

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

<b>Emma Gonzalez,</b>	:	
<b>Complainant</b>	:	
	:	<b>PHRC Case No. 202101248</b>
<b>v.</b>	:	<b>HUD Case No. 03-22-9915-8</b>
	:	
<b>1952 Allegheny Associates LP,</b>	:	
<b>Respondent</b>	:	

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

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**STATEMENT OF THE CASE**

Darlene Hemerka, Permanent Hearing Examiner. A public hearing was held in this matter in Philadelphia, Pennsylvania, on May 16, 2024. Complainant Emma Gonzalez filed a Complaint in PHRC Case No. 202101248 on November 8, 2021, alleging that the Respondent discriminated against her because of her color and national origin. The Complaint was dual filed with HUD. Specifically, Complainant alleged that on or about August 25, 2021 Respondent denied her transfer request because of her color and national origin; Hispanic, and that upon information and belief Respondent allowed other tenants outside Complainant’s protected class to transfer. Additionally, Complainant alleged that on or about August 25, 2021, Respondent’s maintenance staff called her a “sp-c” and “light skin” because two of her children are half white and that she reported the maintenance staff to Respondent, but Respondent did nothing to address her complaints. In May 2022, Complainant filed an Amended Complaint with a PHRC case caption, containing the same allegations as the Complaint filed on or about November 8, 2021. On August 28, 2023, the Commission issued an Order finding Respondent liable for the alleged discrimination in the Complaint because Respondent failed to answer. No one appeared on behalf of the Respondent at subsequent pre-hearing conferences, nor at the public hearing on damages held in this matter.

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

1. On or about November 8, 2021, Emma Gonzalez (Complainant or Gonzalez) filed a Complaint with the Pennsylvania Human Relations Commission (Commission or PHRC) at PHRC case number 202101248, in which she alleged that 1952 Allegheny Associates, LP (Respondent) discriminated against her because of her color and national origin; Hispanic. Housing and Urban Development (HUD) referred the case to PHRC. See C.E. 1 page 5-6.
2. Respondent was served at multiple addresses but failed to answer the Complaint.
3. On or about May 11, 2022, Complainant filed an Amended Complaint with a PHRC case caption, containing the same allegations as the Complaint filed on or about November 8, 2021. See C.E. 1 pages 1-4.
4. On or about July 11, 2023, Commission staff filed a Petition for Rule to Show Cause.
5. On or about July 13, 2023, the Commission issued a Rule to Show Cause.
6. As a result of Respondent's failure to answer, on or about August 28, 2023, the Commission ordered a Finding of Probable Cause and Judgment for Complainant on the issue of liability. C.E. 3.
7. In a letter dated October 3, 2023, the Commission invited Respondent to a Conciliation Conference on October 17, 2023.
8. Conciliation failed on October 17, 2023.
9. The instant case was placed on the Public Hearing Docket on October 17, 2023.
10. A Public Hearing was held in Philadelphia, PA on May 16, 2024.

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<sup>1</sup> Abbreviations

Tr.= Hearing Transcript

C.E.= Commission Exhibit

11. Complainant rented an apartment from Respondent at 1940 Allegheny Avenue, Philadelphia, PA for approximately four years. Tr. 16.
12. Respondent's maintenance workers did not like Gonzalez because she made a complaint about them selling and using drugs on the property. Tr. 17, 20.
13. Respondent's maintenance workers subjected Gonzalez and her family to repeated name-calling, using racial slurs such as "spic," "light-skinned" and "snowflake." Tr. 18.
14. Gonzalez reported the incident to Respondent's property manager, but nothing was done. Tr. 33.
15. As a result of the treatment she was experiencing, Complainant asked Respondent for a transfer to another one of its properties. Tr. 34-5.
16. Respondent initially approved her request for a transfer, but then denied the request in August 2021. Tr. 36.
17. The situation exacerbated Complainant's depression, and anxiety. Tr. 38.
18. In August 2022, Gonzalez moved out of Respondent's property at 1940 Allegheny Avenue. Tr. 43.
19. Complainant incurred approximately \$400 in moving expenses, including a truck rental, packing supplies, and a new refrigerator. Tr. 43.
20. After moving out of Respondent's property, Gonzalez lived in two apartments prior to her current residence. Tr. 44.

## 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. 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.
4. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
5. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
6. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the 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.
7. In this matter, Respondent's failure to answer or respond to a Rule to Show Cause resulted in the entry of a judgment for Gonzalez on the issue of liability.
8. The Complaint must set forth the particulars of the discriminatory practice. 43 P.S. § 959
9. In a housing discrimination case, the PHRC may award actual damages, including out-of-pocket expenses and damages caused by embarrassment and humiliation. 43 P.S. § 959(f)(1).

10. Embarrassment and humiliation damages encompass claims of emotional distress. See *McGlawn v. Pa. Human Rels. Comm'n*, 891 A.2d 757, 777 (Pa. Commw. Ct. 2009).
11. Complainant has established that she is entitled to damages for emotional distress.
12. This purpose is not only to restore the injured party to her pre-injury status and make her whole, but also to discourage future discrimination. *Williamsburg Cmty. Sch. Dist. v. Pa. Human Relations Comm'n*, 512 A.2d 1339, 1342 (Pa. Commw. Ct. 1986).
13. The PHRC may assess a civil penalty against Respondents of up to \$10,000.00 if a Respondent has not been adjudged to have committed a prior discriminatory practice. 43 P.S. § 959(f)(2)(i)

## OPINION

This case arose out of a Complaint filed by Emma Gonzalez, (Gonzalez or Complainant) against her former landlord, 1952 Allegheny Associates LP (Respondent). The case was transferred to the Pennsylvania Human Relations Commission (PHRC or Commission) by Housing and Urban Development (HUD). In her Complaint, Gonzalez alleged that Respondent discriminated against her because of her color and national origin, Hispanic. Specifically, Complainant alleged that on or about August 25, 2021, Respondent denied her a transfer because of her color and national origin and that upon information and belief Respondent allowed other tenants outside Complainant's protected class to transfer. Additionally, Complainant alleged that on or about August 25, 2021, Respondent's maintenance staff called her a "spic" and "light skin" because two of her children are half white and that she reported the maintenance staff to the property manager, but nothing was done to address her complaints.

On May 11, 2022, Gonzalez filed an Amended Complaint with a PHRC case caption, containing the same allegations as the Complaint filed on or about November 8, 2021. See C.E. 1 pages 1-4. By correspondence dated July 11, 2023, the PHRC's Philadelphia regional office petitioned for a Rule to Show Cause, indicating that Respondent had not answered Gonzalez's Complaints. The petition declared that Respondent had been served with Gonzalez's Complaint on November 16, 2021 and the Amended Complaint on May 12, 2022.

On August 28, 2023, the PHRC found probable cause and entered judgment for Gonzalez on the issue of liability. After the finding of liability in this case, conciliation efforts were unsuccessful. 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 in Philadelphia on May

16, 2024, before Permanent Hearing Examiner Darlene Hemerka. Stacy McNaney, Esquire, appeared on behalf of Gonzalez. No one appeared on behalf of the Respondent.<sup>2</sup> Since liability attached because Respondent failed to respond to the Complaints, the only question at the public hearing was what damages, if any, Gonzalez could establish. PHRC filed a post-hearing brief on behalf of Gonzalez in July 2024.

Section 9(f) 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, hiring, reinstatement...with or without back pay...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice...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 filed on behalf of the Complainant, PHRC sought out-of-pocket expenses, damages caused by the humiliation and embarrassment, as well as a civil penalty against Respondent. PHRC sought the following amounts: \$4,926.88 for out-of-pocket expenses; \$100,000.00 for emotional distress; and \$10,000.00 for a civil penalty. The Commission analyzes each of these requests below.

As a starting point for considering what damages if any Gonzalez established, it is necessary to address two inconsistencies between what Complainant alleged in the Complaints and what she testified to at hearing. One inconsistency involves the number of discriminatory incidents that occurred. The second inconsistency is the reason Respondent’s maintenance workers discriminated against Complainant.

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<sup>2</sup> The Office of the Hearing Examiner ordered the Commission to personally serve Respondent with multiple documents in this case including the Order scheduling the public hearing.



There were only two claims of discrimination in the Complaints. The first was that on or about August 25, 2021 Respondent denied her a transfer because of her color and national origin, Hispanic, and that upon information and belief Respondent allowed other tenants outside Complainant's protected class to transfer. The second allegation was that on or about August 25, 2021, Respondent's maintenance staff called her a "sp-c" and "light skin" because two of her children are half white and that she reported the maintenance staff to Respondent, but Respondent did nothing to address her complaints.

Yet, at hearing, Complainant testified to numerous other incidents including her car being vandalized, being threatened by a maintenance worker and being jumped by five women and one man. In its post-hearing brief, the PHRC requests that these incidents be considered when determining the amount for damages. The Commission finds it inappropriate to consider these other events when awarding damages because the PHRA requires that a complaint set forth the particulars of the discriminatory practice. 43 P.S. § 959.

The second inconsistency is the reason Respondent's maintenance workers called Gonzalez names. The Complaints alleged that the maintenance workers called Gonzalez names because of her color and national origin. C.E.1. However, at hearing, when Gonzalez was asked why she thought [the maintenance workers] called her names and whether she thought it had to do with her children being mixed [race], Gonzalez testified, "I believe they just didn't like – they didn't like me ever since I snitched on them. Told what they were doing." Tr. 20. It was only after Gonzalez's attorney interrupted her testimony and asked, "But do you think it was also, was it due just because of that or because of the fact that you were Hispanic and your children were mixed," that Gonzalez testified "I believe so, because I was the only Hispanic and my kids were

the only white people there.” Tr. 21. The Commission finds this testimony insufficient to establish that Gonzalez is entitled to damages for discrimination on the basis of color or national origin regarding the claim about name-calling.

Since the Commission has already found the Respondent liable for discrimination regarding the transfer and the testimony at hearing was not inconsistent with this finding, we turn to appropriate damages for this claim. 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).

Gonzalez requests damages for her tires caused by the Respondent’s maintenance workers. However, the Commission once again finds that Complainant is not entitled to damages for the actions by the maintenance workers since the actions were not connected to Complainant’s national origin or color.

Regarding other out of pocket expenses, Gonzalez testified that she incurred the following moving expenses: \$140.00 for a U-Haul, \$200.00 for a fridge and \$45.00 for boxes. Tr. 43-4. Gonzalez also requests damages for increased rent between her current apartment and what she was paying while living at Respondent. However, Complainant testified that she moved to two residences before her current apartment. Tr. 44. She did not testify regarding her monthly rent at these places. The Commission finds Complainant is not entitled to an award for the rent increase because of the intervening apartments. Finally, Gonzalez requests interest at a rate of 6% for her out-of-pocket

expenses. The Commission finds that this request is reasonable. Thus, Complainant is entitled to interest on her out of pocket expenses.

The question of mitigation of damages lies with the sound discretion of the Commission. *Albert Einstein Med. Ctr. v. Pa. Human Relations Comm'n*, 486 A.2d 575, 576 (Pa. Commw. Ct. 1985). It is Respondent's burden to establish that Complainant failed to mitigate her damages to limit Complainant's entitlement to an award. *Raya & Haig Hair Salon v. Pa. Human Relations Comm'n*, 915 A.2d 728, 735 (Pa. Commw. Ct. 2007). A duty to mitigate is met even if Complainant could have more aggressively searched for housing. See *Merrell v. Chartiers Valley School District*, 51 A.3d 286, 298 (Pa. Commw. Ct. 2012). The Commission must look to the context to determine whether Respondent has established that Complainant acted unreasonably in mitigating damages. In this case, Respondent failed to appear at the Public Hearing or offer any evidence that Complainant failed to mitigate her damages. Based upon the record, the Commission finds that Gonzalez is entitled to the following award for out-of-pocket expenses:

Moving expenses	\$385.00
Interest at 6%	23.10
<b>Total</b>	<b>\$408.10</b>

Gonzalez also requests damages for humiliation and embarrassment which encompasses emotional distress. Calculating emotional distress damages is difficult and 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). The main factors that the Commission considers when determining the amount for emotional distress are 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 are not an exclusive list.

Regarding the first factor, while Gonzalez testified credibly to being both physically harmed and threatened with physical harm, neither of these incidents were alleged in the Complaints or caused by the Respondent's discriminatory conduct of denying Gonzalez's transfer request. Therefore, this factor weighs in favor of awarding Gonzalez a lower amount.

Considering the second factor which is the nature of the evidence offered to describe the harm, the Commission finds that this factor weighs in favor of Gonzalez receiving a significant award. Not only did she testify credibly, but her friend, Anthony Laumeister, also testified about the impact the Respondent's denial of the transfer had on Complainant. Lauminster testified that he was with Complainant when Respondent denied her transfer request and that she was "sad" and "depressed." Tr. 52. He also testified how he had to sometimes buy groceries and stuff because Gonzalez wouldn't leave the house. Tr. 53. Lauminster also testified about Gonzalez having suicidal thoughts. *Id.*

Gonzalez also presented a letter from her doctor. C.E. 8. The letter specified some of the ways Gonzalez's living situation was negatively impacting her medical conditions such as worsening her depression and anxiety and increasing her blood pressure. *Id.* The doctor's note requested that Respondent transfer Gonzalez to another property. Gonzalez got the letter to see if Respondent could "speed up the transfer." Tr. 42. Despite this letter, Respondent denied the transfer.

The third factor of whether Gonzalez sought treatment also weighs in favor of granting Gonzalez a higher award. Not only did Gonzalez introduce a note from her doctor at the hearing she also testified that the doctor “started giving her medicine for her depression and anxiety for the time being.” Tr. 41.

Turning to the fourth factor: whether the discrimination was a single act or ongoing, the record establishes that the denial of Gonzalez’s transfer request was a single act. The Complaints allege that Respondent denied Gonzalez’s transfer on or about August 25, 2021. C.E. 1.

Regarding the fifth factor: whether the complainant was particularly susceptible to being injured by discrimination due to their personal history, Gonzalez was susceptible to suffering emotional distress from discrimination because of her history of anxiety and depression.

Gonzalez testified that she has received disability for anxiety and depression since 2016. Tr. 15.

Upon review of the aforementioned factors, the Commission finds that an award of \$45,000.00 is appropriate for the emotional distress Gonzalez suffered.

Turning to the civil penalty, 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 Respondent acted in a discriminatory manner when it refused to transfer Gonzalez to another building because of her color and national origin. Further Respondent refused to partake in any part of the process. Not only did this not allow the

Commission to properly discern its 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 order follows.

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

<b>Emma Gonzalez,</b>	:	
<b>Complainant</b>	:	
	:	<b>PHRC Case No. 202101248</b>
<b>v.</b>	:	<b>HUD Case No. 03-22-9915-8</b>
	:	
<b>1952 Allegheny Associates LP,</b>	:	
<b>Respondent</b>	:	

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**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 discriminated against her in the terms and conditions of her lease 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**

*Darlene Hemerka*

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**Darlene Hemerka,  
Permanent Hearing Examiner**

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**FINAL ORDER**

AND NOW, this 26th day of August, 2024, 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 Complaints and hereby

**ORDERS**

1. That Respondent cease and desist from acting in a discriminatory manner in the terms and conditions of any lease based on a tenant’s color or national origin.
2. That, within ninety (90) days of the effective date of this Order, Respondent shall pay Emma Gonzalez (Gonzalez) the lump sum of \$45,408.10 which amount represents out-of-pocket expenses plus interest of 6%. and compensatory damages representing the embarrassment and humiliation Gonzalez suffered.
3. That, within ninety (90) days of the effective date of this Order, Respondent shall take Fair Housing Training.
4. That, within ninety (90) days of the effective date of this Order, Respondent shall deliver



to PHRC Counsel, Stacy McNaney, 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.

5. That, within ninety (90) days of the effective date of this Order, Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Stacy McNaney, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 333 Market Street, 8<sup>th</sup> Fl, Harrisburg, PA 17101.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**BY:**



**M. Joel Bolstein**  
**Chairperson**

**Attest:**



O/B/O Commissioner Mayur Patel

Mayur Patel, Secretary