

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

EDWARD McFADDEN, Complainant

v.

NATALIE CHRISTY, Respondent

PHRC Case No. 200027608, Docket No. H-8313

**FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF HEARING COMMISSIONER
FINAL ORDER**

FINDINGS OF FACT *

1. Edward McFadden (hereinafter, "Complainant") is an adult individual residing at 925 Harper Avenue, Drexel Hill, Pennsylvania at all times relevant to this matter. (N.T. 45)
2. Natalie Christie (hereinafter, "Respondent") is an adult female residing at 306 North Oak Avenue, Clifton Heights, Pennsylvania at all times relevant to this matter. (N.T. 16)
3. The Complainant owns a home located at 292 Oak Avenue, Clifton Heights. (N.T. 16)
4. On or about October 5, 2000, the Complainant attempted to rent the house at 292 Oak Avenue, Clifton Heights. (N.T. 16)
5. The Complainant placed an ad seeking applications to lease the property. (N.T. 16-17)
6. The house at 292 Oak Avenue is located in a predominantly white neighborhood. (N.T. 16)
7. At all times relevant to this matter, the Respondent resided in the same neighborhood. (N.T. 17)
8. On or about October 5, 2000, two individuals came to fill out applications to rent the house. (N.T. 16)
9. The individuals were Wanda Waddell, a black female, and Nicole Lang, a white female. (N.T. 16)

10. The Respondent observed the Complainant conducting an interview with Ms. Waddell. (N.T. 17-18)
11. After Ms. Waddell left the premises, the Respondent said to the Complainant, "...if you rent this house to blacks, you're going to have trouble." (N.T. 17-18)
12. The Respondent then told Ms. Lang, the white applicant, that she would burn down the house if the Complainant leased the home to a black person. (N.T. 17)
13. The Complainant expressed concern for the safety of his daughter, who was assisting him in showing the house. (N.T. 17)
14. The Complainant did lease the house to Ms. Waddell. (N.T. 21)
15. On October 10, 2000, the Complainant discovered that the patio, the side of the house and the steps had been defaced with white oil paint. (N.T. 17)
16. On the same day, October 10, 2000, the Complainant discovered that the new garage door for the house was covered with black oil paint. (N.T. 17)
17. The Complainant photographed the damage that was done to his house. (N.T. 19-20; C.E. 1)
18. The Complainant then called the Upper Darby Police Department. (N.T. 18)
19. As a result of the investigation by the Upper Darby Police Department, the Respondent was charged with vandalism and threats made against the Complainant. (N.T. 12-13)

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:

- N.T. Notes of Testimony
- C.E. Complainant's Exhibit
- R.E. Respondent's Exhibit

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC" or "Commission") has jurisdiction over the parties and the subject matter of this case.
2. The parties have met all prerequisites for a public hearing pursuant to the Pennsylvania Human Relations Act (hereinafter "PHRA").
3. Both Complainant and Respondent are persons within the meaning of the PHRA.
4. The property, located at 292 Oak Avenue, Clifton Heights, that the Complainant owned, is a housing accommodation within the meaning of the PHRA.
5. The Respondent violated Section 5 (e) of the PHRA, which provides that it shall be an unlawful discriminatory practice:

(e) For any person...to...coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.

6. The PHRC has broad discretion in fashioning a remedy after a finding of unlawful discrimination.
7. The PHRC may also order the Respondent to cease and desist from the discriminatory practice and further order the Respondent to take affirmative action to remedy the discriminatory practice.
8. The PHRC may award embarrassment and humiliation damages to the Complainant, as well as assess a civil penalty payable to the Commonwealth of Pennsylvania.
9. The Complainant presented direct evidence of discrimination in that he provided un rebutted testimony as to the violation of Sections 5(d) of (e) of the PHRA.

OPINION

On or about December 8, 2000, Edward McFadden (hereinafter "Complainant"), filed a complaint against Natalie Christy (hereinafter "Respondent") at Docket No. H-8313 and PHRC Case No. 200027608. The Complainant's complaint alleges that the Respondent harassed, intimidated and coerced him in an effort to force him not to rent to African Americans. The Complainant alleges that such actions are in violation of Sections 5(d) and 5(e) of the PHRA, the Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 955(a).

PHRC staff conducted an investigation and found probable cause to credit the allegations raised in the instant complaint. The PHRC staff attempted to schedule a conciliation conference in this matter, and their efforts were unsuccessful. The Respondent indicated she did not wish to participate in a conciliation conference. Therefore, the case was approved for public hearing.

A hearing was held on May 14, 2004 in Havertown, PA before Hearing Commissioner Raquel Ortero de Yiengst with Phillip A. Ayers, Esquire, serving as Panel Advisor. William R. Fewell, PHRC Assistant Chief Counsel, represented the State's interest in the complaint. The Respondent, although given notice of the public hearing, chose not to attend. Notice of the public hearing was forwarded to all parties by letters dated April 12, 2004 and May 5, 2004. Furthermore, there is testimony in the record that PHRC Investigator Joseph Shannon spoke with the Respondent directly and informed her of the public hearing.

The instant case before the Commission is fairly simple. The Complainant alleges that the Respondent violated Sections 5(d) and 5(e) of the PHRA. However a review of the facts reveals a violation of Section 5(e). Said section provides in pertinent part that it shall be an unlawful discriminatory practice:

(e) For any person...to...coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order

issued there under, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.

In most cases, the Complainant, in accordance with the landmark case of McDonnell Douglas v. Green, 411 U.S. 792, 5 FEP, 965 (1973), has the initial burden of establishing a *prima facie* case. Once a Complainant establishes a *prima facie* case, the burden of production then shifts to the Respondent to simply produce evidence of a legitimate non-discriminatory reason for its action. Once that is accomplished, the analysis used by the Pennsylvania Supreme Court in Allegheny Housing Rehabilitation Corp. v. PHRC, 156 Pa. 124, 532 A.2d 315 (1987), then comes into play. The Court stated: “Absent a response, the presumption arising from the plaintiff’s *prima facie* case stands determinative of the factual issue of the case. In other words, if the employer rests without producing evidence, the plaintiff must prevail if he or she has produced sufficient evidence to make a *prima facie* case, Id. 532 A.2d at 319.

In the instant case, the uncontroverted facts are that the Respondent threatened the Complainant directly with trouble if he rented to an African American.(N.T. 18). She also told a white applicant that she was going to burn down the Complainant’s house if he rented to a black person (N.T. 17, 18). These threats were followed by incidents of vandalism, including the spattering of paint on Complainant’s house and his garage, (N.T.). These incidents of vandalism were investigated by the Upper Darby Township Police Department and the Respondent was criminally prosecuted (N.T. 12, 13). The record before the Commission reveals that the Respondent clearly attempted to coerce and/or force the Complainant to refuse to lease to African Americans, in violation of the PHRA. The Respondent attempted to accomplish this by means of threats, intimidation and vandalism. She even resorted to a threat of arson. Upon review of the uncontradicted record, the Complainant has proven that he was discriminated against in violation of the PHRA.

We now move to the issue of remedy in the instant case. We must briefly review the Commission’s authority to award relief. The Commission has broad discretion in fashioning an award to effectuate the purposes of the PHRA. See Murphy v. Cmwlth, PA Human Relations Commission, 486 A.2d 388 (1985). Any remedy awarded under the PHRA has two purposes. The first purpose is to insure that the unlawful discriminatory practice is eradicated, usually by a cease and desist order. The second purpose is not only to restore the injured party to pre-injury status and make him whole, but also to deter future discrimination. See Williamsburg Community School District v. Pennsylvania Human Relations Commission, 512 A.2d 339 (1986). The Commission’s specific authority to award relief is found in Section 9 of the PHRA, which provides, in pertinent part:

(f)(1) If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from

such unlawful discriminatory practice and to take such affirmative action, including but not limited to...reasonable, verifiable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(d), (e) or (h) or 5.3 where the underlying complaint is a violation of 5 (h) or 5.3, the Commission may award actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the Commission, will effectuate the purposes of this Act, and including a requirement for report of the matter of compliance, 43 P.S. § 959 (f).

First, the Respondent shall be ordered to cease and desist from discriminating against individuals by taking actions to prevent them from renting to individuals because of their race, African American.

In regard to actual damage to the Complainant's property, PHRC Counsel requested \$2,285 for the replacement damage to his patio, valued at \$1,450, and the door replacement, valued at \$835. However, during the Complainant's testimony, he indicated that he had received a check from Respondent for \$800. Therefore, the Complainant shall be awarded \$1,485 for the damage to his property.

Next, we move to the issue of awarding damages caused by humiliation and embarrassment. In the instant case, the PHRC post hearing brief seeks \$12,000 in damages for the embarrassment and humiliation suffered by the Complainant. Courts have recognized that there are actions that one could reasonably expect to humiliate or cause emotional distress to an individual. See Seaton v. Sky Realty Co., 491 F.2d 634, 636 (7th Cir. 1974). When determining damages for embarrassment and humiliation, any evaluation must include both direct evidence of emotional distress and the circumstances of the act causing the distress. See United States v. Balistreri, 981 F.2d 916 (7th Cir. 1987), vacated on other grounds, and Allison v. PHRC, 716 A.2d 689 (Pa.Cmwlth 1988). See also Secretary of HUD v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990). In addition, injuries caused by embarrassment and humiliation are by their nature difficult to prove. See Marable v. Walker, 704 F.2d 1219 (11th Cir. 1983). It is inherently difficult to measure an amount that will ease a victim's hurt feelings or humiliation.

While it is difficult, our task is to make an appropriate transformation of the Complainant's testimony into quantitative relief. In the instant case, the Complainant credibly testified as to embarrassment and humiliation that he suffered in this matter. He testified as to his embarrassment when his wife and others saw the damage to his property (N.T. 22). He testified as to the embarrassment at his daughter's distress. The Complainant further testified that people he had known for years stopped associating with him and long-term friendships ended as a result of these humiliating incidents. (N.T. 22,23). The Complainant testified as to his further humiliation because this matter was constantly in the newspaper and the resulting negative notoriety (N.T. 27). The articles in the paper clearly depicted the damage to the property done by Respondent. This was particularly embarrassing to the Complainant because people would continue to ask him about the incident (N.T. 23).

Upon review of the record in this matter, including the Complainant's testimony, an award of \$25,000 is appropriate because of the embarrassment and humiliation caused by the Respondent's actions.

Lastly, a civil penalty shall be imposed upon the Respondent in this matter. The following factors should be considered in determining the appropriate civil penalty: (1) The nature and circumstances of the violations; (2) The degree of the Respondent's culpability; (3) The Respondent's financial resources; (4) The goal of deterrence; and (5) Other matters as justice may require. See HUD V. Blackwell, 2 FHFL §25,001 (HUD ALJ Dec. 21, 1989). In the instant case, upon review of the above factors, an award for a civil penalty payable to the Commonwealth of Pennsylvania is warranted. Clearly the Respondent's unwillingness to comply with the Commission's notices and process indicates her utter disregard for the law. Therefore, a civil penalty shall be imposed upon the Respondent in the amount of \$3,000.

An appropriate order follows:

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RECOMMENDATION OF HEARING COMMISSIONER

Upon consideration of the entire record in the above captioned matter, it is the Recommendation of the Hearing Commissioner that the Complainant has proven discrimination in violation of the PHRA. Accordingly, it is the Hearing Commissioner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Rights Commission.

If so approved and adopted, the Hearing Commissioner recommends issuance of the attached Final Order.

By: Raquel Otero de Yiengst, Hearing Commissioner
October 25, 2004

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FINAL ORDER

AND NOW, this 26th day of October, 2004, after 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 Findings of Fact, Conclusions of Law and Opinion of the Hearing Commissioner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter and incorporates the Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

1. Respondent shall cease and desist from discriminating by coercing individuals not to rent to persons because of their race.
2. That within 30 days of the date of the order, the Respondent shall pay actual damages to the Complainant in the amount of \$1,485.
3. That within 30 days of the date of the order, the Respondent shall pay embarrassment and humiliation damages to the Complainant in the amount of \$25,000.
4. That within 30 days of the date of this order, the Respondent shall deliver to PHRC Assistant Chief Counsel William R. Fewell a check payable to the Commonwealth of Pennsylvania in the amount of \$3,000 in the nature of a civil penalty pursuant to Section 9(f)(2) of the PHRA.
5. The Respondent shall report the means by which it will comply with the Order, in writing, to William R. Fewell, Assistant Chief Counsel, at 301 Chestnut Street, Suite 300, Harrisburg, PA 17105-3145, within 30 days of the date of this Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Stephen A. Glassman, Chairperson

Attest: Sylvia A. Waters, Secretary