

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALICIA CINTRON,
Complainant

v.

DOCKET NO. E-79969-D

SOLID WASTE SERVICES, INC.
d/b/a J.P. MASCARO & SONS,
Respondent

STIPULATIONS OF FACT

SUPPLEMENTAL STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING EXAMINER

FINAL ORDER

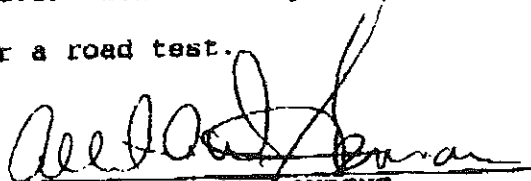
STIPULATIONS OF FACTS

(Cont.)

6. Because the parties failed to conciliate this matter, the Commission approved this case for a public hearing and the parties were notified thereof.

7. The Complainant, on or about May 7, 1996, applied for the position of recycling truck driver with the Respondent and was told to return the next day for a road test.

DATE 7/19/99


COUNSEL FOR RESPONDENT

DATE July 19, 1999


COUNSEL FOR COMMISSION

FINDINGS OF FACT *

1. The Complainant is Alicia Cintron (hereinafter "Cintron"), an adult female resident of Delaware. (NT 130; CE 13; SF 1.)
2. The Respondent J.P. Mascaro & Sons, Inc. (hereinafter "Mascaro"), is in the business of waste and recyclable collection. (NT 189, 191.)
3. Mascaro has 17 separate divisions, five of which are located in eastern Pennsylvania. (NT 189, 207, 334.)
4. The five eastern divisions are: Souderton, Scranton, Allentown, Berks, and Bridgeport. (NT 207.)
5. Each of Mascaro's divisions has a similar management structure: a general manager who is over an operations manager, an office manager, and a shop manager. (NT 189.)
6. In 1996, the general process for hiring drivers was similar at all of Mascaro's divisions: prospective employees fill out an application; when there are

* 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
CE	Complainant's Exhibit
RE	Respondent's Exhibit
SF	Stipulations of Fact
SSF	Supplemental Stipulations of Fact

openings applicants are given a road test; a motor vehicle report (hereinafter "MVR") is requested for an applicant; and if an applicant passes the road test and their MVR is satisfactory, an applicant is sent for a physical and drug test. (NT 199, 210, 302.)

7. On or about May 7, 1996, Cintron went to Mascaro's Bridgeport facility to apply for the position of recycling truck driver. (NT 109, 242; SF 7.)

8. Cintron had learned about driver position openings at the Bridgeport facility from a posting on the bulletin board at All-State Career School, a driving school Cintron began in February 1996. (NT 98, 121, 122.)

9. Since coming to the United States in 1993, Cintron's Delaware driver's license indicated that she had a Commercial Driver's License (hereinafter "CDL") "B". (NT 97, 102, 130.)

10. Beginning February 1996, Cintron attended the six month All-State Career driving school with the expectation of qualifying for a CDL "A" license after graduation in July of 1996. (NT 95, 99.)

11. Generally, the CDL designation "B" allows an individual to drive vehicles weighing less than 26,000 pounds, or combination vehicles weighing less than 10,000 pounds. (NT 206.)

12. To drive a Mascaro recycling truck at Bridgeport, a CDL license was unnecessary. (NT 199.)

13. When Cintron applied at the Bridgeport facility, she had driven school buses part-time for approximately three years for several school districts, driven a

delivery truck part-time between four to six months at a DuPont site, and driven a coach bus part-time between Philadelphia and Atlantic City since approximately 1994. (NT 102, 104, 108, 118, 119-120.)

14. At the Bridgeport facility, on or about May 7, 1996, Leslie Saylor (hereinafter "Saylor"), Mascaro's Bridgeport office manager, gave Cintron an application to complete and made a copy of Cintron's Delaware driver's license. (NT 110, 135, 242.)

15. Cintron filled out the application and returned it to Saylor who instructed Cintron to return the next day for a road test. (NT 111, 242, 250.)

16. Saylor gave Cintron's application to Sonny Macelak (hereinafter "Macelak"), the acting general manager at Bridgeport, and faxed a request to DAC Services, an MVR reporting company with whom Mascaro dealt, to obtain an MVR for Cintron. (NT 200, 244, 247, 306, 328.)

17. As instructed, Cintron returned to the Bridgeport facility the next day and was given a road test by Mascaro's Bridgeport shop manager, Ralph D'Ambrosio (hereinafter "D'Ambrosio"). (NT 112, 138-139.)

18. Cintron's road test was taken in one of Mascaro's recycling trucks. (NT 120.)

19. D'Ambrosio informed Cintron that she did not have any problems and that she had passed the road test. (NT 113.)

20. Cintron discussed her driving school status with D'Ambrosio and relayed her hope to obtain a CDL "A" license soon so she could drive larger trucks. (NT 143.)

21. D'Ambrosio showed Cintron the larger trucks which operated out of Bridgeport. (NT 143.)

22. D'Ambrosio asked Cintron if she was aware that she would be going out on the road at three o'clock in the morning with guys, and that the guys pee on the tires and curse? (NT 114.)

23. D'Ambrosio further asked Cintron if she was aware that, as the driver, she would be their boss, and could she handle that? (NT 114.)

24. Cintron answered yes to D'Ambrosio's questions. (NT 114.)

25. When Cintron and D'Ambrosio returned to D'Ambrosio's office, D'Ambrosio left Cintron alone for between twenty-five and forty-five minutes. (NT 115, 139-140.)

26. When D'Ambrosio returned, Cintron asked if she had the job and was told by D'Ambrosio that he did not know, and that she was just a girl trying to break into a man's world. (NT 139-140.)

27. After an applicant's road test, the regular procedure is that the tester reports to Saylor whether an applicant passed or failed, and this information is passed to Macelak. (NT 209, 252.)

28. When an applicant has passed the road test, the applicant is brought upstairs to speak with Macelak that same day. (NT 252, 311.)

29. Cintron was not brought up to see Macelak; instead, she was told by D'Ambrosio to call him in about two hours. (NT 115, 140.)

30. Cintron called as instructed and subsequently called approximately three more times that day in an attempt to speak with D'Ambrosio. (NT 116.)

31. Cintron was told that D'Ambrosio was not there, so she eventually gave up trying to speak with him. (NT 116.)

32. The following day, Cintron tried again but again gave up when she could not reach D'Ambrosio. (NT 116.)

33. On or about May 13, 1996, Saylor received Cintron's MVR. (NT 253, 254; RE 1.)

34. Cintron's driving record revealed that on August 31, 1994, Cintron was found guilty of speeding which had occurred on August 10, 1994, (43 mph in a 30 mph zone). (NT 122; RE 1.)

35. For this infraction, Cintron received a fine and was given four points on her driving record. (NT 123; RE 1.)

36. The MVR also revealed that on September 25, 1995, Cintron was found guilty of speeding which had occurred on August 13, 1995 (64 mph in a 55 mph zone). (NT 123; RE 1.)

37. Again Cintron was fined and given points on her driving record. (NT 132; RE 1.)

38. Saylor gave Cintron's MVR to Macelak. (NT 254.)

39. Mascaro's hiring procedures included looking closely at an applicant's MVR. (NT 204.)

40. MVRs were reviewed particularly for either prior accidents or speeding violations, as Mascaro believed the quality of their drivers posed a public safety issue. (NT 323.)

41. Witnesses referred to the MVR review as "very significant," and "crucial." (NT 200, 323.)

42. In 1996, the policy regarding when an MVR disqualified an applicant varied at the divisional level, as decisions on when an MVR disqualified an applicant were at the discretion of a facility's general manager. (NT 325.)

43. Generally, Macelak's policy was that an applicant for a non-CDL driving position should have a clean MVR for the past two years. (NT 203, 254, 325.)

44. In 1996, Macelak's safety record was one of the best among Mascaro's general managers. (NT 327.)

45. In November 1998, Mascaro changed insurance carriers and implemented a consistent policy with respect to MVR requirements. (NT 325; RE 10.)

46. In the beginning of 1996, Macelak, then the acting general manager, promoted Saylor from office assistant to the position of office manager. (NT 233, 234, 245.)

47. Macelak initially came to Bridgeport in late 1995 as the operations manager, but assumed the role of acting general manager/operations manager when the then-general manager left. (NT 196, 234.)

48. On March 26, 1996, Henry Pyatt (hereinafter "Pyatt") applied to be a truck driver at Mascaro's Bridgeport facility. (NT 73; CE 11.)

49. Pyatt's MVR indicated that on November 14, 1994, he had been found guilty of speeding which had occurred on September 29, 1994. (CE 11.)

50. Pyatt's license was a CDL "A" class. (CE 11.)

51. Mascaro made exceptions to the general MVR policy when there was a pressing need to fill a driver position. (NT 201.)

52. Recycling drivers were easier to find than CDL "A" licensed drivers, because driving a recycling truck did not require a CDL license. (NT 205.)

53. Bridgeport has hired women drivers both before and after Cintron's application was rejected. (NT 262-286; RE 2.)

54. In May 1996, four individuals were hired at Bridgeport as recycling drivers: Ernel Barnett; Kevin Bates; Amir Muhammed; and Mike Ulmer. (RE 9.)

55. Neither women hired as drivers nor the four men hired in May 1996 as recycle drivers had any violations on their MVRs for two years prior to their hire. (NT 262-286, 287-289; RE 2, RE 9.)

56. Cintron incurred \$140.50 of certifiable travel expenses in this matter. (NT 173-175.)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this complaint.
2. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing.
3. Cintron is an individual within the meaning of the Pennsylvania Human Relations Act.
4. Mascaro is an employer within the meaning of the Act.
5. Cintron presented sufficient evidence that a discriminatory factor played a motivating part in Mascaro's decision process.
6. Mascaro avoids monetary damages and an order of reinstatement by proving that Cintron would not have been hired, despite the discriminatory hiring process.
7. Mascaro violated 16 Pa. Code §41.82(2) when applications of non-hired applicants for the 1996 period were thrown away.

OPINION

This case arose on a complaint filed by Alicia Cintron (hereinafter "Cintron") against J.P. Mascaro & Sons, Inc., which alleged a sex-based discriminatory refusal to hire Complainant as a recycling truck driver on or about May 7, 1996.

On or about May 15, 1999, Cintron amended her complaint to change the Respondent's name from J.P. Mascaro & Sons, Inc., to Solid Waste Services, Inc., d/b/a J.P. Mascaro & Sons, Inc. (hereinafter "Mascaro"). Cintron's sex-based allegation is a claim under Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, PL 744, as amended, 43 PS §§951, *et seq.* (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff initially conducted an investigation and found probable cause to credit the allegation of sex-based disparate treatment. Subsequently, the PHRC and the parties attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion. These efforts were unsuccessful and eventually this matter was approved for a public hearing.

The public hearing began on July 21, 1999. The public hearing was held in Philadelphia, Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner. The post-hearing brief on behalf of the complaint was received on October 25, 1999, and the Respondent's post-hearing brief was received on October 22, 1999. On November 24, 1999, Mascaro filed a reply brief, and on December 16, 1999, a counter-reply brief on behalf of the Complainant was received.

Turning to the general issue arising from the substance of Cintron's allegation, we note that the ultimate question for resolution here is whether Mascaro's rejection of Cintron to be a recycling truck driver violated the PHRA. Section 5(a) of the PHRA states in pertinent part:

It shall be an unlawful discriminatory practice. . . [f]or any employer because of the . . . sex. . . of any individual. . . to refuse to hire or employ. . . such individual. . . or to otherwise discriminate against such individual. . . with respect to. . . hire. . . if the individual . . . is the best able and the most competent to perform the services required.

In this disparate treatment case, Cintron alleges that Mascaro treated her less favorably than a male because of her sex, female. Under a federal analysis, the proof standard for intentional discrimination in refusal to hire cases generally falls within one of two categories: "pretext" cases, and "mixed-motive" cases. See Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 522 (3rd Cir. 1992), *cert. denied*, 62 FEP 1520 (1993). Numerous Pennsylvania courts have repeatedly indicated that it is appropriate to look to Title VII precedent in interpreting the PHRA. See Kryeski v. Schott Glass Technologies, 626 A.2d 595 (Pa. Super. 1993); and Chmill v. City of Pittsburgh, 412 A.2d 860 (Pa. Super. 1980). In this case we will construe the PHRA in light of principles of fair employment law which have emerged relative to federal civil rights laws.

Initially it is important to distinguish between these two proof standards. The pretext analysis is the more typical disparate treatment proof formula used. This analysis derives from the well known cases of McDonnell-Douglas Corp. v. Green, 411 US 792 (1973), and Texas Dept. of Community Affairs v. Burdine, 450 US 248

(1981). Under this now familiar framework, a complainant has the initial burden to establish a *prima facie* case. If this burden is met, the burden of production shifts to the respondent to articulate a legitimate non-discriminatory reason for its action. If a respondent does so, the complainant must seek to prove that the respondent's proffered reason for its action was, in reality, a pretext for an unlawful discriminatory reason, and that the respondent intentionally discriminated against the complainant. Throughout this analysis, the complainant retains the ultimate burden of persuasion.

By contrast, a mixed-motive case arises when a complainant presents sufficient direct evidence that a discriminatory factor played a motivating part in a respondent's decision process. Price Waterhouse v. Hopkins, 490 US 228 (1989). Under the Price Waterhouse standard, the burden of persuasion (as opposed to a mere burden of production) shifts to the respondent to establish that it would have made the same decision in the absence of the discriminatory factor.

The Civil Rights Act of 1991 modified the Price Waterhouse scheme. (Title VII, §703(m), 42 USC §2000e-2(m), PL No. 102-166 §107(a).) The 1991 Act clarified the point that a complainant need only establish that a protected category was a "motivating factor" in an employment decision. The 1991 Act also affirmed that part of the Price Waterhouse holding which declared that a mixed-motive is an affirmative defense for which a respondent bears a burden of persuasion. The 1991 Act modified Price Waterhouse by overruling that part of the holding which found that an employer could avoid all liability by proving that it would have made the

same decision despite the illegal factor. After the 1991 Act, respondents may avoid only monetary damages such as back pay, front pay, and being subject to orders of reinstatement in failure to hire cases. After the 1991 Act, declaratory relief and injunctions may still be ordered. Accordingly, respondents violate civil rights laws when an unlawful consideration plays a role in an employment decision, regardless of other considerations that may independently explain the outcome. See Preston v. Virginia ex rel. New River Community College, 31 F.3d 203 (4th Cir. 1994). In summary, proof by a respondent that it would have reached the same determination without the factor of discriminatory animus simply limits the remedies available to a complainant. See Russell v. Microdyne Corp., 65 F.2d 1229 (4th Cir. 1995).

In order to use the mixed-motive proof formula, a complainant must establish by direct evidence that the decision process substantially utilized an illegitimate criterion. Price Waterhouse, 490 US at 277. Thus, whether a case is analyzed as a "pretext" or "mixed-motive" case hinges on the strength of the evidence establishing discrimination. See Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089 (3rd Cir. 1995).

In the present case the brief on behalf of the complaint focused on five general items of evidence. First, statistics were identified which purport to show that Mascaro hired few women drivers. Second, the brief on behalf of the complaint points to different treatment in the application process. Third, it is argued that statements made by a person involved in the decision process reflect sex-based animus. Fourth, a comparison is made of Cintron's driving record with a male who

was hired as a driver. Finally, the brief on behalf of the complaint points to Mascaro's failure to retain both Cintron's application and the applications of other applicants for drivers' positions.

Several of these arguments combine to establish a mixed-motive case: disparate treatment in the application process, and statements made to Cintron by D'Ambrosio. The remaining points, either singularly or collectively, do not provide significant additional support of Cintron's claim.

With respect to the statistical showing, all that was shown is that at the time of Cintron's application, Mascaro had one female recycling truck driver at the Bridgeport facility who had been a driver for approximately five years. There was no evidence introduced to reflect how many women had applied to become drivers and were rejected prior to 1996.

The statistical argument appears to be based upon the assumption that women and men would want to be recycling drivers with equal desire. Without evidence of who applied and who was rejected, the general evidence regarding the composition of the workforce provides very little support for an inference that Cintron's rejection was because she is a woman.

The comparison of Cintron's driving record with that of Pyatt is equally non-persuasive. First, there is a fundamental issue regarding whether Cintron is even similarly situated to Pyatt. While Cintron was seeking to be a recycling driver, Pyatt's CDL "A" license qualified him to drive Mascaro's largest trucks. In order to drive a recycling truck applicants would simply need a driver's license.

No attempt was made to challenge Mascaro's evidence which indicated that because CDL "A" drivers are more difficult to find, Mascaro's normal policies are more flexible, especially when there is a pressing need for a CDL "A" driver. Any suspicion arising from Pyatt's hiring is further eroded when one considers the fact that Pyatt had one violation within two years, and Cintron had two. When you add to this fundamental difference the fact that the records of those hired as recycling truck drivers were clear of violations within two years of their hires, this affords Cintron little support in her attempt to show direct evidence of discrimination.

On the issue of the disposal of records, this factor is clearly a violation of PHRC regulations found at 16 Pa. Code §41.82(2). In Pennsylvania, in failure to hire cases, employers are required to retain applications by complainants and other candidates for the same position as that for which a complainant and others applied and were rejected. Here, the evidence shows that the Bridgeport general manager who replaced Macelak asked Saylor to gather up applications of those not hired in 1996. These documents were then thrown away.

Under Pennsylvania law a party cannot benefit from its destruction of evidence and, further, when evidence is destroyed there arises a presumption unfavorable to the party responsible for the missing evidence. See Mensch v. Bic Corp. Societe Bic et al., 1992 US Dist. Lexis 14318 (ED Pa. 1992). When a party destroys documents, it is appropriate to adopt a view of the facts as unfavorable to the responsible party as the circumstances will reasonably admit. See Equitable Trust Co. v. Gallagher, 101 A.2d 538 (1954).

The question here is, what view of the circumstances can reasonably be adopted due to Mascaro's destruction of the applications of non-successful applicants in 1996? The initial brief on behalf of the complaint simply suggests that the missing applications create a presumption that the applications were unfavorable to Mascaro. Subsequently in a counter-reply brief, it was asserted that the missing documents would show three things: (1) prior to June 1996, Mascaro hired men with a record of at least two violations; (2) prior to June 1996, Mascaro rejected qualified women; and (3) after Mascaro rejected Cintron, Mascaro continued to seek applicants.

Since the missing documents relate to non-selected applicants, the first suggested showings can not be relegated to Mascaro. The evidence submitted on drivers hired shows that each driver, with the exception of Pyatt, had clean records. As for drivers whose records were not submitted as evidence, the destruction of non-hired applicant files does not reasonably relate to whether Mascaro has ever hired a driver with a driving record as bad as or worse than Cintron's.

On the second point, the records which were thrown away appear to have been for 1996 non-successful applicants. When the PHRC investigator asked for the applications of those not hired, the request specified the period of December 1995 to May 1996. Further, Saylor credibly testified that in 1997 she was asked by the new general manager to pull the applications of those not hired in the past year, and that it was only those records that were thrown out. While it might be reasonable to conclude that some of 1996's non-successful applicants were women, the picture

must be seen in its entirety before concluding that Mascaro rejected any qualified women who applied. Clearly, Mascaro has had women recycling drivers both before and after 1996. In fact, after 1996 the record shows that Mascaro's Bridgeport facility has hired eight qualified women drivers.

The third suggested finding might be applicable if this were to be analyzed under a "pretext" standard. However, as noted, the analysis here is a "mixed motive" review. The factor that a respondent continues to seek applicants after a complainant's rejection normally is applicable in establishing the fourth element of a *prima facie* showing. With a mixed-motive review, this showing is unnecessary. Accordingly, while a cease and desist order is an appropriate response to Mascaro's destruction of non-successful applications, this factor does not result in a significant negative factual impact under the circumstances present here.

A combination of the remaining two evidentiary items noted in the brief on behalf of the complaint do trigger a mixed-motive treatment. With respect to the assertion that there had been disparate treatment in the application process, Saylor's testimony revealed that when an applicant had passed a driving test, the tester would advise Saylor. Then the tester and applicant were brought upstairs to speak with Macelak.

What happened to Cintron in this regard was very different. After Cintron was told she had passed the driving test, she was made to wait in D'Ambrosio's office for up to forty-five minutes. Where D'Ambrosio went and what he did is unknown. What is known is that D'Ambrosio did not inform Saylor that Cintron had passed the

driving test, and Cintron was not taken upstairs to speak with Macelak. Instead, Cintron was sent home and told to call in two hours. When she did call, D'Ambrosio did not come to the phone.

The other illicit factor which results in a finding of direct evidence of a discriminatory process was the undisputed evidence with respect to several of D'Ambrosio's comments to Cintron after she had passed the driving test. When Cintron asked D'Ambrosio if she was hired, Cintron was asked the following questions: "Are you aware that you are going to be on the road at three o'clock in the morning with guys?"; "Are you aware that [these] guys pee on the tires and curse?"; ". . . are you aware that [as] the driver [you are] going to be their boss?"; and "Can you handle that?" Later, upon returning after leaving Cintron alone, D'Ambrosio was asked by Cintron if she was going to be hired and he answered, "Well, I don't know because you are just a girl trying to break into a man's world." We find that these questions are born out of negative, sex-based stereotypes which were visited upon Cintron.

Mascaro's post-hearing brief and reply brief, in effect, suggest that what D'Ambrosio may have said to Cintron should be viewed as mere stray comments made by an employee without the authority to hire or not hire. Mascaro submits that D'Ambrosio was simply Mascaro's shop supervisor, with no responsibility regarding who was hired and who was not.

Clearly, D'Ambrosio was part of Mascaro's hiring process with respect to Cintron. Although D'Ambrosio may not have either made the final decision about

Cintron or even discussed whether to hire her or not, he certainly had the ability to directly impact the hiring process. From Saylor we learn that D'Ambrosio did not make a report regarding Cintron's test results. Certainly, D'Ambrosio's inaction affected Cintron's chance of being given full and fair consideration by the decision maker. Accordingly, D'Ambrosio's comments will be deemed to have been made by an individual directly involved in the application process, and his disparate treatment of Cintron and sex-based comments to her taint the entire application process.

Accordingly, Cintron has succeeded in presenting direct evidence of a sex-based discriminatory intention to deny Cintron a recycling driver position. By making such a showing, in order to avoid monetary damages and being subject to reinstatement, the burden shifts to Mascaro to prove that the decision not to hire Cintron would have been made despite the illegitimate processing of Cintron.

Here, Mascaro has offered proof in the form of objective evidence which indicates that its ultimate decision not to hire Cintron was justifiable and was motivated by a legitimate reason at the time the decision was made not to hire Cintron. Standing alone, the legitimate reason offered by Mascaro induced Mascaro to decide against hiring Cintron.

Mascaro has sufficiently established that the reason Cintron was not hired was that she had a record of two speeding violations within two years of her application. Unrebutted testimony reveals that Macelak, the individual who ultimately decided not to hire Cintron, had a policy which required a clear driving record for two years from the date of an application. Mascaro further offered that

it considered applicants with prior speeding violations as an inherent safety risk. Unrebutted testimony established that Macelak's safety record was very good. This is indicative that his strict policy was worthwhile.

As for the hiring of Pyatt, a CDL "A" driver, Mascaro presented unrebutted evidence that at times Mascaro had extenuating circumstances which would require some relaxing of the clear record policy. First, Mascaro offered that CDL "A" drivers are much more difficult to find than drivers for recycling trucks because only a regular driver's license is needed to drive Mascaro's recycling trucks. Next, Mascaro submitted that there are instances when a CDL "A" driver leaves without notice or is sick and there are immediate circumstances which require bending the policy parameters on occasion. Mascaro's proof in this regard must also be added to the simple fact that Cintron has not shown a single instance of Mascaro having hired a recycling driver, male or female, with anything but a clear driving record. Further, Cintron has not shown Mascaro hired a CDL "A" driver with a driving record as bad as Cintron's.

For this reason, Mascaro has sufficiently proven that Cintron's driving record motivated the decision not to hire her. By proving this, Mascaro successfully avoids only monetary damages and an instatement order. Mascaro remains liable for the discriminatory hiring process and the destruction of records. Accordingly, an appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALICIA CINTRON,
Complainant

v.

DOCKET NO. E-79969-D

SOLID WASTE SERVICES, INC.
d/b/a J.P. MASCARO & SONS,
Respondent

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Cintron was the victim of sex-based hiring procedures. Accordingly, Cintron has proven discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. The Permanent Hearing Examiner also finds that Mascaro violated 16 Pa. Code §41.82(2) by throwing away records it was responsible to retain. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, Supplemental 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

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DOCKET NO. E-79969-D

SOLID WASTE SERVICES, INC.
d/b/a J.P. MASCARO & SONS,
Respondent

FINAL ORDER

AND NOW, this 23rd day of May 2000, 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, Supplemental Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Supplemental Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own finding in this matter and incorporates said documents into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

ORDERS

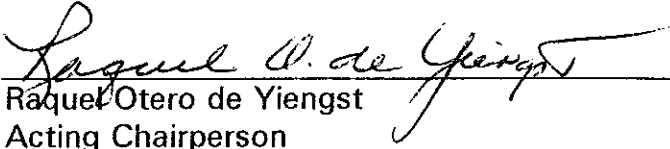
1. That Mascaro cease and desist from discriminating in the hiring process on the basis of sex.

2. That Mascaro cease and desist from throwing away documents it is required to retain by 16 Pa. Code §41.82(2).


3. That, within thirty days of the effective date of this order, Mascaro shall pay Cintron \$140.50, which amount represents expenses Cintron incurred in connection with her complaint.

4. That, within thirty days of the effective date of this order, Mascaro shall report to the Commission on the manner of its compliance with the terms of this order by letter addressed to Assistant Chief Counsel Pamela Darville in the Commission's Philadelphia Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
Raquel Otero de Yiengst
Acting Chairperson

Attest:


Gregory J. Celia, Jr.
Secretary