

KENNETH J. HUBER and
CHARLES W. HUBER,
Appellants

v.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,
Appellee

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 318

COMMONWEALTH DOCKET, 1966

OPINION

BY THE COURT:

This is the appeal of Kenneth J. Huber and Charles W. Huber from the decision and final order of the Pennsylvania Human Relations Commission¹ which determined, inter alia, that the Hubers committed unlawful discriminatory practices under Section 5(h) of the Pennsylvania Human Relations Act in that they refused to rent commercial housing to James C. Sampson and Geraldine M. Sampson, Negroes, because of their race; and further, that the said Hubers maintain a policy of refusing to rent commercial housing to Negroes because of their race. The final order of the Commission then directed the respondents-appellants (Hubers) to cease and desist from this unlawful discriminatory practice; to offer to rent to the Sampsons premises No. 148 Third Avenue, Newtown Square, Delaware County,

¹Irving A. Miller, another respondent against whom the decision and final order applied, did not appeal.

Pennsylvania, for a term of one year at the monthly rental of \$135.00; to comply with the Pennsylvania Human Relations Act, and to take other affirmative action.

The appellants contend that the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended (43 P.S. § 951 et seq.) hereinafter referred to as the "act," is unconstitutional; first because the act and amendments were passed by legislatures which were mal-apportioned as to these appellants and thus denied them the equal protection of the laws and due process of law; that the act itself violates the guarantee of the Fourteenth Amendment to the Constitution of the United States as to equal protection and due process,² and secondly, because it violates Article I, Section I, and Article I, Section 10 of the Pennsylvania Constitution.³ Appellants further contend that the decision and order are void because they are based on findings of fact that were not supported by substantial evidence. Finally, appellants

²"[N]or shall any State deprive any person of...property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

³"All men...have certain inherent and indefeasible rights, among which are those of...acquiring, possessing and protecting property...." (Art. I, §§ I Pennsylvania Constitution)

"[N]or shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured." (Art. I, § 10 Pennsylvania Constitution)

complain that Kenneth J. Huber was not properly served with the complaint and notice of hearing before the Commission and that Charles W. Huber was improperly made a party to the proceedings at the time of and during the hearing.

We shall consider the procedural matters first. Complaint by Geraldine M. Sampson was made against Irving A. Miller, Realtor (who did not appeal from the decision and order of the Commission), and Kenneth J. Huber, Owner, on June 10, 1966. On June 17, 1966, Carl T. Jones, Field Representative for the Human Relations Commission, served copies of the notice of hearing, presumably with copies of the complaint,⁴ on one Thomas Surbani, a tenant-resident of 4223 West Chester Pike, Newtown Square, Pa., the residence of Kenneth J. Huber, with instructions to give one copy to Kenneth J. Huber and one to Charles W. Huber; the latter of whom was not then named as a party-respondent. The complaint was amended on June 21st to include the name of James C. Sampson, the husband, as a complainant, and three days later an answer was filed which was signed and sworn to by not only Kenneth J. Huber, who complains about the service, but also by Charles W. Huber who was still not named as a party.

At the hearing before the Commission on June 27th, Kenneth J. Huber appeared personally and by counsel, and Charles W. Huber was personally present and testified. On or about July 11, 1966 Charles W. Huber filed with the Commission another answer to the complaint denying

⁴See copy of letter from the Chairman of the Board attached to the record in front of the notes of testimony. The objection was only to the manner of service and not the contents of papers served.

any unlawful discriminatory practice and attacking the constitutionality of the Pennsylvania Human Relations Act. At the same time Kenneth J. Huber filed an amended answer raising the same constitutional question.

The Human Relations Act provides simply that "the Commission shall cause to be issued and served a written notice, together with a copy of ... [the] complaint" (Section 9) (43 P.S. § 959). The regulations duly adopted by the Commission pursuant to authority granted to it in the act, provide that notice of the hearing may be served personally or by registered mail (Section 105.02). The Administrative Agency Law, Act of June 4, 1945, P.L. 1388 § 31, states only that a party must be "afforded reasonable notice of a hearing and an opportunity to be heard" (71 P.S. § 1710.31). Under all the facts in this case we conclude that both Hubers had adequate notice of the hearing before the Commission and the objection to the notice has no merit.

Although Charles W. Huber was not named as a respondent in the complaint, he apparently assumed that he was a respondent for he promptly swore to and filed an answer. Thereafter, at the hearing which he attended and sat at counsel table he was made a party by the Commission. It was clear that in the investigation by the Commission representative prior to the hearing, which investigation is required by the act, Charles W. Huber at all times represented himself as the responsible party concerned with the rental of the premises in question, if not the record owner. At the hearing, although counsel for Kenneth J. Huber who stoutly maintained he did not represent Charles W. Huber, urged that Charles W.

Huber be not made a party to the proceeding and after he was made a party that the hearing should be continued until he could retain counsel, Charles W. Huber himself made no objection to his being made a party-respondent, and after the Commission had put in its case he took the stand and on being interrogated by Kenneth J. Huber's counsel he testified at length concerning the property in question; the refusal to rent to the Sampsons; the role he played in the matter, and what he and his son would do in the future about rental of the premises to the Sampsons. Thereafter, as hereinbefore mentioned, he filed another answer.

Of course, a person whose property or contract rights will be adjudicated in a proceeding before an administrative agency should be made a party to the proceedings, but it is not necessary that he be made a party in the pleading stage if when he is properly made a party he has an opportunity to be heard. An analogous situation, in actions at law, is provided for in Pa. R.C.P. 2232(c); Goodrich-Amram § 2232(c)-1 points out that a new party may be added at any stage in the action, during trial or even after testimony is closed.

"It has been said that the most important characteristic of pleadings in the administrative process is their unimportance. In proceedings before administrative authorities, the strict rules of pleading and practice applicable to common-law actions do not apply...."
1 P.L.E Administrative Law and Procedure § 38 (1957). (Emphasis supplied)

The Superior Court, in BYERS v. PA. P.U.C., 176 Pa. Super. 620, 624 (1954) said: "We have stated ' that it is the duty of the

administrative boards to hold fair and open hearings and to give notice so that those interested may have an opportunity to be heard and the "rudiments of fair play" be observed.' "

In our judgment, under all the circumstances of this case, the rudiments of fair play were observed and Charles W. Huber should be considered a respondent in this case.

We now turn our attention to the constitutional question raised by the respondents, hereinafter sometimes called appellants. The first constitutional question raised is: Were these respondents denied the equal protection of the law and the due process of law because of the malapportionment of legislatures which passed the Pennsylvania Human Relations Act and the pertinent amendments thereto? We must answer this question in the negative.

Appellants have presented no authority for their position and we believe none exists, and this failure in itself should be enough to deter a lower court from declaring an act of the legislature unconstitutional. There is, we believe however, authority based on logic and good reasoning contrary to appellants' contention.

If there were no other reason to support the validity of the acts of the legislature, the de facto doctrine which has been ingrafted upon our law would be sufficient. It is clear that officials elected under laws later declared unconstitutional are de facto officers and their acts performed prior to the determination of the invalidity of the laws under which they were elected are valid as to third parties. 43 Am. Jur., Public Officers § 470, et seq.

BAKER v. CARR, 369 U.S. 186 (1961) cited by appellants, held, as far as we are here concerned, only that the claim that malapportioned legislatures denied equal protection of the laws presented a justiciable issue which could be entertained in the federal courts, but did not touch on the effect of a declaration that a state constitution or state laws apportioning a state legislature were unconstitutional.

In REYNOLDS v. SIMS, 377 U.S. 533 (1963), a case in which the United States Supreme Court found that the then existing apportionment laws of the State of Alabama were unconstitutional and that the two plans proposed by the State legislature to correct this failed to cure the unconstitutional elements, the Court, nevertheless, approved the district court's action in denying to the complainants immediate relief from the unconstitutional malapportionment and thus permitted the malapportioned legislature to continue to function until a constitutional apportionment could be achieved. (pp. 585-86) Thus, at least sub silentio, the United States Supreme Court held that the acts of such a malapportioned legislature would not, because of such malapportionment, be unconstitutional.

The Pennsylvania Supreme Court, in BUTCHER v. BLOOM, 415 Pa. 438 (1964), and 420 Pa. 305 (1966) inferentially held the same way:

"It is obvious that the Pennsylvania Legislature cannot properly act to reapportion itself in the short time remaining before the election of November 3, 1964, and months after the April 28, 1964 primary election. We do believe, however, that the Legislature made an earnest effort to reapportion itself in 1963. Unfortunately, it was then without the benefit of the views of the Supreme Court of the United States expressed in the Reynolds cases and without an inter-

pretation by this Court of important and relevant provisions of the Pennsylvania Constitution. Serious disruption of orderly state election processes and basic governmental functions would result from immediate action by any judicial tribunal restraining or interfering with the normal operation of the election machinery at this late date. The Legislature should not be denied a reasonable opportunity to enact new reapportionment legislation. We therefore hold that the 1964 election of Pennsylvania legislators should and must be conducted pursuant to the Acts of January 9, 1964, Nos. 1 and 2. Under no circumstances, however, may the 1966 election of members of the Pennsylvania Legislature be conducted pursuant to a constitutionally invalid plan." 415 Pa. 438, 459-60 (1964) (Emphasis in original)

"We determined, however, that the imminence of the 1964 general election required the utilization of the apportionment plans contained in those acts, notwithstanding their invalidity, in order to prevent serious disruption of election processes and essential governmental functions...." 420 Pa. 305, 307-08 (1966) (Emphasis supplied)

See also: UNITED STATES v. COMMONWEALTH OF PENNSYLVANIA, 214 F. Supp. 913 (W.D. Pa. 1963), a habeas corpus matter in which a prisoner in the state correctional institution sought release on the ground that the legislators who enacted the statute by which he was convicted were elected illegally because the General Assembly had not reapportioned itself according to law. The relief was denied principally on the de facto principle.

There is no merit in appellants' position on this ground.

The other constitutional question raised by appellants concerns the Pennsylvania Human Relations Act itself as distinct from the legislature that passed it.

Appellants argue that the act denied them the equal protection of the law and the due process of law as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States; and further, that it violates the Pennsylvania Constitution in that it denies them the right of acquiring, possessing, and protecting property, and takes their property without authority of law. We find no merit in these contentions.

The Pennsylvania Human Relations Act was designed, inter alia, "to assure equal opportunities to all individuals and to safeguard their rights at places of public accommodation and to secure commercial housing⁵ regardless of race, color, religious creed, ancestry or national origin": Section 2(b) (43 P.S. § 952) (Emphasis supplied); and Section 2(c) proclaims that "This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania."

The act then, in Section 5 (43 P.S. § 955), provides, in pertinent part, that "It shall be an unlawful discriminatory practice(h) For any person to: (1) Refuse to sell, lease, finance or otherwise to deny or withhold commercial housing from any person

⁵Section 4(j) of the act (43 P.S. § 954): "The term 'commercial housing' means housing accommodations held or offered for sale or rent (1) by a real estate broker, salesman or agent, or by any other person pursuant to authorization of the owner; (2) by the owner himself; or (3) by legal representatives, but shall not include any personal residence offered for sale or rent by the owner or by his broker, salesman, agent or employe."

because of the race, color, religious creed, ancestry or national origin of any prospective owner, occupant or user of such commercial housing."

The police power of a state is very broad and transcends all other powers. It may embrace the protection of the lives, health and property of its citizens, the maintenance of good order and the preservation of public morals; and laws enacted pursuant thereto can only be set aside where it is clear that they have no legal or substantial relation to the subject or are an invasion of a right secured by fundamental law.

A state may regulate business and may limit the enjoyment of personal liberty or property for there is no unqualified right to acquire, possess, or enjoy property if the exercise of the right is inimical to the fundamental precepts underlying the police power. COMMONWEALTH EX REL. WOODSIDE v. SUN RAY DRUG CO., 383 Pa. 1 (1955); GAMBONE v. COMMONWEALTH, 375 Pa. 547 (1954); 7 P.L.E., Constitutional Law § 3 (1958).

The legislature has declared that "The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, age or national origin is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth and undermines the foundations of a free democratic state...." Section 2 (43 P.S. § 952).

It has frequently been held in this Commonwealth that the exercise of the police power will be held valid even though it may interfere with property or contract rights if such exercise of the police power bears a real and substantial relationship to the general welfare of the public and is not unreasonable or arbitrary. The property rights guaranteed by the Fourteenth Amendment of the Constitution of the United States are subject, of course, to a proper exercise of the police power.

It is our opinion that it is a proper exercise of the police power of the Commonwealth for the legislature to prohibit the discrimination in leasing, selling or financing of commercial housing against any person because of race, color, religious creed, ancestry or national origin, and that the prohibition in this act does not violate the Fourteenth Amendment of the Constitution of the United States.

The conclusion we have reached here has also been reached by the following appellate authorities when considering similar civil rights legislation in the field of housing: PORTER v. CITY OF OBERLIN, 1 Ohio St. 2d 143, 205 N.E. 2d 363 (1965); DAVID v. VESTA CO., 45 N.J. 301, 212 A. 2d 345 (1965); where due process, equal protection, involuntary servitude and separation of powers were fully discussed: COLORADO ANTI-DISCRIMINATION COMM'N v. CASE, 380 Pac. 2d 34 (1963); MASSACHUSETTS COMM'N AGAINST DISCRIMINATION v. COLANGELO, 182 N.E. 2d 585 (1962); JONES v. HARIDOR REALTY CORP., 37 N.J. 384, 181 A. 2d 481 (1962. See also: ANTIDISCRIMINATION COMMISSIONS, 74 Harv. L. Rev. 526-586 (1961); RACIAL DISCRIMINATION IN HOUSING, 107 U. Pa. L. Rev. 515-525

(1958-59). For analogous persuasive cases see: DISTRICT OF COLUMBIA v. JOHN R. THOMPSON CO., INC., 346 U.S. 100 (1952); RAILWAY MAIL ASS'N v. CORSI, 326 U.S. 88 (1944); WARREN v. PHILA., 382 Pa. 380 (1955).

Article I, Section 10, of the Constitution of Pennsylvania, as far as it pertains to the issue before us, deals with eminent domain and not the exercise of the police power which we have concluded the act in question involves. The act does not violate Article I, Section 10 of the Constitution of Pennsylvania. See WHITE'S APPEAL, 287 Pa. 259 (1926).

Appellants' argument that the act deprives them of the right of acquiring, possessing and protecting property is without merit. Indeed, it is the person allegedly discriminated against who is deprived of the right of acquiring or possessing property if the Human Relations Law were struck down.

We conclude that the anti-discrimination in commercial housing provision of the act does not violate the Pennsylvania Constitution.

This brings us to a consideration of the merits of the case.

It has been established by a great many cases⁶ that the findings of fact on which an administrative agency such as the Pennsylvania Human Relations Commission bases its orders must be supported by "substantial evidence." They must be supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The Commission made 19 Findings of Fact and reached 10 Conclusions of Law. Appellants except to Findings of Fact 4, 8, 14, 15, 16, 17, 18, and 19, and to Conclusions of Law 5, 6, 7, 8, and 9.

The exception to Finding of Fact No. 4 is well taken as far as that finding speaks of Charles W. Huber as being the "true owner of premises No. 148 Third Avenue, Newtown Square," the premises in question. But that erroneous statement is not necessary in arriving at any of the conclusions of law except as to the identical phrase found in Conclusion of Law No. 3 to which no exception was taken. Neither of these erroneous statements are necessary to support the adjudication of the Commission as we herein modify it. Finding of Fact No. 8 and

⁶CONSOLIDATED EDISON CO. v. N.L.R.B., 305 U.S. 197 (1938); PA. STATE BOARD OF MEDICAL EDUCATION And LICENSURE v. SCHIRESON, 360 Pa. 129 (1948); SHENANDOAH SUBURBAN BUS LINES, INC., CASE, 355 Pa. 521 (1947); P.L.R.B. v. KAUFMANN DEPT. STORES, INC., 345 Pa. 398 (1942); RUETTGER v. PA. P.U.C., 164 Pa. Super. 388 (1949); MATYLEWICZ v. HUDSON COAL CO., 53 Lack. 9 (1951); McPHERSON v. CONNELLSVILLE JOINT SCHOOL BOARD, 81 Dauphin 298 (1963); SANITARY WATER BOARD v. BORO OF COUDERSPORT, 81 Dauphin 178 (1963); STATE REAL ESTATE COMM'N v. RADNOR REAL ESTATE, INC., 75 Dauphin 180 (1960).

Conclusion of Law No. 7 deal only with Irving Miller, the respondent who did not appeal, and consequently this finding of fact and conclusion of law are completely unnecessary to the adjudication as herein modified.

The evidence adduced at the hearing before the Commission may be fairly summarized as follows:

Judith Jennings, a real estate agent representing the Negro complainants James C. and Geraldine M. Sampson who desired to rent a single dwelling, ascertained that Irving Miller, a real estate broker, had available the premises in question, 148 Third Avenue, Newtown Square. Said premises were vacant and were for rent on a yearly basis at a rental of \$135.00 per month with the requirement that one month's rental be paid in advance and that \$100.00 be advanced as security.

Mrs. Sampson desired to rent the property on the terms established by the owners and presented herself with Mrs. Jennings, the real estate agent, to Miller, gave him her check for \$235.00 payable to Kenneth Huber as directed, and asked for a year's lease; also indicating a willingness to pay the entire year's rental in advance if necessary. When Miller saw Mrs. Sampson and thus discovered that she was a Negro he indicated that he would have to talk to the owners before giving the Sampsons a lease; stating that he did not know whether the owners would rent to a person of the Negro race. The following day a month-to-month lease which could be terminated on a notice of 30 days (rather than a year's lease which had been offered before the race of the Sampson's was

known) was tendered to Mrs. Sampson. Upon Mrs. Sampson's query she was told that the owner now desired to sell the property and for that reason would not execute a year's lease. In spite of the short term Mr. and Mrs. Sampson executed the lease and returned it to Miller on June 4, three days after the first visit to the Miller office. They were then told that an investigation must be made of their credit and, accordingly, Mrs. Sampson gave Mr. Miller \$10.00 for such investigation. On June 8 when Mrs. Sampson requested of Miller the keys to the premises and the lease she was told that the lease and the credit report were in the hands of Kenneth Huber. Having ascertained from the credit bureau that her credit report was favorable Mrs. Sampson again contacted Miller who advised her, on June 9, that the lease executed by the Sampsons had been mailed to Kenneth Huber several days earlier and that he, Miller, had received no reply. Then, on June 10, Mrs. Sampson received a letter from Miller enclosing a note dated June 8 which he had received from Charles W. Huber saying that on the basis of the credit report he would not rent the premises to the Sampsons. Miller also returned the Sampson's \$235.00 check. On June 11 after the receipt of Miller's letter, the note of Charles W. Huber, and her check Mrs. Sampson called Kenneth Huber on the phone and after an extended conversation during which she told him that she and her husband were all packed and ready to move and that they were willing to pay an entire year's rent in advance, Huber, not refusing the rental, took her phone number and said he would "call her back." He never returned the call.

When, as required by the Human Relations Act after a complaint is filed, an investigation was begun, the investigator was never able to meet with Kenneth Huber although he tried to arrange such a meeting. He did, however, meet with Charles W. Huber on June 14. He informed Charles W. Huber of the nature of the Sampson's complaint and Huber, according to the investigator, gave as the reason he refused to rent the premises to the Sampsons that he had already, on June 7th, rented these premises to one Fred Dager, a former employe. (N.T. 60.)

When the investigator asked to examine the purported lease to Dager, Charles W. Huber made an excuse for failing to produce it and in fact never produced it for inspection before the hearing, nor at the hearing. Investigation further revealed that the Hubers through a real estate broker (Other than Miller who had been replaced after he had prepared a month-to-month lease for the Sampsons) were still attempting to lease the premises after the 7th, the date Charles W. Huber indicated they had already been rented to Dager. In fact, on June 17th, a lease for these same premises was prepared by the new broker and submitted to one James C. Brown, and Judith his wife, members of the Caucasian race, as proposed tenants. This lease was for the term of one year and at the same rental as quoted to the Sampsons. Later when Charles W. Huber testified at the hearing before the Commission he attempted to clarify his position but his testimony was weak, vacillating, and contradictory. For example, when his counsel asked him about the request for a credit report on the Sampsons he replied, almost unintelligibly:

"Well, he [Miller the real estate broker] told me that Mrs. Jennings came there and picked up the key to the property and explained it, which has been

testified.

"An she came back later with a Mrs. Sampson who was a colored person, and he asked me was I willing to rent to a colored person.

"I never said I wasn't. I said the only thing -- which I think should be, is customary, and I thought they did, I don't know. I have other brokers that handle properties for me and nobody rents a property unless I get a credit investigation." (N.T. 108.)

On cross-examination when asked why he had requested a credit investigation on the Sampsons when it was not clear whether he had asked for similar credit investigations on other would-be tenants, he replied:

"A. For the simple reason I wanted to know, that's all.

"Q. Did it have anything to do with the fact the persons who were seeking this property were Negroes?

"A. Probably somewhat...." (N.T. 120.)

At N.T. 121 he admitted that he had instructed Miller to write the lease for the Sampsons on a month-to-month basis, explaining that he had decided to sell the property and consequently did not want a tenant for a long period. Then, at N.T. 123, he testified that Gilbert, his new real estate broker, had offered a six-month lease to the Browns (actually it was for one year, as we have previously seen), apparently with his consent. He also testified that on the Saturday after the Commission's investigator had talked with him about the Dager lease, Dager and his wife decided not to take the property. By calculation, not disputed, Saturday would have been June 18th - the lease offered to the Browns was dated June 17th, a time when, according to his testimony, the property was already rented to Dager.

Mrs. Brown testified that it was on June 15th that she first talked to Gilbert, the real estate broker, and two days later she was offered a lease for one year. It developed later that the Browns were not bona fide applicants for rental and they did not rent the premises. At the time of the hearing before the Commission the premises were still vacant.

The credit report of "Philadelphia Suburban Credit Bureau" on which Huber purportedly relied and which was offered in evidence and made an exhibit, shows that the Sampsons own two properties in Philadelphia from which they receive \$365.00 per month rent, and another in Atlantic City from which they receive \$135.00 per month rent; that they recently sold their home in Philadelphia from which they would presently move; that their "worth" was approximately \$40,000; that James C. Sampson is steadily employed having worked for the same window washing company for twenty-five years; that Mrs. Sampson had worked for the federal government for twenty-one years but was presently on disability compensation; that their reputation in the neighborhood was satisfactory and that nothing detrimental concerning their habits and morals was discovered. As against this favorable report, two banks indicated that on two small personal loans made in 1961 the Sampsons had been slow in their payments and for this reason had later been denied credit.

While further testimony from their bookkeeper concerning the Sampsons prompt payment of their debts and their net worth would normally be irrelevant for it would not matter how good their credit

actually was if Huber honestly relied upon and acted upon the credit report he had received, in the instant case testimony of their good credit and prompt payment is important in view of the later testimony of Charles W. Huber.

At the close of Huber's examination he acknowledged that the premises was still vacant and that he had no tenant but, even though he had then heard the testimony that the Sampsons net worth was \$26,000 and that they promptly paid their bills he would not rent to them for a six-month term, even though they paid the entire rental in advance, until he had talked to his son Kenneth. When offered the opportunity to talk to his son Kenneth who was present in the room, he then decided he could not rent to the Sampsons until he had also talked to his lawyer who was not present.

In view of the basically good credit report, supported by the additional evidence of prompt payment of their bills by the Sampsons, no reasonable person could conclude that poor credit was the reason the Hubers did not rent the premises to them.

All of the findings of fact⁷ on which the Human Relations Commission based its order, as we herein modify it, were adequately

⁷Findings of Fact:

14. On June 14, 1966, the respondent owner acting by and through his father and agent, Charles W. Huber, claimed that he refuses to rent the said property to the complainants because said property had already been rented to an employe whereas in fact said property had not been rented to such employe.

supported by substantial relevant evidence, and evidence that a reasonable mind might accept as adequate to support a conclusion. The Conclusions of Law Nos. 8 and 9,⁸ are naturally arrived at from the said findings of fact.

Footnote 7 contd:

15. On June 14, 1966, the respondent owner, acting by and through his father and agent, Charles W. Huber, asserted that he refuses to rent the property in question to the complainants because the complainants are a poor credit risk whereas in fact the complainants are a good credit risk.

16. The respondents had no reasonable explanation for refusing a bona fide offer to rent said premises No. 148 Third Avenue, Newtown Square, Delaware County, Pennsylvania, to the complainants.

17. On or about June 9, 1966, the respondents, Kenneth J. Huber and Charles W. Huber, attempted to rent said premises No. 148 Third Avenue, Newtown Square, Delaware County, Pennsylvania, to a white tenant through a different real estate broker, the firm of Gilbert Real Estate.

18. The respondent owner has at all times since June 1, 1966 and is presently attempting to secure a white tenant for the said premises No. 148 Third Avenue, Newtown Square, Delaware County, Pennsylvania.

19. At all times herein mentioned, the respondents maintained and still maintain a policy of refusing to rent premises No. 148 Third Avenue, Newtown Square, Delaware County, Pennsylvania, to Negroes because of their race.

⁸8. On June 9, June 14 and thereafter, the respondents, Kenneth J. Huber and Charles W. Huber, committed unlawful discriminatory practices under Section 5 (h) of the Pennsylvania Human Relations Act, in that they instructed their real estate agent to submit a month-to-month lease to the complainants because the complainants were Negroes, in that respondents refused to rent commercial housing to the complainants, James C. Sampson and Geraldine M. Sampson, because of their race and denied and withheld commercial housing from the complainants, James C. Sampson and Geraldine M. Sampson, because of their race.

9. The respondents committed unlawful discriminatory practices under Section 5 (h) of the Pennsylvania Human Relations Act in that respondents maintained and still maintain a policy of refusing to rent commercial housing to Negroes because of their race.

For the reasons set forth at length herein, we make the following

ORDER

AND NOW, this 29 day of May 1967, the appeal of Kenneth J. Huber and Charles W. Huber is dismissed and the modified adjudication is affirmed; as follows:

1. Kenneth J. Huber and Charles W. Huber, their agents, representatives and employes shall cease and desist from
 - (a) Refusing to rent to James C. Sampson and Geraldine M. Sampson, because of their race, premises No. 148 Third Avenue, Newtown Square, Delaware County, Pennsylvania;
 - (b) Maintaining a policy of refusing to rent to Negroes because of their race, housing accommodations now or hereafter owned or controlled by the respondents.
2. Kenneth J. Huber shall offer to rent to James C. Sampson and Geraldine M. Sampson, forthwith, in writing, premises No. 148 Third Avenue, Newtown Square, Delaware County, Pennsylvania, for the term of one year, at the monthly rental of \$135.00. A copy of such written communication shall be transmitted to the Commission by the said Kenneth J. Huber.

3. The said Kenneth J. Huber and Charles W. Huber shall rent all housing accommodations subject to the Pennsylvania Human Relations Act, located in the Commonwealth of Pennsylvania, now or hereafter owned, built or controlled by them, without regard to the race, color, religious creed, ancestry or national origin of applicants for such housing.

4. The said Kenneth J. Huber and Charles W. Huber shall apply the same standards, terms, conditions and privileges in the sale or rental of any such housing accommodations to all applicants for such housing regardless of their race, color, religious creed, ancestry or national origin.

/s/ R. Dixon Herman
R. Dixon Herman, Judge

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KENNETH J. HUBER and : IN THE COURT OF COMMON PLEAS
CHARLES W. HUBER :
vs. : DAUPHIN COUNTY, PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS : No. 318 Commonwealth Docket
COMMISSION : 1966

TESTIMONY AND PROCEEDINGS

BEFORE

HONORABLE R. DIXON HERMAN, Judge,
Twelfth Judicial District of Pennsylvania,
Courts of Dauphin County,

At Harrisburg, Pennsylvania,
beginning Monday, July 18,
1966, at 2:20 o'clock p. m.,
EDST, in Court Room No. 4
Dauphin County Court House.

APPEARANCES:

For the Appellants: JOHN B. PEARSON, ESQ.

For the Appellee: NATHAN AGRAN, ESQ.

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INDEX TO WITNESSES

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* * *

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<u>FOR APPELLANTS:</u>	<u>identified</u>	<u>admitted</u>
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1 THE COURT: This is the time set for the hearing in
2 the matter of Kenneth J. Huber and Charles W. Huber vs.
3 Pennsylvania Human Relations Commission. Before we get
4 into any testimony I would like to have a brief statement
5 from Mr. Pearson as to why we are here, what your position
6 is, and at that time Mr. Agran can make a brief statement
7 as to his position.

8 MR. PEARSON: If Your Honor please, this is an appeal
9 from an order of the Pennsylvania Human Relations Commission
10 by Kenneth J. Huber and Charles W. Huber. Kenneth J. Huber
11 is on record as owner of the property, 148 Third Avenue,
12 Newtown Square, Delaware County, Pennsylvania and Charles
13 W. Huber, his father, has been in full control of the prop-
14 erty and is named as codefendant for that reason. On June
15 1, 1966, a Mrs. Sampson was there -

16 THE COURT: Is this a multi-dwelling unit?

17 MR. PEARSON: No, it's single dwelling. I do not
18 know any more about it than that. I have read the notes of
19 testimony and they don't indicate anything except it is a
20 single dwelling house. A Mrs. Sampson attempted to rent it.
21 The question involved is whether they refused to rent to
22 Negroes or as the Hubers allege because they received a
23 credit report which indicated two banks in the Philadelphia
24 area turned them down for credit. The appeal was filed on
25 July 12, I believe it was, or 13, I've forgotten. The order
26 of the Human Relations Commission was entered on June 28,
27 directing or finding that the appellant, the Hubers and their
28 real estate agent, who did not appeal, had violated the Penn-
29 sylvania Human Relations Act.

30 THE COURT: Was he one of the defendants, the real

1 estate man, was he a defendant in the action?

2 MR. PEARSON: Yes, he has complied with the order,
3 as of today he is not an appellant. He is out of the pic-
4 ture. As far as the order against him, all the order against
5 him required was that he post a notice conspicuously in his
6 office, a statement of policies and a cease-and-desist order
7 which was a matter of future activities. He was not ordered
8 to rent this particular property.

9 MR. AGRAN: No, we couldn't do that.

10 MR. PEARSON: Anyhow, he did not appeal. He has now
11 complied but the Hubers have appealed, as I say, on June 12,
12 and we ask that the appeal be made a supersedeas. That is
13 the matter before the Court today. I don't believe the
14 merits of the case have anything to do with it and should
15 not be gone into.

16 THE COURT: I think that's correct. I want to know
17 why you want a supersedeas. We want to take testimony on
18 that.

19 MR. AGRAN: Are you finished, Mr. Pearson?

20 MR. PEARSON: I have a short memorandum.

21 MR. AGRAN: May I have a copy of the memorandum?
22 I must assume that the only reason given for the petition
23 is the one set forth, namely, that the property according
24 to the Hubers had already been rented to Judith Jennings
25 for a term of one year. That isn't true. It wasn't rented
26 to Judith Jennings when Mrs. Sampson attempted to rent it.
27 I will make reference to it, if Your Honor wishes.

28 MR. PEARSON: That will get into the merits of it.

29 MR. AGRAN: This goes to the reason for supersedeas.
30 In the petition for supersedeas, if you will look at the
petition itself, in paragraph 3 it says, "As set forth in

1 the appeal petition, petitioners have leased the property
2 which is the subject of this action to a third party."
3 So now I look at the petition for appeal, which is, inci-
4 dentally, I have never seen anything like this before.
5 I guess it's good practice. In the petition for appeal,
6 in the very last paragraph prior to the signatures on page
7 3, if you have it in front of you, Your Honor, they say,
8 "The action of the Commission in entering the orders re-
9 ferred to was capricious and an abuse of discretion in that
10 the record shows that the refusal to rent to complainants
11 was based upon a credit report showing that the complainants
12 were slow in paying, and that, following the refusal to rent
13 to the complainants for the reason hereinbefore set forth,
14 respondent, Kenneth J. Huber, rented to one Judith Jennings
15 for a term of one year, and the said lease is still sub-
16 sisting." This is not true. This just isn't true. If
17 they can prove prior to the issuance of it that it was
18 rented, that's a very good reason for a supersedeas. As
19 far as any evidence before me, that's a sworn statement,
20 I think it's sworn, yes, it's a sworn statement so that it
21 is all that is before me at this time, except, I think Your
22 Honor will realize this was granted by Your Honor. It came
23 to my attention Thursday, at which time I called Your Honor
24 and asked to have a little more time. I was due out of town
25 Friday. I just did not have a chance to prepare an answer.
26 This is a legal but factual issue here, as to whether they
27 have reasons, and I wish to deny under oath that it is true.
28 Your Honor must take cognizance of the record in the case
29 itself in Court. I have already returned the record. It
30 is downstairs in the Prothonotary's office so that you may

1 read the testimony.

2 THE COURT: Well, we are going to hear the petitioners'
3 side first and we'll get to your side of the case.

4 MR. PEARSON: It is more a question of Law than it
5 is one of fact. However, I would be glad to put Mr. Ken-
6 neth Huber on the stand and I will also have Mr. Gilbert,
7 a second real estate agent who was involved in the proposed
8 lease to Mrs. Browne, here as a witness.

9 THE COURT: Who is Mrs. Browne? I hadn't heard that
10 name before.

11 MR. PEARSON: Mrs. Browne is a person who agreed to
12 lease this property on June 18, 1966 and apparently this
13 was a frame-up, as it developed, but we still think that
14 Mrs. Browne has rented this property. That is our position.

15 THE COURT: I thought there was a Jennings, it was
16 rented to Judith Jennings?

17 MR. PEARSON: Judith Jennings was a real estate
18 broker, or salesman, I guess, actually a real estate sales-
19 man, who approached the original real estate agent, a Mr.
20 Miller.

21 THE COURT: Was that the man who was a party to this
22 proceeding?

23 MR. PEARSON: Yes, he was a party to this proceeding
24 and made arrangement to rent to the complainants, Mr. and
25 Mrs. Sampson and she, of course, now is as far as I can
26 see, completely out of the picture except as her testimony
27 might have some bearing at some time.

28 THE COURT: That would be on the merits.

29 MR. PEARSON: Subsequent to the Hubers' refusal to
30 rent to Mr. and Mrs. Sampson, the property was put in the

1 hands of a Mr. Gilbert and on, as I say shortly after it
2 was put in Mr. Gilbert's hands, another Judith Howard Browne
3 came around and rented the property from Mr. Gilbert, gave a
4 check for the first month's rent, plus a deposit for damages,
5 and a lease was prepared. At the hearing before the Human
6 Relations Commission Mrs. Browne stated that she had made
7 this proposition as a member of the Media Council for Civil
8 Rights, Media Fair Housing Council, apparently solely for
9 the purpose of gaining evidence against the Hubers. Now,
10 we do feel that we can sue her for breach of contract.
11 She did agree to rent this property. If an appeal is not
12 made or petition for supersedeas, the property is no longer
13 available. I don't see how we could establish any damage
14 when it is not available. I will say that I took the
15 statement when I prepared this petition for supersedeas,
16 I took the statement that the property was rented, had
17 been agreed to be rented.

18 MR. AGRAN: Excuse me, I missed that.

19 MR. PEARSON: I took as true the statement in the
20 petition for appeal that the property had been rented,
21 more technically they had agreed to rent it, as obviously,
22 Mrs. Browne has not, as far as I know, signed a lease and
23 is not in possession of the property. I do think it would
24 seriously prejudice the rights of the Hubers.

25 I will call Mr. Charles Huber.

26
27 CHARLES W. HUBER, having been duly sworn according
28 to law, was examined and testified as follows:

29 DIRECT EXAMINATION

30 BY MR. PEARSON:

1 Q Give the Court your name and address.
2 A Charles William Huber. I live at 44 Cambridge
3 Road, Concordville. That's Concordville, Glen Mills Post
4 Office.
5 Q What county is that in?
6 A Delaware County.
7 Q And are you the father of Kenneth J. Huber?
8 A That's right.
9 Q You were co-defendant with him in this case?
10 A I wasn't in the beginning, they included me
11 in there somehow. I don't know how this happened.
12 Q And, Mr. Huber, have you any personal knowledge
13 of the dealing with this Judith Howard Browne?
14 A All I knew was what Mr. Gilbert told me.
15 Q Who is Mr. Gilbert?
16 A The second broker involved - that the property
17 was rented.
18 Q Mr. Gilbert is here in Court today?
19 A That's right. They wanted to occupy the fol-
20 lowing Saturday. This was on a Tuesday.
21 Q And, Mr. Huber, what is your connection with
22 this property?
23 A I manage the property for my son, that and sev-
24 eral other properties that he owns.
25 Q And did you accept, did you agree that the
26 property could be rented to Mrs. Browne?
27 A Yes.
28 Q On behalf of your son?
29 A Yes, that's right, yes, I did.
30 MR. PEARSON: If Your Honor please, I don't believe

1 I have too many questions of this witness. It's a question
2 of representing the property. Almost everything he knows
3 is hearsay. It might help, if you have any questions, Mr.
4 Agran.

5 MR. AGRAN: I would like to ask a few questions.

6 THE COURT: Go ahead, Mr. Agran.

7 CROSS EXAMINATION

8 BY MR. AGRAN:

9 Q Mr. Huber, you were present, were you not, and
10 testified under oath at the hearing that the Commission
11 conducted on the 28th of June?

12 A Yes, I was.

13 Q At that time you heard Mrs. Browne as a witness?

14 A Yes.

15 Q You did hear her explain to the Commission that
16 she had acted, not really as a bonafide tenant, but as a
17 tester for the Fair Housing Council?

18 A Yes, I did.

19 Q I am going to refresh your memory, read to you
20 your testimony and ask you whether this is what you said.
21 I asked you "Do you know, of course, that Mrs. Browne is
22 not a bonafide tenant?" And your answer was that, "I know
23 that, all right."

24 A Now, I didn't in the beginning.

25 Q Did you know it on the 28th when I asked you
26 this?

27 A She was in the Court Room sitting with you.

28 Q Just answer my question, Mr. Huber, please.
29 Then I said to you, "Therefore, you do not have a tenant
30 now?" You said, "No."

1 A That's right. She didn't move in. She didn't
2 move in.

3 Q I am asking you whether you so testified. Did
4 you say that at that time?

5 A Yes.

6 Q Next, "Then it is vacant today, meaning 148
7 Third Avenue, the property," and you said, "That's
8 right." Then I said, "If you were today offered six
9 months' rent in advance by Mr. and Mrs. Sampson to be
10 able to live there for six months, would you accept it
11 and accept them as tenants?" You answered, "I would have
12 to talk with my boy. I run it, I manage it for him, but
13 I would have to talk to him." Do you remember that?

14 A Yes.

15 Q Do you remember it, you wanted to talk to him.
16 He was in the room.

17 A I also said, talk to my attorney.

18 Q Right, but you refused to rent it to Mr. and Mrs.
19 Sampson although they offered you six months' rent in ad-
20 vance.

21 A Yes.

22 Q And your reason was you had to talk to your boy
23 who was in the hearing room and you wanted to talk to your
24 attorney who was there?

25 A No, he is not my lawyer. I'll tell you why he
26 wasn't if you will let me.

27 Q Go ahead.

28 A Mr. Warfield was in for Mr. Jackson because you
29 wouldn't give him a postponement of two days. If you re-
30 call, he called your office, that's why I had Mr. Warfield

1 in there as the attorney.

2 Q Now, in light of your testimony, Mr. Huber, as
3 given under oath, how could you have sworn under oath in
4 petition for this supersedeas that you had rented the prop-
5 erty to Judith Jennings?

6 A She came and rented it and gave me a five-dollar
7 check for a credit report and I assumed it was rented. The
8 reason I say it wasn't, she didn't move in. The house was
9 there to move into. She was going to move in the following
10 Saturday.

11 Q Is there any question in your mind now, any quest-
12 ion that you do not have a tenant?

13 A There is a question in my mind, yes.

14 Q Explain that to His Honor.

15 A Well, I think legally she should be held respons-
16 ible.

17 Q I have no other questions.

18 REDIRECT EXAMINATION

19 BY MR. PEARSON:

20 Q Mr. Huber, prior to the hearing on June 24, 1966,
21 did you have or did you not have any reason to know who Mrs.
22 Browne was and whether or not she intended to rent the prop-
23 erty?

24 A No, I didn't.

25 Q That's all the questions I have.

26 THE COURT: You may step down.

27 MR. PEARSON: I have Mr. Gilbert.

28 MR. AGRAN: For Your Honor's sake, so that you will
29 get it clearly, Mr. Miller was the agent for the Hubers
30 during the time that Mr. and Mrs. Sampson attempted to rent

1 this property. The record doesn't show why he was dis-
2 charged and a new agent taken on, the one who is about to
3 take the stand. There was a new agent within a matter of
4 days thereafter that Mrs. Browne applied to, a white person,
5 for rental of this same property.

6
7 DAVID V. GILBERT, having been duly sworn according
8 to law, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. PEARSON:

11 Q Mr. Gilbert, will you give the Court your name
12 and address?

13 A David V. Gilbert, Westchester Pike, North Lynn
14 Road, Newtown Square, Delaware County.

15 Q What is your occupation?

16 A I am a real estate agent, registered salesman,
17 Commonwealth of Pennsylvania.

18 Q For what broker?

19 A Gilbert Realtors, Incorporated.

20 Q Is that any relation to M. Vincent Gilbert, Incorp-
21 orated, 3081 Westchester Pike, Newtown Square?

22 A Correct.

23 Q How long have you known the Hubers, Mr. Gilbert?

24 A I guess approximately twenty years.

25 Q And have you ever done any business with them?

26 A Yes, I handled all the rentals for Mr. Charles
27 Huber's properties.

28 Q How long has that been?

29 A I guess, approximately two to three years.

30 Q Approximately two to three years?

1 A Somewhere in that area.

2 Q Now, Mr. Gilbert, can you tell us, did you ever
3 obtain a right from the Hubers to rent the property which
4 is the subject of this proceeding at 148 Third Avenue?

5 A Yes.

6 Q In Newtown Square?

7 A Yes, Mr. Charles Huber told me, I talked to him
8 one day on the phone, this 148 Third Avenue was available
9 and since, as it is customary in our area, we, of course,
10 try to get the best lease we can. I said, "Okay, fine,
11 I'll take care of it." We had shown the property.

12 Q Do you recall about when that was, Mr. Gilbert?

13 A As nearly as I can recall, it was about June 12,
14 somewhere in the area of June 10 or 12, I can't remember.

15 Q And did you obtain any prospective tenants?

16 A Yes, I had shown it twice, then a Judith Howard
17 Browne, Wallingford, came in. I had shown it twice, two
18 other people, one fellow's name was - I forget - he worked
19 for Globe Security Agency, and a Sloan, I'm not sure. Mrs.
20 Browne came in on the 15th. She said she wanted the place.
21 She had to get in that Friday. Her husband was out of town.
22 I got all the necessary credit information from her and she
23 gave me a check for five dollars. I told her the place was
24 hers. She could move in. It was her check, it was drawn
25 on Continental Trust.

26 Q You saw her sign the check?

27 A Yes, she signed it right in front of me. We had
28 this power since we did handle his properties, to make the
29 lease.

30 Q Did you know anything about her credit rating?

1 A I had gotten the information. I told her this,
2 of course, would be subject to her credit report. I called
3 the Credit Agency. I wanted a verbal report. This woman
4 was going to move in. They called me back the next morning.
5 She wanted the lease by 10:30. They confirmed her husband
6 was employed by DuPont, \$15,000.00 a year. They confirmed
7 there were no outstanding debts. She couldn't get anything
8 from the bank, but she found no outstanding debts, when
9 they originally checked it out. This, of course, was also
10 subject to the written report. They picked up the thing
11 afterward. She came in, we didn't have the lease ready
12 at 10:30 and she came back around 2:00. We had the lease
13 then. She took the lease, the reason she did not sign
14 it, my secretary made an error. The terms were rental for
15 a year, it should have been \$1,620.00, my secretary had
16 the term rental \$2,220.00. She called me about it and I
17 said, "That's okay. We'll get a new lease to you." In
18 the meantime I had found out about this suit. I had gone
19 down to Mrs. Browne's home with the new lease and I told
20 her since she had already taken the place she could sign
21 the new lease but I told her that the Hubers now had an
22 action, this was the following Thursday, against them be-
23 fore the Human Relations Commission. I said, "Since you
24 have a lease and you have a right to enjoyment you can
25 sign a release for Mr. Huber." She didn't tell me anything
26 about this. Later on I found out, three days later, after
27 the Human Relations Commission man told me, Mrs. Judith
28 Jennings, a real estate agent, had the place. The Commis-
29 sion chairman told me it was set up and I was used, some-
30 body had to be used and it was me. I said, "That's fine."
Of course, I don't know, he said they didn't want to embar-

1 rass me and so forth, I don't know.

2 Q Mr. Gilbert, when you took this new lease down
3 to Mrs. Browne did she approve it?

4 A She said she'd look it over and have her husband
5 read it over. She'd sign it and get it back to me.

6 Q Did she make a deposit?

7 A She had made a deposit.

8 Q That was five dollars?

9 A No. Oh, yes, she gave me a check for \$270.00 on
10 the 18th.

11 Q That was her check?

12 A That was her check, yes. That was her check of
13 the first month's rent, \$135.00, plus \$135.00 which we hold.
14 She stopped payment on the check.

15 Q Mr. Gilbert, I show you Appellants' Exhibit No. 1,
16 and ask you what it is.

17 A This is a check made out to M. Vincent Gilbert,
18 Inc., agent, signed by Judith Howard Browne. Underneath,
19 deposit on 148 Third Avenue.

20 Q How much is the check for?

21 A \$270.00 even money.

22 Q Is that the check that you testified Mrs. Browne
23 gave you?

24 A Yes, it is.

25 MR. PEARSON: And if Your Honor please, I'd like to
26 ask that the check be admitted for purposes of this hearing
27 as establishing that a deposit was made.

28 THE COURT: There's no objection, it may be admitted.

29 BY MR. PEARSON:

30 Q I just want to ask one more question. At the

1 time that you received that check did you have any reason
2 to suppose that Mrs. Browne was not contemplating in good
3 faith the rental of this property?

4 A As far as I was concerned, she could move in
5 that Friday, Friday and Saturday. They had sold their
6 premises and, which I had confirmed, because we had a
7 deal with the real estate agent, we had another deal on a
8 home of ours that was pending and they told me they had
9 sold her home for \$29,500.00, somewhere in that area.

10 Q When was this?

11 A The 15th of June. She, in fact, afterwards,
12 three days after the hearing, Mr. Taylor and Mrs. Jennings
13 with Mrs. Sampson - well, Mrs. Browne said at the hearing
14 she wasn't going to keep the lease. I said, "That's not
15 my problem. I was the rental agent." As far as that's
16 concerned, the attorney is now going to collect the rent.
17 They said, "What do you want Mrs. Browne to do? She's
18 not going to keep the lease." The lessor has certain
19 rights on the lease. Mrs. Jennings asked if she could call
20 Mrs. Browne, which she did. She told Mrs. Browne what I
21 had said, and I said, "Mrs. Browne, what do you want me to
22 say? You have a lease on the property. I think you ought
23 to see Mr. Jackson, the attorney, to see what you can do as
24 far as breaking it. Have him call me." She said, "We'll
25 break it." She admitted as far as she was concerned -

26 Q Mrs. Jennings?

27 A Mrs. Jennings, the real estate agent, Whitney
28 Real Estate in Bryn Mawr, she came in with Mrs. Sampson
29 and Richard K. Taylor, who is the executive chairman.

30 Q Mrs. Jennings is the broker who filed a complaint

1 with your company?

2 A That's right.

3 Q That's all.

4 MR. AGRAN: May I ask a few questions?

5 THE COURT: Go ahead.

6 CROSS EXAMINATION

7 BY MR. AGRAN:

8 Q Mr. Gilbert, you keep referring to an agreement
9 or lease agreement. There never was a lease agreement
10 signed by anyone, was there?

11 A No written agreement. As far as we were con-
12 cerned this is standard practice. We will make an oral
13 lease just like that and follow it up.

14 Q You had a written lease. What was the date on
15 that written lease?

16 A The 16th.

17 Q Are you sure it wasn't July 1, 1966?

18 A No, it was the date of the signing of agreement.
19 It was the 16th.

20 Q The lease referred back to July 1, it was to start
21 July 1, 1966, is that correct?

22 A That's correct.

23 Q How do you keep referring to a lease agreement
24 as of June 15th?

25 A That was the day we made the lease, the second
26 typed lease on June 16th, as the date of the signing be-
27 cause Mrs. Browne was to come in at 10:30 on the 16th and
28 sign it. She didn't sign it because she objected to the
29 July 1st date and we said, "We'll make it the 15th," and
30 she objected - she objected to the \$2,220.00. That was

1 the only reason she didn't sign it.

2 Q It also required her husband's signature?

3 A Yes.

4 Q And her husband likewise did not sign it?

5 A That's correct.

6 MR. AGRAN: Could I ask if it's possible that the
7 record that has been lodged be brought up? This lease
8 is an Exhibit and I want Your Honor to look at the lease
9 that's dated to start July 1, 1966.

10 THE COURT: If it's been lodged in this county to
11 this number it will be part of the record in this case.

12 MR. AGRAN: I would like to point out the lease
13 that has never been signed.

14 BY MR. AGRAN:

15 Q About the check that was given to you, is it
16 not customary when a person comes in to ask immediately
17 for a deposit?

18 A Usually, right then and there we type up a lease
19 and we sign it. That isn't what happened here.

20 Q When they don't sign it, don't you take a check?

21 A If they have rented the place, yes.

22 Q What do you mean?

23 A We are not going to - a lot of people come in
24 and say, "I'd like to take a look at the lease." It's a
25 uniform lease. They examine the lease and take it back
26 to their attorney before they sign it, before they rent
27 the place. Other people say, "I want the place. Can I
28 have it?" I say, "okay, fine, it's yours. Give us a check
29 and the place is yours," and we can't - we're too busy to
30 get leases typed up immediately. If they say, "We'll accept

1 the lease," we have plenty of people in the premises a
2 week or a week and a half before we get the written lease
3 to them.

4 Q Mr. Gilbert, you asked for the check, did you not?

5 A Yes, I did.

6 Q You asked for an additional month's security rent,
7 did you not?

8 A That's correct.

9 Q Do you think Mrs. Browne, knowing what you know
10 now, would have given you a check if you hadn't asked for
11 it?

12 A No.

13 Q Don't you realize that she understood and I think
14 probably that you weren't to use the check unless or until
15 the lease was signed by her and her husband?

16 A See, I didn't know anything that was going on.

17 Q You know it now?

18 A Yes.

19 Q What happened to the check, did you deposit it?

20 A I even held onto the check 'til the 23rd. I
21 didn't know what was coming. Payment was stopped. What
22 I did with it initially, I held onto it from the 18th to
23 the 23rd, five days, I thought then it was all right and
24 I deposited it.

25 Q One other thing, you prepared a new lease agree-
26 ment?

27 A That's correct.

28 Q And submitted it to her on Friday, the 24th of
29 June, am I right or wrong?

30 A Thursday evening, the 23rd.

1 Q Thursday evening. She said Friday, the 24th
2 in her testimony. She may have been wrong by half a day.
3 The point is, she didn't have the lease from you until the
4 night of the 23rd of June?

5 A That was the second lease we had typed up, right.
6 When she called me on the errors on the original lease, she
7 didn't say she wasn't going to take the premises. The only
8 objection was to get this corrected. "Get me a new lease
9 and we'll sign it."

10 Q Mr. Gilbert, how familiar are you with this as
11 a practice, in Delaware County and other counties, namely,
12 this business of testing by fair housing groups?

13 A I never had this experience.

14 Q You never had it. Are you familiar with the fact
15 that it is going on all the time by these civic groups?

16 A I didn't. I didn't even know who Whitney Real
17 Estate was. Whitney Real Estate is not a realtor, a member
18 of a board.

19 Q There is a very good reason why a Negro is not a
20 member of the realty board. Are you a member?

21 A We are a member of the Chester Main Line Board,
22 all three boards.

23 Q Have you ever seen a Negro realtor at any of the
24 meetings?

25 A Salesmen, I don't know - I have seen them - Negro
26 salesmen. We cooperate with them.

27 MR. PEARSON: We are getting a little far afield.

28 THE COURT: I want to know if the granting of a super-
29 sedeas will hurt anybody.

30 MR. AGRAN: May I talk to that?

1 THE COURT: I'd like to hear something on it from
2 somebody. Your administrative agency code makes it dis-
3 cretionary with the Court. It's not a mandatory thing
4 and, not only that, your administrative code quite clearly
5 indicates even where it's granted, if there's a danger a
6 person might be hurt there ought to be some security re-
7 quired by the Court.

8 MR. AGRAN: That's true. Now, in this particular case,
9 the record is clear. It's been lodged downstairs, part of
10 that record I went into in the Court of Common Pleas, Delaware
11 County, on the 17th of June, with a petition or complaint in
12 equity and the Court did not grant an ex parte injunction
13 but did grant rule to show made returnable why an injunction
14 should not be issued. We knew, we had been told by this
15 Browne woman, not a bonafide tenant, put up to it by the
16 Fair Housing Council, the defendants were trying to rent
17 this property despite the fact that they had a bonafide offer
18 from Negroes to put up a whole year's rent in advance. She
19 had, when the credit report was bad, she had offered to pay
20 them a whole year's rent. There was no denial of it. Be
21 that as it may, we went into Court. It's all in the record.
22 Mr. Jackson, with whom Counsel is associated, stepped up to
23 the bar of the Court and filed preliminary objections. So
24 I said to the Court, sitting en banc, "This is an urgent mat-
25 ter." This is the usual thing. They said, "All matters be-
26 fore us are urgent." I said, "Your Honors, please dispose of
27 these preliminary objections today. I am ready to argue on
28 constitutionality. There was a service of the writ. I had
29 filed an affidavit of service so I wasn't concerned. I was
30 told, "No, it has to take the usual course and we'll hear
the preliminary objections and argument in the Fall." Ob-

1 viously, this killed our chances to invoke the regulations
2 enacted which I handed up to you. The new act of assembly
3 of the legislature gave us specific authority to walk in
4 to the county in which the property is located if probable
5 cause existed. It's right in the act and to seek an in-
6 junction. We saw we were licked. We couldn't wait until
7 Fall. By then we knew what was going on with Mr. Gilbert.
8 They would rent it to someone who is white.

9 THE COURT: That doesn't stop the penalties that
10 you might be able to impose.

11 MR. AGRAN: I think it does. First of all, the pen-
12 alty is \$100.00. The real beauty of the Law is to require
13 that no one be turned down as a result of prejudice. If a
14 man has a house and if this is a bonafide tenant, that
15 house ought to be rented to this tenant. If he rents it
16 to someone else we are out of luck. If you grant the
17 supersedeas, you will be doing, in effect, exactly what
18 Delaware County did to us. They are going out and rent it.
19 I urge Your Honor, if you are going to grant it, at least
20 have them post some kind of security. If this woman, if
21 we are eventually sustained, if she has to go out and rent
22 another property, which they need, for a lot more than \$135.00
23 a month, if they suffer some kind of damage on account of this,
24 let there be something by way of security here in their behalf,
25 at least that if there is to be a supersedeas. If ever there
26 was a case where we urge justice requires no supersedeas,
27 this is it. He can rent this property. They are good people,
28 willing to pay the whole year's rent in advance right now.
29 I offer it and they won't do it. There is only one reason,
30 in my honest opinion, there are hundreds of these cases.

1 MR. PEARSON: If it's a bad credit rating, a year
2 isn't enough, if you're getting somebody who stays five
3 years and doesn't pay.

4 MR. AGRAN: Your Honor has the actual credit record
5 they are complaining about. The evidence is clear that
6 the so-called bad credit occurred in 1961, between 1961
7 and '64. That wasn't so bad. They paid the mortgages.
8 Since May of '64 they paid regularly all mortgage payments
9 without exception. We had their accountant on the stand.
10 Despite all this evidence and the fact that the property
11 was vacant and we were willing to put up a whole year's
12 rent -

13 THE COURT: All of that goes to the merits of the
14 case. What I want to hear is the damage that can result
15 from granting a supersedeas.

16 MR. AGRAN: If Your Honor grants the supersedeas
17 then he can rent this property and perhaps they can't get
18 another suitable one.

19 MR. PEARSON: If Your Honor please, that cuts both
20 ways. We have to give these people a year's lease. Our
21 case is over and we have never had a chance to appeal.
22 Our property gives us the right to appeal and to make that
23 right worthless by failing to grant a supersedeas takes
24 our property away without giving us an opportunity, which
25 the Law allows us to appeal. The other thing in here, as
26 Your Honor himself said, they can put penalties on us if
27 eventually it is found - actually, there is no indication,
28 really, but the Sampsons are desperately in need of this
29 house. They have been living, I believe, in this home
30 where they were at the time of this hearing for some time.

1 MR. AGRAN: That's not so. The record shows they
2 put their stuff in storage and are waiting a chance to
3 get it out. They sold their own home. They owned their
4 home and had nowhere to move. That's the position they
5 are in. They have no place to go, and he works in that
6 area and needs a home in that area.

7 MR. PEARSON: He had been working in that area for
8 many years.

9 MR. AGRAN: That's true.

10 MR. PEARSON: He might find elsewhere he would
11 rather live where he has most of his clients, most of the
12 people he deals with. It seems to me that our interest
13 here is more important. This is the one house we have.
14 As far as we are concerned, the case is over if the super-
15 sedeas is not granted. On the other hand, there is nothing
16 to prevent the Sampsons from going out and attempting to
17 rent another house.

18 MR. AGRAN: I have advised them to try. I know
19 what is going to happen. I have been through this before.

20 MR. PEARSON: Even if they do rent another and the
21 appeal is eventually turned down and the constitutional
22 question is found against us, you still have the right to
23 order cease and desist and to make us comply in the future.
24 I think this law, as far as I know, has not yet been tested.
25 Isn't there a penalty in addition to that?

26 MR. AGRAN: A lot of people feel it is a criminal
27 law. It isn't. The only time there is a penalty imposed
28 is in Section 11 of the act which says that if there is a
29 deliberate violation of the order adjudicated, after the
30 Court affirmed, then and only then will it be considered

1 resistance to our people who try to enforce the law -
2 under those circumstances - otherwise it isn't a criminal
3 act at all. It is a civil act.

4 MR. PEARSON: Also, Your Honor, I think that I am
5 not going to attempt to state what the law is on the sub-
6 ject. Now, I do think that we have a cause of action of
7 breach of contract against Mrs. Browne and however, if we
8 rent this property, it is the subject of our complaint
9 against her. Then we can't fulfill our end of the bargain.

10 MR. AGRAN: Isn't it true, if they have a cause of
11 action against Mrs. Browne that's good for refusing the
12 writ of supersedeas? How can they be heard if they are
13 so sure they have a cause of action against Mrs. Browne?
14 They will talk themselves right out of Court and not only
15 that, but I agree they should put up a bond, I feel, it
16 should be a fair bond so if they are wrong they will re-
17 imburse Mr. and Mrs. Sampson for their monetary loss they
18 might suffer by reason of this.

19 THE COURT: Do you have the act with you?

20 MR. AGRAN: I have a copy. I always manage to
21 carry it with me.

22 THE COURT: Does the act mention anything about a
23 bond?

24 MR. AGRAN: No, there's nothing whatever in the act
25 that I just handed up dealing with injunctions and require-
26 ment of a bond. I believe it is Section 43 of the Adminis-
27 trative Agency Law which governs the Human Relations Act
28 which is referred to in the memorandum I gave you. That
29 sets forth the conditions for getting a supersedeas.
30 "Upon due notice to the agency, the Court may grant a

1 supersedeas upon such terms and conditions, including the
2 filing of security as it may prescribe." There is no doubt
3 Your Honor has a right to attach conditions to this super-
4 sedeas if you believe they are necessary to protect any-
5 body's interests.

6 MR. PEARSON: It does seem to me the question of
7 filing the bond would be stirring up a hornet's nest of
8 trouble. If the Sampsons rent for less, if the property
9 is worth less, say they rent for \$125.00 and the property
10 is worth \$100.00, do we owe them \$25.00? Later on it may
11 be a moot question. There may be no damage question. We
12 have to go in and pass on the fair rental value of this
13 property in order to determine whether there is. I think
14 it would be just building up trouble for ourselves.

15 MR. AGRAN: Every time there is a bond posted of
16 this kind the Court as well as the parties are faced with
17 those same issues. This isn't new. It would be just ex-
18 actly as any other kind of bond similarly placed.

19 MR. PEARSON: Mr. Agran, or Your Honor, if the com-
20 plainant posts bond there may be difficulty in determining
21 what are the damages in the event the appeal is not sus-
22 tained. We have no idea what the Sampsons put out in rent,
23 what they might pay for it.

24 MR. AGRAN: So long as there is something to show
25 good faith, eventually, if we win out, this is the fair
26 way to handle it if the supersedeas is to be allowed.
27 Otherwise, there just is no effect whatever to any of our
28 orders. We might as well talk ourselves right out of Court,
29 in any housing case. That part of our order which goes to
30 the heart of the very issue is invalidated immediately.

1 THE COURT: I don't follow that reasoning too well,
2 Mr. Agran. The question of granting or refusing a super-
3 sedeas is involved by the equity of each case and the Court
4 should determine where the damage would lie, where the dam-
5 age would be greatest if the supersedeas is granted or the
6 supersedeas is refused. I want to see what the act says.
7 It is the Commission that's a party here, not the Sampsons
8 or somebody else.

9 MR. AGRAN: The appeal was taken against us because
10 we issued the order in behalf of the Sampsons.

11 THE COURT: There is no place in the record that I
12 have anything except the Human Relations Commission and
13 Hubers and I am not entirely clear about the damage to the
14 Sampsons or any other person as far as this act is concerned.
15 If a bond were filed it would normally ^{be} conditioned on the
16 outcome of the case and damage suffered by the Commission
17 or other party.

18 MR. AGRAN: No, when I went into the Common Pleas
19 Court of Delaware County the shoe was on the other foot.
20 There all my papers were framed in such a way I was ready
21 and required to file a bond by the Sampsons to the use of
22 Mr. Huber, the two Hubers, you see not by us, obviously,
23 the act doesn't permit us to file a bond as a Commonwealth
24 agency so the same thing is true here. Everyone knows the
25 complaint, those who lodged the complaint are husband and
26 wife, the Sampsons, we merely issued it pursuant to the
27 administrative agency in their behalf. Therefore, if there
28 is to be a bond, it seems to me, it would be to Mr. and Mrs.
29 Sampson.

30 THE COURT: Well, as I see this case, having gone
over it as I could at this time, the supersedeas should be

1 granted. I can't see any great damage by granting of the
2 supersedeas and I can see damage if it isn't granted. How-
3 ever, I am not clear on the bond. I am going to grant the
4 supersedeas as of today subject, however, to the possibility
5 of a bond being entered. I want a short memorandum from
6 each of you on what conditions, if any, should be attached
7 to a bond. I agree that the bond should be perhaps in the
8 sum of \$1000.00, if a bond is required at all. I'm not so
9 sure it is. I'd like to have memorandums from you. I am
10 going to grant the supersedeas and leave the case open
11 subject to the filing of a bond after I have your memoran-
12 dums.

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14 HEARING CONCLUDED
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the within cause, and that this copy is a correct transcript of the same.

/s/ Helen L. Ferguson

Official Stenographer

The foregoing record of the proceedings upon the hearing of the within cause is hereby approved and directed to be filed.

/s/ R. Dixon Herman

Judge