

FINDINGS OF FACT *

1. The Respondents in this case are William Archer and Carol A. Archer, husband and wife, owners of real property located at Rear 631, Mary Street Scranton, PA, (hereinafter "Mary Street property").
2. William and Carol Archer purchased the Mary Street Property in 1971 and, together with their family resided there until June 30, 1995. (N.T.190).
3. In 1995, the Archer's built a new home and began to rent the Mary Street property. (N.T.190).
4. From July, 1995 to the Summer of 1997, the Mary Street property was rented to a family with three children. (N.T.190).
5. The Mary Street property was again rented until November, 1997, when the Archers evicted the then tenants. (N.T.191).
6. The Mary Street property then remained unoccupied until August 1, 1998. (N.T.153, 195; C.E.2p.14).
7. In addition to the Mary Street property, the Archers own four other rental properties. (N.T.156).
8. In an effort to sell the Mary Street property, on or about February 3, 1998, the Archers entered into a "Listing Contract-Exclusive Right to Sell Real Property" with Diane Bell Realty BH&G. (N.T.147,148; (R.E.2).

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

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

9. The three month Listing Contract expired on May 3, 1998, however, if a sale of the Mary Street property occurred within 60 days of May 3, 1998, the Archers still had to pay a Broker's fee. (N.T.160; (R.E.2).
10. The Archers contacted Paul A. Kelly, Jr., Esquire, (hereinafter "Kelly"), and asked him to represent them in the sale of the Mary Street property. (N.T.166).
11. The Archers used Kelly solely for legal matters with respect to the sale of real property, and never used Kelly with regard to rental matters. (N.T. 168,203).
12. The Archers always handled issues arising from their rental properties on their own. (N.T.203).
13. Joyce Skorec, (hereinafter "Skorec"), was the realtor who directly worked with the Archers. (R.E.2, and 10 at p 11).
14. The Mary Street property actually faces Loop Street, a less traveled, recently paved, road, while the side of the Mary Street property is approximately half a block from Mary Street. (N.T.183-186).
15. Skorec erected two large "For Sale" signs at the Mary Street property: one between the house and Loop Street, and another near Mary Street. (N.T.55, 114,147-148; R.E.10 at p. 16-17).
16. The Mary Street property was also listed on the areas multi-listing, and Skorec, herself, had shown the Mary Street property to at least five prospective buyers. (R.E.10 at p.15).
17. The Complainant in this case is Katherine Branch, (hereinafter "Branch"), an African American female, who, in April-May 1998, along with four of her seven

children was a resident at 2304 Edith Avenue, Bangor Heights, a facility run by the Scranton Housing Authority. (N.T.35, 36; R.E.4, 5, and 6).

18. Branch had lived at 2304 Edith Avenue for eighteen years. (N.T.42-43).
19. On or about early to mid-May, Branch called the Archers expressing an interest in buying the Mary Street property. (N.T.37, 146, 192, 197).
20. Branch explained that she knew the Archers' daughter, Tracy, as Tracy and Branch's daughter, Wendy, were good friends. (N.T.56).
21. An arrangement was made for Branch to look at the property and Branch and her daughter toured the Mary Street property with the Archers. (N.t.38, 68, 147, 198, 202-203).
22. Carol Archer informed Branch that she was trying to sell the property and Branch asked if the Archers would consider a rent to buy option. (N.T. 183, 193).
23. Carol Archer informed Branch that one of the Archer's daughters had asked if she could rent to buy the Mary Street property but the Archers had denied her that option. (N.T. 183, 211).
24. Branch expressed interest in purchasing the property and Carol Archer informed Branch of places and organizations Carol Archer's daughter had used when she purchased her first home. (N.T.40, 50, 70, 149, 203).
25. Carol Archer informed Branch that these named organizations help first time home buyers with such things as closing costs, and payments. (N.T. 149).
26. The Archers directed Branch to Kelly for the preparation of a sales agreement and to put down a deposit. (N.T. 149,167).
27. Branch did go to Kelly's office where Kelly gave Branch one of his office's rental application forms for the limited purpose of having Branch complete that

portion of the form which seeks information to facilitate a credit check. (N.T. 73, 167, 168, 204, 249).

28. Over the next several months, Branch periodically called Carol Archer who would tell Branch that the Archers were waiting for Branch to get a loan. (N.T.41, 42, 150, 155).
29. Carol Archer became suspicious of Branch's efforts and things Branch had told the Archers and began to investigate Branch. (N.T.150).
30. Carol Archer went to Lackawanna County District Justice James P. Kennedy's office and was furnished with information regarding past actions involving Branch. (N.T.152, R.E.4, and 5).
31. On September 12, 1997, the Scranton Housing Authority had been awarded a judgment against Branch for rent in arrears and costs for the amount of \$997. (RE 4)
32. On November 5, 1997, the Scranton Housing Authority had been once again awarded a judgment against Branch in the amount of \$566. (RE 5)
33. Tired of waiting for Branch to arrange to buy the Mary Street property, in mid-July 1998, the Archers decided to put the Mary Street property on the rental market. (N.T. 153, 195)
34. On July 19, 1998, the Archers placed an ad in the local newspaper advertising the availability of the Mary Street property for rent. (N.T. 153; RE 3)
35. On July 25, 1998, Timothy R. Marsh, signed a lease for the rental of the Mary Street property. (RE 10 at p. 20)
36. The Marsh family moved into the Mary Street property in the beginning of August 1998. (RE 10 at p. 14)

37. Prior to the Archers leasing the Mary Street property to the Marsh family, the Archers checked with the magistrate's office for prior actions, and with prior landlords of the Marsh family. (N.T. 153)
38. Once the decision was made to rent the property, Branch's past suits and perceived inaction with respect to taking steps to facilitate the purchase of the Mary Street property motivated the Archers to discount Branch as a potential renter of the Mary Street property. (N.T. 159)
39. On October 2, 1998, the Lackawanna County Court of Common Pleas awarded the Scranton Housing Authority a judgment of possession of Branch's apartment at 2304 Edith Avenue, Bangor Heights. (RE 6)
40. Branch testified that when she attempted to put her new husband on her lease at Bangor Heights, the Scranton Housing Authority informed her that since her husband had a criminal record, he could not be on the lease. (N.T. 88)
41. The Scranton Housing Authority's complaint to the Lackawanna County Court of Common Pleas asserted that the court's October 2, 1998, judgment of possession was based on "criminal activity by one of the tenants on the lease for 2304 Edith Avenue, Scranton, Pennsylvania, more specifically Nelson Bernechea, husband of Katherine Branch." (RE 6)

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. Branch is an individual within the meaning of the Pennsylvania Human Relations Relations Act (P.H.R.A.).
4. The Archers are owners of a housing accommodation within the meaning of the P.H.R.A.
5. To establish a *prima facie* case, Branch must prove.
 - a. That she is a member of a protected class;
 - b. That the Archers knew that Branch's race is African American;
 - c. That the Rear of 631 Mary Street was available to rent;
 - d. That Branch was qualified to rent the property;
 - e. That Branch was denied the opportunity to rent the property, and
 - f. That the property remained available to rent.
6. Branch failed to prove that the property was for rent in May 1998.

OPINION

This case arises on a complaint filed by Katherine Branch (hereinafter "Branch") against William and Carol Archer (hereinafter collectively "the Archers") at Pennsylvania Human Relations Commission (hereinafter "PHRC") Docket No. H-7666.

In her complaint Branch alleges that on or about May 1998, Branch saw a for rent sign on the Archers' Mary Street property, but was told by the Archers that they wanted to sell the property. Branch further alleged that she asked if she could rent to buy but was told by the Archers that they just wanted to sell the property. Branch alleged that as of May 19, 1998, the house was still available, and, in effect, the Archers only told Branch they wanted to sell to keep her from renting because of her race, black. Branch's complaint alleged the Archers' actions violate Sections 5(h)(1) and 5(h)(3) of the Pennsylvania Human Relations Act (hereinafter "PHRA"). At the pre-hearing conference, PHRC attorney Fanelli-Greer moved to delete all references to Section 5(h)(3). That Motion was granted.

The PHRC investigated Branch's allegations and, at the conclusion of the investigation, informed the Archers that probable cause existed to credit Branch's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently the PHRC notified the parties that it had approved a public hearing.

The public hearing was held on February 7, 2002, in Scranton, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The Commission's interest in the complaint was overseen by the PHRC Assistant Chief Counsel Margaret Blough. The Archers appeared in person without counsel and were

assisted by their daughter, Lisa Santarsiero. The parties were afforded an opportunity to submit post-hearing briefs. The post-hearing brief on behalf of the complaint was received on April 8, 2002. The Archer's submitted a post-hearing statement that was received on March 4, 2002.

Since all references to Section 5(h)(3) were removed at the pre-hearing conference, at issue in this case is the following provision of the PHRA that makes it an unlawful discriminatory practice for any person to:

1. Refuse to . . . lease. . . or otherwise deny or withhold any housing . . . from any person because of the race. . . of any person. . . (PHRA, Section 5(h)(1))

The post-hearing brief on behalf of the complaint correctly observes that in the case of Allison v. PHRC, 716 A.2d 689 (Pa. Cmwlth. Ct. 1998), the Pa. Commonwealth Court adopted for use in housing cases the proof standard normally found in employment cases as set forth by the Pa. Supreme Court in Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987). In Allison, the court found that normally in a case where the alleged discrimination is a race-based refusal to rent, the PHRC's prosecution of the case has to establish that:

(1) The Complainant is a member of a protected class; (2) the Respondents were aware of the Complainant's race; (3) the Complainant was qualified to rent the property in question; (4) the Complainant was denied the opportunity to rent the apartment; and (5) the apartment remained available for rent. Allison at 692.

Here, the court's phrasing of the *prima facie* requirement in Allison does not specifically fit the situation presented. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the U.S. Supreme Court observed that adaptations of the *prima*

facie formula have to be made for particular applications. See Allegheny Housing Rehabilitation Corp. at 318. In this case, given the credible evidence presented, the required *prima facie* showing is appropriately adjusted as follows:

(1) Branch is a member of a protected class; (2) The Archers knew that Branch is an African American; (3) The property was available to rent; (4) Branch was qualified to rent the property in question; (5) Branch was denied the opportunity to rent the apartment; and (6) the property remained available to rent.

In Allegheny Housing Rehabilitation Corp. at 318, the Pa. Supreme Court instructed that the form the *prima facie* standard takes must be appropriate to its function, which is to eliminate the most common nondiscriminatory reasons for the alleged actions. Here, while Branch has no problem with respect to the first two elements of the requisite *prima facie* requirement, the case stops cold at the third element of the requisite *prima facie* case.

In summary, the Archers contend that in May 1998, their property located at the Rear of 631 Mary Street was for sale and not for rent. To appreciate the legitimacy and extent of the Archers contention, it is necessary to examine and evaluate the credibility of the witnesses in this case.

Judgment of credibility is a responsibility entrusted to the trier of fact. Carr v. Com., State Board of Pharmacy, 49 Pa. Cmwlth. 330, 409 A.2d 941 (1980); Boughter v. Com., Dept. of Public Welfare, 55 Pa. Cmwlth. 521, 423 A.2d 806 (1980); PHRC v. Hempfield Township, 23 Pa. Cmwlth. 351, 352 A.2d 218 (1976). In this case, much of the testimony presented was conflicting. In assessing credibility, consideration was given to each witness' motive and state of mind, strength of memory and demeanor while on the witness stand. Consideration was also given to whether a witness' testimony was contradicted, and the bias, prejudice, and interest, if any, of

each witness. Recognition was also given to the premise that where resolution of a matter rests with a weighting and balancing of conflicting evidence, absolute certainty is rarely achieved.

Testimony on behalf of Branch's case was presented by the live testimony of four witnesses: Branch herself; Branch's daughter, Wendy Branch-Farley; Donna Shafer, Branch's friend; and John Bannon, a Scranton City Electrical Inspector. Additionally, the disposition testimony of two witnesses was presented: Timothy Marsh, the individual who eventually rented the Archers' Mary Street property; and Joyce Skorec, the realtor who had listed the Archers' Mary Street property and attempted to sell it.

Branch's testimony can only be characterized as elusive, evasive, and selectively forgetful. Additionally, a variety of strong circumstances and tangible facts plainly discredit significant portions of Branch's testimony.

The most damaging evidence standing in stark conflict with Branch's testimony was RE 6. Found on this exhibit is a Lackawanna County Clerk of Judicial Records time stamp dated October 27, 1998, indicating the exhibit was filed with the Lackawanna County Common Pleas Court on that date. Generally, Branch's testimony would have us believe that she was forced to leave her residence at 2304 Edith Avenue, Bangor Heights, sometime around April or May, 1998. (N.T. 81) RE 6 clearly indicates that as late as October 27, 1998, Branch still resided at 2304 Edith Avenue, Bangor Heights.

Branch also testified that she was being evicted from Bangor Heights when the Scranton Housing Authority learned that the man she had recently married had a criminal record. (N.T. 78, 80) Branch testified that nine days after her marriage, her husband was incarcerated. (N.T. 88) RE 6 references an October 2, 1998 judgment

for possession in the favor of the Scranton Housing Authority for the 2304 Edith Avenue property and that the judgment was awarded on the basis of criminal activity by Branch's husband. The suggestion is that the criminal activity was current and not merely a record of past actions. If Branch's husband went to jail so soon after his marriage to Branch, obviously there was alleged current criminal activity afoot.

Although Branch wanted us to believe that she had experienced hardships in her living arrangements after leaving Bangor Heights and that such hardships were attributable to the Archers' failure to rent to her, the record clearly shows that Branch was still living at the Bangor Heights property as late as October, 1998. This is a conspicuous discrepancy. Paragraph 4 of RE6 also indicates that Branch's husband was a tenant on the lease for 2304 Edith Avenue. This information is in direct conflict with Branch's testimony.

On another subject, Branch at first testified that she had not seen a large "for sale" sign outside the Archers' Mary Street property, (N.T.93) however, Branch then, almost immediately, contradicted herself and admitted she saw the "for sale" sign in the front yard. (N.T.93). When called as a rebuttal witness, Branch again denied seeing a "for sale" sign in the front yard, but changed her testimony to reflect she had seen a "for sale" sign up near Mary Street, (N.T.265), which was approximately 100 yards from the Mary Street property house.

Branch also contradicted herself when, at first, she testified that the Archers' daughter told her that her brother and a friend had been living at the Mary Street property and the Archers were going to have them move because they were destroying the house. (N.T.36,60). Later Branch testified that the Archers' daughter told her that the Archers moved out after building a new house and the home was vacant. (N.T.75).

At another point Branch testified that she had been told she could move into the property. (N.T.113). Branch indicated that Carol Archer "said she would give me the opportunity and a chance." (N.T.113). When asked, an opportunity to do what, Branch stated, "An opportunity, I guess, to continue to seek for a first homeowner's loan." (N.T.114). Branch was then asked, "at that time did you understand that Ms. Archer was offering you to purchase the home?", to which Branch responded, "At that time, I didn't understand that part. I thought I was going to be renting it." (N.T.114). Such testimony is simply not credible.

Despite agreeing that the Archers did such things as tell her "if you want to buy it. . ." (N.T.40, 58), and provided Branch with the names of organizations and places where Branch could get first homeowner assistance, (N.T.40, 58), Branch attempted to maintain that the arrangement was intended as a rental relationship between herself and the Archers.

Several times, Branch admitted such things as attempting to get financing, (N.T.54, 62, 63), that she mentioned buying the house after being shown it, (N.T.57), and indicating that after being told by the Archers they wanted to sell the property, she suggested that maybe she could rent with an option to purchase the Mary Street property. (N.T.58).

Branch's version of events relies heavily on her suggestion that she was simply responding to a "for rent" sign she saw on a panel near the back door, as she drove by on Mary Street. (N.T.37). Branch later responded to a question which asked when she became aware the house was occupied by saying "when I first seen the sign." (N.T.40). There is no dispute in this record that the house was unoccupied between November 1997 and August 1, 1998. It would appear Branch was saying she first saw the "for rent" sign after noticing the Marsh family had taken up

occupancy in August, 1998. At another point, Branch testified that she saw the "for rent" sign in "the mid-summer" of 1998. (N.T.77). It was abundantly clear that Branch's entire testimony fluctuated dramatically.

Both Branch's daughter and Donna Shafer offered testimony attempting to corroborate Branch's testimony that she had seen a "for rent" sign. Branch's daughter testified the "for rent" sign was "on the side of the house" facing Mary Street. (N.T.221-222). Shafer testified the "for rent" sign was on a railing on the back porch, (N.T.138), but had earlier told an investigator the sign was on a pole on the back porch. (N.T.143).

On this small detail, the record is clear a sign could not have been in four separate places. Instead, Branch's testimony along with her daughter's, and Shafer's are rejected as lacking credibility. On the issue of whether there was ever a "for rent" sign on the Mary Street property, we choose to believe the Archers and their realtor who each testified there never was a "for sale" sign on the Rear of 631 Mary Street house.

The remaining witness, John Bannon, and the two deposition witnesses were found to be entirely credible. However, Bannon's testimony was only offered in support of Branch's attempt to show damages. Marsh's deposition wholly supports the Archers' version, which contends they had intended to sell not rent the Mary Street property prior to mid-July 1998. Finally, the Skorec deposition also supports the Archers defense of Branch's allegation.

Turning to the Archers' testimony, while offered without the assistance of counsel and somewhat sketchy, there was clarity on major points of this case. The record reflects that the Mary Street property was empty from November 1997, through August 1, 1998. The record is clear that between February 3, 1998, and

May 3, 1998, the Archers were parties to an exclusive listing contract with a realty company in an unsuccessful attempt to sell the property. It is clear that the Archers' realtor had posted two "for sale" signs on the property and these signs remained on the property for approximately a month after the listing contract expired. Clearly, the Archers wanted to sell their house and Branch had expressed an interest in purchasing it. The Archers extended assistance to Branch by informing her of organizations and places where she could be assisted as a first time buyer. The problem here was that Branch did not take timely steps needed to arrange the purchase of the property.

As time passed from May through mid-July, the Archers grew frustrated with the lack of progress towards selling their house to Branch and rightly began to grow suspicious of Branch. Their suspicion turned up substantial negative information about Branch's relationship with the Scranton Housing Authority. RE4 and RE5 reflect the Scranton Housing Authority's need to take Branch to court for past due rent on two occasions: September 12, 1997 and again on November 5, 1997. Although Branch tried to pass such discrepancies off as "just a formality," (N.T.105) the Archers were justified in discounting Branch from further consideration with respect to their July 1998 decision to rent the Rear of 631 Mary Street property.

Although Branch did not allege a failure to rent in July 1998, had she, such an allegation would also have been dismissed as lacking merit.

Going back to the *prima facie* requirement, Branch was fundamentally unable to establish the requisite third element of a *prima facie* case. The property was not available to rent in May 1998, and the Archers were not merely suggesting that Branch buy the property to prevent her from renting it, as alleged.

An order dismissing Branch's case follows.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

KATHERINE BRANCH,
Complainant

v.

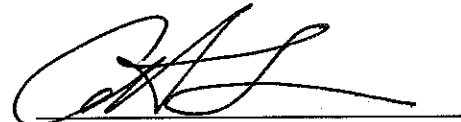
BILL AND CAROL ARCHER
Respondent

DOCKET No. H-7666

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of Section 5(h)(1) 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.

By:



Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

KATHERINE BRANCH,
Complainant

v.

BILL AND CAROL ARCHER
Respondent

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DOCKET No. H-7666

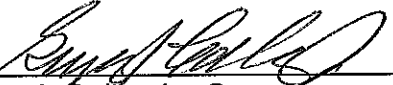
FINAL ORDER

AND NOW, this 21st day of May, 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 findings 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 complaint and hereby.

ORDERS

That the complaint in this case be, and the same hereby is, dismissed.

By: 
Carl E. Denson, Chairperson

Attest: 
Gregory J. Celia, Jr., Secretary