections of the "offer," Respondent told Complainant that he could have rented the apartment to another tenant who would not cost him $100 a month in lost rent. Her continual rejections of him were followed by Respondent's repeated unwelcome advances, derogatory comments, unannounced visits, and eviction actions. In sum, if she would not submit, he would force her out. Accordingly, Mr. Krueger's words and actions together with Ms. Mazes' reaction to his advances establish a *prima facie* case of implicit *quid pro quo* sexual harassment.

Respondent's Articulated Reasons for Eviction

Respondent may rebut the *prima facie* case of harassment by articulating a legitimate, nondiscriminatory reason for his eviction attempts. *See Henson*, 682 F.2d at 906 n.14; *Webb v. Hyman*, 861 F. Supp. 1094, 1104 (D.D.C.); *Shellhammer*, 1 Fair Housing-Fair Lending at 137. Respondent may meet his burden of production by introducing "evidence which, *taken as true*, would *permit* the conclusion that there was a nondiscriminatory reason for the adverse action." *St. Mary's Honor Center*, 125 L.Ed. 2d at 417 (emphases in original).

Respondent testified that he wanted Ms. Maze to move out because she became "hostile," after the incident when she yelled at him to stay out of her apartment. Tr. 39. He alleges that their landlord/tenant relationship became strained after this incident and this prompted his actions aimed at getting her out of the apartment. He claims that once communication between them had been severed, the Complainant failed to pay her rent on time, caused damage to the property, failed to report the damage promptly, and refused to reimburse him for the damages. Respondent's Post-hearing Brief at 7. Respondent correctly asserts that there was a breakdown in their landlord/tenant relationship; however, the breakdown was caused by Respondent's sexual harassment, including his unannounced visits. Accordingly, Respondent's rationale is neither legitimate nor nondiscriminatory.

Complainant became angry when for the fifth or sixth time Respondent entered her apartment unannounced. Attempting to put an end to his sexual solicitations and uninvited entries, she met him on the stairway and screamed at him to stop his intrusions. Moreover, fearing further advances and comments, she did everything she could to avoid

contact with him. In addition, after Ms. Maze filed a complaint, *Respondent, himself,* wanted to sever their landlord/tenant relationship. Thus, he suggested in his July 14th letter that they communicate as little as possible. Accordingly, *his* reason for wanting to sever the relationship, *i.e.,* because she had filed a Fair Housing complaint, is neither legitimate, nor nondiscriminatory.

Respondent's claim that she was behind in her rent is also groundless. He merely subtracted amounts that he claims she owed him for damages. The record establishes that Ms. Maze paid her rent fully and on time. *See* Finding of Fact No. 29. Finally, Respondent's assertion that Ms. Maze was evicted for damaging his property and not paying for repairs is pretextual. Respondent's rejection of Complainant's offered reimbursement at the KHA meeting and his failure to request that she pay for the damages caused by the toilet and/or sink overflow demonstrates that his current assertion is an after-the-fact justification.

Furthermore, the Charging Party has produced additional evidence that Respondent intended to discriminate against Ms. Maze because of her sex. *See St. Mary's Honor Center,* 113 S.Ct. 2742. Respondent's comments and physical advances toward Barbara Maze are evidence of the discriminatory reasons which motivated Respondent to harass Complainant and to attempt to evict her. Although Respondent's actions toward Barbara do not prove that he made similar advances toward Complainant, they are proof of his motive or intent with regard to Complainant. *Heyne v. Caruso,* 69 F.3d 1475, 1480 (9th Cir. 1995).[12] Respondent's conduct toward another tenant makes "it more likely that [he] viewed his female [tenants] as sexual objects, and that, in turn, [he] was more likely to [attempt to evict a tenant] in retaliation for her refusal of his sexual advances." *Id.* at 1481. *See also E.E.O.C. v. Farmer Bros. Co.,* 31 F.3d 891, 897-98 (9th Cir. 1994); *Phillips v. Smalley Maintenance Services, Inc.,* 711 F.2d 1524, 1532 (11th Cir. 1983). Accordingly, I conclude that Respondent's asserted reasons were pretextual. Respondent made Complainant's tenancy untenable and attempted to evict her because she continually rejected his advances and because she filed a complaint against him.

Violation of 42 U.S.C. §§ 3604(b) and 3617

The evidence discussed above establishes that Respondent violated 42 U.S.C.

[12]The *Heyne* court stated that this type of evidence is excluded only if the danger of unfair prejudice outweighs its probative value. 69 F.3d at 1480-81. Unfair prejudice exists if evidence of the harassment of other female employees influences a jury's decision on whether the plaintiff was harassed. Because this is not a jury proceeding there is no danger of such prejudice. In addition, I found that Respondent harassed Complainant, based not on the evidence of his conduct toward Barbara Maze, but rather on Complainant's credibility and Respondent's lack of it. *See supra* pp. 13-15.

§ 3604(b) which prohibits discrimination "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. . . sex." See 24 C.F.R. § 100.65 which makes it illegal to deny or limit "services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors." *See also Honce,* 1 F.3d at 1089 n.1.

In addition, the Charging Party has proved that Respondent violated 42 U.S.C. § 3617, which states that it is "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed. . . any right granted or protected by [42 U.S.C. § 3604]." *See also* 24 C.F.R. § 100.400(c)(2). As demonstrated above (1) Complainant is a member of a protected class; (2) she was attempting to enjoy a right protected under the Act - quiet enjoyment of her apartment without interference from sexual harassment; (3) Respondent intended to discriminate based on sex; and (4) Respondent interfered with her exercise of the right that she was attempting to enjoy. *See People Helpers Foundation, Inc. v. City or Richmond,* 781 F. Supp. 1132, 1134 (E.D. Va. 1992); *Stackhouse v. DeSitter,* 620 F. Supp. 208, 211 (N.D. Ill. 1985); *Grieger,* 689 F. Supp. at 840-41; *Merlino,* 694 F. Supp. at 1104-05; *HUD v. Gutleben,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,078, 25,726 (HUDALJ Aug. 15, 1994), *order modified,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,103 (HUDALJ May 9, 1995).

The record also establishes that Respondent violated 42 U.S.C. § 3617 by retaliating against Complainant because she filed a complaint of discrimination under the Act. To prove retaliation, the Charging Party must establish the following: (1) Complainant was engaged in an activity protected under the Act; (2) Respondent took an adverse action against Complainant; and (3) a causal connection exists between the protected activity and the adverse action. *See, e.g., HUD v. Holiday Manor Estates Club,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,027, 25,298 (HUD Secretary Mar. 23, 1992); *HUD v. Murphy,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,002, 25,051 (HUDALJ July 13, 1990).

When Complainant filed a Fair Housing complaint, she was exercising a right under the Act. See 42 U.S.C. § 3610(a) which provides that an aggrieved person "may. . . file a complaint with the Secretary alleging [a] discriminatory housing practice." Respondent's attempts to get her to move out, including sending the eviction notice constitute the adverse actions. A causal nexus is demonstrated by Respondent's own letters and testimony. The July 14, 1992, letter states: "*because of the charges* you have filed against me our line of communications is not too good. . . . As a rule I have very good relationship with my tenants but *because of the charges* you have filed against me I will be doing everything by the book and the law. . . ." C.P. Ex. 2 at 1 (emphases added). This same letter notifies Ms. Maze of the following: "I had already contacted an attorney about starting an eviction

action." *Id.* at 2. The next letter that he sent to Complainant also discloses that her filing of the complaint influenced his actions to evict her. Immediately after the letter "suggests" that she consider leaving, it states, "Before you moved in you were very friendly and you phoned me a number of times and we went out for breakfast a couple of times and talked about going out for dinner or a few drinks, you were a pleasure to be with and *then you filed sex harassment charges*. . . ." C.P. Ex. 3 at 1 (emphasis added). He also testified that her filing of the complaint was a "hostile" action, and that after taking such a "hostile" action, she should "move out and move on." *See supra* p. 14. I conclude that the actions he took after he found out about the complaint were designed to get Complainant to move out. Therefore, they constitute retaliation against Complainant because she filed a Fair Housing complaint. Accordingly, Respondent violated 42 U.S.C. § 3617 and 24 C.F.R. § 100.400(c)(5).

Remedies

Complainant is entitled to "such relief as may be appropriate, which may include actual damages [and] injunctive and other equitable relief." 42 U.S.C. § 3612(g)(3). The Charging Party seeks the following in damages for Complainant: (1) $4,295.00 for alternative housing costs; (2) $2,000.00 for "lost housing opportunity"; and (3) $20,000.00 for emotional distress. It also requests imposition of civil penalties and injunctive relief against Respondent.

Alternative Housing Costs

Complainant is entitled to an amount reasonably expended on alternative housing costs provided there is proof that such costs were incurred. *See Thronson v. Meisels,* 800 F.2d 136, 140 (7th Cir. 1986); *Miller v. Apartments and Homes of N.J., Inc.,* 646 F.2d 101, 112 (3d Cir. 1981). The Charging Party is seeking additional out-of-pocket rent payments ("rent differential") from February 1993, when she moved out of Respondent's apartment, until the hearing date in early December 1995. Because she had a one year lease starting from May 13, 1992, she is entitled to the rent differential only for that period. (*See* Tr. 28; C.P. Ex. 7).

While Ms. Maze lived in Respondent's apartment building, her share of the rent was $52. From February through April of 1993, Ms. Maze lived with her mother who she paid from $150 to $200 per month in rent. Thus, she is entitled to $369.00 ($175 (*i.e.,* the median for $150 - $200) - $52 = $123; $123 x 3 months = $369). In May of 1993, Ms. Maze leased a two-bedroom apartment. Her portion of the rent was $60. Thus, she is entitled to $8.00 ($60 - $52 = $8) for this one month.

Ms. Maze is entitled to other expenses associated with the eviction and ensuing relocation. *See Hamilton v. Svatik,* 779 F.2d 383, 388-89 (7th Cir. 1985). She spent $120 to move in with her mother, and $125 to move into her current apartment. Accordingly, she is entitled to a total of $245.00 for her moving costs. In sum, Complainant is entitled to a total of $622.00 ($369 + $8 + 245 + 245 = $622) in alternative housing costs.

Although the Charging Party seeks hourly recompense for the time that Complainant spent searching for other housing, it failed to meet its burden of proof on this issue. Accordingly, no damages are awarded.

Emotional Distress and Inconvenience

Ms. Maze's damages are not limited to out-of-pocket expenses; she is entitled to intangible damages as well. *See, e.g., Blackwell,* 908 F.2d at 872-73; *see also* 42 U.S.C. § 3612(g)(3). The Charging Party seeks $2,000 in damages for "lost housing opportunity." Although the Charging Party mislabels these damages as "lost housing opportunity," they are, in fact, damages due to inconvenience, and they are compensable as such. *Compare, e.g., HUD v. The Elroy R. and Dorothy Burns Trust,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,073, 25,682 (HUDALJ June 17, 1994), *decision modified in part,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,092 (HUDALJ Jan. 17, 1995); *HUD v. Kelly,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,034, 25,363 (HUDALJ Aug. 26, 1992), *remanded on other grounds,* 3 F. 3d at 951 (1993). As compared to Respondent's apartment, Complainant's replacement housing is smaller, not as efficiently heated, and without a dining room. In addition, Respondent's discrimination caused Ms. Maze to leave her comfortable, roomy, three-bedroom apartment and move into her mother's two-bedroom apartment where she lived with her two children, her mother, her stepfather and her brother for a period of approximately three months. Moreover, she was compelled to search for housing during the Wisconsin Winter while she was pregnant with her third child. She did not own a car, and therefore, she had to rely on others to provide transportation to seek alternative housing. Accordingly, she is entitled to recompense for this inconvenience that she suffered.

The Charging Party also seeks damages for emotional distress and harm that Complainant suffered as a result of Respondent's physical advances, lewd and disparaging comments, and threats concerning her continued tenancy. The Charging Party did not prove that Complainant suffered severe psychological distress beyond what a reasonable person would have suffered as a result of Respondent's egregious misconduct. Thus, the

record does not reflect that Complainant received psychological counseling or outwardly manifested an intense emotional reaction (with the exception of her screaming at Respondent in the stairway). However, I credit Ms. Maze's testimony that Respondent's misconduct made her feel "dirty" and like a "bad person," frightened her, and caused concern for her children.

At the time that Complainant approached Respondent to seek housing, she was a single mother, with limited financial resources, desperate to find adequate housing for her and her two children. Respondent preyed on her circumstances and offered her an apartment that was $100 more than she qualified for, informing her that she could compensate him for the difference through sexual favors. His misconduct continued after Ms. Maze became a tenant, with physical advances and lewd comments. She unwillingly endured his egregious behavior in front of her children and also while she was pregnant. Moreover, in addition to his attempts at procuring sexual favors, he demeaned her as a tenant, sending her vexing letters and making verbal comments that she was a horrible tenant. He accused her of causing damage to the apartment for which she was not responsible and falsely impugned her for not paying rent. He refused her offers of compensation for the damage that her children did indeed cause and then used that lack of recompense to threaten eviction.

Moreover, Respondent frightened Complainant. He parked outside of her apartment and spied on her while she was home. He made unannounced visits, entering her apartment without permission. Given the physical appearances of Complainant and Respondent, I find that Respondent's size, and therefore, his physical strength in comparison to Complainant, served only to fuel her fears of him. Eventually the tenancy became so miserable that she felt compelled to move out.

After consideration of the emotional pain that Respondent inflicted upon Complainant, I award Complainant compensation in the amount of $22,000.00 for emotional distress and inconvenience.

Civil Penalty

The Act provides that Respondent may be assessed a civil penalty "to vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Charging Party requests that a $20,000 civil penalty be assessed for two violations of the Act. Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the degree of a respondent's culpability; (3) the goal of deterrence; (4) whether a respondent has previously been adjudged to have committed unlawful housing discrimination; and (5) a respondent's financial resources. *See* House Comm. on the Judiciary, *Fair Housing Amendments Act of 1988,* H.R. Rep. No. 711, 100th Cong., 2d

Sess. at 37 (1988); *HUD v. Jerrard,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,005, 25,092 (HUDALJ Sept. 28, 1990).

The nature and circumstances of the violation are so egregious as to warrant a significant penalty. Respondent used his position as a housing provider to prey upon Ms. Maze for his own sexual gratification. He subjected her to physical and verbal torment and degradation, and he retaliated against her for filing a discrimination complaint. His culpability is great - there are no extenuating factors.

Respondent owns, manages, and maintains ten rental apartments in Kenosha. Accordingly, he must be deterred from engaging in future illegal conduct. In addition, imposition of a civil penalty will send a message to others that sexual harassment, and other forms of housing discrimination will not be tolerated.

The record contains no evidence that Respondent has previously been adjudged to have engaged in a discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed is $10,000 pursuant to 42 U.S.C. § 3612(g)(3)(A). Although the Charging Party seeks $20,000 for two violations, because Respondent's conduct is a "unified series of acts constituting a single discriminatory practice," only one $10,000 penalty is warranted. *HUD v. Johnson,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,076, 25,711 (HUDALJ July 26, 1994); *see also HUD v. Ocean Parks Condominium Ass'n Inc.*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,054, 25,527-28 (HUDALJ Aug. 20, 1993), *aff'd* 51 F.3d 1049 (11th Cir. 1995).

Respondent does not contend that he is unable to pay the maximum penalty. Thus, after consideration of all the factors, imposition of a $10,000 penalty against Respondent is warranted.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3). Injunctive relief should be designed to eliminate the effects of past discrimination, prevent future discrimination, and make Complainant whole. *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); *see also Blackwell,* 908 F.2d at 874. The injunctive provisions of the following Order serve all these purposes.

Conclusion

The preponderance of the evidence demonstrates that Respondent Lyle Krueger discriminated against Complainant Debbie Maze on the basis of sex in violation of

42 U.S.C. §§ 3604(b) and 3617; and 24 C.F.R. §§ 100.65 and 100.400. Complainant suffered actual damages for which she will receive compensatory awards. Further, to vindicate the public interest, injunctive relief will be ordered, as well as a civil penalty against Respondent.

ORDER

It is hereby ORDERED that:

1. Respondent Lyle Krueger is permanently enjoined from discriminating with respect to housing. Prohibited actions include, but are not limited to:

a. discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities because of sex;

b. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act; and

c. retaliating against any person for exercising a right under the Fair Housing Act.

2. Consistent with 24 C.F.R. Part 109, Respondent shall display the HUD fair housing logo and slogan in all advertising and documents routinely provided to the public. Consistent with 24 C.F.R. Part 110, Respondent shall display the HUD fair housing poster alongside any "for rent" signs posted in connection with any dwellings that he owns, in whole or in part, manages, or maintains, as of the date of this Order and subsequent to the entry of this Order.

3. Respondent shall institute internal record-keeping procedures, with respect to any operation owned by and any other real property acquired by Respondent that are adequate to comply with the requirements set forth in this Order. These will include keeping all records described in paragraph 4 of this Order. Respondent will permit representatives of HUD to inspect and copy all pertinent records at any and all reasonable times and upon reasonable notice. Representatives of HUD shall endeavor to minimize any inconvenience to Respondent occasioned by the inspection of such records.

4. On the last day of every third period beginning 30 days after this decision becomes final (or four times during the year) and continuing for three years from the date this Order becomes final, Respondent shall submit reports containing the following information to HUD's Midwest Regional Office of Fair Housing and Equal Opportunity, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois

60604-3507, provided that the director of that office may modify this paragraph of the Order as he or she deems necessary to make its requirements less, but not more, burdensome: a list of vacancies at any of the properties owned, in whole or in part, by Respondent during the reporting period, including: the address of the unit, the date the tenant gave notice of an intent to move out or was served with an eviction notice, the date the tenant moved out, the date the unit was rented again or committed to a new rental, and the date the new tenant moved in. When a tenant is evicted, Respondent shall state the reason(s).

5. Respondent shall attend suitable HUD approved Fair Housing training, at a time and location mutually agreed upon by HUD and Respondent. However, in no event, shall such training occur later than three months from the date this decision becomes final.

6. Within forty-five (45) days of the date on which this Order becomes final, Respondent shall pay Complainant Debbie Maze $622.00 for alternative housing costs and $22,000.00 for emotional distress and inconvenience.

7. Within forty-five (45) days of the date on which this Order becomes final, Respondent shall pay a civil penalty of $10,000.00 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. §104.910, and will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the Secretary of HUD within that time.

_____/s/_____
WILLIAM C. CREGAR
Administrative Law Judge

Dated: June 7, 1996