COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION
Pennsylvania Place, Suite 300
301 Chestnut Street
Harrisburg, PA 17101-2702

FAX: (717) 772-4340
TELEPHONE: (717) 772-5128

FAX TRANSMISSION

DATE: February 20, 2004

TO: Karen Kress Weisbord, Esq.
(215) 592-0160 Fax
FROM: William R. Fewell, Esq.

SUBJECT: PHRC v. Gypsy Lane Owners Assoc.

MESSAGE:

Number of pages: 26 (including cover sheet)

If there are any problems with this transmission, please call 717-772-5128 .

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION, on behalf of BRIAN C. DAVIS	:	
Plaintiff	:	
v.	:	No. 536 M.D. 2001
ROBERT H. WISE, MANAGEMENT GYPSY LANE OWNER'S ASSOCIATION,	:	Appeal as of Right Pursuant to 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure
Defendants	:	

NOTICE OF APPEAL

NOTICE IS HEARBY GIVEN THAT the Pennsylvania Human Relations Commission, plaintiff above named, hereby appeals to the Supreme Court Of Pennsylvania from the order entered in this matter on the 22nd day of January, 2004. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully submitted,

Elisabeth S. Shuster
Chief Counsel
Pa Human Relations Commission
Attorney I.D. 20486

BY: William R. Fewell
Assistant Chief Counsel
Pennsylvania Human Relations Commission
P.O. Box 3145
Harrisburg, PA 17105-3145
(717) 944-5179
Attorney I.D. 32059

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION, ON BEHALF OF BRAIN C. DAVIS, **Plaintiff**	:	**NO: 536 MD 2001**
v.	:	**Appeal as of Right Pursuant to Rule 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure**
ROBERT H WISE, MANAGEMENT *and* GYPSY LANE OWNER ASSOCIATION **Defendants**	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing NOTICE OF APPEAL in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

John J. D'Angelo, Esquire
Bank, Minehart & D'Angelo
540 South 11th Street
Philadelphia, PA 19147-1242
(Counsel for Robert H Wise, Management)

Karen Kress Weisbord, Esquire
Weisbord and Weisbord, P C
128 Chestnut Street
Suite 201
Philadelphia, PA 19106
(Counsel for Gypsy Lane Owners Association)

Facsimile of the same documents also sent on this same day to each Counsel.

February 20, 2004

William R. Fewell
Assistant Chief Counsel
Pennsylvania Human Relations Commission
P.O. Box 3145
Harrisburg, PA 17105-3145
(717) 944-5179
Attorney I.D. 32059

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION, on behalf of BRIAN C. DAVIS	:	
Plaintiff	:	
v.	:	**No. 536 M.D. 2001**
	:	**Appeal as of Right Pursuant to Rule 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure**
ROBERT H. WISE, MANAGEMENT GYPSY LANE OWNER'S ASSOCIATION,	:	
Defendants	:	

JURISDICTIONAL STATEMENT PURSUANT TO RULE 909 OF THE PENNSYLVANIA RULES OF APPELLATE PROCEDURE

Opinion and Order Appealed From

A certified copy of the unpublished opinion appealed from is attached as Appendix 1.

Statement Of Basis In Statute For Supreme Court Jurisdiction

This appeal is taken as a matter of right pursuant to Rule 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure since it is an appeal from the Commonwealth Court's post trial Order awarding attorneys fees and expenses to Defendant Gypsy Lane Owner's Association. The Commonwealth Court's exercise of original jurisdiction and trial was pursuant to 42 Pa.C.S. §761 and 43 P.S. §959(d.1).

Text Of The Order Sought To Be Reviewed

A certified copy of the text of the Order is attached as Appellant's Appendix 1. The order was entered on January 22, 2004.

Procedural History

On or about June 7, 1995, Brian C. Davis filed a *pro se* administrative complaint with the Philadelphia office of the Pennsylvania Human Relations Commission ("PHRC") alleging, *inter alia*, familial status discrimination by the Gypsy Lane Owners Association and its residential management agent, John Wise Management, in violation of Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended) ("PHRA"), 43 P.S. §§ 951 – 963. In 2001, Davis exercised his statutory right to have the action decided in a court action under the original jurisdiction of the Commonwealth Court, rather than before the PHRC in an administrative public hearing. 43 P.S. § 959(d.1). The PHRC filed the statutorily required complaint on behalf of Brian C. Davis in the Commonwealth Court on or about October 19, 2001. The trial before Senior Judge Eunice Ross was held on June 30, 2003. Senior Judge Ross found ruled in favor of both Defendants. A post trial Application for Attorney Fees was filed by Defendant Gypsy Lane Owners Association ("Gypsy Lane") against the PHRC, alone. Neither Plaintiff Brian C. Davis nor Defendant John Wise, Management participated in post trial proceedings. PHRC preliminarily objected to the Defendant's application, in that Defendant Gypsy Lane was not entitled to recover attorney's fees from PHRC under the statutory sections that were cited. PHRC also objected to the failure of Gypsy Lane to present any competent factual evidence upon which the Court could award attorney's fees. Defendant Gypsy Lane amended its application and answered the objections. PHRC preliminarily objected to the amended application restating its original objections to the application for attorney's fees that had not been cured by the amendment. Senior

Judge Ross retired and was replaced by Senior Judge Flaherty. A hearing on the objections and the merits was held on January 6, 2004 without testimony or production of any competent documentary evidence. On or about January 22, 2004, Senior Judge Flaherty upheld PHRC objections that the only statutory basis for an application for attorney's fees against PHRC was contained within the PHRA, but then awarded Gypsy Lane all the attorney's fees requested. It is from that order that appeal is now taken.

Questions Presented For Review

1. Whether the Defendant Gypsy Lane waived its right to claim that the Davis complaint was frivolous, where Plaintiff presented a *prima facie case* of "familial status" discrimination under the PHRA at trial and Defendant Gypsy Lane failed to move for summary dismissal of the case at the end of Plaintiff's case-in-chief?
2. Whether the complaint, which alleged "familial status" discrimination against Mr. Davis, who, at all times pertinent to this action, resided with his own minor son, and, his common law wife and her three minor children was frivolous or filed in bad faith, when Pennsylvania law did not differentiate between common law marriage and formalized marriage?
3. Whether, when the proper interpretation of "familial status" is an issue of first impression, the PHRC can be subject to an award of attorney's fees for filing a frivolous complaint or bringing a complaint in bad faith?
4. Whether the PHRC should be held liable for attorney's fees where there was conflicting evidence secured in the course of agency investigation?

5. Whether Defendant Gypsy Lane is entitled to recover attorney's fees and for time and expenses incurred for work on the issues which it lost, the recovery of attorneys fees pursuant to 71 P.S. §§ 2031, 2032 and 42 P.S. § 2503(9)?
6. Whether Defendant is entitled to recover attorney's fees from the PHRC pursuant to a post trial application for attorney fees when Defendant Gypsy Lane presented no sworn testimony or authenticated documentary evidence in support of its application?
7. Whether the Pennsylvania Human Relations Commission can be assessed attorney's fees under the PHRA for its liberal interpretation of the statutory definition of "familial status" when the Pennsylvania legislature has expressly mandated, "[t]he provisions of [PHRA] shall be construed liberally for the accomplishment of the purposes thereof, ..." ? 43 P.S. 962(a).

Respectfully submitted,

Elisabeth S. Shuster
Chief Counsel
Pa Human Relations Commission
Attorney I.D. 20486

BY: 
William R. Fewell
Assistant Chief Counsel
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Harrisburg, PA 17105-3145
(717) 944-5179
Attorney I.D. 32059

Counsel for Plaintiff

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION, ON BEHALF OF BRAIN C. DAVIS, **Plaintiff**	:	**CIVIL ACTION**
v.	:	**NO: 536 MD 2001**
ROBERT H WISE, MANAGEMENT *and* GYPSY LANE OWNER ASSOCIATION **Defendants**	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing JURISDICTIONAL STATEMENT PURSUANT TO RULE 909 OF THE PENNSYLVANIA RULES OF APPELLATE PROCEDURE in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

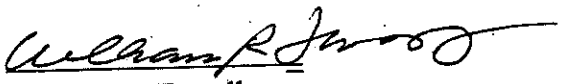
Service by first class mail addressed as follows:

John J. D'Angelo, Esquire
Bank, Minehart & D'Angelo
540 South 11th Street
Philadelphia, PA 19147-1242
(Counsel for Robert H Wise, Management)

Karen Kress Weisbord, Esquire
Weisbord and Weisbord, P C
128 Chestnut Street
Suite 201
Philadelphia, PA 19106
(Counsel for Gypsy Lane Owners Association)

Facsimile of the same documents also sent on this same day to each Counsel.

February 20, 2004



William R. Fewell
Assistant Chief Counsel
Housing and Commercial Property Division
Pennsylvania Human Relations Commission
Attorney I.D. #32059
(Counsel for the Commission)
(717) 772-5128

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Plaintiff	:	
v.	:	No. 536 M.D. 2001
	:	Appeal as of Right Pursuant to Rule 1101(a)(1) of the Pennsylvania Rules of Appellate Procedure
ROBERT H. WISE, MANAGEMENT GYPSY LANE OWNER'S ASSOCIATION,	:	
Defendants	:	

REQUEST FOR TRANSCRIPTS

A notice of appeal having been filed in this matter, the Pennsylvania Human Relations Commission, plaintiff above named, hereby requests that a transcript of the entire proceedings before the Commonwealth Court be prepared, to include both the trial transcript with exhibits and the post trial hearing on attorney fees transcript.

Respectfully submitted,

Elisabeth S. Shuster
Chief Counsel
Pa Human Relations Commission
Attorney I.D. 20486

BY: 
William R. Fewell
Assistant Chief Counsel
Pennsylvania Human Relations Commission
P.O. Box 3145
Harrisburg, PA 17105-3145
(717) 944-5179
Attorney I.D. 32059

COMMONWEALTH OF PENNSYLVANIA

DATE: February 25, 2004

SUBJECT: Information for Response to Reporter Inquiry re Commonwealth Court Decision in PHRC o/b/o Brian C. Davis v. Robert H. Wise Management and Gypsy Lane Owners Association

TO: Laura J. Treaster
Communications Director

FROM: Elisabeth S. Shuster
Chief Counsel

In responding to the reporter's inquiry, use whatever of the following information you deem appropriate.

On February 20, 2004, PHRC filed a Notice of Appeal in Commonwealth Court that it is taking an appeal as of right from Commonwealth Court's post trial Order of January 22, 2004, awarding attorneys fees and expenses to Defendant Gypsy Lane Owner's Association.

On June 7, 1995, Brian C. Davis filed a *pro se* administrative complaint with the PHRC alleging familial status discrimination by Gypsy Lane Owners Association and its residential management agent, John Wise Management, in violation of the PHRAct.

"Familial status" is defined by section 954(t) of the PHRAct as "one or more individuals who have not attained the age of eighteen years being domiciled with: (1) a parent ... ."

In 2001, Davis exercised his statutory right to have the action decided in a court action under Commonwealth Court's original jurisdiction. A trial was held before Senior Judge Eunice Ross on June 30, 2003, who found in favor of both defendants.

Defendant Gypsy Lane filed a post trial application for attorneys' fees against the PHRC. PHRC preliminarily objected to the application, defendant Gypsy Lane amended its application, PHRC preliminarily objected to the amended application restating its original objections to the application, stating that its original objections had not been cured by the amendment. Senior Judge Ross was replaced by Senior Judge Jim Flaherty, a hearing on the objections and merits was held on January 6, 2004 without testimony or production of documentary evidence. On January 22, 2004, some of the PHRC's objections were upheld, but attorney's fees were awarded.

On February 20, 2004, the PHRC filed its appeal to the Pennsylvania Supreme Court, presenting several questions for review. On February 20, 2004 the Commonwealth Court ordered that its January 22, 2004 Opinion be designated "Opinion," rather than "Memorandum Opinion," and reported.

On February 24, 2004, the Supreme Court of Pennsylvania sent a notice acknowledging the appeal and establishing 14 days as the timeframe for filing a Brief in Opposition or a letter stating that such a brief would not be filed.

c: William R. Fewell

Treaster, Laura

From: Shuster, Elisabeth
Sent: Wednesday, February 25, 2004 3:32 PM
To: Treaster, Laura
Subject: FW: Outline of Further proceedings in PHRC v Gypsy Lane

Importance: High

Elisabeth S. Shuster
Chief Counsel
Pennsylvania Human Relations Commission
301 Chestnut Street, Suite 300
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(717) 783-8168 (voice)
(717) 787-0420
(717) 787-4087 (TT)

-----Original Message-----
From: Fewell, William
Sent: Wednesday, February 25, 2004 3:25 PM
To: Shuster, Elisabeth
Subject: Outline of Further proceedings in PHRC v Gypsy Lane

Dolly,

As you know, We filed a NOTICE OF APPEAL and JURISDICTIONAL STATEMENT in the above matter on or about February 20, 2004. The Defendants will have 14 days to respond to the jurisdictional statement. The Supreme Court will then set the issues to be briefed and a time for each party's brief to be submitted. Once the briefs are submitted date for oral argument will be set.

Bill Fewell