COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

INGRID DOTSON, Complainant	:	
v.	:	PHRC Case No. 200602267
DREXELBROOK ASSOCIATES and L. WILLIAM KAY, II, Respondent	:	

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Ingrid Dotson, Complainant	:	
v.	:	PHRC Case No 200602267
Drexelbrook Associates & L. William Kay, II Respondents	:	

STIPULATIONS OF FACT

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required:

1. The Complainant herein Ingrid Dotson (hereinafter "Dotson"), is a person within the meaning of the Pennsylvania Human Relations Act (hereinafter referred to as "PHRA"), and resides in the Commonwealth of Pennsylvania.
2. The Respondents herein are Drexelbrook Associates and L. William Kay, II (hereinafter "Respondents") who are a persons within the meaning of the PHRA, and reside and do business within the Commonwealth of Pennsylvania.
3. On or about October 16, 2006, Dotson filed a verified Complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") against the Respondents at Commission case number 200602267. (A copy of the Complaint will be included as a docket entry in this case at time of hearing).
4. On or about December 4, 2006 Respondents filed an Answer to the Complaint. (A copy of the Answer will be included as a docket entry in this case at time of hearing).
5. On or about December 27, 2006, Dotson filed a verified Amended Complaint against the Respondents at Commission case number 200602267. (A copy of the

Amended Complaint will be included as a docket entry in this case at time of hearing).

6. On or about February 6, 2007 Respondents filed an Answer to the Amended Complaint. (A copy of the Answer will be included as a docket entry in this case at time of hearing).

7. On or about April 7, 2008, following an investigation, Commission staff approved a finding of probable cause against the Respondents in Commission Case number 200602267.

8. On or about April 16, 2008 the Complainant and Respondents were notified that the Commission had issued a finding of probable cause to credit the allegations found in the Amended Complaint number 200602267.

9. Subsequent to the Commission staff's notification of its probable cause determination, Commission staff attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion, but was unsuccessful.

10. On December 23, 2010, the Commission provided notice to the parties, pursuant to 16 Pa. Code §42.101(a) that during the PHRC monthly meeting on December 20, 2010, case number 200602267 were approved for Public Hearing and placed on the Public Hearing docket.

Martin Cunningham,
Assistant Chief Counsel
(Counsel for the Commission
in support of the complaint)

3/23/2011
Date

Carole D. Green, Esquire
(Counsel for the Complainant)

3/1/11
Date

Lisanne L. Mikula, Esquire
(Counsel for the Respondents)

3/14/11
Date

FINDINGS OF FACT*

1. The Complainant herein is Ingrid Dotson Luderman, (hereinafter "Dotson") an adult female who at the time of filing her PHRC Complaint was unmarried. Subsequently, Dotson married. (N.T. 37)
2. For the past 18 years, Dotson has been a Spanish teacher in the Upper Darby High School. (N.T. 39)
3. Respondent, Drexelbrook Associates is a Pennsylvania Limited Partnership with approximately 80 partners. (N.T. 172)
4. In 1959, Drexelbrook Associates purchased an apartment complex consisting of 1223 apartments in 90 buildings on 80 plus acres. (N.T. 105, 173)
5. Respondent L. William Kay, II, (hereinafter "Kay"), is Drexelbrook Associates' general partner. (N.T. 172)
6. Drexelbrook Associates also owns LWK Corporation, a banquet and catering operation. (N.T. 174)
7. Kay is the President of LWK Corporation. (N.T. 217)
8. LWK Corporation rents space for its banquet and catering operation from Drexelbrook Associates. (N.T. 174)
9. Kay testified that he is the operating supervisor over the entire complex, including the LWK Corporation. (N.T. 187)

*The foregoing "Stipulations of Facts" are herby incorporated herein as if fully set forth. To the extent that the Opinion, which follows, recites facts in addition to those her 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:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
S.F. Stipulations of Fact

10. Drexelbrook Associates' Offices are located at 4812 Drexelbrook Drive, a few hundred yards from LWK Corporation's catering facility. (N.T. 113, 114, 121)

11. Kay testified that he oversees LWK Corporation's 50 to 80 employees. (N.T. 175)

12. In July 1995, Dotson became a tenant of the Drexelbrook apartments. (N.T. 39)

13. Dotson entered into a lease agreement that, after the first year, became a month-to-month tenancy. (N.T. 101; C.E. 1)

14. After the first year of the lease, under paragraph 26 "Termination of Lease," either Dotson or Drexelbrook Associates could terminate the lease by giving 60 days notice. (N.T. 101; C.E. 1)

15. In November 2001, Dotson applied and was hired to be a part-time bartender with LWK Corporation's banquet facility. (N.T. 43)

16. Subsequently, in September 2002, Dotson left her employment at the banquet facility. (N.T. 43)

17. After leaving the banquet facility, Dotson and a female co-worker brought an EEOC claim of sexual harassment and filed suit against LWK Corporation in federal court. (N.T. 46, 49)

18. On January 9, 2006, at a settlement conference in the chambers of a federal court judge, Dotson and her co-worker settled their sexual harassment claim. (N.T. 46, 49, 50)

19. Attending the January 9, 2006 settlement conference were Dotson; her co-worker, Mary Czelcz; LWK Corporation's general manager; Edith Pearce, Dotson's attorney; Mark Halpern, LWK Corporation's attorney; and Kay. (N.T. 52, 53; C.E. 2)

20. Dotson testified that as the settlement conference was ending, she believed Kay looked upset and angry and was frowning and glaring at her. (N.T. 58, 103, 108)

21. At that time, Dotson expressed to her attorney her concern that Kay might retaliate by kicking her out of her apartment. (N.T. 57, 95)

22. During his testimony, Kay denied that he had been angry or frustrated or that he had glared at Dotson. (N.T. 177, 179)

23. Kay had attended the settlement conference to consider and provide agreement to the amount of a settlement. (N.T. 176)

24. By letter dated April 19, 2006, Kay advised Dotson that Drexelbrook Associates had elected to terminate Dotson's lease effective June 24, 2006. (N.T. 58, 59; C.E. 3)

25. The April 19, 2006 notice did not articulate a reason for Drexelbrook Associates' election to terminate Dotson's lease. (N.T. 60-61; C.E. 3)

26. Kay testified that the decision to terminate Dotson's lease was solely his. (N.T. 179, 185)

27. At the time Dotson received the lease termination notice, the school year was still in session and Dotson was anxiously continuing to make plans to take approximately six of her Spanish III students to Spain in early July 2006. (N.T. 62, 93, 133, 134)

28. Dotson had liked living at the Drexelbrook Apartments because, in her view, there was a nice view, trees, and she was comfortable there. (N.T. 61)

29. Anxious and upset, Dotson began to look for another apartment once she received the April 19, 2006 notice. (N.T. 61)

30. After stressfully looking at approximately three other apartment complexes, in June 2006, Dotson moved into the LaMaison Apartments in Wayne, PA, which was approximately 10 miles from the high school where Dotson taught. (N.T. 39, 67, 74, 100, 129, 133)

31. The Drexelbrook apartment complex had been only a mile from her school. (N.T. 68)

32. Dotson paid $627.50 to move most of her things and an additional $150.00 to move her sofa. (N.T. 74, 127; C.E. 5c & d)

33. Dotson seeks reimbursement of $240.00 to clean the Drexelbrook apartment. (N.T. 82)

34. While a tenant at the Drexelbrook apartment, Dotson was paying $725.00 per month rent. (N.T. 74)

35. The rent at LaMaison was $960.00 per month. (N.T. 74)

36. By letter dated August 3, 2006, Dotson's attorney advised LWK Corporation's attorney that Kay's action in terminating Dotson's lease was considered a retaliatory action. (N.T. 181; C.E. 4)

37. The August 3, 2006, letter had attached a copy of Kay's April 19, 2006 notice of lease termination. (C.E. 4)

38. Dotson seeks recovery of the difference in rents between LaMaison and Drexelbrook apartments for the period late June 2006 to September 2008. (C.E. 7a, b & c)

39. It appears Dotson left LaMaison in September 2008 to live with her husband in California for a period of time and then, upon returning to Pennsylvania, has lived with her mother. (N.T. 148)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.
2. The parties and the Commission have fully complied with the procedural prerequisites to the public hearing in this case.
3. Dotson is an individual within the meaning of the Pennsylvania Human Relations Act.
4. Both Drexelbrook Associates and Kay are "persons" within the meaning of Section 4(a) of the PHRA.
5. Dotson has made out a *prima facie* case of retaliation by proving that:
   a. She was engaged in a protected activity;
   b. Drexelbrook Associates and Kay were aware of it;
   c. Dotson suffered an adverse action; and
   d. There is a causal link between the protected activity and the adverse action.
6. Drexelbrook Associates and Kay offered a legitimate, non-discriminatory reason for terminating Dotson's lease.
7. Dotson's lease was terminated in retaliation for Dotson having filed a sexual harassment claim.
8. The PHRC has discretion to fashion a remedy which will effectuate the purpose of the Pennsylvania Human Relations Act.

OPINION

This case initially arises on a verified Complaint filed by Ingrid Dotson, (hereinafter "Dotson") on or about October 16, 2006. Dotson's initial Complaint named "LWK Corporation d/b/a Drexelbrook, 4812 Drexelbrook Drive, Drexel Hill, PA 19026, and d/b/a Drexelbrook Caterers, and Drexelbrook Catering, Drexelbrook Drive and Valley Road, Drexel Hill, PA 19026." In Dotson's initial Complaint, she alleged that on April 19, 2006, she received notice that her lease was being terminated in retaliation for having previously filed a sexual harassment, constructive termination claim in federal court. Subsequently, on December 27, 2006, Dotson filed an Amended Complaint changing the name of the party designated as the Respondent. Dotson's Amended Complaint changed the Respondent to "Drexelbrook Associates, Drexelbrook Apartments, & L. William Kay, II, et. al." Like the initial Complaint, the Amended Complaint alleged the April 19, 2006 notice of termination of Dotson's lease was in retaliation for Dotson having previously filed a sexual discrimination Complaint with the EEOC. Additionally, Dotson's Amended Complaint purports to state an aiding and abetting claim against L. William Kay II, (hereinafter, "Kay").

PHRC staff conducted an investigation of Dotson's Amended Complaint and found probable cause to credit Dotson's allegations. Subsequently, the PHRC and the parties attempted to eliminate the alleged discriminatory practices through conference, conciliation and persuasion. However, those efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on April 11, 2011 before Permanent Hearing Examiner Carl H. Summerson. The Complainant's case was presented by Carole D. Green, Esquire, Dotson's Mother, and the Respondents were

represented by Mark S. Halpern, Esquire. PHRC Housing and Commercial Property Division Attorney, Martin C. Cunningham, Esquire entered his appearance on behalf of the State's interest in Dotson's allegations. On June 14, 2011, Dotson submitted her post-hearing brief and on June 24, 2011, the Respondents filed their post-hearing brief.

At the outset of the Public Hearing and as the predominant feature of the Respondents' post-hearing brief, the Respondents primarily focused on the procedural question of whether Dotson's Amended Complaint named Drexelbrook Associates and Kay outside the 180-day filing period. During the Public Hearing, the Respondents renewed a Motion they had previously filed in this matter in February 2007. Then Motions Commissioner Toni Gilhooley received a Motion packet under cover letter dated April 5, 2007, and by Interlocutory Order dated April 6, 2007 denied the Respondents' Motion.

Respondents Drexelbrook Associates and Kay had argued that the first time either of them had been named as a Respondent was December 27, 2006 more than 180 days after Dotson received the notice that her lease had been terminated. Citing the case of Vintage Homes, Inc. v PHRC, 581 A.2d 1014 (Pa Cmwlth. Ct. 1990), Motions Commissioner Gilhooley denied the Motion to Dismiss because there appeared to be a close relationship between the entities named in Dotson's initial complaint and Drexelbrook Associates and Kay and because it appeared the addresses were the same.

On this last point, after the Public Hearing, it was discovered that Drexelbrook Associates and LWK Corporation do not have the same address. LWK Corporation is located several hundred yards from Drexelbrook Associates' office at 4812 Drexelbrook Drive. The evidence submitted at the Public Hearing reveals that the service of process of Dotson's initial Complaint was served at 4812 Drexelbrook Drive. Furthermore, Kay

revealed that he is both the President of LWK Corporation as well as the general partner of Drexelbrook Associates. Kay testified that Drexelbrook Associates owns LWK Corporation and rents space at Drexelbrook apartments to the catering facility, LWK Corporation. Additionally, Kay testified that he oversees the 50 to 80 LWK Corporation employees and was the operating supervisor of the entire Drexelbrook complex including the catering facility.

At the Public Hearing we also learned that, as early as August 2006, Kay became aware of Dotson's intention to bring a retaliation claim challenging Kay's action of sending Dotson the April 19, 2006 Notice of Termination of her lease. Indeed, in a letter dated August 3, 2006, addressed to LWK Corporation's attorney, who, by the way, is the same attorney for Drexelbrook Associates and Kay, Dotson's then attorney put Kay on notice of Dotson's intention to file a retaliation claim.

Revisiting the Respondent's timeliness Motion, the following factors result in the continued denial of the Respondent's renewed Motion: (1) in effect, the body of the initial Complaint and the Amended Complaint identically allege retaliation for sending Dotson a Notice of Lease Termination; (2) Drexelbrook Associates owns LWK Corporation providing a close relationship between the entities named; (3) Dotson's initial Complaint was served at the address of Drexelbrook Associates; (4) Kay had knowledge of Dotson's intention to file a retaliation claim several months before Dotson filed her initial Complaint; (5) LWK Corporation, Drexelbrook Associates and Kay are represented by the same attorney; and (6) LWK Corporation did not file a Motion to Dismiss following Dotson's initial complaint. It was not until Dotson filed her Amended Complaint that a Motion to Dismiss was filed by Drexelbrook Associates and Kay.

For the stated reasons, Dotson's Amended Complaint is properly allowed as the right entity received service and was brought within the jurisdiction of the PHRC but under the wrong corporate designation. The Amended Complaint simply corrected the name of the party that had been sued.

Turning to Dotson's allegations, although the Amended Complaint at paragraphs 10 and 15 reference Sections 5(d), 5(e) and 5(h)(1) & (3), Dotson's Amended Complaint is in effect, wholly a Section 5(d) claim. Dotson's entire claim is that Drexelbrook Associates and Kay retaliated against Dotson because she had previously filed a sexual harassment claim against LWK Corporation.

Sections 5(h)(1) makes it unlawful "[f]or any person to ... [r]efuse to lease ... or otherwise to deny ... any housing accommodation ... from any person because of race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, or to refuse to lease any housing accommodation to any person due to use of a guide animal because of the blindness or deafness of the user, use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association."

Section 5(h)(3) states in pertinent part that it is unlawful "[f]or any person to [d]iscriminate against any person in the terms or conditions of leasing any housing accommodation ... because of the race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the

handicap or disability of an individual with whom the person is known to have a relationship or association."

Clearly, Dotson's claim falls squarely under section 5(d) of the PHRA which states that "It shall be an unlawful discriminatory practice ... [f]or any person to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner in any investigation, proceeding or hearing under this act."

Dotson's allegation contends that her lease was terminated because she had filed a sexual harassment claim against her employer. She does not contend that her lease was terminated because of any other protected category. Accordingly, Dotson's Amended Complaint will be analyzed solely as a retaliation claim.

To establish a *prima facie* case of retaliation, Dotson must prove by a preponderance of evidence that: (1) she engaged in a protected activity; (2) that the Respondents knew that Dotson had engaged in protected activity; (3) that subsequent to Dotson engaging in the protected activity, the Respondents took negative action against her; and (4) that there is a causal connection between Dotson's protected activity and the negative action. See Robert Wholey Company v PHRC, 606 A 2d 982 (Pa. Cmwlth. Ct. 1992)

Here, Dotson established that in July 2003, she filed a sexual harassment claim with the EEOC thereby engaging in the requisite protected activity. She also offered proof that Kay, the general partner of Drexelbrook Associates, knew of Dotson's sexual harassment claim. Clearly, on January 9, 2006, Kay participated in a settlement conference that resulted in the settlement of Dotson's sexual harassment case. Indeed,

Kay testified that his role at the settlement conference was to give consideration to offers of settlement and provide his agreement to any settlement terms. (N.T. 176)

Next, the record is clear that Drexelbrook Associates and Kay terminated Dotson's lease with Drexelbrook Associates. On this point, Section 5(d) of the PHRA is sufficiently broad to cover Drexelbrook Associates and Kay. While Dotson's sexual harassment claim was brought against her employer LWK Corporation, Section 5(d) declares that it is not only an individual's employer who can be charged with retaliation, but "any person" can be the one charged with discrimination "in any manner" because an individual was engaged in a protected activity. Here, Dotson established that Drexelbrook Associates and Kay terminated her lease.

Finally, on the question of whether there is a causal connection, the Respondents did not mount a challenge on this point. Despite this, we observe that approximately two years and nine months lapsed between Dotson's filing of the EEOC sexual harassment claim and the April 19, 2006, lease termination notice.

Of course the closer the proximity in time between the protected activity and the adverse action, the more powerful the inference of a retaliatory motive will be. However, the passage of a substantial period of time will not necessarily result in a finding of a lack of motive if other evidence links the protected activity with the adverse action.

In the case of Coats v Dalton, 927 F Supp. 196, 72 FEP Cases 1539 (E.D. Pa. 1996), the court assessed a retaliation claim where the alleged adverse action occurred four years after the filing of an EEOC claim. In that case the court stated "... the presence of such a time lapse is not alone determinative on the issue of causation ... The time lapse should be only one consideration among many."

In a footnote in the Coats case the court noted that after a case has been filed there will be administrative proceedings and that such proceedings may be considered as evidence of a causal link. Here, without contradiction, Dotson credibly testified that at a January 9, 2006 settlement conference that attempted to conciliate her earlier filed EEOC claim, Kay's demeanor led Dotson to express concern to her lawyer that Kay might retaliate against her by terminating her lease. Of course, just over three months later, Kay did just that. Kay's demeanor at the settlement conference is not wholly unrelated to his later action. See Simmons v Camden County Board of Education, 757 F 2d 1187, 1189 (11th Cir. 1985) Here, we find a sufficient temporal proximity between Kay's demeanor at the settlement conference and his action terminating Dotson's lease.

We do observe that Dotson's testimony that Kay was angry and upset and both glared and frowned at her was contradicted by Kay's testimony. However, on this point we chose to credit Dotson's version.

The question of credibility comes up in nearly every case. This case is no different. On this question, there are several glaring discrepancies and implausibilities in Kay's testimony that result in a determination that his testimony was less than credible. First, Kay initially testified that there is a sign-in system for coming to the Drexelbrook Associates' office. (N.T. 212). Later, Kay directly contradicted his testimony saying there was no sign-in system. (N.T. 230)

Next, Kay testified that approximately five weeks before his April 19, 2006 notice of lease termination, Dotson made an unannounced visit to him by coming to his unmarked, second floor office. (N.T. 180, 211-212) Kay testified that this visit occurred on a weekday at approximately 1 PM. (N.T. 213-14, 220) Credibly, Dotson testified that she

works from 7:10 AM to 3:01 PM Monday through Friday. (N.T. 237, 238) Dotson also flatly denied that she ever visited Kay's office. (N.T. 67)

The implausibility of Kay's version of Dotson's purported visit settles who is to be believed. Kay, who is now 84 years old, testified that Dotson, a young woman, for no apparent reason, came to his office, introduced herself, and almost immediately tells Kay she would like to have sex with him. (N.T. 214, 225) When asked the specifics of what Dotson said, Kay offered that he could not recall. (N.T. 214) We find that he could not recall for the simple reason that there had been no such visit and Dotson had never made such an overture.

Collectively, these discrepancies lead to the conclusion that much of Kay's testimony was not credible. Conversely, Dotson's testimony appeared honest and forthright and is deemed to have been wholly credible.

With this fundamental credibility determination having been made, we turn to Drexelbrook Associates' and Kay's articulation of their legitimate non-discriminatory reason for the termination of Dotson's lease. In this regard, Kay offered that Dotson's lease was terminated approximately five weeks after Dotson sexually propositioned him in his office.

Beyond finding Kay's version improbable, we also observe that Kay's testimony was inconsistent with respect to with whom he purportedly shared the story of Dotson coming to his office. At first, Kay testified that he did not recall telling the individual he instructed to activate Dotson's lease termination his reason for taking such action. (N.T. 186) In his deposition, Kay indicated that he had told Drexelbrook Associates' Controller, Tony Angelucci, the reason he was terminating Dotson's lease. (N.T. 207) Kay's

deposition testimony finds Kay saying he also told Ted Gill the reason because Ted Gill would be the one to initiate the lease termination action. (N.T. 208) In one breath, Kay indicated he told no one and in another breath, he indicates that he told several individuals. This additional inconsistency simply adds to Kay's lack of credibility.

Indeed, Kay was acutely aware of Dotson's EEOC claim and was the direct catalyst for the termination of Dotson's lease. Further, before terminating Dotson's lease, Dotson had lived at the Drexelbrook apartments for approximately 11 years without incident.

Finding the articulated reason for terminating Dotson's lease to be pretextual, we find that the actual motivation for the lease termination was retaliation for Dotson's sexual harassment claim and Kay's knowledge of having to reach a settlement of that claim.

Accordingly, we turn to the issue of appropriate damages. As previously indicated, this is not a Section 5(h) claim. Instead, Dotson's claim is solely a retaliation claim. As such, we are guided by Sections 9(f)(1) and 9(f.1) of the PHRA. Section 9(f)(1) states 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 findings of fact, and shall issue a 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, compensation for loss of work in matters involving the complaint, ...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(d), ... where the underlying complaint is 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 purpose of this act, and including a requirement for report of the manner of compliance.

Although Dotson presented evidence that Kay's actions humiliated and embarrassed her, such damages are unavailable here. The "underlying complaint" to Dotson's retaliation claim is her sexual harassment claim, and allegation emanating from Section 5(a) of the PHRA, not a housing claim under Section 5(h). Accordingly, the evidence presented here, upon which an award can be based, was Dotson's "reasonable out-of-pocket expenses." We will review this evidence momentarily, but first, Dotson also seeks a recovery of attorney fees and costs. On this point, Section 9(f.1) is instructive. Section 9(f.1) states in pertinent part:

> If, upon all the evidence at the hearing, in those cases alleging violation of Section 5(d) ... where the underlying complaint is a violation of Section 5(h) ..., the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney fees and costs to prevailing complainants.

Once again, Dotson's "underlying complaint" is her sexual harassment complaint. As such, attorney fees and costs may not be awarded here.

Accordingly, we return to Dotson's evidence of her out of pocket expenses. First, in both her Public Hearing testimony and her post-hearing brief, Dotson submits that upon her lease being terminated, she found an apartment that was more expensive. Dotson submits that she paid a higher rent for the 27-month period from June 2006 until September 2008. While a tenant at Drexelbrook, Dotson paid $725.00 per month. The rent for Dotson's new apartment at LaMaison was $960.00 a month for a difference of $235.00 per month.

The Respondents generally argue that Dotson could have found a less expensive apartment that was closer to Dotson's job. Additionally, the Respondents argue that Drexelbrook did not have a swimming pool but LaMaison did.

The evidence in this case reveals that at the time of Dotson's receipt of the notice of termination, Dotson began to search for a comparable apartment. Further, at the time, Dotson was not only teaching high school, she was also anxious about making final preparations to take several students to Spain in July 2006. Dotson credibly testified that her time was at a premium, (N.T. 134) and that when she did move, she was under stress. (N.T. 100)

As far as the Respondents' argument about LaMaison having a pool, the evidence reveals that at one time, Drexelbrook also had a pool. However, Drexelbrook's pool was filled in to make room to construct a catering facility. (N.T. 135)

Under the circumstances, Dotson should be awarded the following amount, which represents the difference in rents between LaMaison and Drexelbrook between June 2006 and September 2008.

- (27 months at $265.00 per month = $7,155.00)

Additionally, Dotson credibly testified that she incurred moving expenses in the amount of $777.50 ($627.50 to move the majority of her furniture and an additional $150.00 to move her sofa.) Dotson should be awarded these out-of-pocket moving expenses.

Next, Dotson testified that she seeks $240.00 to reimburse her for cleaning her Drexelbrook apartment. This too should be awarded to Dotson.

Finally, Dotson seeks the costs for driving an additional nine miles to work. When living at Drexelbrook, Dotson drove two miles round trip, five days a week to her high school teaching job. When Dotson moved to LaMaison, her round trip to school was 20 miles. In C.E. 7(a) and in her post-hearing brief, Dotson submits that the periods of time she had to drive an additional 18 miles a day was the 17-week period from September 2006 through December 2006, and the 38-week period from September 2007 through June 2008. Despite the Respondents' argument that Dotson could have found a closer apartment, we find that it is appropriate to award Dotson her costs to drive an additional 18 miles for 55 weeks. We calculate this award as follows:

- 55 weeks x 5 days = 275 days x 18 miles = 4,950 miles
- 4,950 miles x $0.50 per mile = $2,475.00

Finally, in addition to a cease and desist order, Drexelbrook Associates and Kay should be ordered to pay interest of 6% calculated from October 2006, when Dotson's Complaint was initially filed until the out-of-pocket expenses award is paid.

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

INGRID DOTSON, **Complainant**	:	
v.	:	**PHRC Case No. 200602267**
DREXELBROOK ASSOCIATES and L. WILLIAM KAY, II, **Respondent**	:	

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in this case, the Permanent Hearing Examiner concludes that Drexelbrook Associates and Kay did unlawfully discriminate against Dotson by terminating her lease in retaliation for Dotson having filed a sexual harassment claim. Drexelbrook Assoociates' and Kay's action was in violation of Section 5(d) of the Pennsylvania Human Relations Act. Accordingly, it is recommended that the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion be adopted by the full Pennsylvania Human Relations Commission.

July 8, 2011
Date

Carl H. Summerson, Esquire
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

INGRID DOTSON, **Complainant**	:	
v.	:	**PHRC Case No. 200602267**
DREXELBROOK ASSOCIATES and L. WILLIAM KAY, II, **Respondent**	:	

FINAL ORDER

AND NOW, this 25th day of July, 2011 following review of the entire record in this case, including the transcript of testimony, exhibits, briefs, and pleadings, the Pennsylvania Human Relations Commission herby approves the foregoing Stipulations of Facts, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further the Commission adopts the Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion into the permanent record of the proceeding, to be served on the parties to the Complaint and hereby

ORDERS

1. That Drexelbrook Associates and Kay shall cease and desist from retaliation against anyone because they have filed a discrimination claim.

2. Drexelbrook and Kay shall jointly and severally pay Dotson within 30 days of the effective date of this Order, the lump sum of $10,647.50, which amount represents Dotson's out-of-pocket expenses enumerated as follows:

   a. $7,155.00 difference in rent between Drexelbrook and LaMaison

   b. $ 755.50 moving expenses

   c. $ 240.00 cleaning expenses

   d. $2,475.00 extra commuting expenses

3. In addition, Drexelbrook Associates and Kay shall jointly and severally pay Dotson interest of 6% per annum on the amount specified in paragraph 2 above, calculated from October 2006 until such time as payment is made.

4. Within 30 days of the effective date of this Order, Drexelbrook Associates and Kay shall report on the manner of compliance with the terms of this Order by letter addressed to Martin C. Cunningham, Esquire at the Commission's Central Office, 301 Chestnut Street, Suite 300, Harrisburg, PA 17101.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____
Gerald S. Robinson, Esquire
Chairman

Attest:

_____
Daniel D. Yun
Secretary