

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

February 14, 1986

ARCH A. MOORE, JR.
Governor

Gregory T. Hinton, Esquire
314 Deveny Building
Fairmont, WV 26554

Deborah K. Hodges, Esquire
P.O. Box 1189
Fairmont, WV 26555

COPY

RE: Davidson v Stimmel, HR-58-83

Dear Ms. Hodges and Mr. Hinton:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of David A. Davidson v Ida Mae Stimmel, HR-58-83.

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
Howard D. Kenney
Executive Director

HDK/kpv/jcp
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

RECEIVED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JAN 16 1986

W.V. HUMAN RIGHTS COMM.

DAVID A. DAVIDSON,

Complainant,

vs.

Docket No. HR-58-83A

IDA MAE STIMMEL,

Respondent.

ORDER

On the 8th day of January, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner, Gary A. Sacco. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own with the exceptions set forth below.

The Commission hereby amends the Findings of Fact and Conclusions of Law by inserting in paragraph 10 of the Conclusions of Law, page 11, after the word "tenancy" the phrase "in the amount of Five Thousand Dollars (\$5,000.00)," and by inserting after the phrase "attorneys fees" the phrase "to be based on a voucher to be submitted to the Commission by complainant's attorney setting forth in detail the hours worked on the case and his fee request."

The Commission further amends the Findings of Fact and Conclusions of Law by adding thereto paragraph 11, as follows:

11. The respondent shall be ordered to cease and desist from engaging in any actions which deny full and equal rights to any individual or group on the basis of race, sex, age religion, color, national origin, or handicap with respect to the sale or lease of real property.

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 except insofar as they are amended by this Order.

By this Order, a copy of which shall be sent by certified mail to the parties, 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.

Entered this 4 day of Feb., 1986.

Respectfully Submitted



CHAIR/VICE-CHAIR
West Virginia Human
Rights Commission

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

DAVID A. DAVIDSON, :
 :
 Complainant, :
 :
 vs. : CASE NO. HR-58-83A
 :
 IDA MAE STIMMEL, :
 :
 Respondent. :

Approved
R.S.
12/1/85

RECOMMENDED DECISION

PRELIMINARY MATTERS

1. Pre-Hearing Conference was held on the above styled contested case on April 18, 1985, at the Old County Commission Courtroom, Marion County Courthouse, Marion County, Fairmont, West Virginia, pursuant to Notice issued by the West Virginia Supreme Court of Appeals for the West Virginia Human Rights Commission, dated March 19, 1985.

The following appearances were made:

Jeffrey O. McGeary, Special Assistant Attorney General, for the Human Rights Commission and Complainant;

Gregory T. Hinton, Esquire, for Complainant;

Kenneth R. Miller, Esquire, Furbee, Amos, Webb and Critchfield, for Respondent;

Gary A. Sacco, Hearing Examiner.

A Public Hearing was held on this matter, as well as James Powenski vs. Ida Mae Stimmel, Case No. HR-58-83A, both cases having been consolidated for Hearing, without objection by either party, on June 18, 1985, at 9:00 o'clock, a.m., at the Old County Commission Courtroom, Marion County Courthouse,

Marion County, Fairmont, West Virginia, pursuant to Notice issued by the West Virginia Supreme Court of Appeals for the West Virginia Human Rights Commission, dated March 19, 1985.

The Complainant appeared in person, as well as by his Counsel, Gregory T. Hinton, Esquire. The Respondent did not appear personally but through her Counsel, Debra Hodges of Furbee, Amos, Webb and Critchfield. The Complainant, as well as the following individuals appeared and testified on behalf of the Complainant: Linda Davidson, Sheila Moran, Audra Davidson, Harold Davidson, James Powenski. The following individuals appeared and testified on behalf of the Respondent: Paul Vukovich, Donna Sue Beamon, Lawrence Beamon, Sheila Smith.

On October 2, 1985, Complainant filed with this Hearing Examiner "COMPLAINANT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS"; "COMPLAINANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEF IN SUPPORT OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW".

On October 4, 1985, the Respondent filed a "MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTIONS TO DISMISS ADMINISTRATIVE COMPLAINTS OF JAMES R. POWENSKI AND DAVID A. DAVIDSON OR, IN THE ALTERNATIVE, FOR DIRECTED VERDICT".

On October 8, 1985, the Respondent filed "RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW".

On October 24, 1985, the Respondent filed "REPLY OF RESPONDENT TO COMPLAINANT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS".

2. This Hearing Examiner has reviewed and considered all the above set-out documentation supplied by the parties in reaching a decision in this matter.

3. The Respondent has made a MOTION OF RESPONDENT TO DISMISS ADMINISTRATIVE COMPLAINTS OF DAVID A. DAVIDSON OR IN THE ALTERNATIVE FOR DIRECTED VERDICT. This Examiner does hereby overrule this Motion and will consider this matter upon its merits.

ISSUES-CONTENTIONS OF THE PARTIES

The issue presented by the Complainant is whether the race of a guest/invitee (Black) was the basis for an eviction from the rental apartment owned by the Respondent and rented to the Complainant DAVIDSON. The Respondent denies the allegation and alleges that the Complainant was evicted for legitimate reasons, the same being loud and boisterous behavior by the Complainant, his family, and invitees, many of said invitees being unsupervised juveniles.

The question of the Complainant's standing is also at issue.

FINDINGS OF FACT

1. The Complainant, DAVID A. DAVIDSON, a white caucasian, rented an apartment at 714 1/2 Morgantown Avenue, Fairmont, Marion County, West Virginia, from the Respondent, IDA MAE STIMMEL.

2. James Powenski, a black, the nephew of the Complainant, DAVID A. DAVIDSON, helped the Complainant move into the apartment on Sunday, July 11, 1982.

3. James Powenski returned to the Complainant DAVIDSON's apartment for a social visit on or about Wednesday, July 14, 1982.

4. Respondent STIMMEL, on July 14, 1982, advised the Complainant's baby sitter and the baby sitter's friend that "she wouldn't have that Negro boy in the apartment by himself" and further advised that they should tell the Complainant DAVIDSON that he "will be out of there by Sunday". Respondent IDA MAE STIMMEL then again advised that she wouldn't "have that Negro boy up in that apartment".

5. Respondent STIMMEL advised the Complainant, in the presence of his wife, that he and his family must quit the premises because they had a juvenile black male at the apartment with juvenile white females.

6. On Friday, July 16, 1982, the Complainant received an eviction notice from the Respondent, dated July 15, 1982.

7. The Complainant suffered the following out of pocket expenses as a result of the termination of his tenancy and subsequent eviction:

Shutoff and transfer-water service	\$ 15.00
Shutoff and transfer-telephone serv.	20.00
Shutoff and transfer-electric serv.	6.00
Truck rental	50.00
Moving assistance, 2 people	20.00
Total	<u>\$111.00</u>

8. Mrs. Stimmel's statement concerning Mr. Powenski, "shocked" the Complainant, DAVID A DAVIDSON; made him get "angry"; he was "stunned"; and made him feel "bad". Nothing in the record indicates that he was personally humiliated or embarrassed by Mrs. Stimmel's statements or actions.

9. Complainant suffered a degree of inconvenience and aggravation as a result of the eviction.

10. Physical movement emanating from the Davidson's apartment caused a large crack in the plaster in the apartment ceiling below.

11. That during the Davidson tenancy in the apartment, they, on occasion, allowed unsupervised minors to occupy the apartment while they were not at home.

12. The Davidsons occupied the apartment at 714 1/2 Morgantown Avenue, from on or about July 11, 1982, to on or about September 1, 1982, a period of six (6) weeks, and paid only one (1) month's rent.

13. That the Complainant did, however, attempt to pay an additional month's rent, plus a security deposit, the same being forwarded to the Respondent by certified mail, it being refused by the Respondent.

14. Complainant DAVIDSON, along with his family, was evicted by Order of the Magistrate Court of Marion County, West Virginia.

15. The Davidsons were supplied with a written list of rules at the time of their occupancy which they, as tenants, were expected to follow.

16. Paul Vukovich, a neighbor to the Davidsons and the Respondent, was disturbed on several occasions by noise and commotion emanating from the Davidson's apartment and complained numerous times to the Respondent concerning the same.

17. Donna and Carl Beamon, tenants of the Respondent and occupants of the apartment below the Davidsons, made numerous complaints to the Respondent concerning noise and commotion allegedly emanating from the Complainant Davidson's apartment.

18. The Respondent has rented her apartment to a person of American Indian ancestry as well as to a white person with a bi-racial child.

CONCLUSIONS OF LAW

1. 714 1/2 Morgantown Avenue, Fairmont, Marion County, West Virginia, is a "housing accomodation" within the meaning of the West Virginia Code §5-11-3(k) and "real property" within the meaning of West Virginia Code §5-11-3(1).

2. The Complainant DAVIDSON filed a verified complaint against the Respondent, IDA MAE STIMMEL, alleging that the Respondent had engaged in unlawful discriminatory practices prohibited under Article 11, Chapter 5, Section 9, Subsection (g) of the West Virginia Code.

3. The Complaint, dated August 6, 1982, was timely filed within ninety (90) days of the alleged act of discrimination.

4. At all times relevent herein, the West Virginia Human Rights Commission had jurisdiction over the parties and the subject matter in the complaint.

5. The Complaint states sufficient facts upon which the charge of violation of West Virginia Code, Article 11, Chapter 5, Section 9, Subsection (g) is based.

6. Respondent violated the West Virginia Human Rights Act by discriminating against the Complainant, DAVID A. DAVIDSON, on account of race, when, among other reasons, the Respondent, IDA MAE STIMMEL, did terminate the lawful tenancy of the Complainant in and to the apartment unit owned by the Respondent for the reason that the Complainant had entertained a black guest/invitee on the premises.

A. The aforesaid conduct of the Respondent constitutes discrimination against the Complainant in his right to equal opportunity in housing accomodation as proscribed by the West Virginia Human Rights Act.

West Virginia Code §5-11-9 provides that it shall be an "unlawful discriminatory practice", "to discriminate against

any person or group of persons because of the race, color, natural origin, ancestry, sex, blindness or handicap of such person or or group of persons in the terms, conditions or privilege of the sale, rental or lease of any housing accomoda- tion, or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith."

The Respondent contends that the coverage under the Act does not extend to the Complainant because he is a white caucasian and that the act of discrimination complained of and actionable under the statute must have occurred because of the race of the Complainant.

It is this Examiner's opinion that this is not the proper interpretation of the Act, nor does it conform with the intent of the same.

The position of the Respondent cannot be supported. In Commission v. Polly, 212 SE2d 77, 80-81 (W.Va. 1975), the Court, in citing United States v. Henshaw Brothers, Inc., PAH, Equal Opportunity in Housing, 13, 659 (D.D.VA. 1974); Lane v. Wilson, 307 U.S. 267 (1939); United States v. Real Estate Development Corp., 347 F2d 776 (N.D. Miss. 1972), recounted that "State and Federal laws barring discrimination in housing implement a policy which has been highest priority and has to be liberally construed in accordance with that purpose. It was intended that sophisticated forms of discrimination as well as more obvious be eradicated." Again citing Commission v. Polly, "The forceful language used by the Legislature mandates the eradication of unlawful discrimination".

In looking to the Act itself, the declaration of policy of the West Virginia Human Rights Act, W. Va. Code, §5-11-2, states "It is the public policy of the State of West Virginia to provide all its citizens equal opportunity for employment, equal access to places of public accommodations and equal opportunity in the sale, purchase, lease, rental and financing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a Human Right or Civil Right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap. Equal opportunity in housing accommodations is hereby declared to be a Human Right or Civil Right of all persons without regard to race..."

Looking to other sources, Walker v. Pointer, 304 F.Supp. 56 (1969, U.S. District Court, N.D. TEXAS, Dallas Div.) the Court found that the eviction of white tenants from an apartment for entertaining negro guests was discriminatory and that such violation came within the jurisdictional scope of 42 U.S.C.A. 1982.

That Court, in determining the standing of the Plaintiffs, pointed out that the general rule had been that one could not raise a constitutional objection unless he could show that he was within the class of those whose constitutional rights were being infringed. The Court, however, in deciding not to apply that standard, went on to say that the rule was only a rule of practice and that the same is outweighed by the need to protect "fundamental rights". The Court in Walker also alluded to

previous case law which provided that Court sanction of restrictive racial covenants places a "chilling effect" upon the attitudes of white vendors. One can easily envision a parallel "chilling effect" upon the attitudes of white tenants in regard to their ability to entertain black guests/invitees.

8. Respondent contends that the reason for the termination of the tenancy was the loud, boisterous and destructive actions of the Complainant as well as the fact that the Complainant permitted the apartment to be used and occupied by unsupervised juveniles.

Although there is some evidence to support these allegations, there is nonetheless the uncontroverted evidence that the Respondent, in conversations with both the Complainant and his wife, and with Selby Shackelfort and Sheila Moran, advised that the Complainant's tenancy would be terminated and that a reason for said termination was the Respondent's objection to a black invitee/guest being in the apartment. In Williamson v. Hampton Management Company, 339 F.Supp. 1146 (1972), U.S.D.C., N.D.Ill. E. Div., the Court held that "In order to bring Civil Rights actions against landlords for discriminatory refusal to lease, race need not be the sole reason for the decision to refuse if it is an element in that decision".

9. The Complainant, as a result of the Respondent's unlawful discriminatory act, was forced to expend the following sums:

Shutoff and transfer-water service	\$ 15.00
Shutoff and transfer-telephone serv.	20.00
Shutoff and transfer-electric serv.	6.00
Truck rental	50.00
Moving assistance, 2 people	20.00
Total	<u>\$111.00</u>

10. In addition thereto, it is concluded that the Complainant is entitled to compensation for the inconvenience and aggravation resulting from the unlawful termination of his tenancy, as well as an award of reasonable attorneys fees.

As to the claim by the Complainant for lost earnings, this Examiner concludes that there was not sufficient evidence in the record to determine if the loss in earnings was the result of the Respondent's action, nor the true and actual amount of such loss, if any.

DETERMINATION

This Hearing Examiner, therefore, determines that the Respondent did engage in unlawful discriminatory practice in that one of the reasons for her termination of the tenancy of the Complainant was the race (black) of an invitee/guest of the Complainant.

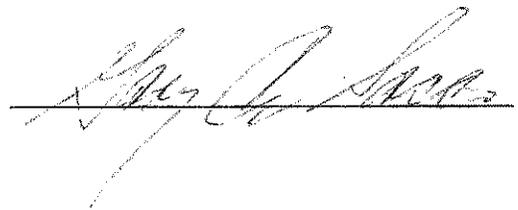
DATED this 26th day of November, 1985.



 Gary A. Sacco, Hearing Examiner

CERTIFICATE OF SERVICE

GARY A. SACCO, Hearing Examiner for the West Virginia Human Rights Commission, does hereby certify that the attached RECOMMENDED DECISION and ORDER with reference to CASE NO. HR-58-83A, DAVID A. DAVIDSON, Complainant vs IDA MAE STIMMEL, Respondent has been duly served upon GREGORY T. HINTON, Esq., Attorney for the Complainant by mailing a true copy thereof at his office, 314 Deveny Building, Fairmont, West Virginia 26554 by U. S. postage prepaid and has been duly served upon DEBORAH K. HODGES, Attorney for the Respondent by mailing a true copy thereof at her office, P. O. Box 1189, Fairmont, West Virginia 26555 by U. S. postage prepaid on this 27th day of November, 1985.

A handwritten signature in cursive script, appearing to read "Gary A. Sacco", is written over a horizontal line.

GREGORY T. HINTON
ATTORNEY AT LAW
314 DEVENY BUILDING
FAIRMONT, WV 26554
TELEPHONE 304 - 366-9777

December 12, 1985

Howard D. Kenney
Executive Director
WV Human Rights Commission
215 Professional Building
1036 Quarrier Street
Charleston, WV 25301

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DEC 16 1985

W.V. HUMAN RIGHTS COMM.

Re: Davidson v. Stimmel
HRC,HR-58-83A

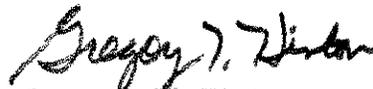
Dear Mr. Kenney:

The Complainant files the following exceptions to the Recommended Decision of the Hearing Examiner.

Complainant excepts to the part of Findings of Fact no. 8 that says "Nothing in the record indicates that he was personally humiliated or embarrassed by Mrs. Stimmel's statements or actions".

Complainant excepts to Findings of Fact nos. 10, 16, and 17. Complainant excepts in the Conclusions of Law no. 10 in that it does not include compensation for humiliation and embarrassment. Complainant excepts to the amount of the incidental damages. Complainant contends that he is entitled to compensation for humiliation and embarrassment, as well as, an amount greater than \$250.00 for incidental damages. Complainant is not the normal white tenant who entertains a black house guest. Complainant is the white uncle of the subject black house guest. Accordingly, Complainant is entitled to both damages for humiliation and embarrassment and or an additional amount for incidental damages.

Sincerely Yours,


Gregory T. Hinton

GTH/cjh
cc: Deborah K. Hodges