

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

STEPHANIE BEDFORD, individually :  
and o/b/o minor child, :  
JEROME NELSON :  
Complainant :

v. :

DOCKET No. H-7353

WILLIAM F. BARRETT, :  
Respondent :

STIPULATIONS OF FACT

FINDINGS OF FACT

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OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Stephanie Beford, individually and :  
O/B/O her minor child Jerome Nelson :  
Complainants :  
 :  
V. : H-7353  
 : HUD:03-97-0311-8  
William F. Barrett, :  
Respondent :

STIPULATIONS OF FACT

The following facts are admitted by all parties to the above captioned case and no further proof thereof shall be required:

1. The Complainant herein is Stephanie Beford and Stephanie Bedford on behalf of her minor child Jerome Nelson.
2. The Respondent herein is William F. Barrett.
3. On or about 3/16/97 Complainant timely filed a verified complaint against Respondent.
4. The Complaint was served upon Respondents on or about April 7, 1997.
5. Respondent answered the Complaint.
6. Following an investigation, a probable cause finding was approved by the legal division on 9/28/99 and Respondent was notified of the finding.
7. A conciliation meeting was scheduled for November 16, 1999 but Respondent chose not to attend. Other attempts at settlement have also failed.
8. The case was approved for Public Hearing by the Executive Director and was placed on the Public Hearing Docket by the Commission at its April 23, 2001 meeting.

9. The property involved in this complaint, Colonial Arms Apartments, located at 77 S. Valley Road, Paoli, PA was at the time of the alleged violation of the Pennsylvania Human Relations Act, owned by Respondent.

These Stipulations of Fact, together with the Witness List submitted by each party will become a part of the official record in this case and will be incorporated into the transcript prepared during the course of any subsequent Public Hearing held in this matter.

By Respondents:

*Dolores M. Troiani* *10/5/01*  
Dolores M. Troiani, Esquire Date

By: Pennsylvania Human Relations Commission:

*Nancy L. Gippert* *11/1/01*  
Nancy L. Gippert, Esquire Date

## FINDINGS OF FACT\*

1. The Respondent is William Barrett, (hereinafter "Barrett") owner of the Colonial Arms apartment complex, (S.F2).
2. The Colonial Arms is an apartment complex consisting of four separate buildings. (N.T.48).
3. Six individual apartment units make up each building. (N.T.48-50).
4. The Complainant is Stephanie Bedford, (hereinafter "Bedford"), a single mother. (S.F1)
5. In February of 1995 Bedford moved into unit 3 in building D at the Colonial Arms. (N.T. 17-18; J.E.1).
6. Bedford was required to have a cosigner because of her poor past credit history. (N.T.19).
7. Prior to coming to Colonial Arms, and in the middle of a lease term, Bedford had been evicted from her previous apartment complex for non-payment of rent. (N.T.34-35).

\* 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 Facts. The following abbreviations will be utilized throughout these Findings of Fact for references purposes:

N.T. Notes of Testimony  
J.E. Joint Exhibit  
C.E. Complainant's Exhibit  
S.F. Stipulations of Fact

8. On January 16, 1995, a one year lease for an apartment at the Colonial Arms was signed by both Bedford and her mother. (N.T. 49,51;J.E.1).
9. The rent on apartment three in building D was \$550 per month. (J.E.1)
10. In 1995 Bedford gave birth to her son, Jerome. (N.T.20).
11. On November 27, 1995, Bedford received a letter from Colonial Arms management advising her that children were not allowed at Colonial Arms and that Bedford would need to vacate her apartment. (N.T.20,63;J.E.2).
12. The letter was prompted by a then existing Colonial Arms policy that children were not permitted at the apartment complex. (J.E.2).
13. In 1995 and 1996, Bedford was the only tenant with a child at Colonial Arms. (N.T.66).
14. As a result of the letter, Bedford obtained the services of an attorney to advise her of her rights. (N.T. 20;J.E.3).
15. Bedford and Colonial Arms resolved their dispute by agreement that Colonial Arms would be billed for and pay Bedford's attorney's fees and extend Bedford's lease for one year. (N.T.20,39,42,63;J.E.14).
16. Rent at the Colonial Arms was due on the first of every month. (N.T.75;J.E.1).
17. Tenant's were allowed a seven day grace period and on the seventh day the rent is deemed to be late. (N.T.75).
18. Late notices are generated by the Colonial Arms bookkeeper and sent out on the eighth day that rent has not been received. (N.T.78).

19. Every tenant whose rent was past the seventh day received a late notice along with an assessment of a late fee. (N.T.75,79).
20. In 1996, Bedford's rent payments were consistently late. (N.T.75,79).
21. Bedford received a late notice each time her rent was not received before the seventh. (N.T.22).
22. Bedford's record of rent payments in 1996 was as follows:
  - (a) January – (Payment was not made until April 17, 1996, after, on April 11, 1996, Colonial Arms filed a Landlord/Tenant Action with the local district justice seeking rent owed in the amount of \$950.00). (J.E.13).
  - (b) February – Rent not paid until February 27, 1996.
  - (c) March - \$200.00 was paid on the 15<sup>th</sup> of March and the remainder was paid on April 17, 1996 as part of Colonial Arms April 11, 1996 action.
  - (d) April – Along with the rent due from January, the April rent was paid on April 17, 1996.
  - (e) May – This rent was technically not late as it was paid on May 6, 1996.
  - (f) June – A rent check was submitted on June 5, however, this check did not clear until June 21, 1996.
  - (g) July – rent paid on July 19, 1996.
  - (h) August – Rent paid on August 16, 1996.
  - (i) September – Rent paid on September 10, 1996.

- (j) October – Rent was not paid until November 4, 1996.
  - (k) November – Rent paid on November 4, 1996.
23. Colonial Arms' accountant advised management not to renew Bedford's lease because she was habitually late paying her rent. (N.T.64,73).
24. Colonial Arms' accountant did not know Bedford or that she had a child and advised Colonial Arms that based solely on Bedford's rent history, Colonial Arms should not carry her. (N.T.64).
25. Colonial Arms had no written policy with respect to the number of late payments that would result in being regarded as habitually late. (N.T.84-85).
26. On November 20, 1996, Colonial Arms sent a letter to Bedford stating that they would not be renewing her lease, and that Colonial Arms expected her to vacate her unit by January 31, 1997. (N.T.44,73;J.E.19).
27. On occasion, in 1996, two other tenants at the Colonial Arms paid their rent late:
- Tenant LW.
    - a. November – rent paid on November 20, 1996
    - b. December – rent paid on December 13, 1996
  - Tenant CE.
    - a. June – rent paid on June 19, 1996
    - b. September – rent paid on September 16, 1996
    - c. December – rent paid on December 20, 1996 (J.E.29).
28. Both tenant LW and tenant CE were permitted to renew their leases. (J.E.29).

29. Tenant CE paid rent late on three occasions in 1997, five times in 1998, and three times in 1999 until in August 1999, Colonial Arms filed to evict tenant CE. (J.E.29).
30. After Bedford's lease expired, she attempted to pay rent in February but the check was returned. (N.T.24).
31. When Bedford refused to leave the apartment, Colonial Arms filed an action in the District Justice's Office to remove her. (N.T.44).



## CONCLUSION OF LAW

1. The Pennsylvania Human Relations Commission, (PHRC) has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural pre-requisites to a public hearing.
3. The Colonial Arms is a housing accommodation within the meaning of the PHRA.
4. Bedford established a *prima facie* case of familial status discrimination under section 5(h)(3) by showing:
  - a. that Bedford is a member of a protected class;
  - b. the apartment in which Bedford was living was available;
  - c. that Bedford was denied the opportunity to renew her lease by Barrett; and
  - d. others similarly situated not in Bedford's protected class were allowed to renew their lease.
5. Barrett articulated a legitimate non-discriminatory reason why Bedford was not permitted to renew her lease.
6. Bedford failed to prove by a preponderance of the evidence that Barrett's articulated reasons for failing to renew Bedford's lease were pre-textual.
7. Bedford failed to prove that Barrett attempted to evict her before the end of the term of her lease in violation of Section 5(h)(1.1).

8. For Bedford to establish a *prima facie* case of discrimination based upon retaliation under section 5(d) she must show:
  - a. that Bedford engaged in a protected activity;
  - b. that Bedford was eligible to renew her lease and was not allowed to do so; and
  - c. there was a causal relationship between the protected activity and the adverse action.
  
9. Bedford failed to establish a causal relationship between the protected activity and the adverse action.

## OPINION

This case arises on a complaint filed on or about March 16, 1997 at Docket Number H-7353, by Stephanie Bedford, (hereinafter "Bedford"), individually and on behalf of Jerome Nelson, a minor, against William Barrett, (hereinafter "Barrett"), owner of the Colonial Arms. In her complaint, Bedford alleged that in 1996 the Colonial Arms refused to renew her lease because of the presence of her child and because she successfully opposed an earlier attempt to evict her based on the presence of her child. The complaint alleges that the refusal to renew her lease violates sections 5(h)(3), 5(h)(1.1), and 5(d) of the Pennsylvania Human Relations Act, Act of October 25, 1995, P.L. 744, as amended, 43 P.S. §§951 et.seq. (hereinafter "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. The efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on November 2, 2001, in West Chester, Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner. Dolores M. Troiani, Esquire, appeared on behalf of Barrett and the State's interest in this matter was overseen by Nancy Gippert, Esquire, Assistant Chief Counsel, PHRC. Post hearing briefs were simultaneously submitted by the parties on or about February 2002.

Section 5(h)(3) of the PHRA states in pertinent part:

"It shall be an unlawful discriminatory practice. . . [for] any person to . . . [d]iscriminate against any person in the terms or conditions of. . . leasing

any housing accommodation. . . or in furnishing. . . services or privileges in connection with the. . . occupancy or the use of any housing accommodation . . . because of the familial status. . . of any person. . .”

Since one of Bedford’s allegations involves a refusal to renew Bedford’s lease as a result of familial status a *prima facie* case can be established by proving that:

1. At the time of the refusal, Bedford had a child;
2. Bedford’s apartment was available;
3. Bedford was denied the opportunity to renew her lease; and
4. Others similarly situated not in Bedford’s protected class were allowed to renew their lease

Clearly, Bedford satisfies the first element of a *prima facie* case. It is undisputed that Bedford has a child and as such is a member of a class intended to be protected by the PHRA. The second element of the *prima facie* case is easily met as Bedford’s apartment was available. Bedford meets the third and fourth elements of the *prima facie* case as she was clearly denied the opportunity to renew her lease while others similarly situated but not in her protected class were allowed to renew their leases. The record indicates that at least two other tenants with no children made late rent payments in 1996 and were allowed to renew their lease. Accordingly, Bedford successfully established a *prima facie* case of a refusal to renew her lease because of familial status.

Once a *prima facie* case has been established, the next step is to determine whether Barrett has articulated a legitimate non-discriminatory

reason for not renewing Bedford's lease. Barrett's brief submits that Barrett articulated a legitimate non-discriminatory reason. In particular, Barrett points to Anne Wolf's testimony which asserts that Bedford's lease was not renewed because Colonial Arms' accountant, who did not know anything about Bedford, advised Colonial Arms not to renew Bedford's lease because Bedford's rent payments were "habitually" late. (N.T.64,73). This assertion meets Barrett's burden of production.

Accordingly, the burden shifts to Bedford to attempt to show that Barrett's explanation is pretextual. See McDonnell-Douglass Corp v. Green, 411 U.S. 792, 804 (1973). In Texas Dept. of Community Affairs v. Burdine, the U.S. Supreme Court stated that pre-text could be shown "either directly by persuading the court that a discriminatory reason more likely motivated the [f]actor or indirectly by showing that the . . . proffered explanation is unworthy of credence".

After a review of the total record, we are compelled to conclude that Barrett's legitimate non-discriminatory reason is both credible and likely to be Barrett's actual motivation for refusing to renew Bedford's lease. Although there were two other tenants in 1996 who made late rent payments, the record indicates that neither tenant's payment records came close to the level of lateness that Bedford exhibited during her tenancy in 1996.

For privacy, the other two tenants with whom Bedford's rental payment record is compared are identified simply by the initials CE and LW. First, CE's rental payment record for 1996 reveals that CE was late on three occasions: June – rent was paid June 19, 1996; September- rent was paid on September

16, 1996; and December- rent was paid on December 20, 1996. Second, LW's rental payment record for 1996 reveals only two late payments; November – rent was paid on November 20, 1996; and December – rent was paid on December 13, 1996.

In effect, Barrett argues that neither CE's nor LW's payment records amount to a tenant who is "habitually" late. Only Bedford's 1996 rental record prompted Colonial Arms' accountant to recommend that Bedford's lease not be renewed. When weighing Bedford's rental payment record with the records of CE and LW, we agree that Bedford's dismal payment record amounts to a habitual problem. Bedford's failures far outweigh either CE's or LW's few instances of late payments in 1996.

The brief on behalf of the complaint suggests that neither CE nor LW received a tenant/landlord notice in 1996 but Bedford first received such a notice in April 1996. Clearly, in April 1996 Bedford had yet to pay rent for January 1996 and had only partially paid the March rent. Nothing either CE or LW did came close to Bedford's delinquency.

The brief on behalf of the complaint also questions the timing of the eventual landlord/tenant complaint taken against CE. A review of CE's payment record must be done on a yearly basis. In 1996, CE was late on three occasions. The same number of late payments occurred in 1997. In 1998, CE was late five times and would likely not have had her lease renewed except for CE's payment on November 6, 1998 of two months rent, thereby running a credit balance. In 1999, CE was late three times in a row which resulted in an eviction action being filed against her.

Besides the action ultimately taken against CE, Anne Wolf offered un rebutted testimony that from time to time others who were also "habitually" late with rent payments were also evicted.

Under the circumstances present, Bedford is unable to meet her burden of proof that the articulated reason offered for not renewing her lease was a pretext for familial status discrimination.

Next we turn to Bedford's 5(h)(1.1) claim. Section 5(h)(1.1) states:

"It shall be an unlawful discriminatory practice. . . [f]or any person to. . . [e]vict or attempt to evict an occupant of any housing accommodation before the end of the term of a lease because of pregnancy or the birth of a child".

Here, the PHRC brief on behalf of the Complaint appears to have abandoned this claim as no reference is made to the Complaint's citation to section 5(h)(1.1). Summarily this claim can be rejected because the facts present here reveal that Barrett did not either evict or attempt to evict Bedford before the end of her lease term. On the contrary, Barrett waited until the end of the lease term and refused to renew Bedford's lease. Such a scenario is inapplicable to Section 5(h)(1.1).

Section 5(h)(1.1) would have applied to the events of the prior year wherein Bedford had been told in a letter dated November 27, 1995 that children were not allowed at Colonial Arms and Bedford would need to vacate her apartment. However, Bedford and Colonial Arms resolved this dispute between themselves and Bedford's lease was renewed. Bedford's PHRC claim concerns the failure to renew the 1996 lease solely and does not address the earlier actions by Colonial Arms.

We therefore turn to Bedford's retaliation claim. Section 5(d) states in pertinent part:

"It shall be an unlawful discriminatory practice . . .[for] any person . . . to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act . . ."

In order for Bedford to establish a *prima facie* case of discrimination based upon retaliation, Bedford must show that:

1. Bedford engaged in a protected activity;
2. Bedford was not allowed to renew her lease; and
3. there is a casual relationship between the protected activity and the adverse action. See, Steiner v. Showboat Operating Co., 25 F.3d 1459, 1464 (9<sup>th</sup> Cir.u 1994).

Clearly, Bedford meets the first element of the requisite *prima facie* case. The record indicates that in November, 1995, Bedford retained an attorney to oppose Barrett's request that Bedford vacate the apartment because of the presence of her child. (J.E.2). The second element of the *prima facie* case is also met as Bedford's apartment was available and Bedford was not allowed to renew her lease.

Bedford, however, failed to establish the third element of a *prima facie* case of retaliation. As a result of Bedford's action taken in November, 1995, a settlement was reached by both parties and Bedford was allowed to renew her lease. During the term of Bedford's 1996 lease the only adverse action that occurred to Bedford was the result of her late payments of rent. The April 11, 1996 Common Pleas Court action resulted from a serious delinquency of



Bedford's January payment and part of March's amount due. Ultimately, the refusal to renew the lease was the result of Bedford's "habitual" late payments. Here, there is no apparent causal relationship between Bedford's protected activity and the non-renewal of her lease. Barrett was fully justified in not renewing Bedford's lease due to Bedford's "habitual" late rent payments.

No violation of either Sections 5(h)(3), 5(h)(1.1) or 5(d) of the PHRA can be found. An order dismissing Bedford's claims follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

STEPHANIE BEDFORD, individually :  
and o/b/o minor child, :  
JEROME NELSON :  
Complainant :

v. :

DOCKET NUMBER. H-7353

WILLIAM F. BARRETT, :  
Respondent :

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of either 5(h)(3), 5(h)(1.1) or 5(d) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, 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.

By:



Carl H. Summerson  
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

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FINAL ORDER

AND NOW, this 25<sup>th</sup> day of March, 2002, 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 Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter and incorporates the Stipulation's of Fact, 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

that the complaint in this case be, and the same hereby is, dismissed.

By: Carl E. Denson  
Carl E. Denson, Chairperson

Attest:

Gregory J. Celia, Jr.  
Gregory J. Celia, Jr., Secretary