

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

John Culbreath,	:	
	:	
Complainant	:	
	:	
v.	:	Case Nos. 200126397 (H8638),
	:	200127248 (P6466)
Norristown Municipal Waste Authority,	:	
	:	
Respondent	:	

JOINT STIPULATION OF FACTS AND EXHIBITS

Stipulation of Facts

The parties in the above-captioned cases admit the following facts; therefore, no further proof of these itemized facts shall be required.

1. The Complainant herein is John Culbreath (Complainant).
2. The Respondent herein is Norristown Municipal Waste Authority (Respondent).
3. The Complainant is an adult African American male.
4. At all times relevant to the above-captioned cases, the Complainant owned, as sole officer of a corporation, and operated a bar and grill business at 219 East Main Street, Norristown, Pennsylvania, at times owning the property jointly with Richard Johnson.

5. At all times relevant to the above-captioned cases, the Respondent owned and operated a wastewater treatment plant serving a region which encompasses the Borough of Norristown, Pennsylvania.
6. At all times relevant to the above-captioned cases, Respondent was incorporated under the requirements of the Act of May 2, 1945, P. L. 382, known as the "Municipality Authorities Act of 1945" as amended, and pursuant to an ordinance adopted by the municipal authorities of the Borough of Norristown, Montgomery County, Pennsylvania, signifying the Borough's intention to incorporate an Authority thereunder.
7. A "Shut-Off Agreement" was executed between Respondent and the Pennsylvania-American Water Company on July 27, 1998.
8. At all times relevant to the above-captioned cases, the "Shut-Off Agreement" listed in Paragraph 7 (seven) above provided that, "Upon written request by the [Norristown Municipal Waste] Authority specifying a premises in the Authority's service area with regard to which the rentals, rates and charges for sewer, sewage or sewage treatment service shall not have been paid for a period of at least thirty days from the date due thereof, the Water Company shall proceed to shut-off the supply of water to such premises until it is advised in writing by the Authority that all such overdue rentals, rates and charges, together with any interest thereon, have been paid or the Authority directs otherwise. . ."
9. Plaintiff was advised on a yearly basis of his sewer bill and any arrearages.
10. On or about September 4, 2001, Complainant was notified that he was \$15,590.15 in arrears on his sewer bills for the subject property and that his water would

SS. [Signature]

therefore be shut off on or after October 11, 2001.

11. On or about September 12, 2001, Complainant was again informed of the potential shut-off, the potential shut-off date, the amount owed, and what could be done to avoid the shut-off.
12. On or about October 1, 2001, Complainant was again informed of the potential shut-off, the potential shut-off date, the amount owed, and what could be done to avoid the shut-off.
13. Complainant's Manager James Mobley paid Respondent \$4,800.00 on November 7 or 8, 2001, after water had already been shut off at 219 Main Street.
14. The water at 219 Main Street was turned back on the day after this partial payment.
15. Mr. Mobley paid Respondent \$1,000.00, \$600 in cash and \$400 by check, on November 26, 2001.
16. The \$400 check presented on November 26, 2001, was returned for insufficient funds.
17. Under the agreement listed in Paragraphs 7 and 8 (seven and eight) above, Respondent initiated discontinuation of Complainant's water service twice in 2001.
18. Complainant's water service was discontinued from November 7, 2001, to November 8, 2001 and again from December 12, 2001 to February 19, 2002.
19. Complainant was the first Norristown business owner to lose water service under the agreement listed in paragraphs 7 and 8 (seven and eight) above and the only Norristown business owner to lose water service in 2001.

20. At the time of Complainant's first water service discontinuation, Respondent was owed 2.4 million dollars in past due money.
21. At the time of Complainant's first water service discontinuation, approximately one third of Respondent's 9600 customers were delinquent in paying their bills.
22. At the time of Complainant's second water service discontinuation, Norristown business owner Gary Grimm, who is not African-American, owed \$10,220.21 (typed on the bill) or \$10,833.42 (handwritten on the bill) on one of his seven properties: 202 East Jacoby Street, Norristown, Pennsylvania.
23. Mr. Grimm's total bill for his multiple properties on December 12, 2001, was \$44,062.30 (calculated from amounts typed on the bills) or \$46,706.04 (calculated from amounts handwritten on the bills).
24. Complainant's water service was reinstated on February 19, 2002 as a result of an Order from the Eastern District of Pennsylvania Bankruptcy Court.
25. Complainant was represented by Attorney Greg Noonan from December 2001 to January 24, 2002 following the December 12, 2001 water shut off.
26. On January 21, 2004, Respondent adopted Resolution No. 2004-1, described in paragraph one of that resolution as "A resolution for the collection of delinquent fees for the services rendered by the Norristown Municipal Waste Authority to its customers."
27. On or about February 1, 2002, the Complainant filed a verified complaint with the Pennsylvania Human Relations Commission (Commission) against the Respondent at Commission Docket Numbers H8638 and P6466.
28. Complainant alleged, in his complaint, that Respondent had shut off water service

to his place of business on November 7, 2001, and on December 12, 2001, and that "turning off of our water service is unprecedented in the respondent's history." He included his own and Respondent's name and address.

29. On or about March 27, 2002, Respondent filed a verified answer to the complaint docketed at H8638 and P6466.
30. On April 9, 2002, the Commission held a Fact Finding Conference, which Respondent's employee Chris DiLenno and former attorney Robert Saraceni, Complainant, and Complainant's manager James Mobley attended.
31. By letter dated July 16, 2003, the Pennsylvania Human Relations Commission's Human Relations Representative (H.R.R.) Shannon notified the Complainant and Respondent that probable cause existed to credit the allegations found in the complaint and invited the parties to attend a conciliation meeting on August 20, 2003, at 10:30 A.M.
32. By letter dated July 23, 2003, Respondent's former attorney, Robert A. Saraceni, Jr., notified Commission staff of a scheduling conflict on the date of the conciliation conference and of his many dates of unavailability for the period from July 24, 2003 through October 1, 2003.
33. By letter dated July 29, 2003, H.R.R. Shannon notified the parties that the conciliation conference originally scheduled for August 20, 2003, had been rescheduled for August 21, 2003.
34. On August 18, 2003, H.R.R. Shannon telephoned Complainant and Attorney Saraceni and left voice messages to return his calls in order to discuss the conciliation conference.

35. On August 19, 2003, Attorney Saraceni telephoned H.R.R. Shannon and stated that the Respondent would not participate in a settlement effort, after which H.R.R. Shannon explained that the conciliation conference would be cancelled and the case sent to Harrisburg for public hearing preparation.
36. By confirming letter dated August 19, 2003, H.R.R. Shannon informed the parties that the conciliation conference scheduled for August 21, 2003, had been cancelled and would not be rescheduled and that the complaint would be forwarded to Central Office.
37. By letter dated October 17, 2003, Raymond Cartwright, the Commission's Director of the Housing and Commercial Property Division, notified the parties that the matter had been referred to his office for review of a public hearing recommendation and that all future communications, including "[t]hose regarding possible resolution," should be directed to the Chestnut Street, Harrisburg, address.
38. By letter dated November 4, 2003, Attorney Joseph J. Santarone, Jr., notified Director Cartwright that he had not been copied in on the above-mentioned October 17, 2003, letter and that "Norristown Municipal Waste Authority would welcome a public hearing regarding this matter."
39. By letter dated December 5, 2003, the Commission's Director Cartwright acknowledged receipt of Attorney Santarone's November 4, 2003, letter and repeated his availability to the parties to discuss resolution.

40. On December 7, 2004, Complainant called the Commission's Philadelphia Regional Office to discuss the possibility of reopening settlement negotiations with Respondent.
41. On December 21, 2004, after receiving a telephone call from Complainant's Manager James Mobley, H.R.R. Shannon discussed by telephone the possibility of settlement with Attorney Santarone, who agreed to contact his client and get back to H.R.R. Shannon.
42. On January 13, 2005, H.R.R. Shannon called Attorney Santarone and left a voice message requesting a response from Respondent regarding settlement proposal.
43. On January 26, 2005, H.R.R. Shannon spoke by telephone with Attorney Santarone, who agreed to check with his client and get back to H.R.R. Shannon with a decision about pursuing settlement.
44. On February 28, 2005, H.R.R. Shannon received a telephone call from Attorney Santarone stating that Respondent had no interest in presenting a counterproposal.
45. By letter dated March 8, 2005, Attorney Santarone notified H.R.R. Shannon that "settlement does not appear to be a possibility in light of the current status of this account. . ."
46. Respondent's counsel contacted PHRC counsel in June 2007 to discuss settlement of this matter and to request a settlement demand of Complainant.
47. Respondent's counsel and PHRC counsel have engaged in good faith settlement negotiations prior to the Commission hearing.
48. In correspondence dated February 2, 2007, Commission staff notified the Complainant and Respondent that a public hearing had been approved.

Joint Exhibits

The parties in the above-captioned cases stipulate to the authenticity and admissibility of the following documents:

1. Cover letter dated October 30, 2002, and signed by Respondent's former Attorney Robert A Saraceni, Jr., and attached Questionnaires signed by Barbara E. Frangiose and Alfonso Gallo. Joint Exhibit 1.
2. "Shut-Off Agreement" dated July 27, 1998, between Respondent and Pennsylvania-American Water Company. Joint Exhibit 2.
3. "Water Shut-off Notice for Delinquent Sewer Bills" directed to "Norristown Property Owner" with Complainant's billing information for 2001 typed at the bottom of the page. Joint Exhibit 3.
4. July 16, 2001 "Notice Prior to Lien" memo addressed to "Richard Johnson & John Culbreath." Joint Exhibit 4.
5. Sewer Lien 2000 Court # 01-14720 documenting municipal lien against Richard Johnson & John Culbreath. Joint Exhibit 5.
6. 8-28-01 year 2001 Annual Sewer Bill addressed to Richard Johnson and John Culbreath with attached domestic mail return receipt for article number P 433 168 114. Joint Exhibit 6.
7. September 4, 2001 "Dear Customer" notice to Richard Johnson/John Culbreath that 219 E Main Street's water service would be terminated on or after October 11, 2001. Joint Exhibit 7.
8. September 12, 2001 "Dear Customer" notice to Richard Johnson/John Culbreath that 219 E Main Street's water service would be terminated on or after 8:00 a.m.

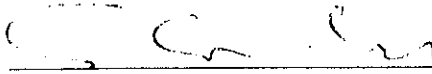
- on October 11, 2001. Joint Exhibit 8.
9. October 1, 2001 "Dear Customer" notice, marked "2nd & Final Notice" to Richard Johnson/John Culbreath that 219 E Main Street's water service would be terminated on or after 8:00 on October 11, 2001. Joint Exhibit 9.
 10. "Fax Transmission" form dated 11/5/01 from Chris DiLenno to "Carmen." Joint Exhibit 10.
 11. "Fax Transmission" form dated 11/8/01 from Chris to Culbreath/Johnson. Joint Exhibit 11.
 12. 11-08-01 year 2001 Annual Sewer Bill addressed to Richard Johnson and John Culbreath marked "Paid Nov - 8 2001 \$4800.00 BEF Partial \$2200. due by 11/13/01." Joint Exhibit 12.
 13. 11-26-01 year 2001 Annual Sewer Bill addressed to Richard Johnson and John Culbreath marked "Paid Nov 26 2001 by CD Pd. \$600.00 cash 400.00 check total \$1000." Joint Exhibit 13.
 14. PNC Bank's "Return Unpaid Insufficient" notice to Respondent concerning Complainant's \$400.00 check. Joint Exhibit 14.
 15. 1-11-02 year 2001 Annual Sewer Bill addressed to Richard Johnson and John Culbreath. Joint Exhibit 15.
 16. Unsigned January 14, 2002, "[A]greement between the Norristown Municipal Waste Authority and representatives of the property at 219 E. Main Street, Norristown." Joint Exhibit 16.
 17. 12/12/2001 year 2001 Annual Sewer Bills addressed to Grimm Brothers Realty Co or Gary Grimm. Joint Exhibit 17.

18. Cover letter dated May 16, 2002, Robert A Saraceni, Jr., and attached billing records (54 pages) regarding Gary Grimm and August Moon. Joint Exhibit 18.
19. October 27, 2003 "Re: Grimm Brother Realty Co. - Delinquent Balances" document. Joint Exhibit 19.
20. Letter dated September 30, 2004, to Gary Grimm from Robert A. Saraceni, Jr. Joint Exhibit 20.
21. Norristown Municipal Waste Authority Resolution No. 2004-1. Joint Exhibit 21.
22. September 12, 2001 "Dear Customer" notice to One Dekalb Corp. that 1 Dekalb St.'s water service would be terminated on or after October 24, 2001; 2001 Annual Sewer Bill and shut-off notice , dated 8/28/01; correspondence from Elwood Long to Barbara Frangiose; correspondence from Elwood Long to Respondent dated 9/18/01. Joint Exhibit 22.
23. September 4, 2001 "Dear Customer" notice to Donald & Jane Seel that 705 Swede St's water service would be terminated on or after October 11, 2001; 2001 Annual Sewer Bill and shut-off notice, dated 8/28/01. Joint Exhibit 23.
24. October 1, 2001 "Dear Customer" notice to Tonya Walker that 535 E. Moore St.'s water service would be terminated on or after October 11, 2001; 2001 Annual Sewer Bill and shut-off notice, dated 8/28/01. Joint Exhibit 24.
25. Letter dated July 8, 2004 from Robert Saraceni to Alfonso Gallo re: Grimm bankruptcy. Joint Exhibit 25.
26. Memorandum titled "Summary of events as recorded in the Authority office." Joint Exhibit 26.
27. August 20, 2001 "Dear Customer" notice to Logan Square Shopping Center that

- 1882 Markley St's water service would be terminated on or after September 27, 2001. Joint Exhibit 27.
28. Computer printout "Account #357197-3 name Grimm Bros Realty"; memorandum dated March 20, 2002 Dilenno to Code Enforcement re: water shut off at 202 E. Jacoby; correspondence dated April 8, 2002 Grimm to Dilenno. Joint Exhibit 28.
29. Letter dated March 8, 2002, Hosay to PUC re: water shut-off at 337 E. Marshall St. Joint Exhibit 29
30. PHRC Complaint #H8638 & P6466. Joint Exhibit 30.
31. Letter dated February 14, 2002, Complainant's counsel to Vangrossi re: bankruptcy stay. Joint Exhibit 31.
32. Adversary Complaint #02-304, Eastern District of Pennsylvania Bankruptcy Court. Joint Exhibit 32.
33. Year 2002 Annual Sewer Bill and Shut-Off notice, dated 1/27/03; current due line items Customer #9082541. Joint Exhibit 33.
34. Complainant's Amended Chapter 13 plan, No. 02-11182 SR. Joint Exhibit 34.

35. Transcript of hearing before the Honorable Stephen Raslavich, February 19, 2002.

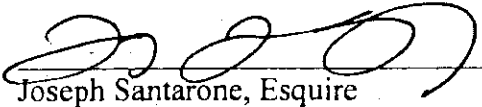
Joint Exhibit 35.



Sharon Lane, Assistant Chief Counsel
Pennsylvania Human Relations Commission
301 Chestnut Street, Suite 300
Harrisburg, PA 17101
Attorney ID# 83295
Counsel in support of the Complaint

8/13/02

Date



Joseph Santarone, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
620 Freedom Business Center, Suite 300
King of Prussia, PA 19406
Attorney ID# 45723
Counsel for the Respondent

8/13/02

Date

FINDINGS OF FACT

1. John Culbreath (hereinafter "Complainant") is an African American male. (J. S. 1, 3).
2. The Respondent herein is Norristown Municipal Waste Authority. (J. S. 2).
3. At all times relevant to the instant cases, the Complainant was the sole owner and operator of a bar and grill business located at 219 East Main Street Norristown, Pennsylvania. (J. S. 4).
4. The Complainant was the sole officer of the corporation that owned the business at 219 East Main Street. (J. S. 4).
5. At all times relevant to the instant cases, the Respondent owned and operated a wastewater treatment plant serving a region which encompasses the Borough of Norristown. (J. S. 5).
6. The Respondent was incorporated under the requirements of the Act of May 2, 1945, P.L. 382, known as the "Municipal Authorities Act of 1945" as amended. (J. S. 6).
7. A "Shut-Off Agreement" was executed between Respondent and the Pennsylvania-American Water Company on July 27, 2998. (J. S. 7).

* To the extent that the Opinion that 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:

J. S. Joint Stipulations
N. T. Notes of Transcript

8. The "Shut-Off Agreement provided, in pertinent part:

"Upon written request by the [Northern Municipal Waste] Authority specifying a premises in the Authority's service area with regard to which the rentals, rates and charges for sewer, sewage or sewage treatment shall not have been paid for a period of at least thirty days from the date due thereof, the Water Company shall proceed to shut-off the supply of water to such premises until it is advised in writing by the Authority that all such overdue rentals, rates and changes, together with any interests thereon, have been paid or the Authority directs otherwise... (J. S. 8)".
9. The Complainant was notified on a yearly basis of his sewer bills and any arrearages. (J. S. 9).
10. On or about September 4, 2001, the Complainant was notified that he was \$15,590.55 in arrears on his sewer bills for the subject property and that his water would therefore be shut off on or before October 11, 2001. (J. S. 10).
11. On or about September 12, 2001, the Complainant was again informed of the potential shut-off, the potential shut-off date, the amount owed, and what could be done to avoid the shut-off. (J. S. 11).
12. On or about October 1, 2001, the Complainant was once again informed of the potential shut-off, the potential shut-off date, the amount owed, and what could be done to avoid the shut-off. (J. S. 12).
13. Complainant's manager James Mobley (hereinafter "Mobley"), an African American paid the Respondent \$4,800 on November 7 or 8, 2001, after the water had been shut-off at 219 Main Street. (J. S. 13).
14. The water service at 219 Main Street was turned back on the day after this partial payment was made. (J. S. 14).
15. Mobley paid Respondent \$1,000, \$600.00 in cash and \$400.00 by check on November 26, 2001. (J. S. 15).

16. The \$400.00 check presented by Mobley on November 26, 2001 was returned for insufficient funds. (J. S. 16).
17. Under the "Shut-Off Agreement", the Respondent initiated discontinuation of Complainant's water service twice in 2001. (S. F. 17).
18. The Complainant's water service was discontinued from November 7, 2001 to November 8, 2001, and from December 12, 2001 to February 19, 2002. (J. S. 18).
19. Mobley was unaware as to whether the Complainant had paid his sewer bills before 2001. (N. T. 22).
20. Mobley acknowledged that none of the sewer bills were paid from 2001 to 2005. (N. T. 22).
21. Mobley was aware that the notices provided that once the water was shut off; that payment in full would be required to turn it back on. (N. T. 30).
22. Even though Mobley made a partial payment, the water service was turned on the next day. (N. T. 31).
23. At all times relevant to the instant complaint, Barbara Frangiose (hereinafter "Frangiose") worked for the Respondent and was the person who dealt with the Complainant's manager. (N. T. 162).
24. Frangiose never personally spoke with the Complainant. (N. T. 164).
25. When Mobley came into the Respondent's office to discuss the billing arrangements, he presented himself to Frangiose as John Culbreath [Complainant herein]. N. T. 164).
26. On Mobley's next visit, he interacted with another employee who told Frangiose that Mobley was waiting to see her. (N. T. 164).

27. Seeing Mobley, she responded that she thought the individual was John Culbreath. (N. T. 164).
28. Frangiose specifically asked the individual what his name was, and he responded that he was in fact Mobley. (N. T. 164).
29. Frangiose never met the Complainant. (N. T. 164-165).
30. Frangiose was aware of the previous owners of the subject property and their past difficulties the Culbreath family had in making payments. (N. T. 174-175).
31. When Frangiose was still under the impression that Mobley was in fact Culbreath, she commented to him she did not want to deal with him or his family because of their history of not paying their account. (N. T. 174).
32. Mobley did not believe that the "you people" comment made by Frangiose was in any way racial. (N. T. 39).
33. When the Complainant's water service was first discontinued, the Respondent was owed 2.4 million in past due money from its customers. (J. S. 20).
34. When Complainant's water service was discontinued the second time, Gary Grimm (hereinafter "Grimm"), a Norristown business man, owed approximately \$10,000.00 on one of seven properties he owned. (J. S. 22).
35. Grimm's total bill for his multiple properties on December 12, 2001 was \$44,062.30. (J. S. 23).
36. Grimm is not an African American. (J. S. 22).
37. Grimm contested the amount and filed a lawsuit against the Borough asserting that he was being overcharged. (N. T. 172).

38. As of a result of this allegation, Frangiose reviewed Grimm's account and realized he had multiple properties. (N. T. 172).

39. Grimm filed for bankruptcy before the Respondent shut his service off. (N. T. 173).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and the subject matter of these cases.
2. The parties have complied with the procedural prerequisites for the convening of a public hearing.
3. The Complainant is an individual within the meaning of the PHRA.
4. The Respondent is a Commonwealth authority within the meaning of the PHRA.
5. The Complainant established a *prima facie* case of race based discrimination by showing:
 - 1) he is a member of protected class;
 - 2) Respondent knew he was a member of a protected class;
 - 3) the Complainant was harmed; and
 - 4) the Respondent treated others not in the protected class more favorably.
6. The Respondent articulated a legitimate non-discriminatory reason for twice discontinuing Complainant's water service.
7. The Complainant has not shown that Respondent's proffered reason is pretextual.

OPINION

These cases arose on verified complaints filed on February 1, 2002, by John Culbreath (hereinafter "Culbreath") against Norristown Municipal Waste Authority (hereinafter "Respondent") at PHRC Case Numbers 200126397 and 200127248. The Complainant alleges that the Respondent had shut off water service to his place of business, the Club House Bar & Grill, on November 7, 2001 and December 12, 2001, because of his race, African American. The Complainant further alleges that the Respondent's actions violated Section 5 (i)(1) and 5(h), (1), and (3) 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 investigated the allegations and at the investigation's conclusion, informed the Respondent that probable cause existed to credit the Complainant's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, the Commission notified the parties that it had approved a public hearing.

On August 13, 2007, a public hearing was held in Norristown, Pennsylvania before a panel of Commissions consisting of Panel Chairperson Commissioner Raquel Otero de Yiengst, Commissioner Timothy Cuevas and Commissioner Toni Gilhooley. Sharon Lane, Assistant Chief Counsel, represented the state's interest in the complaint. Joseph J. Santarone, Jr., Esquire appeared on behalf of the Respondent.

In the instant case, the Complainant did not appear on the day of the public hearing. After repeated attempts to contact the Complainant on the day of the

hearing, Commission Counsel proceeded with the public hearing with the intention that the Complainant would appear at a later date. During the public hearing, Commission Counsel attempted to contact Complainant on several occasions in an attempt to schedule his appearance and was unsuccessful in doing so. Commission Counsel not only did not hear from Complainant but did not hear from anyone on his behalf. Commission Counsel notified the Panel Advisor by letter dated September 4, 2007 that the record was closed and the Commissioner panel could render its decision on the record as presented.

The instant case involves allegations of disparate treatment. The standard of proof was established in the oft-cited case of McDonnell Douglas v. Green, 411 U.S. 792 (1973) and the standard was later adopted by the Supreme Court of Pennsylvania in General Electric Corporation v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A. 2d 649 (1976). Using that analytical model, the Complainant has the initial burden of establishing a *prima facie* case of unlawful discrimination. Once the Complainant establishes a *prima facie* case, the burden of production shifts to the Respondent to produce evidence of a legitimate non-discriminatory reason for its action. See Allegheny Housing Rehabilitation Corporation v. Pennsylvania Human Relations Commission, 516 Pa. 124, 532 A.2d 315 (1987). If the Respondent carries this burden of production, then the burden shifts back to the Complainant to show that the proffered reason(s) is pretextual. The Complainant retains the ultimate burden of proving unlawful discrimination by the Respondent.

In order to establish a *prima facie* case in the instant case, the Complainant must show:

- 1) he is a member of a protected class

- 2) Respondent knew he was a member of protected class
- 3) The Complainant was harmed; and
- 4) The Respondent treated others not in the protected class more favorably.

In the case before the Commission, the Complainant can establish the first element of the *prima facie* case, namely, he is an African American. The second element of the *prima facie* case is met in that the Respondent knew that the Complainant was an African American. It is interesting to note that Ms. Frangiose, an employee of the Respondent, never actually met the Complainant. Frangiose knew Complainant's father and was aware that they were African American. In addition, when Frangiose met James Mobley, Complainant's manager who said he was the Complainant, she was aware that Mobley was African American. Accordingly, the Complainant has established the second element of the *prima facie* showing.

In regard to the third element, it is clear that the Complainant was harmed by the actions of the Respondent. The Complainant had to shut down his business when the Respondent caused the water to his business to be shut off. Lastly there is some evidence in the record before the Commission that others not in the Complainant's protected class were treated more favorably. Others not in Complainant's class were in arrears and did not have their service turned off. Therefore, the Complainant has met his burden of establishing a *prima facie* case.

As aforementioned, once the Complainant has established a *prima facie* case, the burden shifts to the Respondent to produce evidence of a legitimate non-discriminatory reason for its action.

In the instant case, the Respondent satisfies its burden of production by articulating that the action was taken because of the Complainant's delinquency in paying his bills. Since the Respondent herein has met its burden of production, the

burden shifts back to the Complainant to show that the Respondent's proffered reason is pretextual. It is important to note that the Complainant still retains the ultimate burden of proving unlawful discrimination on the part of the Respondent.

Simply stated, the Complainant has not met his burden in this matter. First, the Complainant himself did not appear at the public hearing. The Complainant allegedly suffered a back injury that did not require hospitalization. There was a futile attempt to contact him during the hearing to check on his status. He simply did not appear at the public hearing. Also, the Complainant ignored repeated attempts by Commission Counsel subsequent to the hearing to take his testimony. The matter was then submitted to the Commission without the benefit of the Complainant's testimony. Consequently the Complainant's non-involvement certainly has a detrimental effect on his case. If the Complainant had anything to offer regarding pretext, then the panel never heard it because the Complainant chose not to appear at the public hearing.

The main thrust of the case presented on behalf of the Complainant was that Gary Grimm a white male, did not received the same treatment as the Complainant. Mr. Grimm was the owner of multiple properties and owed approximately \$44,062.30 in December of 2001. (S. F. 23). Mr. Grimm did testify at the public hearing. The record before the Commission reflects the Complainant and Mr. Grimm dealt with their arrearages in entirely different ways. Mr. Grimm filed a lawsuit contesting the amount of the bills and then filed for bankruptcy before any action could be taken to shut the water off.

Frangiose testified that Grimm's service was not shut off because of the lawsuit and upon advice of counsel (N. T. 30). Also, after pursuing his rights through the court system, Mr. Grimm paid his arranges in full. The Complainant ignored notices from the Respondent, made an agreement, then failed to fulfill the agreement by not following

through on the agreement. Even though the Respondent said "payment in full" would be required, the Respondent accepted partial payments and had the water turned back on the next day. When the Respondent made this agreement with Mobley, an agreement was made to make a future payment on a specific date. The date was not only missed, but when the partial payment was finally made, the portion of the payment made by check bounced. Clearly, the Complainant and any representative of the Complainant had a long history of not living up to any agreements to pay arranges.

The Respondent, in response to the delinquencies instituted as collection process to try to collect money owed to the Respondent, there were three rounds of shut-off notices sent out to customers. The record reflects that the Complainant was not treated unfairly. The first notices went to Anthony Butera, a white man. Mr. Butera, upon receiving the notices, came in and paid in full, the amount he owed. The second group was Complainant, Donald and Jane Seal (Exhibit "7"), Tanya Walker (Exhibit "24" and "25") and Edward Long (Exhibit "6"). First, shut-off notices were sent to the Seals but they were returned. The Seals were never located and properly served, so the water was not shut-off. In regard to Ms. Walker's property, the water had already been shut-off by the Pennsylvania American Water Company, so any attempt to do was moot. Mr. Long, white male, upon receipt of the notice, came in and paid the amount in full.

The Complainant was given numerous opportunities in that there were broken agreements, partial payments and a check that bounced. The Complainant, though making the allegation, chose not to appear at the public hearing or even participate subsequent to the hearing, though given the opportunity. Lastly, there was testimony in the public hearing regarding a comment by Frangiose referring to the owners of 219 East Main Street as "you people." There is a vague allegation that this comment was

based on Complainant's race. Once again, we only have Mobley's testimony to review on this point because the Complainant chose not to appear. Mobley testified that he perceived nothing racial in Frangiose's comment. Also when asked, Mobley said that no other employee of the Respondent had any racial animus toward him. (N. T. 39).

In summary, the Complainant has failed to show that the Respondent's actions were a pretext for race discrimination. Accordingly, the Complainant has failed to meet his ultimate burden of persuasion in proving unlawful discrimination by the Respondent.

An Order dismissing this matter follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN CULBREATH
Complainant

vs.

NORRISTOWN MUNICIPAL
WASTE AUTHORITY
Respondent

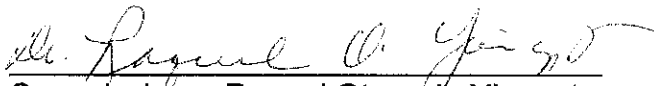
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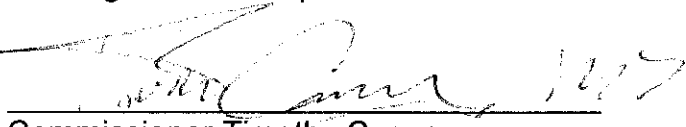
PHRC CASE NOS. 200126397 and
200127248

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in the above captioned cases, the Hearing Panel finds that the Complainant has failed to prove discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Hearing Panel's Recommendation that the attached Joint 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 Hearing Panel recommends the issuance of the attached final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
Commissioner Raquel Otero de Yiengst
Hearing Panel Chairperson

By: 
Commissioner Timothy Cuevas
Panel Member

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN CULBREATH,
Complainant
vs.

PHRC CASE NOS. 200126397 and
200127248

NORRISTOWN MUNICIPAL
WASTE AUTHORITY,
Respondent

FINAL ORDER

AND NOW, this 26th day of JANUARY after a review of the entire record in these matters, the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Joint Stipulations of Fact, Findings of Facts, Conclusions of Law and Opinion of the Hearing Panel. Further, the full Commission adopts said Joint Stipulations of Fact, Findings of Facts, Conclusions of Law and Opinion as its own findings in this matter and incorporates the same into the permanent record of this proceedings, to be served on the parties to the complaints, and hereby.

ORDERS

that the instant complaints are dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Stephen A. Glassman
Stephen A. Glassman, Chairperson

Attest:

Dr. Daniel D. Yun
Dr. Daniel D. Yun, Secretary

