COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

FRIENDSHIP VILLA, Respondent

DOCKET NO. E-20883

STIPULATIONS OF FACT AND LAW

REQUESTS FOR ADMISSIONS

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL CHAIRPERSON

FINAL ORDER

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STIPULATIONS OF FACT AND LAW

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required.

1. Complainant herein is William T. Bellamy, a black male, who is an individual within the meaning of Section 5(a) of the Pennsylvania Human Relations Act.
2. Respondent Friendship Villa is headquartered in Englewood, Colorado.
3. All procedural prerequisites to the holding of a public hearing under the Pennsylvania Human Relations Act have been met in the instant case.
4. On June 12, 1981, Complainant applied for the position of Nursing Assistant at Blue Ridge Haven West.
5. Complainant was not hired for a Nursing Assistant position at Blue Ridge Haven West.

Suzanne Rauer
Counsel for Friendship Villa

G. Thompson Bell
Counsel for Complainant

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

BLUE RIDGE HAVEN WEST, FRIENDSHIP VILLA, BEVERLY ENTERPRISES/EASTERN DIVISION, Respondent

DOCKET NO. E-20883

REQUESTS FOR ADMISSIONS

AND NOW, comes G. Thompson Bell, Assistant General Counsel, Pennsylvania Human Relations Commission, on behalf' of Complainant and files the following Requests For Admissions pursuant to 16 Pa. Code §42.94.

1. The "Application for Employment" of William Thomas Bellamy, a copy of which is attached hereto as Exhibit l, is the application filed by Complainant on or about June 12, 1981, and is relevant to the instant case.
2. The "Classification Description for Nursing Assistant", a copy of which is attached hereto as Exhibit 2, is an authentic copy of the job description for the Nursing Assistant position on and about June 12, 1981, and is relevant to the instant case.
3. The seventeen (17) page list of new hires, a copy of which is attached hereto as Exhibit 3, is an authentic copy of the list of persons hired at Blue Ridge Haven West from June 1, 1981 to August 16, 1982, and is relevant to the instant case.
4. "N.A." on Exhibit 3 stands for Nursing Assistant.
5. No males were hired as Nursing Assistants at Blue Ridge Haven West from June 1, 1981 to August 16, 1982.
6. The "Applications for Employment", copies of which are attached hereto as Exhibit 4, are authentic copies of applications by men for the position of Nursing Assistant at Blue Ridge Haven West and are relevant to the instant case.
7. At all times relevant to this proceeding, approximately 75% of the patients at Blue Ridge Haven West have been female; approximately 25% of the patients have been male.
8. At all times relevant to this proceeding, Nursing Assistants at Blue Ridge Haven West each have been assigned to a number of specific patients.
9. At all times relevant to this proceeding, female, Nursing Assistants at Blue Ridge Haven West have been assigned to care for male patients, including intimate personal care.
10. After Beverly Enterprises purchased Blue Ridge Haven West from Friendship Villa, Beverly Enterprises used the same facility and substantially the same equipment as Friendship Villa used in operating Blue Ridge Haven West.

11. After Beverly Enterprises purchased Blue Ridge Haven West from Friendship Villa, Beverly Enterprises employed substantially the same workforce and supervisory personnel, and employees had substantially the same working conditions.
12. Before and after the sale of Blue Ridge Haven West to Beverly Enterprises, Blue Ridge Haven West has operated as a long term residential facility for elderly men and women.

Respectfully submitted,

G. Thompson Bell
Assistant General Counsel
Pennsylvania Human Relations
Commission
3405 N. Sixth Street
Harrisburg, PA 17110
717-787-9786

DATE: July 11, 1985

FINDINGS OF FACT

The foregoing "Stipulations of Fact and Law" and "Requests for Admissions" are hereby incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
S.F. Stipulations of Fact
R.A. Requests for Admissions

1. On June 11, 1981, Nursing Home Training Institute told Mr. Bellamy that Blue Ridge Haven West had jobs available. (N.T.11).
2. On June 12, 1981 Complainant filled out and submitted an application for the position of Nursing Assistant to Blue Ridge Haven West's receptionist. (N.T. 12, C.E. 1).
3. On June 12, 1981, Blue Ridge Haven West was owned by the Respondent, Friendship Villa. (Stipulation of Fact in N.T. 34) .
4. On or about August 1, 1981, Friendship Villa sold Blue Ridge Haven West to a successor entity. (Stipulation of Fact in N.T. 34).
5. On June 12, 1981, Mr. Bellamy met the duty, physical and special qualifications for the position of Nurses Assistant. (N.T. 13, 14, 15, 16).
6. Between June 12, 1981 and August 1, 1981, approximately 20 Nursing Assistants were hired at Blue Ridge Haven West. (C.E. 3).
7. All 20 Nursing Assistants hired during this period were female, 3 Black and 17 White. (C.E. 3, R.A. #5).
8. On June 22, 1981, 10 days after Mr. Bellamy's application, 10 females were hired as Nursing Assistants. (C.E. 3).
9. Complainant fully released the successor entity from all liability in exchange for $2,200. (Commission Exhibit #1).
10. The difference between what Mr. Bellamy would have earned if hired by the Respondent on June 22, and what he actually earned from June 22, 1981 until the date of Public Hearing, plus interest is approximately $27,556.83. (N.T. 17 through 23) .

CONCLUS IONS OF LAW

1. Complainant is an "individual" within the meaning of the Pennsylvania Human Relations Act.
2. Respondent is an "employer" within the meaning of the Act.
3. The Pennsylvania Human Relations Commission, (hereinafter the "PHRC"), has jurisdiction over the parties and subject matter of this case.
4. The parties and the Commission have fully complied with all procedural prerequisites to a public hearing in this case.
5. Complainant has established a prima facie case of employment discrimination by proving that:

   (a) He is a male;
   (b) He applied for a position for which he was qualified;

(c) He was rejected; and
(d) The Respondent continued to seek other qualified applicants.

6. Respondent failed to come forward with any evidence of a legitimate, nondiscriminatory reason for not hiring the Complainant.
7. Prevailing Complainants are entitled to relief which includes wages lost as a result of the unlawful discriminatory conduct.
8. Where a general release is executed by a Complainant fully releasing a successor entity, the amount received by the Complainant will be set off against amounts recovered against the predecessor company.

OPINION

This case arises on a complaint filed on June 17th, 1981, by Walter T. Bellamy, (hereinafter "Complainant"), originally against Blue Ridge Haven West. The complaint was first amended on September 18, 1981 to add Friendship Villa, (hereinafter "Respondent"), as a party. A second amendment dated July 12, 1983, added the successor entity to whom the Respondent sold all of its interest on or about August 1, 1981.

Complainant alleged that he was denied employment because of his race, Black, and his sex, male in violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§95l et seg., (hereinafter the "Act").

Commission staff conducted an investigation and found probable cause to credit the allegations of discrimination. When efforts to resolve this situation through conference, conciliation, and persuasion were unsuccessful, the case was approved for public hearing. The parties having waived three Commissioners, the case was heard in Harrisburg, Pennsylvania on October 8, 1984, by Commissioner Smith.

On June 11, 1981, Nursing Home Training Institute referred Complainant for employment with the Respondent. Complainant went to Respondent's facility on June 12, 1981 and completed an employment application and gave it to Respondent's receptionist. The receptionist informed the Complainant that no positions were available.

In General Electric Corp. v. PHRC, 469 Pa. 292, 365 A.2d 649 (1976), the Pennsylvania Supreme Court adopted as one touchstone, for discrimination proof, the four-prong test of McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), which provides that, for a complainant to establish a prima facie case of employment discrimination, he must show that: (1) he is a member of a protected minority, (2) he applied for a job for which he was qualified, (3) he was rejected, and (4) the employer continued to seek applicants of equal qualifications. At this point, the complainant will have created a rebuttable presumption that the employer engaged in unlawful discrimination. Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Winn v. Trans World Airlines. Inc., 75 Pa. Commonwealth Ct. 366, 462 A.2d 301 (1983).

The familiar and well settled McDonnell Douglas test is not a fixed absolute that applies in all respects to all circumstances. In actuality, the standard is flexible and contingent on the peculiar factual details of a given scenario. General Electric 469 Pa. at 304-5 n.ll, 365 A.2d at 656 n. 11.

In this case, we find that Complainant clearly meets his burden of making out a prima facie case of employment discrimination.

Caterpillar Tractor Co. v. PHRC, 78 Pa. Commonwealth Ct. 86, 466 A.2d 1129, 1132 (1983) citing Burdine, instructs us that the "burden of establishing a prima facie case of disparate treatment is not onerous." In this case, Complainant has no difficulty showing the four elements of a prima facie case of employment discrimination. In fact the parties stipulated to a substantial portion of the prima facie case, i.e., that Complainant is a Black male, who applied for a nursing assistant position, and Respondent did not hire him. Complainant's testimony regarding his experience weighed against the representative duties, physical requirements and special requirements listed on Respondent's classification description for a Nursing Assistant reveals that Complainant was qualified to perform the duties of a Nursing Assistant.

Complainant's exhibit number 3 establishes by substantial evidence the fourth element of a prima facie case. Complainant's exhibit number 3 lists 20 females who were hired by the Respondent between June 12, 1981, the date Complainant applied, and August 1, 1981, the date Respondent sold its interest in the health care facility to a successor entity. Of the 20 persons hired all were female but they were not all White. Three were Black. Clearly, the Respondent continued to seek other qualified applicants.

Having the prima facie case now established, a rebuttable presumption of employment discrimination arises. At this point, the Respondent had the burden of producing evidence to show a legitimate nondiscriminatory reason for its failure to hire the Complainant. Winn v. TWA, 75 Pa. Commonwealth Ct. 366, 462 A.2d 301 (1983). Since Respondent chose not to present any evidence, the presumption created by Complainant's prima facie case is sufficient to carry Complainant's ultimate burden of persuasion. Harrisburg School District v. PHRC, 77 Pa. Commonwealth Ct. 594, 466 A.2d 760 (1983).

Counsel for Respondent's opening statement contained an attempt to assert a defense for the Respondent's failure to hire the Complainant, however, an opening statement by counsel for a party will not be considered as evidence in this case. Although the rules of evidence at an administrative hearing are relaxed, they are not abolished entirely. Respondent had a full opportunity to present evidence in defense of its actions but for unknown reasons chose to present nothing.

Although Complainant has claimed and shown a prima facie case under both a sex-based and race-based discrimination theory, the evidence considered as a whole reveals that the discriminatory motive for Complainant's rejection was the fact that he was a male, not that the Complainant was Black. At the hearing, evidence introduced by the Complainant clearly identifies sex as the impermissible criterion. The evidence shows that of the women hired for the same position denied to the Complainant, at least three were Black which is the identical protected category claimed by the Complainant. Accordingly, Complainant's ultimate burden is met with respect to his claim of sex-based employment discrimination only.

Having found discrimination, we next turn to the issue of a proper remedy. As noted earlier, Friendship Villa is a predecessor company which sold its interest in the facility to a successor

company a short time after the act of discrimination found here. Complainant argues that since Friendship Villa owned the facility at the time the discrimination occurred, it is liable for the consequences of the discrimination with the exception of Complainant's reinstatement. Reinstatement, of course, could only be provided by the successor company.

Courts have indeed awarded Complainants back pay relief against predecessor companies in cases where there is a successor company. Trujillo v. Longhorn Mfg. Co., 30 FEP 737, 694 F.2d 221 (10th Cir. 1982); Wiggins v. Spector Freight System, 18 FEP 503, 583 F.2d 882 (6th Cir. 1978). However, before calculating an award, there is an additional matter to consider.

During the hearing, information was presented which revealed that the Complainant was given $2,200.00 under the terms of a Release and Settlement Agreement which the Complainant entered into with the successor company. Basically, the $2,200.00 was accepted by the Complainant in full settlement of all claims Complainant had against the successor company. Complainant argued that the general Release given to the successor was meant to be in lieu of reinstatement only, and should not offset lost wages sought to be recovered from the Respondent, Friendship Villa. The Settlement Agreement and Release, however, are clearly a total relinquishment of the Complainant's claims against the successor company. On their face the documents do not indicate that the Complainant intended the release to cover only the reinstatement issue. Accordingly, the question of set-off must be considered.

Exercising equitable discretion, it is reasonable to conclude that, under the circumstances of this case, $2,200.00 is a reasonable value to place on the Complainant's relinquishment of his right to pursue reinstatement from the successor company. Setoff against the amount of a back pay award against the Respondent could occur, however, if $2,200.00 would have been considered in excess of a reasonable value for the reinstatement right issue.

Before calculating damages, there is one final procedural matter to discuss. Section 9(c) of the Act states in pertinent part:

> The members of the Commission and its staff shall not disclose what has transpired in the course of [conference, conciliation and persuasion]: Provided, That the Commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In this case, at the Public Hearing, the Settlement Agreement and Release between the Complainant and the successor company was requested and made a Commission exhibit. It was important to ascertain the scope of the Agreement but unfortunately, review of these documents presents a possible encroachment on Section 9(c)'s prohibition against disclosure of the identity of the parties involved. To diminish this potential encroachment as much as possible, the Settlement Agreement and Release between the Complainant and the successor company have been redacted to remove all reference to the identity of the party with whom the Complainant has entered the Settlement Agreement.

Turning to the final issue regarding the power under Section 9 of the Act to award relief including lost wages, Complainant's evidence is once again uncontested. The earliest date after Complainant's application that Respondent hired a Nursing Assistant was June 22, 1981. Accordingly, this shall be the commencement date for the purpose of calculating the amount of the difference between what the Complainant would have received if hired by Respondent and what he actually earned until the present, plus interest.

If Complainant had been hired by Friendship Villa, he would have earned at least minimum wage. Since January 1, 1981, the minimum wage has been $3.35 per hour. Therefore, between June 22, 1981 and October 8, 1985, Complainant would have earned at least $29,882.

Pay Lost 6/22/81-6/21/85: $3.35/hr. x 40 hrs./wk. x 52 wks./yr. x 4 yrs. =	$27,872
Pay Lost 6/22/85-10/8/85: $3.35/hr. x 40 hrs./wk. x 15 wks. =	$2,010
Total	$29,882

Complainant testified that after he applied for work with Respondent he did not find a job until March, 1983. At that time he worked for Host Inn and was paid $3.35 per hour for twenty hours per week. He worked in this job for four months. In 1983, Complainant also was paid by C.I.T. while he trained to be a cook for three months. During that time he was paid $1.00 per hour for thirty hours per week. In 1984, Complainant was paid $1,241.66 by the R & L Deli and $403.78 by C.I.T. In 1985, Complainant worked for R & L Deli from the beginning of the year until the third week in March. During that time Complainant worked five or six hours per day, five days a week. Complainant was paid $3.50 per hour until sometime in February when he received a raise to $3.75 per hour. Also during 1985, Complainant was paid $2,699 by Odeon.

Thus, Complainant's total earnings from June 22, 1981 until the present are:

1981 - 1982	$ 0.00	
1983	Host Inn $3.35/hr. x 20 hrs./wk. x 17 wks. =	$1,139.00
	C.I.T. $l.00/hr. x 30 hrs./wk. x 13 wks. =	390.00
	Total 1983 =	$1,529.00
1984	R & L Deli	$1,241.66
	C.I.T.	403.78
	Total 1984 =	$1,645.44
1985	R & L Deli	
	$3.50/hr. x 27.5 hrs./wk. x 7 wks. =	$ 673.75
	$3.75/hr. x 27.5 hrs./wk. x 5 wks. =	515.62
	Total R & L Deli 1985 =	$1,189.37

Odeon		2,699.00
	Total 1985 =	$3,888.39
	TOTAL WAGES EARNED =	$7,062.81

The difference between what Complainant would have earned but for the discrimination ($29,882.00) and what he actually earned ($7,062.81) is $22,819.19.

The interest due to Complainant is 6% simple interest per annum. Interest is calculated as follows:

Lost Interest

Wages Lost as of 6/22/82-$6,968 x .06 =	$ 418.08
Wages Lost as of 6/22/83-$13,132 x .06 =	787.92
Wages Lost as of 6/22/84-$19,292 x .06 =	1,157.52
Wages Lost as of 6/22/85-$22,819.19 x .06 x.3 =	410.75
Total Lost Interest =	$2,764.27

Accordingly, the lost wages plus interest award to which Complainant is entitled is $25,583.46, Goetz v. Norristown Area School District, 16 Pa. Commonwealth Ct. 389, 389 A.2d 579 (1974), and entry of the Final Order which follows.

In both the opening statement and closing argument of the PHRC staff attorney on behalf of the complaint, it was asserted that the theory of disparate impact could be applied equally to this case. I disagree. No evidence was received regarding a neutral policy which discriminatorily affects either Blacks or males. If Respondent had a policy of hiring only female nursing assistants to perform personal care services for female patients, clearly, the theory by which to analyze this situation would be disparate treatment. To be a disparate impact case, the Complainant would have to show the Respondent has a policy which has a substantial adverse impact on a protected group, notwithstanding its equal application to all individuals. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

FRIENDSHIP VILLA, Respondent

DOCKET NO. E-20883

RECOMMENDATION OF HEARING PANEL CHAIRPERSON

Upon consideration of the entire record in this case, I, the Hearing Panel Chairperson, conclude that the Respondent violated Section 5 of the Pennsylvania Human Relations Act, and therefore, recommend that the foregoing Findings of Fact, Conclusions of Law, and Opinion be adopted and ratified by the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Act.

Robert Johnson Smith

ROBERT JOHNSON SMITH, CHAIRPERSON
HEARING PANEL

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

FRIENDSHIP VILLA, Respondent

DOCKET NO. E-20883

FINAL ORDER

AND NOW, this 31st day of January 1986, the Pennsylvania Human Relations Commission hereby adopts the foregoing Findings of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Panel Chairperson, pursuant to Section 9 of the Pennsylvania Human Relations Act, and therefore

ORDERS

1. Respondent shall pay to Complainant the lump sum of $25,583.46 within thirty (30) days of the effective date of this Order, plus additional interest at the rate of 6% per annum from the date of this Final Order until payment is made; and
2. Respondent shall provide to the Commission satisfactory written proof of compliance with the above terms within thirty (30) days of the effective date of this Order.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

BY: Joseph X. Yaffe
JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:
Elizabeth M. Scott
ELIZABETH M. SCOTT, SECRETARY

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

FRIENDSHIP VILLA, Respondent

DOCKET NO. E-20883

ENFORCEMENT DETERMINATION HEARING FINDINGS OF FACT

1. In a PHRC Order dated January 31, 1986, the Respondent, Friendship Villa, was ordered to pay the lump sum of $25,583.46 within 30 days of January 31, 1986, plus 6% interest from January 31, 1986, until such date as payment is made.
2. The PHRC Order dated January 31, 1986, also ordered the Respondent to provide written verification of the Respondent's compliance with the PHRC Order within 30 days from January 31,1986.
3. On or about January 31, 1986, PHRC Compliance Division Staff mailed the Respondent a copy of the January 31, 1986, Final Order.
4. The Final Order was mailed to an address provided by Suzanne Rauer, Esquire, the Respondent's attorney at the Public Hearing held on October 8, 1985.
5. The Respondent has not appealed the PHRC's Final Order.
6. As of the date of the Enforcement Determination Hearing, the Respondent has failed to make the ordered lump sum payment to the Complainant and has failed to submit written verification regarding compliance with the PHRC Order.
7. The Respondent has presented no just cause for its failure to comply with the January 31, 1986, PHRC Order.

April 24, 1987
Date

Carl H. Summerson
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

FRIENDSHIP VILLA, Respondent

DOCKET NO. E-20883

RECOMMENDATION OF HEARING EXAMINER

AND NOW, this 24th day of April , 1987, upon consideration of the entire record of the Enforcement Determination Hearing held on April 15, 1987, the Hearing Examiner concluded that the Respondent has failed to comply with the PHRC Final Order dated January 31, 1986, and therefore, recommends that the foregoing Enforcement Determination Hearing Findings of Fact and Final Order attached be adopted by the full Pennsylvania Human Relations Commission pursuant to PHRC policy adopted on June 2,1986.

Carl H. Summerson
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM T. BELLAMY, Complainant

v.

FRIENDSHIP VILLA, Respondent

DOCKET NO. E-20883

FINAL ORDER

AND NOW, this 1st day of June, 1987, the Pennsylvania Human Relations Commission hereby adopts the foregoing Enforcement Determination Hearing Findings of Fact in accordance with the Recommendation of the Hearing Examiner, and therefore

ORDERS

1. That the Respondent shall, within 30 days of the effective date of this Order, comply with the PHRC January 31, 1986, Final Order, in the above-captioned case.
2. That the Respondent's failure to comply with such Order within 30 days shall automatically operate to authorize enforcement proceedings to be initiated in Commonwealth Court.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Thomas L. McGill, Jr.
Thomas L. McGill, Jr.
Chairperson

ATTEST:

John P. Wisniewski
John P. Wisniewski
Secretary

August 7, 1987
Effective Date of the Order