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December 21, 2022

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

**SUSIE AND EDWARD DESMOND
Complainants**

v.

PHRC CASE NO. 201701281

**LINDA AND WALTER DAWSON
Respondents**

**FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF PERMANENT HEARING EXAMINER
FINAL ORDER**

FINDINGS OF FACT¹

1. Complainants are Susie and Edward Desmond, (Complainants, S. Desmond or E. Desmond).²
2. Respondents are Linda and Walter Dawson (Respondents, L. Dawson or W. Dawson).
3. S. Desmond began renting a property from Respondents in 1996 located at 111 Dinnerbell Road. Tr. 20.
4. In 1998, E. Desmond moved in with S. Desmond at 111 Dinnerbell Road. Tr. 22.
5. The parties were friends and exchanged Christmas and birthday gifts. Tr. 24.
6. The Complainants occupied 111 Dinnerbell Road until 2003. Tr 22.
7. In 2003, Respondents tore down 111 Dinnerbell Road and moved a trailer onto 115 Dinnerbell Road. Tr. 23.
8. Complainants moved into the trailer at 115 Dinnerbell Road in 2003. *Id.*
9. 115 Dinnerbell Road was larger than 111 Dinnerbell Road. Tr. 24.
10. From 2003 until 2017, the monthly rent at 115 Dinnerbell Road was \$600.00 per month. *Id.*
11. In 2017, Complainants began the process to secure legal custody of their then fifteen-year-old granddaughter Samantha (Sammi) Geibel, who was in foster care. Tr. 31.
12. Complainants worked with an agency called Family Pathways. Tr. 32.
13. Complainants had to complete weekly training through Family Pathways. *Id.*

¹ Abbreviations

Tr.= Hearing Transcript

C.E.= Commission Exhibit

R.E.= Respondent Exhibit

J.E. = Joint Exhibit

² Complainant, Edward Desmond, died prior to the public hearing in this case. Susie Desmond elected not to pursue damages on behalf of his estate.

14. Someone from Family Pathways inspected the Complainants' home. *Id.*
15. Family Pathways approved the Complainants' home. *Id.*
16. On May 2, 2017, S. Desmond delivered a letter to L. Dawson. J.E. 12 ¶4 and J.E. 1.
17. In the letter, S. Desmond stated that Complainants were working with Family Pathways to bring Sammi home. J.E. 1.
18. In the letter, S. Desmond wrote that Sammi was mentally 10-12 years old. *Id.*
19. S. Desmond also wrote that Sammi had a lot of mental health issues and that she has asthma and wears a hearing aid too. *Id.*
20. In June 2017, Respondents proposed a rent increase from \$600.00 to \$850.00 per month beginning on August 1, 2017. J.E. 12 ¶13.
21. This proposed rent increase would be the first rent increase during Complainants' tenancy. J.E. 12 ¶14.
22. Complainants met with the Respondents in person to discuss the substance of the May 2, 2017, letter on June 18, 2017. Tr. 38.
23. During the June 18, 2017, meeting, Complainants and Respondents discussed Complainants' intent to adopt Sammi. Tr. 38-9, 140, 163-64.
24. During the June 18, 2017, meeting, Respondents expressed concerns about the Complainants adopting Sammi given their ages. Tr. 38-9, 110, 164.
25. Respondents expressed these concerns because of their friendship with the Complainants. Tr. 110, 164.
26. S. Desmond was glad Respondents were concerned. Tr. 39.
27. Complainants and Respondents met again on July 29, 2017, to discuss the proposed lease agreement. Tr. 46.

28. The proposed lease included a provision requiring the Complainants to agree that the property would not be occupied by more than two people. J.E. 2.
29. That provision also said the following: “List all other occupants, including minors, who are not listed as tenants in paragraph one that will occupy the leased premises.” *Id.*
30. The provision said “N/A” *Id.*
31. Complainants asked that Sammi be added to the lease. Tr. 110.
32. Respondents refused to add Sammi to the lease. Tr. 110, 170.
33. Complainants refused to pay the increased rent because Sammi’s name was not on the lease and Respondents refused to add it. Tr. 54.
34. Complainants moved out of the property on or about September 30, 2017. Tr. 58.
35. S. Desmond has suffered from anxiety and depression since 2015. Tr. 64.
36. Having to vacate 115 Dinnerbell Road worsened S. Desmond’s depression and anxiety. *Id.*

CONCLUSIONS 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 prerequisites to a Public Hearing in this case.
3. To establish a prima facie case of disability discrimination based upon an association, S. Desmond must show that Sammi had a disability.
4. To establish a prima facie case of discrimination based on familial status, S. Desmond must show actions taken by the Respondents from which one can infer, if the actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion.
5. S. Desmond failed to establish a prima facie case of disability discrimination.
6. S. Desmond established a prima facie case of discrimination based on familial status.
7. Respondents offered a legitimate non-discriminatory reason for their actions.
8. S. Desmond showed that the reason offered by Respondents was pretext for discrimination.

OPINION

This case arises out of a Complaint filed by Edward and Susie Desmond (hereinafter Complainants, S. Desmond or E. Desmond) against Linda and Walter Dawson (hereinafter Respondents, L. Dawson or W. Dawson). E. Desmond died prior to the public hearing in this matter.³ Complainants' PHRC Complaint was filed on or about October 26, 2017, at PHRC Case Number 201701281. The Complaint alleges that Respondents discriminated against Complainants because of their association with someone with a disability and because of the Complainants' familial status.⁴

Pennsylvania Human Relations Commission (PHRC) staff investigated the Complaint and found probable cause to credit the allegations of discrimination. The PHRC and the parties attempted to resolve the case through conference, conciliation and persuasion. The efforts were unsuccessful, and the case was approved for a public hearing. An in-person hearing was held on June 6, 2022, before Darlene Hemerka, Permanent Hearing Examiner. Robert Taylor, Esquire, and Morgan Williams, Esquire, represented S. Desmond. Emily E. Mahler, Esquire, and Laurel Hartshorn, Esquire, represented the Respondents. The parties submitted post-hearing briefs in September 2022.

The Complaint alleged that the Respondents discriminated against Complainants because of their association with someone with a disability. The Pennsylvania Human Relations Act (PHRA) makes it unlawful to

“[r]efuse to sell, lease, finance or otherwise to deny or withhold any housing accommodation or commercial property from any person because of the race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, prospective owner, occupant or user of such housing

³ According to the Complainants' post-hearing brief, Complainant Susie Desmond elected not to pursue damages on behalf of Edward Desmond's estate.

⁴ The Complaint also had an allegation of discrimination based upon failure to provide a reasonable accommodation. The Complainants agreed not to pursue that claim at the public hearing. J.E. 12.

accommodation or commercial property, or to refuse to lease any housing accommodation or commercial property to any person due to use of a guide animal because of the blindness or deafness of the user, use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.” 43 P.S. § 954 (h)(1)

The term “handicap or disability,” with respect to a person, means:

- (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities;
- (2) a record of having such an impairment; or
- (3) being regarded as having such an impairment... 43 P.S. 954 p.1

The Pennsylvania Human Relations Act (PHRA) provisions are supplemented by applicable regulations promulgated by the PHRC at 16 Pa. Code §44.4. The regulations state

Handicapped or disabled person - includes the following:

- (i) A person who has or is one of the following:
 - (A) A physical or mental impairment, which substantially limits one or more major life activities.
 - (B) A record of such impairment.
 - (C) Regarded as having such an impairment.
- (ii) As used in subparagraph (i) of this paragraph, the phrase:
 - (A) “physical or mental impairment” means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine or mental or psychological disorder, such as mental illness, and specific learning disabilities.

- (B) “major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (C) “has a record of such impairment” means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
- (D) “is regarded as having such an impairment” means has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator, or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph (i)(A) of this paragraph but is treated by an employer or owner, operator, or provider of a public accommodation as having such an impairment. (16 Pa. Code §44.4).

Regarding the disability claim, the parties dispute the specificity with which the claim must be pled in the Complaint. The Complaint alleges discrimination based on an association with someone with a disability; Complainants’ granddaughter Samantha Geibel (Sammi). J.E. 7. The Complaint did not include any allegations that the Respondents regarded Sammi as disabled. However, at the hearing, S. Desmond argued that she was proceeding under a “regarded as” theory of disability. Tr. 126. Respondents argued that S. Desmond should not be able to prevail on the disability claim because the Complaint did not include a “regarded as” claim.

A plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 quoting *Sanjuan v. American Bd. of Psychiatry & Neurology*, 40 F.3d 247, 251. Applying this principle to disability claims, Pennsylvania courts have held that a plaintiff needs specific facts to show that the defendant regarded them as disabled and can't rely solely on the facts pled under a different prong of disability discrimination. See *Molisee v. Securitas Sec. Servs.*, 2012 U.S. Dist. LEXIS 421, *10-11 (W.D. Pa. 2012) and *Palumbo v. Christina Lawrence DMD, Inc.*, 2011 Pa. Dist. & Cnty. Dec. LEXIS 81 *7 (Pa. Comm. Pl. 2011) (dismissing a "regarded as" claim, in part, because "the Complaint is silent as to how Defendant regarded [the plaintiff] as disabled"). Here the Complaint did not include any facts asserting that the Respondents regarded Sammi as disabled. Therefore, the claim should be dismissed under a regarded as theory.

The Complaint did contain facts about Sammi's impairments, so the Hearing Examiner now turns to whether S. Desmond established that Sammi's impairments qualify as a disability because they substantially limit a major life activity. The Complaint includes allegations that Sammi has asthma, mental health issues, is mentally 10-12 years old and wears a hearing aid. See J.E. 7. However, the record does not contain any information about how these conditions impact Sammi. Since S. Desmond did not provide any evidence that Sammi's impairments substantially limited a major life activity, this claim should be dismissed.

The second claim in the Complaint was discrimination based on familial status. The term "familial status" means one or more individuals who have not attained the age of eighteen years being domiciled with: (1) a parent or other person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the

basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. 43 P.S. § 954(t).

On a claim for discrimination, a plaintiff has the initial burden of showing actions taken by the defendant from which one can infer, if the actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion. *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577.

The parties disagree whether S. Desmond is entitled to protection under familial status. Respondents argue that S. Desmond is not entitled to protection because Sammi was not domiciled with her and E. Desmond. Tr. 126. The Hearing Examiner is unpersuaded by this argument for two reasons. First, the plain language of the PHRA makes clear that the protections against discrimination on the basis of familial status apply to people who are in the process of securing legal custody of someone under 18. The structure of the provision illustrates that the word domiciled goes with (1) and (2), not the sentence about legal custody. Second, Respondents' interpretation goes against the PHRA's mandate that its provisions be construed liberally for the accomplishment of its purposes. 43 P.S. § 962(a).

Here the facts show that Complainants were pursuing legal custody of Sammi. They were working with an agency called Family Pathways, which was providing them weekly training. Tr. 32. Family Pathways also came and inspected Complainants' home to see if it was suitable for Sammi. *Id.* Complainants and Family Pathways were communicating with Sammi's caseworker in Georgia. Thus S. Desmond established she is entitled to protection.

The Hearing Examiner finds that S. Desmond provided sufficient evidence to establish a prima facie case of discrimination. S. Desmond informed Respondents via letter that Complainants were working with Family Pathways to bring Sammi to live with them on May 2, 2017. J.E. 12 ¶4. The parties met on June 18, 2017, to discuss the substance of the letter. Tr. 38. In June 2017,

Respondents proposed a rent increase from \$600.00 to \$850.00 per month beginning on August 1, 2017. J.E. 12 ¶13. This proposed rent increase would be the first rent increase during Complainants' tenancy. J.E. 12 ¶14.

Respondents admitted that during the June 18, 2017, meeting they raised concerns about Complainants raising a child given their ages. Tr. 118-19, 164. S. Desmond argues that these admissions alone are sufficient to prove discrimination. Respondents argue that they made these statements out of concern for Complainants. Tr. 118-19, 164. The Hearing Examiner finds these statements insufficient to prove discrimination given the nature of the relationship that the parties had up to that point. The parties were friends and exchanged Christmas and birthday gifts. Tr. 24.S. Desmond testified that she was glad Respondents raised concerns. Tr. 39.

While the admissions alone are insufficient to establish a prima facie case, the proposed lease included a provision requiring the Complainants to agree that the property would not be occupied by more than two people. J.E. 2. That provision also said the following: "List all other occupants, including minors, who are not listed as tenants in paragraph one that will occupy the leased premises." *Id.* The provision said "N/A" *Id.* L. Dawson also admitted that the next tenant in the property was single with no children. Tr. 117. Based on all the evidence, the Hearing Examiner finds that S. Desmond established a prima facie case for familial status discrimination.

Once S. Desmond establishes a prima facie case, the burden shifts to the Respondents to produce a legitimate non-discriminatory reason for their actions. Respondents argue that they terminated the lease because "[Complainants] said they would not sign because of money." Tr. 176. Refusing to agree to a rent increase is a legitimate non-discriminatory reason to end a lease.

The burden then shifts back to S. Desmond to show that the stated reason was pretext. To show that Respondents' reason is pretext, Desmond must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in [] proffered reason for [] actions

that a reasonable factfinder could find it unworthy of credence.” *Krouse v. American Sterilizer Co.*, 126 F.3d 494, 504 (internal quotation marks omitted).

The parties met on July 29, 2017 to discuss the proposed lease. The parties dispute what happened at the July 29, 2017 meeting. W. Dawson testified, “They said they would not sign because of money.” Tr. 176. On cross examination, W. Dawson admitted that Complainants expressed concerns about signing a lease that did not include Sammi. Tr. 169-70. W. Dawson also admitted that Respondents took no steps to amend the lease after Complainants expressed their concerns. Tr. 170. L. Dawson admitted that the Complainants asked that Respondents add Sammi to the lease. Tr. 114. L. Dawson admitted that Respondents did not put Sammi’s name on the lease. *Id.*

S. Desmond testified that Complainants refused to sign the lease because “Sammi’s name was not on it, and they refused to put it on.” Tr. 54. She also testified that “at first she thought [the rent increase] was a little high, but considering what we paid for all those years, it was, you know, around the same amount that everyone else was charging for rent around there.” Tr. 49. S. Desmond further testified that she did not have an objection to the rent increase. *Id.* S. Desmond testified credibly that “she and E. Desmond thought they would live at 115 Dinnerbell Road until they died.” Tr. 54-5.

The Hearing Examiner finds S. Desmond’s testimony of the meeting on July 29, 2017, credible. Specifically, that Complainants raised concerns about Sammi’s name not being on the proposed lease and the Respondents refused to add her. At that point, the Complainants refused to pay the increase in rent. This finding is supported by the fact that the next lease the Complainants signed included Sammi’s name and a higher monthly rent. The Hearing Examiner finds that S. Desmond established a claim for familial status discrimination and is entitled to damages.

Section 9(f)(1) of the PHRA provides in pertinent part:

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 finding 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 reimbursement of certifiable travel expenses in matters involving the complaint, ...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(h)...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.

Section 9(f)(2) of the PHRA provides in pertinent part: “Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Sections 5(h) or 5.3 of this act: (i) in an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice...”

The function of the remedy in a discrimination case is to make a Complainant whole by returning the Complainant to the position in which she would have been, absent the discriminatory practice. *See Albermarle Paper Co. v. Moody*, 422 U.S. 405, 418-19. The first aspect the Hearing Examiner must consider regarding making S. Desmond whole is the issue of the extent of verifiable reasonable out-of-pocket expenses suffered. Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim since the wrongdoer caused the damages. *See Green v. USX Corp.*, 46 FEP Cases 720 (3rd Cir. 1988).

Here S. Desmond testified that Complainants had to get a UHaul truck, hire people to help them move, pay increased rent, and buy a lawnmower. Tr. 59-61. S. Desmond testified that moving expenses were between \$1,500.00-\$2,000.00. Tr. 59. The Hearing Examiner finds that S. Desmond should be awarded the following for out-of-pocket expenses.

Moving Expenses:	\$1,500
Lawnmower and “weed eater:”	\$800
Difference in rent (\$850 proposed) and (\$900 paid to new property) from October 17, 2017, to January 2019 (16 months x \$50):	\$800
Total	\$3,100.00

In determining whether the evidence of emotional distress is sufficient to support an award, the Hearing Examiner looked at both the direct evidence of emotional distress and the circumstances of the act that allegedly caused the distress. *McGlawn v. Pa. Human Rels. Comm'n*, 891 A.2d 757, 777, 2006 Pa. Commw. LEXIS 13, *46 citing *United States v. Balistrieri*, 981 F.2d 916 (7th Cir. 1992). In determining the amount of the award, courts look at different factors. For example, in *HUD v. Jancik*, P-H Fair Hous. Fair Lend. Rptr. sec. 25,058 p. 25,561 (HUD ALJ 1993), the fact finder looked at whether the Complainant suffered physically and whether the Complainant sought medical treatment. In *HUD v. Weber*, P-H: Fair Housing-Fair Lending Rptr. §25,041 p. 25,421 (HUD ALJ 1993), the fact finder analyzed whether the discrimination was repeated or whether the Respondent threatened violence or was violent toward the Complainant. Finally, the fact finder in *Weber* recognized that the Complainant's personal history may amplify the impact of Respondent's discrimination.

Here S. Desmond had lived in this property for over fourteen years. S. Desmond testified credibly that she and E. Desmond thought they would live at 115 Dinnerbell Road until they died. Tr. 54-5. In the middle of attempting to adopt her grandchild who was in foster care, she was forced to move out. This move had to happen after a site visit was done on this property by the adoption agency to facilitate the adoption. Tr. 32. She was forced to find somewhere to live within 90 days. S. Desmond testified she became more depressed. Tr. 54. She was seeing a clinician. *Id.* However, S. Desmond's testimony was vague regarding her symptoms. S. Desmond also testified that she had no physical symptoms. Tr. 57. The Hearing Examiner finds that \$10,000.00 is an appropriate award for the emotional distress.

S. Desmond also requests a civil penalty. When determining the amount of the civil penalty, the factors to consider are: "the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of that Respondent and the goal of

deterrence, and other matters as justice may require.” *Id.* Here the evidence establishes that Respondents discriminated against Complainants. Respondents are fully culpable for those actions. However, there is no evidence that Respondents have a history of discriminating based on familial status. Respondents are not a large landlord. Therefore, \$2,500.00 is an appropriate amount for the civil penalty.

Finally, given that the Respondents own multiple properties and never received any training on the Pennsylvania Human Relations Act, the Hearing Examiner finds that Respondents must attend Fair Housing training within 90 days of the date of this order.

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

SUSIE AND EDWARD DESMOND

Complainants

v.

PHRC CASE NO. 201701281

LINDA AND WALTER DAWSON

Respondents

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that S. Desmond has proven she was denied housing because of her familial status in violation of Section 5(h) of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Darlene Hemerka

Darlene Hemerka, Hearing Examiner

Date: October 31, 2022

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

SUSIE AND EDWARD DESMOND

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PHRC CASE NO. 201701281

LINDA AND WALTER DAWSON

Respondents

FINAL ORDER

AND NOW, this 19th day of December, 2022, 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, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said 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. That Respondents shall cease and desist from discriminating against anyone based on the person's familial status.
2. That Respondents shall attend Fair Housing Training within 90 days of the effective date of this Order.
3. That within 60 days of the effective date of this Order, Respondents shall pay S. Desmond the lump sum of \$3,100.00 which represents reasonable out-of-pocket expenses incurred by S. Desmond.

4. That, within 60 days of the effective date of this Order, Respondents shall pay S. Desmond \$10,000.00 in compensatory damages, which represents the emotional distress S. Desmond suffered and which is directly attributable to Respondents' discriminatory actions.
5. That, within 60 days of the effective date of this Order, Respondents shall deliver to PHRC Counsel, Robert Taylor, Esquire, a check payable to the Commonwealth of Pennsylvania, in the amount of \$2,500.00, which represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.
6. That, within 30 days of the effective date of this Order, Respondents shall report to the PHRC on the manner of their compliance with the terms of this Order by letter addressed to Robert Taylor, Counsel, Pennsylvania Human Relations Commission, Piatt Place, Ste. 390, 301 Fifth Ave., Pittsburgh, PA 15222.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
_____ **M. Joel Bolstein**

ATTEST:

By:  O/B/O Commissioner Mayur Patel
_____ **Mayur Patel, Secretary**

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