COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

LARRY J. REESE, Complainant

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, Respondent

DOCKET NO. E-38391

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

LARRY J. REESE, Complainant
v.
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, Respondent
DOCKET NO. E-38391

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 Larry J. Reese, an adult male (hereinafter "Complainant").
2. The Respondent herein is the Southeastern Pennsylvania Transportation Authority (hereinafter "Respondent").
3. The Respondent, at all times relevant to the case at hand, has employed four or more persons within the Commonwealth of Pennsylvania.
4. On or about November 3, 1986, the Complainant filed a notarized Complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") at Commission docket number E-38391. A Copy of the Complaint will be included as a docket entry in this case at time of hearing.
5. On or about December 24, 1986, the Respondent filed a Response to the Complaint with the Commission. A copy of included as a docket entry in this case at time of hearing.
6. Subsequent to investigation, the Commission notified the Complainant and Respondent that Probable Cause existed to credit the allegations contained in the above referenced complaint.
7. Subsequent to the determination of Probable Cause, the Commission attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but was unable to do so.
8. In correspondence, dated July 29, 1991, the Commission notified the Complainant and the Respondent that a public hearing had been approved.

Michael Hardiman, Esquire
Assistant Chief Counsel
(Counsel for the Commission
on behalf of the complaint)

October 22, 1992
Date:

Nicholas Staffieri, Esquire
(Counsel for Respondent)

Thursday, Oct. 22, 1992
Date:

Andrew F. Erba, Esquire
(Counsel for Complainant)

10/22/92
Date:

FINDINGS OF FACT *

1. The Southeastern Pennsylvania Transportation Authority (hereinafter (“Respondent” or “SEPTA”) is an entity created by the legislature of the Commonwealth of Pennsylvania to operate the public transportation system in Philadelphia, Pennsylvania, and the surrounding counties. (CE 1.)
2. The Respondent employs more than four employees, including but not limited to numerous persons who operate buses and trolleys on fixed routes throughout the SEPTA system. (SF 3.)
3. Larry J. Reese (hereinafter "Complainant") is an adult citizen of the Commonwealth of Pennsylvania and resides with his wife, Suzanne Reese, at 2060 Wilmot Street, Philadelphia, Pa. (NT 25, 30.)
4. On November 3, 1986, the Complainant filed a charge with the Pennsylvania Human Relations Commission (hereinafter "PHRC" or "the Commission") alleging that the Respondent's refusal to hire him for the position of bus/trolley operator based on the perception that the Complainant had a medical condition violated the Pennsylvania Human Relations Act (hereinafter "PHRA"). (SF 4.)

   * 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:

NT	Notes of Testimony
SF	Stipulations of Fact
CE	Complainant's Exhibit

5. The Commission investigated the charge, found probable cause, and conciliation was unsuccessful. (SF 7.)
6. In 1991, the instant complaint was approved for public hearing. (SF 8.)
7. In October of 1986, the Complainant applied to SEPTA for the position of bus/trolley operator. (NT 49.)
8. In the application process the Complainant was given a medical examination after which SEPTA concluded that he had a cardiovascular condition. (NT 48-49.)
9. The Respondent did not introduce any evidence that the medical impairment it had advised Complainant resulted in his not being hired would have prevented him from performing the essential functions of the position. (NT 110-113.)
10. The Respondent stipulated at public hearing that the sole issue in this matter was what damages were due to the Complainant. (NT 7.)
11. The Complainant, from 1986 to the date of the public hearing in this matter, was physically qualified to perform the duties of the position of bus/trolley operator. (NT 7, 48.)
12. The Complainant was twenty-one years old when he was rejected by SEPTA. (NT 50.)
13. In October of 1986, in terms of work skills, the Complainant had limited reading, math, and comprehension skills. (NT 51.)
14. In 1986, the Complainant worked at a number of part-time jobs including:

a. Hertz;
b. Carol Lines;
c. Transportation Administrative Services;
d. Domino Pizza; and
e. Mariani's Trucking Company. (NT 46.)

15. From the date of the rejection of the SEPTA position until the end of December 1986, the Complainant sought full-time employment. (NT 50-53.)
16. The Complainant's total earnings for the year 1986 were $5,682.50. (NT 51.)
17. In 1987, the Complainant still was attempting to find a full-time position. (NT 54.)
18. However, the Complainant did secure part-time employment at ATS Auto Tags (as an auto tag clerk), and Germantown Friends School (school bus driver). (NT 53.)
19. In the middle of 1987, the Complainant and his fiancée opened their own auto tag business which was called Reese's Auto Tags as a joint partnership at 7122 Germantown Avenue, Philadelphia, Pa. (NT 55-56.)
20. The purpose of this business was to assist car owners in registering, transferring, or obtaining licenses or tags from the Common- wealth of Pennsylvania. (NT 58-60.)
21. In May of 1987, the Complainant and his fiancée married and continued to operate the business as a joint partnership. (NT 54, 58-63.)
22. In the year 1987, neither the Complainant nor his wife received a salary from the business. (NT 66-67.)
23. In 1987, the Complainant earned income of $8,854.44 in the following manner:

    a. ATS Auto Tags -$6,240.00
    b. Germantown Friends School -2,614.40. (NT 53.)

24. In the same year, the Complainant's wife earned $12,051.29 from Prudential Insurance, and $1,701.45 from TTMG, Inc. (NT 267-268.)
25. In 1987, the Complainant and his wife's combined income of $22,607.14 paid for personal living expenses and subsidized their business. (NT 267-269.)
26. During the year 1988, the Complainant's part-time earnings as a school bus driver were:

    a. Germantown Friends School -$1,612.50
    b. School District of Springfield Township -289.00 (NT 68-69.)

27. In 1988, the Complainant and his wife had a family income of $17,742. (NT 72.)
28. The Complainant and his wife used their income in 1988 for personal expenses and to subsidize their business. (NT 73.)
29. In 1988, the Complainant filed an application with the Pennsylvania State Police for the position of license examiner. (NT 67.)
30. Approximately June of 1988, the Complainant committed himself full-time to his business, Reese's Auto Tags, because he was unable to procure other full-time employment. (NT 74.)
31. In 1988, Reese1s Auto Tags made a small profit of $1,296, which was kept in the business as a reserve. (NT 73.)

32. In November of 1989, Reese's Auto Tags moved its location from 7122 Germantown Avenue to 7125 Germantown Avenue. (NT 84.)
33. Also in November of 1989, the Complainant and his family purchased a home on Wilmot Street in Philadelphia. (NT 84.)
34. In 1989, the Complainant permitted John Lakis into the business as a partner and opened a second office on Midvale Avenue. (NT 75.)
35. In 1989, the Complainant's business paid Mr. Lakis $4,704.25. (NT 75-76.)
36. Mr. Lakis gave Complainant a $5,000 investment which the Complainant put into the business and opened the second office on Midvale Avenue. (NT 78.)
37. In 1989, the Complainant worked for Germantown School District and earned $203.84. (NT 79.)
38. In 1989, the Complainant made $3,904.25 from the business. (NT 79.)
39. In late 1989, the Complainant and his wife decided to end the partnership with Mr. Lakis, and the business repaid Mr. Lakis his $5,000 investment. (NT 95-96.)
40. In 1989, the Complainant continued to work full-time at the business, spending up to 60 hours per week at the job. (NT 95.)
41. In 1989, upon advice of their tax accountant, the Complainant incorporated the business. (NT 92.)
42. In 1990, the business reduced the salary it paid to the Complainant to $2,600 annually. (CE P-12a.)
43. This reduction was necessary because of a decrease in revenue, the Lakis buyout, and an increase in business expenses. (NT 291, 297.)
44. This reduction resulted from:

    a. fewer vehicles being registered;
    b. increase in insurance rates across the state;
    c. more neighborhood competition;
    d. the business could not increase fees because the customers had other businesses they could go to.

(NT 103-105.)

45. In 1990, the business made a profit of $2,199. (NT 94.)
46. The Complainant and his wife made the decision to keep this profit in the business. (NT 95.)
47. In 1990, all personal expenditures were paid by Mrs. Reese's salary, not the business. (NT 107.)
48. Joy Reese, Complainant's sister, was employed to manage the Midvale office. (NT 97.)
49. In 1990, the business was unable to pay for health insurance for the Complainant, his wife or Joy Reese. (NT 108.)
50. The Complainant and his wife did not have any health insurance in 1990. (NT 108.)
51. In 1991, the business earned a profit of $3,000 which was kept in the business for anticipated expenses. (NT 102, 294-295.)
52. The Complainant and his wife did make some bookkeeping errors in compiling the records of the business. (NT 295,301,305.)

53. From October 1986 until January 6, 1992, the date he began employment with SEPTA, the Complainant was not offered any position with equivalent salary and benefits as those at SEPTA. (NT 126-127.)
54. The Complainant applied for the driving instructor position with the Pennsylvania State Police in 1990. (NT 122.)
55. This position was salaried at $18,000 per year, with full benefits. (NT 122.)
56. In 1992, the Complainant was offered a position with the Pennsylvania State Police which he rejected because he had already accepted employment with SEPTA. (NT 122.)
57. The Respondent presented testimony by Edward Waddington, CPA, at the public hearing. (NT 2, 17.)
58. Mr. Waddington testified as to numerous errors that he felt the Complainant and his wife made in conducting their business. (NT 2, 98-99.)
59. On cross-examination, Mr. Waddington admitted that he could not prove that the Complainant used business money to pay for non-business expenses. (NT 2, 98-99.)
60. Mr. Waddington also testified that Mrs. Reese's salary from other employment could have paid the family's personal expenses. (NT 2, 89-90.)
61. Mr. Waddington never visited the Complainant1s place of business at 7125 Germantown Avenue. (NT 2, 126.)
62. Mr. Waddington's estimation of market worth of the business was based on assumptions with no factual basis. (NT 2, 133-135.)
63. Mr. Waddington testified that the amount of money a business distributes as income is discretionary on the part of the owner. (NT 2, 94-95.)
64. Mr. Waddington also testified that it is a sound business practice to hold profits as a reserve. (NT 2, 94-95, 103, 105.)
65. The Respondent also adduced the testimony of Dr. Philip Spergle, a vocational/psychological expert. (NT 196.)
66. Dr. Spergle met with the Complainant on March 28, 1992 for approximately two hours. (NT 215-221.)
67. Dr. Spergle did not identify any employers that were hiring or would offer the Complainant employment during the years in question. (NT 230-233.)
68. Dr. Spergle testified that there were numerous positions open in Delaware Valley, but he was unable to identify where these positions were. (NT 235-236.)
69. Dr. Spergle not only was unaware of salary and benefits for a SEPTA bus/trolley driver, but he was unable to ascertain whether any employment opportunities he thought were available to Complainant had similar benefits. (NT 236.238, 239.)
70. Dr. Spergle testified that he believed that the Complainant was honestly looking for employment during the years in question. (NT 247.)

CONCLUSIONS OF LAW

1. Larry J. Reese (hereinafter "Complainant") is a person within the meaning of the Pennsylvania Human Relations Act ("PHRA").
2. The Respondent, SEPTA, is an employer within the meaning of the PHRA.
3. The Pennsylvania Human Relations Commission ("PHRC" or "the Commission") has jurisdiction over the parties and subject matter of the complaint under Section 9 of the PHRA.

4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing under the requirements of the PHRA.
5. The complaint in this matter satisfies the requirements set forth in Section 9 of the PHRA.
6. The complaint was filed in a timely manner and served on the Respondent.
7. The Respondent1s refusal to hire Complainant in October of 1986, because he was regarded as having a cardiovascular condition, violated the PHRA.
8. The Complainant did not have a cardiovascular condition which would have prevented him from employment as a bus/trolley driver in 1986, or to the present.
9. Under Section 9 of the PHRA, the Commission has broad discretion in fashioning a remedy.
10. The Commission is clearly entitled to order such affirmative action as will effectuate the purposes of the PHRA.
11. The Respondent bears the burden of establishing that the Complainant failed to mitigate his damages.
12. The Respondent must show that the Complainant did not exercise reasonable diligence in seeking other employment substantially equivalent to the position that he was denied.
13. The Complainant engaged in reasonable efforts to obtain '.f employment similar to that offered by the Respondent.
14. The Respondent failed to show that the Complainant refused employment substantially equivalent to the position he was denied.
15. The Respondent failed to show that the Complainant earned additional income from Reese Auto Tag, Inc., other than that income the Complainant testified that he earned from his business.
16. The Pennsylvania Human Relations Commission is permitted to award interest at the rate of six percent (6%) per annum.

OPINION

This matter arises out of a complaint filed by Larry J. Reese (hereinafter "Complainant") against the Southeastern Pennsylvania Transportation Authority (hereinafter "Respondent" or "SEPTA"). Docket No. E-38391, with the Pennsylvania Human Relations Commission (hereinafter "the Commission" or "PHRC").

On November 3, 1986, the Complainant alleged that the Respondent refused to hire him as a bus operator because of his non-job-related handicap/disability (arrhythmia). The Complainant further asserted that the Respondent1s action violated Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744. as amended, 43 P.S. §§951, et seq. (hereinafter "PHRA").

PHRC staff conducted an investigation of the complaint and found probable cause to credit the allegations raised in the complaint. After the finding of probable cause, PHRC staff endeavored to resolve the matter between Complainant and Respondent through conference, conciliation and persuasion, but such efforts were unsuccessful. Thereafter, PHRC staff, on July 29, 1991, notified the parties that the matter had been approved for the convening of a public hearing.

A public hearing in this matter was conducted on October 22 and 23, 1992. Phillip A. Ayers, Esquire. Permanent Hearing Examiner. presided over the public hearing. The Complainant was represented by Andrew F. Erba, Esquire. The Respondent was represented by Nicholas Staffieri. Esquire. The Commission1s interest on behalf of the complaint was represented by Michael Hardiman, Assistant Chief Counsel for the Commission. Counsel for the parties and Commission Counsel filed post-hearing briefs in support of their respective positions.

Subsequent to the issuance of the notice for public hearing, the Respondent offered the Complainant employment, providing the Complainant could pass a medical examination. In November of 1991, the Complainant was examined by Respondent's medical personnel and was medically cleared for employment. On January 8, 1992, the Complainant commenced employment as a trainee bus/trolley driver. The Complainant subsequently completed his training and became a probationary employee. After the completion of his probation, the Complainant became a permanent employee of the Respondent and remained employed as of the date of the public hearing in this matter.

At the public hearing, the Respondent stipulated to the fact that the only issue preserved for hearing was what remedy the Complainant was entitled to. Also, the Respondent did not introduce any evidence that the medical impairment it had advised Complainant resulted in his not being hired would have prevented him from performing the essential functions of a bus driver. Therefore, the sole issue in this matter is what damages, if any, are due to the Complainant. Furthermore, the time period that we are looking at is the period commencing in October 31, 1986 and ending January 8, 1992.

Since the liability portion of this case is already resolved, we now move to Section 9 of the PHRA which empowers the Commission to effectuate the Act's purposes. Section 9 of the PHRA provides, in pertinent part:

> If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practices as defined in this Act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay...

43 P.S. §959(f). (Emphasis added.) The case law in regard to this section is clearly supportive of a broad interpretation. In Murphy v. Commonwealth, Pa. Human Relations Commission, 506 Pa. 549,486 A.2d 388 (1985), the Pennsylvania Supreme Court said, "We have consistently held that the Commissioners, when fashioning an award, have broad discretion and their actions are entitled to deference by a reviewing court."

The Commission, in awarding any remedy, has several purposes. The first purpose is to insure that the unlawful discriminatory practice is completely eradicated. The second purpose is to restore the injured party to his pre-injury status and make him whole. Williamsburg Community School District v. Pa. Human Relations Commission, 99 Pa. Cmwlth. 206, 512 A.2d 1339 (1986).

Having stated the above in regard to the issue of remedy, we now turn to the Complainant's argument in this matter. The Complainant is requesting that the Commission issue an order requiring the Respondent to:

A) cease and desist from violating the Complainant1s rights;
B) provide back pay from October 1986 to January 8, 1992 in the amount of $124,995.96 (plus 6% interest), minus mitigated earnings of $24,464.40;
C) provide retroactive seniority; and
D) provide retroactive benefits in terms of sick leave, vacation pay, pension benefits, social security contributions, and any other fringe benefits due to the Complainant.

In the instant case, the construction of a remedy will clearly reflect the Commission's discretion in fashioning a remedy, but will keep in focus that the Complainant be restored to the position he would have been in had he not been rejected for the position of bus/trolley operator in October of 1986. The Respondent1s position on the issue of damages, in both its brief and public hearing, is that the Complainant failed to mitigate his damages in that he took himself out of the labor market, that the Complainant received more wages and benefits from his company than he would have received from SEPTA, and also Respondent argues that the Complainant's business was worth $60,000.

The final issue to be examined is whether the Respondent can satisfy its burden of establishing that the Complainant failed to mitigate his damages. In other words, the Respondent must show that the Complainant did not exercise reasonable diligence in seeking substantially equivalent employment. Cardin v. Westinghouse Electric Corp., 850 F.2d 996, 1005 (3rd Cir., 1988). Stated differently, the Complainant need only show a reasonable, good faith effort.

A review of the record before the Commission shows that the Complainant did make a reasonable, good faith effort by seeking other employment and by becoming self-employed. This effort encompasses two time periods, from 1986 until the Complainant opened his own business, and from the time when the Complainant was self-employed. A review of the record before the Commission indicates that the Complainant testified that he filled out applications, forwarded resumes, and spoke with friends concerning different positions. In addition, the Complainant took several part-time positions both before he started his business and after. Also, the Complainant sought employment with the Pennsylvania State Police as a driving instructor even after he commenced his own business.

In attempting to show that the Complainant did not exercise reasonable diligence in seeking other employment substantially equivalent to the lost position. the Respondent presented testimony of Dr. Philip Spergle, a rehabilitation psychologist and vocational expert. Dr. Spergle met with Complainant for a total of two hours and administered several vocational/intelligence tests. From this information, Dr. Spergle formulated an opinion as to the Complainant's work abilities during the period of 1986-1991. Dr. Spergle's opinion was that the Complainant was of average intelligence and could have performed any number of jobs in the Delaware Valley area.

A review of Dr. Spergle's testimony indicates that he was not aware of the financial package offered by SEPTA from 1986-1991, and also he had no knowledge of the financial incentives (including benefits) offered by other employers who were allegedly offering driving positions in the area at this time. Dr. Spergle's testimony did not show that the Complainant could' have secured employment with wages and benefits equivalent to those offered by SEPTA. Denton v. Boilermakers Local 29, 613 F.Supp. 37 (D.C. Mass. 1987).

Upon review of the record before the Commission, the Respondent did not rebut Complainant's testimony that he exercised a good faith effort to secure employment both before he opened his own business and after.

Another argument offered by the Respondent is that the Complainant, in effect, removed himself from the labor market by opening his own business. However, case law has shown that a complainant can mitigate through self-employment. See, e.g., Cardin, supra; Hansard v. Pepsi Cola Metropolitan Bottling Co., 865 F.2d 1461 (5th Cir. 1989); Nord v. United States Steel Corp., 758 F.2d 1462 (11th Cir. 1985). The Respondent must show that the alternative of self-employment was an unreasonable choice on the part of the Complainant. Cardin, supra. Both the Complainant and his wife testified regarding their business. While the testimony at public hearing clearly showed that the Complainant and his wife were not experts in terms of business management, the Complainant and his wife certainly made a good faith effort to succeed in their business. The case law in this area indicates that the question of mitigation in regard to self-employment revolves around whether the business was a serious venture or simply a frivolous afterthought. In the case of Miller v. Swissre Holding Company, 771 F. Supp. 56 (1991), the court held that it was improper mitigation when an individual only invested $145 and the effort was poorly planned and executed. In Hansard v. Pepsi Cola Metropolitan Bottling Company, Mr. Hansard attempted a flea market business which he operated on a part-time basis on weekends out of his home. The court in that case held that the efforts were not reasonable mitigation. In the case before the Commission, the Complainant and his wife spent considerable time and effort in trying to make their business venture successful. In Smith v. Great American Restaurant, 969 F.2d 430, (10th Cir. 1992), the plaintiff put in long hours and effort in opening her restaurant, and the court held that it was proper mitigation since it was a good faith effort. Also, the Smith case illustrates that if a business operates at a loss, there is still proper mitigation because the owner has made a good faith effort. Upon review of all of the evidence presented in this matter, the Complainant has made a good faith effort to mitigate his damages by trying to build a business.

The Respondent has also asserted that the Complainant had more income than the income shown on his personal and business taxes. To that end, the Respondent presented testimony from another witness, Edward Waddington, CPA, who testified that there were numerous business decisions made by the Complainant that may have hidden profits from the business or. at the very least, raised some questions. However, as aforementioned, the case law in this area clearly rejects the proposition that the Complainant be an "expert in business management" to recover damages in this case. Even though there may have been some business errors, the Complainant testified credibly as to his business practice of putting any profit back into the business. Indeed, most of Mr. Waddington's testimony centered on whether the Complainant made business errors.

More precisely, the Respondent asserts that any back pay award to the Complainant should be offset by the value of the business. Mr. Waddington, in his testimony at public hearing, estimated that the Complainant's business was worth $60,000, based on an assumption that the business would earn a profit of $15,000 per year in the future. However, Mr. Waddington did not produce any facts to support his statement as to the worth of the business. On cross-examination, Mr. Waddington knew next to nothing about the Complainant's business. He had never visited the business, never looked at equipment, never reviewed the competitors' businesses, did not know the particular costs of Complainant's business. and did not know of anyone who would buy Complainant's business for $60.000.

The Complainant. in response to Mr. Waddington's testimony. set forth three arguments. Firstly, the entry costs of this business are minimal. Secondly, the Complainant asserts that even though he may have created a good name by working long hours and treating the business like their child. a new owner might not be as conscientious and the "Reese" name might not be as valuable. Lastly. the Complainant asserts that the business is declining because new competition has opened in the neighborhood. As a result. Complainant asserts business will be less profitable in the future.

In reviewing the respective arguments on this issue. it is clear that the Respondent has not produced sufficient evidence to justify the estimation of $60.000 as a business asset. However. we must remember that the Commission has broad discretion in fashioning a remedy. Murphy v. PHRC, supra. Throughout the testimony of the Complainant in this matter. he consistently states that. from the time he opened his business. he spent "55 to 60 hours per week" on the job. In his response to the "business value argument. " the Complainant mentions once again his working long hours in the business. It is clear that the business has some value as a result of the Complainant's efforts over the years. Also. it is clear that the increased value of a business may be reviewed by the Commission. In Cardin v. Westinghouse, supra. the Third Circuit indicated that the question of whether a plaintiff has benefited by an increase in the value of the business is a question to be examined in a self-employment case.

In this instance. utilizing the Commission1s broad discretion in fashioning a remedy. we must make an estimation as to the value of the business. The purpose of any award is to put the individual in the position he/she would have been had not the discriminatory act occurred, not to provide a windfall for an individual. Therefore, we find that the Complainant's business is worth $30,000, and his damages shall be further reduced by that amount.

Accordingly, the Complainant's award shall include the amount he ' would have earned from the date of his rejection, October 31, 1986, until the date of his hire, January 8, 1992. That amount is calculated to be $124,995.96. During that time period, the Complainant had mitigated earnings of $24,464.40. Lastly, the amount of damages is reduced by the Commission's estimate of the value of the business, $30,000. The entire calculation appears as follows:

Amount Complainant would have earned	$124,995.96
Less, mitigated earnings	24,464.40
Subtotal	$100,531.56
Less value of business	30,000.00

Total damages	$ 70,531.56

(Plus, 6% interest from October 1986 to January 1992.)

An appropriate Order follows.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

LARRY J. REESE, Complainant

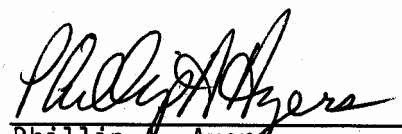
v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, Respondent

DOCKET NO. E-38391

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned case, it is the Recommendation of the Permanent Hearing Examiner that the Complainant has proved discrimination in violation 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, Opinion, and Final Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, this Permanent Hearing Examiner recommends issuance of the attached Final Order.

By: 

Phillip A. Ayers
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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LARRY J. REESE, Complainant

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SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, Respondent

DOCKET NO. E-38391

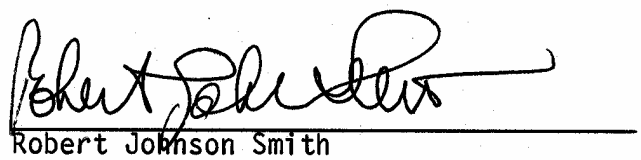
FINAL ORDER

AND NOW, this 26th day of April, 1994, following review of the entire record in this case, including the transcript of testimony, exhibits, briefs and pleadings, the Pennsylvania Human Relations Commission hereby adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, and in accordance with the Recommendation of the Permanent Hearing Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, therefore

ORDERS

1. That the Respondent cease and desist from violating the rights of Complainant to be free from discrimination on the basis of a perceived handicap.
2. That the Respondent shall award back pay to the Complainant in the amount of $70,531.56, plus an additional amount of interest at six percent (6%) from October 8,1986 to January 1992.
3. That the Complainant be given retroactive seniority, sick leave, vacation pay, pension benefits and other fringe benefits the Complainant would have received, but for the discrimination.

Within thirty days of the date of this Order, Respondent shall report on the manner of compliance with the terms of this Order by letter addressed to Michael Hardiman, Esquire, at the Commission's Philadelphia Regional Office located at 711 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.



Robert Johnson Smith
Chairperson

ATTEST:

Gregory J. Celia, Jr.
Secretary