

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

DOMENICO ALOISIO,  
Complainant

v.

BOARD OF SUPERVISORS,  
OLD LYCOMING TOWNSHIP,  
PATRICIA A. GROSS, JOHN W. FRITZ,  
TRUMAN H. HARTLEY, RALPH A. WEIGLE,  
JOHN E. PEPPERMAN, RONALD L. ROCK,  
AND WILLIAM W. WILKERSON,  
ZONING HEARING BOARD,  
Respondents

DOCKET NOS. H-4675 & P-3027

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT

1. The Complainant is Domenico Aloisio, who resides at R.D. #5, Box 3130, Williamsport, Pennsylvania. (NT 11.)

2. The Respondents are the Supervisors of Old Lycoming Township located at 1951 Green Avenue, Williamsport, Pennsylvania; and the Zoning Hearing Board located at 1951 Green Avenue, Williamsport, Pennsylvania. (NT 11.)

3. On or about December 12, 1988, Complainant timely filed a verified complaint against Respondents with the Pennsylvania Human Relations Commission. (NT 9.)

4. On or about November 30, 1990, Complainant filed an amended complaint against Respondents. (NT 9.)

5. Respondents timely answered both complaints. (NT 10.)

6. Following an investigation, probable cause findings were approved and Respondents were notified. (NT 10.)

7. Conciliation was scheduled for November 21, 1990, but was cancelled. (NT 10.)

8. All further attempts at conciliation failed. (NT 10.)

9. The case was approved for public hearing by the Executive Director and placed on the public hearing docket by the Commission. (NT 10.)

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\* The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

NT Notes of Testimony  
CE Complainant's Exhibit

10. On March 25, 1988, Complainant applied to Respondent Zoning Hearing Board by filing a zoning and building application and permit to place a mobile home on property next to rental property which was to be no longer used as living quarters. (CE 5.)

11. By letter dated May 4, 1988, Complainant was required to submit plans and obtain a permit from the Lycoming Sanitary Committee approving his sewage disposal system. (NT 37.)

12. Complainant's property contains one parcel of 17.40 acres and a second parcel containing 0.77 acres. (CE 3.)

13. The Sewage Facilities Act provides that no permit shall be required for the installation of an individual, on-lot sewage system if:

(a) the on-lot sewage system is for a residential structure occupied or intended to be occupied by not more than two families, including the property owner;

(b) it is on a contiguous tract of 10 or more acres; and

(c) the owner of the property is the record owner as of January 10, 1987, and the property owner completes the construction of the structure and the individual on-lot sewer system serving the structure by January 10, 1989. (CE 7.)

14. By letter dated March 29, 1988, the Township Zoning Officer stated, "the mobile home would be placed near an existing home which would no longer be used for living quarters." (CE 10.)

15. The same letter notified Complainant that the mobile home placement was a special exception, and that because there were two homes located on one parcel it would be a continuance of a non-conforming situation. (CE 10.)

16. A non-conforming use is defined by the zoning ordinance as, "A structure or land lawfully occupied by a use that does not conform to the regulations of the district in which it is situated. (CE 12.)

17. Complainant's request for a permit was denied on June 30, 1988. (CE 9.)

18. The Complainant indicated at the public hearing that he had no knowledge from actions or words that any of the Respondents were aware of his Italian ancestry. (NT 34.)

19. William Wilkerson, Zoning Officer for Old Lycoming Township, identified six persons for whom he approved actions that, based on his belief, are or could be of Italian ancestry. (NT 119-122.)

20. John Fritz, former supervisor of Old Lycoming Township, did not participate in any decision of the Zoning Hearing Board. (NT 46.)

21. None of the supervisors have any control over the Zoning Hearing Board or its decisions, including those involving the Complainant. (NT 46, 47.)

22. Mrs. Gross, supervisor, testified that she did not attend the Zoning Hearing Board meetings and was unaware of any decision involving the Complainant. (NT 130, 131.)

23. The other supervisor was Truman Hartley, who is now deceased. (NT 131.)

24. The Zoning Hearing Board did grant a special exception to an individual for hardship purposes due to old age. (NT 142.)

25. The Complainant did not seek a hardship variance. (NT 145.)

26. The Complainant did not appeal the ruling of the Zoning Hearing Board. (NT 123.)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and subject matter of the complaint.

2. The PHRC and all parties have met all procedural prerequisites for a public hearing.

3. The Complainant is a "person" as defined by the Pennsylvania Human Relations Act (hereinafter "PHRA").

4. Respondent is a "person" as defined by the PHRA.

5. The Complainant has established a prima facie case by showing:

A) he is a member of a protected class;

B) the Complainant applied for and was qualified for a permit from the Respondents to place a trailer on his property;

C) he was denied the permit; and

D) Respondents continued to approve permits for others not in the Complainant's protected class.

6. The Respondents produced evidence of legitimate, nondiscriminatory reasons for their refusal to approve the permits.

7. The Complainant has not met his ultimate burden of persuasion by showing that the Respondents' proffered reasons were pretextual.

## OPINION

This matter arises out of a complaint filed by Domenico Aloisio (hereinafter "Complainant") against the Supervisors of Old Lycoming Township and the Zoning Hearing Board (hereinafter "Respondents"), Docket Nos. H-4675 and P-3027, with the Pennsylvania Human Relations Commission (hereinafter "the Commission" or "PHRC").

On December 18, 1988, a complaint was filed against the Respondents alleging that on or about June 30, 1988, the Respondents violated Sections 5(h)(1),(3) and (i)(1) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744 as amended, 43 P.S. §951 et seq. (hereinafter "PHRA"), in that the Respondents discriminated against Complainant by denying him a permit and discriminating in the provision of services in connection with zoning, based upon his ancestry, Italian, and his Italian surname. On November 30, 1990, the Complainant amended his complaint by naming the individual members of the Board.

PHRC staff conducted an investigation of the complaint and found probable cause to credit the allegations raised in the complaint. After the finding of probable cause, PHRC staff endeavored to resolve the matter between Complainant and Respondents through conference, conciliation and persuasion, but such efforts proved unsuccessful. Thereafter, PHRC staff notified the parties that the matter was approved for public hearing. The matter was placed on the public hearing docket at the Commission's September 1991 meeting.

A public hearing in this matter was conducted on April 28, 1993, commencing at 9:05 a.m. Phillip A. Ayers, Esquire, Permanent Hearing

Examiner, presided over the public hearing. The Commission's interest on behalf of the complaint was represented by Nancy L. Gippert, Assistant Chief Counsel for the Commission. The Respondents were represented by Scott A. Williams, Esquire. Counsel for the Respondents and Commission Counsel filed post-hearing briefs in support of their respective positions.

At the public hearing, the focus was appropriately placed on a disparate treatment analysis of the allegations made and the evidence received. The order and allocation of proof in a disparate treatment case was first defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and later clarified by the Pennsylvania Supreme Court in Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987), No. 32 W.D. Appeal Docket 1986. The Pennsylvania Supreme Court's guidance indicates that the Complainant must first establish a prima facie case of discrimination. If the Complainant establishes a prima facie case, the burden of production then shifts to the Respondent to "simply. . . produce evidence of a 'legitimate, non-discriminatory reason' for. . . [its action]." Id at 320. If the Respondent meets this production burden, in order to prevail the Complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the Complainant was the victim of intentional discrimination. Id at 318.

A complainant may succeed in this ultimate burden of persuasion either by direct persuasion that a discriminatory reason more likely motivated a respondent, or indirectly by showing that a respondent's proffered explanation is unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). In order to do so, a complainant need not necessarily offer evidence beyond that offered to

establish a prima facie case. Id at 255 n.10. The trier of fact may consider the same evidence that a complainant has introduced to establish a prima facie case in determining whether a respondent's explanation for the employment decision is pretextual. Diaz v. American Telephone & Telegraph, 752 F.2d 1356, 1358-59 (9th Cir. 1985).

In reviewing allegations of discrimination, the prima facie model must be adapted to the particular type of alleged discrimination. In the instant case, in order to make a prima facie showing, the Complainant must show;

- 1) he is a member of a protected class;
- 2) he applied for a permit from the Respondent to place a trailer on his property;
- 3) he was denied the permit; and
- 4) the Respondents continued to approve permits for others not in Complainant's protected class.

In regard to the first element, the PHRA specifically protects individuals from discrimination based on ancestry. The Complainant is Italian and has alleged that discrimination occurred because of his ancestry and Italian surname. The Complainant has satisfied the first element of the prima facie showing in that he is a member of a protected class.

In regard to the second and third elements of the prima facie showing, it is readily apparent that the Complainant has satisfied these elements. The Complainant did apply to the Respondents to place a mobile home on his property, and the Complainant was denied permission to do so.

Lastly, the Complainant did indicate that there were individuals who were not Italian who did receive permits.



As indicated before, once the Complainant has established a prima facie case, the burden of production then shifts to the Respondent to "simply . . . produce evidence of a legitimate, nondiscriminatory reason for its action." Allegheny Housing Rehabilitation Corp., supra. Essentially, this point is the crux of the matter before the Commission. The Respondent has articulated nondiscriminatory reasons for its action in denying a permit for the Complainant. The Respondent indicated two zoning provisions which prevented the approval of the Complainant's request as follows:

1) A provision of the zoning ordinance prohibiting the granting of a permit for mobile homes on a lot without the owner first obtaining special exception approval from the Zoning Hearing Board; and

2) A provision prohibiting the issuance of permits for a second dwelling residence on the same unsubdivided lot.

The application of these provisions has been challenged in this case, not the provisions themselves.

Since the Respondent has met its burden of producing evidence of a legitimate, nondiscriminatory reason for its action, the Complainant, in order to prevail, must show that the Respondent's proffered reasons for its action are pretextual, or unworthy of credence. Stated differently, the Complainant still has the ultimate burden of persuasion of proving discrimination.

Basically, the Complainant's argument is that the Zoning Hearing Board and the Supervisors discriminated against him by refusing to grant him a special exception. (In the Complainant's Amended Complaint there were allegations raised concerning the zoning hearings and certain actions during

said hearings. At the public hearing in this matter, there was no evidence presented on this issue.) In order to properly review this matter, there must be some understanding of the relationship between the Township Supervisors and the Zoning Hearing Board. The Supervisors' role is to appoint the members of the Zoning Hearing Board. The Zoning Hearing Board is a separate entity from the Township Supervisors; the Board makes its own decisions. The Respondents presented clear and convincing testimony that the Zoning Hearing Board is independent of the Supervisors. Supervisors who testified at the public hearing indicated that they had no knowledge of the Complainant's ancestry and did not know of a hearing pending before the Zoning Hearing Board. No evidence was presented by the Complainant to effectively dispute this position.

In regard to the Zoning Hearing Board, there was no evidence presented by the Complainant indicating that Zoning Hearing Board members in any way considered the Complainant's ancestry. The Complainant himself could not indicate that his ancestry was considered.

At the public hearing, there was a large amount of time spent on whether the Respondent should have known of the Complainant's ancestry because his last name ended in a vowel. There was also evidence presented that other individuals (whose names ended in vowels) were denied permits. However, the Respondents presented credible testimony as to why those applications were denied. The Complainant did not produce any evidence to dispute the Respondents' claim that the decision was made solely on the basis of the township zoning ordinance which required that no more than one dwelling be on any one building lot without subdivision. (There was evidence that the Zoning Hearing Board granted an elderly person temporary

approval of a mobile home. However, that special exception was approved only because of hardship. The Complainant did not present any evidence of hardship.) Also, the Complainant did not appeal the decision of the Zoning Hearing Board in denying his request for special exception. All appeals from a decision of the Zoning Hearing Board shall be taken within thirty days of notice of the determination.

Since the Complainant has failed to meet his ultimate burden of persuasion by showing that the Respondents' proffered reasons are pretextual, an appropriate Order follows:

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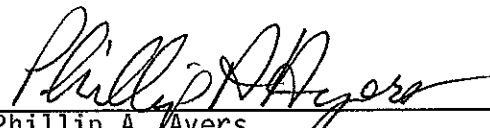
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RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned case, it is the Recommendation of the Permanent Hearing Examiner that the Complainant has not proved discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's Recommendation that the attached Findings of Fact, Conclusions of Law, Opinion, and Final Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, this Permanent Hearing Examiner recommends issuance of the attached Final Order.

By:

  
Phillip A. Ayers  
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 29th day of September, 1994, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Pennsylvania Human Relations Commission hereby approves and adopts said Findings of Fact, Conclusions of Law, Opinion, and Final Order and hereby

O R D E R S

that the instant complaint be dismissed.

By: Robert Johnson Smith  
Robert Johnson Smith, Chairperson

ATTEST:

Gregory J. Celia, Jr.  
Gregory J. Celia, Jr., Secretary