

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**MICHAEL KIEL,
Complainant**

v.

**WES STEZAK,
Respondent**

DOCKET NO. H-6480

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL KIEL,
COMPLAINANT

V.

WES STASZAK,
RESPONDENT

DOCKET NO. H-6480
HUD NO: 03-94-0804-8

STIPULATIONS OF FACT

The following facts are admitted by all parties to the above captioned case and no further proof thereof shall be required:

1. The Complainant herein is: Michael Kiel of R.D. 1 Box 514, Portage, PA 15946.
2. The Respondent herein is Wes Staszak of 209 Dora Street, Whitaker, PA 15122.
3. The property in question is located at 221 Maple Drive, in Edinboro, Pennsylvania.
4. On or about September 15, 1994, Complainant filed a timely Complaint which was served upon Respondent shortly thereafter, alleging housing discrimination based on the Complainant's handicap, quadriplegia, in violation of the following provisions of the Pennsylvania Human Relations Act: §§ 5(h)(1), 5(h)(3), 5(h)(3.1), 5(h)(5), 5(h)(6), 5(h)(7).
5. The Respondents filed a formal Answer on or about October 17, 1994 denying all the substantial allegations of the Complaint.

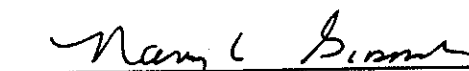
6. A fact finding conference was scheduled for October 5, 1994 but was cancelled.
7. Following an investigation, a probable cause finding was approved by the Commission's Housing Division Legal staff on June 3, 1997. Respondents were notified of the probable cause finding on or about June 13, 1997.
8. Subsequent to the finding of probable cause, efforts were made to eliminate the alleged discrimination. This and all other attempts at conciliation have failed.
9. The above captioned case was approved for Public Hearing and placed on the Public Hearing Docket at the Commission meeting of April 20, 1998.

By Respondent:


Diana C. Wyrick, Esq.

11/5/98
Date

By Pennsylvania Human Relations Commission:


Nancy Gippert, Esquire
Assistant Chief Counsel
Housing Division

10/2/98
Date

FINDINGS OF FACT *

1. The Respondent in this matter is Wes Stezak [sic] (hereinafter "Staszak").
2. The Complainant is Michael Kiel (hereinafter "Kiel").
3. For thirty-four to thirty-five years, Staszak's principal residence has consistently been in Pittsburgh, Pennsylvania. (NT 63, 84.)
4. In approximately 1970-71, Staszak purchased a property located at 221 Maple Drive in Edinboro, Pennsylvania (hereinafter "the rental unit"). (NT 64, 84, 122.)
5. For twenty years, the rental unit was rented to students attending Edinboro University. (NT 67, 125.)
6. From approximately mid-May through August, Staszak and his family occupied the rental unit. Then, from the beginning of September to the end of each school year the rental unit would be rented. (NT 65-67.)
7. While students occupied the rental unit, Staszak maintained a *for rent* sign in a window of the rental unit. While Staszak and his family occupied the rental unit, the *for rent* sign was taken down. (NT 89, 146, 149.)

* The foregoing Stipulations of Fact are incorporated herein as if fully set forth. 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:

CE Complainant's Exhibit
NT Notes of Testimony

8. On or about July 20, 1994, Pam Stuchell (hereinafter "Stuchell") applied to rent the rental unit and gave Staszak a \$200 check as a security deposit. (NT 123, 145, 148 and 157.)

9. While Stuchell was looking at the rental property, her discussion with Staszak turned to Stuchell's roommate. (NT 157.)

10. Staszak asked Stuchell her roommate's name and if she was a "N-----." (NT 158.)

11. Approximately two weeks after July 20, 1994, Stuchell informed Staszak that she no longer wanted to rent the rental unit. (NT 159, 162.)

12. In August 1994, Kiel had made the decision to attend Edinboro University. (NT 23.)

13. At age nineteen Kiel was the victim of a gunshot which injured his spinal cord and left him paralyzed from the neck and shoulders down, a condition commonly known as *quadriplegia*. (NT 23, 35, 99.)

14. In the spring of 1993, after having been shot, Kiel spent four months in recovery and thereafter continued his education at Penn State's Altoona campus. (NT 48, 99.)

15. After completing his third year of undergraduate studies in Altoona, Kiel decided to look for a college which was more accessible than Penn State's main campus. Kiel considered Penn State's main campus to be too spread out. (NT 48, 99.)

16. In August 1994, Kiel's personal care attendant was Pamela Stoltz (hereinafter "Stoltz"), a certified nurse's aide. (NT 22, 100.)

17. Stoltz transported Kiel from his parents' home in Portage to Edinboro to enable Kiel to look at Edinboro University, as Kiel was looking for a more accessible college. (NT 23, 48, 99.)

18. Kiel and Stoltz both decided that if Kiel were to pursue a psychology degree at Edinboro University, Stoltz could attend the university and pursue a degree in nursing, remain Kiel's personal care attendant, and rent an apartment with Kiel. (NT 23-24.)

19. After Kiel and Stoltz agreed to move to Edinboro, they began to look for a place to live. (NT 25.)

20. Kiel and Stoltz looked at university housing purported to be accessible to students with disabilities but decided against living there. (NT 37, 38.)

21. A realtor was contacted, and one property was considered but found unacceptable because it was very small, had a dirt driveway, and had no sidewalk leading to the house. (NT 25.)

22. After an unsuccessful search for a place to live, Kiel and Stoltz returned to Portage. (NT 25.)

23. In mid-August, a call was made to the realtor contact they had made in Edinboro, at which time Kiel and Stoltz were given a general description of the Staszak property. (NT 26.)

24. The realtor gave Staszak's telephone number to Stoltz, as she and Kiel were interested in the rental property primarily because the driveway was cement which would make it easier to take Kiel's wheelchair on and off the lift of his van. (NT 27, 40-41, 43.)

25. On August 16, 1994, from Kiel's home in Portage, Stoltz called Staszak to inquire about the rental property. (NT 27, 28, 49, 101, 123.)

26. Staszak initially emphasized that he wanted the rental property kept clean and neat and there should be no parties, to which Stoltz responded that she and Kiel were there to pursue degrees, not to party. (NT 27.)

27. The need for a security deposit was mentioned, to which Stoltz indicated that it would not be a problem. (NT 28.)

28. Stoltz then indicated that she and Kiel needed a place as soon as possible, and there was discussion regarding a mutually convenient time to meet and look at the rental property. (NT 28.)

29. At some point in the conversation between Stoltz and Staszak, Stoltz noted that she is a caregiver, which prompted Staszak to inquire whether either Stoltz or Kiel is handicapped. (NT 29, 36.)

30. Stoltz informed Staszak that Kiel has a disability. (NT 29.)

31. From that point on, everything changed as Staszak stated, "I don't rent to handicapped individuals. . . the residence is not handicap accessible, the doorways are standard, the hallways are too narrow. . ." (NT 29, 125.)

32. Staszak also expressed that he was unsure if his insurance would cover him if he rented to an individual with a disability. (NT 30, 126.)

33. Staszak informed Stoltz that he would call his insurance company and get back to her regarding whether he could rent to her and Kiel. (NT 30, 49.)

34. When the conversation between Stoltz and Staszak ended, Stoltz informed Kiel that there was a problem because Kiel was in a wheelchair. Stoltz told

Kiel that Staszak said his doorways were standard and the hallways narrow. (NT 30.)

35. Kiel responded that he would speak with his father, Russ Kiel (hereinafter "Kiel's father"), because Kiel's father was always willing to make modifications. (NT 30-31, 49, 104.)

36. Several hours later, Kiel did speak with his father and asked him to call Staszak. (NT 49, 127.)

37. That same day Kiel's father called Staszak. (NT 127.)

38. In effect, their conversation began by Staszak informing Kiel's father that the rental unit was not accessible. (NT 50, 127.)

39. Kiel's father informed Staszak that he is a contractor, and that he could install a temporary ramp, at his own expense, and remove it at the end of Kiel's tenancy. (NT 51.)

40. Staszak then expressed that Kiel's wheelchair would not fit through doorways, that they were standard. (NT 50, 127.)

41. At that time, Staszak had never measured the doorways at the rental unit. (NT 128, 144.)

42. Kiel's father indicated that Kiel's wheelchair was designed to fit standard openings. (NT 50.)

43. Feeling that Staszak was "either hedging or making excuses. . .", Kiel's father asked directly, "Are you telling me that you will not rent to [Kiel] because he's in a wheelchair?" (NT 53.)

44. Staszak answered "yes". (NT 53.)

45. Kiel's father then asked Staszak, "Do you realize that's illegal. . .", to which Staszak responded, "It's my property and if I can't rent it to who [sic] I want then I won't rent it." (NT 53.)

46. Kiel never personally spoke with Staszak. (NT 140.)

47. Neither Stoltz nor Kiel ever saw the inside of the rental unit. (NT 33, 39.)

48. Kiel's wheelchair could have fit through the front door of the rental unit. (NT 142, 144.)

49. Staszak took the rental unit off the market until December 1994, at which time the rental unit was leased to individuals who vacated the unit in April 1995. (NT 87, 145; CE 1.)

50. A few days after the calls to Staszak, Stoltz and Kiel rented the smaller property they had been shown earlier by the Edinboro realtor. (NT 32.)

51. The driveway of the unit rented was shale and not level; Staszak's rental unit driveway was level concrete.

52. Kiel had to embark from his van on the street, traverse a hill in the lawn, and when the weather was inclement a tarp had to be used. (NT 33, 104.)

53. Kiel made a round trip from Edinboro to attend the public hearing, traveling approximately 220 miles in the process. (NT 106-107.)

CONCLUSIONS OF LAW

- 1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and subject matter of this case.**
- 2. The parties and the PHRC have fully complied with the procedural prerequisites to a public hearing.**
- 3. Kiel is an individual within the meaning of the Pennsylvania Human Relations Act (hereinafter "PHRA").**
- 4. Staszak's unit is a housing accommodation within the meaning of the PHRA.**
- 5. Kiel presented direct evidence of Sections 5(h)(1), (5) and (6) violations.**
- 6. When discrimination has been found, the Commission has broad discretion in fashioning a remedy.**

OPINION

This case arises on a complaint filed by Michael Kiel (hereinafter "Kiel") against Wes Staszak (hereinafter "Staszak") at Pennsylvania Human Relations Commission (hereinafter "PHRC") Docket No. H-6480.

In his complaint Kiel alleged that on or about August 15, 1994, Staszak denied him an opportunity to rent an available housing unit because of his disability, quadriplegia. Kiel's initial complaint alleged Staszak's actions violate Sections 5(a)(1), (3), (3.1), (3.2), (5), (6), (8), and 5(e) of the Pennsylvania Human Relations Act (hereinafter "PHRA"). At the pre-hearing conference a motion to amend was granted, allowing changes which indicate Sections 5(h)(1), (3), (3.2), (5), (6), and (7) were allegedly violated.

The PHRC investigated Kiel's allegations and, at the conclusion of the investigation, informed Staszak that probable cause existed to credit Kiel'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 November 12, 1998, in Pittsburgh, Pennsylvania, before PHRC Permanent Hearing Examiner Carl H. Summerson. The Commission's interest in the complaint was overseen by the PHRC Housing Division's Assistant Chief Counsel Nancy L. Gippert. Dianna Calaboyias Wyrick, Esquire, appeared on behalf of Staszak. The parties were afforded an opportunity to submit post-hearing briefs. The post-hearing brief on behalf of the complaint was

received on January 29, 1999. The Respondent's post-hearing brief was received on February 1, 1999.

At issue in this disability-based case are the following provisions of the PHRA that make 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. . . disability of any person. . . (PHRA, Section 5(h)(1));

2. Discriminate against any person in the terms or conditions of . . . leasing any housing accommodation. . . because of the. . . disability of any person. . . (PHRA, Section 5(h)(3));

3. Refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation (PHRA Section 5(h)(3.2));

4. . . . publish or circulate any statement. . . relating to the. . . lease . . . of any housing accommodation. . . which indicates any preference, limitation, specification, or discrimination based upon. . . disability. . . (PHRA Section 5(h)(5));

5. Make any inquiry, elicit any information. . . concerning the. . . disability. . . of an individual in connection with the. . . lease of any housing accommodation. . . (PHRA, Section 5(h)(6)); and

6. . . . offer for. . . lease or rent or otherwise make available housing. . . which is not accessible (PHRA Section 5(h)(7).

Of the six sections of the PHRA listed, two are inapplicable to the circumstances presented in this case: Sections 5(h)(3) and 5(h)(7). As previously held in the case of Pipkin v. Allison, Docket No. H-7003 (Pa. Human Relations Commission, October 28, 1997), when a complainant never actually leases an apartment there can be no discrimination in the terms and conditions of leasing in violation of 5(h)(3). See, also, Allison v. PHRC, 716 A.2d 689 n.5 (Pa.Cmwlt. 1998). Here, since there was no lease between Kiel and Staszak, Section 5(h)(3) of the PHRA has not been implicated.

Section 5(h)(7) allegations are controlled by the PHRA's definition of "accessible" which is found at Section 4(v) of the PHRA. Section 4(v) states:

The term "accessible" means being in compliance with the applicable standards set forth in the following:

- (1) the Fair Housing Act (Public Law 90-284, 42 U.S.C. § 3601 *et seq.*);
- (2) the Americans with Disabilities Act of 1990 (Public Law 101-336, 42 U.S.C. § 12101 *et seq.*); and
- (3) the act of September 1, 1965 (P.L. 459, No. 235), entitled, as amended, "An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement."

Generally, the Fair Housing Act's accessibility standards require compliance of newly constructed multi-family dwellings with four or more units if the buildings involved are ready for first occupancy after March 13, 1991. (42 U.S.C. § 3601 *et seq.*, and 24 C.F.R. § 100.205.) Of course, here we are dealing with Staszak's summer "cottage" which was built in the 1950s. Accordingly, Staszak's rental unit was not out of compliance with the applicable standards of the Fair Housing Act.

Under Title II of the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), accessibility requirements are imposed on government controlled housing only. For this fundamental reason, Staszak's privately owned rental unit does not come under the ADA's accessibility provisions.

The third reference with respect to the PHRA's definition of the term "accessible" relates to P.L. 459, No. 235 as amended, commonly known as the Universal Accessibility Act. Under this act a privately owned rental unit is subject to certain accessibility provisions only if that building was either constructed or remodeled on or after September 1, 1965. Once again, Staszak's unit was built in the 1950s, and there was no evidence that the rental unit has ever been remodeled. Accordingly, Staszak's rental unit is not subject to accessibility requirements imposed by any of the Section 4(v) references. Therefore, no Section 5(h)(7) violation has been presented.

Interestingly, although Section 5(h)(7) was made an allegation in the complaint, no effort was made, either at the public hearing or in the Housing Division's post-hearing brief, to argue that Section 5(h)(7) is implicated under the facts of this case. It would appear that the 5(h)(7) claim had been abandoned.

During the public hearing, Staszak made an oral motion to dismiss. Staszak argued that his rental unit is a "personal residence" under Section 4(k) of the PHRA. Further, under Section 4(i)'s definition of "housing accommodation," any personal residence offered for rent by the owner thereof is excluded. In effect, this oral motion was revisited in Staszak's post-hearing brief.

At the public hearing, Staszak's motion was denied with reasons stated (NT 94-96). Although the issue has been briefed by Staszak, the oral ruling articulated

at the public hearing stands: while the Staszak family occupies the rental unit during the summer months, the unit may be characterized as a personal residence. However, for the periods the Staszaks relinquish all physical control of the rental unit, the character of the property changes to rental property subject to the PHRA.

As this opinion proceeds, it will be readily apparent that many federal and state fair employment concepts are imported into this state fair housing matter. Although federal fair employment and fair housing statutes create and protect distinct rights, their similarities have traditionally facilitated the development of common or parallel methods of proof when appropriate. Pinchback v. Armistead Homes Corp. et al, 907 F.2d 1447 (4th Cir. 1990).

It will also be readily apparent that federal precedent, in both the fair employment and fair housing areas, is useful. 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).

Generally, two analytical approaches can govern a disparate treatment allegation. See, Holmes v. Bevilacqua, 794 F.2d 142 (4th Cir. 1986). The first

model is most often used and involves cases in which complainants rely on a judicially created inference to support their claim of discrimination. Normally, under this model a complainant must first make a *prima facie* showing. Once established, a respondent is afforded an opportunity to articulate a legitimate, non-discriminatory reason for its action. If the respondent meets this production burden, in order to prevail a complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the complainant was the victim of intentional discrimination. See, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987); and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

The second model involves cases in which complainants argue there is direct evidence of discrimination. See, Allison v. PHRC, 716 A.2d 689 (Pa.Cmwth.Ct. 1998); Blalock v. Metal Traders, Inc., 775 F.2d 703, 39 FEP 140 (6th Cir. 1985); Lujan v. Franklin County Board of Education, 766 F.2d 917, 929 n.16, 38 FEP 9 (6th Cir. 1985); and Miles v. MNC Corp., 750 F.2d 867, 875, 37 FEP 8 (11th Cir. 1985). These cases progress without the aid of rebuttable presumptions because a complainant's *prima facie* case consists of evidence of overt discrimination. The burden of persuasion (not merely production) then shifts to the respondent to prove either that (1) the respondent had legitimate reasons for its action; or (2) its overt discrimination can be otherwise justified. See, generally, Smallwood v. United Airlines, 728 F.2d 614, 34 FEP 217 (4th Cir. 1984). When the direct evidence model is used, the *prima facie* route becomes unnecessary. See, Cline v. Roadway Express, 29 FEP 1365 (4th Cir. 1982).

The PHRC Housing Division's brief generally argues that the proper legal framework to be applied to the facts of this case is the direct evidence model. In the alternative, the Housing Division's brief asserts that a *prima facie* case has been shown. Staszak's brief did not directly distinguish the two analytical approaches. Instead, Staszak first argues that he had a legitimate reason for not renting to Kiel: the rental unit could not accommodate Kiel's wheelchair. The two cases cited by Staszak (Winn v. Trans World Airlines, Inc., 506 Pa. 138, 484 A.2d 392 (1984); and City of Pittsburgh, Dept. of Public Works v. Foster, ___ Pa.Cmwlth. ___, 669 A.2d 492 (1995)) refer to the production burden which shifts to a respondent after a complainant establishes a *prima facie* case. In other words, it appears that Staszak has not considered the implications which arise in the event direct evidence is found.

Staszak's brief generally addresses the separate claims individually. The PHRC Housing Division's brief begins by listing five sections of the PHRA purportedly implicated in this case, and then generally discusses them as a whole with a principle focus on the 5(h)(1) allegation. The PHRC brief references Sections 5(h)(1), (3.1), (3.2), (5), and (6). The Complainant's amended complaint alleges violations of Sections 5(h)(1), (3), (3.2), (5), (6), and (7).

Earlier we have discussed the reasons why Sections 5(h)(3) and (7) have not been violated. This leaves Sections 5(h)(1), (3.2), (5), and (6) for analysis. Section 5(h)(3.1) was not made an allegation of the Complainant's amended complaint.

Regarding the 5(h)(3.2) allegation, Staszak generally argues that Kiel has presented no evidence that he requested modifications which Staszak refused to make. On the Section 5(h)(5) allegation, Staszak generally argues that no violation has been shown because any conversations Staszak had were private and not

publicly disseminated. In the alternative, any statements made were not discriminatory.

Finally, Staszak contends that Section 5(h)(6) was not violated because of the timing of his questions about Kiel. Staszak argues that it would be contrary to the intent of the PHRA to preclude all conversations about disabilities between landlords and prospective tenants.

In this case, direct evidence of violations of Sections 5(h)(1), (5), and (6) has been presented. On the Section 5(h)(1) alleged refusal to lease Staszak's rental unit to Kiel, Stoltz testified that Staszak told her "I don't rent to handicapped individuals . . . The residence is not handicap accessible, the doorways are standard, the hallways are too narrow. . ." Additionally, Kiel's father testified that he directly asked Staszak, "Are you telling me that you will not rent to [Kiel] because he's in a wheelchair?" Kiel's father testified that Staszak answered "yes" to his question.

The same testimony of Stoltz and Kiel's father amounts to direct evidence of the alleged 5(h)(5) publication of a statement which indicates any preference, limitation, specification, or discrimination based upon Kiel's disability. On the question of a 5(h)(6) violation, Stoltz testified that Staszak asked her whether either Stoltz or Kiel is handicapped.

As an initial matter it must be specifically stated whether or not the direct evidence is believed. Blalock v. Metal Trades, Inc., 39 FEP 140 (6th Cir. 1985), *citing* Thompkins v. Morris Brown College, 752 F.2d 558, 37 FEP 24 (11th Cir. 1985). Under all of the circumstances of this case, both Stoltz and Kiel's father's testimonies are found to be credible regarding the direct evidence presented in support of the 5(h)(1) and (5) claims. Their testimony was clear, reasonable and

believable. There were no indications to overcome the presumption that they both testified truthfully, with frankness and positivity.

While Staszak specifically denied telling Kiel's father that he would not rent to Kiel because he is in a wheelchair, numerous collateral facts show that Staszak's version is not credible. A close review of Staszak's testimony reveals significant instances where his testimony was less than credible. Very early in Staszak's direct examination, Staszak referred to Pam Stuchell, and suggested that he "just got a check" from her. Staszak's reference to Stuchell was to suggest he had been confused when Stoltz called on August 16, 1994, because both Stoltz and Stuchell are named Pam. In fact, on August 16, 1994, Staszak had not "just" received Stuchell's \$200 deposit check. Staszak had received Stuchell's check on July 20, 1994.

Even more problematic for Staszak is his testimony that after his conversation with Kiel's father, he called Stuchell to tell her he could not rent his property to her because he was taking it off the market. Staszak went so far as to offer that Stuchell felt bad because she was not able to rent his unit.

When Stuchell testified, she credibly revealed quite a different story. Stuchell's testimony indicated that as of July 20, 1994, she began to reconsider renting Staszak's property because Staszak uttered a vicious racial slur when asking about Stuchell's roommate.

Approximately two weeks after giving Staszak the \$200 deposit check, Stuchell and Staszak spoke. In that conversation, Stuchell informed Staszak that she did not want to rent his property. By all indications Stuchell declined to rent the

unit well before Stoltz called Staszak on August 16, 1994. Stuchell's testimony significantly lessens the credibility of Staszak's entire testimony.

Along this same line, Staszak initially testified that he told Stoltz that he had Stuchell's deposit and "other applications." (NT 123.) Later, Staszak testified that he told anyone who called that he had a deposit and another application. (NT 146.) Even later, Staszak returned to his initial story by stating that when he decided to take his property off the market, he did not communicate with other applicants. (NT 149.)

Another telling aspect of Staszak's testimony weighs against him. Several times he was asked if Kiel's father had indicated his willingness to modify the unit to make it accessible. (NT 133, 142, 145.) Staszak first answered, "Not really." (NT 133.) Then Staszak could not recall. (NT 142.) Finally, Staszak indicated Kiel's father might have offered to make modifications. (NT 145.) On this point Staszak is unworthy of belief, as he clearly changed his version and feigned forgetfulness.

It is undisputed that Staszak told both Stoltz and Kiel's father that he thought his property was not accessible. It is the surrounding circumstances of the conversations that are fundamentally in dispute. Under the totality of the circumstances, with respect to credibility, Staszak's testimony lacks credibility, while both Stoltz and Kiel's father testified credibly.

Staszak attempts to defend his refusal to rent to Kiel by suggesting that the property was not accessible. On this point, Staszak admits that Kiel could get in the unit (NT 144), and that if Kiel had wanted to live in the living room, the property was accessible. (NT 142.) Staszak's direct testimony illustrates the conclusion that Staszak just did not want to rent to Kiel because of his disability.

Staszak indicates he told Stoltz that the property was not wheelchair accessible because there are no ramps. (NT 125.) When Stoltz indicated that ramps can be built (NT 125), Staszak said the doorways are narrow, the doorway to the bathroom was small, and there would be difficulty getting past the sink. (NT 125, 126.) When Stoltz countered with the point that Kiel does not use the bathroom, Staszak offered that maybe his insurance may not cover such a situation. (NT 126.)

Each time a stated barrier was countered, Staszak found another hurdle to place before Kiel's effort to rent his unit. In doing so, Staszak reveals his insensitivity to Kiel's situation and his motivation not to rent to an applicant with a disability. Staszak's actions amount to an unlawful refusal to rent his unit to Kiel because of his disability, in violation of Section 5(h)(1).

Staszak submits that to be liable for a Section 5(h)(5) violation, he had to publicly disseminate a statement through some media outlet. On the contrary, Staszak's private conversations with both Stoltz and Kiel's father contained statements which expressed an unlawful preference and a limitation on Kiel because of his disability. Staszak's private conversation falls under the protection afforded by Section 5(h)(5). See, HUD v. Banai et al., FHFL ¶ 25,095 (HUD ALJ 1995), *aff'd*. 102 F.3d 1203 (11th Cir. 1997), *citing* Soules v. HUD, 967 F.2d 817 (2nd Cir. 1992); and U.S. v. L. & H. Land Corp., Inc., 407 F.Supp. 576 (S.D. Fla. 1976). Accordingly, Staszak's statements violate Section 5(h)(5) of the PHRA.

With regard to the Section 5(h)(6) claim that Staszak made an illegal inquiry, a determination of whether an inquiry constitutes a violation depends on the context in which the inquiry was made. See, Soules v. HUD, 967 F.2d 817 (2nd Cir. 1992).

Here, Staszak admits he asked Stoltz if either she or Kiel was in a wheelchair. (NT 124.) Staszak submits that he did not ask the question until after Stoltz identified herself as a caregiver. Staszak's brief further intimates that he merely asked to learn why Stoltz was a caregiver.

Staszak further argues that it is contrary to the intent of the PHRA to preclude all conversation about disabilities because there should be meaningful discussion about possible modifications which would accommodate a prospective tenant. This is correct, however, under the present circumstances, Staszak had no interest in engaging in a meaningful discussion of an accommodation. On the contrary, the evidence reveals a landlord who placed barriers in the way of every attempt to engage in such a discussion. Here, the context of the inquiry made by Staszak was to learn if a wheelchair was involved, and to deny any opportunity of rental if the answer was yes. Accordingly, a section 5(h)(6) violation has also been established.

The remaining claim is that Staszak violated section 5(h)(3.2) by refusing to change his policy and practice of not allowing renters to modify the unit to make it more accessible. (PHRC brief, p. 14.) Beyond a general statement of this claim, the Housing Division's brief does not refer to the Section 5(h)(3.2) claim again.

As previously indicated, a 5(h)(3) claim does not exist because Kiel never rented the unit. Similarly, the Housing Division argues that a renter was not allowed to modify the unit; thereby, a violation of Section 5(h)(3.2) arises. However, once again, Kiel did not lease the unit. Accordingly, he was not denied a chance to modify the unit, and a Section 5(h)(3.2) violation is not found.

REMEDY

Section 9(f)(1) of the PHRA provides that when a respondent is found to have engaged in an unlawful discriminatory practice, the Commission may issue an order which requires a respondent to cease and desist from unlawful discrimination. Such an order may also order "such affirmative action" and "actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the Commission, will effectuate the purpose of [the PHRA]. . . ." Section 9(f)(1) also authorizes "reimbursement of certifiable travel expenses in matters involving the complaint. . . ." Additionally, Section 9(f)(2) authorizes the assessment of a civil penalty "in an amount not exceeding ten thousand dollars. . . ."

In the post-hearing brief on behalf of the complaint, the PHRC housing attorney asks that Kiel be awarded the following:

- | | |
|---|----------|
| 1. Actual Damages - Travel expenses | \$ 71.50 |
| 2. Actual Damages - Humiliation and embarrassment | 5,000.00 |
| 3. Effects of lost housing opportunity | 3,000.00 |

The PHRC housing attorney also asks that a civil penalty in the amount of \$4,000 be assessed.

Here, Kiel had to travel approximately 220 miles, round trip, from Edinboro to Pittsburgh to attend the public hearing. Using the Commonwealth's mileage reimbursement allowance for personal automobiles (*see*, Management Directive 230.10, Revision No. 9), Kiel should be reimbursed for his travel as follows:

220 miles @ 32.5 cents per mile. \$71.50

Regarding humiliation and embarrassment, such damages may be based on inferences drawn from the circumstances of the case, as well as on testimonial

proof. HUD v. Ocean Sands, Inc., 2A FHFL ¶ 25,055 (HUD ALJ Sept. 3, 1993), *citing*, HUD v. Blackwell, 2A FHFL ¶ 25,001 (HUD ALJ Dec. 21, 1989), *aff'd*. 908 F.2d 864 (11th Cir. 1990); and HUD v. Murphy, 2A FHFL ¶ 25,002 (HUD ALJ July 13, 1990). Further, emotional injuries are by nature qualitative and difficult to quantify. *See, e.g.*, Block v. R. H. Macy & Co., 712 F.2d 1241 (8th Cir. 1983).

In this case, three sections of the PHRA were violated: Sections 5(h)(1), (5), and (6). Of these, a combination of Section 5(h)(1) refusal to rent, and Section 5(h)(5), publishing statements that indicates a preference, limitation, and disability-based discrimination, caused the bulk of the humiliation and embarrassment suffered by Kiel. Asking if either Stoltz or Kiel was in a wheelchair appears to have caused little, if any, humiliation or embarrassment. Accordingly, the humiliation and embarrassment award relates to the Section 5(h)(1) and (5) violations.

Although the record makes scant reference to the precise degree of Kiel's subjective reaction to Staszak's discriminatory behavior, it is clear that Kiel was the victim of a wrongful deprivation of valuable rights from which damages are presumed. From Kiel's completely credible testimony and the record considered as a whole, we find that Staszak's actions made Kiel feel "pretty upset." (NT 105.) When Kiel formed the perception that he was being denied the opportunity to rent Staszak's unit because of his disability, that "pretty much blew [his] mind." (NT 106.) Having quadriplegia, Kiel has a multitude of obstacles which are a part of his daily life. When denied the opportunity to rent Staszak's property, Kiel indicates that the dilemma was "another obstacle. . . like hitting a stone wall." (NT 35, 53.) Kiel's response to the direct question, "How did you feel. . .?" (NT 102), illustrates his reaction in his own words. Kiel stated,

Upset, a little upset, a little --- well, I don't dwell on things like that a lot. I mean, it got me upset for a little bit, but if I dwell on things like that, it would just --- it would really eat me up. But at that moment, I guess what --- the way I interpreted that would have been that, why did you fight for two months in intensive care and why did you fight through rehab, why did you fight to get back to school, why did you spend another year down at Penn State, why even fight to get back to school up at Edinboro, you know, is it worth it?

Based upon the nature of Staszak's refusal to permit Kiel to rent his unit and Staszak's insensitive statements, it must be concluded that Kiel suffered substantial emotional distress. Accordingly, the \$5,000 asked for shall be awarded for Kiel's embarrassment and humiliation.

Next, we turn to the claim for "lost housing opportunity." Here, Staszak's refusal to rent to Kiel forced Kiel to accept a rental he considered inferior to Staszak's unit. In particular, the smaller unit Kiel did rent had a very different driveway surface. Had Kiel been able to rent Staszak's unit, Kiel could have embarked from his van onto a flat cement driveway. The difficulties Kiel encountered with the unit he rented were generally described as being required to take his wheelchair over grass to get to the rental front door. Further, when the weather was inclement, Kiel's wheelchair difficulties were made significantly worse. Accordingly, as a separate component of actual damages, the requested amount of \$3,000 shall be awarded for a "lost housing opportunity."

This brings us to consideration of a civil penalty. Such penalties are intended to vindicate the public interest. Here, the PHRC Housing Division's post-hearing brief on behalf of the complaint asks that a civil penalty of \$4,000 be imposed in this case. Determining an appropriate penalty requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the degree of the respondent's

culpability; (3) the goal of deterrence; (4) whether a respondent has previously been found to have committed unlawful housing discrimination; and (5) a respondent's financial resources. *See, e.g., HUD v. Jerrard*, 2 FHFL ¶ 25,005 (HUD ALJ Sept. 28, 1990); *HUD v. Blackwell*, 2 FHFL ¶ 25,001 (HUD ALJ Dec. 21, 1989).

After consideration of these factors, a civil penalty of \$2,000 imposed upon the owner of a single rental unit such as Staszak, under the circumstances present here, will demonstrate the seriousness of the unlawful action. Although Staszak may have expressed a belief that he has the right to rent to anybody he wants to, clearly he only has the right to rent his unit in a non-discriminatory manner. This civil penalty should send the message to owners of single housing accommodations that violations of the PHRA are not only unlawful, but also expensive.

An appropriate Final Order follows.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL KIEL,
Complainant

v.

WES STEZAK,
Respondent

DOCKET NO. H-6480

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Kiel has proven discrimination against Staszak in violation of Sections 5(h)(1), (5), and (6) of the Pennsylvania Human Relations Act.

It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, 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

**MICHAEL KIEL,
Complainant**

v.

**WES STEZAK,
Respondent**

DOCKET NO. H-6480

FINAL ORDER

AND NOW, this 30th day of March, 1999, 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 Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter, and incorporates same into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

ORDERS

1. That, Staszak shall permanently cease and desist from engaging in any acts or practices which have the purpose or effect of denying equal housing opportunities because of disability. Prohibited acts include, but are not limited to:

- a. **refusing or failing to rent an apartment, or refusing to negotiate for the rental of an apartment because of disability;**
- b. **otherwise making unavailable or denying an apartment to any person because of disability;**
- c. **making any inquiry or eliciting any information concerning the disability of an applicant for an apartment; and**
- d. **indicating in any way a discriminatory preference or limitation based on disability.**

2. **That, within thirty days of the effective date of this Order, Staszak shall pay Kiel the sum of \$71.50, which represents travel expenses incurred by Kiel with respect to his involvement in this case.**

3. **That, within thirty days of the effective date of this Order, Staszak shall pay Kiel the lump sum of \$8,000 in compensatory damages for the humiliation Kiel suffered, and for a lost housing opportunity.**

4. **That, within thirty days of the effective date of this Order, Staszak shall deliver to PHRC Housing Division Assistant Chief Counsel Nancy L. Gippert a check payable to the Commonwealth of Pennsylvania in the amount of \$2,000, which amount represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.**

5. **That, consistent with Section 5(j) of the PHRA, Staszak shall prominently post and exhibit a "Fair Housing Practice" notice distributed by the PHRC Housing Division alongside any "for rent" signs posted in connection with any rental unit he owns. Staszak shall hereafter also include the fair housing "Equal**

Opportunity in Housing" symbol in any advertisement for any rental unit owned by Staszak.

6. That, on the last day of every third month, beginning thirty days after this decision becomes final (or four times per year), and continuing for three years from the date this Order becomes final, Staszak shall submit reports containing the following information to the PHRC Housing Division, PO Box 3145, Harrisburg, PA 17105, provided that the Housing Division may modify this paragraph of this Order as that office deems necessary to make its requirements less, but not more, burdensome:


a. a duplicate of every written application, and a log of all persons who applied for occupancy of the property owned, operated, or otherwise controlled in whole or in part by Staszak, indicating the name and address of each applicant, whether the applicant was rejected or accepted, the date on which the applicant was notified of acceptance or rejection and, if rejected, the reason for such rejection. Staszak shall maintain the originals of all applications described in the log;

b. sample copies of advertisements published during the reporting period, specifying the dates and media used or, if applicable, a statement that no advertisements have been published during the reporting period; and

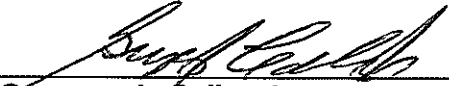
c. a list of all people who inquired, in writing, in person, or by telephone, about renting Staszak's rental unit, including their names and addresses, the date of their inquiry, and the disposition of their inquiry.

7. That, within thirty days of the effective date of this Order, Staszak shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Nancy L. Gippert, Assistant Chief Counsel, PHRC Housing Division, PO Box 3145, Harrisburg, PA 17105.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
Robert Johnson Smith
Chairperson

Attest:


Gregory J. Celia, Jr.
Secretary