COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JIM COOK, Complainant v. SCRANTON HOUSING AUTHORITY, AND MARY ANN KOCHANSKI, MANAGER, VALLEY VIEW TERRACE PROJECTS, PA 301, Respondents	DOCKET NO. H-5159

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT *

1. The Complainant in this case is Jim Cook (hereinafter "Cook").

2. The Respondents herein are the Scranton Housing Authority (hereinafter the "Authority"), a federally funded housing project which provides low income housing, and Mary Ann Kochanski (hereinafter "Kochanski"), the manager of the Authority's project known as Valley View Terrace (hereinafter "Valley View"). (NT 175.)

3. Cook described his race as mixed American, American Indian, and African American, but he perceives himself as publicly considered a black African American. (NT 11.)

4. Valley View is a 240-unit complex composed of several buildings located at 1825 F. Strafford Avenue in the City of Scranton, Pennsylvania. (NT 130; RE 3.)

5. On March 11, 1988, Cook and a white female, Shutina, a/k/a Catherine Kovack (hereinafer "Kovack"), and the Authority entered into a lease agreement for the lease of an apartment at Valley View. (NT 13; RE 3.)

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* 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:

NT Notes of Testimony
CE Complainant's Exhibit
RE Respondent's Exhibit

6. Between March 11, 1988 and on or about October 1988, Cook and Kovack's relationship was marked by quarrelsome unrest, which tumultuousness both caused a disturbance to other Valley View residents and resulted in Kovack physically vacating the apartment she shared with Cook at Valley View. (NT 13, 76-77.)

7. On October 28, 1988, Cook submitted an "Application for Rent Adjustment" to the Authority, requesting that Kovack be removed from the March 1988 lease. (NT 13-14, 60, 84; RE 2.)

8. For this request, Cook insisted that he deal only with the Authority's upper management. (NT 189.)

9. Cook's request was processed by Harold Rempe (hereinafter "Rempe"), the Authority's deputy executive director. (NT 188, 190; RE 2.)

10. In Cook's request, he identified Kovack's relationship to himself as a "friend." (RE 2.)

11. Pursuant to Cook's request, Kovack was removed from the lease. (RE 3.)

12. On January 16, 1989, Kochanski came to Valley View, and on January 18, 1989, Kochanski assumed the duties of manager of Valley View.(NT 13, 129-130, 136.)

13. Shortly thereafter, in January 1989, Kochanski provided Cook with another "Application for Rent Adjustment." (NT 14, 23.)

14. When Cook asked Kochanski to have Kovack's name returned to the lease, Cook indicated, "I'd like to put my girlfriend on the lease." (NT 14, 68, 136.)

15. Cook understood that by completing the "Application for Rent Adjustment" form, he was only applying to have the Authority consider his request to have Kovack added to the lease. (NT 97.)

16. Cook's request was sent to the Authority's main office. (NT 139, 146.)

17. Subsequently, Rempe telephoned Kochanski to advise her that Paul Cusick, the Authority's executive director (hereinafter "Cusick"), had reviewed Cook's request and had decided to deny the request because of the earlier disturbances that had occurred between Cook and Kovack. (NT 149, 190, 191, 199, 202, 203.)

18. Following Rempe's discussion with Kochanski, On February 9, 1989, Kochanski issued to Cook a written request that he come to her office for an informal conference on February 13, 1989. (NT 16; RE 4.)

19. On February 13, 1989, Cook and Kochanski had a meeting during which Cook was advised that Cusick would not permit Kovack on the lease because of the prior problems between Cook and Kovack. (NT 16, 23, 93, 158, 160-161, 166.)

20. Cook advised Kochanski that his relationship with Kovack was between ten to fifteen years old, and that he considered Kovack his common-law wife. (NT 166.)

21. The meeting on February 13, 1989 ended when Cook became agitated and simply walked out. (NT 17.)

22. After the February 13, 1989 meeting, Kochanski frequently observed a woman she assumed to be Kovack on the property with Cook. (NT 222.)

23. Kochanski eventually discussed her suspicion that Kovack was residing at Valley View with Cusick, who responded by generating a memorandum to be posted at the Authority's properties, including Valley View. (NT 89, 223, 254; RE 5.)

24. This memorandum reminded tenants of that portion of their leases which referred to illegal guests, and further advised residents that a violation of this lease provision could result in eviction. (RE 5.)

25. On August 22, 1990, Kochanski received a telephone call from the Scranton Police Department regarding a purse which had been left at the police station which contained identification indicating Kovack resided at Valley View. (NT 225.)

26. Cook had previously taken Kovack's purse to the police department because Kovack had left. (NT 228.)

27. Subsequently, the police gave Kochanski the purse. (NT 225.)

28. Kochanski then called Cook to her office, at which time Cook informed Kochanski that Kovack had been living in his apartment. (NT 102, 228.)

29. When Cook insisted that Kovack was now on the lease, Kochanski called the Authority's main office to check Cook's information. (NT 165, 229.)

30. The main office confirmed that Kovack was not on the lease. (NT 165.)

31. Kochanski again informed Cook that Kovack was not on the lease and that, unless Cook abided by his lease regarding guests, he would be evicted. (NT 103, 105.)

32. As Kochanski asked Cook if Kovack had an income, the conversation between Cook and Kochanski became heated. (NT 104, 166.)

33. The meeting ended with Cook telling Kochanski to do what she had to do, taking Kovack's purse and walking out. (NT 106, 299.)

34. On September 11, 1990, Kochanski submitted a written recommendation that eviction proceedings be initiated against Cook for the reasons that Cook was in violation of the guest provisions of his lease, and because of the unreported income of Kovack. (NT 231; RE 6.)

35. By letter dated September 12, 1990, the Authority advised Cook that the Authority proposed to evict Cook because of his failure to abide by the guest provision of the lease. (NT 31, 96; RE 7.)

36. This letter also advised Cook of his right to request a hearing on the proposed eviction. (RE 7.)

37. On November 5, 1990, a grievance hearing was held before a five-member panel composed of three tenant representatives and two Authority employees. (NT 192-194.)

38. One of the tenant representatives, Ms. Louise Williams, is a black woman. (NT 194, 233.)

39. A grievance hearing panel's recommendation is binding on the Authority. (NT 193.)

40. Cook's grievance hearing panel unanimously recommended that the eviction decision be upheld. (NT 195, 233; CE 1.)

41. The Authority then filed a landlord-tenant action against Cook with the local district justice, who granted the Authority an order for possession of Cook's apartment for violations of the lease. (NT 109, 110.)

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.

3. Cook is an individual within the meaning of the Pennsylvania Human Relations Act.

4. The property from which Cook was evicted was a housing accommodation within the meaning of the Act.

5. Cook's proffered direct evidence is not credible, thus unacceptable.

6. Cook has not established a *prima facie* case of either harassment or a discriminatory eviction.

OPINION

This case arises on a complaint filed by Jim Cook (hereinafter "Cook") against the Scranton Housing Authority (hereinafter "the Authority") and Mary Ann Kochanski (hereinafter "Kochanski") at Pennsylvania Human Relations Commission (hereinafter "PHRC") Docket No. H-5159.

Initially, Cook's complaint appears to have been an informal letter dated November 1, 1990. Subsequently, an amended complaint, verified on May 28, 1991, was substituted for Cook's informal letter complaint. This amended complaint contains a PHRC Harrisburg regional office time-stamp which reflects its receipt by the PHRC on May 31, 1991. Subsequently, on or about November 18, 1991, Cook appears to have verified a second amended complaint. Finally, on an unknown later date, Cook again filed a second amended complaint. From this most recent filing, the general nature of Cook's allegations are extracted.

In his most recent filing Cook alleges that on or about November 13, 1990, he was notified that his lease was being terminated and he was being evicted. This complaint also generally alleges that Kochanski's actions toward Cook amounted to harassment. Cook alleges that both the notice he received that he was being evicted and the alleged harassment by Kochanski occurred because of his race, black, and the race of his female "partner," white.

Cook's complaint alleged the actions of the Authority and Kochanski violate Sections 5(h)(1) and (3) of the Pennsylvania Human Relations Act (hereinafter "PHRA").

The PHRC investigated Cook's allegations and, at the conclusion of the investigation, informed the Authority and Kochanski that probable cause existed to credit Cook'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 May 6, 1997, in Scranton, Pennsylvania before Permanent Hearing Examiner Carl H. Summerson. The Commission's interest in the complaint was overseen by the PHRC Housing Division's Assistant Chief Counsel Jonathan J. Williams. Edmund J. Scacchitti, Esquire, appeared on behalf of the Authority and Kochanski. Theodore Q. Thompson, Esquire, appeared for Cook. The parties were afforded an opportunity to submit post-hearing briefs. Post-hearing briefs were received between July 31, 1997 and August 4, 1997. On August 25, 1997, Attorney Scacchitti's reply brief was received.

Sections 5(h)(1) and (3) of the PHRA state in pertinent part, "It shall be an unlawful discriminatory practice. . . [f]or any person to. . .

> (1) Refuse to. . . lease. . . or otherwise deny or withhold any housing accommodation. . . from any person because of the race . . . of any person. . . occupant or user of such housing accommodation. . .
>
> (2) Discriminate 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 race. . . of any person. . ."

As recognized by the parties, Cook's claims are classic disparate treatment allegations.

If this were an employment case, one of the analytical approaches so frequently seen which govern disparate treatment cases would clearly apply. However, this matter is an allegation found under the housing provision of the PHRA. To date, Pennsylvania courts have not been presented with a disparate treatment, harassment, and eviction-from-housing claim, thus, no clear standard has been articulated in Pennsylvania regarding a useful pattern of proof.

Since 1980, the Pennsylvania Supreme Court has recognized that there are particularly appropriate situations where the interpretation of the PHRA and federal civil rights legislation should be in harmony. Chmill v. City of Pittsburgh, 412 A.2d 860 (Pa. 1980). In Chmill, the Pennsylvania Supreme Court declared: "Indeed, as our prior cases have suggested, the Human Relations Act should be construed in light of principles of fair employment law which have emerged relative to the federal [statute]. . ." citing General Electric Corporation v. PHRC, 469 Pa. 292, 365 A.2d 649 (1976).

As recently as 1993, appellate courts in Pennsylvania have continued to recognize federal precedent as valuable in interpreting the PHRA. Krveski v. Schott Glass Technologies, __ Pa. Super. __, 626 A.2d 595 (1993). Accordingly, we turn to federal precedent, which has generally adopted both the proof model articulated by McDonnell-Douglas v. Green, 411 U.S. 792 (1973), and the alternative analytical method of proof known commonly as the direct evidence model. Federal housing cases under Title VIII have used both analytical models, depending on the circumstances presented. Use of federal guidance articulated in federal Fair Housing Act cases is particularly appropriate since the substantially equivalent housing provisions of the PHRA are the state analog to the Fair Housing Act's provisions.

Here, given the nature of the evidence presented, we will examine this matter under the rubric of both the three-step analytical method of proof used in McDonnell-Douglas, and the direct evidence analytical proof method.

While the briefs of the parties attempt to frame the evidence presented solely under the McDonnell-Douglas model, the U.S. Supreme Court has provided instruction that the McDonnell-Douglas shifting burdens of proof model is "inapplicable where the plaintiff presents direct evidence of discrimination." Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985). Here, Cook's testimony at the public hearing contained several statements allegedly made by Kochanski which constitute a proffering of direct evidence of discrimination. Accordingly, as an initial matter, a specific assessment of the credibility of Cook's testimony must be made. In the event Cook's testimony is found to amount to proof that racial discrimination was a substantial factor in either his eviction or the alleged harassment, the Authority and Kochanski would be obliged to rebut by proving by a preponderance of the evidence that Cook would have been evicted even absent the presence of a racial component. Mt. Healthy City School District v. Doyle, 429 U.S. 274, 287 (1977).

Besides testifying that Kochanski was "arrogant and hostile" (NT 17, 22, 29) to him, Cook proffered testimony that, for no reason Kochanski called him an "asshole." (NT 26.) Cook further proffered that when Cook asked Kochanski if she was talking to him, Kochanski said, "You don't get it. . . she turned her rear to me and patted it and told me to kiss her white ass. . ." Cook also testified that Kochanski was disrespectful to Cook every time he went to the Valley View office and "would have racial things to say. . ." (NT 27.) Finally, Cook proffered that "one

time [Kochanski] said that white people and black people don't belong together, that we should stay away from white people. . ." (NT 27), and that "people like [Cook] in Valley View was (*sic*) nothing but scums (*sic*)." (NT 28.)

When Kochanski testified, she firmly denied either calling Cook an a--hole (NT 163), or telling Cook to kiss her white a-- (NT 163, 241), or use of the term "scum" (NT 164), or saying anything to the effect that blacks should be with blacks and whites with whites. (NT 240.) Kochanski further indicated that Cook upset her by calling her a racist when she advised Cook that Kovack would not be permitted back on the lease. (NT 165.) Kochanski described Cook as an individual who only listened to what he wanted to hear and totally disregarded all else. (NT 162.)

Clearly, Cook's and Kochanski's testimony could not be more diametrically opposed. Kochanski's contradiction of Cook's testimony creates the classic credibility situation where one or the other's testimony must be rejected. Here, after consideration of the entire record, the proffered direct evidence fails largely because Cook's testimony is found to be both unreliable and lacking in credibility. Cook's testimony was repeatedly inconsistent, contradictory and illogical.

First, it is recognized that it is Cook's burden of persuasion that his version is the accurate account of what occurred. While Cook specifically indicated that much of what was allegedly said was said in front of a secretary who was in a position to hear alleged comments (NT 125), Cook failed to call this person as a witness. When Kochanski's testimony directly discredited Cook's allegations, one would reasonably expect that if there were someone supposedly in a position to corroborate Cook's version, that the person would be called as a witness. Here, the only witness for Cook was Cook. Even in the face of general testimony by Cook that Kochanski

treated people of color differently, Cook offered only what he alleged were his own perceptions of Kochanski's behavior toward others in support of that general allegation. Under the circumstances, the unexplained failure to call other witnesses gives rise to an inference that others would not have favorable testimony to offer regarding Cook's case. See, Matter of Evangeline Refining Co., 890 F.2d 1312 (5th Cir. 1989).

Several other factors also were observed which, collectively, have a tendency to further diminish the accuracy and sincerity of Cook's testimony. Paramount in these considerations was Cook's manner of testifying which often can best be described as evasive. It was not that Cook often did not answer questions with certainty, or that he often reflected before answering questions, but that Cook feigned confusion at strategic points and was unresponsive to clear questions. Consistently, Cook attempted to suppress the simple fact that he knew that the Authority had denied his request to have Kovack reinstated on the lease. Instead, Cook attempted to unreasonably maintain that, although told otherwise, he believed that Kovack was legally back on the lease at the moment he filed his application. Under the common principles which govern the conduct of mankind, Cook's obstinacy is incomprehensible.

Another factor heavily weighing against Cook is a collection of inconsistencies and contradictions which mark his testimony. First, Cook indicated that when he initially applied for a unit at Valley View, he and Kovack applied as husband and wife. (NT 12.) The evidence shows that neither the lease (RE 4) nor Cook's application to have Kovack removed from the lease (RE 2) refers to Kovack as Cook's wife. On the contrary, on Cook's application to have Kovack removed from

the lease, Kovack is referred to as "Friend" in the box responding to "Relationship of person to HEAD of family."

As already noted, the record is clear that Cook knew that the procedure to have Kovack placed back on the lease would be a request. At one point Cook stated, "I went down to the office and asked that -- well, I said that I would like to put her back on the lease." Clearly, Cook knew his application was a request only. He guarded his testimony in such a way as to attempt to disguise that he knew full well he had to apply, and that such a procedure was not automatic.

Cook's testimony on another matter is equally telling. Cook proffered that he was told by Kochanski that she had torn up his application to place Kovack back on the lease and thrown it in the garbage. (NT 16, 103.) It appears that Cook would argue that since the existence of the form would evidence Kovack was reinstated on the lease, the alleged tearing up and throwing away of the form was an effort to deny that Kovack was back on the lease. Several things are wrong with such an argument. First, the form was established to have been simply an application. Whether it was destroyed or not would not be helpful to Cook's case. More importantly, however, is a revealing answer Cook gave to a question put to him regarding whether Kochanski gave Cook an explanation of why Kovack was not wanted at Valley View. Cook's full answer was:

> "She said that Mr. Cusick, which was the executive director, she said Mr. Cusick told her that he didn't want Ms. Kovack there. So, I said well, I don't understand why not. I said I signed a form putting her back on the lease. I says so I don't see no reason why. She said well, I tore up that form you signed, and I -- she said I threw it in the garbage. I said well, you can't really do that. I said I signed the document. Mr. Cusick said he didn't want her there so I told her to throw it in the garbage. Well, she was arrogant and hostile so, at that point I just walked out of the office."

In the next to last sentence of his answer, Cook can be seen directly contradicting himself. In this sentence, Cook indicates that he told Kochanski to throw his application away. This excerpt from the transcript amply illustrates a dramatic contradiction.

On the subject of Cook's application, it is far more probable that Cook's application was never returned to Kochanski. This form, when filed, is forwarded to the Authority's main office for processing. Once Cusick decided not to allow Kovack back on the lease, Kochanski simply received a telephone call from Rempe. The application form likely remained at the main office. Cook's version surrounding the loss of his application is entitled to far less credit than Kochanski and the Authority's version on this matter.

Yet another issue weighs heavily against Cook's credibility. Cook testified that "somewhere in August of '90" he signed Kovack back on the lease. The record is clear that Cook made his application to return Kovack to his lease in January 1989, approximately one and one-half years earlier than Cook's testimony.

Finally, regarding Cook's testimony that Kochanski was always arrogant and hostile (NT 17, 29), Cook testified that when he was told Kovack could not be put on the lease that he felt really bad because he could not understand why this decision had been made. (NT 22, 23.) Although Cook articulated his general lack of understanding and sadness at being told Kovack would not be allowed on the lease, at this point in his testimony Cook did not mention being told this in an arrogant or hostile manner.

When the totality of Cook's testimony is compared to the straight-forward, credible testimony offered by Kochanski, strong circumstances tend to discredit

Cook's testimony. This leads to the conclusion that Kochanski's testimony is the more reasonable of the two.

Since Cook's proffered direct evidence has not been accepted, Cook has not proven by a preponderance that a discriminatory motive was a substantial factor in his eviction. Accordingly, the Authority need not prove by a preponderance of the evidence that Cook would have been evicted absent the presence of this factor. See Mt. Healthy, *supra*. Cook's failure to prove this matter by direct evidence brings us back to the issue of the applicability of the McDonnell-Douglas three-prong test.

The first prong under the McDonnell-Douglas legal standard is, of course, Cook's obligation to establish a *prima facie* case. In this matter, the parties have a varied view of what might constitute a *prima facie* case. The Complainant's brief submits that the following is the appropriate *prima facie* case:

1. that Cook is a member of a protected class;

2. that he was racially discriminated against and harassed by the Authority and Kochanski;

3. that he neither desired nor wanted the Respondents' behavior; and

4. that he could not quietly enjoy his apartment without the racial discrimination and harassment.

The PHRC brief on behalf of the complaint proposed two distinct *prima facie* cases. In the proposed conclusions of law, the *prima facie* case put forward includes:

1. that Cook is a member of a protected class, African American, and his relationship with a person of another race, Ms. Kovack;

2. that he was qualified to lease the apartment in question;

3. that he was denied the opportunity to rent the apartment by being wrongfully evicted; and

4. that the Respondents manifested discriminatory intent through racial insults and expressed disapproval of interracial relationships.

At page 13 of the brief, a new *prima facie* case is suggested:

1. that Cook is a member of a protected class;

2. that he was qualified to rent the property in question; and

3. that he was evicted because of racial discrimination.

Both the Respondents' brief and response brief, while not specifically outlining a proposed *prima facie* case, submit that Cook has not proven a *prima facie* case because he:

1. failed to establish that he attempted to exercise a right or privilege prior to the adverse action for his knowingly housing an unauthorized individual in violation of his lease;

2. failed to establish that the reason for his eviction was retaliatory; and

3. failed to establish that others not in his protected class were treated differently.

Several of these proposed *prima facie* cases combine the harassment and eviction components. However, for the purpose of a full analysis, the two components of Cook's allegations should be separately reviewed. First, in order to establish a *prima facie* case of racial harassment by Kochanski, Cook must show:

1. that he belongs to a protected group;

2. that he was subject to racial harassment; and

3. that such racial harassment affected the terms or conditions of his lease.

On the issue of Cook's eviction, since an eviction is analogous to a termination from employment, we will borrow from the requisite *prima facie* case in a discharge-from-employment case. Here, to establish a *prima facie* case of a race-based eviction, Cook must establish:

1. that he is a member of a protected class;

2. that he was a tenant;

3. that he was notified of eviction;

4. that for the same or similar lease violations, he was treated differently than similarly-situated residents who are not members of his protected group.

Regarding Cook's attempt to prove a *prima facie* case of harassment by a preponderance of the evidence, Cook was unable to prove that he was subject to racially-based harassment. Once again, the issue is one of credibility on this element of the requisite *prima facie* showing. As previously outlined, Cook's assertions are assigned less weight than Kochanski's straight-forward denials. Since Cook's testimony was offered on his own behalf, his testimony may be construed strongly against him because it consisted of self-contradictory, vague, and manifestly equivocal elements. Further, Cook's testimony was corroborated by no one. Accordingly, the conflicting testimony on the harassment issue is resolved by assigning less weight to Cook's unreliable evidence.

Turning to the requisite *prima facie* case on Cook's eviction, Cook easily meets the first three elements of the requisite showing. Cook is both a man of color,

and involved in an interracial relationship. Cook was clearly a tenant. And Cook did receive an eviction notice. The fourth element is where Cook's evidence falls short.

The evidence Cook did offer regarding the end of the tenancy of others was deficient with respect to the required fourth element of a *prima facie* case. While Cook offered a scant picture of the eviction of several other tenants, Cook made no effort to rebut the assertions that the Authority had valid reasons for the eviction of each tenant about whom Cook alluded.

Cook's evidence failed to point to a single tenant who had similarly violated the guest provisions of their lease but was not evicted. On the contrary, it appears that Cook was given wide latitude when it came to his particular lease violation.

Kochanski credibly testified that for a year and a half she suspected Cook was permitting Kovack to live in his apartment in violation of Cook's lease. Although having a strong suspicion, all Kochanski did was convey her suspicions to the Authority's main office. Cusick's modest action upon his receipt of Kochanski's information was to prepare and distribute a guileless notice informing all residents of the "guest" policies applicable to tenants.

It was not until Kochanski had been furnished with concrete evidence, in the form of Kovack's identification which listed Cook's apartment as her address, that Kochanski even confronted Cook about Kovack's apparent long-term residency. Once Cook confirmed that Kovack had in fact been residing in his apartment since January of 1989, Cook was given an opportunity to cure the lease violation. His failure to do so resulted in the grievance hearing panel's unanimous vote to uphold pursuit of Cook's eviction. This scenario does not depict an eagerness to evict a

black tenant. On the contrary, it tends to show that racial considerations played no part in the treatment of Cook.

It is worthy of note that the grievance hearing panel was composed of five members, three of whom were themselves Authority residents. One of the panel member residents was a black woman who, along with the rest of the panel, apparently found no merit in Cook's situation.

Finally, Cook did not rebut the Authority's general evidence that white residents who violate their leases or behave disruptively are evicted. (NT 243-244.) For these reasons, Cook has not proven a case regarding his eviction.

Assuming *arguendo* that Cook had met the requisite *prima facie* showing, the Authority has articulated a legitimate, non-discriminatory reason for Cook's eviction. The record contains considerable evidence that Cook knowingly breached his lease agreement by permitting Kovack to reside in his apartment.

In the brief on behalf of the complaint an argument was made that, in effect, Cook's breach of his lease was not serious (p. 16). The evidence is undisputed that during the initial period of Cook's tenancy when Kovack was with him, the two of them disturbed other residents by their irresponsible behavior. It has been frequently recognized during its history that subsidized housing can easily become an undesirable place to live unless managements are careful to require responsible behavior of the tenants. See, *e.g.*, Moundsville Housing Authority v. Porter, 370 SE.2d 341 (1988), citing Anti-Crime Act Amendments of 1981, PL No. 96-399, 94 Stat. 16 (1981), reprinted in 1981 U.S. Code Cong. & Ad. News 6498; Perez v. Boston Housing Authority, 379 Mass. 703, 400 NE.2d 1231 (1980); Perez v. Boston Housing Authority, 368 Mass. 333, 331 NE.2d 801, appeal dismissed, 423

U.S. 1009, 96 S.Ct. 440, 46 L.Ed.2d 381 (1975). While Cook did not appreciate the negative effects of the boisterous, disruptive nature of his prior interaction with Kovack, the three tenant-members of Cook's grievance hearing panel apparently did. Further, parties to a lease may restrict the uses to which a lessee may put a leased premise, and lease provisions which restrict the use of a premise to only authorized persons have consistently been sustained. See, Jema Props. v. McLeod, NYLJ, June 7, 1976; Irvis Holding Corp. v. Gleen, 2 Misc.2d 153 (1976); Roanoke Chowan Regional Housing Authority v. Malachi and Vaughan, 344 SE.2d 578 (1986); Simmons v. Drew, 716 F.2d 1160 (1983); King v. Menachem, *et al.*, 3 EOH 16,626 (1981).

As a final matter, Cook made a particular point of referring to Kovack as his "common-law wife." The evidence considered as a whole reveals that it was not until Cook was told Kovack would not be permitted back on the lease that he told Kochanski that Kovack was his common-law wife. Prior to this, Cook had indicated Kovack was his "friend." (RE 2.)

The sparse record in this matter does not permit a full analysis of whether Cook and Kovack's relationship amounted to a common-law marriage. In Pennsylvania, a common-law marriage may be created by uttering words in the present tense with the intent to establish a marital relationship. Commonwealth v. Sullivan, 398 A.2d 978, 484 Pa. 130 (1979). Evidence from which a common-law marriage may be found can be a showing of cohabitation of the parties and reputation that they are married. Torres v. Commonwealth, Department of Public Welfare, 393 A.2d 1079, 38 Pa. Commonwealth Ct. 467 (1978). Cohabitation is, of course, an essential element of a common-law marriage, but the cohabitation must be

constant, as distinguished from irregular or inconstant cohabitation. Further, the reputation of marriage must not be partial or divided, but broad and general. Estate of Rees, 480 A.2d 327, 331 Pa. Super. 225 (1984); Van Brakle v. Lanauze, 438 A.2d 992, 293 Pa. Super. 276 (1981).

In this case, the limited evidence establishes a pattern of irregular cohabitation and minimal reputation of marriage. When Cook noted that Kovack was Cook's friend, this weighs heavily against there having been a general reputation that Cook and Kovack were married. Also, Kovack and Cook's intermittent separations reveal an irregular pattern of cohabitation. Finally, Cook presented no evidence of the requisite intent to have formed a marriage contract. Accordingly, the evidence presented here falls short of legally establishing a common-law marraige, and it is likely that this same lack of *indicia* of a marriage was considered at the time of the decision to prohibit Kovack back on Cook's lease, and to ultimately consider her an unauthorized occupant.

Since Cook principally failed to establish a *prima facie* case and, secondarily, had he done so, is wholly unable to show that the articulated reason for his eviction was discriminatory, Cook's case should be dismissed in its entirety. An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA

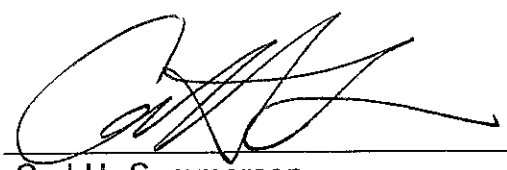
GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JIM COOK, **Complainant** **v.** **SCRANTON HOUSING AUTHORITY, AND MARY ANN KOCHANSKI, MANAGER, VALLEY VIEW TERRACE PROJECTS, PA 301,** **Respondents**	**DOCKET NO. H-5159**

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 Sections 5(h)(1) and (3) of the Pennsylvania Human Relations Act. It is, therefore, the Public 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: 

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GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JIM COOK, **Complainant** **v.** **SCRANTON HOUSING AUTHORITY, AND MARY ANN KOCHANSKI, MANAGER, VALLEY VIEW TERRACE PROJECTS, PA 301,** **Respondents**	**DOCKET NO. H-5159**

FINAL ORDER

AND NOW, this 28th day of October, 1997, 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 same into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

O R D E R S

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

By: Robert Johnson Smith
Robert Johnson Smith, Chairperson

Attest:

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