

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

DENNIS M. MICKLO, Complainant

v.

CITY OF DUQUESNE and CITY OF DUQUESNE CITY COUNCIL, Respondents

DOCKET No. H-8239

STIPULATIONS OF FACT

The attorney for the Commission in support of the Complaint and counsel for the Respondents hereby stipulate the following:

1. That the hearing on the sole issue of whether or not the Complainant is entitled to damages is scheduled for December 18, 2002 at 9:00 am at the State Office Building in Pittsburgh, Pennsylvania.
2. That the order and decree from said hearing will be incorporated in this consent order and decree and made a part hereof.
3. That this consent order is contingent on the Respondents' compliance with the hearing order.

By: Margaret D. Blough, Assistant Chief Counsel – 12/10/02
Counsel for the Commission in support of the complaint

Edmond R. Joyal, Jr., Esquire, Counsel for Respondent – 12/12/02

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FINDINGS OF FACT¹

1. In this case, all issues with respect to liability were resolved by a Consent Order and Decree, which was approved by the Pennsylvania Human Relations Commission on January 27, 2003, (N.T. 6-7).
2. After entry of the Consent Order and Decree, the only issue remaining is what damages, if any, are appropriate. (N.T. 7,10)
3. The Complainant, Dennis Micklo, (hereinafter "Micklo") has two residences in Duquesne, Pennsylvania: 1033 Chestnut Street; and 1111 Savoy Street. (N.T. 12).
4. In or about August 2000, Duquesne Building Inspector McPhearson came to Micklo's property at 1033 Chestnut Street where Micklo and his family were living. (N.T. 13, 30, 31).
5. Based on Building Inspector McPhearson's visit to 1033 Chestnut Street, Micklo believed the property at 1033 Chestnut Street was about to be condemned. (N.T. 13, 15, 31).
6. Already suffering from hypertension, the Building Inspector's visit made Micklo "really uptight" ultimately causing him to suffer a breakdown. (N.T. 13).
7. After forming the belief that his residence at 1033 Chestnut Street was to be condemned, Micklo stayed in bed for an extended period of time and also experienced trouble sleeping. (N.T. 13, 16, 32).
8. Although Micklo believed 1033 Chestnut Street was to be condemned, no condemnation proceedings had begun, in fact, the Respondent, City of Duquesne, (hereinafter "Duquesne"), had no plans to condemn the property at 1033 Chestnut Street. (N.T. 14).
9. Subsequent to Building Inspector McPhearson's visit, Micklo did not receive a notice that the Respondent Duquesne City Council, (hereinafter "City Council"), was scheduled to discuss the 1033 Chestnut Street property. (N.T. 32, 33).

¹ 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 abbreviation will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony

10. Instead, thinking that condemnation of his property was imminent, Micklo decided he should personally speak with city council. (N.T. 33).
11. On a prior occasion, Micklo had gone to a city council meeting. (N.T. 33).
12. Previously when Micklo had gone to the city council it met in a second floor room that was accessible only by stairs. (N.T. 33, 34).
13. Knowing city council meetings are held in a second floor room, Micklo never- the-less went to the building where the city council was scheduled to meet. (N.T. 34).
14. Despite having prior knowledge that he would be unable to climb the stairs to get to the city council meeting, Micklo made no advance effort to seek an accommodation that would have enabled him to attend the city council meeting.
15. Micklo felt slight consternation at being unable to negotiate the stairs leading to the city council meeting. (N.T. 34, 36).

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 at 1033 Chestnut Street is a housing accommodation within the meaning of the PHRA.
4. In housing cases, the PHRC may award damages for humiliation and embarrassment.
5. Micklo has established that he suffered the threshold level of embarrassment.

OPINION

This case arises on a complaint filed by Dennis M. Micklo, (hereinafter “Micklo”), against the City of Duquesne, (hereinafter “Duquesne”), the City of Duquesne City Council, (hereinafter “City Council”), Phil Krivacek, Mayor, and David Pocjak, City Manager. Micklo’s complaint was filed on or about September 11, 2000. In his complaint, Micklo alleged that collectively the Respondent’s maintained a building and offered services which are inaccessible to individuals with mobility impairments. More specifically, Micklo alleged that in or about August, 2000 he was unable to participate in a condemnation process which involved his personal residence because the City Council met at a location accessible only by climbing stairs.

By Interlocutory Order dated September 9, 2002, Phil Krivacek and David Pocjak were dismissed as named Respondents. Further, pursuant to a Consent Order and Decree approved on January 27, 2003, by the full Pennsylvania Human Relations Commission, all liability issues were amicably resolved. Accordingly, the Public Hearing held on December 18, 2002, had the limited purpose of resolving what, if any, damages are appropriate.

The December 18, 2002, Public Hearing was held in Pittsburgh, PA, before Carl H. Summerson, Permanent Hearing Examiner. Edmond R. Joyal, Jr, Esquire, appeared on behalf of Duquesne and the City Council. The State’s interest in this matter was overseen by Margaret D. Blough, Esquire, Assistant Chief Counsel, PHRC. The post-hearing brief on behalf of the complaint was received on February 24, 2003 and the post-hearing brief of Duquesne and the City Council was received on March 10, 2003.

On the question of appropriate damages, there is no dispute that in or about August 2000, Micklo had a desire to attend a city council meeting, however, due to a mobility impairment, Micklo did not attempt to climb a set of steps which led up to the second floor where the city council meetings were held. During the Public Hearing, the parties stipulated that there never was a condemnation process involving Micklo’s residence. Instead, the record reveals that in or about August 2000, a brief visit by a Duquesne Building Inspector left Micklo with the belief that his property at 1033 Chestnut Street was in imminent danger of being condemned.

During the Public Hearing, Micklo offered testimony which principally related to his reactions to thinking his property was being condemned. After the Building Inspector’s visit, Micklo indicates that his hypertension got worse, he began to have trouble sleeping, and he stayed in bed for nearly a year. However, little was done to clearly distinguish Micklo’s understandable reaction to thinking his property was to be condemned from any reaction he may have had at being unable to climb a set of stairs to get to a city council meeting.

Such a distinction is necessary because of the nature of the remedies available under the PHRA. Section 9 (f)(1) of the PHRA provides for an award of damages caused by humiliation and embarrassment only when the underlying complaint involves a housing issue. In this case Micklo only seeks damages for humiliation and embarrassment.

Looking at Micklo's allegations, he has alleged a denial of services in connection with his ownership of 1033 Chestnut Street because of his mobility impairment. Section 5(h)(3) states in pertinent part:

It shall be an unlawful discriminatory practice . . . [f]or any person to . . . [d]iscriminate against any person . . . in furnishing . . . services . . . in connection with the ownership . . . of any housing accommodation . . . because of the . . . handicap or disability of any person . . .

Here, the principle source of Micklo's adverse reaction was the result of the visit from the Building Inspector and the forming of a belief that his residence would be condemned. This scenario does not implicate the protections of the PHRA since it was not alleged that Micklo's property was made the subject of a condemnation proceeding because of Micklo's membership in a protected class. Instead, the PHRA is implicated only because Micklo could not climb the stairs to attend a city council meeting. The two circumstances are very different.

Taken as a whole, Micklo's testimony clearly points to his thought that his property was being condemned as the source of his anguish. All Micklo said about being unable to climb the stairs was that "it makes you feel useless, and embarrassed. Your heart starts to . . . there's nothing you can do . . ." (N.T. 23).

During the Public Hearing, the Hearing Examiner specifically expressed his observation that "it appears the problem that [Micklo's] having is because of the condemnation, not being unable to negotiate the stairs". (N.T. 37). Although, the Hearing Examiner specifically extended an opportunity to provide evidence to distinguish Micklo's reactions, the opportunity was not acted upon.

The circumstances would likely have been much different had Micklo made an attempt to seek an accommodation. First, he would have learned that condemnation was not even under consideration. Second, it is likely that some provision would have been made for Micklo to address the city council. Instead, Micklo is found going to a building knowing there are steps he cannot climb and experiencing consternation at being unable to attend a meeting.

These circumstances present at least the threshold level of cognizable and compensable humiliation and embarrassment. Accordingly, Micklo is entitled to \$150.00 in damages for emotional distress. An appropriate order follows.

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Micklo suffered at least the threshold level of embarrassment.

It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulation, 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.

Carl H. Summerson, Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 24th day of March, 2003, 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 Stipulation, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulation, Findings of Fact, 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 complaint and hereby

ORDERS

1. That jointly and severally, the City of Duquesne and the City of Duquesne City Council shall pay Dennis M. Micklo the lump sum of \$150.00 in compensatory damages for the embarrassment he suffered.
2. That, within thirty days of the effective date of this Order the City of Duquesne and the City of Duquesne City Council shall report to the PHRC on the manner of their compliance with the terms of this Order by letter addressed to Margaret D. Blough, PHRC, Assistant Chief Counsel, P.O. Box 3145, Harrisburg, PA 17105.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Carl E. Denson, Chairperson
Attest: Sylvia A. Waters, Secretary