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, Charging Party, v. C. Robert Lange, Respondent.	HUDALJ 03-93-0429-8 Decided: October 23, 1995

C. Robert Lange, pro se

Antoinette Barksdale, Esquire
For the Government

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed by the Assistant Secretary for Fair Housing and Equal Opportunity of the Department of Housing and Urban Development ("HUD" or "the Secretary") alleging that C. Robert Lange ("Respondent") and C. Robert Lange Realtors, Inc., violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (sometimes "the Act") by placing an advertisement that unlawfully discriminated against families with children. HUD investigated the complaint, and after deciding that there was reasonable cause to believe that discriminatory acts had taken place, issued a Charge of

Discrimination on May 3, 1995. The Charge alleges that Respondent and C. Robert Lange Realtors, Inc., violated section 804(c) of the Act (42 U.S.C. § 3604(c)).[1]

Respondent failed to file an Answer to the Charge of Discrimination. Pursuant to a motion by the Charging Party to which Respondent filed no response, a Default Judgment was entered against Respondent on July 11, 1995, finding that Respondent has violated the Act as alleged in the Charge. On July 18, 1995, a hearing was held for the limited purpose of taking evidence on the appropriate relief to be awarded to the Charging Party. Respondent appeared at the hearing and testified. At the close of the hearing, the parties were given the opportunity to file post-hearing briefs. The Charging Party filed a brief, but Respondent did not. Because Respondent failed to file an Answer to the Charge of Discrimination, the allegations of the Charge are deemed admitted pursuant to section 104.420 of the Rules of Practice governing this proceeding. 24 C.F.R. § 104.420.

Findings of Fact

1. Respondent is an individual who at all times material herein was the sole owner and operator of C. Robert Lange Realtors, a real estate business. Charge, ¶¶ 2, 3; TR. 5.[2]

2. At all times material herein Respondent was a member of Tri-County Multiple Listing Service ("MLS") and wrote and placed advertisements in the MLS. Charge, ¶¶ 5, 6.

3. Every two weeks the MLS provides an updated descriptive list of properties for sale or rent to over 6,500 member real estate agents in three Pennsylvania counties: Chester, Delaware, and Montgomery. Charge, ¶ 7.

4. Respondent caused a listing to be made and published in the MLS on March 10, 1992, advertising a condominium for sale at 48 Llanfair Road, Ardmore, Pennsylvania. Included in the listing was the phrase, "No pets or children allowed." Respondent was identified in the advertisement as the listing agent. Charge, ¶¶ 8, 9.

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[1]The parties now agree that C. Robert Lange Realtors, Inc., is not a legal entity and that Respondent has engaged in business as C. Robert Lange Realtors, a sole proprietorship. Transcript, p. 5.

[2]The following reference abbreviations are used in this decision: "TR." for "Transcript" and "EX." for "Exhibit."

5. The advertisement described above indicated a preference, limitation, or discrimination based on familial status, or an intention to make such a preference, limitation, or discrimination, with respect to the sale of a dwelling. Charge, ¶ 10.

6. As of July 11, 1994, Respondent had an earning capacity of $132,000 per year as a real estate broker, and he and his wife had a net worth of at least $724,048.32. EX.5.

Conclusions

By virtue of the facts admitted by Respondent's failure to file an Answer, Respondent has violated section 804(c) of the Act. 42 U.S.C. § 3604(c).

Remedy

The Charging Party requests that the court order Respondent to pay a civil penalty of $2,500 as authorized by 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (3) the degree of respondent's culpability; (4) the goal of deterrence; and (5) respondent's financial circumstances. *See HUD v. Murphy,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,002 at 25,058(HUDALJ Jul. 7, 1990); *HUD v. Blackwell,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,001 at 25,014-15, *aff'd,* 908 F.2d 864 (11th Cir. 1990); H. R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

(1) Nature and Circumstances of the Violation

The nature and circumstances of the violation in this case do not compel imposition of the maximum possible penalty. There is no evidence that Respondent's single unlawfully discriminatory advertisement was motivated by personal animus toward families with children. Evidence in the record suggests that Respondent wrote the listing to reflect instructions from the owner of the property. TR. 23. Although the record does not show the advertisement caused injury to any particular person, given that the listing was circulated to more than 6,500 real estate agents, it is reasonable to assume that at least one family with children was deprived of the opportunity to buy the property as a result of Respondent's conduct.

(2) Respondent's Record

There is no evidence that Respondent previously has been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against Respondent is $10,000, pursuant to 42 U.S.C. § 3612(g)(3)(A) and 24 C.F.R. § 104.910(b)(3)(i)(A).

(3) Respondent's Culpability

Respondent has been a real estate professional for 18 years. He testified that he was "familiar" with the Act and has received fair housing training, yet he claims that when he prepared the listing in March of 1992 he was ignorant of the familial status provisions of the Act. TR. 24, 35. Whether or not Respondent was in fact unaware of the law, as an experienced professional, he should have known that the listing was unlawful in March of 1992, more than three years after passage of the Fair Housing Amendments Act of 1988.

Respondent's failure to cooperate with the adjudicatory process must also be noted. Although Respondent admits that he received all of the documents issued by the Secretary and by this court, he responded to none of them as required, except the notice of hearing issued by the court. TR. 61.

(4) Deterrence

Assessment of a significant civil penalty will send a strong message to Respondent and others similarly situated in the housing industry that the Secretary will not tolerate housing discrimination based on familial status, including discriminatory advertisements. Respondent testified that he is not currently engaged in the real estate business, but that he still has his broker's license. He therefore may again work in the housing industry. TR. 35-6.

(5) Respondent's Financial Circumstances

Evidence regarding a respondent's financial circumstances is peculiarly within his knowledge, so he has the burden of introducing such evidence into the record. If a respondent fails to produce credible evidence militating against assessment of a civil penalty, a penalty may be imposed without consideration of his financial circumstances. *See Campbell v. United States,* 365 U.S. 85, 96 (1961); *HUD v. Jerrard,* Fair Housing-Fair Lending (P-H) ¶ 25,005 at 25,092(HUDALJ Sep. 28, 1990); *Blackwell* at 25,015.

According to documents submitted by Respondent and the Secretary, as of July 11, 1994, Respondent had an earning capacity as a real estate broker of $132,000 per year, and he and his wife had a net worth of at least $724,048.32. EX. 5. Despite this evidence of relative affluence in 1994, Respondent claims that as a result of protracted, expensive,

and unresolved divorce proceedings, he now has no business, no car, no home, and is "basically bankrupt and insolvent." TR. 26. He testified that he is making his living as a golf caddy. However, a conciliator appointed by the divorce court recommended that Respondent receive 40 percent ($289,619.33) of the marital estate, and Respondent did not explain how the divorce proceedings reduced him to the poverty he claims, or why he cannot realize his substantial earning capacity as a real estate broker. Moreover, he concedes that neither he nor any of his creditors has petitioned a court to declare him a bankrupt. TR. 50. Finally, even if we accept the scenario set out at hearing by Respondent, he has admitted that he will emerge from the divorce with assets approaching $100,000 in value. Respondent therefore has failed to submit credible evidence demonstrating that he cannot pay the $2,500 civil penalty sought by the Charging Party, a reasonable amount under the circumstances.

Injunctive Relief

To preclude future discrimination and protect the public interest, the Act authorizes an administrative law judge to grant injunctive relief to a prevailing Charging Party. 42 U.S.C. § 3612(g)(3). *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).

ORDER

It is hereby ORDERED that:

1. Respondent is permanently enjoined from advertising the sale or rental of a dwelling in any manner that indicates a preference, limitation, or discrimination based on familial status; and

2. Within 10 days of the date on which this Order becomes final, Respondent shall pay a civil penalty of $2,500 to the Secretary of HUD.

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

THOMAS C. HEINZ
Administrative Law Judge

Dated: October 23, 1995.