

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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| SHERRI HAHN, Complainant | : | PHRC CASE NO. 200303174 |
| | : | EEOC CHARGE NO. 17FA460648 |
| and | : | |
| SHIRLEY SPENCER, Complainant | : | PHRC CASE NO. 200303175 |
| | : | EEOC CHARGE NO. 17FA460652 |
| v. | : | |
| WEST EASTON ATHLETIC ASSOCIATION, INC., Respondent | : | |

STIPULATIONS
FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF HEARING PANEL
FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION


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| Sherri Hahn, | : |
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| Complainant | : |
| | : |
| v. | : PHRC Case No. 200303174 |
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| | : |
| West Easton Athletic Association, Inc., | : |
| | : |
| Respondent | : |

STIPULATIONS REGARDING PROCEDURAL PREREQUISITES

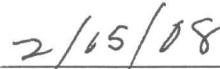
The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required.

1. The Complainant herein is Sherri Hahn (hereinafter "Hahn").
2. The Respondent herein is West Easton Athletic Association, Inc. (hereinafter "Respondent").
3. Hahn is a competent adult female.
4. Respondent, at all times relevant to the case at hand, employed four or more persons within the Commonwealth of Pennsylvania.
5. On or about June 10, 2003, Hahn filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") against Respondent at PHRC No. 200303174. A copy of the complaint will be included as a docket entry in this case at time of hearing.
6. On or about February 3, 2004, Respondent filed an answer to the complaint at PHRC No. 200303174. A copy of the answer will be included as a docket entry in this case at time of hearing.
7. In correspondence dated July 6, 2005, Commission staff notified Hahn and the Respondent that probable cause existed to credit the employment allegations found in the complaint.

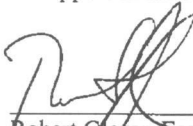
8. Subsequent to the determination of probable cause, Commission staff attempted to resolve the matters in dispute among the parties by conference, conciliation and persuasion.
9. The remedies being sought at the public hearing relate solely to the employment allegations of the complainant.
10. In correspondence dated September 20, 2006, the Commission notified Hahn and the Respondent that a public hearing had been approved for case no. 200303174.
11. All procedural prerequisites for the Commission to convene a public hearing have been met.



Ronald W. Chadwell, Esquire
PHRC Assistant Chief Counsel
(Counsel for the Commission
in support of the complaint)



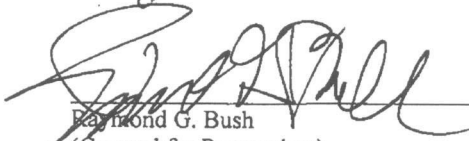
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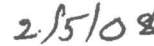
Robert Glazer, Esquire
(Counsel for Complainant)



Date



Raymond G. Bush
(Counsel for Respondent)



Date

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION


Shirley Spencer, :
 :
 Complainant :
 :
 v. : PHRC Case No. 200303175
 :
 :
 West Easton Athletic Association, Inc., :
 :
 Respondent :

STIPULATIONS REGARDING PROCEDURAL PREREQUISITES

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 Shirley Spencer (hereinafter "Spencer").
2. The Respondent herein is West Easton Athletic Association, Inc. (hereinafter "Respondent").
3. Spencer is a competent adult female.
4. Respondent, at all times relevant to the case at hand, employed four or more persons within the Commonwealth of Pennsylvania.
5. On or about June 10, 2003, Spencer filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") against Respondent at PHRC No. 200303175. A copy of the complaint will be included as a docket entry in this case at time of hearing.
6. On or about February 3, 2004, Respondent filed an answer to the complaint at PHRC No. 200303175. A copy of the answer will be included as a docket entry in this case at time of hearing.
7. In correspondence dated July 5, 2005, Commission staff notified Spencer and the Respondent that probable cause existed to credit the employment allegations found in the complaint.

8. Subsequent to the determination of probable cause, Commission staff attempted to resolve the matters in dispute among the parties by conference, conciliation and persuasion.
9. The remedies being sought at the public hearing relate solely to the employment allegations of the complainant.
10. In correspondence dated September 20, 2006, the Commission notified Spencer and the Respondent that a public hearing had been approved for case no. 200303175.
11. All procedural prerequisites for the Commission to convene a public hearing have been met.




Ronald W. Chadwell, Esquire
PHRC Assistant Chief Counsel
(Counsel for the Commission
in support of the complaint)

02/15/08
Date



Robert Glazer, Esquire
(Counsel for Complainant)

2/5/08
Date



Raymond G. Bush
(Counsel for Respondent)

2/5/08
Date

FINDINGS OF FACT *

1. The Respondent, West Easton Athletic Association, Inc., (hereinafter "Athletic Association"), is a social club located at 402 5th Street, West Easton, Pennsylvania.
(N.T. 39, 40)
2. The principal objective and purpose of the Athletic Association is to provide a place for club members to gather socially and to promote athletics within the community. (N.T. 253, 254; C.E. 1)
3. The Athletic Association has a Pennsylvania liquor license and serves to members and guests, food that is prepared in the club's kitchen. (N.T. 40, 256)
4. In and about 2003, the Athletic Association had over 1,000 members. (N.T. 42)
5. According to the Athletic Association's Constitution and Bylaws that were effective in 2003, males over 21 years of age could become regular members while females could only become social members. (N.T. 44, 47, 49, 50, 69, 169; C.E. 1)
6. The Officers of the Athletic Association included: President, Vice President, Recording Secretary; Financial Secretary; and Treasurer. (C.E. 1)
7. The Athletic Association also had a Board of Directors that consisted of 5 members.
(N.T. 89; C.E. 1)
8. Pursuant to Article IV, Section 6 of the Athletic Association's Constitution and Bylaws, the Board of Directors has the authority to hire and fire any employees and to fix their salaries and wages. (N.T. 56, 71, 88; C.E. 1)

* 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:

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| N.T. | Notes of Testimony |
| C.E. | Complainant's Exhibit |
| R.E. | Respondent's Exhibit |

9. A Board of Director's action involving the hiring or firing of an employee could be vetoed by 2/3rds of members attending a meeting and voting by written ballot. (C.E. 1)
10. In 2003, the Athletic Association had approximately 12 to 15 employees. (N.T. 42, 90)
11. Social members were permitted to be employees and in 2003, a number of the Athletic Association's employees were female. (N.T. 69, 70, 214)
12. Complainant, Sherri Hahn, (hereinafter "Hahn"), first became an employee of the Athletic Association in or about 1997. (N.T. 93)
13. Hahn began as a Short Order Cook working in the kitchen and later also began to bartend. (N.T. 58, 94, 125)
14. Hahn first came to the Athletic Association not to seek employment but to only support a friend of hers who was looking for a job as a waitress. (N.T. 92)
15. Hahn was encouraged to also work there and to just try it for a few weeks. (N.T. 123)
16. Hahn's principal job was as a supervisor at A & H Sportswear. (N.T. 91)
17. Hahn's date of birth is August 21, 1948. (N.T. 121)
18. When she was first hired, Hahn was given a social membership in the Athletic Association. (N.T. 94)
19. When she worked as a Short Order Cook or Bartender, Hahn was paid hourly plus tips. (N.T. 94)
20. Complainant, Shirley Spencer, a life member in the Athletic Association first became a social member in the 1950's. (N.T. 169, 215)
21. Shirley Spencer's date of birth is June 9, 1932. (N.T. 168)
22. In 2003, Article VI, Section 1 of the Athletic Association's Constitution and Bylaws stated that "Any one member shall be eligible to one office only of the Association including the position of Steward or Assistant Steward." (C.E. 1)

23. In or about 2001, Sam Heard, (hereinafter "Heard"), the Athletic Association's Steward and then head of the Board of Directors, approached Shirley Spencer and asked her if she would perform his Steward duties for a few months while he was going to be out having open-heart surgery.

(N.T. 96, 171, 174, 205)

24. When Heard approached Shirley Spencer, she expressed concern that some members might be mad that a woman was doing Steward duties. (N.T. 175, 177)

25. As Shirley Spencer had never done any of the duties of the Steward, Heard taught her to ready the facility to open each day at noon, to order supplies and do the books, to check the cash register, to count the finances and receipts, and to arrange bands to play on the weekends. (N.T. 55, 172, 173)

26. Shirley Spencer agreed to do a personal favor to Heard and began performing these duties in Heard's absence for no pay. (N.T. 83, 177-178, 209)

27. After his surgery, Heard did return for a short while but then went out again to have foot surgery. (N.T. 177)

28. Shirley Spencer asked Heard how much longer he would be out and Heard then approached Hahn to ask her to assist Shirley Spencer. (N.T. 178)

29. Heard asked Hahn if she would train to work the register, do small games of chance, and to ready the bar for the next day. (N.T. 96, 127, 130, 131, 155)

30. Hahn agreed to assist Shirley Spencer and at first she worked in the capacity of Shirley Spencer's assistant as an unpaid volunteer. (N.T. 98, 130)

31. At this point, Hahn was working three jobs for the Athletic Association: Kitchen, Bartending, and assisting Shirley Spencer. (N.T. 102, 133)

32. When Heard did not return to his duties, Shirley Spencer asked to be compensated. (N.T. 210)

33. In or about January 2003, the then Board of Directors termed the position Shirley Spencer held as Temporary Bar Manager, and Hahn's position as Temporary Assistant Bar Manager. (N.T. 263, 330)
34. In or about January 2003, Shirley Spencer began to be paid the salary of \$200.00 per week to perform the duties of Temporary Bar Manager, and Hahn began to be paid the salary of \$100.00 per week to perform the duties of Temporary Assistant Bar Manager. (N.T. 57, 59, 68, 100, 101, 134, 181)
35. In November 2002, Lance Day, (hereinafter "Day"), ran for the position of President of the Athletic Association. (N.T. 245)
36. Day was elected as the Athletic Association's President for a one year term to begin in January 2003. (N.T. 63, 246)
37. In January 2003, members of the Board of Directors included: William Hutnik, Sr., Chairperson of the Board, Robert Christian, Tony Curto, and Frank Spencer, Shirley Spencer's husband. (N.T. 258, 280)
38. On February 24, 2003, there was a regular meeting of the Athletic Association. (C.E. 3)
39. Women were not permitted to attend or participate in Athletic Association meetings. (N.T. 103, 182)
40. At the February 24, 2003 meeting, Day attempted to order the voiding of the appointments of Shirley Spencer and Hahn. (C.E. 3)
41. When the Board of Directors voted at the meeting on the question of Shirley Spencer and Hahn, three Board members voted to keep them. (N.T. 299, 321)
42. After the majority of the Board of Directors voted in favor of keeping Shirley Spencer and Hahn, the members present at the meeting were allowed to vote and Day's order to void the appointments of Shirley Spencer and Hahn was approved. (N.T. 270, 322)

43. During this process, Day noted that both Shirley Spencer and Hahn are females and that women are not permitted to be Stewards and that the positions being held by the women were non-existent positions. (N.T. 63, 258)
44. Following the voiding of the positions, three members of the Board submitted their resignations: William Hutnik, Sr., Robert Christian, and Frank Spencer. (84, 140, 223-224, 258-259, 280; C.E. 3)
45. After the meeting, Day yelled over to Shirley Spencer, who was in the back of the room, that he wanted her to get out of the building immediately. (N.T. 185, 186-187, 290)
46. Shirley Spencer asked Day why he had done this and Day replied that she was a woman doing a man's job and that he wanted her out of the building. (N.T. 188, 239)
47. Shirley Spencer replied that she would not leave until Day put his reasons in writing to her. (N.T. 188)
48. Robert Christian had also requested that Shirley Spencer be given a written explanation from Day regarding why her appointment to the position of Acting Bar Manager had been voided. (C.E. 3)
49. Day signed the following notice that was presented to Shirley Spencer:
- The employment of Shirley Spencer and Sherri Hahn is in violation of the constitution art. IV SEC. 1 and art. XVII sec. 1 They are performing the duties of the steward and ass. Steward witch (sic) is a job only to be performed by a active member. Steward as defined in Websters dictionary is the manager. It is there fore (sic) directed by the president that Shirley Spencer be termanated (sic) immedeatly (sic) and only permitted in the Club during hours of operation when the club is open for business. (sic) It is also directed that Sherri Hahn be restricted to meal preparation and serving food which she was hired for to take effect at club closing today.
- (N.T. 289; C.E. 3)
50. The Secretary of the Athletic Association also showed Hahn Day's letter. (N.T. 107)

51. Another Officer of the Athletic Association, Bob Rutan, came over to speak with Hahn, at which time, Hahn indicated her understanding that she could no longer bartend. (N.T. 160)
52. Rutan then told Hahn that the letter just meant that she could not be the Assistant Bar Manager any longer, to which Hahn insisted that she had to stay in the kitchen. (N.T. 160)
53. Rutan then told Hahn, "No, no, that's not true." (N.T. 160)
54. At the end of her shift on February 24, 2003, Hahn removed some personal effects from the Athletic Association and quit. (N.T. 108, 138-139)
55. That same night, three other female employees also quit: Joan Auerbach, Kate Schaffer, and Helen Hunsberger. (N.T. 110)
56. After Shirley Spencer was removed as the Bar Manager on February 24, 2003, the new Board of Directors named a new Steward, James Nagy. (N.T. 65, 273, 289)
57. Subsequent to February 24, 2003, Hahn remained a member of the Athletic Association through 2007, during which time she had visited the club several times. (N.T. 111, 141, 164).
58. Shirley Spencer also continues to be a member of the Athletic Association. (N.T. 215)
59. In May 2006, the Athletic Association amended its Constitution and Bylaws, effectively eliminating the distinction between active member and social member which had the effect of allowing women to be full members of the Athletic Association. (N.T. 53-54; C.E. 2)
60. In 2003, Shirley Spencer received \$1,800.00 in salary from the Athletic Association for her performing the duties of Bar Manager. (C.E. 7)
61. In 2003, Hahn received \$900.00 in salary from the Athletic Association for performing the duties of Assistant Bar Manager. (N.T. 100, 134)

62. In the period from January 1, 2003 until February 24, 2003, Hahn also received wages from the Athletic Association of \$668.00 for her other duties in the kitchen and bartending. (N.T.121; C.E. 5)
63. After February 24, 2003, Hahn continued working her principal job with A & H Sportswear. (N.T. 123)
64. Hahn also worked approximately one to two days per month at another private club in the area, Castle Club, where she earned \$6.50 per hour. (N.T. 111, 113, 141)
65. Additionally, Hahn twice worked as a bartender at parties held by a local Doctor where she earned \$12.00 per hour. (N.T. 111, 113, 141)
66. In or about 2004, Hahn also applied for the job of Manager at Castle Club, but she was not hired. (N.T. 112, 113, 142)
67. Otherwise, Hahn did not apply to work anywhere else after leaving the Athletic Association on February 24, 2003. (N.T. 114, 143)
68. Shirley Spencer has been on Social Security since she turned 65 in 1998 and her health is not good as she suffers from leukemia. (N.T. 198, 227, 228, 230)
69. Shirley Spencer did not look for alternate employment after February 24, 2003. (N.T. 219)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over both Hahn and Shirley Spencer, the Athletic Association and the subject matter of both Hahn's and Shirley Spencer's complaints under the Pennsylvania Human Relations Act ("PHRA").
2. The parties have fully complied with the procedural prerequisites to a consolidated Public Hearing in these matters.
3. Hahn and Shirley Spencer are individuals within the meaning of Section 5(a) of the PHRA.
4. The Athletic Association is an employer within the meaning of the PHRA.
5. The complaints filed in these cases satisfies the filing requirements found in the PHRA.
6. The PHRA prohibits employers from discriminating against individuals because of their sex.
7. Hahn and Shirley Spencer have both presented direct evidence that their employment as Assistant Bar Manager and Bar Manager was terminated because they are females.
8. The Athletic Association has failed to prove by a preponderance of the evidence that either Hahn or Shirley Spencer would have been terminated absent the impermissible factor that they are females.
9. The PHRC has broad discretion in fashioning an award after a finding of discrimination.

OPINION

These cases arise on complaints filed by Sherri Hahn, (hereinafter "Hahn"), and Shirley Spencer, against West Easton Athletic Association, Inc., (hereinafter the "Athletic Association") on or about May 27, 2003, at PHRC Case Nos. 200303174 and 200303175. In Hahn's complaint, she alleges that on February 24, 2003, the Athletic Association terminated her from her position as Acting Assistant Bar Manager because of her sex, female. Hahn's claim alleges that the Athletic Association violated Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et. Seq. (hereinafter "PHRA"). In Shirley Spencer's complaint, she alleges that on February 24, 2003, the Athletic Association terminated her from her position as Acting Bar Manager because of her sex, female, also alleging that this violated the PHRA.

Pennsylvania Human Relations Commission, (hereinafter "PHRC") staff conducted an investigation and found probable cause to credit both Hahn's and Shirley Spencer's allegations of unlawful discrimination. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. However, these efforts were unsuccessful, and these cases were approved for Public Hearing. A consolidated Public Hearing was held on February 5, 2008, before a three member panel of Commissioners consisting of M. Joel Bolstein, Panel Chairperson; Timothy Cuevas, Panel Member; and Daniel L. Woodall, Jr., Panel Member. Robert Glazer, Esquire, presented the case on behalf of both Hahn and Shirley Spencer. Raymond G. Bush, Esquire appeared on behalf of the Athletic Association. PHRC staff attorney William Fewell represented the state's interest in the complaint. Following the consolidated Public Hearing, the parties were afforded the right to file post-hearing

briefs. The post-hearing brief on behalf of the Hahn and Shirley Spencer was received on March 31, 2008. Neither the Athletic Association nor the PHRC regional office filed post-hearing briefs.

Section 5(a) of the PHRA provides in relevant part:

It shall be an unlawful discriminatory practice... for any employer because of the sex... of any individual... to discharge from employment such individual... if the individual... is the best able and most competent to perform the services required...

As the Public Hearing began, the Athletic Association presented a Motion to Dismiss asserting that the Athletic Association is a private club, thereby not an employer under an exception created by the PHRA. The Athletic Association's Motion was taken under advisement and is hereby denied.

Section 4(b) of the PHRA generally defines an employer to include "...any person employing four or more persons within the Commonwealth, but except as hereinafter provided, does not include ... fraternal...associations, except such ... associations supported, in whole or in part, by governmental appropriations." This section goes on to declare, "[t]he term 'employer' with respect to discriminatory practices based on... sex...includes... fraternal...associations employing four or more persons within the Commonwealth."

Here, it is clear that the Athletic Association is a fraternal association and by the language of the PHRA, is an employer for the purposes of an alleged discriminatory practice based on the sex of a Complainant. This is precisely the case in these two complaints. Each Complainant has alleged a sex-based termination from employment. Section 4(b) does exempt practices such as membership selection in a fraternal association, however, the PHRA clearly declares that on questions of discrimination with regard to employees of a fraternal association, sex-based decisions are not exempt from the PHRA's coverage.

Turning to the appropriate analytical approach in these two cases, generally, there are two approaches to use in disparate treatment allegations. See Holmes v. Bevilacqua, 794 F.2d 142, 41 FEP Cases 43 (4th Cir. 1986). The first, oft cited, analytical model involves those instances in which a Complainant relies on a judicially created inference to support the claim of intentional discrimination. See McDonnell Douglas Corp. V. Green, 411 U.S. 792 (1973). Under this model, a Complainant attempts to set forth a *prima facie* case and upon doing so, benefits from a rebuttable presumption of discrimination. At that point, the burden of production shifts to a Respondent to articulate a legitimate, nondiscriminatory reason for the action. Should a Respondent carry this light burden, the Complainant must then prove that the reason offered is pretextual and that the true reason was motivated by discrimination.

The second general model involves cases in which a Complainant presents persuasive direct evidence of a discriminatory motive to support the claim of intentional discrimination. Allison v. PHRC, 716 A.2d 689 (Pa. Commonwealth Ct. 1998); See also Bialock v. Metal Traders, Inc., 775 F.2d 703, 39 FEP Cases 140 (6th Cir. 1985). Direct evidence cases progress without the aid of rebuttable presumptions, in fact, where direct evidence is presented, the McDonnell Douglas analysis is inapplicable. New Corey Creek Apartments, Inc. and Charles Wood, Manager v. PHRC, 865 A.2d 277 (Pa. Commonwealth Ct. 2004); See also Wilson v. City of Aliceville, 39 FEP Cases (11th Cir. 1986) (citing Miles v. M.N.C. Corp., 750 F.2d 867, 875, 36 FEP Cases 1289 (11th Cir. 1985)).

Given the evidence presented in these cases, analysis under only the direct evidence model is all that is necessary. Here, both Hahn and Shirley Spencer have established that their sex was the sole reason they were terminated on February 24, 2003.