

Fair Housing

Due to discrimination in housing, lending, and commercial business establishments, federal and state housing laws were enacted to prohibit these forms of **discrimination**.

Many of the blatant tricks that were used by real estate agents and lenders to deny purchases and/or loans to minorities in the past have been cast aside as a result of the many state and federal fair housing laws.

Unfortunately, as is many times the case, laws are only as good as the people who obey them. In recent times, many of the same discriminatory practices have been used, but on a much more subtle basis.

The following federal and state civil rights laws were legislated with the intent to prohibit many of the forms of discrimination that was tearing up our society.

I. FEDERAL FAIR HOUSING LAWS

Civil Rights Act of 1866

The **Civil Rights Act of 1866** was enacted just after the end of the Civil War (or what the South still calls the “War Between the States”). In any case, one of the key issues behind the above noted war was rights to all citizens in the United States.

The Civil Rights Act of 1866 gave ALL citizens in the United States the right to purchase, rent, sell, hold, and convey all (residential and commercial) real property and personal property without regard to race.

In addition all persons have the right to contract, sue, be sued, and enjoy the full benefits of the law.

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and extraction's of every kind, and to no other."

Federal Fair Housing Act (Civil Rights Act of 1968)

The Federal Fair Housing Act prohibits discrimination in:

1. sale, rental, or advertisement of residential dwellings;
2. brokerage services;
3. appraisal of real estate; and
4. real estate loans and loan purchases.

Discrimination is based on a person's:

1. race;
2. religion;
3. national origin;
4. sex;

A broker may not discriminate on the sale or rental of a residential dwelling.

Thus a broker may not:

1. refuse to sell or rent for discriminatory reasons;
2. evict a tenant for discriminatory reasons;
3. use different qualification criteria for selling or purchasing a residential dwelling;
4. impose different sale or rental charges for discriminatory reasons;
5. use different terms, conditions, and privileges in the sale or rental of residential dwellings;
6. perform differing maintenance activities for certain persons;
7. limit use of common areas or facilities to certain persons; and
8. refuse to provide service due to a person's refusal to provide sexual favors.

A broker may not steer a person into a residential neighborhood or community in an attempt to segregate housing patterns. This is called **steering** and is discriminatory and illegal.

"A broker may not steer a person into a residential neighborhood or community in an attempt to segregate housing patterns."

A broker also may not use advertising that discriminates in the sale or rental of real property. This relates to all advertising used in the course of business. A broker may not attempt to induce or actually induce a person to sell or rent their real property because of the entry of a certain class of people into the neighborhood. This is called **blockbusting** and is illegal.

Americans with Disabilities Act of 1990, Title III (ADA)

The ADA was enacted to prohibit discrimination against people with disabilities. It covers most commercial buildings and requires building owners to remove all "architectural and communicative barriers" that will "impede reasonable access to any facility."

The building may be exempted from this law if it can be shown that upgrading the building to ADA standards would be a "disproportionate cost to the overall alteration."

II. CALIFORNIA FAIR HOUSING LAWS

Unruh Civil Rights Act of 1959

The Unruh Act made it illegal for the proprietor of a business establishment to discriminate because of a person's race.

It stated:

"All persons within the jurisdiction of this State (California) are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin, they are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

A business establishment may not discriminate based upon age of the patron or occupant. However, business establishments used to preserve housing for senior citizens are allowed under an amendment to the federal Fair Housing Act. A senior citizen is defined as a person 62 years of age or older. However, if all persons are not over 62 years of age, the development may qualify under the 55 year old exemption. This means that at least 80% of the units must be occupied by someone 55 years of age or older.

Damages for violation of this Act are not less than \$250 or three times the amount of the actual damages plus attorney fees.

California Fair Employment and Housing Act of 1963 (Rumford Act)

The Rumford Act was the first piece of legislation to use the term "affirmative action." The law related to: "Any activity for the purpose of eliminating discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, or ancestry." This was a much more stringent law since it pertained to any person who refused to sell, lease, or rent housing accommodations because of race, color, religion, sex, marital status, national origin, or ancestry. Unfavorable and discriminatory terms could not be used to discourage the above group.

The Rumford Act prohibited discriminatory practices based on race, color, religion, sex, marital status, ancestry, national origin, or disability in the sale or lease of housing accommodations.

Discriminatory practices include:

1. a broker refusing to represent an individual because of one of the above reasons;
2. advertising that limits preferences based upon the above reasons;
3. making an oral or written inquiry into the above reasons for a person looking to rent or purchase a residential dwelling; and/or
4. limiting loans and financing based upon the above reasons.

The Department of Fair Employment and Housing and the Fair Employment and Housing Commission enforces the Rumford Act.

Housing Financial Discrimination Act of 1977 (Holden Act)

The Holden Act was enacted in response to discrimination in lending practices in California. Lenders, realizing a higher foreclosure rate in urban areas where a majority of minority owners resided, decided to curtail loans in these areas.

They placed a RED LINE circle around these areas, thus coined the term "**Redlining.**"

The Holden Act place restrictions on this practice by making it illegal to "consider the racial, ethnic, religious, or national origin composition of trends in neighborhoods surrounding a housing accommodation."

If the buyer was qualified to purchase a 1-4 unit residential property, the lender had to make a reasonable loan available to that buyer. In retrospect, most people believe this to be a good and well timed law which reduced discrimination in lending, increased loans in urban areas, and slowed down the decay in many urban residential neighborhoods.

Lenders cannot discriminate when making a loan on the basis of:

1. Race
2. Color
3. Religion
4. Ancestry
5. Sex
6. Disability
7. Marital Status
8. National Origin

Lenders cannot refuse a loan to a creditworthy borrower based upon the demographics of the neighborhood. They also cannot refuse a loan based upon a much lower appraisal of the property than in neighborhoods not composed predominantly of non-minority residents.

Lenders are required to post in a conspicuous public place a notice of a loan applicant's rights to file a lending discrimination claim with the Secretary of Business, Transportation, and Housing Agency. This includes state regulated banks and savings banks, and other institutions. It does not cover federally regulated banks.

“Lenders cannot refuse a loan to a creditworthy borrower based upon the demographics of the neighborhood.”

Under the **Federal Home Mortgage Disclosure Act**, lenders are required to disclose home loan origination information to the public. This ensures that redlining will not exist in the United States.

In addition, California state regulated lenders must compile data on the number and amount of loans originated for each fiscal year. These are grouped by census tract and is available to the public for five years.

Real Estate Commissioner's Regulations

The Real Estate Commissioner has enacted regulations prohibiting real estate brokers and their salespeople from any practice that discriminates against anyone based on:

1. Race
2. Color
3. Religion
4. Ancestry
5. Sex
6. Disability
7. Marital Status
8. National Origin

The Commissioner also prohibits **blockbusting** and **panic selling**. Blockbusting has already been explained, however, panic selling occurs when a broker or salesperson goes into a neighborhood and induces homeowners and tenants to move out of the neighborhood because of an impending change in the ethnic makeup of the neighborhood.

The Commissioner also holds real estate brokers accountable to their agents to inform them of all fair housing laws and Commissioner's regulations regarding the matter.

Regulations of the Real Estate Commissioner, Regulation 2780 Discriminatory Conduct as the Basis for Disciplinary Action

Under Regulation 2780 discriminatory conduct is a basis for disciplinary action.

Prohibited discriminatory conduct by a real estate licensee based upon race, color, sex, religion, ancestry, physical handicap, marital status, or national origin includes:

Refusing to negotiate for the sale, rental, or financing of the purchase of real property or otherwise making unavailable or denying real property to any person because of such person's:

- Race
- Color
- Sex
- Religion
- Ancestry

- Physical handicap
- Marital status
- National origin

Refusing or failing to show, rent, or finance the purchase of real property to any person or refusing or failing to provide or volunteer information to any person about real property, or channeling or steering any person away from real property, because of that person's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin or because of the racial, religious, or ethnic composition of any occupants of the area in which the real property is located.

It shall not constitute discrimination under this subdivision of the law for a real estate licensee to refuse or fail to show, rent, sell, or finance the purchase of real property to any person having a physical handicap because of the presence of hazardous conditions or architectural barriers to the physically handicapped which conform to applicable state and local building codes and regulations.

Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin against any person in the:

- Sale,
- Purchase,
- Negotiation,
- Solicitation of the sale or purchase,
- The collection of payments,
- The performance of services in connection with contracts of sale of real property,
- The performance of services in connection with loans secured directly or collaterally by liens on real property, or
- Business opportunities

will fall under Regulation 2780.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of California as to acquiring, financing, holding, or transferring real property.

Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin against any person in the terms, conditions, or privileges of sale, rental, or financing of the purchase of real property. This does

not prohibit the sale price, rent, or terms of a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin against any person in providing services or facilities in connection with the sale, rental, or financing of the purchase of real property, including but not limited to:

1. Processing applications differently,
2. Referring prospects to other licensees because of the prospects' race, color, sex, religion, ancestry, physical handicap, marital status, or national origin,
3. Using with discriminatory intent or effect, codes or other means of identifying minority prospects,
4. Assigning real estate licensees on the basis of a prospective client's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of California as to acquiring, financing, holding, or transferring real property.

Representing to any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status, or national origin that real property is not available for inspection, sale, or rental when such real property is in fact available.

Processing an application more slowly or otherwise acting to delay, hinder, or avoid the sale, rental, or financing of the purchase of real property on account of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of a potential owner or occupant.

Making any effort to encourage discrimination against persons because of their race, color, sex, religion, ancestry, physical handicap, marital status, or national origin in showing, sale, lease, or financing the purchase of real property.

Refusing or failing to cooperate with or refusing or failing to assist another real estate licensee in negotiating the sale, rental, or financing of the purchase of real

property because of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of any prospective purchaser or tenant.

Making any effort to obstruct or discourage the purchase, lease, or financing of the purchase of real property by persons whose race, color, sex, religion, ancestry, physical handicap, marital status, or national origin differs from that of the majority of persons presently residing in a structural improvement to real property or in an area in which real property is located.

Performing any acts, making any notations, asking any questions or making or circulating any written or oral statement which when taken in context, expresses or implies a limitation, preference or discrimination based upon race, color, sex, religion, ancestry, physical handicap, marital status, or national origin; provided, however, that nothing herein shall limit the administering of forms of the making of a notation required by a federal, state, or local agency for data collection or civil rights enforcement purposes; or in the case of a physically handicapped person, making notation, asking questions or circulating any written or oral statement in order to serve the needs of such a person.

Making any effort to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise of any right granted or protected by a federal or state law, including but not limited to:

1. Assisting in any effort to coerce any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status, or national origin to move from or not to move from a particular area.
2. Punishing or penalizing real estate licensees for their refusal to discriminate in the sale or rental of housing because of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of a prospective purchaser or lessee.
3. Evicting or taking other retaliatory action against any person for having filed a fair housing complaint or for having undertaken other lawful efforts to promote fair housing.
4. Soliciting of sales, rentals, or listing of real estate from any person, but not from another person within the same area because of differences in race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of such persons.
5. Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin in informing persons of the

existence of waiting lists or other procedures with respect to the future availability of real property for purchase or lease.

Making any effort to discourage or prevent the rental, sale, or financing of the purchase of real property because of the presence or absence of occupants of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin or on the basis of the future presence or absence of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin, whether actual, alleged, or implied.

Making any effort to discourage or prevent any person from renting, purchasing, or financing the purchase of real property through any representations of actual or alleged community opposition based upon race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

Providing information or advice to any person concerning the desirability or particular real property or a particular residential area which is different from information or advice given to any other person with respect to the same property or area because of difference in the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of such persons.

This does not limit the giving of information or advice to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

Refusing to accept a rental or sales listing or application for financing of the purchase of real property because of the owner's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of any of the occupants in the area in which the real property is located.

Entering into an agreement, or carrying out any instructions of another, explicit or understood, not to show, lease, sell, or finance the purchase of real property because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

Making, printing or publishing, or causing to be made, printed, or published, any notice, statement or advertisement concerning the sale, rental, or financing of the purchase of real property that indicates any preference, limitation, or discrimination because of race, color, sex, religion, ancestry, physical handicap,

marital status, or national origin, or any intention to make such preference, limitation, or discrimination.

This does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

Using any words, phrases, sentences, descriptions, or visual aids in any notice, statement, or advertisement describing real property or the area in which real property is located which indicates any preference, limitation, or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

This does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

Selectively using, placing, or designing any notice, statement or advertisement having to do with the sale, rental, or financing of the purchase of real property in such a manner as to cause or increase discrimination by restricting or enhancing the exposure or appeal to person of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

This does not limit in any way the use of an affirmative marketing program designed to attract persons of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin who would not otherwise be attracted to the real property or to the area.

Quoting or charging a price, rent, or cleaning or security deposit for a particular real property to any person which is different from the price, rent, or security deposit quoted or charged to any other person because of difference in the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of such persons.

This does not prohibit the quoting or charging or a price, rent, or cleaning or security deposit for a housing accommodation containing facilities for the physically handicapped to differ reasonably from housing accommodations not containing such facilities.

Discriminating against persons because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin in performing any acts in connection with the making of any determination of financial ability or in the processing of any application for the financing or refinancing of real property.

Nothing herein shall limit the administering of forms of the making of a notation required by a federal, state, or local agency for data collection of civil rights enforcement purposes. In any evaluation or determination as to whether, and under what terms and conditions, a particular lender or lenders would be likely to grant a loan, licensees shall proceed as though the lender or lenders are in compliance with Section 35800 through 35833 of the **California Health and Safety Code** (The Housing Financial Discrimination Act of 1977.)

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to acquiring, financing, holding, or transferring real property.

Advising a person of the price or value of real property on the basis of factors related to the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of residents of an area or of residents or potential residents of the area in which the property is located.

Discriminating in the treatment of, or services to, occupants of any real property in the course of providing management services for the real property because of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of said occupants.

This does not prohibit differing treatment or services to a physically handicapped person because of the physical handicap in the course of providing management services for a housing accommodation.

Discriminating against the owners or occupants of real property because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of their guests, visitors, or invitees.

Making any effort to instruct or encourage, expressly or impliedly, by either words or acts, licensees or their employees or other agent to engage in any discriminatory act in violation of a federal or state fair housing law.

Establishing or implementing rules that have the effect of limiting the opportunity for any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status, or national origin to secure real property through a multiple listing or other real estate service.

Assisting or aiding in any way, any person in the sale, rental, or financing of the purchase of real property where there are reasonable grounds to believe that such person intends to discriminate because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

Section 2781 Panic Selling

Prohibited discriminatory conduct includes, but is not limited to, soliciting sales or rental listings, making written or oral statements creating fear or alarm, transmitting written or oral warnings or threats, or acting in any other manner so as to induce or attempt to induce the sale or lease of real property through an representation, express or implies, regarding the present or prospective entry of one or more persons of another race, color, sex, religion, ancestry, physical handicap, marital status, or national origin into an area or neighborhood.

Section 2725(f) Duty to Supervise

A broker licensee shall take reasonable steps to become aware of and to be familiar with and to familiarize his or her salespersons with the requirements of federal and state laws and regulations relating to the prohibition of discrimination in the sale, rental, or financing of the purchase of real property. Such laws and regulations include but are not limited to the current provisions and any amendments thereto of:

1. Unruh Civil Rights Act.
2. Title VII and IX of the United States Civil Rights Act of 1968.
3. The Housing Financial Discrimination Act (Holden Act).
4. Blind and other physically disabled persons.

III. FAIR HOUSING OVERVIEW

Civil Rights Act of 1866

The Civil Rights Act of 1866 gave all citizens in the United States the right to purchase real estate. The Civil Rights Act of 1866 also gave everyone in the United States the right to enjoy the full benefits of the law. However, this act was largely ignored in the courts during the more than one hundred years from 1866 to 1968.

Civil Rights Act of 1968

The Civil Rights Act of 1968 prohibited discrimination in the sale and rental of real estate. Exemptions from the act include a residential owner who does not own more than three single-family homes, does not live in the house, does not use a real estate agent in the sale of the home, and does not use discriminatory advertising.

The Civil Rights Act of 1968 prohibited discrimination in (the):

- Sale of Real Estate
- Leasing of Real Estate
- Advertising of Real Estate
- Offer of Real Estate Brokerage Services
- Real Estate Loans
- Real Estate Appraisal Services

Discriminatory actions based on a person's:

1. Race
2. Color
3. Religion
4. Sex
5. Ancestry
6. Marital Status
7. National Origin
8. Handicap

A handicap can be physical or mental and limits a person's activities. A broker may not discriminate by:

1. using different provisions for minority applicants than other applicants,
2. limit use of facilities, and
3. delay maintenance because of discriminatory reasons.

A broker may not discriminate in advertising. This is both oral and written. A broker may not induce people to move out of a neighborhood because minorities are coming into the area. This is called blockbusting and is illegal.

A person who has been a victim of discrimination may file a complaint with the Department of Housing and Urban Development.

A person who has been a victim of discrimination may file a complaint with the Department of Housing and Urban Development. The statute of limitations is one year from the discriminatory act.

Americans with Disabilities Act

A disability is a physical or mental condition that limits a person's normal life activities. Public and private buildings must be built or altered to comply with ADA. A person discriminates against a person with a disability may be liable for civil damages in the amount of \$50,000.

Unruh Civil Rights Act

“The Unruh Civil Rights Act prohibits discrimination based upon race, color, sex, religion, ancestry, national origin, or a disability in business establishments.”

The Unruh Civil Rights Act prohibits discrimination based upon race, color, sex, religion, ancestry, national origin, or a disability in business establishments. This also applies to a person in the business of providing housing to the public.

California Fair Employment and Housing Act

The California Fair Employment and Housing Act prohibits discrimination in housing accommodations in California. Discriminatory practices include:

1. broker refuses to represent a minority person,
2. broker asks about a prospective client's race, color, sex, religion, disability, national origin, or ancestry,
3. Broker places an advertisement under discriminatory conditions

Equal Credit Opportunity Act

The Equal Credit Opportunity Act prohibits discrimination based upon race, color, sex, marital status, religion, and national origin. It is a federal law that attempts to stop:

1. asking about a loan applicant's race, color, sex, marital status, religion, and national origin.
2. requiring signatures from both spouses when one qualifies for the loan on his or her own.
3. making loan qualification for minority applicants more difficult than other non-minority applicants.

The lender has thirty days to notify the loan applicant that their application has been denied, and must deliver to the applicant a statement specifying the reasons the loan was denied.

Housing Financial Discrimination Act

The Housing Financial Discrimination Act, also known as the “Holden Act” was an attempt by California to prevent discrimination in lending.

The Holden Act stated that loan could not be denied to an applicant based upon:

1. Race
2. Color
3. Religion
4. Disability
5. Marital Status
6. Sex
7. Ancestry
8. National Origin

Home Mortgage Disclosure Act

The Home Mortgage Disclosure Act requires lenders to disclose home loan information to the public. This includes anyone making home loans, including state and federally regulated banks. However, there are many exceptions to this requirement.

Lenders must disclose:

1. type and purpose of the loan,
2. whether it is owner-occupied or investor loan,
3. income of the loan applicant,
4. amount of the loan,
5. sex and race of the loan applicant.

AIDS Disclosure

If the occupant died as a result of AIDS, the death does not need to be disclosed by the seller. If the buyer asks the broker a direct question, the broker must disclose that the occupant died from AIDS.

Advertising Guidelines

It is discriminatory to use words or phrases that request particular buyer or tenant. Words such as “white”, “black”, “single”, etc. are discriminatory. However, advertising that requests people age 55 years and old is not discriminatory. This is many times used in adult communities.

Use of the Department of Housing and Urban Development’s (HUD) Equal Housing Opportunity logo is a good way to advertise that the broker does not practice discriminatory practices in their business.

California Bureau of Real Estate (CalBRE)

The California Bureau of Real Estate (CalBRE) prohibits discrimination by real estate brokers. Discriminatory practices include:

1. Discouraging a client from purchasing or renting a property because of the client’s race, national origin, sex, etc.
2. Discriminating in management of properties.
3. Limiting use of Multiple Listing Services, and
4. Refusing to accept a listing, sale, or loan because of discriminatory reasons.

Blockbusting and panic selling are illegal. When a real estate attempts to induce a seller to sell their property because minorities are coming into the neighborhood and will devalue properties, this is called panic selling. The result is what is called blockbusting.

As you have seen from the many federal and state laws, as well as the Real Estate Commissioner’s Regulations, Fair Housing is a major issue in California and national real estate. For this reason, the California Department of Real Estate requires salesperson licensees to complete this three hour continuing education course prior to their first license renewal. The knowledge gained from this course will help the licensee avoid discriminating in the sale, lease, development, etc. of real property.

Next is a look at a court case that impacts fair housing in California.



Flickr / Chris Potter

VIOLATION OF THE CIVIL RIGHTS ACT OF 1968

UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW
JUDGES
January 28, 2011

FOR THE COMPLAINANTS:

Donnie Murray, Sylloris Lampkin, and Melissa Anderson, Attorneys, United States Department of Housing and Urban Development, Atlanta, GA

FOR THE RESPONDENTS:

Clint L. Maze, Attorney, Arab, AL

INITIAL DECISION AND ORDER

BEFORE: J. Jeremiah MAHONEY, Administrative Law Judge

Background. In March of 2009, sisters Melissa and Amanda Garrett and Amanda's fiancé, Christopher Doss (collectively the "Complainants"), sought to rent a residence for themselves and Amanda's infant child. Melissa Garrett was staying temporarily with a friend in Phillip Maze's neighborhood in Arab, Alabama. Melissa noticed nearby a vacant mobile home, rented years ago by her older sister from Opal Maze. Melissa contacted Opal's elder son, Respondent Phillip Maze, who agreed to repair and rent the mobile home. Opal Maze owns three single-family dwellings, including that mobile home, which is adjacent to her house, where she resides with her son, Phillip. Opal Maze owns a third dwelling, another mobile home, that has been rented by Louise Terrell for over 12 years. Now in her mid-80s, Opal Maze was diagnosed with dementia in 2004.

Opal Maze's younger son, Kenneth Maze, lives about ten miles from Arab, Alabama, and is named as Opal's attorney-in-fact in a durable power of attorney.

Respondent Phillip Maze and The Secretary, United States Department of Housing and Urban Development, on behalf of: MELISSA D. GARRETT, JAMAAL KING, AMANDA GARRETT, CHRISTOPHER DOSS (A/K/A TOMMY DOSS) AND THREE MINOR CHILDREN,

Charging Party,



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

v.

**PHILLIP MAZE AND OPALMINNIE MAZE,
Respondents.**

His sister, Brenda Noble, are named as alternates to Kenneth Maze in the event that Kenneth is unavailable, unable, or unwilling to act as attorney-in-fact. However, none of those contingencies have occurred.

Phillip Maze, who resides with his mother as her caretaker, has been handling the maintenance for the dwelling occupied by Louise Terrell. Phillip also began collecting the rent from Louise Terrell as his mother's mental condition declined.

In negotiating the terms of the rental agreement for the vacant mobile home—which was in need of repair—the Complainants approached Phillip Maze, and dealt with him exclusively.

Phillip told the Complainants that rent would be \$345 per month, including water. A verbal rental agreement was reached in February, 2009, and Phillip agreed to complete the necessary repairs before Amanda's family and Melissa moved in.

As the repairs took longer than expected, Kenneth Garrett, the father of Melissa and Amanda, assisted with the repairs to expedite the move-in.

In early March 2009, Amanda Garrett, Christopher Doss, and their infant daughter moved into the mobile home; Melissa Garrett moved in on March 6, 2009. On Sunday, March 8, 2009, Melissa Garrett drove to Trussville, Alabama to pick up Jamaal King, an African-American medical student who was going to spend his spring break with her.

The following morning, March 9, 2009, Phillip Maze was in the Complainants' mobile home to complete some repairs when he encountered Jamaal King in the kitchen. Phillip nodded and stared at Jamaal, but did not speak, and left the mobile home without completing the repairs. That afternoon Phillip encountered Jamaal King in the yard, and stared at him, but



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

did not speak, and left the mobile home without completing the repairs. That afternoon Phillip encountered Jamaal King in the yard, and stared at him, but again did not speak.

Later that day, Phillip Maze came over to the mobile home and asked to speak to “the man of the house.” (Tr. 181).¹ Amanda Garrett brought Christopher Doss to speak to Phillip Maze. (Tr. 181).

Phillip told Christopher that there was a problem with Jamaal King staying at the property and “he needs to go.” (Tr. 24-25). Phillip Maze stated, “We can’t have that here because people will be talking” and he did not want to “keep looking over his shoulder.” (Tr. 25).

In addition, Phillip Maze stated that the people that live on the other side of him are black, “but there ain’t nothing I can do about that.” (Tr.79). After Phillip left, Christopher told Amanda about the conversation, and Amanda called her sister Melissa at work to inform her about what occurred. (Tr. 100-101, 182). That evening, Jamaal King received a call from Melissa Garrett, asking him to pick her up from work. (Tr. 280).

As he walked out of the mobile home to pick Melissa up at work, Jamaal King noticed Christopher Doss and Phillip Maze talking on the front porch. They stopped talking as he walked out. (Tr. 279-280).

The two men were blocking the steps, so as Jamaal King walked off the porch he said “excuse me,” and Christopher stepped to the side. (Tr. 280). Phillip Maze, however, just stood in place looking at Jamaal King. (Tr. 280).

Jamaal King said “excuse me,” but again, Phillip Maze did not move. (Tr. 280-81). Jamaal King had to squeeze by him to get down the steps. When he got to the car, he observed that Phillip Maze continued to stare at him. (Tr. 280-81).

Jamaal King drove to pick up Melissa from work. When he arrived at her workplace, she told him that Phillip Maze had a problem with him being there.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

After speaking with Christopher, Melissa went next-door to speak with Phillip Maze. They stood in front of Phillip Maze's house during the conversation, and Phillip told Melissa that he did not like interracial relationships, and that he wanted her to move out of the mobile home.

Melissa Garrett explained that Jamaal King was just visiting for spring break and was not moving into the mobile home. During their conversation, Phillip Maze continued to stare at Jamaal King, who was across the lot, on the mobile home's front porch.

Melissa explained to Phillip Maze that she was not in a position to move because she had just begun caring for her niece and nephew. She asked Phillip Maze whether she could stay, if she took Jamaal King home. Phillip agreed. She asked him if it would be okay if she took Jamaal King back on Wednesday because she was not off work until then. He told her to just make sure she did it.

At no point in his conversations with Christopher Doss, Melissa Garrett, or Amanda Garrett regarding the rental of the mobile home did Phillip Maze place any restrictions on visitors to the property.

Prior to Jamaal King's visit, Phillip Maze had never advised the Complainants of any limits on overnight visits by any of their family or guests. In addition, Phillip Maze expressed no issue with the visit of two white family members who had already stayed overnight at the subject property.

On Wednesday morning, March 11, 2009, Melissa Garrett was in the kitchen, washing dishes. At about 9:30 a.m., Phillip Maze cut off the water supply to the mobile home.

Christopher Doss went next-door to see if Phillip Maze's water was also off. On the way back to the mobile home, he saw a key sticking out of the water meter, which he had not previously noticed.

Melissa also went over to Phillip Maze's house to see if his water was on. When she asked, Phillip stated that he did not have any idea what was going on and denied that he turned off the water. Next, Melissa visited another



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

neighbor to see if his water was on, and discovered it was.

She immediately went back to Phillip Maze's house, accompanied by Amanda, and asked Phillip again if his water was on. Phillip claimed not to know.

Melissa asked if he would check to see if his water was on. Then she asked if Phillip had cut off the water because Jamaal King was still at the mobile home.

Phillip Maze stated "yes," and Melissa Garrett asked him whether he would turn the water back on if she and Jamaal King left. P

Phillip stated "yes."

After making several calls – to the water company, the police, and the U.S. Department of Housing and Urban Development, Melissa left to drive Jamaal King back to his home near Birmingham.

When he saw the car leave, Phillip turned the water to the mobile home back on. The water had been off for at least two hours.

On her way back from dropping Jamaal King off in Trussville, Melissa Garrett experienced a panic attack and, pulled off the road, and called her father. She had trouble breathing and felt stressed. In addition, she began to worry about any visits by her own children, who are biracial, because of Phillip Maze's reaction to Jamaal King's presence at the property. She felt that her bi-racial children would not be welcomed as visitors.

After the incident with the water, Phillip stopped work on the repairs, and returned to the mobile home only once. However, Phillip stood in his yard and stared toward the mobile home and the Garrett/Doss residents.

Amanda Garrett and Christopher Doss felt uncomfortable remaining at the property, and they moved out of the mobile home on March 13 or 14, 2009.

Since they needed the time to find a new apartment in Arab and to save



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

enough money to pay for the first month's rent and to turn on the utilities, they moved in with Amanda Garrett's grandmother in Arab for approximately two weeks and then they moved to Nashville to stay with Christopher Doss's sister for approximately two and a half weeks.

Melissa Garrett also moved out because Phillip Maze told her to leave on Monday evening, and again on Wednesday morning.

On Monday evening, he told her that she could have part of her money back if she left.

On Wednesday, after he turned off the water, he told her it was time for her to go, and she could not have any money back. Melissa and her niece and nephew stayed in the mobile home for one or two more nights, but she was scared and could not sleep. She slept with a knife under the pillow because she felt intimidated by Phillip Maze and what he might do.

After she moved out, Melissa Garrett and her niece and nephew stayed with her father in Arab. During the last week of March, Melissa Garrett removed her belongings from the mobile home and into an apartment she rented in Arab, Alabama.

APPLICABLE LAW:

On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968, which is now referred to as the Fair Housing Act. The Act expanded on the Civil Rights Act of 1964 to prohibit discrimination regarding the sale, rental, and financing of housing based on race, color, religion, and national origin.

PROCEDURAL HISTORY:

The Department of Housing and Urban Development (HUD) is a Federal Executive Department of the United States Government.

As part of its functions, HUD is responsible for enforcing the Fair Housing Act.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

On December 17, 2009, the Secretary of the United States Department of Housing and Urban Development (the “Charging Party”) issued a Determination of Reasonable Cause and Charge of Discrimination on behalf of Complainants and aggrieved persons Melissa Garrett, Jamaal King, Christopher Doss, Amanda Garrett, and three minor children, alleging that Respondents Phillip Maze and Opal Maze violated the Fair Housing Act (the “Act”), 42 U.S.C. §§ 3601-31.

Specifically, the Charging Party alleges that Respondents denied housing to Complainants, discriminated in the terms and conditions of their rental, made discriminatory statements, and interfered with Complainants’ tenancy, because of race and/or color, in violation of 42 U.S.C. §§ 3604(a), (b), (c), and 3617.

The Complainants seek civil money penalties totaling \$200,000.00.

None of the parties exercised the right to have this matter heard in federal district court, so the matter was ripe for hearing before an administrative law judge.

On May 25 and May 26, 2010, the undersigned conducted a hearing in this matter in the City Council chambers, in Arab, Alabama.

Over the course of two days, the Court heard the testimony of: 1) Christopher (“Tommy”) Doss; 2) Melissa Garrett; 3) Amanda Garrett; 4) Kenneth Garrett; 5) Natasha Watson; 6) Jamaal King; 7) Ralph King; 8) Natasha Watson; 9) Louise Terrell; 10) Willie Pollock; 11) Kenneth Maze; 12) Dr. Robert Hargraves; and 13) Phillip Maze.

The parties filed Post-Hearing Briefs on July 16, 2010 and Reply Briefs on July 30, 2010. Accordingly, this case is ripe for decision.

FINDING OF FACT:

Based on a thorough and careful analysis of the entire record, including evidence in the form of testimony and documents adduced at the hearing, the Court finds the facts as described above, and further finds and takes cognizance of the following facts:



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

1. Complainants Melissa Garrett, Amanda Garrett, Christopher Doss, and all three children, who lived with them at 244 County Road 1840, Arab, Alabama 35016, are White.
2. Complainant Jamaal King is African-American.
3. Respondent Phillip Maze is White.
4. Respondent Opal Maze is White.
5. Phillip Maze resides with and cares for his mother, Opal Maze, in her house at 224 County Road 1840, Arab, Alabama 35016.
6. Aside from her residence, Opal Maze owns two rental dwellings located at 244 County Road 1840, and at 209 County Road 1840, both in Arab, Alabama 35016.
7. Kenneth Maze is Opal Maze's son and Phillip Maze's younger brother.
8. Kenneth Maze has been Opal Maze's attorney-in-fact since 2001, when she gave him a general power of attorney; under Alabama law, it is a "durable" power of attorney;
9. Opal Maze managed the two rental properties at 244 County Road 1840 and 209 County Road 209 until approximately 2004.
10. Since 2004, and at all times relevant to the issues in this matter, Opal Maze has not been competent to conduct any business transactions or enter any contractual agreements due to medically confirmed and worsening dementia (Tr.473-480); A Notice Regarding Issuance of Decision pursuant to 42 USC § 3612(g)(2), was filed with Secretary and the parties on November 9, 2011.
11. The water supply for the rental mobile home at 244 County Road 1840 is provided by an extension from the metered water supply for Opal Maze's nearby home at 224 County Road 1840.
12. By verbal agreement between Phillip Maze and Melissa Garrett and Christopher Doss, the Complainants rented the mobile home at 244 County Road 1840, and the water supply was included in the rent to be paid by the Respondents.
13. Melissa Garrett and Christopher Doss paid rent and part of the security deposit to Phillip Maze prior to moving to 244 County Road 1840.
14. Two adult white visitors stayed overnight at the mobile home early in the Complainants' tenancy.
15. Phillip Maze expressed no issue with the two white visitors' overnight stay.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

16. Phillip Maze did not turn the water supply off to the mobile home when the two white visitors stayed overnight during the Complainants' tenancy.
17. Phillip Maze agreed to allow two additional children to live at the mobile home with the Garrett/Doss family for a period of six weeks, bringing the total number of occupants to six.
18. During their tenancy, the Complainants did not receive any lease violation notices from Respondents.
19. Phillip Maze made repairs at the mobile home on or around March 10, 2009. During this time, he observed Jamaal King at the mobile home.
20. Phillip Maze took issue with Melissa and Jamaal King sleeping together while unmarried and their interracial relationship.
21. Phillip Maze does not approve of interracial relationships and told so to Melissa Garrett.
22. Phillip Maze did not approve of Melissa Garrett's relationship with Jamaal King.
23. Phillip Maze did not limit overnight visitation at the mobile home except when Jamaal King visited.
24. Phillip Maze turned off the water supply to the mobile home.
25. Phillip Maze did not return the security deposit to Melissa Garrett or Christopher Doss after they moved out of the mobile home.
26. Prior to Jamaal King's visit at the mobile home, Phillip Maze had not previously turned off the water supply to the mobile home.
27. Phillip Maze turned the water supply to the mobile home off for approximately two hours, until Jamaal King left the property.
28. Phillip Maze told HUD's investigators that no federal law will tell him to whom to rent.
29. None of Opal Maze's dwellings has been rented to African-Americans, but there is no evidence that any African-Americans ever sought to rent there, or were refused.

DISCUSSION:

This Court has considered all issues raised, and all documentary and testimonial evidence in the record and presented at the hearing. Those issues not discussed herein are not addressed because the Court finds they lack materiality or importance to the decision.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

THE LEASE:

A preliminary issue is whether the oral lease agreement between the Complainants and the Respondents is valid. The parties did not expressly raise this issue, but the validity of the lease is germane to determining whether the Act was violated.

The existence of a valid rental contractual relationship for the mobile home hinges on the law of Alabama, where the agreement was entered into and the rental mobile home was located.

Thus, the Court concludes that Phillip Maze—although he had no ownership interest in the mobile home—entered into an apparently valid agreement with the Complainants for month-to-month rental of the mobile home.

AGENCY:

The Complainants argue that Opal Maze is liable for Phillip Maze's discriminatory conduct under the principles of vicarious liability. The Complainants assert that Opal Maze authorized Phillip Maze to act as her agent, or alternatively, Kenneth Maze, as Opal's attorney-in-fact, authorized Phillip Maze to act as Opal's agent.

The Respondents, on the other hand, contend that—given Opal Maze's mental incapacity—she cannot be held to have authorized Phillip Maze's conduct, or be held liable for it.

The Court concludes that Opal Maze cannot be held liable for Phillip Maze's actions under agency principles because she had no capacity to authorize, and did not actually or apparently authorize Phillip to rent the mobile home to the Complainants, nor did she have the capacity to take the racially discriminatory actions complained of in this action.

FAIR HOUSING ACT:

Fair Housing Act (the "Act") under Title 42 U.S.C. § 3603(b)(1). This provision of the Act exempts from liability owners of:

1. No more than three single-family houses;
2. Who do not use in any manner the rental facilities or rental services of any



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

real estate broker, agent, or salesman, or of such facilities or services of any person in the business of renting dwellings, or of any employee or agent of such broker, agent, salesman, or person.

STANDING:

The Respondents contend that Jamaal King lacks standing to assert any claims under the Fair Housing Act because he did not buy or rent the mobile home.

However, the standing requirement under the Act only requires injury in fact.

Here, Mr. King alleges that as a result of Phillip Maze's actions in violation of the Act, he has suffered a "distinct and palpable injury." *Havens Realty Co. v. Coleman*, 455 U.S. 363, 372 (1982).

To initiate an administrative process under the Act, an "aggrieved person" can file a complaint within one year after an alleged discriminatory housing practice with the HUD Secretary. 42 U.S.C. § 3610(a)(1)(A)(1).

An "aggrieved person" under the Act is broadly defined to include any person who, *inter alia*, "claims to have been injured by a discriminatory housing practice." 42 U.S.C. § 3602(i).

In the case at hand, Jamaal King was neither a tenant nor occupant but a mere guest. Nonetheless, he has standing to pursue damages under the Act.

Jamaal King is an "aggrieved person" as defined under 42 U.S.C. § 3602(i).¹⁰ Thus, the Court concludes that Mr. King has standing for the purposes of the Fair Housing Act.

MOTIVATION:

The Respondents argue that Phillip Maze did not engage in discriminatory housing practices because his actions were motivated by the excessive

number of people staying in the mobile home rather than racial discrimination.

The Complainants, on the other hand, argue that the Respondents' claim is



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

belied by circumstances establishing that Phillip Maze knew that Jamaal King was merely a guest, and that Phillip's true motivation was based on Jamaal King's race.

The evidence is that Phillip Maze himself told Melissa Garrett that he did not like interracial relationships.

Phillip Maze claims to have discussed with Melissa the need for Jamaal King to leave “[b]ecause they had more people living in the trailer than we had agreed to” and “[b]ecause [Phillip] was the seventh person, the last person to show up there”

Notwithstanding that concern, Phillip clearly expressed to Melissa his disapproval of her interracial relationship with Jamaal King.

He also expressed to Christopher his concern about having an African-American on the property.

Based upon the facts established in this record, the Court concludes that Phillip Maze's motivation in turning off the water on Wednesday morning was because Jamaal King was African-American and he had not yet departed the property as Melissa had agreed.

The Court does not lightly dismiss the Respondent's claim that the number of occupants and guests in the mobile home was a violation of the lease agreement.

Phillip testified that at the time he made a rental agreement with the Complainants, he understood that Christopher, Amanda, their infant child and Melissa would reside in the two-bedroom, one-bath, mobile home.

But Phillip later agreed to Melissa's niece and nephew staying with them.

Later, Phillip again did not object to Jamie, Melissa's sister, and her husband spending a night at the mobile home.

Phillip states that he consented to the additional two people beyond that he



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

agreed to originally because “it was to be limited to six weeks and they were just children, they needed a place to live, and they . . . were just little darling kids.”

Phillip also states that he allowed Jamie and her husband to stay because they “were the kids’ parents” even though he did not feel the mobile home was big enough for all the people.

Since then, the matter asserted by Complainant King has been investigated by HUD, which has determined that the Charge should be brought on his behalf.

In sum, Phillip allowed four additional people to temporarily live in the mobile home, beyond the number agreed in the verbal lease.

Phillip allowed as many as four extra people in the mobile home at once, but expressed concern about having one more person in the mobile home, about whom he had made racially discriminatory comments.

Allowing for the legitimacy of Phillip Maze’s concern that too many people were staying in the mobile home, the clear weight of the evidence establishes that Phillip’s actions in requiring Jamaal King to leave—and in turning off the water to the mobile home when he did not leave as expected—were based on prohibited racial discrimination.

VIOLATIONS OF THE FAIR HOUSING ACT:

In view of the foregoing, the Court concludes that Respondent Phillip Maze has violated several provisions of the Fair Housing Act, as charged.

1. The Act makes it unlawful to refuse to rent after the making of a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race or color. 42 U.S.C. § 3604(a). By coercing Melissa to require her guest to leave because he was African-American, and turning off the water supply to the mobile home to enforce that unlawful coercion, Phillip Maze made the use and enjoyment of the Mobile home unavailable to Melissa in violation of Section 3604(a). (Tr.101, 106, 153).



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VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

2. Phillip Maze also violated Section 3604(b), which prohibits discrimination against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race or color. 42 U.S.C. § 3604(b). By imposing a more restrictive guest policy on the Complainants because of Melissa Garrett's association with an African-American, Jamaal King, Phillip Maze applied discriminatory rental terms and conditions in violation of the Act and intentionally interfered with the enjoyment of the mobile home by all of the tenants and authorized guests.
3. As discussed above, Phillip Maze made numerous racially discriminatory statements in violation of Section 3604(c), which makes it unlawful for any person to make any statement with respect to the rental of a dwelling that indicates any preference, limitation or discrimination based on race or color.
4. Finally, in each of the foregoing violations of the Act, Phillip Maze also violated Section 3617 of the Act by coercing, intimidating or interfering with any person in the exercise or enjoyment of any right granted or protected by Section 3604 of the Act.

REMEDY:

Damages for Emotional Distress:

The Complainants request \$200,000 in emotional distress and inconvenience damages, broken down as follows: \$55,500 for Melissa Garrett, \$55,500 for Jamaal King, \$40,000 for Christopher Doss, \$40,000 for Amanda Garrett, and \$3,000 for each minor child.

In particular, the Complainants claim that Amanda Garrett and Christopher Doss experienced inconvenience and stress in losing their housing.

As the Complainants argue, "the proper recourse for too many residents is a notice of lease violation, not depriving the residents of water."

Out-of-Pocket Expenses:

The Complainants argue that they suffered inconvenience and financial loss as a result of the Respondents' discriminatory acts.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

The Complainants request the Court to order the Respondents to pay \$1,318.75 to Melissa Garrett, and \$4,020.95 to Christopher Doss and Amanda Garrett for various out-of-pocket losses related to rent and security deposit for the rental of the mobile home, moving expenses, and rent and starting utilities at a new dwelling.

The Complainants, however, allege excessive out-of-pocket damages, including \$1,852.50 in rent expense incurred by Christopher Doss and Amanda Garrett from May 2009 until the hearing in May 2010.

Upon considering all the exhibits and documentary evidence, this Court finds that an award of \$737.50 to Melissa Garrett and \$927.50 to Christopher Doss and Amanda Garrett in damages will adequately compensate the Complainants for the pecuniary losses they sustained as a result of the discriminatory housing practices.

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.

“Injunctive relief should be structured to achieve the twin goals of:

1. insuring that the Act is not violated in the future and
2. removing any lingering effects of past discrimination.”

The purposes 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. The relief is to be molded to the specific facts of the case.

The Complainants seek injunctive and other equitable relief in light of the violation.

The Court concludes that the requested injunctive relief will serve to rectify past harm and to deter prohibited discrimination by Phillip Maze and others.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

Therefore the requested injunctive relief shall be ordered.

Civil Money Penalty:

As Charging Party, HUD seeks civil penalties in the amount of \$16,000 to be assessed against Phillip Maze and \$5,000 against Opal Maze.

To vindicate the public interest, the Fair Housing Act authorizes an administrative law judge to impose a civil penalty upon a respondent who has been found to have discriminated in violation of the Act.

Assessment of a civil penalty requires a consideration of five specific factors:

1. the nature and circumstances of the violation;
2. the degree of culpability;
3. any history of prior violations;
4. the financial circumstances of the Respondent; and
5. the goal of deterrence, and other factors as justice may require.

The Court finds that the nature and circumstances of Respondent Phillip Maze's violations merit the imposition of a civil money penalty.

In considering the nature and circumstances of his violations, the Court notes that they occurred in the period of just a few days during Jamaal King's curtailed stay at the mobile home.

Culpability for the violations rests solely with Phillip Maze.

Opal Maze—having no culpability in the matter—is not subject to a civil penalty.

Although Phillip Maze referred to the rental “business” as a fourth generation business.

In fact the Respondents have not had significant experience with rental transactions as they manage only two single-family rental dwellings without the use of any agent or real estate brokerage firm.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

The damages for Melissa covers the \$250 rent and security deposit for the rental of the mobile home from Phillip Maze, the \$172.50 rent for March 2009, and the \$315 first-month's rent at her new apartment.

The damages for Christopher and Amanda cover the rent and security deposit for the rental of the mobile home from Phillip Maze, plus the ensuing \$165 hotel stay and the \$25 storage fee incurred during the first month after the move.

There is no history of prior violations of the Act, or allegations that Phillip Maze previously engaged in any discriminatory housing practices.

The Court has been provided no direct evidence bearing on the financial circumstances of Phillip Maze, but notes he has no regular outside employment, and that Kenneth Maze assumed that rental proceeds were the source of support for Phillip Maze in maintaining a household for himself and his mother.

Nonetheless, evidence regarding the Respondents' financial circumstances is peculiarly within his control; Respondents had the opportunity and the burden to introduce such evidence on the record to have it considered.

In the absence of evidence to the contrary, the Court may presume that Phillip Maze can pay the civil penalty, without suffering undue hardship.

Finally, an award of some civil penalty is appropriate to serve as deterrence to others.

Those similarly situated to Respondent Phillip Maze must be put on notice that violations of the Fair Housing Act will not be tolerated.

Based on consideration of the foregoing factors, the Court concludes that assessment of a civil penalty in the amount of \$10,000 should be assessed against Phillip Maze.



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

CONCLUSION:

The preponderance of the evidence establishes that as a result of Respondent Phillip Maze's unlawful action, Complainants Melissa Garrett, Jamaal King, Amanda Garrett, Christopher Doss and three minor children suffered injuries which must be remedied by an award of compensatory damages.

In addition, to protect and vindicate the public interest, a civil penalty must be imposed upon Respondent Phillip Maze.

Accordingly, the following Order is entered.

ORDER:

Having concluded that Complainants Melissa Garrett, Jamaal King, Amanda Garrett, Christopher Doss and three minor children suffered injuries resulting from Respondent Phillip Maze's discriminatory housing practice in violation of the Fair Housing Act, the Court hereby ORDERS that:

1. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay to Complainant Melissa Garrett \$737.50 for tangible losses and inconvenience;
2. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay to Complainants Christopher Doss and Amanda Garrett \$927.50 for tangible losses and inconvenience;
3. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay to the Complainants for emotional distress a total of \$37,500, apportioned as follows:
 - Melissa Garrett, \$12,000;
 - Jamaal King, \$11,000;
 - Amanda Garrett, \$6,000;
 - Christopher Doss, \$4,000;
 - and the three minor children, \$1,500 each.
4. Within thirty (30) days of the date on which this Order becomes final, Respondent Phillip Maze shall pay a civil penalty of \$10,000 to the Secretary, United States Department of Housing and Urban Development;
5. Respondent Phillip Maze is hereby permanently enjoined from discriminating based on race, color, religion, national origin, sex, familial status, or disability, in violation of the Fair Housing Act;



VIOLATION OF THE CIVIL RIGHTS ACT OF 1968 (*continued*)

6. Respondent Phillip Maze shall not rent any dwelling unless he has first:
 - (1) undergone training on the Fair Housing Act conducted by a qualified independent party; and
 - (2) provided the HUD Regional Office notification of the name, address and telephone number of the trainer and or training organization and a copy of a certification confirming his training;
7. Respondent Phillip Maze, if he completes such training, and chooses to engage in the rental of any dwelling, shall provide to the Complainant HUD Regional Office, for purposes of monitoring such rental activity:
 - (a) copies of any advertisements or notices of rental vacancies;
 - (b) copies of any written lease applications;
 - (c) a statement as to each applicant's status protected by the Act, if any;
 - (d) if any applicant is rejected, a statement as to the date and reason for such rejection; and
 - (e) a copy of any executed lease agreement(s), which shall be in writing.

J. Jeremiah Mahoney Administrative Law Judge

This concludes our three (3) hour continuing education course in Fair Housing.