

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

POINDEXTER BROWN,
Complainant

DOCKET NO. H-1162

VS

CAMPBELL ASSOCIATES, INC.,
EMLEN & CO. and
BARBARA WADHAM, Agent,
Respondents

OPINION, INCLUDING FINDINGS OF FACT, CONCLUSIONS
OF LAW, COMMISSION'S DECISION AND FINAL ORDER

On September 18, 1968 a Complaint was filed with the Pennsylvania Human Relations Commission (hereinafter referred to as "Commission") by Poindexter Brown against Emlen & Co. and Barbara Wadham, agent, alleging that on or about September 18, 1968, the Respondents refused to sell a five bedroom house, located at 118 Essex Avenue, Narberth, Pa., to the Complainant because of his race (which was Negro) and that said refusal was in violation of Section 5, Sub-Section (h)(1) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended. The Complaint further stated that the unlawful discriminatory practice referred to was of a continuing nature which has persisted up to and including the present time.

On September 25, 1968 an Amended Complaint was filed with the Commission by the Complainant containing the same allegations as to the original Respondents as in the original Complaint herein but making the allegations as well with reference to Campbell Associates, Inc. and adding it as a Respondent.

At the public hearing on December 18, 1968, the Complaint and Amended Complaint were amended so that the name of one of the Respondents, Barbara "Wadham", would read Barbara "Wadhams".

Investigation of the facts in the case resulted in the finding of probable cause to credit the allegations of the Complaint and the Amended Complaint and the Commission ordered a public hearing to be held in the matter, assigning as Hearing Commissioners, Dr. Robert Johnson Smith, Chairman, and Rev. Arnold D. Nearn, Stanley A. Miller, and Everett E. Smith.

On December 12, 1968 Emlen & Co., through its counsel, Duane, Morris & Heckscher, by William R. Traub, Esq., filed its Answer and New Matter in which it denied having done anything which constituted an unlawful discriminatory practice under the Human Relations Act and alleged, by way of New Matter, that it was not the listing broker for the said property, did not represent the owners of said property and had immediately presented offers by Complainant for the purchase of said property to the listing broker, Campbell Associates, Inc., one of the Respondents herein.

On the same day, through the same counsel as for Emlen & Co., Barbara Wadhams, another Respondent herein, filed her Answer and New Matter in which she denied having done anything which constituted an unlawful discriminatory practice under the Human Relations Act and that she was an employee of Emlen & Co., one of the Respondents herein, and that she had immediately presented offers by Complainant to purchase the said property to the listing broker, Campbell Associates, Inc., one of the Respondents herein.

On December 13, 1968, through its counsel, Haws & Burke, by Robert E. Slota, Esq., Respondent Campbell Associates, Inc., filed its Answer denying that it had engaged in any discriminatory practice under the Human Relations Act.

The public hearing was held on December 18, 1968 in the Township Commissioners' Meeting Room, 75 E. Lancaster Avenue, Ardmore, Pa., beginning at 10:00 A.M., and notes of testimony in said hearing were taken by Jeannette J. Laws, of Joseph M. Corman Reporting Services, Inc.

The case in support of the Complaint as amended, was presented by Stanton W. Kratzok, Esq., Assistant General Counsel for the Commission, and Respondent Campbell Associates, Inc. was represented by Robert E. Slota, Esq. of Haws & Burke; the Respondents Emlen & Co. and Barbara Wadhams being represented by William R. Traub, Esq., of Duane, Morris & Heckscher.

The Complainant, the Respondents and their witnesses were present in court and testified.

At the close of testimony, the Hearing Commissioners heard argument from all counsel and closed the case, indicating that they would make a recommendation to the full Commission which would then make a Final Order.

The Hearing Commissioners are unanimously of the opinion and, therefore, recommend that the Complaint and Amended Complaint herein against Respondent Campbell Associates, Inc., Respondent Emlen & Co. and Respondent Barbara Wadhams be dismissed for the reason that there was no showing that Respondents had refused to sell the property in question to Complainant because he was a member of the Negro race and that, therefore, Respondents have not engaged in a discriminatory practice under the Pennsylvania Human Relations Act.

There is no doubt in the Hearing Commissioners' minds that first appearances in this case were sufficiently clouded as to have justified the public hearing. But now that all the evidence is in, there is equally no doubt that the evidence adduced at the hearing changed those appearances.

The evidence disclosed that Complainant's offer was only \$250.00 away from sellers' asking price and that, eventually, sellers disposed of their property for \$500.00 less than Complainant had offered.

One of the owners of the premises testified, in explanation of his and his wife's refusing Complainant's last counter-offer and eventually taking less for the property from another buyer, that they were moved to do so by the eventual buyers agreeing to a closer settlement date (since the sellers had an apartment under lease for which they were obligated to pay rent) and by the eventual buyers being able to procure the necessary mortgage with more facility than could Complainant.

The Hearing Commissioners were concerned in this matter as to the possibility that, although it had once been rejected, if Complainant's renewal of his counter-offer had been actually communicated to Respondent Wadhams and if she, in turn, had seasonably communicated it to the owners' listing broker, the renewed counter-offer might not have ripened into a valid contract.

There was conflicting testimony as to whether Complainant had actually called Mrs. Wadhams on certain dates to renew his counter-offer. Complainant testified he had made attempts to do so but never received a return call from Mrs. Wadhams.

She testified that she had never received Complainant's calls. However, there was agreement that Mrs. Wadhams finally learned from Complainant his desire to continue the pressing of his counter-offer, which she did communicate to the listing broker, only to learn that an agreement had already been executed in favor of another buyer.

Regardless of how this conflict is resolved, the Hearing Commissioners are of opinion that Complainant's counter-offer would not have been accepted by the owners because of the other factors motivating the sale to the other buyers, namely, a settlement date sooner than Complainant proposed, the desire of owners to avoid the double obligation of having to pay rent on their newly-leased apartment and carrying their home, and the relative ease of the mortgage factor in the eventual buyers' case.

To conclude that Complainant's counter-offer would have been accepted by owners if Mrs. Wadhams had received his earlier calls and had responded early enough to them to have communicated the counter-offer to the listing broker before the eventual buyers appeared on the scene, is to rely on too flimsy conjecture, especially in the circumstances that the owners decided to sell for a price lower than that offered by Complainant, motivated by clear and realistic considerations none of which were related to Complainant's race.

At most, the failure of seasonable communication all around can be fairly said to be attributable to a combination of happenstance and, perhaps, a failure of efficiency and alertness on Respondents Emlen & Co. and Wadhams parts.

There was no evidence whatsoever at all in this case that Complainant's race was a factor either in his relation with his broker, its salesman or with the listing broker or with the owners of the property in question.

The facts and circumstances herein are completely consistent with a failure of contractual relations between Complainant and the property owners solely because there was no meeting of their minds on the terms of the contract.

The Hearing Commissioners, therefore, make the following

FINDINGS OF FACT

1. The Complainant herein is Poindexter Brown, a Negro, age thirty-eight, residing at 1201 Tribbit Avenue, Sharon Hill, Pa., with his wife and children.

2. At all times herein mentioned, Respondents Campbell Associates, Inc. and Emlen & Co., were duly-licensed real estate brokers and Respondent Barbara Wadhams, was a duly-licensed salesman employed by Respondent Emlen & Co.

3. At all times herein mentioned up to November 4, 1968, Louis H. Weiner and Esther Ricklin Weiner, his wife, were the owners of premises 118 Essex Avenue, Narberth, Pa.

4. Premises 118 Essex Avenue, Narberth, Pa., was offered for sale by the owners thereof through Campbell Associates, Inc., and through said broker was sold on September 17, 1968 to Richard R. Straub and Dorothea Straub, his wife, final settlement thereon being held on November 4, 1968.

5. From some time in the early part of the Summer of 1968, Complainant had sought the services of Emlen & Co. in order to procure a residence for sale and, through its salesman,

Respondent Barbara Wadhams, had been shown properties for sale, for none of which was there ever an agreement of sale executed either because the property was not suitable for Complainant's purposes or because the price sought was not what Complainant was willing to pay.

6. On September 5, 1968, Complainant had called Emlen & Co. obtaining information concerning 118 Essex Avenue, Narberth, Pa., the subject property, from Mrs. Claire Miller, a colleague-salesman of Respondent Wadhams who was on vacation.

7. Complainant, in a subsequent conversation with Mrs. Miller on the aforesaid date, was informed that the asking price for the property was \$26,000.00.

8. On the same date, Mrs. Miller arranged for an inspection by Complainant and his wife, which took place in the presence of Mrs. Miller and the owners, subsequent to which Complainant communicated an offer of \$25,000.00 to Mrs. Miller, depositing with her his check for \$500.00 payable to Emlen & Co. At the same time, Complainant and his wife executed an agreement for purchase of the subject premises for \$25,000.00 in which, among other things, it was required that a \$500.00 deposit be made at the signing of the agreement, the balance of deposit up to 10% of the purchase price, to be made within ten days after execution of the agreement and settlement to be made on or before November 7, 1968, to be contingent on Complainant's being able to obtain a mortgage of 80% of the sale price.

9. On the next day, September 6, 1968, Mrs. Miller informed Complainant that the sellers would not agree to the 80% contingency but that the other terms of the agreement were satisfactory to them. Complainant then reduced the mortgage contingency

to 75% but insisted on the settlement date being advanced to on or before December 7, 1968.

10. On the next day, September 7, 1968, Complainant was informed by Mrs. Miller that the sellers had discovered that termites had made necessary the replacement of a window in the premises and therefore wanted \$25,500.00 for the property in order to cover the cost of the replacement. Complainant was also informed by Mrs. Miller that thenceforth Complainant was to deal with Mrs. Wadhams who had just returned from vacation.

11. On September 10, 1968, Complainant spoke to Mrs. Wadhams, bringing her abreast of the termite situation and asking her to communicate to the sellers his counter-offer of \$25,250.00, an increase of \$250.00 over his original offer. Mrs. Wadhams indicated that she would report back the result of this counter-offer.

12. Complainant called Mrs. Wadhams on September 11, 1968 to learn from her that the sellers had refused the counter-offer of \$25,250.00, which Complainant refused to increase by \$250.00 in order to meet sellers' asking price of \$25,500.00.

13. On September 12 and September 13, 1968, Complainant called Mrs. Wadhams but was unable to reach her.

14. On September 15, 1968 an advertisement for the premises appeared in the Philadelphia Inquirer offering the property for \$25,000.00, whereupon Complainant, on September 16, 1968 attempted to call Mrs. Wadhams but was unable to reach her.

15. On September 17, 1968, Complainant and Mrs. Wadhams had a telephone conversation in which Complainant requested her to renew his offer of \$25,250.00 with seller. On September 18, 1968 Mrs. Wadhams informed Complainant that she had learned from the listing broker on the said premises, Campbell Associates,

Inc., that the subject property had been sold on September 17, and Complainant requested the return of his deposit.

16. The subject premises were sold for \$24,750.00 under an agreement of sale dated September 17, 1968, calling for final settlement on or before November 4, 1968.

CONCLUSIONS OF LAW

1. At all times herein mentioned Campbell Associates, Inc. was the agent for the sale of premises 118 Essex Avenue, Narberth, Pa., being the listing broker thereof on behalf of the owners, Louis H. Weiner and Esther Ricklin Weiner, his wife.

2. At all times herein mentioned, Emlen & Co. was the agent employed by Complainant in the procuring of a residence for his purchase, dealing for that purpose with Barbara Wadhams, its salesman.

3. At all times herein mentioned the Commission had and has jurisdiction over the said matter of these proceedings and over the Complainant and Respondents.

4. The counter-offer of Complainant for the purchase of subject premises did not meet the demand of the sellers and, because of this, was the sole operative factor in the failure of Complainant to enter into an agreement for said purchase.

5. There was no evidence whatsoever to indicate that Campbell Associates, Inc., the listing broker, had refused to sell to Complainant because of his race.

6. There was no substantial evidence showing that Emlen & Co. through its salesman, Barbara Wadhams, or that the salesman herself discriminated against Complainant because of his race and that his counter-offer was not timely communicated to the listing broker.

7. The Complaint and Amended Complaint were properly made, signed, and filed in accordance with Section 9 of the Pennsylvania Human Relations Act.

8. No Respondent herein refused to sell Complainant the house herein because he was of the Negro race.

9. No Respondent herein has engaged in an unlawful discriminatory practice in this matter.

It is therefore recommended that the Commission enter an Order dismissing the Complaint and Amended Complaint against Respondents Campbell Associates, Inc., Emlen & Co. and Barbara Wadhams.

COMMISSION'S DECISION

AND NOW, March 3, 1969, upon the recommendation of the Hearing Commissioners and upon all the evidence at the public hearing of this case and in consideration of the Findings of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission, by a unanimous decision, finds and determines that the Complaint and Amended Complaint of Poindexter Brown against Campbell Associates, Inc., Emlen & Co. and Barbara Wadhams be dismissed.

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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Respondents

FINAL ORDER

AND NOW, this 3rd day of March, 1969, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Commission's Decision, and pursuant to Section 9 of the Pennsylvania Human Relations Act, it is hereby


ORDERED, by the Pennsylvania Human Relations Commission:

1. That the Complaint and Amended Complaint of Poindexter Brown, Complainant, be dismissed as to Respondents Campbell Associates, Inc., Emlen & Co. and Barbara Wadhams.

PENNSYLVANIA HUMAN RELATIONS
COMMISSIONS


MAX ROSENN, CHAIRMAN

S E A L

ATTEST: 
STANLEY A. MILLER, SEC'Y.