



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**215 PROFESSIONAL BUILDING  
1036 QUARRIER STREET  
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.  
Governor

January 9, 1986

Barbara Fleischauer, Esquire  
258 McGara Street  
Morgantown, WV 26505

Edwin C. Runner, Esquire  
313 1/3 East Main Street  
P.O. Box 607  
Kingwood, WV 26537

RE: Robinson v Raymond William Barker, HR-264-80

Dear Ms. Fleischauer and Mr. Runner:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Michael Robinson v Raymond William Barker, HR-264-80.

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  
Executive Director

HDK/kpv  
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

**RECEIVED**

NOV 22 1985

W.V. HUMAN RIGHTS COMM.

Answered.....

**BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

MICHAEL ROBINSON,

Complainant,

vs.

Docket No. HR-264-80

RAYMOND WILLIAM BARKER,

Respondent.

**ORDER**

On the 14th day of November, 1985, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner George C. Rutherford. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own with the exceptions set forth below.

The Commission hereby deletes from the Findings of Fact and Conclusions of Law the following:

1. On page 4, paragraph (3) of the conclusions of law and recommended relief the phrase "and punitive damages in the amount of \$500.00,".

2. On page 5, paragraph (4) of the conclusions of law and recommended relief the sentence "As well, Respondent shall reimburse the Office of the Attorney General of the State of West Virginia the sum of \$500.00 for attorney fees and costs in prosecuting this claim, within sixty (60) days from the adoption of this decision by the Commission."



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

*Approved  
by Capt. H  
as noted  
see fees to AG office  
MRS  
9/27/85*

On the Complaint of  
MICHAEL ROBINSON,  
Complainant

vs.

Case No. HR-264-80  
(Monongalia County)

BILL BARKER,  
Respondent

RECOMMENDED DECISION

On July 16, 1985, a public hearing was held in this matter before the undersigned hearing examiner, Michael Edward Nogay, at the West Virginia University College of Law in Monongalia County. George C. Rutherford served as Hearing Commissioner. The Complainant was present in person and by his counsel, Barbara Fleishchauer, Special Assistant Attorney General. The Respondent was present in person and by his counsel, Edwin C. Runner, Esq.

Complainant called as witnesses, Robert Siemann and Kimberly Knight Mace, both of whom now reside out-of-state. Their testimony was taken by telephone conference hook-up and subjected to cross-examination by Respondent's counsel. Mr. Siemann's testimony was taken by telephone and recorded on July 15, 1985, in a telephone conference and admitted in deposition form due to his unavailability. Complainant also testified in his own behalf. Respondent, who is blind, called three (3) character witnesses and a medical doctor in his own behalf, and also testified. Complainant submitted a number of documentary

exhibits that had been part of the Commission's file.

From all of the evidence adduced, the hearing examiner makes the following proposed findings of fact:

(1) Complainant, Michael Robinson, is a black male who was attending college at West Virginia University, in Morgantown, West Virginia, and was seeking housing for the second semester of the 1979-1980 school year.

(2) Respondent, William Barker, is a legally blind white male who owned and still maintains certain apartments in Westover, Monongalia County, West Virginia.

(3) In November and December, 1979, Complainant was looking for an apartment in the area of West Virginia University. On or about November 29, 1979, Complainant telephoned Robert Siemann in response to an advertisement Mr. Siemann had placed in the West Virginia University Daily Athenaeum newspaper. Mr. Siemann advised that he was willing to sublet his apartment at 17 W. Highland Avenue in Westover (which he was renting from Respondent for \$225.00 per month) to Complainant for \$200.00 per month.

(4) Mr. Siemann had been a graduate student at the University and was planning on leaving the area. He is now a resident of the State of Wisconsin where he is a college professor. Mr. Siemann testified that Respondent had not opposed such subletting and was aware of his efforts to find a replacement tenant, and approved the same.

(5) While Complainant was interested in Mr. Siemann's

apartment, he expressed concern over the \$200.00 rent due to his financial condition. Mr. Siemann then suggested to Complainant that possibly another individual, Kimberly Knight (now Mace) could take over Mr. Siemann's larger apartment and that Complainant could then possibly sublet Ms. Knight's apartment for only \$175.00 per month. Ms. Knight was also a tenant of Respondent.

(6) On December 1, 1979, Complainant viewed Ms. Knight's apartment with Mr. Siemann and Ms. Knight and called her on December 3, 1979, accepting the sublease. The apartment was smaller and less costly for Complainant, who would be living alone. The parties planned on closing the sublease and signing new leases on December 5, 1979. On December 4, 1979, however, Mr. Siemann and Ms. Knight approached Respondent and told him of the proposed arrangements. Ms. Knight subsequently advised Respondent that Complainant was black. Respondent reacted to this by calling Mr. Siemann the following week and telling him that the area was "a segregated neighborhood" and that although he knew "it was illegal" he would not rent to a black person. Respondent had never met Complainant in person.

(7) Ultimately, because of Respondent's refusal to approve a sublease to a black person, Mr. Siemann ended up subletting the apartment to a white person. When Ms. Knight told Complainant what Respondent had said and done, Complainant was "shocked" and appeared disbelieving. He was "shaken", "upset", "angry" and seemed "very hurt." Complainant proceeded

to the West Virginia University Housing Office where an employee there told him of the possibility of filing the instant complaint before the Commission. Complainant endured hurt feelings over the incident and was forced to find housing elsewhere.

From the foregoing, the hearing examiner makes the following proposed conclusions of law and recommends the following relief:

(1) That Complainant is a black male who is protected under the West Virginia Human Rights Act from being discriminated against in obtaining housing on account of his race or color, pursuant to West Virginia Code Section 5-11-9(g)(1).

(2) That Respondent, despite his blindness, knew that Complainant was black and knew that it was illegal to deny him equal access to public housing on account of his race. Nevertheless, Respondent refused to approve the sublease arrangement solely because Complainant was a black person, although he had given his tenants implicit approval to sublease to others.

(3) Complainant suffered emotional distress, a loss of human dignity, humiliation, and inconvenience as a direct result of Respondent's discriminating practices. Respondent should pay unto Complainant compensatory damages in the amount of \$1,000.00 and punitive damages in the amount of \$500.00, together with lawful interest from the date of the entry of

LAW OFFICES

SEI  TI & NOGAY

SUITE 7,

PROFESSIONAL PLAZA

3125 PENNSYLVANIA AVE.

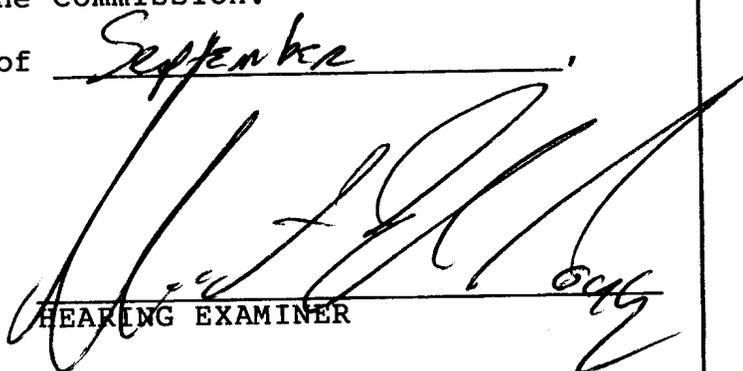
WEIRTON, W. VA. 26062

this decision by the Commission. Such relief is appropriate according to the decision of the West Virginia Supreme Court of Appeals in State Human Rights Commission vs. Pearlman Realty Agency, 239 S.E.2d 145 (W.Va. 1977).

(4) As well, Respondent shall be enjoined from engaging in any future such practices and shall specifically state in any future advertising relative to any of his rental properties that he will not discriminate in housing on the basis of race, religion, color, national origin, ancestry, sex, age, blindness or handicap. As well, Respondent shall reimburse the Office of the Attorney General of the State of West Virginia the sum of \$500.00 for attorney fees and costs in prosecuting this claim, within sixty (60) days from the adoption of this decision by the Commission.

ENTER this 23 day of September,

1985.

  
HEARING EXAMINER

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

On the Complaint of  
MICHAEL ROBINSON,  
Complainant

vs.

Case No. HR-264-80  
(Monongalia County)

BILL BARKER,  
Respondent

O R D E R

After due consideration, the Recommended Decision of Hearing Examiner Michael Edward Nogay, the same which is attached hereto, is hereby ORDERED adopted, and its terms therein controlling, and this matter dismissed. Parties shall take notice pursuant to Rules 9.01 and 9.06(a), of the Emergency Rules of Practice and Procedure, that a motion for reconsideration may be filed.

ENTER this \_\_\_\_ day of \_\_\_\_\_, 1985.

WEST VIRGINIA HUMAN RIGHTS  
COMMISSION

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

*Approved  
by court  
costs to AG  
1/27/85*

On the Complaint of  
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vs.

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125 PENNSYLVANIA AVE.

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SUITE 7.

PROFESSIONAL PLAZA

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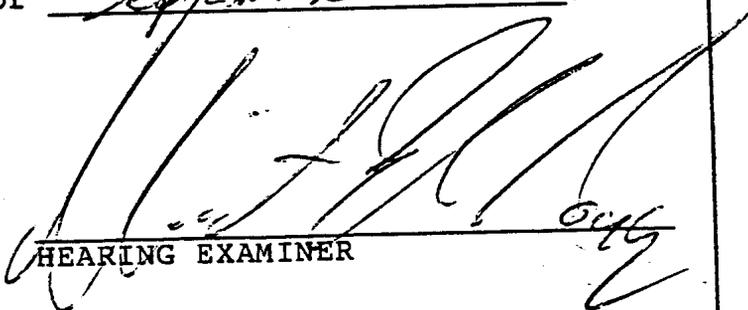
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ENTER this 23 day of September, 1985.

  
HEARING EXAMINER

SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA



PAUL CRABTREE  
ADMINISTRATIVE DIRECTOR

ADMINISTRATIVE OFFICE  
E-402 STATE CAPITOL  
CHARLESTON 25305  
304/348-0145

September 27, 1985

**RECEIVED**

OCT 03 1985

W.V. HUMAN RIGHTS COMM.

Mr. Howard D. Kenney  
Executive Director  
W. Va. Human Rights Commission  
215 Professional Building  
1036 Quarrier Street  
Charleston, West Virginia 25301

Re: Robinson v. Barker  
HR 264-80

Dear Mr. Kenney:

Transmitted herewith is the file in this case which, except as noted below, contains approved recommendations of the Hearing Examiner.

I disapprove, under present policy, of any award of attorneys' fees to the Office of Attorney General as noted on page 5, last paragraph of the Hearing Examiner's Recommended Decision.

With this exception, I believe that the Commission may otherwise approve the ultimate disposition of this case.

Yours very truly,

A handwritten signature in cursive script that reads "Paul R. Stone".

Paul R. Stone  
Chief Administrative Law Judge

PRS:bc

Encs.

CERTIFICATE OF SERVICE

I, Paul R. Stone, hereby certify that I have this 27th day of September, 1985, mailed a true copy of the Hearing Examiner's Recommended Decision in properly addressed envelopes in the United States mail to the following persons:

✓ Barbara Fleischauer, Esquire  
258 McGara Street  
Morgantown, West Virginia 26505

✓ Edwin C. Runner, Esquire  
313 1/3 East Main Street  
P. O. Box 607  
Kingwood, West Virginia 26537



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Paul R. Stone