

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

**TANIKA VALLATI, Complainant**

**v.**

**LAMAR YODER, Respondent**

**PHRC CASE NO. 200302403**

**and**

**MARILYN NOTO, Complainant**

**v.**

**LAMAR YODER, Respondent**

**PHRC CASE NO. 200302412**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

**FINAL ORDER**

### FINDINGS OF FACT\*

1. The Complainant at PHRC Case No. 200302403 is Tanika Vallati, (hereinafter “Vallati”), an adult female who resides at 838 Old Trail Road, Port Trevorton, Pennsylvania. (N.T. 25-26; O.D. 1)
2. The Complainant at PHRC Case No. 200302412 is Marilyn Noto, (hereinafter “Noto”), an adult female who resides in Stroudsburg, Pennsylvania. (N.T. 12; O.D. 1)
3. The Respondent herein is Lamar Yoder, (hereinafter “Yoder”), the owner of an apartment located at 189 East Dewart Street, Shamokin, Pennsylvania. (N.T. 13, 26, 44; O.D. 1)
4. On August 6, 2003, Vallati and Noto jointly entered a month-to-month lease with Yoder for the rental of an apartment located at 189 East Dewart Street, Shamokin, Pennsylvania. (N.T. 13, 26; C.E. 1)
5. The monthly rental for the apartment was \$350.00 per month and Vallati and Noto also paid a security deposit in the amount of \$350.00. (N.T. 12-13, 26, 27; C.E. 1)
6. Because Yoder did not answer the PHRC complaints of Vallati and Noto, on April 26, 2004, the PHRC found Yoder liable for sexually harassing Vallati and Noto. (O.D. 5, 6)

- 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  
O.D. Official Docket

7. Collectively, Vallati and Noto’s PHRC complaints alleged the following: on August 15, 2003, Yoder came into Vallati and Noto’s apartment and asked Vallati to remove her clothes and get underneath him; on August 20, 2003, Yoder told Vallati that Noto could do wonders with her tongue ring; on September 7, 2003, Yoder walked into the apartment and asked Vallati and Noto to fool around with each other; Yoder told Vallati and Noto that he had cameras in the apartment and could see them naked and had peep holes through which he looked at Vallati and Noto; and Yoder entered the apartment through the basement. (O.D. 1)
8. Due to Yoder’s harassment of Vallati and Noto, Vallati and Noto moved out of the apartment on October 9, 2003. (N.T. 13, 28)
9. Yoder refused to return the \$350.00 security deposit. (N.T. 14, 27)
10. Vallati and Noto incurred moving expenses of \$85.00 by paying several friends to help them move. (N.T. 14, 28, 38)
11. Vallati and Noto incurred an additional \$45.00 because Yoder delayed access to a dryer Vallati and Noto had rented. (N.T. 15, 27-28)
12. Yoder’s actions caused Vallati and Noto to be unable to stay in the apartment alone. (N.T. 16, 28)
13. Vallati and Noto had to have friends sleep over to feel comfortable in their apartment. (N.T. 17, 28)
14. Vallati and Noto’s reputation was injured when Yoder told people that Vallati and Noto were sleeping around. (N.T. 29)
15. Yoder’s actions has caused both Vallati and Noto to have a general fear of men. (N.T. 17-18, 29)
16. During the tenancy, Vallati became dizzy and nauseous as a result of Yoder’s actions. (N.T. 29)

17. Yoder's actions caused Vallati to take time off of her work which eventually led to Vallati losing her job. (N.T. 30)
18. Vallati continues to experience difficulty sleeping. (N.T. 31)
19. Yoder's actions made Noto physically sick from stress to the point of Noto experiencing several anxiety attacks. (N.T. 18, 19, 35, 39)
20. Yoder's actions further caused Noto to miss work and she too eventually lost her job. (N.T. 17)

### **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 these consolidated matters, the Respondent's failure to file properly verified answers or to respond to Rules to Show Cause resulted in the entry of judgments for the Complainants on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.

### **OPINION**

These consolidated cases arose on complaints filed by Tanika Vallati, (hereinafter "Vallati") and Marilyn Noto, (hereinafter "Noto") against Lamar Yoder, (hereinafter "Yoder"), generally alleging sexual harassment in housing because of Vallati and Noto's sex, female. Vallati and Noto's complaints state claims under section 5(h)(3) of the Pennsylvania Human Relations Act ("PHRA").

On October 14, 2003, both Vallati and Noto filed verified PHRC complaints. By correspondence dated February 25, 2004, the PHRC Housing and Commercial Property Division, petitioned then Motions Commissioner Sylvia A. Waters for Rules to Show Cause, indicating that Yoder had not answered either Vallati's or Noto's PHRC complaints. The petition indicated that Yoder had been served with the complaints on October 30, 2003, and that by correspondence dated December 22, 2003, Yoder was reminded of his obligation to answer the complaints and that his failure to answer would result in a judgment being entered for Vallati and Noto.

On February 25, 2004, Rules to Show Cause were issued, directing Yoder to respond on or before March 25, 2004. After no responses were received, on April 7, 2004, Motions Commissioner Waters recommended findings of liability in these cases to the full PHRC. On April 26, 2004, the full PHRC determined that Yoder was liable for sexually harassing both Vallati and Noto.

After the findings of liability in these cases, conciliation efforts were unsuccessful. Subsequently, these matters were approved for a public hearing on the limited issue of appropriate damages.

A consolidated public hearing on the issue of appropriate damages was held on December 17, 2004 in Shamokin, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. Stephanie Chapman, Esquire, PHRC Assistant Chief Counsel, oversaw the state's interest in the complaints. Yoder appeared pro se.

On February 14, 2005, PHRC Attorney Chapman filed a post-hearing brief. Yoder did not file a post-hearing brief.

Since liability had been found after Yoder failed to file answers in these consolidated matters, the only question at the public hearing was what damages Vallati and Noto could establish. 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 to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for the loss of work in matters involving the complaint...reinstatement...with or without back pay...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(h)...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..."

The PHRC Housing and Commercial Property Division's post-hearing brief argues for a variety of damages. The Housing and Commercial Property Division seeks moving expenses, reimbursement of a security deposit, the extra cost of a dryer rental, damages associated with the loss of jobs, humiliation and embarrassment damages, and a civil penalty. Each of the requested items will be discussed individually.

First, the request for expenses associated with the Complainant's move should be awarded. But for Yoder's actions, the Complainant's would not have moved. When they did move, they solicited the assistance of several friends to whom Vallati and Noto paid a total of \$85.00.

Next, with respect to the security deposit, Yoder attempted to show that when Vallati and Noto moved, there were damages to the apartment that cost Yoder \$350.00 to repair. When Yoder's evidence is compared to the evidence presented by Vallati and Noto, we find that Yoder's evidence is not credible. Indeed, the photographs Vallati and introduced as Complainant Exhibit 3 A-H support their contention that they left the apartment clean. Both Vallati and Noto offered straightforward, consistent, and credible testimony that Yoder never told them there had been damages that would reduce their security deposit. Even when an attorney for Vallati and Noto corresponded with Yoder, he did not reveal that he intended to claim a reduction in the security deposit due to any damages. In short, Yoder's testimony on this issue was simply not believable. Accordingly, the full amount of the security deposit should be awarded to Vallati and Noto.

Next, Vallati and Noto testified that they incurred an additional expense for the rental of a dryer because Yoder delayed access to the dryer. Yoder lived next door to Vallati and Noto and shared a basement, however, the dryer was located in a portion of the basement that could be locked by Yoder. The stairs leading up to Vallati and Noto's apartment did not accommodate the dryer's size. Accordingly, the dryer was placed in a location that Yoder locked off and delayed the pick-up of the item. For this reason, Vallati and Noto should also be awarded \$45.00 for the additional cost they incurred with respect to the dryer rental.

Next, both Vallati and Noto testified that Yoder's conduct caused sufficient stress that they lost sleep, and that by losing so much sleep, they both missed work. When they missed work both Vallati and Noto were terminated. When Vallati was terminated, she lost a job where she was working approximately 30 hours per week and earning \$5.25 per hour. (N.T. 29-30) For approximately one month, Vallati was out of work until she found alternate employment. Vallati's loss of work resulted in a loss of approximately \$630.00.

Noto also was terminated when Yoder's actions caused her to miss work. At the time of her termination, Noto was working approximately 6 hours a day, six days a week, earning \$9.00 per hour. (N.T. 17, 22-23) Noto was out of work between September 2003 and January 2004. (N.T. 22) For this approximate 16-week period, Noto lost approximately \$5,184.00.

Next, on the issue of humiliation and embarrassment the Housing and Commercial Property Division seeks a total award of \$10,000.00. The evidence in these consolidated cases reveals that Yoder's extreme and outrageous actions caused both Vallati and Noto to lose sleep, become fearful, use only a part of their apartment, become stressed and physically ill. Yoder's actions denied Vallati and Noto basic human rights and harmed their personal dignity. As Vallati and Noto's landlord, he certainly abused his position and treated them as sexual objects and placed them in reasonable fear of him.

Looking at both the direct evidence of embarrassment and humiliation and the circumstances of the acts that caused the distress to Vallati and Noto, See U.S. v. Balistreri, 981 F.2d 916 (7<sup>th</sup> Cir. 1992), the request for \$5,000.00 for each Complainant is deemed reasonable. This amount is generally consistent with awards in similar cases. For instance, in the case of Skzoda v. Illinois Human Rights Commission, 706 N.E. 2d 962 (1998), an appellate court approved an award of \$6,500.00 for humiliation and embarrassment when a landlord grabbed a tenant, kissed her and asked her if she wanted to have sex. Further, when she complained, he terminated her lease. In another case, Chomicki v. Wittekind, 381 N.W. 2d 561 (1985), a landlord harassed a female tenant by asking her to have unwanted sexual relations with him. When she refused, her lease was terminated. This litigant was awarded \$7,500.00 for her humiliation. In the case of Cennamo v. Deem, 2002 W.L. 31873792 (Ohio. App. 5<sup>th</sup> Dist. 2002), early in the tenancy a landlord turned on a pornographic movie in the tenant's presence while completing the lease paperwork. The landlord forced the tenant to put her hand on his crotch area and made other unsolicited sexual advances on several occasions. Shockingly, the award in that case was for only one dollar for the hostile environment.

The present request for a total of \$10,000.00 is in line with prior cases that have dealt with the issue of a landlord sexually harassing a tenant. Accordingly, this amount should be awarded.

The final area requested by the Housing and Commercial Property Division's post-hearing brief is a civil penalty in the amount of \$1,500.00. This request is also deemed reasonable and should be awarded.

Although not sought in the post-hearing brief, Noto also provided testimony that she took off two days of work to attend the public hearing. Noto testified that she earns \$6.50 per hour and lost two days work. (N.T. 18) Accordingly, Noto should also be awarded the amount of \$104.00 in lost wages associated with her pursuit of her case.

An appropriate order follows.

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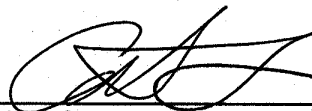
PHRC CASE NO. 200302412

**RECOMMENDATION OF THE PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned consolidated matters, the Permanent Hearing Examiner finds that both Vallati and Noto suffered damages. It is, therefore, the Permanent Hearing Examiner's 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, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

March 9 2005  
Date /

By:   
\_\_\_\_\_  
Carl H. Summerson  
Permanent Hearing Examiner

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**FINAL ORDER**

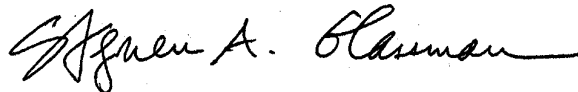
**AND NOW**, this 22<sup>nd</sup> day, of March, 2005, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said 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. That Yoder shall cease and desist from sexually harassing any tenant.
2. That within 30 days from the date of this order, Yoder shall pay to Vallati and Noto the sum of \$85.00, which amount represents moving expenses Vallati and Noto expended as a result of Yoder's unlawful conduct.
3. That within 30 days from the date of this order, Yoder shall pay to Vallati and Noto the sum of \$350.00, which amount represents a security deposit Yoder failed to return to Vallati and Noto.
4. That within 30 days from the date of this order, Yoder shall pay to Vallati and Noto the sum of \$45.00, which amount represents money Vallati and Noto expended as a result of Yoder's delaying the pick-up of a dryer Vallati and Noto had rented.

5. That within 30 days from the date of this order, Yoder shall pay to Vallati the sum of \$630.00, which amount represents pay that Vallati lost as a result of the loss of her job.
6. That within 30 days from the date of this order, Yoder shall pay to Noto the sum of \$5,184.00, which amount represents pay that Noto lost as a result of the loss of her job.
7. That within 30 days from the date of this order, Yoder shall pay to Vallati the sum of \$5,000.00, which amount represents compensatory damages for the humiliation and embarrassment she suffered as a result of Yoder's unlawful sexual harassment.
8. That within 30 days from the date of this order, Yoder shall pay to Noto the sum of \$5,000.00, which amount represents compensatory damages for the humiliation and embarrassment she suffered as a result of Yoder's unlawful sexual harassment.
9. That within 30 days from the date of this order, Yoder shall pay to Noto the sum of \$104.00, which amount represents compensation for loss of work involving pursuit of her PHRC claim.
10. That within 30 days from the date of this order, Yoder shall deliver to PHRC Housing and Commercial Property Division Assistant Chief Counsel Stephanie Chapmen, 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) of the PHRA.
11. That all amounts Yoder is hereby ordered to pay in paragraphs 2 thru 8 above, shall be paid through the PHRC Housing and Commercial Property Division rather than directly to either Vallati or Noto.
12. That within 30 days of the effective date of this Order, Yoder shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Stephanie Chapman, Esquire, Assistant Chief Counsel, PHRC Housing and Commercial Property Division, P.O. Box 3145, Harrisburg, PA 17105.

**PENNSYLVANIA HUMAN RIGHTS COMMISSION**



By:

Stephen A. Glassman  
Chairperson

ATTEST:



Daniel D. Yun, Secretary