



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304-348-2616

November 24, 1986

PHYLLIS MOORE, JR.
Governor

Phyllis Moore
506 Hughes St.
Parkersburg, WV 26105

Paul M. Sansoucy, Esq.
Bond, Schoeneck & King
1 Lincoln Center
Syracuse, NY 13202-1355

Vitro Agate Co.
D Street
Parkersburg, WV 26101

RE: Moore v. Vitro Agate Co.
ES-296-76

Dear Parties:

Due to an oversight, the attached Order was not mailed to the parties.

Herewith, please find the Order of the WV Human Rights Commission in the above-styled and numbered case.

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,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/mst
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PHYLLIS MOORE

Complainant,

v.

DOCKET NO.: ES-296-76

VITRO AGATE COMPANY

Respondent.

FINAL ORDER

On March 14, 1985, the West Virginia Human Rights Commission did review the Record and the Recommended Order of the Hearing Examiner including Findings of Fact, Conclusions of Law, and thereafter the Commission authorized the Chairperson, Russell Van Cleve, to sign this Order.

It is accordingly ORDERED that the Recommended Order of Examiner's Findings of Fact, Conclusions of Law, and Notice of Exceptions be attached and made a part of this Order. The Complaint filed by Phyllis Moore, be dismissed with prejudiced, and that she recover nothing from the Respondent and that each of the parties be responsible for paying their own costs, including any attorney's fees.

It is further ORDERED that a copy of this Order be sent by certified mail to each of the parties and they are hereby notified that they have 10 days upon which to request a review of this decision.

Entered this 24th day of March 1985.

Order Entered:

WEST VIRGINIA HUMAN RIGHTS
COMMISSION

By its:



Chairperson

JMR/kpv

RE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED
DEC 10 1984

W.V. HUMAN RIGHTS COMM.
Assistant

PHYLLIS MOORE,

Complainant,

v.

DOCKET NO. ES-296-76

VITRO AGATE COMPANY,

Respondent.

**RECOMMENDED ORDER OF EXAMINER'S
FINDINGS OF FACT AND CONCLUSION OF LAW**

This case came on for hearing on the 30th day of September, 1982. The hearing was held at the Municipal Building, Parkersburg, West Virginia, before Hearing Examiner, Theodore R. Dues, Jr.; the Commissioner's presence was waived by the parties. The Complainant appeared in person. The West Virginia Human Rights Commission was represented by Eunice L. Green, Assistant to the Attorney General of West Virginia. The Respondent appeared by its representative, Lewis Moore, and by its counsel, Paul M. Sansoucy.

On the 7th day of January, 1976, the Complainant filed a verified complaint alleging that the Respondent, Vitro Agate Company, had discriminated against her on the basis of race by terminating her employment for alleged poor work performance.

The West Virginia Human Rights Commission issued a Letter of Determination on the complaint.

The West Virginia Human Rights Commission, by Howard D. Kenney, Executive Director, served written notice of public hearing upon the parties pursuant to West Virginia Code Section 5-11-10. On the 17th day of August, 1982, pursuant to Section 7.10 of the Administrative Regulations of the West Virginia Human Rights Commission, a Pre-Hearing Order was entered by this Examiner.

After full consideration of the testimony, documentary evidence and arguments of counsel, this Examiner makes the following recommendations for Findings of Fact and Conclusions of Law:

ISSUE

1. Whether the Respondent's lay-off of the Complainant was a result of sexually discriminatory conduct.

FINDINGS OF FACT

1. Phyllis Moore is a Caucasian female.
2. Complainant was employed by Respondent on September 9, 1968.
3. In 1973, Complainant filed an employment discrimination charge against the Respondent for failing to make training opportunities available to women.

4. The EEOC charge was settled by written conciliation agreement in 1973. Within that agreement, training opportunities were to be provided to all employees.

5. Complainant personally endorsed the agreement thereby acknowledging her approval of the same.

6. The agreement provided a release and expressed waiver of Complainant's rights to sue or otherwise file a claim for matters covered by the agreement as long as the agreement was being honored.

7. Complainant failed to prove nor did she allege that Respondent was in breach of the agreement.

8. The agreement expressly provided that training would be used to broaden the rights for women to bump in the event of layoff.

9. Complainant failed to complete the minimum training requirements of the positions for which she alleges she was qualified and which would have precluded her layoff.

10. The agreement is the exclusive remedy for this matter and in as much as there is no allegation of breach no meritorious charge has been alleged.

CONCLUSIONS OF LAW

1. At all times referred herein, the Respondent, Vitro Agate Company, is and has been an employer within the

meaning of Section 3(d), Article 11, Chapter 5 of the official Code of West Virginia.

2. At all times referred to herein, the Complainant was a citizen and resident of the State of West Virginia and is a person within the meaning of Section 3(a), Article II, Chapter 5 of the Official Code of West Virginia.

3. On January 12, 1976, Complainant by verified complaint charged the Respondent with sex discrimination in her layoff.

4. The complaint in this matter was timely filed; having been filed within ninety (90) days of the most recent act of alleged discrimination.

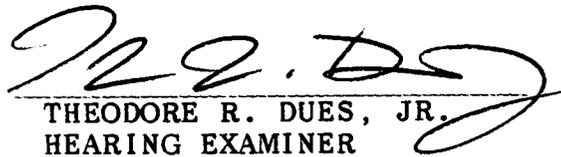
5. The West Virginia Human Rights Commission has jurisdiction over the parties but not the subject matter as a result of the provisions of the EEOC conciliatory agreement entered into by Complainant and the Respondent in 1973. That agreement provides the layoff and training requirements used by the Respondent in the layoff subject of this charge. It also specifically provides that the parties by their endorsement agree to the condition that the EEOC shall determine whether the Respondent has complied with the terms of the agreement.

6. The allegations of the charge in this case falls within the purview of the EEOC agreement.

Accordingly, it is recommended that this matter be dismissed with prejudice as to this charge.

DATED: December 6, 1984

ENTER:


THEODORE R. DUES, JR.
HEARING EXAMINER