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 Jeffrey D. Bellfy and Thomas and Effie Tsaggaris, Charging Party, v. Ocean Parks Jupiter Condominium Association, Inc., Respondents.	HUDALJ 04-90-0589-1 HUDALJ 04-90-0604-1 Decided: August 20, 1993

W. Jay Hunston, Jr., Esquire
For the Respondent

Carole W. Wilson, Esquire
Harry L. Carey, Esquire
Jonathan Strong, Esquire
Holly Cohen Cooper, Esquire
For the Secretary

Before: ROBERT A. ANDRETTA
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

These matters arose as a result of a complaint filed on June 11, 1990, by

Thomas and Effie Tsaggaris and a complaint filed on June 18, 1990, by Jeffrey D. Bellfy ("Complainants").[1] The complaints were filed with the U.S. Department of Housing and Urban Development ("HUD" or "the Department") and allege violations of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* ("the Act").[2] Adjudication is in accordance with 42 U.S.C. § 3612(b) and HUD's regulations which are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.On September 23, 1992, following investigation of the allegations made in the complaints, and determinations that reasonable cause existed to believe that discriminatory housing practices had taken place, the Secretary of HUD issued Determinations of Reasonable Cause and Charges of Discrimination ("Charges") against Ocean Parks Jupiter Condominium Association, Inc. ("Respondent" or "the Association").[3] The Charges allege that Respondent engaged in discriminatory practices on the basis of familial status in violation of 42 U.S.C. § 3604. A joint hearing was held in West Palm Beach, Florida, December 15-17, 1992, and February 23-25, 1993. Post-hearing briefs were filed by the parties on May 13, 1993. Several submissions were subsequently filed by the parties, including corrections to Respondent's post-hearing brief, which were filed on June 21, 1993. Accordingly, these matters became ripe for decision on that last-named date.[4]

Findings of Fact

The Respondent

1. Ocean Parks Condominiums ("Ocean Parks") is a community of 12 condo-miniums located at 300 N. A1A, Jupiter, Florida. Ocean Parks consists of 328 condominium units in 13 buildings. (Charges, ¶ 8; Answers, ¶ 8).[5]

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[1]The Tsaggarises' case has been docketed as HUDALJ 04-90-0604-1. Mr. Bellfy's case has been docketed as HUDALJ 04-90-0589-1. The cases were not consolidated.

[2]As discussed *infra*, effective March 12, 1989, the Act was amended pursuant to the Fair Housing Amendments Act of 1988 to prohibit discriminatory housing practices on the basis of, *inter alia*, familial status.

[3]The investigation of Mr. Bellfy's complaint commenced on September 12, 1990, and was completed on April 19, 1991. (RX 36). The investigation of the Tsaggarises' complaint commenced on September 12, 1990, and was completed on April 30, 1991. (RX 28).

[4]Additional submissions were received after June 21, 1993, but none affected the outcome of this proceeding.

[5]The transcript of the hearing is cited as "Tr." and a page number. The Charging Party's Exhibits are identified as "SX" and an exhibit number; Respondent's Exhibits are identified as "RX" and an exhibit number; Joint Exhibits are identified as "JX" and an exhibit number.

2. Buildings A and B make up Condominium 1. Each of the remaining condominiums consists of one building, designated by a number and corresponding letter. (SX 63).

3. All of the condominium units are spacious two- or three-bedroom units. (Tr. 724, 1404).

4. Each condominium is subject to a Declaration of Condominium ("Declaration"), filed in the public records of Palm Beach County, Florida. (JX 1A).

5. The Association is a Florida not-for-profit corporation which manages the 12 condominiums at Ocean Parks. (Charges, ¶ 9; Answers ¶ 9; JX 1A, p. 1 of Articles of Incorporation, Art. II of Bylaws, Art. X of Declaration of Condominium). Each owner of a condominium unit at Ocean Parks is a member of the Association. (Charges, ¶ 9; Answers ¶ 9; JX 1A, Art. VI of Bylaws). The Association is responsible for approving prospective purchasers, lessees, and mortgagees. (JX 1A, Art. III(2)(g) of Articles of Incorporation, Art. IV(15) of Bylaws). It has the power "[t]o make and amend regulations respecting the use of the property in the condominium." (JX 1A, Art. III(2)(f) of Articles of Incorporation). The regulations must "be equally applicable to all members, and uniform in their application and effect." (JX 1A, Art. XII of Bylaws). The Association is responsible for maintaining, repairing, replacing and operating Ocean Parks property. (JX 1A, Art. III(2)(d) of Articles of Incorporation). The Association has the power to make and collect assessments, including special assessments, against its members.[6] (JX 1A, Art. XIV of Declaration, Art. III(2)(b) of Articles of Incorporation, Art. IV(2) and (3) of Bylaws).

6. The Association is managed by a Board of Directors whose members are elected by all members of the Association at the annual meeting each March. The election is conducted on a community-wide basis, rather than a building-by-building basis. All directors must be members of the Association. After the election, the Board members select the officers. (JX 1A, Art. III of Bylaws; JX 1C, ¶¶ 6 and 7; Tr. 731-33).

Complainant Bellfy

7. Complainant Jeffrey D. Bellfy and Noreen Sachs purchased unit D401 in Condominium 4 on December 7, 1988. (SX 10; RX 16). They moved into the unit in February 1989. (Tr. 342). At the time, Mr. Bellfy was 41 years of age and Ms. Sachs was 33 years of age. (SX 16A; Tr. 1437). Mr. Bellfy had joint custody of Alexis, his daughter from a previous marriage. She was 12 or 13 at the time he purchased the unit, and she lived with him during part of each year. (Tr. 348-50).

[6]For example, it has levied a special assessment to pay $100,000.00 in legal expenses incurred in defending these cases. This assessment ranged from $292.91 to $331.04 per unit. (SX 111).

8. Unit D401 has three bedrooms and three bathrooms and an effective living area of 2,042 square feet. (SX 77A; 77B; Tr. 344).

9. Prior to residing in Ocean Parks, Mr. Bellfy had leased a townhouse condominium. (Tr. 407). Mr. Bellfy did not think of Ocean Parks as a retirement community when he purchased the condominium. (Tr. 394). He was familiar with retirement communities from his employment as a furniture salesman. (Tr. 394-404).

10. Mr. Bellfy and Ms. Sachs entered into a contract to purchase the unit on October 11, 1988. (RX 16). They completed an Application for Approval of Purchaser by the Association ("Application") on October 14, 1988. The Application stated that "children under 14 not permitted," and that by signing the Application, receipt of the Association's rules and regulations and agreement to abide by their provisions had been acknowledged. (RX 16).

11. Vera Peterson, a member of Respondent's interview committee during 1988 and 1989, interviewed Mr. Bellfy and Ms. Sachs on November 30, 1988. During the interview, Mr. Bellfy told Ms. Peterson that he had joint custody of Alexis, and that Alexis would be spending the summers and other school vacations with him. He "press[ed]" the issue of whether Alexis or future children he and Ms. Sachs might have could reside with them at Ocean Parks "from the very beginning of the interview" because he felt that "if there was going to be any question about [his household's] acceptability [he] wanted it out on the table." (Tr. 348-50; *see also* Tr. 438-39). Ms. Peterson assured Mr. Bellfy and Ms. Sachs that Alexis' visits would not be a problem. Specifically, the interview left Mr. Bellfy with the impression that Respondent was changing its policies because of "recent legislation" and "therefore, [the past rule prohibiting children under 14 from living at Ocean Parks] would not be affecting the situation with [his] daughter." (Tr. 350-51, 418). If Ms. Peterson had told him that he could not live at Ocean Parks with his daughter, he would not have moved in. (Tr. 418). Ultimately, the restriction on children described in the application did not concern
Ms. Sachs because Mr. Bellfy and she believed they "had a verbal agreement with Vera [Peterson] ... that it would be all right for [them] to have children." (Tr. 439).[7]

12. On November 30, 1988, the Association issued Mr. Bellfy and Ms. Sachs a Certificate of Approval. (SX 10; RX 16; Tr. 346-47, 760).

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[7]Ms. Peterson testified that Mr. Bellfy did not raise an issue about children during his interview, and that she told him his daughter could stay only 30 days. (Tr. 761, 763). However, I do not credit her testimony which, unlike that of Mr. Bellfy and Ms. Sachs, was replete with memory lapses. Most significantly, she could not recall whether Ms. Sachs was present at the interview; she could not recall the name of any other person she had interviewed, yet remembered interviewing Mr. Bellfy for no specific reason; and, she could not remember Mr. Bellfy's response when she told him children could visit for only 30 days. (Tr. 761, 776-77, 779). Moreover, Mr. Bellfy's memory of the interview is more likely to be accurate because he had joint custody of his daughter, and therefore needed to ascertain whether there were any conditions to her living with him at Ocean Parks.

13. When Mr. Bellfy and Ms. Sachs purchased the condominium, they intended to get married and start a family while they lived there. (Tr. 1373, 1429, 1638). They purchased the condominium unit as long-term housing. (Tr. 1484). Mr. Bellfy liked Ocean Parks because the units were large and well-constructed; the development was nicely landscaped; was well-located, *i.e.*, near tennis, movies, and convenience stores; and he had friends in the neighborhood. (Tr. 1484-86). Mr. Bellfy and Ms. Sachs spent time and money making decorating changes to make the condominium unit suit them. (Tr. 1431, 1486-87).

Complainants Thomas and Effie Tsaggaris

14. Thomas and Effie Tsaggaris purchased unit F101 in Condominium 9 on September 23, 1980. (SX 20; Tr. 244). At the time, Mr. Tsaggaris was 62 and Mrs. Tsaggaris was 59. (SX 73A; SX 73B). They moved into the condominium in August 1982. (Tr. 244, 309). Prior to living at Ocean Parks, the Tsaggarises had never lived in a condominium and had no knowledge of condominium unit ownership. (Tr. 325).

15. Unit F101 has three bedrooms and three bathrooms and an effective living area of 2,042 square feet. (SX 77C; Tr. 245).

16. When they purchased their unit, Mr. and Mrs. Tsaggaris believed that people of all ages could live in Ocean Parks.[8] (Tr. 247, 295-96, 298-300, 310, 325-26). They had grandchildren who were approximately 3 and 8 years of age at the time of their purchase, and they would not have purchased if they had known children under 14 were not allowed as permanent residents.[9] (Tr. 300).

17. Mr. and Mrs. Tsaggaris liked their condominium because it was large. Mr. Tsaggaris is a musician (Tr. 308-09, 1069-70) and the 40 foot living room/dining room was large enough for his grand piano and his rehearsals (Tr. 247, 1070, 1098). They intended to live there the rest of their lives. (SX 82 at 11; Tr. 247, 1070, 1097-98). They redesigned the kitchen, upgraded the appliances, and screened their porch.

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[8]Mr. Tsaggaris testified that they learned of Ocean Parks based upon the recommendation of an acquaintance. They did not read any promotional material on the community. (Tr. 325). Prior to purchasing the unit, neither Mr. nor Mrs. Tsaggaris read the Association's rules and regulations that they had been given at closing. Mrs. Tsaggaris eventually read them, but at hearing did not recall the age restriction.
Mr. Tsaggaris read them when debate began at Ocean Parks concerning the Fair Housing Amendment Act's 55 and older exemption. (Tr. 296, 298-300, 325-26).

[9]Their son and grandchildren did not live with them when they purchased the condominium. However, they did not want to foreclose that option in the event their son and his wife were to predecease the grandchildren. The Tsaggarises also did not want any problems if they predeceased their son, and he inherited ownership of the unit. (Tr. 1072-73).

(SX 106 at 7; Tr. 1070-71).

Ocean Parks' Restrictions on Residency by Children Prior to the Fair Housing Amendments Act

18. Prior to enactment of the Fair Housing Amendments Act of 1988, none of the Declarations governing the units at Ocean Parks restricted residency by families with children. The purpose and use restrictions in those Declarations stated that condominium units "shall be used and occupied by the respective owners thereof, as private single family residences, for themselves, their families, and social guests, and for no other purpose." (JX 1A, Art. XI of Declarations). The Declarations generally required adult supervision of children under 14 using the recreational facilities, including the pool and recreation rooms (JX 1A, Art. XI.C. of Declarations). The Declarations exempted inheritance from the normal procedures regarding conveyances if ownership passed to a "surviving spouse or to any member of his family regularly in residence with him in the condominium parcel prior to his death, who is over the age of fourteen (14) years." (JX 1A, Art. XIII.A of Declarations). Where ownership by inheritance passed to any person not residing with the unit owner prior to his death, the person was required to notify the Association within 90 days of taking title of the intention to reside in the unit, and the Association had 30 days from notice to inform the person of ownership and occupancy approval. (JX 1A, Art. XIII.B of Declarations).

19. A brochure used by Ocean Parks' developer in 1983 described Ocean Parks as having "very large apartments [that] offer all the features of single family living plus the advantages of condominium convenience ... [They] have more space than most 2 or 3 bedroom houses." The brochure did not describe or refer to any restrictions on children or young adults. (SX 5; Tr. 126, 128).

20. Advertisements run by Ocean Parks' developer and real estate agency between 1974 and 1984 described Ocean Parks as an "adult" community. (RX 12; Tr. 661).

21. Respondent's rules and regulations in effect prior to enactment of the Fair Housing Amendments Act excluded children under the age of 14 from being permanent residents at Ocean Parks. Children under 14 were welcome as guests, but could not be in residence for more than 30 days in a calendar year. (RX 1, Rule 8; RX 2, Rule 8; RX 3, p. 5).

The Fair Housing Amendments Act and Ocean Parks' Restrictions on Occupancy

22. In the latter part of 1988, as the Fair Housing Amendments Act was being debated, the Association retained Jay Levine, Esq., as its counsel to insure that it could continue to age restrict pursuant to the new 55 and older exemption.[10] (Tr. 850-51, 854).

[10]Most of Mr. Levine's practice involves the representation of homeowners and condominium

Mr. Levine was concerned about how to comport the exemption with the documents that governed Ocean Parks. Specifically, Mr. Levine was concerned with state covenant law implications and procedural questions given that any amendment to a Declaration required a 2/3 vote of the members of that condominium building, and that the community as a whole was governed by the Association and its Board. (Tr. 852-55).

23. In September and October of 1988, Respondent took a survey of the ages of the residents at Ocean Parks which is detailed below. In March 1989 another set of data was collected by Respondent which is also detailed below. (RX 5).

24. At a Special Meeting on April 5, 1989, the Board of Directors of Ocean Parks ("the Board") approved a proposed amendment to Article XI of the Declarations (the purpose and use restrictions) and scheduled a special membership meeting for May 10, 1989, to consider the amendment. The undated memorandum, which accom-panied the notice of the meeting sent to unit owners stated in part that the Fair Housing Amendments Act:

> prohibits the enforcement of all age restrictions contained in the governing documents of Ocean Parks. The current age restrictions ... would be completely eliminated and Ocean Parks, a housing community primarily for older persons, could become a community made up of people of all ages including children from infants through teenagers.
>
> However ... Ocean Parks can qualify for an exemption under the housing for older persons provisions provided certain condominium documents are modified.

(SX 33). The memorandum described the proposed amendment as necessary "[t]o formalize the Board's intent" to provide housing for older persons. The memorandum stated that the Board's intent "was further supported by a motion approved by an overwhelming majority of unit owners during the annual meeting on March 1, 1989." *Id*. In the words of John Boettger, a Board member at the time, the Board's "feeling was that we were an adult community and we wanted to go for the exemption ... We did not want to let children in ... We wanted the whole community to be exempt from the amendment to the Fair Housing Act." (Tr. 701-03).

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associations. In or about 1988, Mr. Levine testified before the U.S. Senate Judiciary Committee on aspects of the Fair Housing Amendments Act which affect older persons. (Tr. 848).

25. In April 1989, a group of owners opposed to Ocean Parks' qualifying for the 55 and older exemption formed, calling itself the Ocean Parks Committee for Fair Disclosure. (RX 49A). Mr. Tsaggaris was chairman of the committee. (RX 54; Tr. 317). The committee campaigned against the proposed amendment to the Declarations, and sent letters to unit owners soliciting their support. (RX 49A; RX 54).

26. On May 17, 1989, the Association sent its members a notice that the May 10, 1989, meeting had been canceled because it was "necessary [for] the vote on the adoption of the amendment to the Declaration of Condominiums be conducted on an individual condominium basis." (SX 39; Tr. 143). On that date, the Association also sent owners a notice of special unit owners meetings scheduled for July 10-12, 1989, which stated that the meetings' "sole purpose [would be] Amending the Declarations according to the exempt classification of the (Federal) FAIR HOUSING AMENDMENTS ACT OF 1988." (SX 39).[11]

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[11]The proposed amendment stated:

> I. The Ocean Parks Jupiter Condominium Community is a residential Community for Older Persons that provides housing, social and recreation facilities and programs to meet the needs of persons 55 years of age or older. No unit shall, at any time, be permanently occupied by children who are under eighteen (18) years of age, except that children below the age of eighteen (18) may be permitted to visit and temporarily reside for periods not exceeding thirty (30) days in total in any calendar year period. No permanent occupancy of any unit shall be permitted by an individual between the ages of eighteen (18) and fifty-five (55) unless at least one (1) permanent resident of the unit is fifty-five (55) years of age or older. Notwithstanding the same, the Board of Directors has the responsibility to grant hardship exceptions under the Rules and Regulations of the Office of Housing and Urban Development and the Condominium Documents to permit individuals between the ages of eighteen (18) and fifty-five (55) including, but not limited to heirs, devisees or spouses of existing unit owners, to permanently reside in the community, providing that said exceptions shall not be permitted in situations where the granting of a hardship exemption would result in less than eighty per cent (80%) of the units in the Condominium community having no permanent resident fifty-five (55) years of age or older, it being the intent that at least eighty per cent (80%) of the units shall at all times have at least one permanent resident fifty-five (55) years of age or older. The Board of Directors shall establish policies and procedures for the purpose of assuring that the foregoing required percentages of adult occupancy are maintained at all times. The Board, or its designee, shall have the sole and absolute authority to deny occupancy of a unit by any person(s) who would thereby create a violation of the aforestated percentages of older person occupancy. Permanent occupancy or residency shall be defined in the rules and regulations of the Association as may be promulgated by the Board.

(SX 39).

27. At the July meetings, Condominiums 4, 7, 9, 11, and 12 rejected the proposed amendment ("the open condominiums"). Condominiums 1, 2, 3, 5, 6, 8, and 10 voted to adopt it ("the closed condominiums"). All the Complainants resided in open condominiums. (SX 40).

28. Based on the July 1989 votes, on August 17, 1989, the Association filed a Certificate of Amendment to the Declarations of the closed condominiums in the public records of Palm Beach County, Florida. The certificate set forth the entire text of the amendment, *see supra* n.11. (SX 41).

29. On September 1, 1989, the Association issued revised rules and regulations. These rules and regulations, like the previous ones, prohibited permanent residence by children under 14. They also contained the same provision regarding the permissibility of guests under the age of 14 that had been set forth in the previous rules and regulations. The rules and regulations made no mention of the 55 and older exemption, including any reference to the open and closed condominiums. (SX 43, pp. 4-5, 16).

30. On September 8, 1989, the Board adopted a resolution which stated, in part, that "the Community has for many years maintained a minimum age restriction for permanent occupancy" and that the Fair Housing Amendments Act imposes "various requirements in order for the Community to continue maintaining its minimum age restriction" ("the Resolution"). The Resolution stated that the Association had adopted the amendment, *see supra* n.11, and had asked its attorney to prepare further amendments to all the Declarations "to meet the requirements of the Act." The Resolution stated that the Statement of Intent and Rule and Regulation, described below in Finding 31, was the policy of the Association, and that the Board "shall add to that already existing, as many significant services and facilities as possible which are specifically designed to meet the physical or social needs of persons age 55 years and older." (SX 45).

31. On September 21, 1989, the Association filed a Statement of Intent and Rule and Regulation ("Statement of Intent") in the public records of Palm Beach County, Florida. (SX 44). The Statement of Intent stated that Community, defined as the Ocean Parks condominiums, "is in the process of complying with the requirements of the Fair Housing Amendments Act of 1988 ("ACT") ... [It] is in the process of taking the necessary steps and adopting the necessary procedures to qualify for the exemption in the ACT relating to `55 or over housing.'" The Statement of Intent provided that the following rule applied to all applications for lease and purchase:

> No lease or purchase of a unit shall be approved unless the intended occupancy of the unit shall be by at least one person who has attained the age of 55 years. The only exception to this is if the community at the time exceeds the occupancy requirements set forth in the Act; in that event, occupancy shall be permitted of a unit even where no person is 55 years of age or older. However, if at

> the time an occupancy by persons none of whom are 55 years of age would cause the community to fall below the occupancy requirements of the Act, then the lease or sale shall not be permitted and shall be disapproved if no intended occupant is 55 years of age or older. In any event, no person may occupy any unit in violation of Article XI, Section 1 of the Declarations of Condominium for Ocean Parks Condominiums One, Two, Three, Five, Six, Eight and Ten; and with respect to the other condominiums within the community, no person may occupy any unit in violation of the rule and regulation of the Association limiting permanent occupancy to persons fourteen (14) years of age or older.

Id.

32. Mr. Levine, advised Respondent to enforce the Statement of Intent because "by doing that then they could legitimately continue to enforce the [rule excluding children under] age fourteen."[12] (Tr. 869).

33. By letter dated November 14, 1989, Mr. Levine addressed a series of demands that had been made by certain residents and owners of units in the open buildings. Mr. Levine stated that Respondent would not require at least one person 55 or older to occupy a unit in the open buildings, but that it would continue to enforce the prohibition against children under 14 in those buildings. (SX 46; *see also* Tr. 866). In response to Mr. Levine's letter, the developer of Ocean Parks which owned certain units

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[12]Mr. Levine was aware that the requirement in the Statement of Intent that at least one person be 55 or older might be unenforceable in the open condominiums. (Tr. 855-56, 870-71). Accordingly, by letter dated August 15, 1989, he had advised the Association:

> It may be argued that the Statement of Intent and Rule and Regulation is unenforceable with respect to the Condominiums which did not pass the Amendments in July, 1989, as restricting a use which is permitted by the Declaration of Condominium. It is my opinion that such an argument, if a correct one, would not affect the Association's ability to obtain the Exemption under the Fair Housing Amendments Act of 1988. If it [the Statement of Intent] would be in place for a short duration, to be followed by Amendments to the Condominium Documents, I would not be very troubled by any such argument.

(SX 42)(emphasis in original). Mr. Levine underlined this paragraph to "make sure that the Association realized that ... under state covenant law, and the condominium statute, the rule [requiring at least one person aged 55 or over in the open condominiums] would fall." (Tr. 863; *see also* Tr. 856). In the timetable attached to his letter, Mr. Levine advised Respondent that normally he "would not recommend" the Association wait until its annual meeting, over six months later, to have another vote at which it would "seek to have all 12 Declarations have the same restrictions to meet the requirements of the Act," but that given "that the Community is so far above the 80% threshold of the Act, and given the fact that the Association anticipates little turnover of occupancy until then, the risk of waiting is minimal." (SX 42).

in the open condominiums sued the Association and each member of the Board. (Tr. 734, 865-66).

34. On November 30, 1989, the Association sent all real estate brokers in the local area a letter prepared by Mr. Levine's office stating, "the entire Ocean Parks Condominium Community (`Community') is a Community designed and operated for persons 55 years of age or older, as defined in the Fair Housing Amendments Act of 1988 and applicable Administrative Rules." (SX 47; Tr. 857-58, 861). The letter stated that in the closed condominiums, "at least one (1) person to occupy the Unit must have attained the age of 55 years of age. The minimum age for permanent occupancy in those Condominiums is 18 years." It also stated that in the open condominiums, "[t]he only permanent occupancy requirement is that no person under the age of 14 years may permanently occupy a Unit." (SX 47).

35. By letter dated December 11, 1989, the Association notified all its members in both open and closed condominiums of the results of the July 1989 votes and sent them copies of the Resolution and Statement of Intent. (SX 48; Tr. 144-45). The letter explained that in the closed condominiums, resales and new leases were required to be to households in which at least one person was 55 years of age or older, and in which no one was under 18. The letter also stated that in the open condominiums, "no person under the age of fourteen (14) years may permanently occupy a unit[,]" and that those condominiums "must either amend their declarations to provide that children and adults of all ages may permanently occupy a unit or amend ... their declarations to become eligible for exemption for the Fair Housing Amendments Act of 1988." (SX 48).

36. During early 1990, Respondent, through Mr. Levine, continued to assert that children under 14 were not allowed to reside permanently in any condominium, including the open condominiums. (RX 43).

37. In June 1990, Mr. Bellfy and Mr. and Mrs. Tsaggaris, residents of open condominiums, filed complaints with HUD. Both alleged that Respondent's November 30, 1989, letter to local real estate agents caused potential buyers to not purchase their units because of Ocean Parks' proclaimed status as a community for persons 55 and older. (SX 6; SX 7).

38. To settle the developer's suit, *see* Finding 33, the Association sent letters to the real estate brokers in the area stating that its November 30, 1989, letter had been "incorrect." (SX 54; Tr. 739). The letter, dated September 24, 1990, stated in part:

> Ocean Parks Condominiums Nos. FOUR, SEVEN, NINE, ELEVEN and TWELVE are <u>not</u> designed and operated for persons 55 years of age or older.
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> In other words, the entire community has never been and is not now designed for persons 55 years of age or older. There are 12 separate condominiums in Ocean Parks. Five condominiums,

> i.e., Four, Seven, Nine, Eleven and Twelve, operate under their original Declarations of Condominium and retain their original status without restricting the age of the renter or owner in the condominium. Seven condominiums, i.e., One, Two, Three, Five, Six, Eight and Ten, amended their original Declarations to restrict occupancy of units to at least one person who has attained the age of 55 years.

(SX 54) (emphasis in original). The letter also assured brokers that the "common elements are administered for the use and benefit of every legal resident over or under 55 years of age." (Tr. 731, 739).

39. As part of the settlement of the developer's suit, the Association also sent a September 24, 1990, letter to each of its members to "clarify" its position. (SX 55; Tr. 83-84). The letter stated that the open condominiums were "not bound by a 55 years of age or older residency restriction," but the closed condominiums were. It further stated, "[t]he Association will be seeking an exemption under the Act only for those condominiums which have adopted the amendment." (Tr. 737-39).

40. By letters dated September 19, 1990, the Association informed Mr. Bellfy and Mr. and Mrs. Tsaggaris that their condominiums had no age restrictions, and asked them to withdraw their complaints. (SX 52; SX 53; Tr. 280-81, 391-92). Neither Mr. Bellfy nor the Tsaggarises withdrew their complaints after receiving these letters. (Tr. 281, 392). The Tsaggarises did not withdraw their complaint after receiving the letter because they felt the Association kept changing the rules and "the community had become divided because of this ...." (Tr. 281). Mr. Bellfy had similar concerns about what he perceived were continual changes in the rules about children; he believed a group of owners still wanted the entire community to become housing for older persons and felt he had "no security and no known future for that community that would allow us to raise a family." (Tr. 1639).

41. As of April 1, 1988, and through at May 1989, Respondent's application form for approval of purchasers requested the applicant's and spouse's ages, and mentioned no verifying documentation. The application form made no mention of the 55 and older exemption; it only requested the names and ages of children 14 and older who would reside with the applicant, and stated "children under 14 not permitted." (RX 16). Since at least May 1989, Respondent has used a package of application materials for lease and purchase transactions referred to as an interview workbook.[13] As of May 1989, the application form requested the applicant's and spouse's ages, as well as the ages of other

[13]Mr. Lake, who chaired the interview committee from March 1990 to March 1991, testified that he used a version of the interview workbook, SX 63, throughout his tenure on the committee. (Tr. 793, 795). Doris Grunlee who served on the interview committee during 1990, testified that SX 34 through SX 37 were among the forms used during her tenure, and that those exhibits had been removed from her copy of the workbook. (Tr. 519, 531-33). SX 34, SX 35 and SX 37 are all dated May 1989.

residents and their relationship to the applicant, but mentioned no verifying documentation. The application form made no mention of either the 55 and older exemption or the prohibition of children under 14. The application form stated that the applicant had received, read, and agreed to abide by the rules and regulations, and highlighted the rules pertaining to cars, pets, occupants, and decisions of the Board. With specific reference to "occupants," the application stated:

> Only the person(s) named in [the part of the application listing the residents/occupants of the unit] may occupy the apartment on a permanent basis. If the applicant(s) designate others, as permanent residents, the applicants may only occupy the unit as a guest for not more than 30 days in any calendar year.

(SX 35; *see also* Tr. 519).

42. Respondent issued revised application materials as part of its interview workbook in September 1990. The materials included application forms for sales and leases of closed condominiums and sales and leases of open condominiums. The "open" forms requested the names of the applicant, his or her spouse, and any permanent residents. The "closed" forms requested the applicant and spouse's name and age, as well as the names and ages of all permanent residents. The "closed" application forms did not mention any age verification documentation. Neither the "open" nor "closed" forms made any mention of the 55 and older exemption, or the prohibition against children under 14. (SX 63).

43. Since at least September 1990, included in the interview workbook among the forms used by the interview committee was a document used for age verification. Prior to February 1991, the form was entitled "Registration Form - Age Verification." (SX 36;
see also Tr. 519). The form requested the names and ages of all unit owners "as per the deed or other instrument of title," and all occupants, "including owners, tenants, family members and other permanent occupants." The form also requested the designation and submission of one of the following documents as proof of age: birth certificate, baptismal certificate, driver's license, voter's registration or passport. The form stated that the information sought was requested of all unit owners and, if different, all permanent occupants residing in the units. It made no mention of the 55 and older exemption, or any prohibition against children under 14, and stated that the information was "requested to assist the Association in meeting the requirements of the Fair Housing Amendment [sic] Act of 1988."[14]

[14]Harold Lake testified that during his tenure as chairman of the interview committee from March 1990 to March 1991, he participated in all interviews conducted by the committee. According to Mr. Lake, during the entirety of his tenure, the committee asked the ages of applicants to the closed buildings but not the open buildings, and made copies of the driver's licenses of the applicants to the closed buildings. (Tr. 788, 791-95). However, the documentary evidence described above demonstrates that age verification documentation was required only as early as September 1990, and that such documentation was required

only from applicants to closed buildings as of February 1991.

44. Since at least May 1989, the interview workbook also included a "Renter or Owner Use Restrictions" form. The form made no specific mention of the 55 and older exemption, or the prohibition against children under 14, and stated:

> Children under 18 years of age are welcome as guests, but may not be permanent residents. [sic] and no child shall be in residence for more than 30 days in a calendar year. While here they must be under constant supervision of their parents or an adult apartment resident to insure that they do not cause disturbance or interfere with the rights of other owners in common areas.

(SX 34; *see also* Tr. 519).

45. On October 2, 1990, the Association filed a notice rescinding its earlier Statement of Intent in the public records of Palm Beach County, Florida (SX 56), and filed a revised Statement of Intent for the closed condominiums (SX 57). The revised Statement of Intent stated that the closed condominiums were in the process "of attempting to comply with the requirements" of the Fair Housing Amendments Act and "of taking the necessary steps and adopting the necessary procedures to qualify for the exemption in the Act relating to `55 and over housing.'" (SX 57).

46. On November 1, 1990, the Association issued new rules and regulations. (SX 64). The rules and regulations stated that children under 14 could be permanent residents in the open buildings but that children under 18 could not be permanent residents in the closed buildings. They made no mention of the 55 and older exemption and its requirements. (SX 64 at 5).

47. Since February 1991, the Age Verification form used only for the closed buildings expressly referenced the requirement that each unit be occupied by at least one person 55 or older. The form stated that "proof of age must ... be recorded in the condominium office prior to occupancy," and requested the signatures, ages and designation of proof of age documents for owners and/or tenants. Since February 1991, the Renter or Owner Use Restrictions listed the closed buildings, and stated that in those buildings, "children under 18 years of age are welcome as guests, but may not be permanent residents." The form made no reference to the 55 and older exemption and its requirements. (SX 63).

48. The hearing in this case was set for December 15, 1992. On December 2, 1992, the Association amended its Answer of October 20, 1992. It withdrew its assertion that the "communities" comprised of the closed condominiums were exempt from the Act, and substituted the assertion that the Association is one "community" for purposes of the Act and is in compliance with the Act.

49. Respondent conducted another survey of the ages of Ocean Parks residents in December 1992, detailed below. (RX 7).

Eighty Percent Requirement

50. In September and October 1988, a survey[15] was taken of residents' ages on Respondent's behalf, "to clarify exception #3 under the Fair Housing Amendments Act of 1988." Each page of the survey represented one condominium building, and had space for the survey taker to record the number of residents per unit and how many of those residents were over 55. As tabulated by Respondent, the survey revealed that 92.4% of Ocean Parks residents were over 55 years of age; the results were not tabulated on a unit occupancy basis. (RX 5).

51. Respondent collected a second set of data in March 1989. (RX 5). The data was compiled using a form, entitled "SUBJECT: VERIFICATION OF AGE - FAIR HOUSING AMENDMENT ACT OF 1988." The person completing the form was to either check and initial a space indicating that no one 55 or older lived in the unit, or to sign as owner or lessee "verifying" that at least one person 55 or older lived in the unit. As tabulated by Respondent, the survey revealed that 89.6% of the units at Ocean Parks were occupied by at least one person age 55 or older. (RX 5).

52. Respondent collected a third set of data captioned "Resident data - 55+ or 55- /owner / lease / 7/21/89." (RX 5). The data consists of "a summary of residents dated 7-21-89." (Tr. 570).[16]

53. The fourth set of data introduced by Respondent was a December 1992 "census." (RX 7; Tr. 596-97). The forms used in conducting the census provided space for the occupants' names and ages and designation of "proof of age documents."[17] As tabulated by Respondent, the survey revealed that over 92% of the units at Ocean Parks

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[15]Doris Grunlee, a building representative, testified regarding the method of collecting the data. Ms. Grunlee and a neighbor who represented the building jointly with her, "just sort of knew [whether people were at least 55] ... [W]e never went and asked anybody their age, period." According to Ms. Grunlee, "[o]bviously, I wasn't going to go ringing doorbells and ask people their ages, neither was Jeanette." (Tr. 197).

[16]Respondent did not tabulate the results of this survey, nor did it proffer any explanation of its meaning or how the data was compiled.

[17]Ocean Parks building representatives conducted the census. The building representatives report directly to the Association's Board. Tom Maher, who collected the data for his building, was not given instructions other than "to pick up the forms ... [and] find out the ages of the people residing in the building." (Tr. 488, 821-22). Mr. Maher recorded some ages with no proof of age, based on "experience, appearance." (Tr. 499). Indeed, the directions which accompanied the census materials did not explicitly require that the census taker be shown proof of age. The building representatives and Gene Horton, the Association's manager, signed over 90 slips without indicating that they had seen any proof of the occupant's age, even though the form stated: "PROOF OF AGE REQUIRED. The office will copy license, etc." (RX 7).

were occupied by at least one person age 55 or older. (RX 7; *see also* Respondent's post-hearing brief at 10-11).

54. Respondent did not collect source documentation for the data compiled in the first three surveys. In connection with the fourth survey, Respondent collected source documentation indicating that the unit was occupied by at least one person 55 or older for 25, or 7.6% of the units at Ocean Parks. (RX 5; RX 7).

Facilities, Services, and Activities at Ocean Parks

A. Facilities

55. Ocean Parks has two clubhouses. (Tr. 819). Each clubhouse has an activity room, a kitchen, a lending library, a high fidelity music system, a piano, and restrooms. There is a pool table in one clubhouse. The Association office is located in the east clubhouse. (RX 13 and 14). The clubhouses are open between 8:30 a.m. and 4:30 p.m., Monday through Friday, and are locked at other times. Only specific people, such as building representatives, have keys to the clubhouses. Residents must obtain a key from one of the designated people and "accept responsibility" for the clubhouse to use it at any time outside the hours it is officially open. (SX 43 at 13; SX 64 at 13; SX 62, Apr. 1991 Pipeline, p. 1).

56. The Association installed a ramp to the main entrance to the east clubhouse in November 1992.[18] (SX 66; Tr. 228). Prior to that, there had been a rise of approximately three inches at the front door, making the entrance inaccessible to an individual in a wheelchair. (SX 65; Tr. 685-86; *see also* 24 CFR 100.201, Appendix II to Subchapter A).[19] The restrooms in the east clubhouse are not accessible to an individual in a wheelchair.[20] (SX 66; SX 67B; Tr. 639, 1483). The entrance to the west

[18]The record indicates that there is an alternate entrance into the rear of the clubhouse by going through the screened patio, but does not indicate whether the alternate entrance is accessible by an individual in a wheelchair. However, resident Wilma Schlicker testified that she was unable to navigate her husband's wheelchair between the screened patio and the clubhouse, while John Boettger testified that he was able to do so with his wife's wheelchair. (Tr. 230, 686).

[19]Indeed, the entrance was not necessarily accessible where the person in the wheelchair had assistance. Thus, although Mr. Boettger was able to navigate the rise and get his wheelchair-bound wife into the clubhouse prior to installation of the ramp (Tr. 686-87), the rise prevented Mrs. Schlicker from being able to get her wheelchair-bound husband into the clubhouse (Tr. 226).

[20]Although Mr. Horton testified that the ladies' restroom in the east clubhouse was "accessible," he acknowledged that he was unsure whether any of the stalls were wide enough for a wheelchair or had grab bars. (Tr. 621-22). Further, he testified that none of the stalls in the men's restroom is wide enough for a wheelchair or has grab bars (Tr. 622-24), and that there is a step between the porch and the restrooms in the east clubhouse (SX 66; Tr. 639; *see also* SX 67B; Tr. 388). Accordingly, the record does not support a finding that the east clubhouse restrooms are accessible to an individual in a wheelchair.

clubhouse has a 1/2 inch threshold and is wheelchair accessible. (RX 8; Tr. 619; *see also* 24 CFR 100.201, Appendix II to Subchapter A).

57. Ocean Parks has two swimming pools. It also has a "screened patio to pool." (RX 13; RX 14). As early as 1980, Respondent's rules and regulations provided that when the "air temperature [was] expected to rise above 70 degrees during the day," the Association heated the two pools to approximately 78 to 80 degrees; when it was expected to be cooler, it turned the heaters off. (RX 2 at 9; RX 3 at 11; SX 43 at 13; SX 64 at 13; Tr. 1482). Beginning in the second half of 1992, Respondent kept the pool water warmer than it had in the past. (Tr. 1483).[21] The pools are "designed for all ages." They have no slides, diving boards, or other "kids' equipment." (Tr. 697-98). One pool has a grab bar by its showers, but the other does not. (Tr. 988, 1031). The gate used to gain access to at least one of the pools without clubhouse entry is wide enough for a wheelchair. (Tr. 697). The maximum depth of each pool is six feet. (Tr. 990, 1482).

58. There is one "sunning patio independent of pool." (RX 13).

[21]As discussed *infra*, Respondent's assertion, by virtue of RX 13 and RX 14, that the two pools are "maintained at 84 degrees year round *for persons with arthritis*" is self-serving and unsubstantiated.

59. Ocean Parks has a convenient location. It is within walking distance of a public beach, a fishing area, restaurants, a post office, churches, a medical office, and the Palm Beach County Heart Trail, which is monitored by medical personnel. (RX 13; RX 14). It also is near two shopping malls. (Tr. 669-70, 674, 705). To reach one mall, residents must cross a busy street with no traffic light. (Tr. 705-06). The other mall can be reached by walking down an access road. (Tr. 705). Ocean Parks is across the street from a public golf course. There is a public bus stop at the rear entrance to the complex. (RX 13; RX 14).

60. There is a gate to the Jupiter Dinner Theater on the south end of Ocean Parks. There is no sidewalk within Ocean Parks leading to the gate; the grass is cut close, and can be walked across easily. The path, from the end of the parking lot for Building D, leads to a grassy area behind the Dinner Theater. (SX 116; Tr. 708-09, 831, 1478-79). There is no sidewalk for the first 20 feet after one crosses through the gate to the Dinner Theater side; the path is not paved but is level. On the Dinner Theater side, the path ends at a wooden garden box. (SX 116; Tr. 1028).[22]

61. There is a footpath leading to a gate from a parking lot and grassy area at Ocean Parks to "an area of gravel and sand and to the side of Circle K convenience store" on the north end of Ocean Parks. The gate area is not lit at night. The path slopes and is "rough" and "sandy." (SX 116; SX 117; Tr. 711, 1022, 1378, 1479).

62. Although the gates to the Dinner Theater and Circle K have locks on them (Tr. 712, 831, 1410), the front of Ocean Parks is unfenced (Tr. 1378-79), and residents often leave the gates open or unlocked (SX 62, July 1990 Pipeline, p. 2, and Dec. 1992 Pipeline, p. 3).

63. There are two benches at Ocean Parks; residents must walk across grass to reach them. (SX 65; Tr. 623, 696, 1481).

64. Residents must go over rises of an inch or more[23] to gain access to many of the condominium units at Ocean Parks, making them inaccessible to an individual in a wheelchair.[24] (SX 66, 67A; *see also* 24 CFR 100.201, Appendix II to Subchapter A).

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[22]According to Mr. Boettger, the gate provided a "direct walking entrance, or wheelchair entrance, if you will" to the theater. (Tr. 708). The record, including Mr. Boettger's own testimony, however, does not support a finding of wheelchair accessibility. When asked whether one could wheel or walk across the grass within Ocean Parks leading to the gate, Mr. Boettger only replied, "You can walk across it easily." (Tr. 709). Indeed, photographs of the gate area show a narrow path, constricted on the dinner theater side by a garden box. (SX 116).

[23]Indeed, two residents testified that they were unable to assist persons in wheelchairs over the rises. Mrs. Schlicker testified that when her husband became wheelchair bound, if she wanted to take him out, she had to maneuver him over a drop of "several inches" from the front door of her condominium unit to the outside hallway or "catwalk" and a smaller rise on the first floor to leave the building. (Tr. 225). Jeanette Parry testified that she was unable to push her husband's wheelchair into her building because of

the changes in level (two inches outside and one inch inside) at the entrance to her unit. (RX 50; Tr. 546-47). Although Ms. Parry is "fairly strong" and is under 55 years of age, she could not "hold 180 pounds and tip it up and get it over that [change in level]"; instead, she helped him out of the wheelchair and inside the unit. (Tr. 546-48).

[24]Respondent asserts that there are entrance ramps in all condominiums. (RX 13). However, the record indicates that only some of the buildings' entrances have rises which are ramped. (*See*, *e.g.*, SX 66, photograph labelled "building "E" entrance (condo 2)"; SX 67A). Further, the entrances to the first floor units in some buildings are from the outside, rather than from a hallway, and the entrances to those units have unramped rises. (*See*, *e.g.*, SX 66, photographs of condominium 6; SX 67A).

65. There are no security guards at Ocean Parks. (Tr. 638). There are telephones at each building entry; non-residents can call the individual they are visiting and be let into the building. At least seven of the buildings have no inner halls; instead, residents on upper floors gain entry by the catwalks. (Tr. 1404-05). In those buildings, non-residents can gain access to the entry door of the first floor units without using the telephones. (RX 13; Tr. 627-28). There is lighting on the roadways and the buildings; there are elevators in all buildings, "monitored" fire alarms, and "handicapped parking throughout the community."[25] Recycling bins are located in each building, and trash depositories are located on each floor of each building. (RX 13; RX 14).

66. There are no curbs on the roadways in Ocean Parks. (Tr. 986). There are no sidewalks next to the roads, so residents walk in the street.[26] (Tr. 385, 689-90). Winding, curved roads impair visibility. (Tr. 386). One of the paths within the complex is "hazardous to people in wheelchairs because it's hard to navigate. It's on a hill. It slants down and then it makes a sharp [turn]." (Tr. 617). A paved path between the E and G buildings is not sufficiently wide for wheelchair use. (Tr. 228).

B. Services and Activities

[25]Respondent's rules state: "`Handicapped' spaces are reserved solely for use by handicapped persons either while getting in or out of vehicles, or for short time parking while visiting a resident." (SX 43 at 6;
SX 64 at 6).

[26]Although Mr. Boettger testified he felt safe in the streets because most of the time people obey the 15 mile per hour speed limits (Tr. 690-91), the stern warnings in the September 1990 Pipeline and the plea for obedience in the April 1992 Pipeline (SX 62) suggest that other residents are concerned by the number of people who fail to comply with the speed limits.

67. The Association does not employ a social director.[27] An Activities Committee was formally organized at Ocean Parks in 1980.[28] The Activities Committee has its own "constitution and by-laws and all of those things." (Tr. 818). It "is composed of every resident in Ocean Parks." (Tr. 819). Volunteer unit owners run the Activities Committee and organize all activities at Ocean Parks; the Committee does not retain a paid social director. Specifically, the Committee has a board composed of two coordinators. Each clubhouse has two co-chairs, and each building has an activities representative apart from the building representative. Other unit owners participate in the arrangement of activities, as well. (Tr. 682, 817-21). The Activities Committee has experienced some difficulty in finding someone to serve as a coordinator.[29] (SX 62; Tr. 829-30). Most of the activities at Ocean Parks occur during the day.[30] (SX 62; Tr. 979). The Activities Committee organizes fewer activities during the summer, and residents participate less in activities. (SX 62, Sept. 1992 Pipeline, p. 3, which refers to the Activities Committee having been on "summer hiatus"; Tr. 639).

68. The Activities Committee publicizes its activities in the Pipeline, the monthly newsletter published by the Association since 1980. The Pipeline includes a calendar of activities for the month. The activities representative for each building also posts notices of the activities on the building's bulletin board. (SX 62; Tr. 632, 817, 821).

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[27]As discussed *infra*, since May 1992, Gene Horton has served as Respondent's full-time property manager. (Tr. 556-58).

[28]Neither the Association's Articles of Incorporation nor its By-laws mention the Activities Committee. (JX 1A). The Activities Committee is first mentioned in Association's rules and regulations adopted by the Board on June 15, 1983, and is thereafter referred to as such. (RX 3 at pp. 12-13; SX 43 at pp. 13-14; SX 64 at pp. 13-14). Earlier rules and regulations refer to an Entertainment Committee. (RX 1 at 9-10; RX 2 at 10-11). None of the rules and regulations explain the Association's relationship to the Activities Committee.

[29]The August 1990 Pipeline solicited a volunteer to serve as the Activities Committee coordinator, explaining that Helen Sergeant had volunteered to fill the post through September. Apparently, no one volunteered, because the next Pipeline included the following appeal on the first page:

> PRETTY Please ...
> OPJ Activities Committee is still waiting for you to step up and say you'll serve as coordinator. Why is everyone playing coy or bashful? No matter - Helen Sergeant (B309) is gone from the job this month. So you're looking at 3 possible scenarios: OPJAC will go uncoordinated, jeopardizing all our activities. Or you will step up and give it a try. Or OPJAC will turn the screws on someone else and you'll say, "Oh, heavens, not HER!" Please call Helen - 747-0318 - and tell her you can do a great job as OPJAC coordinator.

(SX 62).

[30]Anita Finley, the gerontologist who testified on Respondent's behalf, testified that this indicates that "there's an older population there which requires that." (Tr. 979). However, at least one of Respondent's surveys of its residents showed that "[e]vening programs seem to be preferred over those in the daytime." (SX 62, Nov. 1, 1989 Pipeline, p. 3).

69. The Activities Committee offers bingo games in the clubhouse approximately twice a month during the winter season but does not offer them out of the season. Generally 20 to 50 people participate. The bingo caller is "considerate of the older people" and speaks loudly and slowly. The Activities Committee offers poker games in the clubhouse twice a week, and bridge almost every week.[31] (SX 62, *e.g.*, calendars for September 1989 through February 1991; Tr. 628-29, 679-81, 826-27). Approximately 12 to 16 people regularly participated in bridge as of November 1991, with an unspecified greater number expected later in the season. (SX 62). The afternoon bridge, which is "just for ladies," was "about to collapse for lack of a chairperson" in April 1992, but then the woman who chaired the evening bridge volunteered to chair both. (SX 62, Apr. 1992 Pipeline, p. 3).

70. A social event, such as a dance, dinner party, new resident party, or cookout organized by the Activities Committee, occurs less than once a month. For example, since May 1992, there have been three or four such events.[32] (SX 62; RX 4; Tr. 630-31). Its May 1991, Kentucky Derby Day party was attended by "40 or so horse-players," but the May 1992 Derby Day party was canceled. (SX 62, May and June 1991 and May 1992 Pipeline).

71. The Pipeline notifies residents of monthly "coffee breaks" for the men and a weekly stitchery group for women. (SX 62; Tr. 682-84, 828).

[31]At most, ladies' bridge is offered two afternoons per month and mixed bridge is offered two evenings per month. Some months, the Activities Committee organizes fewer meetings. (SX 62, *see, e.g*, calendars for August 1989 and August, September, and December 1991).

[32]Mr. Horton testified that the Activities Committee had organized approximately three cocktail parties since he began working at Ocean Parks. (Tr. 630-31). The Pipeline's calendars for May - December 1992 show no cocktail parties, but they show a champagne brunch on Labor Day, a costume party on Halloween, a luncheon and fashion show on November 19th, and a Christmas gala on December 11th.
(SX 62).

72. The Activities Committee occasionally organizes outings, or obtains tickets to events, such as dinner theater performances, concerts, and races, for its members to purchase. It does this less than once per month. (SX 62). Since May 1992, the Committee has not organized any bus trips of any sort, including bus trips to the theater, the race track, or bus tours. (Tr. 625-26, 640). Jupiter River Park (a mobile home park adjacent to Ocean Parks) organizes many of the trips the Pipeline describes. (*See*, *e.g.*, SX 62, Nov. 1989 Pipeline, p. 2; Nov. 1990 Pipeline, p. 4; Feb. 1991 Pipeline, p. 4; May 1991 Pipeline, p. 2).

73. Twice per week, there are exercise classes in the pool followed by stretching exercises out of the pool. (SX 62; Tr. 624-25).

74. The "exercise walking groups" at Ocean Parks are groups of people who, on their own, "get together and walk around the property." (RX 13; SX 62, calendars; Tr. 631). Since May 1992, the Activities Committee has publicized two walkathons. (Tr. 631). The "cycling groups" at Ocean Parks consist of people who organize on their own and bicycle "just for fun." (RX 13; SX 62, calendars; Tr. 638). The Activities Committee has organized, at most, one fishing party since May 1992; other people have organized fishing parties on their own. (Tr. 632).[33]

75. The Activities Committee schedules tennis two mornings per week at Tequesta Park.[34] (SX 62).

76. Since May 1992, there have been no seminars or speakers at Ocean Parks.[35] (Tr. 630, 636, 639-40).

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[33]Mr. Horton testified that the reference to "fishing parties" on RX 13 refers to parties organized by the Activities Committee as well as to people who get together to fish more informally. He also testified that the Activities Committee had organized one fishing party since he had been at Ocean Parks. (Tr. 632). However, no fishing parties are listed on the calendars since Mr. Horton began working at Ocean Parks in May 1992. (SX 62).

[34]Respondent introduced no evidence regarding the location of the park. The record also contains no evidence of what the Activities Committee does to organize or facilitate the scheduled tennis. The Pipeline states, "[J]ust show up & you'll play," suggesting that Respondent did not provide transportation or take other steps to organize the tennis. (SX 62, Nov. 1991 Pipeline, p. 4).

[35]Respondent asserts that it provides such courses that address topics such as finances, health, safe driving, and religion. (RX 13; RX 14). However, the record evidence demonstrates that few, if any, courses have been held at Ocean Parks, and that of those provided, they were not under the auspices of the Association, but rather the Activities Committee. Mr. Horton testified that a safe driving course, "Fifty-five Alive," had been scheduled in the Summer of 1992, but had been canceled due to an insufficient number of summer-time participants. (Tr. 639). The Pipeline (SX 62, June 1990 calendar and July 1990 Pipeline, p. 4) indicates that 27 residents passed a safe driving course at Ocean Parks in June 1990, and that it had been organized by the Activities Committee. (*See also* Tr. 994-96). The only seminars and speakers listed by Respondent in a summary prepared for the October 1989 through December 1992 "seasons" are an annual favorite books program and a speaker's forum held almost annually. (RX 4). The March 1992 forum consisted of three residents, each speaking for ten minutes, and was attended by 33

77. Arts and crafts that Ocean Parks residents have made or acquired are displayed in a clubhouse "at least once a year." There have been concerts in the clubhouses, including three concerts that Mr. Tsaggaris gave free of admission. (RX 13; Tr. 691, 1104). Since May 1992, there have been no art displays or concerts. (Tr. 628, 633).

78. Except for bingo, stitchery, trips to the dinner theater, holiday parties, and the March 1992 forum, fewer than 20 people attend most activities. (Tr. 827-29).

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residents. The record does not indicate the sponsor or organizer of these forums. (SX 62, Mar. 1992 Pipeline, p. 1; Apr. 1992 Pipeline, p. 4).

79. The Association provides the following: a four-person staff, including Mr. Horton, the full-time property manager; maintenance for all buildings and grounds; repair of minor plumbing and electrical problems in common areas; publication of a telephone directory of residents; and a 24 hour emergency service telephone number.[36] The building representatives have keys to each unit and the office keeps an emergency update file. Mail and newspapers are delivered to each building. (RX 13; Tr. 620, 641). The Association posts directional signs on the grounds, giving directions to each building, and signs in each building, indicating the location of each apartment.[37] (RX 13).

80. The Association participates in Crime Watch, which the Jupiter Police Department sponsors, and has a "security committee," which consists of people who report suspicious activity to the office or the police. (RX 13; RX 14; Tr. 637-38).

81. The "Sunshine Lady" sends get well, sympathy, and birthday cards to residents. The Association publishes notices of her cards in the Pipeline. (SX 62).[38]

82. The local hospital provides a van to take people to the hospital. Use of the van is not limited to Ocean Parks residents or senior citizens; it is available to "anyone in the area." No Ocean Parks resident uses Meals on Wheels, which is also available, but not sponsored by Ocean Parks. (RX 13; RX 14; Tr. 635, 837, 1030). The Activities Committee encourages people to participate in a local program called Vials of Life, by keeping lists of medications in their refrigerators so they will be available for use by paramedics in emergencies. (Tr. 692-93, 985). The Association generally does not provide transportation to hospitals, doctors, or other medical care. A notice that a local medical facility was performing blood pressure checks was posted once, advising residents that transportation in a car pool could be arranged. (Tr. 640, 836).[39] Residents at one point "thought a bus would be nice." Because they do not have one, if they cannot drive themselves, they get a neighbor to take them to medical appointments, or they call the hospital and arrange to use its van. (Tr. 837).

83. Wheelchairs are provided by the Activities Committee. The wheelchairs are heavy and not in good condition. Under the Association's rules and regulations, residents are not allowed to borrow one for more than a few days.[40] There is one

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[36]The office is open only between 8 a.m. and 2 p.m. The management company's main office handles emergency calls outside those periods. (SX 62, Nov. 1992 Pipeline, p. 4).

[37]The fire marshal required the signs within the buildings. (SX 62, Sept. 1992 Pipeline p. 2).

[38]The record contains no evidence that Respondent appointed the Sunshine Lady or that it paid for the cards she sent. The record also does not indicate that she had any other responsibilities.

[39]The record does not reveal whether the notice was posted on behalf of the Association or the Activities Committee.

[40]"OP rules say the clubhouse wheelchairs are only for emergencies." (SX 62, Sept. 1991 Pipeline,

wheelchair in each clubhouse; this is insufficient to meet the demand, and people keep them too long. (SX 62, Nov. 1990 and Sept. 1991 Pipelines; Tr. 236).

p. 2). "[A]s quickly as possible, once the emergency is over, borrowers should return the wheelchairs to their proper clubhouse locations." (SX 62, Nov. 1990 Pipeline, p. 4).

Complainant Bellfy's Claim of Damages

84. Shortly after Mr. Bellfy purchased the condominium unit, he became "less confident" about being able to have his daughter Alexis visit. (Tr. 352-54). He testified that when Alexis arrived in the summer of 1989:

> [T]here had already been battle lines established and [some people] were [perceived as] enemies of the Association. I felt she had become one and there was concern about her psychological welfare being in that community, as well as our own happiness and ability to -- for Noreen and I to have a family and reside in that community comfortably.

(Tr. 354).

85. By the end of that summer, after the vote to amend the Declarations, Mr. Bellfy concluded that he wanted to get out of Ocean Parks "as quickly as possible." (Tr. 354-55).

86. On September 18, 1989, Mr. Bellfy entered into a four-month exclusive listing contract with Morgan Chapman. Mr. Bellfy arrived at the listing price of $139,000.00, based on information Mr. Chapman provided him about comparable sales and his own experience looking for a home less than a year earlier.[41] (SX 11; Tr. 355-56, 445-46, 1489). He felt he could not sell for less than $130,000.00 to recover his initial investment. (Tr. 1490).

87. During 1988 and 1989, prices for three-bedroom units at Ocean Parks ranged from $113,500.00 to $175,000.00. (RX 10; Tr. 1405-08).

88. Between September 1989 and May 1, 1990, Mr. Chapman held over ten open houses for the condominium unit. (Tr. 360, 447).

89. During an open house on Sunday, December 3, 1989, Joseph L. and Barbara L. Barnes offered to purchase the condominium unit for $127,000.00.[42] Later that day, Mr. Chapman's secretary prepared the written offer, and the Barneses gave Mr. Chap-man a $1,000.00 deposit. (SX 14; SX 15; Tr. 360-64, 457, 460). Two or three days of negotiations followed.[43] (SX 14; Tr. 372-73, 459-60).

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[41]Mr. Bellfy and Ms. Sachs had purchased the unit for $120,000.00 after it had been on the market for over a year. (Tr. 1488).

[42]The record does not indicate the Barneses' ages or whether they had any children.

[43]Mr. Chapman presented the December 3rd offer to Mr. Bellfy and Ms. Sachs that day. Mr. Bellfy and Ms. Sachs made a counteroffer of $137,000.00 (SX 14; Tr. 451, 457, 460). Mr. Chapman presented the counteroffer to the Barneses by telephone, and the Barneses made an oral counteroffer of $133,500.00 (Tr. 457, 460). On or after December 4th, Mr. Bellfy and Ms. Sachs countered at $135,000.00 and

90. On December 4, 1989, during the period of Mr. Bellfy's and Ms. Sachs' negotiations with the Barneses, Mr. Chapman's office received the November 30, 1989, letter from Respondent stating that the entire Ocean Parks community was a community for people 55 years of age or older. After receiving that letter, Mr. Chapman telephoned Mr. and Mrs. Barnes and informed them of the Association's position. (Tr. 471-72).

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initialled their counteroffer. (SX 14; Tr. 371-72, 455, 457-58, 460, 467). The Barneses did not accept the $135,000.00 counteroffer and did not make any other offers. (Tr. 459-60).

91. While Mr. Bellfy's last counteroffer of $135,000.00 was on the table, and after Mr. Chapman had advised the Barneses of the November 30 letter, the Barneses advised Mr. Chapman that they were not going to purchase the unit. (Tr. 470-71).[44]

92. On January 9, 1990, Mr. Bellfy extended the listing through April 18, 1990. On March 14, 1990, he extended the listing through May 1, 1990, and lowered the listing price to $135,900.00. (SX 12; SX 13; Tr. 357-59, 445-46).

93. After negotiations with the Barneses proved unsuccessful, Mr. Chapman showed the unit to between fifteen and twenty other people; none made offers. (Tr. 373, 475-76). During that period, he had listings for comparable condominium units[45] which were not in communities designed for persons 55 and older. The sellers received prices at or near their asking prices after an average listing time of 90 to 100 days. (Tr. 477, 482).

94. After May 1, 1990, Mr. Bellfy and Ms. Sachs continued trying to sell the condominium unit through word of mouth. (Tr. 374, 422, 1471). For example, a friend of Ms. Sachs' father from Michigan expressed interest in purchasing the unit; he discussed it on the telephone with Ms. Sachs, and met in person with Mr. Bellfy, but did not buy the dwelling. (Tr. 374, 442). Realtors knew it was for sale. (Tr. 374). Mr. Chapman knew they still wanted to sell the dwelling, showed it a few times, and said he would tell them if anyone was interested in the unit. (Tr. 1471-72). Mr. Bellfy and Ms. Sachs did not post a for-sale sign on the unit, because they believed the Association's rules prohibited such signs. (SX 43 at 15, rule 5; SX 64 at 15, rule 5; Tr. 422-23, 1467, 1469).

95. More than half the three-bedroom units sold in 1988 and 1989 at Ocean Parks had sales prices of $130,000.00 or more; during 1991 and 1992, none sold for $130,000.00 or more, and many sold for less than $100,000.00. (RX 10). During 1988 and the first 11 months of 1989, ten three-bedroom units sold. One three-bedroom unit (D306) sold during the time between Respondent's November 30, 1989, letter (SX 47) and its September 24, 1990, letter (SX 54).

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[44] After overruling a hearsay objection made by Respondent's counsel, I allowed Mr. Chapman's testimony that he had the "impression" that the Barneses chose not to pursue a deal because Ocean Parks was a 55 and older community. (Tr. 470-71). Upon review of the record, and concluding that the testimony was inadmissable hearsay not subject to any exception, I will not consider it in determining liability or damages. *See* Fed. R. Evid. 402, 403. Moreover, even if the testimony had been allowable, it has none of the indicia of reliability and therefore has no probative value to support a finding that the Barneses withdrew because of Ocean Parks' status as a community for persons 55 and older. Indeed, the only direct evidence proffered by the Charging Party regarding the purported reason for the Barneses' withdrawal from negotiations was the testimony of Mr. Chapman, and no explanation was offered showing why the Barneses were not called to testify themselves.

[45] Mr. Chapman had listings for eight to ten other condominium units during his contract with Mr. Bellfy, and also showed other people's listings. He sold six or seven which were comparably priced to Mr. Bellfy's list price, with similar characteristics; of those, Mr. Bellfy's unit was the largest, and one of the nicest. (Tr. 479-81).

96. Anthony Reich, a real estate appraiser, appraised the value of the Bellfy/Sachs three-bedroom unit as of December 8, 1989, and December 2, 1992. He calculated the 1989 value to be $131,000.00 and the 1992 value to be $105,000.00. (SX 77).

97. When the formal listing agreement with Mr. Chapman expired on May 1, 1990, Mr. Bellfy and Ms. Sachs did not list the unit on the multilist service. Mr. Bellfy and Ms. Sachs believed that they could not sell the unit for more than $110,000.00 and had been advised by realtors that an "old" listing, *i.e.*, a listing which shows the property has been on the market for a long time, is ineffective. (Tr. 374, 377, 378-79). The mortgage on the dwelling was $90,000.00, and all of Mr. Bellfy's savings were invested in the unit. Mr. Bellfy believed that if they had sold the property for $110,000.00, after paying the realtor's commission and closing costs, they would have lost their investment, and would have had no money left, including money to obtain alternate housing. They decided to take the unit off the market for a period of time, in the hope that prices would rise again. Prices, however, declined. (Tr. 377-79, 1467, 1662-69). Beginning in approximately December 1991, Mr. Bellfy began hoping that HUD would "alter the situation to make [his] place more saleable" by ending the discrimination against families with children, and thus increasing the market upon which he could draw to sell the dwelling. (Tr. 381-82, 406, 1487-88).

98. After the listing expired, Mr. Chapman and Mr. Bellfy showed the unit to Martha McGurn in November 1992. Ms. McGurn had previously resided in Ocean Parks and was interested in returning. Lucy Warboy, a friend of Ms. McGurn, arranged for and accompanied Ms. McGurn to the showing. (Tr. 1762-63). Ms. McGurn inspected the apartment for approximately 15 minutes. Mr. Bellfy did not accompany her, and Mr. Chapman did so for a few minutes, along with his daughter. (Tr. 1767-68). Neither Mr. Bellfy nor Mr. Chapman asked for Ms. McGurn's telephone number, and they never contacted her. (Tr. 1770-71). Ms. McGurn was left with the impression that Mr. Bellfy was not seriously interested in selling the unit.[46] (Tr. 1772). Ms. McGurn did not make an offer to purchase Mr. Bellfy's and Ms. Sachs' unit, and in February 1993, purchased another unit at Ocean Parks.[47] (RX 53; Tr. 1772, 1787, 1792).

99. Mr. Bellfy and Ms. Sachs listed the property with Mr. Chapman again in early 1993. (Tr. 1468-70).

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[46]According to Mr. Chapman, Ms. McGurn was not a motivated buyer, but rather "a tire-kicker, somebody who just comes in, looks, and has no interest." (Tr. 1787). Given Ms. McGurn's testimony as corroborated by Ms. Warboy, as well as Ms. McGurn's subsequent purchase at Ocean Parks, I reject Mr. Chapman's characterization of her interest.

[47]Ms. McGurn purchased a unit in a closed building. (Tr. 1772). Nothing in the record demonstrates that the "closed" versus "open" status of the building played any role in her purchase decision.

100. Mr. Bellfy and Ms. Sachs have never rejected any offer to purchase the condominium unit, except in making their counteroffers to the Barneses. (Tr. 1456, 1490-91).

101. Had they sold their unit at Ocean Parks, Mr. Bellfy intended to move with Ms. Sachs to Ocean Way, a nearby Condominium community with smaller units. They hoped to purchase the unit, but wanted to rent first because they wanted to see if they liked the neighborhood, and because they were "a little leery" about buying after their experience at Ocean Parks. (Tr. 1508-09, 1615-16). As discussed at the hearing, had Mr. Bellfy rented at Ocean Way, and at the same time rented out his Ocean Parks unit at market rental rates, he could have reduced his financial obligations by approximately $200.00. (Tr. 1672, 1676).

102. When they purchased the unit, Mr. Bellfy and Ms. Sachs believed they could afford to live at Ocean Parks. Since living at Ocean Parks, their expenses, particularly for automobiles, has increased. Mr. Bellfy's income in 1989 was $29,970.00; in 1990, $34,258.00; in 1991, $31,936.87; and in 1992, $29,157.00. His and Ms. Sachs' combined income in 1989 was $51,714.00; in 1990, $54,197.00; in 1991, $60,642.00; and in 1992, $58,277.00.[48] (SX 17A; SX 104A; SX 118; Tr. 1430-31, 1435, 1503-04).

103. Mr. Bellfy is employed as a member of the design staff of a furniture store. His income is entirely earned on commission. In that position, he interviews customers to determine their preferences in furniture, often to help them design newly purchased homes. (Tr. 1493). His feelings about the situation at Ocean Parks have made it difficult for him to concentrate on the job, and to communicate his ideas to his customers. He describes himself as less patient, more irritable, and less personable. "My job a lot is selling and romancing and trading an idea and formulating that idea, and it's very difficult sometimes if you're not ... in a very positive frame of mind." (Tr. 1493-94).

104. Mr. Bellfy had been able to make the payments on the two homes he had owned in the past. (Tr. 1504). Prior to living in Ocean Parks, Mr. Bellfy always had paid his housing expenses on time, except for a brief time when he made late payments after a 1987 work-related injury prevented him from working.[49] (Tr. 1504, 1630). Additionally, he does not remember ever having checks returned for insufficient funds prior to living at Ocean Parks. (Tr. 1505). While living at Ocean Parks, he has made late payments for housing expenses and had checks returned. (SX 17C; SX 17D; SX 17E; Tr. 1505). When the checks are returned, he feels "[e]mbarrassed and stupid." (Tr. 1505).

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[48]Mr. Bellfy attributed the decrease in his income to a bad economy and his decreased job performance. (Tr. 1504-05).

[49]During his recovery, Ms. Sachs was very supportive and he and Ms. Sachs became closer. (Tr. 1452, 1630).

105. When Mr. Bellfy realized that neither his daughter Alexis, nor any children he and Ms. Sachs might have, could live with them at Ocean Parks, he felt "[a]ngry and devastated and just very upset with the situation. I was very worried that I had made a very bad decision in terms of my present daughter and my future plans for marriage and another child." (Tr. 1511). Ms. Sachs felt "very upset ... like I was trapped. I felt very upset that I couldn't have children ... I felt betrayed ... by the Condominium Association." (Tr. 1430). Mr. Bellfy feels "out of control [and] that [he] let [Ms. Sachs] down." (Tr. 1737-38).

106. Mr. Bellfy and Alexis' mother were divorced in approximately 1984. (Tr. 404). Before Mr. Bellfy moved to Florida, he had seen his daughter three or four days per week. When he moved in 1986, she was a very sensitive girl and had a hard time understanding why he was moving so far away. They were "very, very close" and he was "very, very concerned that she would think I had intentionally purchased a unit that would prohibit me from being with her." When he realized that Respondent's rules and regulations would prohibit Alexis from visiting for more than 30 days per year (SX 43 at 5), it was a big blow and scared him. He tried to assure her that "everything would be all right." (Tr. 1513, 1617-18) He also "was concerned that she would feel discrimination." (Tr. 1620).

107. After the divorce, when Alexis was not with Mr. Bellfy, she lived with her mother and grandparents. She was very close to her grandparents and loved older people. Mr. Bellfy was "very concerned that she not get the wrong impression of older people" because of his problems at Ocean Parks, and did not want the stress he believed was caused by Respondent to change her love of elderly people. (Tr. 1621-22).

108. When Mr. Bellfy was told that the Barneses chose not to accept his counteroffer or otherwise pursue a deal after being informed of the content of Respondent's November 30, 1989, letter to the real estate community, he felt:

> Totally violated. I felt that I was a victim of a criminal action almost. I felt that my rights as an individual had been taken away to sell my unit in a free manner. I felt very frustrated that somebody could have the ability to alter my life in such a negative way. My daughter, I wanted her out of there to begin with. I was very worried about her getting out of the situation and I'm extremely worried about my future plans with having children.

(Tr. 1511-12). Ms. Sachs felt "very upset ... very angry." (Tr. 1436). She was angry at the Association and at Mr. Bellfy. She felt that Mr. Bellfy "was supposed to take care of things for me. He was supposed to provide for me, and he wasn't, I felt." (Tr. 1437). Her feelings hurt Mr. Bellfy. (Tr. 1636-37). Ms. Sachs described Mr. Bellfy as changing from a happy man with a very good attitude to someone "much more irritable. He's become more short-tempered with me. He is more nervous ... He's very upset."

(Tr. 1451).

109. Ever since the Barneses chose not to pursue a deal, Mr. Bellfy has thought about his inability to raise a family at Ocean Parks or to sell the unit "[q]uite often." (Tr. 1512). Believing that the situation was unlikely to change, and that the market for the unit had been "so adversely affected," he began dwelling on it and felt "trapped" and "caged almost." (Tr. 1513).

110. Because Mr. Bellfy gets fatigued more easily and sleeps a lot more, he believes that he sleeps to escape. (Tr. 1622; *see also* Tr. 1451 (Ms. Sachs' testimony that sometimes he "go[es] to sleep right after dinner")). He has had stomach problems that disturbed him sufficiently that he sought medical advice during 1989 and 1990. (SX 16A; Tr. 1622-24). He had not had those symptoms before, and medical tests did not reveal any physical cause. (SX 16A; Tr. 1625).

111. Mr. Bellfy has not sought mental health counselling because of his experience at Ocean Parks. His health insurance does not cover such treatment, and he asserts he cannot otherwise afford it. (Tr. 1627).

112. Mr. Bellfy and Ms. Sachs had planned to get married within a year or so after moving into Ocean Parks. (Tr. 1638). Although they had discussed marriage frequently before, they had not set a date. They did not feel rushed because Ms. Sachs, who was 30 when she moved to Florida in 1986, felt she had time to have children. They had decided to purchase the condominium unit so they would have a secure, stable place that was large enough for children. (Tr. 1453-55, 1631). After the purchase at Ocean Parks, Ms. Sachs told her mother for the first time that she definitely was going to marry Mr. Bellfy. (Tr. 1373). According to Mr. Bellfy, they did not get married because "everything started falling apart here with the Ocean Parks' situation. We were no longer even in an environment where we could have and raise children." (Tr. 1638).

113. When Mr. Bellfy and Ms. Sachs first moved to Florida, they enjoyed the sun and the beach together, took day trips to explore the area, played tennis with friends every Friday night and sometimes more often, jogged, entertained often, and had an active social life. They spent all their evenings together and at least one weekend day together. They continued these activities until just before the negotiations with the Barneses fell through. (Tr. 1445-47, 1634-35). Then they started socializing less[50] and it "gradually continued on a downslide." (Tr. 1635). More recently, they have occasionally gone to a movie; and they played tennis once in the six months preceding the hearing. They did not see their friends from the tennis group in which they had

[50]Wayne Bell, Mr. Bellfy's supervisor, used to socialize with Mr. Bellfy and Ms. Sachs. (Tr. 1330). He has not socialized with Mr. Bellfy outside of work for almost three years, because Mr. Bellfy's "personality changed and he just seems to have a lot of other things going on in his mind and his life right now, and it's just easier not to." (Tr. 1337).

previously been active. (Tr. 1635). They rarely have had people over in the six months preceding the hearing. (Tr. 1445-46, 1634-35). They continue to go jogging together in the morning, but a good deal of the time they end up arguing. (Tr. 1446). Ms. Sachs testified, "sometimes we'll wake up and the first thing we do is argue about this ... It consumes us." (Tr. 1447-48).

114. In 1991, Ms. Sachs considered ending their relationship, and moving out because they were fighting so much. Their relationship had deteriorated to the point that Ms. Sachs worked late and on weekends because she "didn't want to come home because I didn't want to have to deal with it." She found a place to stay, but did not move out because she realized she could not afford to pay for expenses in both places, and Mr. Bellfy could not afford to stay at Ocean Parks alone. (Tr. 1373, 1449). Before moving to Ocean Parks, they had been happy and fought infrequently. (Tr. 1450).

115. Mr. Bellfy testified that Ms. Sachs changed from "a very outgoing and live the life to the fullest type person and very creative and very energetic and intelligent, just happy person" to a "very unhappy, withdrawn" and "very reclusive" person who "sits in her closet sometimes." (Tr. 1635-36). These changes make Mr. Bellfy feel badly, as though he had "let her down" and destroyed her life, because she looked up to him to take care of things, and he has not been able to. (Tr. 1636-37).

116. Mr. Bellfy and Ms. Sachs are very worried about their inability to have a child now because of her "biological clock." (Tr. 1437, 1637). Ms. Sachs thinks about it every week, and sometimes every day. (Tr. 1438). They talk about their inability to sell their unit, and their inability to raise a family almost every day, although sometimes they find these subjects too difficult to discuss. (Tr. 1450).

117. After the depositions and hearing commenced, Ms. Sachs feared leaving the unit on the weekends when Mr. Bellfy was at work, because she believed Ocean Parks residents would confront her about this case. (Tr. 1439). She feels "paranoid"; if Mr. Bellfy and she are outside together, she does not want him to do anything that will draw attention to them. (Tr. 1444). She knows that he sees how the legal proceeding is affecting her, and that he feels badly because he cannot help her. (Tr. 1444).

118. Wayne Bell is the assistant manager at the furniture store where Mr. Bellfy works; he has known and supervised Mr. Bellfy for about four and one-half years. (Tr. 1329-30). Mr. Bell supervises 15 salespeople. (Tr. 1340). He assists the manager in running the store, including giving input into salespeople's performance reviews, and helps the salespeople with sales and any problems. (Tr. 1348).

119. When they first started working together in 1988, Mr. Bell found Mr. Bellfy to be a "[n]ice, lay-back, easygoing person ... probably one of our in the top third producers in the store; reliable, showed up on time, just a good worker." (Tr. 1330, 1340). Mr. Bellfy earned the maximum commission of seven percent on a monthly basis, and was one of the top five salespeople Mr. Bell supervised. (Tr. 1339-40). He was likeable and got along well with his co-workers. (Tr. 1330-31). In contrast, at the time of the hearing and

for the preceding few years, Mr. Bellfy "seems stressed, very jumpy, on edge. He jumps on people at work ... if there's little things that go wrong, they just become major to him, and he gets a little outraged. He's missing work, he comes in late, he leaves early." (Tr. 1335). His performance at the time of the hearing was "below our average or what we want." (Tr. 1337). His temper sometimes flares up and his co-workers "know at times [to] stay away." (Tr. 1340-41).

120. Ledra Sachs is Noreen Sachs' mother. (Tr. 1351). She has known Mr. Bellfy since 1983 or 1984. When Mr. Bellfy lived in Michigan, she saw him frequently, because Ms. Sachs lived with her. He was "very congenial, very friendly, very pleasant." (Tr. 1355).

121. After Mr. Bellfy and Ms. Sachs moved to Florida, Ledra Sachs saw Mr. Bellfy two to four times per year, and talked to him on the telephone almost once a week. (Tr. 1364).

122. Mr. Bellfy has shown his anger about the Association's actions to Ledra Sachs "in his tone of voice." He appeared "nervous, very agitated, [and] had more difficulty sitting still." When he told Ledra Sachs and her husband about the situation at Ocean Parks, he "spoke very quickly." (Tr. 1366).

123. Ledra Sachs testified that when Ms. Sachs told her that the Barneses had chosen not to purchase the unit, Ms. Sachs told her that she was upset that she and Mr. Bellfy could not "go on with their lives and get married and have children, so she was upset, angry, sad, and she was becoming depressed." (Tr. 1362). Mr. Bellfy and Ms. Sachs frequently talked to Ledra Sachs about their housing situation. Ms. Sachs told her mother that she was frustrated at the lack of stability and felt "very sad, but very frustrated, very angry ... very trapped that she couldn't go on with her life and she and Jeff couldn't go on with what they had planned for their future." (Tr. 1365).

124. Ledra Sachs has observed that Mr. Bellfy and Ms. Sachs are "much tenser with each other that we could see in body language. They were fighting with each other." (Tr. 1372). She also concluded they were fighting based on Mr. Bellfy's "demeanor with Noreen and Noreen's demeanor with him." (Tr. 1366).

125. Ledra Sachs was not aware of any problems other than those related to their inability to sell the condominium or to raise a family at Ocean Parks that would have caused the changes she had seen in Mr. Bellfy, Ms. Sachs, and their relationship. (Tr. 1374).

126. In 1990, Mr. Bellfy was a witness at a lengthy deposition in Michigan relating to a business he previously had owned, which had been destroyed by a fire after he sold it. (Tr. 1631-34). He was neither a party to the legal actions in which the deposition was held, nor the person accused of arson. (Tr. 1632-33). The deposition did not upset him. (Tr. 1333, 1669).

Complainants Thomas and Effie Tsaggaris' Claim of Damages

127. The Tsaggarises first considered moving from Ocean Parks in 1989, when the Fair Housing Amendments Act was enacted and they became aware of the rule prohibiting children under 14 from permanently residing in Ocean Parks and Respondent's attempt to qualify for the 55 and older exemption.[51] (SX 106 at 7; SX 82 at 10; Tr. 247-48, 1071, 1098, 1100).

128. The Tsaggarises were "very disturbed" when they learned that Respondent's rules and regulations would not allow their young grandchildren to live with them. While they did not intend to have their grandchildren move in immediately, they wanted the option available if their son and daughter-in-law were to die in a common disaster. (Tr. 248, 310, 1073, 1099). Furthermore, they wanted their son, who was under 55, to be able to inherit the unit and live in it with his family if they both passed away.[52] (Tr. 310, 1072-73, 1099). Having those options closed to him "caused [Mr. Tsaggaris] a tremendous amount of frustration and stress." (Tr. 1099). Also, the Tsaggarises did not like discrimination and did not want to live in a community limited to a certain age group. (Tr. 248). Mrs. Tsaggaris is against all discrimination because that was "[t]he way I was brought up." (Tr. 1090-91).

129. On August 1, 1989, the Tsaggarises entered a three-month listing contract with Doris Grunlee. The listing price was $144,900.00. (SX 21; SX 22; Tr. 214, 250-51). They later extended the contract into December of 1989. (Tr. 254).

130. During Ms. Grunlee's listing, a woman named Marsha Day, who had a daughter,[53] came to an open house and expressed interest in the condominium. Ms. Day purchased a unit at another development which had no age restrictions. Ms. Day did not tell Ms. Grunlee why she did not purchase the Tsaggarises' unit. No one made an offer during Ms. Grunlee's listing. (Tr. 214-19).

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[51]Although the Tsaggarises objected to other aspects of life at Ocean Parks, no other aspect had bothered them sufficiently that they considered moving. These other aspects included problems they experienced when they wanted to screen their unit's terrace in 1982 (Tr. 249-50, 330), liens that had been placed on all units in their building during a payment dispute between Respondent and a contractor (Tr. 330-31), and the rules which limited visitors to 30 days and required residents to post their visitors' names on a bulletin board (Tr. 1099-1100).

[52]Their son had stated that he might like to vacation at Ocean Parks during winters, but that he would not necessarily want to live there year-round. (Tr. 1102).

[53]Ms. Grunlee testified that the daughter was in her teens, basing this testimony on having met the daughter. (Tr. 215-18).

131. In January 1990, after Ms. Grunlee's listing had expired, the Tsaggarises entered a contract with Lillian Papp, a realtor with Prudential Realty. (Tr. 254). They canceled the contract in February 1990, because they were dissatisfied with the lack of prospects she had identified for them. (SX 23; Tr. 254).

132. During most of March 1990, the Tsaggarises ran an advertisement in the Palm Beach Post, listing their condominium for sale at $139,900.00. (Tr. 262). Many people called and asked where it was, but only one woman actually came to see the unit. The woman came alone,[54] and according to Mrs. Tsaggaris, the woman "was very excited about the unit." The woman did not make an offer to buy the unit.[55] (SX 7; Tr. 264-66).

133. On April 3, 1990, the Tsaggarises entered an exclusive listing agreement with Realty World. The listing price was $138,750.00. They later reduced the listing price to $129,850.00 and extended the agreement through December 31, 1990. (SX 25; SX 26;
Tr. 257-58). They lowered the price "[b]ecause property values at Ocean Parks were coming down." (Tr. 258).

134. The Tsaggarises finally sold their condominium for $127,500.00. The sale closed March 1, 1991. (SX 28; SX 31; Tr. 267).

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[54]The Charging Party seeks a finding that the woman had a sixteen year old daughter. In support of that proposed finding, it relies upon Mrs. Tsaggaris' testimony (Tr. 264) and the Tsaggarises' Complaint (SX 7). Mrs. Tsaggaris did not so testify, and there is nothing in the record which indicates the basis of the statement made in the Complaint, that the woman had a sixteen year old daughter. Accordingly, I do not adopt the Charging Party's proposed finding.

[55]Mr. Tsaggaris testified that an offer for $139,900.00 was actually made for their unit, but that the deal collapsed because the offeror had "heard there were problems" at Ocean Park. (Tr. 1096). This testimony, however, is not only inconsistent with that of Mrs. Tsaggaris, but is inconsistent with the narrative portion of the Complaint that he wrote. In that narrative, Mr. Tsaggaris states that a potential buyer was discouraged by reports that Ocean Parks was a community for persons 55 and older and that he felt "certain that [he] lost a possible sale." (SX 7). No mention whatsoever is made of an offer having been made and then withdrawn.

Furthermore, with regard to Mrs. Tsaggaris' testimony that the potential buyer told her she was not pursuing the unit because she had heard Ocean Parks was a 55 and older community (Tr. 266), the testimony is inadmissable hearsay, not subject to any exception as stated in Respondent's objection, which I overruled in the hearing. *See* Fed. R. Evid. 402, 403. Moreover, even if the testimony were allowable, it has none of the indicia of reliability, and therefore has no probative value to support a finding that the Tsaggarises lost a sale to the woman because of Ocean Parks' purported status as a community for persons 55 and older. Indeed, the only direct evidence proffered by the Charging Party regarding the purported reason for the woman's actions was the testimony of Mrs. Tsaggaris. As with the Barneses, the Charging Party offered no explanation why the woman was not called to testify. The lack of such an explanation is particularly puzzling given the statement made by Mr. Tsaggaris in the Complaint that he had the woman's name and telephone number. (SX 7).

135. Mrs. Tsaggaris had begun looking extensively for a new home starting in August 1989. She had looked with agents and alone. The Tsaggarises did not consider living in another condominium because of their experience at Ocean Parks. (Tr. 302-03, 307, 331-32, 1085).

136. The Tsaggarises purchased a single-family home in Jupiter, Florida for $139,000.00. They closed March 1, 1991, the same day they closed the sale of their condominium unit. (SX 29; Tr. 272). Although the new home is subject to rules and regulations, none prohibit occupancy by families with children. (SX 31; Tr. 273).

137. In 1989, after Mrs. Tsaggaris learned that the Association did not allow families with children under 14 to live at Ocean Parks, she thought about moving "[e]very day" and talked to someone about wanting to move "four or five times a week." She felt "agitated" when describing the situation. In 1990 and the first two months of 1991, she continued to think about it "[c]onstantly." (Tr. 1074, 1088). Her tennis game, an important activity to her, suffered because she "had things on [her] mind." (Tr. 1074-75).

138. Mr. Tsaggaris "thought about the restrictions constantly, constantly" in 1989, 1990, and 1991, while he was trying to sell his unit. He "felt very frustrated because [he] couldn't do anything about it." (Tr. 1101). He explained that he is stressed by "[t]hings that I am not responsible for, or things that I can do nothing about. Things that I am not in control of. Things that are imposed on me unfairly." (Tr. 1128).

139. Mr. Tsaggaris was "constantly disturbed," even while giving concerts. (Tr. 1110). He continued giving concerts but not as many as he had previously. (Tr. 1104; *see also* SX 106 at 57). His violin playing at the concerts was not as proficient. (Tr. 1108-09).

140. The situation did not affect Mrs. Tsaggaris' relationship with her husband, but she observed that it affected him "very much" and caused him stress. (Tr. 1075). He was quieter, and appeared frustrated. She was very concerned about her husband's stress. (Tr. 1080).

141. One night when they still lived at Ocean Parks, Mr. Tsaggaris had a blackout.[56] He fell against the kitchen cabinets, straining his neck. His wife heard a

[56]This was the third of four blackouts Mr. Tsaggaris has had during his lifetime. He suffered his first blackout when he was 25 or 26, and in the military. He was a member of an Air Force chamber orchestra, and heard a rumor that the orchestra was going to be disbanded, and that its members would be sent overseas to be in an infantry unit. According to Mr. Tsaggaris, "the stress of that situation was enormous. So I blacked out." When he fell as a result of the blackout, he hit his eye, and it had to be replaced with a glass eye. (Tr. 1110-12). The second blackout occurred in approximately 1972 or 1974. His employer, New York Life Insurance, had sent him to Florida to manage an area office. According to Mr. Tsaggaris, it was "extremely stressful because the office was not doing well, there were a lot of problems, I was working 12 to 13, 14 hours a day." He had a blackout while he was driving and was taken to the hospital. (Tr. 1111, 1113, 1159). As discussed *infra*, the fourth blackout occurred four months after

noise and found him on the kitchen floor. He regained consciousness himself. (Tr. 1076, 1110). After that, Mrs. Tsaggaris testified,

> I was frightened to say the least, and after that I told him he must never get out of bed at night. If he needs something wake me up and I will get it for him. And during the day when he was away I was -- it was very stressful.

(Tr. 1076).

142. The worst time for Mrs. Tsaggaris was "after my husband had the blackout. I was deeply concerned about him and I figured the sooner we got out the better it would be for him physically." (Tr. 1085).

143. In March 1991, when they first moved into their new home, Mrs. Tsaggaris was "[e]xhausted." (Tr. 1087). She continued to feel "agitated" for six months after moving, because of the increased expenses at their new home. (Tr. 1088-89). She has recovered now because she no longer lives in what she believes was a discriminatory situation. (Tr. 1091).

144. When they moved in March 1991, Mr. Tsaggaris felt:

> greatly relieved on one hand, but I felt very stressful on the other, or I might say a little bit frustrated because I had to increase my expenditures. My mortgage [h]as more than doubled. My taxes were more than doubled. So it was a tremendous financial burden, and I -- this is the reason that I went to the School of the Arts to earn some extra money in teaching there.

Mr. Tsaggaris moved out of Ocean Parks. At one time, Mr. Tsaggaris surmised that the blackouts were caused by scar tissue on the brain that had formed as a result of some boxing he did during 1938 to 1940. However, no physician has attributed the blackouts to any such source, and medical tests have not revealed the presence of any such scar tissue. (Tr. 1122-25). Rather, a neurologist has told Mr. Tsaggaris that the blackouts are related to stress. (Tr. 1116-17).

(Tr. 1125-26; *see also* Tr. 1089).

145. On July 9, 1991, Mr. Tsaggaris suffered another blackout and paramedics took him to the Jupiter Hospital emergency room.[57] (SX 32; Tr. 1110). Mrs. Tsaggaris' reaction to the blackout was: "It was horrible. It stays with you, and you're afraid it might happen again." (Tr. 1090). The hospital diagnosed Mr. Tsaggaris as having "syncope" and warned him of the risk of possible sudden death. (SX 32 at 2).

146. The Quatsoes have known the Tsaggarises since the 1950s, when Mr. Tsaggaris and Mr. Quatsoe worked together. (SX 106 at 5-6; SX 82 at 5).

147. The Quatsoes spend four or five months a year at their Florida home. (SX 106 at 4). They have dinner with the Tsaggarises at least two or three times per week when they are in Florida, and talk on the telephone at least once a week when they are in Pennsylvania. (SX 106 at 9, 26).

148. The Tsaggarises, especially Mr. Tsaggaris, talked to the Quatsoes "by the hour" about the situation at Ocean Parks. (SX 106 at 8-10).

149. Mrs. Quatsoe described Mr. Tsaggaris prior to 1989 as a "very sensitive man ... very involved with his music and tennis and his family and was very content and ... a good friend, good conversationalist." (SX 106 at 10). Mrs. Quatsoe testified that after Respondent began its attempt to qualify for the exemption, and while Mr. Tsaggaris still lived at Ocean Parks, Mr. Tsaggaris, who was normally a "good conversationalist," was "preoccupied with the problem ... He was very distraught about what was going on." (SX 106 at 10).

150. Mr. Quatsoe described Mr. Tsaggaris temperament prior to Respondent's actions as "always a personable, lucid individual, very selective of friends ... genuine. Loves kids, loves animals ... sincere." (SX 82 at 12). Mr. Tsaggaris was not a trouble-maker; when they worked together, Mr. Tsaggaris would "get things done, but he'd do it in a gentlemanly, soft-spoken way." (SX 82 at 13). Mr. Quatsoe described the normally "personable" Mr. Tsaggaris as "withdrawn" following Respondent's attempt at qualification. (SX 82 at 13). Mr. Tsaggaris "was extremely worried about what would happen to his grandchildren if anything happened to their ... parents," since Respondent's rules would prevent them from living at Ocean Parks. (SX 82 at 10). "[I]t was on his mind

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[57] Mrs. Tsaggaris testified:

> [W]e were sitting down to dinner and -- I knew my husband was very frustrated still -- and he had a bad blackout at that time, and I was present. Have you ever heard the expression "I'm so frustrated I could scream"[? That is] exactly what he did. He put his head back and he screamed, and he knew what he was doing it but he couldn't stop himself, and then he slid off the chair -- I was holding him -- onto the floor and I called 911. The paramedics came.

(Tr. 1089-90).

constantly ... And you could see it was eating him up ... He was acting very fearful." (SX 82 at 15). Mr. Quatsoe "could see Tom was disturbed." Mr. Quatsoe tried unsuccessfully to help Mr. Tsaggaris "to get his mind off of it" and to let him "get it off his chest." (SX 82 at 14).

151. Mrs. Quatsoe described Mrs. Tsaggaris as "an extremely wonderful hostess." (SX 106 at 17). Prior to Respondent's attempt to qualify for the exemption, she was "very, very open, warming and happy and very cheerful individual, always very, very pleasant and wonderful to be around." (SX 106 at 19). In contrast, since the attempt to qualify began, Mrs. Tsaggaris has been "[v]ery, very distraught, very, very upset most of the time and unhappy, just generally unhappy, which is not her natural personality." (SX 106 at 19).

152. Mr. Quatsoe described Mrs. Tsaggaris as "always supporting [Mr. Tsaggaris], always at his side ... a great cook ... a very strong person." (SX 82 at 17-18). Despite her strength, Mr. Quatsoe knew that Respondent's attempt to qualify for the exemption had "genuinely upset" Mrs. Tsaggaris, because "she was whistling more" and Mrs. Tsaggaris whistles "[w]hen she's uptight or something." (SX 82 at 19).

153. During the Tsaggarises' search for a new home, Mrs. Tsaggaris discussed with Mr. Quatsoe the financial difficulties of moving given their fixed income. (SX 82 at 18). She had never expressed worry to Mr. Quatsoe about finances prior to this. (SX 82 at 20).

154. The Tsaggarises had "invested financially" in their unit at Ocean Parks to make it "Effie's style." Their new home, in contrast, has less of "Mrs. Tsaggaris' personal touches." (SX 106 at 27-28).

155. Shortly after the Tsaggarises had moved into their new home, the Quatsoes visited. Mrs. Quatsoe observed that they were finding it "very difficult ... to really feel comfortable." She found that the Tsaggarises were "physically worn out" and "emotionally drained." She further found that their attitude and behavior had changed. They no longer appeared "happy" and were "subdued in their behavior," *i.e.*, they were less involved with, and interacted socially less with the Quatsoes. (SX 106 at 16). The Tsaggarises were both "very, very distraught ... as though they were in a fog almost." (SX 106 at 16). Mr. Quatsoe found Mr. Tsaggaris to be "quiet ... still withdrawn, seemed more hopeful" than he had been before he was able to move out of Ocean Parks. Mr. Quatsoe was "more concerned over Effie at that point." (SX 82 at 16). Mrs. Tsaggaris was "very tired" and was concerned about furnishing the new home and fixing damage from a fire which had occurred before their purchase. (SX 82 at 20-21).

156. After the Tsaggarises moved, Mrs. Quatsoe found that it took them "a good six or seven months [before] they started to come back to their old selves again[,] which was more complacent, much more sociable." (SX 106 at 18-20). Mr. Quatsoe testified

that Mr. Tsaggaris appears happy where he is now, but that it took a year after the Tsaggarises moved for him to become so. (SX 82 at 16).

157. Mrs. Quatsoe noticed that the negative emotions "surfaced again" when the Tsaggarises received the Charge and began preparing for Respondent's depositions. (SX 106 at 18-19). She stated that in November 1992 and perhaps somewhat before, the Tsaggarises began "going through [emotional] upheavals again" as they were "reliving" the situation that Respondent's actions had caused them to endure. (SX 106 at 19-20).

Applicable Law

The Act

The Fair Housing Act, as amended, makes it unlawful

> (1) to refuse to ... rent after making a bona fide offer, or to refuse to negotiate ... for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status .... 42 U.S.C. § 3604(a).
>
> (2) to discriminate 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 ... familial status .... 42 U.S.C. § 3604(b).
>
> (3) to make, print, or publish, or cause to be made, printed, or published, any notice [or] statement ... with respect to the ... rental of a dwelling that indicates any ... limitation or discrimination based on ... familial status ... or an intention to make any such ... limitation or discrimination. 42 U.S.C. § 3604(c).
>
> (4) to represent to any person because of ... familial status ... that any dwelling is not available for ... rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d).

The Act provides an exemption from its bar against discrimination on the basis of familial status for housing for persons 55 years of age or older. To establish the exemption, the housing provider must show that, at the time of the discrimination on the basis of familial status, it satisfied all of the following three requirements: (1) at least 80% of its units were occupied by at least one person 55 years of age or older; (2) it had published and adhered to policies and procedures which demonstrate the owner's or manager's intent to provide housing for persons 55 years of age or older; and (3)(a) it had significant facilities and services specifically designed to meet the physical or social needs of older persons, or (b) if the provision of such facilities and services was not

practicable, that the housing was necessary to provide important housing opportunities for older persons. 42 U.S.C. § 3607(b)(2)(C).

Case Law

In support of its argument that it meets all three statutory requirements for meeting the exemption, Respondent relies chiefly on *Massaro v. Mainlands 1 and 2 Civic Assn.*, 796 F.Supp. 1499 (S.D. Fla. 1992), *appeal filed*, (11th Cir. July 7, 1992) (No. 92-4635). In *Massaro*, the defendant asserting qualification under the 55 and older exemption was the governing body of a residential subdivision consisting of 529 homes. The court concluded that the defendant had met what it described as the "three *de minimus* requirements" created by Congress as part of the Fair Housing Amendments Act of 1988. *Massaro* at 1501 (emphasis in original).

The court first concluded that the defendant had met the requirement that it have published policies and procedures which demonstrate an intent to provide housing for persons 55 or older. In so holding, the court expressly disagreed with the approach taken by this administrative law judge in *HUD v. TEMS Ass'n*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,028 (HUDALJ Apr. 9, 1992), with regard to the interpretation given to the six factors set out in the regulations to determine whether the requirement has been met. In particular, the court disagreed with this ALJ's "application of some of the factors to free standing single homes where the developer retains no overriding interest in the community at the time of the alleged violation." *Massaro* at 1505. In the court's view, "disregarding those inapplicable factors is more consistent with Congress' attempt to balance the rights of the elderly with the right of single families to affordable housing." *Id*. The court however cited no statutory authority or legislative history to support this interpretation.

Next, the court concluded that the defendant had met the requirement that it have significant facilities and services specifically designed to meet the physical or social needs of older persons. According to the court, the defendant had proffered "abundant evidence" of the requisite facilities and services. *Id*. In so holding, the court reviewed a single issue of the subdivision's newsletter as well as certain trial testimony. *Id*. Although the court attributed the facilities and services listed to the defendant, it made no specific findings in that regard.

Finally the court concluded that the defendant had met the requirement that 80% or more of the households have at least one member 55 or older. *Id*. at 1505-06. The court noted that the applicable regulations do not specify how a defendant must meet this test, but concluded that the results of three studies conducted by defendant demonstrated that over 90% of the houses had at least one resident over 55, and that the plaintiffs had offered no evidence to contradict the defendant's showing. *Id*. at 1506. In so holding, the court acknowledged that the first two studies had not been verified by defendant. *Id*. at 1505. Yet, with no rationale, it concluded that all three studies,

together, were sufficient to meet the test, because the third study had been verified through the use of driver's licenses and other documents. *Id*. at 1506.

Contrary to the position taken by Respondent, I do not view *Massaro* as an articulation of the correct standards for meeting the requirements to qualify for the 55 and older exemption from the Act. By interpreting, without rationale or authority, the requirements as "*de minimus*," the court effectively allows the exemption to swallow the Act's rule against discrimination based upon familial status. Accordingly, I do not find the court's decision in *Massaro* to be dispositive, and instead, follow this tribunal's decisions interpreting and applying the 55 and older exemption.

Discussion

In this case, there is direct evidence that Respondent discriminated on the basis of familial status. First, from the effective date of the Fair Housing Amendments Act through November 1, 1990, Respondent published and implemented rules and regulations that excluded children under the age of 14 from Ocean Parks. The Association sent rules and regulations containing this restriction to all Ocean Parks residents on or about September 1, 1989. On September 21, 1989, the Association filed a Statement of Intent in the county's public records, stating that children under the age of 14 were prohibited from residing in Ocean Parks. The Association sent a November 30, 1989, letter to area real estate brokers, stating that children under the age of 14 were prohib-ited from residing in all twelve condominiums in Ocean Parks. It also sent a December 11, 1989, letter to unit owners representing that the Declarations of all twelve condominiums prohibited permanent occupancy by families with children under 14 in Ocean Parks.

Second, from September 1990 through the hearing, Respondent designated five condominiums as open to families with children and seven as closed.[58] In September 1990, Respondent sent letters to area real estate brokers, as well as to Complainants and other unit owners, stating that residency by families with children under 18 years of age was limited to certain buildings at Ocean Parks. From September 1990 to the time of the hearing, the Association's policies, procedures, and forms for approving applications for purchase or lease stated that Respondent limited families with children under 18 to certain buildings at Ocean Parks. The October 2, 1990, revised Statement of Intent which the Association filed in the public records also stated that Respondent excluded families with children under 18 from certain buildings. From November 1, 1990, to the time of the hearing, Respondent issued and enforced rules and regulations which stated that it limited children under 18 to certain buildings in Ocean Parks.

[58]Thus, from November 30, 1989, when Respondent sent its first letter to area real estate brokers, through November 1990, when Respondent amended its rules and regulations to allow persons of all ages to reside in the open condominiums, no one under 14 could reside in Ocean Parks and anyone at least 14 but not yet 18 could reside only in the five open condominiums.

Respondent does not deny that it took the actions at issue. Instead, it defends itself by claiming that it did not violate the Act because it enjoys the exemption for housing for persons 55 years of age or older.[59]

It is well-settled that the housing provider claiming the exemption has the burden of proving that it qualifies for the exemption. *TEMS* at 25,307; *HUD v. Murphy*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,002, 25,044 (July 13, 1990); *United States v. Keck*, 1 Fair Housing-Fair Lending (P-H) ¶ 15,563, 16,445 (W.D. Wash. 1990); *Lanier v. Fairfield Communities, Inc.*, 2 Fair Housing-Fair Lending (P-H) ¶ 15,632, 16,251 (M.D. Fla. 1990). Accordingly, Respondent bears the burden of establishing that, at the time of its discrimination, Ocean Parks met all three criteria for the 55 and older exemption. Failure to meet any of the three is fatal to its argument. *Murphy* at 25,044; *Keck* at 16,446.

First Test

[59]In its post-hearing brief, Respondent moves for dismissal of all charges based on the over two-year delay between the filing of the Complaints and the Secretary's issuance of the Charges. In support of its motion, Respondent cites the Act's requirement that HUD complete its investigation and issue a reasonable cause determination within 100 days of the filing of the complaint, unless it is impracticable to do so, in which case HUD must notify the parties in writing of the reasons for the failure (42 U.S.C. § 3610(a)(1)(B)(iv)(C)), and relies upon *Baumgardner v. HUD*, 960 F.2d 572 (6th Cir. 1992), and *HUD v. Kelly*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,034 (HUDALJ Aug. 26, 1992), *appeal filed*, (6th Cir. Oct. 16, 1992) (No. 92-4064). Although both decisions recognize that under certain circumstances dismissal might be warranted where HUD has not complied with a procedural specification, neither tribunal granted dismissal on the facts before it. Instead, the amounts of the civil penalties which otherwise could have been awarded were adjusted downward to reflect the effect of HUD's delay on the respondents, *i.e.*, the unnecessary accrual of actual damages. Because the record does not demonstrate circumstances which significantly deviate from those presented in *Baumgardner* and *Kelly*, I deny the motion to dismiss, but will consider the effect of HUD's delay in the discussion of any civil penalty, *infra*.

Respondent has failed to present reliable evidence that, at any time since enactment of the Fair Housing Amendments Act -- when the discrimination at issue became unlawful -- 80% of the dwellings in Ocean Parks have had at least one person 55 years of age or older in residence. Respondent relies on the purported results of four surveys it undertook to qualify for the exemption. Such reliance, however, is misplaced. Most significant is the absence of sufficient evidence of corroborating source documentation. There is no evidence whatsoever that, in conducting the first three surveys,[60] Respondent verified the compiled data with valid source documentation.[61] As to the fourth and final survey,[62] only minimal source documentation was introduced into the record, and, where documentation was absent, there was no evidence that Respondent had reviewed such documentation prior to recordation of the data. In the absence of sufficient evidence of source documentation, none of the surveys presents a reliable basis for determining whether Ocean Parks meets the first test.[63] Accordingly, I find that Respondent has failed to meet the first test.

[60]The first survey, conducted in September and October 1988, is also unreliable in that it was conducted prior to enactment of the Fair Housing Amendments Act and was tabulated to reveal the percentage of residents at Ocean Parks who were over 55. Respondent did not introduce any evidence that the population of Ocean Parks remained sufficiently constant after the survey, which would render the data reliable as to the time of enactment of the Fair Housing Amendments Act and forward. Under the Act, the relevant inquiry is not the total percentage of residents 55 and over; rather, it is whether 80% of the units are occupied by at least one person 55 and older.

[61]This deficiency in source documentation is most pronounced in the survey conducted in March 1989. The survey form instructed each unit owner or lessee to either initial a section of the form or to sign the form, depending on the ages of the unit's occupants. Several of the completed forms indicate that the persons filling out the forms were confused by the instructions. Both initialing and signing the forms was the most common error. Without any source documentation to corroborate the occupant's ages, I am unable to determine either the meaning or the accuracy of the data in this survey.

[62]The fourth survey was conducted in December 1992. Respondent introduced no evidence, however, as to whether there had been any significant changes in the composition of Ocean Parks' population between enactment of the Fair Housing Amendments Act and the fourth survey. Thus, even if there had been sufficient evidence of verification, the fourth survey would have borne no weight as to actions taken by Respondent prior to December 1992.

[63]Having reached this conclusion, I need not address the validity of Respondent's tabulation of the survey results.

Second Test

Under the second test, Respondent must demonstrate that it published and adhered to policies and procedures that demonstrate an intent to provide housing for persons 55 or older. HUD's regulations set out six factors that are drawn from the Act's legislative history which, "among others, are relevant in determining whether the owner or manager of a housing facility" meets the second test. 24 CFR 100.304(c)(2). These six factors are: (1) written rules and regulations; (2) the manner in which the housing is described to prospective residents; (3) the nature of advertising; (4) age verification procedures; (5) lease provisions; and (6) the actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules and regulations. *Id*. As stated in *Murphy* at 25,050:

> These tests are designed to establish whether a housing provider has demonstrated an intent to provide housing for persons 55 or older by its adoption and adherence to policies and procedures which manifest that intent. The focus of the tests is on whether: (1) the housing provider holds itself out as providing housing for persons 55 or older, and (2) the housing provider has demon-strated that it has consistently done so.

Based upon an application of the six factors enumerated in the regulations as detailed below, Respondent has failed to demonstrate an intent to provide housing for persons 55 or older.

Factor 1. Respondent's Rules and Regulations

Respondent's rules and regulations effective prior to November 1, 1990, provided that children under 14 were welcome as guests, but could not be guests for more than 30 days. The rules and regulations issued by Respondent on November 1, 1990, provided that children under 14 could be permanent residents in the open buildings, but that children under 18 could not be permanent residents in the closed buildings. At no time did the rules and regulations make any mention whatsoever of Ocean Parks being housing for persons 55 or older, including all the attendant requirements. Thus, Respondent's written rules and regulations do not demonstrate an intent to provide housing for persons 55 and older.

Factor 2. Description of Ocean Parks to Prospective Owners and Tenants

Ocean Parks is described to prospective owners and tenants in the applica-tion/interview materials used for approving sales and leases. Taken together, the record evidence concerning Ocean Parks' description to prospective owners and tenants does not demonstrate an intent to provide housing for persons 55 and older. Respondent repeatedly made no reference to Ocean Parks as a 55 and older community. Prior to September 1990, no distinction whatsoever was drawn between the "open" and

"closed" buildings. At one point, the only prohibition specifically mentioned was that for children under 14; at another, only a prohibition against all children under 18 was mentioned. Insofar as age information was sought, there is no evidence that verifying documentation was requested.

Respondent's inartful attempt at implementation of the 55 and older exemption continued after September 1990 (when it issued revised application materials) through February 1991. Although the "open" and "closed" buildings were distinguished, neither the "open" nor "closed" forms made any mention of the 55 and older exemption or, to the extent it was still in effect, the prohibition against children under 14. Only the "closed" forms requested the applicants' ages, yet age verification documentation was apparently sought from all occupants.

Finally, since at least February 1991, although the Age Verification form expressly referenced the requirement that each unit be occupied by at least one person 55 or older, and required proof of age documentation, the form was used only for owners or tenants of "closed" buildings. Although the Renter or Owner Use Restrictions listed the "closed" buildings and stated that children under 18 could not be permanent residents, it too did not refer to the 55 and older exemption and all its requirements.

Factor 3. Advertising of Ocean Parks

The only evidence regarding the advertising of Ocean Parks is a brochure used by the developer in 1983 (SX 5), and advertisements run by the developer and real estate agency between 1974 and 1984 (RX 12). Any relevance that could otherwise be attributed to the pre-Fair Housing Amendment Act advertisements' references to Ocean Parks as an "adult"[64] community is outweighed by the fact that there is no evidence that the advertisements were placed by Respondent. Thus, advertising is not a factor in determining whether Respondent has demonstrated an intent to provide housing for persons 55 and older.

Factor 4. Implementation of Age Verification Procedures

Insofar as Respondent has implemented age verification procedures, the record does not demonstrate that those procedures are consistent with an intent to maintain the 55 and older exemption. As discussed above, even since implementing age verification procedures in 1990, the Association has not consistently requested and verified the ages of persons applying to open condominiums. In the absence of that information, Ocean Parks would be unable to monitor its compliance with the 55 and older exemption's 80% requirement. The age verification procedures used by Ocean Parks,

[64] *See* 24 CFR 109.20(a), (b)(7) (words used in advertisements that are indicative of discriminatory preferences or limitations include "adult").

therefore, fall short of demonstrating an intent to provide housing for persons 55 and older.

Factors 5 and 6. Provisions in Lease/Actual Practices of Enforcing Lease Documents or Rules and Regulations

Respondent does not act as a lessor or, for that matter, a seller in transactions involving Ocean Parks' condominiums. Rather, its role is to approve or disapprove persons as purchasers or lessees. That decision is memorialized in a Certificate of Approval issued by the Association, which makes no mention of the 55 and older exemption. It only states that "approval has been given pursuant to the provisions of Declaration of Condominium." Beginning in the Spring of 1989, and continuing through the eve of trial, the status of the Declarations, and in particular, the purpose and use restriction provisions as they pertained to the 55 and older exemption, was thrown into a state of flux. The record demonstrates that in attempting to qualify for the 55 and older exemption through amendment of the Declarations and issuance of related documents, Respondent vacillated between portrayal of Ocean Parks as separate communities, only some of which claimed the exemption, and one 55 and older community. Regardless of the cause for the ambiguities, Respondent's issuance of the various Statements of Intent, letters to real estate brokers, and letters to Ocean Parks residents, lent uncertainty and confusion as to the status of Ocean Parks and its component condominiums. As a result, the documentation by which Respondent attempted to articulate and enforce its policies, became a moving target, rendering Respondent's position inconsistent and equivocal. Accordingly, neither the provisions of the Certificate of Approval and its incorporation of the Declarations by reference nor the issuance of related documents sufficiently demonstrate an intent to provide housing for person 55 and older.

Third Test

Respondent argues that Ocean Parks offers significant facilities and services specifically designed to meet the physical or social needs of older persons.[65] The significance of facilities and services is evaluated in terms of the needs of the residents and the location of the housing. *TEMS* at 25,308. To determine that the facilities and services are significant, a housing provider must show that they have been "designed, constructed, or adapted to meet the particularized needs of older persons." *See also Keck* at 16,446 (housing provider must show that the facilities and services indicate a "genuine commitment to serving the special needs of older persons"). In short, Respondent must demonstrate that Ocean Parks is fashioned primarily for a population of occupants at least 55 years old.

[65] Alternatively, the third test can be met by demonstrating that the provision of such facilities and services was impracticable and that the housing was necessary to provide important housing opportunities for older persons. Because Respondent does not argue that alternative, it is not considered.

Common characteristics of older persons include greater incidences of physical limitation, increased health concerns (both corrective and preventative), and additional leisure time. *Murphy* at 25,044-45. Facilities and services in an exempted community must successfully and consistently address these characteristics. As set forth in the HUD regulations:

> "[s]ignificant facilities and services specifically designed to meet the physical and social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of [sic] programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption)....

24 CFR 100.304(b)(1).

A. Facilities at Ocean Parks

Respondent has not demonstrated that the facilities at Ocean Parks meet the standard articulated by statute and regulation. For example, of the facilities in existence, the two clubhouses at Ocean Parks have the generic features of any meeting place, and none of the distinctive features that would demonstrate they were designed for a community of older persons. For example, the mere presence of a clubhouse kitchen, contrary to Respondent's position, does not constitute a congregate dining facility. Prior to November 1992, the main entrance to the east clubhouse was inaccessible by an individual in a wheelchair. Indeed, at least one wheelchair bound resident who had assistance was unable to use the entrance prior to ramping. Moreover, even after entering the clubhouse, residents in wheelchairs are unable to find an accessible restroom. The record does not reflect if restroom accessibility in the west clubhouse is any easier. Thus, Respondent was unable to demonstrate that the clubhouses were designed to serve as the central activity area for a 55 and older community.

Respondent was similarly unable to show that its swimming pools were designed or modified with older persons in mind. When Respondent notes that the pools have no diving boards, slides, or other equipment that children might enjoy, it loses track of the central question of this test. Simply that a facility is not specifically equipped for use by children does not mean that it automatically becomes a facility for persons 55 and older. Recently, the pool temperature has been set higher than in the past for, Respondent argues, persons with arthritis. However, this modification occurred close to the eve of trial and is little more than a self-serving nod in the direction of compliance with the exemption. Although persons in wheelchairs can gain access to at least one pool

without having to go through the clubhouse, only one pool's shower has grab bars, indicating
inaccessibility.

Although there are aspects of Ocean Parks' physical layout which suit the needs of older persons, other aspects are unsuitable. For example, internal roadways at Ocean Parks show a lack of design for older people. With no sidewalks in the complex, residents must walk on the roads or on footpaths throughout the development. One path was described as "hazardous" because it was on a hill, while another was too narrow for wheelchairs. There are only two benches at Ocean Parks, and they can only be reached by crossing the grass. Other barriers to safe and easy travel within the complex include the rises a resident must overcome to enter the condominium units. Respondent's purported "willingness" to allow residents to ramp private entrance rises is irrelevant to an assessment of its qualification for the exemption. Similarly, although certain aspects of Ocean Parks' location offer the convenience associated with the needs of older persons, other aspects render it inconvenient. For example, despite its proximity to the Jupiter Dinner Theater and the Circle K convenience store, access using the paths leading from both to Ocean Parks is difficult for someone not able-bodied. The infrastructure and location of a community for older persons should accommodate the mobility problems associated with aging. Ocean Parks offers almost no such accommodation.

B. Activities and Services at Ocean Parks

Under the applicable regulations, the respondent housing facility or its owner-manager equivalent must demonstrate that it itself provides the required significant facilities and services. *See* 24 CFR 100.304(b). Of the activities available at Ocean Parks, nearly all are coordinated by the all-volunteer Activities Committee. The record indicates that the Activities Committee was chartered separate from the Association, and Respondent has introduced no evidence suggesting any other connection between the two (*i.e.*, that it funds the Committee or co-sponsors some activities). Nothing in Respondent's By-laws, Articles of Incorporation or rules and regulations requires that Respondent support or maintain the Committee. Indeed, at times Ocean Parks has had difficulty filling the volunteer position of Committee coordinator (which if left unfilled, according to the Pipeline, could "jeopardiz[e] all our activities"), and that at least one activity -- afternoon ladies bridge -- almost "collapse[d]" because no volunteer could initially be found to chair the activity. Moreover, the record further demonstrates that many of the activities are scheduled infrequently, and that even when held, participation is often sporadic. Because Respondent has not demonstrated that it is responsible for and committed to the provision of activities at Ocean Parks, it has not demonstrated compliance with the third test.

The record supports the same conclusion with regard to the services available at Ocean Parks. Any benefits which accrue from the availability of the local hospital's van, Meals on Wheels, the Vials of Life Program, the Crime Watch Program, carpools arranged by residents, and commemorative cards sent by the Sunshine Lady, are not

attributable to Respondent. Moreover, the record evidence concerning the maintenance, security, emergency and related services provided by Respondent demonstrates that nothing uniquely suited to older persons is provided. Finally, the services provided for the infirm by Respondent are limited to two wheelchairs, which can be utilized only for short durations and are insufficient to meet demand.

Having failed to demonstrate that it provides significant facilities, activities and services specifically designed to meet the physical or social needs of older persons, Respondent has failed to meet the third test.

Ultimate Conclusions

As detailed above, Respondent has failed to demonstrate that at the time of the discrimination, it has met the three statutory requirements for the 55 and older exemption. Without qualifying for the exemption, it was unlawful for Respondent to discriminate on the basis of familial status by prohibiting children under 14 from residing in all Ocean Parks condominiums until November 1, 1990, and by then changing the prohibition to exclude children under 18 from the closed condominiums, while allowing children of all ages to reside in the open condominiums. Therefore, *all* actions taken by Respondent in the name of the exemption are subject to the prohibitions of the Fair Housing Act and applicable HUD regulations.[66] Those actions which constitute violations of the Act and the specific provisions of the Act and regulations violated are as follows:

[66]The Charging Party argues that even where the exemption applies, dual housing, such as Respondent's open and closed condominium arrangement, constitutes unlawful segregation in violation of the Act. In support of its argument, the Charging Party acknowledges that "the Act does not explicitly bar dual housing segregated by protected class," and instead relies on its interpretation of 24 CFR 100.70(c)(4) and 100.70(d)(2), as well as the Preamble to HUD's regulations.

The Preamble at 900, explaining HUD's position that a housing facility cannot have certain sections designated for older persons and other sections for persons of all ages, relies on § 100.70(c)(4). This section forbids "[a]ssigning any person to a particular section of a community ... because of familial status ...." Additionally, section 100.70(d)(2) forbids "[e]mploying codes or other devices to segregate applicants ... because of familial status ...." Those regulations are included among the provisions prohibiting discriminatory housing practices in general. However, the regulations concerning the exemptions for housing for older persons, in particular, § 100.304(a), provides "the provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit ...." Having concluded that Respondent does not qualify for the exemption, I need not decide the unsettled issue of whether the Act is automatically violated where a housing provider that qualifies for the exemption has established dual housing based upon familial status.

First, by publishing and implementing rules and regulations from the effective date of the Fair Housing Amendments Act through November 1, 1990, prohibiting children under 14 from being permanent residents in Ocean Parks, Respondent made dwellings at Ocean Parks unavailable to families with any such children. At the time the Fair Housing Amendments Act became effective, Ocean Parks' rules and regulations prohibited permanent residency by children under 14. Respondent again issued rules and regulations containing the same restriction on or about September 1, 1989. On September 21, 1989, Respondent filed a Statement of Intent in the county's public records, stating that children under the age of 14 were prohibited from residing in Ocean Parks. Respondent sent a November 30, 1989, letter to area real estate brokers, stating that children under the age of 14 were prohibited from residing in Ocean Parks. It also sent a December 11, 1989, letter to unit owners representing that the Declarations of all twelve condominiums prohibited permanent occupancy by families with children under 14 in Ocean Parks. Prior to May 1989, the application used by Respondent for all condominium unit purchases or leases expressly stated that children under 14 were not permitted. By these actions, Respondent effectively discouraged families with such children from inspecting and buying or renting certain dwellings at Ocean Parks, employed a device to reject applicants with such children, and refused to approve applications for occupancy in such dwellings. Respondent therefore violated 42 U.S.C. § 3604(a) and 24 CFR 100.50(b)(3), 100.70(a), (b), (c)(1), and (d)(2) & (3).

By these actions, Respondent also made, printed, and published, and caused to be made, printed, and published, notices and statements that indicated a preference, limitation, and discrimination, based on familial status, and an intent to make such a preference, limitation and discrimination, *i.e.*, a preference for people without children under 14 and a limitation on and discrimination against families with children. Respondent therefore also violated 42 U.S.C. § 3604(c) and 24 CFR 100.50(b)(4), 100.75(a), (b), and (c)(1) & (2).

By these actions, Respondent also represented to persons that certain dwellings were not available for lease or sale based on familial status when they were in fact so available. Respondent therefore also violated 42 U.S.C. § 3604(d) and 24 CFR 100.50(b)(5), 100.80(a) and (b)(2).

Second, by establishing and implementing the open and closed condominiums based upon familial status, Respondent effectively made certain dwellings at Ocean Parks unavailable to families with children. From at least May 1989 to September 1990, Respondent stated in its application materials that children under 18 could not be permanent residents at Ocean Parks. On August 17, 1989, Respondent filed in the public records a Certificate of Amendment to the Declarations of the closed condo-miniums. The certificate stated that no unit could be permanently occupied by children under 18. In September 1990, Respondent sent letters to area real estate brokers and unit owners purporting to limit families with children under 18 years of age to certain buildings at Ocean Parks. From September 1990 to the time of the hearing, the Association's policies, procedures, and forms for conducting interviews and approving

applications for purchase or lease stated that it limited families with children under 18 to certain buildings at Ocean Parks. Both the September 21, 1989, Statement of Intent and the October 2, 1990, revised Statement of Intent which the Association filed in the public records stated that it excluded families with children under 18 from certain buildings. From November 1, 1990, to the time of the hearing, Respondent issued and enforced rules and regulations which stated that respondent limited children under 18 to certain buildings in Ocean Parks. On November 30, 1989, Respondent sent local real estate brokers a letter stating that the minimum age for permanent occupancy in the closed buildings was 18. By these actions, Respondent also effectively discouraged people from inspecting and buying certain dwellings, employed a device to reject applicants, and refused to approve applications for occupancy in a condominium. Respondent therefore violated 42 U.S.C. § 3604(a) and 24 CFR 100.50(b)(3), 100.70(a), (b), (c)(1) & (4), and (d)(2) & (3).

By these actions, Respondents also discriminated in the terms, conditions, or privileges of selling a dwelling because of familial status. Respondent therefore violated 42 U.S.C. § 3604(b) and 24 CFR 100.50(b)(2), 100.65(a) and (b)(1). By these actions, Respondent also made, printed, and published, and caused to be made, printed, and published, notices and statements that indicated a preference, limitation, and discrimination based on familial status, and an intention to make such a preference, limitation and discrimination. Respondent therefore violated 42 U.S.C. § 3604(c); 24 CFR 100.50(b)(4), 100.75(a), (b), and (c)(1) & (2).

Remedies

The Fair Housing Act provides that where an administrative law judge finds that a respondent has engaged in discriminatory housing practices, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). The Act further states that the "order may, to vindicate the public interest, assess a civil penalty against the respondent." *Id*. The maximum amount of a civil money penalty is dependent upon whether the respondent has been adjudged to have committed prior discriminatory practices. *Id*. Where the respondent has not been adjudged to have committed any prior discriminatory practices, any civil money penalty assessed against the respondent cannot exceed $10,000.00. Otherwise, the maximum allowable civil money penalty is $25,000.00. *Id*.; *see also* 24 CFR 104.910(b)(3).

The government, on behalf of itself and the Complainants, has prayed for: (1) an award of damages to compensate Complainants Bellfy and the Tsaggarises for economic losses and emotional distress; (2) an award of damages to compensate Complainants the Tsaggarises for inconvenience; (3) the imposition of $20,000.00 in civil penalties against Respondent; and (4) injunctive relief to ensure that Respondent does not engage in unlawful housing practices in the future.

Economic Damages

The Charging Party seeks an award of $50,254.35 to compensate Mr. Bellfy for the economic losses he purportedly incurred as a result of Respondent's discrimination. Of that amount, $28,500.00 (plus interest) is sought as compensation "for the difference between the $133,500 purchase price the Barneses would have paid but for the discrimination and the unit's current $105,000 fair market value."[67] The remaining $21,754.35 is sought as compensation for the "unnecessary housing expenses" Mr. Bellfy incurred from February 1990 until the hearing. According to the Charging Party, "[R]espondent's unlawful discrimination forced Mr. Bellfy to continue living in housing which was considerably more expensive than that which he would have occupied but for the discrimination."

The compensation for economic losses sought by the Charging Party is premised upon a finding that but for Respondent's discrimination, the Barneses would have purchased the Bellfy/Sachs unit. That premise, however, was not established by the record evidence. As discussed *supra* n.44, the record contains no direct, admissible evidence of the reason(s) that the Barneses chose not to accept the last counteroffer made by Mr. Bellfy and Ms. Sachs or to otherwise continue negotiations. In the absence of such evidence, the Charging Party argues that the timing of the Barneses' withdrawal from negotiations and their becoming aware of Respondent's November 30, 1989, letter supports the drawing of an inference that negotiations collapsed because of Respondent's discriminatory conduct as memorialized in the letter. Based upon that inference, the Charging Party would have this tribunal reach the conclusion that had the Barneses not become aware of the letter, they would have closed a deal with Mr. Bellfy and
Ms. Sachs. The drawing of such an inference, however, requires speculating that the timing of the withdrawal from negotiations and becoming aware of the letter was more than coincidental. To do so would be to reject outright any one of a number of plausible reasons why people choose to withdraw from negotiations. Therefore, the record does not support an award of damages for the economic losses sought by the Charging Party.

The Charging Party seeks an award of $15,705.95, plus interest, to compensate the Tsaggarises for the economic losses they purportedly incurred as a result of Respondent's discrimination. That amount is sought as compensation for the loss of "at least two potential buyers during late 1989 and early 1990," and "represents the difference between the $136,205.95 [the Tsaggarises] would have received had they sold it to the interested family with children in 1989 ($144,900 purchase price minus $8,694.05

[67] As compensation for this purported economic loss, the Charging Party seeks, in the alternative, injunctive relief ordering Respondent to purchase the Bellfy/Sachs unit for $133,500.00, plus interest. For the same reasons set forth above denying an award of damages for this alleged loss, such injunctive relief is denied.

for the 6% commission ...) and the $120,500 they received in 1991 ($127,500 purchase price minus $7,000 commission)."[68]

[68]According to the Charging Party, had this first "potential sale not come to fruition and they had sold it, without a real estate agent and, thus, no commission, to the interested family with children in March 1990, they would have received $19,400 more than they actually received."

The Charging Party acknowledges that it cannot prove that either of the potential buyers would have purchased the unit at the Tsaggaris' asking price. Rather, it asserts that, given the buyers' "interest" in the unit and the absence of evidence that anything other than their learning of Respondent's prohibition on families with children caused them to stop pursuing the unit, a presumption has been created "that the potential buyers would have purchased the unit at the listing price or, if applicable, at the last price offered during the negotiations." Based upon that presumption, the Charging Party argues, the burden shifts to Respondent to demonstrate "that the potential buyer would not have purchased the dwelling for reasons other than respondent's discrimination, or would have purchased at a lower price." According to the Charging Party, having failed to introduce evidence that "either potential buyer would not have purchased the dwelling at the Tsaggarises' listing price," Respondent has failed to meet its burden.

As concluded with regard to Mr. Bellfy, the record evidence does not support a finding that the potential buyers were discouraged from negotiating with the Tsaggarises because of Respondent's discrimination. Again, the record contains no direct, admissible evidence of the reason(s) either potential buyer chose not to pursue negotiations. *See supra* n.55. Indeed, there is no such evidence that either potential buyer was in fact interested in the unit. In the absence of such evidence, the Charging Party again argues that the timing of the buyers' becoming aware of Respondent's prohibition of certain families and their failure to enter into negotiations with the Tsaggarises, despite having expressed "interest" in the unit, supports the drawing of an inference that negotiations failed to take place because of Respondent's discriminatory conduct. Based upon that inference, the Charging Party would have this tribunal reach the conclusion that had the buyers not become aware of Respondent's discriminatory policy, they would have purchased the unit at the listing price. As stated above, the drawing of such an inference is not possible. Therefore, the record does not support an award of damages for the economic losses sought by the Charging Party.

Inconvenience Damages

The Charging Party also seeks $5,000.00[69] each as compensation for the inconvenience purportedly suffered by the Tsaggarises because of Respondent's discrimination.[70] According to the Charging Party, such inconvenience stems from the burden associated with the move to alternate housing. Given, as discussed above, that the Tsaggarises were compelled to seek other housing when Respondent began its attempt to qualify for the exemption, any inconvenience suffered by the Tsaggarises resulting from the move is compensable. However, such inconvenience must be proven apart from a claim of emotional distress; to do otherwise would result in a duplicative award. *See HUD v. Bucha*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,046 (HUDALJ May 20, 1993). Accordingly, insofar as the damages for inconvenience sought by the Charging Party are meant to compensate the Tsaggarises for "the move, which left them exhausted and stressed" (*see* Secretary's post-hearing brief at 163), and to compensate Mr. Tsaggaris for feeling "very stressful" and "a little bit frustrated" at having to take a job to pay the increased expenses of the new home (*see* Tr. 1125-26), any such award is discussed below in the context of damages for emotional distress.

Effie Tsaggaris testified that she spent approximately nineteen months searching for a new home. Between her efforts and those of real estate agents, she secured a single family home in Jupiter, Florida. In *HUD v. Leiner*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,021, 25,268-69 (HUDALJ Jan. 3, 1992), the complainant was awarded $1,500.00 for the inconvenience caused by the respondent's discrimination that was incurred during her two month search for housing. The award was not only based upon the time spent searching, but also on the fact that the complainant had been forced to live with her great-grandmother and had to take taxicabs to see potentially suitable apartments. In contrast, the record in this proceeding does not demonstrate the extent of the inconvenience. Although absolute precision is not required to prove a claim of intangible damages, the record must demonstrate, for example, that Mrs. Tsaggaris had to take time out from other activities to perform the search or that the search was otherwise difficult to conduct. The evidence presented of inconvenience in this case demonstrates a degree of damage more similar to that suffered by the complainant in *HUD v. Jeffre*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,020, 25,257 (HUDALJ Dec. 18, 1991). In *Jeffre*, the complainant was awarded $500.00 for the inconvenience associated with a four-month search for alternate housing and having to remain in crowded, uncomfortable housing. Here, the search for housing was considerably longer, but the Tsaggarises were able to remain in housing they, by their own admission,

[69]In its post-hearing brief, the Charging Party increased the amount of damages it had sought at hearing for the Tsaggarises' inconvenience to $5,000.00. The Charging Party offers no explanation for the increase except its further review of case law and the record.

[70]The Charging Party does not seek a separate award of damages for the inconvenience suffered by Mr. Bellfy because it "is not readily separable from his economic losses and emotional distress."

deemed desirable. Furthermore, by excluding all condominiums from the housing search, the pool of available housing was limited, thus extending the duration of the search. Accordingly, Mrs. Tsaggaris is entitled to compensation for inconvenience in the amount of $500.00.[71]

[71]Respondent argues that any actual damages which otherwise would be awarded should be denied given HUD's excessive delay in issuing the Charges of Discrimination against it. Although such delay may affect the amount of any civil penalty, there is no authority for a similar reduction in the actual damage award itself. *See HUD v. Kelly*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,034, 25,362 (HUDALJ Aug. 26, 1992), *appeal filed*, (6th Cir. Oct. 16, 1992) (No. 92-4064). Accordingly, any effect of the delay is discussed *infra* in the section of this decision concerning imposition of a civil penalty.

Emotional Distress Damages

Damages for emotional distress can be inferred from the circumstances, as well as established by testimony, even in the absence of evidence of economic or financial loss or medical evidence of mental or emotional impairment.[72] *See, e.g.*, *Seaton v. Sky Realty*, 491 F.2d 634, 636 (7th Cir. 1974); *Smith v. Anchor Building Corp.*, 536 F.2d 231, 236 (8th Cir. 1976); *Johnson v. Hale*, 940 F.2d 1192 (9th Cir. 1991); *HUD v. Blackwell*, 908 F.2d 864, 874 (11th Cir. 1990). The amount of the award is intended to compensate the complainant for the damage inflicted by the discrimination. As in all civil cases, the damage award should make the victim whole, yet not provide a windfall. *See, e.g., HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,001, 25,013 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990).

Further, housing discriminators must take their victims as they find them; that is, damages are measured based on the injuries actually suffered by the victim, not on the injuries that would have been suffered by a reasonable or by an ordinary person.[73] Put otherwise, the susceptibility of the victim to injury is a factor that must be taken into consideration.[74]

A. Mr. Bellfy

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[72]The Charging Party requests that I reconsider my previous ruling allowing mental examinations of Complainants and thereby disregard the hearing testimony of the psychologists who performed the examinations. For the same reasons set forth by Order dated December 8, 1992, I reaffirm my previous ruling. Indeed, given the nature and scope of the Charging Party's request for emotional distress damages, I consider its opposition to the taking of the examinations to be disingenuous. In any event, I find that the testimony at issue was entirely unhelpful in assessing any emotional distress that was caused by Respondent's discrimination. Most significantly, the bulk of the testimony concerned the Complainants' responses to standardized psychological tests which bear little if any demonstrated relationship to the effects of housing discrimination. Accordingly, the psychologists' testimony provides no basis for any damage award for emotional distress.

[73]*See, e.g., HUD v. Properties Unlimited*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,009, 25,152 (HUDALJ Aug. 5, 1991) (damage award gave consideration to fact that complainant was eight and one-half months pregnant at time of discriminatory act); *HUD v. Jerrard*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,005, 25,091 (HUDALJ Sept. 28, 1990) (complainant's "pre-existing emotional problem" taken into consideration in determining damages for emotional distress).

[74]*See HUD v. Kelly*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,034, 25,362 n.24 (HUDALJ Aug. 26, 1992), *appeal filed*, (6th Cir. Oct. 16, 1992) (No. 92-4064) (Sixth Circuit's decision in *Baumgardner* not interpreted to reject the principle that the susceptibility of a housing discrimination victim to injury must be considered). *See also Steele v. Title Realty*, 478 F.2d 380 (10th Cir. 1973) (previous discrimination relevant to determining amount of compensation for emotional distress); *Davis v. Mansards*, 597 F. Supp. 334, 347-48 (N.D. Ind. 1984) (one tester, "deeply affected" and "decimated emotionally," was awarded $5,000.00, while another tester, who was "much less profoundly affected" and displayed a "degree of cynicism," was awarded $2,500.00); *Harrisons v. Otto G. Heinzeroth Mtg. Co.*, 430 F.Supp. 893, 897 (N.D. Ohio 1977).

The Charging Party seeks an award of $20,000.00 for the emotional distress experienced by Mr. Bellfy because of Respondent's discrimination. As evidence of Mr. Bellfy's emotional distress, the Charging Party relies on the anxiety he experienced in dealing with his daughter, physical manifestations of the distress, his decreased job performance, his inability to satisfy financial obligations, the impact of this proceeding, and the deterioration of his relationship with Ms. Sachs.

As detailed above, Mr. Bellfy worried about the effect the discrimination would have on his daughter, including his relationship with her. As a divorced father with joint custody, Mr. Bellfy was concerned that his daughter would believe he had intentionally chosen a community which excluded children. He was afraid he would be unable to have her live with him for only a limited number of days per year, and that when at Ocean Parks, she would experience discrimination. He also was concerned that the situation at Ocean Parks would negatively affect his daughter's positive image of the elderly. But for Respondent's discrimination, Mr. Bellfy would not have endured this consternation and the consequent distress.[75]

Mr. Bellfy also experienced stomach problems and fatigue, and slept more frequently. Respondent asserts that compensation for emotional distress manifested in such ailments is not warranted because the ailments "do not appear related by date" to its conduct. However, Mr. Bellfy sought and obtained medical treatment for the stomach problems in July 1989, September 1989, September 1990, and December 1990. (SX 16A). This was the same period during which Respondent pursued qualification for the 55 and older exemption. Mr. Bellfy also testified that he had not experienced symptoms prior to that time, and medical tests did not reveal any physical cause. As for the fatigue and sleepiness, Mr. Bellfy's otherwise credible testimony as to the nature and timing of the symptoms was corroborated by that of Ms. Sachs. Given the unrebutted record evidence, I conclude that Respondent's discrimination caused Mr. Bellfy compensable emotional distress, which manifested itself in physical symptoms.

As demonstrated by the unrebutted testimony of Mr. Bellfy and his supervisor at work, since Respondent's discrimination, Mr. Bellfy has also become increasingly impatient and irritable with customers and co-workers, resulting in a reduction in his job performance. This, too, is evidence of compensable emotional distress.

The Charging Party, however, has not demonstrated that Mr. Bellfy's purported inability to meet his financial obligations and any consequent emotional distress were caused by Respondent's discrimination. According to the Charging Party, the making of late payments for housing expenses by Mr. Bellfy and the return of checks made out by

[75]Mr. Bellfy testified that he felt compelled to reassure his daughter that the situation would work itself out. There is nothing in the record which demonstrates what, if any, reaction his daughter actually had to the situation at Ocean Parks. Thus, Mr. Bellfy is not entitled to any compensation for any distress he may have experienced as a result of his daughter's reaction to the situation at Ocean Parks.

Mr. Bellfy due to insufficient funds are attributable to Respondent's discrimination. The relationship, however, between Respondent's financial problems and Respondent's discrimination is too speculative and, therefore, is not a basis upon which an award of damages for emotional distress can be made.

Specifically, the Charging Party ties Mr. Bellfy's financial problems to his decreased job performance. Although Mr. Bellfy's job performance decreased, by his own admission, his income went down at least in part because of a decline in economic conditions. Indeed, Mr. Bellfy's income did not spiral downward dramatically; during 1989-1992 his income peaked in 1990 and returned to its 1989 level in 1992. Similarly, Mr. Bellfy's and Ms. Sachs' joint income during those years generally increased, with a dip from 1991 to 1992 that still left a combined joint income larger than all but the previous year. Moreover, by the Charging Party's own admission, Mr. Bellfy's and Ms. Sachs' expenses, particularly for automobiles, increased, and there is no record evidence as to the reasonableness of such expenses.

The record also demonstrates that as a result of Respondent's discrimination, Mr. Bellfy's relationship with Ms. Sachs suffered, causing him compensable emotional distress.[76] According to the Charging Party, the deterioration in the relationship was due primarily to Mr. Bellfy's and Ms. Sachs' inability to sell the unit and move to a situation where they could start a family. As set forth above, until November 1990, Respondent's discrimination prevented a child under 14 from permanently residing with Mr. Bellfy and Ms. Sachs. Given that situation and finding it difficult to sell the unit, Mr. Bellfy and Ms. Sachs claimed that they postponed their plans to marry and start a family. The emotional pain experienced by Mr. Bellfy which both caused and resulted from the postponement was only exacerbated by the effect of having to endure Ms. Sachs' emotional turmoil as well. For this, Mr. Bellfy is entitled to an award of damages for emotional distress.

The amount of compensable distress, however, is not nearly as great as posited by the Charging Party, given the lack of record evidence demonstrating that Mr. Bellfy took sufficient steps to mitigate this aspect of his damages. According to the Charging Party, Mr. Bellfy's and Ms. Sachs' relationship continued to suffer even after Respondent eliminated the rule prohibiting children under 14 from permanently residing in the open buildings. Elimination of the rule, however, removed the major source of any uncertainty associated with their starting a family. Moreover, Mr. Bellfy and Ms. Sachs were obligated to explore options that could have alleviated their predicament, including all potential sales or rental of the unit. Thus, although I do not find Mr. Bellfy's and Ms. Sachs' initial decision in or about May 1990 to remove the unit from the market-place to be unreasonable, I consider his reliance on HUD intervention to resolve his dilemma beginning in December 1991 to be so. Indeed, the record demonstrates that on at least

[76]Given the conclusion reached above that Respondent's discrimination did not cause the sale to the Barneses to fall through, any emotional distress which resulted therefrom is not compensable.

one occasion, Mr. Bellfy failed to treat a potential buyer seriously. Contrary to Respondent's depiction of that buyer, Martha McGurn, as disinterested, the record shows that it was Mr. Bellfy himself who was disinterested.

Finally, damages are also warranted for the emotional effect on Mr. Bellfy caused by Ms. Sachs' reaction to this proceeding. In particular, her apprehension concerning the reaction of other Ocean Parks residents to this action made him feel ineffectual.

Given the extent of emotional distress suffered by Mr. Bellfy because of Respondent's discrimination and a review relevant case law,[77] I conclude that $5,000.00 in emotional distress damages is recoverable, and this amount will be awarded to Mr. Bellfy in the Order below.

B. Mr. and Mrs. Tsaggaris

[77] *See, e.g.*, *Bucha* at 25,457 ($0 awarded to complainant for emotional distress); *HUD v. Carter*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,029 at 25,321 (HUDALJ May 1, 1992)($6,000.00 awarded to complainant for emotional distress); *Murphy* at 25,056-57 (total of $7,750.00 awarded to 8 of 9 complainants); *Blackwell* at 25,017 (total of $40,000.00 awarded to 2 complainants and $20,000.00 to 2 intervenors for emotional distress).

The Charging Party seeks an award of $50,000.00 for the emotional distress experienced by Mr. Tsaggaris because of Respondent's discrimination and $20,000.00 for that experienced by Mrs. Tsaggaris.[78] As evidence of Mr. Tsaggaris' emotional distress, the Charging Party relies on his preoccupation with Respondent's discrimination, which interfered with his musical performances and friendships; the blackouts he experienced during the time he was trying to sell the unit and after he had moved from Ocean Parks; and the changes in his behavior upon receiving the Charge and preparing for this proceeding. As evidence of Mrs. Tsaggaris' emotional distress, the Charging Party relies on changes in her behavior and personality; changes in her recreational habits; her concern for the effect the discrimination was having on Mr. Tsaggaris (most significantly, his blackouts); her exhaustion after the move; and the agitation she continued to feel not only after the move, but in connection with this proceeding.

The record demonstrates that as a result of Respondent's discrimination, Mr. Tsaggaris suffered considerable compensable emotional distress. Given Mr. Tsaggaris' disposition, he became extremely preoccupied and frustrated with the situation at Ocean Parks. His musical ability, an important aspect of his life, was hampered. Most significantly, he experienced great stress, apparent to those around him most, which, ultimately manifested itself in two blackouts, one before and one soon after moving from Ocean Parks.[79] Although the stress dissipated six months to a year after moving from Ocean Parks, it returned with the advent of this proceeding.

The record also demonstrates that as a result of Respondent's discrimination, Mrs. Tsaggaris changed from being warm, happy and open to agitated, unhappy and preoccupied. Her tennis game, an important recreational activity to her, suffered. She constantly worried, not only about the financial implications of a move given their fixed income, but about the effect the situation was having on her husband. Most significantly, she feared that her husband's health and indeed his life were in jeopardy. On one occasion, she found Mr. Tsaggaris lying unconscious on the kitchen floor, and on another

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[78] In its post-hearing brief, the Charging Party increased the amount of damages sought at hearing for the Tsaggarises' emotional distress to $50,000 for Mr. Tsaggaris and $20,000 for Mrs. Tsaggaris. The Charging Party offers no explanation for the increase except its further review of case law and the record.

[79] Respondent asserts that no compensation is warranted in connection with these blackouts. First, Respondent disputes that the blackouts are solely caused by stress; rather, it asserts that they are attributable to a preexisting condition of brain scar tissue. Second, based upon the testimony of the psychologist retained by it, Respondent suggests that even if stress is a causal factor, Mr. Tsaggaris' smoking of two to three packs of cigarettes daily is a probable source of stress.

The record however, does not support the conclusion that Mr. Tsaggaris' blackouts are the result of a preexisting scar tissue condition. *See supra* n.56. Thus, Respondent has failed to rebut the Charging Party's assertion that the blackouts are triggered by stress. Moreover, having credited the record evidence that Respondent's discrimination caused Mr. Tsaggaris stress, having rejected the testimony of the psychologists called by both parties, and given the timing of the blackouts, I conclude that the record sufficiently demonstrates that Respondent's discrimination caused the blackouts.

occasion, she witnessed the blackout and called 911. Mrs. Tsaggaris was left physically and emotionally exhausted from the move, and after finally beginning to recover several months later, saw the emotional upheaval return when faced with reliving the past because of this proceeding.

Given the extent of the emotional distress suffered by the Tsaggarises and a review of relevant case law,[80] I award each of them $7,500.00.

Civil Penalty

[80] *See supra* n.77.

In addressing the factors to be considered when assessing a request for imposition of a civil penalty, the House Report on the Fair Housing Amendments Act of 1988 states:

> The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When determining the amount of a penalty against a respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, and any history of prior violations, the financial circumstances of that respondent and the goal of deterrence, and other matters as justice may require.

H. Rep. No. 100-711, 100th Cong., 2d Sess. 37 (1988) ("House Report").

Although Respondent violated the Act in its failed pursuit of qualification for the 55 and older exemption, and any such violation is serious, the record does not demonstrate that Respondent's attempt to qualify for the exemption was made in anything other than good faith. A demonstrated desire to exclude children does not indicate bad faith *per se*. Indeed, that goal, coupled with a demonstration of the requisite physical and social attributes of the community and of the requisite percentage of persons 55 and older, are necessary for the exemption. Moreover, Respondent was faced with a new, complex statute and regulations, complicated further by state law considerations and it's own organizational structure. Where, as in this proceeding, the record does not demonstrate that the absence of these elements is attributable to an orchestrated effort by the respondent to knowingly obfuscate discriminatory conduct, no finding of bad faith can be made. The record, therefore, does not demonstrate that the timing and substance of the changes Respondent made in its policies, practices and positions, both before and after initiation of this proceeding, make Respondent completely blameworthy for its actions.

Respondent also has no history of prior violations. There is nothing in the record evidence to indicate that Respondent's financial circumstances militate against the imposition of a civil penalty. Indeed, the record demonstrates that Respondent has passed at least some of the cost of this litigation onto its members by increasing their assessments. Finally, the imposition of a civil penalty is necessary to serve the goal of deterrence, so that those seeking to claim the exemption in the future will do so lawfully.

The Charging Party also argues that the $10,000.00 maximum penalty for a respondent who has not been adjudged to have committed any prior discriminatory housing practice should be applied to each of the two cases, which although tried jointly, were not consolidated. Thus, the Charging Party seeks imposition of $20,000.00 in civil penalties. Given the language of the Act and Congress' demonstrated intent in designing the civil penalty scheme, the relevant inquiry in determining the allowable maximum penalty is whether a defendant's conduct, in its totality, constitutes "a discriminatory housing practice." *See* 42 U.S.C. §§ 3602(f), 3612(g)(3); House Report at 37. Making the number of complainants the basis for determining the civil penalty

ignores the Congressional guidelines. Although this proceeding is comprised of two cases tried jointly and not consolidated, Respondent's unlawful conduct, albeit incremental, amounts to a unified series of acts, thereby constituting a single "discriminatory housing practice." Accordingly, a single maximum penalty of $10,000.00 is applicable in this proceeding.

Based upon a consideration of the factors directed by Congress and to vindicate the public interest, I conclude that it would be appropriate in this case to impose a single civil penalty of $5,000.00 upon Respondent. However, because of HUD's unexplained delay of over two years in issuing its Charges,[81] I will not award the full amount. By failing to provide the speedy resolution contemplated by the Fair Housing Amendments Act, HUD enlarged the period during which Complainants' damages accrued. Consequently, Respondent will be ordered to pay more actual damages to the Complainants than they would have if HUD had acted within the statutorily prescribed time frame. Given the intangible nature of those damages, the extent to which they were enhanced by HUD's inaction cannot be ascertained exactly. *Cf. HUD v. Kelly*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,034, 25,363 (HUDALJ Aug. 26, 1992), *appeal filed*, (6th Cir. Oct. 16, 1992) (No. 92-4064) (civil penalty of under $3000.00 reduced to $0 where Respondents ordered to pay tangible economic damages more than $3000.00 higher due to HUD's delay). However, such precision is not required. *See Baumgardner v. HUD*, 960 F.2d 572, 583 (6th Cir. 1992) (civil penalty of $4000.00 reduced to $1500.00 due to HUD's delay where Respondent ordered to pay compensatory damages of $1500.00, comprised of $1000.00 for economic losses, including inconvenience, and $500.00 for emotional distress). Because the damages awarded Complainants for emotional distress and inconvenience in large part reflect injury incurred during the period of delay, I decline to award any civil penalty.

Injunctive Relief

The Act also authorizes the administrative law judge to order injunctive or other equitable relief. 42 U.S.C. § 3612(g)(3). The purposes of injunctive relief 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 1033, 1036 (8th Cir. 1979), *cert. denied*, 445 U.S. 905 (1980). The injunctive provisions of the following Order serve all of these purposes.

Order

[81]The Charging Party does not allege and there is nothing in the record which demonstrates that HUD notified the parties of its failure to complete its investigations within 100 days and the reasons for the failure.

1. Respondent and its agents and employees are hereby permanently enjoined from discriminating with respect to housing because of familial status. Prohibited actions include, but are not limited to:

a. making unavailable or denying a dwelling to any person because of familial status;

b. discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;

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

d. representing, because of familial status, that any dwelling is not available for sale, rental, or inspection when it is in fact so available;

e. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act; and

f. retaliating against Complainant Jeffrey Bellfy, any witness, or anyone else for his or her participation in these cases or for any matter related thereto, including by imposing new requirements on applicants for approval to purchase, lease, or occupy Mr. Bellfy's and Ms. Sachs' unit.

2. Respondent and its agents and employees shall cease to employ or enforce any policies or practices that discriminate against families with children, including its rules and regulations excluding children under 18 from certain condominiums.

3. Within 10 days from the date this order becomes final, Respondent shall file a Notice of Rescission of the revised Statement of Intent (SX 57) in the Public Records of Palm Beach County, Florida, and shall rescind all its discriminatory policies, including, but not limited to, its rules and regulations prohibiting children under 18 from residing permanently in certain condominiums and the prohibitions on children under 18 in Respondent's interview workbook (SX 63) and the forms included therein.

4. Within 10 days of the date this order becomes final, Respondent shall inform all its agents, employees, and members of the terms of this order and educate them as to such terms and the requirements of the Act. Any new employees shall be informed of such no later than the evening of their first day of employment.

5. Within 60 days from the date this order becomes final, Respondent shall hold a meeting for all its members, at which it shall inform them of the requirements of this order. At that meeting, Respondent shall inform its members that the discriminatory language in the Declarations of Condominium of the closed condominiums is unenforceable under the Act and shall take appropriate action to facilitate the amendment of the Declarations of Condominium of the closed condominiums to comply with the Act. This action shall include:

a. preparing amendments which delete the discriminatory language;

b. scheduling times for members to vote on the amendments, at the earliest time allowed by state law;

c. informing its members that the Act requires the amendments;

d. within 30 days of the votes, advising members of the results; and

e. within 30 days of the votes, filing any amendments which are adopted.

6. Within 10 days of the date on which this Order becomes final, Respondent shall pay actual damages to Complainant Jeffrey Bellfy of $5,000.00.

7. Within 10 days of the date on which this Order becomes final, Respondent shall pay actual damages to Complainant Effie Tsaggaris of $8,000.00.

8. Within 10 days of the date on which this Order becomes final, Respondent shall pay actual damages to Complainant Thomas Tsaggaris of $7,500.00.

9. Within 30 days of the date this order becomes final, and at least once every 12 months for the following three years, Respondent shall send written notice to all area real estate brokers, and to all occupants and owners, that the discriminatory policies and procedures are no longer in effect. For purposes of this requirement, "area real estate brokers" refers, at a minimum, to all brokers and agents with any office in the area to which Respondent sent SX 47 and/or SX 54.

10. Consistent with 24 CFR Part 109, Respondent shall display the HUD fair housing logo and slogan in all documents routinely provided to the public. Consistent with 24 CFR Part 110, Respondent shall display the HUD fair housing poster in a prominent place in its principal office, and any other offices where it conducts business.

11. Respondent shall institute internal record-keeping procedures, with respect to the applications for approval of prospective purchasers, tenants, or other occupants, which are adequate to comply with the requirements set forth in this order. These will include keeping all records described in this order. Respondent will permit representatives of HUD to inspect and copy all pertinent records at any and all

reasonable times and upon reasonable notice. Representatives of HUD shall endeavor to minimize any inconvenience to Respondent from the inspection of such records.

12. On the last day of every sixth month (or two times per year), beginning at the end of the second month after this order becomes final, and continuing for three years from the date this order becomes final, Respondent shall submit reports containing the following information to HUD's Atlanta Regional Office of Fair Housing and Equal Opportunity, 75 Spring Street, S.W., Atlanta, GA 30303-3388, except that the Regional Administrator may make the requirements less, but not more burdensome:

a. A duplicate application for all persons who applied for Respondent's approval of purchase, rental, or occupancy at Ocean Parks, and a statement for each person which includes the person's name and familial status, whether the person was rejected or accepted, the date on which the person was notified of acceptance or rejection, and if rejected, the reason for such rejection.

b. Current occupancy statistics indicating those units in which condominiums at Ocean Parks are occupied by families with children.

c. A list of all people who inquired of Respondent, its agents or its employees, in writing, in person, or by telephone, about renting, buying, or occupying a unit at Ocean Parks, including the name, address, and familial status, date of inquiry, and disposition of the inquiry for each such person.

d. A description of any changes made during the reporting period to Respondent's rules and regulations or other documents provided to or signed by current or new tenants, purchasers, occupants, or applicants, regardless of whether the change was formal or informal, written or unwritten, and a statement of when the change was made, how and when the members, tenants, occupants, and applicants were notified of the change, whether the change or notice thereof were made in writing, and, if so, a copy of the change and the notice.

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

/s/

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Robert A. Andretta
Administrative Law Judge