

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

FREDDIE MAE DAVIS, on behalf :  
of her son, DARNELL, :  
Complainant :  
vs. : Docket No. P-1297  
FRED KEKSEO, d/b/a FRED'S :  
BARBER SHOP, :  
Respondent :

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

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HISTORY OF THE CASE

This matter involves a complaint filed with the Pennsylvania Human Relations Commission ("Commission") by Freddie Mae Davis, on behalf of her minor son, Darnell, on March 9, 1977, at Docket No. P-1297. The complaint which was timely, verified and in writing alleged that at 10:30 a.m. on March 3, 1977, Fred Kekseo, doing business as Fred's Barber Shop in Allegheny County, Pennsylvania, ("Respondent") refused to cut the hair of her son, Darnell, because of the child's race, Black in violation of Section 5, Subsection (i) (1) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. 951 et seq. ("the Act").

Service of the complaint was initially attempted by certified mail. However, when Respondent refused to accept this means of service, personal service was effected by

Terrance McDaniel, who was then a Field Investigator for the Commission.

An investigation of the allegations of the complaint was conducted by representatives of the Commission pursuant to the statutory mandate of 43 P.S. 959, in which investigation resulted in a determination that probable cause existed to credit the allegations of the complaint.

Thereupon, after notice of probable cause, the Commission endeavored as mandated by the Act to eliminate the acts complained of by conference, conciliation and persuasion. These endeavors were unsuccessful, and on June 25, 1979, the Commission approved the case for Public Hearing. The Panel named to hear the case included: Doris M. Leader, Chairperson of the Panel, John P. Wisniewski, Hearing Commissioner and Sister Mary Dennis Donovan, C.S.J., Hearing Commissioner. Sidney V. Blecker, Assistant General Counsel from the Harrisburg Regional Office of the Commission, served as Legal Advisor to the Hearing Panel.

On January 4, 1980, a Pre-Hearing Conference was held which the Respondent refused to attend.

A Public Hearing conducted at all times pursuant to Section 9 of the Act was held on Monday, February 4, 1980, in the Hearing Room - 16th Floor of the Pittsburgh State Office Building, Pittsburgh, Pennsylvania. Arthur Greif, Assistant General Counsel from the Pittsburgh Regional Office of the Commission presented the case on behalf of the Complainant. George A. Miller, Esquire appeared on behalf of the Respondent.

Subsequent to receipt of the Notes of Testimony,  
briefs on behalf of the Complainant and the Respondent  
were filed with the Commission.

FINDINGS OF FACT

1. Complainant, Freddie Mae Davis, is an adult individual who resides in Allegheny County, Pennsylvania. (Tr. 5)

2. Complainant's son, Darnell Davis, on whose behalf the Complaint was filed, is a six year old minor. (Tr. 5)

3. Respondent, Fred Kekseo, resides in Allegheny County, Pennsylvania and owns and operates Fred's Barber Shop, which is located at 2006 East Carson Street, Pittsburgh, Pennsylvania within the County of Allegheny. (Tr. 21)

4. Mr. Kekseo received his Master Barber's license from the State of Pennsylvania in 1967 and 1968, and has had an owner's license for his shop since at least 1977. (Tr. 25, 33)

5. In March of 1977, Complainant was residing at 3114 Cordell Place, in Arlington Heights, Pittsburgh. Respondent's barber shop was the nearest to her home. (Tr. 1)

6. On March 3, 1977, Complainant took her son, who at the time was three years old, to Fred's Barber Shop for the child's first haircut. (Tr. 5-6, 12)

7. Upon entering the shop, Complainant, who is Black approached Mr. Kekseo, who is White, and informed him that she wanted to have her son's hair cut. Mr. Kekseo replied that he did not cut "colored" people's hair. (Tr. 6, 22, 3)

8. Complainant then attempted to persuade Mr. Kekseo to examine her son's hair in order to determine whether Mr. Kekseo could cut the hair. In reply, Respondent repeated his earlier statement that he did not cut "colored" peoples' hair. (Tr. 7, 22) Respondent never examined Darnell's hair and no other conversation between Complainant and Mr. Kekseo took place. (Tr. 13)

9. Although Mr. Kekseo's testimony as to his encounter with the Davises differs from Ms. Davis' version, (Tr. 22) the Commission found Ms. Davis to be a more credible witness and therefore accepts her version of the incident.

10. Several White people were present in the shop when the conversation between Complainant and Mr. Kekseo took place. One of the women who had witnessed the exchange made it apparent by the expression on her face that she thought the barber's remarks were humorous. (Tr. 7)

11. Complainant then left the barber shop immediately with her son. (Tr. 8)

12. Complainant subsequently had her son's hair cut at a barber shop located near Respondent's (Tr. 9) This barber, who was White, agreed to cut her son's hair after first examining the child's hair type. (Tr. 10)

13. Complainant filed a complaint with the Commission on behalf of her son Darnell on March 9, 1977. (Complainant p. 3)

14. Respondent was served the complaint personally because he had refused to accept service by certified mail. (Tr. 17)

15. The complaint was personally served by a Commission investigator, Terrance McDaniel. When serving the complaint, Mr. Kekseo told Mr. McDaniel that he did not know how to cut "colored" people's hair. (Tr. 17)

16. Mr. Kekseo has never cut the hair of a Black person. (Tr. 32)

17. Darnell Davis has fine, wavy hair that is very straight. (Commission's observation, Tr. 17-18)

18. Respondent cuts the curly hair of White people unless they request an Afro style. (Tr. 30, 32-33)

19. Respondent, in deciding whether to cut the curly hair of White people, will first examine the person's hair, Respondent, however, never examined Darnell Davis' hair. (Tr. 7, 32)

20. The Commission finds from the testimony and given the texture of Darnell Davis' hair, that it is highly doubtful that Respondent was unqualified to cut that child's hair.

21. The Commission finds as a matter of fact that Respondent's stated reason for his refusal to cut Darnell Davis' hair was a mere pretext.

22. Respondent has done only a very small amount of the "clip over comb" technique of hair cutting which is employed for cutting very curly hair. (Tr. 29)

23. Respondent can be taught to cut "over-curly" hair by the Pittsburgh Barber School, Inc., 41 East Ohio Street, Pittsburgh, Pennsylvania 15212. The instruction cost \$94.50. (Tr. 18-19; Comp. Ex. No. 1)

## CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("Commission") properly has jurisdiction over the parties and subject matter of this action, pursuant to Sections 4, 5 and 9 of the Pennsylvania Human Relations Act ("Act"), Act of October 27, 1955, P.L. 744 as amended, 43 P.S. 951 et seq. (43 P.S. 954, 955, 959).

2. The parties and the Commission have fully complied with all the procedural prerequisites to a Public Hearing in this matter. (43 P.S. 959)

3. Complainant is a "person" within the meaning of Section 5 of the Act. (43 P.S. 955)

4. A barber shop is a "place of public accommodation" within the meaning of Section 5 of the Act. (43 P.S. 954, 955)

5. Respondent is an "owner" of a place of public accommodation within the meaning of Section 5 of the Act. (43 P.S. 955)

6. The Complaint filed in this matter states a cause of action for discrimination in a place of public accommodation under Section 5 Subsection 5 (i) (1) of the Act. (43 P.S. 955 (i) (1))

7. The credibility of witnesses, the weight of testimony and the inferences to be drawn from the evidence are matters for the determination by the administrative agency.

8. Administrative fact finders are free to draw reasonable inferences from the evidence presented to them.



9. The Commission finds that Respondent Fred Kekseo has unlawfully discriminated against Complainant by refusing to cut Darnell Davis' hair in violation of Section 5 Subsection (i) (1) of the Act. (43 P.S. 955 (i) (1))

10. Respondent violated Section 5 Subsection (i) (1) of the Act when he refused to cut Darnell Davis' hair in that he:

(i) denied Darnell Davis a haircut for the stated reason that he didn't cut "colored peoples hair," and

(ii) refused to examine Darnell Davis' hair to see whether he could cut it in contrast to his stated willingness to examine the curly hair of White people to see whether he could cut it.

11. Respondent's professed inability to cut very curly hair in a professionally competent manner is not a defense to his violation of Section 5 Subsection (i) (1) of the Act.

12. The remedies incorporated in the Commission's Order are necessary to insure that similar acts of discrimination no longer occur in the barber shops of this Commonwealth.

OPINION

This matter arises on the complaint filed with the Pennsylvania Human Relations Commission by Freddie Mae Davis, on behalf of her minor son, Darnell, alleging that Respondent, Fred Kekseo, doing business as Fred's Barber Shop, refused to cut the hair of her son, Darnell, because of the child's race, Black in violation of Section 5, Subsection (i) (1) of the Pennsylvania Human Relations Act.

The Legislature clearly decided nineteen years ago that a barber shop is a place of public accommodation. In 1961, when it amended the Pennsylvania Human Relations Act ("Act") to cover discrimination in the provision of public accommodations, the Legislature took care to exhaustively define the establishments it considered public accommodations. It expressly included barber shops in this list. Act of October 27, 1955, P.L. 744, Section 4 (1), as amended, 43 P.S. 954 (1).

After carefully examining the entire record, we conclude that the evidence adduced at Public Hearing convincingly established that the facts of this case present a clear violation of Section 5, Subsection (i) (1) of the Act, which makes it an unlawful discriminatory practice "for any person being the owner. . . of any place of public accommodation . . . to . . . deny to any person because of his race . . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation . . ." Act of October 27, 1955, P.L. 744, Section 5, Subsection (i) (1), as amended, 43 P.S. 955 (i) (1).

Every person who testified before the Commission, including Mr. Kekseo, indicated that the initially stated reason for not cutting Darnell's hair was "I don't cut colored people's hair". One cannot imagine a clearer case of overt racial discrimination.

The record reveals that Freddie Mae Davis, the Complainant, testified that in March of 1977, she decided to have her son's hair cut for the first time. Darnell was then three years old. She elected to have his hair cut at Fred's Barber Shop, a facility operated as a sole proprietorship by the Respondent, for two reasons: The shop was physically close to her home and the barber, by his hair style, appeared to be "up to date with the latest hairstyles."

Ms. Davis entered the barber shop and stated to the Respondent that she would like to get Darnell's hair cut. The Respondent looked at her and said:

"I don't cut colored people's hair."

Ms. Davis then asked the Respondent to at least examine the child's hair, for Darnell's hair is very straight for a member of his race. Again Mr. Kekseo stated:

"I don't cut colored people's hair."

Following this brief encounter, Ms. Davis walked out of the shop. No other conversation transpired between Ms. Davis and Mr. Kekseo.

Understandably upset at this incident, Ms. Davis felt very angry. She was convinced by her sister-in-law to contact the NAACP, an agency which in turn referred her to the Commission.

Later, Ms. Davis went to another White barber on Carson Street, whose first name was Joe. She asked the barber whether he cut "colored people's" hair, and Joe stated that he would have to see Darnell's hair. Upon examining the child's hair, he readily agreed to cut it.

Terrance McDaniel, then a Field Investigator for the Commission, testified as to his discussion with Mr. Kekseo when he personally served a complaint upon him. It was only at this time, after having received notice of the legal proceedings that had been instituted against him, that Mr. Kekseo stated that he lacked the necessary training to cut Black people's hair. When Mr. McDaniel informed him that Darnell had straight hair, Mr. Kekseo

failed to deny this fact, but merely stated that "he did not cut colored people's hair."

The Respondent, Mr. Kekseo, admitted that when a White person with curly hair asks him for a simple haircut, he will usually cut that person's hair, after first examining that person's hair type. However, he stated that he had never cut a Black person's hair, regardless of hair type.

Mr. Kekseo professed an ignorance of how one cuts the hair of Black people. Yet he was able to describe in great detail the special problems involved in cutting over-curly hair, and he admitted to some experience in the matter, stating, "I have never done it that much myself."

Mr. Kekseo also claimed that the White barber who did cut Darnell's hair, Joe Pennesi, was trained in such matters. Yet, when asked to describe Mr. Pennesi's training, Mr. Kekseo spoke of his experience in "hair coloring, hair straightening and that sort of stuff, style cuts and toupees now and then." Significantly, this special training did not include any courses in the cutting of curly and overcurly hair.

The racial motive behind Respondent's refusal to serve Darnell is even more apparent when one compares the treatment accorded the Davis' by Joe Pennesi, the barber who actually cut Darnell's hair with that accorded them

by Fred Kekseo. When the Davis' entered the shop, Mr. Pennesi examined Darnell's hair and then readily agreed to cut it. Mr. Kekseo refused to examine Darnell's hair, refused to even ask what sort of hair style Ms. Davis desired for her child, and, by his cold repetition of the words, "I don't cut colored people's hair," made it clear to the Davis' that they were not welcome in his shop.

Although Mr. Kekseo sought to portray Joe Pennesi as a barber whose specialized training made him more able to cut the hair of Black people, such was clearly not the case. For surely if Mr. Pennesi had such training, he would not have had to first examine the child's hair. Significantly, when Mr. Kekseo itemized Mr. Pennesi's specialized training, he said nothing about any specialized skills in the cutting of curly or over-curly hair, or, to use Mr. Kekseo's phrase, the cutting of colored people's hair.

Further evidence of the racial motive behind this refusal to serve is found in the testimony of Mr. Kekseo himself. He admitted that he cut the hair of White people when it was curly, unless they asked for Afros. Yet, when Darnell Davis walked into Kekseo's shop accompanied by his mother, Mr. Kekseo never inquired into the hair style Ms. Davis desired for her son. When asked at the hearing to describe Darnell's hair, Mr. Kekseo used the words "rather course" and "curly". Yet all

those present in the hearing room could see that the child's hair was fine and wavy, with less curl to it than that of many White people in the room. Apparently, Mr. Kekseo, when describing Darnell's hair, was reacting to the color of the child's face, not the texture of his hair.

Respondent's assertion that he has never received any training in the cutting of curly or over-curly hair is unpersuasive and obviously a pretext. Specifically, Respondent's professed inability to cut Black people's hair is not a defense to his violation of the Act. Respondent's defense is contrived, yet not at all novel. On the few occasions on which courts or commissions have been asked to review the legality of a refusal by a White barber to serve a Black person, the defense of lack of skill in cutting Black people's hair has usually been raised.

In Pinkney v Maloy, 241 F. Supp. 943 (N.D. Fla. 1965), a White barber charged with violating the 1964 Civil Rights Act sought to raise this defense. The court tersely noted:

Finally, the defense asserted by defendant that he is not qualified to perform the requested services is not responsive to the issues raised by the complaint and may not be made the basis of an affirmative defense. The degree of skill or proficiency in any occupation or profession which is covered by the Act is irrelevant in this litigation. 241 F. Supp. 947 (emphasis added)

In Sellers v. Philips Barber Shop, 46 N.J. 340, 217 A.2d 121, (1966) the New Jersey Supreme Court discussed that state's close regulation of the barbering profession and concluded:

The practice of barbering and the operation of barber shops have a sufficiently intimate relationship with the public interest and welfare to justify licensing and regulation of barbers and their shops. The public need for the service made available by the craft is sufficiently urgent to warrant legislative imposition of training and skill qualifications upon applicants for a license to practice barbering, i.e., among other things, of cutting hair "for the public generally" for payment. And the license signifies further that its holder has demonstrated to the satisfaction of the Board of Barber Examiners that he is qualified in "hair cutting" -- not just Caucasian hair, but the hair that grows on the head of any human being. If this competence does not extend that far, he lacks the legislatively established qualifications for license. Moreover, we believe that in the future the Board should inquire into the willingness of each candidate for a license to cut the hair of any applying patron regardless of race, color, creed, national origin, ancestry or age. If he reveals an unwillingness to do so, obviously he does not meet the standards for a license.

. . . .

As we have indicated the license and registration of the barber and his shop, with the accompanying monopoly of the practice of barbering have brought him into the public domain and given him a special status. So long as he holds that status he cannot discriminate against a prospective patron who seeks his service, be he Negro or any other race, any more than a lawyer or other professional person may discriminate for that reason. 217 A.2d 124-125 (emphasis added)

Pennsylvania also closely regulates the barbering profession. It requires that each barber be examined and licensed, Act of June 19, 1931, P.L. 589, § 1, as



amended, 63 P.S. § 551. That examination, among other things, requires that the prospective barber be "possessed of requisite skill in said occupation to properly perform all the duties thereof, including his or her knowledge and ability in . . . hair cutting, and all the duties and services incident thereto . . ." Act of June 19, 1931, P.L. 589, § 3, as amended 63 P.S. § 553(a) (emphasis added).

Surely, the obligation to cut the hair of people of all races is one of the duties incident to the cutting of hair. It has been an express duty of barbers from the moment the Legislature prohibited discrimination in public accommodations.

The Pennsylvania Barber License Law, and the decisions of courts from other jurisdictions are all unanimous in their support of the proposition that the professed inability to cut a Black person's hair is not a defense for a barber charged with refusing to serve a Black person. But even if there were no decisions or statutes on this issue, the Commission would be compelled to reject such a defense. Since a barber's ability to cut hair is generally uniquely within his own knowledge, an acceptance of this defense would effectively allow any barber who is unwilling to cut a Black person's hair to falsely claim his ignorance of the matter. This Commission, by accepting such a defense, would effectively be forcing the Black citizens of this Commonwealth to wander from barber shop to barber shop looking for someone willing to cut their hair. The Black citizens of this Commonwealth

should not be relegated, as was Freddie Mae Davis, to  
humbly asking a barber, "Do you cut colored people's  
hair."

Remedy

Our finding of discriminatory refusal to cut Darnell Davis' hair leads necessarily to consideration of appropriate relief.

Unquestionably, the Commission's power to award affirmative relief is necessarily broad. In PHRC v. Alto-Reste Park Cemetary Ass'n., 453 Pa. 124, 306 A.2d 881 (1973), the Pennsylvania Supreme Court stated:

[T]he Legislature, in an attempt to deal comprehensively with the basic and fundamental problem of discrimination, clothed the Human Relations Commission with authority to "... take such affirmative action including but not limited to. . . as, in the judgment of the Commission, will effectuate the purposes of this Act, and including a requirement for report of the manner of compliance." Pennsylvania Human Relations Act, Supra at § 9, 63 P.S. § 959 (Supp. 1974). (Emphasis added.) The words "as in the judgment of the Commission" indicate to us that the Legislature recognized that only an administrative agency with broad remedial powers, exercising particular expertise, could cope effectively with the pervasive problem of unlawful discrimination. Accordingly, the Legislature vested in the Commission, quite properly, maximum flexibility to remedy and hopefully eradicate the "evils" of discrimination. Pennsylvania Human Relations Act, Supra at § 2(a), 63 P.S. § 952(a) (Supp. 1973). The legislative mandate that the provisions of the Act be "construed liberally", noted supra, serves to reinforce this view. . .

It is beyond cavil that the Human Relations Act was intended, by the Legislature, to protect more than individuals unlawfully discriminated against -- of equal importance is the Act's intent that the public generally be protected from such discrimination. Pennsylvania Human Relations Act, supra at § 2(c), 63 P.S. § 952(c) (Supp. 1973). Accordingly, it is, and was here incumbent upon the Commission to not only fashion an effective remedy

for the individual aggrieved, but also to guard against and deter the same discriminatory action from recurring, to the detriment of others within the same class. 306 A.2d 887-888

It is this Commission's duty to issue a remedy that provides effective assurance that Fred Kekseo will not again refuse service to a Black individual. Even though Mr. Kekseo's contention that he is unable to cut the hair of Black people is clearly not a legal defense to a claim of discrimination, it should be a factor to be considered in fashioning an appropriate remedy, as specified in the Order which follows.

Additionally, Mr. Kekseo should be required to post his intention to not discriminate and to report upon his manner of compliance. Both of these types of remedies are clearly appropriate here.

As a final element of this remedial order, this Commission should, pursuant to § 9 of the Act, "inform the appropriate State licensing authority of the order with the request that the licensing authority take such action as it deems appropriate against such licensee" 43 P.S. § 959. In so informing the State Board of Barber Examiners of its order against Mr. Kekseo, the Commission will request that the Board take the following steps:

- (i) inform all barbers throughout the Commonwealth that they are required to cut the hair of people of all races;
- (ii) inform all barbers throughout the Commonwealth that their refusal to cut the hair

of a person because of a professed inability to cut the hair of members of a particular race subjects that barber to the possible suspension or revocation of his or her license on the grounds of "gross incompetence". Act of June 19, 1931, P.L. § 9, as amended, 43 P.S. § 559(d); and

- (iii) inform Mr. Kekseo that his failure to comply with all aspects of the Commission's order will result in the suspension or revocation of his license.

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this 30th day of June, 1980, in consideration of the entire record in this matter, including the Complaint, Stipulations, Exhibits, Record of the Hearing, and Briefs filed on behalf of Complainant and Respondent, the Hearing Commissioners hereby adopt the attached as their proposed History of the Case, Findings of Fact, Conclusions of Law, Opinion and Final Order and hereby recommend that the same be finally adopted and issued by the Pennsylvania Human Relations Commission.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Doris M. Leader  
Doris M. Leader, Chairperson  
Hearing Panel

BY: John P. Wisniewski  
John P. Wisniewski  
Hearing Commissioner

BY: Sister Mary Dennis Donovan, C.S.J.  
Sister Mary Dennis Donovan, C.S.J.  
Hearing Commissioner

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FREDDIE MAE DAVIS, on behalf  
of her son, DARNELL,  
Complainant

vs

FRED KEKSEO, d/b/a FRED'S  
BARBER SHOP,  
Respondent

Docket No. P-1297

COMMISSION'S DECISION AND FINAL ORDER

AND NOW, this 11th day of July, 1980, upon consideration of the full record in this case and of the foregoing Recommendation of the Hearing Commissioners, and pursuant to the provision of Section 9 of the Human Relations Act, Act of October 27, 1955 P.O. 744 as amended, 43 P.S. § 951 et seq., the Pennsylvania Human Relations Commission hereby adopts the foregoing History of the Case, Findings of Fact, Conclusions of Law, and Opinion and therefore,

O R D E R S:

1. That Respondent, Fred Kekseo, doing business as Fred's Barber Shop, shall forthwith cease and desist from:  
(i) directly or indirectly refusing, withholding from or denying to any person because of race, color, sex, religious creed, ancestry, national origin, or handicap or disability, or to any person due to use of a guide dog

because of the blindness of the user, any of the accommodations, advantages, facilities or privileges of his barber shop; and (ii) refusing to cut an individual's hair on the grounds that he is professionally untrained to cut that person's hair.

2. That respondent shall, within twenty (20) days from the date of this Order, send to the Complainant at her address, 4650 Chance Way, Pittsburgh, Pennsylvania 15207, a letter offering to cut Darnell Davis' hair. A copy shall be sent to the Commission at its Pittsburgh Regional Office.

3. That Respondent shall post in a conspicuous place in his shop a notice which states his non-discriminatory policy. Such notice shall be provided to Respondent by the Commission. Respondent will also report upon his manner of compliance.

4. That the Executive Director of the Commission shall inform the State Board of Barber Examiners of the action taken by the Commission in this case, and shall direct to such State Board a copy of the Transcript of the Public Hearing, Decision, Findings of Fact, Conclusions of Law and Order of this Commission in this case, and shall request that the State Board of Barber Examiners take the following steps:

- (i) Whatever independent disciplinary action deemed appropriate, including suspension or revocation of Mr. Kekseo's license;



