

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**KATHLEEN BURNS (nee: GREEN), Complainant**

**v.**

**NICHOLAS CONSTRUCTION CO., INC.; SPRINGFIELD BRICKWORKS, INC.;  
HUGO CERITANO; VINCENT CERITANO AND ANN CERITANO, Respondents**

**Docket No. E-34574**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

**FINAL ORDER**

**FINDINGS OF FACT**

To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony  
C.E. Complainants' Exhibit

1. The Complainant herein is Kathleen Burns, nee Green, an adult female (hereinafter either "Burns" or "Complainant"). (N.T. 24-25; C.E. #3)
2. The Respondents herein are:
  - a. Nicholas Construction Co., Inc.;

- b. Springfield Brickworks, Inc.;
  - c. Hugo Ceritano;
  - d. Vincent Ceritano; and
  - e. Ann Ceritano (C.E. #3; C.E. #6)
3. In 1985, Springfield Brickworks, Inc. appropriated for use the name Nicholas Construction Co. and filed with the Pa. Department of State its intention to trade as Nicholas Construction Co. (C.E. 12)
  4. Springfield Brickworks Inc. had two listed shareholders, Vincent Ceritano and Ann Ceritano. (C.E. 12)
  5. Subsequent to the filing of the present matter Nicholas Construction Co. ceased doing business. (C.E. 1)
  6. Between the time of the filing of this complaint and approximately August 1988, Hugo Ceritano continually represented himself as duly authorized to represent Nicholas Construction Co.'s interest. (N.T. 68, 79-80)
  7. In early September 1985, Hugo Ceritano interviewed Burns for a secretarial position with Nicholas Construction Co. (N.T. 27)
  8. On September 19, 1985, Hugo Ceritano hired Burns to answer phones, make up weekly payrolls, and do light typing as needed. (N.T. 27, 28)
  9. Burns worked half a day September 19, 1985, and a full day September 20, 1985, after which time, Burns decided not to return to work for Nicholas Construction Co. (N.T. 27, 34, 46, 47)
  10. On September 20, 1985, Hugo Ceritano repeatedly subjected Burns to blatant sexual advances, requests for sexual favors, and conversation of a sexual nature all of which was unwanted by Burns, who had communicated her objection to such conduct to Hugo Ceritano several times. (N.T. 36-46)
  11. The paradigm of repeated, unwelcome sexual conduct caused Burns to resolve not to return to work after September 20, 1985. (N.T. 47)
  12. Burns' resignation was reasonable because Hugo Ceritano's discriminatory actions had made Burns' working conditions so difficult that any reasonable person in her position would have also felt compelled to resign. (N.T. 36-46)
  13. After leaving Nicholas Construction Co. Burns made immediate efforts to secure alternative employment. (N.T. 50)
  14. On October 11, 1985, Burns secured alternative employment in a job which paid more than she had been making with Nicholas Construction Co. (N.T. 50-51)
  15. Burns' lost wages between September 21, 1985 and October 11, 1985 were \$490.00. (N.T. 32, 50)

#### **PROPOSED CONCLUSIONS OF LAW**

1. Under the Pennsylvania Human Relations Act ("PHRA"), the Pennsylvania Human Relations Commission, ("PHRC"), has jurisdiction over the Complainant, the Respondents and the subject matter of the complaint.
2. The parties and the PHRC have fully complied with the procedural prerequisites to a Public Hearing in this matter.
3. Springfield Brickworks, Inc., operating under the fictitious name Nicholas Construction Co., Inc., is an "employer" within the meaning of Sections 4(b) and 5(a) of the PHRA.

4. Respondent Hugo Ceritano is a "person" within the meaning of Sections 4(a) and 5(e) of the PHRA.
5. Burns is an "individual" within the meaning of Section 5(a) of the PHRA.
6. Burns' complaint and amended complaint satisfy the filing requirements found in Section 9 of PHRA.
7. Burns presented un rebutted credible evidence which establishes by a preponderance of the evidence that while employed by Nicholas Construction Co., Inc. on September 20, 1985, she was sexually harassed by Hugo Ceritano.
8. The evidence presented also establishes by a preponderance of the evidence that the circumstances surrounding the discriminatory conduct engaged in by Hugo Ceritano justifies the conclusion that Burns' resignation amounted to a constructive discharge.
9. Nicholas Construction Co., Inc. is responsible for Hugo Ceritano's unlawful sexual harassment of Burns regardless of whether Hugo Ceritano's actions were forbidden and regardless of whether Nicholas Construction Co., Inc. knew or should have known of their occurrence.
10. The PHRC has the power to order a Respondent, whether or not an employer of a Complainant, to compensate a complainant for lost wages where a Respondent is found to be responsible for the loss through an unlawful discriminatory practice.
11. Hugo Ceritano's actions were directly responsible for Burns' financial loss of wages between September 21, 1985 and October 11, 1985.

#### **OPINION**

This case arises on a complaint filed by Kathleen Burns, (hereinafter either "Burns" or "Complainant"), against Nicholas Construction Co., Inc. with the Pennsylvania Human Relations Commission. In her complaint filed on or about September 26, 1985, Burns, in effect, alleged sexual harassment which created a hostile working environment which caused her resignation. On two subsequent occasions, Burns amended her complaint. The second amendment changed the name of the original Respondent to Nicholas Construction Co. Inc., and added as Respondents, Springfield Brickworks, Inc., Vincent Ceritano, Hugo Ceritano, and Ann Ceritano. Additionally, the Complainant added a Section 5(e) allegation against Respondent, Hugo Ceritano. Thus, the Complainant's complaint alleges violations of Sections 5(a) and 5(e) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. ("PHRA").

PHRC staff had investigated the original allegations and determined that probable cause existed to credit the Complainant's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion, but such efforts proved unsuccessful. Following the amendment of the complaint, further conciliation efforts were attempted but failed and all Respondents were notified that the PHRC had scheduled a Public Hearing.

The Public Hearing was held on October 10, 1989 in Media, PA, before Hearing Examiner Carl H. Summerson. The case on behalf of the Complaint was presented by PHRC staff attorney Michael Hardiman. All named Respondents failed to appear at the Public Hearing and consistent with 16 Pa. Code §42.105 (a) and (b), proof of notice to the Respondents was entered upon the record and the hearing proceeded in their absence. Following the Public Hearing, all parties had

an opportunity to review the hearing transcript and submit a brief. Only PHRC regional attorney Michael Hardiman submitted a post hearing brief which was received on December 4, 1989.

In this case, Burns credibly testified that in early September 1985, after becoming aware of an open position, Burns applied for a secretarial position with Nicholas Construction Co., Inc. and was interviewed by Hugo Ceritano. During the interview, Hugo Ceritano advised Burns that the job included answering the telephone, preparing the payroll and doing typing as necessary. Also, during the interview, Hugo Ceritano described himself as being "in charge" of the company and the "head" of it. The interview was held in the office where the person selected would be working. The one room office was furnished with two desks and a couch. The desks were located not more than several feet apart and were to be occupied by Hugo Ceritano and the individual selected for the position.

After the interview, Burns did not hear anything for several weeks. Then on September 19, 1985 Burns, who was then working for a temporary agency, learned that Nicholas Construction Co., Inc. wanted to hire her for a full time position starting that same afternoon. Burns accepted the job offer made by Hugo Ceritano and began working around 2:00 p.m. on September 19. On her first day, Hugo Ceritano instructed Burns how to make up the payroll, which she did. The following day, Burns returned to work at approximately 9:00 a.m. Hugo Ceritano arrived, around 9:15 a.m. Later that morning, Hugo Ceritano advised Burns that he wanted to take her to a job site so she could see firsthand what the company did. Hugo Ceritano drove to the job site in question, however, on the way there, Hugo Ceritano stopped for breakfast. At the restaurant, Hugo Ceritano began talking to Burns about how "girls" can make extra money. Hugo Ceritano also inquired of Burns about her family and the fact that the Complainant was engaged. Burns testified that Hugo Ceritano's remarks appeared to be sexual in nature and that she told him that she was not "that kind of a girl." Upon resuming their journey to the job site, Hugo Ceritano's conversation became more sexually explicit. He told Burns things like she could become a "call girl" and could make a lot of money. He also told Burns how he had paid prior employees for sexual favors. Additionally, Hugo Ceritano offensively touched Burns' thigh and attempted to tickle her. Burns made it clear this conduct was offensive and unwanted. At the job site, Hugo Ceritano told Burns that he could set her up in one of the townhouses under construction. Further he told her she could use the townhouse as a "call girl" and from there provide sexual services to him and others.

Upon returning to the office with Hugo Ceritano, his sexually explicit conversations continued. For example, Burns testified that Hugo Ceritano told her that he feared diseases associated with hiring prostitutes and that he would rather pay his secretary than expose himself to disease by going to Atlantic City and paying a prostitute. Hugo Ceritano explicitly repeated stories of his sexual experiences with prior secretaries.

In the office, Hugo Ceritano also specifically propositioned Burns. Several times, Hugo Ceritano told Burns that he would pay her one hundred dollars to perform oral sex. Hugo Ceritano's actual language was quite blunt and crude. He also rudely told Burns that they could have intercourse in such a way that it would not be "like you are cheating." Sordidly, Hugo Ceritano suggested that Burns should treat sex like a job that would financially help her family. Hugo Ceritano also handed Burns a very large sum of money and stated that she could have it if she would agree to

his request for sexual favors. Hugo Ceritano even attempted to rub Burns' shoulders and put his hands on her back. These sordid incidents occurred despite the fact that Burns had continually advised Hugo Ceritano that she had no interest in any of his propositions. Burns remained on the job until her 5:00 p.m. quitting time indicating that she was afraid to leave because Hugo Ceritano had thoroughly intimidated her.

Once Burns had left the office, and reflected on the day's events, Burns sat down and cried realizing just how horrible the day's events had been. Burns then decided that she would not return to work. Burns had every reason to believe that, had she returned to a small office occupied Only by Hugo Ceritano and herself, the offensive conduct would have been repeated.

Burns made immediate efforts to find alternative work after deciding not to go back to Nicholas Construction Co., Inc. Approximately three weeks later Burns found substitute employment. Burns started her new job on October 11, 1985 at an hourly wage rate of \$5.50 per hour. While employed at Nicholas Construction Co., Inc. Burns rate of pay was \$5.00 an hour.

From Burns' un rebutted credible testimony about the incidents occurring on September 20, 1985, clearly a factual prima facie case of both sexual harassment and constructive discharge have been shown; namely, that she is a female; that she was subjected to verbal sexual advances, lewd sexual comments, innuendos and gestures, and other derogatory or degrading acts; and that due to such advances, comments, innuendos and gestures, Burns was forced to terminate her employment with Nicholas Construction Co., Inc.

The PHRC has promulgated guidelines on sexual harassment. Pa. B. Doc. No. 81-201, filed January 30, 1981. The sexual harassment guidelines serve to reaffirm the PHRC's position that sexual harassment is an unlawful employment practice under Section 5 of the PHRA.

The guidelines indicate that:

“Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”

Of the three listed criteria for determining whether an action constitutes unlawful behavior, Burns' testimony falls within categories one and three of the guidelines.

Under the PHRA, employees should be afforded a working environment free from discriminatory intimidation and harassment based on sex. Therefore, Nicholas Construction Co., Inc., breached its affirmative duty to maintain a workplace free of sexual harassment and intimidation. In fact, here, Burns described a working environment so polluted with highly noxious practices that we find not only sexual harassment, but working conditions were and would have continued to be so difficult, in fact intolerable for Burns, that any reasonable person

in her position would have also felt compelled to resign. Accordingly, Burns makes out a strong case of constructive discharge.

Since, although given every opportunity to do so, no Respondent attended the Public Hearing, liability may be assessed. The remaining question is against whom liability should be levied since there are five named Respondents: Two corporate entities and three individuals.

Attorney Hardiman's brief argues that all named Respondents should be held accountable. Under the circumstances presented, we disagree.

Clearly, both named corporate entities are liable since under Section (c) of the PHRC sexual harassment guidelines, employers are "responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence."

Here, although there appears to be some dispute regarding his exact corporate relationship, Hugo Ceritano was, in any event, sufficiently affiliated with the named corporate entities and exercised a supervisory capacity over Burns during her short employment with Nicholas Construction Co., Inc.

Equally clear is the direct liability which attaches to Hugo Ceritano. Attorney Hardiman's brief cites the Pa. Supreme Court case of PHRC v. Transit Casualty Insurance Co., 478 Pa. 430,387 A.2d 58 (1978), in which the court indicated that the PHRC has authority to require a Respondent, whether or not that Respondent is an employer of the Complainant, to pay backpay to a Complainant where that Respondent was responsible for the discrimination that occurred.

Here, no question remains regarding precisely who was directly responsible for the horrible experience to which Burns was subjected.

Regarding Vincent and Ann Ceritano, the remaining individually named Respondents, the picture is not as clear. Attorney Hardiman's brief suggests that these two individuals should be secondarily liable and seems to fully rely upon the PHRC's broad equitable power to fashion remedies for assessment of liability against Vincent and Ann Ceritano.

A careful review of the documentary evidence presented reveals an interesting situation regarding Ann Ceritano's involvement. Complainant Exhibit 13 contains an expired driver's license of Ann Ceritano. On this license and in a letter from her dated August 17, 1989 her signature appears. When these signatures are compared to a signature purporting to be Ann Ceritano's found on a Corporation Bureau Fictitious Name Registration Form, contained in Complainant Exhibit 12, the signatures clearly appear to have been executed by two different people. Upon further inspection, the signature in Exhibit 12, purporting to be Ann Ceritano's, is quite similar to Hugo Ceritano's signatures which frequently appears in some of the exhibits submitted. This apparent discrepancy poses the question of whether Ann Ceritano had even been fully aware that she was listed as a shareholder of Nicholas Construction Co., Inc.

Further, considering the legal principle articulated in Transit Casualty Supra., the Pa. Supreme Court ruled that the PHRC could require non-employer Respondents to pay backpay when that person was responsible for the acts of discrimination. Nothing in this record suggests that Ann Ceritano was in any way responsible for the September 20, 1985 actions of Hugo Ceritano. In fact, as the wife of Hugo Ceritano, common sense dictates that Ann Ceritano would not have in any way condoned Hugo Ceritano's discriminatory behavior.

Regarding Vincent Ceritano, again, the present record contains nothing in support of the position that as only an owner and shareholder, he was in some way responsible for Hugo Ceritano's actions. Clearly, of the five named Respondents, those which should be required to pay Burns' lost wages are Springfield Brickworks, Inc., Nicholas Construction Co., Inc., and Hugo Ceritano.

Burns may seek full recovery either individually from anyone of these Respondents or through any combination of these Respondents up to the amount of her lost wages. Attorney Hardiman's brief accurately calculated Burns' lost wages as \$490.00. Accordingly, an appropriate Order follows.

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**KATHLEEN BURNS (nee: GREEN), Complainant**

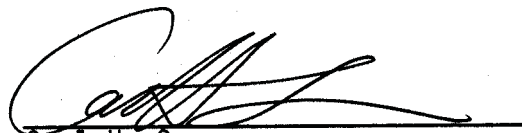
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**Docket No. E-34574**

**RECOMMENDATION OF THE PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that accordingly, the Complainant has proven discrimination in violation of §5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law and Opinion be Approved and Adopted by the full Pennsylvania Human Relations Commission. If so Approved and Adopted the Permanent Hearing Examiner recommends issuance of the Attached Final Order.

  
Carl H. Summerson  
Permanent Hearing Examiner



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Docket No. E-34574

FINAL ORDER

AND NOW this 21<sup>st</sup> day of December, 1989, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law and Opinion as its own finding in this matter and incorporates the Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

1. Respondents, Springfield Brickworks, Inc., Nicholas Construction Co., Inc., and/or Hugo Ceritano, either individually or collectively, shall pay Complainant, within 30 days of the effective date of this Order, the lump sum of \$490.00 being the total of her lost wages between her constructive discharge on September 20, 1985 and October 11, 1985, when she found substitute employment.
2. In addition, the Respondents named in paragraph 1 above, either individually or collectively, shall pay Complainant interest of 6% per annum on the amount specified in paragraph 1 above, calculated from October 11 of 1985 until such time as payment is made.
3. Within 30 days of the effective date of this Order, the appropriate Respondent(s) shall report on the manner of compliance with the terms of this Order by letter addressed to Michael Hardiman, Esquire, at the Commission's Philadelphia Regional Office, 711 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Thomas L. McGinn, Jr.  
Thomas L. McGinn, Jr., Chairperson

ATTEST:

BY: Raquel Otero de Yiengst  
Raquel Otero de Yiengst, Secretary