

PENNSYLVANIA HUMAN RELATIONS COMMISSION	:	IN THE COURT OF COMMON PLEAS
	:	OF
	:	DAUPHIN COUNTY, PENNSYLVANIA
vs.	:	
	:	
HOWARD H. CHRISTNER, Individually and doing business as H. CHRISTNER COMPANY	:	NO. 257 COMMONWEALTH DOCKET,  1967

O P I N I O N

BY THE COURT:

This is an appeal of Howard H. Christner, individually and doing business as H. Christner Company (hereinafter referred to as respondent or appellant) from an order made by the Pennsylvania Human Relations Commission (hereinafter referred to as the Commission). The appeal is pursuant to the provisions of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, 43 P.S. 951 et seq.<sup>1</sup> (hereinafter referred to as the Act).

The order from which the appellant appeals is as follows:

"AND NOW, May 23, 1967 . . . it is hereby

ORDERED, by the Pennsylvania Human Relations Commission:

1. That the respondent, HOWARD H. CHRISTNER, individually and doing business as H. Christner Company, his agents, representatives and employees, shall cease and desist from refusing

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(1) Section 10 of the Pennsylvania Human Relations Act, 43 P.S. 960, provides that any order of the Commission may be reviewed under the provisions of section 41 of the Act of June 4, 1945, P.L. 1388 (Administrative Agency Law), 71 P.S. 1710.41.

to rent to the complainant, GLORIA J. WOFFORD, because of her race, or to Negroes generally because of their race, commercial housing now or hereafter owned, built, managed or controlled by the respondent anywhere within the Commonwealth of Pennsylvania.

2. That the respondent shall take the following affirmative actions which in the judgment of the Commission will effectuate the purposes of the Pennsylvania Human Relations Act:

a. Offer forthwith to rent to the complainant, Gloria J. Wofford, an apartment located in the Carriage House Apartments, Pittsburgh, Pennsylvania;

b. Issue to all agents, representatives and employes of the respondent written instructions, previously approved by the Commission, explaining the requirements and objectives of the Pennsylvania Human Relations Act and advising each such person of his individual responsibility for compliance with that Act and his obligation to make such compliance meaningful and effective. Copies of such instructions signed by the said persons individually and acknowledging receipt and understanding thereof shall be transmitted to the Commission by the respondent;

c. Post in every office maintained by the respondent copies of Commission's Fair Housing Posters conspicuously, in accessible and well-lighted places where they may be readily observed by those seeking housing accommodations; and

d. Notify the Pennsylvania Human Relations Commission at its office at 1401 Labor and Industry Building, Harrisburg, Pennsylvania 17120, in writing, within fifteen (15) days of the date of service of this Final Order as to the steps the respondent has taken or intends to take to comply with the provisions hereof."

Gloria J. Wofford, a negress, filed a complaint with the Commission alleging that "on or about . . . March 14, 1966, the respondent refused to consider the complainant's application to rent an apartment at 1515 Penn Avenue, Pittsburgh, Pennsylvania 15221".

The appellant is the principal owner of the stock of the Hayes-Grace Corporation, which corporation is the owner of a high-rise apartment building consisting of seventy-two rental units and known as the Carriage House Apartments. The apartment house is included within the term "commercial housing" as defined in section 4(j) of the Act, 43 P.S. 954(j), which provides:

"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."

It appears from the testimony taken at the hearing before the Commission that the complainant is 34 years old, single, and a member of the negro race. She has a bachelor of arts degree and a master degree in social work from the University of Pittsburgh. She is a social worker and is employed as a supervisor of case workers in the Department of Welfare of the Commonwealth of Pennsylvania. The record also establishes that on March 2, 1966, in response to a newspaper advertisement, she made application to rent a one-bedroom apartment from the appellant. At the time

and for at least one month thereafter, there were available for rent three one-bedroom apartments of the type sought by the complainant. She was shown an apartment of the type she desired to rent by the caretaker of the apartment house, and she agreed to rent the apartment at the asking rental and was advised by said caretaker to contact the appellant for such rental. On the next day complainant called at the office of the appellant twice and was advised that he was not in the office but would return her call; not having heard from the appellant, complainant again called on the next morning and was again advised by the appellant's secretary that he was not in the office and that he would return complainant's call. Complainant thereupon spoke with the appellant's secretary and was again advised that appellant was not in the office when, as a matter of fact, she learned later that he was in the office at the time. On March 4, 1966 the complainant offered to execute a formal application and to leave a deposit for the apartment she desired, but the appellant's secretary stated that she was not permitted and had no authority to accept such offers. On March 9, 1966 complainant met with the appellant in his office and was advised by him that he had left the application forms in another brief case but refused to accept a deposit offered by the complainant to reserve one of the three one-bedroom apartments which the complainant desired to rent. At the time of the interview the appellant was advised that the complainant was single, was 34 years of age, worked as a supervisor for the Department of Welfare of the Commonwealth of Pennsylvania, that she intended to occupy a one-bedroom apartment

by herself, and that she earned in excess of \$7,000 per year. Two days later the complainant called the appellant and was advised that no decision had as yet been made in the matter, but that she would be advised as soon as a decision was reached; thereafter, the complainant heard nothing from the appellant until May 10, 1966, at which time the appellant called her to complain that she had lodged a complaint against him with the Commission. At that time the three one-bedroom apartments, which had been available for rent when the complainant applied, had already been rented by the appellant to three white tenants.

It appears that the appellant had no reasonable explanation for refusing the bona fide offers of the complainant to rent an apartment in the Carriage House. The appellant gave three reasons why he refused to rent to the complainant. The reasons were: (1) the appellant claimed he would not rent to any young previously unmarried and single girls; (2) the complainant was unable to afford an apartment in the Carriage House Apartments; and (3) the complainant's alleged poor physical appearance.

The evidence discloses that the appellant had rented to unmarried single girls who were of the white race prior to the application of the complainant.

As to the second excuse the record discloses that the rental for the apartments in the building was between \$155 and \$165 per month. At the time the complainant applied for an apartment she was earning in excess of \$7,000. It also appears that a credit check made by the appellant resulted in a favorable credit report.

As to the poor physical appearance of the complainant, the Commission found there was no credible evidence that such a qualification had ever been applied in the case of white applicants for an apartment in this particular apartment house.

The Commission found that the excuses given by the appellant for refusing to rent to the complainant did not appear to be bona fide or valid. It found that the complainant is a highly intelligent person, neat in appearance, neat and conservative in dress, well spoken, of good family, and of sufficient means and income to be able to afford the rental of an apartment in the Carriage House Apartments, and would be a desirable and good tenant.

There is no doubt that the facts found by the Commission are adequately and sufficiently supported by the testimony taken by the Commission.

From the facts thus found by the Commission, the Commission made the following conclusions of law, all of which are supported by the testimony taken by the Commission:

#### CONCLUSIONS OF LAW

- "1. At all times herein mentioned, the respondent, Howard H. Christner, individually and doing business as H. Christner Company, was a licensed real estate broker, was president of the corporation which owns Carriage House Apartments located at 1515 Penn Avenue, Pittsburgh, Pennsylvania, and was the sole and only person authorized to rent apartments in said apartment house.
2. Apartments located in Carriage House Apartments, at all times herein mentioned have been available for rent to the general public and the said apartment building is

therefore 'commercial housing' within the meaning of that term as set forth in Section 4(j) of the Pennsylvania Human Relations Act.

3. At all times herein mentioned, the Commission had and still has jurisdiction over the respondent.

4. At all times herein mentioned, the Commission had and still has jurisdiction over the subject matter of this proceeding and over the complaint.

5. By refusing to rent an apartment in Carriage House Apartments to the complainant for alleged poor appearance, inadequate financial means and single status, when in fact the complainant was of good appearance, adequate means and when in fact apartments had been rented by respondent to white single tenants, the respondent has, directly or indirectly, refused, denied and withheld commercial housing from the complainant, Gloria J. Wofford, because of her race.

6. On March 9, 1966, on March 16, 1966 and at all times from said dates up to and including the present time, the respondent has committed unlawful discriminatory practices in violation of Section 5(h) (1) of the Pennsylvania Human Relations Act in that he refused and still refuses to rent commercial housing to the complainant, Gloria J. Wofford, because of her race."

The Supreme Court said in Goodman Appeal (Petition of Acchione), 425 Pa. 23 (1967), on page 30, that in determining appeals this Court must bear in mind certain established legal principles:

"By a host of authorities in our own and other jurisdictions it has been established as an elementary principle of law that courts will not review the actions of governmental bodies or administrative tribunals involving acts of discretion, in the absence of bad faith, fraud, capricious action or abuse of power; they will not inquire into the wisdom of such actions or into the details of the manner adopted to carry them into execution. It is true that the mere possession of discretionary power by an administrative body

does not make it wholly immune from judicial review, but the scope of that review is limited to the determination of whether there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agency's duties or functions. That the court might have a different opinion or judgment in regard to the action of the agency is not a sufficient ground for interference; judicial discretion may not be substituted for administrative discretion."

We conclude that the Commission was adequately justified in determining that the appellant violated the provisions of the Pennsylvania Human Relations Act and, accordingly, make the following.

O R D E R

AND NOW, March 11, 1968, the appeal of Howard H. Christner, individually and doing business as H. Christner Company, is hereby dismissed and the determination of the Commission that the appellant violated section 5(h)(1) of the Pennsylvania Human Relations Act is hereby sustained. Costs to be paid by appellant.

Carl B. Shelley  
CARL B. SHELLEY, Judge