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 Fair Housing Council of Oregon, Charging Party, v. Dennis B. Anderson, Respondent.	HUDALJ 10-00-0100-8 Decided: June 7, 2001

Dennis B. Anderson, *pro se*

James R. Froembling, Esq.
For the Secretary

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

INITIAL DETERMINATION AND ORDER

Introduction

This case arose under the Fair Housing Amendments Act of 1988 ("the Act"). *See* 42 U.S.C. §§ 3601-3619. After an investigation, the Department of Housing and Urban Development ("HUD") issued a Determination of Reasonable Cause and a Charge of Discrimination on November 30, 2000. Respondent, Dennis B. Anderson, failed to file an answer to the Charge of Discrimination.

On January 24, 2001, the Secretary of HUD ("the Secretary") filed a Request to Enter Default Judgment. Respondent again failed to respond. Accordingly, a Default Judgment and Order was issued on February 12, 2001, finding that Respondent violated

42 U.S.C. §§ 3604(a), (b), and (c). Because the facts alleged in the Charge are deemed admitted, a hearing was held on March 6, 2001, for the limited purpose of taking evidence on the appropriate relief to be awarded. *See* 24 C.F.R. § 180.420(b). On April 11, 2001, the Secretary filed his post-hearing brief. Respondent was required to file any post-hearing submission on or before April 20, 2001. Respondent did not file a post hearing submission; accordingly, this case is ripe for decision.

Findings of Fact[1]

1. Complainant, Fair Housing Council of Oregon ("FHCO") is a private, non-profit corporation organized under the laws of the State of Oregon. FHCO's offices are located at 310 S.W. 4th Avenue, Suite 430, Portland, Oregon. Charge[2] ¶ 7.

2. Complainant's primary purpose is to further equal access to housing for all persons, whether they reside in Oregon or any other state in the northwest, and to promote culturally and demographically diverse communities. To achieve those goals, FHCO provides education to the general public, housing providers and tenants; counsels individuals who believe they have been subjected to unlawful discrimination; investigates housing discrimination complaints; and pursues legal remedies for discrimination. In support of its efforts to promote equal opportunity in housing, FHCO conducts tests at various rental complexes to gather information on whether dwellings are available to all individuals regardless of their race, color, religion, sex, handicap, familial status, or national origin. FHCO's clients include families with children seeking housing. Charge ¶ 8.

3. At all relevant times, Respondent Dennis B. Anderson was the owner and manager of Surf Sounds Adult Court, the subject property in this case. Respondent established all rental policies at the property. Charge ¶ 9.

4. The subject property is located at 4263 South Coast Highway, South Beach, Oregon, and consists of a 15 space mobile home park containing owner-occupied mobile homes. Respondent purchased the property in or around 1992. He resides in one of the mobile homes and rents the other 14 spaces to tenants. Since 1992 Respondent has rented eight different spaces to new tenants. Of these eight spaces, four were rented to tenants under the age of 55. Charge ¶ 10.

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[1]Because I entered a Default Judgment and Order, I find the allegations set forth in the Charge to be proved.

[2]"Charge" refers to the November 30, 2000, Charge of Discrimination.

5. On or about April 8, 1999, one of Respondent's tenants, Patricia Kay, contacted FHCO alleging that Respondent denied potential purchasers of her mobile home the opportunity to rent because of the familial status of the potential buyers. Charge ¶ 11.

6. In response to this allegation, FHCO designed a telephone test for familial status discrimination. The test was conducted from April 28 - 30, with three testers posing as potential applicants. Charge ¶ 12.

7. On or about April 28, 1999, Tester 1 telephoned Respondent and inquired about purchasing a mobile home at the subject property. Respondent told Tester 1 that he prefers that everyone be 55, or older, but that there are some younger couples in the park, but no children. Tester 1 asked about credit checks and approval. Respondent replied that he neither conducts credit checks nor relies on any other formal screening, but that "he can tell just by looking at you." Charge ¶ 13.

8. On or about April 29, 1999, Tester 2 telephoned Respondent to inquire about the availability of mobile homes in the park. Tester 2 stated that she and her husband were interested in purchasing a mobile home for themselves and their two children. Respondent told her that there were mobile homes for sale in the park, but that children were not allowed to live in the park. Charge ¶ 14.

9. On or about April 30, 1999, Tester 3 telephoned Respondent telling him that she was looking for a space to rent for herself and her husband. Respondent told her that his property was an "adult" park which meant that residents were over the age of 55 and that no children were allowed. Respondent asked Tester 3's age. She replied that she was 45 and retired, but that her husband, also 45, was still employed. Respondent stated that he could make an exception which depended on whether they were "respectable." Charge ¶ 15.

10. Respondent does not publish or adhere to any rules, regulations, or other policies or procedures that demonstrate his intent to operate his mobile home park as housing for persons 55 and older. Charge ¶ 17. *See* 42 U.S.C. § 3607(b)(2)(C)(ii).

11. Respondent does not have a procedure for verifying the age of the occupants of his property through the use of reliable documentation. Charge ¶ 18. *See* 42 U.S.C. § 3607(b)(2)(C)(iii)(I).

12. At the time FHCO conducted its telephone tests, only 71% of Respondent's units (9 % below the minimum requirement of 80%) were occupied by at least one person

over the age of 55. Charge ¶ 19. *See* 42 U.S.C. § 3607(b)(2)(C)(i).

13. On or about January 25, 2000, Respondent gave each tenant a notice that stated: "We the undersigned acknowledge the fact Surf Sounds Adult Court has never allowed children. Other than specified visitation through contract, the park has been children free." Respondent required each tenant to sign the notice under threat of a $25 increase. FHCO's Complaint had been filed with HUD 12 days earlier, on January 13, 2000.[3] Charge ¶ 21

Conclusions of Law

1. Respondent committed unlawful discrimination by denying Tester 2 the opportunity to rent because of her children, thereby, making the subject property unavailable because of familial status in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. §§ 100.50(b)(1), (3), 100.60, and 100.70.

2. By adopting and enforcing a policy of not renting to families with children, Respondent committed unlawful discrimination in the terms, conditions, or privileges of rental of a dwelling on the basis of familial status, in violation of 42 U.S.C. § 3604(b) and 24 C.F.R. §§ 100.50(b)(2) and 100.65.

3. By making, or causing to be made, oral and written statements which indicated a preference, limitation, or discrimination, or an intention to limit or discriminate, based on familial status, including statements regarding not renting to families with children, Respondent committed unlawful discrimination on the basis of familial status in violation of 42 U.S.C. § 3604, and 24 C.F.R. §§ 100.50(b)(4) and 100.75.

Remedies

Because I entered a Default Judgment and Order, Respondent has been adjudged to have violated 42 U.S.C. §§ 3604(a), (b), and (c). The Secretary on behalf of FHCO seeks $2052.74 to compensate FHCO for staff time and resources, including overhead and long distance phone charges, that were extended in investigating this case; $1,692.48 to compensate it for the future diversion of resources so that it may conduct three future tests of Respondent's compliance with the act; a $5,000 civil penalty; and appropriate injunctive relief.

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[3]This notice was given despite the fact that Respondent had, on one occasion in 1995, rented to a mother with a minor child. This family, the Robys, still lived at Respondent's mobile park when the notice was given to the tenants. Charge ¶ 21.

Out-of-pocket costs

A fair housing organization may recover damages for out-of-pocket costs incurred in the investigation and processing of a housing discrimination complaint. *See, e.g., Chicago v. Matchmaker Real Estate Sales Center, Inc.,* 982 F.2d 1086 (7th Cir. 1992), *cert. denied,* 508 U.S. 972 (1993); *Davis v. Mansards,* 597 F. Supp. 334 (N.D. Ind. 1984). However, an award of damages must be specifically proved and based on evidence. *See, e.g., Wood v. Day,* 859 F.2d 1490, 1492-93 (D.C. Cir. 1988); *Bills v. Hodges,* 628 F.2d 844 (4th Cir. 1980).

Through the testimony of its Acting Executive Director, Michael Anderson, and time logs recording the time spent investigating and processing the Complaint, Complainant provided credible evidence of the amount and value of the time it spent on this case through the March 6, 2001, hearing date. These records establish that FHCO devoted 34 hours and 59 minutes of staff time to design and conduct the tests in Respondent's case at a cost of $877.85. Overhead costs in the amount of $1,114.88 are allocable to the staff time. Finally, FHCO expended $30 in long distance telephone charges. (G. Exs. 1-4; Tr. pp. 41-44). Accordingly, FHCO will be awarded a total of $2,052.74 in damages for its out-of-pocket expenses.

Diversion of Future Resources

Awards may be made to fair housing organizations as compensation for the costs associated with future monitoring and testing of a respondent. *Matchmaker*, supra at 1099; *HUD v. Jancik*, 2A Fair Housing-Fair Lending (Aspen) ¶ 25,058, 25,568 (HUDALJ Oct. 1, 1993), *aff'd.*, 44 F.3d 553 (7th Cir. 1995). FHCO requests compensation for three future on-site tests at a cost of $564.16 per test. On site tests, while more expensive than telephone tests, are likely to be more effective because of Respondent's familiarity with telephone testing. Accordingly, FHCO will be awarded $1,692.48 to compensate it for the future diversion of its resources to insure that Respondent complies with the Act.

Civil Penalty

The Secretary requests that a civil penalty in the amount of $5,000 be assessed in this case. *See* 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 180.670(b)(3)(iii). Determining an appropriate penalty requires consideration of the following factors: (1) the nature and circumstances of the violation; (2) whether 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. Blackwell, 2 Fair Housing-Fair Lending (Aspen) ¶ 25,001 at 25,014-15

(HUDALJ Dec. 21, 1989), *aff'd,* 908 F.2d 864 (11th Cir. 1990); House Comm. on the Judiciary, *Fair Housing Amendments Act of 1988,* H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Applying these factors to Respondent's acts, I note the following: First, the nature and circumstances of Respondent's violations of the Act are serious. Respondent does not deny that he currently maintains a policy of excluding families with children from his mobile home park; indeed, he readily admits it. Tr. pp. 51, 53-54, 65, 71. He evidently believes that he has a right to exclude children from his park without having to comply with 42 U.S.C. § 3607 (e.g. meeting the requirement that at least 80% of the residents have one family member 55 or older). Tr. p. 62. He admits that he does not maintain the 80% threshold and that he uses no process to verify the age of applicants as required by the Act. Tr. pp. 71, 74. Second, Respondent has previously been adjudged to have committed a fair housing violation.[4] Third, Respondent is directly culpable for violating the Act. He did not act through an agent, or intermediary. As a provider of lots for mobile homes, he has a responsibility to be familiar with and adhere to the laws and regulations prohibiting discrimination against families with children. Fourth, by discouraging Respondent and others from engaging in similar conduct, the goal of deterrence will be furthered by the imposition of a civil penalty. Fifth, Respondent has provided no evidence that he is financially unable to pay a civil penalty.

Having considered these factors, I conclude that the civil penalty requested by the Secretary in the amount of $5,000 is appropriate and warranted under the circumstances.

Conclusion

Respondent has been adjudged to have violated 42 U.S.C. §§ 3604(a), (b), and (c). Complainant will be compensated for its damages. Further, to vindicate the public interest, injunctive relief will be ordered and a civil penalty will be assessed against Respondent.

ORDER

It is hereby ORDERED that:

1. Respondent, Dennis B. Anderson, is permanently enjoined from discriminating

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[4]Respondent was enjoined by an Oregon Circuit Court from discriminating against families with children. G. Ex. 6

with respect to housing because of familial status.

2. Within forty-five (45) days of the date this Order becomes final, Respondent shall display the HUD Fair Housing logo and slogan in all advertising and documents routinely given to the public.

3. Within forty-five (45) days of the date this Order becomes final, Respondent shall display the HUD Fair Housing logo alongside any "for rent" signs that he might post in connection with any dwellings that he owns, manages, or operates as of the date of this order and no less than five years following this date.

4. Within six months of the date this Order becomes final or as soon thereafter as HUD's Office of Fair Housing and Equal Opportunity can arrange for it, Respondent shall attend at least one training, education and/or outreach program as presented by the Northwest/Alaska FHEO HUB session.

5. Within forty-five (45) days of the date this Order becomes final, Respondent shall create and maintain a log of future approved and denied applications for rentals by individuals with children and submit a copy of the log to HUD every six months for a period of two years.

6. Within forty-five (45) days of the date this Order becomes final, Respondent shall pay Complainant, Fair Housing Council of Oregon, $2,052.74 to compensate it for its out-of-pocket damages and $1,692.48 to compensate it for the future diversion of its resources; and

7. Within forty-five (45) days of the date this Order becomes final, Respondent shall pay a civil penalty of $5,000 to the Secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. §§ 180.670 and 180.680, and will become the final agency decision thirty (30) days after the date of issuance of this initial decision or the affirmance, in whole or in part, by the Secretary of the United States Department of Housing and Urban Development within that time. *See* 24 C.F.R. §§ 14.335, 14.340, 180.680(b).

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WILLIAM C. CREGAR
Acting Chief Administrative Law Judge