

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

VANESSA BRITTO,  
Complainant

vs.

JOHN T. SCHUTLZ,  
ERNA S. SCHULTA, d/b/a  
MOUNTAIN VIEW APARTMENTS,  
Respondent

:  
:  
:  
:  
:  
:  
:

DOCKET NO. H-3404

STIPULATION OF FACTS

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

- 1) The Complainant herein is Vanessa Britto, a Black, adult female, who resides at 506 East Stoughton, #34, Champaign, Illinois 61820.
- 2) The Respondents herein are John T. Schultz and Erna S. Shultz who reside at 578 Pugh Road, Wayne, Pennsylvania 19087, and who own and manage the Respondent Mountain View Apartments located at Elizabeth and Ford Streets, Conshohocken, Pennsylvania.
- 3) The Complainant, on or about November 10, 1981, filed a notarized complaint with the Pennsylvania Human Relations Commission (the "Commission") at Docket No. H-3404. A copy of the formal complaint is attached hereto as Appendix "A" and is incorporated by reference as if fully set forth.
- 4) The Complainant, on or about July 19, 1982, filed a notarized amended complaint with the Commission at Docket No. H-3404. A copy of the amended complaint is attached hereto as Appendix "B" and is incorporated by reference as if fully set forth.

5) On November 13, 1981, Commission staff duly served all parties to this action with a copy of the complaint described in item number three (3) above.

6) On January 21, 1983, Commission staff duly served all parties to this action with a copy of the amended complaint described in item number four (4) above.

7) In correspondence dated July 1, 1982, the Commission notified the Respondent that probable cause existed to credit the allegation contained in the above captioned complaint. A copy of this correspondence is attached hereto as Appendix "C" and is incorporated by reference as if fully set forth.

8) Subsequent to the determination of probable cause, the Commission and the Respondents attempted to eliminate the alleged discriminatory practice through conference, conciliation and persuasion but were unable to do so.

9) There are twenty-two (22) rental units contained in the Mountain View Apartment complex.

10) Respondents had rented apartment B-16 to Mr. & Mrs. Joseph Barks for a period of time ending on August 31, 1981.

11) Respondents advertised for rent a one-bedroom apartment in the Philadelphia Bulletin on August 7, 1981.

12) The one-bedroom apartment that Respondents so advertised on August 7, 1981, was apartment B-16.

13) Respondents rented the unit in question to Amy Goldblatt, a White, female on August 18, 1981.

14) On January 31, 1983, Respondents by their attorney, Kenneth L. Baritz filed an answer to the complaint, a copy of which is attached hereto as Appendix "D", and is incorporated by reference as if fully set forth.

COMMONWEALTH OF PENNSYLVANIA  
EXECUTIVE OFFICES  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

VANESSA BRITTO, :  
COMPLAINANT :  
 :  
v. : DOCKET NO. H-3404  
 :  
JOHN T. SCHULTZ, ERNA S. :  
SCHULTZ, d/b/a MOUNTAIN :  
VIEW APARTMENTS, :  
RESPONDENTS :

FINDINGS OF FACT\*

1. The complaint in this case was filed ninety-one days after the alleged act of discrimination. (Complaint)
2. Respondents presented their defense to the merits of this complaint without raising the issue of timely filing of the complaint.
3. Complainant was advised by Commission staff that her complaint would be timely if filed by November 10, 1981, the date on which it was notarized. (Stipulation of counsel, March 15, 1984)
4. Ms. Britto offered to rent from Respondents Apartment B-16 at Mountain View Apartments on August 8, 1981. (N.T. 17, 18, 44)
5. Respondent John Schultz refused to rent the apartment to Ms. Britto on August 11, 1981. (N.T. 23, 65)
6. Respondents used no formal rental application procedure at Mountain View Apartments. (N.T. 55, 62)

\*The foregoing Stipulation of Facts is hereby incorporated herein as if fully set forth.

7. Mr. Schultz considered Ms. Britto to be a qualified tenant at the time she offered to rent Apartment B-16. (N.T. 71)

8. Respondents sought other tenants for Apartment B-16 after rejecting Complainant's application. (N.T. 49)

9. Mr. and Mrs. Joseph Barks occupied Apartment B-16 from September 15, 1979 until August 31, 1981. (N.T. 30)

10. Mr. Barks gave notice to Respondents of his intent to vacate Apartment B-16 on or about August 5, 1981. (N.T. 31, 32, C.E. 2)

11. Respondents' regular rental practice is to place an advertisement in a newspaper after receiving written notice that an apartment will become vacant. (N.T. 60, 69)

12. Ms. Britto responded to Respondents' August 7, 1981 newspaper advertisement by telephone on August 8, 1981. (N.T. 8-11)

13. Ms. Schultz told Ms. Britto during their telephone conversation on August 8, 1981 that Apartment B-16 would be available on September 1, 1981. (N.T. 9)

14. Mr. Schultz called Ms. Britto back on August 8, 1981 and arranged to show her Apartment B-16 at 3:00 p.m. that same day. (N.T. 10, 11)

15. Mr. Schultz allowed Complainant and her friend, Nancy Reid, to inspect the apartment without attempting to point out its features; he was evasive about answering their questions. (N.T. 14, 15, 42, 43)

16. Ms. Britto offered to rent Apartment B-16 immediately after seeing it; the offer was directed to Mr. Schultz.

(N.T. 15)

17. After Ms. Britto's initial offer to rent Apartment B-16, Mr. Schultz refused to make any firm arrangement, saying that he had not received written notice from the current tenants.

(N.T. 15, 16)

18. Ms. Britto renewed her offer on August 8, 1981 by telephone from Ms. Reid's home; Mr. Schultz again stated that he lacked written notice from the current tenants and could not do anything. (N.T. 17, 18, 44)

19. On August 10, 1981, Ms. Britto spoke with Mr. and Ms. Barks in their apartment and asked them if they had given notice to Respondents. (N.T. 19, 34)

20. Mr. Barks informed Ms. Britto that notice had been sent; in her presence he then telephoned Mr. Schultz and was informed by Mr. Schultz that the notice already provided was adequate. Mr. Barks relayed this information to Ms. Britto. (N.T. 20, 34, 35)

21. Ms. Britto asked Mr. Schultz by telephone for a decision about her application on August 11, 1981. He again claimed to lack written notice and refused to rent the unit to her when she indicated her belief that his conduct was racially motivated. (N.T. 22, 23, 24)

22. The successful applicant for Apartment B-16, Amy Goldblatt, had become the supervisor of Deborah Rice in late

July or early August of 1981 and learned of the vacancy from Ms. Rice. (N.T. 61, 74, 75, 77, 78)

23. Deborah Rice in August of 1981 was a close friend of Respondents' son, Ward Schultz. (N.T. 74, 77)

24. Respondents had adequate notice of the Barks' intent to vacate Apartment B-16 prior to August 8, 1981. (N.T. 34, C.E. 2)

25. Mr. Barks did not submit any additional notice to Respondents after August 5, 1981. (N.T. 38)

26. Respondents have owned and operated Mountain View since November of 1971; from that date until the time of this hearing they had had two Black applicants for apartments and no Black tenants. (N.T. 60-62, 68)

## CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Act.
2. Respondents are owners and operators of commercial housing accommodations within the meaning of the Act.
3. The Commission has jurisdiction over the parties and the subject matter of this case.
4. The Commission and the parties have complied with all procedural prerequisites to a public hearing in this matter.
5. The ninety day filing period set out in Section 9 of the Act is not jurisdictional, but is subject to the operation of waiver and equitable tolling.
6. Respondents waived their right to challenge the timely filing of the complaint in this case.
7. The filing period should be equitably tolled in this case.
8. Complainant has made out a prima facie case of discrimination by proving that:
  - a. She is a member of a protected class;
  - b. She applied for commercial rental housing and was a qualified tenant;
  - c. Her application was rejected; and
  - d. Respondents sought applicants of equal qualifications after rejecting Complainant and eventually leased the unit sought by her to a White woman.

9. Respondents failed to overcome Complainant's prima facie case by coming forward with credible, nondiscriminatory reasons for their conduct.

10. Respondents refused to rent an apartment to Complainant on the basis of her race, Black, in violation of the Act.

11. Complainant is entitled to broad affirmative relief.



## OPINION

This case arises on a complaint filed by Vanessa Britto ("Complainant") against John T. Schultz ("Respondent") with the Pennsylvania Human Relations Commission ("Commission") on November 10, 1981. An amended complaint filed on July 19, 1982 named Erna S. Schultz as an additional Respondent and identified the apartment complex owned and operated by Mr. and Mrs. Schultz as Mountain View Apartments. Complainant alleged that Respondents refused to rent an apartment to her because of her race, Black and sex, female in violation of Section 5(h)(1) of the Pennsylvania Human Relations Act, 43 P.S. §§951 et seq. ("Act"). Commission staff investigated and found probable cause to credit the allegations of discrimination. When efforts to resolve the situation through conference and conciliation were unsuccessful, the case was approved for public hearing. The parties waived their rights under Section 9 of the Act to a hearing before a panel of three Commissioners, and proceeded to hearing on August 8, 1983 in Norristown, PA before Commissioner Thomas L. McGill, Jr., Esquire.

At the conclusion of the hearing, after the parties had rested and made closing arguments, the Hearing Commissioner sua sponte raised the issue of the Commission's jurisdiction due to a question of the timeliness of the complaint, and indicated that the record would be reopened for testimony or argument as to timeliness if either party so requested. On or about October 13, 1984, Complainant filed a petition to reopen the record for

the admission of evidence relevant to the issue of timeliness. Respondent did not respond to the petition. By order dated January 6, 1984, the petition was granted. On March 15, 1984, in lieu of further testimony, counsel for the parties stipulated that two documents could be admitted to the record. These were admitted by order dated April 3, 1984.

Before considering the merits of this case, it is necessary to determine whether the complaint was timely filed. If it was not, the legal effect of that fact must be decided.

Section 9 of the Act provides in relevant part: "Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination." 43 P.S. §959. Ms. Britto alleged a discriminatory refusal to rent on August 11, 1981. The complaint was notarized on November 10, 1981, the ninety-first day after the challenged act. No continuing violation was alleged. The complaint was unquestionably not filed within the ninety day period required by the Act.

Neither this Commission nor Pennsylvania's appellate courts have decided whether the ninety day requirement is a jurisdictional one which must be met or an affirmative defense in the nature of a statute of limitations which is subject to waiver and equitable tolling. For the reasons which follow, we find that it is not jurisdictional, but a statute of limitations whose operation may be waived or equitably tolled.

Like the Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., requires that complaints of

discrimination be filed with the Equal Employment Opportunity Commission within a specified number of days. Pennsylvania's Supreme Court has held that Title VII is the federal analog to the Act, and has accorded great deference (though not blind adherence) to federal courts' interpretations of that statute. General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976). We are therefore guided by the reasoning of the United States Supreme Court in Zipes v. Trans World Airlines, Inc., 455 U. S. 385 (1982), wherein the the Court rejected TWA's argument that Title VII's filing period was jurisdictional:

By holding compliance with the filing period to be not a jurisdictional prerequisite to filing a Title VII suit, but a requirement subject to waiver as well as tolling when equity so requires, we honor the remedial purpose of the legislation as a whole without negating the particular purpose of the filing requirement, to give prompt notice to the employer.

Id. at 398.

Pennsylvania courts have also held that statutory filing deadlines similar to the Act's are not jurisdictional. The Supreme Court in Department of Public Welfare v. UEC, Inc., 483 Pa. 503, 397 A.2d 779 (1979) set out the operative distinction:

...[S]ubject matter jurisdiction cannot be supplied by waiver, estoppel or agreement of the parties. Where a tribunal has no authority to hear a particular type of case, actions of the parties cannot supply that authority. Where, however, the limitation on jurisdiction is over the parties, they can supply the requisite jurisdiction by their conduct... [the limitation period at issue] is a limitation on jurisdiction over the person/party.... [It] may be affected by conduct amounting to waiver or estoppel, or by agreement of the parties.

Id. at 515-16, 397 A.2d 779 at 785. See also Bellotti v. Spaeder, 433 Pa. 219, 249 A.2d 343 (1969); Kozak v. City of Philadelphia, 459 A.2d 424 (Pa. Super. 1983). It cannot be questioned that this Commission has jurisdiction over the type of case brought by Complainant, i.e. subject matter jurisdiction. For both of the reasons advanced by Complainant, we find that we have jurisdiction over the parties as well.

First, as previously noted, the jurisdictional question was raised by the Hearing Commissioner sua sponte after each party had rested. The issue was not raised in the Answer to the complaint filed by Respondent prior to the hearing. Nor did Respondent at any time move to dismiss the complaint on the basis of untimeliness. This conduct amounted to waiver of the defense.

Second, even had the defense not been waived, the documents admitted to the record by post-hearing stipulation convince us that the filing period should be equitably tolled in this case. Commission staff's affidavit and accompanying letter establish that Complainant contacted the Commission in October of 1981 and was advised by letter that her complaint would be timely if filed by November 10, 1981, the date on which it was notarized. Where Complainant relied on the advice of the agency empowered to enforce the Act, as it may be inferred that she did, equity dictates tolling of the filing period. "... [A] claimant who misses a filing deadline will not be penalized after being misled by agency authorities as to the proper ... procedure ... ." Baker v. Pennsylvania Human Relations Commission, 462 A.2d 881 (Pa. Cmwlth 1983). We therefore turn to the merits of Ms. Britto's complaint.

Section 5 of the Act provides in part: "It shall be an unlawful discriminatory practice ... (f) or any person to: (r)efuse to sell, lease, finance or otherwise to deny or withhold commercial housing from any person because of the race ... of any prospective owner, occupant or user of such commercial housing ..." 43 P.S. §955 (h)(1). Commercial housing is defined in Section 4 as "... housing accommodations held or offered for sale or rent ... (2) by the owner himself ..." 43 P.S. §954(j).

Neither this Commission nor any Pennsylvania court has articulated the parties' respective burdens of proof<sup>1</sup> or the elements of a prima facie case of discrimination in housing under

the Act. Both are now well settled in cases of employment discrimination, however, and need only slight modification for application here.<sup>2</sup> We therefore hold that Complainant's prima facie burden is to prove:

1. That she is a member of a protected class;
2. That she applied for a rental unit for which she was qualified;
3. That her application was rejected; and
4. That following her rejection the Respondent continued to seek other applicants of similar qualifications.

Should Complainant meet this burden, Respondent must establish a legitimate, non-discriminatory reason for its conduct. Complainant may then prevail by showing that the reason advanced is pretextual.

The facts underlying Complainant's prima facie case are essentially uncontested. Ms. Britto is a Black woman, protected by the Act from discrimination on the basis of her race.<sup>3</sup> Her credible and uncontradicted testimony was that she verbally informed Mr. Schultz that she wished to rent the apartment he showed her on August 8, 1981. In the absence of a formal application procedure, these offers constituted applications for the unit. Mr. Schultz himself testified that he considered her qualified at the time of her application. He did not contradict Ms. Britto's testimony that he refused on August 11, 1981, to rent the unit to her. The apartment remained available until August 18, 1981, when it was rented to a White woman, Amy

Goldblatt, one of the other applicants sought and interviewed by Respondents during the intervening days.

Evaluation of Respondents' explanation of these events requires additional factual background. Apartment B-16 at Mountain View Apartments, the unit sought by Ms. Britto, was occupied by Joseph Barks and his wife from September 15, 1979 until August 31, 1981. Mr. Barks testified that he gave notice of his intent to vacate the apartment by sending to Mr. Schultz a document admitted to the records as Complainant's Exhibit 2. The note was sent on August 3 or 4, 1981. In keeping with their regular practice, Respondents then placed a classified advertisement of the apartment's availability in the Philadelphia Bulletin. The advertisement, which was admitted as Complainant's Exhibit 1, appeared on August 7, 1981. Ms. Britto responded to it by telephone on August 8, 1981 and was told by Ms. Schultz that the apartment would be available on September 1, 1981. They arranged for Mr. Schultz to return Ms. Britto's call. He did so and agreed to show Ms. Britto the apartment that same day, August 8, 1981.

Ms. Britto arrived for this appointment accompanied by a close family friend, Nancy Reid. Ms. Schultz allowed them to inspect the unit; both women testified that he made no effort to actively "show" the apartment and was evasive about answering their questions.

After viewing this unit Ms. Britto informed Mr. Schultz that she liked it very much and wished to rent it. He told her

that he could make no firm arrangements because he had not received written notice from the current tenants. Uncomfortable at having no clear agreement, Ms. Britto called Mr. Schultz when she returned to the home of Ms. Reid, with whom she was staying, and renewed her offer. Ms. Reid listened on an extension phone. Mr. Schultz again stated that he needed written notice from the current tenants.

On Monday, August 10, 1981 Ms. Britto returned to Mountain View; she had briefly spoken with Mr. and Mrs. Barks the previous Saturday while waiting for Mr. Schultz, and hoped to resolve with them the question of written notice. According to Mr. Barks' credible testimony, upon hearing that Mr. Schultz claimed to lack notice, he told Ms. Britto that he had sent Mr. Schultz the note previously mentioned, Complainant's Exhibit 2. In her presence he called Mr. Schultz; he was told by Mr. Schultz that the notice already sent had been received and that nothing further was needed. Mr. Barks relayed this information to Ms. Britto.

Upon returning to the Reids' Ms. Britto attempted to call Mr. Schultz. She could not reach him until shortly before eight the next morning. He again stated that he had not received notice. She advised him of her information to the contrary and her belief that his conduct was racially motivated. He then indicated that he could not rent the apartment to her; they had no further contact until after this complaint was filed.

The successful applicant, Amy Goldblatt, signed a lease for Apartment B-16 on August 18, 1981. The testimony of Respon-



dents, their son Ward Schultz, and his fiancée Deborah Rice, established that Ms. Goldblatt had recently become Ms. Rice's supervisor and learned through Ms. Rice of the apartment's availability.

Respondents offer two explanations for their conduct. First, they claim that Mr. Barks' notice was not specific and they could not rent the unit to Ms. Britto because they were unsure of its exact date of availability. Second, they argue that their decision to rent to Ms. Goldblatt was in keeping with their regular practice of renting to persons who were recommended to them. It is also claimed that Ms. Goldblatt was able to be flexible about the date on which she was to take occupancy. For the reasons which follow, we are not persuaded that these factors actually motivated Respondents.

Mr. Barks' note stated: "As it looks now, we should be moved out by Monday, August 31. If I need that last day of August, or if I discover we'll be gone sooner, I'll let you know." Telephone numbers for Mr. Barks and his wife at work and at home were given.

The note clearly indicates vacancy no later than September 1, 1981, the date given to Ms. Britto by Ms. Schultz during their telephone conversation on August 8, 1981. Obviously the Schultzes were confident enough of the upcoming vacancy to place an advertisement in an August 7, 1981 newspaper, and to interview a number of prospective tenants. Further, Mr. Barks' credible testimony was that Mr. Schultz did not question him during their August 10, 1981 conversation about his plans, or

ask for any notice in addition to that given in the note already sent, and that Mr. Barks did not, then or later, supply clarifying information. Nor does the record show that Mr. Schultz questioned Ms. Britto about her ability to be flexible regarding occupancy dates. Against this background, it is simply not credible that Mr. Schultz would refuse to discuss occupancy with an admittedly qualified tenant because of doubts about the current tenants' plans, doubts which were inexplicably and promptly resolved after Ms. Britto ceased to make inquiries.

Nor is Ms. Goldblatt's supposed desirability based on Ms. Rice's recommendation persuasive. Nothing in the record indicates that Respondents were aware of Ms. Goldblatt before August 10, 1981. Her interest in the unit on that date does not explain Mr. Schultz's reluctance two days earlier to deal with Ms. Britto, or his reliance at that time on claimed doubts about availability.

Moreover, as Complainant urges in her brief, personal preference based on recommendation is the sort of subjective consideration which has long been suspect in cases of employment discrimination. General Electric, supra, 365 A.2d at 657, n. 14. Given the sequence of events in this case, it is not persuasive here.

The claim by Respondents that Mr. Barks' notice was legally insufficient is without relevance. Whether or not it was legally lacking, the record shows that Respondents accepted and acted upon it.

We therefore find that Respondents have failed to come forward with credible, nondiscriminatory reasons for their refusal to rent to Ms. Britto, and conclude that their conduct was based upon his race, in violation of the Act. Having so found, Section 9 of the Act empowers us to award appropriate relief.

Complainant has not requested individual relief, but asks instead for prospective, broad, affirmative relief. This is a particularly appropriate situation for such a remedy. Respondents testified that they have had only two Black applicants since 1971, and have rented to neither. We therefore direct entry of the order which follows.

## F O O T N O T E S

1. While J. Howard Brandt, Inc. v. Pennsylvania Human Relations Commission, 15 Pa. Cmwlth 123, 324 A.2d 840 (1974) placed upon the Commission (as complainant) the burden of proving a violation of the Act through substantial evidence, no decided case has analyzed the burden placed upon a Respondent once Complainant has made out a prima facie case.

2. See General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976), adopting the standards established by the United States Supreme Court for proving a prima facie case of employment discrimination under Title VII in McDonnell-Douglas v. Green, 411 U.S. 792 (1973).

3. Although the complaint alleged discrimination on the basis of race and sex, the claim of sex discrimination was not pursued at hearing.

COMMONWEALTH OF PENNSYLVANIA  
EXECUTIVE OFFICES  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

VANESSA BRITTO, :  
COMPLAINANT :  
v. : DOCKET NO. H-3404  
JOHN T. SCHULTZ, ERNA S. :  
SCHULTZ, d/b/a MOUNTAIN :  
VIEW APARTMENTS, :  
RESPONDENTS :

RECOMMENDATION OF HEARING COMMISSIONER

Upon consideration of the entire record in this case, the Hearing Commissioner hereby recommends that the foregoing Finding 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.

*Thomas L. McGill, Jr.*  
\_\_\_\_\_  
THOMAS L. MCGILL, JR.  
HEARING COMMISSIONER

COMMONWEALTH OF PENNSYLVANIA  
EXECUTIVE OFFICES  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

VANESSA BRITTO, :  
COMPLAINANT :  
v. : DOCKET NO. H-3404  
JOHN T. SCHULTZ, ERNA S. :  
SCHULTZ, d/b/a MOUNTAIN :  
VIEW APARTMENTS, :  
RESPONDENTS :

FINAL ORDER

AND NOW, this 28th day of June, 1984,  
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 Commis-  
sioner, and therefore ORDERS:

1. The Respondents and their agents and employes shall  
fully comply with the Pennsylvania Human Relations Act ("Act")  
and shall cease and desist from discriminating on the basis of  
race in the terms, conditions or privileges of the rental of any  
and all commercial housing accommodations which the Respondents  
own or operate, or in the furnishing of advantages, privileges,  
facilities or services in connection therewith.

2. The Respondents and their agents and employes shall  
take the following affirmative actions which, in the judgment of  
this Commission, will effectuate the purposes of the Act:

a. Offer full, equal and nondiscriminatory assis-  
tance without regard to race to all persons who come to  
the Respondent seeking assistance regarding commercial  
housing accommdations.

b. Immediately issue written instructions setting forth paragraph 4(a) of this Order to all employes and agents as well as directing them to abide by this Order and to comply with the Act.

c. Furnish the Commission with a copy of said instructions within ten (10) days of the effective date of this Order.

d. Post the Fair Housing Practices Notice citing the provisions of the Act relating to housing in a conspicuous and well-lighted place in their normal place of business where both present and prospective customers and clients will normally see it and be able to read it.

e. Submit to the Commission's Headquarters Housing Division, Suite 300, 101 South Second Street, Harrisburg, PA 17101, quarterly reports for a period of three (3) years from the effective date of this Order. The first quarter commences on the first day following the effective date of this Order. All reports shall be filed with the Commission within thirty (30) days after the end of each quarter. The report shall contain:

i. The name, race, address(es), telephone number and date of inquiry of all persons who inquire in person at all offices, sites or other places of business used by the Respondents within the Commonwealth of Pennsylvania about the availability of commercial housing.

ii. The racial composition of each house, building or other commercial housing facilities which the Respondents own or operate during the quarter.

iii. Representative samples of actual newspaper advertisement and promotional or marketing literature, if any, introduced during the ninety (90) day period. Notification should also be given of any other advertising or promotional programs introduced during the period including their nature, scope, duration and frequency.

f. For a period of three (3) years from the effective date of this Order, maintain a registry of the names, addresses and phone numbers of all persons seeking, applying for, or requesting information concerning the availability of units at any and all commercial housing accommodations or other real property which the Respondents own or operate.

g. From the effective date of the Order, prepare and post in a conspicuous place a unified listing of all available units for rental of any commercial housing accommodations which the Respondents own or operate. All persons seeking information regarding units shall be referred to this unified list. Any information given by the Respondents, their agents or employes regarding units not on the list shall be construed as a violation of this Order.



h. From the effective date of this Order, effectuate an Affirmative Tenant Referral System, in that the Respondents shall:

i. Permit all Black applicants to make application whether a vacancy exists or not.

ii. Notify the Black applicant that he/she/they is (are) to be processed under the terms of a Tenant Referral System Agreement.

iii. Process the Black application for any existing vacancy of the type of unit sought by the Black applicant.

iv. Notify the Black applicant of his/her/their acceptance or rejection within seven (7) working days of the date of application.

v. Notify both the Commission and the Black applicant of the reason for rejection.

vi. Notify Black applicants who have been accepted that they have been placed on an "Affirmative Action Waiting List."

vii. Notify the applicant that he/she/they will be offered the next vacancy in the type apartment sought.

viii. Implement the "Affirmative Action Waiting List" as follows:

aa) Upon being given notice of vacancy, check the Affirmative Action Waiting List and process any Black applicants there for the vacancy.

bb) If there are no Black applicants on the Affirmative Action Waiting List, notify the Commission of the available unit, size, rental cost, date of availability.

cc) Following notice of the Commission, the apartment shall be offered only to Black persons applying, or who may be referred by the Commission, for one half of the notice period or for two weeks, whichever is longer.

dd) After one half of the notice period or two weeks, whichever is longer, if an acceptable Black applicant is not available, rent the apartment to any person(s) as long as all applicants are considered in a non-discriminatory fashion.

ee) Any Black applicant rejected at any time must be furnished a reason for rejection in writing, a copy of which shall be furnished to the Commission.

ix. Agree that any lease executed in contravention of this Order shall be voidable and may be set aside at the discretion of the Commission.

x. Submit quarterly reports listing:

(a) Name of all Black applicants.

(b) Name of all Black tenants.

(c) Report of all notices sent to rejected Black applicants.

i. Not retaliate against Black tenants by reducing privileges, advantages, facilities, services or by any other discriminatory action.

j. Investigate promptly all complaints by Black applicants or tenants of discourteous, rude, or discriminatory behavior by Respondents, employes, or agents or any other person acting on behalf of the Respondents (whether compensated or not) and take necessary disciplinary action where warranted.

k. From the effective date of this Order, include in all advertising for commercial housing accommodations or other real property which the Respondents own or operate the words "Equal Opportunity Housing." The Respondents may, in addition, use the Equal Opportunity Logotype.

l. For a period of three (3) years from the effective date of this Order place advertisements of any vacancy in at least one newspaper of general circulation and shall place the advertisement prior to leasing the unit which is to be vacated.

m. Within sixty (60) days of the effective date of this Order, submit in writing to the Commission's Headquarters Housing Division a statement setting forth the rental policies and procedures to be used by the Respondent including, but not limited to, the Respondent's rental criteria, procedures for processing rental applications, procedures for handling inquiries,

offering applications, offering units to prospective tenants, rejecting prospective tenants, accepting deposits, signing leases and receiving notices of intentions to vacate. The Respondents shall notify the Commission in writing of changes in their policies and procedures thirty (30) days prior to their implementation by the Respondents, their employees and agents. Such policy must be objective, must be implemented and followed and may be subject to modification after a hearing on the merits if it is not satisfactory and the Respondents do not wish to amend it.

5. Any infraction of this Order by an employe of the Respondent shall constitute an infraction by the Respondents of record.

6. If any clause, sentence, paragraph or part of this Order, or the application thereof to any persons or circumstances, shall, for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Order not the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the person or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the Commission's intent that this Order would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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

ATTEST:

*Elizabeth M. Scott*  
ELIZABETH M. SCOTT, SECRETARY