

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**CHRISTINA DIDION and ANDREA RAMIREZ, Complainants**

**v.**

**PATRICK RUTKOWSKI, Respondent**

**DOCKET NOS. H6045, H6059**

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

**FINDINGS OF FACT \***

1. The Complainants herein are Andrea Ramirez, a Mexican female, and Christina Didion, a white female.
2. The Respondent herein is Patrick Rutkowski, a white male.
3. On or about August 8, 1993, Complainants were looking for an apartment to rent. (NT 26.)
4. The Complainants responded to an advertisement for a two-bedroom apartment owned by Respondent. (NT 26 and CE 19.)
5. The apartment was located at 448 East 14th Street in Erie, Pennsylvania. (NT 27.)
6. Both of the Complainants looked at the apartment and decided they wished to rent it. (NT 27.)
7. The Complainants filled out an application, paid a pro-rated rent and were told by Respondent that they could rent the apartment. (NT 27.)

8. Complainant Didion further informed the Respondent that she had a boyfriend who would occasionally be visiting her at the apartment. (NT 28.)

\* 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:

CE Complainants' Exhibit  
NT Notes of Testimony  
RE Respondent's Exhibit

9. On or about August 8, 1993, Respondent drove the Complainants to Pennsylvania Electric Company ("Penelec") to process the transfer of utilities at the apartment to the Complainants. (NT 30.)

10. While driving to Penelec, the Respondent made a racial remark when he saw a Caucasian woman with a bi-racial child. (NT 42.)

11. The racial remark by the Respondent was that "[She is] a nigger-loving bitch." (NT 42.)

12. At that time both Complainants asked to be dropped off, and told Respondent that they would catch a bus from that point. (NT 42-43.)

13. On or about August 8, 1993, Complainant Didion's friend, a black male, visited the apartment. (NT 36.)

14. When Respondent discovered that the boyfriend was looking for Complainant Didion, Respondent slammed the door and walked away. (NT 36.)

15. On or about August 9, 1993, both Complainants had purchased grocery items and were ready to move in. (NT 43.)

16. Both Complainants went to the apartment accompanied by Ormondo Ramirez, father of Complainant Ramirez. (NT 43.)

17. When Complainant Ramirez and her father arrived at the apartment, they were approached by the Respondent. (NT 43.)

18. The Respondent told Complainant Ramirez and her father that both Complainants already had problems. (NT 43.)

19. The Respondent told Mr. Ramirez and his daughter to tell Complainant Didion that "No niggers [are] allowed", "It [is] bad for the other tenants to have them around", and that "I don't like black people." (NT 58.)

20. During the course of this conversation, the Respondent complained that, "There had been three black guys here already." (NT 46.)

21. At some point in the conversation, Complainant went to use the telephone. (NT 34.)
22. Upon returning, the Respondent said, "She probably used my phone to call those niggers." (NT 34.)
23. At the time of this complaint, there was a sign on Respondent's property which said, "No glass objects, diving and niggers." (NT 52, 56.)
24. Complainant Ramirez's father took pictures of the sign. (NT 55.)

## **CONCLUSIONS OF LAW**

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties in this case.
2. The PHRC has jurisdiction over the subject matter of the complaint under the Pennsylvania Human Relations Act ("PHRA").
3. The parties and the PHRC have complied with the procedural prerequisites to a public hearing.
4. The Complainants and Respondent are persons within the meaning of the PHRA.
5. The property which the Complainants rented was a housing accommodation within the meaning of the PHRA.
6. The Complainants presented direct evidence of a violation of Sections 5(h)(1), 5(h)(3), 5(h)(5), and 5(h)(6) of the PHRA.
7. The Complainants have met their ultimate burden of persuasion that the Respondent's actions violated Sections 5(h)(1), 5(h)(3), 5(h)(5), and 5(h)(6) of the PHRA.
8. Upon a finding of unlawful discrimination, the PHRC has the authority to issue an order, including actual damages, as well as damages for embarrassment and humiliation, a cease and desist order, and any other affirmative action as justice may require under the PHRA.

## **OPINION**

On October 29, 1993, two complaints were filed with the Pennsylvania Human Relations Commission ("PHRC") by Complainants Christina Didion and Andrea Ramirez (Docket Nos. H-6059 and H-6045) against Patrick Rutkowski ("Respondent"), alleging that the Respondent violated Sections 5(h)(1), (3) and (6) of the Pennsylvania Human Relations Act ("PHRA"). In their complaints, the Complainants allege that the Respondent discriminated against them by constructively evicting them from an apartment because of the race of Complainants' boyfriends, black.

The PHRC investigated the Complainants' allegations and, at the conclusion of the investigation, informed the Respondent that probable cause existed to credit the Complainants' allegations. Thereafter the PHRC attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently the PHRC notified

the parties that it had approved a public hearing in this matter. (Both complaints were consolidated for the public hearing at the pre-hearing conference.)

A public hearing was held on October 1, 1996, before Permanent Hearing Examiner Phillip A. Ayers. The Commission's interest in this matter was overseen by the PHRC Housing Division's Assistant Chief Counsel Jonathan J. Williams. The Respondent, although mailed notice of the public hearing, did not attend. (Even though Respondent answered the instant complaints, he chose not to attend the fact-finding conference, pre-hearing conference, or public hearing.)

Although Respondent chose not to participate in this process, it is necessary to go through the elements of the specific allegations. Section 5(h) of the PHRA states, in pertinent part, "It shall be an unlawful discriminatory practice . . . [f]or any person to . . . (1) Refuse to . . . lease. . . or otherwise deny or withhold any housing accommodation. . . from any person because of the race . . . of any person. . . occupant or user of such housing accommodation . . .

(3) Discriminate against any person in the terms or conditions of . . . leasing any housing accommodation. . . or in furnishing facilities, services or privileges in connection with the . . . occupancy or use of any housing accommodation. . . because of the race. . . of any person . . .

(5) Print, publish or circulate any statement or advertisement: (i) relating to the . . . lease. . . of any housing accommodation. . . which indicates any preference, limitation, specification, or discrimination based upon race [or] color. . .

(6) Make any inquiry, elicit any information, make or keep any record or use any form of application, continuing questions or entries concerning race [or] color. . . in connection with the . . . lease of any housing accommodation.

Firstly, we will review Respondent's conduct in light of Section 5(h)(1) of the PHRA. In the instant case, the facts are very clear. The Respondent not only advertised that an apartment was available, but then rented it to the Complainants. Clearly, after the discovery of the race of Complainant Didion's boyfriend, the Respondent indicated that there were problems, and no "n—rs" would be allowed in the apartment building. The Respondent, by his actions, constructively denied the Complainants housing because of the race of the boyfriend, and therefore violated Section 5(h)(1) of the PHRA.

Secondly, Respondent's conduct discriminates in the "terms of leasing" the apartment, which is a violation of Section 5(h)(3) of the PHRA. Once again, after the Respondent became aware of Complainant Didion's boyfriend being black (Complainant Ramirez's boyfriend was also black), Respondent then imposed a rule that the boyfriends would not be allowed in the building. The instant fact situation is similar to that raised in *Woods-Drake v. Lundy*, 667 F.2d 1198, 1199 (1982). In that case, the plaintiffs were white tenants who brought an action under the Fair Housing Act alleging that the landlord evicted them because they had black visitors in their apartment. The court in *Lundy* decided that when a landlord imposes on white tenants a rule that they may rent only if they agree not to receive blacks as guests, then the landlord has discriminated in the "terms, conditions and privileges of rental" on the basis of race. Clearly the *Lundy* case mirrors the facts of the instant case. Consequently, Respondent's conduct violates Section 5(h)(3) of the PHRA.

Next, Respondent's conduct violates Section 5(h)(5) of the PHRA. Section 5(h)(5) provides that, "It shall be an unlawful discriminatory practice. . . for any person to publish or circulate any statement or advertisement: (i) relating to the . . . lease. . . of any housing accommodation. . . which indicates any preference, limitation, specification, or discrimination based upon race [or] color." In this case the Respondent displayed a sign in the swimming pool area indicating that no "n—rs" were allowed in the area. (CE 4.) The record reveals that the swimming pool is part of the Respondent's apartment complex. The sign certainly indicated that blacks were not welcome at the complex.

Lastly, Respondent's conduct violates Section 5(h)(6) of the PHRA. It is an unlawful practice to "make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions concerning race [or] color." The Respondent in the instant case certainly elicited information as to the race of the Complainants' boyfriends. At the bottom of the rental application, Respondent noted whether the Complainants had boyfriends.

## **REMEDY**

First, the Complainants are seeking a cease and desist order against the Respondent. Also the Complainants are seeking damages for humiliation and embarrassment, and out-of-pocket expenses caused by the discriminatory actions of the Respondent.

Section 9(f)(1) of the PHRA provides that when a respondent is found to have engaged in an unlawful discriminatory practice, the Commission may issue an order which requires a respondent to cease and desist from unlawful discrimination. Such an order may include "such affirmative action" and, in housing discrimination cases only, "actual damages, including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the purpose of [the PHRA] . . ." Additionally, Section 9(f)(2) authorizes the assessment of a civil penalty "in an amount not exceeding ten thousand dollars. . ."

A monetary award to Complainants may be based on consideration of humiliation and embarrassment caused by Respondent's actions. Humiliation and embarrassment can be inferred from the circumstances, as well as established by testimony. *Seaton v. Sky Realty Co., Inc., et al.*, 491 F.2d 634, 636 (7th Cir. 1974). The most important factor in determining an award for humiliation and embarrassment is the victim's reaction to the discriminatory conduct. *HUD v. Banai*, 2 FHFL, ¶25,095 (HUD ALJ February 1995). In the instant case, the record is somewhat sparse regarding the exact nature of both Complainants' reactions to the Respondent's conduct. The essence of Commission Counsel's questioning of Complainant Didion elicited the testimony that she "cried a lot," "[was] embarrassed," and "could not believe what was happening to [her]." Complainant Ramirez also indicated that she cried as a result of Respondent's conduct. While the questioning at hearing did not elicit a fully detailed picture of the Complainants' humiliation and embarrassment, the Complainants did generally describe their reactions as embarrassed and hurt.

A damage award cannot fully compensate a victim of discrimination, and it is inherently difficult to measure an amount which will ease a victim's hurt feelings or humiliation. Our task is to make an appropriate transformation of Complainants' testimony into quantitative relief. Therefore, considering the record as a whole, it is reasonable and fair to award each Complainant Six Thousand Dollars (\$6,000.00) for the humiliation suffered as a result of the Respondent's conduct. An award

for humiliation and embarrassment is not intended to be a windfall but, rather, to make the Complainants whole for the distress they suffered.

Next, the Complainants request damages for expenses that would not have arisen but for the Respondent's discrimination. Both Complainants testified credibly as to the damages and presented documents which verified the amounts. Clearly, since the Respondent chose to ignore the public hearing, there is no evidence in the record to the contrary. The damages include:

(1)	Pro-rated rent	\$ 204.00
(2)	Pennsylvania Electric Co. statement	10.94
(3)	Rent paid at another location	<u>800.00</u>
	TOTAL Out-of-Pocket Expenses	\$1,014.94

Next, we move to the issue of an appropriate civil penalty. In attempting to vindicate the public interest, the PHRA authorizes the imposition of a civil penalty upon a respondent who has violated the PHRA. Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the degree of the respondent's culpability; (3) the goal of deterrence; (4) whether a respondent has previously been found to have committed unlawful housing discrimination; and (5) a respondent's financial resources. See, e.g., *HUD v. Jerrard*, 2 FHFL ¶25,005 (HUD ALJ Sept. 28, 1990); *HUD v. Blackwell*, 2 FHFL ¶25,001 (HUD ALJ Dec. 21, 1989). In the instant case, the Respondent's unlawful conduct, coupled with his use of a vile racial slur, is clearly violative of the PHRA. Also, Respondent's unwillingness to comply with the Commission's notices and process indicates his utter disregard for the letter of the law. Therefore, a civil penalty shall be imposed upon the Respondent in the amount of Ten Thousand Dollars (\$10,000.00).

An appropriate Final Order follows.

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**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainants have proven discrimination in violation of Section 5 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.

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**FINAL ORDER**

**AND NOW**, this 21st day of April, 1998, 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 findings in this matter and incorporates same into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

**ORDERS**

1. That the Respondent shall cease and desist from race-based discrimination with regard to rentals, housing conditions, eliciting information and publishing statements.
2. That Respondent shall comply with the PHRA and shall take the following affirmative actions which, in the judgment of the Commission, will effectuate the purpose of the Act:
  - a. offer full, equal, non-discriminatory assistance, without regard to race, to all such persons who come to the Respondent seeking assistance regarding housing accommodation or commercial property;
  - b. issue written instructions immediately reciting paragraph 1 of this Final Order to any employees, as well as directing them to abide by this Order and comply with the Act;
  - c. furnish the Commission with a copy of said instructions within ten days of the effective date of the Order;
  - d. post all appropriate notices including, but not limited to, the Fair Housing Practices Notice, citing the provisions of the Act relating to housing, in a conspicuous and well-lighted place where both present and prospective customers and clients will normally see it and be able to read it; and
  - e. remove all signs, pictures, notices and/or posters containing racial or ethnic slurs.



3. That the Respondent shall pay to each Complainant the lump sum of \$6,000.00 in compensatory damages for the humiliation they suffered.
4. That the Respondent shall pay to Complainant Ramirez an additional \$929.47, and to Complainant Didion an additional \$85.47, to reimburse them for expenses incurred as a result of Respondent's actions.
5. That, within thirty days of the effective date of this Order, the Respondent shall deliver to PHRC Housing Division Assistant Chief Counsel a check payable to the Commonwealth of Pennsylvania in the amount of \$10,000.00, which amount represents an assessment of a civil penalty under Section 9(f)(2)(i) of the PHRA.
6. That, within thirty days of the effective date of this Order, the Respondent shall report to the Commission on the manner of his compliance with the terms of this Order, by letter addressed to Assistant Chief Counsel, Housing Division, in the Commission's Harrisburg Executive Offices.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**