

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

TERRANCE HUDSON, LORING HUDSON,
AND RENEE KING,

COMPLAINANTS,

V.

DOCKET NO. PAR-21-75

MONONGAH SWIMMING POOL
CLUB, INC., A CORPORATION,

RESPONDENT.

ORDER

On the 15th day of July, 1985, the Commission reviewed Hearing Examiner Michael E. Nogay's Findings of Fact and Conclusions of Law. After consideration of the aforementioned Proposed Findings of Fact and Conclusions of Law, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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

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

Entered this 15th day of July, 1985.

RESPECTFULLY SUBMITTED,



RUSSELL VAN CLEVE
CHAIRPERSON, WV HUMAN RIGHTS
COMMISSION

Approved
June 25, 1985
SRH

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

On the Complaint of:

TERRANCE HUDSON, LORING HUDSON
and RENEE KING,
Complainants

RECEIVED

JUN 21 1985

vs.

CASE NO. PAR-21-75 MM.
(Marion County)

MONONGAH SWIMMING POOL CLUB,
Inc., a non profit corporation,
Respondent

[Handwritten signature]

RECOMMENDED DECISION

On May 1, 1985, this matter came on for public hearing in Marion County before Hearing Examiner Michael Edward Nogay. The Complainants all appeared in person and by their private counsel, Gregory Hinton, Esquire, and by Barbara Fleischauer, Special Assistant Attorney General for the State of West Virginia. Although it never filed a verified answer to the administrative complaint herein, the Respondent appeared by its counsel Karen M. Yokum, Esquire, and by Deborah Vandetta, its secretary. The hearing was transcribed by Barbara Arnold, a certified court reporter.

Prior to the taking of any testimony, the parties entered into a written stipulation waiving the presence of a hearing commissioner, the same which is attached to this Order, and incorporated hereby.

Complainants introduced the sworn testimony of nine (9) witnesses in establishing their prima facie case of race discrimination. Respondent then presented the testimony of five (5) witnesses in its defense. Complainant rebutted with the testimony of two (2) additional witnesses. Six (6)

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documentary exhibits were introduced on behalf of Complainants and one (1) documentary exhibit was made a part of the record on behalf of Respondent. Counsel for both parties submitted post-hearing briefs to the examiner.

From all of the foregoing, the hearing examiner did make the following findings of fact:

1. On or about August 2, 1974, Josephine Hudson, a black adult, filed a verified complaint against the Monongah Swimming Pool Club. The complaint was filed on behalf of her minor son, Terrance Hudson, a black male, and also stated facts concerning allegations of race discrimination arising out of the same incident involving Loring Hudson, a black male, and the minor son of Josephine Hudson, and Renee King, a black female and the minor niece of Josephine Hudson. Although the complaint names only Terrance Hudson as a party, it appears from the testimony of Josephine Hudson and the actual written language of the complaint that all three (3) children were intended to be named as party complainants. During the course of the public hearing, an oral motion by counsel for Complainants to formally amend and clarify the complaint was granted by the Hearing Examiner, and Terrance Hudson, Loring Hudson and Renee King were, with their consent, formally made party complainants in this matter. They are all now adults. The Hearing Examiner made a specific finding that the omission of the names of Loring Hudson and Renee King was a clerical error which should be corrected, and that the incident involving these two individuals related back to the

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date set forth in the original complaint. As well, it is hereby concluded as a finding of fact that the proper name of the respondent is Monongah Swimming Pool Club, Inc.

2. Monongah Swimming Pool Club, Inc. is a non-profit corporation which was initially organized in or about 1963. The pool is located in Monongah, Marion County, West Virginia, and was initially and primarily funded by means of a \$32,000.00 loan from the Farmer's Home Administration (FHA) an agency of the United States government. This federal agency uses public funds to fund projects which "improve" local communities. The pool was originally open only to private members, but exceptions were gradually made to allow members of the general public to swim there as is more fully set forth below. The FHA is still being paid on the original loan by the Respondent, and the FHA still monitors the financial activities of the pool. It is the policy of the FHA to refuse loans to organizations which discriminate on the basis of race. The FHA dictated numerous regulations which the Respondent had to comply with in order to obtain the loan, and it still maintains oversight with regard to the pool's operation.

3. On Sunday, July 21, 1974, Terrance Hudson was ten (10) years old, and Loring Hudson and Renee King were each nine (9) years old. As stated above, all three (3) of these individuals are black. On July 21, 1974, these three (3)

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children were brought to the Respondent swimming pool by Brooks Lambert, a white child, who was a member of the pool, and who was a neighbor of Complainants. Sundays were typically "visitors" days at the pool and members whose families had paid the yearly dues could bring guests at a small admission price. As the four (4) children approached the pool with admission money in hand, a lifeguard at the pool came out into the parking lot and refused the Complainants admission as guests. The Complainants each recalled that the pool was crowded that day and those inside lined up by the fence and watched as the children were forced to leave the parking lot. They recalled seeing no blacks in the pool and Terrance Hudson recalls being particularly embarrassed because some white friends from his little league baseball team watched him being refused admittance. All three (3) Complainants testified as to their humiliation, anger and embarrassment over this incident. The Complainants lived very close to the pool and could hear the noise in the summertime of other children swimming and enjoying themselves. They were never able to enjoy the pool during their childhood.

4. Respondents attempted to explain the July, 1974, incident as non-race related, and introduced evidence that guests had to be non-residents of Marion County, West Virginia. (See, Article VI, Section Six of Respondent's Exhibit #1). This non-residency requirement for guests,

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Respondents contended, was required by the FHA so as to increase pool income by forcing local citizens to join the pool rather than allowing them to come as guests. However, the uncontradicted testimony of two (2) white persons, namely, Theresa Rhodes and Bernard Pierce, clearly establishes that white, non-member, residents of Marion County were regularly allowed to be guests at the pool regardless of where they lived, even when they were not accompanied by a member and even on days when visitors were normally not permitted. In a community as small as Monongah, it was relatively easy to ascertain who was and who was not a local resident.

5. Although no formal request was made to the FHA until 1982, it is clear that during the 1970's the swimming pool frequently held "guest days." In addition to "guest days" when visitors were allowed, the pool frequently held "pool parties" or "splash parties" on Thursday evenings during the summer months. Members would purchase tickets which could be given to non-members to gain admission to these "pool parties" which were otherwise open to the public. In the summer of 1974, following the July 21 incident, Renee King attempted to attend a "pool party" with a white friend, Jean Lambert, whose family was a member. Renee King was denied admission by pool personnel. In 1981, Dennis Serian, a white male who was also a member of the pool sought to bring Terrance Hudson as a guest to a "pool party." Terrance Hudson

was also denied admission. Dennis Serian testified that John Palmer, a pool employee, told him later that "You know the rules--no blacks allowed."

6. No blacks were ever accepted as members of the pool until 1983. The application for membership in effect in the mid-1970's specifically inquired as to the "race" of the applicant. Although testimony reveals that the pool was experiencing financial difficulties, the evidence shows that the number of memberships accepted was actually decreased, and that black families were told that no vacancies existed. This reduction in members was made independently by Respondent, and was not required by the FHA.

7. The pool served food and refreshments to the general public during the 1970's by means of a window facing the parking area.

8. On occasion, a white child would be turned away as a guest at the pool because of local residency. However, it is clear from the testimony of Bernard Pierce and Theresa Rhodes, two white non-members from Marion County who frequently swam at the pool, that this was more the exception than the rule. In contrast, however, no black guests were ever admitted. This discrimination caused the Complainants to suffer humiliation, embarrassment, emotional and mental distress, and a loss of personal dignity.

9. There appears to have been a strong tie existing between the Town of Monongah and the Respondent pool,

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including, on at least one occasion, one-time providing of legal representation to the pool by the town's attorney. (See Complainant's Exhibit #6.)

In addition to the foregoing Findings of Fact, the Hearing Examiner did make the following Conclusions of Law:

1. Terrance Hudson, Loring Hudson and Renee King were the intended Complainants when the complaint was filed in 1974, and should be made Complainants by way of amendment under Rule 3.06.

2. Complainants are black persons who are protected parties under the West Virginia Human Rights Act from discrimination in places of public accommodation.

3. Under the provisions of West Virginia Code Section 5-11-3(j) and the decision of the West Virginia Supreme Court of Appeals in Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission, 309 S.E. 2d 342 (W.Va. 1983), the respondent swimming pool was a place of "public accommodation" in 1974 and 1981 and from 1963 through the present date. The swimming pool utilized public funds from the FHA to finance its original construction, and owes its existence to money provided by taxpayers. The pool was heavily regulated by the FHA. The pool made itself a place of public accommodation by providing food and refreshments to the general public, and by holding "guest days" and "pool parties", which opened the pool to the general public.

4. The Respondent discriminated against the Complainants on the basis of race with regard to public accommodations in 1974 and 1981, and discriminated against all black persons in the community who sought membership from 1963 through 1983. This discrimination was unlawful under West Virginia Code Section 5-11-9(f).

5. The Complainants have, as a direct result of this unlawful discrimination, suffered severe embarrassment, humiliation, emotional and mental distress, as well as a loss of personal dignity, and may be compensated for the same under the rule established in State Human Rights Commission v. Pearlman Agency, 239 S.E. 2d 145 (W.Va. 1977).

WHEREFORE, it is recommended that the Complainants be awarded the following relief against the Respondent:

1. That the Respondent be hereby enjoined from further discriminating against black persons who seek to gain admission to the pool as either guests or members;
2. That the Respondent, within sixty (60) days of the entry of this Order, develop a written policy which will encourage such non-discriminating access to its place of public accommodation, and that it furnish copies of such policy to this Commission and to each of the current members of Respondent swimming pool;
3. That Respondent post in at least three (3) separate and conspicuous places at its principal place of business signs indicating that its facilities are open to all

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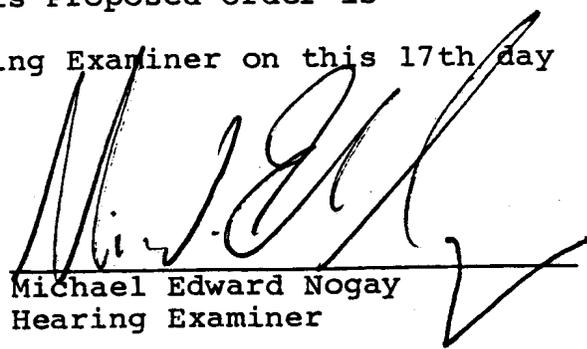
persons regardless of their race, color, national origin, ancestry, blindness, religion, sex, age, or handicap;

4. That the Respondent, within sixty (60) days from the entry of this Order, and each year hereafter for a period of five (5) years, submit a written breakdown of applicants and guests, listing their race, names and addresses and whether their application for membership was accepted or whether such guest was admitted;

5. That the Respondent, within sixty (60) days from the entry of this Order pay each of the Complainants, namely, Terrance Hudson, Loring Hudson, and Renee King the sum of Five Thousand Dollars (\$5,000.00), by way of compensatory damages for the humiliation, embarrassment, emotional distress, mental distress and loss of personal dignity which they have suffered as a result of the said discriminatory practices of Respondent.

6. That the Respondent, within sixty (60) days from the entry of this Order pay unto the Complainants private counsel, namely, Gregory Hinton, Esquire, the sum of One Thousand Dollars (\$1,000.00) in attorney fees.

Pursuant to Rule 7.02 this Proposed Order is submitted by the undersigned Hearing Examiner on this 17th day of June, 1985.



Michael Edward Nogay
Hearing Examiner

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