



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

June 2, 1994

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Re: Grimmett v. WV Dept. of Transportation/Div. of Highways  
HR-443-92

Dear Parties:

Enclosed, please find the final decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before a administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before a administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

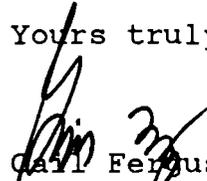
10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from a administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the executive director of the commission at the above address.

Yours truly,



Carl Ferguson  
Administrative Law Judge

GF/mst

Enclosure

cc: Glenda S. Gooden, Legal Unit Manager

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ED GRIMMETT,

Complainant,

v.

DOCKET NUMBER(S): HR-443-92

WEST VIRGINIA DEPARTMENT OF  
TRANSPORTATION/DIVISION OF  
HIGHWAYS,

Respondent.

**FINAL DECISION**

A public hearing, in the above-captioned matter, was convened on December 9, 1993, in Logan County, West Virginia, before Gail Ferguson, Administrative Law Judge. Briefs were received through April 8, 1994.

The complainant, Ed Grimmatt, appeared in person and the West Virginia Human Rights Commission appeared by its counsel, Senior Assistant Attorney General Paul R. Sheridan. The respondent, West Virginia Department of Highways, was represented by counsel, Frank S. Curia.

On April 16, 1992, the complainant filed this action against the respondent. Subsequently, the case was consolidated with the case of Maxwell v. WV Dept. of Highways, Docket No. HR-442-92, because the claims of both of these complainants arose out of the same set of facts. Mr. Maxwell reached a settlement with the respondent prior to hearing.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record

developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the administrative law judge and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper decision. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

#### FINDINGS OF FACT

1. Complainant, Leslie Edward Grimmett, known as Ed Grimmett, is a Caucasian male, a native of West Virginia, and a resident of Bruno, Logan County.

2. On or about June 1, 1988, the complainant acquired a quitclaim deed to a piece of real estate at Huff Junction, near the intersection of State Routes 80 and 1 in Logan County. The property is bounded by Huff Creek, the Guyandotte River, State Route 80 and railroad tracks.

3. Soon after taking possession of the property, the complainant erected a one-story building with a full basement to

serve as his sign-painting shop. He also moved a mobile home onto the property.

4. Within a week of moving his business onto the property, but before construction of his shop was completed, the complainant was approached by Paul Hicks, a state road inspector, concerning possible encroachment of his business on a state right-of-way. After observing the area, Mr. Hicks told the complainant, "I can't see where you're bothering anything." Mr. Hicks testified at the hearing that not only was the complainant not blocking a roadway, but he was not blocking the view of anything.

5. Mr. Hicks told the complainant that the bridge span, which is Route 80/1, calls for a 50-foot right-of-way. Hicks told complainant that if he did not contact the complainant in two days time, the complainant should continue with his plans for developing the area.

6. Mr. Hicks did not return to the site within the specified time; consequently, the complainant assumed that there was no encroachment and resumed construction of his shop.

7. A sign-painter by trade, the complainant secured a business licence and began running a successful business from his shop on the property at Huff Junction. Not only did the complainant pay property taxes, but he paid business taxes on his sign business.

8. Two weeks after his first visit, Mr. Hicks returned to the site with a team of surveyors, who painted lines on the ground indicating the path of the state right-of-way. According to respondent, the complainant was told that his building was on the right-of-way. The complainant, however, measured the distance from

the right-of-way to his shop and determined that he was 20 feet outside the path of the right-of-way.

9. Later in the summer of 1988, Ronald John Maxwell, an African American male, approached the complainant to ask if he might rent the mobile home. Maxwell had separated from his wife and needed a place to live. Because the trailer was not equipped with electricity or running water, and because the complainant was eager to have an on-site resident for security reasons, Mr. Maxwell was permitted to live in the trailer rent free in return for assisting the complainant by performing odd jobs when needed.

10. Mr. Maxwell lived more or less permanently on the premises, from the summer of 1988 through the spring of 1992. Complainant later gave the mobile home to Maxwell.

11. The Huff Junction area is not a racially diverse community. Specifically, there are not many African American residents in the Huff Junction area.

12. In October, 1988, a letter was sent by the Sheriff of Logan County requesting that he serve upon complainant a "Notice of Removal of Obstructions."

13. The "Notice for Removal of Obstructions" identified the obstruction as being a "1 story frame structure and mobile home on property owned by the Division of Highways" and as being "located at the junction of WV Route 80 and Local Service Route 80/1, Man area of Logan County, W.Va."

14. The complainant initially contacted the respondent through his counsel. In response to the "Notice" respondent received a letter dated October 4, 1988, from John W. Bennett, an attorney in

Logan requesting "copies of the survey, deed, right of way and any other instrument that you feel establishes the State's claim to the property in question in order that I can review them and properly advise Mr. Grimmett."

15. By letter dated October 7, 1988, John P. Lindsay, Acting District Right of Way Agent, sent the requested information to Mr. Bennett.

16. By letter dated February 21, 1989, Mr. Bennett was advised by Joe Martorella, the District Attorney for the Division of Highways that complainant's file had been given to him by the District Right of Way Agent for the purpose of taking legal action against complainant and set a deadline for March 15, 1989, when suit would be instituted if the Division had not heard from him.

17. On February 27, 1989 John Lindsay, the District Right of Way Agent, talked with complainant. The complainant explained to Mr. Lindsay that Mr. Hicks had observed no obstruction or encroachment and that his business was 20 feet from the painted marks.

18. In an effort to achieve some security regarding his ability to continue to operate his business from his shop, the complainant made a request to the respondent for a lease or sale of the property in question. The request was denied.

19. When Lindsay wrote to complainant, the only reason given for turning down the lease was a concern regarding federal highway money. However, an internal memorandum written two days before the letter and reflecting Lindsay's decision in response to the request, does not mention federal money. The reason reflected in the internal

records was the possibility of setting a precedent which would cause the respondent to be swamped with such requests.

20. There is other evidence calling both explanations into doubt. Regarding the claim made in the memorandum that the lease was denied because of a fear of being swamped by similar requests, this is in contradiction to admissions made by Lindsay to the effect that normally he is open to a lease request. Other of respondent's witnesses made clear that normally encroachments are cleared when they present a problem, not merely because they are encroachments.

21. In 1989, George Long, a local businessman, asked the complainant if raw sewage from the mobile home was being dumped directly into the creek. The complainant responded that, because the trailer was not equipped with running water, there was no sewage. Mr. Long returned to the site on a Sunday afternoon shortly thereafter, ostensibly to ask Mr. Maxwell to cut his grass. Mr. Long was seen looking around the property. It was complainant's perception that Mr. Long was seeking to gather information regarding the property and Mr. Maxwell.

22. Almost immediately after Mr. Long's inquiries, the complainant was served with a summons in a circuit court action filed by the respondent, for removal of an obstruction, seeking to evict him from the property.

23. During the entire pendency of the circuit court action, complainant continued to operate his business out of his sign shop, and Ron Maxwell continued to reside in the mobile home on the same property. In the end, the Logan County Circuit Court ruled against complainant on a motion for summary judgment. The "OPINION" of the

court states in relevant part that "it is conclusively presumed that the West Virginia Department of Transportation, Division of Highways has title to such public road and that its property includes the property the defendant admittedly claims only through a quit-claim deed."

24. In late 1991, the complainant had a conversation with Charles Adkins, a state highways inspector, at a local Dairy Queen. Mr. Adkins asked the complainant, "What are you going to do about that nigger pissing in front of everybody?" It was apparent to complainant that Adkins was referring to Ron Maxwell.

25. Charlie Adkins testified at hearing that he did not recall talking to complainant at the Dairy Queen, but that it was possible. Charlie Adkins testified that he was sure that he never made the derogatory comment. He explained, "I don't refer to people that way. You can get in trouble." Mr. Adkins is not credible. The testimony of respondent's witness Everette Bowden, clearly proves that Charlie Adkins understood the "problem" to be that "a black man" was living on the property. Furthermore, it is clear that the respondent resolved that the solution to this "problem" was "removing trailer and shack," which the respondent did by evicting complainant.

26. Charlie Adkins testified that he referred people who complained about right-of-way problems to the district office. He strenuously denied personally making any complaints to the district office himself. However, later he acknowledged that he had personally relayed to the district office some complaints. In addition, both the documentary evidence and the testimony of Everette Bowden established that he had called the district office to relay a

complaint about "two black men," who were "using a shack under the bridge."

27. In December 1991, Guy Harvey, the complainant's nephew, found the complainant at Dairy Queen and told him that inspectors he found there were taking photographs on his property. The complainant arrived at his shop soon after and was told by one of the state inspectors that there had been complaints from local business owners about a man drinking and living in a shack under the bridge. Guy Harvey recalled the respondent's employees using the term "black hobos" to refer to these men.

28. In January 1992, the complainant was told by an employee of respondent that a wrecking crew in Huntington was preparing to demolish his sign shop within the next few days. On that occasion, the complainant made known to the respondent representatives that the mobile home was owned by Ronald Maxwell.

29. The complainant contacted Logan County Circuit Judge Ned Grubb, who in turn contacted the Logan County Department of Highways Maintenance Superintendent, Hobert Adkins. Adkins gave an assurance to the Judge who in turn informed the complainant that the demolition would be deferred for 30 days.

30. In March 1992, Everette Bowden, a foreman for the respondent's Man Subdistrict, told the complainant on several occasions that his real problem was "that black boy living in your trailer," referring to Ronald Maxwell. This was verified by several independent witnesses. Mr. Bowden also told complainant that Race Chapman, the owner of the local Pic Pac Grocery Store, and respondent's employee Charlie Adkins had been complaining about

Ronald Maxwell, and that Adkins had called in a complaint to the respondent's office in Huntington.

31. Everette Bowden initially testified that his only involvement in this matter was to take the structure in question down. However, Bowden later admitted having two or three conversations with complainant at the site of complainant's shop. Bowden could not recall the details of the conversations but denies having any conversations with complainant about Maxwell. However, Bowden admitted that he was present when Charlie Adkins came into Bowden's office and said that he (Adkins) had received several complaints about Ron Maxwell. Bowden said that Adkins called his boss about the complaints. Bowden testified that Adkins referred to the men as "two black men" when he called in the complaint to his boss. Bowden testified that Adkins said that "the people from Pic Pac had complained about them." Everette Bowden obviously was aware of the complaints about Maxwell when he had his conversation with complainant. The credible evidence supports complainant's contention that Bowden told him that his real problem was "that black boy living in your trailer."

32. Hobert Adkins was and is the Logan County Maintenance Supervisor for respondent. The complainant testified that he went to see Mr. Adkins at his home on a Sunday to plead his case, but Mr. Adkins refused to talk to him outside business hours. Mr. Adkins later telephoned the complainant and told him, "You'd better get that nigger out of there." The complainant hung up on him. Mr. Adkins called back a few moments later to say that he was only trying to

help the complainant. Adkins also told complainant not to tell anyone about the phone call.

33. Hobert Adkins testified that the only time he talked to the complainant was when the complainant came to his home on a Sunday, although he could not recall the subject of the conversation. He also denied calling the complainant later that evening, but when pressed, he hid behind an alleged failure to remember, stating, "I'm not going to perjure myself." Later he also acknowledged the possibility that he had stopped by to see complainant at his shop.

34. Hobert Adkins similarly denied telling the complainant "you'd better get that nigger out of there." Initially he denied making the statement, claiming that he had never used the term "nigger." Later he indicated that it was like the other things he was alleged to have done; he just didn't remember. Mr. Adkins is not believable. His testimony is evasive and his memory selective. The transcript is as follows:

Q: You don't recall calling Ed Grimmett regarding this matter, but it's possible, isn't it, that you did?

A: Sure, it's possible, but I don't remember doing it. Just like I don't remember calling anybody a nigger.

Q: You don't remember doing that?

A: No, boy, and I never do that no way. I can swear to that one.

35. On March 16, 1992, the respondent demolished the complainant's sign shop. The top story was torn up, and the bottom of the building, with its contents, was burned. When it was destroyed, it contained paint and things used to make signs,

including about 100 forms, a specially made work table, and approximately 350 florescent light bulbs.

36. Approximately a month later after the complainant's sign shop was demolished, the respondent pulled Ron Maxwell's mobile home off the property and took it to the site of respondent's garage in Man, West Virginia. A few days later, the proprietor of a restaurant across the highway complained about it. In response to the complaint, and without any regard for the security of the mobile home, Maxwell's mobile home was pulled to a wide spot along the highway about a mile from the respondent's garage. A few days later it burned, and later was pushed over the bank.

37. Mr. Bowden testified that he had been told by his superiors that he could do whatever he wanted with the mobile home.

38. The respondent went to some lengths to convey the impression that its agents do not involve themselves with right-of-way concerns.

39. Hobert Adkins was aware of respondent's decision to sue the complainant, and he was also the respondent's official who agreed to a voluntary delay of the eviction at the personal request of Judge Grubb. In addition, a number of witnesses indicated that they are accustomed to getting complaints from influential local citizens who expect them to get results. It is clear from the record as a whole that local Department of Highways officials typically have a great deal of influence over the respondent's decision, such as whether to remove an encroachment.

40. Respondent put forth numerous and various explanations for why it had sought so vigorously to remove these particular "encroachments."

41. At one point, John Lindsay testified that "an encroachment is an encroachment." He went on to suggest that whenever an encroachment was found, it was removed. There is ample evidence to show that this is not in fact the way the respondent approaches encroachments.

42. Paul Hicks testified that there are lots of encroachments on the respondent's rights-of-way that are allowed to exist because they do not create a problem. He also testified that there are some encroachments that do create problems, but which the respondent does not seek to remove because it would be too expensive. Mr. Hicks testified that he had never been asked to survey the Dixon Hardware encroachment.

43. Charlie Adkins testified that in doing his work of expanding and straightening state roads, he often finds that there are encroachments on the right-of-way which have to be removed to facilitate the expansion or straightening work. The fact that there are such encroachments, and that many have been there for some time, indicates that the respondent has a practice of leaving encroachments until they need to be removed. In other words, encroachments are regularly permitted to remain on respondent's right-of-way until the respondent actually needs that piece of ground and they are suddenly in the way.

44. Mark Straight, right-of-way agent for the respondent confirmed this. He testified: "Normally we are notified of the

obstruction during the construction or maintenance of the highway and they're listed at that time. There has been occasions that the obstruction had not been removed due to them not being in the way of construction or deemed as hazardous."

45. Mark Straight testified that the only hazard he could imagine being caused by complainant's shop would be if it caused people to park vehicles along the roadway near the sign shop. But, he acknowledged that this would be no different from any vehicle parked anywhere along any roadway, an extremely common phenomenon.

46. There are many buildings which encroach upon the state highway rights-of-way, through southern West Virginia, including Logan County. There are some examples within a short distance of the property where the complainant's sign shop had been built. At least one of these encroachments obscures the view of drivers approaching the stop light from around a blind curve. Not only has none of these encroachments been removed, but there is no evidence that the respondent has ever made any effort toward having them removed.

47. In his effort to explain the decision to evict complainant and Maxwell, Lindsay offered a second explanation; that is, that there was a concern about respondent's liability if the mobile home were to be flooded, or if someone were to drive off the roadway into the shop. However, Lindsay admitted that he never sought any legal opinion as to what, if any, liability the respondent would have under these types of scenarios.

48. As a third explanation, Lindsay testified that there was concern that if the sign shop caught fire, it might damage the bridge. However, the respondent actually burned the sign shop as a

means of demolishing it, belying this as a serious concern. Lindsay admitted that the possibility of the mobile home burning was never a concern because it was more remote from the bridge.

49. As a fourth explanation, John Lindsay claimed under oath in answers to interrogatories that the respondent had plans to continuously use the site to stockpile materials. However, there is no dispute that there has not been any storage of any materials on the site. The property has not been used by the respondent for any purpose since the respondent destroyed the complainant's sign shop and removed Ron Maxwell's trailer.

50. As a fifth explanation, Lindsay suggested that encroachment such as this could interfere with the receipt of federal funds to do maintenance. However, this conflicts with the respondent's general practice to wait until an encroachment is in the way to go to the effort of removing it. There has not been any maintenance of the bridge since the complainant's sign shop was demolished.

51. James Watt, a building equipment mechanic for the respondent offered a sixth explanation. He testified that it was his understanding that the reason for taking complainant's sign shop down was because "the power company has asked for an easement or right-of-way."

52. The evidence reveals that the respondent's action against encroachments can be triggered by complaints from citizens, particularly if the encroachments are obstructing the right-of-way. John Lindsay testified that when a citizen complains about an encroachment, the respondent checks it out. Normally, if the encroachment is not an obstruction or causing some harm or danger,

nothing is done about it. However, the respondent clearly give special attention encroachments where there has been pressure on the respondent to remove it.

53. Charlie Adkins indicated that he tried to avoid getting directly involved in relaying complaints. The exceptions, he explained on cross, were when the complaint is "serious enough." Asked to explain, he elaborated that with some people "you've got to show them that you care about what they feel by calling yourself..."

54. Ivan Browning, respondent's assistant district engineer, sought to blur the distinction between encroachment and obstruction. What became clear was that a "serious encroachment" is one which either constitutes a true obstruction or one which offends some influential person in the community. Browning testified that his opinion was that the complainant's shop constitute a "serious encroachment and interfered with the maintenance and inspection of that bridge." However, when pressed on the matter, he acknowledged that in his mind any encroachment upon the right-of-way amounts to an "obstruction," exposing his logic which makes complainant an "obstruction" even when he posed no obstruction to traffic or maintenance. Mr. Browning's later comments clearly revealed that the true causes of the respondent's decision to evict Maxwell and complainant lay in the complaints regarding Maxwell.

Q. It was quite a distance from the bridge, wasn't it?

A. According to what you call "quite a distance."

Q. Well, probably a hundred feet or so?

A. I don't recall really exactly, but it was on the right-of-way. That was all I was going

on. If it's on the right-of-way, then it's an obstruction.

Q. So anything on the right-of-way should be removed, is that your approach?

A. When it interferes with our maintenance of our highways and bridges.

Q. But there's no way that the trailer interfered with the maintenance of the bridge or the highway, is there?

A. When we get complaints from the general public of obstructions and we have to look into it, we're going to clear the obstructions. They don't have any business being on the right-of-way. No, we don't really move all obstructions from the right-of-ways, but we don't get complaints from the public.

55. John Lindsay admitted that there were never any complaints about complainant being in anyone's way. The only complaints to the respondent concerning these "encroachments" were not about complainant, but about Maxwell. And these complaints were not that Maxwell constituted any kind of obstruction of the roadway; rather, these complaints were about the presence of "black hobos," a "black boy" or "nigger" as Maxwell was variously referred to by respondent's agents.

56. Charlie Adkins testified that he personally received many complaints regarding complainant's building, some from local business owners. He received perhaps as many as 12 or more such complaints. Mr. Adkins testified on direct that the substance of the complaints was that people wanted "to know why that a business was being allowed to be operated and built on state property. And other ones was wanting to know if they could build a building there and sell tires out of it. And other people was complaining that owned businesses,

wanting to know different stuff. I can't remember everything." On cross-examination, Charlie Adkins admitted that he did not specifically remember the substance of the complaints. And then later, he testified that there were complaints about someone living under the bridge and "using the bathroom outdoors."

57. The only written records of any complaints filed regarding Maxwell or complainant or the alleged encroachments include one which was personally filed by Charlie Adkins. Both this complaint and the other regard Ronald Maxwell living at the site. Neither complaint concerns complainant operating a business on state lands. Indeed, there is nothing to corroborate the claim that complainant's operation of a sign shop was the basis for any complaints. Furthermore, the written records clearly reflected that the respondent had a plan to deal with the "problem" caused by Ronald Maxwell by removing the shack and the trailer.

58. While the recorded complaints about Ronald Maxwell were made in December 1991, if Charlie Adkins actually received 12 or so complaints as he claimed, it is likely that they had begun substantially before that.

59. The respondent tried to suggest that there was "something suspicious" about the fact that the complainant held title to the property in question by quitclaim deed. However, John Lindsay admitted in his testimony that when the state sells property, it is usually by quitclaim deed.

60. John Lindsay testified that he checked the surveys and deeds to see that they were valid. He testified that he was sure that the respondent owned the land. Regarding the property in

question, Mr. Lindsay testified that the respondent had actually acquired the same property on two separate occasions, by separate deeds, from two separate grantors.

61. The respondent destroyed the complainant's sign shop, which would cost approximately \$22,000 to rebuild. Everette Bowden testified that the material which the respondent salvaged from complainant's building was worth about \$2,000. Complainant's net loss on the structure was \$20,000.

62. Complainant had approximately 350 eight-foot florescent lights stored in the basement of his sign shop which were destroyed with the shop. Each of these lights was valued at \$7.41, for a total additional loss of \$2,593.50. Also destroyed with the shop was a \$400 heavy-duty work table especially built for sign making.

63. Along with complainant's sign shop, respondent destroyed his tools and a vast collection of lay-out forms and silk screens, paint equipment and squeegees which complainant used to serve his customers, all of which the complainant values at approximately \$5,000.

64. The destruction of his shop and his tools effectively destroyed the complainant's business. Complainant estimate that the value of his sign business itself, at the time it was destroyed, was approximately \$20,000, over and above the value of the shop, tools and other tangible things.

65. Complainant testified to emotional distress suffered as a result of the respondent's discriminatory conduct.

## CONCLUSIONS OF LAW

1. The complainant, Ed Grimmett, is an individual aggrieved by an unlawful discriminatory practice, and is a proper complainant under the Virginia Human Rights Act, WV Code §5-11-10.

2. The respondent, West Virginia Department of Transportation/Division of Highways, is a person as defined by WV Code §5-11-1 et seq., and is subject to the provisions of the West Virginia Human Rights Act.

3. The respondent is and was all times relevant hereto, "the owner...or other person have the right of ownership or possession" of the piece of Logan County real property at the confluence of Huff Creek and the Guyandotte River, adjacent to the south shore of Huff Creek, State Route 80/1, and the C & O Railroad tracks.

4. The complaint in this matter was properly and timely filed in accordance with WV Code §5-11-10.

5. The Human Rights Commission has proper jurisdiction over the parties and the subject matter of this action pursuant to WV Code §5-11-9 et seq.

6. For approximately four years, the complainant, Leslie Edward Grimmett, occupied this real property pursuant to a claim of right.

7. During his occupancy of this real property, the complainant permitted an African American male named Ronald Maxwell to reside in a mobile home on the real property, and Ronald Maxwell did so reside on the property.

8. On or about March 16, 1992, the respondent denied to and withheld from the complainant certain real property, including the housing accommodations of Ronald Maxwell, by evicting both complainant and Maxwell, by demolishing and burning the complainant's sign shop, and by removing and destroying the mobile home of Maxwell.

9. The respondent denied to and withheld from the complainant this real property because of the race of Ronald Maxwell and, more specifically, because other area residents complained about an African American residing on this site.

10. While the respondent may have the right to evict the complainant from this real property for any legal reason, the respondent has violated the West Virginia Human Rights Act, WV Code §5-11-9(a)(7)(1989), by doing so because of race.

11. Complainant has established a prima facie case of discrimination.

12. The respondent has articulated legitimate nondiscriminatory reasons for its action toward the complainant, which the complainant has established, by a preponderance of the evidence, to be pretext for unlawful discrimination.

13. As a result of respondent's having unlawfully evicted the complainant from this real property, the complainant has suffered damages of \$47,993.50 for a lost structure and lost materials and other tangible assets; \$20,000.00 for lost good will and other intangible aspects of his business.

14. As a result of the unlawful discriminatory action of the respondent, the complainant is entitled to an award of incidental

damages in the amount of \$2,950.00 for the humiliation, embarrassment and emotional and mental distress and loss of personal dignity.

15. The complainant and/or the Commission are entitled to their reasonable costs in the litigation of this case.

### DISCUSSION AND ARGUMENT

In the spring of 1992, the complainants, Ed Grimmett and Ronald Maxwell, were removed by the respondent from a piece of land lying south of Man, West Virginia, bordered by State Route 80, Huff Creek and the Guyandotte River. Complainant had been operating a small business on the property. Ron Maxwell had been residing in a mobile home which had been given to him by complainant. Complainant is white; Ron Maxwell is black. The respondent removed both Maxwell and complainant from the land because of racially motivated complaints by local businessmen who objected to Maxwell's presence in the area.

Complainant's deed to this property is recorded in the Logan County land records at Book 459, Page 400. After acquiring the land, complainant built a sign shop on the land from which he operated his sign making business. At the same time that he was building his sign shop, complainant acquired a mobile home which he moved onto his land, just below his sign shop. Like the shop, the mobile home was well off the highway. Complainant allowed Ron Maxwell, who occasionally assisted complainant and who agreed to watch his sign shop, to reside in the mobile home. Complainant later gave the

mobile home to Ron Maxwell in exchange for some work Maxwell had performed for him.

Shortly after complainant began his sign shop, Paul Hicks, a representative of respondent, inspected complainant's land. Hicks had been concerned that complainant's shop might be obstructing the highway, but after inspecting it, Hicks told complainant that it did not appear to him that complainant's use of the land posed any problem for the respondent. Indeed, complainant's shop was well off the highway and did not obstruct the highway in any way.

At the end of September, 1988, the respondent served complainant a notice to remove "obstruction" from what it claimed to be state highway land, but a representative of respondent indicated to complainant that he could ignore the notice. During the next several years, complainant operated his sign painting business from his shop on this site.

People associated with the businesses near the mouth of Huff Creek complained to the respondent about Ron Maxwell. While disputed by respondent's representatives, this fact was clearly shown. There was no evidence that anyone complained about complainant, or about either of them "obstructing" the highway. Representatives of the respondent repeatedly warned complainant that Ron Maxwell was objectionable to area businessmen and made it clear to complainant that he stood to be evicted if Ron Maxwell continued to reside there. Complainant refused to evict Ron Maxwell.

Neither Maxwell or complainant were obstructing the highway in any manner. In contrast, there are numerous examples of situations in which others were encroaching on respondent's land, some of which

were creating obstructions where the respondent has taken no action, or only nominal action. However, in response to the racially motivated complaints about Ron Maxwell, the respondent removed Maxwell and complainant. Ultimately, the respondent demolished and burned the sign shop and pulled the mobile home from the site and burned it.

As a result of the respondent's acquiescence to the racially motivated requests of area businessmen and because of complainant's refusal to abandon Maxwell, Maxwell was rendered homeless, and complainant lost his business.

West Virginia Code §5-11-9(a)(7)(1989), provides that it is an unlawful discriminatory practice:

For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(A) To refuse to sell, rent, lease, assign or sublease or other wise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status of such person or group of persons....

WV Code §5-11-9(a)(7)

There can be no question that the respondent, the West Virginia Department of Highways, fits the definition of those who have a duty of nondiscrimination in housing. The respondent is "the owner,...or other person having the right of ownership or possession of...housing accommodations or real property" in question. The respondent claims to be the titled owner of the land; in fact, it claims that it holds

title under two separate conveyances. In addition, the respondent forcibly evicted both the complainant and Ronald Maxwell from the property based upon this claim of right. Accordingly, under the Human Rights Act, the respondent operates under a statutory prohibition, requiring that the respondent not "refuse to sell, rent, lease, assign or sublease or otherwise... deny to or withhold from any person...any housing accommodations or real property...because of race...." WV Code §5-11-9(a)(7).

Furthermore, there can be no serious contention that the respondent has denied to Ronald Maxwell a housing accommodation; that is to say, his mobile home, and that the respondent has denied to complainant, Ed Grimmett, and withheld from him the real property on which he operated his business. The facts are not in dispute. The issue in this case is whether the respondent took these action because of race.

The respondent has tried to cloud this issue of motive by focusing upon its claim of ownership. But ownership rights are entirely beside the point. For the purposes of this action, the complainant does not contest the respondent's title to the land in question.<sup>1/</sup> Like every other landowner, the respondent has the lawful right to use its property as it sees fit; provided, however, that it does so in a manner which is consistent with the law. However, the right to possess and control property is not a license

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<sup>1/</sup> While the complainant still maintains that he has a valid deed to the property and that the Circuit Court of Logan County erred by failing to acknowledge complainant's property rights, this contention has no bearing on the case at hand.

to discriminate. A showing of improper purpose for doing an otherwise lawful act can establish a violation of the Fair Housing Act.

In the same way that the owner of an apartment building has the right to decide whether he rents apartments, whether he puts in new carpeting, how much he charges for rent, and even to whom he rents, he must do all of these things without discriminating based upon race. So it is with the respondent. The respondent may evict all people who encroach upon its land, or it may choose to evict only when these encroachments impair the safety of the roads or impede the respondent's operations. Indeed, the respondent may evict people who encroach upon its land for any reason or no reason at all, so long as the respondent does not evict people for an illegal reason.

If the respondent evicted Maxwell and complainant because of race (in this case, because of the race of Ronald Maxwell to whom the complainant had provided a place to live), then the respondent violated the West Virginia Human Rights Act and is liable to the complainant for damages caused him by this violation.

The crux of this case, like with most disparate treatment discrimination cases, is the issue of motive: whether respondent evicted complainant and Maxwell because of Maxwell's race. And as with most other discrimination cases, the evaluation of claims regarding motive involves the careful examination of direct and circumstantial evidence and the assessment of witness credibility. In this case, the evidence clearly points to the conclusion that the complainant was evicted from the property in question because of race, in this case, the race of Ronald Maxwell.

The appropriate analysis of evidence in a disparate treatment housing discrimination case parallels that of an employment discrimination case. As with employment discrimination cases, there are three different analyses which may be applied in evaluating motive. Each of the three applied to the facts of this case, as will be shown below, yields the same result.

The first, and most common, uses circumstantial evidence to prove discriminatory motive. Since those engaging in discrimination usually hide their bias and stereotypes, making direct evidence unavailable, a complainant may show discriminatory intent by the three-step inferential proof formula first articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 36 L.Ed. 2d 668, 93 S. Ct. 1817 (1973), and adopted by our Supreme Court in Shepherdstown Volunteer Fire Dept. v. State Human Rights Commission, 172 WV 627, 309 S.E.2d 342 (1983). The same analysis is used to evaluate circumstantial evidence in housing discrimination cases. Secretary, United States Dept. of Housing and Urban Development on Behalf of Herron v. Blackwell, 908 F.2d 864 (11th Cir. 1990); Williams v. Matthews Company, 499 F.2d 819, 827 (8th Cir. 1974); and United States v. City of Black Jack, Missouri, 508 F.2d 1179, 1184-85 (8th Cir. 1974).

The McDonnell Douglas method requires that the complainant or commission first establish a prima facie case of discrimination by showing protected status, an adverse action, and some evidence to show a link between the two. The burden of production then shifts to respondent to articulate a legitimate, nondiscriminatory reasons for its action. Finally, the complainant or Commission must show that the reason proffered by respondent was not the true reason for the

employment decision, but rather a pretext for discrimination. The term "pretext," as used in the McDonnell Douglas formula, has been held to mean "an ostensible reason or motive assigned as a color or cover for the real reason or motive; false appearance; pretense." WV Institute of Technology v. Human Rights Commission, 181 WV 525, 383 S.E.2d 490, 496 (1989), citing Black's Law Dictionary, 1069 (5th ed. 1979). A proffered reason is pretext if it is not "the true reason for the decision." Conaway v. Eastern Associated Coal Corp., 174 WV 164, 358 S.E.2d 423, 430 (1986).

Second, there is the "mixed motive" analysis. In order to prevail, the complainant in a housing case need not necessarily show that the discriminatory motive was the sole motive for the respondent's action. It is sufficient to show that the discriminatory purpose is "a motivating factor." United States v. City of Birmingham, Michigan, 538 F.Supp. 819, 827 (E.D. Mich. 1982) (Emphasis supplied); Village of Arlington Heights v. Metropolitan Housing Development Authority, 429 U.S. 252, 265-66, 50 L.Ed.2d 450, 97 S.Ct. 555, 563-64 (1977); United States v. City of Parma, Ohio, 661 F.2d 562m 572 (6th Cir. 1981); Williams v. Matthews Co., 499 F.2d 819 826 (8th Cir. 1974); Shaw v. Cassar, 558 F. Supp. 303, 313 (E.D. Mich. 1983). This analysis was established by the United States Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, 104 L.Ed.2d 268, 109 S.Ct. 1775 (1989), and recognized by the West Virginia Supreme Court of Appeals in WV Institute of Technology v. WV Human Rights Commission, 181 WV 525, 383 S.E.2d 490, 496-97, n.11 (1989).

Finally, if it is available, a complainant or the commission may prove a housing discrimination claim by direct evidence of discriminatory intent. Proof of this type shifts the burden to the respondent to prove by a preponderance of the evidence that the same action would have been taken even if it had not had the illicit reason. Bradley v. Carydale Enterprises, 730 F. Supp. 709 (E.D. VA 1989); Hayes v. Sullivan, 907 F.2d 1447, 1452-53 (4th Cir. 1990); Trans World Airlines v. Thurston, 469 U.S. 111, 36 F.E.P Cases 977 (1985). This analysis is similar to that used in mixed motive cases.

The complainant clearly has established a prima facie case under a McDonnell Douglas type test. Complainant, although white, associated himself with an African American named Ron Maxwell by providing Maxwell with a resident on his real property and not ejecting Maxwell despite pressure from respondent's employees. This "association" brings complainant within the scope of the legal protections against discrimination. Armstead v. Starkville Municipal Separate School District, 331 F.Supp. 567, 3 F.E.P. Cases 977 (N.D. Miss. 1971); Faraca v. Clements, 10 F.E.P. Cases 718 (N.D. GA. 1973), aff'd, 506 F.2d 956, 10 F.E.P. Cases 725 (5th Cir. 1975); Lanford v. City of Texarkana, Arkansas, 478 F.2d 262, 5 F.E.P. Cases 1016 (8th Cir. 1973); Battle v. Mulholland, 439 F.2d 321, 9 F.E.P. Cases 1150 (5th Cir. 1971).

Second, complainant suffered a tangible harm in that he was evicted from the real property in question by the respondent. It is unnecessary that he himself be deprived of housing by the respondent. It has been widely held in housing discrimination cases that persons who suffer an injury because of the defendant's

discrimination in housing against a third party, have a fair housing claim for damages. See Gladstone Realtors v. Village of Bellwood, 569 F.2d 1013, 3 E.D.H. 15,329 (7th Cir. 1978), aff'd, 99 S.Ct. 1601 (1979) (plaintiffs who allege injury resulting from racial steering by defendants are "persons aggrieved" under Fair Housing Act, even though they were not directly discriminated against); Old West End Association v. Buckeye Federal Savings and Loan Association, 1 FH-FL 15,548 (N.D. Ohio 1986) (white homeowners attempting to sell home in "redlined" area who alleged mortgage broker forced lower sale price are "persons aggrieved" by discriminatory practices); Sherman Park Community Association v. Wauwatosa Realty Co., 486 F. Supp. 838, 3 E.D.H. 15,333 (E.D. Wisc. 1980) (white plaintiffs who live in white areas who allege that defendant's steering practices deprive them of benefits of living in integrated neighborhood have standing); Wilkey v. Pyramid Construction Co., 619 F. Supp. 145, 1 FH-FL 15,529 (D. Conn. 1985) (white employee of management company who is discharged from employment because of attempts to aid blacks in renting apartments has standing).

The third part of the prima facie burden is a link between the protected status and the adverse action. There is more than ample evidence to establish the requisite link between complainant's "association" with Maxwell and his being evicted by respondent. There is compelling circumstantial evidence. For instance, it appears that the respondent does not seek to remove other nonobstructing encroachments, and certainly does not when there is much expense and inconvenience involved. Yet in this case, it did. Furthermore, respondent's explanations for why it did are

inconsistent and doubtful. This circumstantial evidence is more than sufficient to satisfy the third part of the prima facie burden as articulated in Conaway v. Eastern Associated Coal Corp., 178 WV 164, 358 S.E.2d 423 (1986) and other cases. But here there is much more to establish the link: there are the disclosures by respondent's employees as to the actual motive. The statements by respondent's own agents belie its official explanation as to its motive.

The prima facie case having been established, the McDonnell Douglas analysis then placed the burden on the respondent to articulate a legitimate, nondiscriminatory reason. This it clearly did, although the various reasons put forth at different stages by different agents are not the same. The analysis then moves to an examination of the veracity of the stated reasons: whether the stated reasons are the true reasons or whether they are pretext for racial discrimination.

Analysis of the case as a mixed motive or a direct evidence case brings one to the same critical factual determination as to motive; the only difference involves the burden of proof on the question of motive. If the evidence persuades the finder of fact that the discriminatory motive played any role in the respondent's decision, then the burden is upon the respondent to prove that the impermissible racial motive was not decisive.

Although the explanations proffered by respondent at hearing were legitimate and nondiscriminatory, the complainant has established direct evidence of racial animus on the part of respondent. The credible evidence reveals that three separate agents of respondent made comments to complainant which directly revealed

the true motive. In addition, the statements of these agents were corroborated by other evidence.

In a conversation at a Dairy Queen in Logan County, Charles Adkins, an inspector for respondent, asked the complainant, "What are you going to do about that nigger pissing in front of everybody?" It was apparent to complainant that Adkins was referring to Ron Maxwell. Adkins testified that he did not recall such a conversation, but did not deny it except to deny that he ever used the term "nigger." He testified, "I don't refer to people that way. You can get in trouble." He went on to say, "I know the State Department wouldn't put up with me. They'd just tell me to go on." Adkins' denials are not believable. However, regardless of whether or not Adkins used the term "nigger," Adkins does not even deny that he may have conveyed this to complainant.

Everette Bowden, a foreman for the respondent's Man Subdistrict, also told the complainant on several occasions that his real problem was "that black boy living in your trailer," referring to Ronald Maxwell. This was verified by several independent witnesses. Bowden admitted having two or three conversations with complainant at the site of complainant's shop but could not recall the details of the conversations. Bowden denied having any conversation with complainant about Maxwell. However, his denial in this regard is not credible. Bowden testified that he overheard Charlie Adkins call in a complaint to the district office, to the effect that "two black men" were living in a shack by the bridge and that "the people from Pic Pac had complained about them." Everette Bowden obviously was aware of the complaints about Maxwell when he had his conversation

with complainant. The credible evidence supports complainant's contention that Bowden told him that his real problem was "that black boy living in your trailer."

Hobert Adkins, the Logan County maintenance supervisor for respondent, made similar comments to the complainant. Complainant testified that he went to see Mr. Adkins at his home on a Sunday to plead his case, but Mr. Adkins refused to talk to him outside business hours. Mr. Adkins later telephoned the complainant and told him, "You'd better get that nigger out of there." The complainant hung up on him. Mr. Adkins called back a few moments later to say that he was only trying to help the complainant. Adkins also told complainant not to tell anyone about the phone call. Hobert Adkins' testimony regarding these transactions was evasive and his memory selective. Like Charlie Adkins, Hobert Adkins testified that he did not recall these conversations, but did not deny that they took place, except to claim that he never used the term "nigger."

In addition to these comments made to complainant by respondent's agents, which directly implicate concerns over Ronald Maxwell as the true cause of complainant's fate, there is other corroborating evidence which clearly establishes that Maxwell was no less than a part of the cause. This evidence includes the two written complaints regarding Ronald Maxwell -- the only written evidence regarding the motive for the ejection of these two men. This evidence also includes the corroborating statement of an agent of respondent who was overheard by Guy Harvey to say that there had been a complaint by local business owners about "black hobos" who had been drinking and living in a shack under the bridge.

Since it is not necessary that the discrimination be the sole motive for the respondent's action, but only "a motivating factor," United States v. City of Birmingham, Michigan, 538 F. Supp. 819, 827 (E.D. Mich. 1982), this evidence is more than enough to establish complainant's claim.

Moreover, there is ample evidence to establish that respondent's articulated reasons are pretext. The explanations offered by the respondent for its actions are inconsistent with its general practices, inconsistent with its own conduct, and inconsistent with the statements of its own agents. In addition, the variations in explanations offered by respondent in different contexts are additional cause to distrust these explanations. In short, the evidence clearly supports the conclusion that the offered explanations are pretext.

First, it was clearly established that the respondent does not generally remove encroachments merely because they are encroachments. While respondent's witnesses Browning and Lindsay attempted to assert this position, it was clear from the evidence that where encroachments were not obstructing or otherwise causing problems, the respondent did not go to the trouble of removing them. Even when encroachments were positioned on a right-of-way where they might become an obstruction at a future point in time, the evidence was that the respondent sought the removal of the encroachment at the time it presented a problem. Despite the fact that Maxwell and complainant were not an obstruction, the respondent pursued their removal with a vengeance, and with the expenditure of much effort and resources. The respondent offered no other examples of where it had

made even half the effort to cure even a truly serious obstruction problem.

Second, at least some of the explanations offered by respondent were inconsistent with its own conduct. For instance, John Lindsay testified that he was motivated by a concern that if complainant's shop were to burn, it could damage the bridge over the Guyandotte River. However, when the respondent eventually demolished the shop, it belied this as a true concern by burning the shop. Lindsay also claimed to be motivated by a concern over liability if the shop should be struck by a motorist veering off the bridge or a flood if the river inundates the mobile home. However, Lindsay admitted that he never sought a legal opinion about this potential liability. What is more, Lindsay failed to offer any explanation as to why any potential liability for these eventualities should be any more of a concern than it is for the numerous encroachments which the respondent declines to remove.

Similarly, the respondent claimed in its answers to the commission's interrogatories that its reason for ejecting complainant was its plan to continuously use the site to stockpile materials. However, it was clear that in the intervening time the respondent has not used the site for this purpose. There was not any evidence that the respondent had ever used it for this purpose in the past. Nor was there any evidence that the respondent had any plan to so use it in the future.

Finally, the variations in the explanations offered by respondent provide very compelling cause to doubt their veracity. There were at least six separate explanations offered at different

points during the proceedings. These included a claim that encroachments are removed simply because they are encroachments, a concern that to abide complainant will set an impractical precedent; a concern about federal funding for the maintenance of the bridge; concern about liability for injuries or damage to complainant or Maxwell; a concern that the bridge would be damaged if the shop burned; a need to use the land to stockpile materials; and a problem involving a power company right-of-way.

Courts have been extremely skeptical of stated reasons which are not asserted until "late in the game." Gallo v. John Powell Chevrolet, Inc., 61 F.E.P. Cases 1121, 1129 (M.D. PA 1991); Foster v. Simon, 467 F. Supp. 533, 19 F.E.P. Cases 1648 (W.D. N.C. 1979); Johnson v. University of Pittsburgh, 359 F. Supp. 1002, 5 F.E.P. Cases 1182 (W.D. PA 1973). Likewise, shifting reasons or defenses between the time of the adverse action and the time of the hearing are strong evidence of pretext. Smith v. American Service Company of Atlanta, Inc., 611 F. Supp. 321, 35 F.E.P. Cases 1552 (N.D. GA 1984); Townsend v. Grey Line Bus Co., 597 F. Supp. 1287, 36 F.E.P. Cases 577 (D. Mass, 1984), aff'd, 767 F.2d 11, 38 F.E.P. Cases 483 (1st Cir. 1985). Respondent's asserted defenses have the unavoidable look and feel of pretext.

There is additional evidence to support a finding that the offered reasons are pretext for a discriminatory motive. Obviously, the extra judicial comments of Everette Bowden, Charlie Adkins and Hobert Adkins persuasively establish this. (This direct evidence of motive is discussed above.) In addition, there is other evidence, discussed above, which clearly establishes that the respondent was

getting complaints about this "black hobo," and that these were probably the only complaints the respondent received regarding this land.

Finally, there is the episode involving George Long, a local businessman. Mr. Long asked the complainant suspicious questions about the mobile home in which Maxwell was living and made a suspicious visit to the site. It was complainant's perception of these events that Mr. Long was seeking to gather information regarding the property and Mr. Maxwell.

Then, almost immediately after Mr. Long's inquiries, the complainant was served with a summons in a circuit court action filed by the respondent seeking to evict him from the property.

#### RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. The respondent shall cease and desist from engaging in unlawful discriminatory practices.

2. Within 31 days of receipt of this decision, the respondent shall pay to the complainant \$67,993.50.

3. Within 31 days of receipt of this decision, the respondent shall pay to complainant incidental damages in the amount of \$2,950.00 for humiliation, embarrassment, emotional distress and loss of personal dignity suffered as a result of respondent's unlawful discrimination.

4. The respondent shall pay ten percent per annum interest on all monetary relief.

5. Within 31 days of receipt of this decision, the respondent shall pay the commission reimbursement of witness fees, hearing transcript costs and travel expenses associated with prosecuting this claim.

6. The complainant's attorney shall, within ten (10) days receipt of this decision, submit to the commission and respondent an itemized statement of compensable expenses associated with prosecution of this case.

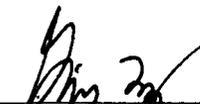
7. In the event of failure of respondent to perform any of the obligations hereinbefore set forth, complainant is directed to immediately so advise the West Virginia Human Rights Commission, Legal Unit Manager, Glenda S. Gooden, Room 106, 1321 Plaza East, Charleston, West Virginia 25301-1400, Telephone: (304) 558-2616.

It is so ORDERED.

Entered this 31 day of May, 1994.

WV HUMAN RIGHTS COMMISSION

BY



GAIL FERGUSON  
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I, Gail Ferguson, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing FINAL DECISION by depositing a true copy thereof in the U.S. Mail, postage prepaid, this 2nd day of June, 1994, to the following:

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GAIL FERGUSON  
ADMINISTRATIVE LAW JUDGE