

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ILARIA CABRERA,
Complainant

v.

HILLRISE MUTUAL HOUSING
ASSOCIATION, INC.,
Respondent

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PHRC Case No. 201702890
HUD Case No. 03-18-9287-8

RECOMMENDATION OF MOTIONS EXAMINER

AND NOW, this 15th day of August, 2018, upon consideration of
Respondent's Motion to Dismiss it is hereby

R E C O M M E N D E D

to the full PHRC pursuant to 16 Pa. Code §42.131(c)(1), that *Respondent's Motion to Dismiss* be granted. Although afforded an opportunity to respond to the Motion neither the PHRC Harrisburg regional office nor the Complainant filed a response.

Generally, the Respondent's Motion argues that on May 1, 2018, the Complainant executed a Separation Agreement and Release with the Respondent in which the Complainant released the Respondent from all claims arising out the Complainant's lease of a residence owned by the Respondent.

The Complainant's PHRC Complaint alleges that from September 2017 through January 2018, the Respondent's property manager subjected the Complainant to harassment due to her sex. The Complainant's PHRC Complaint further alleges that from

September 2017 through February 2018, the Respondent's property manager subjected the Complainant to disparate conditions or tenancy because of the Complainant's National Origin, Puerto Rico. Finally, the Complainant's PHRC Complaint alleges that on January 4, 2018, the Complainant was evicted in retaliation for the Complainant having complained about the alleged sexual harassment and disparate conditions of her tenancy.

A review of the Separation Agreement and Release reveals that the Agreement was knowing and voluntary. In pertinent part, the Agreement contains the following terms:

1. The Agreement is written in a manner calculated to be understood by the Complainant;
2. The nature of claims covered include "any claim, demand, suit, damage or loss whatsoever arising from or related to Tenant's Lease of Occupancy of the Unit... This is intended as a full, general and total release by each Party of the other Party and shall preclude any actions or claims whatsoever regarding the Lease or any other matter that occurred prior to the execution of this Agreement..."
3. The Agreement does not seek to waive rights that may arise after the Agreement was executed;
4. The Complainant's waiver of rights was done in consideration of the Respondent agreeing to "file a Praecipe to Settle, Discontinue, and End the Litigation with prejudice." At the time of the execution of the lease, there was a pending eviction proceeding in the Lancaster County Court of Common Pleas.

In effect, the Complainant has waived her right to seek recovery of the claims made in her PHRC Complaint.

While the Agreement may prohibit the Complainant from seeking a remedy for alleged discrimination, the PHRC continues to be free to review the allegations and

assess whether the PHRC wishes to file a PHRC action against the Respondent. There can be no waiver of this aspect of a claim. In other words, there remains a question of whether the PHRC believes that the Commonwealth has a public interest in enforcement of the PHRA. Under Section 9(b)(1) of the PHRA, "whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation." Here, this assessment may now be made.

However, the Separation Agreement and Waiver prevent the Complainant from continuing with her PHRC Complaint. Accordingly, the Complainant's Amended Complaint should be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

Carl H. Summerson
Motions Examiner

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ORDER

AND NOW, this 24th day of September, 2018, upon consideration of the Recommendation of the Motions Examiner in the above captioned case, it is hereby,

ORDERED

that the aforementioned Recommendation be and is hereby approved by the full Pennsylvania Human Relations Commission. Accordingly, since the Complainant effectively waived her right to proceed with a PHRC action, this case is dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____



M. Joel Bolstein, Esquire
Acting Chairman

Attest



Dr. Raquel O. Yiengst
Vice Chairperson