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 Shayleen Turner and Tskeai Louise Dockery, Charging Party, v. David C. French, Delores French and Beverlea Moore, Respondents.	HUDALJ 09-93-1710-8 Decided: September 12, 1995

Richard J. Chiurazzi, Esq.
For the Respondents

Diane Walder, Esq.
For the Charging Party

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION AND ORDER

Statement of the Case

This matter arose as a result of a complaint filed by Shayleen Turner and Tskeai Louise Dockery ("Complainants"), alleging discrimination in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619. On February 3, 1995, following an investigation and a determination that reasonable cause existed to believe that discrimination had occurred, the Department of Housing and Urban Development ("HUD" or "the Charging Party") issued charges against Respondents, David C. French and Beverlea Moore, alleging that they had engaged in discriminatory housing practices in violation of §§ 3604 (a) (b) and (c) of the Act. The charges alleged that Respondents

violated the Act by, *inter alia*, making an apartment unavailable to Complainants based on familial status; imposing different terms and conditions of residency because of familial status; and making or causing to be made, statements with respect to residency, which indicate a limitation or preference based on familial status.

On May 11, 1995, this Court granted the Government's motion to amend and supplement the pleadings to add Delores French as a Respondent in the case. An Amended Charge of Discrimination was filed on May 19, 1995.

Respondent filed a prehearing motion to dismiss on the basis of the Government's delay in investigating the case and in issuing the Charge of Discrimination. That motion was denied by Order on May 11, 1995.

A hearing was held on May 23, 1995, in Modesto, California. Both parties submitted post-hearing briefs. The case is now ready for decision.

In their post-trial brief, Respondents restated the arguments made in their Motion to Dismiss that (1) the charge of discrimination was not filed in a timely fashion, and (2) that the investigation was not completed within one hundred (100) days as required. These motions were addressed in the Order of May 11, 1995, and will not be reconsidered. Respondents also argue that the Charging Party has failed to prove that an apartment was available to rent to Complainants as of May 3, 1993, or prove that Respondents engaged in a policy or practice of discriminating against Complainants or other individuals with children. In the alternative, they argue that if the Court finds Respondents violated the law, Complainants should not be awarded damages and a civil penalty should not be imposed because of the inordinate delay by the Government in bringing the Charge in this case.

Findings of Fact

1. The Complainants are Shayleen Turner and her daughter, Tskeai Louise Dockery, who was one month old in May, 1993. Ms. Turner is a 21-year-old high school graduate with post high school vocational training. Since October 1990, she has been an assistant manager/manager-trainee at Kentucky Fried Chicken where she supervises ten people. Tr. 1, p.23.[1] In May 1993, she was working two jobs -- part-time at Kentucky Fried Chicken and part-time at Campbell Industries. Tr. 1, p. 38.

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[1]The following reference abbreviations are used in this decision: "Tr. 1", "Tr. 2", and "Tr. 3", followed by a page number for transcript volumes I, II and III; "C. P. Ex." for Changing Party's Exhibit; and "R. Ex." for Respondents' Exhibits.

2. Respondents David C. French and Delores "Dolly" French are the owners of the property in question, located at 7711 Camellia Lane, in Stockton, California. They own and operate nine residential properties. C.P.-14, Tr.1, pp. 19-21, Tr.2, p. 426.

3. Respondent Beverlea "Dee" Moore has been the resident manager at 7711 Camellia Lane for the past 15 years. She accepts applications for rental units, interviews applicants, and manages the property for Mr. and Mrs. French. C.P.16. Tr.2, pp. 525-537.

4. The property at 7711 Camellia Lane consists of eight upstairs apartments and eight downstairs apartments. Each apartment has two-bedrooms and a total of 690 square feet of living space. Tr. 2, p. 404. There was very little turnover in tenants prior to May 1993, the month in question.

5. In May 1993, Ms. Turner and her infant daughter, Tskeia, shared a two-bedroom apartment with her mother and Ms. Turner's 16-year old sister. Ms. Turner and her child shared one bedroom and her mother and sister shared the second. Ms. Turner had moved in with her mother in August 1992, after being on her own for a number of years. Prior to moving in with her mother she had stored her furniture and some personals belongings at a cost of $45 per month. The arrangement with her mother was intended to be temporary and Ms. Turner had been looking on and off for an apartment of her own, but after her baby was born, she began to search in earnest. She desired more space, and freedom from her mother's smoking, which she considered a health hazard for her newborn child. Tr.1, p. 30.

6. On May 3, 1993, Ms. Turner saw an advertisement in the *Stockton Record* listing a two-bedroom apartment for rent at the 7711 Camellia Lane complex for $395 per month, which would be available for rent as of May 15, 1993. Tr. 1, p. 82. The listed apartment seemed to meet all of her prerequisites. She responded to the ad by telephoning the number listed therein. The person who answered identified herself as "Dee Moore". Tr.1, pp. 27,28. Ms. Moore told Complainant that the apartment was not available "to be looked at yet, but that it was identical to her (Ms. Moore's) apartment (#8) and that [Complainant] could come and look at her apartment instead." Ms. Moore stated further that if Complainant liked the apartment she was shown, she would give her an application to fill out. Tr. 1, pp. 27,28.

7. Complainant Turner and her mother visited the subject complex on the day that she called and they met and spoke with Ms. Moore.[2] Ms. Moore appeared to be interested in showing them the apartment and was in the process of giving them an application until Complainant and her mother told Ms. Moore that the two-bedroom apartment would be for Complainant and her infant daughter. When Ms. Moore became aware that a child would be a resident, she told Complainant and her mother that the apartment that was available for rent was an upstairs apartment and that "we don't rent upstairs units to people with children."[3] She went on to explain that their policy was not to rent upstairs units to people with small children because it was too dangerous. Thinking that policy was reasonable, Ms. Turner asked to see a downstairs unit.
Ms. Moore indicated that there was no downstairs apartment available, that she did not know when one would become available and that she had no pending 30-day notices. Ms. Moore then suggested that Complainant Turner go down the street and look at another apartment building that had an apartment available for rent at that time.
Ms. Moore did not show Complainant and her mother her apartment, nor did she give Complainant an application. Tr. 1, pp.29-30; 39-40; 149-156.

8. Following Ms. Moore's suggestion, Complainant Turner and her mother went down the street to the other apartment building but they left without looking at any individual units after seeing a posted notice about frequent spraying for insects. Complainant Turner was concerned about the effects of frequent exposure to insecticides on her baby.

9. Complainant Turner really liked the apartment at 7711 Camellia Lane. She thought it was "cute, quiet, and cheap." Tr.1, pp. 39-40. The streets were clean. It was a "pretty" neighborhood, with a church on one corner. It was in a school district that had the best reputation in Stockton, and it was in her price range. Tr. 1, pp. 45-46. Her mother liked the apartment too. During their trip back home, Ms. Turner's mother wondered if she and her 16-year old daughter might move there. When they got home, they called Ms. Moore to see if that would be possible. Ms. Moore told them that they

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[2]Ms. Turner did not get the name of the person who answered the door and engaged in the conversation with her, but she informed the person that she was there as a follow-up to a telephone call she had made earlier in the day. Ms. Turner assumed that the person she met at 7711 Camellia Lane was Dee Moore. Tr. 1, p. 29. Although Ms. Moore testified that she never remembered seeing Ms. Turner or her mother before, she acknowledged talking to two women on or about that day about an upstairs apartment and informing them that she preferred not to rent upstairs units to families with children. C.P. 16. I credit Shayleen's and Mary Beth Turner's testimony that they talked to Ms. Moore on the premises of 7711 Camellia Lane.

[3]According to Ms. Mary Beth Turner, Ms. Moore said "Well, we don't allow children upstairs" because they might fall down the stairs and injure themselves. Tr. 1, p.149-151.

(Respondents) did not rent upstairs units to families with teenagers because teenagers are loud and noisy and would disturb the downstairs tenants. Ms. Turner was not satisfied with this reason and stated to Ms. Moore that a 16-year old would soon be old enough to rent on his/her own. During that conversation Ms. Moore stated again that she would not rent the upstairs unit to a person with small children. At that point, Complainant Turner told Ms. Moore that she would like to speak to her supervisor and asked for the name and number. Ms. Moore declined to give her that information, but told Ms. Turner that she would have the owner call her. The owner never called Ms. Turner. C. P.- 6.

10. Ms. Turner felt that she had been treated unfairly by Ms. Moore's refusal to consider her application for an apartment at 7711 Camellia Lane. She was angry, "felt mad" and "frustrated." She was preoccupied with the feeling that she had been unfairly treated and it affected her ability to concentrate. Tr. 1, pp. 38-40; 113-114. She was depressed; would not eat; and wanted to be to herself. Tr. 1, p. 130, 156. Fueling her anger was her belief that Ms. Moore had used the fact that she had a child as an excuse for race discrimination. Tr. 1, pp. 98-100, 112, 139-140. She talked about race as a factor with her mother and later with her supervisor, Patrick Anthony Parker ("Tony"). He suggested that she contact FHA and file a complaint. She acted on that advice, called HUD, and was sent a complaint form and an information package. Tr. 1, pp. 42-43.

11. Prior to filing a complaint with HUD, Ms. Turner did not know that it was unlawful to discriminate against families with children. More specifically, she did not know that it was unlawful for respondents to refuse to rent an upstairs unit to a family with children for reasons of safety or noise. Tr. 1, p. 96-68. She thought that the policy sounded reasonable. Accordingly, she was not "mad" at the time about being treated differently on the basis of familial status. Tr. 1, pp. 95-98.

12. On May 12, 1993, Ms. Turner filed a complaint with HUD. Her complaint alleged discrimination based on race, and on familial status. Specifically, she alleged that Ms. Moore told her that she could not rent the apartment because she had a small child and that when she called back, Ms. Moore told her that a 16-year old child would not be able to stay in the apartment, as well. C.P.- 5. *See also* C.P.- 6. Although Ms. Turner reported what Ms. Moore had told her as the reason she was not suited for the apartment which related to her having a minor child, Ms. Turner was convinced that Ms. Moore did not want to rent to her because she is African-American. Tr. 1, p. 73. Ms. Turner's mother was even more convinced of a racial motivation. Tr. 1, pp. 100, 112-118; C.P.-7.

13. After May 3, 1993, Complainant Turner continued her search for a two-bedroom apartment in the price range she wanted. She looked in the *Stockton Record* on a daily basis and responded to "For Rent" signs she observed. For about three months she

looked for an apartment during times when she was not at work. Her time for searching was limited in that she worked two part-time jobs and had an infant child to care for. Some of the apartments she looked at were smaller than she liked, or were dirty and not well kept, while others were nice but cost more than she could afford to pay. Tr. 1, pp.36, 37; 154-55.

During the months May through July she was being "choosy" about the places she considered. She wanted an apartment in a nice, quiet, safe neighborhood much like the 7711 Camellia Lane neighborhood. Tr. 1, pp. 126-27. By August, however, she had become "desperate." Her mother's smoking in the apartment was causing her child to become more congested. She decided she had to move. Tr. 1, p. 87.

14. About August 9, 1993, Complainant Turner leased a two-bedroom apartment at 4437 La Cresta Way in Stockton, which rented for $450 per month. Tr. 1, pp. 58, 81; C.P.-30. She was required to make a $450 security deposit. The apartment she rented had an upstairs and a downstairs and was larger in space, she thought, than the one advertised at 7711 Camellia Lane. Tr. 1. p. 93-94. However, it was in a much less desirable neighborhood for Ms. Turner than the 7711 Camellia Lane apartment. The neighborhood was less safe, in that the crime rate was much higher with frequent gang activity and drug dealings. Tr. 1, pp. 168-79.

15. The apartment at 4437 La Cresta Way was 3-4 miles farther from her day-care site than 7711 Camellia. Tr.1, p. 45. Moreover, the property at 7711 Camellia Lane was closer to a shopping center and to the Lincoln Unified School District, which Ms. Turner thought would be a good future school choice for her child.

16. On May 28, 1993, Respondents rented an upstairs unit to Jennifer Feiock. At the time of her application, Ms. Feiock stated that she would be the sole occupant of the unit. C.P.-20.[4]

17. On or about July 7, 1993, Theresa Jeffrey-Clark began investigating the Complaint filed by Ms. Turner. In a written statement taken by Ms. Jeffrey-Clark and signed by Respondent Beverlea Moore, Ms. Moore stated that she recalled a visit by Ms. Turner and her mother. As to what was said to them, Ms. Moore stated that "I told them that we prefer not to have children in upstairs apartment if at all possible. I asked if she

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[4]I do not credit Mr. French's testimony that he was informed by Ms. Feiock while her application was pending that her 15-year old daughter and the daughter's infant child would reside in the unit. This claim is contrary to Ms. Feoick's statement on her application, (C.P.-20A) and conflicts with Mr. French contemporaneous entry in his ledger (C.P. 20-B).

could wait until a downstairs apartment was available, but she turned and walked away. I remember her mother saying it was good that we preferred to place children in downstairs apartments, and that all places or more places should have that policy." As to whether she offered Ms. Turner an application, Ms. Moore stated "I do not know or remember if I offered her an application but I know she did not take an application because she walked away." Ms. Moore stated that her policy was to ask all inquiring persons if they would like to have an application, and one is certainly provided if requested. Ms. Moore stated that she did not remember if Ms. Turner called back and asked if Ms. Moore would consider renting to her mother and her 16-year old sister, but stated that "the answer would have been about the same. We try to keep harmony in the complex and teenagers are a little heavy footed so we try to keep children in the lower apartments." C.P.-16.

18. During the course of her investigation Ms. Jeffrey-Clark took a signed statement from Respondent David French. Mr. French stated that he had no problem with having children at his complex, but that "we do try to rent to families with children in the downstairs unit. We get complaints from downstairs tenants about children upstairs and some have lead [sic] to arguments." Mr. French stated further that his policy was to give an application to everyone who asks for an application. C.P.-13.

19. The apartment unit about which Ms. Turner inquired was available for rent in May, 1993. Ms. Turner was not given an application for the unit because she intended to live there with her young child. The apartment remained available until May 28, 1993, when it was rented to Jennifer Feiock. (*See* Finding of Fact no. 16).

20. Prior to May, 1993, there were no upstairs units rented to applicants who identified children as residents on their applications. However, in several instances children were born to tenants who where then living in upstairs units.[5] One resident, Caroline Cordero, who had been a resident for fourteen years, gave birth to a child on November 14, 1990. She remained a tenant for about 1-1/2 years after her child was born. She moved out because she wanted a home with a yard and because she was concerned for her child's safety. She felt no discrimination by Respondents because of her child. Tr.2, pp. 517-123. Another tenant, Bob Morino, lived in an upstairs unit for approximately ten years. Tr.2, p. 410. After moving in he got married, and on March 4, 1991, the couple had a child. The family continued to live in the unit until November 1992. Tr. 3, p. 580.

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[5]Respondents presented evidence that since Ms. Turner's complaint on May 13, 1993, Respondents have rented upstairs apartments to families with children. Respondents' action in renting to families with children *after* Complainants' filing of this fair housing complaint is irrelevant for purposes of determining whether discrimination occurred.

21. On February 3, 1995, HUD issued a Determination of Reasonable Cause and Charge of Discrimination. The Determination included a finding that there was no reasonable cause to bring a charge of discrimination on the basis of race. However, reasonable cause was found to charge discrimination based on familial status.

22. Despite HUD's determination of no reasonable cause, Complainant Turner and her mother still believed at the time of the hearing that the real and unspoken reason Complainant was not considered for housing at 7711 Camellia Lane was her race. Tr.1, pp. 74, 102-103. Ms. Turner remained "mad" as she was in May 1993, and said she would probably always think that it was because of her race that she was not accepted for application at 7711 Camellia Lane. Tr. 1, p.102-103, 114. However, even though at the time of trial she still thought that the policy expressed by Ms. Moore of relegating children to the downstairs apartment units was a reasonable one based on considerations of danger to the child, she was "mad" about the restrictions placed on children as well. Tr. 1, pp. 102, 104-105. She hadn't been upset about it in May, 1993, because she "didn't now any better" until she was advised by FHA that what Ms. Moore said and did was in violation of fair housing laws. Tr. 1, p. 96-98, 112, 139-140.

23. Although the policy seemed reasonable to her, Ms. Turner would not have been deterred from renting an upstairs unit at 7711 Camellia Lane by the potential danger to children posed by living on the second floor -- she would not have put her child unsupervised in a dangerous situation. Tr. 1, p. 105.

Discussion

The Fair Housing Act was enacted by Congress to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack,* 508 F. 2d 1179 (8th Cir.), *cert denied*, 422 U. S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, sophisticated as well as simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053, (N.D. Ohio 1980), *aff'd in relevant part*, 661 F. 2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

On September 13, 1988, the Act was amended to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status. 42 U.S.C. §§ 3601-19. In amending the Act, Congress recognized that throughout the country, "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2d Sess., at 19 (1988). Congress noted a survey finding that 25 percent of all rental units exclude children and that 50 percent of all rental units have policies that

restrict families with children in some way. *Id.* (citing Marans, "Measuring Restrictive Rental Practices Affecting Families With Children: A National Survey, "Office of Policy Planning and Research, HUD, 1980). The survey found also that almost 20 percent of families with children were forced to live in less desirable housing due to restrictive housing policies. *Id.* The desire to remedy these problems motivated Congress to provide for the protection of families with children under the Fair Housing Act. Congress clearly and unequivocally sought to outlaw housing discrimination against families with children.

The Charging Party alleges that Respondents discriminated against Ms. Turner and her daughter because of their familial status in violation of 42 U.S.C. §§ 3604 (a)(b), and (c). These sections of the Act make it unlawful:

> (a) to refuse to...rent...or to refuse to negotiate for the rental of...a dwelling to any person because of...familial status...;
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> (b) to discriminate against any person in the terms, conditions, or privileges of...rental of a dwelling...because of...familial status...; and
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> (c) to make...or publish, or cause to be made...or published any...statement...with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on...familial status.... *[See also* 24 C.F.R. §§ 100.60 and 100.75].

"Familial status" is defined by the Act as "one or more individuals (who have not attained the age of eighteen years) being domiciled with...a parent or another person having legal custody of such individual or individuals." 42 U.S.C. § 3602(k)(i). Moreover, "family" is defined as including a parent and one child. See 24 C.F.R. § 100.20. Ms. Turner and her daughter constitute a "family" and have "familial status."

A violation of the Act can be established either by direct or indirect evidence. *HUD v. Gwizdz*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,790 at 25,792 (1995). Direct evidence, if it constitutes a preponderance of the evidence as a whole, will support a finding of discrimination. *See HUD v. Morgan*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,008, 25,134 (HUDALJ July 25, 2991), *aff'd* 985 F. 2d 1451 (10th Cir. 1993); *HUD v. Jerrard*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,005 at 25,087 (1990).

Absent direct evidence, the Charging Party may prove discriminatory animus and establish a *prima facie* case by indirect evidence. *See HUD v. Blackwell*, 908 F. 2d 864, 870 (11th Cir. 1990); *Pinchback v. Armistead Homes Corp.*, 907 F. 2d 1447, 1451 (4th

Cir.,) *cert. denied,* 111 S. Ct. 515 (1990); *see also McDonnell Douglas Corp. v. Green,* 411 U. S. 792 (1973). Once HUD has done so, the burden of production shifts to Respondents to articulate a nondiscriminatory reason for their actions. The Charging Party then may prove that the asserted legitimate reason is pretextual. *See McDonnell Douglas*, 411 U.S 792; *see also Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981). However, pretext alone does not necessarily prove discrimination. The Charging Party still has the burden to demonstrate that an asserted reason, even though pretextual, evidences an intent to discriminate. *See St. Mary's Honor Center v. Hicks*, 509 U.S. _, 113 S. Ct. 2742 (1993).

Availability of an Apartment for Rent in May 1993

In order for Complainants to prevail they must establish that Respondents had an apartment available for rent on or about May 1993 and that they unlawfully refused to consider renting to Complainants because of familial status. *Soules v. HUD*, 967 F. 2d 817, 822 (1992); *Bell v. Mike Ford Realty Company*, 857 F. Supp. 1550 (1994).

Respondents' argument that an apartment was not available to rent in May 1993 is not persuasive.[6] Ms. Turner went to the subject property as a result of seeing a newspaper advertisement for an apartment vacancy at that location. Ms. Moore did not tell Ms. Turner that there was no vacancy, instead she told her that work was being done on the apartment Ms. Turner came to see, that it was not then available for viewing or occupancy, but that Ms. Turner could look at her apartment instead. Tr.2, p. 553. Ms. Moore's words and conduct confirmed that an apartment was available for rent within a reasonable time, although it was not available for immediate occupancy. Further, it is undisputed that Respondents rented an upstairs apartment to Jennifer Feiock on May 28, 1993. This proves Respondents had an apartment "available" for rent in May 1993.[7]

Violation of 42 U.S.C. §§ 3604(a) and (b)

The Charging Party asserts that there is direct evidence in this case that establishes Respondent Moore acted with discriminatory intent in Ms. Moore's statement to Ms. Turner and her mother, that Respondents did not rent upstairs apartments to people with children. Tr. 1, p.29.

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[6]To the extent that Respondents argue that Complainant must show that an apartment was available *as of* May 3, 1993, or was available for *occupancy* in May 1993, the argument is rejected.

[7]The testimony shows that Respondents signed a lease agreement renting an upstairs unit (#14) to Jennifer Feiock on May 28, 1993, the term to commence on June 1, 1993. C.P.-20.

Direct evidence is defined as evidence which "proves [the] existence of [the] fact in issue without inference or presumption." *Black's Law Dictionary*, 413-14 (spec. 5th ed. 1979). I agree that the statement constitutes direct evidence of discrimination against families with children by Respondent Moore. The context of the statement shows that it was made after Ms. Moore had learned that Ms. Turner intended to live in the apartment with her minor child.[8] Up until that point Ms. Moore had encouraged Ms. Turner to come and look at the apartment, and had intended to give her an application. Moreover, I credit the testimony of Shayleen and Mary Beth Turner that the statement was made. Their testimony is consistent with the other evidence in the record: Ms. Moore's statement to the investigator that she told Complainant Turner and her mother that Respondents preferred not to have children in the upstairs apartment if at all possible; Ms. Moore's trial testimony affirming her deposition testimony that she told Complainant Turner that Respondents didn't like to put children in the upstairs units and asked her if she could possibly wait for a downstairs unit to become available, Tr. 3, 545; and Ms. Moore's testimony that if apartments were available both up and downstairs and someone with children came to view an apartment she would show them the downstairs apartment. Further, Ms. Moore testified that in such a case she would tell the prospective applicant that "we would rather keep the children in the downstairs apartment" even if the potential tenants stated they wanted the upstairs apartment. Tr. 2, pp.568-69.

Ms. Moore's statements evidence a stereotypical belief about a protected group, i.e. families with children. They also express an intent to treat families with children differently from other families. *See HUD v. Schilling*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,052 at 25,479. 25,484 (1993). In this regard, neither Respondents' concern for the safety of children who would live on the second floor, nor their concern for the peace and quiet of the downstairs tenants, is a defense to the charge of familial status discrimination. *See HUD v. Bucha*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,046 (1992); *HUD v. Schilling*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,052 (1993); *HUD v. Kormoczyi*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,071 (1994). Moreover, HUD has specifically rejected the suggestion that housing

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[8]Ms. Turner said that she would be residing in the apartment with her infant child in response to Ms. Moore's question to her regarding who would live in the apartment. Tr. 1, pp.29-30.

providers should be allowed "to exclude handicapped persons or families with children from dwellings on upper floors of a high rise, based on the assertion that such dwellings per se present a health or safety risk to such persons." *See e.g.* HUD Preamble II, 24 C.F.R. ch. 1, subch. A., app. I, 54 Fed. Reg. 3236, 3252-53 (Jan. 23, 1989). Similarly, HUD regulations forbid housing developments from providing "dual purpose" facilities that segregate families with children from other residents. *See* Schwemm on Housing Discrimination, §13.4(2)(c).

Where there is proof of discrimination by direct evidence, the *McDonnell Douglas* analysis is inapplicable. Instead, respondents must show by a preponderance of the evidence that they would have taken the same action absent consideration of the discriminatory factor. *Mt. Healthy City School District v. Doyle*, 429 U. S. 274 (1977). Respondents have offered no reason for refusing to consider Ms. Turner as a potential tenant other than safety concerns. That is an impermissible reason to reject families with children. Accordingly, I find that Complainants have borne their burden of proving that Respondents did not allow them to rent an available unit at 7711 Camellia Lane in Stockton, California because they were a family with a minor child, in violation of 42 U.S. C. § 3604(a). David French's denial at trial that they ever had a policy which precluded renting to families with children in the upstairs unit, and that they would have rented the upstairs unit to Ms. Turner despite the fact that she had an infant child, is not credible.

Section 3604(b) makes it a violation to discriminate against any person in the terms, conditions, or privileges of sale...of a dwelling...because of...familial status.... The Charging Party argues that Respondents' conduct also discriminated against Complainants in the terms, conditions or privileges of rental of an apartment at the complex because of Complainants' familial status, in that persons without children were not limited to living in ground floor apartments. The evidence shows that Respondents treated applicants without minor children differently from applicants with children in terms of the apartments units they would consider renting to them. Respondents have not articulated a legitimate, nondiscriminatory reason for their disparate treatment of families with children. Accordingly, I find that Respondents conduct also violated § 3604(b) of the Act.

Violation of 42 U.S.C. § 3604(c)

The Charging Party also alleges that Respondents violated 42 U.S.C. § 3604 (c). This section of the Act states that it is illegal to "make...or publish, or cause to be made...or published any notice [or] statement...with respect to the sale (or rental)...of a dwelling that indicates any preference, limitation, or discrimination based on...familial

status...or an intention to make any such preference, limitation, or discrimination." A statement indicates or expresses a discriminatory preference either when an "ordinary" listener[9] or reader may reasonably interpret it as such, or when the statement is intended to express such a preference. *See Soules v. HUD*, 967 F. 2d 817, 824 (2d Cir. 1992); *Ragin v. New York Times*, 923 F. 2d 995, 999-1002 (2d Cir.) *cert denied*, 112 U.S. 81 (1991); *HOME v. Cincinnati Enquirer, Inc.*, 943 F. 2d 644, 646-48 (6th Cir. 1991); *HUD v. Gutleben*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,078, 25,725 (HUDALJ Aug. 13, 1994).

The Charging Party alleges as violations of §3604(c) Dee Moore's statement that she did not rent upstairs units to persons with children (*Charge*, ¶12) and her statement that she would not rent upstairs units to persons with sixteen year-old children because they disturb downstairs tenants (*Charge*, ¶15). I find that Respondent Moore made both statements and that they were made with respect to the sale or rental of property. Ms. Moore is the manager of the property in question and made the statements while talking to Complainant, a prospective tenant. The statements clearly expressed a preference against placing families with children in the upstairs units. An ordinary listener could reasonably interpret the statements as expressing a preference against and discouraging renting to families with children in the upstairs unit in light of the circumstances in which the statements by Ms. Moore were made. *See United States v. Grishman*, 818 F. Supp. 21, 23 (D. Me. 1993) (The statement that rental property was "more suited to people without children" indicates a preference based on familial status). Accordingly, I find that Respondent Moore made statements of preference with respect to the rental of property in violation of §3504(c).

Respondents David and Delores French are Liable for the Discriminatory Statements Made by their Resident Manager, Beverlea Moore.

The duty of property owners not to discriminate is non-delegable. Consequently, property owners may be held liable for the discriminatory actions of their employees. *U. S. v. Gorman Towers Apartment*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) *15,942 at 15,942.4 (1994) (citing Walker v. Crigler*, 976 F. 2d 900 (4th Cir. 1992). If it is established that the agent of a defendant has engaged in discriminatory conduct in violation of the Act, the defendant will be held liable. *See Gorman* at 15,942.4 (citing *Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F. 2d 1086 (7th Cir. 1992), cert. denied, 113 S. Ct. 2961 (1993). It is well-settled agency law, that a principal may be held liable for the discriminatory conduct of his agent if such acts took place within the

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[9]The "ordinary listener" is "neither the most suspicious nor the most insensitive." *Ragin*, 923 F. 2d at 1002.

scope of the agent's apparent authority, even if the principal neither authorized nor ratified the acts. *Gorman*, at 15,942.5.

In the case *sub judice*, the owners of the complex are David French and Delores "Dolly" French. Dee Moore is the resident property manager. According to Ms. Moore, she has authority to act as the owners' agent in communicating with prospective tenants about vacant available apartments. Tr. 2, p. 533. Although Ms. Moore claims no expressed authority to select tenants at the subject complex, Respondent owners remain liable for her discriminatory actions as her position as resident property manager makes her their agent under general principles of agency law. *See HUD v. Bucha*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,046 at 25,456 (1993) (Owner who employs manager and rental agent is a principal who is liable for the wrongful acts of his agent.). Finally, David French's statement to the investigator showed his awareness of the existence of the policy and practice being implemented by Respondent Dee Moore. C.P.-13. Accordingly, Respondents David and Delores French are liable for the discriminatory conduct of Beverlea "Dee" Moore.

Having found that Respondents discriminated against Complainants on the basis of familial status in violation of the Act, Complainants are entitled to "such relief as may be appropriate, which may include actual damages...and injunctive and other equitable relief." 42 U.S.C. § 3612(g)(3). Moreover, Respondents may be assessed a civil penalty "to vindicate the public interest." *Id.*

Remedies

The Charging Party asserts that Respondent's familial status discrimination caused Ms. Turner to suffer considerable damages, including economic loss, emotional distress, loss of housing opportunity, and loss of civil rights. Accordingly, the Charging Party seeks to compensate Complainants for actual and intangible damages.

Respondents argue that Complainants should not be awarded damages because: (a) their claimed expenses are not credible or are not reasonable; and (b) that Ms. Turner's emotional distress was caused by her belief that she was the victim of race discrimination, rather than discrimination based on familial status.

Respondents assert further that they were prejudiced in their ability to minimize accrued damages by HUD's inordinate and unexplained delay in issuing the Charge of Discrimination, requesting a reduction in damages on that basis alone. This argument has no merit. Complainants were victimized by Respondents' unlawful conduct. Reasonable

compensation to them should not be reduced because of delays over which they had no control. *See HUD v. Kelly*, HUDALJ 05-90-0879-1 (December 1, 1994).

Out of Pocket Loss

Complainant seeks compensation in the amount of $2,586.50 for economic losses. I find that Complainant is entitled to $2397[10] as compensation for her out-of-pocket losses. The $2397 includes the difference in the rent at Respondent's unit and the unit she subsequently rented ($1193); $424 for time spent searching for alternative housing; $90 for additional storage costs; and $690 for additional transportation costs.

Housing Costs Differential

Complainant may recover expenses incurred in locating alternative housing and the difference in rental charges between the dwelling made unavailable by unlawful discrimination and the more expensive alternative housing, "if the evidence shows that the expenses and the choice of alternate housing were reasonable." *HUD v. Edelstein*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,018 at 25,240 (1991). To recover the increased cost of alternative housing, a complainant must have made a reasonable effort to seek comparable housing and to minimize damages. *HUD v. DiBari*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,036 (1992). Whether a complainant has failed to mitigate damages depends upon the reasonableness of her conduct. *Miller v. Apartment and Homes of New Jersey, Inc.*, 646 F. 2d 101, 111 (3rd Cir. 1981). In this case the alternative housing found by Complainant was comparable, though more expensive and in a less desirable neighborhood than the housing denied. I find that Ms. Turner conducted a diligent search for an alternative apartment and that she attempted to locate an apartment that was comparable in price, size, style, location, and proximity to transportation and schools, as well as other characteristics of the 7711 Camellia Lane property. That property rented for $395. The apartment unit she eventually rented cost $450 per month. She is entitled to recover the $1193 difference in the monthly rental cost made necessary because of the discriminatory treatment.[11]

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[10]Amounts are rounded off to the nearest dollar.

[11]Recovery for alternative housing is at the rate of $55 for 21 months (Aug. 1993 thru April 1995) plus 21 days in May 1995 (at $1.83 per day) = $38.43, for a total of $1193.43. Although the Charging Party requests recovery starting May 3, 1993, the date of denial of rental, I find that Complainant is entitled to compensation for alternative housing costs starting in August 1993 when she obtained alternate housing.

In reaching this determination, I gave little consideration to Respondents' contention that since the apartment Ms. Turner moved into at La Cresta was larger than the one she sought at 7711 Camellia Lane, she ended up paying 3 cents less per square foot for that apartment than for Respondents' unit. The

Housing Search Expense

Complainant Turner seeks $424 for 70-plus hours she spent between June and the end of July looking for an alternative apartment. The Charging Party has assessed a value to her time based on her per hour work wage of $6. Complainant Turner should be compensated for the time she searched for alternative housing. Ms. Turner worked two part-time jobs, plus had a young child who deserved her attention. Her time was valuable to her. *HUD v. Ineichen* (HUDALJ) 05-93-0143-1 (April 4, 1995). The amount of time spent by her has not been shown to be unreasonable. Further, I find that compensation at the level of her hourly wage is reasonable. Ms. Turner is entitled to $424.

Storage Expense

Complainant Turner is entitled to recover costs resulting from the additional storage time caused by Respondents' discrimination. Complainant placed her property in storage on August 20, 1992, at the rate of $45 per month. These items were taken out of storage shortly after Complainants moved into their La Cresta Blvd. apartment in August 1993. Had Complainant rented the denied apartment at 7711 Camellia Lane, she would have taken these items out upon moving into her Camellia Lane address in June 1993. As a result of Respondents' discriminatory conduct, she did not locate alternative housing until August 5, 1993. Accordingly, Complainant sustained additional storage costs for the months of June and July. I award $90 for the additional storage costs.

Security Deposit

Although Complainant seeks to recover $450 for the security deposit she incurred for renting alternative housing and alleges that she would not have had to incur that expense had she not been discriminated against, the evidence does not support that contention. The evidence shows that tenants at 7711 Camellia Lane paid a security deposit of $300. (C.P.-18, 20, 12). In any event, the security deposit is not considered a

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implication of this observation is that Complainants got a better deal at La Cresta. However, it is clear that the size was not the most important feature Ms. Turner was looking for in an apartment. Apart from it being a two-bedroom apartment, she was most concerned about attractiveness and safety of the location and the convenience to her arranged day care and her job. Further, I have given no credit to Mr. French's self-serving opinion that the La
Cresta apartment was overpriced and that Ms. Turner paid more than the market rate for it. (Tr.2, p. 439). The evidence does not show that Mr. French had an adequate basis for this assessment. In any event, Ms. Turner paid the amount of rent required by her lease. The alternative apartment was not comparable in size or price to the denied apartment, but it was as close as she could get and satisfy her other requirements. Ms. Turner made a reasonable effort to "cover," and therefore may recover the higher costs of alternative housing.

loss since, by agreement, it is to be returned to the tenant when the tenancy ends. For these reasons, Complainant is not entitled to recover the $450 security deposit.

Additional Transportation Expense

Complainant is entitled to recover additional transportation costs caused by having to obtain housing farther from her child-care provider. Had she been allowed to rent the 7711 Camellia Lane apartment, she would have lived only three miles from her child-care provider. Because she was not considered for that apartment, she had to drive six additional miles every day. Using the standard governmental mileage rate of .25 cents a mile, she is entitled to $690.[12]

Emotional Distress, Embarrassment and Humiliation

It is well established that the damages that may be awarded under the Act include damages for embarrassment, humiliation and emotional distress caused by acts of discrimination. Such damages can be inferred from the circumstances, as well as proven by testimony. *HUD v. Blackwell*, Fair Housing-Fair Lending (P-H), para. 25,001 at 25,011 (HUDALJ December 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990). Because these intangible types of injuries cannot be measured quantitively, courts do not demand precise proof to support a reasonable award of damages for such injuries. See *Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983). Key factors in such a determination are the complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. Schwemm, *Housing Discrimination*, § 25.3(2)(c) (1990). [13]

The Charging Party presented evidence that after being denied an opportunity to

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[12]The Charging Party seeks to recover $302.50 based on .50 per day (.25 each way) x 5 days or $2.50 per week for 50 weeks (excluding two weeks vacation per year), for a period of two years and 21 days ($125 x 2 = $250 + $52.50 = $350.50). However, the testimony shows that Complainant had to drive 6 additional miles every day. Tr. 1, pp. 44-45. At the standard government mileage rate of .25 cents a mile, she would be entitled to $1.50 per day or $7.50 per week or $375 for 50 weeks or $690 for 92 weeks. Again, I have considered entitlement to begin August 1993, rather than May 1993. Thus I have used 92 weeks in the calculation instead of two years (100 weeks) and 21 days as requested by the Charging Party.

[13]*See generally,* **Alan W. Heifetz and Thomas C. Heinz**, *Separating the Objective, the Subjective and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications,* **26 J. Marshall L. Rev. 3, (1992).**

rent at 7711 Camellia Lane, Ms. Turner felt upset, angry, frustrated, hurt and mad --- emotionally upset. Tr. 1, p. 38, 41, 155-56. Complainant testified that she was still upset even at the time of trial. She continued to feel that she had been treated unfairly. Tr. 1, p. 41. However, Ms. Turner has taken no medication and she had not seen any therapists or counsellors in connection with her emotional distress. Tr. 1, p. 113.

The goal of a damage award in a housing discrimination case is to try to make the victim whole. The awards of damages for emotional distress in these cases range from a relatively small amount, e.g. $150 in *HUD v. Murphy*, Fair Housing-Fair Lending (P-H) p. 25,002, awarded to a party who ". . .suffered the threshold level of cognizable and compensable emotional distress" (at 25,079), to substantial amounts such as, e.g., $175,000 in *HUD, et al v. Edith Marie Johnson,* HUDALJ 06-93-1316-8 (July 26, 1994). For the usual and ordinary complainant, the standard employed to assess the amount of compensatory damages for such intangible injuries is the reaction by one considered a reasonable complainant to the respondent's discriminatory actions. That reaction will vary with the degree of egregiousness of the respondent's conduct. However, respondents who discriminate in housing must take their victims as they find them and judges must take into consideration the susceptibility to injury of the particular complainant. [14]

In this case, Ms. Turner is entitled to compensation for the emotional distress caused by Respondent's actions; however, the requested $45,000 award is not justified. The amount of an award is intended to compensate complainants for the damage inflicted by the act of discrimination. Here, the act of discrimination involved a violation of the laws regarding familial status. And, although Ms. Turner reacted with hurt and humiliation, and the discrimination weighed on her mind, interfered with her level of functioning at work as well as at home, and caused physical manifestations -- she became depressed, cried at work, retreated from her friends and family, and over-indulged herself with food -- Complainant's own testimony shows that her injury, in terms of emotional distress, was caused not by the discrimination against families with children, but rather by her perception that she was discriminated against because of her race. Ms. Turner believed that the children issue was used by Ms. Moore as an excuse to cover up race discrimination. Tr. 1, pp. 100, 112-118. Her reactions went beyond those which are reasonable based upon the degree of egregiousness of Ms. Moore's conduct. There is no evidence that Ms. Moore made any racially derogatory remarks or did anything which reasonably suggested racial discrimination. More to the point, racial discrimination is not a part of the Charge of Discrimination in this case. Accordingly, her distress resulting from her misperception of Respondent's Moore's motivation cannot be considered in an award of damages.

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[14] *Id. See also HUD v. Colber*, 2 Fair Housing-Fair Lending (P-H) (HUDALJ) ¶25,096 (1994).

As to Ms. Turner's emotional reaction to the familial status discrimination, the evidence shows that, initially, she was not bothered by Respondent's policy restricting children from living in the upstairs unit. In her May 19, 1993, letter to HUD, Ms. Turner stated that the policy "sounded reasonable to me. . ." C.P.-6. It was not until she was advised by FHA that Ms. Moore's reason for declining to rent to her might violate the law prohibiting discrimination against families with children that she reacted to that situation. She then became "mad" that she had been treated unfairly on that basis. Tr. 1, pp. 102, 119. Even so, at trial, she restated her belief in the reasonableness of the policy based on safety concerns. Tr.1, pp. 103-04, 112. She thought that the stairs could be hazardous in that a young child could slip through the rails on the cement. Tr.1, p. 105.

I conclude that Complainant Turner suffered no severe emotional distress as a result of Respondents act of discrimination based on familial status. At the time of the rejection, she was not even aware of the discrimination. However, she is a person who reacts strongly to being treated unfairly, and since she became aware in May 1993 of the law prohibiting discrimination against families with children, she has been "mad" that Respondents treated her unlawfully because she had a child. I award Ms. Turner $500 for emotional distress.[15]

Loss of Housing Opportunity

Complainants request compensation of $15,000 for their lost housing opportunity. They assert that they were deprived of features and amenities of the apartment at 7711 Camellia Lane that included the location, the school district, the proximity to her child care provider and shopping center, as well as the proximity of the apartment to nice houses in a quiet, cozy, and safer area. These features were of particular and uncommon value to her because she had not had them at her mother's address, nor was she able to locate acceptable alternative housing that offered those features. Complainant testified that she looked forward to eventually putting her daughter into a preschool program in a school in the Lincoln Unified School District, the best in Stockton.[16] All of these features were peculiar to the 7711 Camellia Lane address, therefore, the denial was especially injurious. However, Complainant's dissatisfaction with her mother's location

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[15]Respondents argue that if Ms. Turner is entitled to any damages for emotional distress, they should be limited to one (1) or two (2) months, (R's Brief at p. 16), based on Complainants' failure to mitigate damages by accepting Respondents' offer, made in March 1995, for Complainants to move into their building. Respondents assert that Complainants' refusal to accept the offer was not for good reasons. Respondents do not explain which months they think are appropriate for consideration of damages and which are not. In any event, I don't see how moving into Respondents' building would have mitigated Complainant Turner's *emotional* damages. Accordingly, I find no merit to this contention.

[16]Tskeai was born in April 1993, and thus would not have become preschool age for quite some time.

came not from the distance from her child care provider or shopping centers. Rather, she wanted more space and freedom from the unhealthy cigarette smoke in her mother's home and she wanted a nicer, safer location. Although she got more space and freedom from the smoke when she moved to La Cresta, had she rented at 7711 Camellia Lane she would have benefited from a nicer and safer neighborhood. I find that Complainant is entitled to $5,000 for loss of housing opportunity.

Loss of Civil Rights

The Charging Party asserts that it is in the public interest that Complainants be awarded significant damages for loss of civil rights. Such an award, they assert, will show Respondents and others that civil rights are not to be disregarded. It will also show potential complainants that their loss of civil rights will be vindicated through the administrative process. The Charging Party requests a minimum award of $5,000.

I conclude that an award for loss of civil rights is not appropriate. The Charging Party's brief offers no guidance concerning the precise value that the factfinder should place on constitutional protections. Indeed, it is doubtful that more than a nominal award for loss of civil rights in a housing discrimination case would survive scrutiny by the United States Supreme Court.[17] In *Memphis Community School District v. Stachura*, 477 U.S. 299 (1986), a case brought under 42 U.S.C. § 1983 for, *inter alia*, an alleged violation of First Amendment rights, the Supreme Court specifically held that where the basic statutory purpose of awarding damages is to compensate persons for injuries caused by the deprivation of constitutional rights, only nominal damages may be awarded, in the absence of actual damages, for vindication of a lost civil right. The Court ruled that a trier of fact may not award damages based on "subjective perception of the importance of constitutional rights as an abstract matter." *Id.* at 308. The Court noted that damages based on the abstract value or importance of constitutional rights are an unwieldy tool for ensuring compliance with the Constitution. Relying heavily on *Stachura*, the Sixth Circuit Court of Appeals in *Baumgardner v. HUD ex rel. Holley*, 960 F. 2d 572, 583 (1992) set aside a $2,500 award by an administrative law judge for loss of civil rights in a Fair Housing Act case. The court held that the award was "an unwarranted, subjective, additional assessment beyond the proper measure of compensatory damages proven in this case." *Id.* Applying the rationale of *Stachura* and *Baumgardner* to the instant case, I award no additional damages for loss of civil rights.

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose a civil penalty upon a respondent who has been found to have

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[17]See Heifetz and Heinz, *supra,* discussion at section 4, *Loss of Civil Rights,*

discriminated in violation of the Act. 42 U.S.C. § 3512(g) (3) (A); 24 C.F.R. § 104.910(b)(3). A maximum penalty of $10,000 may be assessed if a respondent has not been previously adjudged to have committed housing discrimination. 42 U.S.C. § 104.910(b)(3)(i)(A). However, assessment of a civil penalty is not automatic. The House Report indicates that in ascertaining the amount of the civil penalty, this tribunal "should consider the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of the Respondent and the goal of deterrence, and other matters as justice may require." H.R. Rep. N. 711, 100th Cong. 2d Sess. at 37 (1988).

Respondent argue that no civil penalty should be assessed against Respondents. They argue that they have been punished sufficiently by having to defend the charges in this case at "great financial expense" in a case that has been extremely emotionally unpleasant for them. R's Brief, at p.17. Respondents assert that they are ordinary, hardworking people who have had no training in real estate laws and who were completely unaware of the HUD regulations. *Id.*

Evidence regarding Respondents' financial circumstances is peculiarly within their knowledge, so they have the burden of producing such evidence for the record. If they fail to produce credible evidence which would tend to militiate against assessment of a civil penalty, a penalty may be imposed without consideration of financial circumstances. See *Campbell v. United States*, 365 U.S. 85, 96 (1961)' *HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H) ¶¶ 25,001, 25,015 (HUDALJ Dec. 21, 1989), *aff'd* 908 F.2d 864 (11th Cir. 1990). Respondents did not present any testimony to indicate that payment of the maximum civil penalty would cause them financial hardship. Thus, the record does not contain any evidence that Respondent could not pay a civil penalty without suffering undue hardship.

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

The nature and circumstances of the violation in this case warrant imposition of a modest penalty. The Respondents' conduct was serious, although not such as to warrant maximum penalty. The preponderance of the evidence shows that they had a policy and practice of restricting families with children to the ground floor apartments. However, Respondents did not exclude children from living at the complex. The evidence establishes that Respondents acted, in substantial part, out of concern for the safety of children. Entrance to each upstairs unit is gained by way of steep cement stairs. In addition, each upstairs unit has a balcony. C.P. 2A-2H. Respondents worried that having children living on the second floor might pose a danger to their safety. Both Complainant

and her mother thought that Respondents' concern was not unreasonable. Moreover, the evidence establishes that Respondents were not aware that fair housing laws prohibit restricting children to the lower level. Although ignorance of the law is no excuse, it is a factor which may reasonably mitigate the seriousness of the offense.

Also to be considered is the Respondents' culpability. Although Respondent David French is a real estate broker and operates his own rental service as well as property management business, his complex involves a small number of units, and the testimony showed that there were very infrequent turnovers in tenants; therefore he had few opportunities to place new tenants. The evidence does not demonstrate a careless disregard for the Fair Housing Act or discriminatory animus towards children. Further, after Respondents were made aware of the illegality of their actions, they discontinued the policy and practice and rented to families with children without restrictions. *See Morgan v. HUD*, 985 F. 2d 1451 (1993). Despite these mitigating factors, an award of some civil penalty is appropriate as a deterrent to others. Those similarly situated as the Respondent must be put on notice that discriminatory actions against families with children will not be tolerated. More specifically, others must be put on notice that segregating families with children based on safety considerations or based on stereotypical views about how much noise they make is not a defense to liability for violation of the Fair Housing Act.

Based on consideration of the above five elements, I conclude that Respondent Beverlea "Dee" Moore should be assessed a civil penalty of $100. A civil penalty of $500 is assessed jointly and severally against Respondents David and Delores French.

Injunctive Relief

The administrative law judge may order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell II*, supra, 908 F. 2d at 874 (quoting *Marable v. Walker*, 704 F. 2d at 1219, 1221 (11th Cir. 1983).

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

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

CONCLUSION AND ORDER

The preponderance of the evidence demonstrates that Respondents Beverlea Moore, David French and Delores French discriminated against Complainants Shayleen Turner and Tskeai Dockery on the basis of familial status in violation of 42 U.S.C. §§ 3604 (a),(b), and (c).

The evidence also establishes that as a result of Respondents' unlawful actions, the Complainants have suffered injuries, which must be remedied by an award of compensatory damages. In addition, to protect and vindicate the public interest, injunctive relief is necessary and a civil penalty must be imposed against the Respondents. Accordingly, the following Order is entered.

ORDER

Having concluded that Respondents discriminated against Complainants in violation of 42 U.S.C. §§ 3604(a),(b), and (c) of the Fair Housing Act, it is hereby **ORDERED** that:

1. Respondents are permanently enjoined from discriminating with respect to housing based on familial status. Prohibited actions include, but are not limited to:

a. discriminating against any person in making any residential real estate-related transaction, or in the terms or conditions of such a transaction, because of familial status;

b. making, printing, or publishing any statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status; and

c. otherwise making unavailable or denying a dwelling to any persons because of their familial status.

2. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay actual damages in the amount of $7897 to Complainant Shayleen Turner. This includes $2397 in out-of-pocket costs, $500 as compensation for her emotional distress and humiliation, and $5000 as compensation for a lost housing opportunity.

3. Within thirty (30) days of the date on which this Order becomes final, Respondent Beverlea Moore shall pay a civil penalty of $100 to the Secretary, United States Department of Housing and Urban Development.

4. Within thirty (30) days of the date on which this Order becomes final, Respondents David and Delores French shall pay a civil penalty of $500 to the Secretary, United States Department of Housing and Urban Development.

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

CONSTANCE T. O'BRYANT
Administrative Law Judge