

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BIRDIE WREN,

Defendant.

No. 13 CV 8284

Judge Manish S. Shah

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The United States—acting on behalf of individuals who reported being denied housing by a potential landlord—filed this suit alleging violations of the Fair Housing Act.¹ The defendant, Birdie Wren, was the owner of two rental units in Chicago. Wren was represented by counsel during discovery and settlement conferences, and up until the eve of a bench trial. During that time, Wren experienced health issues, and ultimately, there was a breakdown in her relationship with counsel. Counsel was permitted to withdraw his appearance. Wren never appeared for any court proceeding or communicated with the court (despite repeated efforts by the court and plaintiff to contact her), and she failed to appear for the pretrial conference and for the trial. This failure amounted to a default and the bench trial proceeded in her absence. After considering the documents and testimony

¹ The FHA authorizes the Attorney General to bring suit where she has reasonable cause to believe that a defendant has (1) engaged in a “pattern or practice of resistance to the full enjoyment of any of the rights” granted by the FHA, or (2) denied rights to a group of persons where such denial raises an issue of “general public importance.” 42 U.S.C. § 3614(a). The Attorney General must also commence and maintain an action on behalf of an aggrieved person, if that person elects to pursue such an action. 42 U.S.C. § 3612(a), (o).

admitted during the trial, along with the proposed findings of fact and conclusions of law submitted by the United States, and for the reasons explained below, the Clerk shall enter judgment against the defendant Birdie Wren in the amount of \$15,000, and enter a permanent injunction.

This order sets forth my findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

I. Applicable Law

A. Liability Under the Fair Housing Act

The Fair Housing Act prohibits discrimination in the rental of dwellings because of handicap or familial status. Unlawful acts include making a dwelling unavailable, discriminating in rental terms or conditions, refusing to negotiate for the rental of a dwelling, and making any statement that indicates a preference based on handicap or familial status.² 42 U.S.C. § 3604(a), (c), (f). A group meets the “familial status” requirement of the statute if a parent lives with one or more of her children who are under the age of 18 years. 42 U.S.C. § 3602 (k)(1). “Handicap,” is defined as “a physical or mental impairment which substantially limits one or more of [a person’s] major life activities.” 42 U.S.C. § 3602(h). Physical or mental impairment includes Human Immunodeficiency Virus infection. 20 C.F.R.

² “Statements” may be oral or in writing, 24 C.F.R. § 100.75(b), and include expressions of prohibited preferences made to “renters.” *Id.* § 100.75(c)(2). A statement violates § 3604(c) if it indicates to an ordinary listener that the person making the statement prefers or disfavors a protected class for housing. *White v. U.S. Dep’t of Hous. & Urban Dev.*, 475 F.3d 898, 905–06 (7th Cir. 2007); *Jancik v. Dep’t of Hous. & Urban Dev.*, 44 F.3d 553, 556 (7th Cir. 1995).

§ 100.201(a)(2). The HUD regulations also prohibit a landlord from making “an inquiry to determine whether an applicant for a dwelling . . . has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.” 24 C.F.R. § 100.202(c).

B. Remedies under the FHA

When the government commences a suit on behalf of a private party, 42 U.S.C. §§ 3612(o)(3) and 3613(c) provide that if the court finds that a discriminatory housing practice has occurred, the court may award actual and punitive damages and may enter any permanent injunction it deems appropriate. 42 U.S.C. § 3613(c)(1). Injunctive relief can include an order enjoining the defendant from engaging in discriminatory practices, and any order against the person responsible for the violation “as is necessary to assure the full enjoyment of the rights granted by [the FHA].” 42 U.S.C. § 3614(d)(1)(A). In actions commenced by the Attorney General, the court may award monetary damages to persons aggrieved, and may assess a civil penalty to vindicate the public interest. 42 U.S.C. § 3614(d)(1).³ Damages include compensatory damages for emotional distress suffered by aggrieved persons. *United States v. Balistrieri*, 981 F.2d 916, 928, 931–32 (7th Cir. 1992).

³ A civil penalty for a first offense under § 3614(d)(1)(C), may not exceed \$55,000. 28 C.F.R. § 85.3(b)(3).

II. Facts⁴

Defendant Birdie Wren owned a two-unit building located at 7407 S. May St. in Chicago, Illinois. The building had an upstairs one-bedroom unit and a downstairs two-bedroom unit. Each unit was separately deeded, and Wren had been renting out the apartments since sometime prior to 2001. In the fall of 2011, Wren placed an online ad for a one-bedroom apartment at 7407 S. May St. for \$500 and a two-bedroom apartment at 7407 S. May St. for \$800.

A. C.C.'s Housing Inquiry

C.C. was diagnosed with HIV in 2007.⁵ In the fall of 2011, when she was about 24 years old, C.C. was living in subsidized housing for mothers with HIV. C.C. had a minor child who was also living with her. C.C. was unable to work because of her HIV, and had been receiving Social Security Disability Income payments since 2010. Her SSDI benefits were approximately \$1,000 per month, and she felt she could afford an apartment for around \$500 per month.

During 2011, C.C. was a client of FOLA Community Action Services. FOLA, among other things, provides information about housing opportunities to low-income persons with HIV. In the fall of 2011, C.C.'s FOLA housing coordinator helped C.C. search for housing. The coordinator conducted an online rental search for C.C. and

⁴ The trial transcript is entry [51] on the district court's docket.

⁵ The full names of C.C. and any minor children referenced during trial have been placed under seal. *See* 410 ILCS 305/9; Fed. R. Civ. P. 5.2.

generated a list of apartment leads for her that included the listings of defendant's apartments at 7407 S. May St.

On the afternoon of December 2, 2011, C.C. placed a phone call to Wren using the number included in the listing for defendant's apartment building. C.C.'s sister was present and heard the conversation on C.C.'s cell phone, which was on speaker. During the call, Wren identified herself and inquired about the source of C.C.'s income. C.C. told defendant she received "disability," referring to her SSDI payments. Defendant asked C.C. what her disability was and C.C. responded that it was HIV.

After C.C. disclosed her HIV status, Wren's tone turned disgusted and she said, "No, no. We can't have that here in my building." C.C. then began to cry and hung up shortly thereafter. Wren heard C.C. cry. C.C. then went into another room continuing to cry until her sister consoled her. In a state of shock, C.C. then contacted her FOLA housing coordinator, who advised her to seek legal assistance and gave her a referral. C.C. did not try to rent another place because she thought she would be denied housing because she had HIV. Instead, she moved in with her friend with whom she did not want to live.

C.C. contacted the John Marshall Law School Fair Housing Legal Clinic, and the clinic helped her file a complaint on May 8, 2012, with HUD alleging housing discrimination on the basis of disability. C.C. filed an amended complaint with HUD

on August 6, 2012, alleging housing discrimination on the basis of disability and familial status.

On September 24, 2013, HUD found reasonable cause to believe that discrimination in violation of FHA § 804(a) and § 804(c) had occurred and charged defendant with those violations. On October 17, 2013, C.C. elected to have the claims asserted in that charge in a civil action (*see* 42 U.S.C. § 3612(a)), and HUD referred the matter to the Department of Justice on October 23, 2013.

B. Felicia Kimber's Housing Inquiry

In the fall of 2011, Felicia Kimber was in her mid-twenties with three minor children. She was living in a studio apartment with her youngest son in subsidized housing, and was looking to move. Her other two children were living with their father at the time, but she intended to move somewhere where all three of her children would be able to live with her. Her income was approximately \$1,300 a month.

Kimber saw a listing on SocialServe.com for a two-bedroom apartment for \$800 located at 7407 S. May St. in Chicago, which she believed she could afford, and which would enable her to live with all three of her children. On December 11, 2011, Kimber called defendant using the number listed in the ad for defendant's apartment building. During that conversation, Wren asked who would be living in the apartment. Kimber said her three children would be living with her. Wren then said that she was not interested in having any children in that unit. Wren also asked

about Kimber's income, to which Kimber said she received wages and social security for her oldest son. Wren asked about the nature of Kimber's son's disability. At the end of the conversation, Wren told Kimber that she would call her back if she had any additional questions. Defendant did not contact Kimber again. Kimber attempted to contact Wren approximately five or six times to make an appointment to see the apartment. She could not reach defendant, and left messages on Wren's answering machine or voicemail. Defendant did not return Kimber's calls.

Kimber did not rent the apartment from defendant, and instead moved in with her two older children's father. She knew moving in with him would lead to issues, and in fact it resulted in what she described as "domestic issues."

C. Defendant's Journal and History of Tenants

Defendant kept a journal and log of her daily activities that included her contacts with potential tenants and the substance of conversations with tenants. In an entry on December 2, 2011, defendant wrote about C.C., "She agreed that she is HIV-positive."⁶ In several log entries, defendant wrote down the disability of potential tenants in connection with SSDI benefits.

In another log entry on December 11, 2011, defendant wrote "Felicia Kimber [phone number omitted]. Call her – call to see if she can meet us there Thurs." The log does not list any other contacts or attempted contacts with Kimber. The log does note the interest of another potential tenant, Jennifer Newell, and lists a number of

⁶ Defendant testified in her deposition that she believed HIV was probably related to sinful activity.

contacts with her. Newell did not have any children and was the only other potential tenant noted in defendant's log at the same time period that Kimber contacted defendant. Wren has not rented to any tenants with minor children living with them since 2001.

In the spring of 2012, defendant rented out both units to two other single women who did not have any children. The leases used by defendant were similar in all relevant respects for both tenants. The leases included an addendum which stated, "[r]ooms are for singles only, unless approved by management. No exceptions. We must know who is living on the premises." (In one lease, the words "rooms are for singles only, unless" was crossed out.)

Defendant receives a monthly income of \$3,025.86 per month from her pension and social security benefits, excluding any income from the rental of units at 7407 S. May St. She does not have any mortgage payments.

III. Analysis

Defendant violated the FHA when she inquired into the nature of C.C.'s disability, voiced her disgust at her HIV status, and refused to engage in further negotiations or discussions with C.C. The statement, "We can't have that here in my building," revealed her discriminatory animus and unlawful preference against HIV-positive tenants, and it also was a statement of refusal to rent. Based on her HIV status and her inability to work (resulting in her qualification for SSDI

benefits),⁷ C.C. was a person with a disability within the meaning of the FHA. Wren therefore violated §§ 3604(c), 3604(f)(1)(A), 3604(f)(2), and 24 C.F.R. § 100.202(c). An “aggrieved person” is any person who claims to have been injured by a discriminatory housing practice, 42 U.S.C. § 3602(i), and C.C. plainly falls within that definition.⁸ She also suffered emotional distress as a result of Wren’s conduct—experiencing shock, humiliation, and the worry associated with not finding housing because of her HIV status.

Defendant also violated the FHA when she indicated to Kimber a preference against renting to people with children and refused to respond to Kimber’s repeated contacts. Based on Wren’s diligent recordkeeping, I infer that her failure to return Kimber’s calls was an intentional act of refusing to entertain the possibility of renting to a person with a child. Kimber is also clearly an aggrieved person under the act. Wren’s lease agreements confirm that Wren actively discouraged renting to families. She did not want to rent to families with children, and that preference was prohibited discrimination on account of familial status. Wren violated §§ 3604(a) and (c) in her interactions with Kimber. The evidence at trial was sufficient to conclude that Wren had a practice of not renting to families with children; the refusal to engage with Kimber was not an isolated incident.

⁷ See e.g., *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot “engage in any other kind of substantial gainful work”)

⁸ “Discriminatory housing practice” means an act that is unlawful under § 3604. 42 U.S.C. § 3602(f).

The government recommends an award of damages for C.C. and Kimber in the amounts of \$15,000, and \$10,000, respectively. [52] at ¶¶ 57, 59. For comparison, the government cites to other cases, but those cases span decades, jurisdictions, and amounts from \$7,500 to \$228,000. *Id.* These other cases do not provide much in the way of useful metrics. There was no evidence that either C.C. or Kimber suffered any damages other than emotional distress. C.C. was genuinely shocked by Wren's conduct and the prospect of not being able to find housing due to her HIV status caused emotional damage, one that brings her to tears to this day. I conclude that \$10,000 is an appropriate award for C.C.'s damages. Kimber's damages were not as severe as C.C.'s. While Kimber endured a difficult housing situation after she was unable to pursue Wren's apartment, those consequences were not sufficiently tied to Wren's conduct to warrant the full amount the government seeks. An award of \$5,000 to Kimber is sufficient to compensate her for the mild emotional distress directly attributable to Wren's refusal to negotiate.

I decline to assess a civil penalty in this case. Wren, who at the time of trial was 85 years old, was receiving a relatively modest monthly income, and the government offered no evidence that she was currently generating any rental income. The conduct proved at trial was not supported by evidence of significant harm caused to the public at large, and the public interest in ensuring that these particular housing units are available to tenants with disabilities or families is better vindicated through injunctive relief, not a punitive fine. The finding that defendant

engaged in a practice of discrimination creates a presumption that an injunction is appropriate. *Balistreri*, 981 F.2d at 933–34. Defendant, as noted above, failed to rebut this presumption or defend the case at all, and therefore, an injunction shall issue. An injunction with the terms set forth below is appropriate to prevent Wren from denying anyone else the full enjoyment of the rights granted by the FHA. *See* 42 U.S.C. § 3614(d)(1)(A). Some monitoring of Wren (and any agents or successors) is appropriate, but given her age, two years is an adequate period of time to accomplish the goals of compliance-checking.

The defendant, and any agents and other persons in active concert or participation with her (with actual notice of the injunction in this case) and any non-bona fide purchaser of 7407 S. May St. in Chicago Illinois, shall be permanently enjoined from:

1. Making unavailable or denying a dwelling to any person because of disability or familial status in violation of the FHA, 42 U.S.C. § 3604(a) and § 3604 (f); and
2. Making any statements, with respect to the sale or rental of a dwelling, that indicate a preference, limitation, or discrimination in violation of the FHA, 42 U.S.C. § 3604(c).
3. Using an addendum to any leases for units at 7407 S. May Street that limit the number of persons living in the units.

The defendant and any agents and other persons in active concert or participation with her (with actual notice of the injunction in this case) and any non-bona fide purchaser of 7407 S. May St. in Chicago Illinois, shall retain the following records for a period of two years and make the same available to the United States Department of Justice, the Department of Housing and Urban Development, or the designee of either for inspection upon request:

1. Any advertisements of rental property;
2. The names and contact information, if given to defendant upon request, of any prospective tenant; and
3. Records of current and future tenants, including names of adults and ages of children which can be determined after the property has been rented.

IV. Conclusion

For the foregoing reasons, the Clerk shall enter judgment in favor of the United States and against Birdie Wren in the amount of \$15,000 (with \$10,000 awarded to C.C. and \$5,000 to Kimber). A separate order setting forth the permanent injunctive relief awarded will follow and will be made part of the final judgment order. Enter judgment, and terminate civil case.

ENTER:

Date: 8/24/15



Manish S. Shah
U.S. District Judge