



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
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ARCH A. MOORE, JR.
Governor

May 8, 1986

Frances A. Bryant
General Delivery
Gauley Bridge, WV 25085

Jennifer Bailey, Esquire
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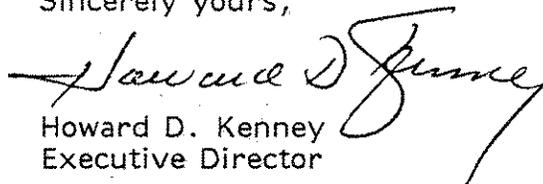
RE: Bryant V 7-11 Stores/ES-444-82

Dear Mr. Bryant & Mr. Bailey:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Bryant V 7-11 Stores/ES-444-82.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

FRANCIS A. BRYANT
COMPLAINANT,

V.

DOCKET NO.: ES-444-82

7-11 STORES & SBR, INC.
RESPONDENT.

ORDER

On the 9th day of April, 1986, the Commission reviewed Hearing Examiner Michael C. Farber's Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this Order a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

The Respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of cancelled checks, Affidavit or other means calculated to provide such proof.

Entered this 25th day of April, 1986.


CHAIR/VICE CHAIRMAN
WV HUMAN RIGHTS COMMISSION

LAW OFFICES
MORTON & MORTON, L.C.
WEBSTER SPRINGS
WEST VIRGINIA

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

FRANCES A. BRYANT)
)
 Complainant)
)
 vs.) Case No. ES 444-82
)
 7-ELELVEN STORES and)
 SBR, INC.,)
)
 Respondents)

FINDINGS OF FACT

1. Complainant was employed by respondent, SBR, Inc., as a Clerk at its 7-Eleven Store in Montgomery, West Virginia from July of 1981 to February 8, 1982. Complainant performed general work for respondent which included operating the cash register, stocking shelves and cleaning the store. Complainant was a full-time employee and was paid at an hourly rate of \$3.50. Complainant worked the eight hour evening shift from 3:00 o'clock p.m. to 11:00 o'clock p.m.

2. Complainant was on duty one evening in late December of 1981 with Paul Maxwell, another employee of respondent at the Montgomery 7-Eleven Store. During the course of the evening, complainant received a telephone call from Rudy Ramones, her immediate supervisor, who informed her that a report had been made to him that Mr. Maxwell was inebriated at

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work. Shortly thereafter, Mr. Ramones appeared at the Store in order to question complainant and Maxwell concerning the report.

3. At the time, complainant denied any knowledge of Maxwell's condition and further informed Mr. Ramones that she had not seen her co-worker lying on the floor at any time that evening. Mr. Maxwell also denied being drunk. Acting upon his personal observations of Maxwell, Ramones informed complainant that there was apparently no basis for the report. Thereafter, Mr. Ramones left the Store, and Maxwell and complainant completed their regular shift that night without incident.

4. The record in this matter clearly reflects that two former employees of respondent, who were present in the Store that evening, had filed the report against Mr. Maxwell for personal reasons relating to their termination of employment. As complainant stated during the hearing, "[a]ll I know is that they did not like him [Paul Maxwell] and that they didn't want him in the store. They caused quite a bit of trouble from the time Paul came until he left." (Transcript of Hearing, p. 84).

5. Following the above related incident, complainant heard nothing more about the matter until February 8, 1982, the date of her termination as an employee of the respondent. Prior to that time, however, respondent had launched an investigation to determine the source of "shortages" at the Store (Transcript of Hearing, p. 89). During the course of the

investigation, respondent requested that its employees take a polygraph test. The record is unclear as to the response of the other employees, but complainant refused to take the test.

6. On February 8, 1982, complainant was contacted at home by Mr. Ramones, who informed her that she was going "to be fired...for covering up for Paul Maxwell." (Transcript of Hearing, p. 91). Complainant denied having any involvement in that matter but to no avail. Her employment with respondent was terminated on February 18, 1982. According to Ramones, the firing actually occurred "because [complainant] did not cooperate in the lie detector test." (Transcript of Hearing, p. 128).

7. During the period of complainant's employment at the Store, respondent also employed five other women as clerks. Paul Maxwell was the only male employee working in that particular position. Mr. Ramones held the position of manager.

8. Complainant alleges that her firing resulted from discrimination based upon sex. The undersigned finds as a matter of law that there is no basis for such a claim due to the fact that complainant was fired for refusing to take a polygraph test. Complainant probably had grounds at the time of the subject incident to institute an action for retaliatory discharge, but such matters are beyond the scope of the West Virginia Human Rights Act.

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CONCLUSIONS OF LAW

Based upon the above findings of fact, the undersigned does conclude as a matter of law that complainant has failed to prove that respondent discriminated against her on the basis of sex.

Enter this 4th day of February, 1986.



MICHAEL C. FARBER
Hearing Examiner