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 Marlene Briggs and Michael Briggs, Charging Party v. Piroshka Kormoczy, Ida Keszeg, Arpad Keszeg, Michael Godollei, Irene Godollei Frederick Kormoczy, and Rosa Kormoczy, Respondents.	HUDALJ 05-91-0747-1 Decided: May 16, 1994

Konrad J. Rayford, Esquire
For the Government

Gino P. Naughton, Esquire
For the Respondents

Before: Paul G. Streb
Administrative Law Judge

INITIAL DECISION AND ORDER

STATEMENT OF THE CASE

This matter arose as a result of a complaint of discrimination based on familial status filed by Marlene and Michael Briggs ("Complainants") against Ida and Arpad Keszeg; Michael and Irene Godollei; and Frederick, Rosa, and Piroshka Kormoczy ("Respondents"). The complaint was filed on April 4, 1991; it was amended on September 13, 1991, and January 30, 1992. The complaint was filed and processed pursuant to the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq*. ("Fair Housing Act" or "Act") and 24 C.F.R. Parts 103 and 104.

The Department of Housing and Urban Development ("Government" or "HUD") investigated the complaint and issued a charge against Respondents on September 29, 1993. HUD alleged in the charge that Respondents discriminated against Complainants by refusing to rent an apartment to them because they had a child less than 18 years old; HUD also alleged that two Respondents made statements indicating a limitation on the rental of the apartment based on familial status. HUD alleged that Respondents' actions were in violation of 42 U.S.C. §§ 3604(a) and (c). Respondents denied the allegations.

A hearing was held in Chicago, Illinois on January 25 and 26, 1994. The record was closed on April 28, 1994, upon the filing and receipt of the Government's Brief.[1]

ANALYSIS, FINDINGS, AND CONCLUSIONS OF LAW

Background

Complainants Marlene and Michael Briggs have lived together since 1985; they were married on November 15, 1991. Hearing transcript ("Tr.") 148, 277. The Briggs had one child, Tegan Briggs, who was six years old at the time they sought to rent the apartment in question. Michael Briggs worked as a practical nurse; Marlene Briggs was not employed. Tr. 149, 246.

Respondents Ida and Arpard Keszeg; Michael and Irene Godollei; and Frederick and Rosa Kormoczy own and manage a six-unit apartment building located at 2065 North Jarvis, Chicago, Illinois. Government's exhibit ("Ex. G") 12; Tr. 316, 344-45, 354, 384-90. Piroshka Kormoczy is the mother of Frederick Kormoczy, Ida Keszeg, and Irene Godollei. She has no ownership interest in the building and no authority to rent any of the units. However, she shows vacant apartments to persons who inquire about renting them, and she was the person who showed the Briggs and their daughter the apartment in question. Tr. 315-20.

Respondents' apartment building consists of three stories with two two-bedroom units on each story. Five units are rented; Piroshka Kormoczy lives in the other unit. Tr. 345. The six units are designated 1W, 1E, 2W, 2E, 3W and 3E, corresponding to the floor and orientation of each unit. For example, Piroshka Kormoczy's apartment, 1W, is on the west side of the first floor, and is located directly below apartment 2W. Tr. 62, 162, 248.

In March 1991, Respondents placed a sign on the apartment building advertising an apartment for rent. Ida and Arpard Keszeg's telephone number was listed as the number to call for information. Tr. 355. On or about March 12, 1991, Marlene Briggs called that number and made an appointment to see an apartment. The Briggs went to view the apartment with their daughter, and Piroshka Kormoczy showed them apartment 2W. Tr. 161-62, 247-49. Subsequently, Michael Briggs returned to the apartment building and obtained an application for tenancy. Several days later, the Briggs went

[1] **Respondents elected to make a closing argument at the end of the hearing in lieu of filing a brief.**

back to the building to submit the application. At that time, Piroshka Kormoczy showed the Briggs apartment 2E, and they submitted the application to her. The Briggs' application was rejected several weeks later by Ida Keszeg. Tr. 166-71, 252-56.

Analysis Of The Allegations

The Government's Allegations

The Government alleges that Respondents refused to rent an apartment to the Complainants because they had a child. In addition, the Government alleges that Piroshka Kormoczy stated to the Complainants that she did not want children living in the unit above her; and that Ida Keszeg stated to Marlene Briggs that there were older tenants living in the building and they did not want children living in the building. The Government has the burden to prove these allegations by the preponderance of the evidence. *United States v. Balistrieri*, 981 F.2d 916, 930 (7th Cir. 1992), *cert. denied,* 114 S.Ct. 58 (1993); *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1452 (4th Cir. 1990). The Government has offered direct evidence in support of the allegations.

The Government contends that Respondents' refusal to rent to the Complainants was in violation of 42 U.S.C. § 3604(a), which makes it unlawful:

> To refuse to . . . rent after the making of a bona fide offer . . . for the . . . rental of . . . a dwelling to any person because of . . . familial status . . . .

The Fair Housing Act defines the term "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent . . . ." *Id*. § 3602(k).[2]

The Government has also alleged that Respondents' statements to the Briggs concerning children were in violation of 42 U.S.C. § 3604(c), which makes it unlawful:

> To make . . . any . . . statement . . . with respect to the . . . rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . familial status . . . or [that
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> indicates] an intention to make any such preference, limitation, or discrimination.

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[2] **It is undisputed that Complainants are covered by the familial status provisions of the Act; their child was less than 18 years old and she was living with them. It is also undisputed that Complainants' offer to rent the apartment was bona fide. *See Johnson v. Jerry Pals Real Estate,* 485 F.2d 528, 530 (7th Cir. 1973) (plaintiffs' offer to buy home was bona fide because they were actual home seekers).**

Findings Regarding The Allegations

The following findings are based on the testimony of the Complainants. Respondents disputed the Complainants' version of the events in question, but as discussed below, I find Complainants' version of the events to be more credible than Respondents' version.

While viewing apartment 2W during their first visit to Respondents' apartment building, the Briggs noticed that Piroshka Kormoczy was watching their daughter, and they asked if children living in the building would be a problem for her. Piroshka Kormoczy does not speak English. However, she replied through a neighbor, who served as an interpreter, that she did not want to have children living over her head, but the decision was not hers to make.[3] Tr. 163, 250.

The Briggs then requested an application and were told by Piroshka Kormoczy that none was available. After returning to her home, Marlene Briggs called the Keszegs; a woman, presumably Ida Keszeg, told her that applications should have been at the apartment building. Marlene Briggs then asked if children would be a problem, and the woman told her that there would be no problem with children. Tr. 164, 165, 251.

[3] **The neighbor returned to her country of origin, Austria, shortly after the events in question; she did not testify at the hearing. Ex. G-11.**

Michael Briggs then returned to the apartment building later that day to obtain an application. He encountered Piroshka Kormoczy, who told him again through the same interpreter that she did not want children living over her head, but it was not her decision to make. Tr. 165, 205, 214, 251. The Briggs completed the application and returned it within two days to Piroshka Kormoczy. At that time, she showed them apartment 2E. Although no interpreter was present, Piroshka Kormoczy communicated with the Briggs by pointing, making gestures, and speaking single-syllable words in English. She asked them if they liked the apartment. The Briggs indicated that they did like apartment 2E, which was similar to apartment 2W, and they submitted their application to Piroshka Kormoczy. Tr. 166-67, 252-54.

After approximately a week had passed and the Briggs had not received any response regarding the application, Marlene Briggs called the Keszegs to inquire about the status of the application. She was told by a woman, presumably Ida Keszeg, that the application was not available. Several more phone inquiries by Marlene Briggs to the Keszegs produced no information concerning the status of the application. Finally, in the latter part of April 1991, Marlene Briggs received a return telephone call from Ida Keszeg, who rejected the application. Ida Keszeg stated that there were elderly people living in the building, and they did not want children living there. Tr. 168-71, 254-56.

Respondents' Credibility

Piroshka Kormoczy denied stating to the Briggs that she did not want children living above her. Tr. 317-19. However, her recollection of the incident was not good. Although she recalled showing the apartment to the Briggs in the presence of her neighbor, she did not recall whether or not her neighbor spoke to the Briggs. Tr. 324. Moreover, on September 6, 1991, Ida Keszeg admitted to HUD's investigator, John Meade, that Piroshka Kormoczy, had told the Briggs that she did not want children living above her. When the investigator told Ida Keszeg that her mother would have to be interviewed during the investigation, Ms. Keszeg stated that her mother had nothing to do with the denial of the application, and that her mother "only told the Complainant that she does not like children living above her." Although Ida Keszeg denied making that statement, it is set forth in Mr. Meade's September 6, 1991 summary of his interview with her, and he testified that she made the statement. Ex. G-10; Tr. 43-45, 364. For the reasons discussed below, I find that Mr. Meade is more credible than Ida Keszeg.

Ida Keszeg denied that she told Marlene Briggs that her application was rejected because she had a child. Tr. 356, 358. She contends that the Briggs were rejected as tenants because they had bad credit. However, that contention is not supported by the evidence. Although Ida Keszeg told the investigator on September 6, 1991, that she rejected the Briggs because they had a poor credit rating, Ex. G-10, she did not give specific testimony to that effect at the hearing.[4] Marlene Briggs testified that there was

[4] **The only testimony given by Ida Keszeg on this issue was vague. During cross-examination she was asked the following question:**

never any mention to her by Ida Keszeg that the Briggs were being rejected because of bad credit. Tr. 256. Marlene Briggs' testimony is consistent with the testimony of Michael Briggs regarding the reason given for the rejection of their rental application. Michael Briggs testified that his wife said the reason Ida Keszeg gave her for the rejection of their application was that older persons lived in the building and they did not want children living in the building. He testified that Marlene Briggs did not say that Ida Keszeg had mentioned anything about their credit rating. Tr. 170-71.

Moreover, Respondents presented contradictory evidence concerning the issue of whether they had obtained information on the Briggs' credit. The Keszegs testified at the hearing that Ida Keszeg obtained such information over the telephone from Laslo Temesvary, who owned the Equity Mortgage Company, and that there was never anything obtained in writing. Tr. 351, 358-60. However, when Ida Keszeg told the investigator on September 6, 1991, that she had rejected the Briggs because of poor credit, he asked her for a copy of the credit report; she replied that she "no longer has the credit report," implying that she had obtained a written report. Ex. G-10, Tr. 43. Despite repeated requests by Mr. Mead for a copy of the credit report, and the issuance of an investigative subpoena for it, neither Arpard nor Ida Keszeg ever informed Mr. Mead that the credit check had been performed over the telephone, and that there was no written report. Ex. G-10-12, G-15; Tr. 36-37, 43, 46-47, 51, 115-17, 362-63.

Ida Keszeg later changed her explanation concerning the credit check. On October 16, 1991, she told Mr. Meade in the presence of her former attorney that Respondents' policy was to first call an applicant's former landlord; if no information could be obtained from the landlord, they would order a credit check. She then told Mr. Meade that she never called the Briggs' landlord or performed a credit check on the Briggs. Ex. G-12; Tr. 51, 117. She also testified that she did not call the landlord. Tr. 363.

On September 27, 1991, Arpad Keszeg also told Mr. Meade in the presence of his former attorney that he did not believe that a credit check had been performed. Ex. G-11; Tr. 47. He then told Mr. Meade that Ida Keszeg, or possibly his brother-in-law, received a poor reference on the Briggs from their former landlord. Ex. G-11. On November 19, 1991, the Keszegs' former attorney also told Mr. Meade that Ida Keszeg received a poor reference on the Briggs from their landlord. Tr. 56; Ex. G-14. The former landlord, Stewart Garland stated, however, that he did not recall any inquiry concerning the Briggs, and that if he had received one, he would not have said that they were poor tenants. Tr. 24; Ex. G-17. Although Arpad Keszeg testified that he did not make those statements to Mr. Meade, they are set forth in Mr. Meade's summary of his

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When you told Marlene Briggs that she could not have the apartment because her credit was bad, did you tell her why her credit was bad?

She responded, "I don't remember." Tr. 362.

interview with him, and Mr. Meade testified that he made those statements. Tr. 47; Ex. G-11. I find Mr. Meade to be more credible than Arpad Keszeg. Unlike Mr. Keszeg, Mr. Meade was a neutral witness; as discussed below, I found Mr. Meade to be a very credible witness.

Further, on September 6, 1991, Mr. Meade asked Ida Keszeg for the telephone number of the credit reporting agency; she told him that she did not recall the number. Ex. G-10. However, that statement is inconsistent with her testimony at the hearing that she had a long-time business relationship with Mr. Temesvary, who often provided her with credit information. Tr. 358. Moreover, Frederick Kormoczy testified that Mr. Temesvary had been a very good friend of the family for many years.[5] Tr. 389. In sum, Respondents' assertion that they performed a credit check on the Briggs, and that they rejected them because of poor credit is not credible.[6]

In addition to the above inconsistencies, Ida Keszeg's credibility is also adversely affected by the fact that she told Mr. Meade on October 16, 1991, that there was a family with children residing in apartment 2W at that time; however, it is clear from the testimony of Respondents' witnesses that apartment 2W was vacant from September 1990 until April 1992. Tr. 338-39, 364, 395.

Mr. Meade's Credibility

Respondents denied many of the statements that Mr. Meade attributed to them in his testimony and in the summaries of his interviews with them. They have attacked Mr. Meade's credibility by asserting that he did not conduct a fair investigation. They argue that in order to make himself "look good" in the eyes of his superiors, he conducted a results-oriented investigation designed to favor the Complainants. Respondents argue that Mr. Meade's bias was demonstrated by the fact that he did not obtain a credit report on the Complainants from a credit reporting agency during the investigation.

Although the principal purpose of the Fair Housing Act is to vindicate the rights of persons who suffer discrimination in housing, "persons against whom complaints are made are entitled to fair treatment as well." *Kelly v. Secretary of HUD*, 3 F.3d 951, 957 (6th Cir. 1993). HUD intends that fairness be an essential element of the investigatory process. HUD has stated in this regard that, "HUD is neutral with respect to the parties" during an investigation. 54 Fed. Reg. 3263 (Jan. 23, 1989) (HUD's explanatory comments accompanying publication of regulations implementing 1988 Fair Housing Amendments Act).

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[5] **Mr. Temesvary did not testify at the hearing; Arpad Keszeg testified that he was deceased. Tr. 352.**

[6] **In view of my finding that Respondents did not reject the Briggs because of their credit, the issue of whether they had poor credit at that time need not be addressed.**

There is no evidence to support Respondents' allegation that Mr. Meade conducted a biased investigation. Their assertion that he favored the Complainants in order to make himself "look good" is purely speculative. Mr. Meade had no reason to falsely report the content of his conversations with Respondents. Moreover, the fact that Mr. Meade did not obtain a credit report from a credit reporting agency is not evidence of bias. As discussed above, when Ida Keszeg told him that Complainants were rejected because they had poor credit, he requested her to give him a copy of the credit report upon which she had relied, and he asked her for the telephone number of the credit reporting agency. He asked the Keszegs and their former attorney for the report several times, and he issued an investigative subpoena for it to the Keszegs. Tr. 36-37, Ex. G-10, 15. Thus, Mr. Meade took appropriate action to verify Ida Keszeg's assertion that she had rejected Complainants due to poor credit. The fact that he was not furnished the credit report or the telephone number was persuasive evidence that Ida Keszeg had not checked the Briggs' credit. Thus, the actual quality of their credit was not at issue, and in my judgment, fairness did not require that Mr. Meade independently seek Complainants' credit rating from a credit reporting agency. Based on my observation of his demeanor, Mr. Meade testified sincerely concerning the facts in this case. Unlike Respondents, he had no interest in the outcome of the case. In sum, I find that Mr. Meade was a very credible witness, and I find that his version of Respondents' statements to him are accurate.

Respondents also argue that Mr. Meade misconstrued their statements to him because of a language barrier; they are originally from Hungary and do not speak perfect English. Tr. 84. However, this argument is not supported by the record. Mr. Meade testified that although Respondents had accents, he did not have a problem understanding them. Tr. 85. Ida Keszeg served as a translator when he interviewed Piroshka Kormoczy. Ex. R-4. Moreover, it is not reasonable to believe that a language barrier could have caused Mr. Meade to attribute several statements to Respondents if they had not made them.

Complainants' Credibility

Respondents contend that, for several reasons, Complainants were not credible witnesses. I disagree. Respondents first argue that the Briggs' complaint is a fabrication. However, if the Briggs had wished to fabricate a complaint of discrimination, it is highly unlikely that they would have come up with such an unusual and convoluted set of circumstances as is presented in this case. Also, it is unlikely that they would have included in their testimony facts that might be viewed as favorable to Respondents -- Ida Keszeg's initial statement that children would not be a problem, and Piroshka Kormoczy's action of showing them a second apartment.

Respondents also argue that it would not have made sense for the Briggs to complete the application if Piroshka Kormoczy made the alleged discriminatory statement. However, Michael Briggs testified that even though Mrs. Kormoczy stated

that she did not want to have children living over her head, the Briggs completed the application based on their understanding that they still had an opportunity to rent an apartment, because Mrs. Kormoczy said that she had no decision-making authority regarding the rental of the units. Tr. 209.

Respondents next argue that Marlene Briggs' testimony that she was not on welfare in 1990 and 1991 was inconsistent with a statement in her deposition. However, there is no inconsistency. In the deposition she stated that she could have been on welfare at that time, but she was not sure. Tr. 276-77. Respondents also point out that although Marlene Briggs got married on November 15, 1991, she stated during her December 1993 deposition that she got married on November 15, 1992. However, Marlene Briggs satisfactorily attributed this discrepancy to faulty recollection; she testified that there was a death in her family just prior to the deposition. Tr. 245, 272-73. Moreover, I do not find it unreasonable to believe that a spouse would have a faulty recollection concerning a wedding anniversary date. In any event, matters such as these are not closely related to the issues in this case.

Respondents next argue that Marlene Briggs falsely stated in several documents -- her application for Respondents' apartment, her complaint to HUD, and a HUD questionaire -- that her name was Briggs, and that she falsely stated on the questionaire that she was married. It is undisputed that before Marlene Briggs was married, she used the name "Briggs" on those documents and stated on the questionaire that she was married. However, she satisfactorily explained that she had used that name regularly since 1985 when she began living with Michael Briggs. Although Respondents point out that she stated in her deposition that the first time she took her husband's name was when they got married, I do not find an inconsistency; it is not clear from the record whether she understood "using" the name "Briggs" to have the same meaning as "taking" it. Tr. 273-75, 282-83; Ex. R-3.

In any event, there is no evidence that Respondents told Marlene Briggs that she had to be married in order to get an apartment. Also, she did not have to be married in order to be eligible to file a complaint. As discussed above, Marlene Briggs was covered by the familial status provisions of the Act because her child was living with her. There is no evidence that Ms. Briggs believed that she had to be married in order to file a complaint. Thus, there is no evidence that she intended to deceive anyone by making the statements in question concerning her name and marital status.

Respondents also argue that Michael Briggs falsely stated on his 1990 federal income tax return that he had two children, and that he improperly claimed Marlene Briggs as a dependent before they were married. Mr. Briggs admitted that although he had only one child in 1990, he listed two children on his tax return. Tr. 193-94. However, I do not find that Mr. Briggs' credibility is significantly impaired by that matter. The filing of a federal income tax return is far removed from the issues in this case. The issue of whether Marlene Briggs was properly claimed as a dependent is, of course, beyond the jurisdiction of this tribunal.

Further, Respondents argue that there is inconsistency between the Briggs' testimony, their written complaints, and Mr. Meade's summaries of his interviews with them. The Briggs testified that Piroshka Kormoczy made the statement that she did not want children living above her when they first viewed unit 2W. However, the complaints and the summaries do not contain that assertion. The first two complaints state that Piroshka Kormoczy made the discriminatory statement to Michael Briggs when he went back to pick up the application. The third complaint and Mr. Meade's summaries state that Piroshka Kormoczy made the discriminatory statement when Michael Briggs returned the application. Tr. 163, 250; Ex. G-1, 2, 3, 8, 9.

I do not find that these differences have a significant impact on Complainants' credibility. The applicable part of HUD's complaint form states as follows:

> *Summarize* in your own words what happened. Use this space for *a brief and concise* statement of facts. Additional details *may* be submitted on an attachment.

Ex. G-1 (emphasis added).

The omission from the complaints of an assertion that a discriminatory statement was made during the Briggs' first visit is not inconsistent with the instructions to prepare a brief and concise summary of the events. The omission of that assertion from the interview summaries is somewhat troublesome, but it involves an omission, not a direct conflict. Moreover, even if Piroshka Kormoczy made the discriminatory statement only once, the outcome of this case would be the same. As discussed above, Ida Keszeg admitted to Mr. Meade that she made the statement. The only direct conflict involves the minor issue of whether discriminatory statements were made when the application was picked up from Piroshka Kormoczy, or when it was returned to her. There is no omission or conflict in the testimony, complaints, or summaries as to the essential allegations -- that Piroshka Kormoczy stated that she did not want children living above her, and that Ida Keszeg stated that there were older persons living in the building and they did not want children living in the building.

In sum, I find that Complainants' testimony was more credible than that of the Respondents. Despite vigorous and lengthy cross-examination, their testimony was internally consistent and consistent with the testimony of each other. Based on my observation of their demeanor, I found their testimony to be very frank and convincing.

Respondents' Rental To Families With Children

Respondents assert that they have rented apartments to families with children, and that that fact is persuasive evidence that they did not make the discriminatory statements in question, and that they did not reject Complainants because they had a child. It is true that Respondents have rented apartments to families with children, and

that some of those rentals occurred before they knew about the instant complaint. Tr. 33, 347; Ex. G-4. Mary Smith, who had an eight-year-old son, signed a lease on April 5, 1991, and began living in unit 3E on April 15, 1991. Tr. 246. Carol Katsarea and her husband, who were expecting a child, signed a lease on April 14, 1991, and moved into the unit 2E on May 1, 1991. Ex. G-16, Tr. 59-62, 333-34. Apartment 2W had also been occupied by a family with a child. Donna Garvin lived in that unit with her 15-year-old daughter from June 1990 until September 1990.

This evidence, coupled with the fact that Piroshka Kormoczy showed unit 2E to Complainants, demonstrates that Respondents did not discriminate against families with children generally in the rental of apartments. Respondents' decision not to rent unit 2E or 3E to Complainants obviously was not based on their familial status, because those units were rented to other families with children who applied at approximately the same time that Complainants applied.

However, the fact that a dwelling has been rented to members of the same protected class as Complainants is not dispositive of a claim of discrimination. *David v. Mansards*, 579 F. Supp. 334 (N.D. Ind. 1984). The preponderance of all of the evidence in the case shows that Ida Keszeg did not want a family with a child living above her mother, Piroshka Kormoczy, in unit 2W when Complainants applied to rent an apartment. As discussed above, Piroshka Kormoczy told the Briggs that she did not want children living above her, and Ida Keszeg told them that she was rejecting their application because they had a child. Moreover, after Ms. Garvin and her child moved out of unit 2W in September 1990, it remained vacant until approximately April 1992. Tr. 338-39, 395. When Ms. Smith and her child applied for an apartment in early April 1991, they were not shown unit 2W. Although Piroshka Kormoczy showed unit 2W to the Briggs, there is no evidence that she was aware initially that anyone other than Marlene Briggs would be living there. When Marlene Briggs made the appointment to view the apartment, there was no discussion concerning children; she simply asked if she could view it, and an appointment was made for her to do so. Tr. 247-48.

Conclusions Of Law

By rejecting the Briggs as tenants for apartment 2W because they had a child, Ida Keszeg refused to rent because of familial status in violation of 42 U.S.C. § 3604(a). In their May 9, 1991 response to the complaint, Ida and Arpad Keszeg stated through their former attorney that "any decision-making as to whether to lease [an apartment] to a particular individual is made jointly by [them]." Ex. G-7. Accordingly, I find that Arpad Keszeg participated in the discriminatory decision to reject the Briggs as tenants. Thus, he is also liable for the violation of § 3604(a). There is no evidence that the other Respondents participated in that discriminatory decision.

By stating to Marlene Briggs that there were older persons living in the building and they did not want children living in the building, Ida Keszeg also made a statement expressing a preference for or limitation on the rental of the subject property because of

familial status, in violation of 42 U.S.C. § 3604(c).[7] By stating to the Complainants that she did not want children living above her, Piroshka Kormoczy also expressed a

[7] **The fact that families with children lived in Respondents' apartment building demonstrates that Ida Keszeg's discriminatory statement to Marlene Briggs was a false statement. However, a statement need not be true in order to constitute a violation of §3604(c).**

preference for the rental of the subject property because of familial status, in violation of §3604(c).[8]

Because the Keszegs and Piroshka Kormoczy were acting as agents for the other joint owners and managers of the building -- Michael Godollei, Irene Godollei, Frederick Kormoczy, and Rosa Kormoczy -- in their dealings with the Briggs, those four Respondents are vicariously liable for the violations of the Act by the Keszegs and Piroshka Kormoczy. *See United States v. Mitchell*, 335 F. Supp. 1004, 1007 (N.D. Ga. 1971), *aff'd sub. nom. United States v. Bob Lawrence Realty*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973) (holding a principal liable even though it neither instructed its agent to discriminate nor ratified that discrimination); *United States v. Balistrieri*, 981 F.2d 916, 930 (7th Cir. 1992), *cert. denied,* 114 S.Ct. 58 (1993) (apartment owner liable for discrimination of rental agent).

REMEDIES

Because Respondents have violated the Fair Housing Act, Complainants are entitled to appropriate relief under the Act, which may include actual damages suffered by them and injunctive and other equitable relief. 42 U.S.C. § 3612(g)(3). A civil penalty may also be imposed. *Id*. The Government, on behalf of the Complainants, seeks: (1) damages totalling $9,840.90 to compensate Complainants for economic loss; (2) damages totalling $20,000.00 to compensate them for emotional distress; (3) injunctive relief designed to prohibit Respondents from violating the Fair Housing Act in the future; and (4) a civil penalty of $10,000.00.[9]

Compensatory Damages

Actual damages for violations of the Act may include damages for economic loss as well as intangible injuries such as embarrassment, humiliation, and emotional distress caused by the violations. *See Secretary of HUD v. Blackwell,* 908 F.2d 864, 872 (11th Cir. 1990). Damages for emotional distress may be based on inferences drawn from the

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[8] **Based on the nature of Piroshka Kormoczy's statements and the fact that Respondents rented other apartments to families with children, it is possible that Respondents' statements and decision not to rent to the Briggs might have been motivated by a legitimate desire to ensure a quiet living environment for Piroshka Kormoczy. *See Soules v. U.S. Department of Housing and Urban Development*, 967 F.2d 817 (2d Cir. 1992). However, Respondents did not assert that their statements and actions were so motivated, and there was no evidence that they sought to determine whether Tegan Briggs was a noisy child. Rather, they denied making the statements and gave a false reason for rejecting the Briggs. Moreover, Piroshka Kormoczy testified that she did not mind if children made noise in the apartment above her. Tr. 326.**

[9] **Those amounts, which total $39,840.90, are set forth in the Government's Brief. It is noted that the Government stated previously that it was seeking a lesser amount, $36,000.60, in damages and civil penalty. *See* Secretary's Statement Of Damages And Civil Penalties (January 4, 1994). However, because I have awarded a total amount less than $36,000, I do not find that Respondents have been prejudiced by the change in the amount sought from them by the Government.**

circumstances of the case, as well as on testimonial proof. *Id*.

Economic Loss

The claim of $9,840.90 for economic loss is based on the Briggs' uncontested testimony that they incurred expenses in finding alternate housing; that they had to pay higher rent as a result of Respondents' discriminatory refusal to rent to them; and that they incurred expenses as a result of prosecuting their complaint. Reasonable expenses of this nature are properly compensable. *See, e.g., Hamilton v. Svatik*, 79 F.2d 383, 388-89 (7th Cir. 1985) ($500 for additional rent and transportation expenses); *Brown v. Ballas*, 331 F. Supp. 1033 (N.D. Tex. 1971) (up to $750 for lost work and expenses in finding alternative housing). As discussed below, I find that the Briggs' economic loss resulting from Respondents' actions was $8,356.90.

Marlene and Michael Briggs have sustained substantial economic loss and are entitled to compensation for their losses resulting from Respondents' discrimination. But for that discrimination, Complainants no doubt would have rented apartment 2W. Complainants had been living at 7255 Ridge in Chicago, Illinois before locating the apartment at 2065 West Jarvis. They were paying $700 dollars per month at 7255 Ridge, and were seeking to lower their monthly rental expenses. Tr. 148-49. Respondents' apartment met the needs of their family and was within the price range that they were seeking, $500 per month. Tr. 177, 246. Among other things, what attracted them to Respondents' apartment was the $500 per month rent. Tr. 246. In addition, their lease at 7255 Ridge was due to expire on May 1, 1991, and their landlord was seeking to increase the rent by $30 per month. Tr. 148-49, 174, 246.

Prior to March 12, 1991, the Briggs had been looking for an apartment for approximately one month. Because of the short period of time remaining to locate housing, the Briggs were required to settle for housing at the same rental cost that they had been paying. Tr. 173-174. They found an apartment at 7035 North Ridge, Chicago, Illinois in May 1991; the rent was $700 per month. Tr. 149-50, 175-78. There was, therefore, a $200 per month difference between the two rents. The Briggs continued to pay that additional $200 for seven months (May 1991 - January 1992) for a total of $1,400 more rent. Tr. 179. Additionally, the Briggs were required to pay a $75 holdover fee for remaining in the apartment at 7255 Ridge several extra days because of the extra time needed to look for another apartment. Tr. 177. These amounts ($1,400 plus $75) are properly compensable to the Briggs.

After moving into 7035 North Ridge, the Briggs continued to search for suitable and more affordable housing. The landlord at 7035 North Ridge did not provide the Briggs with the services required under their lease. The landlord refused to paint, exterminate insects, or install smoke detectors. Also, there was not sufficient water pressure. The Briggs were required to pay $100 of their own money for some of these services, which they performed themselves. As a result of on-going inadequate servicing, the Briggs broke their lease. They were taken to court, were required to pay

court costs to settle the matter, and lost 1 1/2 months of their security deposit, for a total $1,500. Tr. 178-81, 257-59. I agree that the cost of bringing their new apartment up to reasonable standards ($100) is properly compensable. However, Complainants' decision to break their lease cannot be reasonably attributed to Respondents' actions. Therefore, I will not award the costs that Complainants incurred by breaking their lease.

The Briggs subsequently located another apartment at 2110 West Fargo, Chicago, Illinois, where they now reside. They paid $685 per month rent for one year (January 1992 - February 1993); then the rent increased to $725 per month. The Briggs were paying that amount at the time of the hearing. Tr. 181-82, 261. The total rent differential for this period totals $4,920.00 ($185.00 per month x 12 months, January 1992 until February 1993 = $2,220; plus $225 for 12 months, February 1993 until January 1994 = $2,700). I find that this amount is properly compensable. If the Briggs had remained at 7035 North Ridge, there would have been a $200 rent differential for some period. The initial differential at 2110 Wells Fargo ($185) was less than that, and the later differential ($225) is reasonably attributable to a rent increase.

Because of Respondents' discrimination, the Briggs were forced to continue looking for housing. They were required to spend additional time and energy to find another apartment. They were under pressure to move and had little time to do so. Tr. 173-74. They spent every day for approximately two weeks from the middle of April 1991, when they determined that Respondents would not rent to them, until they located the apartment at 7035 North Ridge in May 1991. They spent approximately one hour per day, including Saturday and Sunday, for 14 days looking through newspapers. Tr. 175. Michael Briggs earned approximately $16 per hour at that time. Tr. 150. Although the Government also seeks $16 per hour for the value of Marlene Briggs' time, I find that amount to be unreasonable; she was not employed at the time in question, and there is no evidence as to her education and previous employment. I find that $8 per hour is a more reasonable amount for the value of her time. Accordingly, I will award $168 for the Briggs' time in locating another apartment (7 hours at $16 per hour = $112; plus 7 hours at $8 per hour = $56).

In addition, the Briggs looked at approximately 20 apartments during that two-week period. As a result, Michael Briggs lost wages taking time off to look for apartments. Michael Briggs refused approximately six assignments, each consisting of eight-hour shifts. As discussed above, Michael Briggs was employed as a practical nurse and worked for an agency which procured the assignments. If an employee could not work any part of the assignment, the employee would be passed over for the entire assignment. Tr. 182-83. I find that Mr. Briggs' lost wages are properly compensable in the amount of $768.00 (6 assignments x 8 hours = 48 x $16 per hour).

The Briggs were also required to incur mileage expense in using their automobile while seeking an apartment. The Briggs traveled approximately 30 miles per week over a two-week period, looking at approximately 20 apartments at various locations in Chicago and suburban areas. Tr. 176, 183, 262. This mileage expense is properly compensable in the amount of $14.40 (60 miles x 24 cents per mile).

The Briggs are also entitled to compensation for the time spent prosecuting their complaint and attending the hearing. Marlene Briggs spent one hour talking on the phone with a HUD intake worker on April 4, 1991. Tr. 263. In June 1991, she spent one hour in a phone interview with HUD personnel. Tr. 264. On September 3, 1991, she spent one hour and 30 minutes with a HUD investigator. Tr. 264. On November 8, 1991, she spent one hour and 30 minutes with a HUD investigator. Tr. 265. She spent two hours at a deposition taken by Respondents in December 1993. Tr. 187, 266-67. She spent four hours with a HUD attorney in January 1994. Tr. 186. She also spent two days at the hearing.

Further, each of the Briggs spent approximately four hours in November 1993, December 1993, and January 1994 talking with HUD attorneys. Tr. 185-86, 265-66. Additionally, Michael Briggs took off four days from work to attend the depositions and the hearing, and to meet with a HUD attorney. Tr. 266-67. He spent $12.50 per day for parking on three occasions in connection with this case, for a total of $37.50. Tr. 187-88. Marlene Briggs spent $50.00 for baby-sitting expenses. Tr. 268-69. Accordingly, I will award $824 to compensate the Briggs for the time spent prosecuting their complaint (36 hours at $16 per hour = $576; plus 31 hours at $8 per hour = $248), plus $87.50 for parking and baby-sitting expense.

Emotional Injury

The claim for $10,000.00 for each of the Briggs for emotional injury is based on their uncontested testimony concerning the effect that Respondents' actions had on them. For the following reasons, I find that Complainants are each entitled to $5,000 in compensatory damages for emotional distress.

The Briggs were quite distressed and discouraged by Respondents' act of discrimination, which made the Briggs feel angry, frustrated and upset. Although they would have been able to achieve their goal of lowering their rent at Respondent's unit, they had to pay $200 more than that at the new apartment. They were required to deal with an uncomfortable, stressful situation in their new location, where the landlord refused to paint, exterminate, install smoke detectors, or provide sufficient water pressure. Tr. 149, 179-80, 261. The illegal discrimination also created greater tension in the Briggs' relationship with each other because they were unhappy with the alternative living arrangement.

Moreover, the Briggs felt the stress of having to initially locate another apartment within two weeks after they had been denied the apartment by the Respondents. Tr. 172-73, 25-258. As the parents of a child, the Briggs are both responsible for the well-being of that child, which includes providing decent housing. The Briggs expressed a deep concern regarding this and a strong attachment to their daughter during their testimony at the hearing. Marlene Briggs testified that, "My daughter is my life and part of my life forever." Tr. 257. Michael Briggs testified that, "We couldn't get an apartment for my little girl, I just couldn't believe it, . . . we [weren't] going anywhere without her." Tr. 172.

On the other hand, there was no evidence that the Briggs were especially sensitive victims, that their distress caused them to have any physical symptoms, or that their distress lasted for a long period. Moreover, Respondents conduct toward the Briggs was not malicious. In my judgment, a total of $10,000 is appropriate compensation for the Briggs' emotional injuries.

Civil Penalty

To vindicate the public interest, the Fair Housing Act also authorizes an administrative law judge to impose civil penalties upon respondents who violate it. 42 U.S.C. § 812(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determining an appropriate penalty requires consideration of the following factors: (1) the nature and circumstances of the violation; (2) the degree of a Respondent's culpability; (3) any history of prior violations; (4) a Respondent's financial resources; (5) the goal of deterrence; and (6) other matters as justice may require. *See* H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988).

Respondent's violations are serious offenses. Statements that indicate discrimination against families with children tend to discourage such families from seeking to rent the applicable properties. As a result, housing opportunities for those persons are limited in contravention of the intent of the Act. *See Mayers v. Ridley*, 465 F. 2d 630, 653 (D.C. Cir. 1972) (concurring opinion). Moreover, Respondents' statements and failure to rent the house to Complainants caused them to suffer injury.

As Piroshka Kormoczy and Ida Keszeg bore sole responsibility for their statements to Complainants, they are fully culpable. Ida Keszeg bears primary responsibility for the discriminatory failure to rent the apartment to Complainants. Her action was compounded by offering a false reason for denying them the apartment. Arpad Keszeg participated in the decision to reject Complainants, but the extent of his involvement is unclear. There is no evidence that any of the other Respondents participated in the discriminatory failure to rent the apartment to Complainants.

There is no evidence that Respondents have previously been found to have committed an unlawful discriminatory housing practice. Consequently, the maximum civil penalty that may be assessed against each of them is $10,000.00. *See* 42 U.S.C.

§ 812(g)(3)(A); 24 C.F.R. § 104.910(b)(3)(i)(A). However, the maximum penalty should not automatically be imposed in every case. *See* H.Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988). As there is no evidence concerning Respondents' financial circumstances, I have not considered that factor.

Because Respondents rent five apartments on a regular basis, there is a need to deter them from discriminating when selecting tenants and from making prohibited statements that would dissuade families with children from seeking to rent from them. Other similarly situated persons need to know that violating the Act will incur serious consequences. However, the amount of the penalty should not be extremely high because Respondents have no prior offenses, and they have a history of renting apartments to families with children.

The Government requests that one civil penalty in the amount of $10,000 be imposed against all Respondents jointly. However, imposition of a joint civil penalty would be inconsistent with the need to consider one of the applicable factors -- the degree of a Respondent's culpability. If a joint civil penalty were imposed, several Respondents whose liability was merely vicarious would be liable for payment of the penalty. Therefore, I will impose civil penalties only against the culpable Respondents -- Ida and Arpad Keszeg and Piroshka Kormoczy. I find the appropriate civil penalties to be as follows: Ida Keszeg -- $5,000; Arpad Keszeg -- $2,000; Piroshka Kormoczy -- $1,000.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). "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*, 908 F.2d at 875 (quoting *Marable v. Walker*, 704 F.2d 1219, 1221 (11th Cir. 1983)). Although there are no lingering effects of Respondents' violations, the injunctive relief provided in the following Order bars Respondents from violating the Act in the future.

CONCLUSION

My conclusions are as follows: The preponderance of the evidence shows that Respondents Ida and Arpad Keszeg violated 42 U.S.C. § 3604(a), and that Ida Keszeg and Piroshka Kormoczy violated 42 U.S.C. § 3604(c). The Complainants suffered actual damages for which they will receive a compensatory award of $18,356.90. Further, to vindicate the public interest, injunctive relief will be ordered, and civil penalties totaling $8,000 will be imposed against the culpable Respondents.

ORDER

It is ORDERED that:

1. Respondents are permanently enjoined from discriminating with respect to housing because of race, color, religion, sex, familial status, national origin, or handicap. Prohibited actions include, but are not limited to:

a. refusing or failing to sell or rent a dwelling, or refusing to negotiate for the sale or rental of a dwelling, to any person because of race, color, religion, sex, familial status, national origin, or handicap;

b. otherwise making unavailable or denying a dwelling to any person because of race, color, religion, sex, familial status, national origin, or handicap;

c. 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 race, color, religion, sex, familial status, national origin, or handicap;

d. 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 race, color, religion, sex, familial status, national origin, or handicap; and

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 Fair Housing Act.

2. Within 35 days of the date on which this Order becomes final, Respondents shall pay actual damages of $18,356.90 to Complainants.

3. Within 35 days of the date on which this Order becomes final, Ida Keszeg shall pay a civil penalty of $5,000 to the Secretary of HUD; Arpad Keszeg shall pay a civil penalty of $2,000 to the Secretary; and Piroshka Kormoczy shall pay a civil penalty of $1,000 to the Secretary.

4. For a period of 3 years from the date of this Order, Respondents shall develop and maintain records showing the names, addresses, and familial status of all tenants, applicants, and persons who inquire about renting any of their properties, as well as the dates and disposition of the inquiries. Respondents shall keep all rental applications. Respondent shall allow HUD to review those documents every 3 months.

5. Respondents shall submit a report to this tribunal within 15 days of the date this Order becomes final detailing the steps taken to comply with it.

FINALITY

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

/s/
_____
PAUL G. STREB
Administrative Law Judge