

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

AUDREY BANASZAK, P-1016-P)
MARY ANNE HUNTER, P-1017-P)
MICHELLE B. SCARBOROUGH, P-1024-P)
and CAROL ANN B. MERRIMAN, P-1042-P)
Complainants)
vs.)
ESTATE OF JOSEPHINE LAGEMAN,)
THOMPSON LAGEMAN, Trustee,)
and THOMPSON LAGEMAN, indi-)
vidually, and MARY LAGEMAN,)
individually,)
Respondents)

HISTORY OF THE CASE, FINDINGS OF FACT,
CONCLUSIONS OF LAW, COMMISSION'S DECISION
AND FINAL ORDER

HISTORY OF THE CASE

The above four-docketed individual complaints each charge the Respondents refused to permit them and women as a class to play golf at the Crafton Public Golf Course (hereafter the "golf course"), a place of public accommodations within the control of and supervision of the Respondents, in violation of §5(i)(1) and (2) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended (hereafter the "Act").

The Respondents were duly served with copies of the complaints and amended complaints but filed no answers. An investigation into the allegations of the complaints was made by representatives of the Pennsylvania Human Relations Commission (hereafter the "Commission") and a determination was made that there was probable cause to credit the allegations therein. Thereupon, the Commission endeavored to eliminate the unlawful practices complained of by conciliation. This endeavor was unsuccessful and on February 4, 1975 a Public Hearing was convened in Pittsburgh pursuant to §9 of the Act. The Hearing

Panel consisted of Commissioner Elizabeth M. Scott, Chairperson, and Commissioners Mary Donovan and Doris A. Smith. The Panel granted the application of Complainants' Counsel that the four complaints be consolidated.

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FINDINGS OF FACT, CONCLUSIONS OF
LAW, COMMISSION'S DECISION AND
FINAL ORDER

FINDINGS OF FACT

1. The Complainants are females.
 - A. Audrey Banaszak filed a complaint at Docket No. P-1016-P.
 - B. Mary Anne Hunter filed a complaint at Docket No. P-1017.
 - C. Carol Ann B. Merriman filed a complaint at Docket No. P-1042.
 - D. Michelle B. Scarborough filed a complaint at Docket No. P-1024-P.
2. The Respondent estate of Joseph Lageman includes the land now being operated as the Crafton Public Golf Course, Crafton, Pennsylvania in the County of Allegheny. (C-2)
3. The Respondent Thompson Lageman is the sole trustee of the estate of Josephine Lageman and as such has full authority and control over the policies and practices of the Crafton Public Golf Course. (C-2, C-3)

4. The Respondent Mary Lageman held herself out to the Commission representatives as being an owner of the Golf Course, purported to speak for the Golf Course when she enunciated to the Commission representatives the policy of the Golf Course with regard to the admission of women and conducted the business of the Golf Course. (T. 32-33)

5. The Respondents were duly served with notice of the Public Hearing. (C-1)

6. On two occasions some time in June of 1974, the Complainant Audrey Banaszak inquired at the Golf Course of persons conducting the business of the Course whether she could use the facilities of the Course. Each time she was told she could not because their policy prohibited women from using the Course. (T. 11-12) On another occasion she telephoned the Golf Course and was informed women could not play there. (T-12)

7. Some time in August of 1974 the Complainant Carol Ann B. Merriman telephoned the Golf Course and was told, upon her inquiry, that she would not be able to use the Course because no women were allowed. (T. 27)

8. The Golf Course is listed in the Yellow Pages of the Pittsburgh Telephone Directory under the heading, Golf Courses, Public. (C-4)

9. The Golf Course has a sign at its front entrance reading, "Men Only." (C-5), (T. 16, 33)

10. There are no membership requirements for males who patronize the Golf Course. (T. 20-21, 26-27)

11. The Respondent Mary Lageman admitted to a Commission investigator that the Golf Course did not permit women to play. (T. 33)

12. The Golf Course has maintained and maintains a policy and practice of denying use of its golf facilities to women.

13. The Complainants, Hunter and Scarborough, although duly served with notice, did not appear at the Public Hearing.

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CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Complainants and the Respondents and subject matter of the complaint under the Pennsylvania Human Relations Act.

2. The Crafton Public Golf Course is a place of public accommodations within the jurisdiction of the Pennsylvania Human Relations Commission.

3. The Commission has jurisdiction over complaints alleging a denial of any advantage, facility or privilege in a place of public accommodation because of sex.

4. The Respondents' conduct in advising the Complainants Banaszak and Merriman that they could not use the Golf Course because of their sex violated §5(i)(1) of the Act.

5. The Respondents' practice and policy of denying access to the Golf Course to women is a violation of § 5(i)(1) of the Act.

6. The Respondents' conduct in posting a sign at the entrance to its Course proclaiming it was open to "Men Only" violated §5(i)(2) of the Act.

7. The above-docketed complaints were timely filed with the Commission.

8. The conduct and policy and practice of Respondents found to be in violation of the Act are continuing violations.

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this 2nd day of June, 1975,
upon consideration of all the evidence presented at the
hearing on the above matter, and pursuant to the Findings of
Fact and the Conclusions of Law, the Hearing Commissioners recom-
mend to the entire Commission that an Order be entered
against the Respondents holding them in violation of
Section 5(i)(1) and (2) of the Pennsylvania Human Relations
Act and providing for appropriate relief.

Elizabeth M. Scott
Elizabeth M. Scott, Chairperson

Mary Dennis Donoyan
Mary Dennis Donoyan

Doris Smith
Doris Smith

COMMONWEALTH OF PENNSYLVANIA

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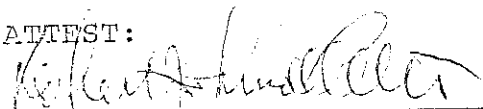
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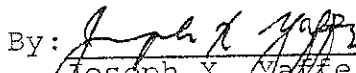
COMMISSION'S DECISION

AND NOW, this 2nd day of June, 1975,
upon the recommendation of the Hearing Commissioners and upon
all the evidence of the Public Hearing of this case, and in
consideration of the Findings of Fact and Conclusions of Law,
the Pennsylvania Human Relations Commission finds and determines
that the Respondents engaged in unlawful discriminatory prac-
tices in violation of Section 5(i)(1) and (2) of the Pennsylvania
Human Relations Act, Act of October 27, 1955, P. L. 744, as
amended, in that Respondents followed a policy and practice of
denying women use of the Crafton Public Golf Course and further-
more denied to the Complainants Audrey Banaszak and Carol Ann
B. Merriman the opportunity to use the Golf Course because
of their sex. The complaints of the Complainants Mary Anne
Hunter and Michelle B. Scarborough are dismissed for failure
of those Complainants to appear and testify at the Public
Hearing.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:


Dr. Robert Johnson Smith,
Secretary

By: 
Joseph X. Yaffie,
Chairperson

COMMONWEALTH OF PENNSYLVANIA

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vidually, and MARY LAGEMAN,)
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Respondents)

FINAL ORDER

AND NOW, this 2nd day of June, 1975,
upon consideration of the foregoing Findings of Fact, Conclusions
of Law, and Commission's Decision, and pursuant to the pro-
visions of Section 9 of the Pennsylvania Human Relations Act,
as amended, the Pennsylvania Human Relations Commission
hereby

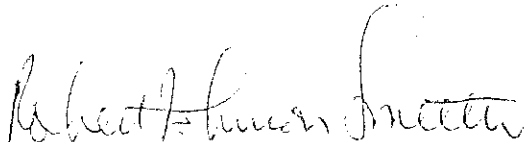
ORDERS:

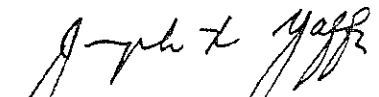
1. The Respondents shall forthwith cease and desist from denying any of the accommodations, advantages, facilities and privileges of the Crafton Public Golf Course to women.
2. The Respondents shall within 30 days of the effective date of this Final Order invite the Complainants Banaszak and Merriman to play golf at the Golf Course as the guests of the Golf Course at a time convenient to the Complainants.
3. Within one week of the effective date of this order, the Respondents shall place advertisements on the sport pages

of the Pittsburgh daily newspapers for a period of at least once a week for four consecutive weeks stating that the facilities of the Crafton Public Golf Course are open to all individuals without regard to their sex. Proof of compliance shall be submitted within thirty days to the Pittsburgh Regional Office of the Commission.

4. The Respondents shall forthwith remove the "Men Only" sign at the front entrance to the Golf Course and shall discontinue any other communications, oral or written, in any way indicating any limitation to the full and equal access to women of each and every accommodation, advantage, facility and privilege of the Golf Course.

5. The Respondents shall orally and in writing instruct all employees and agents of the Golf Course of its non-discriminatory policy toward women.


Robert Johnson Smith


Joseph X. Yaffe

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

Appeal No. 940 C.D. 1975

In Re: AUDREY BANASZAK, et al,
Appellees

v.

ESTATE OF JOSEPHINE LAGEMAN, et al,
Appellants

BRIEF FOR APPELLEES

Appeal from Order dated June 2, 1975
of the Pennsylvania Human Relations
Commission at Numbers P-1016-P,
P-1017-P, P-1024-P and P-1042-P

Sanford Kahn,
Gary L. Lancaster,
Attorneys for Appellees

Pennsylvania Human Relations Commission
Room 810, 4 Smithfield Street
Pittsburgh, Pennsylvania 15222

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Statutes:

The Pennsylvania Constitution:

Article 1, Section 26. 10

Article 1, Section 28. 9

Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended:

Section 2(a) 5,7,8

Section 2(b) 5,6,7,8

Section 3. 5,6,7,8

Section 5(i)(1). 4

Statutory Construction Act, Act of November 25, 1970, P.L. 707, as amended:

Section 1921 8

Section 1922 8,9,10

COUNTER-STATEMENT OF QUESTION INVOLVED

Whether the Pennsylvania Human Relations Commission in ordering the owner of a place of public accommodations to open its facilities to all regardless of sex has acted to fulfill the Legislative intent and purpose as promulgated in the Pennsylvania Human Relations Act.

COUNTER-HISTORY OF THE CASE

The four-docketed individual complaints each charge the Respondents refused to permit them and women as a class to play golf at the Crafton Public Golf Course, a place of public accommodations within the control of and supervision of the Respondents, in violation of §5(i)(1) and (2) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended.

The Respondents were duly served with copies of the complaints and amended complaints but filed no answers. An investigation into the allegations of the complaints was made by representatives of the Pennsylvania Human Relations Commission, and a determination was made that there was probable cause to credit the allegations therein. Thereupon, the Commission endeavored to eliminate the unlawful practices complained of by conciliation. This endeavor was unsuccessful and on February 4, 1975 a Public Hearing was convened in Pittsburgh pursuant to §9 of the Pennsylvania Human Relations Act. The Hearing Panel granted the application of Complainants' counsel that the four complaints be consolidated.

Testimony was taken of Complainants Ms. Audrey Banaszak and Ms. Carol Ann B. Merriman as to their attempts to gain access to the golf course but were refused because of their sex. Additional testimony was taken of Mr. Banaszak, as to the requirements for men who wanted to play on the course and from Pennsylvania Human Relations Commission Investigator Ronald Saunders as to statements made to him

by Respondent Mary Lageman. Several exhibits were introduced, including the Pittsburgh Yellow Pages, indicating that the Appellants have advertised Crafton Golf Course as a public golf course, and a photograph showing a "Men Only" sign being displayed at Respondents' facility.

On the basis of this evidence, the Hearing Panel made 13 Findings of Fact and 8 Conclusions of Law, finding the Respondents to be in violation of sections 5(i)(1) and 5(i)(2) of the Pennsylvania Human Relations Act by their refusal to permit women access to the golf course and their displaying the "Men Only" sign.

On June 2, 1975, the Commission issued a final order which directed the Respondents to end their discriminatory practices and to take specific steps to make known to their employees and the public at large the change in their policies. Complainants Scarborough and Hunter did not appear at the Hearing and gave no testimony, and their complaints were dismissed.

ARGUMENT

The Pennsylvania Human Relations Commission in directing that the Crafton Golf Course be opened to all without regard to sex was fulfilling the Legislature's intent by assuring the right of equal opportunity at places of public accommodations without regard to sex.

The Appellants unquestionably have followed a policy of denying to women the accommodations, advantages, facilities and privileges of its place of public accommodation, a public golf course.¹

Nevertheless, the Appellants urge that the Commission has acted erroneously in ordering them to change this practice and admit women, citing as authority Section 5(i)(1) of the Act. Section 5(i)(1) reads that it shall be an unlawful discriminatory practice:

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to:

(1) Refuse, withhold from, or deny to any person because of his race, color, religious

¹At no time throughout the history of this case, either during the investigation, the Public Hearing or on this appeal have the Appellants denied or placed in controversy the fact that the named Complainants and women as a class were refused admittance to the Crafton Golf Course by the Appellants solely because of their sex. In point of fact, the record shows that Appellant Mary Lageman openly stated to a Commission Investigator that women as a class were not permitted on the course. (R. 43a). Furthermore, at no time have the Appellants denied or placed into controversy the fact that a written notice was openly displayed at Appellants' facility, a notice to the effect that the golf course was restricted to use by men only. (R. 43a)(C5).

creed, ancestry, national origin, or handicap or disability, or to any person due to use of a guide dog because of the blindness of the user, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

It is readily apparent that this section does not include the word "sex"; however, this is not dispositive, for Sections 2(a), 2(b) and Section 3 of the Act all expressly include "sex" as a "protective class" in places of public accommodations. These provisions, Sections 2(a), 2(b) and 3, by implication and of necessity, place "sex" within the meaning of Section 5(i)(1).

The Act was amended in 1969 to add sex discrimination to the Commission's jurisdiction. Act of July 9, 1969, P.L. 133. At that time, Section 2(a) was amended and presently reads:

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, handicap or disability, use of guide dogs because of blindness of the user, age, sex or national origin is a matter of concern to the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury

to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants. (emphasis added)

At that time, Section 2(b) was amended and presently reads:

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, handicap or disability, use of guide dogs because of blindness of the user, age, sex or national origin, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights at places of public accommodation and to secure commercial housing regardless of race, color, religious creed, ancestry, sex, handicap or disability, use of guide dogs because of blindness of the user or national origin. (emphasis added)

At that time, Section 3 was amended and presently reads:

The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any place of public accommodation and of commercial housing without discrimination because of race, color, religious creed, ancestry, handicap or disability, age, sex or national origin are hereby recognized as and declared to be civil rights which shall be enforceable as set forth in this act. (emphasis added)

Thus, it is evident that the Legislature in promulgating the 1969 Amendment intended to address itself to sex discrimination not

only in the areas of commercial housing and employment, but also in places of public accommodations, and has declared it to be the public policy of the Commonwealth to assure equal opportunity to all individuals regardless of sex and to safeguard their rights in places of public accommodations.

In Section 3, the Legislature has declared that the opportunity for an individual to, among other things, obtain all of the accommodations, facilities, and privileges of any place of public accommodation without discrimination because of sex is a civil right and enforceable as set forth in the Act. Thus, in Sections 2(a), 2(b) and 3, the Legislature has expressed its intent to insure the rights of all individuals to frequent places of public accommodations without regard to their sex. Yet the Appellants urge that this thrice repeated, unequivocally-stated intent of the Legislature be read out of the Act and viewed as totally non-existent.

The Pennsylvania Supreme Court, while the issue before it was one of race discrimination rather than sex discrimination, read the Pennsylvania Human Relations Act as prohibiting sex discrimination in places of public accommodations.

"So long as the non-sectarian cemetery holds that status, it may not, and could not, legally, as a place of public accommodation, discriminate on the basis of ...race, color, religious creed, ancestry, use of guide dog because of blindness of the user, age, sex, or national origin. Pennsylvania Human Relations Act, supra, at Section 2(a)." (emphasis supplied) Pennsylvania Human Relations Commission v. Alto Reste Park Cemetery Association, 306 A.2d 881 at 887 (1973)

The Statutory Construction Act restates the long-established rules for a reviewing court in dealing with this kind of an issue:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intentions of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions. 1 Pa.S. § 1921(a).

The interpretation urged by the Appellants would clearly violate the intent of the General Assembly and frustrate, not effectuate, this intent.

Appellants have not addressed themselves to Sections 2 and 3 of the Act, for under their construction, the Commission - and the Court - must read those provisions out of the Act. The Commission, under the express terms of its mandate, may not do so. See Section 6 of the Act. Nor may the court deem the Legislature to intend that its language be superfluous and without import. Daly v. Hemphill, 411 Pa. 263 (1967).

The Statutory Construction Act sets forth various presumptions which a court may use in seeking to ascertain the intent of the Legislature. 1 Pa.S. § 1922. Several are apposite here:

(1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.

It is submitted that in the face of the emphatic language of Sections 2 and 3 of the Pennsylvania Human Relations Act, the construction urged by the Appellants would be both absurd and unreasonable, for it would be illogical to conclude that the Legislature,

in declaring the public policy of the Commonwealth as being to assure the equal opportunity for all individuals regardless of sex at places of public accommodations, and that this equal opportunity is a civil right, intended that the continual denial of that equal opportunity be permitted to go unchecked. Moreover, it would be equally illogical to conclude that the Legislature, by making such assurances of equal opportunity within the text of the Pennsylvania Human Relations Act, intended that an individual who was denied that opportunity have no recourse to the Pennsylvania Human Relations Commission or that the Commission be ineffectual in eliminating such practices where they are found to exist.

(2) That the General Assembly intended the entire statute to be effective and certain.

As already noted, the construction urged by Appellants would completely eliminate significant provisions of the statute.

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

Two provisions of the Pennsylvania Constitution also provide clear guidance in considering this issue. Section 26 of Article 1 declares:

Neither the Commonwealth nor the political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

And Section 28 of Article 1, adopted in 1971, declares:

Equality of rights under the law shall not be denied or abridged because of the sex of the individuals.

Clearly, Section 28 of Article 1 must be read as a Legislative act correcting, to the extent that it was necessary, any prior Legislative oversight. Moreover, given the fact that the opportunity for an individual, including women, to obtain all of the accommodations, advantages, facilities and privileges of any place of public accommodation has been declared to be a civil right in Section 3; were the Act read as not prohibiting the Appellants' discriminatory practices, the result would be that a man's right to use Appellants' place of public accommodation would be observed but a woman's right would be denied, denied solely because of her sex. This interpretation would appear to be violative of Section 26 of Article 1 of the Pennsylvania Constitution.

Finally, a fourth rule of statutory construction provides:

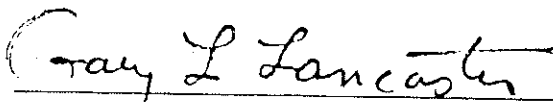
(5) That the General Assembly intends to favor the public interest against any private interest.

The public interest in eliminating the vestiges of discrimination has been expressed in the most explicit terms by the General Assembly and recited above. Clearly, the interest of the Appellants, in denying women their statutory right to frequent a place of public accommodation without regard to sex, must be subjugated to that of the public.

CONCLUSION

The Pennsylvania Human Relations Commission in directing the Appellants to open its facilities to all without regard to sex was carrying out the Legislative intent and the purpose as embodied in the Pennsylvania Human Relations Act. The Commission has acted to assure the right to equal opportunity at places of public accommodations without regard to sex, that right is found within the text of the Pennsylvania Human Relations Act and has been reiterated by the Pennsylvania Constitution. Therefore, Appellee requests that this Court affirm the final order of the Pennsylvania Human Relations Commission in this case.

Respectfully submitted,



Gary I. Lancaster