

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**MARGARET H. COLLINS and LEON FRISBY, Complainants**

**v.**

**DONALD P. McKAY, Respondent**

**DOCKET NO. H-428**

**OPINION**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**COMMISSION'S DECISION**

**FINAL ORDER**

A complaint was filed with this Commission on July 16, 1964 by Margaret H. Collins, a real estate broker, against Donald P. McKay, a builder of housing accommodations, on the ground that Mr. McKay had refused to accept an agreement of sale from Miss Collins because of the race of the purchaser, Leon Frisby, who is a Negro, and who was desirous of purchasing premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania.

An Amended Complaint was filed in this case on September 11, 1964 adding Leon Frisby, the purchaser, as a party complainant and setting forth additional averments of alleged unlawful discriminatory practices on the part of the respondent on July 23, 1964 and on August 25, 1964.

Investigation of the facts in this case resulted in a finding of probable cause to credit the allegations of the complaint, whereupon efforts were made by the Commission to adjust the matter by conciliation and persuasion.

When all efforts to adjust, first by the staff and then by the Commission, were unsuccessful, the Commission voted to conduct a public hearing. Selected as Hearing Commissioners to conduct the hearing and to report back to the Commission, were Joseph X. Yaffe, Esq., as presiding Commissioner, Edward M. Green and S.D. Roberts.

Notices of the public hearing together with copies of the Amended Complaint were given to the respondent and to Francis R. Lord, Esq., attorney for the respondent, in accordance with the Commission's Regulations. The public hearing was held on Friday, October 2, 1964 at 10:00 o'clock A.M. in Borough Hall Building, State and Jackson Streets, Media, Delaware County, Pennsylvania.

The case in support of the complaint was presented by Nathan Agran, Esq., General Counsel for the Commission, and the respondent was present and represented by Francis R. Lord, Esq.

Seven witnesses testified in support of the complaint. Also called to the stand as of cross-examination was respondent, Donald P. McKay. He refused to answer claiming that his answers "may tend to incriminate me under my rights in the Pennsylvania Constitution and in the United States Constitution." The Hearing Commissioners then requested the respondent to reply to the questions, advising he would be granted immunity in accordance with Section 7 (g) of the Pennsylvania Human Relations Act. The respondent still refused to answer questions upon the advice of his attorney who explained that he so advised his client because, in his opinion, the Pennsylvania Human Relations Act is unconstitutional.

The respondent did not file an answer to the Amended Complaint; nor did he call any witnesses or present any evidence at the conclusion of the complainant's case.

On all of the evidence at the public hearing the Hearing Commissioners recommend that the Commission find that the respondent, Donald P. McKay, has committed unlawful discriminatory practices as defined in the Pennsylvania Human Relations Act.

The Hearing Commissioners, Joseph X. Yaffe, Esq. presiding, Edward M. Green and S.D. Roberts, make the following findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. At all times herein mentioned, the complainant, Margaret H. Collins, white, was a licensed real estate broker authorized to transact business in the Commonwealth of Pennsylvania and was an employee of Suburban Fair Housing, Inc., a real estate firm.
2. The said real estate firm Suburban Fair Housing, Inc. is a corporation with principal office at No. 53 Cricket Avenue, Ardmore, Pennsylvania which represents buyers of housing accommodations in and around Delaware County, Pennsylvania on an open occupancy basis -- that is to say, it represents all qualified applicants for housing, regardless of their race.
3. At all times herein mentioned, the complainant, Leon Frisby, Negro, lived and he still lives at No. 2838 Island Road, Philadelphia, Pennsylvania.
4. At all times herein mentioned, prior to September 8, 1964, the respondent., Donald P. McKay, was the builder and owner of premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania.
5. Prior to September 8, 1964, the building at No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania was an unoccupied new dwelling intended to be occupied by one family for residence purposes.
6. On July 14, 1964 the respondent Donald P. McKay advertised for sale to the general public premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania by means of signs at the intersection of Beatty Road and Parkridge Drive, Wallingford and also in front of the premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania.
7. At the time of the events complained of, the price being asked by the respondent for No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania was \$31,900.
8. At all times hereafter mentioned the respondent controlled the sale of the dwelling located at No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania.
9. On July 14, 1964 the complainant, Margaret H. Collins, spoke by telephone with the respondent, Donald P. McKay, advising him that she had a prospective buyer for premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania who was willing to pay the full asking price of \$31,900.
10. In the first part of the telephone conversation of July 14, 1964 between complainant, Margaret H. Collins, and respondent, Donald P. McKay, respondent expressed eagerness to sell the said

premises No. 850 Parkridge Drive, Wallingford for \$31,900 and advised that he will pay a commission to any real estate broker who represents the buyer.

11. During the said telephone call of July 14, 1964, respondent asked whether the prospective buyers are Negroes and when told the buyers were Negroes, respondent told complainant, Margaret H. Collins, not to "spend much time with those prospects."
12. During said telephone call of July 14, 1964, when complainant, Margaret H. Collins, urged respondent, Donald P. McKay, to accept the offer from Negro applicants, the respondent refused to sell to Negroes, stating as reasons that he personally lived across the street from premises No. 850 Parkridge Drive, Wallingford and "I have other lots in the area, I don't want to go out of business."
13. On the same day, to wit, July 14, 1964, the complainant, Leon Frisby, instructed his real estate agent, Suburban Fair Housing, Inc., through its employe, Margaret H. Collins, the other complainant herein, to purchase premises No. 850 Parkridge Drive, Wallingford for the full asking price of \$31,900. At the same time, he executed an agreement of sale to that effect and left \$500 as a deposit for the purchase of said property.
14. On July 15, 1964 complainant Margaret H. Collins, delivered the said agreement of sale to respondent's office at 3720 Garret Road, Drexel Hill, Pennsylvania.
15. Later on that same day, to wit, July 15, 1964, the respondent called the complainant, Margaret H. Collins, to advise that he is refusing to sign the agreement of sale because it had not been written correctly, claiming "the property wasn't identified, he didn't know where the house was."
16. Respondent returned the said agreement of sale by mailing it to the complainant, Margaret H. Collins, who received it in her office on July 20, 1964.
17. Respondent knew that the premises which complainant, Leon Frisby, offered to purchase through complainant, Margaret H. Collins, identified as a "stone front, sample house on Parkridge Drive, Wallingford, Delaware County, Pennsylvania" were premises No. 850 Parkridge Drive, Wallingford.
18. On July 15, 1964, respondent told complainant, Margaret H. Collins, that the property at No. 850 Parkridge Drive, Wallingford, was not for sale.
19. On July 15, 1964, when respondent told complainant, Margaret H. Collins that said property was not for sale, he well knew that it was available for sale.
20. On or about July 15, 1964, after complainant, Leon Frisby, submitted his offer, respondent removed the "For Sale" sign in front of premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania.
21. On July 24, 1964, after amending the agreement of sale to further identify the property as "850 Parkridge Drive (next to 848 Parkridge Drive)", the complainant, Margaret H. Collins, resubmitted to the respondent the same agreement of sale by handing same to respondent at respondent's office.
22. Respondent then and there on July 24, 1964, refused to accept the said agreement of sale from the complainant, Margaret H. Collins, stating that the property in question, No. 850 Parkridge Drive, Wallingford, was already sold and was subject to another agreement of sale.
23. On July 24, 1964, at the time respondent told complainant that premises No. 850 Parkridge Drive, Wallingford had been sold and were subject to another agreement of sale, the said property had not been sold, was not subject to any other agreement of sale, and the respondent well knew that said property was then still available for sale.
24. On August 25, 1964, respondent advised the Human Relations Representative of the Pennsylvania Human Relations Commission who was handling the investigation of this case that the alleged agreement of sale with the DeVito family in connection with the property at No. 850 Parkridge Drive, Wallingford, was no longer in effect and that the property was now available for sale, whereupon the said Human Relations Representative so advised the complainants.
25. On August 26, 1964 the complainants eliminated the mortgage clause from the agreement of sale twice previously submitted to the respondent and re-submitted the agreement of sale as thus

- changed, wherein the complainant, Leon Frisby, offered \$31,900 in cash to the respondent for the purchase of premises No. 850 Parkridge Drive, Wallingford.
26. The respondent again refused to sell said property to the complainant, Leon Frisby, and returned the agreement of sale to the complainant, Margaret H. Collins, with a letter over his signature, dated August 28, 1964 stating no reason for the refusal except, "I do not choose to accept this offer."
  27. On August 17, 1964 respondent entered into an agreement of sale for the sale of premises of No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania with Mr. and Mrs. Leroy R. Johnston, members of the Caucasian race, for the sum of \$30,500. This fact was never revealed by respondent or respondent's attorney to the Commission or any of its members or staff.
  28. Mr. and Mrs. Leroy R. Johnston first examined premises No. 850 Parkridge Drive, Wallingford on August 7, 1964 or August 8, 1964, refused to pay the price of more than \$31,000 being asked by respondent, and finally agreed to buy the property for \$30,500 on August 17, 1964.
  29. On September 8, 1964 respondent and his wife, Ann E. McKay, conveyed said premises to Mr. and Mrs. Leroy R. Johnston at a settlement held in the offices of Title Abstract Company of Pennsylvania representing Lawyers Title Insurance Corporation. This fact was never revealed by respondent or respondent's attorney to the Commission or any of its members or staff.
  30. The complainant and his wife, Mr. and Mrs. Leon Frisby, are both school teachers employed by the Philadelphia School District whose gross earnings and other income amount to \$20,000 per year, and who, at all times herein mentioned, desired and still desire to purchase a dwelling for themselves and their family in or near Wallingford, Pennsylvania.
  31. The respondent, Donald P. McKay, had no reasonable explanation for refusing bona fide offers of \$31,900 from the complainants on July 15, 1964 and on July 24, 1964 and for thereafter accepting a lesser offer of \$30,500 from Mr. and Mrs. Leroy R. Johnston on August 17, 1964.
  32. On July 15, 1964, on July 24, 1964 and on all times herein mentioned the respondent refused and still refuses to do business with the complainant Margaret H. Collins because she is a real estate broker working for Suburban Fair Housing, Inc., a real estate firm which represents all qualified buyers of housing accommodations including Negroes.
  33. On July 15, 1964 and July 24, 1964 and at all times herein mentioned respondent refused and still refuses to sell housing accommodations to the complainant, Leon Frisby, because of his race.
  34. At all times herein mentioned respondent maintained and still maintains a policy of refusing to sell housing accommodations to Negroes because of their race.

### **CONCLUSIONS OF LAW**

1. At all times herein mentioned, complainants were and they still are inhabitants of the Commonwealth of Pennsylvania.
2. At all times herein mentioned and up to September 8, 1964 respondent built, owned or otherwise controlled the sale of premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania.
3. At all times herein mentioned and up to September 8, 1964 premises No. 850 Parkridge Drive, Wallingford, Delaware County, Pennsylvania was an unoccupied new dwelling intended to be occupied by one family for residence purposes and was therefore "commercial housing" within the meaning of that term in Section 4 (j) of the Pennsylvania Human Relations Act.
4. At all times herein mentioned the Commission had and still has jurisdiction over the respondent.
5. At all times herein mentioned the Commission had and still has jurisdiction over the subject matter of this proceeding and over the complaint.
6. On July 14, 1964 the respondent committed unlawful discriminatory practices under Section 5 (h)(6) of the Pennsylvania Human Relations Act in that the respondent made inquiries and

elicited information concerning the race of the complainant, Leon Frisby, in connection with the sale of commercial housing by respondent to the said complainant.

7. On July 14, 1964, July 15, 1964, July 24, 1964, and thereafter respondent committed unlawful discriminatory practices under Sections 5(h)(1) and 5(h)(3) of the Pennsylvania Human Relations Act in that the respondent discriminated against the complainant, Margaret H. Collins by refusing to do business with her in connection with the sale of commercial housing because the race of the prospective buyer whom she represented as real estate broker was Negro.
8. On July 14, 1964, July 15, 1964 and July 24, 1964 and thereafter, respondent committed unlawful discriminatory practices under Section 5(h)(1) of the Pennsylvania Human Relations Act in that respondent refused to sell commercial housing to complainant, Leon Frisby, because of his race and denied and withheld commercial housing from the complainant, Leon Frisby, because of his race.
9. On July 14, 1964, July 15, 1964, July 24, 1964 and thereafter, respondent committed unlawful discriminatory practices under Section 5(h)(1) of the Pennsylvania Human Relations Act in that respondent maintained and still maintains a policy of refusing to sell commercial housing to Negroes because of their race.
10. Complainants are individuals claiming to be aggrieved by unlawful discriminatory practices within the meaning of Section 9 of the Pennsylvania Human Relations Act.
11. The complaint was properly made, signed and filed in accordance with Section 9 of the Pennsylvania Human Relations Act.
12. The complaint was properly amended in accordance with Section 9 of the Pennsylvania Human Relations Act.

The Hearing Commissioners are unanimously of the opinion and therefore recommend that the Commission enter a cease and desist order against the respondent in this case.

This is a clear case of racial discrimination by the respondent who refused to sell a new home built by him to the complainant, Leon Frisby, because Mr. Frisby is a Negro, and who refused to deal with the other complainant, Margaret H. Collins, a licensed real estate broker, because she was acting for Mr. Frisby, a Negro.

When, on July 14, 1964, the respondent was first contacted by Miss Collins and advised that she had a buyer for the Parkridge Drive property the respondent was very eager to deal with her and to make the sale. He spoke of some loose tiling in the basement and assured Miss Collins that this would be corrected in the event of the sale.

As soon as the respondent learned that the prospective buyer was Negro, he immediately showed by words and actions that he would refuse to sell the house through Margaret H. Collins, real estate broker, to Leon Frisby, because Leon Frisby is Negro.

The following specific comments, actions and failures to act on the part of respondent have convinced the Hearing Commissioners that the respondent committed unlawful discriminatory practices in violation of the fair housing provisions of the Pennsylvania Human Relations Act:

1. On July 14, 1964 respondent asked Miss Collins whether her prospective buyer was Negro. This is specifically forbidden by the Human Relations Act.
2. When advised that the buyer was Negro, respondent told broker, in effect, that he could not and would not sell the property to a Negro because he lived across the street from the property and because he had other lots for sale in that area and the sale of the house to a Negro would hurt him financially.

3. An agreement of sale signed by Leon Frisby offering the full asking price of \$31,900 for the property in question was submitted by Margaret H. Collins to respondent on July 15, 1964 and was rejected by respondent on the ground that the agreement did not adequately describe the property desired. This, in the opinion of the Hearing Commissioners, was merely an excuse given by respondent for refusing to accept Mr. Frisby's offer, his real reason being his unwillingness to sell to any Negro.
4. On July 15, 1964 respondent told Margaret H. Collins that the Parkridge Drive property desired by complainant, Leon Frisby, was only a sample house and was not for sale. In the opinion of the Hearing Commissioners said property remained available for sale at all times on and after July 15, 1964 despite the excuses and statements made by the respondent.
5. On July 15 or July 16, 1964, respondent removed the "For Sale" sign which had appeared in front of premises 850 Parkridge Drive, Wallingford despite the fact that the property was still available for sale.
6. On July 24, 1964 when complainants again submitted to respondent a bona fide offer of \$31,900 for the Parkridge Drive property respondent rejected the offer this time on the alleged ground that there was an outstanding agreement of sale for the property with a DeVito family when, in fact, there was no such outstanding agreement and the property was available for sale at that time.
7. On August 17, 1964, respondent entered into an agreement of sale with Mr. and Mrs. Leroy R. Johnston, white purchasers at a price of \$30,500 for the said Parkridge Drive property, and pursuant to said agreement, the respondent and his wife made settlement and conveyed said property to the Johnstons on September 8, 1964. This is especially significant to the Hearing Commissioners because (a) respondent was apparently satisfied to take a loss of \$1400 and sell to white purchasers rather than sell to the Negro complainant, Leon Frisby, (b) it shows that the property in question, as indicated earlier in this Opinion, was actually available for sale at all times despite respondent's assertions to the contrary and (c) it bears further witness to the probability that the true reason for respondent's rejections of complainant's several offers was the race of Leon Frisby especially since respondent kept carefully concealed from the complainants and from this Commission the facts relating to the August 17, 1964 agreement of sale and to the September 8, 1964 conveyance by deed.

The respondent did not see fit to file an Answer to the Amended Complaint and also did not see fit to testify. The Hearing Commissioners are therefore not aware of any valid defense by the respondent to the charges made by the complainants.

From the nature of the questions asked by respondent's attorney on cross-examination and from statements made by said attorney during the hearing, the Hearing Commissioners are led to believe that the respondent's refusal to accept complainant, Leon Frisby's, offers to purchase are based upon the following:

1. Technical errors in the preparation of the agreement of sale.
2. The fair housing provisions of the Pennsylvania Human Relations Act are unconstitutional.

The Hearing Commissioners do not believe that the technical errors in the preparation of the agreements of sale were the true reason for respondent's refusal to sell to Leon Frisby: (1) because such errors could have been corrected without modification of the essential terms of the sale; (2) because the respondent gave different and conflicting reasons to both complainants and to the Commission's representatives for refusing to sell to Leon Frisby; and (3) because the \$31,900 offers made by complainant, Leon Frisby, on July 15, and July 24, 1964 were bona fide.

The Hearing Commissioners must assume that the Pennsylvania Human Relations Act is constitutional and valid in all respects and therefore respondent's anticipated defense of unconstitutionality is without merit.

Unfortunately, the respondent sold the Parkridge Drive property desired by the complainant, Leon Frisby, to a purchaser before this Commission had the opportunity to complete its investigation, attempt to conciliate the complaint, hold a public hearing and issue an order. In this respect, the instant case is similar to other housing complaints where the housing accommodations involved are conveyed or related to third persons before the Commission can issue a binding order.

Although the Commission under existing law may not order the respondent to convey the property at No. 850 Parkridge Drive, Wallingford, to the complainant, Leon Frisby, the Hearing Commissioners recommend that the Commission issue a cease and desist order against the respondent requiring him to make available to the complainant, Leon Frisby, the next dwelling built by the respondent in or near Wallingford, Delaware County, Pennsylvania; to sign a statement of policy wherein he will agree that he will not, directly or indirectly violate any of the fair housing practices provisions of the Pennsylvania Human Relations Act in the future; and to require him to cease and desist from refusing to do business with the complainant, Margaret H. Collins, or the firm for which she works, Suburban Fair Housing, Inc., if such refusal is because said complainant and firm often represent Negroes.

The Hearing Commissioners also recommend that the Commission, in accordance with agreements heretofore reached with the Federal housing agencies, forward copies of the Commission's order in this case to such agencies and in particular to Federal Housing Administration (FHA) and to Veterans Administration (VA) for appropriate action by such agencies against the respondent.

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Presiding Hearing Commissioner

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Hearing Commissioner

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Hearing Commissioner

### COMMISSION'S DECISION

**AND NOW**, November 10, 1964, upon recommendation of the Hearing Commissioners, upon all of the evidence at the public hearing of this case, and in consideration of the findings of fact and conclusions of law by the Hearing Commissioners, the Pennsylvania Human Relations Commission, by a unanimous decision of ten of its eleven members, finds and determines that the respondent, Donald P. McKay, committed unlawful discriminatory practices under Sections 5(h)(1), 5(h)(3) and 5(h)(6) of the Pennsylvania Human Relations Act in that respondent refused to sell commercial housing to the complainant, Leon Frisby, because of the race of the said Leon Frisby, in that the respondent discriminated against the complainant, Margaret H. Collins, a Pennsylvania real estate broker, by refusing to do business with her because she represented a Negro, in that the respondent made an inquiry and elicited information concerning the race of a prospective buyer of commercial housing owned and

controlled by him, and further in that respondent maintained and still maintains a policy of refusing to sell commercial housing to Negroes because of their race.

### **FINAL ORDER**

**AND NOW**, November 10, 1964, 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 respondent, Donald P. McKay, his agents, representatives and employes, shall cease and desist from:
  - a. Refusing to sell to complainant, Leon Frisby, because of his race, housing accommodations now or hereafter owned, built or controlled by the respondent;
  - b. Maintaining a policy of refusing to sell to Negroes, because of their race, housing accommodations now or hereafter owned, built or controlled by the respondent; and
  - c. Making any inquiry or eliciting any information concerning the race of prospective buyers of housing accommodations now or hereafter owned, built or controlled by the respondent.
2. That the respondent, Donald P. McKay., his agents, representatives and employes, shall cease and desist from refusing to do business with the complainant, Margaret H. Collins, or the firm by which she is employed, Suburban Fair Housing, Inc. if such refusal is because Margaret H. Collins or Suburban Fair Housing, Inc. represent Negroes.
3. That the respondent, Donald P. McKay, his agents, representatives and employes, shall take the following affirmative action which, in the judgment of the Commission will affectuate the purposes of the Pennsylvania Human Relations Act:
  - a. Offer to sell to the complainant, Leon Frisby, the first available dwelling or other housing accommodations subject to the Pennsylvania Human Relations Act located in or near Delaware County, in the Commonwealth of Pennsylvania, now or hereafter owned, built or controlled by the respondent;
  - b. Sell all housing accommodations subject to the Pennsylvania Human Relations Act located in the Commonwealth of Pennsylvania, now or hereafter owned, built or controlled by the respondent, without regard to the race, color, religious creed, ancestry or national origin of applicants for such housing.
  - c. With respect to all housing accommodations subject to the Pennsylvania Human Relations Act located in the Commonwealth of Pennsylvania, now or hereafter owned, built or controlled by the respondent;
    1. Apply the same standards, terms, conditions and privileges in the sale of any such housing accommodation to all applicants for such housing regardless of their race, color, religious creed, ancestry or national origin;
    2. Transmit to the Commission forthwith a statement listing the dwellings owned or controlled by the respondent and available for sale, stating the addresses, the designations and the requested sales prices for each such dwelling.
  - d. Issue to all agents, representatives and employes of the respondent and to all persons now employed or who may hereafter be employed within one year of the date of this order by the respondent, written instructions, previously approved by the Commission, explaining the requirements and the objectives of the Pennsylvania Human Relations Act and advising each such person of his individual responsibility for compliance with that Act and his obligation to make such compliance meaningful and effective. Copies of such



- instructions signed by the said persons individually and acknowledging receipt and understanding thereof shall be transmitted to the Commission by the respondent;
- e. Post in every office now or hereafter maintained by the respondent copies of the Commission's Fair Housing poster conspicuously in accessible and well-lighted places where they may be readily observed by those seeking housing accommodations;
  - f. Transmit to the Commission forthwith a statement signed by the respondent stating that the respondent will not, at any future time, either directly or indirectly, violate the fair housing practices provisions of the Pennsylvania Human Relations Act;
  - g. Notify the Pennsylvania Human Relations Commission at its office at 1401 Labor and Industry Building, Harrisburg, Pennsylvania 17120, in writing within fifteen (15) days of the date of service of this Order as to the steps the respondent has taken to comply with each ordered provision of this Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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HARRY BOYER  
Chairman

Attest:

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EDWARD M. GREEN  
Secretary