

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOYCE M. PARR,	:	
COMPLAINANT	:	
	:	DOCKET NOS. E-25670-D
v.	:	E-26387-D
	:	E-27659-D
CONSUMERS MOTOR MART,	:	
RESPONDENT	:	

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
OPINION,
RECOMMENDATION OF HEARING EXAMINER,
FINAL ORDER

FINDINGS OF FACT *

1. Joyce M. Parr is a black adult individual residing at 7970 Aber Road, Verona, Pennsylvania 15147. (N.T. 7)
2. Consumers Motor Mart, Main Street, Sharpsburg, Pennsylvania, has at all relevant times employed four or more persons within the Commonwealth of Pennsylvania. (N.T. 9, 10, 62)
3. Consumers Motor Mart ("CMM") is a weekly magazine distributed free to the public in which car dealers and related concerns buy advertising space. (N.T. 8, 113)
4. Ms. Parr was employed by CMM from 1981 until June of 1983. (N.T. 8)
5. As a CMM salesperson Ms. Parr visited advertisers, photographed cars being advertised, wrote copy, and assisted in processing the advertisement at the CMM office. (N.T. 8)
6. Ms. Parr earned a base salary of \$100 weekly plus a 10 percent (10%) commission on sales. (N.T. 6, 82)
7. CMM is owned and operated by Rocco and Teresa Ferrone. (N.T. 10, 89, 112)

* To the extent that the Opinion which follows recites facts in addition to those set forth here, they shall be deemed to be additional findings of fact.

Key to abbreviations:

C.E.	Complainant's Exhibit
R.E.	Respondent's Exhibit
N.T.	Notes of Testimony

8. In March of 1983, CMM employed Ms. Parr, Christine Guthrie, Lois Watkins, Estelle Peacock, Carla Pantone, plus a part-time type setter and delivery people. (N.T. 9-10)
9. Carla Pantone is the Ferrones' daughter. (N.T. 148)
10. Ms. Parr's employment at CMM was satisfactory to her and the Ferrones through the end of 1982 or early 1983. (N.T. 10, 172)
11. Ms. Parr received three written reprimands from Ms. Ferrone in March and April of 1983. (N.T. 14, 21, C.E. 1, 2, 3)
12. Ms. Parr had never received a written reprimand before April of 1983. (N.T. 20)
13. Ms. Parr's sales territory was reduced in May of 1983, a significant portion of it was reassigned to a new salesperson, Jennifer Watkins. (N.T. 23)
14. Christine Guthrie, a white woman, was the only other salesperson employed by CMM in the Spring of 1983; the only negative action taken against her by the Ferrones was a single written reprimand for failing to turn in route sheets. (N.T. 76, 77A, 78, 82, R.E. 2)
15. Rocco Ferrone, testifying about CMM's financial distress in early 1983, indicated that the current salespeople could not adequately cover the magazine's territory, and said that he planned to increase the sales staff. (N.T. 113, 120, 123)
16. Mr. Ferrone testified that it takes five to seven weeks for a new salesperson to become productive. (N.T. 129, 136)

17. The only salesperson hired by CMM in the Spring of 1983 was Jennifer Watkins, an inexperienced college student whose plans to return to college that Fall were known to Ms. Ferrone. (N.T. 136, 206)
18. In March of 1983, Lois Watkins called the Bureau of Employment Security at Ms. Ferrone's direction for information about avoiding a claim for unemployment benefits if Ms. Parr were to be fired. (N.T. 67)
19. Lois Watkins heard conversations between Ms. Ferrone and Carla Pantone to the effect that Ms. Parr was not having success with dealers in Monroeville because she was black. (N.T. 67, 68)
20. Mr. Ferrone was told by sales manager Carla Pantone in the Spring of 1983 that "(t)hey're not working. They're not giving their fullest attention." "They" referred to Ms. Parr and Ms. Guthrie. (N.T. 207)
21. Ms. Guthrie was never told that her sales territory would be reduced. (N.T. 165, 166)
22. Ms. Guthrie's base salary was not reduced to \$50 when her sales fell below \$1,000 per week. (N.T. 165)
23. The Ferrones had received a copy of Ms. Parr's first complaint to the Commission (Docket No. E-25670-D) before her employment was terminated. (N.T. 195)
24. Ms. Parr was terminated during or shortly after a conversation with Ms. Ferrone during which Ms. Ferrone directly stated that she did not wish to employ Ms. Parr because Ms. Parr had filed a complaint with the Commission. (N.T. 25)

25. Ms. Ferrone equivocated when asked if Ms. Parr had been fired. She admitted to testifying in separate Unemployment Compensation proceedings that Ms. Parr had been fired and that she had voluntarily quit. (N.T. 106, 107, 108, 109)
26. Carla Pantone equivocated about whether Ms. Parr had been discharged. (N.T. 158, 159, 160)
27. Ms. Parr won a CMM sales contest in April of 1983. (N.T. 205)
28. There was not a significant drop in Ms. Parr's sales between 1982 and 1983, other than that caused by the reassignment of a large part of her sales territory. (N.T. 101, 102, C.E. 6)
29. Jennifer Watkins became unable to work for CMM in June of 1983 after an automobile accident; at that point Ms. Parr asked Ms. Ferrone to return her former sales territory. Ms. Ferrone refused. (N.T. 25)
30. When asked why she would not return her former territory to Ms. Parr, Ms. Ferrone told her: "I am not giving them back to you. . . Joyce, I want you to tell me how can you go out there and represent me feeling the way you do, how can you do that?" (N.T. 197)
31. Ms. Ferrone discharged Ms. Parr in the course of the conversation during which Ms. Parr asked to have her former sales territory returned. (N.T. 25)
32. Ms. Ferrone told Ms. Parr that she was discharged because she had filed a complaint with the Commission. (N.T. 25)

33. The Ferrones never discussed with Ms. Parr their claimed concern that she was selling real estate to the detriment of her work for them. (N.T. 200)
34. Ms. Parr earned \$722.50 from selling real estate in all of 1983, and \$5,566.25 in 1982. (N.T. 44)
35. Ms. Parr listed five properties during 1982 and the first half of 1983. (N.T. 42, 43)
36. Ms. Parr received Unemployment Compensation benefits from the time of her discharge until December of 1983. (N.T. 26)
37. The Ferrones opposed Ms. Parr's receipt of Unemployment Compensation benefits. (N.T. 26, 105, 106)
38. Ms. Parr was harassed by Consumers Motor Mart because of her race.
39. Ms. Parr was discharged by Consumers Motor Mart because she had filed a complaint with the Commission.
40. Ms. Parr's average salary between November of 1981 and May 13, 1983, (after which her sales territory was partly reassigned) was \$287.84. (N.T. 104)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.
2. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.
3. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("Act").
4. Respondent is Complainant's employer within the meaning of the Act.
5. Complainant has made out a prima facie case on her complaint at Docket No. E-25670-D, alleging racial harassment, by proving that:
 - a. She belongs to a protected class;
 - b. She was performing duties that she was qualified to perform;
 - c. She was subjected to adverse employment consequences; and
 - d. Persons not of her suspect class but otherwise similarly situated were not subjected to the adverse employment consequences.
6. Respondent has introduced admissible evidence of a legitimate, nondiscriminatory reason for its adverse treatment of Complainant, rebutting the inference of discrimination created by her prima facie case.
7. Complainant has carried her ultimate burden of persuasion in the case at Docket No. E-25670-D by proving that the reasons offered by Respondent for its actions were pretextual.
8. Complainant has made out a prima facie case of retaliatory discharge in her complaint at Docket No. E-26387-D by proving that:

- a. She engaged in protected activity;
- b. Subsequent to that protected activity she was subjected to an adverse employment consequence; and
- c. There was a causal connection between the protected activity and the adverse employment consequence.

9. Respondent has failed to rebut Complainant's prima facie case of retaliatory discharge.

10. Complainant has failed to establish a prima facie case of retaliatory interference with receipt of Unemployment Compensation benefits.

11. The negative actions taken by Respondent against Complainant during the Spring of 1983, including reassignment of part of her sales territory, were taken because of her race, black, in violation of Section 5 (a) of the Act.

12. Respondent discharged Complainant from her position as salesperson in retaliation for filing the complaint at Docket No. E-25670-D, in violation of Section 5 (d) of the Act.

13. Following a finding of discrimination the Commission is empowered by Section 9 of the Act to award relief including back pay and reinstatement.

14. Interest of 6% per annum on back pay awards may also be ordered.

OPINION

This case arises on complaints filed by Joyce M. Parr ("Complainant") against Consumers Motor Mart ("Respondent" or "CMM") with the Pennsylvania Human Relations Commission ("Commission"). The first complaint, filed on or about June 3, 1983, at Docket No. E-25670-D, alleged that Respondent was harassing Complainant because of her race, black, 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. §951 et seq. ("Act"). The second complaint, filed on or about August 26, 1983, at Docket No. E-26387, alleged that Respondent discharged Complainant from her position as sales representative in retaliation for filing the complaint at Docket No. E-25670, in violation of Sections 5 (a), 5 (d), and 5 (e) of the Act. The third complaint, filed on or about February 9, 1984, at Docket No. E-27659, alleged that Respondent interfered with Complainant's receipt of Unemployment Compensation benefits in retaliation for filing both of the previous complaints, in violation of Sections 5 (a), 5 (d), and 5 (e) of the Act; it was also alleged that Respondent refused to respond to a written reference inquiry from a potential employer, also in retaliation for the previous filings.

Commission staff conducted an investigation into the situation and found probable cause to credit the allegations of all three complaints. The Commission and the parties then attempted to eliminate the practices complained of through conference, conciliation and persuasion. When these efforts were unsuccessful the cases were approved for public hearing. A hearing on the consolidated cases was held in Pittsburgh, Pennsylvania, on August 29, and 30, 1985, before Hearing Examiner Edith E. Cox.

Consumers Motor Mart is a weekly magazine distributed free to the public in which dealers advertise automobiles that they have for sale. Advertising space is also sold to parts dealers and other automobile-related concerns. Ms. Parr was employed by CMM as a salesperson from 1981 until her employment ended in June of 1983. She visited automobile dealers and other concerns each week to sell them space in the magazine. If a dealer bought space she would take a picture of the car being sold, write the copy, and take these back to the magazine's office for further processing. Copies of the magazine would be distributed to the dealers the next week. She earned a base salary and a commission on sales.

CMM has at all times relevant to this case been owned and operated by Rocco Ferrone and his wife, Teresa Ferrone. In March of 1983, in addition to Ms. Parr, the magazine employed another salesperson, Christine Guthrie, Carla Pantone as sales manager, Estelle Peacock as layout person, Lois Watkins as secretary, and a part-time type setter and delivery people. Carla Pantone is the Ferrones' daughter.

The parties agree that Ms. Parr's employment with CMM was, initially, satisfactory to both her and the Ferrones. They also agree that this was no longer the case by the Spring of 1983. Ms. Parr describes a course of harassment, racial in origin, culminating in a retaliatory discharge in June of 1983. The Ferrones depict Ms. Parr as an increasingly disgruntled employee who was unable or unwilling to respond to their need for increased sales, and suggest that she devoted much of her effort to selling real estate, to the detriment of her work for CMM.

The respective burdens of proof of the parties in cases brought

under the Act are well settled. Complainant bears the initial burden of making out a prima facie case. Should she do so, Respondents must rebut the inference of discrimination thus created by setting forth through the introduction of admissible evidence the legitimate, non-discriminatory reason(s) for their conduct. Complainant may then still prevail by proving that the proffered reasons were pretextual. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973); General Electric Corp. v. Pennsylvania Human Relations Commission, 365 A.2d 649 (1976).

The prima facie case is based on evidence introduced by the Complainant. Should a Respondent remain silent in the face of that evidence, judgment must be entered for the Complainant. Where evidence of a Respondent's reason for its action is received, the Complainant's burden of establishing a prima facie case merges with her ultimate burden of persuading the trier of fact that there was intentional discrimination. Burdine, supra. In that situation, where a Respondent has done all that would have been required of it had the Complainant properly made out a prima facie case, it is no longer relevant whether the Complainant did so; the trier of fact should then decide the ultimate question of whether or not discrimination occurred. United States Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983)

Much of the testimony in this case was flatly contradictory; resolution of the case requires numerous determinations as to the credibility of various witnesses. Questions of credibility, and of the weight to be given to evidence, are for the trier of fact. Harmony Volunteer Fire Co. v. Pennsylvania Human Relations Commission, 459 A.2d 439 (1983).

Ms. Parr's first complaint, alleging a violation of Section 5 (a) of

the Act, claimed several acts of harassment by Respondent beginning in April of 1983. It was claimed that, because of Ms. Parr's race, black, Respondents took away her gas allowance, reduced her sales territory (causing a substantial reduction in her income), and committed other acts designed to force her resignation or justify her dismissal.

Section 5 (a) of the Act provides in relevant part:

It shall be an unlawful discriminatory practice. . .
for any employer because of the race. . . of any individual. . .
to otherwise discriminate against such individual with
respect to compensation, hire, tenure, terms, conditions
or privileges of employment. . .

43 P.S. §955 (a). Unquestionably this section prohibits harassment or ill treatment by an employer because of an employee's race.

In setting out the prima facie case elements of a Title VII case alleging refusal to hire, the United States Supreme Court in McDonnell-Douglas v. Green, supra, noted that differing factual situations would call for variation in the elements. 411 U.S. at 802, n.13. Pennsylvania courts have also recognized the need for flexibility. Reed v. Miller Printing Equipment Division, 75 Pa. Commonwealth 360, 462 A.2d 292 (1983). In this case Complainant has made out a prima facie case by proving that:

1. She belongs to a protected class;
2. She was performing duties which she was qualified to perform;
3. She was subjected to adverse employment consequences; and
4. Persons not of her protected class but otherwise similarly situated were not subject to the adverse consequences.

Ms. Parr is black and is protected by the Act from discrimination based on her race. The parties as noted agree that her performance was satisfactory at least up to the beginning of the events giving rise to this

case, which is sufficient to establish the second element above. And it is not disputed that Respondent took a number of actions including a series of written reprimands and reduction of her sales territory which with one minor exception were not taken against the only other CMM salesperson at that time, a white woman named Christine Guthrie. It is therefore necessary to consider Respondent's explanation of events.

Respondent offers two sorts of explanation. It specifically defends each of the individual reprimands for matters such as Ms. Parr's failure on a few occasions to turn in route sheets detailing her daily travels. And it generally asserts that Ms. Parr's performance was becoming inadequate in the Spring of 1983 at a time when increased competition was making it necessary for CMM to expand sales. It claims that each action it took was justified by business necessity.

Business necessity is of course a legitimate, nondiscriminatory reason for an employment action. In this case, for the reasons which follow, I find that the business necessity defense proffered by Respondent is pretextual, and that Respondent's actions toward Ms. Parr during the Spring of 1983 were racially motivated.

Complainant does not deny that CMM was financially stressed during the first half of 1983. However, the Ferrones' attempts to connect their treatment of Ms. Parr with that financial distress are not supported by the record. Mr. Ferrone, testifying to CMM's need in early 1983 for increased sales, indicated that it was impossible for their current sales staff to adequately cover the territory, and that he had determined at that time to increase sales by bringing in more sales personnel. He testified that it took

five to seven weeks for a new salesperson to become productive. Yet neither he nor his wife, who hired Jennifer Watkins, could adequately explain why the only person they hired at that point was an inexperienced student who Ms. Ferrone knew planned to return to college that Fall, or why they took territory away from the experienced Ms. Parr to give to Ms. Watkins. No attempts to hire experienced salespeople during this period were described.

Further, there is credible evidence in the record establishing that Ms. Ferrone had determined by as early as March of 1983 that she intended to fire Ms. Parr. Lois Watkins, at that time the secretary at CMM, testified credibly that she called the Bureau of Employment Security in that month at Ms. Ferrone's direction for information about how to protect herself against a claim for Unemployment Compensation benefits if Ms. Parr were fired. Ms. Watkins testified to hearing the ensuing conversation, during which Ms. Ferrone was told to "document everything". The written reprimands to Ms. Parr began shortly afterwards.

Ms. Ferrone did not deny that this conversation took place. She testified that she contacted the Bureau of Employment Security in order to learn how to protect herself against an employee who wanted to be laid off. This explanation is not credible: Ms. Ferrone did not suggest that Ms. Parr could in some fashion force her own lay-off. The obvious defense against an employee who wishes to be laid off is declining to do so.

Ms. Watkins also testified credibly to hearing conversations between Ms. Ferrone and her daughter, Carla Pantone, to the effect that Ms. Parr was not having success with dealers in Monroeville because she was black. Notably, part of Ms. Ferrone's explanation for assigning Monroeville to Ms.

Watkins was that Ms. Watkins ". . .made a very nice appearance." (N.T. 206) Apparently the Ferrones expected the appearance of Ms. Watkins to overcome her lack of experience.

Most significant, the record reveals differences in the treatment given to Ms. Parr and to the other salesperson working in the Spring of 1983, Ms. Guthrie. Ms. Guthrie is white.

Mr. Ferrone, in testifying about the magazine's financial predicament during the Spring of 1983, recounted a conversation with Carla Pantone during which she told him that "(t)hey're not working. They're not giving their fullest attention." (N.T. 127) "They" quite clearly referred to Ms. Parr and Ms. Guthrie. Yet all subsequent actions taken, with the minor exception of one reprimand of Ms. Guthrie for failing to turn in route sheets, were against Ms. Parr. Two points are especially critical. First, Ms. Guthrie testified credibly that she was never told that her sales territory was to be reduced; Mr. Ferrone's testimony that she was told this, as part of a "new restructuring" (N.T. 135) of which everyone was aware, was not credible. Second, Ms. Guthrie testified credibly that her base salary was never reduced, even though her sales dropped below \$1,000 on three occasions. Ms. Parr's pay however was reduced when her sales were less than \$1,000.

I therefore conclude that Respondent's treatment of Complainant during the Spring of 1983, including the reduction of her sales territory, was based not on business necessity but on her race. While the Ferrones' original concerns may well have been financial in origin, their resulting actions selectively focused on Ms. Parr, for no legitimate reason.

Ms. Parr's second complaint, at Docket No. E-26387, alleged that she was terminated on June 29, 1983, in retaliation for filing her first complaint, in violation of Sections 5 (a), 5 (d), and 5 (e) of the Act. Of these sections only 5 (d) is applicable; it provides:

It shall be an unlawful discriminatory practice. . . for any employer, employment agency, or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this Act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation proceeding or hearing under this Act.

43 P.S. §955 (d).

As already discussed, both state and federal law recognize the need to tailor the elements of a prima facie case to the circumstances of the particular factual situation. Here Complainant has made out a prima facie case of retaliation by proving that:

1. She engaged in protected activity;
2. Subsequent to her protected activity she was subjected to an adverse employment consequence; and
3. There was a causal connection between the protected activity and the adverse employment consequence.

Wrighten v. Metropolitan Hospitals, Inc., 726 F.2d 1346 (9th Cir. 1984); McMillan v. Rust College, Inc., 710 F.2d 1112 (5th Cir. 1983). Essential to establishing a causal connection between the protected activity and the adverse employment consequence is proof that the employer was aware of the activity before taking the adverse action. Cohen v. Fred Meyer, Inc., 686 F.2d 793 (9th Cir. 1982).

The parties do not dispute that Ms. Parr filed a complaint with the Commission and that the Ferrones received it prior to the end of her employment.

They do dispute both the nature of and the reasons for that termination of employment. For reasons to be explained below, I credit Ms. Parr's testimony that she was discharged by Ms. Ferrone during a conversation which included a direct statement to the effect that the Ferrones did not wish to continue her employment because she had filed the charge. This determination is sufficient to establish Complainant's prima facie case, making it necessary to consider Respondent's explanation of events.

Respondent as noted may rebut the inference of discrimination created by Complainant's prima facie case by introducing admissible evidence of a legitimate, nondiscriminatory reason for the challenged employment action. For the following reasons, I find that this burden has not been met.

First, Respondent is unable to accurately characterize the nature of the end of Ms. Parr's employment. Asked directly whether she had fired Ms. Parr, Ms. Ferrone equivocated. She acknowledged making statements in separate Unemployment Compensation proceedings arising out of these same events to the effect that Ms. Parr had voluntarily resigned, and, on a different occasion, that Ms. Parr had been fired for poor performance.

Nor did she take advantage of the opportunity afforded by these proceedings to clarify her position. Carla Pantone, the Ferrones' daughter, similarly equivocated about the nature of the end of Ms. Parr's employment. Asked if she knew why Ms. Parr was fired, Ms. Pantone denied that she had been fired, then admitted that she had been; she indicated that Ms. Parr had been unhappy at CMM, and then almost immediately admitted (when asked if the discharge had to do with a fear that Ms. Parr would discuss the case with dealers) that "(w)hen you are in sales, you have a fear of those kinds of things; that's our bread and butter." (N.T. 160)

It is impossible to find that evidence of a legitimate reason for an event has been produced by a party which has such difficulty in deciding what it believes the event to have been.

Although unwilling to unequivocally declare that Ms. Parr was fired, Respondent nevertheless strongly suggests that her performance was inadequate, apparently to demonstrate that she deserved to be fired, whether or not she actually was. It was claimed that she refused to purchase a necessary camera, and that she failed to submit route sheets detailing her daily travels. It was suggested that she was devoting time to selling real estate, to the detriment of her work for CMM. It was hinted that her sales had dropped. I find that none of this had anything to do with the end of Ms. Parr's employment.

It is, initially, noteworthy that Respondent seemingly attempts to connect these claimed deficiencies with a termination that it does not acknowledge ever taking place. Also, while hinting that Ms. Parr's sales had become in some way inadequate, Respondent fails to point out any significant decline in her sales figures. It does not dispute that she won a CMM sales contest in April of 1983. And review of 1982-83 sales figures, admitted to the record as Complainant's Exhibit 6, does not demonstrate any meaningful decline in Ms. Parr's sales during the latter part of her employment at CMM -- at least not until a significant portion of her sales territory was assigned to a different salesperson.

Most significant of all however is a remark admittedly made by Ms. Ferrone in connection with this reassignment of territory and the events which followed. The parties agree that a portion of Ms. Parr's territory was

assigned to Jennifer Watkins in May of 1983, and that Ms. Watkins covered the territory for several weeks until she became unable to do so because of an automobile accident. Ms. Parr then approached Ms. Ferrone and asked to have the territories returned to her. Ms. Ferrone declined to do this. Asked by Ms. Parr for a reason, Ms. Ferrone's own testimony was that she responded: "I am not giving them back to you. . . Joyce, I want you to tell me how can you go out there and represent me feeling the way you do, how can you do that?" (N.T. 197) I conclude that this remark, referring to the first Commission complaint, is a direct statement of retaliatory animus, and that Ms. Ferrone's attempts to explain it as an expression of concern about Ms. Parr's sales ability were pretextual. I further conclude that, as Ms. Parr testified, Ms. Ferrone discharged her during that conversation, and told her that she was discharged because she had filed a complaint with the Commission, in spite of her assurances to Ms. Ferrone that she enjoyed her job and wanted things to work out.

I also find that the suggestion by the Ferrones that Ms. Parr was selling real estate to the detriment of her work for CMM, is pretextual. Mr. Ferrone testified to being told in April of 1983 by a dealer in Ms. Parr's territory that she was engaged in selling real estate, and to being convinced of this when he saw a real estate listing book in her car. Yet the Ferrones admittedly never discussed this issue with Ms. Parr. Ms. Ferrone claimed that she wished to confront Ms. Parr with the matter on the day after their conversation about reassigning sales territory, and intended to contact the dealer who had made the accusation in the interim. She gave no reason for waiting two months to obtain particulars from the dealer. Nor did she explain why, in her last telephone conversation with Ms. Parr, she instructed Ms. Parr

to bring in all of her sales records, files, and presentation booklet. Clearly Ms. Ferrone's intent was not to discuss Ms. Parr's real estate activities, but to discharge her.

Further, Ms. Parr's uncontradicted testimony was that her earnings from selling real estate for all of 1983 were \$722.50, substantially less than the \$5,566.25 she earned in that way in 1982, a year during which the Ferrones had no difficulty with her performance. She testified also without contradiction that she listed only five properties during 1982 and the first half of 1983.

I therefore conclude that Ms. Parr was discharged because she had filed a complaint with the Commission, in violation of Section 5 (d) of the Act.

Finally, Ms. Parr's third complaint alleged retaliatory interference with receipt of Unemployment Compensation benefits and refusal to respond to an employment reference inquiry, in violation of Sections 5 (a), 5 (d), and 5 (e) of the Act. As no evidence was introduced relevant to the alleged refusal to respond to a reference inquiry, only the claim of retaliatory interference will be considered.

As with her first claim of retaliation, Complainant to establish a prima facie case must prove:

1. That she engaged in protected activity;
2. That she subsequently suffered an adverse employment consequence; and
3. There was a causal connection between the protected activity and the adverse consequence.

Wrighten v. Metropolitan Hospitals, Inc., supra; McMillan v. Rust College, Inc., supra.

Assuming that a cause of action exists under the Act for retaliatory interference with unemployment benefits, a question which is not free from doubt, in this case a prima facie case has not been established. Complainant did engage in the protected activity of complaining to the Commission. She testified that she received Unemployment Compensation benefits after her discharge until December of 1983, when she was told by an unidentified person that benefits would be cut off because of Ms. Ferrone's assertion that she had asked to be laid off. Ms. Ferrone testified that she did resist Ms. Parr's claim for Unemployment Compensation benefits at one or more proceedings; as already discussed, she admitted to taking more than one position in these proceedings, always however opposing Ms. Parr's claim. The record also establishes that, at the time of this hearing, one or more Unemployment Compensation claims were still pending or under appeal. No evidence was introduced as to amounts in benefits either received prior to or lost after December of 1983. This evidence, essentially all that was introduced relevant to the claim of retaliatory interference, fails to establish a causal connection between Ms. Parr's protected activity and the cessation of her benefits. All it establishes is that Ms. Parr's benefits were cut off at a certain point, apparently because of the Ferrones' opposition. While this did take place after the initial Commission complaint was filed, something more than a temporal relationship must be shown before a causal connection can be inferred. Ms. Parr's third complaint must therefore be dismissed.

Having concluded that Ms. Parr was harassed because of her race and discharged from her employment at CMM because she filed a complaint with the

Commission, in violation of the Act, it is necessary to consider appropriate relief. Following such a finding of discrimination, the Commission is empowered by Section 9 of the Act to award such relief, including back pay and reinstatement, as will effectuate the purposes of the Act. Interest of six percent per annum on back pay awards may also be ordered. Goetz v. Norristown Area School District, 16 Pa. Commonwealth 389, 328 A.2d 579 (1974).

Complainant here requests back pay, which is necessary to return her to the position in which she would have been absent Respondent's discriminatory conduct. Uncontradicted testimony introduced on behalf of Complainant established that her average weekly salary between November 3, 1981, and May 13, 1983, (the last date before her income was reduced because of reassignment of part of her territory) was \$287.84. This amount represents a reasonable assessment of Complainant's lost wages, exact measurement of which is not possible because of the weekly variation in the sales upon which her wages were based. She is therefore entitled to back pay at the rate of \$287.84 per week for the period between her discharge and the date of the final order in this case, less amounts actually earned by her during that period, plus interest. A specific calculation is set out in the final order which follows.

At hearing, Complainant expressed reservations about reinstatement but indicated that she would be interested in returning to CMM if she prevailed. As the purpose of relief is to make the Complainant whole, reinstatement is appropriate after a finding of discriminatory discharge. Respondents are therefore directed to offer Ms. Parr a position as salesperson with a territory equivalent to that which she held in April of 1983. Respondents are further to pay Ms. Parr front pay at the rate of \$287.84

weekly beginning on the date thirty days after the effective date of this order until such time as a bona fide offer of reemployment is made by them and either accepted or rejected by her.

Finally, Ms. Parr requests back pay for the wages she lost as a result of the reassignment of part of her sales territory to Ms. Watkins in May of 1983. Having found that that reassignment was part of a discriminatory course of conduct by Respondent, I further find that Ms. Parr is entitled to the wages she lost because of it.

In addition, Ms. Parr in her brief requests an award of attorney's fees. She cites no authority allowing such an award, however, and being aware of none, I must deny her request.

A final order follows.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOYCE M. PARR,	:	
COMPLAINANT	:	
	:	
v.	:	DOCKET NOS. E-25670-D
	:	E-26387-D
CONSUMERS MOTOR MART,	:	E-27659-D
RESPONDENT	:	

RECOMMENDATION OF HEARING EXAMINER

Upon consideration of the entire record in this case, the Hearing Examiner concludes that Respondent terminated Complainant's employment in retaliation for the complaint of harassment which she filed with the Commission, in violation of Section 5 (d) of the Human Relations Act, and therefore recommends that the foregoing Findings of Fact, Conclusions of Law, and Opinion be adopted by the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Act.

Edith E. Cox

Edith E. Cox
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOYCE M. PARR,
COMPLAINANT
v.
CONSUMERS MOTOR MART,
RESPONDENT

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DOCKET NOS. E-25670-D
E-26387-D
E-27659-D

FINAL ORDER

AND NOW, this 2nd day of July, 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 Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, and therefore

O R D E R S :

1. Respondent shall cease and desist from discriminating on the basis of race, and against persons who participate in any way in the proceedings of this Commission;
2. Respondent shall pay to Complainant, within thirty (30) days of the effective date of this order, a lump sum of \$29,186.00, less necessary deductions, plus interest of six percent (6%) per annum beginning with the date of her discharge, calculated as follows:
 - a. Wages lost between July 1, 1983, and December 31, 1983: 26 weeks x \$287.84 per week = \$7,483.84, less \$722.50 in actual earnings, or \$6,761.34.
 - b. Wages lost in 1984: 52 weeks x \$287.84 per week = \$14,967.68, less \$5,871.88 in actual earnings, or \$9,095.80.

- c. Wages lost in 1985: 52 weeks x \$287.84 per week = \$14,967.68, less \$8,375.50 in actual earnings, or \$6,592.18.
- d. Wages lost between January 1, 1986, and May 31, 1986: 21 weeks x \$287.84 per week = \$6,044.64.
- e. Wages lost between May 13, 1983, and June 29, 1983, as a result of reassignment of sales territory: \$692.04, calculated by taking 10% of sales shown on Exhibit 6 for the relevant weeks and adding \$100 for those weeks with sales over \$1,000 and \$50 for those weeks with sales below \$1,000, and subtracting that sum from \$287.84 x 6.

3. The amounts set out in 2 (c) and 2 (d) above shall be reduced by amounts actually earned by Ms. Parr between August 30, 1985, and May 31, 1986, as set forth in an affidavit provided by Ms. Parr to Respondent's counsel within fifteen (15) days of the effective date of this order.

4. Respondent shall offer to Complainant a position as salesperson with equivalent sales territory to that she had in April of 1983.

5. Respondents shall pay Complainant front pay in the amount of \$287.84 weekly, beginning on the date thirty (30) days after the effective date of this order and ending on such date as bona fide offer of reemployment is made by them and either accepted or rejected by her; these payments shall be reduced by amounts actually being earned by Ms. Parr during this period, as demonstrated by affidavits to be supplied by her to Respondent's counsel at monthly intervals.

6. Respondents shall not retaliate against Complainant in any way.

7. Respondents shall report on the manner of their compliance with the terms of this order within thirty (30) days of the effective date of this order, by letter addressed to the Director of Compliance, Pennsylvania Human Relations Commission, 101 South Second Street, Harrisburg, PA 17101.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 

Joseph X. Yaffe
Chairperson

ATTEST:

John P. Wisniewski
Assistant Secretary

