



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**WV HUMAN RIGHTS COMMISSION**

**1321 Plaza East**

**Room 104/106**

**Charleston, WV 25301-1400**

**GASTON CAPERTON**  
GOVERNOR

**TELEPHONE 304-348-2616**

**Quewanncoii C. Stephens**  
Executive Director

March 28, 1990

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Evelyn J. House  
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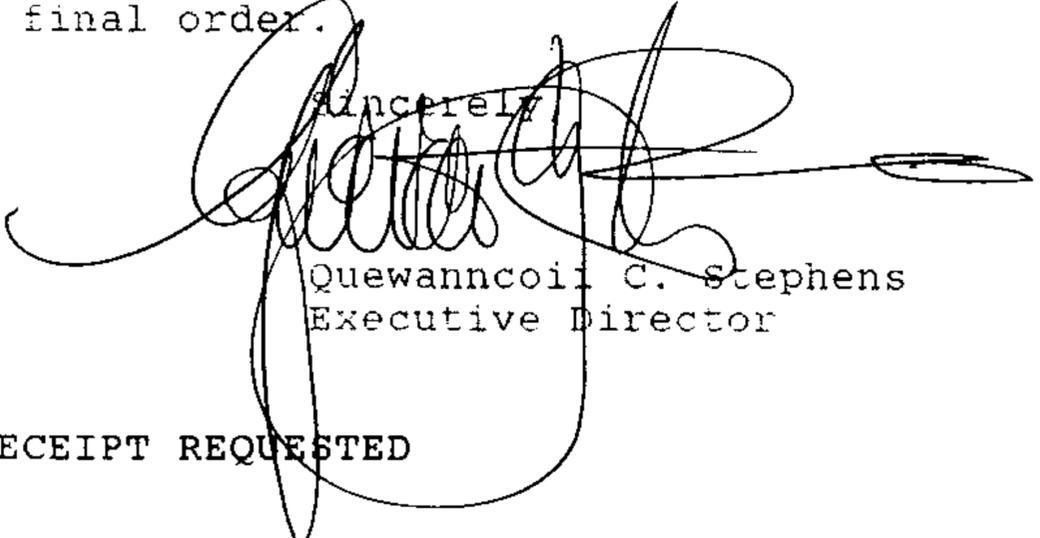
Mike Kelly  
Deputy Attorney General  
812 Quarrier St.  
L & S Bldg. - 5th Floor  
Charleston, WV 25301

Re: Hill v. Evelyn J. House  
HR-545-86

Dear Parties:

Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case. Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective July 1, 1989, any party adversely affected by this final order may file a petition for review with the WV Supreme Court of Appeals within 30 days of receipt of this final order.

Sincerely,

  
Quewanncoii C. Stephens  
Executive Director

Enclosures  
CERTIFIED MAIL-RETURN RECEIPT REQUESTED

### NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal you must file a petition for appeal with the clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a non-resident of this state, the non-resident may be required to file a bond with the clerk of the supreme court.

In some cases the appeal may be filed in the Circuit Court of Kanawha County, but only in: (1) cases in which the commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code Section 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

KIMBERLY D. HILL,

Complainant,

v.

DOCKET NO. HR-545-86

EVELYN J. HOUSE,

Respondent.

FINAL ORDER

On 10 January 1990 the West Virginia Human Rights Commission reviewed the Recommended Findings of Fact and Conclusions of Law filed in the above-styled matter by hearing examiner, Theodore R. Dues, Jr. After consideration of the aforementioned, and all documents filed in response thereto, the Commission decided to, and does hereby, adopt said Proposed Order and Decision, encompassing the Findings of Fact and Conclusions of Law therein, as its own, with no modifications.

It is, therefore, the Order of the Commission that the hearing examiner's Proposed Order and Decision, and the encompassing Findings of Fact and Conclusions of Law, be attached hereto and made a part of this Final Order.

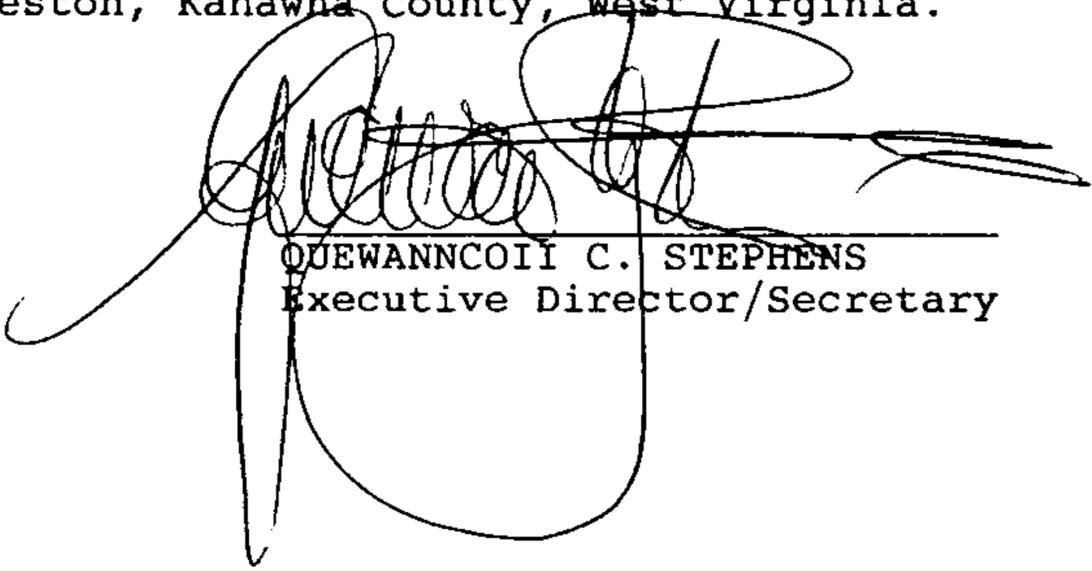
By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and to the Secretary of State of the State of West Virginia, the parties are hereby notified that they have ten days to request a

reconsideration of this Final Order and that they may seek judicial review.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 22<sup>d</sup> day of March, 1990, in Charleston, Kanawha County, West Virginia.



QUEWANNCOII C. STEPHENS  
Executive Director/Secretary

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

KIMBERLY D. HILL,  
Complainant,

v.  
EVELYN J. HOUSE,  
Respondent.

Docket No. HR-545-86

**RECEIVED**  
DEC 9 1988  
W.V. HUMAN RIGHTS COMM.

**EXMINER'S RECOMMENDED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

This matter matured for public hearing on the 7th day of April, 1987. The hearing was held at the Harrison County Courthouse, Clarksburg, West Virginia. The hearing panel consisted of Theodore R. Dues, Jr., Hearing Examiner and Nathaniel Jackson, Hearing Commissioner.

The Complainant appeared in person and by her counsel Heidi A. Kossuth and Randy Dunkle. The Respondent appeared in person and by her counsel John S. Folio.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Examiner, and conversely, to the extent the same are inconsistent to the findings and conclusions, the same are rejected.

## ISSUES

1. Whether the Complainant was refused the rental of an apartment owned by the Respondent due to her race.
2. If so, to what relief is the Complainant entitled.

## FINDINGS OF FACT

1. At the time of the hearing, the Complainant was a black female 21 years of age.
2. Also, the Complainant was employed at a restaurant located at Bridgeport, West Virginia, some few miles away from the location of the apartment, subject of this action.
3. The Complainant noticed an ad in a local newspaper and called the Respondent, on or about April 10, 1986, to inquire about renting the same. At that time, the parties discussed the condition of the apartment and its layout and the improvements which the Respondent had made to the apartment. Also during the conversation, the Complainant advised the Respondent that she would be renting the apartment for herself and her boyfriend, Mr. Childers (a white male).
4. At the conclusion of that conversation, the Complainant was told by the Respondent that she could have the apartment.
5. Later, Childers physically viewed the apartment and was instructed by the Complainant to take a note from the Respondent to the Department of Human Services for the arrangement of payment of the rent. The Department of Human

Services was to pay the deposit of \$100.00 and the first months rent of \$150.00.

6. Later, after determining that the Complainant and Childers were of different races, the Respondent told the Complainant that she did not want to wait the three months for the receipt of a Department of Human Services check for payment of the rent. The Complainant then offered to obtain the money sooner, but the Respondent said she had already rented it to someone else.

7. Prior to this, the Respondent had advised the Department of Human Services that she would wait 6 to 8 weeks for a check to be issued by the agency.

8. The Complainant spoke with the Respondent three times on the phone, prior to having the apartment withdrawn.

9. The Complainant had to walk one and one half hours to town to catch a bus.

10. When working at night, the Complainant would take a cab from work to home. This cost approximately \$6.00 per night. Other nights when the Complainant had no money for a cab, she would wait until approximately 3 or 4 a.m. for her aunt to leave work and come by to pick her up.

11. If the Complainant had been rented the Respondent's apartment, the Complainant would have not incurred the inconvenience or expense heretofore mentioned.

12. A month after the Complainant had the approval of the apartment withdrawn by the Respondent, the Respondent was still advertising the apartment in the local newspaper.

13. Subsequent to having the Respondent's apartment withdrawn, the Complainant made an application for subsequent housing.

14. The fact the Complainant and her boyfriend were not yet married was not indicated to be of any significance by the Respondent.

15. The Respondent advised an employee of the Department of Human Services, following up on the Complainant's rental subsidy application for the Respondent's apartment, that it made her sick to think that a black and white couple would be renting her apartment.

#### DISCUSSION

The Complainant established a prima facie case of housing discrimination as a result of her race by establishing that: she is a black female; that she applied for the apartment in question; that the Respondent approved the rental of the apartment by the Complainant; that later upon discovering that the Complainant and her companion were of different races the apartment was withdrawn; and, that the Respondent continued to advertise the apartment under the same terms and conditions that were originally listed at the time the Complainant applied and was initially approved. McDonnell Douglas v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1973); State ex rel. Logan-Mingo Area Mental Health Agency, Inc., 329 S.E. 2d 77 (1985).

The Respondent indicated that she did not rent the apartment for the reason that she was moving to the upstairs area

herself as a result of a flood. The evidence of record indicates that this explanation deserved no weight. Accordingly, the reason articulated by the Respondent was determined to be pretextual. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089 (1981). Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission, 309 S.E.2d 342 (W.Va. 1983).

Although the decision to withdraw the apartment from the Complainant was of significance, it, however did not result in a major economic loss to the Complainant. The embarrassment and humiliation of the same, in addition to the inconvenient situation, in which the Complainant was placed, as a result of the decision, is worthy of relief. Accordingly, general damages will be provided to the Complainant pursuant to the case of State Human Rights Commission v. Pearlman Realty Agency, 239 S.E.2d 145 (W.Va. 1977).

#### CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties herein.
2. The Complainant established a prima facie case of housing discrimination, as discussed earlier herein.
3. The Respondent failed to articulate a credible legitimate nondiscriminatory reason for her failure to follow through with the initial agreement to rent the apartment to the Complainant.
4. The Complainant suffered no specific economic loss,

that was sufficiently provided in the record, with the exception of the significant inconvenience and the embarrassment and mental anguish caused by the conduct of the Respondent. Accordingly, the Examiner finds that the Complainant is entitled to damages under Pearlman in the amount of \$1,000.00.

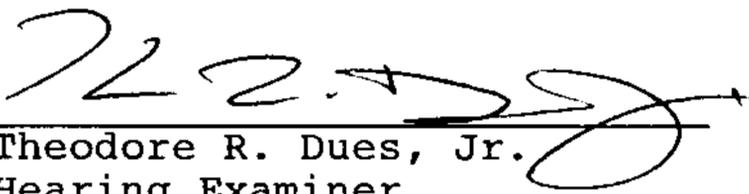
**PROPOSED ORDER**

Accordingly, the Examiner does hereby recommend to the Commission that judgement be awarded to the Complainant. Also, it is recommended that the following relief be provided:

1. An award for incidental damages in the amount of \$1,000.00.
2. A cease and desist Order.

DATED: Sept. 15, 1988

ENTER:

  
Theodore R. Dues, Jr.  
Hearing Examiner