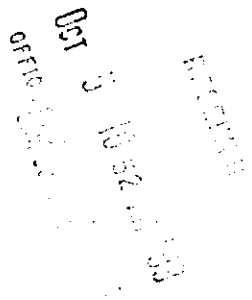
UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY



The Secretary, United States Department of Housing and Urban Development, on behalf of Agnes M. Guard, individually and as personal representative of the Estate of George Guard, Charging Party, and Agnes Guard, Intervenor v. Ocean Sands, Inc., Respondent.	HUDALJ 04-90-0231-1

Carole W. Wilson, Esq.
Harry L. Carey, Esq.
Jonathan Strong, Esq.
Theresa L. Kitay, Esq.
Washington, D.C.
For the Charging Party

George R. McLain, Esq.
Sarasota, FL
For the Intervenor

James R. DeFurio, Esq.
Sarasota, FL
For the Respondent

Before: Henry G. Cisneros
Secretary of U.S. Department of Housing and Urban Development (HUD)

DECISION AND ORDER

Statement of the Case

This matter arose as a result of a complaint filed on February 20, 1990, by George and Agnes Guard (collectively the "Guards"), a married couple, with the U.S. Department of Housing and Urban Development ("HUD" or the "Charging Party") alleging violations of the Fair Housing Act ("Act") based on the handicap of George Guard. 42 U.S.C. §§3601-3619. The Guards alleged that the Respondent Ocean Sands, Inc. ("Respondent") had denied their requests for reasonable accommodations and permission to make reasonable modifications to their condominium unit made necessary because of George Guard's mobility impairment.

After an investigation, HUD issued a Determination of Reasonable Cause and Charge of Discrimination ("Charge") on February 3, 1993. Between the filing of the complaint and the issuance of the Charge, George Guard passed away. The Charge was issued on behalf of Agnes Guard both individually and as the representative of the Estate of George Guard. Agnes Guard was permitted to intervene in her individual capacity and was represented by counsel. A hearing on this matter was held in Bradenton, FL, on May 10-12, 1993, before an Administrative Law Judge (ALJ).

Facts as Found by ALJ

In 1985 George Guard fell in the bathtub and suffered a stroke which paralyzed his left side. He was never able to walk independently again. Mr. Guard spent many months in the hospital and in a head trauma facility. Initially he improved through therapy, and his doctors were hopeful he might walk again. In 1986, Mr. Guard fell, breaking his hip and wrist. He kept failing and having mini-strokes.

The front of the Guards' condominium unit at Ocean Sands is at ground level with a short walkway to the paved parking area that ends at a loose pebble lot leading to Golden Beach Boulevard, a nearby thoroughfare. Agnes Guard was able to push her husband's wheel chair on the paved parking area to their car. It was a very difficult struggle for Agnes Guard to lift her husband into the front passenger seat of the car and then store the wheelchair. It was not practically possible for Agnes Guard and a nurse to push George Guard in his wheelchair beyond the paved parking area across the loose pebble lot to Golden Beach Boulevard.

The Guard's patio in the back of the unit, facing the Gulf of Mexico and the pool, is about three feet above the ground level. A common breezeway through the building ends in a narrow stairway of four steps down to ground level. The Guard's

apartment has no ground level access to the back and, because of the loose pebble driveways surrounding Ocean Sands, there was no way to get George Guard and his wheelchair from the front of the buildings to the grounds in the back.

At some time, while George Guard was still able to use a walker, a wooden walkway to the pool was installed. This wooden walkway permitted Mr. Guard, using his walker, to go to the pool. There is no evidence in the record to establish that this walkway was installed at the request of the Guards.

Because of George Guard's severely impaired mobility, the Guards attempted to make Ocean Sands wheelchair accessible. As early as March 30, 1989, the Guards asked Respondent to install a walkway to the public road and a ramp to enable a wheelchair to get down the steps to the common areas or alternatively, permission to install, at their own expense, a lift to enable George to reach the ground in his wheelchair. The Guards further asked permission to store a golf cart at the back of their unit, covered by a tarpaulin, so that George could be driven to the van or enjoy the water. The Guards also asked permission to have and park a wheelchair van in the Respondent's parking lot.

The Guards retained Daniel Lobek, an attorney, to represent them. They also hired Ted Yeatts, a licensed civil engineer, to draw up construction plans for modifications to the Guards' unit that Agnes Guard desired.

Yeatts prepared such plans after making several field inspections of Ocean Sands. These plans were drawn on top of schematic drawings of Ocean Sands that Agnes Guard had provided Yeatts. In the front of Ocean Sands, Yeatts' plan provided, with specifications, a wooden plank walkway starting at the paved parking area and crossing the loose pebble lot, level with the pebble surface, to Golden Beach Boulevard. This would permit George Guard to be wheeled, in his wheelchair, to Golden Beach Boulevard.

The plans, utilizing a brochure describing "Wheel-O-Vator" porch lifts, which Agnes Guard had provided Yeatts, located a lift on the ground just outside the Guards' patio, behind a protruding wall. The lift gave access from the Guards' patio to the ground. These plans called for a rain awning over the lift, a minor relocation of plantings next to the Guards' unit, and the installation of an electrical line, according to city and national codes, running from the lift to an inside control box. The plans also provided for a plank walkway that would lead from the lift to an existing walkway that leads to the pool. Yeatts billed Agnes Guard $500 and provided the names of several contractors who could do this work for the Guards.

The Guards offered, in a letter from their attorney, as an alternative to the wheelchair lift, a shed on the common elements for storage of a golf cart to transport George Guard. The letter asked that if the Association approved, it should advise of the location the Association preferred, so the Guards could submit a formal request. The letter stated that if the Association did not approve the alternative, the request for approval of the wheelchair lift stood as submitted. The letter concluded by advising the Association's attorney that if the Association did not cooperate, the Guards were prepared to exercise their rights under the Act.

The proposal for the golf cart was made because Agnes Guard felt it was a simple solution to the problem of getting George Guard onto Ocean Sands' common property.

On March 30, 1990, the Association held its annual meeting in an apartment at Ocean Sands. The Board had scheduled a discussion of the Guard's request. Agnes Guard and Mr. Lobek attended this meeting. Nine of the ten units' owners were represented. The meeting was relatively unruly and involved a lot of shouting. During the discussion of "New Business," the Association President stated that the attitude of the Guards during the past year had been a slap in the face. Someone also suggested that the Guards move. The Association President also said that she did not know what happened to the van, for which the Guards had received permission, but which never materialized. Agnes Guard asked that she and her husband be relieved of house arrest by permitting them to have golf cart that would grant them access to the community. Lobek said the Guards wanted to put the cart outside, near their patio, where ozone discharge would not be a problem. He invited the Association members to go out and look at the proposed spot, but they did not do so.

The ALJ concluded that the Association did not violate the Act with respect to the Guards' request to park a handicap van in their assigned parking space at Ocean Sands.

The ALJ found, however, that when viewed as a whole, the Association's conduct was designed to delay ruling on the Guards' requests. The Association did not want these modifications made, so it stalled. This is, in effect, what the Association's attorney suggested at the Association meeting and is consistent with the Association's conduct before the Fair Housing Act amendment to include the handicapped. Officials of the Association expressed their desire not to have a handicapped person there when they suggested the Guards should consider moving.

The ALJ concluded that since on or about November 27, 1989, until March 27, 1992, the date of George Guard's death, the Association violated 42 U.S.C. §3604(f)(3)(A) and (B) by having,

for all practical purposes, refused the Guard's request to install a wheelchair lift and wooden walkways, which were reasonable modifications of existing premises to have afforded George Guard full enjoyment of the premises, and by having refused to make reasonable accommodations in rules, policies, practices or services when such accommodations were necessary to have afforded George Guard equal opportunity to use his dwelling.

The Guard's request of September 28, 1989, to park a golf cart at the northwest corner of their patio and to cover it with a tarpaulin was a simple, reasonable, and practical solution to the problem of promptly providing George Guard access to the Ocean Sands property and an opportunity to enjoy the grounds and the Gulf. It was a reasonable request that was cost effective and could be achieved quickly. In order to save time, so that George Guard could quickly have access to the property, the Guards abandoned their request for a shed in which to store the cart, because it involved planning time and time to obtain the required permits, not to mention the time it would take to obtain the Board's approval of the plans, and because it was expensive.

The request to park the golf cart, covered with a tarpaulin, was a request for a reasonable accommodation to the Association's rules, policies, and practices which would have afforded George Guard an equal opportunity to use and enjoy his dwelling, including Ocean Sands' property. Thus it was protected by 42 U.S.C. §3604(f)(3)(B). Further, since this also involved some minor construction change in the Guards' unit, so they could run an electric line into the unit to charge the golf cart, it involved a reasonable modification of the unit protected by 42 U.S.C. §3604(f)(3)(A). The Association, by its stalling and dilatory conduct, in effect denied the Guards' reasonable request to park a golf cart behind their unit, cover it with a tarpaulin, and charge it by a line into their apartment.

The ALJ concluded that from September 28, 1989, the date the Guards proposed the golf cart and tarpaulin, to March 27, 1992, the date George Guard died, the Association violated 42 U.S.C. §3604(f)(3)(A) because it refused to permit the Guards to make reasonable modifications of the premises, and it violated 42 U.S.C. §3604(f)(3)(B) because it refused to make reasonable accommodations in its rules, policies, and practices.

Additionally, noting the Association's repeated refusals to grant the Guards' reasonable requests and the hostility to the Guards expressed by owners and Association officers because they had requested the modifications, the ALJ concluded that the Association's conduct constituted discrimination based upon handicap in violation of 42 U.S.C. §3604(f)(2).

The Charging Party sought damages as follows:

1) $30,000 for the emotional distress of Mr. and Mrs. Guard.

2) $6,995.50, representing one-half of the maintenance fees paid by the Guards from March 30, 1989, until George's death. This portion of the maintenance fees was the amount that went for maintenance of the grounds and the pool of Ocean Sands.

3) $4,967.24 in economic damages to reimburse the Guards for attorney fees.

4) $500 for Yeatts' services as a civil engineer.

5) $5,000 in civil penalties.

The ALJ awarded damages as follows:

1) $5,000 and $8,500 for George and Agnes Guard, respectively, for emotional distress.

2) $5,870.50 for the Guards for out of pocket expenses paid to the Respondent for maintenance of the grounds and common elements of the Respondent premises.

3) Zero for attorney fees because the attorney had failed to distinguish between fees for representing the Guards on Handicap discrimination matters and time spent on other matters that were used as leverage.

4) $500 for Yeatts' services.

5) $3,500 in civil penalties.

Motion to Modify in Part the Initial Decision

By its Motion to Modify in Part the Initial Decision dated September 3, 1993, the Charging Party sought Secretarial review under 24 C.F.R. §104.930 of the Administrative Law Judge's award of damages and his treatment of the civil penalty. Specifically, the Charging Party seeks review of the failure of the ALJ to award sufficient emotional distress damages to the Guards, the failure of the ALJ to award any attorney fees and the failure of the ALJ to impose a $5,000 civil penalty against Respondent.

Charging Party argues that the emotional distress awards to the Complainants was too low, given the ALJ's finding of facts regarding each Complainant. The Charging Party cited several cases in support of the requested award: HUD v. Girard, 2 Fair

Housing-Fair Lending ¶25,005 (HUDALJ 1993) (awarding $15,000 in emotional distress); HUD v. Bangs, 2 Fair Housing-Fair Lending ¶25,040 (HUDALJ 1993) (awarding $10,000 in emotional distress, no physical symptoms).

Charging Party argues that the denial of attorney fees was error because the nonhandicap issues worked on by Mr. Lobek were used as leverage in gaining Respondent's attention in the handicap discrimination matters and that all fees were awardable as compensatory damages, not attorney fees. Charging Party argues that of the $4,967.24, 20.6 hours, amounting to $2,482, were directly attributable handicap discrimination matters.

Charging Party also sought the imposition of a civil penalty of $5,000 on Respondent, arguing that the ALJ erred in fining the Respondent only $3,500.

Finally, Charging Party has asked that the injunctive relief provided by the ALJ be made retroactive in order to allow the Guards to recover any assessments they may already have paid, or could be asked to pay, to the Respondent because of this case.

The Respondent filed a Response to the Charging Party's Motion to Modify and its own Motion to Modify. In its Response, the Respondent argued that the Secretary could not substitute his judgment for that of the ALJ with respect to damages for emotional distress and the civil penalty. It also argued that it would be inappropriate to award attorney fees because of the inclusion of so many nonhandicap matters in the attorney's billings and that a retroactive injunction would be impossible to police because the assessment of attorney fees by the Guards' attorney included numerous nonhandicap matters that could not be properly apportioned.

Respondent's Motion to Modify in Part the Initial Decision

Respondent raised three issues in its Motion to Modify. First, it argued that there was no evidence that Agnes Guard was the personal representative of her husband's estate. Second, it argued that it is against Florida law not to assess the Guards' unit a share of the legal fees, expenses, damages awards or civil penalties incurred by the Respondent in this case. Third, Respondent argued that there is no competent evidence to support the ALJ's order that the condominium assessments paid by the Guards for pool upkeep and other grounds maintenance should be refunded to the Guards.

DISCUSSION

1. The ALJ Erred in Not Considering the Case Law on Damages for the Emotional Distress of the Guards.

Damages for emotional distress may be awarded under the Act. 42 U.S.C. §3612(g)(3); 24 C.F.R. §104.910(b)(1); Johnson v. Hale, 940 F.2d 1192 (9th Cir. 1991); Phiffer v. Proud Parrot Motor Hotel, Inc., 648 F.2d 548 (9th Cir. 1980). Damages for emotional distress may be inferred from the circumstances, as well as established by testimony and no evidence of economic loss or medical evidence of mental or physical symptoms stemming from the discrimination need be submitted. Johnson v. Hale, supra; Secretary of HUD on Behalf of Herron v. Blackwell, 908 F.2d 864 (11th Cir. 1990); Seaton v. Sky Realty Co., 491 F.2d 634 (7th Cir. 1974). One who discriminates in violation of the Fair Housing Act must take the victims as (s)he finds them; damages are measured on injuries actually suffered by the victim and not on the basis of the injuries that would be suffered by a reasonable person. HUD v. Kelly, 2 Fair Housing-Fair Lending ¶25,034 at 25,362 (HUDALJ August 26, 1992).

The ALJ awarded Mr. Guard $5,000. He made no mention of any case law concerning the amount of damages that have been awarded in similar cases. Such case law, however, does exist. See Girard, supra ($15,000 and no physical symptoms) and Bangs, supra ($10,000 and no physical symptoms). It is noted that in Girard, reference is made to five cases tried in the Federal courts where the emotional distress damages ranged from $10,000 - $12,400 in three cases and $20,000 or more in two cases. Hamilton v. Svatik, 779 F.2d 383 (7th Cir. 1985) (jury award of $12,000 affirmed); Phillips v. Hunter Trails Community Association, 685 F.2d 184 (7th Cir. 1984) (reducing a jury award for each plaintiff from $25,000 to $10,000); Block v. Macy Co., Inc., 712 F.2d 1241 (8th Cir. 1983) ($12,400 awarded); Pollit v. Bramel, 669 F.2d 172 (S.D. Ohio 1987) ($25,000); and Blackwell, supra (jury awards upheld, $20,000 for one couple and $40,000 for a second couple in a housing discrimination case based on race). In addition, in a recent case, Littlefield v. McGuffey, 954 F.2d 1337 (7th Cir. 1992), the court affirmed an emotional distress award for $50,000 for one person in a housing case based upon race discrimination.

In deciding on the issue of compensatory damages, the ALJ made the following findings:

> The [Respondent's] violations of the Fair Housing Act prevented George Guard from enjoying the Ocean Sands' property, including the pool area and the overlook of

> the Gulf. Access to these areas had been greatly enjoyed by him in the past. He was, in effect, a prisoner, confined to his unit by the [Respondent's] conduct. When he was able to get outside, after his disability, he was more alert and would look around and pay attention to what was happening. He would smile and stay awake. Getting to the Gulf would have helped his frame of mind and given him something to look forward to when he got up in the morning. George Guard lived his last years feeing he was a burden to his wife. For a period of over two years, from September 28, 1989, to March 27, 1992, George Guard lived in his unit without the ability to access and enjoy the Ocean Sands property, because of the [Respondent's] unlawful conduct.
>
> Based upon the nature of the refusal to permit George Guard to enjoy the property, his disappointment, his frustration, and the relatively long period of time he experienced emotional distress, I conclude that George Guard suffered substantial emotional distress. Because he was unable to enjoy Ocean Sands' common property he was denied an important housing opportunity that, in his case, would have been very therapeutic, as well as pleasurable.

Initial Decision at 26-27.

The ALJ found that Mrs. Guard "experienced frustration because she could not provide her husband a better quality of life. Because of [Respondent's] conduct she was unable to enjoy their final years together. Her experience was heartbreaking and upsetting." Initial Decision at 27. In addition, he found that "the actions of her neighbors humiliated and embarrassed her and made her feel unwanted." Ibid.

In light of the ALJ's findings and existing case law, which

appears to award generally greater amounts for complainants who suffered emotional distress similar to that suffered by the Guards, the matter of the amount of damages to be awarded to the Guards must be remanded. The ALJ is directed to reconsider the amount of his award of damages to the Guards for emotional distress in light of his findings and the aforementioned cases.

The Respondent argues that the award of $5,000 and $8,500 to the Mr. and Mrs. Guard, respectively, should not be disturbed. Respondent argues that the Secretary cannot second guess the ALJ on the issue of compensatory damages because the matter involves the ALJ's assessment of conflicting evidence. The Secretary disagrees. A Secretarial review may remand a determination of damages, or any other determination by the ALJ, when that determination appears to the Secretary to be inconsistent with prior case law.

2. The Request for Compensatory Damages to Cover Attorney Fees is Not Warranted.

Rather than requesting a review of the ALJ's denial of attorney fees, the Charging Party has sought Secretarial review of the denial by seeking compensatory (actual) damages for the fees. An analysis of the Fair Housing Act leads to the conclusion that attorney fees are covered by the attorney fees provision, 42 U.S.C. §3612(p), and are not covered by the compensatory damages provision, 42 U.S.C. §3612(g)(3). Accordingly, the request for review is denied as to this issue.

Section 3612(g)(3) provides that the ALJ may award actual damages for violations of the Fair Housing Act. Section 3612(p) provides that the ALJ may, in his or her discretion, allow the prevailing party a reasonable attorney fee. The latter provision specifically relates to the fees of an attorney. The former, refers generally to actual damages. By construing §3612(g)(3) as including attorney fees, the provisions of §3612(p) would be rendered superfluous. It is a maxim of statutory construction that all the provisions of a statute, if at all possible, are to be given effect and that no provision should be emasculated or rendered surplusage. Weinberger v. Hynson, Wescott and Dunning, Inc., 412 U.S. 609, 93 S.Ct. 2469, 2485 (1973); Jarecki v. G.D. Searle & Co., 367 U.S. 303, 81 S.Ct. 1579, 1582 (1961); United States v. Menasche, 348 U.S. 528, 75 S.Ct. 513, 519-520 (1955); Horner v. Merit Systems Protection Bd., 815 F.2d 668 (1987). To award damages for attorney fees under §3612(g)(3) would render §3612(p) as impermissibly superfluous. In light of this determination, Respondent's arguments concerning this issue are not addressed.

3. The Assessment of Civil Penalties of $3,500 Will Not Be Disturbed.

42 U.S.C. §3612(g)(3) directs that the ALJ who "finds that a respondent has engaged or is about to engage in a discriminatory housing practice . . . shall order such relief as may be appropriate. Such order may, to vindicate the public interest, assess a civil penalty against the respondent." In addressing the factors to be considered when assessing a request for the imposition of a civil penalty under 42 U.S.C. §3612(g)(3), the House Report on the Act states:

> The Committee intends that these civil penalties are maximum, not minimum, penalties. When determining the amount of a penalty against a Respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of that Respondent and the goal of deterrence and other matters as justice may require.

H. Rep No. 100-711, 100th Cong., 2d Sess. 37 (1988), reprinted at 1988 Code Cong. and Admin. News 2173, 2198.

Charging Party argues that the civil penalty should be increased to $5,000. Respondent argues that this review cannot reassess the civil penalty because there is no argument or evidence to indicate that the civil penalty imposed by the ALJ was unjust.

Under 42 U.S.C. §3612(h), however, the Secretary may review any finding, conclusion or order. There is no limitation on his review authority. Further, the Secretary is the most appropriate person within the U.S. Department of Housing and Urban Development to determine whether a particular penalty will vindicate the public interest in a Fair Housing Act case. Nevertheless, based upon the ALJ's findings of fact and conclusions of law, it appears that the civil penalty was appropriate. Accordingly, the civil penalty of $3,500 is affirmed.

4. The Request to Amend the Injunction is Granted in Part.

The Charging Party seeks modification of the injunction entered by the ALJ because it does not cover any assessments the Guards may have already paid because of this case. Motion to

Modify at 13. The injunction issued by the ALJ at Paragraph 8 of his Order states: "Ocean Sands, Inc. shall not assess the Guards' unit to pay legal fees, expenses, damage awards, or civil penalties incurred by Ocean Sands, Inc. as a result of this case." Initial Decision at 31. The basis of this order rests on the ALJ's decision stating:

> It would be inequitable for the [Respondent] to make assessments against the Guards' unit to pay legal fees or other expenses incurred by the Association in the defense of this action or to pay for any of the damages or civil penalties to be paid by the [Respondent] as a result of this action.

Id. at 30. While it does appear that the ALJ's order covers all prospective charges that the Respondent might levy against all of the condominium units at Ocean Sands as a result of this case, it does not cover any past assessments which may have been assessed against the Guards' unit prior to the filing of the Charge. Such charges could have been included as part of the Guards' economic damages. Charging Party, however, has not indicated that the record anywhere reflects that the Guards were assessed any such charges, and, accordingly, no damages based on such charges can be awarded in this case. To the extent that the Guards' unit has not yet been assessed attorney fees for seeking modifications of their unit because of Mr. Guard's handicapping condition (excluding Respondent's utilization of the services of an attorney to deal with pest control or other issues raised by the Guards or their attorney), the ALJ's order should be, and hereby is, amended to prohibit the assessment of the Guards' unit for such attorney fees.

Respondent argues that the injunction should not be retroactive because attorney fees that need to be paid by the Respondent's units contain many charges which are vague and cannot be related to the Fair Housing Act and that, therefore, the injunction is not capable of enforcement. Appendix A, attached to the Charging Party's Motion to Modify in Part, clearly reflects the attorney fees paid to Mr. Lobek by the Guards for services directly related to his handicapping condition under the Fair Housing Act. Thus, none of the charges listed on Appendix A may be assessed against the Guards' unit. Nor may any other charges set forth in the ALJ's order be assessed against the Guards' unit. Accordingly, the injunction is not vague.

5. Respondent's Motion to Modify Must Be Denied.

Respondent argues that there was no evidence that Agnes Guard was the personal representative of her husband's estate. It claims that Mrs. Guard should have presented Letters of Administration evidencing her status as the personal representative of her husband. This matter was addressed by the ALJ. No evidence has been presented to persuade the Secretary that Mrs. Guard was not the personal representative of her husband's estate. The ALJ's determination on this issue is affirmed.

Respondent next argues that it is against Florida law not to assess the Guards' unit a share of the legal fees, expenses, damages awards or civil penalties incurred by the Respondent in this case. Respondent cites Abbey Park Homeowner's Association v. Bowen, 508 So. 2d 554 (Fl, 4th DCA 1987), as authority for this proposition. However, when Congress legislates pursuant to its delegated powers under the Constitution, conflicting state law and policy must yield pursuant to the Supremacy Clause. Perez v. Campbell, 402 U.S. 637, 649, 91 S.Ct. 1704 (1971); Lee v. Florida, 392 U.S. 378, 88 S.Ct. 2096 (1968); Nash v. Florida Industrial Commission, 389 U.S. 235, 88 S.Ct. 362 (1967). Title VIII of the Civil Rights Act of 1964, as amended by The Fair Housing Act was enacted to provide fair housing throughout the nation to ensure the removal of artificial, arbitrary and unnecessary barriers that discriminate on impermissible characteristics. U.S. v. City of Parma, Ohio, 494 F.Supp. 1049 (D. Ohio 1980), aff'd 661 F.2d 562 (6th Cir. 1981), cert. denied, 456 U.S. 926, 102 S.Ct. 1972 (1982); Meadows v. Edgewood Management Corp., 432 F.Supp. 334 (W.D. Va. 1977). Thus, Title VII, as amended by the Fair Housing Act, is national policy and overrides state law or policy in conflict with it. Florida law or policy that would prevent protecting the Guards against an assessment to help pay the Respondent's costs of this action would violate Federal law and policy and cannot be condoned. Accordingly, modification of the ALJ's order on this basis is denied.

Respondent further argues that there is no competent evidence to support the ALJ's order that the condominium assessments paid by the Guards for pool upkeep and other grounds maintenance should be refunded to the Guards. This matter, however, was adequately addressed by the ALJ, who found competent evidence in the record. Accordingly, modification of the ALJ's order on this basis is denied.

ORDER

Upon consideration of the Motion to Modify in Part the Initial Decision in the above captioned cases and Respondent's Opposition thereto, and pursuant to 42 U.S.C. §3612(h)(1) and 24 C.F.R. §104.930(a), the Secretary hereby remands this case for further consideration as follows:

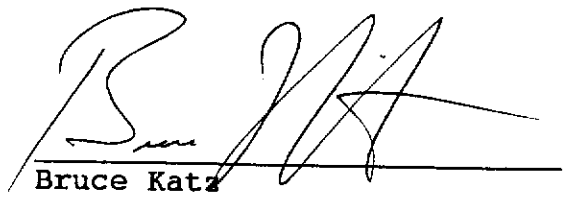
1. The ALJ will reassess the amount of damages for emotional distress awarded to the Guards in light of existing case law.

2. The civil penalty imposed by the ALJ is affirmed. Within 10 days of the date of this order, Respondent shall pay to the United States of America $3,500 in civil penalties.

3. Para. 8 of the ALJ's order imposing an injunction is affirmed, except for the clarification that Ocean Sands, Inc. shall not assess the Guards' unit to pay any legal fees incurred by the Respondent in responding to the handicap based efforts by the Guards' attorney, Mr. Lobek, to change Respondent's position regarding handicap discrimination issues. (In other words, Respondent may not assess the Guards' unit for any of the attorney fees listed in Appendix A of the Charging Party's Motion to Modify in Part the Initial Decision, which Motion is dated September 21, 1993.)

Except as modified herein, the Initial Decision and the Order of the ALJ in this case are affirmed.

Dated: 10/4/93



Bruce Katz
Secretarial Designee