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 Marie Campbell and Michelle Kirkland, Charging Party, v. Housing Authority of City of Las Vegas, Respondent.	HUDALJ 09-94-1016-1 Decided: November 6, 1995

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For the Respondents

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For the Charging Party

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION AND ORDER

Statement of the Case

This matter arose as the result of a complaint filed by Marie Campbell on behalf of herself and her daughter, Michelle Kirkland ("Complainants") alleging discrimination based on race in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* ("the Act"). On December 7, 1994, following an investigation and a determination that reasonable cause existed to believe that discrimination had occurred, the Department of Housing and Urban Development ("HUD" or "the Charging Party") issued a charge

against the Housing Authority of the City of Las Vegas ("Respondent" or "HALV") alleging that it had engaged in discriminatory housing practices in violation of 42 U.S.C. §§ 3604 (a), (b), and (d).[1]

A hearing was held in Henderson, Nevada, March 28-30, 1995.[2] The parties filed, *inter alia*, post-hearing and reply briefs, briefs addressing civil penalties, and written answers to questions raised at the end of the hearing. Both the Charging Party and Respondent submitted post-hearing documents for consideration with regard to their response to questions posed at the hearing. Respondent did not object to the admission of the post-hearing documents submitted by the Charging Party -- The Public Housing Occupancy Handbook: Admission, HUD Handbook 7465.1 REV-2 (Aug. 1987) ("Occupancy Handbook"), and Affidavit of Maryann Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations. Having received no objection to the admission into evidence of these two documents, they have been admitted and marked as C.P. Exs. 18 and 19, respectively.[3] However, the Charging Party objects to admission of documents submitted by Respondent entitled "Preapplication Packet Important Notice" and "Written Instructions." The objection is on the basis that they are undated and contain no statement that they were routinely provided to public housing applicants *at the time* Ms. Campbell applied for housing. I find merit to the Charging Party's objections; accordingly, the documents have not been admitted and have not been considered in deciding this case.

Respondent objects to Exhibits 2-9 to the Charging Party's brief addressing civil penalties based on Federal Rules of Evidence 402, 403, and this tribunal's ruling at hearing excluding irrelevant evidence. Because the exhibits are relevant to a determination of the maximum amount of civil penalties that may be assessed, and

because they are not unduly prejudicial, they are admissible. The last filing was received

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[1]The charge was amended on March 6, 1995, to include Michelle Kirkland as an aggrieved party.

[2]On March 24, 1995, several outstanding motions were ruled upon during a telephone conference. One such pleading was a Motion to Dismiss that had been filed by Respondent. As noted at the hearing, that Motion was denied for the reasons expressed by the Charging Party in its Opposition to the Motion. See Tr. 17-18; Respondent's Motion to Dismiss (Mar. 21, 1995); Charging Party's Opposition (Mar. 23, 1995). Respondent's post-hearing brief again raised the issue of the adequacy of conciliation which had been addressed in Respondent's Motion to Dismiss and disposed of by my ruling. Because Respondent raised no new arguments in its post-hearing brief concerning the conciliation issue, I need not reconsider the matter.

[3]The following reference abbreviations are used in this decision: "Tr." followed by a page number for the hearing transcript; "C.P. Ex." for the Charging Party's Exhibit; "R. Ex." for Respondent's Exhibit; and "Stip." for the parties' Joint Agreement on Stipulation filed March 28, 1995.

on July 7, 1995, rendering this case ripe for decision[4].

Findings of Fact

The Parties

1. Marie Campbell, age 42, is the mother of Michelle Kirkland, who was 12 years old at the time of the hearing. Tr. 336. Complainants are African-American. Stip. 3. Since August 1992, they have resided in public housing administered by HALV. Stip. 2; Tr. 336-37, 379, 411.

2. HALV is a public housing authority ("PHA") which administers various public housing programs pursuant to 24 C.F.R. Part 900 *et seq.*, including the Low Income Public Housing ("LIPH") program.. HALV operates and manages LIPH projects on both the East and West Sides of Las Vegas, Nevada. Stips. 1 and 2. Las Vegas Boulevard is the demarcation line for the East and West Sides. Tr. 76.

3. Pursuant to 24 C.F.R. Part 960, PHAs are required to adopt tenant selection policies and procedures which conform to HUD requirements. *See* 24 C.F.R. § 960.204. HALV's written policies and procedures are set forth in a document titled "Statement of Policies Governing Admission to and Continued Occupancy of HUD-Aided Housing Units Operated by the Housing Authority of the City of Las Vegas, Nevada" ("Statement of Policies"). HALV's selection policies are set forth in its Tenant Selection and Assignment Plan ("TSAP"), which is attached to its Statement of Policies. Tr. 215; C.P. Exs. 3 and 14.

Historical Data

4. At all relevant times, African-Americans comprised at least 55% of LIPH family program applicants. The remaining applicants were nearly all White and Hispanic. Tr. 494, 812, 830, 877-78.

5. In August 1991 there were 971 family units at the West Side LIPH projects, 747 of which were occupied[5]. The percentage of these units occupied by African-Americans ranged from 70.2% at Evergreen Arms to 96.8% at Herbert Gerson Park ("HGP"). During the same time, there were 882 family units at the East Side projects,

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[4]On August 22, 1995, I issued a Notice that due to, *inter alia*, the number and complexity of issues in this case, it was impracticable to render a decision within the 60-day period, and that I anticipated issuing a decision within the succeeding 60-day period.

[5]The figures used throughout this decision do not include HALV's 45 "scattered sites," which include both East and West Side units. C.P. Ex. 7; R. Exs. 3-11.

813 of which were occupied. The percentage of these units occupied by African-Americans ranged from 8% at Ernie Cragan Terrace ("ECT") to 41.7% at Cedar Gardens. C.P. Ex. 7; Tr. 79-80, 135-36.

6. Of the two-bedroom LIPH offers made to prospective tenants by HALV during January 1992 through September 1992, 56.7% of the offers made to African-Americans were for West Side developments and 43.3% of the offers made to African-Americans were for East Side developments. During the same period, 42.9% of the offers made to Whites and 42.3% of the offers made to Hispanics were for West Side developments while 57.1% of the offers made to Whites and 57.7% of the offers made to Hispanics were for East Side developments. Tr. 80-81; C.P. Ex. 2 at 82-83.

7. Of the new tenants moving into HALV LIPH projects during the period from January 1992 through September 1992, 60% of the African-American tenants moved into West Side projects and 40% of the African-American tenants moved into East Side projects. During the same period for new tenants, 64.3% of the White tenants and 58.1% of the Hispanic tenants moved into East Side projects and 35.7% of the White tenants and 41.9% of the Hispanic tenants moved into West Side projects. Tr. 81-82, 169-71, 176; C.P. Ex. 2 at 83-84.

8. As of September 1992, there were 967 family units in the West Side LIPH projects, 729 of which were occupied. The percentage of units occupied by African-Americans ranged from 75% at Evergreen Arms to 99.3% at HGP. As of September 1992, there were 882 family units in the East Side projects, 780 of which were occupied. C.P. Ex. 7. The percentage of units occupied by African-Americans ranged from 31.8% at ECT to 53.8% at Cedar Gardens. Tr. 79-80, 135-36; C.P. Ex. 7.

Differences between the West Side and the East Side

9. Most projects on the East Side are newer than those on the West Side. Tr. 680, 723, 772, 848. In general, the East Side projects are better maintained than the West Side projects. Tr. 77, 120, 325-29, 485-86. During the past five years, HALV has undertaken an effort to rehabilitate and modernize many of its developments. The majority of such work has been focused on the West Side. Insofar as the work has required the relocation of existing tenants, the majority of those tenants are African-Americans who have been relocated to the East Side. HGP (one of the older projects on the West Side) is undergoing rehabilitation and modernization. Tr. 120-23, 723-24, 772-73.

10. HGP has the largest community center of any HALV development. The center offers programs that are available to HGP residents, including drug rehabilitation

and prevention and tutorials. HGP also has its own Metro Police substation and its own parole/probation unit. Tr. 126, 775-77, 865-66, 883-84.

11. There is gang activity on both the East and West Sides of HALV. However, the West Side has more gang activity, as well as a greater drug problem, and therefore, is more dangerous. Tr. 120, 461-62, 813, 862. At least in part because of such danger, it is more difficult for HALV to lease units on the West Side as compared to the East Side. Tr. 329-30, 332-34, 446-47, 461-62, 454, 813; *see also* Tr. 105. HGP, in particular, is perceived by HALV to be more troubled than other West Side projects. At times, HALV has considered HGP to be one of its hardest to lease projects. Tr. 188-89, 862.

The Voluntary Compliance Agreement

12. In October 1991, HUD and HALV executed an Agreement for Voluntary Compliance ("VCA") with Title VI of the Civil Rights Act of 1964.[6] C.P. Ex. 14; Tr. 213-14. The VCA was a settlement entered into to avoid Federal enforcement proceedings against HALV and to remedy a pattern of segregated housing whereby primarily African-American tenants were housed on the West Side of Las Vegas, and non-African-Americans were housed on the East Side of Las Vegas. C.P. Ex. 15; Charging Party's Brief on the Meaning of Adjudged Prior Discriminatory Housing Practice for Purposes of Assessing Civil Penalty (Apr. 21, 1995) at Ex. 1 ("Civil Penalty Ex. 1").

13. The VCA stated that none of its provisions could be waived, modified or amended unless done so in writing by all the parties. C.P. Ex. 14, numbered page 36.

VCA Processing of Prior Discrimination Complaints

14. Pursuant to the VCA, HALV designed and developed a process to address the effects of its prior discriminatory tenant selection system. HALV agreed to set aside $693,291 for monetary compensation, and to identify individuals who had experienced discriminatory placement. Civil Penalty Exs. 1 and 3. HALV published notices and sent letters to prior and current applicants informing them of its intent to address complaints of prior discrimination through monetary compensation or remedial housing. Civil Penalty Ex. 4. In response to this notice, HALV received approximately 500 claims seeking redress. The claims were processed by the Applications Department, which made initial determinations of eligibility for compensation. Civil Penalty Exs. 1, 4. Approximately 50 claims were determined to be eligible for compensation. Civil Penalty Ex. 1.

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[6] Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, color, or national origin, under any program or activity receiving Federal financial assistance. *See* 42 U.S.C. § 2000d, *et seq.*

15. Ineligible claimants could enter a two-step appeals process. First a claimant could receive an informal review of his or her file by HALV's Hearing Officer. If dissatisfied, a claimant could request a formal review from the Formal Hearing Panel ("FHP"), a three-member panel consisting of a HALV employee and representatives from the Economic Opportunity Board and Poor People Pulling Together, both independent, non-profit organizations. Civil Penalty Ex. 1.

16. The FHP followed the procedures set forth in HUD regulations for use by a Public Housing Authority ("PHA") to resolve tenant grievances. *See* 24 C.F.R. § 966.56, *et seq.* During the formal review, the FHP held hearings at which claimants were entitled to submit documentation, confront adverse witnesses, and be represented by counsel. *Id.*; Civil Penalty Ex. 1. The FHP summarized its findings and conclusions in written final decisions issued to applicants. Civil Penalty Exs. 1, 10, 11.

17. In at least two instances, the FHP found that HALV had discriminated against the applicants in the processing of their requests for housing. Civil Penalty Exs. 1, 10, 11.

VCA Tenant Assignment Provisions

18. Pursuant to and consistent with the terms of the VCA, HALV amended its Tenant Selection and Assignment Plan ("TSAP"). Tr. 215; C.P. Exs. 3 and 14. The VCA provisions concerning the TSAP require that HALV "record on a community-wide waiting list, by date and time of application, the names of all current applicants, and all applicants who apply for public housing in the future. . . ." C.P. Ex. 14, numbered page 14. Such applicants, according to the VCA, are to be placed on the waiting list and receive offers in the order determined by the date and time their applications are received and any HUD-approved preferences. These preferences included the "Federal Preferences" (*e.g.*, involuntary displacement) mandated by HUD regulations, as well as preferences based on Las Vegas residency. *See* 24 C.F.R. §§ 960.204(a), (b)(4), 960.211; C.P. Ex. 2, p. 30. As of January 1992, there were three relevant categories of preferences, containing priorities within each preference:

(1) Federal Preference
- 1 = involuntary displacement (*e.* homelessness),
- 2 = substandard housing
- 3 = no Federal preference

(2) Veteran's Preference
- 1 = active duty
- 2 = family of deceased veteran
- 3 = family of disabled veteran

4 = no veteran's preference

(3) Resident's Preference
A = Las Vegas resident
B = nonresident of Las Vegas.

Accordingly, a preference of 1-1-A was the highest preference for ranking on the waiting list. Tr. 708; C.P. Ex. 2 at 30; Tr. 476, 708; *see also* 24 C.F.R. §§ 960.204 (a), (b) (4), 960.211.

19. Pursuant to the VCA, HALV also adopted and implemented a "one-offer, one-refusal" process as part of its TSAP, with specified modifications. C.P. Ex. 14, numbered page 14. One of the modifications provided that whenever HALV offered an applicant a unit in a project where that applicant's race was "concentrated," it was to offer that applicant simultaneously

> a choice of that unit and any then available additional units of appropriate size and type at any project of the applicant's choice where his/her racial group is not concentrated. If no such units are available at the nonconcentrated project of the applicant's choice the applicant will be offered. . .[t]he opportunity to wait for the next available unit of appropriate size in a project where his/her racial/ethnic group is not concentrated.

C.P. Ex. 14, numbered page 15; *see also* C.P. Ex. 3.

20. In determining whether a racial group is "concentrated" or "nonconcentrated" at a particular project, the VCA requires a comparison of the

> group's percentage of tenancy at the project to the percentage that group has attained in [HALV's] overall family tenant population. . . If the percent of a racial. . . group at a project is equal to or less than the percentage of that group for [HALV's] total program, then that group will be considered a nonconcentrated group at that project. If the percent of a racial group at a project is more than the percentage of that group for [HALV's] total program, then that group will be considered a concentrated group at that project.

C.P. Ex. 14, numbered page 4.

VCA Transfer Provision

21. The VCA provides that in granting tenant requests for a transfer, the first priority category is those tenants with an "urgent/emergency need" to transfer. C.P. Ex. 14, numbered pages 16-17, and Attachment X. The VCA defined "urgent/emergency transfers" as "limited to [those where the tenant's apartment was] subject to natural disaster, severe structural deficiencies/damage, [or] fires. . . ." These transfers also include transfers for "health/safety considerations." C.P. Ex. 14 at Attachment W. Urgent/emergency transfers are on an "as-needed basis." C.P. Ex. 14, numbered pages 16-17.

VCA Training

22. The VCA required all HALV employees to attend VCA training and to sign a statement of understanding of the terms of the VCA. Tr. 223; C.P. Ex. 15, numbered pages 2, 22. On January 24, 1992, the following HALV employees were present at a VCA training session administered by HUD: Thomas Gholson, Deputy Executive Director; Kita Cameron, Housing Programs Division Manager; Ruth Pipkins, Applications Department Supervisor; and Laura McGee, Housing Operations Manager. Tr. 231-32, 662, 886-87. Prior to the January 24th training session, HUD distributed to all HALV employees "VCA Highlights" setting forth key remedial provisions of the VCA, including tenant selection and assignment practices. Tr. 227-29; C.P. Ex. 15, pp. 3-4. On June 15, 1992, HUD held an additional day-long teleconference training session attended by Ms. Pipkins, among others. Tr. 232-33, 254. The additional training covered tenant selection and assignment issues, including maintenance of the waiting list. Tr. 233.

HALV's Process for Assigning Apartments

23. During the relevant time period, HALV's Applications Department was responsible for assigning units in the various housing programs. The Applications Department would provide each prospective tenant with a preapplication packet, to be completed and returned to the Department. C.P. Ex. 6; Tr. 72, 186-89, 266-67, 852-55. The Applications Department would then place the applicants on a waiting list, the sequence of which was determined by "preference," and date and time of application.[7] Tr. 468, 708.

[7]Applicants also had the opportunity to sign a "West Side Interest Letter." C.P. Ex. 6. The letter was used by HALV to determine whether applicants were willing to accept offers for selected, difficult-to-lease West Side developments. An applicant's declination to sign the letter did not affect his or her position on the waiting list. However, an applicant's execution of the letter enabled HALV to offer the applicant housing out of sequence, thereby "skipping over" applicants who had not signed the letter. C.P. Ex. 6; Tr. 72-74, 853-55.

24. Applicants' files were maintained for processing through referrals and assignment of housing. Tr. 478. When vacancies occurred at individual projects, the projects' Site Managers sent Management Request Forms to the Applications Department for referrals of prospective tenants. Tr. 478-79, 673, 705, 816-17. Each Site Manager Request Form asked for a certain number of files to fill vacancies for units with specific bedroom sizes. Tr. 673, 705. The Applications Department date-stamped and then logged in the Request Forms in a File Assignment/Offers Log, and sent out applicant files to the Site Managers. Tr. 817-20; R. Ex. 2.

25. Once the Applications Department sent out an applicant file in response to a Site Manager's request to fill a unit vacancy, that unit was no longer available, unless and until the applicant did not accept the vacant unit. Tr. 819-21.

26. There is only one express reference in the TSAP to the exercise of discretion in selecting and assigning applicants. This provision allows the Executive Director to consider exceptions to the Federal preferences in "extreme emergencies," "hardships of a temporary nature," or when the exception would be in HALV's "best interest." C.P. Ex. 3, Tab D at 3.

HALV's Action on Complainants' Application for Housing

27. In August of 1991, Complainant Campbell moved with her daughter to Las Vegas from Michigan to escape an abusive marital relationship. Tr. 337. While living in Michigan, Ms. Campbell's husband stalked her, requiring Complainants to move frequently. Tr. 380. Upon Complainants' arrival in Las Vegas, they moved into the Shade Tree Center, a homeless shelter on the West Side, where they remained for approximately two weeks. Tr. 338.

28. On September 1, 1991, Ms. Campbell sought to apply for all family housing programs administered by HALV. The only program open at the time was Section 8 Moderate Rehabilitation. Tr. 339-40, 412, 420; Stip. 11; C.P. Ex. 5, Tabs D and E. Because HALV advised Ms. Campbell that it could take up to one to two years to obtain public housing, she sought housing with Project Home. Project Home provides housing for the homeless; it is an organization separate from HALV. Tr. 37-38.

29. In early September 1991, pursuant to a Project Home program, Ms. Campbell and her daughter moved into a two-bedroom apartment at Sherman Gardens, 1701 J Street, R-11, on the West Side of Las Vegas. Tr. 37, 341, 415. The residents at Sherman Gardens were predominantly African-American. Tr. 409, 517. Pursuant to the Project Home program, Ms. Campbell's residence was limited to six months. Tr. 38, 156.

30. Ms. Campbell first observed gang activity on the West Side when she and Michelle moved into the Project Home unit at Sherman Gardens. At that point, Ms. Campbell decided she did not want to live on the West Side. Tr. 343, 381.

31. In January 1992, the family LIPH housing program became open to applicants, and Ms. Campbell applied for two-bedroom housing. Tr. 412, 665. At that time, Project Home certified to HALV that Ms. Campbell would be involuntarily displaced from the housing provided by Project Home because her six-month maximum stay was ending soon. Thus, HALV determined her preference category to be "1-4-A," *i.e.*, involuntarily displaced or homeless, no veterans' preference, resident of Las Vegas. C.P. Ex. 5, Tabs D and E. On January 17, 1992, HALV advised Ms. Campbell to keep in contact, and to provide HALV with any change of address or telephone number. Tr. 407; C.P. Ex. 5, Tab D.

32. On January 21, 1992, while residing at the Project Home unit and still waiting for HALV housing, Ms. Campbell wrote a letter to HALV stating: "I do not want to live on the West Side because I fear harm to my child and myself due to the drug[s] and gangs. . . there." Tr. 343; C.P. Ex. 5, Tab G.

33. In March 1992, Complainants moved from Project Home and from Las Vegas, to Ely, Nevada, where Ms. Campbell had obtained employment as a Corrections Officer at Ely State Prison. Tr. 343-45. Prior to moving to Ely, Ms. Campbell informed Project Home staff that she would be working in Ely, and later wrote Project Home advising it of her employment. Ms. Campbell did not provide this information to HALV. Tr. 408.

34. On March 11, 1992, HALV attempted to telephone Ms. Campbell to advise her that an apartment was available. C.P. Ex. 5, Tab A. The apartment was a two-bedroom unit at Weeks Plaza, an East Side project. Tr. 699. HALV was unable to reach Ms. Campbell by telephone because the number had been disconnected. HALV sent a postcard to Ms. Campbell at the Sherman Gardens/Project Home unit, advising her of the apartment's availability. Tr. 349-50, 406; C.P. Ex. 5, Tabs A and D. The postcard, dated March 11, 1992, stated:

> Processing of your application is complete. WE NOW HAVE AN APARTMENT TO RENT TO YOU.
>
> Please contact Linda at 649-3278 no later than March 17, 1992 to make an appointment to look at the unit. Lack of response will be judged as a lack of interest and your application will be placed at the bottom of the waiting list and you will lose all Federal Preferences for one (1) year.

C.P. Ex. 5, Tab D. HALV did not receive a response to the postcard. On April 27, 1992, the Applications Department sent a letter to Ms. Campbell at the Project Home unit at Sherman Gardens advising her that she had refused a unit, and had lost her preference level for one year. C.P. Ex. 5, Tabs A and D. On April 29, 1992, the postcard was returned to HALV marked "return to sender, no forward order on file, unable to forward." C.P. Ex. 5, Tab D. On May 18, 1992, the letter was returned for the same reason. C.P. Ex. 5, Tab D.

35. Complainants resided in Ely, Nevada, from early March 1992 to mid-to-late August 1992. Tr. 343-45, 402, 410, 419-20. On August 6, 1992, while still residing in Ely, Ms. Campbell telephoned HALV to check her status and to notify HALV of a new general delivery address on East Lake Meade Boulevard in Las Vegas. She spoke with Paul Hansen, an Applications Department employee, who informed her that her name had been removed from the waiting list because she had refused an offer of housing. Tr. 344-46, 407-08, 417-18, C.P. Ex. 5, Tab and D.

36. On or about August 20, 1992, Complainants moved back to Las Vegas. They returned to the Shade Tree Shelter. Tr. 347-48. Ms. Campbell went to HALV on August 20, 1992, to inquire about her status, to request a review, and to provide another new address -- a post office box in Las Vegas. She spoke with Mr. Hansen, who again informed her that she had been removed from the waiting list because she had refused an apartment. In response, Ms. Campbell wrote to HALV on August 20, 1992, and requested an informal review hearing, insisting that she had never refused a unit. Tr. 347, 405-06; C.P. Ex. 5, Tabs C and D.

37. Not having received a response to her letter, Ms. Campbell returned to HALV early in the day on August 26, 1992, and spoke with Mr. Hansen. He repeated to Ms. Campbell that she had been removed from the waiting list for refusing an apartment, and referred her to Ruth Pipkins. Tr. 348, 674-75, 693-94; C.P. Ex. 5, Tabs A and B. Ms. Pipkins reviewed Ms. Campbell's file and reiterated to Ms. Campbell that she had refused a unit. Ms. Campbell insisted she had not. Tr. 349; C.P. Ex. 5, Tabs B and C. Ms. Pipkins reviewed Ms. Campbell's file and showed her the postcard that had been sent. Tr. 349-50, 406, 698, 702.

38. During their August 26, 1992, meeting, Ms. Campbell told Ms. Pipkins that she was homeless, had a young child, and had nowhere to go. Tr. 407-09, 414, 700, 702. Ms. Pipkins believed that when the postcard had been sent, Ms. Campbell had been homeless and that her preference remained "1-4-A." Tr. 414, 700, 703, 706; C.P. Ex. 5, Tabs A, C and D. Ms. Campbell confirmed that she had never received the postcard, insisted that HALV was wrong, and asked Ms. Pipkins for HUD's address. Believing that

Ms. Campbell had been withdrawn from the waiting list erroneously for refusing a unit, Ms. Pipkins reinstated Complainant's application by placing her on the waiting list with no loss of time or preference. Tr. 667-68, 698, 701, 703, 709, 874; *see also* C.P. Ex. 2, p. 34; C.P. Ex. 5, Tabs A and D.[8] Ms. Pipkins placed Ms. Campbell back on the waiting list because she believed that but for the error HALV had made Ms. Campbell would have already been assigned housing. Tr. 703; *see also* Tr. 698, 709. Thus, she treated Ms. Campbell's application as though it had never been removed from the waiting list, thereby affording her the full benefit of the original date and time of application and Federal preference status. Respondent's Post-Trial Brief (May 19, 1995)("Resp. Brief ") at 8.

39. Ms. Pipkins then contacted the senior housing specialist and determined that at the time of the meeting, the only two-bedroom unit available was in HGP on the West Side.[9] She offered this unit to Ms. Campbell and gave Ms. Campbell a few days to inspect the apartment and decide whether she wanted it. Ms. Pipkins told Complainant that if she did not accept the West Side apartment, she would be placed on the bottom of the waiting list. Ms. Pipkins told Ms. Campbell to return to HALV when she had made her decision. Tr. 350-51, 355, 414, 698, 701, 703-06; C.P. Ex. 5, Tab D.

40. Ms. Pipkins did not offer Complainant the option of waiting for an East Side unit to become available. Tr. 351-52, 414-15.

41. Had Ms. Pipkins offered Complainant the opportunity to wait for an East Side unit, she would have chosen to do so. Ms. Campbell wanted to be on the East Side. Further, she could have continued to reside at the Shade Tree shelter for at least several more weeks. Tr. 351-52, 414-15, 706.

42. Complainants visited the unit at HGP on August 26, 1992. At an unspecified time on August 27, 1992, Ms. Campbell returned to HALV and told Ms. Pipkins she wanted the unit. Tr. 352-56; C.P. Ex. 5, Tabs A and D. Ms. Campbell signed the lease for the unit and moved in on August 31, 1992. Tr. 356-57; C.P. Ex. 5, Tabs A and H.

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[8]Although Ms. Campbell did not advise Ms. Pipkins during the meeting that she had been residing and employed in Ely, Nevada, when the postcard had been sent (Tr. 407-08), this information would not have rendered Ms. Campbell ineligible for public housing or resulted in her removal from the public housing waiting list. Her income level while residing in Ely was below the income limit for a family of two for most of HALV's projects. Further, HALV did not impose a local residency requirement on applicants. Sec'y Secretary's Response to Judge Constance T. O'Bryant's Questions at the End of Trial (Apr. 21, 1995) at 4-5. In any event, the fact of her move to Ely and her job there could not have impacted on Ms. Pipkins' decision since she was unaware of this information.

[9]Although the Charging Party alleges that there were other two-bedroom units available on the East Side, as discussed *infra*, the Charging Party has failed to prove its allegation.

Ms. Pipkins

43. Ruth Pipkins is Hispanic/Latina. She has been employed by HALV for the past 21 years. Stip. 4; Tr. 694-97. For the past 15 years, she has held the position of Applications Department Supervisor, except for the period from August 1991 to November 1991 when she worked in the VCA area. As Applications Department Supervisor, she pulled unverified applications from the waiting list and assigned them to an applications technician to be verified. After verification, the technician would return the file to Ms. Pipkins' assistant for filing and maintaining in the assistant's office. The assistant was also responsible for quality control of the files after verification. Tr. 266-67, 475-77, 479-81, 499-500, 501-02, 694-97, 705, 707. Individual Site Managers would send requests for applicants' files to fill vacancies directly to Ms. Pipkins, who would, in turn, forward the requests to her assistant for referral back to the Site Managers. Tr. 290, 478-79, 500-01. Ms. Pipkins' assistant at all relevant times was Manuela "Nellie" Gruber, who is Hispanic/Latina. Stip. 5; Tr. 83.

44. Ms. Pipkins had access to and was responsible for maintaining the waiting list. She shared this responsibility with a data-entry clerk. Ms. Pipkins had direct contact approximately six times a day with applicants at the front desk. In addition, at times she would be called upon to translate for Spanish-speaking applicants. She also conducted training orientation for new employees, which culminated in a tour of the housing developments. Tr. 475-77, 479-81, 499, 501-02, 694-97, 705, 707.

45. Ms. Pipkins' immediate supervisor is Kita Cameron, who is White/Portuguese. Her second level supervisor is Thomas Gholson, who is African-American. Tr. 710; Stip.
10; C.P. Ex. 2, p. 5. At all relevant times, Carl Rowe was the Executive Director of HALV.[10] Tr. 293.

46. In early 1989, Ms. Pipkins reprimanded Allison Wallace, an Applications Department employee, who is White, for "placing too many Code Twos, [i.e.,] African-Americans, on the East Side." Tr. 313, C.P. Ex. 9, Tab D.[11]

47. In February 1992, Ms. Pipkins, as part of her supervisory duties, took Stephanie McGough, a White, newly hired, Applications Department employee, on an

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[10]Neither party identified the race of Mr. Rowe.

[11]Although Ms. Pipkins denies making this statement as reported by Ms. Wallace, (Tr. 701-02), I find Ms. Wallace to be the more credible witness. Ms. Wallace's testimony is consistent with the reliable and credible testimony of Stephanie McGough, a former HALV employee who worked under Ms. Pipkins. *See infra* Finding Nos. 47-57 and n.13. In addition, Ms. Wallace's testimony is consistent with the statement she gave to the HUD investigator in March 1994. C.P. Ex. 9, Tab D. I therefore credit Ms. Wallace's testimony.

orientation tour of the East Side projects. Tr. 265-66, 268, 696. While visiting an apartment, Ms. McGough commented that it and the complex were well-maintained. Another newly-hired employee in attendance laughed and stated that Ms. McGough would not have said the same thing had she toured the West Side earlier that day. Ms. Pipkins then interjected, "the Blacks have always lived on the West Side. It's where they want to live. It's where they deserve to live." Ms. Pipkins then proceeded to discuss where they would eat lunch. Ms. McGough was "stunned into silence" by Ms. Pipkins' comment and was "appalled" by Ms. Pipkins' "cavalier attitude." Tr. 268-69.

48. During Ms. McGough's employment in the Applications Department from February to October 1992, and in her presence, Ms. Pipkins would refer to Mr. Gholson, behind his back, as a "loco Negro bendejo," which translated means "crazy Black asshole." Tr. 297.

49. During Ms. McGough's employment at HALV, she observed that Ms. Pipkins was rude to, and made derogatory comments about, African-American applicants while showing favoritism towards Hispanic applicants. Tr. 265, 271, 284, 294, 302, 305.[12]

50. In February or March 1992, while Ms. McGough was assisting a young African-American woman to complete her application, Ms. Pipkins said to Ms. McGough, in front of the applicant, "These people can't read and write. You're going to need to help her so that she fills it out right." Tr. 269-70. Ms. Pipkins walked off. The applicant became angry, asked for Ms. Pipkins' name, retrieved her application saying that she was not going to file it, and left. Tr. 270.

51. In February 1992, two Hispanic men came into the Applications Department to apply for housing. At the time, they were not eligible for any programs because they were single, had no dependents, and had not lived together previously. Tr. 272. One man said that he had lived with his parents, while the other said that he had lived with his wife and children. Ms. Pipkins told them to sign a statement falsely claiming that they had lived together previously for two years in Mexico. She then notarized the statement and had their names placed on the waiting list. Ms. Pipkins assigned their file for verification based on her notarized statement. In less than two weeks, they were housed. Tr. 272-73.

52. Ms. Pipkins assisted another Hispanic applicant, Alba Gonzales, who had listed herself and her two children as prospective residents of HALV housing. Ms. McGough was verifying Ms. Gonzales' information when she discovered that

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[12]Although Ms. McGough recognized that Ms. Pipkins was "abrupt" with people in general, she testified that she was more abrupt with African-American applicants than with Hispanic or White applicants. Tr. 305.

Ms. Gonzales' husband lived with her and that she received welfare only for one of her two children. Ms. McGough was concerned that the husband might provide additional income which could change Ms. Gonzales' eligibility for housing. In addition, Ms. McGough needed a statement from Ms. Gonzales as to whether her husband would be living with her, whether he would be paying child support, and whether she would be applying for welfare for her other child. Tr. 274-75. When Ms. McGough approached Ms. Pipkins with her concerns, Ms. Pipkins told her that they were not "private investigators," that she should investigate only the information provided by the client instead of ascertaining further information, and that she should complete the case file. Tr. 274-75.

53. During the verification of her application, Ms. Gonzales came into the Applications Department to speak with Ms. Pipkins. Ms. Gonzales had written a statement which had been notarized by Ms. Pipkins, that claimed Ms. Gonzales had to live on the East Side because she relied for transportation on her friends who resided on the East Side. Ms. Pipkins gave the statement to Ms. McGough and told her to place it in Ms. Gonzales' file. Ms. McGough informed Ms. Pipkins that according to the welfare worker, as well as documentation in Ms. Gonzales' file, the Gonzaleses had two vehicles, one of which was available to Ms. Gonzales. Tr. 275-76. Ms. Pipkins told Ms. McGough, "That's not what the statement says" and directed her to "[p]ut it in the file. Finish the case and give it to Nellie [Gruber]." Tr. 276.

54. When an African-American applicant, Ms. Carter, requested assignment to the East Side for a reason similar to Ms. Gonzales', Ms. Pipkins refused to consider her request. HALV had notified Ms. Carter, who was residing at the time with her mother, that she had an appointment to inspect an apartment at Weeks Plaza on the East Side. Because Ms. Carter did not keep the appointment, her name had been removed from the waiting list. Ms. McGough learned that Ms. Carter had not responded to the notice because her mother's house had burned down and she and her mother had been residing in a motel. After verifying information from a fire department report and motel receipts, Ms. McGough had Ms. Carter's application reinstated on the waiting list because she had provided a "verifiable good cause reason" for not keeping her appointment. Within a few days of her reinstatement, Ms. Carter was offered an apartment at Sherman Gardens on the West Side. Tr. 278-79.

55. When Ms. Carter received the offer for an apartment on the West Side, she contacted Ms. McGough to ask for an East Side apartment. She stated she had no vehicle and had to rely on her mother for transportation. Ms. McGough relayed her request to Ms. Gruber. Ms. Gruber, in turn, approached Ms. Pipkins. Ms. Pipkins' response was "Not everybody can live on the East Side. That isn't a good cause reason. Don't waste her time and don't waste your time. If she doesn't take the apartment at Sherman

Gardens, her name goes off the waiting list for a year." Tr. 276-79. Ms. McGough told Ms. Carter that she was sorry, but that if she didn't accept the West Side apartment she would be removed from the waiting list for a year. Ms. Carter began to cry while describing the financial burden of staying at the motel for a year and the hardship to her mother, her daughter, and herself. Tr. 278-79.

56. Ms. McGough reported to Ms. Cameron, Ms. Pipkins' statements that African-Americans "deserve to live" on the West Side and that "these people can't read and write." Tr. 270-71;*see* Findings Nos. 47 and 50. Ms. Cameron reacted to Ms. McGough's report by saying that Ms. Pipkins had "a strong personality" and that she perceived "a personality conflict" between Ms. Pipkins and Ms. McGough. Tr. 271. Ms. Cameron stated that she was pleased with Ms. Pipkins' performance and suggested that Ms. McGough decide by the end of the week if she wanted to keep her job. Tr. 271.

57. Ms. McGough also reported Ms. Pipkins' actions and statements, as well as her own discussion with Ms. Cameron, in response to a questionnaire that Mr. Rowe had distributed to HALV employees. Although Mr. Rowe intended that employees return the questionnaire anonymously, Ms. McGough identified herself on six written pages that she submitted. Tr. 293-94.[13]

58. Ms. Pipkins is a considered by her co-workers to be a very demanding person and an inflexible supervisor whose management skills need vast improvement. Tr. 305, 315, 869-70. Mr. Gholson received and investigated constant complaints that she was a harsh supervisor and that she had a racial bias. Tr. 869-70. In or about August 1991, Mr. Gholson removed Ms. Pipkins from her supervisory position because of problems created by her "supervisory style."[14] Tr. 870. However, at the direction of Mr. Rowe,

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[13]In her testimony, Ms. Pipkins addressed only one instance of the alleged racial bias depicted by Ms. McGough. She denied making the statement that African-Americans deserve to live on the West Side. Tr. 701. I credit Ms. McGough's testimony that Ms. Pipkins made this statement and credit her testimony as well regarding the other demonstrations of racial bias by Ms. Pipkins. Ms. McGough's testimony was forthright and sincere. She clearly recollected particular incidents and the names of the people involved. *See, e.g.*, Tr. 275-76. She remembered specific people because they "touched [her] heart." Tr. 302. Indeed, her testimony was heartfelt, as demonstrated by her visible distress in delivering her testimony. After describing the incident involving Ms. Carter, Ms. McGough was moved to tears when relating the story of a West Side resident seeking a transfer. The resident described to Ms. McGough how just that morning, while picking up her newborn, a bullet had "whizz[ed] by her ear," leaving a bullet hole above the baby's crib. Tr. 281. Moreover, Ms. McGough is a disinterested witness. At the time of the hearing, she was no longer employed by HALV and had no pecuniary interest in the outcome of this proceeding. She also had no reason to fabricate her testimony because she had never been mistreated by Ms. Pipkins. In fact, Ms. Pipkins was pleased with Ms. McGough's work performance. Ms. Pipkins relied on Ms. McGough, who had received the highest score of any employee on an Applications Department written test, to review other employees' work. Tr. 290-92. Finally, the evidence shows that Ms. McGough has been consistent in her reports. She reported Ms. Pipkins' behavior to Ms. Cameron, Ms. Pipkins' immediate supervisor, and to Mr. Rowe, the Executive Director of HALV. She did so openly, thereby showing a willingness to risk potentially negative consequences. Her failure to voice her concerns to Mr. Gholson, Ms. Pipkins' second level supervisor, does not, as suggested by Respondent, detract from her credibility. She testified that she did not consider him to be "approachable" until the end of her employment at HALV. Tr. 297-98.

[14]Concerning the complaints of racial bias, Mr. Gholson testified that based upon his investigation, he was

Mr. Gholson reinstated Ms. Pipkins to her supervisory position after a few months. Tr. 695-96, 870.

HALV's Process for Resident Transfers

59. HALV's Statement of Policies provides that a tenant "will not be transferred to a dwelling unit of equal size. . .within sites except to alleviate hardship as determined by the Executive Director, or his designated representative." C.P. Ex. 3 at 9. Although "hardship" is not expressly defined, the Statement of Policies further states that "[e]mergency transfers are permitted when unit conditions pose an immediate threat to tenant health and safety, as determined by the Authority." C.P. Ex. 3 at 9. The TSAP states that in accordance with the VCA, the "first priority category is tenants with an urgent/emergency need to transfer to another unit. . . .Transfer of urgent/emergency tenants will be made on an as needed basis." C.P. Ex. 3, TSAP at 2. Because there are more tenants requesting emergency transfers than there are available units, HALV seeks to prioritize the requests based on the nature and extent of the emergency. Tr. 861-62.

60. HALV's Statement of Policies provides that "[t]he Project [i.e., Site] Managers have the responsibility to obtain and document all pertinent information relative to a request for transfer." Each project's Site Manager compiles and maintains a transfer list, determines which tenants are to be placed on the list, and gathers documentation in support of the transfer requests. The Statement of Policies does not describe the extent or nature of the documentation required. C.P. Ex. 3 at 9; C.P. Ex. 12; Tr. 91, 714-15, 726-30.

61. In practice, HALV does not require the tenant to provide documentation in support of all emergency transfer requests. Circumstances where documentation is not required include non-tenant initiated requests, e.g., telephone requests from the District Attorney's office to transfer a tenant in the witness protection program, similar requests or directives from the police department, or from Child Protective Services.[15] Where the tenant has requested the emergency transfer, HALV requires documentation. The type and extent of documentation is within the Site Managers' discretion and varies depending on the circumstances.[16] Tr. 91-94, 717-20, 727-28, 730-32, 734, 860-61, 889.

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unable to find evidence to support the allegations. Tr. 870-71. The record does not specify the nature or extent of those complaints or of his investigation.

[15]Although the Charging Party alleges that there should, in all instances, be some documentation of transfer requests from law enforcement agencies (Secretary's Post-Hearing Brief at 47 (May 23, 1995)), it mischaracterizes the testimony upon which it bases its assertion. *See* Tr. 889.

[16]For example, where a request is based upon a medical condition, HALV requires supporting documentation from a physician or other medical personnel. Tr. 718.

62. Where a tenant requests an emergency transfer because of allegations of harassment and threats against the tenant, HALV requires documentation demonstrating that the problem is continual, life threatening, and that the tenant has been specifically targeted. Tr. 732-33, 861-62.[17]

63. Site Managers are responsible for recording in the tenant file the tenant's requests for emergency/safety transfers, tenant reports of incidents or concerns related to the requests, and tenant inquiries regarding the status of the requests. Tr. 92-93, 859.

HALV's Response to Complainants' Request for Transfer

64. Soon after moving into HGP, Complainants considered the West Side project to be a dangerous place to live. Tr. 357. Beginning within a few months of moving into HGP and continuing through December 1992, Ms. Campbell's car, a Mazda RX-7, was vandalized. On separate occasions, the windshield was broken, the battery was stolen, the tires were slashed, and the body was painted with "X's." Tr. 357-59, 394, 424. 424, 428. Other incidents followed, involving attacks on her home. On one occasion around May of 1993, and on two occasions in July or August of 1993, someone threw rocks and bottles through Complainants' apartment windows. Tr. 363-64, 395, 508; C.P. Ex. 5, Tab M. Ms. Campbell reported each of the incidents to the Project Managers at HGP, John Peters and Karenlee Gilbert, and, on at least one occasion to Mr. Gholson, HALV's Deputy Executive Director. She repeatedly requested a transfer because of the incidents. Tr. 97, 364; C.P. Ex. 2, pp. 39-40; C.P. Ex. 5, Tab K. She was repeatedly advised that she needed to submit a police report and other documentation demonstrating the alleged harassment. Tr. 366; C.P. Ex. 5, Tab K.

65. On August 8, 1993, while Ms. Campbell was away from home, youths gathered outside her apartment. Michelle and her friend Bridget, who was spending the night, opened the door and started calling them "Bay-Bay kids." Tr. 360, 392-93. According to Michelle, the term "Bay-Bay" means "rubbish" or "bad." Tr. 509. When the youths threatened to blow up the unit and turn off the electricity unless the girls let them in the apartment, Michelle let them in. During the time the intruders were at the apartment, someone slapped Michelle. Tr. 360-61; C.P. Ex. 5, Tabs I and J.

66. Ms. Campbell learned about the incident from Bridget's mother the following morning, who told her that the youths were gang members. Bridget's mother also told Ms. Campbell the gang members "meant business," and that they were "going to do

[17]HALV does not consider tenant disputes, even those involving physical altercations, as justifying an emergency transfer. Rather, HALV regards the situation as a lease violation and attempts to address the issue without granting a transfer. Tr. 732.

something" to her apartment. It was from this conversation that Ms. Campbell assumed that all those involved in the incident were gang members. Tr. 360-61, 383-87, 390, 422-23.

67. As a result of the assault on Michelle and the threat related by Bridget's mother, Ms. Campbell became very fearful, and on August 9, 1993, she called the police. Unlike the other incidents which only involved property damage to her car and apartment windows, her daughter's safety was now an issue. Tr. 361, 363-64, 366, 428-29. The police came to the apartment. Tr. 361, 363. Ms. Campbell also met with Mr. Gholson on this day, to appeal HALV's refusal to transfer her. Tr. 364, 859, 871; C.P. Ex. 5, Tabs A and K. Mr. Gholson reviewed her file to determine the number of contacts Complainant had had with HALV staff to determine Ms. Campbell's efforts to get the transfer.[18] Tr. 859. He found no evidence of a police report of any incident, and informed her to obtain one. He told her that she needed documentation to demonstrate a pattern of harassment, without which she would not receive a priority transfer. C.P. Ex. 5, Tab A; Tr. 364, 859.

68. On August 10, 1993, Ms. Campbell filed a "Voluntary Statement" with the police department relating the broken window incidents and the August 8th harassment of her daughter. Tr. 362; C.P. Ex. 5, Tabs I and J. In her Voluntary Statement, Ms. Campbell reported that

> [o]n several occasions my home has been surrounded by gang members who call themselves the GPK's. These young boys have made threats against my daughter and myself. [T]hey stated they would blow up my house and set it on fire. They threw a rock and glass through my front and back window. . . . I fear for my daughter's and my. . . safety. These attacks are unprovoked and they're done by boys who don't look like they are more than 15 years old.

C.P. Ex. 5, Tab J. The police department entered the information in Ms. Campbell's Voluntary Statement onto a typed, computer printout. The printout recorded the incidents as "threat against a person" and "malicious destruction of private property." C.P. Ex. 5, Tabs I and J.

69. On August 11, 1993, Ms. Campbell requested a formal review of HALV's

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[18]Despite the fact that Ms. Campbell had requested a transfer on several previous occasions from both Mr. Peters and Ms. Gilbert, the first notation in Ms. Campbell's tenant file of her having made a transfer request is dated August 9, 1993. C.P. Ex. 5, Tab A; C.P. Ex. 12. Thus, Ms. Campbell's file was not documented by the Site Managers to show her transfer requests and Mr. Gholson would not have known the extent and frequency of Ms. Campbell's requests from a review of her file.

denial of her request for a transfer. HALV received the request on August 16, 1993. C.P. Ex. 5, Tab L.

70. On August 25, 1993, Florence Rogers, the HALV VCA Coordinator and Hearing Officer, conducted a formal review of Ms. Campbell's transfer request and determined that there was no documentation to substantiate her complaint of gang harassment. C.P. Ex. 5, Tabs A and J. On August 26th, Ms. Rogers reported her determination to Ms. Campbell. C.P. Ex. 5, Tabs A - J and L; Tr. 442.

71. On September 2nd, Ms. Campbell provided HALV with a copy of her Voluntary Statement and the police computer printout of August 10, 1993. C.P. Ex. 5, Tabs I and L. On September 3, 1993, not having yet received the Voluntary Statement or computer printout, Ms. Rogers mailed to Ms. Campbell a letter memorializing her earlier conversation with Ms. Campbell wherein she denied the transfer request. C.P. Ex. 5, Tabs A and L.

72. By mid-September, Ms. Campbell had not yet received the September 3rd letter, and she advised Ms. Rogers of this fact. Therefore, on September 17, 1993, Ms. Rogers sent Ms. Campbell a copy of the letter. In resending the September 3rd letter after having received the Voluntary Statement and computer printout, Ms. Rogers had again determined that an emergency transfer was not warranted. C.P. Ex. 5, Tabs A and L.

73. Late in the evening on September 26, 1993, a firebomb was thrown through Michelle's bedroom window. Michelle was sleeping in the living room at the time. Both Complainants ran from the apartment and watched the fire. The fire department responded and put out the blaze. The blaze was confined to Michelle's bedroom. The fire and resulting water damage destroyed a sleep sofa, a television, linens, dishes, and most of Michelle's clothing and toys. That evening Complainants were moved into a motel room at HALV's expense. They were transferred the following day to an apartment at ECT on the East Side where they continue to reside. Tr. 367-68, 398-99, 400-01, 424-25, 433, 511-12; C.P. Ex. 2, p. 21; C.P. Ex. 5, Tabs A and G; C.P. Ex. 12.

74. Ms. Campbell replaced some of the items destroyed by the firebombing and the resulting water damage. She purchased a sofa for approximately $200 and some clothes for Michelle costing approximately $300. She has not replaced the television which she purchased in 1991 for approximately $400. Tr. 367-68, 398-99, 400, 425, 433, 512.

75. On September 30, 1993,[19] Ms. Campbell submitted a complaint to HUD

[19]Ms. Campbell submitted the original handwritten complaint to HUD on September 30, 1993. The original

alleging that Respondent steered her and her daughter to a predominantly African-American complex, and later refused to transfer them to another complex because of their race. C.P. Ex. 1; Tr. 415-17, 426-28, 434.

Cases of Transfers with No or Minimum Documentation

76. In late April to early May of 1992, there were riots in West Las Vegas following the acquittal of police officers in Los Angeles accused of assaulting motorist Rodney King. The Las Vegas Police Department restricted public access to the West Side and instructed HALV to evacuate all non-African-American families from the West Side. Tr. 720-23, 866-67.

77. On May 6, 1992, Linda Odom, a White tenant, was transferred from Sherman Gardens Annex on the West Side to Weeks Plaza, an East Side project. There is no documentation whatsoever in Ms. Odom's tenant file concerning the transfer. C.P. Ex. 11; Tr. 104-06, 157-59.

78. On November 23, 1993, Cecilia Renderos, a Hispanic tenant, was transferred from the Westwood Park project, a West Side development, to ECT on the East Side. On July 2, 1993, HALV received a letter from Ms. Renderos requesting a transfer for the following reasons: her apartment had been broken into twice and her VCR had been stolen, she was fearful that someone would again break in and harm her children, and the father of her children knew her address and might return to bother her. C.P. Exs. 2 at 72, 11 and 12; Tr. 102-04. The file contained no third-party documentation of the alleged burglaries or potential domestic problem. The reasons that the Site Manager gave for granting the transfer request were "harassment, break-ins." C.P. Ex. 11.

Ms. Campbell's Reaction to Being Housed at HGP

79. Within two months of moving to HGP, Ms. Campbell came to believe that she had been discriminated against by HALV. Tr. 370. She told Queenie Theus, a friend who lived on the East Side, that she believed HALV "wanted to put black people over there in Gerson [i.e., HGP] over on the West Side." Tr. 444.

80. In describing why she believed she had been treated unfairly by Respondent and why this made her feel "bad," Ms. Campbell explained:

> I felt like I didn't have the opportunities that most white people have. . . .I couldn't live in a safe environment. . .for me and my

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complaint was later typed by HUD and signed by Ms. Campbell on October 15, 1993.

> daughter. And I knew that [HALV] had other projects. . .in Las Vegas that were integrated but I was placed in a[n] all-black. . .project. And I'm not saying. . .all black people are bad. . .I'm not better than [any]body, but I don't want to live like that as far as ganging members. The gangs [are] what make it bad in the project. If it wasn't for that it wouldn't be bad. . . .You could live a decent life.

Tr. 370; *see also* Tr. 445.

81. Ms. Campbell thinks about "the way that they [i.e., HALV employees] do blacks, second grade them in a certain part of town and don't give them the opportunity that. . .it just seems like White people have." Tr. 376-77. Ms. Campbell thinks about Respondent's treatment of her "all the time." Tr. 377; *see also* Tr. 445.

Ms. Campbell's Feelings of Endangerment

82. When Ms. Campbell first visited HGP to inspect the unit Ms. Pipkins had offered, she did not form an opinion about HGP. Tr. 353. After moving in, however, and observing what she believed was gang activity, she regarded HGP as a dangerous place to live. Tr. 357.

83. Almost every night, Ms. Campbell heard gunfire while living at HGP. When she would look outside, she saw "packs" of boys and girls gathered around her building. She believed them to be gangs, engaged in drug dealing, gambling, and acts of vandalism.

Tr. 369, 445, 455. She attributes the specific problems she experienced at HGP to gang activity. Tr. 395-96.

84. Against her daughter's wishes, Ms. Campbell would walk Michelle to and from the school bus stop because she feared that Michelle would be harmed by the other children. Later when Michelle walked to school, Ms. Campbell would accompany her. Tr. 421, 507-08, 518-19, 521.

85. Ms. Campbell frequently thinks about the year she resided in HGP. She thinks about the firebombing "almost every day." She believes someone could have been killed "over nothing." Tr. 376. She often thinks about the incidents when rocks and bottles were thrown through her windows and feels "badly." Every time Ms. Campbell gets into her car and sees the X's still painted on it, she recalls the vandalism. Tr. 374-75, 377, 395.

86. Ms. Campbell thinks about the "trauma" Michelle experienced, and how it

may affect her daughter's life in the future. She feels that she was unable to protect Michelle the way she should have been able to, but that she had no options because financially she could not move. Tr. 374-76.

Michelle's Reaction to Respondent's Actions

87. When Michelle accompanied her mother to look at the HGP unit she was very upset and cried because she did not want to move there. Tr. 353-55. Michelle decided she did not like HGP on that first visit because she saw graffiti -- "GPK" -- written in spraypaint on the apartments.[20] Tr. 505-06, 517.

88. While living at HGP, Michelle did not go outside to play. Tr. 370. Michelle thought that HGP was a "bad" place with "a whole lot of gangs." Tr. 505. She described it as "bad" because some of the people there did not "like" her and her mother, broke their windows, and burned their apartment. Tr. 506, 508.

89. Michelle was traumatized by the threats and the resulting firebombing and was frightened by the other incidents. Tr. 510, 512. While at HGP she saw "a lot" of people getting "beat up." Tr. 512-14.

Dr. Jenkins-Monroe's Testimony Regarding the Impact of Respondent's Actions on Complainants

Valata Jenkins-Monroe, a clinical forensic psychologist who examined Complainants, was qualified as an expert in (1) evaluating adults, children, and families with respect to the effects of race discrimination, (2) conducting multicultural and psychological assessments of adults, children, and families, and (3) evaluating individuals and families affected by domestic violence and abuse. Tr. 528-48; C.P. Ex. 17. Dr. Jenkins-Monroe gave testimony regarding Complainants' emotional condition and the impact of the HALV's actions on their emotional state. I credit her testimony as restated below. Her opinions, findings and conclusions were based on (1) the results of psychological tests that she administered; (2) her interviews with Complainants; (3) her analyses of Complainants' past histories and present environment[21]; and (4) other facts as presented in

[20]At the time, Michelle did not know what the initials "GPK" meant. By the time of the hearing she understood the letters to stand for Gerson Park Killers or Gerson Park Kings. Tr. 505-06, 517. Ms. Campbell's friend and former West Side resident, Ms. Theus, understood "GPK" to stand for Gerson Park Kings, a gang comprised of elementary school age children, teenagers and some adults. Tr. 436-37, 447, 450, 452-54, 456-58, 461, 469.

[21]Dr. Jenkins-Monroe met with Complainants on March 3, 1995 through March 5, 1995. Tr. 549. During a period of two and one half days, Dr. Jenkins-Monroe conducted a mental status examination of each during clinical interviews and administered a battery of tests to Complainants. The interviews reviewed Complainants' current difficulties and stressors in relation to prior stressors. Dr. Jenkins-Monroe administered the following: a Traumatic Losses Experience Questionnaire, an instrument designed to

this case. Significantly, her opinions, findings and conclusions are unrebutted. Findings Nos. 90-101 are based on her testimony.

90. Ms. Campbell shows symptoms of a depressive disorder, not a major depression, however. Although her symptoms of depression allow Ms. Campbell to function on a day-to-day basis, she typically feels sad most of the time. Tr. 568. She also has very low self esteem. Tr. 562, 568-69.

91. Ms. Campbell's low self-esteem and depressive symptoms are attributable to many stressors in her life. These include spousal abuse, homelessness, repeated relocations, and residency at HGP. However, the major factor contributing to her low self-esteem and depressive symptoms is her feelings of guilt about moving her daughter from Michigan, and also about moving her into HGP. Tr. 554, 558-60, 595-96. 607-68.

92. Although Ms. Campbell has negative feelings concerning both moves, the more intense feelings surround her move to HGP. According to Dr. Jenkins-Monroe, Ms. Campbell considered that in moving to Las Vegas and into Sherman Gardens she was making the best she could of a bad situation. At the time they were the only options she had. She had mustered up enough courage to leave her husband and home in Michigan and was starting over again, hoping ultimately to make a better life for herself and her daughter. However, Ms. Campbell felt differently about her placement at HGP. She felt that it should not have been her only option and felt cheated that HALV more frequently housed non-African Americans on the East Side. Dr. Jenkins-Monroe testified that:

> In moving to Nevada, Ms Campbell was creating [a] new life based on the resources that she had. . . available to her, she wanted to maximize the best of those opportunities. Her guilt was related to the fact that [in moving into HGP] she didn't feel that she was able to maximize all the choices for her daughter in terms of a different type of environment [other] than Gerson. She certainly experienced a lot of helplessness, a lot of pain, because she felt that . . . some of the kinds of experiences [were] out of her control. . . . [W]hat made [placement at HGP different than the initial move to Nevada was] that it did seem to be more related to her race and the color that she was as opposed to her inability to move or be motivated out of a

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determine a person's losses and the impact of the losses on them; an Environmental Response Inventory ("ERI"), which is designed to determine how comfortable a person is in his or her environment; the Black Racial Identity Attitude Scale ("BRIAS"), which is designed to determine the impact of racial discrimination on the individual; and a Rorschach test which helps to assess how well a person interacts with his or her environment. Tr. 549-52, 574. Dr. Jenkins-Monroe also gave Ms. Campbell an MMPI-II, [Minnesota Multiphasic Personality Inventory-II], a self-report inventory test. This test contains, *inter alia,* a suicide ratings index. Tr. 550, 576. Michelle took the MMPI adolescent version. Tr. 576. Dr. Jenkins-Monroe also had Michelle take the Children's Sentence Completion Test. Tr. 579.

> real stressful situation [i.e., the spousal abuse]. She [wanted to do] everything that she could do in order to have more options available for her daughter and she felt that those were things that were not available for her. . . primarily because of her race.

Tr. 560-61.

93. Ms. Campbell's perception of Respondent's conduct as discriminatory impacted her already low self-esteem because it rekindled feelings of failure caused by making unwise life choices. She felt helpless and frustrated because certain options were not available to her because of her race. She saw that people of other races were being placed in the very environment she had requested. Tr. 560-61, 568.

94. Ms. Campbell strongly values a safe environment. Tr. 561, 565. On testing, Ms. Campbell had one of the lowest scores for trusting her environment. Tr. 569-70. Dr. Jenkins-Monroe's interview of Ms. Campbell showed that she perceived HGP as being anything but safe and while residing there, she was particularly fearful of the dangers facing her daughter. Tr. 563. Due to this fear, Ms. Campbell experienced increased nervousness and felt "a sense of impending danger." Tr. 562-63. In addition, her eating and sleeping habits suffered. Tr. 562.

95. Ms. Campbell did not exaggerate how she had been affected by Respondent's conduct. Rather, she tended to deny a lot of her distress. She repressed quite a bit and tended to present herself as doing better than the testing showed her to be. Tr. 572-73; *see also* Tr. 574, 606

96. Ms. Campbell's condition requires individual weekly therapy sessions of up to a year. Tr. 585, 589. The hourly rate for these sessions ranges from $80 to $100. Tr. 590.

According to Dr. Jenkins- Monroe, Michelle suffers from symptoms that "parallel. . . post-traumatic stress disorder." Tr. 575. The following findings are based upon her testimony regarding Michelle's level of emotional distress:

97. Michelle displayed self-destructive behavior of which she was not even aware. On testing, she met five of eight criteria on the suicide index, a level extremely high for someone her age. Michelle has difficulty focusing and startles easily. Tr. 575-78. In addition, she has a lack of responsiveness, or to coin Michelle's own phrase "she just doesn't feel anything." Tr. 577. Michelle's symptoms are attributable primarily to her fear for her physical safety while residing at HGP and to a lesser extent to the losses that she suffered when displaced from her home in Michigan. In Dr. Jenkins-Monroe's opinion, Michelle's fears started when the car was spraypainted with X's and culminated with the firebombing. Dr. Jenkins-Monroe testified that Michelle understood the X's to mean that her family was targeted for death. According to

her, Michelle had learned about gang activity while residing in Sherman Gardens. Tr. 596-98, 617, 620-24.

98. Michelle has very negative feelings about her race, due to her life at HGP. Tr. 581-83. She believes that African-Americans are not trustworthy; thus, she would prefer to be another race. Tr. 582.

99. Michelle has a lot of repressed anger as a result of her mother moving her from Michigan, and her life in the projects, particularly at HGP. Tr. 578-79. In producing stories for pictures, Michelle told of being victimized at HGP, without anyone coming to her rescue. Relating these stories was especially painful for Michelle. Tr. 580.

100. Michelle's condition requires weekly individual intensive psychotherapy sessions for a year to address her fears and negative attitudes about African-Americans in her environment, as well as the anger that she has for her mother. Tr. 583-84, 587, 590. The cost for these sessions ranges from $75 to $90. Tr. 590.

101. Both Complainants require six months of weekly family therapy sessions. These sessions cost from $110 to $125 per session. Tr. 585, 591.

Discussion

The Charging Party alleges that Respondent discriminated against Complainants by "steering" them to a West Side development because of their race. "Steering" is defined as "directing prospective [tenants] interested in equivalent properties to different areas according to their race." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 94 (1979); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366 n.1 (1982) ("[R]acial steering. . . preserve[s] and encourage[s] patterns of racial segregation in available housing by steering members of racial. . .groups to buildings occupied primarily by members of such racial. . .groups and away from buildings and neighborhoods inhabited primarily by members of other races. . . .") (citation omitted); 24 C.F.R.§ 100.70(c)(4) (Steering is defined, *inter alia*, as "[a]ssigning any person to a particular. . . development because of race."). Steering is prohibited by section 804(a) of the Act which states that it is illegal to "otherwise make unavailable or deny, a dwelling to any person because of race. . . ." 42 U.S.C. § 3604(a); *see also* 24 C.F.R. §§ 100.50(b)(3) and 100.60; *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1529 (7th Cir. 1990); *Zuch v. Hussey*, 394 F. Supp. 1028, 1047 (E.D. Mich. 1975), *aff'd*, 547 F.2d 1168 (6th Cir. 1977).

The Charging Party alleges that Respondent also violated the Act, when after having steered Complainants to the West Side, Respondent refused to transfer them

because of their race. Specifically, Respondent is alleged to have required Complainants to provide documentation to justify a transfer, a requirement not imposed on non-African-American tenants. If such disparate treatment is established, it would violate 42 U.S.C. § 3604(b), which prohibits "discriminat[ion] 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." *See also* 24 C.F.R. § 100.65(a).

Respondent denies steering Complainants to the West Side because of their race. Rather, it asserts that Ms. Pipkins offered Complainants housing on the West Side because she felt sorry for Complainants, because she was correcting HALV's error, and because the only available unit was on the West Side. As concerns the transfer request, Respondent states that its refusal to transfer Complainants was based on Complainants' failure to provide adequate documentation to support a transfer. The reasons given by Respondent are not persuasive, for even if they are credited, for the reasons discussed below, they do not justify Respondent's failure to give Complainants their option of waiting for East Side housing nor do they explain Respondent's failure to transfer Complainants in light of their transfer of Ms. Renderos. Accordingly, I conclude that the evidence supports a finding that Respondent violated 42 U.S.C. §§ 3604(a) and 3604(b) by treating Complainants differently based solely on race, in assigning them housing and in considering the transfer request.

The Charging Party also alleges a violation of 42 U.S.C. § 3604(d) which makes it illegal to "represent to any person because of race. . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." HUD contends that Ms. Pipkins' representation to Complainant that the HGP unit was the only available unit, when other units were available, violated this section. According to the Charging Party, during the period from Ms. Campbell's meeting with Ms. Pipkins to Ms. Campbell's acceptance of the HGP offer when her file was sent to the HGP Site Manager, there were three other available two-bedroom units, all on the East Side. See Secretary's Corrected Post-Hearing Brief (May 23, 1995), ("C.P. Brief") at 28. As detailed below, the Charging Party has not met its burden of proving the availability of those units at the relevant times, and therefore has not proved a violation of § 3604(d).[22]

One of the units the Charging Party claims was available was located at ECT, the other two at Weeks Plaza. C.P. Ex. 4. As for the ECT unit, the Charging Party failed to establish that the unit was available prior to the time on August 26th when the offer was

[22]The Charging Party pled and tried this alleged violation as Respondent's failure to notify Complainants that other units were available, not as Respondent's failure to offer Ms. Campbell the option of waiting for an East Side unit. Accordingly, I need not decide whether the failure to offer such an option constitutes a violation of this section.

made to Complainants. The ECT unit was a two-bedroom apartment that was offered to another African-American applicant. Tr. 143. The Site Manager's request showing an available two-bedroom unit at ECT was date-stamped as having been received by the Applications Department at 8:28 a.m., August 26, 1992. C.P. Ex. 4. Thus, it was not until this time that Ms. Pipkins would have known of the availability of the ECT unit. The File Assignment Log, HALV's official recordation of when the Applications Department assigns files to the Site Managers, (thus making the unit no longer available), shows that the Applications Department sent an African-American applicant's file to fill the unit request at ECT on that same day, i.e., August 26, 1992. However, no time is established in the record for this action. In other words, the record is silent as to when on August 26th the ECT unit became unavailable. Thus, the record does not establish that the ECT unit was available at the time Ms. Pipkins offered Ms. Campbell the HGP unit.

Similarly, the Charging Party has failed to prove that the units at Weeks Plaza were available during the relevant time. The Site Manager Request Form showing the availability of these two units was date-stamped August 27th, 8:52 a.m. C.P. Ex. 4; Tr. 62-64. It was not until this time that Ms. Pipkins would have known of the availability of the two units. Although the record demonstrates that Ms. Campbell accepted the HGP unit on August 27th, it does not show the time. Thus, the Charging Party has failed to prove that the Weeks Plaza units were available prior to Ms. Campbell's acceptance of the HGP unit.

The Charging Party is seeking damages in the following amounts: $175,000 for Ms. Campbell's emotional distress; $325,000 for Ms. Kirkland's emotional distress; $3,000 for out-of-pocket expenses; $5,200 for individual therapy for Ms. Campbell; $14,040 for individual therapy for Ms. Kirkland; and $3,250 for family therapy for Complainants. In addition, HUD requests equitable relief, as well as civil penalties totalling $100,000.

Governing Legal Framework

The Charging Party has the burden of proving, by a preponderance of the evidence, that Respondent discriminated against Complainants. The legal framework to be applied depends on whether the evidence offered to prove the alleged violation is direct or indirect. Direct evidence if it constitutes a preponderance of the evidence as a whole, will support a finding of discrimination. *See, e.g., TWA v. Thurston,* 469 U.S. 111, 121-22 (1985); *HUD v. Morgan,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,008, 25,134 (HUDALJ July 25, 1991), *aff'd,* 985 F.2d 1451 (10th Cir. 1993); *HUD v. Jerrard,* 2 Fair Housing-Fair Lending (P-H) ¶ 25,005, 25,087 (HUDALJ Sept. 28, 1990). Direct evidence is defined as evidence which "proves [the] existence of [the] fact in issue *without inference or presumption." Black's Law Dictionary* 413-14 (spec. 5th ed. 1979)

(emphasis added); *see also Kormoczy v. HUD*, 53 F.3d 821, 824 (7th Cir. 1995) (Direct evidence is an acknowledgment of the defendant's discriminatory intent.).

Absent direct evidence, the Charging Party may prove discrimination by indirect evidence of intent. First the Charging Party must establish a *prima facie* case. Once the Charging Party establishes a *prima facie* case, the burden of production shifts to Respondent to articulate a legitimate, nondiscriminatory reason for its actions. The Charging Party then may prove that the asserted reasons are pretextual. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Dwivedi*, 895 F.2d at 1529-31; *HUD v. Blackwell*, 908 F.2d 864 (11th Cir. 1990); *see also Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981). However, pretext alone does not necessarily prove discrimination. The Charging Party still maintains the burden to demonstrate that an asserted reason, even though pretextual, evidences an intent to discriminate. *See St. Mary's Honor Center v. Hicks*, 113 S.Ct. 2742 (1993); *Washington v. Garrett*, 10 F.3d 1421, 1432-33 (9th Cir. 1993).

Respondent's Steering of Complainants Based on Race

1. The Charging Party's Direct Evidence Case

The Charging Party alleges that Ms. Pipkins' statements of "general racial bias," as well as the statements she made to Ms. Wallace and Ms. McGough relating to African-Americans' residency on the West Side, are direct evidence of discrimination. Although the Charging Party did not specify which statements demonstrate "general racial bias," Ms. Pipkins' racial epithets referring to her supervisor, Mr. Gholson, as a "crazy Black asshole," show such bias.[23] In addition, I find that her rudeness only to African-American applicants is also evidence of her "general racial bias."[24] The two statements relating to assignment of African-Americans to the West Side are those she made to Ms. McGough during an orientation tour, and her reprimand of Ms. Wallace. Ms. Pipkins' statement to Ms. McGough was that "The Blacks have always lived on the West Side. It's where they want to live. It's where they deserve to live." Tr. 268-69. The statement to Ms. Wallace was a reprimand for "placing too many Code Twos, being African-Americans, on the East Side." Tr. 313. I conclude that none of the above-stated evidence is direct evidence in this case. Although the evidence is probative on the issue of her general bias, it is not direct proof of her intent with regard *to the Complainants*. *See, e.g.*, *Kormoczy*, 53 F.3d

[23] I do not find that Ms. Pipkins' statement about the inability of "these people" to read or write to be evidence of a discriminatory bias because the record is unclear as to whether she was referring to housing applicants in general, or only to African-American applicants. *See supra* Finding No. 50.

[24] Although an argument may be advanced that Ms. Pipkins was an abrupt person, and therefore, rude to everyone, Ms. McGough specifically testified that she reserved her derogatory comments only for African-American applicants. *See supra* n.12.

at 824; *Robinson v. Montgomery Ward and Co., Inc.*, 823 F.2d 793, 795-97 (4th Cir. 1987), *cert denied*, 484 U.S. 1042 (1988) (General racial remarks are not normally direct evidence of discrimination.).

2. The Charging Party's Indirect Evidence Case

Although HUD failed to prove direct evidence of discriminatory intent, it has established a *prima facie* case of racial steering. Under the circumstances of this case, HUD may prove a *prima facie* case of discrimination by demonstrating the following: 1) Complainants are members of a protected class; 2) Respondent offered Complainants housing at a concentrated development, i.e., a project populated predominantly by members of their class; 3) by operation of the VCA, Complainants were entitled to be given the opportunity to wait for the next available unit of appropriate size in a nonconcentrated development; and 4) Respondent did not offer Complainants any such option. *See, e.g., Cabrera v. Jakabovitz*, 24 F.3d 372, 390 (2d Cir. 1994), *cert. denied*, 115 S. Ct. 205 (1994); *see also Blackwell*, 908 F.2d at 870; *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979).

Complainants are African-American. Accordingly, they are members of a protected class, i.e, race. *See* 42 U.S.C. § 3604. Respondent offered Complainants an apartment at HGP, which is a predominantly African-American development. Under the terms of the VCA, African-Americans are a concentrated group at HGP. Thus, HUD has proved the first and second elements of its *prima facie* case.

The Charging Party has also proved the third and fourth elements of its *prima facie* case. Under the terms of the VCA, prospective tenants with offers in concentrated projects are entitled, without exception, to be given the opportunity to wait for the next available unit of appropriate size in a development that is not concentrated. The VCA expressly provides that none of its provisions can be waived, modified or amended unless done so in writing. *See* Finding Nos. 13, 19 and 20. There is no record evidence that the VCA provision concerning the making of offers for housing in concentrated projects was inapplicable to circumstances such as those presented in this case.[25] Thus, Complainants were entitled to receipt of the option under the VCA, and the Charging Party has proved the third element. Because Respondent did not offer Complainants the opportunity to wait for a nonconcentrated unit, the fourth element has been established and the burden shifts to Respondent to provide a nondiscriminatory reason for its actions.

[25]Although there is a provision in the TSAP for the waiver of Federal preferences by the Executive Director (*see* Finding No. 26), the provision could not have been and indeed was not invoked by Respondent because Ms. Campbell was already considered to be at the highest Federal preference category. *See* Finding Nos. 18 and 38.

Respondent has articulated three nondiscriminatory reasons for its actions: 1) the HGP apartment was the only unit available, 2) Ms. Pipkins was acting to correct an error that HALV had made, and 3) Ms. Pipkins acted out of compassion. As previously indicated, these reasons are not persuasive.

As concerns the first reason, Respondent contends that Ms. Campbell was offered the HGP unit because it was the only one available at the time of Ms. Pipkins' and Ms. Campbell's meeting on August 26, 1992. Although the evidence does not establish that there was another available unit, the alleged discrimination is not Respondent's failure to offer another available unit, but Respondent's failure to offer Ms. Campbell the option to wait for a unit in a nonconcentrated project. Thus, in this case, the lack of other available units is not dispositive of the claim of discriminatory treatment.

As concerns the second reason, it is pretextual. Ms. Pipkins stated that "[HALV had] made an error and [Ms. Campbell] would have been sent out prior to that timeframe." Tr. 703;*see also* Tr. 698, 709. In Ms. Pipkins' view, HALV's error prevented Ms. Campbell from receiving an offer of housing to which she was otherwise entitled. Accordingly, Ms. Pipkins treated Ms. Campbell's application as though it had never been removed from the waiting list, thereby affording her the *full benefit* of the original date and time of application and Federal preference status. Tr. 701; Respondent's Brief at 8 (emphasis added); Finding No.38. However, Ms. Pipkins' actions fell short of affording Complainants the full benefit of being next on the waiting list.
Had Ms. Campbell been accorded the full benefit of the original date and time of application and Federal preference status, and treated as if her application had never been removed from the waiting list, she would have been offered her option pursuant to the VCA. The VCA, a formal civil rights agreement between the Federal government and HALV, clearly mandated that applicants in Ms. Campbell's situation be offered the option of waiting until a unit became available in a nonconcentrated project. Ms. Pipkins was fully knowledgeable of the VCA, and neither Ms. Pipkins nor Respondent offered any reason for the failure to follow the terms of the agreement. All that Ms. Pipkins needed to do to comport with the VCA would have been to provide Ms. Campbell the option of waiting for an East Side unit -- an unburdensome task with innocuous results because she had already determined to offer Ms. Campbell housing ahead of other applicants. Thus, given Ms. Pipkins' knowledge of the VCA's requirements and its genesis, coupled with what Ms. Pipkins believed to be the nature of HALV's error, I conclude that if she were truly correcting the error, she would have also offered Ms. Campbell the option of waiting for another unit in a nonconcentrated development.

I find Respondent's third articulated reason pretextual as well. According to Respondent, Ms. Pipkins acted out of compassion for Ms. Campbell's plight as a homeless single mother. Based on the record before me, the claim that Ms. Pipkins acted

out of compassion in assigning Complainants housing but limiting their options, is simply not credible. The evidence demonstrates that although Ms. Pipkins is sympathetic toward the plight of Hispanic applicants, she harbors no such feelings for African-American applicants. Specifically, on two occasions, Ms. Pipkins knowingly notarized false statements for Hispanic applicants to make them eligible for housing, and in the case of one applicant, eligible for East Side housing.[26] *See* Finding Nos. 51 and 53-55. In contrast, Ms. Pipkins refused to assist an African-American applicant, Ms. Carter, even though such assistance would not have required the notarization of a false statement.

Based upon the evidence of Ms. Pipkins' racial bias against African-Americans, and Respondent's failure to offer any nonpretextual reasons for Ms. Pipkins' treatment of Complainants, I find that Ms. Pipkins' offer of the HGP unit on the West Side reveals her intent to steer Complainants to the West Side apartment. The record demonstrates Ms. Pipkins' belief that African-Americans should be housed on the West Side. She openly expressed this view to Ms. McGough. She also reprimanded Ms. Wallace for housing too many African-Americans on the East Side. Moreover, she demonstrated a general racial bias against African-Americans. She was rude only to African-American applicants, and openly spewed racial epithets about her supervisor, Mr. Gholson. Finally, she assisted Hispanic applicants to obtain housing or to obtain housing on the East Side while declining to offer similar aid to African-American applicants. I therefore find that the Charging Party has carried its burden of proving that Ms. Pipkins steered Complainants to the West Side development of HGP because of their race by demonstrating that Respondent's asserted reasons for Ms. Pipkins' actions are pretextual and that they evidence an intent to discriminate. *See St. Mary's Honor Center,* 113 S. Ct. 2742.[27]

Because Ms. Pipkins was employed by HALV at the time she violated the Act, HALV is vicariously liable for her actions. *See, e.g., Chicago v. Matchmaker Real Estate Sales Center,* 982 F.2d 1086 (7th Cir. 1992), *cert. denied sub nom., Ernst v. Leadership Council for Metropolitan Open Communities,* 113 S. Ct. 2961 (1993); *United States v. Youritan Constr. Co.,* 370 F. Supp. 643, 649 (N.D. Cal. 1973), *aff'd as modified,* 509 F.2d 623 (9th Cir. 1975). Accordingly, Respondent violated 42 U.S.C. § 3604(a) when Ms. Pipkins steered Complainants to the West Side development of HGP because of their

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[26]Respondent seeks to negate the importance of Ms. Pipkins' assistance in one of these instances by asserting that the applicants were housed in sites not owned by HALV. *See* Resp. Brief at 25. Respondent's point is not well-taken. It is irrelevant where, or even whether, the applicants were housed. What is relevant is that in order to assist the Hispanic applicants in obtaining housing, Ms. Pipkins, a HALV supervisor, was willing, and, in fact, did operate outside permissible HALV procedures.

[27]In support of its allegations of discrimination, the Charging Party also proffered statistical evidence, as well as Respondent's use of the West Side interest letter, to show past steering. *See* Charging Party's Brief at 29-32. Because the Charging Party has otherwise proved disparate treatment, I need not decide whether this evidence is also probative on the ultimate issue of liability.

race.

Respondent's Failure to Transfer Complainants

The Charging Party alleges that Respondent's refusal to transfer Complainants until after the firebombing was racially motivated. Specifically, the Charging Party contends that Respondent required a greater level of documentation from Ms. Campbell to support her transfer request than was required of non-African-American tenants requesting transfers for similar reasons. If proven, the allegation of differing requirements constitutes a violation of 42 U.S.C. § 3604(b) which prohibits, *inter alia,* discrimination "in the terms, conditions, or privileges of. . . rental of a dwelling, or in the provision of services or facilities."

The Charging Party sets forth an indirect evidence case of discriminatory transfer. Under the facts of this case, a *prima facie* case of discrimination requires proof of the following: 1) Complainants are members of a protected class; 2) they requested an emergency transfer for safety reasons; 3) HALV denied the transfer requests on the basis of insufficient third-party documentation; and 4) HALV granted tenant-initiated transfer requests for emergency/safety reasons, without requiring third-party documentation from tenants who were not members of Complainants' protected class. *Cf., e.g., Furnco Constr. Co. v. Waters,* 438 U.S. 567, 575 (1978) (The *McDonnell Douglas* formulation is "not intended to be an inflexible rule."); *McDonnell Douglas,* 411 U.S. at 802 n.13 ("The facts necessarily will vary. . . and the specification. . . of the prima facie proof required. . . is not necessarily applicable in every respect in differing factual situations."); *Baker v. Int'l Brotherhood of Boilermakers,* 778 F.2d 750, 756 (11th Cir. 1985) ("The requisites for a prima facie case. . . are flexible.").

The Charging Party has proved all four elements of the *prima facie* case. First, Complainants are African-American. Thus, they are members of a protected class. Second, Ms. Campbell applied for an emergency transfer out of HGP because of safety concerns -- harassment and threats.

Third, it is undisputed that HALV denied Ms. Campbell's transfer request for lack of sufficient third-party documentation. Ms. Campbell failed to provide any documentation until early September 1993, when she submitted her Voluntary Statement and a police computer printout to HALV on September 2, 1993. *See supra* Finding No. 71. The Statement was Ms. Campbell's own version of the alleged threats and harassment, and was duplicated by the police department in its computer printout. In other words, there was no independent, third-party verification of the alleged harassment. After submission of the Voluntary Statement and computer printout, HALV again denied Ms. Campbell's request.

The fourth element has been established by HALV's treatment of another tenant, Cecilia Renderos, who is Hispanic. Because Ms. Renderos is not African-American, she is a not a member of the same protected class as Complainants. Ms. Renderos was transferred from the West Side to the East Side in November of 1993, based on her handwritten letter requesting a transfer. The reasons Ms. Renderos provided were that her apartment was broken into twice and her VCR was stolen; she was fearful that someone would again break in and harm her children; and the father of her children, who knew her address, might return to bother her. The Site Manager cited "harassment" and "break-ins" as the reason the transfer was approved. The documentation Ms. Renderos submitted did not include any independent third-party verification of the alleged harassment as was required of Complainants, yet HALV transferred her. Thus, the Charging Party has established a *prima facie* case of disparate treatment.

Although Respondent asserted that it refused to transfer Complainants because they failed to submit sufficient third-party documentation, HALV failed to offer any explanation whatsoever for its transfer of Ms. Renderos, whose situation was identical to Complainants in that she had no third-party documentation and it was a tenant-initiated request. Respondent, therefore, failed to articulate a legitimate, nondiscriminatory reason for its disparate treatment of Complainants and Ms. Renderos. *See Burdine,* 450 U.S. at 257-58.[28]

The Charging Party also argues that HALV's transfer of tenant Linda Odom, whose tenant filed contained no documentation concerning the transfer, shows that it discriminated against Complainants. However, as Respondent notes, because Ms. Odom's transfer is dissimilar to Complainant's transfer, the Charging Party has failed to establish a case of disparate treatment. Specifically, whereas Ms. Campbell's transfer request was a tenant-initated one, the preponderance of the evidence shows that Ms. Odom was transferred at the behest of the Las Vegas police department. The record demonstrates that Ms. Odom was transferred on May 6, 1992; she was White and her transfer was from the West to the East Side. The record further demonstrates that her transfer occurred within the timeframe of late April to early May of 1992, when the

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[28]As discussed *supra*, HALV had denied Ms. Campbell's transfer request on several occasions prior to its receipt of the Voluntary Statement and computer printout. Because the record demonstrates that, with the exception of emergency transfer requests from law enforcement officials, HALV did not grant emergency transfer requests absent documentation, I find that the Charging Party failed to prove that the denials predating submission of Ms. Campbell's documentation were discriminatory. Specifically, HALV's Statement of Policies requires documentation to warrant such transfers, and HALV employees who granted such transfer requests anticipate the submission of some documentation. Also, the Charging Party failed to prove that any tenant-initiated request for transfer had been granted without any documentation. Finally, HALV employees repeatedly informed Ms. Campbell of the need to submit documentation to support her transfer request. *See supra* Findings Nos. 60-64, 67.

police department initiated transfers by directing HALV to evacuate non-African-American tenants from the West Side. Finally, the record also establishes that requests from law enforcement agencies are not necessarily documented. *See supra* Finding Nos. 61 and n.15, 76-77. Accordingly, I conclude that the Charging Party has not met its burden of proving the fourth element of its *prima facie* case as to Ms. Odom.

Based on Respondent's differing treatment of Complainants and Ms. Renderos, the Charging Party has carried its burden and proved that Respondent's refusal to transfer Complainants was discriminatorily based. *See Burdine*, 450 U.S. at 254 & n.7. Accordingly, I find that Respondent violated 42 U.S.C. § 3604(b).

Remedies

Complainants are entitled to "such relief as may be appropriate, which may include actual damages [and] injunctive and other equitable relief." 42 U.S.C. § 3612(g)(3). In addition, Respondent may be assessed a civil penalty to "vindicate the public interest." *Id.* The Charging Party seeks damages in the amount of $175,000 to compensate Ms. Campbell for emotional distress and $325,000 to compensate Ms. Kirkland for emotional distress. The Charging Party also seeks damages in the amount of $3,000 to compensate Complainants for their out-of-pocket expenses associated with the damage to Ms. Campbell's car and the loss of personal property resulting from the firebombing, and $5,200 to cover the cost of individual psychotherapy for Ms. Campbell, $14,040 to cover the cost of such therapy for Ms. Kirkland, and $3,250 to cover the cost of family therapy for both Complainants. Finally, the Charging Party seeks civil penalties totalling $100,000 and appropriate injunctive relief.

Respondent has a duty not to discriminate against public housing applicants either in the selection and assignment of housing or in approving or denying transfer requests. *See, e.g., Walker v. Crigler*, 926 F.2d 900, 904 (4th Cir. 1992); *see also HUD v. Dedham Housing Authority*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,015 (HUDALJ Nov. 15, 1991), *rev'd in part on other grounds*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,023 (HUDALJ Feb. 4, 1992). Upon breaching that duty, Respondent is liable for damages proximately caused by the discrimination. *See, e.g., Weyerhouser Co. v. Atropos Island*, 777 F.2d 1344, 1351-52 (9th Cir. 1985); W. Prosser & W. Keeton, *Prosser & Keeton on the Law of Torts* at 302 (5th ed. 1984). Damages are proximately caused by the discrimination if they are the reasonably foreseeable consequences of the discrimination. *See HUD v. Johnson*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,076, 25,710; *see also FDIC v. Imperial Bank*, 859 F.2d 101 (9th Cir. 1988); *McGarry v. United States*, 370 F. Supp. 525 (D. Nev. 1973), *aff'd in relevant part*, 549 F. 2d. 587 (9th Cir. 1976), *cert. denied*, 434 U.S. 922 (1977). In other words, if a reasonable person would have anticipated that the injury was reasonably likely to flow from the breach of duty, i.e., the

discrimination, then the damages are foreseeable and Respondent must recompense Complainants for their injury. *Restatement (Second) of Torts* § 452 (1965); *Standard Oil Co. v. Matt McDougall Co*, 381 F.2d 686 (9th Cir. 1967).

The Charging Party claims damages from both acts of discriminatory conduct -- Respondent's initial steering of Complainants to the West Side and its subsequent failure to transfer them. Respondent is liable for damages that were reasonably foreseeable consequences of both acts of discrimination.

Damages from Racial Steering

By virtue of having been steered to the West Side, Complainants experienced injuries which fall into two categories: intangible injury associated with feelings of being treated unequally because of race, and intangible and tangible injury associated with harassment and threats directed at them while they lived at HGP. Complainants are entitled to damages incurred as a result of Respondent's racial steering, for feelings of dejection and degradation at having been deprived of the opportunity to live in a certain area because of their race. Such damages are the foreseeable consequence of Respondent's racial steering. *See, e.g., Bradley v. John M. Brabham Agency, Inc*, 463 F. Supp. 27, 32 (D.S.C. 1978); *Blackwell*, 908 F.2d at 872-73. However, as concerns Respondent's steering, Complainants are not entitled to any damages from the harassment and threats which occurred during their residency on the West Side because the Charging Party failed to show that the harassment and threats were reasonably foreseeable damages proximately caused by the discriminatory act of steering.

Proving foreseeability in this case where criminal acts were perpetrated by third parties, requires more than a showing that the acts were a possible consequence of Respondent's actions in steering Complainants to HGP; rather, the Charging Party must demonstrate, *inter alia*, that the steering created a recognizable high degree of risk of Complainants' being harmed by third party conduct. *See Restatement (Second) of Torts*, § 302B, comment e (1965). In this case, the Charging Party, at a minimum, failed to demonstrate the incidence of similar threats, harassment and gang activity, sufficient to put HALV on notice of the degree of likelihood that Complainants would be subjected to such acts or otherwise establish some basis for foreseeability by HALV. *See, e.g., Kline v. 1500 Massachusetts Ave. Apt. Corp*, 439 F.2d 477, 481, 483 (D.C.Cir. 1977); *Waldon v. Housing Auth. of Paducah*, 854 S.W.2d 777 (Ky. Ct. App. 1991).

Although the Charging Party established that the West Side, in general, is more dangerous and has more gang activity than the East Side, it failed to offer any proof of the incidence on the West Side, and at HGP, of threats, harassment or gang activity similar to that experienced by Complainants. The record merely includes testimony concerning the

general level of danger of the West Side and HGP. For example, Ms. Theus, a friend of Ms. Campbell's and former West Side resident, opined that she was not surprised at finding out about the vandalism, threats, and harassment suffered by Complainants because "those are the things that go on over there." Tr. 442. Such testimony is much too general to establish the type and frequency of crimes committed at HGP leading up to the time Complainants were victimized, and thus, the probability, that by being placed at HGP, Complainants would be threatened, harassed, and subject to gang violence in the manner and to the extent that they were. *See, e.g., Kline,* 439 F.2d at 483. Because the Charging Party failed to prove that Respondent could have reasonably foreseen that Complainants would have been harassed and threatened as a result of the steering, Complainants are not entitled to damages for such injury.[29]

Damages from Refusal to Transfer

It was, however, reasonably foreseeable that Complainants would have suffered injury from HALV's discriminatory refusal to transfer them once they provided the Voluntary Statement and police computer printout to Respondent. Respondent had repeatedly directed Ms. Campbell to furnish documentation. It also had a policy requiring that the threats and harassment forming the basis of a transfer request be continual, life threatening, and targeted. By providing the Statement, Complainant put HALV on notice that she and her daughter had been targeted by a gang of youths who had threatened to blow up and set their apartment on fire. In addition, the Statement notified HALV, in writing, of what Complainant previously reported orally to Respondent. It reiterated the window breaking incidents, previous threats to Complainants, and gang members loitering outside of Complainants' unit. Her report showed the harassment to be continual, life-threatening, and targeted. Given the urgency of Ms. Campbell's plea and the contents of the submission, and absent any HALV inquiry or investigation, it became reasonably foreseeable that Complainants would be victimized by a life threatening act of violence, including a possible firebombing. Thus, damages arising from the threats and harassment that occurred after September 2, 1993, are compensable. However, Complainants are not entitled to compensation for damages occurring prior to that date. Ms. Campbell did not furnish the requested documentation to HALV prior to September 2nd, a relatively unburdensome task given the alleged gravity of her situation. Because she did not furnish the documentation, it was reasonable for HALV to conclude that she did not consider the incidents serious enough to warrant a transfer. While Ms. Campbell did not contact the police earlier to file a report because she feared gang retaliation, there is no evidence that she conveyed this fear to HALV. Therefore, HALV had no reason to interpret her failure to submit documentation as anything other than a manifestation of a lack of sincere interest in a transfer, or an

[29]Because the Charging Party failed to show foreseeability, I need not decide whether HALV had the duty, authority, and/or ability to address the harassment, threats, and gang activity, experienced by Complainants.

absence of evidence that the incidents occurred as reported.

Emotional Distress Damages

Although "courts do not demand precise proof to support a reasonable award of damages [for emotional distress]," *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination as well as established by testimony. *See Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974); *see also Blackwell*, 2 Fair Housing-Fair Lending at 25,011-13. Discriminators must take their victims as they find them and compensate them accordingly. *See, e.g., HUD v. Kogut*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,100, 25,905-06 (HUDALJ Apr. 17, 1995); *citing Williamson v. Handy Button Mach. Co.*, 817 F.2d 1290, 1294 (7th Cir. 1987).

Because of discriminatory racial steering, Ms. Campbell suffered emotional distress in terms of feelings of dejection and degradation at having been "second graded" by HALV and deprived of the opportunity to live in a certain area because of her race. Her feelings of dejection began soon after moving into HGP when she began to notice HALV's practice of assigning tenant housing based on race, and they continued at least until the hearing. The evidence shows that she was very upset at having been assigned to one of the most dangerous projects operated by HALV and not considered for placement on the East Side, because someone at HALV did not think that she, as an African-American, deserved a safer and better place. She experienced these feelings "all the time" and they impacted on her sense of self-worth. According to Dr. Jenkins-Monroe, Ms. Campbell's depression and low self-esteem are of such severity that therapy is warranted. Accordingly, Ms. Campbell is entitled to substantial compensation for this injury resulting from Respondent's unlawful steering of her family to HGP. On the other hand, there is no evidence that Michelle sustained any such damage from the steering. Thus, she is not entitled to compensation on that ground.

As for damages based on Respondent's failure to honor Complainants' transfer request, from early September 1993, until she was transferred on September 27, 1993, Ms. Campbell lived with an explicit threat to her and her daughter's safety that, despite being documented as requested by Respondent, was being ignored. She felt anxiety and concern for her daughter's well-being, as well as guilt for having moved her daughter to HGP and exposing her to threats and harassment. Ultimately, she had to cope with the firebombing of her daughter's bedroom, and the fact that one or both of them could have been killed "over nothing." Ms. Campbell is entitled to compensation for having endured this emotional distress.

However, the amount of the damages sought by the Charging Party ($175,000) is

not justified. Although Ms. Campbell experienced depression, lowered self-esteem, sleeplessness, loss of appetite, and physical manifestations of her distress, she experienced no "major" depression and has been able to function on a day-to-day level. Indeed, while at HGP and thereafter she has participated in self-improvement classes.[30] Accordingly, the evidence does not show that Ms. Campbell has been debilitated to the extent suggested by the Charging Party.

In comparison, Michelle's distress was more profound. Michelle, as described by Dr. Jenkins-Monroe, suffers from symptoms similar to post-traumatic stress disorder. The trauma from Michelle's experiences at HGP, predominantly the firebombing, has transformed her from being the warm and normal child she was when she moved from Michigan, to one who is self-destructive, has difficulty focusing, and is generally unresponsive to her environment.[31] To coin Michelle's own characterization, "she just doesn't feel anything." Further, according to Dr. Jenkins-Monroe and based on extensive test results, Michelle has developed negative attitudes about her own race as a result of her experiences at HGP. As a result of exposure to repeated acts of violence at HGP, predominantly the firebombing, she has come to distrust African-Americans and would prefer to be of another race. The psychic consequences of harboring such feelings and views, which were intensified by the firebombing, requires intensive and long-term therapy, and warrant an award of significant damages. Yet, again, though her injuries are substantial, the amount of damages sought by the Charging Party ($325,000) is excessive. Michelle was not physically injured and the Charging Party has produced no evidence that she shows any physical manifestations of her distress. Further, there is no evidence that she has acted out her anger or shown behavioral problems at home, at school or in the community.

Although Complainants are not entitled to compensation for the emotional distress they experienced prior to early September 1993, their fear for those three weeks in September prior to the firebombing and their reaction to the firebombing itself were heightened by their experiences at HGP leading up to that time, as well as other unique aspects of their psychological profiles. *See Pierce v. Southern Pacific Transp. Co.*, 823 F.2d 1366, 1372 n.2 (9th Cir. 1987); *see also Lancaster v. Norfolk & Western Railway Co.*, 773 F.2d 807, 820, 822 (7th Cir. 1985), *cert. denied*, 480 U.S. 945 (1987).

Accordingly, I conclude that Michelle is entitled to $80,000 for compensation for emotional distress and that Ms. Campbell is entitled to $40,000 for emotional distress.

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[30] While living at HGP, Ms. Campbell participated in a computer training course sponsored by HALV, and since February, 1995, she has participated in a HALV-sponsored maintenance apprenticeship program. Tr. 336-37; 378-79; 411, 450.

[31] Dr. Jenkins-Monroe testified that Michelle's Michigan existence was a positive, warm one. *See, e.g.*, Tr. 578-80, 81-82.

The amount awarded to each Complainant reflects the severity of the injuries each suffered. *See, e.g.*, *HUD v. Lashley*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,039, 25,407 (HUDALJ Dec. 7, 1992); *HUD v. Tucker*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,033, 25,350-51 (HUDALJ Aug. 24, 1992), *submission of appeal vacated*, No. 92-70697 (9th Cir. July 18, 1994) (unpublished order); *Blackwell*, 2 Fair Housing-Fair Lending at 25,011-14.

Out-of-Pocket Damages and Counseling Expenses

The Charging Party seeks out-of-pocket costs for the damage to Ms. Campbell's automobile, as well as costs incurred from the firebombing. Because the car vandalism was not a reasonably foreseeable consequence of HALV's steering, and occurred prior to the discriminatory refusal to transfer, Complainant is not entitled to such compensation. Because the firebombing was a foreseeable consequence of Respondent's discriminatory refusal to transfer Complainants, Complainants are entitled to out-of-pocket expenses incurred as a result of the firebombing. I find that Complainants are entitled to $1,100 as compensation for these costs. *See, e.g.*, *Thronson v. Meisels*, 800 F.2d 136, 140 (7th Cir. 1986). The damage award includes recovery of $200 Ms. Campbell paid for a new sofa; $300 she paid for Michelle's clothes; $400 as replacement cost for the television set; and $200 as the reasonable cost of replacement of linens, dishes, and toys lost in the firebombing. *See supra* Finding No. 74.

The Charging Party seeks damages of $5,200 to cover the cost of individual psychotherapy for Ms. Campbell, $14,040 to cover the cost of such therapy for Michelle, and $3,250 to cover the cost of family therapy for Complainants to remedy the effects of the emotional distress caused by Respondent. I conclude that such damages are reasonable and compensable. *See, e.g.*, *HUD v. Aylett*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,060 (HUDALJ Oct. 21, 1993), *aff'd*, 54 F.3d 1560 (10th Cir. 1995); Finding Nos. 96, 100-101.

Civil Penalties

To vindicate the public interest, the Act authorizes an administrative law judge to impose civil penalties upon a respondent who violates the Act. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Determination of an appropriate penalty requires consideration of five factors: (1) whether a respondent has previously been adjudged to have committed unlawful housing discrimination; (2) a respondent's financial resources; (3) the nature and circumstances of the violation; (4) the degree of a respondent's culpability; and (5) the goal of deterrence. *See* House Comm. on the Judiciary, *Fair Housing Amendments Act of 1988*, H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988); *see also HUD v. Jerrard*, 2 Fair Housing-Fair Lending (P-H)

¶ 25,005, 25,092 (HUDALJ Sept. 28, 1990).

The Charging Party seeks imposition of two separate penalties -- one for the unlawful steering and one for the unlawful refusal to transfer. Under the facts of this case, each act is a distinct, independent discriminatory practice. Each individual discriminatory act was committed by separate actors taking unrelated actions, at distinct points in time. The steering emanated solely from Ms. Pipkins and the Applications Department in August of 1992. The decision refusing to transfer Complainants was made by the Site Managers, and ratified by Mr. Gholson and Ms. Rogers around August of 1993, a year later. The record demonstrates that neither Ms. Pipkins nor the Site Managers was acting in concert with the other. Because each act is segregable, rather than a component of a unified series of acts, each is a "discriminatory housing practice" warranting a separate penalty. 42 U.S.C. § 3612(g)(3); *see also HUD v. Johnson*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,076, 25,711 (HUDALJ July 26, 1994); *citing HUD v. Ocean Parks Condominium Ass'n Inc*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,054, 25,527-28 (HUDALJ Aug. 20, 1993); *petition for review docketed*, No. 93-5058 (11th Cir. Sept. 28, 1993).

1. Lack of Previous Violations

The Act provides that where a respondent "has not been adjudged to have committed any prior discriminatory act," the civil penalty that may be assessed is limited to $10,000. 42 U.S.C. § 3612(g)(3). If a respondent "has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge," the greatest possible assessment is $25,000. *Id.* Two or more previous discriminatory housing practices within seven years of filing the charge warrant an assessment of up to $50,000. *Id.* The Charging Party alleges that the two determinations of discrimination by the VCA Formal Hearing Panel ("FHP") are prior violations warranting the maximum assessment. *See* Finding No. 17. Respondent counters that the referenced FHP determinations are not prior judgments of discriminatory housing practices because the FHP proceedings are neither formal adjudications nor regulatory determinations as contemplated by 42 U.S.C. § 3612(g)(3) and the relevant regulations.

Although the Act and its legislative history are silent on the definition of "adjudged to have committed [prior] discriminatory housing practices," *see id.*; H.R. Rep. No. 711 at 37, HUD regulations state that

> The amount of the civil penalty may not exceed. . . $10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or

> local fair housing law, *or* in any licensing *or* regulatory proceeding conducted by a Federal, State or local governmental agency.

24 C.F.R. § 104.910(b)(3)(i)(A) (emphases added). The identical language is used at 24 C.F.R. § 104.910(b)(3)(i)(B) and § 104.910(b)(3)(i)(C) with regard to the nature of the adjudication for purposes of the enhanced penalties. Neither the regulations, nor the accompanying preamble define the relevant terminology of 24 C.F.R. § 104.910(b)(3)(i)(A)-(C). *Id.*; 24 C.F.R. Ch. I, Subch. A, App. I.

Although the regulation delineates several settings in which a respondent can be found to have been adjudged to have committed a prior discriminatory housing practice, the Charging Party concedes that the only applicable one to this case is a "regulatory proceeding conducted by a Federal, state, or local government agency." Charging Party's Civil Penalty Brief at 4, 6. It argues that the FHP hearings were "regulatory proceedings" conducted by HALV, a local governmental agency. To support its position, the Charging Party relies on cases in which a state or Federal agency, having been legislatively or similarly entrusted with a particular function, performed that function in a "regulatory proceeding." *Id.* at 4. The FHP process, however, was not the exercise of a function by an entity empowered with the authority to regulate.[32] It was not authorized by statute, implementing regulations, or other such legal mandate; rather, it was purely a creature of the VCA. In other words, it was the mechanism by which HALV implemented its Title VI settlement. Because the Charging Party has failed to demonstrate that the FHP hearings were "regulatory proceedings" under the applicable HUD regulation, I find that the maximum penalty that may be assessed is $10,000 for each violation.[33]

2. Respondent's Financial Resources

Respondent has the burden of presenting evidence of its financial circumstances. *See Jerrard*, 2 Fair Housing-Fair Lending at ¶ 25,092 (*citing Campbell v. United States*, 365 U.S. 85, 96 (1961). Respondent asserts that imposition of "maximum civil penalties" would hamper its rehabilitation work at the housing projects and otherwise affect services and amenities that HALV provides its tenants. However, Respondent does not specify whether its reference to "maximum penalties" is to the $100,000 maximum sought by the Charging Party or to the $20,000 maximum suggested by Respondent as the outer limit

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[32]The fact that HALV adopted the hearings process set forth at Subpart B of Part 966 of 24 C.F.R. did not make the FHP hearings "regulatory proceedings." That Subpart sets forth the grievance procedures and requirements used by PHAs in addressing tenant disputes. The fact that the process that was adopted and implemented by HALV is similar or even identical to the process described in Subpart B does not vest HALV with any regulatory authority or render its FHP hearings "regulatory proceedings."

[33]Because I find that the FHP hearings were not "regulatory proceedings," I need not decide whether they were "adjudications" by a "local government agency" as argued by the Charging Party. See 24 C.F.R. § 104.910(b)(3)(i)(B) and (C).

and adopted in this decision. *See* Respondent's Brief Re: Imposition of Civil Penalties (Apr. 20, 1995) at 24-25. Given the large disparity between the two figures, Respondent's lack of specificity undermines its protestations concerning its purported lack of financial resources.

Moreover, other than unfounded assertions, Respondent failed to produce evidence to support its contention that "maximum penalties," regardless of the amount, would affect services to tenants. *Id.* To the contrary, Respondent has access to Comprehensive Grant Program funds totalling over eleven million dollars for fiscal years 1994 and 1995. *See id.* at 24. Although Respondent asserts that its access to the funds *may* be restricted for a protracted period pending a possible appeal of this proceeding, that such a restriction will occur is speculative. Respondent's assertion that its financial resources are likely to be limited based on a current Congressional "trend" to reduce funding for public housing is similarly based on mere conjecture. *Id.* Accordingly, I find that assessment of maximum penalties of $20,000 would not impose any financial hardship. *See Dedham Housing Authority*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,023.

3. The Nature and Circumstances of the Violations

Respondent's violations of the Act were twofold: unlawful steering and unlawful refusal to transfer. Both violations followed execution and implementation of the VCA, an agreement between the Federal government and Respondent to address and eradicate past discrimination. Both violations occurred despite Respondent's express agreement to perform its functions in a nondiscriminatory manner.

The steering of Complainants to the West Side was particularly reprehensible given the calculated manner in which Ms. Pipkins carried out the discrimination against Complainants. Realizing that Ms. Campbell was desperate for housing, Ms. Pipkins seized on that vulnerability and manipulated the situation to steer Ms. Campbell to the West Side. The discriminatory refusal to transfer was also egregious. Because Respondent ignored a clearly described threat against Complainants, it showed a callous disregard for Complainants' safety. Accordingly, the nature and circumstances of the violations warrant imposition of a substantial penalty.

4. The Degree of Respondent's Culpability

Respondent's culpability for the violations supports a significant penalty. HALV bears direct responsibility for Ms. Pipkins' discriminatory steering of Complainants. Both Ms. Cameron, Ms. Pipkins' immediate supervisor, and Mr. Rowe, HALV's Executive Director, had been forewarned by Ms. McGough of Ms. Pipkins' racial bias. Yet, both

failed to take any steps to address the problems. Ms. Cameron chose to ignore Ms. McGough's counsel, attributing any issues to "a personality conflict" between Ms. Pipkins and Ms. McGough. Moreover, the record does not indicate that Mr. Rowe acted upon Ms. McGough's comments. Indeed, in the fall of 1991, Mr. Rowe directed Mr. Gholson to reinstate Ms. Pipkins as a supervisor in the Applications Department after he had removed her from that position. This reinstatement occurred after HALV had received continual complaints of Ms. Pipkins' racial bias. HALV's culpability is augmented by the fact that it had executed the VCA to address discrimination in tenant selection and assignment.

Respondent is also blameworthy for the discriminatory refusal to transfer. HALV did not have a well-defined, uniform set of standards for granting emergency/safety transfer requests. Therefore, the discriminatory refusal occurred in a climate of nearly unbridled discretion. Although some discretion is warranted in such matters, the lack of established criteria and guidelines fostered the atmosphere in which the discrimination against Complainants occurred. The fact that Respondent ultimately transferred Complainants after the firebombing does not diminish its culpability. HALV's response, after the fact, was the only viable reaction under the circumstances. Respondent, therefore, bears responsibility for the discriminatory refusal to transfer.

5. The Goal of Deterrence

Significant penalties will serve the purpose of deterrence. Public housing authorities must be put on notice that permitting an environment wherein discriminatory conduct is likely to occur will not be tolerated. By failing to adequately address concerns that had been raised about Ms. Pipkins, Respondent facilitated her steering of Complainants to the West Side despite the guaranteed protections of the VCA. By failing to implement standards for emergency transfers, Respondent facilitated the refusal to transfer based on race. Such nonfeasance requires imposition of a sizeable penalty.

Upon consideration of all the relevant factors, I conclude that Respondent should be assessed a civil penalty of $10,000 for each of the two acts, totalling $20,000.

Injunctive Relief

An administrative law judge may order injunctive or other equitable relief to make a complainant whole and to protect the public interest in fair housing. 42 U.S.C. § 3612(g)(3). The purposes of injunctive relief include the following: eliminating the effects of past discrimination, preventing future discrimination, and positioning the aggrieved persons as close as possible to the situation they would have been in, but for the discrimination. *See Park View Heights Corp. v. City of Black Jack*,605 F.2d 1033,

1036 (8th Cir. 1979),*cert. denied,* 455 U.S. 905 (1980);*see also Blackwell,* 908 F.2d at 874 (quoting*Marable v. Walker,* 704 F.2d 1219, 1221 (11th Cir. 1983)). Upon finding discrimination, a judge has "the power as well as the duty to `use any available remedy to make good the wrong done.'"*Moore v. Townsend,*525 F.2d 482, 485 (7th Cir. 1975) (citations omitted). The injunctive provisions of the following Order serve all of these purposes.

Conclusion

The preponderance of the evidence demonstrates that Respondent, the Housing Authority of the City of Las Vegas, discriminated against Complainants, Marie Campbell and Michelle Kirkland, on the basis of race in violation of 42 U.S.C. §§ 3604(a) and (b), and 24 C.F.R. §§ 100.50(b)(3), 100.60, 100.65(a) and 100.70(c)(4). Complainants suffered actual damages for which they will receive compensatory awards. Further, civil penalties will be assessed against Respondent, and injunctive relief will be ordered.

ORDER

It is hereby ORDERED that:

1. The Housing Authority of the City of Las Vegas, its agents, employees, successors, and assigns, are permanently enjoined from discriminating with respect to housing because of race. Prohibited actions include, but are not limited to the following:

a. making unavailable or denying a dwelling to any person because of race;

b. discriminating 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;

c. failing to notify any housing applicant of available housing options because of race;

d. failing to transfer any tenant because of race; and

e. retaliating against Complainants, Marie Campbell and Michelle Kirkland, any witness, or any person, for their participation in this case.

2. Within ninety (90) days of the date on which this ORDER becomes final, Respondent shall establish a written, uniform, and objective policy to be used in reviewing and acting upon tenant requests for "emergency transfers" as referred to in

Section IV, B., 3.d., of Respondent's "Statement of Policies Governing Admission to and Continued Occupancy of HUD-Aided Housing Units Operated by the Housing Authority of the City of Las Vegas, Nevada" (Charging Party's Exhibit 3 at 9). Within one-hundred twenty (120) days of the date on which this ORDER becomes final, Respondent shall submit a copy of the policy to HUD's Office of Fair Housing and Equal Opportunity, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102-3448, for concurrence.

3. Within one-hundred twenty (120) days of the date on which this ORDER becomes final, Respondent shall develop a training plan for all Site Managers on administration and compliance with the policy referred to in paragraph two (2.) of this ORDER. Within one-hundred fifty (150) days of the date on which this ORDER becomes final, Respondent shall submit a copy of the training plan to HUD's Office of Fair Housing and Equal Opportunity, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102-3448, for concurrence.

4. Within thirty (30) days of HUD's concurrence in the written policy referred to in paragraph two (2.) of this ORDER, Respondent shall amend its most recent "Statement of Policies Governing Admission to and Continued Occupancy of HUD-Aided Housing Units Operated by the Housing Authority of the City of Las Vegas, Nevada" to incorporate the policy referred to in paragraph two (2.) of this ORDER.

5. Within thirty (30) days of HUD's concurrence in the training plan referred to in paragraph three (3.) of this ORDER, Respondent shall distribute the amended policy referred to in the immediately preceding paragraph, to all Site Managers, and conduct the training referred to in paragraph three (3.) of this ORDER.

6. Within sixty (60) days of HUD's concurrence in the written policy referred to in paragraph two (2.) of this ORDER, Respondent shall provide one copy to the head of each occupied unit, (and to all future tenants, thereafter), of the amended policies incorporating the policy referred to in paragraph two (2.), or shall otherwise notify said residents and tenants of the policy referred to in paragraph two (2.) of this ORDER.

7. Within forty-five (45) days of the date on which this ORDER becomes final, Respondent shall pay the following damages: $40,000 for emotional distress to Marie Campbell; $80,000 for emotional distress to Michelle Kirkland; $5,200 for therapy to Marie Campbell; $14,040 for therapy to Michelle Kirkland; $3,250 for family therapy to Marie Campbell and Michelle Kirkland; and $1,100 for out-of-pocket expenses to Marie Campbell and Michelle Kirkland.

8. Within forty-five (45) days of the date on which this ORDER becomes final,

Respondent shall pay two civil penalties of $10,000 each, for a total of $20,000 to the Secretary of HUD.

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

CONSTANCE T. O'BRYANT
Administrative Law Judge