

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS COMMISSION,
Complainant

v.

DOCKET NO. H-2343

DINAVEL ENTERPRISES, INC., t/a BARCLAY
SQUARE,

Respondent

PENNSYLVANIA HUMAN RELATIONS COMMISSION,
Complainant

v.

DOCKET NO. H-2422

CLAUDE DE BOTTON, individually and for
DINAVEL ENTERPRISES, INC., ETHEL GOLDBERG,
individually and as Vice-President of
DINAVEL ENTERPRISES, INC., DINAVEL ENTER-
PRISES, INC., a Pennsylvania Corporation,
t/a BARCLAY SQUARE,

Respondents

HISTORY OF THE CASE, FINDINGS OF FACT,
CONCLUSIONS OF LAW, RECOMMENDATION OF HEARING COMMISSIONERS,
COMMISSION'S DECISION AND FINAL ORDER

HISTORY OF THE CASE

Pursuant to its authority under §9 of the Pennsylvania Human Relations Act, Act of October 27, 1955 P.L. 744, as amended (the "Act"), the Pennsylvania Human Relations Commission (the "Commission") initiated a complaint at Docket No. H-2343 on September 10, 1974 charging the respondent Dinavel Enterprises, Inc., trading

as Barclay Square, a Philadelphia corporation and an apartment complex at 1600 Garrett Road, Upper Darby, Pennsylvania with violating §5(h) of the Act. The complaint specifically charged that "the respondent denied and withheld housing rental information from a Black applicant while providing this information to a White applicant in that on August 28, 1974 at approximately 2 p.m. a Black person went to respondent's business location to inquire about housing and was told there would be no apartments available at Barclay Square until December or January while a White person went to respondent's business location on the same date at approximately the same time and was told there would be apartments available at Barclay Square in October." The complaint alleged that the conduct complained of constituted a continuing violation of the Act.

On January 21, 1975, the Commission initiated a complaint at Docket No. H-2422 listing as respondents Claude De Botton, individually and for Dinavel Enterprises, Inc., Ethel Goldberg, individually and as Vice-President of Dinavel Enterprises, Inc.; Dinavel Enterprises, Inc., a Pennsylvania Corporation, T/A Barclay Square. The complaint charged that these respondents by the conduct complained of at Docket No. H-2343 had violated a pre-existing consent order at Docket No. H-1519 of January 26, 1972 under the terms of which the Respondents had legally bound themselves to cease and desist from violating the Act.

An investigation into the allegations contained in the complaint was made by representatives of the Commission and a determination was made that there was probable cause to credit the allegations

of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practice complained of by conciliation. This endeavor was unsuccessful and a public hearing was convened pursuant to §9 of the Act with both complaints consolidated. The Hearing Panel consisted of Commissioners Alvin Echols, Jr., Esq. and Doris Leader. Roy Yaffe, Esq., presented the case in support of the complaints. Nathan L. Edelstein, Esq., represented the Respondents.

A hearing was convened in Upper Darby, Pennsylvania on December 15, 1975 and apparently concluded on that date. Subsequently, at the request of counsel for the respondents, the hearing was reconvened on February 20, 1975 in Philadelphia, at which time the Respondents were permitted to present additional testimony on the question of the availability of certain apartments for rental at the time of the test and for the period for which the testers inquired. The hearing was concluded on February 20, 1975.

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Respondents :

FINDINGS OF FACT

1. A housing test is a law enforcement tool which is utilized by the Commission to enable it to determine, even in the absence of complaints from individuals claiming to be aggrieved, whether an owner of commercial housing is complying with the Act.

2. On August 28, 1974, the Commission conducted a housing test on the Respondents' Barclay Square Apartments at 1600 Garrett Road in Upper Darby, Pennsylvania.

3. Two Commission Human Relations Representatives assigned to the Housing Division of the Philadelphia Regional Office participated in the test, Jane Lowenstein, White, and Eileen Burke, Black.

4. On August 28, 1974, Jane Lowenstein, entered the Respondents' rental office at Barclay Square at approximately 1:55 pm and spoke with Blanche Frost, an employe of the Respondents, about renting an apartment. She was told that an apartment would be available for her in October, providing she applied soon enough. She left the office at approximately 2:10 p.m.

5. Approximately 2:20 p.m. on August 28, 1974, Eileen Burke entered the same rental office and spoke with Ms. Frost about renting an apartment. She was told that nothing would be available until December. She left at approximately 2:25 p.m.

6. Both testers had asked for one or two bedroom apartments for October or later. Nothing in the nature of the testers' inquiries of Ms. Frost nor anything in the information they may have provided to her accounted for the discrepancy in the information they received about when an apartment would be available.

7. The discrepancy in the information provided Ms. Burke was on account of her race, Black.

8. No evidence was introduced that the employe's discriminatory conduct was pursuant to instructions of the respondents or any other of its agents or was authorized by respondents or that respondents knew of or condoned such conduct.

9. The respondents presented several witnesses who testified that respondent De Botton had given repeated explicit instructions to Barclay Square employes not to discriminate.

10. There were in fact apartments of the kind Ms. Burke and Ms. Lowenstein had requested available in October and November.

11. Evidence in the record indicated the Respondents' one bedroom apartments rented for \$189.50 a month and that the two bedroom apartments rented for \$224.50 and up a month.

12. Respondents had a requirement that a prospective tenant's weekly income must equal the monthly rental.

13. Evidence in the record indicated that approximately 60 of the 537 units at Barclay Square were occupied by Blacks and that Barclay Square was easily accessible to Philadelphia. No evidence was presented as to what percentage of Blacks in Philadelphia earned sufficient income to qualify for Barclay Square.

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CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Respondents and over the subject matter of the complaints.
2. The Act prohibits the withholding or misrepresentation of information on housing because of the race of someone who has inquired about or applied for commercial housing.
3. Where a housing test has established disparate treatment to the disadvantage of the Black tester, this evidence plus a sufficient statistical showing of racial imbalance (under-inclusion of Blacks in the housing facility in question) may establish a pattern and practice of unlawful discrimination in violation of the Act.

4. The fact that the disparate treatment was carried out by an employe of the respondents and even if it was without the knowledge and contrary to explicit instructions of respondents would not be a defense under the well-established principle of law that a corporation and its officers are responsible for the acts of a subordinate employe.

5. The Complainant did not establish that a pattern and practice of unlawful discrimination against Blacks existed in Barclay Square apartments.

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RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this day of , 1977, upon
consideration of all the evidence presented at the public hearing
in the above captioned matter, pursuant to the findings of fact
and conclusions of law, the Hearing Commissioners recommend to
the entire Commission that an order be entered dismissing the
complaint.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALVIN ECHOLS, JR., Esq.
Chairperson

DORIS LEADER
Hearing Commissioner

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COMMISSION'S DECISION

AND NOW, this day of , 1977, upon the
Recommendation of the Public Hearing Commissioners and upon all
the evidence at the public hearing of this case, and upon considera-
tion of the Findings of Fact and Conclusions of Law, the Pennsylvania
Human Relations Commission finds and determines that a violation of
the Act has not been proven in that the evidence has not established
that there existed at Barclay Square a pattern and practice of dis-
crimination against prospective tenants because of their race, Black.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

By: ELIZABETH M. SCOTT, SECRETARY

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FINAL ORDER

AND NOW, to wit, this day of , 1977, upon
consideration of the Findings of Fact, Conclusions of Law, and
Commission's Decision and pursuant to the provisions of §9 of
the Pennsylvania Human Relations Act, as amended, the Pennsylvania
Human Relations Commission hereby

ORDERS:

that the Complaints be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

By: ELIZABETH M. SCOTT, SECRETARY