

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA

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v.

Case No. 2020 CA 002870 B

THE BURRELLO GROUP, LLC, *et al.*

ORDER

The Court grants in part and denies in part plaintiff the District of Columbia’s motion for remedies against defendants Jose Burrello and The Burrello Group, LLC. The Court awards injunctive relief concerning future compliance with the D.C. Human Rights Act (“DCHRA”), a civil penalty of \$158,000, and attorney fees of \$79,490.80. Because all issues are now resolved and the case is closed, the Court denies as moot the District’s consent motion to continue the pretrial conference.

I. BACKGROUND

On December 7, 2021, the Court granted the District’s motion for reconsideration and granted the District’s motion for summary judgment on liability for Counts I-IX of its complaint under the DCHRA. Other factual and procedural background are described in the October 12 Order in which the Court initially denied the District’s summary judgment motion on liability.

Pursuant to the December 7 order, on March 24, 2022, the District filed a motion for remedies (“Motion”). On April 6, defendants filed an opposition (“Opp.”). On April 13, the District filed a reply (“Reply”).

II. DISCUSSION

D.C. Code § 2-1403.16a(1) provides that, in a civil action brought by the Attorney General under the DCHRA, the District may obtain (a) injunctive relief, (b) “[c]ivil penalties, up to the amounts described in § 2-1403.13(a)(1)(E-1), for each action or practice in violation of this unit, and in the context of a discriminatory advertisement, for each day the advertisement is

posted,” and (c) “[a]ny other form of relief described in § 2-1403.13(a)(1).” D.C. Code § 2-1403.13(a)(1)(E-1) provides that, when the defendant “has not been adjudged to have committed any prior unlawful discriminatory practice” (and this is defendants’ first adjudicated violation of the DCHRA), the District may pursue civil penalties of up to \$10,000 per violation. D.C. Code § 2-1403.13(a)(1)(E) provides that the District may pursue as a remedy “[t]he payment of reasonable attorney fees.”

The District seeks (A) injunctive relief, (B) a civil penalty of \$1,580,000, and (C) attorney fees and costs of \$79,490.80.

A. Injunctive relief

Defendants do not object to the injunctive relief requested by the District, with one exception. The exception involves the duration of the requirement in ¶ 6 of the proposed order that defendants “maintain records of all advertisements, notices, signs, or statements of available properties posted, to be available for inspection by the District.” The District contends that this requirement should apply for three years, and defendants contend that one year is appropriate. Defendants do not object to a three-year reporting requirement in ¶ 5, and a three-year record retention requirement is equally appropriate. Defendants do not contend this this requirement imposes any significant burden or cost on them, and it is proportional to the magnitude of the violation.

Because it is reasonable, the Court grants the District’s reporting request in its entirety.

B. Civil penalty

The District asks for a civil penalty of \$1,580,000. Defendants posted illegal advertisements on various websites for 158 days, starting on September 19, 2019 and ending on February 24, 2020. The District contends that the Court should impose the maximum civil penalty of \$10,000 per day for each of these 158 days – less than the potential maximum civil

penalty of \$4.8 million if the civil penalty were \$10,000 for each of the days that the advertisement was posted on each website.

Defendants contend that they are entitled to a jury trial on the amount of the civil penalties. However, “a determination of a civil penalty is not an essential function of a jury trial, and ... the Seventh Amendment does not require a jury trial for that purpose in a civil action.” *Tull v. United States*, 481 U.S. 412, 427 (1987). The amount of the civil penalty is an issue for the Court to decide. Neither side requests an evidentiary hearing.

Both sides agree that three factors are relevant to the amount of the civil penalty: (1) the magnitude and severity of the harm and injury to the public; (2) bad faith of the defendants; and (3) the need to deter future violations. *See* Motion at 6; Opp. at 4. The Court considers each factor and explains why it assesses a civil penalty of \$158,000, or \$1,000 per day for each day that defendants violated the DCHRA.

1. Severity of harm

The advertisement posted by defendants that told voucher holders not to apply concerned one, and only one, property: a two-unit building. Motion at 1; Burrello Deposition at 28-29 (transcript attached to the District’s summary judgment motion filed on September 22, 2021). The Court agrees with the District that discriminatory advertisements artificially reduce the supply of rental housing by discouraging voucher holders from applying, although two units is a tiny fraction of the 150,000+ rental units in the District of Columbia. It is impossible to know how many voucher holders would have applied to rent either unit if defendants had not told them not to apply. However, the record does not suggest that any significant number of voucher holders were interested or that a voucher holder would have actually ended up renting one or both units. Mr. Burrello estimated that he got applications from no more than five prospective

tenants, and even though defendants kept the property on the market as rental housing for six months, they were unable to lease the property, which they ended up selling.

The severity of the potential harm to potential renters and to the public weighs in favor of a smaller rather than larger civil penalty.

2. Bad faith

As the Court discussed in its December 7 order (at 2), the record does not demonstrate conclusively whether or not Mr. Burrello knew that it was illegal or wrong to advertise that the property was “Not approved for vouchers.” On the one hand, Mr. Burrello has been a licensed real estate agent or broker for nearly 40 years, he got regular training about fair housing, and he testified “I know I was incorrect or wrong” about the advertisements. Burrello Deposition at 51, 78, 81, 115. On the other hand, Mr. Burrello testified that he knew very little about how vouchers work, he never rented to an individual with a voucher, and he included the statement that the properties were not approved for vouchers because he mistakenly believed that approval was required. *Id.* at 86-87. The record does not suggest that Mr. Burrello was personally biased against people with vouchers, and especially given the dearth of interested people, he had an economic incentive to expand the pool of applicants to include voucher holders. As far as the record shows, this was an isolated aberration, and all of the postings were essentially the result of one decision in the fall of 2019 when defendants decided to advertise the property as rental units.

The record indicates that defendants’ conduct was certainly negligent, possibly reckless, but not clearly malicious. This factor weighs in favor of a significant civil penalty, but less than the statutory maximum.

3. Deterrence

The Court considers both individual and general deterrence in determining the amount of a civil penalty. As far as individual deterrence is concerned, Mr. Burrello testified, “I certainly

learned my lesson” (Deposition at 114), and given the money and time consumed by this case, the Court is inclined to credit this statement. However, it is appropriate to send a message to landlords in the District of Columbia that the cost of violating the DCHRA substantially exceeds any potential benefits. Defendants argue that imposing penalties would make them a “martyr.” Opp. at 7. Imposing a substantial civil penalty on defendants does not make them martyrs; it serves the legitimate goal of general deterrence, and defendants should incur consequences for a significant violation of the DCHRA – beyond a promise not to violate the law again.

The Court considers defendants’ financial resources in assessing deterrence. Defendants notably do not dispute that they are able to pay the \$1.5 million civil penalty proposed by the District. However, the Burrello Group either lost money or was marginally profitable during this period. Burrello Dep. at 33-39.

Like the other factors, this factor weighs in favor of a significant civil penalty, but substantially less than the statutory maximum

4. Summary

Considering these factors as a whole, the Court imposes a civil penalty of \$158,000 based on \$1,000 per day for each day that the illegal advertisement was posted on a website. Because the Court also awards the District its attorney fees of \$79,490.80, the total cost to defendants of their violation of the DCHRA is almost a quarter of a million dollars, and this result sends an appropriate message to landlords in the District of Columbia that is proportional to the seriousness of an isolated violation involving a two-unit building that was never leased.

C. Attorney fees

An award of attorney fees is warranted in this case. The District was forced to incur substantial attorney fees to protect the public interest by obtaining an effective remedy for a serious violation of the DCHRA, and these fees should be paid by the parties that violated the

law, not by blameless taxpayers in the District of Columbia. Defendants do not dispute the reasonableness of the fees requested by the District, so the Court awards the requested fees of \$79,490.80.

Defendants make two arguments against an award of attorney fees. *See Opp.* at 8. First, they argue that District is not entitled to attorney fees because it did not attempt in good faith to settle this case. However, nothing suggests that the District negotiated in bad faith, and defendants have adamantly contested liability and contend that they should not pay any money at all for an adjudicated violation. Second, defendants argue that the Court should not award fees because the District brought this case for policy reasons, not compensatory reasons, but as the Court explained above, the District has an obligation to enforce the DCHRA and to obtain effective relief for serious violations like this one.

IV. CONCLUSION

The Court orders that:

1. The District's motion for remedies is granted in part and denied in part.
2. Defendants shall not engage in any practice with respect to any property management or real estate services in the District that violates the DCHRA.
3. Defendants shall not post advertisements for residential housing that violate the prohibition of source income discrimination under the DCHRA.
4. For so long as defendants continue to offer real estate or any other professional services related to housing in the District, they shall maintain written policies that reflect the District of Columbia's laws regarding discrimination based on source of income and other protected categories under D.C. Code § 2-1402.21. Defendants shall provide copies of the policies required under this paragraph to all current employees, management, and corporate officers. Within the first 14 days of an individual's employment with defendants, they shall

provide the policies as required under this paragraph to all new employees hired after the date of this order. Defendants shall also provide a copy of their housing discrimination training materials and policies required under this paragraph to the District within 30 days of this Order.

5. Within 60 days of this order, and on at least an annual basis for so long as defendants continue to offer services in the District, they shall provide training to all employees and management through a third-party training company on D.C. Code § 2-1402.21 regarding discrimination and on the District's fair housing laws.

6. For a period of three years after entry of this order, starting on the first business day in January 2023, on an annual basis, Defendants shall submit to the District a sworn statement identifying any complaints received alleging a violation of the DCHRA. The statement shall include: (i) the date of the complaint and alleged incident; (ii) a summary of the complaint and alleged incident, and (iii) the remedial measures taken by defendants with respect to the complaint and alleged incident.

7. For a period of three years after entry of this order, defendants shall maintain records of all advertisements, notices, signs, or statements of available properties posted, to be available for inspection by the District.

8. Defendants shall pay the District a civil penalty of \$158,000.

9. Defendants shall pay the District attorney fees of \$79,490.80.

10. The pretrial conference on June 14, 2022 is vacated.

11. The District's May 10 motion to continue the pretrial conference is denied as moot.

SO ORDERED.

Anthony C Epstein

Anthony C. Epstein
Judge

Date: May 13, 2022

Copies by CaseFileXpress to all counsel