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 Long Island Housing Services, Inc., Charging Party, v. Harry Minicozzi, Ralph LaBella, and LaBella Realty, Respondents.

HUDALJ 02-92-0601-1
Decided: May 11, 1995

Thomas Carroll, Esquire
For the Complainant

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed by Long Island Housing Services, Inc. ("Complainant" or "LIHS"), alleging that Harry Minicozzi, Ralph LaBella, and LaBella Realty ("Respondents") violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (sometimes "the Act") by placing an advertisement that unlawfully discriminated against families with children, and by treating testers from LIHS differently based on familial status. The Department of Housing and Urban Development ("HUD" or "the Secretary") investigated the complaint, and after deciding that there was reasonable cause to believe that discriminatory acts had taken place, issued a Charge of Discrimination against Respondents on November 17, 1994. Respondents were served with the Charge on or about November 21, 1994. The Charge alleges that Respondents violated sections 804(a), (b), (c), and 805 of the Act (42 U.S.C. §§ 3604(a), (b), (c), and 3605), and various sections of the regulations promulgated thereunder.

Respondents failed to file an Answer to the Charge of Discrimination. Pursuant to a motion by the Charging Party to which Respondents filed no response, a Default Judgment was entered against Respondents on January 6, 1995, finding that Respondents have violated the Act as alleged in the Charge. On January 18, 1995, a hearing was held in Central Islip, New York, for the limited purpose of taking evidence on the appropriate relief to be awarded to the Charging party. At the close of the hearing, the Charging Party was directed to submit a post-hearing brief, which was filed March 22, 1995. Respondents did not appear at the hearing. Because Respondents failed to file an Answer to the Charge of Discrimination, the allegations of the Charge are deemed admitted pursuant to section 104.420 of the Rules of Practice governing this proceeding. 24 C.F.R. § 104.420.

Findings of Fact

1. Complainant is a private, non-profit, fair housing agency dedicated to equal housing opportunity and the creation of racially and economically integrated housing throughout Long Island, New York. Charge, ¶ 7; TR. 8; SX. 1.[1]

2. Respondent LaBella Realty is a real estate agency located at 169 Forest Avenue, Locust Valley, New York. Charge, ¶ 8.

3. Respondent Ralph LaBella is a licensed real estate broker with an office at 169 Forest Avenue, Locust Valley, New York. He is also the principal of Respondent LaBella Realty. Charge, ¶ 9, 10.

4. Respondent Harry Minicozzi works for, is an agent of, or is otherwise associated with, Respondent LaBella Realty. Charge, ¶ 12.

5. On June 3, 1992, Respondent LaBella Realty placed an advertisement in the Oyster Bay *Pennysaver* newspaper that stated, in pertinent part, "BAYVILLE! ON SOUNDSIDE ON THE BEACH, 2 Bedrooms ... from June 1st to 1st Oct. No children ... mature couple only. LaBella Realty 671-3344." Charge, ¶ 13; TR. 8; SX. 1.

[1]The following reference abbreviations are used in this decision: "TR." for "Transcript" and "SX." for "Secretary's Exhibit."

6. On June 6, 1992, a tester from LIHS, Tester One, telephoned Respondent LaBella Realty and told Respondent Minicozzi, who answered the telephone, that she was calling in response to an advertisement concerning a waterfront apartment in Bayville. After Tester One told Respondent Minicozzi that she intended to rent the apartment for herself and her 14-year-old grandson, Respondent Minicozzi said that he planned to see the owner that day and would ask about renting to someone with a child, since the advertisement stated, "no children." During this conversation, Respondent Minicozzi told Tester One that he would call her back after his visit with the owner. Charge, ¶¶ 14, 16; SX. 2, 3.

7. On June 6, 1992, a second tester from LIHS, Tester Two, contacted Respondent Minicozzi by telephone and inquired about the apartment advertised in the *Pennysaver* by LaBella Realty. Tester Two told Respondent Minicozzi that she was looking for an apartment for her retired parents. Pursuant to appointment, Respondent Minicozzi showed the apartment to Tester Two on June 8, 1992. Charge, ¶¶ 22-25; TR. 23, 24, 30; SX. 2, 3.

8. Respondent Minicozzi did not telephone Tester One as promised. Charge, ¶ 18; SX. 2, 3.

9. On June 7, 1992, Tester One telephoned Respondent LaBella Realty a second time and again spoke to Respondent Minicozzi. After Tester One identified herself by name, Respondent Minicozzi stated that he remembered her as the applicant with a child. Respondent Minicozzi refused to show the Bayville apartment that had been advertised in the *Pennysaver* to Tester One and instead offered to show her a different apartment. Charge, ¶¶ 19, 20, 21; SX. 2, 3.

10. Complainant spent considerable staff time and resources on this case, including: identifying the Respondents; filing a complaint and an amended complaint with HUD; researching other advertisements placed by Respondent LaBella Realty; investigating the ownership of Respondent LaBella Realty and the real estate assets of Respondent Ralph LaBella; establishing terms for a suggested conciliation agreement; reviewing case pleadings; preparing witness and evidence lists and a prehearing statement; and attending the hearing. Complainant's staff spent a total of 88.2 hours on this case. The time and resources Complainant spent pursuing this case diverted resources that would have otherwise been spent attempting to secure equal access to housing for Complainant's clients. TR. 9, 15-18; SX. 2, 3, 4.

Conclusions

By virtue of the facts admitted by Respondents' failure to file an Answer, Respondents Harry Minicozzi and Ralph LaBella violated sections 804(a) and (b) of the

Act (42 U.S.C. §§ 3604(a) and (b)), and all three Respondents violated section 804(c) of the Act (42 U.S.C. § 3604(c)). Charge, ¶¶ 29-33.

Remedies

Section 812(g)(3) of the Act provides that upon a finding that a respondent has violated the Act, an administrative law judge shall order "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person." 42 U.S.C. § 3612(g)(3). When a fair housing organization diverts resources from fulfilling its usual functions to pursuing redress for discrimination, it may recover the "opportunity costs" caused by the discrimination. *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th Cir. 1990); *Saunders v. General Serv. Corp.*, 659 F. Supp. 1042, 1060 (E.D. Va. 1987); *Davis v. Mansards*, 597 F. Supp. 334, 348 (N.D. Ind. 1984). Respondents have violated the Act through conduct that caused Complainant to spend 88.2 staff hours pursuing this case. To compensate Complainant for this diversion of resources, Complainant will be awarded $8,800, the amount requested by the Charging Party.

Civil Penalties

To vindicate the public interest, the Act authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (3) respondent's financial circumstances; (4) the degree of respondent's culpability; and (5) the goal of deterrence. *See HUD v. Murphy*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,002 at 25,058; *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001 at 25,014-15, *aff'd*, 908 F.2d 864 (11th Cir. 1990); H. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Nature and Circumstances of the Violation

The nature and circumstances of the violation in this case do not compel imposition of the maximum possible penalty. There is no evidence that Respondents' single unlawfully discriminatory advertisement was motivated by animus toward families with children. Evidence in the record suggests that Respondents were simply complying with the wishes of the owner of the advertised apartment. Although significant in economic terms, Complainant's injury was not extreme.

Respondents' Record

There is no evidence that Respondents previously have been found to have

committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against Respondents is $10,000, pursuant to 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3)(i)(A).

Respondents' Financial Circumstances

Evidence regarding Respondents' financial circumstances is peculiarly within their knowledge, so they had the burden of introducing such evidence into the record. If a respondent fails to produce credible evidence militating against assessment of a civil penalty, a penalty may be imposed without consideration of his financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1961); *HUD v. Jerrard*, Fair Housing-Fair Lending (P-H) ¶ 25,005 at 25,092; *Blackwell* at 25,015. Respondents have introduced no evidence concerning their financial circumstances and must therefore be considered capable of paying the maximum civil penalty without suffering undue hardship.

Respondents' Culpability

Respondents failed to appear and offer any reason why they should not be found fully culpable for the offense charged. As real estate professionals, they should have known that the advertisement that gave rise to this case was unlawfully discriminatory on its face.

Deterrence

Assessment of a significant civil penalty will send a strong message to Respondents and others similarly situated in the housing industry that the Secretary will not tolerate housing discrimination based on familial status, including discriminatory advertisements.

* * *

The Charging Party seeks to impose a $2,500 civil penalty against Respondents, a reasonable amount under the circumstances.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). The Charging Party in its brief requested injunctive relief but did not provide a proposed order. When injunctive relief is sought, it is the duty of the movant to specify in detail the nature of the relief sought. Absent that information, nothing more than a generally prohibitory order will be issued.

Conclusion

Respondents Harry Minicozzi and Ralph LaBella have violated sections 804(a) and (b) of the Fair Housing Act and Respondents Harry Minicozzi, Ralph LaBella and LaBella Realty have violated section 804(c) of the Act. 42 U.S.C. §§ 3604(a), (b), and (c). As a result of Respondents' conduct, Complainant suffered actual damages for which it will receive a compensatory award. Further, to vindicate the public interest, an injunction will be ordered against Respondents as well as a civil penalty.

ORDER

It is hereby ORDERED that:

1. Respondents are permanently enjoined from:

a. refusing to negotiate for the rental of, or otherwise make unavailable, a dwelling to any person because of familial status;

b. discriminating against any person in the terms, conditions, or privileges of rental of a dwelling because of familial status;

c. causing to be made, printed or published any advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status.

2. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay actual damages of $8,800 to Complainant Long Island Housing Services.

3. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay a civil penalty of $2,500 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) of the Fair Housing Act

and the regulations codified at 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/

THOMAS C. HEINZ
Administrative Law Judge

Dated: May 11, 1995.