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Maximizing Damages in A Fair Housing Case, 26 J. Marshall L. Rev. 1 (1992)

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ARTICLES

FOREWORD—MAXIMIZING DAMAGES IN A FAIR HOUSING CASE

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Congress declared that “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”¹ That policy is enforced by laws. Notably Title VII of the Civil Rights Act, 42 U.S.C. Sections 3601-3619 and the Fair Housing Act of 1968, 42 U.S.C. Section 1982, as amended by the Fair Housing Amendments Act of 1988.

Between 1968 and 1989, the chief means of redress for victims of illegal discrimination were private civil suits. Since 1989, fair housing complainants have been able to bring their actions before an administrative law judge after the Department of Housing and Urban Development has conducted an investigation and found reasonable cause. However, private civil suits remain a clear, and sometimes preferred, alternative.

Whether in a full judicial or administrative proceeding, damages awarded to a complainant who proves the defendant violated the law serve an important public purpose. Damages are intended primarily to make the victim whole, to restore the rights denied and to compensate the victim for the suffering caused by the discrimination. When a tribunal awards significant damages, it not only compensates the victim but also serves as a lesson or a deterrent to other potential violators.

Some twenty-two years of experience in a private agency that provides legal representation to victims of discrimination, experience that encompasses more than 1,000 cases, confirms the importance of damages in the large scheme of fair housing enforcement. Monetary damages can never fully compensate the victim of discrimination. However, when damages take into account the full scope of the injury, they demonstrate that the courts and the nation take these injuries seriously. Further, damages send a warning to discriminators that violations can be costly.

The articles that follow were taken from the speeches at the Fair Housing Legal Seminar entitled “Maximizing Damages in a Fair Housing Case.” The seminar was sponsored by the John Mar-

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1. 42 U.S.C. § 3601 (1988).

shall Law School and the Leadership Council for Metropolitan Open Communities.² The speeches explore aspects of actual or compensatory damages in a Fair Housing case and how to prove them.

Judge Heifetz and Judge Heinz, outline the range of considerations that occupy the trier of fact in assessing damages. They focus on the most difficult, the intangible but real damages that are suffered by a person who is denied a basic need, shelter, because of a condition that she or he cannot change. The Judges argue that these injuries can never be presumed, but must be and can be proved in the courtroom.

Rogers and Kahn explain how to prove those damages. The authors use examples from other areas of tort law to instruct plaintiffs' attorneys in Fair Housing cases. They suggest that the wide variation in damage awards for pain and suffering in fair housing cases can be narrowed if practitioners fully understand the nature of their clients' injuries and become more effective in presenting evidence of those injuries at trial.

The other two articles explore the uncertain ground where facts and emotions, law and psychology, intersect. Dr. Heinrich, a psychologist, notes that attorneys' reliance on objectivity may limit their appreciation of the psychic hurt of their clients. The author suggests specific ways that psychologists or other social scientists may help in preparing and presenting a case.

Seng, Einhorn and Brown, all attorneys, take Heinrich's advice a step further. Using a case study approach with documents from an attorney, a victim and her psychologist, the authors vividly present the difficulties attorneys face in analyzing their clients' injuries. The very depth of the injury that the client is experiencing may hinder his or her ability to articulate these feelings to the attorney. An attorney who is intent on gathering facts may unintentionally discourage the client from communicating his or her real emotions. The psychologist may help the client to articulate and the attorney to understand the injury. The psychologist can then work with the attorney and client to present the full scope of injuries at trial.

Taken together, these authors have provided significant tools to advance the practice of Fair Housing law. Their recommendations, to this non-attorney fair housing activist, square with experience. I commend their teachings to the private bar, and particularly, to plaintiffs' attorneys in the full expectation that more vigorous and effective representation in claiming actual damages for victims of housing discrimination, will move this nation closer to the full realization of its declared policy of fair housing for all.

2. Maximizing Damages in a Fair Housing Case (May 1 and 2, 1992).