

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

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| Rohini Blood, | : | |
| | : | |
| Complainant | : | |
| | : | PHRC Case No. 201703203 |
| v. | : | |
| | : | HUD No. 03-18-8823-8 |
| William Wheeler, | : | |
| | : | |
| Respondent | : | |

FINDINGS OF FACTS¹

1. The Respondent in this case is William Wheeler, (hereinafter “Wheeler”), the owner of several rental properties: a two-unit building located at 3924 Cole Avenue, Allison Park, Pa that Wheeler has owned for twenty-two years, and two additional properties owned during the periods, one, 2007 through 2015 and the other, 2007 through 2018 that are located in ethnically diverse areas. (N.T. 93, 99; C.E. 7 at129)
2. The Complainant in this case is Rohini Blood, (hereinafter “Blood”), an individual who was born in India, raised in Malawi, Africa, and who moved to the United States in September 2015. (N.T. 22)
3. In May 2017, Blood's close female friend, Tomin, shared with Blood an ad for an apartment she found on Craigslist. (N.T. 23)
4. The ad was for the second-floor apartment in Wheeler's two unit building located at

¹ Abbreviations
 N.T. Notes of testimony from the Public Hearing
 C.E. Complainant Exhibit

3924 Cole Avenue, Allison Park, Pa. (N.T. 23, 32; C.E. 1)

5. At the time Blood was looking for an apartment for herself and her then 11-month-old daughter, Blood was separated from her husband and this would be the first time that Blood would be living in the United States alone with her daughter. (N.T.24)

6. By telephone, Blood contacted Wheeler and arranged to view the available second floor unit. (N.T. 24).

7. In Mid-May, approximately a week after contacting Wheeler, Blood, her daughter and Blood's friend viewed Wheeler's apartment. (N.T. 24, 27)

8. As part of friendly casual conversation at the time of Blood's viewing of the apartment, Wheeler asked Blood where she was from. (N.T. 25-6, 123)

9. Feeling nothing was out of the ordinary about the conversation, Blood informed Wheeler that she was having some personal problems and that she is from India but was raised in Africa since she was 13 years old. (N.T. 25)

10. Blood felt that the apartment was safe. (N.T. 24)

11. Shortly after viewing the apartment, Blood contacted Wheeler to tell him that she had decided to rent the apartment. (N.T. 27)

12. Wheeler did not care about Blood's ethnicity when he met with Blood or when he rented Blood his apartment. (C.E. 7 at 131)

13. On May 22, 2017, Blood signed a lease for the second-floor apartment located at 3924 Cole Avenue, Allison Park, Pa. (N.T. 28, 32, 122; C.E. 1)

14. The initial six-month term of the lease began on May 22, 2017 and ended on December 1, 2017 with the proviso that the lease would automatically renew for another six months unless one of the parties acted to terminate the lease. (N.T. 30; C.E. 1)

15. Pursuant to several relevant lease terms, Blood was to pay \$525.00 per month plus utilities and Wheeler was to be responsible for maintenance including pest control. (N.T. 30, 36,101; C.E 1)

16. Without contradiction, Wheeler testified that he always verbally informed each of his tenants that his maintenance responsibilities were limited and that he was not responsible for things like replacing light bulbs, repairing leaky toilet flappers, clogged toilets, and other incidental repair needs. (N.T. 101; C.E. 7 at 54). In late May 2017, accompanied by her friend, Tomin, Blood arrived at 3924 Cole Avenue ready to move in. (N.T. 31)

17. By chance, Wheeler happened to be at the building as Blood and her friend prepared to move Blood's things into the apartment. (N.T. 31)

18. As Wheeler was preparing to leave, Blood asked Wheeler if he could help her friend carry Blood's Queen size mattress upstairs. (N.T. 31-32; C.E. 7 at 74)

19. Wheeler helped move the mattress. (N.T. 32)

20. Wheeler continued to assist Blood by making several trips carrying items from the moving truck upstairs. (C.E. 7 at 75, 92, 98)

21. Blood testified that when she also asked Wheeler to put a crib together and put up a curtain rod, Blood was greeted with Wheeler's laughter. (N.T. 32, 34; C. E. 7 at 74, 91)

22. On June 7, 2017, Blood sent Wheeler a text message indicating that she was experiencing a leaking toilet. (N.T. 37)

23. On June 14, 2017, Wheeler responded to Blood's message about a leaking toilet by leaving the following voicemail message:

Rohini, got your message. You're very clear, and I could care less. You're not going to bully me around, you're not going to push me around and I'm not going to succumb to your neediness every time you decide that you can't do something or refuse to do something for yourself. I don't know where you get off, I don't know

how you grew up, I don't know what the situation was when you came over to this country, whether you came from the caste system and you look down your nose at regular, normal people like me or not, but guess what? If you were from the caste system, that shit don't fly over here. You know? You asked me to put the crib together. Ridiculous! You asked me to help you take the mattress up the steps. Ridiculous! That's ridiculous.(N.T. 37, 39; C.E. 2).

24. Blood testified that most of the communication between herself and Wheeler was via text messages. (N.T. 44)

25. On June 15, 2017, Wheeler and Blood exchanged the following series of emails about an issue with Blood's toilet:

Wheeler indicates "toilet flushes fine. Push the handle down and hold it for a second. It was working fine for the 2 months I worked on the apartment. My wife is making a copy of the lease for you. I received the 2 money orders. All future payments must be made with a personal check. will not issue a receipt because you chose to pay via money order. Furthermore, you DO NOT endorse the back of the money order, I do."

Blood replied: "No the flash is not working. Since yesterday." Wheeler responded: "Your expectations are ridiculous. 'I need curtain rods, please.' Are you kidding me? You're Needy beyond comprehension. Go to Home Depot and buy a new chain. I am not responsible to INCIDENTAL items. Time to grow up and stop relying on everyone else to solve your minor, day-to-day problems. I have been renting properties for 20 years and have NEVER replaced a toilet chain. Ask Tommie what she thinks, if she's honest with you, she'll tell you the same thing."

Blood replied, "I'm getting the toilet fix it coming out the rent I will send the receipt." Wheeler responds, "I will stop down to look at it. And no, you will not take it out of the rent. You do NOT have my permission to schedule repairs for the apartment. If you do, then the financial responsibility is yours. You have zero idea how this works. Tell me when you are home, and I will look at it. You have given me two different explanations as to what it is."

Blood responded, "As I told you before, the flush is not unless I pull the chain. I'm home." Wheeler replied, "Ok, I'll be down tomorrow. What time do you leave for work?" Blood tells Wheeler "I'm leaving at 8 a.m., will be back at 3." Wheeler then says, "I will stop down between 8 and 3 if it needs parts, I will buy them and come back after I'm done working."(C.E. 3)

26. Blood testified that the communication found in C.E. 3 is similar to the earlier voice mail left by Wheeler in that there is nothing about Blood's race or National Origin in either communication. (N.T. 51)

27. Blood testified that she felt like she was unable to help herself. (N.T. 47)

28. Blood relayed several other issues to Wheeler that she felt were Wheeler's maintenance responsibility. (N.T. 55; C.E 4)

29. By email in approximately mid-August 2017, Blood conveyed a concern about a perceived issue with an air conditioner, mice in her unit and the condition of several stairs. (C.E. 4)

30. Wheeler informed Blood that he would recontact his air conditioner repair person and Blood responded, "OK." (C.E. 4)

31. Wheeler's email response to the concern about mice states, "Rohini, I'll get to them when I have time. I don't "jump" when you say so. My world doesn't revolve around your wishes and concerns... You complain about mice. EVERY other tenant would've bought mouse traps and taken care of the problem themselves. Not you. Yet I get there, your door is standing open and there is food all over the floors. You created the problem, but I had to take care of it because you're unwilling to step up and help yourself."(C.E. 4)

32. Blood's email response to Wheeler states, "Well a reply would be nice. I texted on the 15 aug no I'm not first to complain a tenant previously did fall! I'm not going to fall with my baby with rain this is a illegal structure. I'm paying you the rent not living for free so talking me treat me with respect you called a brown person racist will gladly report you to the housing authority." Wheeler's response states, "Same thing with the clogged toilet, A toilet doesn't clog itself. It gets clogged by what is put down the toilet. Yet you called me to have me once again rescue you from a mess you created. NEVER in my years of renting has a tenant called me because THEY clogged their own toilet. You just don't get it. Racist what? You're ridiculous. Not the least bit surprised you're divorced. Move. (C.E 4)

33. No evidence was presented regarding Blood ever responding to Wheeler's

question, Racist What? (N.T.55)

34. On December 1, 2017, the Complainant's lease automatically renewed for six months. (N.T. 30, 63; C.E. 1)

35. In either January or February 2018, Blood applied through Capital Realty Group for Income Based housing. (N.T. 63, 94)

36. On February 14, 2018, Blood was notified that she had been initially turned down for Income Based housing because of a "Bad Landlord Reference." (N.T. 64-5; C.E. 5)

37. Blood asked her husband, from whom she was separated, to contact Wheeler about his negative reference. (N.T. 70)

38. Blood's husband did communicate with Wheeler to which Wheeler responded, " Ethnicity means a lot. I have lived next door to Indians and have had numerous Indians as my customers. I'm 55 years old and in my dealings with Indians, I have discovered many things. Nice, decent friendly people. Extremely intelligent, without a WHIFF of common sense and devoid of practical social skills. CLUELESS, SOCIALLY AWKWARD, ZERO COMMON SENSE, PUSHY, NEEDY. These exact traits I have seen in nearly EVERY Indian I have ever met. If you think I'm off base, ask your average Joe America what their thoughts are on the same subject and you will get a like response. Do I hate Indians? NO, I hate DEALING with them. Big difference." Further Wheeler wrote, "The millisecond I show any disgust with her neediness and whiny bullshit, she goes off about RESPECT. Your Indian Princess seems to think the world stops and starts at her whim and when she gets put in her place, she cries 'you must RESPECT me.'" (C.E. 6)

39. After reapplying for Income Based housing, Blood successfully secured alternate Income Based housing. (N.T. 79)

40. On March 2, 2018, Blood moved from Wheeler's apartment. (N.T. 81)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing in this case.
3. Blood is an individual within the meaning of the PHRA.
4. Wheeler is an individual within the meaning of the PHRA.
5. To establish a *prima facie* case of a hostile living environment, Blood must show:
 - a. That the alleged conduct was unwelcome;
 - b. That the conduct was because of Blood's national origin;
 - c. That the conduct was severe or pervasive; and
 - d. That Wheeler was responsible for the alleged conduct.
6. Blood failed to establish the requisite *prima facie* showing of a hostile living environment.
7. To establish a *prima facie* case that Respondent circulated or made statements indicating a preference in violation of Section 5(h)(5) of the PHRA Blood must show:
 - a. That Wheeler made a statement;
 - b. That the statement was made with respect to the sale or rental of a dwelling;
 - c. That the statement indicates a preference, limitation, or discrimination on the basis of the protected class at issue,
8. To determine whether a statement indicates a preference, limitation, or discrimination on the basis of the protected class at issue, an "ordinary reader" standard is applied. If an ordinary reader or an ordinary listener would believe that the statement suggests a preference, limitation, or discrimination based on a protected status, the statement is deemed discriminatory. Evidence of the speaker's motivation for making the discriminatory statement

is unnecessary to establish a violation.

9. Blood failed to establish that Wheeler circulated or made statements indicating a preference in violation of Section 5(h)(5) of the PHRA
10. To establish a prima facie case of constructive eviction, in violation of Section 5(h)(3), a Complainant must show that the discriminatory conduct was so severe or pervasive that it created a housing environment abusive to tenants because of their protected class and became so intolerable that abandoning possession of the property qualified as a fitting response. Possession of the housing accommodation must be given up by a Complainant, in response to the hostile housing environment, to establish a constructive eviction.
11. Blood failed to establish a prima facie case for constructive eviction.

OPINION

This case arises out of a Complaint that Rohini Blood. (hereinafter "Blood") filed against William Wheeler (hereinafter "Wheeler") at PHRC Case Number 201703203. The case was dual filed with Housing and Urban Development (HUD) and the cases were consolidated. After the initial filing, Blood filed an Amended Complaint and then on October 22, 2019, Blood filed a Second Amended Complaint. Blood's Second Amended Complaint alleges three Counts: (1) that Wheeler failed to perform maintenance in a disparate manner because of Blood's National Origin; that Wheeler created a hostile living environment because of Blood's National Origin; and that Wheeler gave Blood a negative reference when Blood attempted to find an alternative place to live, again because of Blood's National Origin, all in violation of Section 5(h)(3) of the Pa. Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter the "PHRA"); (2) that Wheeler circulated statements indicating a preference in violation of Section 5(h)(5) of the PHRA; and (3) that Wheeler denied Blood a housing accommodation by constructively evicting Blood because of Blood's National Origin, in violation of Section 5(h)(1) of the PHRA.

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff investigated and found probable cause to credit Blood's allegations of discrimination. The PHRC and the parties 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 hearing was held virtually on April 28, 2021, before Carl H Summerson, Permanent Hearing Examiner. Both the Complainant and the Respondent participated virtually and were unrepresented. PHRC attorneys Robert Taylor, Esquire, and Morgan Williams, Esquire, participated virtually on behalf of the Commonwealth's interest in the allegations. Briefs were submitted by the Respondent and the PHRC. The Respondent's brief was received on May 28, 2021, and the PHRC's brief was

received on July 29, 2021.

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

It shall be an unlawful discriminatory practice ... for any person to discriminate against any person in the terms or conditions of selling or leasing any housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation or commercial property because of the...national origin... of any person...

Section 5(h)(5) states in relevant part:

It shall be an unlawful discriminatory practice...for any person to [P]rint, publish or circulate any statement ...(i) relating to the sale, lease or acquisition of any housing accommodation ... which indicates any preference, limitation, specification or discrimination based upon ... national origin...

Section 5(h)(1) states in relevant part:

It shall be an unlawful discriminatory practice ... for any person to [R]efuse to sell, lease, finance or otherwise to deny or withhold any housing accommodation...from any person because of the...national origin...of any person...occupant or user of such housing accommodation ...

The PHRC's post-hearing brief correctly observes that the PHRA is often interpreted consistent with federal cases that come under the Fair Housing Act. Federal cases coming under the Fair Housing Act also recognize that legal principles arising under Title VII employment cases are relevant to housing discrimination cases because the two statutes are part of a coordinated scheme of civil rights laws enacted to end discrimination. *Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999), citing *Gamble v. City of Escondido*, 104 f.3D 300 (9TH Cir. 1997); *Spavone v. Transitional Servs. Of N.Y. Supportive Housing Program*. 216 U.S. LEXIS 63005 (E.D.NY May 12, 2016), citing *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2nd Cir. 1988), see a/so *Williams v. 5300 Columbia Pike Corp.*, 891 F.Supp. 1169 (E.D. Va. 1995). Clearly, there can be an analogy

between an alleged creation of a hostile housing environment with allegations of alleged hostile work environments. The two provisions of the PHRA covering housing and employment are part of a coordinated scheme which share the parallel objective of taking measures to end bias and prejudice in housing and employment. *See Williams v. Poretsky Management*, 955 F.Supp. 490 (D.C. Md 1996).

The present case is similar to many cases in that we find more than one version of the interactions between Blood and Wheeler. Before an analysis of the elements that must be shown in the varied alleged counts made in the Second Amended Complaint, a short recitation of several factors that bear on the credibility of the parties in this matter is in order.

Throughout Blood's testimony, Blood offered that Wheeler "started immediately" to say things to Blood that were offensive and called Blood derogatory names. (N.T. 44) Blood testified that Wheeler's communications always had something to do with color. (N.T. 62) That there were insults always (N.T. 63), and every day (N.T. 67) On the other hand, Wheeler, while recognizing that conversations with Blood were perhaps indelicate, (N.T. 143), consistently and vehemently denied that he ever publicly ridiculed Blood or ever said anything racist or bigoted against Blood's ethnicity or national origin. (N.T. 126, 127, 130) Indeed, Wheeler credibly testified that he had maybe only 5 - 10 conversations with Blood the entire tenancy. (N.T. 143) Further, it is clear that the principal reason for conversations between Blood and Wheeler appears to have dealt only with maintenance issues, not insults about Blood's national origin.

Several telling components of the evidence in this case have a slight negative impact on Blood's credibility. First, only selective emails between Wheeler and Blood were offered into evidence. It was apparent that much of the communication between Wheeler and Blood was by email, however, other emails were not offered as evidence. (N.T.57). If Wheeler insulted Blood every day, one would expect there would be more emails that purport to establish this allegation. Instead, the

emails that were introduced, while harsh, do not support the premise that every communication between Wheeler and Blood was offensive because of Blood's national origin.

Similarly, Blood initially offered that Wheeler insulted Blood and her child by referring to Blood as a brown woman and her child as mixed. On cross-examination, Blood changed the timing of such alleged comments. On cross-examination, Blood testified that such comments did not occur until the point when Blood was trying to move to income-based housing. Finally, with respect to one maintenance item, Blood had informed Wheeler that he had to come repair a leaking toilet or she would call a plumber and take the cost out of the rent. During Blood's testimony, Blood admitted that she had broken the part of the toilet that required the repair. Conversely, Wheeler did not hesitate to admit that he had asked Blood "are you from the caste system in India." (C.E. 7 at 73-4) In contrast to Blood, Wheeler's testimony was consistent and on balance more credible than Blood's.

Turning to the first Count in Blood's Second Amended Complaint, generally, Blood seeks to assert a claim for violations of the PHRA based on her national origin. Blood generally claims that Wheeler interfered with her right to enjoy her apartment by creating a hostile living environment born out of a discriminatory animus towards Blood's national origin. According to Blood, Wheeler, her landlord, who had control over the terms, conditions or privileges of the rental of the dwelling, *see ie Cain v. Rambert*, No. 13 CV 5807, 2014, U.S. Dist. LEXIS 74188 (E.D.NY May 30, 2014), continually harassed Blood and used racial slurs and discriminatory remarks as to Blood's national origin. During the public hearing, the PHRC abandoned the theories found in portions of Count One of Blood's Second Amended Complaint that attempted to claim that there had been disparity in Wheeler's response to Blood's maintenance requests and the claim that, because of national origin, Wheeler gave Blood a negative reference when Blood attempted to relocate to income-based housing. This leaves the claim that Blood had been subjected to a hostile living environment as the essence of Blood's claim in Count 1.

Clearly, hostile environment claims can apply in the housing context. *See D'Censo v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996). Like any hostile environment claim, all the relevant circumstances must be reviewed. Numerous courts instruct that regarding the question of whether an environment is hostile or abusive, there are several general factors to consider: the frequency of the alleged discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with a tenant's living experience. *See Harris v. Forklift Systems, Inc.* 510 U.S. 17 (1993).

Generally, the requisite *prima facie* showing for a claim of hostile living environment is (1) whether the conduct was unwelcome; (2) was the conduct because of the protected class; (3) was the conduct sufficiently severe or pervasive; and (4) is the Respondent responsible. *See Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989), *see also Rivera v. Rochester Genesee Regional Transportation Authority*, 743 F.3d 11 (2nd Cir. 2014) Here, the first and fourth elements are easily met. The issues in this case are with the second and third elements, with particular attention paid to the third element.

Regarding the second element, we look to the totality of the circumstances present here. First, Blood is up against a rather strong inference which holds that if the person that rents the apartment knowing the national origin of the tenant is the same person alleged to be biased against the tenant later, there is an inference that any dispute between the landlord and tenant is likely not because of the national origin of the tenant. *See ie Grady v. Affiliated Cent. Inc.*, 130 F.3d 553 (2nd Cir. 1997) (employment case). In this case, there is such an inference that makes it difficult for Blood to meet her burden to establish by a preponderance of the evidence that she was harassed because her national origin is India. *See Rivera v. Rochester Genesee Regional Transportation Authority*, 743 F.3d 11 (2nd Cir. 2014)

Here, the clear genesis of the difficulties between Blood and Wheeler revolved around maintenance issues. From the moment Blood was moving in, Wheeler formed an impression that Blood wanted things done for her that she should have attempted to do for herself. Both Wheeler and Blood felt that they were not respected in the landlord-tenant relationship. Wheeler testified that he felt that Blood treated him like a servant (C.E 7 at 74) and Blood felt that Wheeler thought she was incapable of doing things for herself. (N.T. 43)

When Blood was moving in, whether Blood requested or demanded Wheeler's help, Wheeler did assist Blood's friend carry in a mattress as well as making several other trips carrying things that belonged to Blood upstairs. (C.E. 7 at 74, 75, 92, 98) Wheeler testified without contradiction that Blood merely stood by watching and did not assist. (C. E. 7 at 75) Further, the evidence shows that Blood also asked Wheeler to put a crib together and furnish curtain rods. Blood testified that Wheeler's response was to laugh. Wheeler offered that these were things Blood should do herself and that he felt that Blood had been disrespectful to him from the beginning. (C.E. 7 at 106)

Here the evidence shows that when Wheeler met Blood for the first time, Wheeler did ask Blood where she is from. On this point, all seem to agree, the conversation was friendly and there was no trace of bias or animosity. There is evidence in the record that Wheeler said something to Blood that one might reasonably think related to Blood's national origin. Wheeler admits that he did ask Blood if she was part of a caste system. (C.E. 7 at 105, 120) Wheeler's version of why he said this comment is that he felt that Blood was looking down on him, treating him like he was inferior. (C.E. 7 at 105) There is certainly a question in this case regarding whether Wheeler's interactions with Blood were because of her national origin.

Assuming arguendo, Wheeler's actions can be shown to relate to Blood's national origin, we turn to the main question in this entire case. The third element of the requisite

prima facie showing is that the alleged actions amount to either severe or pervasive harassment. Once again, consideration of this issue should be done in the context of the constellation of all the circumstances surrounding the allegations. *See EEOC v.*

WC&MEnters., 496 F.3d 393 (5th Cir. 2007) and *Cooper v. Jefferson County Coroner & Medical Examiner's Office*, 861 Fed Appx. 753 (11th Cir. 2021). Further, the conduct that is either severe or pervasive must be both objectively and subjectively offensive. *Harris supra*.

With respect to the evidence presented in this case, Blood has the responsibility to establish by a preponderance of the evidence that either verbal comments were made or actions were committed. Here, Blood seeks to construct a convincing mosaic of alleged statements and conduct that would allow a showing of discrimination. Blood alleges that Wheeler continually verbally harassed her, however, Blood has not established by a preponderance of evidence that Wheeler continually called her offensive names or offended her because of her national origin. Hostile environment claims usually involve a long-lasting pattern of highly offensive behavior, *see eg Schwapp v. Town of Avon*, 118 F.3d 108 (2nd Cir. 1997).

In context, the interaction between Blood and Wheeler generally revolved around Blood's requests for maintenance and Wheeler's reactions to Blood's requests. The record of a telephone call and documented emails submitted into the record show a tenant who believed her landlord had the responsibility to make minor repairs and a landlord who believed that the tenant had the responsibility to address most of the issues brought up. What is clear is that Blood would threaten to withhold rent to pay for services she believed that Wheeler was responsible for and Wheeler would respond by tending to the issues himself rather than get tied up with disputes over acts of withholding of rent to pay for repairs done by someone else. What is equally clear is that Blood's evidence does not show a constant barrage of racial and national origin bias. Instead, the evidence

reveals that the interactions show profound differences of opinion on who had what maintenance responsibilities and how Blood maintained the apartment.

In Pennsylvania, in an employment case, the Commonwealth Court addressed an alleged hostile or abusive work environment and provided considerable guidance on the question of what is severe or pervasive. In the case of *Infinity Broadcasting Corporation v. PHRC*, 893 A.2d 151 (Cmwlth Ct. 2006), the court observed that when determining whether there is a sufficient hostile or abusive environment, the totality of the circumstances must be reviewed. The circumstances the court indicated must be reviewed are the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating; or a mere offensive utterance; and whether it unreasonably interferes with" [an individual's living environment]. Citing *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) quoting *Harris v. Forklift Sys. Inc.*, 510 U.S. 17 at 787. The court indicated that "simple teasing, offhand comments, and isolated incidents (unless extremely serious)" are not actionable under the PHRA. The court instructed that the aggregate effects of all evidence and reasonable inferences therefrom must be evaluated. Citing *Cardenas v. Massey*, 269 F.3d 251 (3rd Cir. 2001).

Of course, there is not a precise mathematical test to determine whether an environment is abusive or hostile. The determination necessarily entails a fact specific assessment of all the attendant circumstances. See *Cruz. Hewitt Associates Caribe Inc.* 281 U.S. LEXIS 61506 (DCPR Feb 20, 2018) and *Seflane v. Wal-Mart Stores, Inc.*, 2002 U.S. Dist. LEXIS 5614 (DCNH Mar. 27, 2002)

In the *Infinity Broadcasting* case, the court listed the general circumstances of several cases where it had been found that the instances of alleged harassment were insufficiently severe or pervasive. In the first case noted by the court, *Woodland v. Joseph T. Ryerson & Son, Inc.* 302 F.3d 843 (8th Cir. 2002), the following was found to not be sufficiently severe or pervasive: racist

graffiti - drawings of KKK, a swastika and a hooded figure on the walls of a bathroom, a racially derogatory poem strewn around the workplace, and three racially derogatory comments made about a Complainant. Next, the court looked to the case of *Peters v. Renaissance Hotel Operating Co.* 307 F.3d 535 (7th Cir. 2002) where there were six incidents, including a supervisor's reference to black music as "wicca wicca Woo music." There had also been a request by a customer that an African American guest be investigated for stealing coins from a fountain, alleged denials of services for African American guests, and one use of the "n... " word in the presence of the Complainant. Again, the Court found that, collectively, these things had not amounted to severe or pervasive conduct. A third case the court reviewed was *Bolden v. PRC, Inc.*, 43 F.3d 545 (10th Cir. 1994). In that case, there had been two overtly racial remarks directed at a Complainant, including use of the terms KKK and n. , and the distribution of an offensive racial cartoon, and general ridicule and harassment. Again, the court noted that there had not been sufficient harassment that met the standard of severe or pervasive.

In the case the Pa. Commonwealth Court was deciding, there had been distribution of a book that contained varied passages that were unquestionably offensive. The court noted that the distribution of the book was unprofessional, insulting and insensitive but did not amount to the requisite level of being severe or pervasive.

The *Infinity Broadcast* case that comes out of the Pa. Commonwealth Court is not the only case where sporadic isolated incidents of harassment do not trigger a finding of a hostile environment. See *Kishaba v. Hilton Hotels Corp.* 737 F. Supp. 549 (D.C. Haw. 1990) citing *EEOC v. Murphy Motor Freight*, 488 F. Supp 381 (D. Mich. 1980).

Here, Blood offered that she was subjectively offended by Wheeler, however, Blood must also show that the circumstances of the interaction were objectively offensive as well. See *Parolne*

v. Unisys Corp. 878 F.2d 100 (4th Cir. 1989). Indeed, conduct that is not severe or pervasive enough to create an objectively hostile or abusive environment that a reasonable person would find hostile or abusive is beyond the purview of protection. *See Harris supra*. Assessment of this question is quintessentially a question of fact.

Here, Blood effectively abandoned her initial claims that Wheeler discriminatorily refused to make repairs and that Wheeler wrote a negative reference when Blood sought to secure income-based housing because Blood's national origin is India. Blood asserted several allegations of harassment based on her national origin and provided testimony regarding those allegations at the public hearing. Specifically, Blood explained that when she was moving into the subject property, on May 22, 2017, she asked Wheeler for assistance. Wheeler responded by laughing at Blood's requests, bringing up Blood's national origin, telling Blood that this isn't Africa, and telling Blood that it doesn't work that way in America. N.T. 34.

Wheeler also left a voicemail for Blood, on June 14, 2017, stating "... I don't know how you grew up, I don't know what the situation was when you came over to this country whether you came from the caste system and you look down your nose at regular, normal people like me or not, but guess what? If you were from that caste system, that shit don't fly over here. You know, you asked me to put the crib together. Ridiculous. You asked me to help you to take the mattress up the steps. Ridiculous. That's ridiculous." N.T. 39, 43. Wheeler sent Blood text messages, on June 15, 2017, stating "your expectations are ridiculous you're needy beyond comprehension. time to grow up and stop relying on everyone else to solve your minor, day-to-day problems. I have been renting properties for 20 years and have NEVER replaced a toilet chain." N.T. 45; C.E. 3.

Additionally, Wheeler sent Blood text messages, on August 26, 2017, stating "I don't 'jump' when you say so. My world doesn't revolve around your wishes and concerns. Those nails have been like that for years through numerous tenants. But of course, you're the first to complain because that's

what you do. You complaint about mice. EVERY other tenant would've bought mouse traps and taken care of the problem themselves. Not you. ... Move." N.T. 59-60; C.E. 4. Wheeler called Blood "a stupid, brown woman" and he felt sorry for her daughter because she's half mixed race, half Indian and half Caucasian. N.T. 61.

Wheeler also sent text messages to Blood's estranged husband, in February 2018, stating Ethnicity means a lot. I have lived next door to Indians and have had numerous Indians as my customers. I'm 55 years old and in my dealings with Indians I have discovered many things. Nice. Decent. Friendly people. Extremely intelligent without a WHIFF of common sense and devoid of practical social skills. ... CLUELESS. SOCIALLY AWKWARD. ZERO COMMON SENSE. PUSHY. NEEDY. These exact same traits I have seen in nearly EVERY Indian I have ever met. ... Do I hate Indians? NO. I hate DEALING with them. Big difference. ... Your Indian Princess seems to think the world stops and starts at her whim and when she gets put in her place she cries 'you must RESPECT me.'" N.T. 70-1; C.E. 6.

While the Commission does not condone these statements made by Wheeler and finds them to be reprehensible and unacceptable behavior for a landlord to engage in toward a tenant, the Commission recognizes that the evidence offered at the public hearing does not support a finding of a hostile housing environment. The evidence established that Wheeler made discriminatory comments to Blood on four separate occasions in a period of ten (10) months and that Wheeler made discriminatory comments to Blood's estranged husband on one occasion in a period of ten (10) months. Given the totality of the circumstances and the evidence presented, Blood failed to establish that the conduct engaged in by Wheeler was severe or pervasive and regular. Therefore, that claim shall be dismissed.

Blood also claims that Wheeler violated Section 5(h)(5) of the PHRA by making statements that show a preference against Indians. Fundamentally, Section 5(h)(5) mainly deals with statements that show a preference with respect to prospective renters who apply and rent a property.

While the Commission has found no case law in Pennsylvania interpreting Section 5(h)(5) of the PHRA, the language in Section 5(h)(5) of the PHRA is nearly identical to the language in Section 3604(c) of the Fair Housing Act.² In interpreting the provisions of the PHRA, the Commission recognizes that while courts and the Commission are “not bound by federal court decisions interpreting the provisions of the federal Civil Rights Act of 1964 . . . in a case of first impression, it is appropriate to look to federal decisions involving similar federal statutes for guidance.” City of Pittsburgh Commission on Human Relations v. Fisher, 782 A.2d 586, 592 n.8 (Pa. Commw. Ct 2011).

Relying upon federal case law interpreting Section 3604(c) of the Fair Housing Act, the Commission finds that to establish a *prima facie* violation of Section 955(h)(5) of the PHRA, a Complainant must show (1) the Respondent made a statement; (2) the statement was made with respect to the sale or rental of a dwelling; and (3) the statement indicated a preference, limitation, or discrimination on the basis of the protected class at issue. Fair Housing Resources Center, Inc.v. Djm’s Reasons, LTD., 499 Fed. Appx. 414, 415 (6th Cir. 2012). A Complainant may prove a Section 5(h)(5) claim by either proving that the Respondent made the statement with actual intent to discriminate, if proof of actual intent exists, or by proving “that an ‘ordinary listener’ would naturally interpret the statement as indicating a preference for or against a protected group or as indicating some other limitation or discrimination against a protected group,” without requiring evidence of the speaker’s motivation for making the discriminatory statement. Fair Housing Resources Center, 499 Fed. Appx. at 415.

Here, Wheeler's question about whether Blood had been part of a caste system was not a declaratory statement, but simply a question. Applying an "ordinary listener" standard, Wheeler's

² Section 3604(c) of the Fair Housing Act provides that “it shall be unlawful to make, print, publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicated any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C.S. § 3604(c).

question is seen more as an isolated stray remark unrelated to any decision-making process. *Isolated stray remarks are not indicative of discrimination. See Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999). Here, Blood has not demonstrated that, considering all the circumstances, an ordinary listener would believe that Wheeler's statements indicated a preference against Blood's national origin. Accordingly, Blood's Section 5(h)(5) claim should be dismissed.

Finally, Blood claims that she had been constructively evicted from her apartment. For a constructive eviction, “the interference by a landlord with the possession of his tenant or with the tenant’s enjoyment of the demised premises must be of a substantial nature and so injurious to the tenant as to deprive him of the beneficial enjoyment of a part or the whole of the demised premises, . . . to which the tenant yields, abandoning the possession within a reasonable time.” *Kuriger v. Cramer*, 498 A.2d 1331, 1338 (Pa. Super. Ct. 1985). Thus, to establish a constructive eviction, “possession must be given up by the tenant in consequence of the landlord’s acts.” *Id.*

In this case, the evidence established that Wheeler made discriminatory statements to Blood, on four separate occasions, between May 2017 and August 2017. The evidence failed to establish that Wheeler made discriminatory statements to Blood between September 2017 and March 2018 when Blood vacated the property. The evidence also failed to establish that Wheeler engaged in discriminatory conduct toward Blood between September 2017 and March 2018. The evidence also established that Blood allowed the lease to renew for another six-month term in December 2017, that Blood first applied for other properties in January 2018, five months after the last discriminatory statement made by Wheeler and that Blood only applied for income-based housing when she began looking for other housing in January 2018. Thus, while the Commission finds Wheeler’s conduct to be reprehensible and unacceptable, the evidence failed to establish that Wheeler’s conduct was of a substantial nature and so injurious to Blood as to deprive her of the beneficial enjoyment of a part or the whole of the property. Accordingly, Blood’s constructive eviction claim should be dismissed

because it was not supported by the evidence in the record. An order dismissing Blood's Complaint follows.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ROHINI BLOOD.

Complainant

v.

**PHRC CASE NO. 201703203
HUD CASE NO. 03-18-8823-8**

**WILLIAM
WHEELER,**

Respondent.

**RECOMMENDATION OF PERMANENT HEARING
EXAMINER**

Upon consideration of the entire record in the above-captioned case, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of Sections 5(h)(1), (3) or (5) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Facts, Conclusions of Law, and Opinion be approved and adopted. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Date February 15 2022¹

By: _____



Carl H. Summerson Permanent
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
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WILLIAM WHEELER,

Respondent.

FINAL ORDER

AND NOW, this 19th day of December, 2022,

after a review of the entire record in this matter, the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Facts, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the full Commission adopts said Findings of Facts, Conclusions of Law, and Opinion as its own finding in this matter and incorporates the same 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.

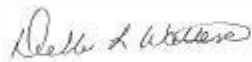
By:



M. Joel Bolstein, Chairman

ATTEST:

By:



O/B/O Commissioner Mayur Patel

Mayur Patel, Secretary

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