

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

UNITED STATES OF AMERICA,
PLAINTIFF,

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V.

CAUSE NO. A-05-CA-710-LY

ANIBAL AND JANET SILVA,
DEFENDANTS.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BE IT REMEMBERED that in the above styled and numbered cause this Court previously rendered default judgments against Defendants *pro se* Anibal and Janet Silva on the issue of their liability as to the United States' claims that the Silvas violated Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act Amendments of 1988 ("Fair Housing Act") (Clerk's Document Nos. 141 & 204).¹ On October 1, 2007, the Court called this cause for trial before the Court on the remaining issues of Plaintiff United States' requests for damages, injunctive relief, and civil penalties against Anibal and Janet Silva. The United States, Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, appeared by counsel. Defendants *pro se* Anibal and Janet Silva, although duly noticed, failed to appear. Having considered the witnesses' testimony and exhibits presented at the October 1 damages trial, the arguments of United States' counsel, the file, the United States Post-Trial Brief filed November 9, 2007, and the Notice Concerning Injunctive Relief filed February 22, 2008 (Clerk's Document Nos. 233 & 234), and the applicable law the Court finds and concludes (1) that the aggrieved individuals are entitled to recover damages from Anibal and Janet Silva; (2) a civil penalty will be assessed against each of the Silvas, (3) the Silvas will be

¹ See 42 U.S.C. §§ 3601-19 ("Fair Housing Act").

enjoined from discriminating against individuals on the basis of national origin, and (4) the Silvas will be enjoined from relitigating the issues decided in this cause in the United States Bankruptcy Court for the Southern District of California and in the future.²

Background

The United States brings this action against the Silvas to enforce the federal Fair Housing Act on behalf of Virginia Jaimes, Profirio Alcantara, Celestino Medrano, and Martha Elena Puerto, and other aggrieved individuals. *See* 42 U.S.C. §§ 3602(i), 3612(o). Specifically, the United States alleges that the Silvas engaged in a pattern or practice of discrimination on the basis of national origin by conducting their real-estate business in an unfair and discriminatory manner when transacting business with individuals originally from Mexico who attempted to obtain loans for homes or to rent or buy homes from the Silvas. *See* 42 U.S.C. §§ 3604(a), (b), 3605(a), 3614(a) (unlawful to refuse to sell or rent after making *bona fide* offer, refuse to negotiate for sale or rental of dwelling, or otherwise make unavailable or deny dwelling to persons because of national origin and to discriminate against person in terms conditions, sale or rental of dwelling because of national origin). The United States requests that the Court award damages to aggrieved individuals, assess statutory civil penalties against the Silvas, and grant specific injunctive relief (Clerk's Document No. 1). *See* 42 U.S.C. § 3612(o)(3). The Silvas were properly served, and after the Silvas failed on several occasions to comply with the Federal Rules of Civil Procedure and this Court's orders, the

² *See Silva v. Jaimes*, No. 07-90588-JM (Bankr. S.D. Cal. 2007) (pending). Silva also commenced a civil action in the United States District Court of California against all of the aggrieved individuals in this action. *See Silva v. Jaimes*, No. 07CV1931-JAH (S.D. Cal. 2007). That court dismissed the action without prejudice for failure to pay the filing fee.

All findings of fact contained herein that are more appropriately considered conclusions of law are so deemed. Likewise, any conclusion of law more appropriately considered a finding of fact is so deemed.

United States moved for sanctions against the Silvas, requesting that the Court render default judgment as to liability on the claims of discrimination. Following a show-cause notice to the Silvas that they appear and show cause why the Court should not render default judgment against them, the Silvas' failed to respond. The Court rendered default judgment in favor of the United States and against the Silvas as to only liability on the United States' claims (Clerk's Document Nos. 141 & 204). Neither Anibal nor Janet Silva sought reconsideration of the Court's action.

A final pretrial conference was set for September 25, 2007, on the remaining issues of damages (Clerk's Document Nos. 178 & 209). The parties' pretrial filings were due to be submitted to the Court on or before Monday, September 17. *See* Loc. R. W.D. Tex. CV-16(e) (pretrial filings due ten days before final pretrial conference). The United States timely submitted its pretrial filings, however, neither Anibal nor Janet Silva submitted pretrial filings at any time. On September 25, the Court proceeded with the final conference, at which the United States appeared by counsel. Although duly notified, neither of the Silvas appeared. The Court received no communications from either Anibal or Janet Silva regarding the trial. On October 1, the Court proceeded with trial on the United States' claims for damages, injunctive relief, and civil penalties.

During trial, several aggrieved individuals testified about their real estate purchasing experiences with the Silvas. In every instance, the Silvas led the aggrieved persons to believe that each had purchased homes when they had not. The aggrieved individuals paid the Silvas significant down payments, which the Silvas led each of them to believe that the payment was part of their home purchase. In several instances, the aggrieved individuals made regular monthly payments to the Silvas, which the payors thought were home-financing payments. Israel Ponce's testimony provides a typical example of the nature and circumstances of the Silvas' scheme and the serious harm it

caused. In 2003, Ponce contacted Anibal Silva, who was a Texas licensed real-estate agent, and informed Silva that he was seeking to purchase a house for himself, his wife, and his daughter. Silva suggested Ponce might be interested in purchasing a house owned by Anibal's wife, Janet Silva. Ponce gathered the \$5,000 down payment for the home purchase using his savings, his wife's savings, and money borrowed from friends. The Silvas cashed Ponce's initial deposit and three years' of Ponce's regular monthly payments. The Silvas never recorded the contract for deed signed for the property. *See* Tex. Prop. Code Ann. § 5.079 (West 2004). Further, the Silvas made only sporadic payments on their own mortgage for the property Ponce believed the Silvas sold to him. As of December 2006, for the property allegedly conveyed to Ponce, the Silvas were over \$58,000 in arrears on their mortgage on the property. The testimony at trial established that the Silvas engaged repeatedly in this type of misleading real-estate transaction with several individuals from Mexico utilizing several different residential properties.

Damages

Based on the testimony of Mario and Maria Calderon, Jose Abuto, Flor Perez, Virginia Jaimes, Lorenza Jaimes, Norma Gonsalvez, Israel Ponce, Norma Segura, Martha Puerto, Liliana Hernandez, Carlos Reyes, Guadurcio Olivares, Argelia Olivares, Jose Garcia, and Celestino Medrano, Marketa Howard, Porfirio Alcantara, and Maria Alcantara, the Court finds Anibal and Janet Silva jointly and severally liable for damages to the following aggrieved individuals in the specified amounts: (1) Porfirio and Maria Alcantara recover damages in the amount of \$5,227.21; (2) Celestino Medrano recover damages in the amount of \$3,500; (3) Martha Puerto and Carlos Reyes recover damages in the amount of \$3,670; (4) Israel Ponce and Norma Segura recover damages in the amount of \$12,792.80; (5) Virginia Jaimes recover damages in the amount of

\$16,852.72; (6) Flor Perez and Jose Aburto recover damages in the amount of \$15,662; (7) Guadencio and Argelia Olivares recover damages in the amount of \$16,255.70; (8) Jose Garcia recover damages in the amount of \$7,925.50; and (9) Mario and Maria Calderon recover damages in the amount of \$21,766.04.

Civil penalty

A court may assess a civil penalty against a defendant found to have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act. *See* 42 U.S.C. § 3614(d)(1)(C).³ One of the primary purposes of civil penalties is to deter unlawful conduct. *See Tull v. United States*, 481 U.S. 412, 425-27 (1987) (discussing civil penalties). As the trial testimony reveals, the conduct of the Silvas was reprehensible. The Silvas acted with full knowledge of the effects of their actions and business relations with the aggrieved individuals, and even now, by failing to appear before this Court regarding the United States' allegations, they demonstrate no remorse for the harm they caused. The Court finds that Anibal and Janet Silva engaged in a pattern or practice of discrimination in violation of the Fair Housing Act. *See* 42 U.S.C. § 3614(a). Having reviewed the evidence and the file, the Court finds that a civil penalty of \$55,000 assessed against each Defendant Anibal and Janet Silva is necessary to vindicate the public interest.

Injunctive relief

A court may enjoin a defendant from engaging in a pattern or practice of discrimination in violation of the Fair Housing Act and may render other orders as necessary to assure the full

³ To vindicate the public interest, a court may assess a civil penalty (i) in an amount not exceeding \$50,000, for a first violation; and (ii) in an amount not exceeding \$100,000, for any subsequent violation." 42 U.S.C. § 3614 (d)(1)(C). The maximum amounts in civil penalties that may be awarded under these provision have been increased to \$55,000 and \$110,000 respectively. *See* 28 C.F.R. § 85.3(b)(3).

enjoyment of the rights granted by the Fair Housing Act. *See* 42 U.S.C. § 3614(d)(1)(A). When formulating injunctive relief, this Court, exercising its discretion, must shape an effective remedy for fair-housing violations. *See United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 125-26 (5th Cir. 1973). A defendant may avoid injunctive relief only if that defendant shows that “there is no reasonable expectation that the wrong will be repeated.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953).

Given the discriminatory pattern and practice of the Silvas established at trial, the United States requests general and specific injunctive relief which it contends is tailored to prevent the Silvas from engaging in future violations of the Fair Housing Act. The Court finds lacking from this cause any reason for this Court to believe or conclude that the Silvas will cease their discriminatory activities. The Silvas, although duly served with process and after participating in the early phases of this action, wholly fail to defend their positions regarding the United States’ claims that they engaged in a pattern and practice of discriminatory conduct in violation of the Fair Housing Act. The Court finds that there exists a reasonable likelihood that in the future the Silvas will commit a violation of the Fair Housing Act. Therefore the Court will grant in part the United States’ request for general and specific injunctive relief. The Court will render a general injunction against Anibal and Janet Silva enjoining future Fair Housing Act violations and will grant the United States’ request that Defendants Anibal and Janet Silva (1) each be trained on the requirements of the Fair Housing Act; (2) that for the next five years each include references to the Fair Housing Act in all future advertisements for real-estate related transactions; (3) for the next five years, each report to the United States any real-estate related transaction they conduct, real-estate related employment they obtain, and housing discrimination complaints filed against them; and (4) refrain from continuing

to prosecute or filing any future claims of any sort against any person who was identified as an aggrieved person or witness in this cause.

Conclusion

The Court finds that the testimony and evidence presented at trial supports the Court's previous findings of default as to liability in favor of the United States on its claims that Anibal and Janet Silva engaged in a pattern or practice of housing discrimination on the basis of national origin. Further the Court finds and concludes that the Silvas' discriminatory practices caused several aggrieved individuals harm, and the Court will award each of them damages. Further the Court will enjoin Defendants Anibal and Janet Silva and their agents, employees, and successors and all other persons in active concert or participation with them, from discriminating on the basis of national origin in violation of the Fair Housing Act; will enjoin relitigation of the issues determined in this cause in the Southern California bankruptcy court and in the future; and will assess civil penalties to vindicate the public's interest. By separate order, the Court will render a Final Judgment in favor of United States and against the Silvas.

IT IS ORDERED that Anibal and Janet Silva are jointly and severally liable for damages to the following aggrieved individuals in the designated amounts: (1) Porfirio and Maria Alcantara recover damages in the amount of \$5,227.21; (2) Celestino Medrano recover damages in the amount of \$3,500; (3) Martha Puerto and Carlos Reyes recover damages in the amount of \$3,670; (4) Israel Ponce and Norma Segura recover damages in the amount of \$12,792.80; (5) Virginia Jaimes recover damages in the amount of \$16,852.72; (6) Flor Perez and Jose Aburto recover damages in the amount of \$15,662; (7) Guadencio and Argelia Olivares recover damages in the amount of

\$16,255.70; (8) Jose Garcia recover damages in the amount of \$7,925.50; and (9) Mario and Maria Calderon recover damages in the amount of \$21,766.04.

IT IS FURTHER ORDERED that Anibal and Janet Silva are each assessed a civil penalty in the amount of \$55,000.

IT IS FURTHER ORDERED that for a period of five years from the date the final judgment in this cause is signed Anibal and Janet Silva are enjoined from: (1) refusing to sell or rent, refusing to negotiate for the sale or rental, or otherwise make unavailable, a dwelling because of an individual's national origin, in violation of Title 42 United States Code section 3604(a); (2) discriminating in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of an individual's national origin, in violation of Title 42 United States Code section 3605; and (3) coercing, intimidating, threatening, or interfering with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under the Fair Housing Act, in violation of Title 42 United States Code section 3617.

IT IS FURTHER ORDERED that Anibal and Janet Silva submit to training on the requirements of the Fair Housing Act as may be directed by the United States.

IT IS FURTHER ORDERED that Anibal and Janet Silva include references to the Fair Housing Act in all future advertisements for real-estate related transactions.

IT IS FURTHER ORDERED that for five years from the date the final judgment in this cause is signed, Anibal and Janet Silva report to the United States any real-estate related transactions they conduct, real-estate related employment they obtain, and housing discrimination complaints filed against them.

IT IS FURTHER ORDERED that Anibal and Janet Silva are enjoined and are to refrain from continuing to prosecute claims in *Silva v. Jaimes*, No. 07-90588-JM (Bankr. S.D. Cal. 2007) that are the same claims resolved against the Silvas in this action, and the Silvas are enjoined and are to refrain from filing any future claims of any sort against any aggrieved person or witness in this cause.

SIGNED this 17th day of July, 2008.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE