

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|---------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:03CV406 |
| |) | |
| v. |) | |
| |) | |
| JOHN R. KOCH, |) | MEMORANDUM AND ORDER ON |
| |) | PLAINTIFF UNITED STATES' MOTION |
| Defendant. |) | FOR A CIVIL PENALTY AND |
| |) | INJUNCTIVE RELIEF |
| _____ |) | |

Sections 3614(d)(1)(A) and (B) of the Fair Housing Act, 42 U.S.C. 3601, *et seq.* empower the court to enter injunctive relief, and section 3614(d)(1)(C) allows the court to enter a civil penalty of no more than \$55,000. The United States asks for both injunctive relief and imposition of the full amount of civil penalty allowed.

CIVIL PENALTY

The United States has noted that the House Report accompanying the Fair Housing Act amendments sets out factors to be considered by a court when determining a civil penalty, as follows:

1. nature and circumstances of the violation;
2. degree of culpability;
3. history of prior violations;
4. financial circumstances of the defendant (in determining the amount of penalty);
5. goal of deterrence; and
6. other matters as justice may require.

H.R. Rep. 100-711 at 40 (June 17, 1988).

The nature and circumstances of the violation, the information contained in what is headed "FACTUAL STATEMENT" in the Memorandum and Order on Plaintiff's Motion for a

New Trial is a fair statement, but lacks the specificity that can more accurately picture the self-gratifying, debasing, and pitiless acts of sexual indulgence practiced by the defendant on the financially strapped women who rented or sought to rent houses from him. For example, Ebony Dishmon rented from him for six or seven months in 1999, during which he propositioned her several times by saying that if she would have sex with him one or two times a week, she would have to pay only one-half of the regular rent. He threatened to evict her and ultimately did, after being told that since she wasn't "suckin'" his "dick" or having sex with him, he did not want her to live in his house. When Penny Goforth was trying to rent a house from him, he exposed his penis to her for about five minutes. Brenda Parker Taylor, a mentally disabled woman, testified that the defendant coerced her into having oral sex with him multiple times, and then evicted her after she refused to let him urinate on her. Felisha Scoggins said, when she sought to rent a house from him, that he would work with her to take \$75 off the rent as long as no man lived in the house and she gave him sexual favors; he put his hands on her breasts for 10 to 15 seconds and said he wanted to suck on her breasts, all of which she refused. Rachel McCluskey testified that the defendant coerced her into having sex with him under threat of eviction.

The defendant was entirely culpable for the events to ten of the nineteen women who testified at the trial. The violations of the Fair Housing Act traced back to at least 1992 by his inappropriate doings with Deborah Sterling.

The financial circumstances of the defendant are somewhat uncertain. He offered little concrete evidence of his financial status, although the burden is his to bring forward evidence "to show that his financial circumstances warrant a limitation of the [punitive damages] award." *Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565, 570-71 (8th Cir. 1998), quoting *Smith v. Lightning Bolt Productions, Inc.*, 861 F.2d 363, 373 (2d Cir. 1988). According to my notes, Mr. Koch testified that he owns 53 lots or properties, about 43 of them having improvements on them and the rest are vacant lots. Given the sparse evidence before me, I conclude that the defendant has not shown that he is incapable of paying any allowable amount of civil penalty.

The punitive damage awards have totaled \$49,185 against the defendant. The civil damages awards total \$16,967. The jury, therefore, awarded punitive damages totaling slightly less than 3 to 1 over actual damages. If I award \$40,000 in punitive damages, the amount thus

attributed for punishment purposes would be \$89,185, or about 5 1/4 times the amount of actual damage awards. That seems to me to be fair and effective.

As for injunctive relief, I agree with the United States that a general injunction prohibiting the defendant from discriminating based on sex in violation of the Fair Housing Act and prohibiting him from coercing, intimidating, threatening or interfering with any person on account of that person's exercising rights protected by the Fair Housing Act is in order. That should protect the aggrieved persons or witnesses at trial from retaliation. There was testimony at the trial of attempts by the defendant to dissuade one or two of the aggrieved persons from cooperating with the Department of Justice's investigation and the present lawsuit. It also should dampen any proclivity to repeat past discriminatory actions.

The defendant already has retained an independent management company to operate his housing rental business and the injunction can assist in keeping that practice in place.

IT THEREFORE IS ORDERED that the plaintiff United States' Motion for Civil Penalty and Injunctive Relief, filing 142, is granted as follows:

- a. a civil penalty in the amount of \$40,000 against the defendant is imposed, due within 60 days of the date of this order, with interest at the rate of 3.38 percent per annum until paid in full;
- b. the defendant is enjoined from discriminating on the basis of sex in violation of the Fair Housing Act and from coercing, intimidating, threatening, or interfering with any person on account of that person's having exercised rights protected by the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, as amended;
- c. the defendant shall not participate in the management of any residential rental properties subject to the Fair Housing Act, as amended, that is currently owned, or acquired in the future, in whole or in part owned by him;
- d. the defendant shall obtain or continue engaging an independent management firm immediately and utilize it to operate his landlord-tenant business, including present properties and any properties acquired in the future. The independent management firm shall have exclusive management authority concerning the showing of rental units to prospective tenants, accepting applications for prospective tenants (or otherwise having face-to-face contact with potential tenants during the

application process), inspections (except as otherwise provided), the collection of rents, evictions, rentals (except rental increases), repairs, maintenance, and violations of tenant lease obligations;

- e. the independent management company above shall not be owned by, employ, or utilize any individual or company related to John R. Koch by blood or by marriage;
- f. the independent management company above shall be the entity that maintains any and all contacts with tenants and prospective tenants, including but not limited to showing apartments, executing leases, applications and other housing documents, collecting rent, taking their requests, and making repairs;
- g. the defendant is not prohibited from visiting any rental property he owns for a purpose other than engaging in management activities, but the defendant shall not initiate contact with any female tenant during such visits. Upon notice from the independent management firm that a rental unit is unoccupied, vacant and not under lease, the defendant shall be allowed to visit these rental units for the purpose of inspection. Under these circumstances, the defendant shall not initiate any form of verbal or other contact with female tenants of other rental units;
- h. the defendant shall not take any retaliatory action against any plaintiff, aggrieved party, or witness in this case. Nothing in this order shall prohibit the independent management company from seeking redress through the courts to evict or collect monies owned by such tenants who occupy residential rental properties owned by the defendant.
- i. this injunction as set out in paragraphs b through h shall remain in effect for 10 years from the date of this order.

Dated March 29, 2005.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge