

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

---

<b>Paige Cole,</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>PHRC Case No. 202102052</b>
	:	
<b>Todd Toms,</b>	:	<b>HUD Charge No. 03-22-0964-8</b>
<b>All Star Property Management and</b>	:	
<b>Renovations,</b>	:	
<b>Respondents</b>	:	

---

**STATEMENT OF THE CASE  
FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
RECOMMENDATION OF PERMANENT HEARING EXAMINER  
FINAL ORDER**

## STATEMENT OF THE CASE

TAMARA SHEHADEH-COPE, PERMANENT HEARING EXAMINER. A public hearing was held in this matter in York, Pennsylvania, on March 23, 2023. Complainant Paige Cole filed a complaint in PHRC Case No. 202102052 on March 14, 2022, against Respondents Todd Toms and All Star Property Management and Renovations. The Complaint alleges that Respondent has denied or otherwise made dwellings unavailable because of sex; discriminated in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex; Made statements with respect to the rental of dwellings that indicate a preference a limitation or discrimination based on sex; and coerced, intimidated, threatened or interfered with persons in the exercise or enjoyment of their rights granted or protected by the Fair Housing Act. Respondent Todd Toms filed a timely answer denying the allegations set forth by the Complainant. No one appeared on behalf of the Respondent at subsequent prehearing conferences, nor at the public hearing held in this matter.

## FINDINGS OF FACT<sup>1</sup>

1. The Complainant herein is Paige Cole, a female (hereinafter “Cole”).
2. The Respondents herein are Todd Toms and All Star Property Management & Renovations (hereinafter “Toms”). Toms is the manager of the property located at 330 Sycamore Lane, Hanover, PA 17331. Tr. 19. All Star Property Management & Renovations is a business run by Mr. Toms and his family. Tr. 38; C.E. 2.
3. Cole is employed as a subcontractor for PDJ Entertainment, where she has worked for approximately 9 years. Tr. 15.
4. On or about November of 2021, Cole was looking for new housing in order to be closer

---

<sup>1</sup> Abbreviations

Tr.= Hearing Transcript

C.E.= Commission Exhibit

to her job in Harrisburg. *Id.*

5. At the time, Cole resided approximately 2 hours away from her place of employment, and she sought to move approximately 30 to 45 minutes away from her place of employment. Tr. 15, 16.
6. Cole searched and found an advertisement for the property located at 330 Sycamore Lane on Facebook Messenger. Tr. 16,17.
7. Cole identified Toms as the individual who had posted the advertisement on Facebook messenger. Tr. 17.
8. On or about November 7, 2021, Cole contacted Toms about the property at 330 Sycamore Lane via Facebook messenger. Tr. 19, C.E. 3. Toms indicated that the apartment was still available. Tr. 19.
9. Toms asked Cole additional questions, including how many people would reside in the apartment, her credit score, whether she had any pets, and whether she smoked. Tr. 19, 20; C.E. 3. Cole provided answers to all his questions.
10. Toms informed Cole that he would need to know her credit score before scheduling a showing. Cole stated that she thought her score to be approximately 520. Tr. 20; C.E. 3.
11. Toms and Cole proceeded to schedule a tentative date through Facebook Messenger chat. On November 10, 2021, Toms inquired about Cole's employment and questioned whether she could afford the apartment on her own, as he had typically rented the apartment to couples before. Tr. 21; C.E. 3.
12. Cole informed Tom that she was a subcontractor for PJD entertainment and owned a small costuming business. She also stated that she was a property owner in another state and could afford to rent. She asked Toms whether it would be a problem that she would

be renting on her own. Tr. 22; C.E. 3.

13. Toms responded by asking whether Cole was a “private party stripper”. *Id.* Toms also asked whether Cole was employed at Savannah’s, a local adult entertainment club. C.E.3. Cole again stated that she was a subcontractor for PJD entertainment and not a “private party stripper”, further explaining that she made that distinction to avoid assumptions and prejudice by others. Tr. 23; C.E. 3.
14. Cole testified that she felt “annoyed”, and as if her answer was not enough for Toms. Tr. 23.
15. During their conversation, Toms also referred to Cole’s body, and the “sexy pics” on her Facebook profile. C.E. 3.
16. Cole and Toms scheduled a time for Cole to view the apartment on or about November 27, 2021. Tr. 24. Toms did not express concerns about Cole’s credit score at the viewing. Tr. 24. Cole testified that Toms asked several times at the showing whether others would also be occupying the apartment, and that any men that would be living there would have to be cleared by him. Tr.29.
17. In a subsequent message via Facebook Messenger, Toms stated that he was “leaning towards” renting to Cole over any other potential candidates. Tr. 23, 24.; C.E. 3.
18. During that same Messenger exchange, Toms asked Cole about the types of men she is normally attracted to. C.E. 3.
19. Toms then expressed concern about renting to Cole because he is “crazy attracted” to her, and it might cause problems. C.E. 3. Cole testified that she felt “disgusted” and “embarrassed”, having never heard anything like this from a potential landlord or stranger before. Tr. 27.

20. When Cole asked whether Toms was not going to rent to her, Toms proposed that Cole instead "...Move in with [Toms]. Pay almost nothing. And save [Cole's] money." C.E. 3.
21. Cole testified that this proposition made her feel "disgusted" and "scared", and feeling like her occupation gave the impression that she was a person she was not. Tr. 28. Cole also testified her view of the proposition as implying the provision of sexual favors in lieu of paying rent. Tr. 31.
22. When Cole requested confirmation that Toms would not rent to her, he stated that the "guy who lives in the basement would probably lose his mind over [Cole]", and while acknowledging that this would be unfair to Cole, Toms did not need the potential problems that could result. Tr. 31; C.E. 3. Cole testified that there was no mention of other occupants in the original advertisement for the property, and that she felt scared about the possibility that the man in the basement would come upstairs while she was living on the property. Tr. 32.
23. Cole then referred to Toms' reasons as "disgusting" and "ridiculous" and stated that he did not want to rent to her because she was "too good looking" and he was "too attracted to [Cole]". Tom replied that he was also not renting to her due to her poor credit and that he would not be able to verify income. Tr. 33, 34; C.E. 3.
24. Cole testified that she did not believe this excuse, that Toms was aware of her credit score before deciding to show the apartment, and that he never attempted to verify her income even when both she and her employer offered to provide information to verify her income. Tr. 34.
25. Cole testified that she felt "angry and upset" at what she viewed as excuses provided by Toms because she did not accept the offer to move in with him. Tr. 35. She further

testified to feeling “discouraged” and “embarrassed”. Tr. 36.

26. Cole testified that had she been able to rent the property from Toms, she would be residing closer to work, making for a shorter commute and higher income due to the ability to pick up additional shifts. She would also not need to pay \$150 weekly for a dog sitter. *Id.*
27. Cole further testified that her experience with Toms has affected future attempts at finding housing. Due to Toms’ conduct, Cole does not go to view a potential property without the presence of another male, which has been difficult due to her friends working long hours. *Id.* Cole also fears disclosing information related to her employment to potential landlords, fearing judgment or the treatment she received by Toms. Tr. 37. Cole also testified that she has been discouraged from finding housing because of the fear of experiencing something similar to what she experienced with Toms. *Id.*
28. As a result of what happened with Toms, Cole testified to feeling “extremely uncomfortable” around landlords and has had to cancel numerous appointments due to the fear of going to see an apartment alone. Tr. 37.
29. Cole filed a verified Complaint with the Pennsylvania Human Relations Commission (PHRC) at PHRC Case Number 202102052 on or about March 14, 2022. C.E. 1.
30. Respondent Toms filed an Answer in the form of a letter on or about July 25, 2022. C.E. 2.
31. A Public Hearing in this matter was held on March 23, 2023, in York, Pennsylvania. Tr. 1.
32. Respondent Toms did not attend the public hearing despite having been properly served notice of the hearing. Tr. 7, 8.

## **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 in this case.
3. Paige Cole (Cole), is a person within the meaning of the Pennsylvania Human Relations Act (PHRA).
4. Todd Toms and All Star Property Management and Restorations (Toms), is a person within the meaning of the PHRA.
5. The property located at 330 Sycamore Lane is a housing accommodation within the meaning of the PHRA.
6. To establish a prima facie case of refusal to lease a housing accommodation on the basis of sex, Cole must show:
  - a. She is a member of a protected class;
  - b. She applied for and was qualified to rent the dwelling;
  - c. Her application was rejected; and
  - d. Additional evidence exists indicating discriminatory intent.
7. Cole has not established a prima facie case of discrimination for refusal to rent property on the basis of sex.
8. To establish a prima facie case of discrimination on the basis of sex in the terms and conditions of leasing a housing accommodation, Cole must show:

- a. She is a member of a protected class;
  - b. She inquired about or applied for a dwelling from Toms;
  - c. Toms imposed unfavorable or less favorable terms or conditions on Cole; and
  - d. Toms did not impose such terms or conditions on similarly situated inquirers/applicants not of Cole's protected class.
9. Cole has established a prima facie case of discrimination on the basis of sex in the terms and conditions of leasing a housing accommodation.
10. To establish discriminatory statements with respect to the rental of a dwelling, Cole must establish:
- a. She is a member of a protected class;
  - b. Toms made a statement with respect to the rental of a dwelling;
  - c. The statement indicated a preference, limitation, or discrimination based on a protected class.
11. Cole has not established that Toms made discriminatory statements with respect to the rental of a dwelling.
12. To establish *quid pro quo* sexual harassment, Cole must establish:
- a. Toms requested or demanded sexual favors from Cole;
  - b. Such request or demand was unwelcome;
  - c. Cole refused Toms' request or demand;
  - d. Toms deprived Cole of housing, or altered any of the terms, conditions or privileges thereof, because of her refusal.
13. Cole has established that she was sexually harassed by Toms.



## OPINION

This case arises out of a Complaint filed by Paige Cole (Cole) against Todd Toms and All Star Property Management and Restorations (Toms). Cole's PHRC Complaint was filed on or about March 14, 2022, at PHRC Case No. 202102052. Cole's Complaint alleges that Toms has denied or otherwise made dwellings unavailable because of sex; discriminated in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex; Made statements with respect to the rental of dwellings that indicate a preference a limitation or discrimination based on sex; and coerced, intimidated, threatened or interfered with persons in the exercise or enjoyment of their rights granted or protected by the Pennsylvania Human Relations Act (PHRA).

Pennsylvania Human Relations Commission (PHRC) staff investigated the Complaint and found probable cause to credit all Cole's allegations of discrimination. The PHRC and the parties attempted to resolve the case through conference, conciliation, and persuasion. The efforts were unsuccessful, and the case was approved for a public hearing. The Public Hearing was held on March 23, 2023 in York, PA, before Permanent Hearing Examiner Tamara Shehadeh-Cope. The Commission's interest in the complaint was represented by PHRC Attorney Robert Taylor, Esq. Payton Gutierrez, Esquire, represented Cole. No one appeared on behalf of Toms. Following the Public Hearing, the parties were offered an opportunity to submit post-hearing briefs. On May 17, 2023, Attorney Taylor's post-hearing brief was received.

The PHRA makes it an unlawful discriminatory practice for any person to do the following:

Refuse to... lease... or otherwise to deny or withhold any housing accommodation... from any person because of the... sex... of any person... (PHRA, Section 5(h)(1)).

Discriminate against any person in the terms or conditions of... leasing any housing accommodation... because of the sex... of any person... (PHRA, Section 5(h)(3)).

Print, publish, or circulate any statement... relating to the... lease... of any housing accommodation... which indicates any preference, limitation, specification, or discrimination based upon... sex... (PHRA, Section 5(h)(5)).

Fundamentally, where direct evidence of discrimination is presented, such evidence, if established by a preponderance of the evidence, is sufficient to support a finding of discrimination. See *Allison v. PHRC*, 716 A.2d 689, 691 (Pa. Commonwealth Ct. 1998), citing *Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1452 (4<sup>th</sup> Cir. 1990).

In the absence of direct evidence, it is appropriate use the burden-shifting analysis set forth in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973) to establish discrimination based upon circumstantial evidence. Under this analysis, Complainant must first set forth the requisite prima facie showing of discrimination. If a prima facie case is made, the burden then shifts to Respondent to articulate a legitimate non-discriminatory reason for taking the alleged adverse action. If a legitimate reason has been sufficiently articulated, the Complainant is provided the opportunity to prove that the articulated reason is a pretext for discrimination.

### **Refusal to lease on the basis of sex and *quid pro quo* sexual harassment**

Section 5(h)(1) of the PHRA states in relevant part:

It shall be an unlawful discriminatory practice... for any person to refuse to... lease...or otherwise to deny or withhold any housing accommodation... from any person because of the... sex... of any person...

Section 5(h)(1) of the PHRA very closely resembles Section 804(a) of the Fair Housing Act (FHA) and both are grounded in similar legislative goals of anti-discrimination. Because of this, the PHRA and the FHA are interpreted in a consistent manner. Per section 12(a) of the PHRA, "The provisions of [The PHRA] shall be construed liberally for the accomplishment of

[its purposes] ... and any law inconsistent with any provisions [contained therein] shall not apply”.

The Commission can find a violation of 5(h)(1) if a Respondent refuses to rent to a Complainant based on sex. The Commission can also find a violation of 5(h)(1) based on sexual harassment. Here the Complainant alleges two violations of Section 5(h)(1); One violation by refusing to rent to her because of her sex, and a second violation based on sexual harassment via quid pro quo statements. The Commission will address these claims separately.

To establish a prima facie case of discrimination based upon refusal to lease a property, Complainant must show that (1) She is a member of a protected class; (2) She applied for and was qualified to rent or to purchase the dwelling; (3) Her application was rejected (4) Additional evidence exists indicating discriminatory intent. *Lindsay v. Yates*, 578 F. 3d 407, 415 (6<sup>th</sup> Cir. 2009). Cole has not established a prima facie case of discrimination for refusal to rent property on the basis of sex because she failed to provide additional evidence that indicates discriminatory intent.

Elements 1 and 3 are undisputed. Cole is an adult female and is in the protected class of sex. Toms admits that he did not rent to Cole and moved into the dwelling at 330 Sycamore Lane. C.E.2.

Regarding element 2, Cole provided sufficient evidence to establish that she applied for and was qualified to rent the dwelling at 330 Sycamore Lane.<sup>2</sup> Cole reached out to Toms on November 7, 2021 via Facebook messenger to inquire about the apartment, at which point Toms proceeded to ask a series of questions. Tr. 19; C.E. 3. Toms inquired about the number of people

---

<sup>2</sup> While Toms disputed that Cole was qualified to rent the dwelling in his Answer, the Hearing Examiner did not address his arguments because Cole failed to establish a prima facie case.

that would occupy the dwelling, requested a credit score, and inquired about any pets or smoking. Tr. 20; C.E. 3. Cole responded to all the questions, including disclosing her approximate credit score, and Toms proceeded to schedule a showing. Toms also indicated that there was one other potential female candidate who would also be looking at the space, and that if she did not “wow” him, then he would rent to Cole. Tr. 25. The other candidate never came to the showing. C.E. 3.

After the showing, Toms disclosed that he was leaning towards renting to Cole but had “one more question” and proceeded to ask what type of men Cole was normally attracted to. C.E. 3. Cole testified that she felt “very uncomfortable and off guard”. Tr. 27. Toms then stated, “I want to rent to you. I am just a little concerned about the fact that I am crazy attracted to you. I have never had that issue with a tenant before. That could cause problems.” Tr. 27; C.E. 27.

Complainant failed to meet her burden regarding element 4 of the prima facie case because the record points to a refusal to rent based not on Cole’s being a female, but on being a female that Toms was attracted to. Other females were not precluded from consideration for the apartment and there was no reason to believe that Toms would not have rented to other qualified female candidates. He even stated as such when discussing the other candidate that he had a showing scheduled with. Toms also admitted that his attraction to Cole was an issue that he has never had with a “tenant” before, indicating that this decision was specific to Cole and his level of attraction to her, not because Cole was a female. There was also no indication of a preference for male tenants or any evidence showing that similarly situated males would have had their applications accepted; in fact, the only reference to potential male tenants was Cole’s testimony relating to Tom’s request to clear any prospective male co-tenants by him. Tr. 29. Since Cole did not establish a prima facie case, her claim for refusal to rent on the basis of sex must fail.

The Commission finds for the Complainant on her sexual harassment claim. In order to establish a sexual harassment claim premised on *quid pro quo* in violation of Section 5(h)(1) of the PHRA and section 804(a) of the FHA, Complainant must show that (1) The Respondent requested or demanded sexual favors from the complainant; (2) Such request or demand was unwelcome; (3) Complainant refused Respondent's request or demand; and (4) Respondent deprived the Complainant of housing, or altered any of the terms, conditions, or privileges thereof, because of her refusal. *Greiger v. Sheets*, No. 87 C 6567, 1989 U.S. Dist. LEXIS 3906, at \*9-10 (N.D. Ill Apr. 7, 1989). A *quid pro quo* claim may be established by only a single incident of harassment.

After Toms admitted his concern about renting to Cole because he found her so attractive, Cole attempted to confirm the rejection of her application by asking "so you're not going to rent to me?." Toms replied with an alternative proposition, stating "How about this... Move in with me. Pay almost nothing and save your money." Tr. 28; C.E. 3. Cole testified that she interpreted this as Toms propositioning her and hinting that in lieu of paying rent, she would provide sexual favors. Tr. 31. She believed this proposition to be connected to Toms' admitted attraction to her and being a stranger, as well as judgment of her character based upon her occupation. Tr. 30, 31. The offer by Toms to Cole that she move in with him and pay almost nothing plus his statements relating to her occupation, to her looks, and his admission of attraction, is sufficient to establish that Cole would be expected to provide sexual favors in lieu of paying rent. This proposition was unwelcome and refused by Cole, who stated that she did not even know him. In response to that refusal, Toms disclosed for the first time, the existence of an additional male tenant in the basement. who would probably lose his mind over her. Thus Toms would not rent to her because of the potential problems that could result.

**Discrimination in the terms or conditions of leasing any housing accommodation on the basis of sex**

Section 5(h)(3) of the PHRA states in relevant part:

It shall be an unlawful discriminatory practice... for any person to.: discriminate against any person in the terms and conditions of... leasing any housing accommodation... because of the ... sex... of any person...”

This language closely resembles Section 804(b) of the Fair Housing Act [42 U.S.C. 3064(B)], and HUD regulations at 24 C.F.R. 100.65(b)(5) specifically note that “denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors” is a direct violation of this section. To establish discrimination in the terms or conditions of leasing any housing accommodation, Complainant must show: (1) she is a member of a protected class; (2) she inquired about or applied for a dwelling from the Respondent; (3) The Respondent imposed unfavorable or less favorable terms or conditions on the Complainant; and (4) The Respondent did not impose such terms or conditions on similarly situated inquirers/applicants not of the complainant’s protected class. *United States v. Balistrieri*, 981 F.2d 916, 929 (7<sup>th</sup> Cir 1992). There is no need to conduct further analysis, as it has been established that Toms’ behavior toward Cole constituted *quid pro quo* sexual harassment and was thus a direct violation of Section 5(h)(3) of the PHRA and Section 804(b) of the Fair Housing Act.

**Discriminatory statements relating to the lease of any housing accommodation on the basis of sex**

Section 5(h)(5) of the PHRA is modeled after Section 804(c) of the FHA, stating in relevant part:

It shall be an unlawful discriminatory practice... for any person to: Print, publish or circulate any statement... relating to the... lease... of any housing accommodation... which indicates any preference, limitation, specification, or discrimination based upon... sex.”

To establish discriminatory statements made in violation of the aforementioned relevant sections of the PHRA and FHA, Complaint must show: (1) She is a member of a protected class; (2) The Respondent made, printed, or published a notice, statement, or advertisement with respect to the sale or rental of a dwelling; (3) The notice, statement or advertisement indicated a preference, limitation, or discrimination based on a protected class. *White v. HUD*, 475 F. 3d 898, 904 (7<sup>th</sup> Cir. 2007).

We have already determined above that Toms did not discriminate against Cole on the basis of her sex but based on his level of attraction to her specifically. Similarly in this case, though Toms did make statements to Cole regarding her body and acknowledged that he was very attracted to her (and that the other tenant in the basement would also be attracted to her), there is nothing in the record to indicate that any preference expressed was based on anything other than his attraction to Cole or that he would have acted in a similar manner with anyone else in her protected class. Therefore, Complainant has not met her prima facie burden in showing that Respondent made discriminatory statements in leasing to her.

However, since Cole successfully met her burden on two claims, we move to consideration of an appropriate remedy.

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 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, and including a requirement for report of the manner of compliance.

In the post-hearing brief on behalf of the Complainant, PHRC seeks actual damages, including damages caused by the humiliation and embarrassment, as well as a civil penalty against Respondents.

We first address the out-of-pocket damages that Complainant alleges to have suffered and whether they are “verifiable, reasonable out-of-pocket expenses” per the PHRA. The function of the remedy in a discrimination case is 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, 418-19. Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim since the wrongdoer caused the damages. See *Green v. USX Corp.*, 46 FEP Cases 720 (3<sup>rd</sup> Cir. 1988).

At the public hearing, Complainant Cole testified to wanting to move to be closer to her job in Harrisburg. Tr. 16. She testified to living approximately 2 hours away from her place of employment and was looking to reside approximately 30 to 45 minutes away instead. *Id.* The dwelling at 330 Sycamore Lane was within that approximate distance. Tr. 17. Regarding damages suffered, Complainant testified that had she been able to move into 330 Sycamore Lane, she would have been able to pick up additional shifts at work and thus earn a higher income. Tr. 36. She also stated that she would have saved on mileage with the shorter commute and would not need to hire a dog sitter at a rate of \$150 per week. There are approximately 68 weeks between the date of the alleged harm



November 27, 2021 and the date of the public hearing, March 23, 2023.

We reject the contention that Cole is to be compensated for her \$150 per week expense of dog sitting. There is insufficient evidence to show whether a pet sitter would no longer have been necessary, especially considering Cole's testimony as to her intention to pick up additional shifts at work had she been able to move closer to her job.

The record shows the name and location of Cole's employer, as well as the location of Cole's residence and the residence being leased by Toms. Cole testified to earning approximately \$2,500 per week but did not testify to the number of days per week she was commuting to work. Therefore, we operate with the assumption that Cole made at least one round trip to and from work per week.

The distance between Cole's residence and her place of employment is approximately 126 miles one way (252 miles round trip). Had she been able to reside at 330 Sycamore Lane, the distance between her residence and her employer would have been approximately 39 miles (78 miles round trip), a significant difference. Accordingly, Cole's award for out-of-pocket expenses follows:

Difference in round-trip mileage = 252 miles – 78 miles = 174 miles

(Difference in miles x 2022 GSA Mileage Rate) x No. of weeks between alleged harm and public hearing = (174 miles x \$0.585= \$101.79) x 68 weeks = **\$6,921.72**

Cole also requests damages for humiliation and embarrassment and a civil penalty. The Commission addresses each of these requests below.

In determining whether the evidence of emotional distress is sufficient to support an award, we must look at both the direct evidence of emotional distress and the

circumstances of the act that allegedly caused the distress. *McGlawn v. Pa. Human Rel's. Comm'n*, 891 A.2d 757, 777, 2006 Pa. Commw. LEXIS 13, \*46 citing *United States v. Balistrieri*, 981 F.2d 916 (7th Cir. 1992).

In their post-hearing brief, Counsel for the Complainant and Counsel for the Commission allege that the Commission has not articulated a formula to be used to calculate emotional damages pursuant to the PHRA, and neither have the Pennsylvania Courts. As part of their argument, they ask the Commission to adopt the framework articulated in a Brooklyn Law Review article from 1999, entitled *Evaluating Emotional Distress Damage Awards to Promote Settlement of Employment Discrimination Claims in the Second Circuit*, 65 Brooklyn L. Rev. 393. The article divides damages into tiers, beginning with Tier One which awards between \$5,000 to \$35,000 for what is considered to be “garden variety” emotional distress- generally, vague descriptions of emotional distress unsupported by medical corroboration. Tier Two damages range from \$50,000 to \$100,000 and are awarded to the complainant who suffered significant injuries supported by medical testimony and/or witness testimony. Tier Three awards can be more than \$100,000 and are reserved for the most egregious and outrageous causes of emotional distress that have significantly impacted one’s physical and mental health and is supported by medical testimony. Counsel for the Complainant requests an award of \$75,000 in embarrassment and humiliation damages.

The challenges inherent to calculating emotional distress damages are not unique to this tribunal. Courts have held that the size of an intangible damage award is largely intuitive and is a matter over which the jury or the trial judge sitting without a jury has a great deal of discretion. *Laudon v. Loos*, 694 F. Supp. 253, 255 (E.D. Mich. 1988). In the past, the Commission has relied upon several factors set forth by other courts when calculating emotional distress damages, namely in the cases *HUD v. Jancik*, P-H Fair Hous. Fair Lend. Rptr. sec. 25,058 p. 25,561 (HUD

ALJ 1993), and *HUD v. Weber*, P-H: Fair Housing-Fair Lending Rptr. §25,041 p. 25,421 (HUD ALJ 1993). In *Jancik*, the fact finder looked at whether the Complainant suffered physically and whether the Complainant sought medical treatment. The fact finder in *Weber* considered whether the discrimination was repeated or whether the Respondent threatened violence or was violent toward the Complainant. *Weber* also recognized that the Complainant's personal history may amplify the impact of Respondent's discrimination.

These factors can easily be summarized as follows: (1) Whether complainant suffered physical harm or threat of physical harm in addition to harm to their mental health; (2) The nature of the evidence offered to describe the harm (e.g. testimony by the Complainant, testimony by others, expert testimony); (3) Whether Complainant sought or otherwise received treatment for the injury; (4) Whether the discrimination was a single act or was ongoing; and (5) Whether the complainant was particularly susceptible to being injured by discrimination due to their personal history. These factors considered by the Commission are not an exclusive list.

Here, the emotional distress experienced by Cole is well supported by her credible testimony. Cole testified to feeling "disgusted and embarrassed" when Toms admitted to being "crazy attracted" to her. Tr. 27. When he added to that the proposition of having Cole move in with him, she testified to feeling "disgusted" and "scared", never having experienced such treatment from someone she considered to be a stranger. Tr. 28. At one point during the public hearing, Cole appeared to be visibly upset, and when asked whether she needed a moment or a tissue, she stated that recounting the story was "very embarrassing for me". Tr. 30. Cole further testified that what happened with Toms ultimately affected her housing search. Because of Respondent's conduct, Cole testified to needing to make sure a male friend is present when she goes to look for housing. Tr.

36. Per Cole, this has complicated her home search because she is dependent on her friends' schedules and many work long hours. *Id.* She also testified to being afraid of disclosing her occupation to potential landlords because she fears judgment and treatment akin to the way Toms treated her. Tr. 37. Overall, because of what she experienced with Toms, Cole is now "extremely uncomfortable" around landlords, and has felt discouraged from looking for a new place to live out of the fear that she would have to go through a similar experience again. *Id.*

Upon review of the aforementioned factors set forth, the Commission finds that there was no additional corroborating evidence provided that would support an award at the level requested by Complainant. The discriminatory treatment was not ongoing, as Respondent ceased contact with Complainant after the November 27, 2021 conversation. There was no testimony relating to having received treatment relating to her physical or mental health. No additional witness testimony was provided other than Cole's despite having had others accompany her to seek housing after what happened with Toms. Despite lack of additional medical or witness testimony, it is apparent that what Cole experienced was distressing and has had a lasting and continuing negative impact on her life.

Fundamentally, it must be recognized that a damage award can never fully compensate a victim of discrimination and that it is inherently difficult to measure an amount which will ease a victim's feelings and experiences of embarrassment and humiliation. Our task is to seek to make an appropriate transformation of Cole's general qualitative testimony into quantitative relief. Therefore, considering the record as a whole, it is reasonable and fair to award Cole \$28,000 for the embarrassment and

humiliation she suffered.

Calculation of total damages, including a grant of the 6% interest requested by

Complainant follows:

Actual Damages=     \$6,921.72 + \$28,000 =     **\$34,921.72**

6% Interest=         \$34,921.72 \* 6% =         + **\$2,095.30**

---

**TOTAL                    =         \$37,017.02**

In turning to the civil penalties requested by Counsel for the Commission, Section 9(f)(2) of the PHRA provides in pertinent part:

Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Sections 5(h) or 5.3 of this Act: (i) in an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice...”.

When determining the amount of the civil penalty, the factors to consider are: "the nature and circumstances of the violation, the degree of culpability, any history of prior violations, the financial circumstances of that Respondent and the goal of deterrence, and other matters as justice may require." *HUD v. Weber*, P-H, Fair Hous.Fair Lend., §25,041 (HUD ALJ, 1993). Here, the evidence establishes that Toms acted in a discriminatory manner when he sexually harassed Cole and discriminated in the terms and conditions of leasing to Cole because of her sex. Further, aside from filing an answer with the Commission, Toms refused to partake in any part of the public hearing process. He failed to appear at pre-hearing conferences, and no one appeared on his behalf at the public hearing. Not only did this not allow the Hearing Examiner to properly discern his financial circumstances, but this blatant disregard for Complainant’s experience, the PHRC adjudicatory process and the ultimate administration of justice is one that should

be penalized with the goal of deterring similar behavior in the future. As such, seeing as there is no known record of past transgressions by Respondent, the maximum amount of \$10,000.00 is an appropriate amount for the civil penalty.

An appropriate order follows:

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

---


<b>Paige Cole,</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>PHRC Case No. 202102052</b>
	:	
<b>Todd Toms,</b>	:	<b>HUD Charge No. 03-22-0964-8</b>
<b>All Star Property Management and</b>	:	
<b>Renovations,</b>	:	
<b>Respondents</b>	:	

---

**RECOMMENDATION OF THE PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Complainant has proven that Respondent sexually harassed and refused to lease property to her in violation of Section 5(h)(1) of the PHRA. Complainant has also proved that she was discriminated against in the terms and conditions of leasing housing in violation of Section 5(h)(3) of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

BY:   
\_\_\_\_\_  
**Tamara Shehadeh-Cope**  
**Permanent Hearing Examiner**

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

---

<b>Paige Cole,</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>PHRC Case No. 202102052</b>
	:	
<b>Todd Toms,</b>	:	<b>HUD Charge No. 03-22-0964-8</b>
<b>All Star Property Management and</b>	:	
<b>Renovations,</b>	:	
<b>Respondents</b>	:	

---

**FINAL ORDER**

AND NOW, this 18th day of September, 2023, 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 approved 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**

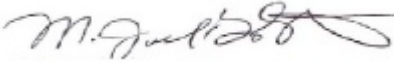
1. That Todd Toms (Toms) cease and desist from sexually harassing anyone and otherwise acting in a discriminatory manner against anyone seeking to lease a property from him.
2. That, within forty-five (45) days of the effective date of this Order, Toms shall pay Paige Cole (Cole) the lump sum of \$37,017.02, which amount represents out of pocket expenses and compensatory damages representing the embarrassment and humiliation Cole suffered, plus an additional interest of 6%.
3. That, within forty-five (45) days of the effective date of this Order, Toms shall deliver to




PHRC Counsel, Robert Taylor, a check payable to the Commonwealth of Pennsylvania, in the amount of \$10,000.00, which represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.

4. That, within 30 days of the effective date of this Order, Toms shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Robert Taylor, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 301 Fifth Avenue, Suite 390, Pittsburgh, PA 15222.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**BY:**   
**M. Joel Bolstein**  
**Chairperson**

**ATTEST:**

**By:**  O/B/O Commissioner Mayur Patel  
**Mayur Patel, Secretary**