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 Patricia Y. Jorgensen, Charging Party, v. Zbyslaw Kogut and Law Corporation, Respondents.	HUDALJ 09-93-1245-1 Decided: April 17, 1995

Paul J. Malikowski, Esq.
For the Respondents

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For the Charging Party

Before: William C. Cregar
Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arose as a result of a complaint filed by Patricia Yvonne Jorgensen ("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 September 29, 1994, 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 Zbyslaw Kogut and Law Corporation ("Respondents")[1] alleging that they had engaged in discriminatory housing practices in

[1]The following reference abbreviations are used in this decision: "Tr. 1," and "Tr. 2," followed by a

violation of 42 U.S.C. §§ 3604(a), 3604(b), and 3617; and 24 C.F.R. §§ 100.50(b)(1), 100.60, 100.65, and 100.400.

A hearing was held in Sparks, Nevada, on December 14-15, 1994. The parties' post-hearing briefs were to have been filed by February 4, 1995. I granted the Charging Party's request for an extension of time until February 13, 1995, to file post-hearing briefs. I received the Charging Party's brief on February 15, 1995;[2] Respondents did not file a brief. Accordingly, this case is ripe for decision.

Statement of Facts

1. Patricia Yvonne Jorgensen is a 53 year old married woman.[3] Tr. 1, p. 22. She was a waitress for approximately 25 years, until May 31, 1991, when a back injury forced her to quit. She has been under medical care since that time. Tr. 1, pp. 23, 66, 129. Ms. Jorgensen's medications include ibuprofen, as well as prescription drugs for incontinence, stress, and psoriasis, which she takes on an "as needed" basis. She resorts to the stress medication whenever she "gets really nervous." Tr. 1, pp. 91-92. As of September 1993, she has been collecting $468.00 monthly in social security disability payments for her injury. Prior to that time, Ms. Jorgensen received monthly payments averaging $600.00 from Irvin Luken, a friend.[4] Tr. 1, pp. 74-75, 129. She does not own a car. Tr. 1, pp. 23, 44, 129.

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page number for Transcript Volumes I and II; "C.P. Ex." for the Charging Party's Exhibit; and "R. Ex." for Respondents' Exhibit.

The charge originally named "Zleysldw Kogut" as the sole Respondent. By consent of the parties, the Charge was amended to reflect the correct spelling of Mr. Kogut's first name and to add Law Corporation as a Respondent. Tr. 1, pp. 3-5.

[2]The Charging Party's brief contains Exhibit B, a December 8, 1994, letter from Mr. Kogut to HUD. Because this document should have been proffered at the hearing, it was not timely submitted. Accordingly, I reject it as an exhibit. *See* 24 C.F.R. § 104.810.

[3]She and her husband have been married for five years; they were separated until their reconciliation in July 1994. Tr. 1, p. 22.

[4]The payments were originally loans from Mr. Luken that Ms. Jorgensen was to repay after she started collecting disability. Tr. 1, pp. 74-75. However, when he became seriously ill with a heart condition, the payments became recompense for Complainant's services. She cared for Mr. Luken by doing his grocery shopping, cleaning his apartment, providing other household services, and attending to his needs while he was hospitalized. Tr. 1, pp. 77-79. As of the hearing, Complainant did not owe Mr. Luken any money. Tr. 1, pp. 77-78.

2. Zbyslaw Kogut was born in Poland in 1939 and emigrated to the United States in 1969. He is a commercial artist who has been employed as a sign painter in the United States. Tr. 1, pp. 187-89. He has resided in various cities including Anaheim, California, where he was the assistant manager of a 52-unit mobile home park. Tr. 1, p. 190.

3. The Civic Center is a three story, 43-unit building located at 300 Holcomb Avenue, Reno, Nevada. Tr. 1, pp. 24, 190. The building is located in a safe, crime free, well lit area of Reno. Entrance to the building is restricted. Tenants must have a key to enter, and visitors may gain access through an intercom system. Tr. 1, pp. 49, 166. There is a bus stop directly across the street from the front entrance. Tr. 1, p. 49. The building has a laundry room, and the apartments are spacious. Tr. 1, pp. 48, 166.

4. Around October of 1992, Mr. Kogut, acting on behalf of Law Corporation, purchased 32 condominium units at the Civic Center, including unit no. 42. Tr. 1, pp. 4, 189-90. Law Corporation was incorporated for the purpose of purchasing the real estate. Mr. Kogut is the sole shareholder, officer and director of the company. Tr. 1, p. 4. Respondent bought the properties with settlement money that he had received from an accident. Tr. 1, pp. 189-90. The seller of the 32 units, CAAD Rentals, was represented by Nicholas Colonna, a realtor.[5] Tr. 1, pp. 190, 227.

5. In October of 1992, Ms. Virginia Ison, the Civic Center's then incumbent building manager taught Mr. Kogut how to manage the property. Tr. 1, p. 191. Because Respondent owned a majority of the 43 units, he owned a majority of the voting shares in the tenants' association at the Civic Center. Controlling the majority of shares, he formally elected himself manager of the building, and, on November 1st, he replaced Ms. Ison as the building manager. He moved into the manager's apartment on the first floor, unit no. 1. Tr. 1, pp. 191-93, 198-99. He assumed all maintenance duties for the entire building and collected rents for the 32 units that he owned. Tr. 1, p. 197.

[5]Mr. Colonna is a Reno business man, property manager, and broker. He participated in various landlord trade associations as president, founder, or lobbyist. Tr. 1, pp. 190, 227. He teaches real estate seminars on Nevada landlord-tenant law, including evictions and small claims. Tr. 1, pp. 228-29. Mr. Kogut had previously encountered Mr. Colonna when he was a student in one of his real estate courses. Tr. 2, p. 19.

6. As of March 1992, Complainant resided at the Lenox Hotel, located at Evans Street, Reno, Nevada. Tr. 1, pp. 24, 68. Her apartment was on an alleyway and had a back door entrance that strangers constantly approached. Her apartment was robbed twice. Once her wallet was taken, and the other time, money was stolen. Tr. 1, p. 24. Because she did not feel secure at the apartment, and because the hotel was in the process of raising the rent, Complainant decided to seek other housing.
Tr. 1, p. 24. She sought assistance from Mr. Colonna who referred her to Virginia Ison.[6] Tr. 1, p. 24-25, 69-70.

7. Ms. Jorgensen filled out an application, listing Mr. Colonna as a reference. Tr. 1, p. 25. He considered her to be of "good character," and he recommended her for an apartment. Tr. 1, pp. 250-51. On March 19, 1992, Ms. Jorgensen signed a six-month lease for a third floor studio apartment, unit no. 42, for $325 a month. Tr. 1, pp. 26, 73; C.P. Ex. 5.

8. Around the end of October 1992, Complainant and Respondent met briefly when they were introduced by another tenant. Tr. 1, pp. 29, 83, 205. Subsequent to their introduction, Respondent and Complainant saw each other twice in the hallway. On one occasion, Complainant noticed Respondent installing carpet and inquired whether the building was getting new carpeting. A second time, Complainant greeted Respondent on her way out of the building. Tr. 1, p. 89. Ms. Ison had told Respondent that Complainant "liked to drink" and "to bring men to her apartment." Tr. 1, p. 226. She related that on two occasions, she opened the front door for Complainant because she came home "loaded" and could not find the keyhole. Ms. Ison then escorted Ms. Jorgensen to her apartment and never heard any noise from her apartment after that. However, Ms. Ison, did not indicate to Mr. Kogut that Ms. Jorgensen was a "problem" tenant. She never received any legitimate complaints from other tenants about Ms. Jorgensen.[7] C.P. Ex. 11.

9. Around the first of each month, Complainant paid her rent with checks written on Mr. Luken's personal bank account. Tr. 1, pp. 74, 87; Tr. 2 p. 46. On November 1, 1992, Ms. Jorgensen went to Mr. Kogut's apartment to pay her rent. Tr. 1, pp. 29-30. Because he was not home, she returned the next day, November 2nd, around 5:30 p.m. She had returned from the market carrying a bag of groceries. Tr. 1, pp. 29-30, 85-86, 202. Mr. Kogut was not in, but he had left a note on his door stating that he was doing

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[6]Ms. Jorgensen sought Mr. Colonna's assistance because he was the only real estate professional she knew. She had previously rented a room in one of Mr. Colonna's hotels for approximately two years and had also been employed by him as a waitress. Tr. 1, p. 24.

[7]Complainant's downstairs neighbor, Ray Ryan, had asked her to stop using the bathroom at night because the noise of the toilet disturbed him. Tr. 1, p. 80; C.P. Ex. 11. Ms. Ison thought that Mr. Ryan was an alcoholic and a chronic complainer; she did not consider his complaints about Ms. Jorgensen to be legitimate. C.P. Ex. 11.

maintenance work in Apartment No. 35. She went to that unit. Tr. 1, pp. 29, 86, 202-04. The tenant answered the door and summoned Mr. Kogut. Tr. 1, p. 205. In the hallway outside of the apartment, Complainant told Respondent that she wanted to pay her rent.

Tr. 1, pp. 29, 88. Because his hands were filthy, Respondent refused to accept the check at that time; rather, he offered to stop by her apartment later.[8] Tr. 1, pp. 29, 88, 207.

10. A few minutes later, Respondent went to Complainant's apartment to collect the rent. He told her that he would give her a receipt later. Tr. 1, p. 30. Complainant mentioned that her carpet needed cleaning. Respondent answered that he had the perfect cleaning fluid. Tr. 1, p. 31. He also commented on a bottle of vodka that he noticed in her bag of groceries. She replied that she was going to have a drink and offered him one. Tr. 1, p. 30. He said, "Not now, later. I have to clean up." Tr. 1, p. 30. He took the rent check and left. Tr. 1, p. 30.

11. At around 8:00 p.m. that evening, Ms. Jorgensen, dressed in a "sloppy," thick, black t-shirt and pants, was watching television, eating popcorn, and having a drink, when Respondent, carrying a quart of orange juice and a gallon of rug cleaner, knocked on her door. Tr. 1, pp. 31, 35. He said, "I'll have that drink now." Tr. 1, p. 31. Ms. Jorgensen and Mr. Kogut talked about Fullerton, California, where both had lived previously, Mr. Kogut's sign painting business, and other topics. Tr. 1, pp. 32, 96, 219. While visiting, Complainant fixed three "light"[9] drinks of vodka and orange juice for Respondent, and an equal number of vodka and diet seven-up concoctions for herself. Tr. 1, pp. 31, 97, 221. During the course of the evening, Respondent sat at Complainant's dinette table, and Complainant sat in her recliner in front of the television. Tr. 1, p. 31.

12. At around 10:00 p.m., Respondent got up to leave.[10] Complainant walked Respondent to the door. Respondent put his hand under Complainant's shirt, grabbed her breast, and attempted to kiss her. Tr. 1, pp. 32-33. Ms. Jorgensen exclaimed, "No!" She backed away and pushed him out the door. He hurried down the steps. Tr. 1, pp. 32-33, 98.

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[8]Respondent disputes much of Complainant's testimony concerning events that evening. For the reasons discussed *infra*, I find Complainant's testimony more credible than Respondent's and have accepted
Ms. Jorgensen's version.

[9]Respondent requested "light" drinks. Thus, she made them in a large glass, with lots of ice and orange juice, and only a little more than a half ounce of alcohol. Tr. 1, pp. 31, 97.

[10]Complainant remembered that it was around 10:00 p.m., because the television program *Northern Exposure* had just started. Tr. 1, p. 32.

13. Ms. Jorgensen was "shocked" and "upset" by Respondent's action. In all her years as a waitress, she had never been accosted by any customer. Tr. 1, p. 33. She bolted the door and started crying. Tr. 1, p. 33. Complainant later called Respondent to tell him that she did not intend to convey "the wrong impression." He replied, "no problem." Tr. 1, pp. 34, 101-02. Mr. Kogut's nonchalant reply made Ms. Jorgensen feel even worse because he appeared to have been unaffected by the incident. Tr. 1, p. 102.

14. Ms. Jorgensen did not sleep at all that night. Tr. 1, p. 34. Even though her door was bolted and she knew that Respondent could not enter with his key, she felt insecure. Tr. 1, p. 34. She called her daughter and spoke to her about the incident for approximately an hour. Tr. 1, pp. 34, 100. She also telephoned her friend, Joyce Jerome,[11] "off and on all night long." Tr. 1, pp. 34, 100, 102, 119, 120. The next day, Ms. Jorgensen took her prescription stress medication. Tr. 1, pp. 92, 121. Sometime later, she discussed this incident with her brother-in-law, a minister who has counselled her in the past. Tr. 1, p. 119.

15. On November 3rd at around 10:00 p.m., Ms. Jorgensen, while speaking on the telephone, was cooking a hamburger. Tr. 1, pp. 35, 104. Because the fan over the stove was not working, the apartment became smoky. She became concerned when the smoke detector in the apartment did not sound. Tr. 1, pp. 35, 104.

16. Ms. Jorgensen turned off the stove and went down to tell Mr. Kogut about the inoperable fan and smoke detector. Tr. 1, pp. 34-35. She wanted him to check the fire prevention devices in the building. She knocked on his door. Mr. Kogut who had been in bed for about 20 minutes, refused to open the door stating, "I am asleep, go away." Tr. 1, pp. 35-37, 107; Tr. 2, p. 11.

17. Complainant returned to her apartment and between 10:30 and 10:45 p.m., she called Mr. Colonna. Tr. 1, pp. 37, 107-08. She told him about Respondent's conduct the previous evening and expressed her concern that the fire prevention devices in the building were faulty. Tr. 1, p. 37. Mr. Colonna told her that he "did not want to get involved in [the alleged sexual harassment incident, and that if she had] a problem with that [she should] talk to [Mr. Kogut] or . . . go to court." Tr. 1, p. 235.

[11]Ms. Jerome, whom Complainant calls "Mom," is a 75 year old close friend and confidant of Complainant. Tr. 1, pp. 34-35.

18. On or around November 4th, Mr. Kogut also called Mr. Colonna for advice. He complained to Mr. Colonna about Complainant knocking on his door at night. Tr. 1, p. 237. He informed Mr. Colonna that Ms. Jorgensen's conduct "frightened" and "upset" him. Tr. 1, p. 237. Mr. Colonna had informed him that Ms. Jorgensen was accusing him of sexual harassment. R. Ex. 4 at 2; Tr. 1, pp. 237-39; Tr. 2, p. 18. Mr. Colonna advised Respondent that if he was having trouble with a tenant, he should serve a 30-day eviction notice. Tr. 1, pp. 241-42. He also suggested that Respondent memorialize the events in writing so that Mr. Colonna would have a document to place in his files. Tr. 1, pp. 237-38. Respondent heeded his advice and delivered a letter to Mr. Colonna outlining his version of the events of November 2nd and 3rd. Tr. 1, pp. 234, 237.

19. Between 12:30 and 1:00 a.m., on November 7, 1992, Complainant was given a ride home by her friend, James Mueller. Tr. 1, pp. 173-74. When they arrived at Ms. Jorgensen's apartment, they saw an eviction notice posted on the door, directing Ms. Jorgensen to leave the Civic Center by December 8, 1992. Tr. 1, pp. 38, 175; C.P. Ex. 6. Ms. Jorgensen at first was "in total shock," as she exclaimed, "Oh, my God, I'm being evicted." Tr. 1, pp. 38, 175. They went into the apartment, and she started crying. Tr. 1, p. 175.

20. Mr. Mueller asked her if she had paid her rent. Tr. 1, pp. 175-76. She said she had and then told him about the November 2nd incident. Tr. 1, pp. 38, 175-76. Mr. Mueller stayed for approximately one and a half hours trying to comfort Ms. Jorgensen who continued to cry. Tr. 1, pp. 176-77. After Mr. Mueller left, Ms. Jorgensen sought consolation by calling Ms. Jerome. Tr. 1, pp. 39-40, 182-83.

21. Approximately a week after receiving the eviction notice, Ms. Jorgensen began searching for alternate housing. Tr. 1, pp. 44-45. Her search consumed approximately three days a week. It included making inquiries of friends, looking in the newspapers, speaking with apartment managers, and inspecting various apartments via bus. Tr. 1, pp. 44, 128. She spent approximately 18 hours inspecting at least six apartments. Tr. 1, pp. 128-29. As a last resort, she discussed sharing housing with a girlfriend. Tr. 1, pp. 44-45. Ms. Jorgensen filed a Complaint with HUD on or around November 22, 1992. C.P. Ex. 3.

22. Ms. Jorgensen tried to phone Mr. Kogut numerous times to discuss the eviction, but he did not answer his telephone. She once saw him in the hallway and attempted to discuss the matter. He merely replied, "It's in the court's hands." Tr. 1, p. 41. On or around December 1st, Ms. Jorgensen saw Mr. Kogut outside raking leaves. She attempted to pay her December rent. Respondent refused to accept it saying that she would have to move. Tr. 1, p. 46.

23. Ms. Jorgensen's search was fruitless, and accordingly, she had not yet moved by December 8, 1992. Tr. 1, pp. 44-45. On December 10th, she received an unlawful detainer notice to appear at a hearing in the county courthouse on December 28, 1992. Tr. 1, pp. 42-44; C. P. Exs. 7a, 7b.

24. Upon receiving the unlawful detainer notice, Ms. Jorgensen called Legal Aid which referred her to the Nevada Equal Rights Commission ("the Commission").[12] Tr. 1, pp. 44, 53-54. The Commission attempted, but failed to settle the dispute. Tr. 1, pp. 54-57, 164-65; C.P. Ex. 13.

25. By December 28th, the date of the eviction hearing, Complainant had yet to find suitable accommodations. She was worried about becoming homeless, particularly with the existing accumulation of over five feet of snow, and she informed the judge accordingly. Tr. 1, p. 46. She also told him about the November 2nd incident. Tr. 1, pp. 115-16, 121. Although sympathetic, the court nevertheless ordered her to vacate her apartment within three days. Tr. 1, p. 46.

26. After the eviction hearing, Complainant visited Ms. Jerome. Across the street from Ms. Jerome's apartment there is a brick house located at 408 East 8th Street, Reno, Nevada. Tr. 1, pp. 23, 47. The building had a vacancy sign for a ground floor apartment. She applied for tenancy and moved in on December 30, 1992. Tr. 1, pp. 23, 47, 48. The monthly rent was $375.00, with a $200.00 security deposit. Tr. 1, p. 50. The landlord allowed Ms. Jorgensen to pay the security deposit in installments that ended in July 1993. Tr. 1, p. 51. In November of 1993, the rent increased to $400.00. Tr. 1, pp. 50, 53; C.P. Ex. 8.

27. Ms. Jorgensen relied on friends and acquaintances to assist her in her move. She had to borrow money. Tr. 1, p. 47. Two elderly men, Complainant's friend and his friend, moved her possessions in a station wagon. Tr. 1, p. 47. Because they were unable to move her heavy furniture, she left behind a sleep sofa, two chairs, and a table, which Complainant values at around $100.00. Tr. 1, pp. 52-53, 130.

28. The move aggravated Ms. Jorgensen's back injury. Tr. 1, pp. 47-48. She switched to a stronger pain medication. Tr. 1, pp. 120-21. The pain precluded her from unpacking her belongings until two days after the move. Tr. 1, p. 47. During those two

[12]The Commission is not a "substantially equivalent agency," as defined in 42 U.S.C. § 3610(f). *See* Tr. 1, p. 167.

days, she stayed with Ms. Jerome. Tr. 1, pp. 47-48.

29. The building that houses Ms. Jorgensen's new apartment is approximately 100 years old. Tr. 1, p. 48. Because the building is an old brick structure, with no air conditioning, it is uncomfortably hot in the summer. Ms. Jorgensen, at times, uses three fans. Tr. 1, p. 48. Because there are no laundry facilities, Complainant takes a cab or bus to do laundry. Tr. 1, p. 48. The closest public transportation is two blocks away. Tr. 1, p. 49. The building is noisy because of an adjacent freeway and train tracks. Tr. 1, pp. 49-50.

30. The neighborhood is unsafe. There have been drive-by shootings and a kidnapping. Transients sleep on the park benches. Tr. 1, pp. 48-50. The building does not have an intercom system. After her ground floor apartment was robbed of a VCR and jewelry, she installed an alarm on the front door and a double bolt on the back door. Tr. 1, pp. 48-49.

31. Prior to instituting the eviction process against Complainant, Respondent had never evicted a tenant, nor had he been involved in any eviction proceedings. Tr. 2, p. 20.

Discussion

Res Judicata and Collateral Estoppel

Respondent asserts that this action is barred by *res judicata* and collateral estoppel based on the results of prior proceedings, *i.e.*, the judgment against Complainant in the unlawful detainer action and the failure of the Nevada Equal Rights Commission ("the Commission") to pursue Ms. Jorgensen's complaint. The doctrine of *res judicata*, or claim preclusion, bars the relitigation of claims that were the subject of a prior proceeding, and the litigation of claims that could have been, but were not, raised in a prior proceeding. 18 Charles A. Wright *et al, Federal Practice and Procedure; Jurisdiction* § 4402 (1981); *Brown v. Felson,* 442 U.S. 127, 131 (1979). Collateral estoppel, or issue preclusion, bars the relitigation of issues actually litigated that were essential to the judgment. Wright, *supra* §4416.

Under Nevada law, claim and issue preclusion are applicable only under the following conditions: 1) the party against whom the doctrines are being asserted must have been a party, or in privity with a party in the prior adjudication; 2) the issue decided in the prior adjudication must be identical to the one presented currently; and 3) there must have been a final judgment on the merits in the prior proceeding. *Paradise Palms Community Ass'n v. Paradise Homes,* 89 Nev. 27, 505 P.2d 596, 599, *cert. denied*, 414 U.S. 865

(1973); *see Sierra Pac. Power Co. v. Craigie,* 738 F. Supp. 1325, 1328-29 (D. Nev. 1990); *Granite Constr. Co. v. Allis-Chalmers,* 648 F. Supp. 519, 521-22 (D. Nev. 1986).

None of these three conditions applies to this case. The Secretary was neither a party, nor in privity with the parties in the other proceedings. Complainant's and the Secretary's interests are not equivalent. The Complainant's interest in these proceedings is to redress an injury personal to her. The Secretary, on the other hand, has broader interests that encompass the vindication of public rights in discrimination cases brought pursuant to the Fair Housing Act. In addition, there was no final judgment on the discrimination claim in the unlawful detainer action. Although Complainant raised this issue, the court declined to consider it in enforcing the eviction action. Tr. 1, p. 121. Finally, the Commission did not decide the discrimination claim, or issue a "final judgment" concerning Complainant's harassment claim. Rather, its proceeding was in the nature of mediation. It neither held a formal hearing, nor issued a determination on the merits. Therefore, the doctrines of *res judicata* and collateral estoppel do not bar this proceeding.

Governing Legal Framework

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 such impermissible characteristic is sex and one such form of illegal discrimination is 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 Mr. Kogut sexually harassed Ms. Jorgensen, then evicted her because she refused his unwelcome advance. It alleges that the harassment and ensuing eviction violated the Act which prohibits making housing unavailable or denying "a dwelling to any person because of. . . sex" or discriminating "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. . . ." 42 U.S.C. §§ 3604(a) and (b); *see also* 24 C.F.R. §§ 100.50(b)(1), 100.60, 100.65.[13]

[13]Section 100.65(b)(5) of 24 C.F.R. describes a prohibited practice under 42 U.S.C. § 3604(b) as "[d]enying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors."

In addition, the Charging Party alleges two violations of 42 U.S.C. § 3617 based on sexual harassment. This section of the Act makes it "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]." 42 U.S.C. § 3617; *see also* 24 C.F.R. § 100.400. The Charging Party asserts that the unwanted touching and resulting eviction constitutes "interference with Complainant's right under § 804 to enjoy her apartment without sex discrimination." Charging Party's Post-Hearing Brief at 49 (Feb. 13, 1995). Moreover, it asserts that Respondents also violated 42 U.S.C. § 3617 by retaliating against Complainant because she sought to file a complaint under the Act.

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. 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).

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; 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; and 5) where there is an employer/employee relationship and the tenant seeks damages against an employer, the employer is liable. *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.

Under the circumstances of this case, all elements but the fourth, can be established by direct evidence.[14] However, because the Charging Party does not contend that

[14]Direct evidence is evidence which "proves [the] existence of [the] fact in issue without inference or presumption." *Black's Law Dictionary* 413-14 (spec. 5th ed. 1979).

Respondents made Ms. Jorgensen's submission an explicit condition of her continued tenancy, it must employ indirect evidence of discrimination to prove the fourth element, *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 casual connection" between Complainant's reaction to the harassment and the eviction 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 Respondents to articulate a legitimate, nondiscriminatory reason for the eviction. Where Respondents are unable to do so, the Charging Party has proved its case. Where there is a legitimate, nondiscriminatory reason articulated, the Charging Party may then prove 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 *Quid Pro Quo* Sexual Harassment

The first, third, and fifth elements do not require extensive discussion. The first and third elements are satisfied because Ms. Jorgensen is a woman. *See* 42 U.S.C. § 3604; *Henson,* 682 F.2d at 903. Concerning the fifth element, Law Corporation is liable for Mr. Kogut's actions. The company was incorporated solely for Mr. Kogut's purpose of purchasing the building. Mr. Kogut is the sole shareholder, officer, and director of the company. Thus, the company is liable for his actions.[15]

The second element "turns largely on credibility determinations." *Meritor,* 477 U.S. at 68. Mr. Kogut's and Ms. Jorgensen's accounts of the evening of November 2, 1992, conflict. I credit Ms. Jorgensen's testimony for the reasons set forth below.

[15]While the *Shellhammer* court requires proof that the principal knew of an agent's harassment and failed to remedy the situation, *see* 1 Fair Housing-Fair Lending at 137; other courts have determined that an employer is strictly liable in a *quid pro quo* harassment case, *see,* e.g., Henson, 682 F.2d at 909-10. Under either formulation Mr. Kogut, as well as Law Corporation are liable.

Mr. Kogut denies engaging in any improper conduct with Ms. Jorgensen. He testified as follows: Ms. Jorgensen requested that he clean her carpet because she was expecting company later that evening, Tr. 1, p. 208; he arrived at her apartment around 8:00 p.m. with carpet cleaner, Tr. 1, pp. 210-11, 216; he cleaned the carpet while engaging in innocuous social conversation, Tr. 1, pp. 218-19; while the spots on the carpet were drying, they ate popcorn, drank beverages,[16] and watched a football game between the San Francisco 49ers and the Washington Redskins, Tr. 1, pp. 216-17; he left her apartment around 10:00 p.m. without incident, Tr. 1, p. 219; Tr. 2, p. 42.

I do not credit Mr. Kogut's testimony. First, in contrast to Ms. Jorgensen's testimony that they watched regular television programming that evening, Mr. Kogut testified that they were watching a football game between San Francisco and Washington. He specifically remembered that these teams were playing, because he is a football fan. Tr. 1, pp. 217-18. However, these two teams never met during the 1992 football season.[17] Second, during a deposition taken approximately two weeks before the hearing, Mr. Kogut stated that Complainant "never" tried to pay the December rent. Tr. 2, p. 35. At the hearing, however, he testified that sometime in early December 1992, he was outside landscaping when Complainant approached him and attempted to pay that month's rent. Tr. 2, p. 16. Third, at his deposition, Mr. Kogut stated that Mr. Colonna fired

[16]Mr. Kogut claims that he drank only one alcoholic beverage, and thereafter, switched to orange juice. Tr. 1, pp. 222-23.

[17]I have taken official notice of the 1992 football schedule as published in the November 1, 1992, edition of the *San Francisco Sunday Examiner and Chronicle*.

Ms. Jorgensen from her position as a waitress at his restaurant. Tr. 2, pp. 39-40. On the other hand, at the hearing, Mr. Kogut testified that he "had no knowledge" concerning whether Mr. Colonna had fired Complainant.[18] Tr. 2, p. 39. Fourth, in a response to HUD, Mr. Kogut wrote that he agreed to clean Complainant's carpet after hours because the "tenants assoc[iation told him] to please the people, fix anything wrong and make [the] tenants happy." C.P. Ex. 4 at 1. The association, however, was not in a position to dictate any terms to him because as majority shareholder of the association, he "essentially could vote himself into any office and hire himself to any position." Tr. 1, p. 199. Indeed, he elected himself as building manager. Finally, Mr. Kogut was not forthright with the HUD investigator. When the investigator asked Respondent for his tenant list and tenant files, he responded that he did not have a tenant list or know who his tenants were. Tr. 1, p. 141. The former owner contradicted Mr. Kogut. When the HUD investigator contacted Mr. Aramini, one of the principals of CAAD Rentals, he stated that "that was not true." Tr. 1, pp. 141-42. Mr. Aramini further stated that a tenant list and tenant files were transferred to Respondent, at the Civic Center, when he purchased the apartments. *Id.* The investigator eventually found the tenant files among the Civic Center's records. *Id.*

In contrast to Mr. Kogut, I found Ms. Jorgensen to be credible. Her testimony was entirely consistent. Moreover, Mr. Colonna, Respondent's own witness, corroborates her testimony. His testimony concerning Mr. Kogut's letter to him recounting the events of November 2nd tends to establish that Mr. Kogut did make advances. Mr. Colonna stated that the letter contained information about "a sociable attitude prevailing, and that [Mr. Kogut] thought there w[ere] maybe some *sexual advances* but, you know, nothing specific." Tr. 1, p. 239 (emphasis added). He further testified that Respondent "had to leave [Ms. Jorgensen's apartment] because of her reaction to him or his reaction to her." Tr. 1, p. 239.

Because I credit Ms. Jorgensen's testimony, I conclude that Mr. Kogut touched Ms. Jorgensen's breast and attempted to kiss her. *See supra* finding no. 12. For the reasons discussed below, I further conclude that Mr. Kogut's actions were unwelcome.

In order to establish that sexual advances are unwelcome, the "inquiry is whether [Complainant] by her conduct indicated that the alleged sexual advances were unwelcome.

[18]I conclude that Ms. Jorgensen was not fired by Mr. Colonna. Although by the time of hearing, Mr. Colonna was unable to testify with certainty as to whether he fired Ms. Jorgensen, during his deposition, Mr. Colonna stated that he did not fire her; rather, "she just left." Tr. 2, pp. 56, 58-59. Because it would be inconsistent for Mr. Colonna to have recommended Ms. Jorgensen for an apartment at the Civic Center, had he fired her, I credit his deposition testimony on this point.

. . ." *Meritor*, 477 U.S. at 68. "[S]exually provocative speech or dress. . . is obviously relevant" to the inquiry. *Id.* at 69.

After Mr. Kogut's advance, Ms. Jorgensen blurted out "No!" She backed away, pushed him out of her apartment, bolted the door, and started crying. A short time later she called Respondent to tell him that she didn't intend to convey "the wrong impression." Nothing in her conduct that evening indicates that she welcomed Mr. Kogut's advance. She sat in her recliner in front of the television, while Respondent sat at the dinette table. They watched television, ate popcorn, consumed alcoholic beverages, and conversed about nonsexual topics. During this time, there was no physical contact between them. Ms. Jorgensen did not wear provocative attire; rather she was wearing a "sloppy," thick, black t-shirt and pants. Moreover, none of Ms. Jorgensen's conduct or speech prior to the incident could be interpreted as inviting an advance. Complainant and Respondent did not know each other. They had seen each other only four times previously - when they were introduced by a tenant, when they passed each other in the hallway twice, and when Complainant attempted to pay the rent earlier that day. Accordingly, I find that Respondent's touching was an unwelcome one and that the Charging Party has proved the second element.

To establish the fourth element, the Charging Party must prove that Ms. Jorgensen's rejection of Mr. Kogut's unwelcome advance, in some way, caused the eviction. There must be "evidence of a causal connection" between Complainant's reaction to the harassment and Respondents' eviction action. *Honce*, 1 F.3d at 1090. I find that the fourth element has been established by the fact that Ms. Jorgensen was at all times a qualified tenant and by the timing of the eviction.

Ms. Jorgensen had always paid her rent timely and was current that month. In addition, there was no evidence to indicate that she was a "problem tenant." In fact, the record demonstrates the opposite to be true. Ms. Ison, the former manager, stated that "no one ever complained about" Ms. Jorgensen and that there were "no problems with [Ms. Jorgensen]."[19] C.P. Ex. 11 at 3. In addition, Mr. Colonna who recommended Ms. Jorgensen for the apartment, did not consider her to be a "problem tenant" when he was her landlord, and he thought her to be of "good character." Tr. 1, pp. 250-51.

Despite the fact that Complainant was not a problem tenant and was current in her rent, Respondent served an eviction notice on her within four days of her rejection of his advance. The timing of the eviction provides compelling evidence that Complainant's

[19]Respondent's own witness, Mr. Colonna, testified that he considered Ms. Ison to be particular about the tenants she selected, that she "did her job well and when she had to evict tenants she would do that." Tr. 1, pp. 251-52.

rejection of Respondent's advance caused the eviction. *Cf. Nichols,* 42 F.3d 503, 513 (9th Cir. 1994) (An employer's granting of a job benefit "immediately following" a sexual act established a "nexus."); *Webb v. Hyman,* 861 F. Supp. 1094, 1105-06 (D.D.C. 1994) (Complainant's testimony alone may be sufficient to establish a *prima facie* case of *quid pro quo* harassment based on "the sequence and timing" of various employment decisions which occurred following the supervisor's harassing conduct.); *Wilson v. Wayne County,* 856 F. Supp. 1254, 1260 (M.D. Tenn. 1994) (Harassment was established where advances occurred a few days before, and a few minutes after the employee's job related request.).

Because Ms. Jorgensen was a qualified tenant who was subjected to harassment and evicted within days after she rejected Respondent, the Charging Party has proved a *prima facie* case of *quid pro quo* sexual harassment.

Respondents' Articulated Reasons for the Eviction

Respondents may rebut the Charging Party's *prima facie* case by articulating a legitimate, nondiscriminatory reason for the eviction. *See Henson,* 682 F.2d at 906 n.14; *Webb,* 861 F. Supp. at 1104; *Shellhammer,* 1 Fair Housing-Fair Lending at 137. Respondents may meet their 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).

Respondents assert[20] that Mr. Kogut evicted Complainant becauses she (1) tendered a "third-party check,"[21] (2) asked Mr. Kogut to clean her carpet after hours, (3) made a few phone calls to him after business hours seeking admission to his apartment, and (4) woke him up after he had gone to bed. In addition, Respondents maintain that the eviction was based on the advice of Mr. Colonna. Tr. 1, pp. 21, 237; Tr. 2, pp. 32-33, 50.

Even if "taken as true," none of these reasons has been demonstrated to be a legitimate basis for Complainant's eviction. First, Mr. Kogut did not testify or otherwise demonstrate that he was inconvenienced, in any way, by Complainant's method of payment, or that he was unable to collect the funds. Indeed, Mr. Luken made the check out to Mr. Kogut, who indorsed it and cashed it without apparent difficulty. *See* Tr. 2, pp. 45-46. Second, even if I were to credit Mr. Kogut's testimony that Complainant requested he clean her carpet after business hours, this request does not constitute a legitimate reason to evict her. Mr. Kogut admits that he willingly agreed to clean her carpet. He was under no obligation to do so and certainly not after hours. Third, Respondent testified that on the

[20]Because Respondents did not file a post-hearing brief, I have extrapolated these contentions from their counsel's opening statement and examination of witnesses.

[21]Respondents refer to the checks written by Mr. Luken on his account as third-party checks.

evening of November 3rd, the night that Ms. Jorgensen attempted to report smoke in her apartment, she telephoned him three to four times seeking entrance to his apartment. Tr. 2, pp. 15-16. Even if true, he has failed to demonstrate how three or four telephone calls after hours to a manager constitute a legitimate reason for an eviction. In any event, for the reasons discussed above, I credit Ms. Jorgensen's testimony that she did not make these calls. *See* Tr. 1, p. 36; *see also supra,* pp 13-14. Fourth, Respondent has failed to demonstrate why Complainant's one after hours visit constitutes a legitimate cause for eviction. Complainant attempted to contact Respondent to advise him of the potential fire hazard in her apartment. Her oven fan did not work, and more importantly, the smoke detector did not sound. Although the visit was after hours, it was not unreasonably disruptive. She never gained access to his apartment because Respondent refused to open his door; 10:30 p.m. was not an unreasonably late hour;[22] and when Respondent told Complainant to go away, she left.

[22]It will be recalled that Mr. Kogut testified that he was cleaning Ms. Jorgensen's carpet, while watching television with her, until 10:00 p.m. the previous evening.

Finally, Respondents assert that the eviction was based on the advice of Mr. Colonna. Mr. Kogut told Mr. Colonna that Complainant's evening visit on November 3rd "frightened" and "upset" him. Tr. 1, p. 237. Accordingly, Mr. Colonna advised Respondent to institute eviction proceedings. Tr. 1, p. 241. Assuming that Mr. Kogut was, in fact, afraid of Ms. Jorgensen, and that fear, as articulated to Mr. Colonna, formed the basis for Mr. Colonna's recommendation, I conclude that because his fear was caused by the sexual harassment, the stated reason although true, is not a legitimate, nondiscriminatory one.

Mr. Colonna testified as to Respondent's account of the events of November 2nd and 3rd. Respondent and Complainant watched television together on November 2nd. "[T]hen the next night is when he was *really frightened.* This is when he got the call, he said she was banging on his door late at night asking to come in to his apartment and he didn't know what to do. And he said, I'm *frightened.*" Tr. 1, pp. 240-41 (emphases added). Therefore, Mr. Colonna advised Respondent that if "he is having problems with the tenant. . . the only thing you can do is. . . file a 30 day no cause notice." Tr. 1, p. 241. Thus, Mr. Colonna's recommendation was based on his perception that Mr. Kogut was afraid of Complainant.

However, the record establishes only one reason for any fear Mr. Kogut might have felt towards Ms. Jorgensen - his own improper advances. Ms. Jorgensen did nothing to evoke such a fear. Complainant went to Respondent's apartment on only one occasion to complain of an inoperative smoke detector. She did not threaten him and he was unaware of any violent history. He never allowed her access to his apartment and she had no key. She had never disturbed him before. Other than the previous evening's occurrence, they had only four brief, uneventful, prior encounters. Consequently, I conclude that any fear on his part must have resulted from the previous night's occurrence. Accordingly, any recommendation from Mr. Colonna based on that fear was not a legitimate reason to evict Complainant. Thus, Respondents have not produced any "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).[23] Accordingly, I conclude that Respondents failed to meet their burden of production and the Charging Party's *prima facie* case establishes that Ms. Jorgensen was evicted because she rejected Mr. Kogut's unwanted sexual advance.

Violations of 42 U.S.C. §§ 3604(a),(c), and 3617

[23]Because Respondents failed to articulate any nondiscriminatory, legitimate reasons for the eviction, I need not reach the question of whether any of Respondents' stated reasons for the eviction were pretextual. *See supra* p. 12.

Section 3604(a) of 42 U.S.C. prohibits making housing unavailable or denying "a dwelling to any person because of. . . sex." Respondents evicted Ms. Jorgensen because she rejected Mr. Kogut's unwelcome sexual advance. Accordingly, Respondents violated this section of the Act. *See Woods v. Foster,* No. 94 C 4187, 1995 WL 9245 (N.D. Ill. Jan 10, 1995). In addition, the Act 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." 42 U.S.C. § 3604(b). Because residency is one of the many "terms, conditions, or privileges of. . . rental," when Respondents terminated Complainant's residency because she rejected Mr. Kogut's sexual advance, they also violated 42 U.S.C. § 3604(b). *See Shellhammer,* 1 Fair Housing-Fair Lending ¶ 15,472; *see also Honce,* 1 F.3d at 1088-89.

Finally, HUD alleges that Respondents violated 42 U.S.C. § 3617 which makes it "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]." To prove a violation of this section, the Charging Party must establish that (1) Complainant is a member of a protected class; (2) she was attempting to enjoy a right protected under the Act; (3) Respondents intended to discriminate based on sex; and (4) Respondents 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); *HUD v. Gutleben,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,078, 25,726 (HUDALJ Aug. 15, 1994).

First, because Complainant is a woman, she is a member of a protected class. *See supra p. 12*. Second, she was attempting to enjoy housing free from interference because of discrimination; that is, she was exercising her right to quiet enjoyment of her apartment. *See Stackhouse v. DeSitter,* 620 F. Supp. 208, 211 (N.D. Ill. 1985). Third, the requirement of a demonstration that Respondent intended to discriminate based on sex is satisfied under the circumstances of this case by the proof of sexual harassment. *See Honce v. Vigil,* 1 F.3d at 1089. Finally, I find that Respondents interfered with Complainant's residency because of her sex. Evicting Complainant from her home is an extreme type of interference. Accordingly, I conclude that Respondents also violated 42 U.S.C. § 3617. *See Merlino,* 694 F. Supp. at 1104-05; *Grieger,* 689 F. Supp. at 840-41.

The Charging Party also contends that Respondents violated 42 U.S.C. § 3617 by retaliating against Complainant because she sought to file a complaint of discrimination under the Act. However, because there is no evidence that Respondents knew of Complainant's intention to file a complaint under the Act, the Charging Party failed to prove that they evicted her because she was attempting to exercise her rights. Although Mr. Colonna told Mr. Kogut about Complainant's telephone call to him wherein she

complained about Mr. Kogut's conduct, there is no evidence that Complainant informed Mr. Colonna that she intended to file a complaint or exercise any other remedies available under the Act. Therefore, Mr. Colonna could not have told Mr. Kogut that Complainant intended to exercise her rights under the Act. Nor is there other evidence that Respondents had any other means of knowing, prior to instituting eviction proceedings, whether Complainant intended to exercise her rights under the Act. Thus, the record fails to demonstrate that Respondents' eviction action was a retaliatory one.

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: $1,926.50 for alternate housing costs; $20,000 for lost housing opportunity; $50,000 for emotional distress and physical injury; and $2,500 for loss of civil rights. Damages for loss of civil rights are not compensable in this case because they are duplicative of other damages asserted and awarded *infra*. *See Memphis Community School District v. Stachura,* 477 U.S. 299 (1986); *Carey v. Piphus,* 435 U.S. 247 (1978); *Baumgardner v. HUD,* 960 F.2d 572, 583 (6th Cir. 1992).

Alternate Housing Costs

Complainant is entitled to an amount reasonably expended on alternate housing costs if 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 a rent differential from the Complainant's forced relocation until the hearing date. Complainant moved into the East 8th Street apartment on December 30, 1992; the hearing was held December 14-15, 1994. Because there is no evidence that, prior to the hearing date, she would have left the Civic Center but for the discriminatory eviction, I award her damages for the period from January 1, 1993, until December 15, 1994. Complainant's rent at the Civic Center was $325 a month. The monthly rent at her current apartment was $375, until November 1993, at which time it increased to $400. Accordingly, I find that Complainant is entitled to $500 ($50 x 10), for the difference in rent from January 1993 until October 1993, and to $1012.50 ($75 x 13.5), for the rent differential from November 1993 until mid-December 1994.[24]

[24]Although Complainant's new one-bedroom apartment is larger than her studio apartment at the Civic Center, she is nevertheless entitled to compensation for the rent differential. "[T]o the extent that [Complainant] did receive more value at the substitute apartment, this can be viewed as a forced reallocation of. . . monetary resources" for which Complainant may be reimbursed. *Miller,* 646 F.2d at 112.

Ms. Jorgensen 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 was unable to move all of her furniture from the Civic Center. She left behind a sleep sofa, two chairs, and a table, which she values at $100. I find this amount, which is uncontested by Respondents, to be reasonable. Accordingly, she is entitled to recompense of $100.

The Charging Party seeks payment for Complainant's $200 security deposit. Although Complainant had an initial outlay, the record does not demonstrate that Complainant will not receive the deposit back at the end of her tenancy. Thus, because there is no evidence that the security deposit is a cost that will be incurred by Complainant, she is not entitled to reimbursement from Respondents. *See HUD v. Jerrard,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,005, 25,091 (HUDALJ Sept. 28, 1990).

Finally, the Charging Party requests hourly recompense at the minimum wage rate for the time that Ms. Jorgensen searched for alternate housing. Because Complainant was unemployed at the time of her search, the record fails to demonstrate that she incurred actual monetary losses due to the search. Consequently, she is not entitled to compensation.

Emotional Distress, Lost Housing Opportunity, and Physical Harm

Complainant's damages are not limited to her 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). Under these circumstances, Complainant is entitled to recompense for emotional distress, lost housing opportunity, and physical harm, suffered as a result of the unwelcome advance and ensuing discriminatory eviction.

Discriminators must take their victims as they find them. *See, e.g., Williamson v. Handy Button Mach. Co.,* 817 F.2d 1290, 1294 (7th Cir. 1987); *HUD v. Kelly,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,043, 25,362 (HUDALJ Aug. 26, 1992) *remanded on other grounds,* 3 F. 3d at 951 (1993). Complainant was concerned for her safety, financially troubled, and physically frail. All of these circumstances affected her reaction to Respondents' discrimination.

Ms. Jorgensen moved out of the Lenox Hotel primarily because of safety concerns. Her alleyway apartment had been robbed twice and her doorway was a depository for strangers seeking a back entrance to the hotel. The Civic Center, with its intercom system, third floor apartment, and safe, crime free, well lit neighborhood offered a haven for Complainant. Respondents forced her to move to a ground floor apartment in a crime ridden neighborhood. Her apartment has been broken into twice. Complainant is entitled to compensation for her current feelings of insecurity, as well as for the loss of her

Civic Center haven. In addition to the loss of her previous secure existence, she also lost the amenities of the Civic Center's quieter neighborhood, newer building, air conditioning, laundry facilities, and easy access to public transportation, the latter two features being particularly significant to Ms. Jorgensen who does not own a car.

Ms. Jorgensen's precarious financial condition made her eviction particularly difficult and stressful. Upon receiving the eviction notice, she cried for over an hour and was inconsolable that night. Mr. Mueller testified that as late as February of 1993, she remained "depressed" and "upset" over what had occurred. Tr. 1, pp. 177-78, 184. The prospect of finding new housing, given her limited financial resources and lack of a car, were daunting. Her options of alternative housing were severely restricted because of her limited finances. She even considered, as a last resort, sharing an apartment with a girlfriend. She feared that she might be made homeless and end up on the streets, a dangerous prospect given the existing snowfall in Reno, at the end of December. When she finally found new housing, her move was difficult given her limited resources. She had to borrow money to move, and was forced to rely on the kindness of two elderly gentlemen to move her belongings in a station wagon. Finally, as of the hearing date, she had not yet searched for new housing because she could not afford another move. Tr. 1, p. 53. She was unable to pay her security deposit at the new apartment until approximately six months after she had moved in.

Complainant also suffered physically because of the eviction. She gave uncontested testimony that the move aggravated her existing back injury, necessitating a stronger pain medication. She was also unable to unpack her belongings for two days after her move because of back pain. She had to live with her friend, Ms. Jerome, during that time.

Finally, the incident itself also caused Complainant embarrassment and temporary concern for her security. The night of Kogut's advance, Ms. Jorgensen was "shocked," "upset," and in tears. Her sense of security at the Civic Center was temporarily affected by the unwelcome, unexpected advance of the onsite building manager. Even though she knew that Respondent could not enter her apartment, she felt the need to bolt her door. Complainant did not sleep that evening; rather she made numerous phone calls seeking consolation. Moreover, the event caused her to take her prescription stress medication the next morning. However, on the next evening, she went to Mr. Kogut's apartment to report the inoperable smoke detector. Ms. Jorgensen testified that, at that time, she no longer felt threatened as she did the night of the incident. Tr. 1, p. 106. Accordingly, she is entitled to damages for her lost sense of security because of the incident itself, only for the short period of time from the night of the incident until the following evening when she went down to Mr. Kogut's apartment.

Because Respondents' discrimination affected her sense of security, physical condition, and finances, and cost her the amenities of the Civic Center, I award Complainant compensation in the amount of $25,000.00.

Civil Penalty

The Act provides that Respondents may be assessed a civil penalty "to vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Charging Party requests that a $30,000 civil penalty be assessed for three 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); *Jerrard,* 2 Fair Housing-Fair Lending at 25,092.

The nature and circumstances of the violation merit a significant penalty. Mr. Kogut evicted Complainant, not for any legitimate reasons, but because she rebuffed his advance. In addition, he denied any involvement in the action. He chose to portray himself to this tribunal as a victim of Ms. Jorgensen's mendacity, when, in fact, he offered numerous falsehoods for the eviction. Finally, he was not forthcoming with the HUD investigator. *See supra pp. 13-14.*

Respondents own 32 condominiums and Mr. Kogut is the property manager at the Civic Center. Accordingly, Respondents 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 Respondents previously 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). *See, e.g., HUD v. Simpson,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,082, 25,763-64 (HUDALJ Sept. 9, 1994); *HUD v. Johnson,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,076, 25,711 (HUDALJ July 26, 1994). Respondents do not contend that they are unable to pay the maximum penalty. Thus, after consideration of all the factors, imposition of a $10,000 penalty against Respondents, jointly and severally, 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 Respondents Zbyslaw Kogut and Law Corporation discriminated against Complainant Patricia Yvonne Jorgensen on the basis of sex in violation of 42 U.S.C. §§ 3604(a), 3604(b), and 3617; and 24 C.F.R. §§ 100.50(b)(1), 100.60, 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 Respondents Zbyslaw Kogut and Law Corporation.

ORDER

It is hereby ORDERED that:

1. Respondents, Zbyslaw Kogut and Law Corporation, are permanently enjoined from discriminating with respect to housing. Prohibited actions include, but are not limited to:

a. refusing to sell or rent a dwelling to any person because of sex;

b. 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; and

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

2. Consistent with 24 C.F.R. Part 109, Respondents 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, Respondents shall display the HUD fair housing poster alongside any "for rent" signs posted in connection with any dwellings that they own, in whole or in part, as of the date of this Order and subsequent to the entry of this Order.

3. Respondents shall institute internal record-keeping procedures, with respect to any operation owned by and any other real property acquired by Respondents 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. Respondents 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 Respondents 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, Respondents shall submit reports containing the following information to HUD's Pacific/Hawaii Regional Office of Fair Housing and Equal Opportunity, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102-3348, 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 Respondents 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 has been evicted, Respondents shall state the reason for the eviction.

5. Within forty-five (45) days of the date on which this Order becomes final, Respondents shall pay the following damages to Complainant Patricia Yvonne Jorgensen: $1,612.50 for alternate housing costs, and $25,000.00 for emotional distress, lost housing opportunity, and physical harm.

6. Within forty-five (45) days of the date on which this Order becomes final, Respondents 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/

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William C. Cregar
Administrative Law Judge

Dated: April 17, 1995.