



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION

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Room 104/106

Charleston, WV 25301-1400

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GASTON CAPERTON
GOVERNOR

Quewanncoii C. Stephens
Executive Director

April 24, 1990

Juanita Slaughter
317 Oak Manor Dr., Apt. 202
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Bluefield Townhouses/Samuel Sink
1405 Main St.
Princeton, WV 24740

William J. Akers, Esq.
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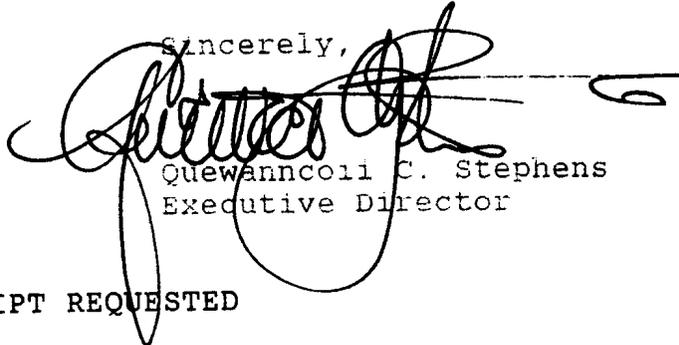
Kim Farha, Asst. Attorney General
812 Quarrier St.
L & S Bldg. - 5th Floor
Charleston, WV 25301

Re: Slaughter v. Bluefield Townhouses/Samuel Sink
HR-143-88

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

JUANITA SLAUGHTER,

Complainant,

v.

DOCKET NO. HR-143-88

BLUEFIELD TOWNHOUSES/
SAMUEL SINK,

Respondent.

FINAL ORDER

On 14 March 1990 the West Virginia Human Rights Commission reviewed the recommended decision filed in the above-styled matter by hearing examiner Gail Ferguson. After consideration of the aforementioned, and after review of the transcript of record and the briefs and argument of counsel, the Commission decided to, and does hereby, adopt said proposed recommended decision, encompassing the findings of fact and conclusions of law therein, as its own, except for the modification and amendment as set forth below:

In the subsection entitled "Relief and Order" paragraph 2, awarding the complainant actual damages of \$90.00 for

expenses incurred in her attendance at the hearing of this matter, is eliminated. The Commission finds no authority for awarding a party her expenses for attending the hearing which she requested. With the elimination of paragraph 2, former paragraph 3 in the subsection entitled "Relief and Order" is amended and renumbered as paragraph 2, and is affirmed in its entirety.

It is, therefore, the Order of the Commission that the hearing examiner's proposed Order and Decision, encompassing her findings of fact and conclusions of law, be attached hereto and made a part of this Final Order, except as amended by this Final Order.

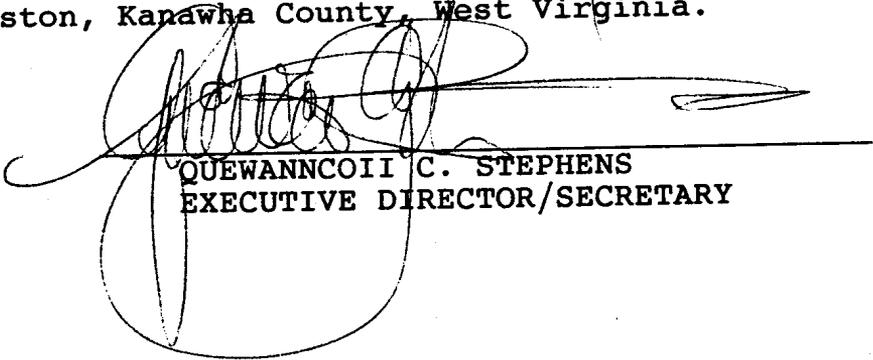
By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of the State of West Virginia, the parties are hereby notified that they have ten (10) days to request that the West Virginia Human Rights Commission reconsider this Final Order or they may seek judicial review

as outlined in the "Notice of Right to Appeal" attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 30th day of March, 1990, in Charleston, Kanawha County, West Virginia.



QUEWANNCOII C. STEPHENS
EXECUTIVE DIRECTOR/SECRETARY

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JUANITA SLAUGHTER,

Complainant,

v.

DOCKET NUMBER: HR-143-88

BLUEFIELD TOWNHOUSES/SAMUEL SINK,

Respondent.

HEARING EXAMINER'S RECOMMENDED DECISION

A public hearing, in the above-captioned matter, was convened on October 27, 1988, in Raleigh County, at the City Municipal Bldg., Council Chambers, Bluefield, West Virginia. The Hearing Panel consisted of Gail Ferguson, Hearing Examiner, and Nathaniel Jackson, Hearing Commissioner.

The complainant, Juanita Slaughter, appeared in person and by counsel, Sharon M. Mullens, Deputy Attorney General. The respondent, Bluefield Townhouses/Samuel Sink, appeared in person and by counsel, William J. Akers.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the

hearing examiner and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper decision.¹ To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

ISSUES

1. Whether the respondent unlawfully discriminated against the complainant on the basis of her race by his refusal to rent her.
2. If such illegal discrimination on the basis of race occurred, what should the remedy be?

FINDINGS OF FACT

1. The complainant, Juanita Slaughter, is a black female.
2. The complainant was denied rental of an apartment in the Bluefield Townhouses owned by Samuel Sink, the respondent, on or about August 18, 1987.
4. The complainant and her husband, Mark Slaughter, were both employed at the time the complainant sought rental of an apartment from the respondent. The complainant was and is an

¹ Respondent did not submit any post-hearing proposed findings of fact and conclusions of law.

assistant manager at K-Mart. Mr. Slaughter is employed as a landscape laborer.

5. The complainant was a resident of West Virginia at the time she sought rental of an apartment in the Bluefield Townhouses, and last lived in West Virginia in February, 1988.

6. On or about August 13, 1987, the complainant was apprised of a vacancy at Bluefield Townhouses and was shown the respondent's vacant apartment by Aileene Stewart, a K-Mart employee complainant supervised. Ms. Stewart, who is white, resided in one of the three apartments which made up Bluefield Townhouses.

7. The next day the complainant met with Charlotte Massey, respondent's secretary, to inquire about the apartment vacancy. Ms. Massey informed complainant that a \$250.00 security deposit was required and that there was no written lease.

8. The following day the complainant took a cashier's check for \$250.00 to Ms. Massey. In response to questions by the complainant as to when she could move in, Massey informed the complainant that she had not yet had a chance to speak with respondent, Mr. Sink, her boss, and that she would have to get back with the complainant after doing so.

9. The complainant was not asked any questions by Ms. Massey regarding any other preconditions for renting the apartment.

10. The complainant was eager to move in and began trying to contact Mr. Sink immediately. On the following Tuesday, the complainant reached Mr. Sink and identified herself and asked him

when she could move in. Mr. Sink responded by asking her where she presently resided; who her husband was; and where he was employed, and further informed the complainant that he would have to check her references.

11. The respondent, Samuel Sink, never verbally or in writing informed the complainant of a requirement of a one-year lease.

12. The complainant was never given an opportunity to inform Samuel Sink of any other references other than to inform him of where she presently lived and to inform Charlotte Massey of her address when she asked.

13. After many futile attempts to subsequently reach Mr. Sink, the complainant was informed by respondent's secretary that respondent would not allow her to rent the apartment.

14. On or about August 20, 1987, the complainant received in the mail from respondent her cashier's check for the security deposit, along with a note indicating that she and her husband were no longer considered for the apartment due to information received from previous landlords.

15. The complainant and her husband lived in three locations in Princeton, West Virginia prior to seeking rental of an apartment in Bluefield Townhouses, namely, Underwood Apartments; South Third Street Apartments; and Pepperidge Apartments.

16. The respondent alleges he refused to rent to the complainant because of a bad reference from a former landlord of the complainant, Lawrence G. Underwood, owner of Underwood Apartments; and further, because he required a one-year lease.

17. The complainant last rented an apartment from Lawrence Underwood in February, 1985.

18. Mr. Underwood testified that respondent did contact him although he could not recall when, to ascertain whether among things the complainant was "slow in paying her rent." Notwithstanding his affirmative response to that query, Mr. Underwood testified that he would have continued to rent to the complainant had she desired to continue living in Underwood Apartments. Mr. Underwood's testimony was not credible.

19. The complainant then rented an apartment from Randall Grant at the South Third Street Apartments in March of 1985.

20. Randall Grant testified that he was not contacted by the respondent regarding a reference for the complainant. Mr. Grant further testified that he never had any problems whatsoever with the complainant and her spouse and that they were good tenants.

21. The complainant and her husband rented an apartment at the Pepperidge Apartments from 1985 until 1987, and were excellent tenants, according to the resident manager, Sara Shaffer.

22. Ms. Shaffer testified that she was not contacted by the respondent regarding a reference for the complainant, and further, that the home office for Pepperidge Apartments was not, at any time, contacted regarding a reference for the complainant.

23. According to the respondent, additional reasons for his refusal to rent to the complainant were: the complainant had three different residences in one year; complainant was a messy housekeeper; complainant's husband had a drinking problem; and

finally, that in his reference check from a former unidentified landlord, respondent had been told that complainant's rent was raised because of bad information given to the HUD Administration.

24. The respondent did not produce any witnesses or documentary evidence to corroborate his previously sworn statements listing all of the reasons he refused to rent to the complainant.

25. The respondent alleged that he required a one-year lease at the Bluefield Townhouse Apartments because he was attempting to get them approved for the Voucher Program under Section 8 through HUD, yet he had no written guidelines stating such.

26. Samuel Sink testified that he was in the process of applying for approval for the Voucher Program for Bluefield Townhouses with the Bluefield Housing Authority prior to August, 1987. Yet, Marie Walker, Executive Director of the Bluefield Housing Authority, testified that Mr. Sink had previously filed applications and sought approval for programs, but not one in that office had been contacted by him regarding the Voucher Program at Bluefield Townhouses.

27. The respondent admitted that he knew that the complainant was leaving her then present residence at Pepperidge Apartments because her income had increased; and due to their guidelines, her income was over the limit to allow continued residency, and not because she was a bad tenant.

28. The respondent rented the apartment, sought by the complainant, to a white female whom he ultimately evicted. The respondent then himself moved into the apartment.

29. Samuel Sink only checked with the employer of the white female tenant that he rented to rather than the more elaborate "reference checking" applied to the complainant.

30. As of the date of hearing, the respondent had not required any of his Bluefield Townhouse tenants, all of whom are white, to sign a written lease.

31. The respondent testified that he had seen the complainant at the apartments next to the Bluefield Townhouses, so he had opportunity to learn of the complainant's race.

32. The complainant was humiliated and upset by being refused rental of the apartment in Bluefield Townhouses, and was particularly embarrassed given her working relationship with Ms. Stewart.

33. The complainant incurred approximately \$90.00 in expenses for telephone calls, gas and food necessary for travel from Maryland to West Virginia for the hearing upon her complaint.

DISCUSSION

As set forth in WV Code §5-11-9(g)(1), an unlawful discriminatory practice has been defined as:

"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...of such person or group of persons."

The complainant herein alleges that the respondent, owner of Bluefield Townhouses, denied her housing because she is a black person, a legally impermissible consideration.

Judicial precedent interpreting federal and state discrimination laws, squarely places the initial burden upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Dept. v. West Virginia Human Rights Commission, 309 S.E. 2d 342, 352-353 (WV 1983); McDonnell-Douglas Corp. v. Green, 411 U.S. 791 (1973).

In general, a prima facie case of discrimination against a member of a protected class can be proven by direct or circumstantial evidence, or by inferential evidence, or by a combination of evidence. McDonnell-Douglas Corp. supra; State ex rel. State Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., 329 S.E. 2d 77 (1985); Conaway v. Eastern Associated Coal Corp., 358 S.E.2d 423 (1986). As reiterated in Conaway, the requirements of the McDonnell-Douglas prima facie case are not inflexible and must be tailored to each factual situation. The task of proving a prima facie case is not intended to be onerous. Shepherdstown, supra.

If the complainant makes out a prima facie case, respondent is required to rebut the presumption of discrimination by articulating a legitimate non-discriminatory reason for the action which it has taken with respect to complainant.

The respondent's evidence must sufficiently raise a genuine issue of fact as to whether or not discrimination occurred against the complainant. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Furnco Construction Corp. v. Waters, 438 U.S. 567, (1978); Shepherdstown, supra.

If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown, supra; McDonnell-Douglas, supra.

In the instant case, the complainant, a black female, has made a prima facie case of race discrimination by proving facts which, if otherwise unexplained, raise an inference of discrimination. Furnco Construction Co. v. Waters, supra. The complainant's protected class status is undisputed. The complainant has, through clear, convincing and credible evidence, established that she inquired about a unit vacancy at Bluefield Townhouses, a complex owned by respondent, Samuel Sink; that she was told by respondent's secretary, Charlotte Massey, that there was a vacancy and that there was no written lease or lease application; and that she was further informed by Ms. Massey that only a \$250.00 security deposit was required to rent the apartment, which amount complainant promptly tendered. The complainant has further established that, although subsequently Mr. Sink asked her for reference information limited to where she was presently living; where she was employed; where her husband was employed; and who her husband was, that any inquiry into these areas, would have revealed her to be a desirable prospective tenant. The complainant further established that the respondent refused to

rent the aforementioned vacant unit to her and thereafter rented the apartment to a white female.

Having established a prima facie case, the burden shifts to the respondent to articulate reasons for its actions. The respondent states a myriad of reasons for his refusal to rent the apartment in question to the complainant: a bad reference from a former landlord; the necessity of a one-year lease; the transiency of the complainant; information that the complainant was a messy housekeeper; information that complainant's husband had a drinking problem; and information that complainant's rent had been raised because of misinformation she gave to the HUD administration.

A careful review of the record of evidence in the case reveals that the complainant has established the respondent's articulated reasons for refusing to rent to her as pretextual. The crowning proof that the complainant was discriminated against by the respondent was established through the respondent's own testimony and lack of supporting testimony. The respondent admitted that he had seen the complainant at the apartments next to the Bluefield Townhouses, and, thus, knew she was black.

The respondent claims to have received a bad reference from the complainant's former landlord, Lawrence Underwood, who rented an apartment to the complainant and her husband in 1984. Aside from the fact that the complainant never provided respondent with the name of the Underwood Apartments as a reference, this testimony is simply not credible. Although Lawrence Underwood testified that respondent did contact him regarding the complainant,

he could not recall when. This is the same witness, who otherwise testified unhesitanttly and with total recall about minutia relating to his relationship with the complainant in 1984. Moreover, Mr. Underwood's testimony appears to be contrived and inconsistent. Mr. Underwood mentioned that the respondent, whom he repeatedly referred to as "Bob" but claimed, even at the public hearing, not to know, asked him if the complainant paid her rent on time; but vacillated between what "Bob" had asked him generally about the complainant and what the "lady" had asked him about the complainant. The undersigned hearing examiner is of the opinion weighing the totality of this evidence, the demeanor and credibility of Mr. Underwood and that of the respondent, that this "conversation" regarding the complainant never took place, or, that if it did, it occurred after the complainant was refused the apartment. Arguendo, even if this testimony was determined to be believable, the fact of the matter is that respondent never contacted complainant's two more recent landlords, notably, Sara Shaffer, resident manager for Pepperidge Apartments whose name was provided by the complainant to the respondent and Mr. Randall Grant, complainant's landlord at the South Third Street Apartments where complainant resided in 1985; and further, that had they been contacted, they each would have given the complainant a good reference.

To be sure, if the respondent had actually checked references, he obviously would have ascertained that the complainant had been a long-term resident, in good standing at the Pepperidge Apartments.

Additionally, the respondent's allegation regarding the complainant being a messy housekeeper was soundly rebutted by the testimony of her former landlords. By way of example, Ms. Shaffer indicated that the complainant and her spouse were "very, very good tenants and that she did not have any problems with them." With regard to the condition of their apartment, Ms. Shaffer testified that the complainant and her husband were very clean.

Interestingly, the respondent's secretary, upon whom he allegedly relied to "check the complainant's references," although available and still within the employ of respondent, was not called as a witness.

Moreover, by way of comparison, even if respondent's defense was credited, the respondent only checked with the employer of the white female tenant he actually rented the apartment to, as opposed to the more elaborate "reference checking" he applied to the complainant.

The respondent further alleged as a defense that he needed a one-year lease; however, the respondent had not required any of his Bluefield Townhouse tenants, all of whom are white, to sign a written lease, as of the date of hearing. Additionally, the respondent did not submit any documentary evidence to support such lease requirement. The respondent's testimony on this point was simply not credible. The evidence of record supports the conclusion that the respondent had no written lease, lease application or lease guidelines or written requirements.

The respondent did not offer any direct or supporting evidence to support his allegation that he had been told that the complainant's spouse had a drinking problem

Respondent's testimony as to another reason for his rejection of the complainant as a tenant, namely information he had received related to complainant's prior alleged financial misrepresentation to HUD, thereby imputing complainant's character and integrity, was not credible.

The evidence reveals that the respondent admitted that he knew that the complainant was leaving her present residence at Pepperidge Apartments because her income had increased such that she was over their income guideline limits to allow continued residency and not because she was a bad tenant; and furthermore, that the Pepperidge Apartments were financed through the Federal Housing Authority (FHA), were in no way subsidized or covered in any fashion by HUD and did not accept vouchers or certifications from HUD.

In summary, the complainant has demonstrated that respondent's articulated reasons are pretext for unlawful discrimination based on her race.

Thus, the evidence, when reviewed in its entirety, proves that the respondent has acted in violation of the West Virginia Human Rights Act in refusing to rent to the complainant.

CONCLUSIONS OF LAW

1. At all times relevant to this complaint, the complainant, Juanita Slaughter, has been a resident of West Virginia.

2. The complaint in this matter was timely filed.

3. At all times referred to herein, the respondent, Samuel Sink, was an owner and lessor of real property, known as Bluefield Townhouses located at 1450 Main Street in Princeton, West Virginia.

4. The complaint states sufficient facts upon which to charge violations of the West Virginia Human Rights Act, WV Code §5-11-1 and §5-11-9.

5. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of this complaint.

6. The complainant has established a prima facie case as she has proven the following: the complainant has demonstrated that the respondent's articulated reasons for refusing to rent to the complainant are pretextual.

7. The action of the respondent toward the complainant constitutes unlawful discriminatory action on the basis of race in violation of the West Virginia Human Rights Act.

8. As a result of the unlawful discriminatory action of the respondent, the complainant is entitled to recover actual damages for travel and related expenses incurred in returning to West Virginia from Maryland for the public hearing; and to an

award of incidental damages for the humiliation, embarrassment, emotional and mental distress and loss of personal dignity.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby ORDERED as follows:

1. The respondent shall cease and desist from engaging in unlawful discriminatory practices.

2. Respondent shall pay to the complainant actual damages of \$90.00 as set forth in Finding of Fact Number 33.

3. Respondent shall pay complainant incidental damages in the amount of \$2,500.00 as compensation for humiliation, embarrassment and mental distress and loss of personal dignity.

Entered this 22 day of November, 1989.

WV HUMAN RIGHTS COMMISSION

BY



GAIL FERGUSON
HEARING EXAMINER