



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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

TELEPHONE: 304-348-2616

January 14, 1986

ARCH A. MOORE, JR.  
Governor

Virginia Guyton-Smith  
619 Stockton Street  
Charleston, WV 25312

Catherine A. McMullen, Esquire  
Assistant Attorney General  
Room #-26, State Capitol  
Charleston, WV 25305

Fred F. Holroyd, Esquire  
209 W. Washington Street  
Charleston, WV 25302

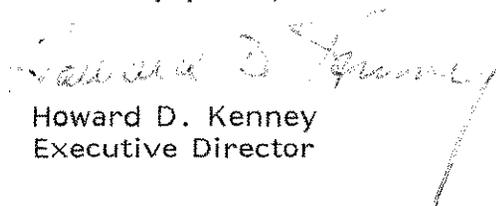
RE: ES-227-81 & ER-228-81 Smith v Shop-A-Minit Markets, Inc.

Dear Ms. Smith, Ms. McMullen, and Mr. Holroyd:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Virginia Guyton Smith v Shop-a-Minit Markets, Inc. ES-227-81 and ER-228-81.

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/jcp  
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Virginia Guyton Smith,

COMPLAINANT,

v.

Docket No. ES-227-81 & ER-228-81

Shop-A-Minit Markets, Inc.

RESPONDENT.

ORDER

On the 13th day of November, 1985, the Commission reviewed Hearing Examiner Theodore R. Dues, Jr.'s Findings of Fact and Conclusions of Law. After consideration of the aforementioned 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 14 day of Jan, 1986.

RESPECTFULLY SUBMITTED,



CHAIR Vice Chair  
WEST VIRGINIA HUMAN RIGHTS COMMISSION

Approved 5/25/85  
JCH

Approved 10/4/85  
at [unclear] by [unclear]

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

107-255-4261  
W.V. HUMAN RIGHTS COMM.

VIRGINIA GUYTON SMITH,  
Complainant,

vs.

DOCKET NO. ES-227-81

SHOP-A-MINIT MARKETS, INC.,  
Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT  
AND CONCLUSION OF LAW

This case came on for hearing on May 1, 1985. The hearing was held at the Conference Room of the West Virginia Human Rights Commission, 1036 Quarrier Street, Charleston, West Virginia. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The parties waived the presence of the Hearing Commissioner.

The Complainant appeared in person and by Counsel, Catherine A. McMullen. The Respondent appeared by its representative, Ronald Lynn Martin and by Counsel, Fred F. Holroyd.

FINDINGS OF FACT

1. Respondent is a retail grocery chain operating twenty-six stores in West Virginia. At the material time herein it also operated a doughnut shop in Charleston, West Virginia.

2. Complainant, Virginia Guyton Smith, a black female, worked for Respondent from July 15, 1980 until October 3, 1980 as a clerk, cashier, and doughnut machine operator.

3. Complainant was not the most senior employee in the doughnut shop.

4. Respondent's policy, both written and in practice, was to promote clerks to Managers, based exclusively on merit.

5. Respondent's policy was not to consider seniority when promoting employees from clerk to Managers.

6. The store in question had a history of not being profitable.

7. Complainant performed her duties without complaint or reprimand.

8. Complainant was qualified to be Manager of the doughnut shop.

9. Russell Walden was hired August 21, 1980.

10. Russell Walden had twenty-four years of supervisory experience.

11. Complainant had no experience as a supervisor.

12. Russell Walden was made Manager of the Doughnut shop on September 19, 1980 .

13. Complainant continued to work her normal duties without incident from September 19, 1980 until October 3, 1980.

14. On October 3, 1980, Complainant upon reporting to work was directed to clean dirty dishes in the sink, a task she had performed previously without complaint.

15. Respondent's refusal to promote the Complainant to Manager was the reason Complainant quit work,

#### CONCLUSIONS OF LAW

1. At all times material herein the Respondent was an

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

2. At all times material herein Complainant was a citizen and resident of the State of West Virginia and is a person within the meaning of Section 3 (a), Article 11, Chapter 5, of the Code of West Virginia.

3. On November 10, 1980, the Complainant filed a verified complaint properly alleging that Respondent had engaged in unlawful discriminatory practices within the meaning of Section 9, Article 11, Chapter 5 of the Code of West Virginia.

4. The said complaint was timely filed within ninety days (90) of the alleged acts of discrimination. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter of this action pursuant to Section 8, 9 and 10 of Article 11, Chapter 5 of the Code of West Virginia.

5. Complainant made an initial prima facie showing that Respondent discriminated against her herein on the basis of race and sex by refusing to promote her to the position of Manager on September 19, 1980 and promoting a white male to Manager.

6. Respondent articulated a legitimate, non-discriminatory reason for not promoting the Complainant to Manager; ie, to promote a more experienced person to Manager to attempt to make the store turn a profit.

7. The Complainant failed to show by a preponderance of the evidence that the reason articulated by the Respondent for not promoting her to Manager was a pretext.

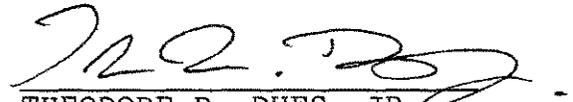
8. No violation of the Act has been proven by Complainant.

RELIEF

Therefore, it is the recommendation of this Examiner that the Respondent is entitled to judgement and the Complainant take naught.

DATED 5-21-85

ENTER:

  
THEODORE R. DUES, JR.  
HEARING EXAMINER