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COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION

301 Chestnut Street, Suite 300

P.O. Box 3145

Harrisburg, PA 17105-3145

(717) 787-4410 (Voice)

(717) 787-4087 (TT)

March 23, 2004

COMMISSIONERS
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www.phrc.state.pa.us

Morris and Carol Wilson
946 Woodbine Street
Pittsburgh, PA 15201

Re: **Johnson v. Wilson,**
PHRC Docket No. H-8561
HUD No 03-02-0037-8

Dear Mr. and Ms. Wilson:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law, Opinion, Recommendation of Commissioner Waters, and Final Order dated March 23, 2004.

The Respondents have thirty days from the date of this Final Order to notify the PHRC, in writing, as to the Respondents' compliance with the terms of the Final Order.

Also, as of the date of the Final Order, please be advised that the Respondents have thirty days from the date of the Final Order to appeal from the Commission's Final Order. An appeal must be made by requesting a review of the Commission's Final Order by the Commonwealth Court under the Rules of Appellate Procedure, Chapter 15. This appeal must be made within thirty days of the issuance of this Final Order.

Yours very truly,

A handwritten signature in black ink that reads "Homer C. Floyd".

Homer C. Floyd
Executive Director

Enclosure

cc: Nancy Gippert, Esquire
Keith and Yvonne Johnson
HUD

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Keith and Yvonne Johnson
940 Woodbine Street
Pittsburgh, PA 15201

Re: **Johnson v. Wilson,**
PHRC Docket No. H-8561
HUD No. 03-02-0037-8

Dear Mr. and Ms. Johnson:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law, Opinion, Recommendation of Commissioner Waters, and Final Order in the above referenced case. As of the date of the Final Order, please be advised that the Respondent has thirty days from the date of the Final Order to appeal from the Commission's Final Order.

You are advised that the Complainant also has the right to appeal from the Commission's Final Order. Pursuant to Chapter 15 of the Pennsylvania Rules of Appellate Procedure, a review of the Commission's Final Order can be obtained by filing a petition for review with the prothonotary of the Commonwealth Court. Such an appeal must be made within thirty days of the date of the Final Order.

PHRC staff will be in contract with you during this period regarding the Respondent's compliance with the terms outlined in the Commission's Final Order. Should the Respondent not appeal this Final Order nor comply with the terms outlined in the Final Order, an Enforcement Determination Hearing may be held.

Yours very truly,

A handwritten signature in cursive script that reads "Homer C. Floyd".

Homer C. Floyd
Executive Director

Enclosure

cc: Nancy Gippert, Esquire
Mr. and Ms. Wilson
HUD

FINDINGS OF FACT*

1. On or about October 17, 2001, Complainants, Keith and Yvonne Johnson, filed a PHRC Complaint against Respondents, Morris and Carol Wilson.
2. Under cover letter dated March 25, 2002, PHRC Assistant Chief Counsel, Nancy Gippert, filed a Petition for Rule to Show Cause. (N.T. 11).
3. On March 28, 2002, PHRC Motions Commissioner, Carl E. Denson, issued a Rule to Show Cause which, in effect, notified the Respondents that they had until April 26, 2002 to file an answer to the Complainants' complaint. (N.T. 12).
4. The Respondents did not file an answer. (N.T. 12).
5. On May 20, 2002, Motions Commissioner Denson recommended to the full PHRC that the Respondents be found liable for the Complainants' allegations.(N.T. 12).
6. By Order dated May 21, 2002, the PHRC found the Respondents liable for harassing the Complainants with the purpose of deterring the Complainants from occupying their residence at 940 Woodbine Street, Pittsburgh, Pennsylvania, and that such actions were taken because Keith Johnson is an African American and Yvonne Johnson is Chinese. (N.T. 12, 23).
7. On September 23, 2002, the PHRC approved this case for a public hearing on the limited issue of what, if any, damages are appropriate. (N.T. 12).
8. A public hearing on the issue of what, if any, damages are appropriate was held on July 11, 2003, in Pittsburgh, Pennsylvania.

* 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

9. The PHRC's May 21, 2002, finding of liability was based on the allegations of the Complainants' complaint which include:

On or about April, 2001, and or until present, the Respondent(s) have threatened, made false animal control reports, interfered with the quite, peaceful enjoyment of our home, attempted to interfere with our fair housing rights and made many racially derogatory references exhibiting a racial preference and or limitation at our residence . . . on the basis of our race, African – American, Chinese, and Chinese/African American . . .

. . . Since moving to the subject property, the respondent neighbors have threatened us by stating that "I'll shoot you niggers" and intentionally encouraging their dogs to come onto our property in order to attack our twenty year old son.

The respondent neighbors have convinced other Caucasian neighbors to also infringe on our property by spreading rumors, parking in from of our house even though they have driveways, and blowing and sweeping leaves onto our property.

The respondent's son Chad has called us niggers, cunt, black bitch, told us to go back to where we came from and made threats of physical violence against our family.

The respondent Carol indicated to me that she did not like oriental people and encourages and tolerates the behavior of the neighbors and her son in violating our rights.

The respondent Morris has brought his large dog and small dog to our property to defecate. The Respondent has continually allowed their dog to run loose on my property in order to intimidate us and threaten us in violation of the City of Pittsburgh Animal Control Ordinances.

We allege that the respondent is threatening us, attempting to intimidate us and violate our fair housing rights due to our race, Chinese and African American . . .

10. On or about April 1999, Keith and Yvonne Johnson and their two children Marcus Twyman and Jessica Twyman, began renting the property located at 940 Woodbine Street, Pittsburgh, Pennsylvania. (N.T. 16, 17, 102, 144, 120).
11. Prior to the Johnson's moving into the home at 940 Woodbine Street, the house had been vacant for a lengthy period, and neighbors had used the property as a place to walk their dogs. (N.T. 24, 96).

12. In or about October 1999, the Johnson's purchased the home at 940 Woodbine Street. (N.T. 16, 17, 19, 102).
13. The Respondents, Morris and Carol Wilson, lived two doors away from the Johnson's at 946 Woodbine Street. (N.T. 88, 186, 190, 163).
14. The Wilsons had lived at 946 Woodbine Street for approximately 30 years. (N.T. 136, 186, 190).
15. Prior to moving to Woodbine Street, Keith Johnson had developed a medical condition which became severe in 1997. (N.T. 17, 102, 103).
16. For a period, Keith Johnson was hospitalized and was on life support. (N.T. 17).
17. Due to Keith Johnson's illness, by the time the Johnson's moved to Woodbine Street, Keith and Yvonne Johnson had decided not to have another child. (N.T. 103).
18. Keith Johnson's disease was progressive and he was depressed. (N.T. 34, 103).
19. Unable to work, Keith Johnson remained at home recuperating. (N.T. 34, 83).
20. The genesis of the Johnsons problems with the Wilson's involved an Easter 2000 incident between Yvonne Johnson's mother, and the Wilson's son, Chad Wilson. (N.T. 20, 152).
21. Apparently, because of where Yvonne Johnson's mother had parked her car, Chad Wilson called Yvonne Johnson's mother a "Chinese chink bitch." (N.T. 20, 21, 32, 105, 114, 151, 171).
22. A few days after this incident, Yvonne Johnson went to the Wilson's home and spoke with Carol Wilson. (N.T. 106).
23. Carol Wilson's response was to laugh and say "oh, my son, he's going on 20, he thinks he's going on 40, but he's only 20. (N.T. 21, 98,100).

24. Unsatisfied with Carol Wilson's response, Yvonne Johnson called the police. (N.T. 107).
25. Yvonne Johnson did not attempt to approach Carol Wilson again. (N.T. 22).
26. Sometime later, Chad Wilson told the Johnson's, "I'm going to get my gun if you N_____s don't leave Stanton Heights." (N.T. 22, 97).
27. In addition to the problem with the Wilson's son, the Johnsons had continual problems with the Wilson's two dogs. (N.T. 26, 32, 58, 94, 124, 175).
28. Morris Wilson walked his dog in front of the Johnson's home which bothered the Johnson's. (N.T. 36).
29. The Wilson's dogs barked which was nerve racking to Kevin Johnson. (N.T. 36, 83, 124, 167, 168, 169).
30. The Wilson's dog periodically ran loose and on one occasion pinned Keith Johnson in his car. (N.T. 26).
31. On another occasion, the Wilson's dog frightened Marcus Twyman, who had to run from the dog. (N.T. 32, 145).
32. On yet another occasion, in or about September 2002, one of the Wilson's dogs bit Keith Johnson's pant leg. (N.T. 22, 77).
33. Yvonne Johnson has a bleeding disorder which caused her to be worried that she might be bitten. (N.T. 26, 27).
34. The Johnsons called the police about the Wilson's dogs approximately five times. (N.T. 124, 175).
35. After one of the Wilson's dogs bit Keith Johnson's pant leg, Keith Johnson was accused of lying to the police and was arrested and spent 10 hours in jail until the charge against him was thrown out. (N.T. 121, 122, 140, 142).

36. In April 2002, the Johnson's installed a fence to keep dogs from defecating on their lawn. (N.T. 25, 91).
37. The cost of the fence was \$550.00. (N.T. 28; C.E. 1).
38. After the fence was erected, the problem of dogs coming onto the Johnson's property was solved. (N.T. 27).
39. Yvonne Johnson testified that the Wilson's would park their car to block the Johnson's driveway just to irritate the Johnson's. (N.T. 90).
40. Yvonne Johnson also testified that the Wilson's convinced neighbors to infringe on the Johnson's property, bring actions against the Johnson's and to confront the Johnson's. (N.T. 29, 30, 31).
41. Yvonne Johnson testified that when neighbors did confront her, she perceived them to be confrontational and threatening. (N.T. 31, 32).
42. Yvonne Johnson further testified that the Wilson's and other neighbors heckled and laughed at the Johnson's. (N.T. 33).
43. Kevin Johnson testified that both Morris and Chad Wilson periodically called him a N _____, or a Black M _____ F _____er and commented, "we are gong to make you move." (N.T. 121, 123).
44. Chad Wilson called Marcus Twyman a N _____ and called members of the Johnson family N _____s and cunts. (N.T. 23, 84, 97).
45. Yvonne Johnson testified that Kevin Johnson was on their roof painting and Morris Wilson called Keith Johnson a derogatory name. (N.T. 85, 97, 116).
46. Shortly thereafter, Morris Wilson accused Kevin Johnson of indecent exposure. (N.T. 130).
47. Morris Wilson testified that he blew up at Yvonne Johnson and called her a

- F _ _ _ing stinking bitch, and asked her, "if you don't like me, and I don't like you, don't talk to me, and I won't talk to you, and we can get along very well. (N.T. 172).
48. Feeling for the safety of their granddaughter, the Johnsons installed surveillance cameras. (N.T. 35).
 49. The Johnsons felt trapped in their home. (N.T. 33).
 50. Since Chad Wilson's verbal assault on her, Yvonne Johnson's mother no longer visits. (N.T. 38).
 51. The Johnsons have had to hold a graduation party and a baby shower elsewhere out of worry about what might happen to them next. (N.T. 33, 39).
 52. Yvonne and Keith Johnson took turns sleeping and felt they had to watch everything that happened outside. (N.T. 34).
 53. Keith Johnson has lost sleep and his depression and anxiety has increased. (N.T. 37, 126).
 54. The relationship between Yvonne and Keith Johnson has been negatively impacted as they now argue more. (N.T. 126).
 55. In the period after the incidents, Keith Johnson has taken even more medications. (N.T. 126).
 56. Kevin Johnson paid \$511.00 in co-payments for the medications taken to relieve anxiety and depression. (N.T. 127; C.E. 2).

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a respondent to timely answer a complaint places a respondent in default.
3. Under 16 Pa. Code §42.33, when a respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42,33(d)(4), when a respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, the Respondents' failure to answer or respond to a Rule to show Cause resulted in the entry of a judgment for the Complainants on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. When, as here, the Respondent's are found to have violated section 5(h) of the PHRA, Section 9(f)(1) of the PHRA permits the Commission to award actual damages, including damages caused by humiliation and embarrassment.
8. When Section 5(h) of the act is violated, the Commission may also assess a civil penalty.
9. The Commission may also order the Respondents to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed by Keith and Yvonne Johnson against Morris and Carol Wilson. The Complainants' complaint at PHRC Docket No. H-8561 alleged that from April, 2001 until October 17, 2001, the Respondents threatened the Complainants, made false animal reports, interfered with the quiet, peaceful enjoyment of the Complainants' home, attempted to interfere with the Complainants' fair housing rights, and made many racially derogatory references which exhibited a racial preference and or limitation because of Keith Johnson's race, African American, and Yvonne Johnson's race, Chinese. The complaint at Docket No. H-8561 states a claim under Sections 5(h) of the Pennsylvania Human Relations Act ("PHRA").

Keith and Yvonne Johnson's verified complaint at Docket No. H-8561 was filed on or about October 17, 2001. By correspondence dated March 25, 2002, the Pennsylvania Human Relations Commission ("PHRC") Housing Division petitioned Motions Commissioner Denson for a Rule to Show Cause, indicating that the Wilsons had not answered the Johnson's complaint. The petition declared that the Wilsons had been served with the complaint on October 26, 2001. The petition further indicated that numerous requests, by phone and mail, had been made in an effort to obtain an answer from the Wilsons.

On March 28, 2002, a Rule to Show Cause was issued, directing the Wilsons to respond on or before April 26, 2002. After no response was filed, on May 20, 2002, Motions Commissioner Denson recommended a finding of liability to the full PHRC. On May 21, 2002, the full PHRC determined that the Wilsons harassed the Johnson's because of their races.

The public hearing on the issue of appropriate damages was held July 11, 2002, in Pittsburgh, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The

state's interest in the complaint was overseen by Nancy Gippert, PHRC Assistant Chief Counsel. The Wilsons attended the public hearing but were not represented by an attorney.

After the finding of liability in this case, conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for public hearing on the issue of appropriate damages.

Since liability had been found after the Wilson's failed to file an answer, the only question at the public hearing was what damages the Johnson's could establish. Since this case is a 5(h) case, under Section 9(f)(1) of the PHRA, the PHRC is empowered to order the Respondent "to cease and desist from such unlawful discriminatory practice" and "the Commission may award actual damages, including damages caused by humiliation and embarrassment as in the judgment of the Commission, will effectuate the purpose of this act . . ." Under Section 9(f)(2)(i), the Commission may also award a civil penalty not exceeding \$10,000.

While the housing provisions of the PHRA emphasize protecting home seekers against discrimination in gaining access to housing, it also prohibits discrimination against families once they occupy their housing. All must be afforded the right to live where they wish, and discriminatory resistance to such civil rights must have a forum for redress.

In the post-hearing brief on behalf of the complaint, PHRC attorney Gippert prays for actual damages of \$1,104.00, and seeks awards of \$5,000.00 for Keith Johnson and \$5,000.00 for Yvonne Johnson for the embarrassment and humiliation they suffered. Additionally, Attorney Gippert seeks a civil penalty of \$1,500.00.

A review of the complaint provided only a glimpse of the stark reality faced by the Johnsons. Since the complaint, standing alone, did not afford an opportunity to assess a more detailed view of the victimization visited on the Johnsons, a summary account of

each of the Johnson's general allegations was solicited through the testimony of various witnesses.

What was shown in summary form was the story of an African-American husband and a Chinese wife with two children who thought they had gained access to a slice of the American dream: Ownership of a home in a nice neighborhood. A home where the family could take refuge from bigotry which, all too often, is visited on couples of racially mixed marriages. However, on or about Easter 2000, the Johnson's dream began to turn into more of a nightmare. The nature of Chad Wilson's verbal attack on Yvonne Johnson's mother underlies both the gravity and intentionality of not only that singular act, but what was to follow.

It appears that Yvonne Johnson's attempt to express the seriousness of Chad Wilson's behavior to Carol Wilson reflected a tacit unwillingness to take measures to thwart such behavior. It appears, Yvonne Johnson accurately felt the Wilson's were disinterested in the volatile racial indignity inflicted on Yvonne Johnson's mother. Accordingly, Yvonne Johnson was left with no alternative but to call the police.

The course of conduct that followed can easily be characterized as deeply embedded individual racist tactics reflecting a desire to ultimately exclude and expel the Johnson's from the neighborhood. The Johnson's testified about multiple victimizations which have the earmarks of an escalating campaign to make the Johnson's so unwelcome that they would move. Over time, the Johnson's home, rather than a refuge, became a place of fear and apprehension.

Chad Wilson's threat that he would get a gun caused the Johnson's even further significant psychological harm and emotional trauma. The Johnson's revealed their constant state of fear that violence could be visited on them at any moment. They went so

far as to take turns sleeping to keep watch as, collectively, the Wilsons acts signaled to them that there was no "safe haven" for them.

At the public hearing, the Johnsons produced evidence that the discriminatory acts of the Wilsons caused the Johnsons to incur an expense of \$593.00 to build a fence on their property. Additionally, the Johnsons presented evidence that Keith Johnson required medication attributable to increased stress and anxiety caused by the Wilsons. The co-payments Keith Johnson paid for that medication was \$511.00. Accordingly, an award of \$1,104.00 is appropriate for these actual expenses born by the Johnsons.

Next we turn to the question of appropriate compensation for the embarrassment and humiliation suffered by Keith and Yvonne Johnson. Precise proof is not necessary to support a reasonable award of damages for embarrassment and humiliation, Block v. R.H. Macy & Co., Inc., 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony. HUD v. Tucker, 2 Fair Housing-Fair Lending Lending (P-H) T 25,033, 25, 350 (HUDALJ Aug. 24, 1992), submission of appeal vacated, No. 92-70697 (9th Cir. July 18, 1994)(unpublished order); see also Seaton v. Shy Realty Co., Inc., 491 F.2d 634, 636 (7th Cir. 1974); HUD v. Blackwell, 2 Fair Housing-Fair Lending (P-H) 125,001, 25,011-13 (HUDALJ Dec. 21, 1989), affd, 908 F.2d 764, 872-73 (11th Cir. 1990). The main factor in determining the size of an award for embarrassment and humiliation is the victim's reaction to the discriminatory conduct. The gauges of the reasonableness and extent of a victim's reaction to the discriminatory conduct are the egregiousness of the conduct and the susceptibility of the victim. See generally, Robert G. Schwemm, *Housing Discrimination Law and Litigation*, §25.3(2)(c) (1994).

Here, the record demonstrates an unrelenting and heartless campaign designed to drive the Johnson's from their home. The Wilson's cruel campaign dominated the

Johnson's lives for an extended period of time. In effect, the Johnsons were captives in their home, and when outside, they were exposed to many varied indignities at the hands of the Wilsons. Keith and Yvonne Johnson felt frustrated and embarrassed, both because of how it affected them and how it affected their entire family and their friends.

The Wilson's humiliating and menacing campaign of harassment and intimidation not only damaged the self-esteem of the Johnson's, but enduring the series of hurtful incidents caused the Johnsons to worry about nearly every aspect of their lives. The Johnson's went so far as to take turns sleeping for fear of their safety in their home. Indeed, the Johnson's feared for their lives.

In light of the extreme embarrassment and humiliation Keith and Yvonne Johnson continuously endured as a result of the Wilson's discriminatory campaign, I conclude that Keith and Yvonne Johnson are each entitled to compensation in the amount of \$25,000.00 for the humiliation and embarrassment they suffered. See HUD v. Simpson, 2 Fair Housing-Fair Lending (P-H) 25,082 (HUDALJ Sept. 9, 1994); HUD v. Kocerka, (HUDALJ May 4, 1999); HUD v. Gruzdaitis, (HUDALJ Aug. 14, 1998).

To vindicate the public interest, the PHRA also authorizes the imposition of a civil penalty upon respondents who violate the PHRA. Determining an appropriate penalty usually requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the goal of deterrence; (3) whether a respondent has previously been adjudged to have committed unlawful housing discrimination; (4) a respondent's financial resources; and (5) the degree a respondent's culpability. See, HUD v. Jerrard, 2 Fair Housing-Fair Lending (P-H) ¶¶25,005, 25,092 (HUD ALJ Sept. 28, 1990); HUD v. Blackwell, Fair Housing-Fair Lending ¶¶25,001, 25,014-15 (HUD ALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864, 872-73 (11th Cir. 1990). Here, the PHRC housing attorney seeks a \$1,500.00 civil penalty.

The nature and circumstances of the Wilsons' actions certainly merit a \$1,500.00 civil penalty. The extent, character, and significance of volitional, racially-based indignities perpetrated against the Johnson family amount to an escalating pattern designed to influence the Johnsons to move. The Johnson family became isolated bearing the brunt of neighbor hostility which at times was severe. As such, the requested civil penalty should be awarded.

An appropriate order follows:

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

KEITH and YVONNE JOHNSON,
Complainants

v.

MORRIS and CAROL WILSON,
Respondents

:
:
:
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:
:

PHRC DOCKET NO. H-8561

RECOMMENDATION OF COMMISSIONER WATERS

Upon consideration of the entire record in the above-captioned matter, I find that Keith and Yvonne Johnson suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, I further recommend issuance of the attached Final Order.


PENNSYLVANIA HUMAN RELATIONS COMMISSION

March 2, 2004
Date

By: Sylvia A. Waters /@
Sylvia A. Waters
Commissioner

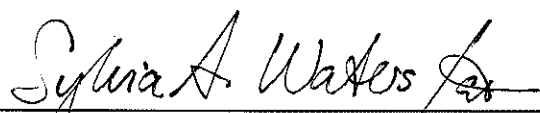
2. That jointly and severally, Morris and Carol Wilson shall pay Keith Johnson the lump sum of \$25,000.00, in compensatory damages for the embarrassment and humiliation he suffered.
3. That jointly and severally, Morris and Carol Wilson shall pay Yvonne Johnson the lump sum of \$25,000.00, in compensatory damages for the embarrassment and humiliation she suffered.
4. That jointly and severally, Morris and Carol Wilson shall pay the Johnson's the amount of \$1,104.00 which amount represents expenses that the Johnson's incurred.
5. That, within thirty days of the effective date of this Order, the Wilson's shall deliver to PHRC Housing Division Assistant Chief Counsel Nancy Gippert, a check payable to the Commonwealth of Pennsylvania in the amount of \$1,500.00, which represents 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, the Wilsons shall report to the PHRC on the manner of their compliance with the terms of this Order by letter addressed to Nancy Gippert, Assistant Chief Counsel, PHRC Housing Division, P.O. Box 3145, Harrisburg, PA 17101-2702.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

Stephen A. Glassman
Chairperson

Attest:



Sylvia A. Waters, Secretary