



COPY

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

1/2/86
~~December 20, 1985~~

Sharon Mullens, Esq.
Assistant Attorney General
1204 Kanawha Boulevard, East
Charleston, WV 25301

James H. Crewdson, Esq.
Charleston National Plaza
Charleston, WV 25301

RE: Janine Patterson V R. M. McConihay
Docket No.: HR-60-79

Dear Ms. Mullens and Mr. Crewdson:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Janine Patterson V R. M. McConihay.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

Howard D. Kenney
Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JANINE PATTERSON,
Complainant,

v.

DOCKET NO. HR-60-79

R. M. MCCONIHAY,
Respondent.

FINAL ORDER

At its regularly scheduled meeting held on November 13, 1985, the Commission reviewed the record in this case and thereafter adopted the Hearing Examiner's Findings of Fact and Conclusions of Law as its own.

It is therefore, ORDERED that the Findings of Fact and Conclusions of Law of the Hearing Examiner be attached hereto and made a part hereof for all pertinent purposes.

It is further ORDERED that:

1. That the Complainant be awarded the sum of \$360.00 representing additional rent which the Complainant was required to pay.
2. That the Complainant be awarded the further sum of \$2,500.00 as incidental damages for humiliation and embarrassment caused by the Respondent's unlawful conduct.

Entered this 5 day of December, 1985.

WV HUMAN RIGHTS COMMISSION

BY ITS Betty Baxter Hamilton
CHAIR, VICE CHAIR

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

Received
WVHR
10/3/85

JANINE PATTERSON

Complainant

vs:

DOCKET NO. HR-60-79

RECEIVED

R. M. McCONIHAY

Respondent

OCT 07 1985

W.V. HUMAN RIGHTS COMM.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Pursuant to notice issued to the respective parties hereto, this matter came on for hearing on the 29th day of May, 1985, beginning at 9:00 a.m. in Conference Room E, Building 7, State Capitol Complex, Charleston, West Virginia. Robert R. Harpold, Jr., Hearing Examiner, presided, the parties having specifically waived the presence of a hearing commissioner.

The complainant, Janine Patterson, appeared in person and by her counsel, Sharon Mullins, and the respondent, Mrs. R. M. McConihay, appeared in person and by her counsel, James H. Crewdson.

It appearing to the hearing examiner that notice, as required by law, setting forth the time and place of the hearing and the matters to be heard, had regularly been served upon the respective parties hereto and that the same appeared in person; the hearing was convened at the aforesaid time and place.

Upon due consideration of the evidence and exhibits filed herein, the hearing examiner hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The respondent, Ruby M. McConihay, a white female, resides at 1931 Washington Avenue, St. Albans, Kanawha County, West Virginia, and has been a property owner in St. Albans, Kanawha County, West Virginia for approximately thirty-three (33) years and owns ten (10) rental homes in St. Albans, Kanawha County, West Virginia, collecting monthly rent from the same.
2. The complainant, Janine Patterson, is a 29 year old black woman.
3. In July 1978, respondent advertised for rent a house located at 2815 Lincoln Avenue, St. Albans, Kanawha County, St. Albans, West Virginia.
4. Complainant contacted respondent because of an advertisement in the newspaper which specifically indicated "infants only."
5. Respondent's usual practice in renting her homes was to inform prospective tenants of the rental property address, have them go to the rental home, look at it from the outside, view the neighborhood, and if interested call her back and schedule an appointment with her to be shown the inside.
6. On July 24, 1978, complainant, having previously telephoned respondent, scheduled an appointment to view the

rental home located at 2815 Lincoln Avenue, St. Albans, West Virginia.

7. Complainant, accompanied by a co-worker, Mrs. Julian Adkins, went to view the rental home.

8. Mrs. Adkins observed that the neighborhood location of the rental home was nice and that children were present in the neighborhood.

9. Respondent showed the home, which was a two to three bedroom house with hardwood floors and a "nice size yard" to complainant.

10. After viewing the house, complainant discussed with respondent the fact that she had a child who would be living in the rental home.

11. On July 24, 1978, after seeing the rental home, complainant offered respondent a deposit on the house. The rental was \$245 per month. The lease was for a period of one year.

12. Respondent informed complainant at that time that she had already accepted a deposit from a single parent and thus could not accept hers. However, respondent stated that if the other person decided not to rent the house she would let her know.

13. Complainant wrote her name, address and telephone number on a piece of paper and handed it to respondent in order that respondent could contact her if she were willing to rent the house to her.

14. Upon leaving the house, Mrs. Adkins observed respondent ball up and throw down the piece of paper complainant had given Mrs. McConihay upon which she had written her name and address and telephone number. Respondent didn't remember what she did with the piece of paper.

15. Respondent never contacted complainant; however, on July 29th complainant contacted respondent and was told by the respondent that she had not heard from the other party, and was informed by the respondent that she would not rent the house to people with small children.

16. The respondent produced no deposit receipts.

17. Respondent had no black tenants residing in any of the ten rental homes owned by her in 1978 and had not rented to black tenants prior to 1978.

18. Mr. Lindell, an investigator from the West Virginia Human Rights Commission when serving the complaint in this matter, was told by respondent that she felt "these colored people would not take care of her property" as well as other similar comments. Respondent also informed Mr. Lindell that she had not rented to blacks.

19. Respondent informed Mr. Lindell that the reason she did not rent the 2815 Lincoln Avenue house to complainant was because she had a small child and would have to have a babysitter and that the babysitter would not take care of the property. Furthermore, a small child would do damage to the property and would be noisy, which would cause the neighbors to complain.

20. Mr. Lindell and complainant observed evidence of children living or playing in the neighborhood. Respondent testified that there was a sign in the window but couldn't remember what it said.

21. Mr. Lindell and the complainant, observed a sign in the window of respondent's rental home saying children were acceptable.

22. The tenants who actually rented the rental house located at 2815 Lincoln Avenue, St. Albans, West Virginia, were white. They rented the house on August 25, 1978. They were married with no children.

23. Respondent stated that she had several other houses located close to the rental house and would have difficulty renting the other houses if she rented to people with children of preschool or infant ages. Respondent testified that the locations of her other rental homes other than the two located at 2815 and 2817 Lincoln Avenue, St. Albans, West Virginia, were in fact several blocks away from each other.

24. Respondent indicated that since 1978 she had rented to Italians and Jews.

25. Respondent in her August 4, 1978, letter stated that she wanted to rent her house to people with one school age child.

26. Complainant later rented a house in Cross Lanes for \$275 a month. The house she later rented contained a fur-

nished stove and refrigerator, consequently the complainant chose to sell her stove and refrigerator for \$900.00.

27. Complainant was unable to car pool to work and consequently purchased a used 1977 Delta Oldsmobile for \$6,000.00

CONCLUSIONS OF LAW

The hearing examiner, having heard the evidence and having reviewed the exhibits filed at the hearing, hereby makes the following conclusions of law:

1. That the complainant, being a black female, is a member of a protected class.
2. That the respondent being the owner of rental property is a covered owner as defined by the West Virginia Human Rights Act (5-11-3).
3. That the parties are within the jurisdiction of the West Virginia Human Rights Commission.
4. At all times referred to herein, 2815 Lincoln Avenue, St. Albans, Kanawha county, West Virginia, constituted a "housing accommodation" as defined in Code § 5-11-3(k).
5. At all times referred to herein, the respondent, was the person having the right of ownership or possession of and the right to rent or lease the housing accommodation located at 2815 Lincoln Avenue, St. Albans, Kanawha County, West Virginia, within the meaning of Code § 5-11-9(g).
6. At all times referred to herein the complainant is and has been a citizen and resident of West Virginia within the meaning of Code § 5-11-2.

7. That there is sufficient evidence to infer that the complainant was, in fact, discriminated against because of her race.

Chapter 5, Article 11, Section 9 of the West Virginia Code states in part that:

"It shall be an unlawful discriminatory practice..." (g) 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:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise 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 or handicap of such person or group of persons: Provided, that this provision shall not require any person named herein to rent, lease, assign or sublease any housing accommodations or real property, or any portion thereof to both sexes where the facilities of such housing accommodations or real property, or any portion thereof, are suitable for only one sex;

(2) To discriminate against any person or group of persons because of the race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons in the terms, conditions or privileges of the sale, rental or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the

prospective purchase, rental, lease, assignment or sublease of any housing accommodations or real property or part or portion thereof, which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex, blindness or handicap or any intent to make any such discrimination and the production of any statement, advertisement, publicity, sign, form of application, record or inquiry purporting to be made by any such person shall be prima facie evidence in any action that the same was authorized by such person: Provided, that with respect to sex discrimination, this provision shall not apply to any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only one sex."

The forceful language used by the Legislature mandates the eradication of unlawful discrimination. State of West Virginia Human Rights Com. v. Pauley, 9 EPD § 10, 103 (W.Va. 1975).

Complainant need not prove that the respondent acted with specific intent to violate the laws: it is enough if respondent's acts and conduct had the effect of discriminatorily denying housing opportunities to a minority home seeker. U. S. v. Real Estate Development Corp., 347 F. Supp 776 (N.D. Miss. 1972).

It is clear from the evidence that the complainant made an inquiry to the advertisement in the newspaper, and at the time of said inquiry was told that the house was available and an appointment was made.

The treatment afforded complainant by the respondent after being contacted concerning the rental of 2815 Lincoln Avenue, St. Albans, Kanawha County, West Virginia, amounted to a refusal to rent that housing accommodation on the basis of race,

constituting an unlawful discriminatory practice in violation of W.Va. Code § 5-11-9 (g)(1).

Upon her arrival and tour of the house, the complainant was informed that the respondent had already accepted a deposit from a single parent. This, of course, would be a non-discriminatory reason for not renting the house to the complainant. However, one must look to the entire sequence of events to get the total picture. When the complainant called back two days later she was informed that the respondent would not rent to people with children, which was contrary to the advertisement in the newspaper and to the sign in the window of the rental home. Furthermore, Mrs. Atkins observing the respondent throwing away the piece of paper with the complainant's name and telephone number on it clearly indicates that the respondent had no intentions of renting the rental home to the complainant.

Having some concerns about this, the complainant filed a complaint with the West Virginia Human Rights Commission who sent testers to the address of the respondent to inquire as to whether or not the rental home was available. While the results of the testing were not introduced into evidence, nevertheless, as a result of the investigation, a complaint was served upon the respondent. Upon serving the complaint, the respondent made several racial remarks which corroborates the complainants contention that the respondent never intended to rent her the house. Aware of the subtle ways in which housing opportunities can be denied minorities, courts have consistently been skeptical

of subjective excuses for turning away minorities. Newbem v. Lake Loulie, Inc., 308 F. Supp 407 (S.D. Ohio 1968); Stevens v. Dobs, Inc., 483 F2d 82 (4th Cir. 1973); United States v. Real Estate Development Corporation, 372 F. Supp 766 (M.P. Miss 1972).

In interpreting almost identical language in the Federal Fair Housing Act (42 USC § 3604[a]) the United States district Court of the Northern District of California held that acts which are designated to discourage or frustrate black apartment hunters are just as discriminatory as outright rejection. United States v. Youritan Construction Co., 370 F. Supp 643 (N.D. Cal. 1973); United States v. Gooms, 348 F. Supp 1130 (M.D. Fla. 1972).

It is clear from the evidence that the respondent unlawfully discriminated against the complainant informing her over the telephone that the apartment was available for rent, showing her the apartment and then refusing her the apartment under some pretext that she would not rent to people with children.

The complainant having established a prima facie case of discrimination, the burden shifted to the respondent to offer evidence sufficient to rebut the prima facie case. Clearly, the respondent's evidence fails to rebut the prima facie case established by the complainant.

Therefore, it is the finding of this examiner that the respondent was guilty of acts of discrimination toward the com-

plainant within the meaning of the provisions of the West Virginia Human Rights Act. (5-11-9(g)(1))

As a result of the illegal discriminatory actions of the respondent, complainant incurred pecuniary loss by reason of having to search out and acquire an alternate housing accommodation.

The question now shifts as to what damages has the complainant sustained as a result of the acts of discrimination. The Human Rights Commission has the authority to make an award of monetary damages to a victim of unlawful discrimination, however, damages can only be awarded upon proof of a monetary loss. State of West Virginia Human Rights Comm. v. Pauley, 158 W.Va. 495, 212 SE2d 77 (1975). The purpose of awarding damages under the West Virginia Human Rights Act is to "make whole" the victim of the discriminatory act.

As noted in the findings of fact, the complainant leased the house in the Cross Lanes area for the monthly rental of \$275.00 per month or \$30.00 per month more than the monthly rental of the respondent's house. Since the rental period would have been for at least one year, the out of pocket damages sustained on behalf of the complainant amounted to \$360.00 for the initial rental period.

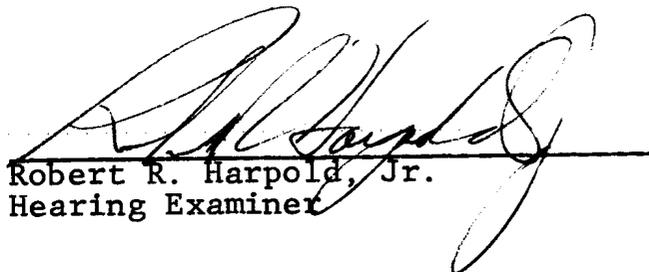
The complainant contends that she had to sell her stove and refrigerator and purchase a second car, and that she should be compensated for this as damages. I cannot agree with this. The fact that she sold her stove and refrigerator was a decision

she made herself and to allege them as damages is too remote in this examiner's opinion. The same rationalization prevails in the case of the purchase of the automobile. The complainant benefited from the car which she says she still has. Therefore, it is this examiner's opinion that the complainant's out of pocket damages amounts to \$360.00.

In this respect, the examiner awards compensatory damages in the amount of \$360.00.

The law in West Virginia is clear that the West Virginia Human Rights Commission may award to the complainant incidental damages as compensation for humiliation and embarrassment. State Human Rts. Com. v. Pearlman, 239 SE2d 145 (1977). Although Pearlman clearly demonstrates the Commission's power to award compensatory damages for humiliation, embarrassment and emotional and mental distress and the loss of dignity on account of any discriminatory act on the part of the respondent, that authority should be exercised with restraint depending upon the facts and circumstances of each case and the amount of proof of such humiliation and embarrassment. In this case, the only testimony regarding this element was the testimony of the complainant. No other witness testified as to the embarrassment or humiliation of the complainant. Ms. Atkins couldn't remember what effect it had on the complainant. In view of this, the hearing examiner is reluctant to award an amount as argued by counsel for the complainant. In this respect, after considering all the evidence, especially the testimony of the complainant

regarding her humiliation and embarrassment, the hearing examiner awards the sum of \$2,500.00 as compensation for the embarrassment and humiliation caused by the acts of discrimination of the respondent.



Robert R. Harpold, Jr.
Hearing Examiner