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 Christina L. Brown, Charging Party, v. Albert DiCenso, Respondent.	HUDALJ 05-91-0495-1 Decided: June 19, 1995

James P. Baker, Esquire
For Respondent

Harry L. Carey, Esquire
For the Government

Before: Constance T. O'Bryant
Administrative Law Judge

INITIAL DECISION ON REMAND

By Order dated April 18, 1995, the Secretary of the United States Department of Housing and Urban Development ("the Secretary") vacated and modified the March 25, 1995, Initial Decision ("I .D.") of the undersigned. The Secretary concluded that based on the facts set forth in the I. D. Respondent engaged in sexual harassment of Complainant in violation of §§ 804(b) and 818 of the Fair Housing Act ("the Act") and found liability on the part of Respondent. The remand order, issued pursuant to 42 U.S.C. § 3612(h)(1) and 24 C.F.R. § 104.930(a), specifically directed me to determine the amount of damages to be awarded and the civil penalty to be assessed.

Procedural Background

This matter arose as a result of a complaint filed by Christina Brown ("Complainant"). She alleged discrimination based on sex in violation of the Fair Housing Act as amended, 42 U.S.C. § 3601, *et seq*. The Department of Housing and Urban Development ("HUD", "the Secretary" or "the Charging Party") investigated the complaint and determined that reasonable cause existed to believe that discrimination had occurred. On June 22, 1994, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination ("Charge") against Albert DiCenso, ("Respondent") alleging that he had violated 42 U.S.C. §§ 3604(b) and 3617.

A hearing was held in Springfield, Illinois on October 25, 1994. I issued the I. D. on March 25, 1995, finding that Respondent, while inquiring about the rent, caressed Complainant's arm and back and stated words to her to the effect that if she did not have money to pay the rent she could take care of it in other ways. After Complainant slammed the door, Respondent stood outside calling her names -- a "bitch" and "whore' -- and then left. I concluded, however, that this one act by Respondent did not establish sexual harassment under the "hostile housing environment" or the *"quid pro quo"* theory of sexual harassment discrimination. Accordingly, I issued an Order dismissing the Complaint. The Secretary has reversed that determination and found liability on the part of Respondent.

Factual Background

The Fair Housing Act makes it illegal to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of . . . sex . . . " 42 U.S.C. § 3604(b). Moreover, the Act makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any right granted or protected by" the Act. 42 U.S.C. § 3617.

The Charging Party alleges that Respondent violated the Fair Housing Act by: touching Complainant in a sexually suggestive manner when he came to her apartment to collect rent or to make repairs; making improper insinuations that Complainant could pay the rent with sexual favors; and subjecting her to verbal abuse and initiating eviction proceedings against her when she refused his advances. Respondent denies that he made sexual advances toward Complainant or sexually harassed her in any way. He asserts that his eviction of Complainant was for the sole reason that she refused to pay rent lawfully owed to him.

In his Order on Secretarial Review, the Secretary adopted the Findings of Fact in the I. D. They are restated below for convenience of the reader; however, footnotes have

been deleted.

FINDINGS OF FACT

1. Complainant Christina L. Brown, a white female, was, during the period from June 1990 to February 1991, 18-19 years old. Tr. 70.[1]

2. In June 1990, Complainant was the mother of a one-month-old infant. Tr. 51. Thomas Andrews was the father of her child. Tr. 71.

3. At all times relevant to this proceeding, Respondent Albert DiCenso, a white male, and his wife owned a residential dwelling located at 522 1/2 West Allen Street, Springfield, Illinois ("subject property"). Tr. 177. Respondent purchased the subject property in 1971 and sold it in March, 1991. The property was owned for rental purposes. Respondent had a total of 30 rental units. Tr. 177-179.

4. The subject property was a four-unit apartment; however, Respondent rented out the basement in addition as an apartment on at least one occasion. Tr. 217.

5. Respondent was primarily responsible for the management of his properties and performed such tasks as building maintenance and rent collection. Tr. 179-180.

6. Respondent had been in the business of renting dwellings for over 20 years. Tr. 178.

7. In June 1990, Complainant responded to an advertisement Respondent had placed in the local newspaper for the rental of an apartment at the subject property. Tr. 49. She set up an appointment for June 12, 1990, to view the apartment. Tr. 49-50.

8. Complainant and Thomas Andrews met Respondent at the subject property. They found the apartment suitable. Both Complainant and Mr. Andrews indicated to Respondent that two other individuals would be residing in the apartment -- their daughter, Sara, and a family friend, Jason Rickert. Tr. 51, 71.

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[1]The following reference abbreviations are used in this decision: "Tr. " followed by a page number for Transcript; "CP Ex." for the Charging Party's Exhibit; "R Ex." for Respondent's Exhibit.

9. On June 14, 1990, Complainant, Mr. Andrews and Jason Rickert signed a lease for the subject property. CP's Ex. #2, Tr. 51. The lease was for six months with an option for six more months at the end of the term. Tr. 54. Under the terms of the lease, the agreed-upon rent for the subject property was $300 per month, due on the 14th of each month. CP's Ex. #2, Tr. 53.

10. Jason Rickert resided in the apartment only a few months. After he moved out, Respondent reduced Complainant's rent to $275.

11. Initially, the Complainant and her co-tenants took the rental payments to Respondent's home; however, that practice changed beginning in September, 1990. Tr. 190. Tr. 224. From that time forward Respondent went to the dwelling to collect the rent. Because Respondent was frequently away from the city, he would from time-to-time attempt to collect the rent on days prior to when it was actually due. Tr. 190-192.

12. During their tenancy, Complainant and Mr. Andrews made rental payments for the months of June through December of 1990. The payments for the months of June, July and August were $300 per month. The payments for the months of September through December were in the amount of $275 per month. (CP's Ex. #7; Tr. 56-58). They failed to make a payment for the month of January, 1991. Tr. 68, 199.

First Incident of Alleged Sexual Harassment

13. In late August or early September, Respondent came to Complainant's apartment to collect the rent. He knocked on the door and when Complainant answered, asked her for the rent. Complainant responded that she could not pay it and that it was not yet due. According to Complainant, Respondent then "stepped towards (her) like he was going to continue saying something." Complainant stepped back, opened the door wider to let Respondent see that Mr. Rickert was in the apartment and that she was not alone. Respondent then walked away. Tr. 59, 72, 85, 110. At another point in her testimony, Complainant described Respondent's actions this way: "As close as he got to me and he seemed to want to say something else but when he realized I wasn't alone, he simply walked off." Tr. 72.

Second Incident of Alleged Sexual Harassment

14. In mid-October or early November, Respondent came to Complainant's apartment to collect the rent. It was before the 14th of the month when rent was due. On this occasion, while Complainant stood at the door, Respondent asked about the rent and simultaneously began caressing her arm and back. He said to her words to the effect that if she could not pay the rent, she could take care of it in other ways. Complainant

slammed the door in his face. Respondent stood outside calling her names -- a "bitch" and "whore," and then left. Tr. 59, 90-91, 93.

Unauthorized Entry - First Incident (socks)

15. In late October or early November, Complainant came home from work and found her infant daughter's socks on the stove in the kitchen. They had been taken out of the dresser drawers and put on the kitchen stove. Tr. 61-62, 96. There was no evidence of forced entry, and Complainant had left the door locked. Although Complainant had no evidence that Respondent was responsible for this incident, she believed that he was. Tr. 96.

16. After this incident, Complainant secured a security chain lock on the front entrance when she was not at home and exited through a back door. Tr. 61.

Unauthorized Entry - Second Incident (lingerie)

17. About mid-to-late November, Complainant came home from work and found her lingerie "strung completely all over the house -- everywhere you looked there was something." Tr. 61. The chain lock on the front door had been forced open. Tr. 61. Although Complainant had no evidence as to who was responsible for these events, she believed that it was Respondent. Tr. 67, 97.

18. Complainant did not report either incident to the Respondent or to police, nor did she confront Respondent with her belief that he was responsible for both incidents. Tr. 110.

Unauthorized Entry - Third Incident (leaking pipes)

19. On December 29, 1990, Ms. Brown called the police at about 3:35 a.m. with a complaint about Respondent's entry into her apartment without her consent. Her complaint was taken over the telephone and reported by Officer Fritcher. (R's Ex.13). She reported that Respondent had been in her apartment to repair a bathroom sink on the day before and had advised her that he needed to get a part to fix the sink and that he would return. She had advised him that if he did not return by 3:30 p.m. when someone would be at home, she did not wish for him to enter the apartment. However, she was called at work by a neighbor who told her that Respondent was inside her apartment. Later, when she got off work and returned home she found all the lights on in her apartment (she had left them off) and three of her new towels on the floor soaking up water and rust, and the sink was still not fixed. Respondent had left a note saying he would return on December 29th at about 11:00 a.m. to repair the sink. The officer advised Ms. Brown that as her landlord,

Respondent had the right to enter her apartment to make repairs if necessary, and that there was nothing she could do about it. Tr.66, *See* also R's Ex. 13.

The January Incident/ Eviction

20. On January 15, 1991, Respondent went to collect rent from Ms. Brown and Mr. Andrews at 522-1/2 W. Allen St., Apt. #4. While there, he became involved in a confrontation with Mr. Andrews and the police were called. The police were informed that the two had become involved in a disagreement because Mr. Andrews "refused to pay his rent." The officer reported that Respondent and Mr. Andrews "both came to the decision of settling the matter in court." R's Ex. 14. Complainant and Mr. Andrews told Respondent that they would be leaving within 10 days and asked him if he would allow their $200 deposit to cover the rent for the 10 day period. Tr. 102.

21. Complainant did not move out within 10 days, i.e. by January 25, 1991. As of January 31, 1991, she and Mr. Andrews still resided on Respondent's property. CP's Ex. #1.

22. In late January, Respondent served on Complainant and Mr. Andrews a five-day notice-to-quit the premises. Tr. 103.

23. On January 31, 1991, Complainant filed a housing discrimination complaint with HUD. CP's Ex. #1 . She reported her address as 522 1/2 W. Allen, Apt #4, Springfield, Illinois. In her statement of the facts she stated:

> On January 13, 1991 my landlord Mr. Albert Dicenso demanded rent from me on the pretense that my payroll check would bounce, he began harassing me and my boyfriend and threatened us with bodily harm. He has made sexual advances toward me and ransacked our apartment.

24. The January 31, 1991, complaint filed by Complainant with HUD was the first time Complainant had complained to law enforcement authorities that Respondent had sexually harassed her.

25. On February 1, 1991, Respondent filed a lawsuit in the Circuit Court of Sangamon County naming both Complainant and Mr. Andrews as defendants. Tr. 103, 197, 230. R's Ex. #3.

26. At no time between January 14th, the date the rent was due, and the time Respondent filed the lawsuit, did Complainant or Mr. Andrews pay the back rent.

Tr. 198. At the time he filed the lawsuit, it was Respondent's understanding that they did not intend to pay the rent. Tr. 199.

27. On March 4, 1991, in a letter to the director of the Office of Fair Housing and Equal Opportunity, Respondent replied to Ms. Brown's complaint. He denied that he had harassed anybody and denied making any sexual advances to Ms. Brown. He asserted that he had had problems collecting the December 1990 rent and on January 15, 1991, had gone to the Complainant's apartment to attempt to collect the rent, and that Mr. Andrews not only refused to pay any rent but threatened to physically harm him. Further, Respondent asserted that although he and Mr. Andrews had agreed to try to work out the situation, Mr. Andrews had refused to pay any of the rent that was due. Consequently he had served on both Mr. Andrews and Ms. Brown a five-day notice-to-quit and vacate the apartment. He denied ransacking their apartment. He felt that the filing of the complaint was "a plot" by Ms. Brown and Mr. Andrews to avoid paying the rent they owed him. CP's Ex. #5.

28. On March 7, 1991, after an evidentiary hearing where testimony was taken from both the Complainant and Mr. Andrews, as well as from Respondent, a Sangamon County judge entered judgment in favor of Respondent and against Complainant and Mr. Andrews. The judgment was for the sum of $275 and court costs. R's Ex. #3, Tr. 103-107.

29. Complainant and Mr. Andrews entered into an arrangement with Respondent to pay the amount of the judgment. (R's Ex. #5). They did not keep this agreement. Tr. 199-200.

30. During the course of his business as a landlord, Respondent pursued court-supervised eviction of tenants on 15 to 20 occasions. Tr. 198. His practice was to initiate eviction proceedings when tenants refused to pay the rent. Tr. 198.

Conclusion of Law

After considering the above Findings of Fact, and the pertinent caselaw, the Secretary concluded that based on the totality of the circumstances in the case the one incident of Respondent's conduct established in Finding of Fact ¶14 above, was sufficiently severe to constitute invidious sexual harassment. The Secretary concluded that:

> by touching Complainant in a sexually suggestive manner when he came to her apartment to collect the rent, making an improper

> insinuation that Complainant could pay the rent with sexual favors, and, when his sexual advances were refused, subjecting Complainant to verbal abuse, Respondent engaged in deplorable and offensive sexual harassment of Complainant in violation of subsection 804(b) and section 818 of the Act.

Accordingly, the Secretary found for the Complainant on the issue of liability based on the facts set forth above.

Remedies

The Charging Party asserts that Respondent's sexual harassment caused Ms. Brown to suffer considerable emotional distress. The Charging Party seeks $40,000 in damages, the imposition of the maximum civil penalty of $10,000, and for the order of injunctive relief. The Respondent argues that an award of $40,000 in damages is totally without justification, as is a civil penalty of $10,000.

Emotional Distress and Humiliation

It is well established that the damages that may be awarded under the Act include damages for embarrassment, humiliation and emotional distress caused by acts of discrimination. Such damages can be inferred from the circumstances, as well as proven by testimony. *HUD v. Blackwell*, Fair Housing-Fair Lending (P-H), ¶ 25,001 at 25,011 (HUDALJ December 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990). Because these intangible type injuries cannot be measured quantitively, courts do not demand precise proof to support a reasonable award of damages for such injuries. See *Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983). The goal of a damage award in a housing discrimination case is to try to make the victim whole. To obtain this goal, wide discretion is accorded in setting emotional distress damages. However, two critical factors are to be considered: the egregiousness of the Respondent's conduct and the effect of that conduct on the Complainant.

The awards of damages for emotional distress in Fair Housing Act cases range from a relatively small amount, e.g. $150 in *HUD v. Murphy*, Fair Housing-Fair Lending (P-H) p. 25,002, awarded to a party who ". . . suffered the threshold level of cognizable and compensable emotional distress," to substantial amounts such as e.g. $175,000 in *HUD, et al v. Edith Marie Johnson, HUDALJ 06-93-1316-8 (July 26, 1994).*

The Charging Party asserts that Complainant was injured in two ways -- based on Complainant's own fear of Respondent because of his conduct and the lasting effects thereof, and as a contributing factor to the deterioration of her relationship with Tom Andrews, the father of her child. Complainant has alleged no financial loss as a result of

Respondent's conduct.

Ms. Brown testified that as a result of Respondent's sexual harassment of her, she became afraid of him. She no longer felt safe at home and was afraid to be home alone or to return home alone. Tr. 73, 75-77. The Charging Party alleges that the predictable distress level was heightened in this case because of Ms. Brown's financial situation. Ms. Brown felt effectively "trapped" at the property and forced to play a "macabre game of 'hide and seek'" with Respondent until she could obtain funds to move. (CP's Post-Hearing Brief, at p.30) Tr. 75-77.

Complainant is entitled to compensation for the emotional distress she suffered based on her fear of Respondent. However, Complainant moved from Respondent's unit at the end of January 1991. There is no evidence that she had reason to fear Respondent after she moved. Accordingly, these fears should have dissipated after January 1991. The award of damages takes into consideration her distress caused by fear from October 1990 to the end of January 1991.

Complainant testified that Respondent's actions caused increased stress and tension in her relationship with Mr. Andrews. Tr. 76-77. She alleges that when she signed the lease for Respondent's apartment she had plans to get married to Mr. Andrews and to raise their child together. However, her relationship with him changed after her encounter with Respondent. She testified that when she felt she was being sexually harassed, she didn't want "anything to do with any aspect of any man" and she lost her sexual drive towards Mr. Andrews. According to her, Mr. Andrews did not understand why she took her upset and anger out on him, so they had fights. Sex between them didn't occur as often and went down to "absolutely nothing." Tr. 76. Her lack of interest in having a sexual relationship with Mr. Andrews continued even after they vacated Respondent's apartment and contributed to the death of their relationship. As of the time of the hearing they no longer had a relationship, and she did not hear from him very often. Tr. 76-78.

Complainant is entitled to compensation for the stress in her relationship with Mr. Andrews caused or exacerbated by Respondent's conduct; however, she must show a causal link between Respondent's unlawful conduct and the alleged damage to her relationship with Mr. Andrews. In this regard, Complainant testimony shows that her relationship with Mr. Andrews was troubled for reasons independent of Respondent's conduct. Complainant admitted that they had other problems which contributed to the decline of their sexual relationship. Tr. 81. Complainant testified that she discontinued having sexual relationship with Mr. Andrews in September 1990, and that continued until February 1991. Sometime after February 1991, she and Mr. Andrews resumed having sex and a second child was born to them on May 12, 1992. Tr. 80.

Respondent's conduct which was found to be harassing occurred in late October or early November 1990. (See Finding of Fact ¶14). Accordingly, Respondent's conduct has not been shown to be the cause of, or to have significantly contributed to, the cessation of Ms. Brown's and Mr. Andrew's sexual relationship. This alleged injury is not supported by the evidence and has not been considered in assessing damages.

Although Complainant claims that as a result of her experience with Respondent her attitude toward all men has been negatively affected, she didn't explain why or how this was so. She didn't relate any reaction on her part to any male that changed as a result of her encounters with Respondent. Further, Complainant testified that she sought no counseling or medical treatment because of her relationship problems or her anger. More than mere assertion of emotional distress is required to support an award for damages of this type. Thus, minimal consideration has been given to this alleged reaction to Respondent's conduct.

According to the Secretary, this is the first Title VIII sexual harassment housing case decided by an administrative tribunal. Because this is the first case, no specific guidance is available for determining an award for emotional damages resulting from sexual harassment by a landlord of his tenant. To support the amount of award requested in the instant case, the Charging Party has cited awards for emotional damages in Title VII cases. The Charging Party cited awards of $20,000 in *Gallagher v. Wilton Enterprises, Inc.*, 962 F. 2d 120 (1st Cir 1992); of $125,000 in *Dias v. Sky Chefs, Inc.*, 919 F. 2d 1370 (9th Cir. 1990), *vac'd and rem'd on other grounds,* 501 U.,S. 1201 (1991), *jury verdict aff'd*, 948 F. 2d 532 (9th Cir. 1991), *cert. den'd*, 112 S. Ct. 1294 (1992); of $50,000 in *Meadows v. Guptill*, 856 F. Supp. 1362 (D. Ariz. 1993); and of $10,000 in *Troutt v. Charcoal Steak House, Inc.*, 835 F. Supp. 899 (W.D. Va. 1993). The Charging Party points to the substantial damage awards in these cases and urges that emotional injury to a person from sexual harassment in the home is likely to be greater than that which results from sexual harassment in the workplace. The Charging Party contends that when home is not a safe place, a person can predictably feel distressed and immobilized, as it alleges is reflected in Complainant's testimony. Accordingly, the Charging Party seeks an award of $40,000 for compensation of Complainant's emotional distress.

In *Gallagher*, the plaintiff alleged sexual harassment on the job by her supervisor "every time I met him." Plaintiff alleged that the defendant's harassment lasted over a period of more than two years and that his conduct included squeezing, hugging, and kissing her. When she finally rebuffed his advances, he caused her to be fired. The plaintiff alleged severe emotional damage. The jury awarded $20,000 for emotional distress.

In *Diaz*, the jury awarded $125,000 in general damages for sexual harassment and

intentional infliction of severe emotional distress. The claim alleged conduct by the defendant that occurred over a period of more than 15 months and which involved almost daily incidents of harassment of numerous women employees. These included daily comments on the breasts, buttock and physical appearance of individual women, and the setting of a dress standard for women that included wearing of dresses or skirts and nylons and heels so that defendant could admire their legs. The defendant discharged plaintiff after she refused to wear nylons and heels.

In *Meadows*, the jury awarded $50,000 for the offensive touching of plaintiff in a hostile work environment sexual harassment claim against the employer. Plaintiff alleged defendant habitually harassed her over a three year period with offensive conduct which included his looking down her blouse, forcibly rubbing his body against hers, and grabbing her buttocks with both hands. Plaintiff was treated for emotional distress and depression.

Finally, in *Troutt*, the jury awarded $10,000 in damages for shame, humiliation and embarrassment. Plaintiff's supervisor sexually harassed her over a period of more than two years. Defendant made remarks that were suggestive and vulgar and escalated into physical contact that included kissing plaintiff, placing his hands on her breast, and reaching under her skirt and putting his hand on her crotch. The plaintiff alleged extreme emotional distress, sleeplessness and depression.

As can be seen, the above cited cases are not helpful in providing guidance for assessing the amount of award for Complainant in this case. All of the cited cases differed from the instant case as to the egregiousness of the defendants' conduct as well as to the effect of that conduct on the plaintiffs. The offensive conduct in each case involved the touching of a decidedly sexual part and a continuing course of conduct on the part of the defendant, not a single occurrence. Moreover, in each case the acts occurred over a lengthy period of time and ended with the firing (actual or constructive) of the employee for rejection of the employer's sexual advances. Finally, all plaintiffs alleged severe emotional distress requiring psychological treatment. These factors are not present in Complainant's case.

The Charging Party also cites as instructive the very substantial awards in the settlement agreements of two recent housing discrimination cases involving sexual harassment. It cites the consent decree agreement in the case of *United States v. Nedialkov,* No. 93 C 1794 (N.D. Ill. Dec. 1, 1994), in which four victims of sexual harassment were to divide $180,000; and the consent decree in *United States v. Dana Properties,* No. S-90-0254 (E.D. Cal. 1992), where eight victims of sexual harassment were to divide $342,000. Again, these cases are not instructive. The conduct charged in each of the two cases involved a pattern and practice of sexual harassment and over a six-year period and a one-year period, respectively. Moreover, the consent decree

provides that the award is to be shared among multiple victims, and contains no description of the nature of the harassment of, or the injury to, any particular complainant. Accordingly, these cases are not helpful in assessing damages in this individual case.

The evidence supporting injury to Complainant in the instant case involves one act wherein Respondent touched her arm and back, propositioned her, and then upon her rejection, called her a "bitch" and a "whore." Although Respondent's conduct is clearly offensive and reprehensible, Complainant was not subjected to the repeated acts as were the plaintiffs in the above cases. Moreover, Complainant's distress caused no major disruption in her activities of daily living. Complainant was employed at the time she was sexually harassed by Respondent. There is no evidence that her emotional distress caused her to lose her job or to be unable to successfully perform her job duties. In addition, Complainant had an infant child at the time. There is no evidence that her emotional distress caused her to be unable to satisfactorily care for her child. And, although she feared Respondent, her fear should have dissipated once she moved to a new address and had no further contact with him. Finally, although Complainant alleges a continuing lack of interest in all men, she has not required counselling or therapy for this problem. Considering all the circumstances in this case, I conclude that an award of $5,000 for emotional distress is a reasonable award in this case.

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose a civil penalty upon a respondent who has been found to have discriminated in violation of the Act. 42 U.S.C. § 3512(g)(3)(A); 24 C.F.R. § 104.910(b)(3). A maximum penalty of $10,000 may be assessed if a respondent has not been adjudged to have committed any prior discriminatory housing practice. 42 U.S.C. § 104.910(b)(3)(i)(A). The House Report indicates that in ascertaining the amount of the civil penalty, this tribunal "should consider the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of the Respondent and the goal of deterrence, and other matters as justice may require." H.R. Rep. N. 711, 100th Cong. 2d Sess. 37.

With regard to the nature and circumstances of the violation, and the degree of culpability, Respondent's conduct was highly offensive. He used his position as landlord to take advantage of this teenaged mother whom he knew to be vulnerable due to her youth, her need for housing and her financial situation. Moreover, Respondent is in the real estate business. He testified that he had training in the Fair Housing Act ("FHA"). Respondent's actions demonstrate a careless disregard for the FHA.

There is no evidence that Respondent has been adjudged to have committed any previous discriminatory housing practices. Thus, the maximum civil penalty that may be assessed against Respondent in this case is $10,000. 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3)(i)(A).

Evidence regarding respondents' financial circumstances is peculiarly within their knowledge, so they have the burden of producing such evidence for the record. If they fail to produce credible evidence which would tend to mitigate against assessment of a civil penalty, a penalty may be imposed without consideration of financial circumstances. See *Campbell v. United States*, 365 U.S. 85, 96 (1961) *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶¶ 25,001, 25,015 (HUDALJ Dec. 21, 1989), *aff'd* 908 F.2d 864 (11th Cir. 1990). Mr. DiCenso presented no evidence that payment of the maximum civil penalty would cause him financial hardship. Thus, the record does not contain any evidence that Respondent could not pay a maximum civil penalty without suffering undue hardship.

It is unlikely that the goal of deterrence would be served in this case in the absence of a substantial penalty. In this regard, I have not credited the Charging Party's assertion (without explanation) that the discriminatory behavior of Respondent appears "so ingrained in his nature," that a maximum civil penalty is necessary to insure that he is deterred in the future. (CP's Post Hearing Brief, p. 32). I find no basis in the record for this assertion. However, Respondent has several properties that he rents and will likely continue to have contact with numerous tenants. Further, other landlords must be put on notice that the Act truly prohibits sexual harassment in housing, that sexual harassment of those who rent from them will not be tolerated, and that conduct such as Respondent's is "not only unlawful but expensive". *HUD v. Jerrard*, 2 FH- FL (P-H), ¶25,005, 25,092 (HUDALJ Sept. 28, 1990).

Based on consideration of the above five elements, I conclude that to vindicate the public interest and to meet the goal of deterrence, a substantial penalty should be assessed. I conclude that $5,000 is a reasonable penalty.

Injunctive Relief

The administrative law judge may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell II*, supra, 908 F. 2d at 874 (quoting *Marable v. Walker*, 704 F.

2d at 1219, 1221 (11th Cir. 1983).

The purpose of injunctive relief in housing discrimination cases include eliminating the effects of past discrimination, preventing future discrimination, and positioning the aggrieved persons as close as possible to the situation they would have been in but for the discrimination. See *Park View Heights Corp. v. City of Black Jack*, 605 F. 2d 482, 485 (7th Cir. 1975) (citation omitted). The relief is to be molded to the specific facts of the case.

Injunctive relief is necessary to ensure that Respondent does not engage in discriminatory housing practices in the future. The appropriate injunctive relief for this case is provided in the Order below.

CONCLUSION AND ORDER

Having concluded that Respondent Albert DiCenso discriminated against Complainant Christina Brown, in violation of §§ 804(b) and 818 of the Act, and the regulations codified at 24 C.F.R. § 100.65(d)(5) it is hereby **ORDERED** that:

1. Respondent DiCenso is permanently enjoined from discriminating against Complainant Christina Brown and all other persons in the rental of dwellings on the basis of sex. Prohibited actions include, but are not limited to, discriminating against any person in making available any residential real estate-related transaction, and in the terms or conditions of such a transaction because of their sex, or otherwise making unavailable or denying a dwelling to any persons because of their sex as set out in 24 C.F.R. Part 100 (1994).

2. Within thirty (45) days of the date on which this Order becomes final, Respondent shall pay actual damages in the amount of $5,000 to Complainant, Christina Brown as compensation for her emotional distress and humiliation.

3. Within thirty (45) days of the date on which this Order becomes final, Respondent shall pay a civil penalty of $5,000 to the Secretary, United States Department of Housing and Urban Development.

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 thirty (30) days or the affirmance, in whole or in part, by the Secretary within that time.

/s/

CONSTANCE T. O'BRYANT
Administrative Law Judge