No. 98-3597

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RONALD ALEXANDER, et al.,

Plaintiffs-Appellants

v.

MARIA A. RIGA, et al.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS URGING REVERSAL

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STATEMENT OF THE ISSUES

The United States will address the following issues:

1. Whether the district court erred in refusing to submit the issue of punitive damages to the jury after the jury found that defendants had discriminated on the basis of race in violation of the Fair Housing Act, 42 U.S.C. 3601, et seq., but awarded neither compensatory nor nominal damages.

2. Whether the district court erred in refusing to hear evidence on plaintiffs' request for injunctive relief after the jury found that defendants had discriminated on the basis of race in violation of the Fair Housing Act, 42 U.S.C. 3601, et seq.

IDENTITY AND INTEREST OF THE UNITED STATES AS AMICUS CURIAE

The Attorney General is responsible for all federal court enforcement of the Fair Housing Act by the United States. Under

42 U.S.C. 3614, the Attorney General is authorized to bring an action alleging a pattern or practice of discrimination in violation of the Fair Housing Act. In such an action, the United States is authorized to seek injunctive relief and monetary damages on behalf of persons aggrieved by such discrimination. See 42 U.S.C. 3614(d). In addition, if an individual elects under 42 U.S.C. 3612(a) to pursue a charge of discrimination in a civil action, pursuant to 42 U.S.C. 3612(o), the Secretary of Housing and Urban Development shall authorize the Attorney General to file a civil action on behalf of the aggrieved person. In such a case, the United States is authorized to seek the same equitable and monetary relief on behalf of any aggrieved person that such individual could obtain in a private suit under 42 U.S.C. 3613, including "actual and punitive damages." 42 U.S.C. 3612(o)(3), 3613(c). The issues in this case involve the scope of relief available under the Act and their resolution will affect the Attorney General's enforcement program. The United States files this brief pursuant to Fed. R. App. P. 29(a).

STATEMENT OF THE CASE

A. Proceedings Below

In January 1996, plaintiffs Ronald and Faye Alexander and the Fair Housing Partnership of Greater Pittsburgh, Inc. (FHP) sued apartment owners Joseph and Maria Riga for discriminating against them in the rental of an apartment in violation of the

Fair Housing Act, 42 U.S.C. 3601 (App. 19-30).[1] The complaint sought compensatory and punitive damages, along with declaratory and injunctive relief. Plaintiffs repeated their request for the various forms of relief in Plaintiffs' Amended Pretrial Narrative Statement (filed May 23, 1997) (R. 33). The Statement contains a one-page description of the equitable relief sought, including an order requiring the posting of fair housing notices and a cease and desist order prohibiting defendants from discriminating on the basis of race.

After eight days of trial, on May 22, 1998, the jury answered a set of special interrogatories and found that defendant Maria Riga had discriminated against the Alexanders (Tr. 902-903).[2] The jury, however, declined to award compensatory or nominal damages and found that Maria Riga's discriminatory conduct was not "a legal cause of harm to the plaintiff[s]" (Tr. 902-904). The jury also found that Maria Riga had discriminated against the FHP but again declined to award any damages, although it did find that Maria Riga's actions were "a legal cause of harm" to the FHP (Tr. 903-904). The court, having bifurcated the deliberations for the purpose of considering punitive damages, then refused to submit to the jury the issue of

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[1] "App. __ " refers to the appendix filed by appellants. "Tr. __" refers to the trial transcript. "Mem. Op. __" refers to the Memorandum opinion the district court entered on October 13, 1998, which is found at page 940 of appellants' appendix. "R. __ " refers to entries in the district court docket sheet.

[2] Maria Riga's husband, Joseph, is the co-owner of the apartment building but was out of the country during the events at issue in this case (Tr. 509).

punitive damages (Tr. 907). The court entered judgment in favor of the defendants (R. 80).

On May 28, 1998, plaintiffs filed post-trial motions: (1) to enter a judgment notwithstanding the verdict, to issue an additur of nominal damages in the amount of one dollar for each plaintiff, or to grant a new trial on compensatory, punitive, and nominal damages or, in the alternative, award punitive damages as a matter of law against both Maria and Joseph Riga; (2) for a hearing on injunctive relief; (3) for attorney's fees, costs and expenses; and (4) to grant plaintiffs judgment as a matter of law (App. 921-938). Defendants moved to tax costs against the plaintiffs (R. 87).

On October 13, 1998, the district court denied the plaintiffs' motions except for the FHP's motion to have judgment entered in its favor, denied defendants' motion to tax costs, and entered judgment (App. 939, 961-962). Plaintiffs filed a timely notice of appeal on November 5, 1998 (App. 3).

B. Statement Of Facts

1. Ronald and Faye Alexander are a black couple who began apartment hunting in September 1995 (Tr. 8, 367-369). On September 17, 1995, Faye Alexander saw an advertisement in the Sunday newspaper for an apartment at 5839 Darlington Road in the Squirrel Hill area of Pittsburgh, which is a predominantly white neighborhood (Tr. 9-10, 15, 697). After making an appointment to see the apartment at noon on Monday, September 18, the Alexanders changed the appointment to 1:00 (Tr. 9-18). The Alexanders

arrived a few minutes early and waited for the apartment's co-owner, Maria Riga, who is white (Tr. 16-17, 375-376). Ms. Riga and her husband owned the entire building on Darlington Road, which had four apartments in addition to the one at issue here (Tr. 506-507). When Ms. Riga arrived, she walked up to the Alexanders' car and said they should not have changed the appointment since they had "just missed the apartment" (Tr. 18). Although Ms. Riga said she had tried to call to tell them, there was no message on their answering machine or a number on the Caller I.D. when they got home (Tr. 19-20, 379).

Over the next several weeks, Maria Riga continued to advertise the apartment at 5839 Darlington Road in the Sunday newspapers. At the same time, Ms. Riga repeatedly denied the apartment was available in response to the Alexanders' inquiries. After seeing the same advertisement in the newspaper on Sunday, September 24, 1995, they began to suspect that Maria Riga had lied to them about the apartment's availability (Tr. 21-22, 381-382). On Tuesday, September 26, Ronald Alexander called a friend, Robin McDonough, to see if she would check on the apartment (Tr. 383-384). Robin McDonough is white (Tr. 202-204). Ms. McDonough reported to Alexander that when she called the number in the advertisement, Ms. Riga told her the apartment was available and made an appointment to show it to her, which McDonough later canceled (Tr. 202-205, 383).

On that same Tuesday, September 26, Ronald Alexander called Maria Riga and left a message using a different name, James

Irwin, because he thought it would allow him to determine if Riga was being honest with him (Tr. 383-384). A woman called back and Alexander made an appointment, as James Irwin, to see the apartment on Friday, September 29, at 11:30 (Tr. 384-385). When he got to the apartment building that morning, Alexander saw an "Apartment for Rent" sign in front and Maria Riga sitting on the top porch step (Tr. 389-391). As he walked up to her, Alexander said he was James Irwin and that he had an 11:30 appointment (Tr. 391). Maria Riga responded that she had come "all this way" but had forgotten her keys (Tr. 392). Alexander asked if he could reschedule and Maria said yes, and that he had her number (Tr. 392-393). Alexander, however, could see that she had covered up a set of keys with her hand as he was standing there and as he walked away, he heard the keys scrape as she got up and entered the building (Tr. 392-394). Alexander called and left messages asking to reschedule but Riga never called back (Tr. 395-397).

Before his appointment at the apartment that morning, Alexander had met with an attorney, Caroline Mitchell (Tr. 385). After the incident with the keys, Alexander called Mitchell to report what had happened (Tr. 394). Alexander and Mitchell spoke later in the afternoon with Andrea Blinn, the testing coordinator of the Fair Housing Partnership of Pittsburgh, Inc. (FHP) (Tr. 48-49, 60, 394).

As a result of that conversation, Andrea Blinn of the FHP arranged to have a test of Ms. Riga's practices to see whether she was discriminating against potential renters on the basis of

race (Tr. 60-61). FHP was concerned about the report of alleged discrimination in Squirrel Hill, a predominantly white area, because such an "unchecked act of discrimination, though it may be small, can have a very strong impact upon the overall segregation in our community" by discouraging other black people from seeking housing in that area (Tr. 697-698).

One of the testers was a white male, Dennis Orvosh, and the other was a black female, Daria Mitchell (Tr. 62). Both testers made appointments for the next day, September 30 (Tr. 67-69). Dennis Orvosh appeared for his appointment at 11:00 (Tr. 264-265). He met Maria Riga, who showed him the apartment and said it was available immediately (Tr. 268). Orvosh told Maria Riga that he would talk to his wife about the apartment and would get back to her if they wanted to rent the apartment or see it again (Tr. 268). At Andrea Blinn's request, he called Maria Riga back on Monday, October 2, to make another appointment to see the apartment (Tr. 269-270). Ms. Riga confirmed it was still available (Tr. 270). Orvosh then called the next day to cancel the appointment, after confirming again that it was still available (Tr. 271).

Daria Mitchell, the black tester, made an appointment to see the apartment at 1:00 on Saturday, September 30, but arrived at 1:24 because she had the wrong address (Tr. 295-302). Ms. Mitchell called and rescheduled the appointment for 5:30 that afternoon (Tr. 302). When Daria Mitchell arrived at the apartment at 5:30, she saw Maria Riga talking with a white male

(Tr. 303). Maria Riga told Daria Mitchell that the man's name was Jeff and that he had filled out an application for the apartment (Tr. 303). Riga showed Mitchell the apartment but told her that Jeff was "going to get the apartment" (Tr. 304). Riga promised Mitchell that "if anything became available, she would call [her]" (Tr. 304-305).

The man with whom Maria Riga was speaking when Daria Mitchell arrived was Jeffrey Lang, a private detective Caroline Mitchell had hired (Tr. 139-147, 197-198). On that Saturday, September 30, 1995, Lang called the number in the September 24 advertisement for the Rigas' apartment and a woman, who identified herself as Carla, returned his call (Tr. 143-145). He made an appointment to see the apartment and when he arrived at about 5:00, the woman who had said she was "Carla" admitted her name was Maria Riga (Tr. 151-156). Riga showed him the apartment (Tr. 151-156). Although he had not asked for one, Riga gave Lang a rental application and said she wanted him to move in (Tr. 157-162). Lang never said he intended to rent the apartment but said only that it was nice and that he would like his wife to see it (Tr. 169, 183-184).

As Lang was leaving, he and Riga saw Daria Mitchell coming toward the building (Tr. 166). Lang asked Riga "if this was the 5:30 appointment and Maria rolled her eyes and went on to state that it was and that this woman was, quote, driving me up a wall, unquote" (Tr. 166). Maria Riga then said that she would "have to tell" Ms. Mitchell that she had given him an application (Tr.

166). When Ms. Mitchell walked up onto the porch, Maria Riga told Ms. Mitchell in a "harsh" tone that "I'll show you the apartment, but I already gave this gentleman an application" (Tr. 167-168). Even though Daria Mitchell had asked Maria Riga to let her know if the apartment became available, Riga never called Mitchell to let her know that Lang had not rented the apartment and that it was still available (Tr. 303-305).

An advertisement for the apartment was again in the newspaper on Sunday, October 1 (Tr. 397-398). Ronald Alexander called again, identified himself as James Irwin and asked if the apartment was still available (Tr. 398). Maria Riga said it had been rented (Tr. 398), contrary to her representations to Orvosh on October 2 and 3 (Tr. 270-271). When Alexander said he liked the building and asked her to call him if space became available, Riga said she would take his number but that she did not anticipate any apartments becoming available soon (Tr. 399). After leaving several more messages that were not returned, Alexander reached Riga later that week. She again denied there was an apartment available (Tr. 404-408).

The Alexanders saw yet another advertisement for the apartment in the Sunday paper on October 8, and Ronald Alexander called using his real name (Tr. 410). This time, Maria Riga said that she had placed the ad prematurely since the people had not vacated the apartment and it was not available to be seen (Tr. 410). At Ronald Alexander's request, Robin McDonough called Riga about the apartment to see if Riga was discriminating against the

Alexanders because they were black (Tr. 411). McDonough called Maria Riga and arranged to see the apartment on October 9 (Tr. 206-207, 412-413). Maria Riga showed Robin McDonough the vacant apartment the next day and said that it was available immediately (Tr. 208). Maria Riga's treatment of McDonough was "cordial" (Tr. 208).

Maria Riga continued to place ads for the apartment through the first week of November (Tr. 595). She finally rented the apartment to a couple on November 18, 1995 (Tr. 363-364, 748; Exh. 23). Mr. Sinha, the husband, was from India, and the wife evidently was not a member of any minority group (Tr. 742). At trial, Maria Riga denied she had ever seen the Alexanders or had any appointments with them (Tr. 556-560, 596, 738)

2. In denying the Alexanders' request to submit the punitive damages issue to the jury, the district court found that punitive damages were precluded because the jury's refusal to award damages showed that it "did not consider the conduct of Mrs. Riga to have been the result of an evil motive or intent or to have involved reckless or callous indifference to the federally protected rights of plaintiffs." Mem. Op. at 10 (App. 949). In the court's view, it thus "would be inappropriate to permit the jury to award punitive damages to them." Mem. Op. at 10 (App. 949). The court also held that more than intentional discrimination is required for the jury to enter punitive damages -- that "outrageous conduct on the part of Mrs. Riga 'beyond that which may attach to any finding of intentional discrimination'"

was required. Mem. Op. at 11 (App. 950). It was significant in the court's view that "Mrs. Riga's conduct did not cause [Faye Alexander] to cry, to become ill, to suffer any emotional distress or to seek medical or psychological care, and Mr. Alexander testified that, although he suffered emotional distress as a result of Mrs. Riga's conduct, he sought no medical attention or psychological counseling." Mem. Op. at 11 (App. 950).

The court denied plaintiffs' request to present evidence on the need for injunctive relief, asserting that plaintiffs had waived the request because, although it had been a significant portion of the complaint and the pretrial statement, plaintiffs had not repeated the request until six days after the jury trial. Mem. Op. at 15 (App. 954). The court also found that even if plaintiffs had not waived the request, there was no need for injunctive relief since there was no evidence of a continuing or recurrent violation. Mem. Op. at 16 (App. 955). Plaintiffs filed a notice of appeal on November 5, 1998 (App. 3).

SUMMARY OF ARGUMENT

The jury found here that Maria Riga had intentionally discriminated against Faye and Ronald Alexander because they were black, and the evidence showed a calculated pattern of repeatedly refusing to show the apartment or give truthful information to black potential renters. Despite the jury verdict of liability for this pattern of blatant racial discrimination, the defendants will suffer no adverse consequences for the actions of Ms. Riga

because the district court refused to consider further relief. Thirty years after Congress declared racial discrimination unlawful and ten years after Congress amended the Act to strengthen enforcement (in part by eliminating the cap on punitive damages), this is an untenable result.

Punitive damages and injunctive relief are two of the most effective means of enforcing the Act and are intended to change the behavior of violators, as well as those who might violate the Act in the future. They are especially important in the context of the Fair Housing Act since "[m]ost fair housing cases do not involve major economic losses." Robert G. Schwemm, Housing Discrimination: Law and Litigation § 25.3(2)(b) at 25-19 (1990 & Supp. 1997). Under the language of the punitive damages provision of the statute, 42 U.S.C. 3613(c), and the standards governing the award of punitive damages under civil rights statutes, see Smith v. Wade, 461 U.S. 30 (1983), the court erred in refusing to submit the issue of punitive damages to the jury. Similarly, the purposes of the Fair Housing Act to prevent and deter housing discrimination are frustrated by the court's erroneous refusal to even hear evidence on the need for equitable relief after a jury finding of intentional discrimination.

ARGUMENT

I

THE DISTRICT COURT ERRED AS A MATTER OF LAW IN REFUSING TO SUBMIT THE ISSUE OF PUNITIVE DAMAGES TO THE JURY

A. Punitive Damages Serve Important Statutory Purposes

In amending the Fair Housing Act in 1988, Congress found that, twenty years after the Act's passage, "discrimination and segregation in housing continue to be pervasive." H.R. Rep. No. 711, 100th Cong., 2d Sess. 15 (1988). Congress cited several regional studies that demonstrated that blacks continue to face a significant probability of being discriminated against in both housing sales and rentals. H.R. Rep. No. 711 at 15. Congress also cited a national study by the Department of Housing and Urban Development that concluded that "a black person who visits 4 agents can expect to encounter at least one instance of discrimination 72 percent of the time for rentals and 48 percent of the time for sales." H.R. Rep. No. 711 at 15.

Congress concluded that in spite of the clear national policy articulated in the Act since 1968, the Act provided "only limited means for enforcing the law," which Congress viewed as "the primary weakness in existing law." H.R. Rep. No. 711 at 15. Weaknesses in the Act's enforcement by private parties included "lack of private resources" and "disadvantageous limitations on punitive damages." H.R. Rep. No. 711 at 16. As the House Report stated: "[t]he Committee believes that the limit on punitive damages served as a major impediment to imposing an effective

deterrent on violators and a disincentive for private persons to bring suits under existing law." H.R. Rep. No. 711 at 40. As a result, Congress amended the Act to remove the $1000 limitation on the award of punitive damages that had been part of the Act originally. The Act now provides, under 42 U.S.C. 3613(c), that "the court may award to the plaintiff actual and punitive damages." Such damages are intended to ensure effective enforcement and deterrence -- major purposes of the Fair Housing Act. These purposes are distinct from Congress' intent to compensate individuals for actual damages incurred as a result of discriminatory housing practices since it is often difficult to prove that substantial losses were caused by such discrimination. See Robert G. Schwemm, Housing Discrimination: Law and Litigation § 25.3(2)(b) (1990 & Supp. 1997).

B. No Finding Of Outrageous Conduct Is Required For A Jury To Consider Punitive Damages

The district court misconstrued the statutory provision allowing punitive damages when it held that such damages could not be awarded absent a showing of "outrageous" conduct that, for example, caused Faye Alexander to "cry, to become ill, [or] to suffer any emotional distress or to seek medical or psychological care." Mem. Op. at 11 (App. 950). The court confused the sort of evidence that would justify compensation for actual injury with the evidence required to support an award of punitive damages.

It is well-established that where a cause of action arises out of a federal statute, federal, not state, law governs the

scope of the remedy available to plaintiffs. Burnett v. Grattan, 468 U.S. 42, 47-48 (1984); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 240 (1969). The rationale for the rule is that Congress did not intend to subject the rights of individuals under federal remedial legislation to the vagaries of various state laws, which "would fail to effect the purposes and ends which Congress intended." Basista v. Weir, 340 F.2d 74, 86 (3d Cir. 1965). Consistent with this principle, this Court has a "policy of striving for federal uniformity in the area of damages in civil rights cases." Savarese v. Agriss, 883 F.2d 1194, 1207 (3d Cir. 1989). As they strive for such uniformity, courts "must bear in mind that the civil rights laws are intended in part to provide broad, consistent recompense for violations of civil rights." Bolden v. Southeastern Pennsylvania Transp. Auth., 21 F.3d 29, 35 (3d Cir. 1994) (citing Basista, 340 F.2d at 74).

In Smith v. Wade, 461 U.S. 30, 51 (1983), the Supreme Court established the standard for the award of punitive damages for a deprivation of a federally protected civil right, and rejected the claim that the threshold showing required to submit the issue of punitive damages to a jury is higher than the standard for liability and compensatory damages. In an action under 42 U.S.C. 1983, the Court held that a "reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law, should be sufficient to trigger a jury's consideration of the appropriateness of punitive damages."

461 U.S. at 51.[3] A plaintiff need not show ill will, evil purpose, or malicious intent to be entitled to punitive damages. See 461 U.S. at 48 ("punitive damages * * * may be awarded not only for actual intent to injure or evil motive, but also for recklessness [and] serious indifference to or disregard for the rights of others"); 461 U.S. at 51 (the district court did not err in not requiring "actual malicious intent"). Importantly, punitive damages, unlike compensatory damages, are "never awarded as of right, no matter how egregious the defendant's conduct." 461 U.S. at 52. The question whether to award such damages is left to the discretion of the jury. Ibid.

This Court has applied Smith v. Wade to requests for punitive damages under federal civil rights statutes and reversed a district court for applying a standard similar to the one the district court applied here. In Savarese v. Agriss, 883 F.2d 1194, 1204 (3d Cir. 1989), a 42 U.S.C. 1983 action, the district court instructed the jury that plaintiffs had to show by a preponderance of the evidence that "[d]efendants have engaged in conduct that was so outrageous, so vicious, so intentionally harmful that they should be punished for that conduct." 883 F.2d at 1205. This Court reversed and held that the instructions

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[3] Application of the standard announced in Smith v. Wade in the context of punitive damages under 42 U.S.C. 1981a(b)(1) is at issue in the Supreme Court in Kolstad v. American Dental Ass'n, No. 98-208 (argued March 1, 1999). The United States filed an amicus brief in that case supporting petitioner and arguing that the standard of reckless indifference to federal rights contains no "outrageousness" requirement.

could have led the jury to believe that a reckless disregard of an individual's federally protected rights was insufficient to support an award of punitive damages. 883 F.2d at 1205.[4] In Keenan v. Philadelphia, 983 F.2d 459, 469-470 (3d Cir. 1992), this Court applied Smith v. Wade and upheld punitive damages in a Section 1983 action for discrimination, retaliation, and violation of First Amendment rights. This Court determined that defendants' repeated deliberate acts of discrimination based on sex "exhibited a reckless or callous disregard of or indifference to the rights of [the plaintiffs]" justifying the imposition of punitive damages. 983 F.2d at 470. This Court thus has rejected a requirement of egregious or outrageous conduct, finding that acts of intentional discrimination in deliberate or reckless disregard of plaintiffs' civil rights are sufficient to warrant punitive damages. Cf. Rowlett v. Anheuser-Busch, Inc., 832 F.2d 194, 206 (1st Cir. 1987) ("[a]fter all, can it really be disputed that intentionally discriminating against a black man on the basis of his skin color is worthy of some outrage?").

While this Circuit has not had occasion to apply Smith v. Wade in the context of the Fair Housing Act, other courts of appeals have found its application appropriate there as well. In United States v. Balistrieri, 981 F.2d 916 (7th Cir. 1992), cert. denied, 510 U.S. 812 (1993), the Seventh Circuit held in a

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[4] Thus, although the district court here cited Savarese to support its refusal to submit the punitive damages issue to the jury, Mem. Op. at 10 (App. 949), the case in fact supports reversal of its ruling.

case involving housing testers that the district court erred in directing a verdict for the defendant on punitive damages where there was evidence of intentional racial discrimination. The court found that "[t]he jury could reasonably find from the defendants' systematic practice of treating black apartment seekers less favorably than whites that the defendants consciously and intentionally discriminated against potential black renters." 981 F.2d at 936. See also Samaritan Inns, Inc. v. District of Columbia, 114 F.3d 1227 (D.C. Cir. 1997) (applying Smith v. Wade to claims for punitive damages under the Fair Housing Act); Ragin v. Harry Macklowe Real Estate Co., 6 F.3d 898 (2d Cir. 1993) (same); Asbury v. Brougham, 866 F.2d 1276, 1282 (10th Cir. 1989) (same).

Discriminating against potential renters on the basis of race has been illegal for over thirty years. There was never any suggestion in this case that Ms. Riga did not understand what discrimination was or that it was illegal to discriminate (see Tr. 741-743). Under the correct standard, a jury would be fully justified in awarding punitive damages to the Alexanders in response to Maria Riga's systematic, deceitful, and repeated refusal to show the apartment to black potential renters.

C. Punitive Damages Can Be Awarded Absent An Award Of Compensatory Damages

The language of the Fair Housing Act does not limit the availability of punitive damages to cases in which compensatory damages have been awarded. Imposing such a requirement on the award of punitive damages would frustrate Congress's purpose in

allowing punitive damages and in removing the limit on such awards when it amended the Act in 1988. The issue whether to award punitive damages is distinct from the issue whether the plaintiffs have suffered compensable harm. The purpose of punitive damages is to punish and deter, whereas the purpose of compensatory damages is to compensate the plaintiffs for any actual harm they have suffered. See Smith v. Wade, 461 U.S. at 54 (when considering punitive damages, the court should focus on the character of the defendant's conduct and whether it calls for deterrence and punishment over and above that provided by compensatory awards).

As a threshold matter, whether punitive damages can be awarded absent an award of compensatory damages in a case arising under a federal statute is, as noted above, an issue governed by federal law. See Miller v. Apartments & Homes of New Jersey, Inc., 646 F.2d 101, 108 (3d Cir. 1981) (federal law governs availability of contribution under the Fair Housing Act); Basista v. Weir, 340 F.2d 74, 86-87 (3d Cir. 1965) (federal common law governs issue of punitive damages in case under 42 U.S.C. 1983). Applying federal law, the courts of appeals for the Ninth and Seventh Circuits have found that punitive damages are recoverable under the Fair Housing Act absent an award of actual damages. In Rogers v. Loether, 467 F.2d 1110 (7th Cir. 1972), aff'd on other grounds, sub nom Curtis v. Loether, 415 U.S. 189 (1974), the district court found in a Fair Housing Act case that the plaintiff had suffered no actual damages, but assessed punitive

damages of $250. The court of appeals, although reversing because the trial court had incorrectly denied defendant a jury trial, considered the language of the Fair Housing Act and concluded that it "does not require a finding of actual damages as a condition to the award of punitive damages." 467 F.2d at 1112 & n.4. In Fountila v. Carter, 571 F.2d 487, 491-492 (9th Cir. 1978), also a Fair Housing Act case, the Ninth Circuit, citing Rogers v. Loether, similarly concluded that actual damages are not a prerequisite for entry of punitive damages.

Other courts, including this Court, have reached the same conclusion under other federal civil rights statutes. In Basista v. Weir, 340 F.2d 74, 85-88 (3d Cir. 1965), this Court held that actual damages were not required for an award of punitive damages in a 42 U.S.C. 1983 case alleging illegal arrest and wrongful incarceration by police officers. The court noted that:

> * * * there is neither sense nor reason in the proposition that such additional damages may be recovered by a plaintiff who is able to show that he has lost $10, and may not be recovered by some other plaintiff who has sustained, it may be, far greater injury, but is unable to prove that he is poorer in pocket by the wrongdoing of defendant.

340 F.2d at 88, quoting Press Pub. Co. v. Monroe, 73 F. 196, 201 (S.D.N.Y), appeal dismissed, 164 U.S. 105 (1896). In Hennessy v. Penril Datacomm Networks, Inc., 69 F.3d 1344, 1351-1352 (7th Cir. 1995), the court held that compensatory damages were not required for an award of punitive damages under Title VII, finding that the state common law rule that "[p]unitive damages may not be assessed in the absence of compensatory damages" had no

applicability to a federal civil rights action. See also Timm v. Progressive Steel Treating, Inc., 137 F.3d 1008, 1010 (7th Cir. 1998) (jury's award of punitive damages in Title VII sexual harassment suit may stand despite no compensatory or back pay award; "[e]xtra-statutory requirements for recovery should not be invented"); cf. Campos-Orrego v. Rivera, No. 98-1318, 1999 WL 254470, at *6-*7 (1st Cir. May 4, 1999) (citing Basista v. Weir and allowing punitive damages without an award of compensatory damages as long as plaintiff made a proper request for nominal damages).[5]

The only Fair Housing Act case in which a court of appeals has held that compensatory damages are required for an award of punitive damages is People Helpers Foundation, Inc. v. Richmond, 12 F.3d 1321 (4th Cir. 1993). In that case, the court conceded that, in enacting the Fair Housing Act, Congress "did not limit punitive damages to situations in which compensatory damages have been first awarded" and that "[t]here is no established federal common law rule that precludes the award of punitive damages in

[5] The jury did not award nominal damages in this case, although plaintiffs requested nominal damages before and after the jury returned its verdict (Tr. 841, 905-906; App. 926-928). The jury instruction on nominal damages here, to which the plaintiffs did not object, provided that "if you find that the plaintiffs are entitled to verdicts in their favor * * * but you do not find that the plaintiffs sustained substantial actual damages, then you may return a verdict for the plaintiffs in some nominal sum, such as one dollar on account of actual damages." Mem. Op. at 5 (App. 944) (emphasis added). The court of appeals for the Second Circuit has held that "it is plain error for the trial court to instruct a jury only that, if the jury finds such a violation [of the Fair Housing Act], it "may" award such damages, rather than that it must do so." LeBlanc-Sternberg v. Fletcher, 67 F.3d 412, 431 (2d Cir. 1995), cert. denied, 518 U.S. 1017 (1996).

the absence of an award of compensatory damages." 12 F.3d at 1326. Nevertheless, the court adopted the state common law tort rule and vacated the district court's $1 punitive damages award. The district court here did not purport to adopt state common law tort rules, but in any event, as explained above, application of state common law to damages under the Fair Housing Act is inappropriate because it undermines the statute's purposes. See generally Miller v. Apartments & Homes of New Jersey, Inc., 646 F.2d 101, 106-108 (3d Cir. 1981) (under Fair Housing Act and 42 U.S.C. 1982, courts are to adopt rules "to further, but not to frustrate, the purposes of the civil rights acts").

II

PLAINTIFFS ARE ENTITLED TO A HEARING ON INJUNCTIVE RELIEF

The plaintiffs also asserted claims for injunctive relief but the district court refused to hear evidence on the claims after the jury decided the legal issues. That ruling was erroneous. Once illegal discrimination has been proved, "[a] district court has 'not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.'" United States v. Yonkers Bd. of Educ., 837 F.2d 1181, 1236 (2d Cir. 1987), cert. denied, 486 U.S. 1055 (1988) (citing United States v. Paradise, 480 U.S. 149, 171 (1987) (plurality), citing Louisiana v. United States, 380 U.S. 145 (1965)); see also Robert G. Schwemm, Housing Discrimination: Law and Litigation

§ 25.3(2)(b) (1990 & Supp. 1997); cf. Temple Univ. v. White, 941 F.2d 201, 215 (3d Cir. 1991), cert. denied, 502 U.S. 1032 (1992) (court required to order equitable relief that cures the violation of the Social Security Act, 42 U.S.C. 1396 et seq., but is no "broader than necessary to correct the violation"). While injunctive relief is normally left to the district court's discretion, the court's refusal here to hold a hearing or consider injunctive relief after the jury found a violation of the Fair Housing Act was an abuse of discretion. LeBlanc-Sternberg v. Fletcher, 67 F.3d 412, 432 (2d Cir. 1995) (reversing district court decision refusing to enter injunctive relief after the jury found that defendants had violated the Fair Housing Act, 42 U.S.C. 1983, and 42 U.S.C. 1985(3)); see also Sandford v. R. L. Coleman Realty Co., 573 F.2d 173 (4th Cir. 1978) (district court's refusal to award injunctive relief against realty company with policy of discriminating against blacks in rentals and sales reversed as "clear error"); Marable v. Walker, 704 F.2d 1219, 1220-1221 (11th Cir. 1983) (district court's injunction, which merely prohibited landlord from applying rental criteria in a racially discriminatory manner against plaintiff or anyone else, was inadequate and did not afford relief required).

Contrary to the district court's finding, the plaintiffs' complaint and the pretrial memorandum explicitly preserved their claim for equitable relief. It would have been improper for the court to consider the claims for equitable relief before the jury decided the legal claims, and "[a]fter the legal claim has been

determined the court, in the light of the jury's verdict on the common issues, may decide whether to award any equitable relief." 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 2d § 2338 at 223 (2d ed. 1994), citing Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959). The fact that plaintiffs waited six days after the jury verdict to seek a hearing on equitable relief should in no way be viewed as a waiver of such claims, and we know of no case in which a waiver was found under similar circumstances.

The district court's conclusion that such relief was in any event unnecessary also is not supported by the record since plaintiffs sought to introduce evidence of other violations by Maria Riga in renting other apartments (Tr. 801-815). The district court excluded such evidence at trial because, in the court's view, the case "was a disparate treatment, not a disparate impact, case." Mem. Op. at 14 (App. 953). The district court obviously was confused about the sort of evidence relevant to a claim of discrimination, but even if the district court properly excluded such evidence at the liability stage, evidence of other discriminatory acts was clearly relevant to the need for injunctive relief.

Consideration of injunctive relief is important in cases such as this in which the jury does not award compensatory damages and defendants suffer no adverse consequences as a result of their illegal conduct. Andrea Blinn, now the executive director of the Fair Housing Partnership of Greater Pittsburgh,

Inc., testified that the area in which the Alexanders sought to find an apartment was predominantly white (Tr. 697). An "unchecked act of discrimination" in a white neighborhood such as the discrimination proved here can have a snowball effect and perpetuate segregation by discouraging not only the actual victims of the discrimination from seeking housing in that area, but others who learn about it (Tr. 697). The district court had a duty to consider equitable relief, and its failure in this regard requires a remand for proper consideration of the evidence.

CONCLUSION

The district court's judgment should be reversed and the case remanded for consideration of appropriate relief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B). Based on the word-count in the word-processing system, the brief contains 6545 words. If the court so requests, the undersigned will provide an electronic version of the brief and/or a copy of the word printout.

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Rebecca K. Troth

CERTIFICATE OF SERVICE

I hereby certify on June 3, 1999, that I caused to be served two copies of the foregoing Brief for the United States as Amicus Curiae Supporting Appellants Urging Reversal by first-class mail, postage prepaid, on:

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