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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

*Have Changes
made before making
Pg 5 - Par. 28 (changed)
Pg 3 - Par. 7 (same)*

GUSSIE JOHNSON,
Complainant

v.

NICHOLAS J. CAFARO, individually and
doing business as CAFARO BARBER SHOP
Respondent

DOCKET NO. P-52

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

In December, 1961 and again in January, 1962, Gussie Johnson, a male Negro, residing at 8373 Vidette Street, Pittsburgh, Pennsylvania, (hereinafter referred to as complainant), entered the barber shop owned and operated by Nicholas J. Cafaro and known as Cafaro Barber Shop, located in East Hills Shopping Center, Allegheny County, Pennsylvania (hereinafter referred to as respondent) and on both occasions, complainant was given a haircut, without incident. On both these occasions, the barbers did not know that complainant was a Negro. Shortly thereafter, the barbers learned of the race of the complainant and thereafter, on February 6, 1962, on February 9, 1962, on September 14, 1962 and on March 2, 1963, the complainant entered the said barber shop for a haircut and failed to be served on any of those occasions. Respondent claims that complainant was not served because he and his barbers do not know how to cut the hair of a Negro. Complainant claims that he was refused to be served on those four occasions because he is a Negro.

Shortly following the incidents which occurred on February 6 and February 9, 1962, complainant signed and filed a complaint with the Pennsylvania Human Relations Commission (hereinafter referred to as

Commission). This Complaint was later amended, on April 9, 1963.

The Commission made an investigation of the facts which resulted in a finding of probable cause to credit the allegations of the Complaint. There then followed several attempts to effect an amicable adjustment of the matter by conciliation and persuasion. When such efforts to adjust amicably failed to materialize, the Commission ordered a public hearing in the matter and such public hearing was held in Pittsburgh on April 29, 1963, at which time the Hearing Panel consisted of Commissioner Edward G. Petrillo, Esq., Presiding Member, and Reverend James B. Cayce and Mrs. Florence S. Reizenstein, Hearing Commissioners.

A copy of the Amended Complaint was enclosed with the notice of the public hearing and an Answer to the Amended Complaint was filed by respondent generally denying that he committed unlawful discriminatory practices in violation of the Pennsylvania Human Relations Act.

At the public hearing, the case in support of the Complaint was presented by Nathan Agran, Esq., General Counsel for the Commission, and the respondent was present and was represented by Frederick L. Kiger, Esq. At the outset of the hearing, counsel for the respondent moved the Commission to dispense with the hearing on the ground that "the entire procedure is unconstitutional, to the effect that the Commission is acting as counsel for complainant, as prosecutor, and as a determinator of the facts." This oral motion was taken under advisement and will be treated in the Opinion hereinafter set forth. A second oral motion made by respondent at the hearing questioned the validity of the Amended Complaint, since the original Complaint in this matter was not sworn to. This motion will likewise be treated later in the Opinion.

Briefs of law have been filed with the Commission by both Frederick L. Kiger, Esq., on behalf of the respondent, and by Nathan Agran, Esq., in support of the Complaint. The Hearing Commissioners have

considered all of the evidence received at the public hearing and all of the arguments put forward in the briefs of law, and recommend that the Commission find that the respondent, Nicholas J. Cafaro, individually and doing business as Cafaro Barber Shop, has committed unlawful discriminatory practices as defined in the Pennsylvania Human Relations Act.

The Hearing Commissioners, Edward G. Petrillo, Esq., Presiding Member, Rev. James B. Cayce, Hearing Commissioner and Mrs. Florence S. Reizenstein, Hearing Commissioner, make the following findings of fact and conclusions of law :

FINDINGS OF FACT

1. At all times mentioned herein, complainant, Gussie Johnson, lived and he still lives at 8373 Vidette Street, Pittsburgh, Pennsylvania.
2. Complainant, Gussie Johnson, is a Negro.
3. At all times mentioned herein, respondent, Nicholas J. Cafaro, was and he still is the proprietor of Cafaro Barber Shop in East Hills Shopping Center, Allegheny County, Pennsylvania.
4. At all times mentioned herein, Cafaro Barber Shop was and it still is a place of public accommodation, resort or amusement.
5. At all times mentioned herein, respondent posted and displayed a sign and he still posts and displays in the Cafaro Barber Shop a sign to the effect that a regular hair cut costs \$1.75.
6. The Cafaro Barber Shop is the closest barber shop to the home or residence of complainant.
7. In mid-December 1961 or thereabouts, complainant entered the Cafaro Barber Shop for a haircut and received a haircut, without incident, for the sum of \$1.75.
8. On that occasion, the barber who gave complainant a haircut is named Leo Artisti.

9. On that occasion, it took Leo Artisti less than 20 minutes to give complainant a haircut.

10. On that occasion, the respondent, Leo Artisti and the other barbers working for respondent in the said Cafaro Barber Shop did not know that complainant is a Negro.

11. Leo Artisti did not indicate at that time that he found any particular difficulty in giving complainant a haircut.

12. Leo Artisti made no attempt at that time to charge complainant more than \$1.75 for giving him a haircut.

13. Twenty minutes is the usual time it takes to give any person a haircut.

14. In mid-January 1962 or thereabouts, complainant again entered the Cafaro Barber Shop for a haircut and received a haircut, without incident, for the sum of \$1.75.

15. On that occasion, too, the barber who gave complainant a haircut is named Leo Artisti.

16. On that occasion, it took Leo Artisti less than 20 minutes to give complainant a haircut.

17. On that occasion, too, the respondent, Leo Artisti and the other barbers working for respondent in the said Cafaro Barber Shop did not know that complainant is a Negro.

18. Leo Artisti did not indicate at that time that he found any particular difficulty in giving complainant a haircut.

19. Leo Artisti made no attempt at that time to charge complainant more than \$1.75 for giving him a haircut.

20. In the last week of January 1962 or thereabouts, the respondent and all of the barbers working for respondent in the said Cafaro Barber Shop learned that complainant is a Negro.

21. On February 6, 1962, complainant again entered the Cafaro Barber Shop for a haircut.

22. On that occasion, complainant was permitted to sit without attention, despite the fact that at least two of the barbers in the said Cafaro Barber Shop were idle.

23. On February 9, 1962, complainant again entered the Cafaro Barber Shop for a haircut.

24. On that occasion, complainant was shown a sign, "Special, \$7.50" by the barbers working in the said Cafaro Barber Shop and was told by said barbers that he would be required to pay the said amount of money if he desired his hair to be cut.

25. On September 14, 1962, complainant again entered the Cafaro Barber Shop for a haircut.

26. On that occasion, the manager of the Cafaro Barber Shop refused to permit complainant's hair to be cut by any of the barbers on the ground that the barbers were not trained to cut the hair of a Negro.

27. On March 2, 1963, complainant again entered the Cafaro Barber Shop for a haircut.

28. On that occasion, the owner and operator of the Cafaro Barber Shop, Nicholas J. Cafaro, refused to permit complainant's hair to be cut by any of the barbers on the ground that the barbers were not ^{trained} ~~refused~~ to cut the hair of a Negro.

29. The complainant failed to receive a haircut in the Cafaro Barber Shop on any of the four said dates, to wit, February 6, 1962, February 9, 1962, September 14, 1962 and March 2, 1963.

30. Complainant's hair is not difficult for a licensed barber to cut.

31. Respondent has never charged \$7.50 for cutting any white person's hair, and has never received \$7.50 from any person, white or Negro, for a haircut.

32. A charge of \$7.50 is far in excess of respondent's usual charge for cutting a white person's hair and is a prohibitive price for cutting any person's hair.

33. Permitting complainant to sit waiting for a haircut while at least two barbers were idle and making no effort to give service to him is tantamount to refusing to cut complainant's hair.

34. Telling complainant he must pay \$7.50 for a haircut is tantamount to refusing to cut complainant's hair.

35. Telling complainant that no barber is trained to cut the hair of a Negro when in fact at least one of the barbers had previously cut complainant's hair on two different occasions, is tantamount to refusing to cut complainant's hair because he is a Negro.

36. The notice, "Special, \$7.50" posted by respondent in Cafaro Barber Shop means in effect that the accommodations, advantages, facilities and privileges of Cafaro Barber Shop shall be refused, withheld from or denied to complainant and to any Negro unless he pays a prohibitive price far in excess of respondent's usual charge for cutting a white person's hair.

37. Permitting complainant to sit without attention while at least two barbers were idle means in effect that the patronage or custom of Negroes at Cafaro Barber Shop is unwelcome, objectionable, or not acceptable, desired or solicited.

38. By telling complainant that none of the barbers at Cafaro Barber Shop was able to cut the hair of a Negro and by this means refusing to give complainant a haircut, respondent, directly or indirectly refuses, withholds from or denies to Negroes, because of their race, the accommodations, advantages, facilities or privileges of a place of public accommodations, resort or amusement.

CONCLUSIONS OF LAW

1. At the time of the events complained of, complainant was and he still is an inhabitant of the Commonwealth of Pennsylvania.

2. At the time of the events complained of, Cafaro Barber Shop was and it still is a place of public accommodation, resort or amusement within the meaning of Section 4 (1) of the Pennsylvania Human Relations Act.

3. At the time of the events complained of, respondent, Nicholas J. Cafaro, was and he still is the proprietor of Cafaro Barber Shop located in East Hills Shopping Center, Allegheny County, Pennsylvania.

4. At all times since the filing of the complaint herein, the Commission has had and it still has jurisdiction over the person of the respondent.

5. At all times since the filing of the complaint herein, the Commission has had and it still has jurisdiction over the subject matter of this proceeding and over the complaint.

6. On February 6, 1962, by permitting complainant to sit waiting for a haircut without attention while at least two barbers were idle and making no offer to serve him, respondent directly or indirectly refused, withheld from or denied to him, because of his race, the accommodations, advantages, facilities or privileges of a place of public accommodation, resort or amusement, in violation of Section 5 (i) (1) of the Pennsylvania Human Relations Act.

7. On February 9, 1962, by telling complainant he would have to pay the excessive price of \$7.50 for a haircut, the respondent refused, withheld from or denied to any Negro unless he pays a prohibitive price far in excess of respondent's usual charge for cutting a white person's hair, the accommodations, advantages, facilities or privileges of Cafaro Barber Shop, all of which constitutes an unlawful discriminatory practice in violation of Section 5 (i) (1) of the Pennsylvania Human Relations Act.

8. The sign, "Special, \$7.50", posted in Cafaro Barber Shop on February 9, 1962, means in effect that the patronage or custom of Negroes at Cafaro Barber Shop is unwelcome, objectionable or not acceptable, desired or

solicited, and constitutes an unlawful discriminatory practice in violation of Section 5 (i) (2) of the Pennsylvania Human Relations Act.

9. On September 14, 1962 and on March 2, 1963, by telling complainant that none of the barbers is trained to cut the hair of a Negro when in fact complainant's hair had been previously cut on two occasions without difficulty or incident, the respondent directly or indirectly refuses, withholds from or denies to Negroes, because of their race, the accommodations, advantages, facilities or privileges of a place of public accommodation, resort or amusement, in violation of Section 5 (i) (1) of the Pennsylvania Human Relations Act.

The Hearing Commissioners recommend that the full Commission adopt the foregoing findings of fact and conclusions of law and enter an order against the respondent requiring him to cease and desist from refusing to serve Negroes in his barber shop.

Having observed and heard all of the witnesses at the public hearing in this matter, we cannot agree with the arguments advanced by the respondent that the evidence failed to disclose unlawful discriminatory acts on the part of the respondent. On the contrary, it is very clear to the Hearing Commissioners that on four different occasions, the respondent and his agents refused to cut complainant's hair simply because the complainant is a Negro and for no other reason.

While it is true that the respondent at no time said explicitly, "We will not cater to any Negro in this barber shop," the actions of the respondent leave no doubt whatever of the fact that the patronage of Negroes at the Cafaro Barber Shop is unwelcome and not acceptable or desired.

On February 6, 1962, when complainant entered Cafaro Barber Shop for a haircut he was permitted to sit without any attention and without any barber offering to give him any service, despite the fact that at least two of the barbers were free and idle and were standing around looking out of the window.

Three days later, on February 9, 1962, when complainant again tried to get a haircut in the Cafaro Barber Shop, he was shown a sign by the barbers reading, "Special, \$7.50" and was told he must pay this excessive amount of money if he desires to have his hair cut.

On September 14, 1962, when the complainant attempted to get a haircut in the Cafaro Barber Shop he was told by the manager that no barber was trained to cut the hair of a Negro.

On March 2, 1963, the respondent himself told the complainant the same thing -- that none of his barbers was trained to cut the hair of any Negro.

Such actions on the part of the respondent speak louder than any words and convince the Hearing Examiners that every kind of device and excuse was used to avoid catering to a Negro.

This is all the more apparent because the evidence was very clear to the effect that this complainant twice entered the Cafaro Barber Shop in December 1961 and in January 1962, at a time when no barber knew he was a Negro, and on both of these occasions, he had no difficulty whatsoever in receiving a haircut without any incident. The evidence shows that the barber who cut his hair did not know he was a Negro at those times and treated him exactly as he would any white or other customer. It took the same amount of time to cut complainant's hair, approximately twenty minutes, as it took to cut any other patron's hair. Complainant and the barber engaged in the usual talk between barber and patron. No customer in the barber shop questioned the service to the complainant or raised any objections whatever. The complainant on those occasions was charged and paid the usual \$1.75 for the haircut.

Several weeks later, the barbers saw complainant walking through the mall, near the barber shop, with his family and realized for the first time that complainant was a Negro. Thereafter, the four incidents described

above, beginning with the February 6, 1962, incident occurred. The complainant was never again given a haircut in the Cafaro Barber Shop.

The refusal of the manager and also the respondent owner of the barber shop, on separate occasions, to permit complainant to receive a haircut on the ground that no barber could cut a Negro's hair, was obviously an excuse and subterfuge which in effect made known to everybody, "This barber shop will not cater to any Negro." This must be so because the evidence is uncontroverted that this complainant, a Negro, did in fact receive a haircut on two different occasions theretofore, when no barber knew he was a Negro. It was only after his race became known that his hair suddenly became too difficult to cut.

At the public hearing the respondent moved that the hearing be dispensed with on the ground that the original Complaint filed by the complainant was not sworn to by the complainant. An Amended Complaint has been sworn to and filed, a copy of which was forwarded to the respondent and his attorney at the time notice of the public hearing was given. In fact, respondent filed an Answer to this Amended Complaint and the Amended Complaint and the Answer thereto formed the basis for the public hearing. Under these circumstances, the Hearing Commissioners do not believe that the procedure in this matter is in any way defective and the respondent's motion is accordingly denied.

Counsel for the respondent also moved orally at the public hearing to dispense with the hearing on the ground that "the entire procedure is unconstitutional, to the effect that the Commission is acting as counsel for complainant, as prosecutor and as a determinator of the facts." A substantial portion of respondent's brief filed with this Commission has likewise been devoted to this proposition. We cannot agree that the procedure is invalid simply because the Commission investigates the facts, cites the respondent after failure to secure an amicable adjustment, and then sits as a

hearing tribunal. Hundreds of similar commissions act in this manner and the Pennsylvania Human Relations Act, in Section 9, specifically provides that "The case in support of the complaint shall be presented before the Commission (at the public hearing) by one of its attorneys or agents."

So, for example, the Pennsylvania State Real Estate Commission and the Pennsylvania Liquor Control Board likewise act, as do dozens of other commissions in this Commonwealth. With the multitude of commissions operating in this Commonwealth, the procedure objected to by the respondent, seems inevitable. It is not this procedure which violates the concept of "procedural due process of law" but rather the failure of any commission to conduct a fair hearing and to afford a respondent every opportunity to be heard in defense of the complaint. So long as the hearing itself is fair and judicial and so long as the right is reserved to a respondent to have the courts review the matter, a respondent cannot complain of a violation of "procedural due process of law."

In the opinion of the Hearing Commissioners, a cease and desist order against the respondent is warranted by the testimony at the public hearing.

/Sgd/ Edward G. Petrillo
EDWARD G. PETRILLO
Presiding Hearing Commissioner

/Sgd/ James B. Cayce
JAMES B. CAYCE
Hearing Commissioner

/Sgd/ Florence S. Reizenstein
FLORENCE S. REIZENSTEIN
Hearing Commissioner

COMMISSION'S DECISION

AND NOW, July 30, 1963, 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 unanimously finds and determines:

1. The Commission has jurisdiction over the person of the respondent, over the subject matter of this proceeding and over the instant complaint, as amended.

2. The respondent has committed and continues to commit unlawful discriminatory practices in violation of Section 5 (i) of the Pennsylvania Human Relations Act, in that the respondent has refused, withheld from and denied to the complainant, because of the race of the complainant, the accommodations, advantages, facilities and privileges of his business establishment known as Cafaro Barber Shop, a place of public accommodation, resort or amusement.

FINAL ORDER

AND NOW, July 30, 1963, 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, Nicholas J. Cafaro, his managers, agents and employes, shall cease and desist from directly or indirectly refusing, withholding from or denying to the complainant, to other Negroes, and to other persons because of their race, color, religious creed, ancestry or national origin, the accommodations, advantages, facilities or privileges of Cafaro Barber Shop, located in East Hills Shopping Center, Allegheny County, Pennsylvania, or any other barber shop operated by the respondent within the Commonwealth of Pennsylvania.

2. That the respondent, Nicholas J. Cafaro, his managers, agents and employes, shall cease and desist from permitting any patron of Cafaro Barber Shop or of any other barber shop operated by respondent within the Commonwealth of Pennsylvania, to sit waiting for a haircut while barbers therein are idle, without making any effort to give service to such patron, as a device, trick or excuse for refusing to cut the hair of such patron because of his race, color, religious creed, ancestry or national origin.

3. That the respondent, Nicholas J. Cafaro, his managers, agents and employes, shall cease and desist from posting or displaying a notice in Cafaro Barber Shop or in any other barber shop operated by respondent within the Commonwealth of Pennsylvania, for exhibition to the complainant or to other Negroes, containing the language, "Special, \$7.50," so long as the usual and customary charge for a haircut is less than \$7.50.

4. That the respondent, Nicholas J. Cafaro, his managers, agents and employes, shall cease and desist from publishing, circulating, issuing, displaying, posting, or mailing, directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities or privileges of Cafaro Barber Shop shall be refused, withheld from or denied to any Negro or other person because of his race, creed, color or national origin except upon payment of a prohibitive price far in excess of respondent's usual charge for a haircut, or to the effect that the patronage or custom of Negroes or others at Cafaro Barber Shop is unwelcome, objectionable or not acceptable desired or solicited.

5. That the respondent, Nicholas J. Cafaro, his managers, agents and employes, shall cease and desist from telling complainant or other Negroes seeking a haircut that no barber working in the Cafaro Barber Shop is trained to cut the hair of a Negro, as a device, trick or excuse for refusing to cut the hair of such patrons because of their race or color.

6. That the respondent, Nicholas J. Cafaro, his managers, agents and employes, shall take the following affirmative action, which in the judgment of the Commission will effectuate the purposes of the Pennsylvania Human Relations Act :

a. Extend to the complainant, without regard to his race or color, full, equal and unsegregated accommodations, advantages, facilities and privileges at Cafaro Barber Shop and any other barber shop operated by the respondent within the Commonwealth of Pennsylvania;

b. Extend to all persons, without regard to their race, color, religious creed, ancestry or national origin, full, equal and unsegregated accommodations, advantages, facilities and privileges at Cafaro Barber Shop and any other barber shop operated by the respondent within the Commonwealth of Pennsylvania;

c. Instruct all of the respondent's employes, in writing, to serve Negro customers entering Cafaro Barber Shop and any other barber shop operated by the respondent within the Commonwealth of Pennsylvania, in the same manner as white customers. Copies of such written instructions, signed by all of respondent's employes and acknowledging receipt and understanding thereof shall be transmitted to the Commission by the respondent;

d. Post and maintain in a conspicuous place at Cafaro Barber Shop, where patrons entering the barber shop may easily see it, a copy of the Commission's poster, furnished by the Commission; and

e. Notify the Pennsylvania Human Relations Commission at its office at No. 1401 Labor and Industry Building, Harrisburg, Pennsylvania, in writing, within fifteen (15) days after the

service of this Final Order as to the steps the respondent has taken to comply with this Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: /Sgd/ Harry Boyer
HARRY BOYER,
Chairman

Attest:

/Sgd/ Jesse D. Reber
JESSE D. REBER
Secretary