

**COMMONWEALTH OF PENNSYLVANIA**

**GOVERNOR'S OFFICE**

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**ANNE COYLE,**  
Complainant

v,

**KINGSESSING RECREATION  
CENTER ADVISORY COUNCIL,**  
Respondent

PHRC CASE NO. 200606523

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

**FINAL ORDER**

## FINDINGS OF FACT\*

1. On or about April 20, 2007, Complainant, Anne Coyle, (hereinafter "Coyle"), filed a PHRC Complaint against the Respondent, Kingsessing Recreation Center Advisory Council, (hereinafter "the Council"), in which Coyle alleged that the Council refused to allow Coyle to participate in the Council's activities and programs because of Coyle's race, Caucasian. (O.D. 1 and 2).
2. On or about October 26, 2007, Coyle filed an Amended Complaint, in effect, adding an allegation that the City of Philadelphia had aided and abetted the Council's discrimination of Coyle. (O.D. 4)
3. Subsequently, the City of Philadelphia came to an agreement with Coyle that settled that part of Coyle's Amended Complaint that alleged the City had aided and abetted the Council's discriminatory denial of participation. (N.T. 8)
4. After the City was no longer a Respondent, Coyle's only remaining claim was her allegation that she was denied participation in the Council. (O.D. 4)
5. By initial correspondence dated June 2, 2008, and subsequently resent on June 18, 2008, the PHRC's Philadelphia regional office filed a Petition for Rule to Show Cause. (O.D. 1, and 2).
6. On June 6, 2008, PHRC Motions Commissioner Daniel L. Woodall, Jr., issued a Rule to Show Cause which, in effect, notified the Council that it had until July 7, 2008 to file a properly verified answer to Coyle's complaint. (O.D. 3).

\* 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:

O.D. Official Docket  
N.T. Notes of Testimony  
C.E. Commission Exhibit  
S.L. Supplemental letter dated March 23, 2011

7. The Council did not file an answer. (N.T. 11, 16).
8. Because the Council failed to answer, on July 11, 2008, Motions Commissioner Woodall recommended to the full PHRC that the Council be found liable for Coyle's allegation. (O.D. 5)
9. Accepting Motions Commissioner Woodall's recommendation, by Order dated August 26, 2008, the PHRC found the Council liable for denying Coyle participation in the Council's activities and programs because of Coyle's race, Caucasian. (O.D. 5).
10. A public hearing on the issue of what, if any, damages are appropriate was held on July 22, 2010 in Philadelphia, Pennsylvania. (N.T. 1)
11. At the time of the denial of participation in the Council's activities and programs, Coyle resided at 1120 S. 51<sup>st</sup> Street, Philadelphia, Pennsylvania. (N.T. 18: O.D. 1, 2, and 4).
12. The Council is a volunteer community organization operated by citizens and neighbors with a goal of guiding the use of the Council's resources. (N.T. 46-47).
13. The Council is funded by and open to all citizens of the City of Philadelphia. (S.L.)
14. Kingsessing Recreational Center is a place of amusement and enjoyment that solicits the patronage of the general public. (S.L.)
15. The Council manages the Kingsessing Recreation Center and is in charge of the Center's facilities during non-operating hours. (S.L.)
16. The Council is authorized to charge fees for the use of the Kingsessing Recreation Center and when the Council does so, the Council deposits those fees into a bank account in the name of the Council. (S.L.)

17. During the hours the Council manages Kingsessing Recreation Center, and, as an extension of the City of Philadelphia, the Council is responsible for the Kingsessing Recreation Center including being exposed to liability during the hours the Council manages the facilities. (S.L.)
18. The only requirement for membership in the Council is being a neighborhood resident. (S.L.)
19. In August 2007, Coyle moved to a location in Lebanon County nearly 100 miles away. (N.T. 27)
20. In addition to Coyle's present complaint against the Council, Coyle also filed four housing complaints with the PHRC alleging retaliatory harassment that occurred after Coyle's complaint that she had been denied participation in the Council's programs and activities. (N.T. 32; C.E. 1)
21. All four of Coyle's PHRC housing complaints have been closed after each investigation resulted in a no probable cause finding. (C.E. 1)
22. After filing her complaint against the Council, Coyle made four trips to the PHRC Philadelphia regional office to conduct business that involved her present complaint. (N.T. 37)
23. On each of these four visits to the PHRC Philadelphia regional office, Coyle incurred a parking expense of approximately \$20.00 per visit.
24. On three of Coyle's visits she traveled 180 miles round trip per visit. (N.T. 37)
25. On three of Coyle's visits to the PHRC Philadelphia regional office, Coyle also incurred travel expenses for turnpike tolls paid in the amount of \$10.00 per trip. (N.T. 37)

## 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 Council's failure to file a properly verified answer resulted in the entry of a judgment for Coyle on the issue of liability.
6. Kingsessing Recreational Center is a public accommodation as defined by Section 4(l) of the PHRA as it "is open to, accepts or solicits the patronage of the general public, including. . . recreation parks . . ."
7. Section 5(i) of the PHRA declares that "[i]t shall be an unlawful discriminatory practice. . . [f]or any person being the . . . manager . . . of any public accommodation . . . to deny to any person because of [their] race. . . either directly or indirectly, any of the . . . advantages . . . or privileges of such public accommodation."
8. The Council is the manager of a public accommodation within the meaning of Section 5(i) of the PHRA.

9. The PHRC has broad discretion in fashioning a remedy.
10. The Commission may also order a Respondent 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.
11. Unless an underlying complaint is a violation of Section 5(h) or 5.3 of the PHRA, the PHRC may not award either damages caused by humiliation and embarrassment or assess a civil penalty. Section 9(f)(1 and 2) PHRA.

## OPINION

This case arose on a complaint filed by Anne Coyle, (hereinafter "Coyle"), against Kingsessing Recreation Center Advisory Council, (hereinafter "the Council"). Coyle's initial complaint alleged that the Council denied Coyle participation in the Council's activities and programs because of Coyle's race, Caucasian. Coyle's complaint states a denial of public accommodation claim under Section 5(i)(1) of the Pennsylvania Human Relations Act ("PHRA").

Coyle's initial verified complaint was filed on or about April 20, 2007. Subsequently, Coyle filed an amended complaint that sought to add the City of Philadelphia as an additional Respondent. After being added as a Respondent, the City of Philadelphia settled that portion of Coyle's amended complaint that alleged the City of Philadelphia had aided and abetted the Council's discrimination. By correspondence dated June 2, 2008, and subsequently resent on June 18, 2008, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Commissioner Woodall for a Rule to Show Cause, indicating that the Council had not answered Coyle's complaint. The petition declared that the Council had been served with Coyle's complaint on May 7, 2007. The petition further indicated that by letter dated June 15, 2007, an effort had been made to obtain an answer from the Council.

On June 6, 2008, a Rule to Show Cause was issued, directing the Council to respond on or before July 7, 2008. After the Council failed to file a properly verified answer, on July 11, 2008, Motions Commissioner Woodall recommended a finding of liability to the full PHRC. On August 26, 2008, the full PHRC determined that the Council prevented Coyle from participating in the Council's activities because of Coyle's race, Caucasian.

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

The public hearing on the issue of appropriate damages was held July 22, 2010, in Philadelphia, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Norman G. Matlock, PHRC Assistant Chief Counsel. Coyle presented a statement on her own behalf. Attending the Public Hearing on behalf of the Council was Tom Henry, the Council's president.

Following the Public Hearing, the parties were afforded the opportunity to submit post-hearing briefs. The post-hearing brief on behalf of the state's interest in the complaint was received on November 1, 2010. Coyle also filed a post-hearing brief that was received on November 9, 2010.

Since liability had been found after the Council failed to file a properly verified answer, the only question at the public hearing was what damages Coyle could establish.

Section 9(f)(1) of the PHRA provides in pertinent part:

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 finding 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 reimbursement of certifiable travel expenses in matters involving the complaint ...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in cases alleging a violation of Section 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 manner of compliance.



The function of the remedy in discrimination cases is not to punish the Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which she would have been, absent the discriminatory practice. See Albermarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975); PHRC v. Alto-Reste Park Cemetery Association., 306 A.2d 881 (Pa. S. Ct. 1973).

In order to properly assess the appropriate damages in this case, it is necessary to fully appreciate the nature of Coyle's PHRC complaint. Coyle's initial complaint basically alleged that the Council refused to permit Coyle to join the Council. More specifically, Coyle's "underlying facts" indicate that on September 4, 2006, Coyle had asked the Council's Recreation Leader and the Council's President to be admitted to the Council in order to form a Youth Baseball Program. Further, Coyle alleged that, at that time, the President told her that there was no interest in baseball. Coyle also alleged that in both the October and November 2006 meetings of the Council, the President expressed his disapproval of the City of Philadelphia sending Caucasian staff to the Council and his disapproval of Caucasian youth participating in the Council's programs. Count 1 of Coyle's initial complaint then alleged that on January 7, 2007, at a public meeting hosted by the Council's current President and a former Council President, both complained about Coyle's prior attempts to participate in the Council and in the surrounding community. Allegedly, both individuals expressed that the community is a black community and that the Complainant was not a part of it.

Subsequently, Coyle filed an amended complaint that expanded the "underlying facts" supporting Coyle's claim and added the City of Philadelphia as a named Respondent. The expanded underlying facts found in the amended complaint reference Coyle's alleged August 15, 2006 notification to the City that the Council was preventing Coyle from participating in the activities and programs of the Council. Coyle's

underlying facts further allege that on December 2, 2006, Coyle sent a letter to the Deputy Commissioner of the City's Recreation Department, again notifying the City of the Council's conduct. Coyle also references calls she made between January 2007 and April 2007 to the City's Recreation Department Commissioner requesting a meeting about her allegations of the Council's conduct and the Recreation Department's alleged failure to investigate her concerns.

Coyle's amended complaint is then structured to present two separate Counts. The first Count shadows Coyle's initial complaint against the Council. In effect, the second Count alleged that the City aided and abetted the Council's refusal to permit Coyle to participate in the Council. Paragraph 26 of Count 2 in Coyle's complaint against the City makes a vague reference to the City's participation "in the Council's harassment against me." Paragraph 27 goes on to allege that as a result of the City's failure to investigate the Council, the Council's "harassment of [Coyle] intensified and escalated to physical assault. [Coyle] ended up having to move out of the area."

In both Coyle's Public Hearing testimony and in her post-hearing brief, Coyle attempts to modify the fundamental nature of her allegation against the Council. As drafted, Coyle's complaint and amended complaint solely implicate an alleged public accommodation violation against the Council. Much of Coyle's testimony and argument for damages deals with purported instances of harassment and intimidation while she was living in the neighborhood where the Council is located. (N.T. 20, 25-26) When testifying, Coyle asserted that she had alleged certain things in her complaint, however, a careful reading of Coyle's complaint reveals that Coyle did not allege the things she testified that she had alleged. For example, Coyle testified that paragraph 7 of her complaint asserts that the President of the Council had organized her neighbors against her. (N.T. 20) In this regard, whether it is Coyle's initial complaint or her amended

complaint, neither paragraph 7 articulates such an allegation. Coyle also testified that her complaint alleges that there had been an ongoing pattern of harassment and intimidation including acts of violence directed at her for over a year. (N.T. 25-26) Once again however, such an allegation was not articulated in either Coyle's initial complaint or her amended complaint.

During the Public Hearing, information became available that Coyle had also filed four housing complaints with the PHRC. Apparently, Coyle may have alleged in these four other complaints that she suffered harassment and intimidation in retaliation for having complained that the Council refused to allow her to participate in activities and programs at the Council. However, each of these four other complaints were dismissed after an investigation resulted in no probable cause findings. The present complaint and amended complaint strictly allege a denial of a public accommodation.

For this reason, Coyle's damages are limited. Had this matter been a housing matter, the damages she seeks for humiliation and embarrassment might be appropriate. However, the matter here is a public accommodation issue where the PHRC does not have the power to award damages for humiliation and embarrassment. Instead, Coyle's damages in a public accommodation case are rather limited.

First, a cease and desist order is appropriate. Since the Council did not answer Coyle's complaint, the Council was found to have denied Coyle participation in the activities and programs of the Council because of her race. Given this finding, it is entirely appropriate to order the Council to stop denying interested members of the area participation in the Council because of their race.

Next, Coyle has established that she incurred travel expenses in connection with pursuit of her PHRC claim. Coyle's travel expenses are of two distinct forms: (1)

parking expenses incurred when she visited the PHRC Philadelphia regional offices; and (2) mileage to get to the Philadelphia regional office.

Coyle testified that on each of four trips to the PHRC's Philadelphia regional office, she incurred a parking expense of approximately \$20.00. Accordingly, Coyle expended approximately \$80.00 for parking expenses. Coyle also testified that on three occasions, she traveled approximately 90 miles one way to come to the PHRC's Philadelphia regional offices and that on each trip she incurred tolls paid to travel the Pennsylvania Turnpike. Given this testimony, an award for mileage and tolls should include the following:

180 miles per trip @\$ .50 per mile – 3 trips ---	\$270.00
Roundtrip Turnpike tolls per trip @ \$10.00 ----	<u>\$30.00</u>
Total mileage expenses	\$300.00

Finally, the PHRC post-hearing brief on behalf of the state's interest in this complaint submits that the Council should be ordered to make available to any interested member of the public documents that fully describe the duties and responsibilities of members of the Council and further to require all Board members of the Council to participate in a PHRC training program. The post-hearing brief on behalf of the state's interest in this matter submits that the Philadelphia Department of Recreation stands ready to sponsor and facilitate such a training program. However, since the Philadelphia Department of Recreation did not directly participate in the Public Hearing, any order requiring training should not direct the Department of Recreation to sponsor and facilitate a training program. Instead, the PHRC Philadelphia regional office would be free to seek the cooperation of the Department of Recreation in becoming involved with such a mandated training program..

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ANNE COYLE,  
Complainant

v,

KINGSESSING RECREATION  
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PHRC CASE NO. 200606523

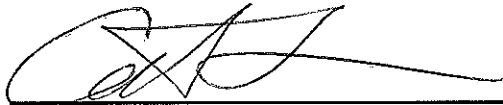
RECOMMENDATION OF PERMANENT HEARING EXAMINER

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

PENNSYLVANIA HUMAN RELATIONS COMMISSION

June 9, 2011  
Date

By:



Carl H. Summerson  
Permanent Hearing Examiner

**COMMONWEALTH OF PENNSYLVANIA**

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**PHRC CASE NO. 200606523**

**FINAL ORDER**

AND NOW, this 28<sup>th</sup> day of June, 2011 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**

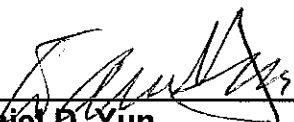
1. That the Council shall cease and desist from denying to any interested citizen the privilege of participating in the Council's activities and programs because of the race of any individual.

2. That the Council shall pay Coyle the sum of \$80.00 which amount represents expenses Coyle incurred for parking on four occasions when Coyle visited the PHRC's Philadelphia regional office in connection with this case..
3. That the Council shall reimburse Coyle \$300.00, which represents certifiable travel expenses incurred by Coyle in matters involving his complaint.
4. That the Council shall make available to any interested member of the public documents that fully describe the duties and responsibilities of a member of the Council.
5. That within 60 days of the effective date of this Order, the Council shall conduct a training program for the Council's Board members regarding individual rights under the PHRA with reference to a public accommodation.
6. That, within thirty days of the effective date of this Order, the Council shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Norman G. Matlock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 110 North 8<sup>th</sup> Street, Suite 501, Philadelphia, PA 19107.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By:   
\_\_\_\_\_  
**Gerald S. Robinson, Esquire**  
**Chairman**

**Attest:**

  
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**Daniel D. Yun**  
**Secretary**