

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

ROCHELLE D. DETTER, Complainant

v.

RICHARD SHARP AND SHARP'S VILLAGE MOBILE HOME PARK, Respondent

DOCKET NO. H-7404

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF COMMISSIONER

FINAL ORDER

FINDINGS OF FACT*

1. The Complainant herein is Rochelle D. Detter (hereinafter "Detter" or "Complainant"), an adult female residing at 5145 Susquehanna Trail, York, Pennsylvania. (N. T. 21).
2. Respondent Richard Sharp is an adult individual residing in the Commonwealth of Pennsylvania. (N. T. 7).
3. Respondent Sharp's Village Mobile Home Park is a mobile home park wholly owned and operated by Respondent Richard Sharp located at 5145 Susquehanna Trail, York, PA. (N.T.7).
4. Respondent Sharp's Village Mobile Home Park is a housing accommodation having its principle place of business at 5145 Susquehanna Trail, York, Pennsylvania. (N.T. 7, 21).
5. On or about February 1, 1996 the Complainant rented a lot At Sharp's Village Mobile Home Park for \$270.00 per month. (N.T.23).
6. The Complainant placed the trailer that she owned on the lot. (N. T. 23).
7. The Complainant moved in with her husband and two children. (N. T. 23)
8. The base rent the Respondent charged for three people living in a mobile home was \$225.00 per month. (N.T.II, 13).

9. The Respondent charged an additional monthly charge of \$40.00 for each person in excess of three persons living on the lot. (N. T. 11, 13, 16).
10. The Complainant paid an additional \$5.00 per month in order to have a pet on the premises. (N.T.36).
11. The Complainant felt that the added financial burden created more pressure for her husband. (N.T. 24)
12. The Complainant testified that she felt that the additional charge was "punishment for being a young family of our age wanting to have more children." (N. T. 31)
13. The Complainant testified that her family experienced financial problems because her husband wasn't working much. (N. T. 47)

- 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 reference purposes:

N.T. Notes of Testimony

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and subject matter of the case.
2. The Complainant and Respondents are persons within the meaning of the Pennsylvania Human Relations Act ("PHRA ").
3. The property, which the Complainant leased and resided on, is a housing accommodation within the meaning of the PHRA.
4. The Complainant established a *prima facie* case of familial status discrimination by showing:
 - 1) She is a member of a protected class;
 - 2) The Complainant applied for and leased a space in Respondent's mobile home park;
 - 3) The Complainant suffered an adverse action in that she had to pay an extra monthly fee; and
 - 4) Others similarly situated, not in Complainant's protected class, were not assessed the extra fee.
5. The Respondents articulated a legitimate non-discriminatory reason for assessing an extra fee.
6. The Complainant proved, by a preponderance of the evidence, that the Respondents' articulated reason is not credible.
7. The Complainant has met her ultimate burden of persuasion that Respondents violated the PHRA.
8. The Respondents violated Section 5 (h)(3) of the PHRA.
9. The PHRC has broad discretion in fashioning a remedy after a finding of unlawful discrimination.

10. The PHRC may also order the Respondents to cease and desist from the discriminatory practice and further order Respondents to take such affirmative action to remedy the discriminating practice.

OPINION

On or about May 9, 1997, a complaint was filed at Docket Number H- 7404 by Rochelle P. Detter (hereinafter "Complainant") against Richard Sharp and Sharp's Village Mobile Home Park (hereinafter "Respondents"). In her complaint, the Complainant alleges that the Respondents discriminated against her because she has children. More specifically, she alleges that she was discriminated against because of familial status in that she was charged an extra fee. The Complainant alleges that the Respondents' actions are in violation of Section 5 (h)(3) of the Pennsylvania Human Relations Act (hereinafter "PHRA "), the Act of October 27, 1955, P. L. 744, as amended, 43 P.S. Section 955 (a).

PHRC staff conducted an investigation and found probable cause to credit the allegations raised in the complaint. The PHRC staff and the parties attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion. These efforts proved unsuccessful and the case was approved for public hearing. A hearing was held in York, Pennsylvania on April 15, 2003, before Permanent Hearing Examiner Phillip A. Ayers. Both parties filed post-hearing briefs in this matter.

In the instant case, the Complainant alleges unlawful familial status discrimination by the Respondents. At issue in this familial status case is the provision of the PHRA, 43 P.S. 955(h)(3), that makes it an unlawful discriminatory practice for any person to "discriminate against any person in the terms and conditions of...leasing any housing accommodation...because of the...familial status...of any person."

It is necessary to briefly detail the analytical process developed in cases of this nature. In discrimination cases, the Pennsylvania Supreme Court has adopted the model established by the case of McDonnell-Douglas v. Green, 411 U.S. 792 (1973). Even though the McDonnell-Douglas model was used for employment cases, the analysis has been modified for housing cases. The McDonnell-Douglas methodology was never intended to be rigid, mechanized or ritualistic. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742, 2754 (1993). Utilizing the McDonnell-Douglas analysis, the Complainant has the initial burden of establishing a *prima facie* case of discrimination. Once a *prima facie* is established, the Respondent must produce evidence of a legitimate non-discriminatory reason for its action. If the Respondent is successful in meeting its burden of production, then the Complainant still has the ultimate burden of proving, by a preponderance of the evidence, that she is the victim of unlawful discrimination. The Complainant may also show that the reasons asserted by the Respondent are pretextual.

In the instant case, the Complainant is alleging that the \$40.00 extra fee has a discriminatory effect on families with children. The Complainant can establish a *prima facie* case of familial status discrimination by showing:

- 1) She is a member of a protected class;
- 2) The Complainant applied for and leased a space in Respondents' mobile home park;

- 3) The Complainant suffered an adverse action in that she had to pay an extra monthly fee; and
- 4) Others not in the protected class were not assessed the extra fee.

Firstly, the Complainant is clearly a member of a protected class in that she fits the definition of familial status. Familial status is defined as one or more individuals under the age of eighteen years, domiciled with a parent having legal custody of such individual or individuals. Under the facts established in this case, the Complainant is a member of a protected class. Secondly, the Complainant certainly applied for and leased a space in Respondent's mobile home park. Next, the Complainant suffered an adverse action in that she had to pay an extra monthly fee of \$40.00. Lastly individuals not in Complainant's protected class were not assessed the extra fee. Upon review of the evidence presented in this matter, the Complainant has met her burden of establishing a *prima facie* case of familial status discrimination.

Once the Complainant has met her burden, the burden of production then shifts to the Respondents to present evidence of legitimate, non-discriminatory reason for its action. In the instant case, the Respondents initially relied on the facial neutrality of a policy of charging the extra monthly fee. However, Respondent Sharp then testified at the public hearing that he charged the extra monthly fee because of the increase of water and sewage usage. This statement satisfies the Respondents' burden of production.

Once the Respondents have met their burden of production, the Complainant still has the ultimate burden of proving that she is a victim of unlawful discrimination. In the instant case, Respondent Sharp testified that the only households, to his own knowledge, affected by his policy were families with children. (N. T. 90) The only households with four or more individual were households with children. There is no dispute that the Respondent Sharp charged an extra fee based on familial status. Respondent Sharp, as aforementioned, first argues the facial neutrality of the policy. Then, at the public hearing, he asserted that the extra fee was to cover the water and sewage bills.

The case law on the issue before the Commission is clear. If a policy has a disparate impact on a protected class, facial neutrality will not save a policy from violating anti-discrimination law. McDonnell-Douglas v. Green, supra. In U.S. v. Melody Lakes Country Club Estates. et al., 1994 U.S. Dist. LEXIS 18178 (E.D. PA, Dec. 15, 1994), the court found that a mobile home park owner who imposed a \$75.00 fee for residents in excess of two per unit was guilty of discrimination on the basis of familial status discrimination. The fact that children were not specifically barred was not determinative of the case. The court recognized that it is far more likely that an extra fee would impact on a family with children. U.S. v. Lepore, 816 F.Supp. 1011 (M.D. PA 1991).

We now move to the issue of remedy

We must briefly review the Commission's authority to award relief. The Commission has broad discretion in fashioning an award to effectuate the purposes of the PHRA. Murphy v. Cmwlth, PA Human Relations Commission, 486 A.2d 388 (1985). Any remedy awarded under the PHRA has two purposes. The first purpose is to insure that the unlawful discriminatory practice is

eradicated, usually by a cease and desist order. The second purpose is to not only restore the injured party to pre-injury status and make him whole but also to deter future discrimination. Williamsburg Community School District v. Pennsylvania Human Relations Commission, 512 A.2d 339 (1986). The Commission's specific authority to award relief is found in Section 9 of the PHRA, which provides, in pertinent part:

(f)(1) If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to...reasonable, verifiable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(d), (e), or (h) or 5.3 where the underlying complaint is a violation of Section 5 (h) or 5.3, the Commission may award actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the Commission, will effectuate the purposes of this Act, and including a requirement for report of the manner of compliance, 43 P. S. §959 (f).

Firstly, the Respondents should be ordered to cease and desist from discriminating against individuals based on their familial status. Secondly, the Complainant should be awarded actual damages for the extra fee of \$40.00 per month she paid from February 1996 until September 1997. Next we move to the issue of awarding damages caused by humiliation and embarrassment. In the instant case, the PHRC post hearing brief seeks \$10,000 in damages for the embarrassment and humiliation suffered by the Complainant. Courts have recognized that there are actions that one could reasonably expect to humiliate or cause emotional distress to an individual. Seaton v. Sky Realty Co., 491 F.2d 634, 636 (7th Cir. 1974). When determining damages for embarrassment and humiliation, any evaluation must include both direct evidence of emotional distress and the circumstance of the act causing the distress. United States v. Balistreri, 981 F.2d 916 (7th Cir. 1992). Furthermore, in housing cases, courts have awarded damages for intangible injuries based on the Complainant's own testimony. Rakovich v. Wade, 819 F.2d 1393 n.6 (7th Cir. 1987), vacated on other grounds and Allison v. PHRC, 716 A.2d 689 (Pa.Cmwlth 1988). See also Secretary of HUD v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990) In addition, the injuries caused by embarrassment and humiliation are by their nature difficult to prove. Marable v. Walker, 704 F.2d 1219 (11th Cir. 1983).

In the instant case, the Complainant testified as to the impact that the Respondents' actions had on herself and her family. The Complainant stated that the higher payment had "more of a detrimental effect because I had more stress on me to deal with. And money and financial turmoil is great in a marriage, and it took a toil on us." (N. T. 34) However the Complainant also testified that there was already financial stress on the family because her husband was not working. The record also reflects that the Complainant and her family were receiving assistance from her church. While it does appear that the Complainant did suffer some embarrassment and humiliation from the extra fee, it does not reach the award, sought by the PHRC post hearing brief in this matter. Upon review of the record, including Complainant's testimony, no award for embarrassment and humiliation is warranted in this matter.

Lastly a civil penalty may be imposed upon the Respondents in this matter. The following factors should be considered in determining the appropriate civil penalty: (1) the nature and circumstances of the violation; (2) the degree of the Respondents' culpability; (3) the Respondent's financial resources; (4) the goal of deterrence; and (5) other matters as justice may require. Upon review of these factors and the record in this matter, a civil penalty of \$500.00 is appropriate.

An appropriate Order follows:

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DOCKET NO. H-7404

RECOMMENDATION OF COMMISSIONER

Upon consideration of the entire record in the above captioned matter, it is the Recommendation of the Permanent Hearing Examiner that the Complainant has proven discrimination in violation of the PHRA. Accordingly it is 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.

PENNSYLVANIA HUMAN RELATIONS COMMISSION
BY: M. Joel Bolstein, Commissioner

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FINAL ORDER

AND NOW, this 27th day of September 2004, 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, Recommendation 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 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. Respondent Richard Sharp and Respondent Sharp's Village Mobile Home Park shall cease and desist from discriminating against persons because of their familial status.
2. That within 30 days of the date of this order, the Respondents shall, jointly and severally, pay the Complainant \$760.00 for the extra fee that was paid in the instant case, during the 19 month period of February, 1996 thru September, 1997.
3. That within 30 days of the date of this order, the Respondents shall, jointly and severally, deliver to PHRC Assistant Chief Counsel William R. Fewell a check payable to the Commonwealth of Pennsylvania in the amount of \$500.00 in the nature of a civil penalty pursuant to Section 9(f)(2) of the PHRA.
4. The Respondents shall report the means by which it will comply with the order, in writing, to William R. Fewell, Assistant Chief Counsel at 301 Chestnut Street, Suite 300, Harrisburg, PA 17101-2702 within thirty days of the date of this order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

B: Stephen A. Glassman, Chairperson

Attest: Sylvia A. Waters, Secretary