

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

SALLY ATKINSON, Complainant

v.

LINCOLN REALTY MANAGEMENT COMPANY, Respondent

DOCKET NO. H-4358

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. Sally Atkinson, (hereinafter either "Atkinson" or "Complainant"), is an adult individual who, since January 1986, has resided in Unit C-301, Audubon Court Apartments, (hereinafter "Audubon"), Audubon, Pa. (N.T. 29, II-5)
2. Lincoln Realty Management Company, (hereinafter either "Lincoln" or "Respondent"), manages Audubon. (N.T. II-232)
3. Audubon is a garden style apartment complex principally composed of 12 separate apartment buildings which in combination contain 175 rental units. (N.T. II-208, II-210, II-239)
4. Buildings A, B, and C at Audubon are within close proximity of one another, and form a courtyard with grassy areas between the buildings and facing a common parking area. (N.T. II-198.
5. Building C contains 14 rental units: 6 units on one side and 8 units on the other side with a firewall separating the two sides. (N.T. II-197)
6. On January 1986, Atkinson entered into a lease agreement with Lincoln for the rental of unit C-301 at Audubon. (N.T. 44; REX 1)

* To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
CEX Complainant's Exhibit
REX Respondent's Exhibit

7. The initial term of the lease was for 1 year beginning February 1, 1986, and ending January 31, 1987. (N.T. II-229-230, II-234; REX 1)
8. The lease contained an automatic renewal provision "unless otherwise terminated." (REX 1)
9. Unit C-301 is in building C at Audubon. (N.T. II-5, II-104, II-205, II-211, II-229-230)
10. In 1984, Atkinson became critically ill as a result of exposure to a "bug bomb" leaving her with an impaired immune system and acutely sensitive to a variety of chemicals. (N.T. 3D, II-120, II-129)
11. In June 1984 Atkinson was medically diagnosed with "Chemical Sensitivity. (N.T. 31; CEX 17) Atkinson also suffers from multiple sclerosis. (N.T. II-120)
12. By 1986, Atkinson was developing a greater awareness of aspects of her condition and her particular levels of tolerance. (N.T. 33)
13. As part of Atkinson's late 1985, early 1986 search for an apartment, Atkinson developed a series of questions designed to generally inform her whether a prospective apartment would be suitable to her needs. (N.T. 38)
14. When Atkinson called Audubon, the person with whom she spoke answered Atkinson's questions to her satisfaction. (N.T. 39)
15. Atkinson indicated to the Audubon representative that she was asking such questions because she was allergic. (N.T. 38)
16. Atkinson and her son Robert were shown apartment C-301 by Susan Gassner, during which meeting Atkinson specifically discussed her extreme sensitivity and informed Gassner that she couldn't have pesticides in her environment. (N.T. 40, II-6)
17. Gassner instructed Atkinson that elderly individuals lived in Building C and that they were clean and there were no pesticides being used there. (N.T. 41)
18. Gassner further informed Atkinson that her application might take a while longer given the uniqueness of the situation. (N.T. 41)
19. Atkinson was initially permitted to remain in the apartment for several hours to personally check her reactions, if any. Atkinson found the apartment tolerable. (N.T. 42,44)
20. Normally vacant units are painted prior to a new tenant's occupancy, however, Atkinson's request that unit C-301 not be painted was granted. (N.T. 44)
21. Although her lease began February 1, 1986, Atkinson was provided access as early as January 8, 1986 to clean the unit with her own tolerable cleaning products in preparation for her occupancy. (N.T. 44)
22. Atkinson had asked if she could slightly modify the apartment and make certain arrangements: i.e; (a) installation of water filters; (b) water bottle delivery; (c) use of oxygen; (d) installation of an exhaust fan in the kitchen. (N.T. 42, 43, 45)
23. Generally, Atkinson was instructed that everything was OK so long as the premises were restored to their original condition when she vacated. (N.T.43)
24. However, Lincoln mandated that if Atkinson was to install a kitchen exhaust fan, the work had to be done by Lincoln's electrician. (N.T. 45)

25. Atkinson obtained substantially lower estimates from other electricians and advised Lincoln of the price variance, but Lincoln still would permit installation of an exhaust by their electrician only. (N.T. 45, II-9-10, II-133-134)
26. Atkinson also installed two types of air filters in her apartment. (N.T. II-106; CEX 19b; REX 8)
27. Not long after Atkinson moved into Audubon, property Manager Gassner advised Atkinson that Gail Raisner was replacing her and that Atkinson should contact Raisner. (N.T. 11--128; CEX 61) Atkinson did call Raisner (N.T. 48)
28. Shortly thereafter on April 14, 1986, Lincoln's president changed from Bob Dobslaw to Norman Brodsky (hereinafter "Brodsky"). (N.T. II-229-230)
29. On April 18, 1986, Lincoln received a joint letter from Atkinson and her husband which reiterated the extent and background of Atkinson's condition and graciously requested "cooperation" with respect to any contemplated use of herbicides for lawn care and pesticides for extermination. (REX 8)
30. The April 18, 1986 letter simply requested, "(if possible) at least a two-week notice" of either pending exterminating in building C, carpet treatments in building C hallways, or application of chemicals for lawn care. (REX 8)
31. Should any such treatments be used, the April 18, 1986 letter also makes reference to the probable need to pre-move Atkinson's air filters and furnishings to avoid contamination and the possibility of Atkinson being compelled to leave depending on the severity of the exposure. (REX 8)
32. Further this letter extended an invitation to contact Atkinson for additional information and in effect simply suggests consideration of a natural method of lawn care with sources listed. (REX 8)
33. On the same day Lincoln received Atkinson's letter, Atkinson called and had a lengthy discussion with Dobslaw regarding her problem. During this call Atkinson also discussed a call she had received which indicated that Lincoln was contemplating the use of pesticides for grounds maintenance at Audubon. (N.T. 48, 49, II-230- 231)
34. In a subsequent letter dated April 26, 1986, Atkinson again generally advised Lincoln of her condition. (CEX 19b)
35. Atkinson's April 26, 1986 letter confirmed her past discussions with both Gassner and Raisner about her extreme sensitivities. (CEX 19b)
36. The April 26, 1986 letter also expressed Atkinson's belief that her apartment was her only safe harbor as both hotels and motels and the homes of friends and family members were considered unsafe because of repeated use of chemical extermination. (CEX 19b)
37. Atkinson's April 26, 1986, letter also spoke of a small but steady improvement in her health since residing at Audubon. (CEX 19b)
38. The letter also evokes strong images of Atkinson's extensive efforts researching non-toxic alternative methods of lawn care. (CEX 19b)
39. The April 26, 1986 letter generally compared chemical use with non-toxic organic lawn care and provided Lincoln with addresses and catalogue information from chemical alternative organic manufacturers. (CEX 19b)
40. The letter further requests to be provided with a written report regarding the methods of lawn care Lincoln's landscaper contemplated using. (CEX 19b)

41. Finally, the April 26, 1986 letter indicates that Atkinson had called several local landscapers and found a willingness to use organic non-toxic methods for lawn care. (CEX 19b)
42. In a letter dated May 6, 1986, Brodsky responded to Atkinson's April 16, 1986 request for consideration of an accommodation. (CEX 1a)
43. Brodsky's letter indicated he did contact the lawn maintenance firms recommended by Atkinson but neither of the firms had a non-petro chemical product available for poison ivy, poison sumac, and dandelion control. (CEX 1a)
44. Brodsky's letter went on to state that in deference to Atkinson's physical condition, no chemicals would be used for lawn care that season at Audubon. (CEX 1a)
45. Brodsky's letter then went on to inform Atkinson that her lease would not be renewed and that Atkinson was expected to vacate by January 31, 1987. (N.T. 65,67, II-235; CEX 1a)
46. In effect, Brodsky's May 6, 1986 letter informed Atkinson that Audubon cannot be expected to operate as a "Medically Sensitive Care Facility," and that Audubon was not equipped to handle Atkinson's condition. (CEX 1a)
47. Brodsky's letter also told Atkinson that it was unreasonable for her to expect Lincoln to eliminate from the entire complex all "generally" accepted maintenance and landscape procedures, including painting, carpet cleaning, and extermination procedures. Further, Brodsky's letter specifically rejected the precautionary measures and organic non-toxic methods for lawn care suggested by Atkinson. (CEX 1,a)
48. In another letter dated May 6, 1986, Raisner informed Atkinson that she was going to inspect Atkinson's apartment because someone brought to Raisner's attention that there was a constant vibrating/humming noise coming from C-301. (N.T. 71; CEX 2)
49. When Raisner inspected Atkinson's apartment it was evident that the unit's air conditioner made more noise than Atkinson's air filters. (N.T. 71) I'
50. Since 1986, Audubon had experienced a carpenter bee problem. (N.T. 53, 266; CEX 12)
51. In the summer of 1986, Lincoln informed Atkinson that they intended to treat for carpenter bees with a product perceived dangerous by Atkinson. (N .T .53)
52. Atkinson's extensive and costly efforts to educate herself about her condition and the effects of pesticides led her to William Currie, (hereinafter "Currie") a pest management specialist with the federal Environmental Protection Agency. (N.T. 53, 84, 162)
53. Currie and several local exterminators advised Atkinson of a variety of methodologies for the treatment of carpenter bees. (N.T. 53; CEX 19a)
54. In a letter dated May 20, 1986 to Brodsky, Atkinson generally discussed a variety of treatments and suggested what she perceived as a risk reduction course of action: direct injection of powder into colonies versus spraying followed by either painting or varnishing wood trim as bees are deterred from boring into wood which has been painted. (CEX 19a)
55. Additionally, Atkinson requested to be informed of the proposed procedures selected, and what product the selected exterminator would be using. (CEX 19a)
56. Finally, Atkinson's letter asked that her balcony area not be treated as she had not observed carpenter bees there. (CEX 19a)

57. In a letter dated July 11, 1986, Atkinson's then attorney, Thomas L. Gowen, wrote to Pest Controls indicating that he had been made aware by Brodsky that Pest Controls was scheduled to use ficam injections for carpenter bees and also conduct pesticide spraying in all laundry rooms at Audubon. (REX 7)
58. Gowen generally advised Pest Controls of Atkinson's condition and the heightened risk of exposure Atkinson faced. (REX 7)
59. Gowen's letter also shared with Pest Controls that boric acid, diatomaceous earth, and silicate dust are the best and least toxic methods for treating carpenter bees. (REX 7)
60. Finally, Gowen's letter requested Pest Controls to exercise the utmost caution in devising any plan for spraying at Audubon. (REX 7)
61. Gowen's letter was carbon copied to Brodsky. (REX 7)
62. At some point in the summer of 1986, Raisner called Atkinson to ask Atkinson which method would be the least toxic, spraying or injection, and also told Atkinson that exterminators were on site assessing the problem. (N.T. 55)
63. Desiring to help, Atkinson left her apartment on crutches and started toward Lincoln's on-site office. (N.T. 55, 56)
64. On the way to the office Atkinson noted that the exterminators were treating not just assessing. (N.T. 56)
65. When Atkinson arrived in the office, the exterminator's son came into the office. (N.T. 59-61)
66. Atkinson asked the young man to stay away from her as she feared chemical vapors emanating from his clothing might adversely affect her. (N.T.61)
67. In response, the young man verbally then taunted Atkinson and waived a spray can in her face while he and Raisner laughed. (N.T. 61-62; CEX 19d)
68. As complainant tried to leave, she began having trouble breathing and upon returning to her apartment she had an adverse reaction. (N.T. 62-64)
69. Although Atkinson did not ask that the treatment be stopped, the exterminator did stop and would not continue unless Atkinson executed a release of liability. (N.T. 64, 79)
70. Learning that Audubon was doing excavation work in connection with the installation of a new drainage system, Atkinson took the opportunity to write Brodsky a letter dated October 16, 1986, providing information regarding perceived safer lawn maintenance products and notifying Brodsky that two samples were to be forwarded for consideration. (CEX 19f)
71. Brodsky's October 31, 1986, response to Atkinson's October 16, 1986 letter informed Atkinson that Brodsky had written sources of products mentioned but that he was "not obligated to use these products." (CEX 1b).
72. Brodsky's October 31, 1986 letter reviewed his decision not to use chemical fertilizers the previous season and stated he had not been able to use extermination services either, however, he fully intended to use chemical fertilizers beginning early spring 1987 and begin pest extermination February 1, 1987, the day after Atkinson's lease expired. (CEX 1b)
73. Brodsky had previously offered to temporarily transfer Atkinson from Audubon to another complex but Atkinson declined the offer. (N.T. II-235; CEX 1b)
74. In effect, Brodsky's October 31, 1986 letter states that the condition of 174 other residents could not be adversely affected because of Atkinson's condition. (CEX 1b)

75. In his October 31, 1986 letter, Brodsky stated to Atkinson: "Obviously multi-family living is not medically proper or safe for you." (CEX 1b)
76. Again in a letter dated January 29, 1987, Atkinson specifically outlined a proposed accommodation of her condition regarding termite treatment, carpenter bee and crawling insect treatment; and lawn and shrub treatments. (CEX 21)
77. Again, Atkinson's January 29, 1987 letter offered a list of suppliers who were prepared to recommend local services that would perform the suggested treatments. (CEX 21)
78. In February 1987 Lincoln did not renew Atkinson's lease, instead, Lincoln tried, unsuccessfully, to evict Atkinson. (N.T. 68; CEX 3,4,7)
79. By letter dated May 20, 1987, Atkinson again generally advised Brodsky of the conditions surrounding her "desperate plight" and again passed along to Brodsky information regarding less toxic extermination alternatives and examples of others who had successfully implemented such programs. (N.T. 97, 98; CEX 72)
80. In a letter from Lincoln's attorney dated June 8, 1987, Atkinson, through her then attorney, Kenneth Mumma, was given advance notice and the scheduled dates of Lincoln's intentions to exterminate 20 apartments scattered throughout Audubon, and all Audubon laundry rooms. (N.T. 72; CEX 5)
81. In a June 12, 1987 letter, Lincoln's attorney again wrote Atkinson's then attorney and in effect asserted the position that the only obligation owed to Atkinson was to provide advance notice to her of Lincoln's expected pest control measures. (CEX 6)
82. Atkinson pursued and at a June 22, 1987 hearing successfully obtained an injunction from the Montgomery County Court of Common Pleas, enjoining Lincoln "from using any pest control substance, device, or methodology not approved by [Atkinson], anywhere in North side of building Unit C, and to provide 48 hours notice of any spray or "bomb" application to any other building or grounds within 100 feet of building Unit C, until [Atkinson] no longer occupies her unit or 45 days from this date whichever occurs first." (CEX 60)
83. The date of the injunction was June 22, 1987. (CEX 60)
84. By letter dated August 9, 1987, Lincoln communicated to the judge who has issued the June 22, 1987 injunction that Lincoln agreed to voluntarily extend the effect of the injunction until September 20, 1987. (CEX 8)
85. During the Public Hearing, the parties, in effect, orally stipulated that Audubon subsequently agreed to voluntarily extend the terms of the June 22, 1987 injunction until all litigation relating to the injunction was resolved. (N.T. II-80-84)
86. On some matters of safety, Lincoln had been known to send memos to all Audubon residents regarding issues of concern. (N.T. 107, 108)
87. In September, 1987, when Atkinson received physically threatening correspondence in the mail, signed "a tenant", she notified Lincoln, however, Lincoln took no action to either address or deter such actions. (N.T. 108)
88. In effect, Lincoln managers communicated to Audubon residents that the lack of certain services was attributable to Atkinson. (N.T. II-146, II-159, II-175-176, II-180, II-187-188)
89. Pest exterminators have a wide variety of pesticides from which to choose when deciding on a treatment program for a given pest problem. (N.T. 191-193,201,216,238)

90. Currie's testimony specifically outlined a universally accepted approach to pest management called "Integrated Pest Management." ("IPM") (N.T. 168-171).
91. IPM is a system which uses multiple methods, following a site specific designed decision making process, emphasizing risk reduction. (CEX 28)
92. IPM uses an eight step approach:
 - a. define the roles of persons involved in the pest management system and assure understanding and communication between them;
 - b. determine objectives by site specific areas;
 - c. set action thresholds;
 - d. monitor the site environment on periodic consistent basis to determine effectiveness of action;
 - e. take action which makes site environment incompatible with needs of pest;
 - f. take appropriate pesticidal action, utilizing the least toxic, most effective and efficient application techniques that provides longest exposure to pest in pests most vulnerable stage, and which exposes people, property and environment to the least possible hazard;
 - g. evaluate the results of action by periodic monitoring; and
 - h. keep records of objectives, monitoring methods, action taken, and results.
93. In June 1988, Currie directly provided Lincoln with general written information regarding the IPM system. (CEX 55)
94. Currie also offered Lincoln his personal assistance to develop and implement a pest management strategy at Audubon. (N.T. 190; CEX 55)
95. In effect, Currie testified that much, and perhaps all of Audubon's interior pest problems could be resolved by IPM interior approach using boric acid based pesticide applications by either crack and crevice treatment with boric acid dust or boric acid based baits. (N.T. 181-185)
96. While boric acid dust may take longer to apply, it lasts longer and has a much lower toxicity hereby reducing exposure and risk. (N.T. 181-185, 188)
97. Currie's evaluation of the lawn at Audubon was that the lawn was relatively nice and could be even better if the mowing height were extended. (N.T. 186)
98. It is better to have professional pest management in an apartment complex because otherwise, individual tenants tend to resort to their own various treatment methods. (N.T. 204,244)
99. Joseph Kahn, ("Kahn") the owner of Pest Controls testified for Lincoln. (N.T. 226-245)
100. In Kahn's opinion, boric acid is not a totally effective treatment as there are occasions when a stronger pesticide is needed: i.e., when a nest of yellow jackets breaks through a wall into a living unit. (N.T. 230)
101. Kahn agreed that "anyone worth their salt would specifically consider the IPM method." (N.T. 235)
102. It was Kahn's understanding that Atkinson would merely like to restrict the use of pesticides as much as possible. (N.T. 238)
103. Kahn testified that when he is advised there are people around with certain sensitivities, he stays away from using certain pesticides. (N.T.. 249)
104. Kahn recognized the choice of pesticides is broad and that there is some flexibility regarding usage depending on the pest. (N.T. 254,255)

105. Kahn also indicated that when there is more than 1 building in a complex, it would not be difficult to tailor the pesticidal needs of each building; one simply needs a plan of action. (N.T. 257)
106. Kahn's testimony also indicated he recognized boric acid as an excellent material in his arsenal against household pests. (N.T. 261)
107. Between 1986 and the present, Lincoln took little action throughout Audubon in regards to pest problems. (N.T. II-208, II-235)
108. Doris Marburger, Lincoln's on site manager at Audubon for the past 3 years, in effect, testified that there would be little difficulty in coordinating efforts which would, in some ways, accommodate Atkinson's condition. (N.T. II-208-209)
109. Three tenants of building C testified at the Public Hearing regarding a distinct odor coming from Atkinson's apartment; the existence of pests in building C; the condition of the hallway and laundry room in building C; and the state of the lawn at Audubon. (N.T. II-140-143, II-148, II-151-158, II-168-175)
110. Two testified that the grass is generally OK while the third said that while the lawn is mowed the grass may have some weeds in it. (N. T. II-143, II-158, II-172)
111. All agreed that the common hallway in building C needs painted and that recently the hallway often had cigarette butts and other trash on the floor. (N.T. II-140, II-148, II-151, II-168-169, II-173)
112. Regarding the laundry room, only one of the three has seen any bugs in the laundry room. (N. T. II-141, II-153, II-176)
113. All agreed there is an unusual odor which appeared to be coming from Atkinson's apartment. (N.T. II-143, II-157, II-168)
114. Marburger and one tenant testified that the tenant immediately below Atkinson was disturbed by noise coming from the Atkinson apartment. (N.T. II-142. II-191)
115. No Lincoln employee ever advised Atkinson that either other tenants had complained regarding an unusual odor in the hallway or the tenant below Atkinson had complained of a noise issue. (N.T. II-197. II-226. II-293)
116. The odor problem was likely caused by large quantities of vitamin B-12 and B-complexes kept in Atkinson's apartment. (N.T. II-270. II-292)
117. Several factors contributed to added noise in the unit immediately below Atkinson's unit:
 - a. Atkinson had removed the carpet in her unit;
 - b. In February 1990. Atkinson broke her hip. and used a walker during her rehabilitation period; and
 - c. Atkinson had occasion to use a chair on rollers for locomotion around her apartment. (N.T. II-191. II-217, II-291-292)
118. Had someone told Atkinson of recent complaints, in consideration of others, Atkinson would have willingly worked out a mutually agreeable arrangement. (N.T. II-293)
119. The carpet Atkinson removed from her unit was approximately 20 years old and was bad. (N.T. II-206, II-217)
120. Marburger testified that due to their age, when old carpets were replaced, tenants could not be expected to pay for the replacement. (N.T. II-206)

121. Atkinson had requested permission from Lincoln to remove at her expense, carpet from unit 301, as the associated dust and dirt were detrimental to Atkinson. (N.T. II-105; CEX 14, CEX 36)
122. In a letter dated October 4, 1989, Lincoln indicated they would permit Atkinson to remove her carpet only if she placed 50% of the replacement cost of replacement carpeting in escrow. (CEX 14)
123. Regarding painting of the common hallway of building C, Atkinson identified a less toxic paint and advised Lincoln of her willingness to pay any difference in the cost between regular paint and the less toxic alternative. (N.T. II-9; CEX 31(a). CEX 32)
124. Hallways of building C have not been painted since prior to 1986. (N.T. II-140, II-148, II-168-169)
125. In October, 1989, Atkinson's doctor, Dr. Rea, advised Atkinson of his recommendations of modifications to insure minimum exposure to harmful substances:
 - a. removal of all odors of chlorine, fabric softeners, perfumes, soaps, and pesticides from Atkinson's environment;
 - b. installation of a ceiling fan in Atkinson's kitchen;
 - c. removal of the dishwasher from Atkinson's apartment with concurrent sealing of pipes to prevent odors seeping in;
 - d. installation of a washer and dryer in Atkinson's apartment;
 - e. installation of an exhaust fan in the basement laundry area of building C, with a control switch on the first floor near the stairs;
 - f. use of less toxic paints in common hallways in building C;
 - g. the least toxic methods of pest control should be used (IPM method);
 - h. removal of rugs from Atkinson's unit for the duration of her tenancy;
 - i. air and water filters in Atkinson's apartment.

(CEX 52)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (PHRC) has jurisdiction over the parties and the subject matter of this case.
2. By stipulation of the parties, all procedural prerequisites for a public hearing in this matter have been met.
3. Atkinson has established a prima facie case by proving that:
 - a. She is handicapped within the meaning of the PHRA;
 - b. She was otherwise qualified to be a tenant at Audubon;
 - c. Lincoln was aware of her chemical sensitivities;
 - d. She requested but was denied a lease;
 - e. She requested but was denied accommodations of her handicap; and
 - f. She offered plausible reasons to believe that Lincoln could have accommodated her handicap.
4. Lincoln bears the burden of showing that it would be an undue burden to accommodate Atkinson's handicap.
5. Lincoln failed to establish either an undue burden or that there was a demonstrable threat of harm to the health and safety of other residents at Audubon.

6. Lincoln made minimal efforts to accommodate Atkinson's handicap.
7. Although available to Lincoln, Lincoln never attempted alternative methods of pest control and lawn maintenance which significantly reduced the risk to Atkinson's health.
8. Lincoln's inaction resulted in tenant complaints.
9. In effect, Lincoln advised complaining tenants that Atkinson had created the problem thereby creating a hostile living environment for Atkinson.
10. Section 9 of the PHRA gives the PHRC broad remedial powers.

OPINION

This case arises on a complaint filed by Sally Atkinson, [hereinafter "Atkinson"]) against Lincoln Realty Management Company (hereinafter "Lincoln") on or about February 10, 1987, at Docket No. H-4358.

The complaint was subsequently amended on about August 14, 1987. Atkinson alleged that Lincoln discriminated against her by attempting to evict her because she is a female and because of her handicap/disability, chemical sensitivity. Atkinson also alleges that Lincoln failed to provide reasonable accommodations of her condition. The complaint alleges that such alleged actions violate Section 5(11)(3) of the Pennsylvania Human Relations Act, Act of October 25, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter the "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. The efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on June 14 and 15, 1990, in Huntingdon, PA, before Carl H. Summerson, Hearing Examiner.

The case on behalf on Atkinson was presented by William L. McLaughlin, Esquire. Norman Mittan, Esquire appeared on behalf of Lincoln, and the PHRC interest in this matter was overseen by Nancy Gippert, Esquire, Assistant Chief Counsel, PHRC. Post hearing briefs were simultaneously submitted by the parties on or about July 24, 1990.

Although the Complainant's complaint alleged both handicap/disability-based and sex-based discrimination, this case proceeded solely under the theory of handicap/disability-based discrimination. During the pre-hearing conference of this case, by oral stipulation, the sex-based portion of Atkinson's allegations were abandoned. Accordingly, this opinion will address Atkinson's handicap/disability-based allegations only.

The threshold question in this case is the scope of the PHRA's protection afforded to handicapped persons in private housing rentals. Interestingly, the Respondent's brief specifically acknowledges "that a provider of public housing must make reasonable accommodations to a disabled or handicapped tenant if requested to do so." We agree.

Although the complaint in this case cites Section 5(h)(3) of the PHRA, this case actually presents alleged violations of Sections 5(h)(1) and (3). Section 5(h)(1) states in pertinent part:

"It shall be an unlawful discriminatory practice...[f]or any person to...[r]efuse to...lease...or otherwise deny or withhold any housing accommodation...from any person

because of the...handicap or disability of any prospective...occupant or user of such housing accommodation. ..”

Section 5(h)(3) states in pertinent part:

“It shall be an unlawful discriminatory practice...[f]or any person to...[d]iscriminate against any person in the terms or conditions of...leasing any housing accommodation...or in furnishing facilities, services, or privileges in connection with the...occupancy or use of any housing accommodation... because of the...handicap or disability...of any present or prospective...occupant or user of such housing accommodation...”

The PHRC has also promulgated regulations regarding discrimination on the basis of handicap or disability. (16 Pa. Code Chapter 44) However, these regulations generally pertain to discrimination in public accommodations and in employment.

Although not specifically drafted for housing accommodation issues, the framework of these regulations can help supply clarity and can be successfully drawn from in this analogous legal context of a housing accommodation issue. To realize the appropriateness of using the handicap regulations here, we need only look to the stated purposes of the PHRA and of the regulations themselves.

First, in pertinent part, Section 2(b) of the PHRA declares it, "to be the public policy of this Commonwealth...to safeguard [all individuals'] right...to secure housing accommodation...regardless of...handicap or disability..." Section 3 further provides in pertinent part: "The opportunity for an individual to obtain...housing accommodation...without discrimination because of...handicap or disability...is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act."

Under 16 Pa. Code §44.2(a) and (b), the handicap regulations declare how the regulations are to be constructed, i.e

“(a) The provisions of this chapter shall be construed liberally for the accomplishment of the purposes of the act.
(b) The provisions of this chapter will be construed consistently with other relevant Federal and State laws and regulations except whether such construction would operate in derogation of the purposes of the act and this chapter.”

This regulatory provision is consistent with the general mandate of Section 12(a) of the PHRA which states: “The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof...”

It should be noted that the requirement that Lincoln provide reasonable accommodations is an implied obligation created by the PHRA. The regulations from which certain analogies will be made are therefore not the authority upon which the reasonable accommodation requirement rests. See Jenks v. AVCO Corp., 340 Pa. Superior Ct. 542,490 A.2d 912 (1985)

The PHRA's purposes intend to create an atmosphere in which individuals with handicaps are free and equal members of society able to live and participate in the social mainstream, independently exercising free choice and control over their own lives just like everyone else.

Turning to the resolution of the allegations, only the Complainant's brief reviewed the standard analysis for an alleged handicap disability-based refusal to renew a lease and a failure to make reasonable accommodations.

Generally, the Respondent's brief focused its presentation on an argument that to accommodate Atkinson would create an undue hardship and pose a threat of harm to the health and safety of others. The Respondent's brief correctly visualized the ultimate questions here, however, before we get to those issues, we must first be assured that Atkinson has set out a prima facie case.

Here, Atkinson can present a prima facie case of discrimination with regard to both the alleged refusal to renew her lease and the alleged failure to provide reasonable accommodations of her chemical sensitivities by showing:

1. That she is handicapped;
2. That she was otherwise qualified to be a tenant;
3. That Lincoln knew of her chemical sensitivities;
4. That she requested and was denied a lease;
5. That she requested but was denied certain accommodations; and
6. That she can make a facial showing or at least offer plausible reasons to believe that her handicap could have been accommodated.

First, there can be no question that Atkinson's condition was a handicap. Since the PHRA does not define a handicap, here we draw an analogy from 16 Pa. Code §44.4's definition which provides;

Handicapped or disabled person - Includes the following:

(i) A person who:

- (A) has a physical or mental impairment which substantially limits one or more major life activities;
- (B) has a record of such an impairment; or
- (C) is regarded as having such an impairment.

Under the circumstances presented here, Atkinson meets anyone of the three listed definitions.

Regarding the second element of the prima facie showing, there is no dispute that in January 1987, Atkinson was otherwise qualified to be a tenant at Audubon. There was however, some minor dispute regarding whether Lincoln knew of Atkinson's condition. Lincoln attempted to present evidence that when Atkinson first contacted Audubon she simply referred to her condition as "allergies." Lincoln further contends that Atkinson's condition seemed to be constantly changing.

While it is true that, at first, Atkinson did mention she had "allergies," there is also a great deal of evidence that Atkinson continually detailed the nature of her illness to Lincoln's management and made it quite clear that her condition was severe and created a considerable need for environmental precautions. In fact, Lincoln's May 6, 1986 notice of non-renewal of lease specifically notes that Lincoln was aware of Atkinson's medical problems. The May 6, 1986 letter clearly demonstrates Lincoln was fully cognizant of Atkinson's condition.

Once again, with regard to both the fourth and fifth elements listed, there was no dispute raised by the evidence presented. Clearly, Atkinson did not want to vacate her apartment at the expiration of her lease on January 31, 1987. Also, much evidence exists with regard to Atkinson having requested accommodations of her condition which were denied. For example; Atkinson had requested Lincoln to place an exhaust fan in the basement laundry room in building C: This was never done. Atkinson made numerous requests that Lincoln use either a natural organic lawn care program or pesticide products which had a lower toxicity: Lincoln did neither. Atkinson requested that Lincoln adopt an IPM approach to unit pest control using a boric acid dust: Lincoln did not. Atkinson asked that the hallway of building C be painted with a less toxic paint: The hallway remains unpainted. Atkinson asked to be permitted to remove the carpets from her unit: Lincoln would only agree if Atkinson put one-half of the replacement cost in escrow. Similarly, Atkinson asked to be allowed to have an outside electrician install a kitchen exhaust fan in her unit because it would cost significantly less than if she used Lincoln's electrician: Lincoln maintained that Atkinson could only install the fan if she used the more expensive Lincoln electrician. Atkinson asked to be permitted to install a washer/dryer in her apartment: Lincoln would not permit it. Atkinson requested Lincoln to remove the dishwasher from unit C-301 and seal the pipes to prevent odors seeping into her unit: This was not done. Clearly, Atkinson offered evidence sufficient to meet the fourth and fifth elements of the prima facie showing.

Regarding the sixth and final element, Atkinson presented considerable evidence that suggests Lincoln could have accommodated her chemical sensitivity. At great personal expense and effort, Atkinson researched alternatives and continually shared her findings with Lincoln. It is at this point that Lincoln's brief picked up and attempted to establish the existence of both an undue hardship and a threat of harm to other Audubon residents.

Lincoln's brief suggests that they did accommodate Atkinson as much as they were able to without creating an undue hardship and without imposing a demonstrable threat of harm to the health and safety of others. Lincoln asserts that in May 1986, they not only gave Atkinson an 8-month notice that her lease would not be renewed but also assured Atkinson that, for that season, they would not use pesticides for either fertilization or weed control. Further, Lincoln's May 1986 notice offered to release Atkinson from the terms of her lease with a two week notice.

Lincoln's brief also suggests that a letter from Atkinson's doctor stated that Atkinson should be residing in single-family housing. After generally setting out the nature of Atkinson's condition, the letter to which Lincoln's brief referred actually states:

What is needed is a home environment sufficiently free of chemical exposure where she can begin to recuperate. Optimally, this would include the following: 1) A new home

which contains non-toxic building materials, or an older home 18-40 years old with dry basement, brick exterior, baseboard electric heat and not been exterminated. The stove for cooking and hot water heater should be electric. This home cannot be in a neighborhood with traffic fumes or insecticide spraying. 2) This home should have a whole house water filter. 3) Fabrics both for home furnishing and clothing should be either cotton, silk or wool, which are untreated.

Another accommodation Lincoln submits it offered Atkinson occurred in 1986 when Audubon was experiencing a carpenter bee problem. Atkinson was consulted regarding her preference in alternative methods of treatment and the method Lincoln chose was approved by Atkinson. Lincoln's brief portrays the circumstances surrounding the treatment as later stopping because of a strong objection lodged by Atkinson.

However, the record considered as a whole, while revealing some initial accommodation on Lincoln's part, presents a different picture as to why the carpenter bee treatments stopped. The reason the exterminator ceased his treatments appears to be directly related to the aftermath of disrespectful indignities shown to Atkinson by the exterminator's son. While in Lincoln's on-site offices, Atkinson was taunted, jeered at and physically menaced with a spray can of insecticide causing Atkinson to have an adverse reaction. It would seem that the exterminator's fear of liability stopped the process, not an objection by Atkinson. Clearly, the exterminator refused to continue unless Atkinson executed a release of liability, and since Atkinson, acting on advise of counsel, did not sign such a release, the work was never finished.

Lincoln further submits it made efforts to accommodate Atkinson in other ways. Lincoln did agree to permit installation of an exhaust fan in Atkinson's kitchen. Lincoln afforded Atkinson prior notice of scheduled painting of other units in building C. Lincoln refrained from either painting or recarpeting the hallways of building C. Likewise, Lincoln refrained from lawn fertilization and weed care throughout Audubon. Lincoln even offered to temporarily move Atkinson to another complex while extermination and fertilization procedures were performed.

On its face, Lincoln's gesture of affording temporary housing appears both generous and reasonable. However, Atkinson's unit had been made environmentally acceptable to her by the introduction of certain measures which would not be found at a temporary location. Atkinson had installed 3 air filters, and a water filter in her unit, and had cleaned her entire unit with cleaning solvents which did not leave residual odors and vapors harmful to her. Temporary locations did not afford such security and environmental modifications.

Citing National Railroad Passenger Corp. v. PHRC, 70 Pa. Commonwealth Ct. 62,452 A.2d 301 (1982), Lincoln also submits that while looking at the question of reasonable accommodation, careful consideration should be given to "the threat to the health and safety of others." In effect, Lincoln contends that their inability to use the pesticides of their choice resulted in an unhealthy environment for the occupants of Audubon's 174 other units.

This single assertion is perhaps the largest distortion of the pest management situation as it existed at Audubon. First of all, Atkinson's concerns regarding pest control were principally for building C and the immediate vicinity. A June 22, 1987, court ordered injunction prohibited

Lincoln from using any pest controls in the area on the north side of building C only. Lincoln was free to use pest controls otherwise within 100 feet of building C so long as Atkinson was afforded 48 hours notice. The remainder of Audubon had no court ordered restrictions regarding pest control. Additionally, the court's injunction was originally drafted to last for only 45 days. Subsequently, on two occasions, Lincoln voluntarily extended the effects of the injunction.

It is simply impossible to understand how Lincoln can even attempt to argue that 174 other residents were adversely affected by Atkinson's need for accommodation. According to the court order, the only persons who could possibly have been affected would have been residents on the north side of building C. If Lincoln is suggesting their decision not to, except in emergency cases, use pesticides; since 1986 was because they were accommodating Atkinson - such an assertion is simply not credible.

One must strain even to attempt to understand why Lincoln never attempted to design a pest management strategy which at least attempted to implement some of Atkinson's suggested alternatives. If Lincoln had any concern for the welfare of the residents at Audubon, Lincoln had a number of options open to it. Clearly, the IPM methodologies were worth attempting rather than simply doing absolutely nothing.

It is interesting to note that in Lincoln's opening statement at the Public Hearing, the following assertion was made: "We have our exterminating company who disputes the empirical studies by this IPM method from this expert from the EPA indicating he does not believe they combat an existing problem."

The exterminating company this statement apparently referred to was Pest Check, owned by Joseph Kahn. Kahn, rather than disputing the IPM methods, was not only very familiar with the IPM methods but also stated "Anyone worth their salt would specifically consider the IPM method." When Kahn discussed the use of boric acid he did indicate that it was not a totally effective treatment and cited an example: if yellow jackets broke through a wall you need something more. Otherwise, Kahn, in effect, testified that boric acid was an "excellent material." Kahn did relate a personal experience where use of boric acid alone proved unsuccessful in a college kitchen area. However, Kahn never said it was not worth trying boric acid in building C. Perhaps Kahn was not prepared to comment on whether it would be effective because, as Kahn testified, he did not inspect Audubon regarding the extent of pest problems there.

As a whole, Kahn's testimony was quite consistent with Currie's testimony regarding the IPM approach and the effectiveness of boric acid dust. Here, all it appears Atkinson was asking was for Lincoln to just try the IPM approach with an emphasis on boric acid rather than other more toxic pesticides the use of which could cause Atkinson severe physical problems.

Instead of at least trying the recommended treatment, Lincoln chose to sit back and do nothing except wait for complaints from disgruntled residents when pests began to appear. And when this happened, Lincoln had no qualms about advising complaining residents that their hands were tied because of Atkinson. Of course, Lincoln conveniently neglected to say their hands, if tied at all, were tied voluntarily and that there were alternatives worth trying that Lincoln rejected outright.

Kahn had testified that as an exterminator he would have no difficulty either creating or activating a plan of action which tailored methods to the different needs of the different buildings at Audubon. Had Lincoln made even the slightest movement in this regard, this entire matter may not have arisen. Instead, it was Lincoln's stubborn attitude and complete act of omission which created any health hazards at Audubon because of pests. This includes the inconveniences testified to by occupants of building C.

It is worth noting that when asked, one building C resident testified that it would be fine with her if the method used for bug removal took a bit longer to apply and also took a bit longer to work. As any reasonable person, this tenant's legitimate pest concerns would have been satisfied so long as bugs were ultimately removed.

Lincoln's brief refers to two possible types of bugs in building C, earwigs and clover mites. Currie noted that from the testimony of Audubon's maintenance supervisor, Robert Hendley, those two pests were likely candidates from descriptions given. First, Lincoln's brief incorrectly attributed the descriptions of the pests to residents of building C. Second, Lincoln's brief distorts Currie's testimony regarding treatment strategy. Lincoln's brief suggests that Currie testified that earwigs and clover mites cannot be effectively treated with boric acid. Instead toxic chemicals likely to be harmful to Atkinson were necessary. A close reading of Currie's testimony on this subject indicates, first for clover mites, Currie would not use pesticides at all. Instead, he indicated you could just vacuum them up. With earwigs, they are generally found in very damp material. Although Currie didn't mention it in rebuttal when specifically addressing earwigs and clover mites, Currie did testify earlier that you should first attempt to modify the environment to deter pest populations. Clearly, if earwigs need damp material to habitate, you need only avoid leaving damp materials in the laundry room. The laundry room was where Hendley said he saw the bugs which may have been earwigs.

Regarding some of the other requested accommodations, Lincoln offered almost no evidence of undue hardship. Instead, Brodsky actually conceded that other than extermination and fertilization, "There are other accommodations we could do for [Atkinson]." In fact, Brodsky readily agreed there would be no problem if a tenant were to develop a handicap and thereby need a ramp installed as an accommodation.

Perhaps Brodsky's idea of "architectural barriers" envisions only wheelchair-bound individuals. Of course, there are many forms of handicap. Brodsky's general attitude regarding handicapped individuals jumps out several places by his expressed notion that Atkinson's condition is a "strange handicap" (N.T. II-251, and that multi-family living is not medically safe or proper for Atkinson. (CEX 16)

In reality, handicaps are a function of the environment. Consequently, if barriers are eliminated, so are handicaps. Furthermore, it is a fundamental notion that handicapped individuals ought to be integrated everywhere. Quite clearly, people value highly a place that they can call home. Where they are secure and safe. Having such a place where one can feel secure is particularly important to a disabled person who must face an outside world filled with overwhelming

barriers. To provide Atkinson with such a place would have been so easy for Lincoln. Instead, Lincoln fought Atkinson on every occasion. This record reveals that part of the reason Lincoln's attitude was so callous; was because of a misperception that Atkinson was attempting to, as Brodsky put it, enter the management realm of Audubon. When Atkinson was saying please, Brodsky was hearing a demand and took a stubborn defensive posture rather than a reasonable approach to the desperate pleas of a woman reaching for purely reasonable accommodations.

Beyond the unsuccessful undue hardship argument, the Respondent's brief also asserts there are three independent reasons for refusing to renew Atkinson's lease: (1) An offensive odor from Atkinson's apartment infringes upon other tenants rights; (2) Atkinson removed the carpeting from unit C-301 without permission; and (3) Atkinson's son, who resides with her at times, has violated security regulations and allegedly done things which annoy other tenants.

First, not one of these cited reasons occurred at the initial time of Lincoln's refusal to renew Atkinson's lease on January 31, 1987. All testimony received tends to suggest these matters occurred recently. Beyond this factor, the reasons stated have been shown to be pretextual reasons, offered after-the-fact to justify and unjustifiable situation. Quite simply, the odor problem was apparently caused by large quantities of vitamins stored in Atkinson's apartment. Had Atkinson been told the odor was offending others she would have been a considerate neighbor and worked to negate the smell.

Regarding the carpet removal, Atkinson had asked for permission to remove her carpeting. Atkinson was told it would be OK if she would place in escrow, half of the replacement cost. Only later did Lincoln suggest there was a noise problem.

The carpets in units at Audubon were approximately 20 years old and as tenants moved, the vacant unit's carpets were invariably replaced. When this occurred, no tenants were asked to pay part of the replacement costs. In other words, Atkinson was being asked to do something no one else was required to do. This was unreasonable in light of the fact that Atkinson had asked to remove the carpet as an accommodation of her condition. Furthermore, Atkinson again indicated that had anyone ever complained to her about noise, she would have been happy to make suitable arrangements.

Lastly, Atkinson's son's behavior was placed in question. Frankly, except for littering and propping open the laundry room door in violation of security regulations, the testimony concerning his behavior was insufficiently articulated to substantiate any allegations being made. Furthermore, as with the other items, Atkinson was never informed of the expressed concerns regarding her son. Had she been told, perhaps some adequate corrective action could have been initiated.

In summary, the three additional reasons offered for Lincoln's actions are individually and collectively deemed pretextual assertions. Accordingly, Atkinson has met her ultimate burden of persuasion in this case by showing that all requested accommodations could have been reasonably made without either undue hardship to Lincoln or harm to other tenants. Furthermore, Atkinson has shown that she was refused a lease solely because of her handicap/disability.

Our attention is thus turned to an appropriate remedy. Section 9(f) of the PHRA states in pertinent part:

"If, upon the evidence at the hearing, the Commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this act, the Commission shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to,...the making of reasonable accommodations,...or leasing specified housing accommodations... upon such equal terms and conditions and with such equal facilities, services and privileges...to any person discriminated against...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."

The Complainant's brief wholly relies on Atkinson's doctor's recommended measures and modifications of unit C-301 as the basis of their requested remedy. With minor adjustments, that list is considered appropriate in scope and reasonable in application. Accordingly, the following remedial measures are proper:

1. Should Atkinson desire to do so, Lincoln shall permit Atkinson to install a kitchen ceiling fan in unit C-301 by a licensed electrician of her choice, subject to the approval of Lincoln, the cost to be borne by Atkinson;
2. Lincoln shall cause the dishwasher in Unit C-301 to be removed and the pipes sealed to prevent odors from seeping into unit I C-301, the cost to be borne by Lincoln.
3. Should Atkinson desire to do so, Lincoln shall permit Atkinson to install a washer and dryer in unit C-301, cost to be borne by Atkinson.
4. Lincoln shall install an exhaust fan in the laundry room of building C to remove chlorine, fabric softener, soaps, and other odors from that area, and install a control switch on the first floor level, the cost to be borne by Lincoln.
5. When deemed appropriate, Lincoln shall either paint or wallpaper the hallways of building C, and if painted, Lincoln shall use a less toxic paint product. Prior to painting, Lincoln shall discuss the choice of paint with Atkinson and allow Atkinson to submit the name of a recommended product for Lincoln's consideration. Any increased cost of a less toxic product or its application shall be borne by Lincoln.
6. Lincoln shall attempt pest control in and around building C by formulating an IPM strategy which first strives to address any pest problem with the least toxic pesticide application possible. Lincoln shall discuss their plan with Atkinson well in advance of any actual treatments and give due consideration to any recommended course of action Atkinson may submit. Should either less toxic products or their application cost additional money, Lincoln shall bear the added costs.
7. Lincoln shall permit Atkinson to either cover her floors with tolerable floor coverings or leave them bare. The cost of personal floor coverings, if any are installed by Atkinson, shall be borne by Atkinson. When Atkinson vacates the unit, no additional cost shall be assessed by Lincoln for Atkinson's prior removal of carpeting.
8. Within 100 feet of building C, Lincoln shall attempt to implement an organic lawn care program, the cost thereof to be borne by Lincoln.

9. Lincoln shall provide to Atkinson at least two weeks notice of all pest treatments and lawn maintenance at Audubon which use toxic materials of any sort. Such notice shall include an accurate description of the scope of treatments and products to be used.
10. Lincoln shall continue to give Atkinson advance notice of all painting to be done in building C.

Finally, the Complainant's brief also asks for an award which provides a new lease under similar terms and conditions as non-handicapped tenants of Audubon.

Therefore, relief is ordered as specified in the Final Order which follows.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

SALLY ATKINSON, Complainant


v.

LINCOLN REALTY MANAGEMENT COMPANY, Respondent

DOCKET NO. H-4358

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Respondent refused to renew the Complainant's lease because of her handicap/disability, chemical sensitivity, and also failed to afford the Complainant reasonable accommodations. Accordingly, the Complainant has proven discrimination in violation of §5(h)(1) and (3) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted the Permanent Hearing Examiner recommends issuance of the attached Final Order.



Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SALLY ATKINSON, Complainant

v.

LINCOLN REALTY MANAGEMENT COMPANY, Respondent

DOCKET NO. H-4358

FINAL ORDER

AND NOW, THIS 28th day of August, 1990, 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 Commission adopts said Findings of Fact, Conclusions of Law and Opinion as its own finding in this matter and incorporates the Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding. to be served on the parties to the complaint and hereby

ORDERS

1. Respondent shall cease and desist from discriminating on the basis of handicap/disability.
2. That the Respondent shall consider reasonable accommodations of the handicap/disabilities of Audubon tenants.
3. That the Respondent shall offer to Complainant. a new lease. on the same terms and conditions offered to those tenants who are not handicapped.
4. That the Respondent shall reasonably accommodate the Complainant's handicap by taking measures consistent with this opinion.
5. That the Respondent shall. within 30 days of the effective date of this Order. report to the PHRC on the manner of its compliance with the terms of this Order by letter. addressed to Nancy L. Gippert. Esquire, in the PHRC Harrisburg. PA Headquarters office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Rita Clark

Rita Clark, Vice Chairperson

ATTEST:

Raque Otero De Yienst
Raquel Otero De Yienst, Secretary

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

SALLY ATKINSON, Complainant

v.

LINCOLN REALTY MANAGEMENT COMPANY, Respondent

DOCKET NO. H-4358

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

OPINION

The continued Public Hearing of this matter resulted from a Commonwealth Court of Pennsylvania remand in Lincoln Realty Management Co. v. PHRC, No. 2010 C.D. 1990, filed October 17, 1991. In its remand, the Commonwealth Court instructed the Pennsylvania Human Relations Commission ("PHRC") to look at several general issues with respect to a prior PHRC order dated August 28, 1990.

From the PHRC order of August 28, 1990, several remedial measures were extracted by the Commonwealth Court for which certain limited questions remained for resolution. These general measures included:

- (A) dishwasher removal;
- (B) installation of an exhaust fan in the laundry room of Building C;
- (C) painting within Building C;
- (D) pest control:
 - (1) in Building C;
 - (2) outside;
- (E) carpet removal; and
- (F) lawn care.

Prior to the continuation in response to the remand of this Public Hearing held on August 26, 1992 and May 12, 1993, the parties themselves reported that there had been final resolution of both the dishwasher and carpet removal matters. As of May 12, 1993, although there had been continual efforts to amicably resolve the remaining areas of dispute, the other matters, although reportedly close to resolution, remained outstanding.

Of the remaining areas, the remand was made so specific findings could be made on whether Atkinson provided to Lincoln a reasonable description of the proposed modifications, and whether Atkinson had been given assurances that modifications would be made in a workmanlike manner. Finally, specific findings were to be made regarding whether Atkinson is willing to pay any increased costs resulting from a modification and if she is willing to restore the premises, reasonable wear and tear excepted.

Immediately prior to opening the Public Hearing on May 12, 1993, the parties reached an agreement which sufficiently resolves the remaining issues on remand. At this time, the parties were represented as follows: Lincoln was represented by James M. Penny, Jr., Esquire; Atkinson's private attorney was Clifford A. Boardman, Esquire; and representing the state's interest in the complaint was PHRC housing attorney, Nancy L. Gippert, Esquire. The parties indicated they would file post-hearing briefs on several open issues, however, none has been received.

The Final Order which follows generally outlines the parameters of the parties' stipulated agreement.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

SALLY ATKINSON, Complainant

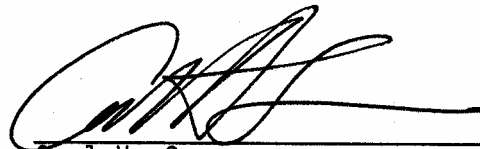
v.

LINCOLN REALTY MANAGEMENT COMPANY, Respondent

DOCKET NO. H-4358

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the parties have sufficiently stipulated to circumstances which resolve the outstanding matters on remand from the Commonwealth Court. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.



Carl H. Summerson
Permanent Hearing Examiner

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

SALLY ATKINSON, Complainant

v.

LINCOLN REALTY MANAGEMENT COMPANY, Respondent

DOCKET NO. H-4358

FINAL ORDER

AND NOW, this 27th day of August, 1993, after a review of the record on remand in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Opinion as its own in this matter and incorporates the Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

A. Laundry Room Exhaust Fan in Building C.

1. Should Atkinson desire to install an exhaust fan in the laundry room of Building C, Atkinson shall submit proposed installation plans and the name of the contractor Atkinson has selected to make the installation,
2. Lincoln may review the proposals to enable Lincoln to be assured that the installation will be done in a workmanlike fashion and that the proposed installation will not cause structural damage.

B. Painting.

1. Lincoln will use either Miller paint or such other paint which Atkinson suggests to paint any of the following:
 - a. common areas on Atkinson's side of Building C;
 - b. Atkinson's apartment; or
 - c. the apartment immediately below Atkinson's.
2. Standard paint may be used elsewhere.
3. Lincoln shall provide at least two weeks' notice to Atkinson of an intention to do any painting on Atkinson's side of Building C.
4. Notice is not otherwise required.

C. Pest Control.

1. Inside Building C:

- a. Lincoln will provide Atkinson with information regarding pest infestations which have or will occur in apartments on Atkinson's side of Building C.
- b. Anytime Lincoln contemplates the use of pesticides in Atkinson's side of Building C, Lincoln will give Atkinson at least two weeks' notice. Should an acute infestation of stinging insects occur, Lincoln will give Atkinson not less than three working days' notice of Lincoln's intent to treat the infestation.
- c. Upon Atkinson's receipt of a notice to treat an acute infestation of stinging insects, Atkinson will respond in writing to Lincoln within three days with her proposal regarding the method of treatment.
- d. Lincoln will provide Atkinson with at least two days' notice of Lincoln's intention to apply pest control treatments inside the other side of Building C and inside the side of Building B closest to Atkinson's apartment.
- e. No notice of pest control treatments is required in any other buildings.
- f. Lincoln and Atkinson will make every effort to respond expeditiously to either a notice or a proposal.

2. Outside Building C:

- a. Lincoln will provide Atkinson at least two weeks' notice with respect to any perceived pest problems on Atkinson's side of Building C. (This notice requirement is subject to the same stinging insect proviso found above at paragraph C.1(b).)
- b. Upon Atkinson's receipt of Lincoln's notice, within two weeks Atkinson will provide Lincoln with her written recommendations for addressing the pest problem.
- c. Lincoln will give due consideration to Atkinson's recommendations.
- d. Atkinson is free to inspect the exterior of Building C as she desires.
- e. Lincoln will provide Atkinson with at least two days' notice of anticipated pesticide application around Buildings A and B and the other half of Building C.
- f. Lincoln will not apply pesticides to the other side of Building C at the same time as there is exterior treatment of Building B.
- g. Otherwise, pesticide applications will not require notice to Atkinson.
- h. Lincoln's notices will consist of a statement of the perceived pest problem, where the problem is located, and Lincoln's proposed course of action.

D. Lawn Care.

1. When Lincoln intends to use fertilizers, herbicides, or other inorganic lawn treatments in areas other than the grassy - courtyard of Buildings A, B, and C, and the grassy area behind Building C:
 - a. Lincoln will give Atkinson at least two days' notice when such an application will be a liquid application; or
 - b. Atkinson will receive two weeks' notice when an application is to be in granular form.

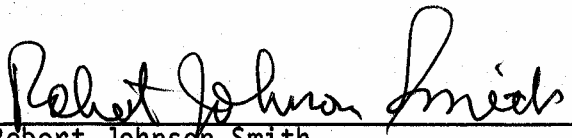
2. In the grassy courtyard of Buildings A, B, and C, and in the grassy area behind Building C, Lincoln will use organic fertilizers to feed the lawns and provide Atkinson with at least two days notice.
3. Atkinson will attempt to ascertain an organic method for quick killing of broadleaf weeds and expeditiously report her findings to Lincoln.
4. If Atkinson either fails to report such a method to Lincoln or if she is unable to ascertain an organic quick-kill broadleaf weed killer, with at least two weeks' notice Lincoln will make two applications of a broadleaf herbicide to the grassy area of A, B, C courtyard in 1993, and will make one application of a pre-emergent crabgrass killer in the early spring of 1994.
5. Should broadleaf herbicides and a pre-emergent crabgrass killer be used, Lincoln will then evaluate the lawn's condition to determine an appropriate course of action.
6. Should applications of a broadleaf killer be necessary in 1993, after such an application Lincoln will use a grass catcher to collect grass clippings for the two mowings which follow the herbicide applications to the A, B, C courtyard lawn.
7. In the fall of 1993, Lincoln will de-thatch, core aerate and reseed the A, B, C courtyard, if needed.

E. Cost.

1. Lincoln will obtain price quotes, and anytime there is an increased cost to Lincoln, Lincoln will provide Atkinson with increased cost estimates.
2. Atkinson shall have the option to have a procedure implemented or not, and Atkinson shall expeditiously convey her choice to Lincoln.
3. Atkinson will bear additional costs associated with any option she agrees to regarding:


- (a) the use of alternative paint products;
- (b) use and procedures associated with alternative pesticide products, inside and outside;
- (c) alternative lawn care applications or services; (d) installation of a laundry room fan;
- (e) the restoration of the laundry room wall to its former condition at the expiration of Atkinson's tenancy; and (f) all other additional costs associated with the implementation of an accommodation sought by Atkinson.

PENNSYLVANIA HUMAN RELATIONS COMMISSION



Robert Johnson Smith
Chairperson

ATTEST:



Gregory J. Zelia, Jr.
Secretary