

**COMMONWEALTH OF PENNSYLVANIA**  
**GOVERNOR'S OFFICE**  
**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**SAMUEL ZASLOW, himself  
and as executor of his  
deceased wife's estate,  
Complainant**

**v.**

**DORAL II CONDOMINIUM  
ASSOCIATION  
Respondent**

**DOCKET NO. H-7599**

**STIPULATIONS OF FACT**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

**FINAL ORDER**

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Samuel Zaslow, himself and as :  
executor of his deceased wife's estate, :  
COMPLAINANT : H-7599  
 : 03-98-0349-8  
v. :  
 :  
Doral II Condominium, :  
RESPONDENT :

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 Samuel Zaslow, himself and as executor of his deceased wife's estate.
2. The Respondent herein is Doral II Condominium.
3. On or about March 20, 1998 Complainant timely filed a verified complaint against Respondents with the Pennsylvania Human Relations Commission (hereinafter Commission).
4. The Complaint was served upon Respondents on April 1, 1998.
5. Respondent timely answered the Complaint on April 14, 1998.
6. Following an investigation, a probable cause finding was approved by the legal division on September 3, 1998 and Respondents were notified of the finding on September 10, 1999.



## FINDINGS OF FACT \*

1. The Complainant in this matter is Samuel Zaslow, on behalf of himself, and as the executor of the estate of his deceased wife, Muriel Zaslow. (S.F. 1; N.T. 144).
2. The Respondent, Doral II Condominium Association, (hereinafter, "Doral II"), is a condominium located at 9906 Bustleton Avenue, Philadelphia, Pa.
3. There are 122 condominium units in seven two-story buildings at Doral II. (N.T. 35, 145, 146, 300).
4. The two-story buildings at Doral II are divided into sections in which there are four condominium units per section. (N.T. 300)
5. Each section has a common area front door which opens at ground level. (N.T. 301).
6. Inside the common area front door the entrances to two condominium units are located: one on the left and one on the right. (N.T. 301; C.E. 7 Attachment A).

\* The foregoing "Stipulations of Facts" are hereby 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 Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T.	Notes of Testimony
C.E.	Complainant's Exhibit
R.E.	Respondent's Exhibit
S.F.	Stipulation of Fact

7. In the common area hallway outside of ground floor condominium units, there are stairs leading up to two second floor units. (N.T. 106, 300-301; C.E. 7 Attachment A).

8. From the ground up, stairways have eight risers and seven treads which end at an intermediate landing and another five risers and four treads leading up to the second floor landing immediately outside the second floor units, again, one unit on the left and the other on the right. (N.T. 81, 206, 301; C.E. 7 Attachment A).

9. Doral II has a seven member executive board. (N.T. 222).

10. Before Muriel Zaslow died, Samuel and Muriel Zaslow were happily married forty-five years. (N.T. 36).

11. In June of 1984, Samuel and Muriel Zaslow purchased unit F-12 at Doral II. (N.T. 35, 86, 145).

12. The Zaslow's purchased unit F-12 when it was new. (N.T. 146).

13. Unit F-12 is a second floor unit and is directly across the hall from unit F-14. (N.T. 201).

14. In 1997, Rose Paul lived alone in unit F-14. (N.T. 201, 205).

15. In March, 1997, Muriel Zaslow suffered a major stroke. (N.T. 36, 99, 164, 183).

16. The stroke left Muriel Zaslow able to stand and turn but unable to walk, in need of dialysis due to a loss of kidney function, and needing to be tube fed since her throat muscles were also affected in such as way as to impair swallowing. (N.T. 37, 100, 114).



17. Muriel Zaslow's mind and speech were unaffected and she had the use of her arms. (N.T. 101, 151).

18. After March, 1997, Muriel Zaslow was confined to a wheelchair and required constant care which was provided by a daily attendant who assisted in feeding, clothing, and bathing her. (N.T. 152).

19. The loss of kidney function required her to be on dialysis three times a week. (N.T. 101, 164, 184).

20. Muriel Zaslow had to be transported to a hospital for dialysis. (N.T. 43, 101).

21. Three times a week an ambulance came to take Muriel Zaslow for dialysis. (N.T. 101).

22. The Ambulance attendants would strap Muriel Zaslow in a collapsible chair and carry her downstairs, and when they brought her back, carry her back upstairs. (N.T. 101, 102).

23. In or about June 1997, Samuel Zaslow was informed by both a nurse and a social worker at the Hospital where Muriel Zaslow received dialysis, that her insurance company was giving the hospital a rough time about paying for the frequent ambulance services. (N.T. 40, 142).

24. Fearing that there would come a time when his insurance would not pay for the ambulance service, and knowing that his wife was otherwise unable to leave the unit, in approximately June 1997, Samuel Zaslow began to make inquiries of chairlift manufacturers about his options with respect to whether a chairlift could be installed in the common area stairway outside his unit. (N.T. 40, 47, 107, 108).

25. Samuel Zaslow received informational materials and estimates of either over \$12,000 to purchase or approximately \$400 a month to rent a chairlift. (N.T. 47, 51).

26. Samuel Zaslow also spoke with Rose Paul and his downstairs neighbors, Mr. and Mrs. Entenger, to inform them of his intention to install a chairlift in the stairway and to ask them if they had any objections. (N.T. 45, 203).

27. Neither the Entengers nor Rose Paul objected and related that a chairlift was okay with them. (N.T. 46, 203).

28. Samuel Zaslow also told them that he would be both personally responsible and financially responsible if the building were to be damaged in anyway. (N.T. 45).

29. A few days after speaking with their neighbors, Samuel and Muriel Zaslow received a letter from the condominium executive board which informed them that a chairlift could not be installed in a common element area. (N.T. 52, 52; C.E. 1).

30. The executive board's undated letter also related that the board had previously rejected a similar request. (N.T. 108; C.E. 1).

31. In response to the executive board's undated letter, Samuel Zaslow sent a registered letter, dated June 10, 1997, to the board's Acting President, Herb Weiss, which Samuel Zaslow intended to be a formal request for permission to install a chairlift in the common area hallway outside his unit. (N.T. 57, 58, 119, 122; C.E. 2).

32. Subsequently, the executive board held a special meeting to discuss the request, and by letter dated June 16, 1997, Samuel and Muriel Zaslow were advised that the board had unanimously rejected the request, in effect, because the chairlift would be placed on a common element area. (N.T. 61, 226, C.E. 3).

33. The board's June 16, 1997 letter also confirmed that on two prior occasions, the board had rejected similar requests. (C.E. 3).

34. By registered letter dated June 21, 1997, Samuel Zaslow advised the board that, in his opinion, the board's denial was discriminatory. (N.T. 64, 119, C.E. 4).

35. Thereafter, it was Samuel Zaslow's intention to install a chairlift despite the board's denial and if necessary, litigate the matter. (N.T. 137).

36. On October 6, 1997, Doral II held a meeting at which the subject of Samuel Zaslow's request came up. (N.T. 66, 69-70, 93, 173).

37. Many unit owners expressed that they were in favor of allowing a chairlift to be installed. (N.T. 72, 76).

38. Rose Paul publicly expressed her approval of the request. (N.T. 202).

39. When Samuel Zaslow spoke to the board he again noted that neither Rose Paul nor the Entenger's would have a problem with it, that he would be responsible to return the hallway to its original condition after the chairlift was removed, and informed the board of Muriel Zaslow's depression at feeling like a prisoner in her home. (N.T. 69, 70).



40. Samuel Zaslow also reminded board member Goldberg that after receiving the board's first letter, Samuel Zaslow had called Goldberg and asked him how he would get Muriel Zaslow downstairs if the ambulance service ended, and that Goldberg had responded that he was going to have a problem. (N.T. 69, 70).

41. At the meeting, Goldberg then called Samuel Zaslow a crude demeaning name. (N.T. 93, 183, 187).

42. The following day, on the afternoon of October 7, 1997, Muriel Zaslow died. (N.T. 93, 183, 187).

43. After her stroke, other than being taken downstairs by ambulance attendants to transport her for dialysis three times a week, Muriel Zaslow had only left her home on one occasion. (N.T. 94).

44. In the spring of 1997, her two sons, Brian and Mark Zaslow, came to the Zaslow's unit and carried Muriel Zaslow downstairs, and took her to one of their homes where she was able to visit with her family and her grandchildren. (N.T. 94, 166-167).

45. At the end of the day, her sons took her home and carried her back upstairs. (N.T. 94).

46. The executive board did not request any additional information from Samuel Zaslow regarding the type of chairlifts being considered, and Samuel Zaslow did not voluntarily provide the board with any specifics. (N.T. 108, 153, 217).

47. After Muriel Zaslow died, the information Samuel Zaslow had obtained from chairlift manufacturers was of no use to him, so the informational materials were discarded. (N.T. 115, 131, 155).

48. On or about July 1999, Doral II asked Ronald P. Kobelin, (hereinafter "Kobelin"), a principal with GBQC Architects to study the hallway of building F at Dorall II and to offer his opinion regarding whether a chairlift could have been installed. (N.T. 233, 243).

49. Kobelin testified that he looked at the building codes, visited the site, took measurements, and reviewed the product lines of several chairlift manufacturers. (N.T. 293).

50. Kobelin offered his expert opinion that a chairlift could not be installed which would be in compliance with the building code. (N.T. 250-251; R.E. 2).

51. He had measured the width of the hallway stairs in building F to be 38", and if a chairlift were to be installed, the width would fall below 36" the minimum width required of stairways in a building such as building F at Doral II. (N.T. 250-251; R.E. 2).

52. Kobelin's report observed that a chairlift track would also partially block the doorway of one of the lower unit's. (R.E. 2).

53. Kobelin's report and testimony concluded that, in effect, the installation of a chairlift in the common area hallway of building F at Doral II would pose an unacceptable safety risk. (N.T. 267; R.E. 2).

54. On February 28, 2000, Gray Smith, a self-employed architect presented the PHRC Housing Division with another report on the issue of whether a chairlift could be installed in building F at Doral II. (C.E. 7).

55. Smith's comprehensive report accurately pointed out several fundamental flaws in the Kobelin report, including:

- a. Kobelin had reviewed the wrong building code for his analysis;
- b. While Kobelin noted that a chairlift track may partially block the downstairs units's doorway, his report neglected to mention either that products have "flip-up" tracks to avoid that problem, or that a chairlift can be installed on the other side of a stairway to avoid the issue completely; and
- c. Kobelin's report does not mention the variance procedures available in circumstance like the issue present in this case. (N.T. 315, 316; C.E. 7; R.E. 2).

56. In Philadelphia, if an individual wants to install a chairlift in a condominium common area hallway similar to the circumstances at Doral II, building F, the procedure would begin by the individual engaging in an interactive process with the condominium's governing board. (N.T. 321).

57. The individual and the board would both have to be aware that an application for a building permit would have to be filed with Licenses and Inspections. (N.T. 322).

58. If the requested permit would be refused by Licenses and Inspections, the next step is to seek a variance by asking for a review by both the Accessibility Advisory Board and the Philadelphia Board of Building Standards. (N.T. 308, 323).

59. The Accessibility Advisory Board would assess whether the proposed chairlift is an acceptable accessibility device, and the Board of Building Standards



would assess whether any resultant obstruction would be an acceptable variance. (N.T. 308).

60. In the present circumstances, because any chairlift would reduce the stair width below 36", a variance would have been required. (N.T. 318).

61. When a requested variance achieves accessibility, frequently the Board of Building Standards has granted variances. (N.T. 341).

62. Smith testified that in his experience, variances had been granted in many situations which are similar to the Zaslow's situation at Doral II. (N.T. 331-332).

63. Some of the criteria reviewed by the Board of Building Standards would be the number of units affected, (here, one unit); the number of persons living there, (again, one person); and the number of persons who could live in any affected units. (N.T. 308, 309).

64. In Smith's expert opinion, it would have been technically feasible to install a chairlift on the stairway outside unit F-12 without endangering the health, safety, and welfare of either residents or the public in general and that a variance could have been secured. (N.T. 305).

65. Before her stroke, Muriel Zaslow was very positive, engaging, friendly and generally enjoyed life. (N.T. 188).

66. After the stroke, Muriel Zaslow became depressed that she had to have dialysis three times a week and was also bitter because she had to be carried up and downstairs by ambulance attendants. (N.T. 38).

67. Muriel Zaslow expressed frustration at feeling she was on display. (N.T. 166).



68. After returning from the one visit she was able to make with her family away from her home, Samuel Zaslow asked his wife if she had a good time, to which she hysterically responded that she did not want to be carried like a bag. (N.T. 96).

69. As the October 6, 1997, Doral II meeting approached, Muriel Zaslow became hopeful and excited. (N.T. 179-180).

70. When the meeting ended and she was told what was said and that there was no change in the board's position, Muriel Zaslow broke down and cried, became silent, and shut everyone out. (N.T. 93, 180).

71. The next afternoon Muriel Zaslow died. (N.T. 93, 183).

72. Samuel Zaslow was frustrated, bitter, angry, and depressed at the board's denial of his request. (N.T. 90, 181).

73. Samuel Zaslow also was saddened that his neighbors of 15 years would deny something that would release Muriel Zaslow from being a prisoner in her home. (N.T. 90, 189).

74. The treatment given Samuel Zaslow at the October 6, 1997 meeting both disappointed and embarrassed him. (N.T. 181).

75. Samuel Zaslow's out-of-pocket expenses totaled \$75.00. (N.T. 87-88).

## CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The Parties have fully complied with the procedural prerequisites to a public hearing.
3. The property that the Zaslows owned was a housing accommodation within the meaning of the PHRA, and the common elements of Doral II are "premises" within the context of Section 5(h)(3.1) of the PHRA.
4. The Zaslows established a *prima facie* case of disability discrimination under 5(h)(3.1)(3.2) by showing:
  - a. that Muriel Zaslows was a member of a protected class, in that she had a physical impairment, which substantially limited a major life activity, walking;
  - b. the Zaslows requested the accommodation of a chairlift from Doral II;
  - c. the Zaslows were denied the requested accommodation even before they requested it;
  - d. the Zaslows were also denied the accommodation after they requested it;
  - e. the accommodation requested was reasonable; and
  - f. the Zaslows would have paid for the accommodation themselves out-of-pocket and would have been responsible for any damage caused when the accommodation would have been removed.

5. Doral II articulated legitimate non-discriminatory reasons why the Zaslows were refused the accommodation.

6. The Zaslows successfully proved by a preponderance of the evidence that Doral II articulated reasons for refusing to allow the accommodation were pretextual.

7. The Zaslows have met their ultimate burden of persuasion that the Respondents' actions violated Section 5(h)(3.1) and (3.2) of the PHRA.

8. Samuel Zaslow has established that both he and his deceased wife, Muriel Zaslow, suffered embarrassment and humiliation due to Doral II's discriminatory acts.

9. Samuel Zaslaw has established that he incurred out-of-pocket expenses.

10. The Commission may award actual damages, including damages caused by humiliation and embarrassment.

11. The Commission may also order Doral II to cease and desist from the discriminatory practice.



## OPINION

This case arises on a complaint filed by Samuel Zaslow on behalf of himself, and as the executor of the estate of his deceased wife, Muriel Zaslow, against Doral II Condominium Association, (hereinafter "Doral II") on or about March 20, 1998, at Docket No. H-7599. Samuel Zaslow alleged that between June 1997 and October 6, 1997, Doral II refused to give him permission to install a chairlift as an accommodation to Muriel Zaslow's disability. The complaint alleges that such alleged violate Section 5(h) (3.1) and (3.2) of the Pennsylvania Human Relations Act, Act of October 25, 1995, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter the "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. The efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on March 7, 2000, in Philadelphia, PA, before Carl H. Summerson, Permanent Hearing Examiner.

Terry L. McCallum, Esquire appeared on behalf of Doral II and the PHRC interest in this matter was overseen by Lisa Jo Fanelli-Greer, Esquire, Assistant Chief Counsel, PHRC. Post hearing briefs were simultaneously submitted by the parties on or about June 2000.



Section 5(h)(3.1) states in pertinent part:

"It shall be an unlawful discriminatory practice . . . [f]or any person to . . . [r]efuse to permit, at the expense of a person with a handicap, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises . . ."

Section 5(h)(3.2) states in pertinent part:

"It shall be an unlawful discriminatory practice . . . [f] for any person to [r]efuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation."

Since the allegations here involve the right to make certain modifications a *prima facie* case is established by providing that:

1. Muriel Zaslow had a disability and that Samuel Zaslow is a person associated with a person with a disability;
2. Doral II either knew of Muriel Zaslow's disability or it was reasonable that Doral II would be expected to know of her disability;
3. That a modification of a common area of Doral II was necessary to afford Muriel Zaslow an equal opportunity to come and go from her unit;
4. Doral II refused permission for such modification.

See HUD v. Ocean Sands, Inc., (P-IA) ¶25,055 (HUD A.L.J. 9-3-93), *aff'd* and remanded, 2 Fair Housing-Fair Lending (P-H) ¶25,056 (1993).

If Samuel Zaslow can make this showing, Doral II may prevail if it can demonstrate that the requested accommodation either imposes an undue financial

or administrative burden on Doral II, or the requested accommodation is not reasonable.

There is no dispute in this case that Muriel Zaslow was indeed disabled due to the severe after-effects of a major stroke. One result of her stroke left Muriel Zaslow confined to a wheelchair from the period after her stroke until her death on October 7, 1997. Also, Samuel Zaslow was protected by the PHRA because he was associated with a person with a disability. (Section 5(h)(1) of the PHRA). Further, there is no dispute in this case that the board of Doral II was aware that Muriel Zaslow's could not walk the stairs outside her unit and that her mobility impairment was the reason for the request to install a chairlift.

Clearly, a chairlift would have afforded Muriel Zaslow an equal opportunity to leave her home other than when carried by ambulance attendants taking her for dialysis three times a week, or by her sons who rightfully feared for her safety when carrying her up and down the stairs.

Finally, Doral II continually refused to grant permission for the installation of a chairlift. In fact, even before permission was sought, Doral II wrote to the Zaslows to inform them that a chairlift could not be installed because it would have to be installed as part of the common elements of Doral II.

As indicated, Doral II's first response was an instant rejection because the chairlift would be installed into a common element area. It was not until later that Doral II's purported rationale for its rejection of the request to install a chairlift became something much different.

In its post-hearing brief, the common area question is not mentioned. Instead, Doral II generally argues that several other factors contributed to the denial of the request. First, Doral II's brief argues that Samuel Zaslow neither provided Doral II with information about chairlifts nor advised Doral II that he would be willing to bear the expense of installation. Doral II submits that it could not make a rationale, informed, and intelligent decision regarding whether the request was reasonable without the benefit of specific information about the type of chairlift contemplated by the Zaslows.

Second, Doral II submits that the request was not reasonable. Doral II argues that a chairlift could not have been installed in compliance with minimal building code safety standards. Doral II contends that a chairlift would have posed a demonstratable threat to the health and safety of others.

On the common element issue it is readily apparent that this was Doral II's only concern in June of 1997. As soon as the Executive Board of Doral II became aware that Samuel Zaslow was considering the possible installation of a chairlift, the board directed a letter to the Zaslows. In the board's letter, the only reason the board offered the Zaslows regarding why a chairlift could not be allowed was "This cannot be done as it is part of common elements." On this point the board is incorrect.

The PHRA requires consideration of a request for the removal of barriers to individuals with mobility impairments, and to grant such requests if they are reasonable. Modifications of common areas which are reasonable are the very type of modifications envisioned by civil rights laws which include the PHRA. In this



instance, Muriel Zaslow clearly needed the requested modification to afford her both the full enjoyment of the premises and to provide her with the same opportunity as others to generally enjoy a life outside of her unit.

In this instance, Doral II's Executive Board appears to have reacted so quickly and negatively because they simply did not want a chairlift put on the common elements.

This brings us to Doral II's rationale offered later. First, Doral II argues that Samuel Zaslow did not provide the Board with information. The pretext in this position is readily apparent. The Board acted to inform the Zaslows that a chairlift was not allowed even before a request was submitted. Clearly, a negative tone had been established as the first contact between the Board and the Zaslows.

In the employment context, when an individual with a disability requests an accommodation, it is necessary for an employer to engage in an interactive process with the person in need of accommodation. See 29 C.F.R. §1630.2(0)(3). This concept is worthy of being imported into the housing arena.

On this question, Doral II's negative response before a request was even made is indicative of a lack of good faith in trying to understand what accommodation might be helpful and reasonable under the circumstances present. Instead, it is apparent that Doral II's Board simply would not have approved the installation of anything on the common area. This position was renewed in the board's June 19, 1997 letter to the Zaslows. In this letter, the board cited several provisions of the Condominium governing documents which address the use of the common elements



at Doral II. Thus the only initiative taken by Doral II was to cause any interactive process to breakdown before it even began.

Doral II's Board did not take reasonable steps to assist the Zaslow's needs. There was no good faith communication regarding whether Muriel Zaslow's limitation could be overcome through an accommodation. Rather than engage in an interactive process which discussed the removal of a barrier, the board initiated the process by erecting a negative barrier. At every instance Doral II's board impeded the Zaslow's effort to alleviate Muriel Zaslow's problem. After the board's initial correspondence, Samuel Zaslow was fighting an uphill battle against an entrenched position closed to discussion.

While both Doral II and the Zaslows bore responsibility for determining in good faith what accommodation was necessary and reasonable as part of an interactive process, here, Doral II's actions wholly impeded a meaningful interactive process. This alone is a violation of the PHRA's fundamental requirement that Doral II give at least a good faith consideration to a request for a modification of the common area at Doral II which would assist an individual with a disability to have equality of opportunity to enjoy both Doral II and beyond.

Accordingly, Doral II's argument that Samuel Zaslow did not present the board with specific information on chairlifts is without merit. It is likely that had the board asked for such information, Samuel Zaslow would have cooperated fully. The same analysis applies to that portion of Doral II's argument that Samuel Zaslow did not advise the Board that he would bear the cost of installation of a chairlift. Had the board asked him, Samuel Zaslow certainly would have advised the board that he

intended to absorb the cost of both installation and removal if and when the chairlift became unnecessary.

On a related matter, Doral II argues that Section 5(h)(3.2) is inapplicable since Samuel Zaslow never requested that Doral II make a reasonable accommodation "in rules, policies, practices or services." Because there had been no request, Doral II contends that it could not have violated this section of the PHRA.

Once again, Doral II's June 19, 1997 letter to the Zaslows refers to the Condominium's documents which are, in effect, Doral II's rules, policies, and practices. Clearly, Samuel Zaslow's request to install a chairlift implicated an interpretation of the Condominium's rules, policies, and practices which made room for flexibility of interpretation to facilitate the requested accommodation. Accordingly, Section 5(h)(3.2) is implicated by the circumstances present here. What is known is simply that Doral II's board read their rules, policies, and practices to reject any change to the Condominium common areas. The evidence shows that the Board had rejected other similar requests before the Zaslow's need for a chairlift arose. Quite clearly, it was the policy and practice of Doral II's board to interpret their rules to often deny the requests of residents of Doral II to install equipment on common areas which would be of tremendous assistance to residents with disabilities.

We next turn to Doral II's argument that a chairlift would have posed a demonstrable threat to the health and safety of others and that a local building code would be violated by the installation of a chairlift.



Although Doral II continually denied the Zaslow's request between June 1997 and October 7, 1997, it is apparent that Doral II's board did not, at the time have a complete understanding of building code provisions, and a full appreciation of the building permit process. It was not until July 1999, that Mr. Kobelin, AIA, provided his opinion that to install a chairlift would both violate the building code and be a direct threat to the health and safety of others. Doral II's rejection of the Zaslow's request was simply based on the board's desire to not allow something to be installed on the common area.

The question here is whether this after-acquired information is useful to Doral II's defense of the charge that Doral II denied the Zaslow's request in 1997. The simple answer is no.

The information provided to Doral II's board by Mr. Kobelin can only be described as sorely lacking and incomplete. The reality of the situation is that Mr. Kobelin's report either inadvertently or possibly intentionally omitted critical information.

The most important omission of Mr. Kobelin's report is that a procedure existed for individuals to request a variance when what they want to do is technically violative of the existing building code. Here, to install a chairlift would have required a variance. The building code requires a 36" width for stairs such as those in building F at Doral II. If a chairlift would be installed, the width of the stairs would have been reduced to approximately 25". This situation would have posed the necessity for a variance.

The PHRC's expert, Mr. Gray Smith, credibly testified that it would have been likely that had Samuel Zaslow pursued a variance to install a chairlift the variance would have been granted. Mr. Smith indicated that in his experience, in many similar situations, variances which achieve accessibility have been granted.

Of course in the present matter, Samuel Zaslow never was able to initiate the building permit process. Instead, even before he could request the board's approval, he was summarily informed that nothing could be installed on the common area. Each time the board of Doral II denied Samuel Zaslow's request, Doral II violated the PHRA and is therefore liable to both Samuel Zaslow and Muriel Zaslow. Accordingly, we turn to the question on an appropriate remedy.

The PHRC has broad discretion to fashion a remedy where unlawful discrimination has been proven. Murphy, et. al. v. Com., Pennsylvania Human Relations Commission, 506 Pa. 549, 486 A.2d 388 (1985). In fashioning a remedy, the victim of discrimination is entitled to "make whole relief, which will restore the victim to his or her pre-injury status." Murphy. In cases alleging a violation of section 5(h) of the PHRA, the Commission may order a Respondent to cease and desist from the discriminatory actions, take whatever affirmative actions may be necessary and award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the Act. A civil penalty may also be imposed.

Here, the post-hearing brief on behalf of the complaint seeks a cease and desist order; \$75.00 stipulated as the amount Samuel Zaslow's out-of-pocket



expenses; \$20,000 for the humiliation and embarrassment of Samuel and Muriel Zaslow; and a civil penalty of \$2,000.

Clearly, a cease and desist order is appropriate. Further the parties have stipulated that Samuel Zaslow incurred \$75.00 in out-of-pocket expenses. The questions in this matter are what is an appropriate award for humiliation and embarrassment and should a civil penalty be imposed.

Humiliation and embarrassment can be inferred from the circumstances as well as established by testimony. Seaton v. Sky Realty Co. Inc., et al., 491 F.2d 634, 636 (7th Cir. 1974). See also HUD v. Blackwell, 2 FHFL ¶125,001 (HUD A.L.J. Dec. 21, 1989), *aff'd*. 908 F.2d 844 (11th Cir. 1990). The key factor in determining the size of an award for humiliation and embarrassment is a victim's reaction to discriminatory conduct. HUD v. Banai, *spra* at ¶125,857.

First, we recognize that much of the Zaslow's difficulties followed the dramatic changes to their lives after Muriel Zaslow's stroke in March, 1997. Next we are mindful that it was not until approximately early June of 1997 that the Zaslow's even considered the possibility of installing a chairlift. Accordingly, for the purposes of an award for intangible damages, the Zaslow's emotional well being will be limited to the effect the board's first letter had on them as well as the effects of subsequent board action. Additionally, another key factor in determining an appropriate award is the egregiousness of the board's reaction to the Zaslow's situation and the ultimate denial of the request to install a chairlift.

In housing cases, damages are to be measured on the injuries actually suffered by the victims of discrimination not on the basis of injuries that a reasonable person

would suffer. See, HUD v. Kelley, 2 FHFL ¶125,034 (HUD ALJ Aug 26, 1992). Here, the Zaslows were particularly sensitive to emotional distress because since March 1997, they had been directly affected by Muriel Zaslow's medical problems. The record reveals that the Zaslows had a lifelong commitment to each other and that Samuel Zaslow was particularly distressed that his neighbors of 15 years would treat him so poorly and leave his wife without the means to leave their unit.

Between June 1997 and Muriel's death on October 7, 1997, Doral II prevented the Zaslows from seeking a building permit and going through the City's variance application process. Instead of assisting the Zaslows' efforts to obtain the requisite building permit, Doral II erased any hope for an eventual alleviation of Muriel Zaslow's situation which, in effect, kept her as a prisoner in her home. Before her stroke, Muriel Zaslow was described as having been engaging, friendly, very positive and one who enjoyed life. The depression visited on Muriel Zaslow after her stroke was intensified by the denial of a request which gave her hope and would have afforded her a greater degree of enjoyment of her life. Following the meeting on October 6, 1997, at which all hope was smashed, Muriel Zaslow had nothing to look forward to and she was very disappointed and depressed. Her spirit was broken as she cried, became silent and shut everyone out. The following day she died.

Samuel Zaslow was sad and bitter throughout the period of the continual denial of his requests. He too became depressed that he could not help his wife obtain access to the outside. Further, beyond disappointment, Samuel Zaslow was embarrassed at the treatment and disparaging remarks he was subjected to at the October 6, 1997 unit owner meeting.

Based on Doral II's refusal of the Zaslow's request, both Samuel and Muriel Zaslow's disappointment, embarrassment and depression, we conclude that the Zaslow's suffered substantial emotional distress. Accordingly, Samuel Zaslow should receive \$10,000 for the embarrassment and humiliation he personally suffered, and an additional \$10,000, in his capacity as executor of Muriel Zaslow's estate, for the embarrassment and humiliation she suffered.

To vindicate the public interest the PHRA authorizes the PHRC to impose a civil penalty upon a Respondent who violates the PHRA. The PHRC housing division's post-hearing brief seeks a civil penalty of \$2,000. This amount is deemed appropriate under the circumstances of this case and shall be imposed.

An appropriate order follows:



**COMMONWEALTH OF PENNSYLVANIA**  
**GOVERNOR'S OFFICE**  
**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**SAMUEL ZASLOW, himself  
and as executor of his  
deceased wife's estate,  
Complainant**

**v.**

**DORAL II CONDOMINIUM  
ASSOCIATION  
Respondent**

**DOCKET NO. H-7599**

**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Zaslows have proven discrimination against Doral II in violation of Section 5(h) (3.1) and (3.2) of the Pennsylvania Human Relations Act.

It is, therefore, the Permanent Hearing Examiner's recommendation that the attached stipulations of fact, findings of fact, conclusions of law, and opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

By: \_\_\_\_\_



**Carl H. Summerson  
Permanent Hearing Examiner**

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SAMUEL ZASLOW, himself  
and as executor of his  
deceased wife's estate,  
Complainant

v.

DOCKET NO. H-7599

DORAL II CONDOMINIUM  
ASSOCIATION  
Respondent

FINAL ORDER

AND NOW, this 29<sup>th</sup> day of August, 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, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own finding in this matter and incorporates the same into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

**ORDERS**

1. Doral II shall permanently cease and desist from engaging in any acts or practices which have the purpose or effect of denying reasonable requests for modifications to Doral II common areas which would afford individuals with disabilities the opportunity to fully enjoy their units.

2. That Doral II shall pay Samuel Zaslow the lump sum of \$10,000 in compensatory damages for the embarrassment and humiliation he suffered.

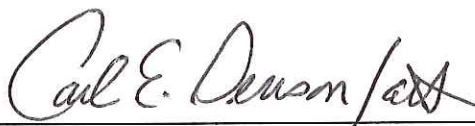
3. That Doral II shall pay Muriel Zaslow's estate the lump sum of \$10,000 in compensatory damages for the embarrassment and humiliation she suffered.

4. That Doral II shall pay Samuel Zaslow the amount of \$75.00, which amount represents the out-of-pocket expenses he suffered.

5. That, within thirty days of the effective date of this Order, Doral II shall deliver to PHRC Housing Division Assistant Chief Counsel Lisa Jo Fanelli-Greer, a check payable to the Commonwealth of Pennsylvania in the amount of \$2,000, which presents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.

6. That, within thirty days of the effective date of this Order, Doral II shall report to the PHRC on the manner of their compliance with the terms of this Order by letter addressed to Lisa Jo Fanelli-Greer, Assistant Chief Counsel, PHRC Housing Division, P.O. Box 3145, Harrisburg, PA 17105.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By:   
\_\_\_\_\_  
Carl E. Denson  
Chairperson

Attest:

  
\_\_\_\_\_  
Gregory J. Celia, Jr.  
Secretary