



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East
Room 108A

Charleston, WV 25301-1400

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Cecil H. Underwood
Governor

December 5, 1998

Ada C. Vandevender
HC 73, Box 21
Mingo, WV 26294

Ray Sohl, General Manager
Silver Creek Unit Owners Association
P.O. Box 66
Snowshoe, WV 26209

John McFerrin, Esq.
Asst. Attorney General
Civil Rights Division
812 Quarrier St., Suite 500
P.O. Box 1789
Charleston, WV 25326-1789

John R. Teare, Jr., Esq.
Bowles Rice McDavid Graff &
Love, PLLC
P.O. Box 1386
Charleston, WV 25325-1386

Re: Ada C. Vandevender v. Silver Creek
Unit Owners Association
Docket No. EH-379-95

Dear Parties:

Enclosed please find the Order of the Commission affirming the Administrative Law Judge's Final Decision, with certain modifications. Please be advised that this is not a final order in that the parties may submit additional information regarding the amount of back wages due the Complainant. This information must be submitted in accordance with the time lines set forth in this Order.

Sincerely,

NORMAN LINDELL
ACTING EXECUTIVE DIRECTOR

NL/jk
Enclosure

cc: Robert B. Wilson, Esq.
Administrative Law Judge
(w/enclosure)

Mary C. Buchmelter, Esq.
Deputy Attorney General
Civil Rights Division
(w/enclosure)

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ADA COLLEEN VANDEVENDER,

Complainant,

v.

DOCKET NO. EH-379-95

SILVER CREEK UNIT
OWNERS ASSOCIATION,

Respondent.

ORDER

On August 13, 1998, and September 10, 1998, the West Virginia Human Rights Commission reviewed the findings of fact and conclusions of law filed in the above-styled matter by Administrative Law Judge Mike Kelly. After consideration of the aforementioned, and a thorough review of the transcript of record, the arguments and briefs of counsel, and the appeals and answers filed by each of the parties in response to the Administrative Law Judge's Final Decision, the Commission decided to, and does hereby, rule as follows:

1. The Administrative Law Judge's finding that the Complainant proved her prima facie case that Respondent unlawfully discriminated against her on the basis of disability is affirmed.

2. The Administrative Law Judge's finding that as a result of the Respondent's unlawful discrimination, the Complainant is entitled to incidental damages in the amount of \$1,000 is affirmed.

3. The Administrative Law Judge's finding that as a result of the Respondent's unlawful discrimination, the Complainant is entitled to the next vacancy in the position of housekeeper with pay, grade, and benefits commensurate with those she would have received if she had been allowed to return to work on November 14, 1994, is affirmed.

4. The Administrative Law Judge's finding that as a result of the Respondent's unlawful discrimination, the Complainant is entitled to an order requiring the Respondent

to cease and desist from engaging in unlawful discriminatory employment practices is affirmed.

5. The Administrative Law Judge's finding that as a result of the Respondent's unlawful discrimination, the Complainant and the Commission are entitled to reimbursement of costs and expenses incurred in prosecuting this claim is affirmed.

6. The Administrative Law Judge's findings with regard to back wages and interest are affirmed, in part, with the following modifications and amendments:

The Administrative Law Judge's finding that the Complainant's back wages ceased because she voluntarily removed herself from the full-time job market in order to attend college is not affirmed; however, pursuant to the Rules of Practice and Procedure Before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-10.7, the matter is remanded to Administrative Law Judge Robert B. Wilson in order to determine the appropriate award of back wages due the Complainant, in accordance with the following specific guidelines:

Administrative Law Judge Wilson is to state specifically why the Complainant's back pay was limited in light of the following:

(1) Nothing in the record indicates that the Complainant's subsequent job had employee benefits, including health coverage or paid vacations; and

(2) Nothing in the record indicates that any of the other housekeeping jobs in the Canaan Valley area offered full-time, year-round employment.

If the Respondent can point to specific evidence in the record to indicate the above, it may do so by letter to the Administrative Law Judge.

If there is nothing in the record that shows that other comparable housekeeping jobs were available, Administrative Law Judge Wilson is authorized to reopen the record to allow both parties to substantiate the lack or availability of equivalent employment, focusing on the following:

(1) Whether any of the other housekeeping jobs were full-time employment;

(2) Whether any of the other housekeeping jobs were year-round employment;
and

(3) Whether any of the housekeeping jobs offered employee benefits, including health coverage and paid vacation.

The parties, in the discretion of the Administrative Law Judge, may offer evidence through affidavit, submission of documents or testimony.

Administrative Law Judge Wilson is to state specifically why Complainant's back pay was cut off when she entered vocational school in light of the following:

(1) That Ms. Vandevender attempted to find comparable employment before entering vocational school (Tr. 72-75);

(2) That Ms. Vandevender worked part time whenever part-time housekeeping work was available while attending vocational school (Tr. 80);

(3) That even if Ms. Vandevender had not attended vocational school, an equivalent full-time, year-round housekeeping job would not have been available to her (Tr. 66-77) and she was not under any duty to accept a lesser job;

(4) That even if the Complainant had remained with the Mountain Lodge as a housekeeper or with Snowshoe as a Customer Service Specialist, her job would only have lasted as long as the ski season (Tr. 74-75); and

(5) That the only way for the Complainant to earn an comparable salary and benefits was to receive additional training.

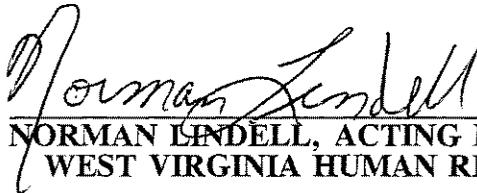
The above-requested documents shall be served on Administrative Law Judge Wilson and the Executive Director of the Commission, with a copy to opposing counsel, within twenty (20) days from the date of receipt of this Order. Failure to comply with this Order of the Commission shall result in a calculation of damages by the Commission based upon available information.

The parties are advised that it is the intent of the Commission to issue a Final Order encompassing all monetary relief, including back pay, interest, retirement, health benefits, and incidental damages, to be awarded the Complainant on or before February 1, 1999.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 14th day of December 1998, in Charleston, Kanawha County, West Virginia.



**NORMAN LINDELL, ACTING EXECUTIVE DIRECTOR
WEST VIRGINIA HUMAN RIGHTS COMMISSION**



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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Cecil H. Underwood
Governor

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 4, 1999

Ada Colleen Vandevendor
HC 73, Box 21
Mingo, WV 26294

Janie O. Peyton
Assistant Attorney General
Civil Rights Division
PO Box 1789
Charleston, WV 25326-1789

Silver Creek Unit Owners
Assn.
PO Box 66
Snowshoe, WV 26209

John Teare, Jr., Esq.
William G. Anderson, Esq.
Bowles, Rice, McDavid, Graff
& Love
PO Box 1386
Charleston, WV 25325-1386

Re: Vandevender v. Silver Creek Unit Owners Association
EH-379-95

Dear Parties:

Enclosed, please find the Remand Damage Calculation Order of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

Vandevendor v. Silver Creek Unit Assn.

March 4, 1999

Page 2

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before an administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before an administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

10.8.4. Supported by substantial evidence on the whole record; or

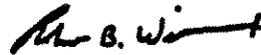
Vandevendor v. Silver Creek Unit Assn.
March 4, 1999
Page 3

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the Acting Executive Director of the commission at the above address.

Yours truly,



Robert B. Wilson
Administrative Law Judge

RBW/mst

Enclosure

cc: Norman Lindell, Acting Executive Director

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ADA COLLEEN VANDEVENDER,

Complainant,

v.

DOCKET NUMBER(S):EH-379-95

SILVER CREEK UNIT OWNERS
ASSOCIATION,

Respondent.

REMAND DAMAGE CALCULATION ORDER

Pursuant to the **ORDER OF THE COMMISSION** entered on December 14, 1998; the undersigned makes the following findings of fact and **ORDER** awarding back pay in light of the Commission's remand in the above styled action:

FINDINGS OF FACT

1. The Complainant was released to return to work by her doctor on November 14, 1994. At the time of the discriminatory act of respondent in November 1994, she was not allowed to return to work. She was unable to obtain full time year round employment with vacation and health benefits in housekeeping jobs, although she looked for such employment. Affidavit of Complainant dated January 13, 1999 (Hereafter "Affidavit").
2. Complainant worked two days as a housekeeper at the Mountain Lodge in December 1994. Complainant left this employment because it was not year round and did not offer health

benefits and paid vacation and she heard of work at Silver Creek. The evidence establishes that complainant was not offered health benefits or vacation at the time she took this job; however, as was the arrangement with the respondent when she was initially hired in 1987; she could conceivably have become eligible for these benefits if she later became a core employee of Mountain Lodge. Affidavit, Affidavit of John Butler Manager of Mountain State Lodge and Evidentiary Deposition of February 2, 1999.

3. Complainant worked as a seasonal customer service representative from December 1994 through March 1995 at Silver Creek Lodge at which time she was laid off work following the ski season. Affidavit.

4. Complainant continued seeking employment and enrolled in vocational school in August 1995. She remained available to work although attending school full time from Monday through Friday during the days through May of 1996; if she had been able to find year round employment offering benefits and vacation and paying what she had been making. Affidavit and Evidentiary Deposition.

5. Complainant worked as a customer service representative for Silver Creek Lodge again part time, working evenings and weekends while attending Vo-Tech; from December 1995 to March 1996 when she was again laid off from work. She did not seek full time seasonal employment however, while attending school. Affidavit and Evidentiary Deposition.

6. Complainant continued to seek employment and remained available for work thereafter. Complainant enrolled in school in August or September 1996 through December 1996, taking classes in real estate three nights per week for three hours a night, and continued looking for work of a year round nature, with benefits and paying what she earned while working

for respondent; but, did not find any such openings available. Complainant was a desk clerk/night auditor at The Inn at Snowshoe from mid-November 1996 until March 10 or 11, 1997 when she was again laid off from work. Affidavit and Evidentiary Deposition.

7. In January 1997, Complainant took and passed the West Virginia realtor's test and began working for Old Spruce Realty as a contractor in February 1997 earning \$5,031.00 in commissions from that employment while working at The Inn at Snowshoe. Since the complainant is unable to recall when during 1997 these commissions were received, the undersigned adopts the arbitrary month of June of that year for their inclusion as mitigation over respondent's objection that April should be the month in which they are imputed to have been earned. The undersigned adopts the argument advanced by respondent that all earnings should be included in mitigation even where such earnings exceed the monthly lost back pay and benefits complainant would have earned in such months, over complainant's objection. Affidavit and Evidentiary Deposition.

8. Complainant continued to seek employment and was hired as seasonal auditor at the Silver Creek Lodge for Snowshoe working until she was laid off in April 1998. Complainant continued to seek employment and was rehired as auditor at Silver Creek Lodge in September 1998 where she currently works, and expects to be laid off again in April of 1999. Complainant also had income in 1998 from work with the U.S. Department of Commerce Bureau of Census. Affidavit and Evidentiary Deposition and Exhibit to Deposition Tab A.

9. Complainant has been available for work continuously since November 1994 despite having taken classes in school. The evidence establishes that she continued to seek employment of a full time year round nature, with health benefits and vacation, paying what she had earned

from respondent; and has only been able to find seasonal or part time employment which does not offer paid vacation or health coverages to which she was entitled to as a "core-employee" with respondent. Thus the undersigned finds as fact that she was unable to secure comparable employment despite her best efforts. Affidavit and Evidentiary Deposition.

10. The undersigned adopts the back pay damage calculation without reductions for the time complainant was taking courses as submitted by complainant in the submissions dated February 11 and 17, 1999; taking into account all earnings in mitigation including earnings from employment with the Bureau of the Census with commissions attributed to June of 1997; indicating net lost wages and benefits of \$27,860.02 plus interest of \$10,358.40. The Commission has previously affirmed Judge Kelly's ruling that complainant would receive only \$1,000.00 in incidental damages; and therefore that award is not before the undersigned upon this remand from the Commission.

CONCLUSIONS OF LAW

1. It is the undersigned's understanding of the Commission' Remand Order that complainant is not required to take a job that is not equivalent in terms of it being year round employment, with comparable pay, and with health benefits and paid vacation in mitigation under the West Virginia Human Rights Act, as such employment would not be comparable employment.

2. Complainant has undertaken reasonable attempts to mitigate her damages under the circumstances.

3. It is the undersigned's understanding of the Commission's Remand Order that attendance at school does not necessarily terminate back pay damages under the West Virginia Human Rights Act; but, that such attendance would only result in reduction of back pay for the periods while attending classes if it resulted in the complainant not being reasonably available to accept comparable employment during such period; and that back pay would continue in any event following cessation of attendance of educational courses or job training.

4. Complainant was unable to find comparable employment at any time; but nevertheless accepted employment which mitigated her back pay damages. During the periods of her attendance of Vo-Tech and Real Estate Courses any forgone earnings from such attendance are deemed unascertainable and of no significance given the legal standard since complainant remained available for comparable employment and none was available and because she did obtain employment during such periods that was not comparable, which employment has been included in the mitigation of complainant's back pay damages.

5. Notwithstanding any language to the contrary in the Commission's Remand Order, this Remand Damage Calculation Order is in the nature of a Final Order of the Administrative Law Judge in this case and is therefore subject to the procedure for appeal of such an order to the Commission as set forth in statute and pursuant to WVHRC Procedural Rule 77 C.S.R. 2 §10.

6. The complainant is entitled to back pay and interest in the amount of \$38,218.42 as more fully set forth in complainant's damage calculations submitted on February 11, 1999 and February 17, 1999.

RELIEF AND ORDER

The respondent is hereby **ORDERED** to pay back pay and interest in the amount of \$38,218.42.

It is so **ORDERED**.

Entered this 4th day of March, 1999.

WV HUMAN RIGHTS COMMISSION

BY



**ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE**



DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

812 Quarner Street
L & S Building, Sixth Floor
Charleston, West Virginia 25301
FAX (304) 558-0184

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

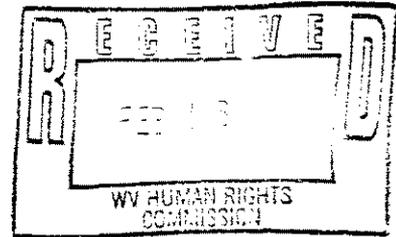
Antitrust & Consumer
Protection Division
(304) 558-8986

Civil Rights Division
(304) 558-0546

Preneed Funeral Services
(304) 558-0303

Consumer Hotline
800 368-8808

February 11, 1999



PLEASE REPLY TO:
Post Office Box 1789
Charleston, West Virginia 25362-1789

Robert B. Wilson, Esquire
Administrative Law Judge
West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, West Virginia 25301

Re: Vandevender v. Silver Creek Unit Owners Association
Docket No. EH-379-95

Dear Judge Wilson:

Attached are our proposed damage calculations in Ada Vandevender v. Silver Creek Unit Owners Association. We have done one sheet in which Ms. Vandevender's commissions are included in April and one where her commissions are included in June. As you can see, it makes very little difference in the amount of the damage award.

We have made several assumptions that are laid out in detail.

Our damage calculation assumes that Ms. Vandevender would get 1/2 of the back pay while in school. Next week we will provide the damage calculation for full back pay while in school.

LOST BENEFITS BASED ON FIGURES PROVIDED BY RESPONDENT:

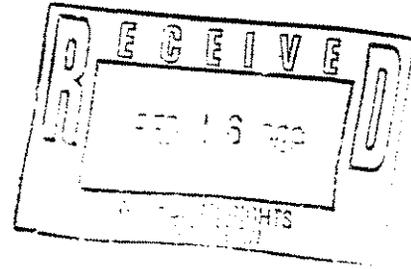
1996
Back Pay

The Core employees worked on average 151.3 hours for the ten months during which they worked full time. During the approximately two months when they received low earning slips, they worked average of 136.2 hours.

During the school year of 1996, we divided the amount of back pay that she would have earned in half.

7 months in school at 1/2 time - $\$6.50 \times 151.3 / 2 = \491.73 a month.
3 months in summer at full time - $\$6.50 \times 151.3 = \983.46
2 months of low earning - $\$6.50 \times 136.2 / 2 = \442.65

Judge Robert B. Wilson
February 11, 1999
Page 2



Mitigation

Actual numbers based on Ms. Vandevender's W-2 forms.

1997

Back Pay

10 months - $\$6.65 \times 120.7 \text{ hours} = \802.66
2 months of low earnings - $\$6.65 \times 112.1 = \745.47

Mitigation

Actual numbers based on Ms. Vandevender's W-2 forms.

1998

Back Pay

10 months - $\$7.65 \times 129.9 = \993.74
2 months - $\$7.65 \times 119.9 = \917.24

Mitigation

Actual numbers based on Ms. Vandevender's W-2 forms. Plus, an approximate commission of \$6400.

We think that this is a reasonable and fair amount of damages based on numbers provided by the Respondent in their most recent faxes.

Because we are engaged in settlement talks with the Respondent, we would like to request that you are not issue your ruling until next Friday, February 19, 1999.

Sincerely,

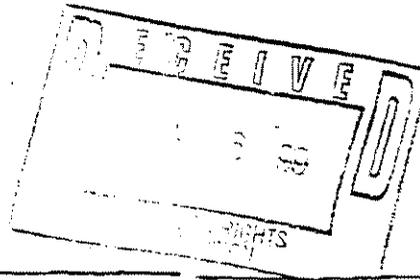
A handwritten signature in cursive script that reads "Janie O. Peyton".

JANIE O'NEAL PEYTON
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

JOP/dd

Enclosures

g:\civ\JOP\Vandeven\Damages



Silver Creek Association Payroll History - Core Hskpr.

1513×10
 1362×2

 $17854 \div 12 =$
1488
 Adjusted 12 mo. Avg.

Year	Employee Name	Annual Gross Earning	Avg. Wage Rate	Actual Hours Worked
(1996)				
1	P. Mallow	\$11,050	\$6.40	1726.56
1	J. Taylor	\$6,919	\$5.55	1224.60
1	P. Currence	\$8,330	\$6.55	1474.34
1	L. Bennett	\$6,974	\$5.55	1234.34
1	P. Collins	\$8,011	\$5.55	1417.39
1	B. Price	\$8,005	\$5.55	1416.81
1	R. Channell	\$9,967	\$6.15	1622.65
1	S. Vandenvender	\$8,590	\$5.55	1573.45
1	I. Linsey	\$10,882	\$5.55	1926.62
9		\$8,781	\$5.79	13,615

$\div 9 = 1513$

Year	Employee Name	Annual Gross Earning	Avg. Wage Rate	Actual Hours Worked
(1997)				
1	P. Mallow	\$11,992	\$6.55	1803.31
1	J. Taylor	\$7,855	\$5.55	1342.74
1	P. Currence	\$8,852	\$5.55	1513.16
1	L. Bennett	\$2,910	\$5.55	497.44
1	P. Collins	\$8,574	\$5.55	1465.14
1	B. Price	\$8,574	\$5.55	1465.14
1	R. Channell	\$10,889	\$6.40	1701.41
1	S. Vandenvender	\$4,187	\$5.55	715.73
1	I. Linsey	\$12,018	\$6.30	1701.74
1	P. Morris	\$7,294	\$5.55	1246.14
1	A. Tracy	\$3,505	\$5.55	620.35
1	D. Lambert	\$4,245	\$5.50	771.82
1	B. Channel	\$4,703	\$5.55	803.93
13		\$7,354	\$5.99	15,690

1207×10
 $+ 1121 \times 2$

 $14,312 \div 12 =$
1193
 Adjusted 12 mo. Avg.

$\div 13 = 1207$

Year	Employee Name	Annual Gross Earning	Avg. Wage Rate	Actual Hours Worked
(1998)				
1	P. Mallow	\$14,095 ✓	\$7.55	1842.78
1	J. Taylor	\$7,990 ✓	\$6.35	1166.42
1	P. Currence	\$8,588 ✓	\$6.55	1253.72
1	L. Bennett	\$7,201 ✓	\$6.35	1051.24
1	P. Collins	\$8,160 ✓	\$6.55	1191.24
1	B. Price	\$8,214 ✓	\$6.55	1199.12
1	R. Channell	\$10,189 ✓	\$7.40	1374.19
1	S. Vandenvender	\$6,903 ✓	\$6.55	1007.74
1	I. Linsey	\$13,424 ✓	\$7.94	1690.65
1	A. Tracy	\$8,942 ✓	\$6.55	1305.40
1	B. Channel	\$8,298 ✓	\$6.55	1211.39
1	D. Lambert	\$8,425 ✓	\$6.50	1291.15
12		\$9,201	\$7.02	15,588

1299×10
 $+ 1199 \times 2$

 $15,388 \div 12 =$
1282
 Adjusted 12 mo. Avg.

$\div 12 = 1299$

Notes: Number of hours worked a factor of:
 1) The number of housekeepers employed as core workers.
 2) Number of guest nights
 Core employees w/ less than \$1,000 total earnings have been excluded.
 List provided by Sandra Arbogast, Head Hskpr.)
 Calculations and supporting material provided by Manager
 P. Mallow is atypical as she worked at different positions to get more hours

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION
DOCKET NO. EH-379-95

DAMAGE CALCULATION

WAGE AND BENEFIT AMOUNTS PROVIDED BY THE RESPONDENT
MITIGATION FOR 11/94 THROUGH 6/99 - ON ONE HALF REDUCTION WHILE IN SCHOOL

MONTH/YR	..LOST		..NET			ENDING BALANCE
	BACK PAY	LOST BENEFITS	MITI-GATION	BACK PAY	INTEREST EARNED	
NOV 94	541.25	143.21	.00	684.46	.00	684.46
DEC 94	1,082.50	143.21	430.00	795.71	7.70	1,487.87
JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98
FEB 95	1,082.50	209.50	860.00	432.00	17.57	2,317.55
MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93
AUG 95	541.25	209.50	.00	750.75	55.75	7,256.43
SEPT 95	541.25	209.50	.00	750.75	62.47	8,069.65
OCT 95	541.25	227.13	.00	768.38	69.25	8,907.28
NOV 95	270.63	227.13	.00	497.76	76.23	9,481.27
DEC 95	541.25	227.13	382.69	385.69	81.01	9,947.97
JAN 96	491.73	227.13	434.84	284.02	84.90	10,316.89
FEB 96	491.73	227.13	434.84	284.02	87.97	10,688.88
MAR 96	491.73	227.13	209.09	509.77	91.07	11,289.73
APR 96	442.65	227.13	.00	669.78	96.08	12,055.59
MAY 96	442.65	227.13	.00	669.78	102.46	12,827.83
JUNE 96	983.46	227.13	.00	1,210.59	108.90	14,147.32
JULY 96	983.46	227.13	.00	1,210.59	119.89	15,477.80
AUG 96	983.46	227.13	.00	1,210.59	130.98	16,819.38
SEPT 96	491.73	227.13	.00	718.86	142.16	17,680.40
OCT 96	491.73	227.13	.00	718.86	149.34	18,548.59
NOV 96	491.73	227.13	434.84	284.02	156.57	18,989.19
DEC 96	491.73	227.13	913.36	-194.50	160.24	18,954.93
JAN 97	802.66	227.13	745.57	284.22	159.96	19,399.11
FEB 97	802.66	227.13	745.57	284.22	163.66	19,846.99
MAR 97	802.66	227.13	267.10	762.69	167.39	20,777.07
APR 97	745.47	227.13	5,031.00	-4,058.40	175.14	16,893.81
MAY 97	745.47	227.13	.00	972.60	142.78	18,009.19
JUNE 97	802.66	227.13	.00	1,029.79	152.08	19,191.06
JULY 97	802.66	227.13	.00	1,029.79	161.93	20,382.77
AUG 97	802.66	227.13	.00	1,029.79	171.86	21,584.42
SEPT 97	802.66	227.13	.00	1,029.79	181.87	22,796.08
OCT 97	802.66	227.13	890.57	139.22	191.97	23,127.27
NOV 97	802.66	227.13	890.57	139.22	194.73	23,461.21
DEC 97	802.66	227.13	890.57	139.22	197.51	23,797.94
JAN 98	993.74	227.13	1,166.00	54.87	200.32	24,053.13
FEB 98	993.74	227.13	1,166.00	54.87	202.44	24,310.44
MAR 98	993.74	227.13	1,166.00	54.87	204.59	24,569.90
APR 98	917.24	227.13	7,116.00	-5,971.63	206.75	18,805.02
MAY 98	917.24	227.13	1,111.51	32.86	158.71	18,996.59
JUNE 98	993.74	227.13	.00	1,220.87	160.30	20,377.76
JULY 98	993.74	227.13	.00	1,220.87	171.81	21,770.45
AUG 98	993.74	227.13	.00	1,220.87	183.42	23,174.74
SEPT 98	993.74	227.13	1,166.00	54.87	195.12	23,424.73
OCT 98	993.74	227.13	1,166.00	54.87	197.21	23,676.81
NOV 98	993.74	227.13	1,341.42	-120.55	199.31	23,755.56
DEC 98	993.74	227.13	1,341.42	-120.55	199.96	23,834.98
JAN 99	993.74	227.13	1,250.44	-29.57	200.62	24,006.03
FEB 99	993.74	227.13	1,250.44	-29.57	202.05	24,178.51
MAR 99	993.74	227.13	1,250.44	-29.57	203.49	24,352.43
APR 99	993.74	227.13	.00	1,220.87	204.94	25,778.24
MAY 99	993.74	227.13	.00	1,220.87	216.82	27,215.93
JUNE 99	993.74	227.13	.00	1,220.87	228.80	28,665.59
TOTALS	44,542.78	12,326.48	35,772.28	21,096.98	7,568.61	28,665.59

DAMAGE SUMMARY

TOTAL LOST EARN	21,096.98
INTEREST	7,568.61
INCIDENTIALS	<u>1,000.00</u>
TOTAL DUE:	29,665.59

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION
DOCKET NO. EH-379-95

DAMAGE CALCULATION

WAGE AND BENEFIT AMOUNTS PROVIDED BY THE RESPONDENT
MITIGATION FOR 11/94 THROUGH 6/99 - ON ONE HALF REDUCTION WHILE IN SCHOOL

MONTH/YR	..LOST		..NET		INTEREST EARNED	ENDING BALANCE
	BACK PAY	LOST BENEFITS	MITI- GATION	BACK PAY		
NOV 94	541.25	143.21	.00	684.46	.00	684.46
DEC 94	1,082.50	143.21	430.00	795.71	7.70	1,487.87
JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98
FEB 95	1,082.50	209.50	860.00	432.00	17.57	2,317.55
MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93
AUG 95	541.25	209.50	.00	750.75	55.75	7,256.43
SEPT 95	541.25	209.50	.00	750.75	62.47	8,069.65
OCT 95	541.25	227.13	.00	768.38	69.25	8,907.28
NOV 95	270.63	227.13	.00	497.76	76.23	9,481.27
DEC 95	541.25	227.13	382.69	385.69	81.01	9,947.97
JAN 96	491.73	227.13	434.84	284.02	84.90	10,316.89
FEB 96	491.73	227.13	434.84	284.02	87.97	10,688.88
MAR 96	491.73	227.13	209.09	509.77	91.07	11,289.73
APR 96	442.65	227.13	.00	669.78	96.08	12,055.59
MAY 96	442.65	227.13	.00	669.78	102.46	12,827.83
JUNE 96	983.46	227.13	.00	1,210.59	108.90	14,147.32
JULY 96	983.46	227.13	.00	1,210.59	119.89	15,477.80
AUG 96	983.46	227.13	.00	1,210.59	130.98	16,819.38
SEPT 96	491.73	227.13	.00	718.86	142.16	17,680.40
OCT 96	491.73	227.13	.00	718.86	149.34	18,548.59
NOV 96	491.73	227.13	434.84	284.02	156.57	18,989.19
DEC 96	491.73	227.13	913.36	-194.50	160.24	18,954.93
JAN 97	802.66	227.13	745.57	284.22	159.96	19,399.11
FEB 97	802.66	227.13	745.57	284.22	163.66	19,846.99
MAR 97	802.66	227.13	267.10	762.69	167.39	20,777.07
APR 97	745.47	227.13	.00	972.60	175.14	21,924.81
MAY 97	745.47	227.13	.00	972.60	184.71	23,082.12
JUNE 97	802.66	227.13	5,031.00	-4,001.21	194.35	19,275.26
JULY 97	802.66	227.13	.00	1,029.79	162.63	20,467.67
AUG 97	802.66	227.13	.00	1,029.79	172.56	21,670.03
SEPT 97	802.66	227.13	.00	1,029.79	182.58	22,882.40
OCT 97	802.66	227.13	890.57	139.22	192.69	23,214.31
NOV 97	802.66	227.13	890.57	139.22	195.45	23,548.98
DEC 97	802.66	227.13	890.57	139.22	198.24	23,886.44
JAN 98	993.74	227.13	1,166.00	54.87	201.05	24,142.37
FEB 98	993.74	227.13	1,166.00	54.87	203.19	24,400.42
MAR 98	993.74	227.13	1,166.00	54.87	205.34	24,660.63
APR 98	917.24	227.13	716.00	428.37	207.51	25,296.50
MAY 98	917.24	227.13	1,111.51	32.86	212.80	25,542.17
JUNE 98	993.74	227.13	6,400.00	-5,179.13	214.85	20,577.89
JULY 98	993.74	227.13	.00	1,220.87	173.48	21,972.24
AUG 98	993.74	227.13	.00	1,220.87	185.10	23,378.21
SEPT 98	993.74	227.13	1,166.00	54.87	196.82	23,629.90
OCT 98	993.74	227.13	1,166.00	54.87	198.92	23,883.69
NOV 98	993.74	227.13	1,341.42	-120.55	201.03	23,964.17
DEC 98	993.74	227.13	1,341.42	-120.55	201.70	24,045.32
JAN 99	993.74	227.13	1,250.44	-29.57	202.38	24,218.13
FEB 99	993.74	227.13	1,250.44	-29.57	203.82	24,392.38
MAR 99	993.74	227.13	1,250.44	-29.57	205.27	24,568.08
APR 99	993.74	227.13	.00	1,220.87	206.73	25,995.68
MAY 99	993.74	227.13	.00	1,220.87	218.63	27,435.18
JUNE 99	993.74	227.13	.00	1,220.87	230.63	28,886.68
TOTALS	44,542.78	12,326.48	35,772.28	21,096.98	7,789.70	28,886.68

DAMAGE SUMMARY

TOTAL LOST EARNINGS	21,096.98
INTEREST	7,789.70
INCIDENTALS	<u>1,000.00</u>
TOTAL DUE:	29,886.68



DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

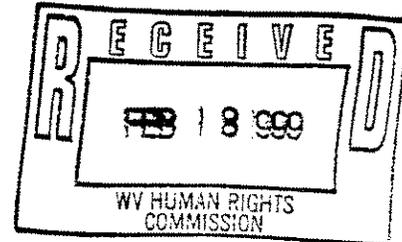
812 Quarrier Street
L & S Building, Sixth Floor
Charleston, West Virginia 25301
FAX (304) 558-0184

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

February 17, 1999

Antitrust & Consumer
Protection Division
(304) 558-8986
Civil Rights Division
(304) 558-0546
Preneed Funeral Services
(304) 558-0303
Consumer Hotline
(800) 368-8808

PLEASE REPLY TO:
Post Office Box 1789
Charleston, West Virginia 25362-1789



Robert B. Wilson, Esquire
Administrative Law Judge
West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, West Virginia 25301

Re: Vandevender v. Silver Creek Unit Owners Association
Docket No. EH-379-95

Dear Judge Wilson:

Enclosed are the proposed damage calculations for full back pay while in school in the above referenced case. Lost back pay and benefit amounts for 1996, 1997, and 1998 have been provided by the respondent. The computations for these amounts are identical to those used in the damage calculations for one-half back pay while in school which were mailed to you on February 11. Mitigation amounts are actual numbers taken from Ms. Vandevender's W-2 forms.

Per your request, one damage calculation lists the commissions Ms. Vandevender received for selling real estate in April of 1997 and 1998. The second calculation has the commissions listed in June of 1997 and 1998.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Janie O. Peyton
JANIE O'NEAL PEYTON
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

JOP/dd

Enclosures

cc: William G. Anderson, Esquire
Counsel for the Respondent

VANDEVER V. SILVER CREEK OWNERS ASSOCIATION DAMAGE CALCULATION
 DOCKET NO. EH-379-95

WAGE/BENEFIT AMOUNTS FOR 1997-1999 PROVIDED BY RESPONDENT; APRIL COMMISSION CALCULATIONS
 MITIGATION FOR 11/94 THROUGH 6/99 - NO REDUCTION IN BACK PAY WHILE IN SCHOOL

MONTH/YR	..LOST			..NET		ENDING BALANCE
	BACK PAY	LOST BENEFITS	MITI- GATION	BACK PAY	INTEREST EARNINGS	
NOV 94	541.25	143.21	.00	684.46	.00	684.46
DEC 94	1,082.50	143.21	430.00	795.71	7.70	1,487.87
JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98
FEB 95	1,082.50	209.50	860.00	432.00	17.57	2,317.55
MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93
AUG 95	1,082.50	209.50	.00	1,292.00	55.75	7,797.68
SEPT 95	1,082.50	209.50	.00	1,292.00	66.98	9,156.66
OCT 95	1,082.50	227.13	.00	1,309.63	78.31	10,544.60
NOV 95	541.25	227.13	.00	768.38	89.87	11,402.85
DEC 95	1,082.50	227.13	382.69	926.94	97.02	12,426.82
JAN 96	983.46	227.13	434.84	775.75	105.56	13,308.12
FEB 96	983.46	227.13	434.84	775.75	112.90	14,196.77
MAR 96	983.46	227.13	209.09	1,001.50	120.31	15,318.58
APR 96	885.30	227.13	.00	1,112.43	129.65	16,560.66
MAY 96	885.30	227.13	.00	1,112.43	140.01	17,813.10
JUNE 96	983.46	227.13	.00	1,210.59	150.44	19,174.13
JULY 96	983.46	227.13	.00	1,210.59	161.78	20,546.51
AUG 96	983.46	227.13	.00	1,210.59	173.22	21,930.32
SEPT 96	983.46	227.13	.00	1,210.59	184.75	23,325.66
OCT 96	983.46	227.13	.00	1,210.59	196.38	24,732.63
NOV 96	983.46	227.13	434.84	775.75	208.11	25,716.49
DEC 96	983.46	227.13	913.36	297.23	216.30	26,230.02
JAN 97	802.66	227.13	745.57	284.22	220.58	26,734.82
FEB 97	802.66	227.13	745.57	284.22	224.79	27,243.83
MAR 97	802.66	227.13	267.10	762.69	229.03	28,235.56
APR 97	745.47	227.13	5,031.00	-4,058.40	237.30	24,414.45
MAY 97	745.47	227.13	.00	972.60	205.45	25,592.51
JUNE 97	802.66	227.13	.00	1,029.79	215.27	26,837.57
JULY 97	802.66	227.13	.00	1,029.79	225.65	28,093.00
AUG 97	802.66	227.13	.00	1,029.79	236.11	29,358.90
SEPT 97	802.66	227.13	.00	1,029.79	246.66	30,635.35
OCT 97	802.66	227.13	890.57	139.22	257.29	31,031.86
NOV 97	802.66	227.13	890.57	139.22	260.60	31,431.68
DEC 97	802.66	227.13	890.57	139.22	263.93	31,834.83
JAN 98	993.74	227.13	1,166.00	54.87	267.29	32,156.99
FEB 98	993.74	227.13	1,166.00	54.87	269.97	32,481.84
MAR 98	993.74	227.13	1,166.00	54.87	272.68	32,809.39
APR 98	917.24	227.13	7,116.00	-5,971.63	275.41	27,113.17
MAY 98	917.24	227.13	1,111.50	32.87	227.94	27,373.99
JUNE 98	993.74	227.13	.00	1,220.87	230.12	28,824.97
JULY 98	993.74	227.13	.00	1,220.87	242.21	30,288.05
AUG 98	993.74	227.13	.00	1,220.87	254.40	31,763.32
SEPT 98	993.74	227.13	1,166.00	54.87	266.69	32,084.88
OCT 98	993.74	227.13	1,166.00	54.87	269.37	32,409.13
NOV 98	993.74	227.13	1,341.42	-120.55	272.08	32,560.65
DEC 98	993.74	227.13	1,341.42	-120.55	273.34	32,713.44
JAN 99	993.74	227.13	1,250.44	-29.57	274.61	32,958.49
FEB 99	993.74	227.13	1,250.44	-29.57	276.65	33,205.57
MAR 99	993.74	227.13	1,250.44	-29.57	278.71	33,454.71
APR 99	993.74	227.13	.00	1,220.87	280.79	34,956.37
MAY 99	993.74	227.13	.00	1,220.87	293.30	36,470.55
JUNE 99	993.74	227.13	.00	1,220.87	305.92	37,997.34
TOTALS	51,305.81	12,326.48	35,772.27	27,860.02	10,137.32	37,997.34

DAMAGE SUMMARY:

NET LOST EARNINGS	27,860.02
TOTAL INTEREST	10,137.32
EARNINGS/INTEREST	<u>37,997.34</u>
INCIDENTALS	1,000.00
TOTAL	<u>38,997.34</u>

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION DAMAGE CALCULATION
 DOCKET NO. EH-379-95

WAGE/BENEFIT AMOUNTS FOR 1997-1999 PROVIDED BY RESPONDENT - JUNE COMMISSION CALCULATIONS
 MITIGATION FOR 11/94 THROUGH 6/99 - NO REDUCTION IN BACK PAY WHILE IN SCHOOL

MONTH/YR	..LOST		..NET		INTEREST EARNINGS	ENDING BALANCE
	BACK PAY	LOST BENEFITS	MITIGATION	BACK PAY		
NOV 94	541.25	143.21	.00	684.46	.00	684.46
DEC 94	1,082.50	143.21	430.00	795.71	7.70	1,487.87
JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98
FEB 95	1,082.50	209.50	860.00	432.00	17.57	2,317.55
MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93
AUG 95	1,082.50	209.50	.00	1,292.00	55.75	7,797.68
SEPT 95	1,082.50	209.50	.00	1,292.00	66.98	9,156.66
OCT 95	1,082.50	227.13	.00	1,309.63	78.31	10,544.60
NOV 95	541.25	227.13	.00	768.38	89.87	11,402.85
DEC 95	1,082.50	227.13	382.69	926.94	97.02	12,426.82
JAN 96	983.46	227.13	434.84	775.75	105.56	13,308.12
FEB 96	983.46	227.13	434.84	775.75	112.90	14,196.77
MAR 96	983.46	227.13	209.09	1,001.50	120.31	15,318.58
APR 96	885.30	227.13	.00	1,112.43	129.65	16,560.66
MAY 96	885.30	227.13	.00	1,112.43	140.01	17,813.10
JUNE 96	983.46	227.13	.00	1,210.59	150.44	19,174.13
JULY 96	983.46	227.13	.00	1,210.59	161.78	20,546.51
AUG 96	983.46	227.13	.00	1,210.59	173.22	21,930.32
SEPT 96	983.46	227.13	.00	1,210.59	184.75	23,325.66
OCT 96	983.46	227.13	.00	1,210.59	196.38	24,732.63
NOV 96	983.46	227.13	434.84	775.75	208.11	25,716.49
DEC 96	983.46	227.13	913.36	297.23	216.30	26,230.02
JAN 97	802.66	227.13	745.57	284.22	220.58	26,734.82
FEB 97	802.66	227.13	745.57	284.22	224.79	27,243.83
MAR 97	802.66	227.13	267.10	762.69	229.03	28,235.56
APR 97	745.47	227.13	.00	972.60	237.30	29,445.45
MAY 97	745.47	227.13	.00	972.60	247.38	30,665.43
JUNE 97	802.66	227.13	5,031.00	-4,001.21	257.55	26,921.77
JULY 97	802.66	227.13	.00	1,029.79	226.35	28,177.90
AUG 97	802.66	227.13	.00	1,029.79	236.82	29,444.51
SEPT 97	802.66	227.13	.00	1,029.79	247.37	30,721.67
OCT 97	802.66	227.13	890.57	139.22	258.01	31,118.91
NOV 97	802.66	227.13	890.57	139.22	261.32	31,519.45
DEC 97	802.66	227.13	890.57	139.22	264.66	31,923.33
JAN 98	993.74	227.13	1,166.00	54.87	268.03	32,246.23
FEB 98	993.74	227.13	1,166.00	54.87	270.72	32,571.82
MAR 98	993.74	227.13	1,166.00	54.87	273.43	32,900.12
APR 98	917.24	227.13	716.00	428.37	276.17	33,604.66
MAY 98	917.24	227.13	1,111.50	32.87	282.04	33,919.57
JUNE 98	993.74	227.13	6,400.00	-5,179.13	284.66	29,025.10
JULY 98	993.74	227.13	.00	1,220.87	243.88	30,489.84
AUG 98	993.74	227.13	.00	1,220.87	256.08	31,966.80
SEPT 98	993.74	227.13	1,166.00	54.87	268.39	32,290.06
OCT 98	993.74	227.13	1,166.00	54.87	271.08	32,616.01
NOV 98	993.74	227.13	1,341.42	-120.55	273.80	32,769.26
DEC 98	993.74	227.13	1,341.42	-120.55	275.08	32,923.79
JAN 99	993.74	227.13	1,250.44	-29.57	276.36	33,170.58
FEB 99	993.74	227.13	1,250.44	-29.57	278.42	33,419.43
MAR 99	993.74	227.13	1,250.44	-29.57	280.50	33,670.36
APR 99	993.74	227.13	.00	1,220.87	282.59	35,173.82
MAY 99	993.74	227.13	.00	1,220.87	295.12	36,689.80
JUNE 99	993.74	227.13	.00	1,220.87	307.75	38,218.42
TOTALS	51,305.81	12,326.48	35,772.27	27,860.02	10,358.40	38,218.42

DAMAGE SUMMARY:

NET LOST EARNINGS	27,860.02
TOTAL INTEREST	10,358.40
EARNINGS/INTEREST	<u>38,218.42</u>
INCIDENTALS	1,000.00
TOTAL	<u>39,218.42</u>

CERTIFICATE OF SERVICE

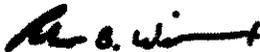
I, Robert B. Wilson, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing REMAND DAMAGE CALCULATION ORDER by depositing a true copy thereof in the U.S. Mail, postage prepaid, this 4th day of March, 1999, to the following:

ADA COLLEEN VANDEVENDOR
HC 73 BOX 21
MINGO WV 26294

JANIE O PEYTON
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
PO BOX 1789
CHARLESTON WV 25326-1789

SILVER CREEK UNIT OWNERS ASSN
PO BOX 66
SNOWSHOE WV 26209

JOHN TEARE JR ESQ
WILLIAM G ANDERSON ESQ
BOWLES RICE MCDAVID GRAFF & LOVE
PO BOX 1386
CHARLESTON WV 25325-1386



ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 108A

Charleston, WV 25301-1400

TELEPHONE (304) 558-2616

FAX (304) 558-0085

TDD - (304) 558-2976

TOLL FREE: 1-888-676-5546

Cecil H. Underwood
Governor

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 4, 1999

Ada Colleen Vandevendor
HC 73, Box 21
Mingo, WV 26294

Janie O. Peyton
Assistant Attorney General
Civil Rights Division
PO Box 1789
Charleston, WV 25326-1789

Silver Creek Unit Owners
Assn.
PO Box 66
Snowshoe, WV 26209

John Teare, Jr., Esq.
William G. Anderson, Esq.
Bowles, Rice, McDavid, Graff
& Love
PO Box 1386
Charleston, WV 25325-1386

Re: Vandevendor v. Silver Creek Unit Owners Association
EH-379-95

Dear Parties:

Enclosed, please find the Remand Damage Calculation Order of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before an administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before an administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

10.8.4. Supported by substantial evidence on the whole record; or

Vandevendor v. Silver Creek Unit Assn.

March 4, 1999

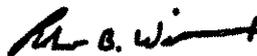
Page 3

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the Acting Executive Director of the commission at the above address.

Yours truly,



Robert B. Wilson
Administrative Law Judge

RBW/mst

Enclosure

cc: Norman Lindell, Acting Executive Director

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ADA COLLEEN VANDEVENDER,

Complainant,

v.

DOCKET NUMBER(S):EH-379-95

SILVER CREEK UNIT OWNERS
ASSOCIATION,

Respondent.

REMAND DAMAGE CALCULATION ORDER

Pursuant to the **ORDER OF THE COMMISSION** entered on December 14, 1998; the undersigned makes the following findings of fact and **ORDER** awarding back pay in light of the Commission's remand in the above styled action:

FINDINGS OF FACT

1. The Complainant was released to return to work by her doctor on November 14, 1994. At the time of the discriminatory act of respondent in November 1994, she was not allowed to return to work. She was unable to obtain full time year round employment with vacation and health benefits in housekeeping jobs, although she looked for such employment. Affidavit of Complainant dated January 13, 1999 (Hereafter "Affidavit").
2. Complainant worked two days as a housekeeper at the Mountain Lodge in December 1994. Complainant left this employment because it was not year round and did not offer health

benefits and paid vacation and she heard of work at Silver Creek. The evidence establishes that complainant was not offered health benefits or vacation at the time she took this job; however, as was the arrangement with the respondent when she was initially hired in 1987; she could conceivably have become eligible for these benefits if she later became a core employee of Mountain Lodge. Affidavit, Affidavit of John Butler Manager of Mountain State Lodge and Evidentiary Deposition of February 2, 1999.

3. Complainant worked as a seasonal customer service representative from December 1994 through March 1995 at Silver Creek Lodge at which time she was laid off work following the ski season. Affidavit.

4. Complainant continued seeking employment and enrolled in vocational school in August 1995. She remained available to work although attending school full time from Monday through Friday during the days through May of 1996; if she had been able to find year round employment offering benefits and vacation and paying what she had been making. Affidavit and Evidentiary Deposition.

5. Complainant worked as a customer service representative for Silver Creek Lodge again part time, working evenings and weekends while attending Vo-Tech; from December 1995 to March 1996 when she was again laid off from work. She did not seek full time seasonal employment however, while attending school. Affidavit and Evidentiary Deposition.

6. Complainant continued to seek employment and remained available for work thereafter. Complainant enrolled in school in August or September 1996 through December 1996, taking classes in real estate three nights per week for three hours a night, and continued looking for work of a year round nature, with benefits and paying what she earned while working

for respondent; but, did not find any such openings available. Complainant was a desk clerk/night auditor at The Inn at Snowshoe from mid-November 1996 until March 10 or 11, 1997 when she was again laid off from work. Affidavit and Evidentiary Deposition.

7. In January 1997, Complainant took and passed the West Virginia realtor's test and began working for Old Spruce Realty as a contractor in February 1997 earning \$5,031.00 in commissions from that employment while working at The Inn at Snowshoe. Since the complainant is unable to recall when during 1997 these commissions were received, the undersigned adopts the arbitrary month of June of that year for their inclusion as mitigation over respondent's objection that April should be the month in which they are imputed to have been earned. The undersigned adopts the argument advanced by respondent that all earnings should be included in mitigation even where such earnings exceed the monthly lost back pay and benefits complainant would have earned in such months, over complainant's objection. Affidavit and Evidentiary Deposition.

8. Complainant continued to seek employment and was hired as seasonal auditor at the Silver Creek Lodge for Snowshoe working until she was laid off in April 1998. Complainant continued to seek employment and was rehired as auditor at Silver Creek Lodge in September 1998 where she currently works, and expects to be laid off again in April of 1999. Complainant also had income in 1998 from work with the U.S. Department of Commerce Bureau of Census. Affidavit and Evidentiary Deposition and Exhibit to Deposition Tab A.

9. Complainant has been available for work continuously since November 1994 despite having taken classes in school. The evidence establishes that she continued to seek employment of a full time year round nature, with health benefits and vacation, paying what she had earned

from respondent; and has only been able to find seasonal or part time employment which does not offer paid vacation or health coverages to which she was entitled to as a "core-employee" with respondent. Thus the undersigned finds as fact that she was unable to secure comparable employment despite her best efforts. Affidavit and Evidentiary Deposition.

10. The undersigned adopts the back pay damage calculation without reductions for the time complainant was taking courses as submitted by complainant in the submissions dated February 11 and 17, 1999; taking into account all earnings in mitigation including earnings from employment with the Bureau of the Census with commissions attributed to June of 1997; indicating net lost wages and benefits of \$27,860.02 plus interest of \$10,358.40. The Commission has previously affirmed Judge Kelly's ruling that complainant would receive only \$1,000.00 in incidental damages; and therefore that award is not before the undersigned upon this remand from the Commission.

CONCLUSIONS OF LAW

1. It is the undersigned's understanding of the Commission' Remand Order that complainant is not required to take a job that is not equivalent in terms of it being year round employment, with comparable pay, and with health benefits and paid vacation in mitigation under the West Virginia Human Rights Act, as such employment would not be comparable employment.

2. Complainant has undertaken reasonable attempts to mitigate her damages under the circumstances.

3. It is the undersigned's understanding of the Commission's Remand Order that attendance at school does not necessarily terminate back pay damages under the West Virginia Human Rights Act; but, that such attendance would only result in reduction of back pay for the periods while attending classes if it resulted in the complainant not being reasonably available to accept comparable employment during such period; and that back pay would continue in any event following cessation of attendance of educational courses or job training.

4. Complainant was unable to find comparable employment at any time; but nevertheless accepted employment which mitigated her back pay damages. During the periods of her attendance of Vo-Tech and Real Estate Courses any forgone earnings from such attendance are deemed unascertainable and of no significance given the legal standard since complainant remained available for comparable employment and none was available and because she did obtain employment during such periods that was not comparable, which employment has been included in the mitigation of complainant's back pay damages.

5. Notwithstanding any language to the contrary in the Commission's Remand Order, this Remand Damage Calculation Order is in the nature of a Final Order of the Administrative Law Judge in this case and is therefore subject to the procedure for appeal of such an order to the Commission as set forth in statute and pursuant to WVHRC Procedural Rule 77 C.S.R. 2 §10.

6. The complainant is entitled to back pay and interest in the amount of \$38,218.42 as more fully set forth in complainant's damage calculations submitted on February 11, 1999 and February 17, 1999.

RELIEF AND ORDER

The respondent is hereby **ORDERED** to pay back pay and interest in the amount of \$38,218.42.

It is so **ORDERED**.

Entered this 4th day of March, 1999.

WV HUMAN RIGHTS COMMISSION

BY 
ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE



DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

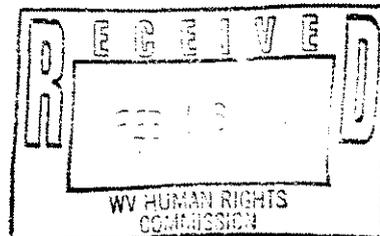
812 Quarrier Street
L & S Building, Sixth Floor
Charleston, West Virginia 25301
FAX (304) 558-0184

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

Antitrust & Consumer
Protection Division
(304) 558-8986
Civil Rights Division
(304) 558-0546
Preneed Funeral Services
(304) 558-0303
Consumer Hotline
(800) 368-8808

February 11, 1999

PLEASE REPLY TO:
Post Office Box 1789
Charleston, West Virginia 25362-1789



Robert B. Wilson, Esquire
Administrative Law Judge
West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, West Virginia 25301

Re: Vandevender v. Silver Creek Unit Owners Association
Docket No. EH-379-95

Dear Judge Wilson:

Attached are our proposed damage calculations in Ada Vandevender v. Silver Creek Unit Owners Association. We have done one sheet in which Ms. Vandevender's commissions are included in April and one where her commissions are included in June. As you can see, it makes very little difference in the amount of the damage award.

We have made several assumptions that are laid out in detail.

Our damage calculation assumes that Ms. Vandevender would get 1/2 of the back pay while in school. Next week we will provide the damage calculation for full back pay while in school.

LOST BENEFITS BASED ON FIGURES PROVIDED BY RESPONDENT:

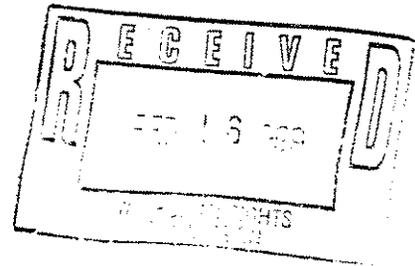
1996
Back Pay

The Core employees worked on average 151.3 hours for the ten months during which they worked full time. During the approximately two months when they received low earning slips, they worked average of 136.2 hours.

During the school year of 1996, we divided the amount of back pay that she would have earned in half.

7 months in school at 1/2 time - $\$6.50 \times 151.3 / 2 = \491.73 a month.
3 months in summer at full time - $\$6.50 \times 151.3 = \983.46
2 months of low earning - $\$6.50 \times 136.2 / 2 = \442.65

Judge Robert B. Wilson
February 11, 1999
Page 2



Mitigation

Actual numbers based on Ms. Vandevender's W-2 forms.

1997

Back Pay

10 months - $\$6.65 \times 120.7 \text{ hours} = \802.66
2 months of low earnings - $\$6.65 \times 112.1 = \745.47

Mitigation

Actual numbers based on Ms. Vandevender's W-2 forms.

1998

Back Pay

10 months - $\$7.65 \times 129.9 = \993.74
2 months - $\$7.65 \times 119.9 = \917.24

Mitigation

Actual numbers based on Ms. Vandevender's W-2 forms. Plus, an approximate commission of \$6400.

We think that this is a reasonable and fair amount of damages based on numbers provided by the Respondent in their most recent faxes.

Because we are engaged in settlement talks with the Respondent, we would like to request that you are not issue your ruling until next Friday, February 19, 1999.

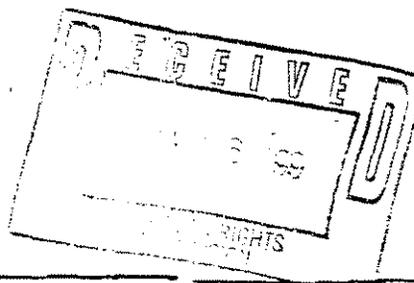
Sincerely,

JANIE O'NEAL PEYTON
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

JOP/dd

Enclosures

g:\civ\JOP\Vandeven\Damages



Silver Creek Association Payroll History - Core Hskpr.

Year	Employee Name	Annual Gross Earning	Avg. Wage Rate	Actual Hours Worked
(1996)				
1	P. Mallow	\$11,050	\$6.40	1726.56
1	J. Taylor	\$6,919	\$5.65	1224.60
1	P. Currence	\$8,330	\$5.65	1474.34
1	L. Bennett	\$6,974	\$5.65	1234.34
1	P. Collins	\$8,011	\$5.65	1417.38
1	B. Price	\$8,005	\$5.65	1416.81
1	R. Channell	\$9,967	\$6.15	1626.65
1	S. Vandenvender	\$8,390	\$5.65	1473.45
1	I. Linsey	\$10,982	\$5.65	1926.62
9		\$8,781	\$5.79	13,615
(1997)				
1	P. Mallow	\$11,992	\$6.65	1803.31
1	J. Taylor	\$7,855	\$5.85	1342.74
1	P. Currence	\$8,852	\$5.85	1513.16
1	L. Bennett	\$2,910	\$5.85	497.44
1	P. Collins	\$8,574	\$5.85	1465.64
1	B. Price	\$8,574	\$5.85	1465.64
1	R. Channell	\$10,889	\$6.40	1701.41
1	S. Vandenvender	\$4,187	\$5.85	715.73
1	I. Linsey	\$12,018	\$6.90	1741.74
1	P. Morris	\$7,294	\$5.85	1246.54
1	A. Tracy	\$3,505	\$5.85	620.35
1	D. Lambert	\$4,245	\$5.50	771.82
1	B. Channell	\$4,703	\$5.85	803.93
13		\$7,354	\$5.99	15,690
(1998)				
1	P. Mallow	\$14,095	\$7.65	1842.48
1	J. Taylor	\$7,990	\$6.85	1166.43
1	P. Currence	\$8,588	\$6.85	1253.72
1	L. Bennett	\$7,201	\$6.85	1051.24
1	P. Collins	\$8,160	\$6.85	1191.24
1	B. Price	\$8,214	\$6.85	1199.12
1	R. Channell	\$10,169	\$7.40	1374.19
1	S. Vandenvender	\$6,903	\$6.85	1007.74
1	I. Linsey	\$13,424	\$7.94	1690.65
1	A. Tracy	\$8,942	\$6.85	1306.40
1	B. Channell	\$8,298	\$6.85	1211.39
1	D. Lambert	\$8,425	\$6.50	1296.15
12		\$9,201	\$7.02	15,588

$$\frac{1513 \times 10}{1362 \times 2}$$

$$17854 \div 12 =$$

148.8
Adjusted 12 mo. Avg.

$\div 9 = 1513$

$$\frac{1207 \times 10}{1121 \times 2}$$

$$14312 \div 12 =$$

1193
Adjusted 12 mo. Avg.

$\div 13 = 1207$

$$\frac{1299 \times 10}{1199 \times 2}$$

$$15388 \div 12 =$$

1282
Adjusted 12 mo. Avg.

$\div 12 = 1299$

Notes: Number of hours worked a factor of:

- 1) The number of housekeepers employed as core workers.
- 2) Number of guest nights

Core employees w/ less than \$1,000 total earnings have been excluded.

List provided by Sandra Arbogast, Head Hskpr.

Calculations and supporting material provided by Manager

P. Mallow is atypical as she worked at different positions to get more hours

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION
DOCKET NO. EH-379-95

DAMAGE CALCULATION

WAGE AND BENEFIT AMOUNTS PROVIDED BY THE RESPONDENT
MITIGATION FOR 11/94 THROUGH 6/99 - ON ONE HALF REDUCTION WHILE IN SCHOOL

MONTH/YR	..LOST			..NET		INTEREST EARNED	ENDING BALANCE
	BACK PAY	LOST BENEFITS	MITI- GATION	BACK PAY			
NOV 94	541.25	143.21	.00	684.46	.00	.00	684.46
DEC 94	1,082.50	143.21	430.00	795.71	7.70	7.70	1,487.87
JAN 95	1,082.50	143.21	860.00	365.71	14.40	14.40	1,867.98
FEB 95	1,082.50	209.50	860.00	432.00	17.57	17.57	2,317.55
MAR 95	1,082.50	209.50	860.00	432.00	21.31	21.31	2,770.86
APR 95	541.25	209.50	.00	750.75	25.09	25.09	3,546.70
MAY 95	.00	209.50	.00	209.50	31.56	31.56	3,787.76
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	33.56	5,113.32
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	44.61	6,449.93
AUG 95	541.25	209.50	.00	750.75	55.75	55.75	7,256.43
SEPT 95	541.25	209.50	.00	750.75	62.47	62.47	8,069.65
OCT 95	541.25	227.13	.00	768.38	69.25	69.25	8,907.28
NOV 95	270.63	227.13	.00	497.76	76.23	76.23	9,481.27
DEC 95	541.25	227.13	382.69	385.69	81.01	81.01	9,947.97
JAN 96	491.73	227.13	434.84	284.02	84.90	84.90	10,316.89
FEB 96	491.73	227.13	434.84	284.02	87.97	87.97	10,688.88
MAR 96	491.73	227.13	209.09	509.77	91.07	91.07	11,289.73
APR 96	442.65	227.13	.00	669.78	96.08	96.08	12,055.59
MAY 96	442.65	227.13	.00	669.78	102.46	102.46	12,827.83
JUNE 96	983.46	227.13	.00	1,210.59	108.90	108.90	14,147.32
JULY 96	983.46	227.13	.00	1,210.59	119.89	119.89	15,477.80
AUG 96	983.46	227.13	.00	1,210.59	130.98	130.98	16,819.38
SEPT 96	491.73	227.13	.00	718.86	142.16	142.16	17,680.40
OCT 96	491.73	227.13	.00	718.86	149.34	149.34	18,548.59
NOV 96	491.73	227.13	434.84	284.02	156.57	156.57	18,989.19
DEC 96	491.73	227.13	913.36	-194.50	160.24	160.24	18,954.93
JAN 97	802.66	227.13	745.57	284.22	159.96	159.96	19,399.11
FEB 97	802.66	227.13	745.57	284.22	163.66	163.66	19,846.99
MAR 97	802.66	227.13	267.10	762.69	167.39	167.39	20,777.07
APR 97	745.47	227.13	5,031.00	-4,058.40	175.14	175.14	16,893.81
MAY 97	745.47	227.13	.00	972.60	142.78	142.78	18,009.19
JUNE 97	802.66	227.13	.00	1,029.79	152.08	152.08	19,191.06
JULY 97	802.66	227.13	.00	1,029.79	161.93	161.93	20,382.77
AUG 97	802.66	227.13	.00	1,029.79	171.86	171.86	21,584.42
SEPT 97	802.66	227.13	.00	1,029.79	181.87	181.87	22,796.08
OCT 97	802.66	227.13	890.57	139.22	191.97	191.97	23,127.27
NOV 97	802.66	227.13	890.57	139.22	194.73	194.73	23,461.21
DEC 97	802.66	227.13	890.57	139.22	197.51	197.51	23,797.94
JAN 98	993.74	227.13	1,166.00	54.87	200.32	200.32	24,053.13
FEB 98	993.74	227.13	1,166.00	54.87	202.44	202.44	24,310.44
MAR 98	993.74	227.13	1,166.00	54.87	204.59	204.59	24,569.90
APR 98	917.24	227.13	7,116.00	-5,971.63	206.75	206.75	18,805.02
MAY 98	917.24	227.13	1,111.51	32.86	158.71	158.71	18,996.59
JUNE 98	993.74	227.13	.00	1,220.87	160.30	160.30	20,377.76
JULY 98	993.74	227.13	.00	1,220.87	171.81	171.81	21,770.45
AUG 98	993.74	227.13	.00	1,220.87	183.42	183.42	23,174.74
SEPT 98	993.74	227.13	1,166.00	54.87	195.12	195.12	23,424.73
OCT 98	993.74	227.13	1,166.00	54.87	197.21	197.21	23,676.81
NOV 98	993.74	227.13	1,341.42	-120.55	199.31	199.31	23,755.56
DEC 98	993.74	227.13	1,341.42	-120.55	199.96	199.96	23,834.98
JAN 99	993.74	227.13	1,250.44	-29.57	200.62	200.62	24,006.03
FEB 99	993.74	227.13	1,250.44	-29.57	202.05	202.05	24,178.51
MAR 99	993.74	227.13	1,250.44	-29.57	203.49	203.49	24,352.43
APR 99	993.74	227.13	.00	1,220.87	204.94	204.94	25,778.24
MAY 99	993.74	227.13	.00	1,220.87	216.82	216.82	27,215.93
JUNE 99	993.74	227.13	.00	1,220.87	228.80	228.80	28,665.59
TOTALS	44,542.78	12,326.48	35,772.28	21,096.98	7,568.61		28,665.59

DAMAGE SUMMARY

TOTAL LOST EARN	21,096.98
INTEREST	7,568.61
INCIDENTIALS	<u>1,000.00</u>
TOTAL DUE:	29,665.59

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION
DOCKET NO. EH-379-95

DAMAGE CALCULATION

WAGE AND BENEFIT AMOUNTS PROVIDED BY THE RESPONDENT
MITIGATION FOR 11/94 THROUGH 6/99 - ON ONE HALF REDUCTION WHILE IN SCHOOL

MONTH/YR	..LOST		..NET		INTEREST EARNED	ENDING BALANCE					
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JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98					
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MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86					
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70					
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76					
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32					
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93					
AUG 95	541.25	209.50	.00	750.75	55.75	7,256.43					
SEPT 95	541.25	209.50	.00	750.75	62.47	8,069.65					
OCT 95	541.25	227.13	.00	768.38	69.25	8,907.28					
NOV 95	270.63	227.13	.00	497.76	76.23	9,481.27					
DEC 95	541.25	227.13	382.69	385.69	81.01	9,947.97					
JAN 96	491.73	227.13	434.84	284.02	84.90	10,316.89					
FEB 96	491.73	227.13	434.84	284.02	87.97	10,688.88					
MAR 96	491.73	227.13	209.09	509.77	91.07	11,289.73					
APR 96	442.65	227.13	.00	669.78	96.08	12,055.59					
MAY 96	442.65	227.13	.00	669.78	102.46	12,827.83					
JUNE 96	983.46	227.13	.00	1,210.59	108.90	14,147.32					
JULY 96	983.46	227.13	.00	1,210.59	119.89	15,477.80					
AUG 96	983.46	227.13	.00	1,210.59	130.98	16,819.38					
SEPT 96	491.73	227.13	.00	718.86	142.16	17,680.40					
OCT 96	491.73	227.13	.00	718.86	149.34	18,548.59					
NOV 96	491.73	227.13	434.84	284.02	156.57	18,989.19					
DEC 96	491.73	227.13	913.36	-194.50	160.24	18,954.93					
JAN 97	802.66	227.13	745.57	284.22	159.96	19,399.11					
FEB 97	802.66	227.13	745.57	284.22	163.66	19,846.99					
MAR 97	802.66	227.13	267.10	762.69	167.39	20,777.07					
APR 97	745.47	227.13	.00	972.60	175.14	21,924.81					
MAY 97	745.47	227.13	.00	972.60	184.71	23,082.12					
JUNE 97	802.66	227.13	5,031.00	-4,001.21	194.35	19,275.26					
JULY 97	802.66	227.13	.00	1,029.79	162.63	20,467.67					
AUG 97	802.66	227.13	.00	1,029.79	172.56	21,670.03					
SEPT 97	802.66	227.13	.00	1,029.79	182.58	22,882.40					
OCT 97	802.66	227.13	890.57	139.22	192.69	23,214.31					
NOV 97	802.66	227.13	890.57	139.22	195.45	23,548.98					
DEC 97	802.66	227.13	890.57	139.22	198.24	23,886.44					
JAN 98	993.74	227.13	1,166.00	54.87	201.05	24,142.37					
FEB 98	993.74	227.13	1,166.00	54.87	203.19	24,400.42					
MAR 98	993.74	227.13	1,166.00	54.87	205.34	24,660.63					
APR 98	917.24	227.13	716.00	428.37	207.51	25,296.50					
MAY 98	917.24	227.13	1,111.51	32.86	212.80	25,542.17					
JUNE 98	993.74	227.13	6,400.00	-5,179.13	214.85	20,577.89					
JULY 98	993.74	227.13	.00	1,220.87	173.48	21,972.24					
AUG 98	993.74	227.13	.00	1,220.87	185.10	23,378.21					
SEPT 98	993.74	227.13	1,166.00	54.87	196.82	23,629.90					
OCT 98	993.74	227.13	1,166.00	54.87	198.92	23,883.69					
NOV 98	993.74	227.13	1,341.42	-120.55	201.03	23,964.17					
DEC 98	993.74	227.13	1,341.42	-120.55	201.70	24,045.32					
JAN 99	993.74	227.13	1,250.44	-29.57	202.38	24,218.13					
FEB 99	993.74	227.13	1,250.44	-29.57	203.82	24,392.38					
MAR 99	993.74	227.13	1,250.44	-29.57	205.27	24,568.08					
APR 99	993.74	227.13	.00	1,220.87	206.73	25,995.68					
MAY 99	993.74	227.13	.00	1,220.87	218.63	27,435.18					
JUNE 99	993.74	227.13	.00	1,220.87	230.63	28,886.68					
TOTALS						44,542.78	12,326.48	35,772.28	21,096.98	7,789.70	28,886.68

DAMAGE SUMMARY

TOTAL LOST EARNINGS	21,096.98
INTEREST	7,789.70
INCIDENTALS	<u>1,000.00</u>
TOTAL DUE:	29,886.68



DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

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Charleston, West Virginia 25301
FAX (304) 558-0184

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

February 17, 1999

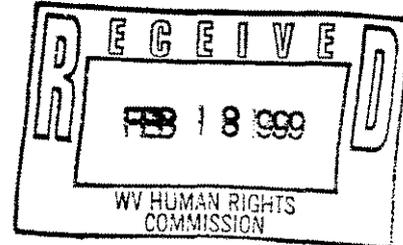
Antitrust & Consumer
Protection Division
(304) 558-8986

Civil Rights Division
(304) 558-0546

Preneed Funeral Services
(304) 558-0303

Consumer Hotline
(800) 368-8808

PLEASE REPLY TO:
Post Office Box 1789
Charleston, West Virginia 25362-1789



Robert B. Wilson, Esquire
Administrative Law Judge
West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, West Virginia 25301

Re: Vandevender v. Silver Creek Unit Owners Association
Docket No. EH-379-95

Dear Judge Wilson:

Enclosed are the proposed damage calculations for full back pay while in school in the above referenced case. Lost back pay and benefit amounts for 1996, 1997, and 1998 have been provided by the respondent. The computations for these amounts are identical to those used in the damage calculations for one-half back pay while in school which were mailed to you on February 11. Mitigation amounts are actual numbers taken from Ms. Vandevender's W-2 forms.

Per your request, one damage calculation lists the commissions Ms. Vandevender received for selling real estate in April of 1997 and 1998. The second calculation has the commissions listed in June of 1997 and 1998.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Janie O. Peyton
JANIE O'NEAL PEYTON
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

JOP/dd

Enclosures

cc: William G. Anderson, Esquire
Counsel for the Respondent

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION DAMAGE CALCULATION
 DOCKET NO. EH-379-95

WAGE/BENEFIT AMOUNTS FOR 1997-1999 PROVIDED BY RESPONDENT; APRIL COMMISSION CALCULATIONS
 MITIGATION FOR 11/94 THROUGH 6/99 - NO REDUCTION IN BACK PAY WHILE IN SCHOOL

MONTH/YR	..LOST		..NET		INTEREST EARNINGS	ENDING BALANCE
	BACK PAY	LOST BENEFITS	MITI- GATION	BACK PAY		
NOV 94	541.25	143.21	.00	684.46	.00	684.46
DEC 94	1,082.50	143.21	430.00	795.71	7.70	1,487.87
JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98
FEB 95	1,082.50	209.50	860.00	432.00	17.57	2,317.55
MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93
AUG 95	1,082.50	209.50	.00	1,292.00	55.75	7,797.68
SEPT 95	1,082.50	209.50	.00	1,292.00	66.98	9,156.66
OCT 95	1,082.50	227.13	.00	1,309.63	78.31	10,544.60
NOV 95	541.25	227.13	.00	768.38	89.87	11,402.85
DEC 95	1,082.50	227.13	382.69	926.94	97.02	12,426.82
JAN 96	983.46	227.13	434.84	775.75	105.56	13,308.12
FEB 96	983.46	227.13	434.84	775.75	112.90	14,196.77
MAR 96	983.46	227.13	209.09	1,001.50	120.31	15,318.58
APR 96	885.30	227.13	.00	1,112.43	129.65	16,560.66
MAY 96	885.30	227.13	.00	1,112.43	140.01	17,813.10
JUNE 96	983.46	227.13	.00	1,210.59	150.44	19,174.13
JULY 96	983.46	227.13	.00	1,210.59	161.78	20,546.51
AUG 96	983.46	227.13	.00	1,210.59	173.22	21,930.32
SEPT 96	983.46	227.13	.00	1,210.59	184.75	23,325.66
OCT 96	983.46	227.13	.00	1,210.59	196.38	24,732.63
NOV 96	983.46	227.13	434.84	775.75	208.11	25,716.49
DEC 96	983.46	227.13	913.36	297.23	216.30	26,230.02
JAN 97	802.66	227.13	745.57	284.22	220.58	26,734.82
FEB 97	802.66	227.13	745.57	284.22	224.79	27,243.83
MAR 97	802.66	227.13	267.10	762.69	229.03	28,235.56
APR 97	745.47	227.13	5,031.00	-4,058.40	237.30	24,414.45
MAY 97	745.47	227.13	.00	972.60	205.45	25,592.51
JUNE 97	802.66	227.13	.00	1,029.79	215.27	26,837.57
JULY 97	802.66	227.13	.00	1,029.79	225.65	28,093.00
AUG 97	802.66	227.13	.00	1,029.79	236.11	29,358.90
SEPT 97	802.66	227.13	.00	1,029.79	246.66	30,635.35
OCT 97	802.66	227.13	890.57	139.22	257.29	31,031.86
NOV 97	802.66	227.13	890.57	139.22	260.60	31,431.68
DEC 97	802.66	227.13	890.57	139.22	263.93	31,834.83
JAN 98	993.74	227.13	1,166.00	54.87	267.29	32,156.99
FEB 98	993.74	227.13	1,166.00	54.87	269.97	32,481.84
MAR 98	993.74	227.13	1,166.00	54.87	272.68	32,809.39
APR 98	917.24	227.13	7,116.00	-5,971.63	275.41	27,113.17
MAY 98	917.24	227.13	1,111.50	32.87	227.94	27,373.99
JUNE 98	993.74	227.13	.00	1,220.87	230.12	28,824.97
JULY 98	993.74	227.13	.00	1,220.87	242.21	30,288.05
AUG 98	993.74	227.13	.00	1,220.87	254.40	31,763.32
SEPT 98	993.74	227.13	1,166.00	54.87	266.69	32,084.88
OCT 98	993.74	227.13	1,166.00	54.87	269.37	32,409.13
NOV 98	993.74	227.13	1,341.42	-120.55	272.08	32,560.65
DEC 98	993.74	227.13	1,341.42	-120.55	273.34	32,713.44
JAN 99	993.74	227.13	1,250.44	-29.57	274.61	32,958.49
FEB 99	993.74	227.13	1,250.44	-29.57	276.65	33,205.57
MAR 99	993.74	227.13	1,250.44	-29.57	278.71	33,454.71
APR 99	993.74	227.13	.00	1,220.87	280.79	34,956.37
MAY 99	993.74	227.13	.00	1,220.87	293.30	36,470.55
JUNE 99	993.74	227.13	.00	1,220.87	305.92	37,997.34
TOTALS	51,305.81	12,326.48	35,772.27	27,860.02	10,137.32	37,997.34

DAMAGE SUMMARY:

NET LOST EARNINGS	27,860.02
TOTAL INTEREST	10,137.32
EARNINGS/INTEREST	<u>37,997.34</u>
INCIDENTALS	1,000.00
TOTAL	<u>38,997.34</u>

VANDEVENDER V. SILVER CREEK OWNERS ASSOCIATION DAMAGE CALCULATION
 DOCKET NO. EH-379-95

WAGE/BENEFIT AMOUNTS FOR 1997-1999 PROVIDED BY RESPONDENT - JUNE COMMISSION CALCULATIONS
 MITIGATION FOR 11/94 THROUGH 6/99 - NO REDUCTION IN BACK PAY WHILE IN SCHOOL

MONTH/YR	..LOST		MITI- GATION	..NET		INTEREST EARNINGS	ENDING BALANCE
	BACK PAY	LOST BENEFITS		BACK PAY			
NOV 94	541.25	143.21	.00	684.46	.00	684.46	
DEC 94	1,082.50	143.21	430.00	795.71	7.70	1,487.87	
JAN 95	1,082.50	143.21	860.00	365.71	14.40	1,867.98	
FEB 95	1,082.50	209.50	860.00	432.00	17.57	2,317.55	
MAR 95	1,082.50	209.50	860.00	432.00	21.31	2,770.86	
APR 95	541.25	209.50	.00	750.75	25.09	3,546.70	
MAY 95	.00	209.50	.00	209.50	31.56	3,787.76	
JUNE 95	1,082.50	209.50	.00	1,292.00	33.56	5,113.32	
JULY 95	1,082.50	209.50	.00	1,292.00	44.61	6,449.93	
AUG 95	1,082.50	209.50	.00	1,292.00	55.75	7,797.68	
SEPT 95	1,082.50	209.50	.00	1,292.00	66.98	9,156.66	
OCT 95	1,082.50	227.13	.00	1,309.63	78.31	10,544.60	
NOV 95	541.25	227.13	.00	768.38	89.87	11,402.85	
DEC 95	1,082.50	227.13	382.69	926.94	97.02	12,426.82	
JAN 96	983.46	227.13	434.84	775.75	105.56	13,308.12	
FEB 96	983.46	227.13	434.84	775.75	112.90	14,196.77	
MAR 96	983.46	227.13	209.09	1,001.50	120.31	15,318.58	
APR 96	885.30	227.13	.00	1,112.43	129.65	16,560.66	
MAY 96	885.30	227.13	.00	1,112.43	140.01	17,813.10	
JUNE 96	983.46	227.13	.00	1,210.59	150.44	19,174.13	
JULY 96	983.46	227.13	.00	1,210.59	161.78	20,546.51	
AUG 96	983.46	227.13	.00	1,210.59	173.22	21,930.32	
SEPT 96	983.46	227.13	.00	1,210.59	184.75	23,325.66	
OCT 96	983.46	227.13	.00	1,210.59	196.38	24,732.63	
NOV 96	983.46	227.13	434.84	775.75	208.11	25,716.49	
DEC 96	983.46	227.13	913.36	297.23	216.30	26,230.02	
JAN 97	802.66	227.13	745.57	284.22	220.58	26,734.82	
FEB 97	802.66	227.13	745.57	284.22	224.79	27,243.83	
MAR 97	802.66	227.13	267.10	762.69	229.03	28,235.56	
APR 97	745.47	227.13	.00	972.60	237.30	29,445.45	
MAY 97	745.47	227.13	.00	972.60	247.38	30,665.43	
JUNE 97	802.66	227.13	5,031.00	-4,001.21	257.55	26,921.77	
JULY 97	802.66	227.13	.00	1,029.79	226.35	28,177.90	
AUG 97	802.66	227.13	.00	1,029.79	236.82	29,444.51	
SEPT 97	802.66	227.13	.00	1,029.79	247.37	30,721.67	
OCT 97	802.66	227.13	890.57	139.22	258.01	31,118.91	
NOV 97	802.66	227.13	890.57	139.22	261.32	31,519.45	
DEC 97	802.66	227.13	890.57	139.22	264.66	31,923.33	
JAN 98	993.74	227.13	1,166.00	54.87	268.03	32,246.23	
FEB 98	993.74	227.13	1,166.00	54.87	270.72	32,571.82	
MAR 98	993.74	227.13	1,166.00	54.87	273.43	32,900.12	
APR 98	917.24	227.13	716.00	428.37	276.17	33,604.66	
MAY 98	917.24	227.13	1,111.50	32.87	282.04	33,919.57	
JUNE 98	993.74	227.13	6,400.00	-5,179.13	284.66	29,025.10	
JULY 98	993.74	227.13	.00	1,220.87	243.88	30,489.84	
AUG 98	993.74	227.13	.00	1,220.87	256.08	31,966.80	
SEPT 98	993.74	227.13	1,166.00	54.87	268.39	32,290.06	
OCT 98	993.74	227.13	1,166.00	54.87	271.08	32,616.01	
NOV 98	993.74	227.13	1,341.42	-120.55	273.80	32,769.26	
DEC 98	993.74	227.13	1,341.42	-120.55	275.08	32,923.79	
JAN 99	993.74	227.13	1,250.44	-29.57	276.36	33,170.58	
FEB 99	993.74	227.13	1,250.44	-29.57	278.42	33,419.43	
MAR 99	993.74	227.13	1,250.44	-29.57	280.50	33,670.36	
APR 99	993.74	227.13	.00	1,220.87	282.59	35,173.82	
MAY 99	993.74	227.13	.00	1,220.87	295.12	36,689.80	
JUNE 99	993.74	227.13	.00	1,220.87	307.75	38,218.42	
TOTALS	51,305.81	12,326.48	35,772.27	27,860.02	10,358.40	38,218.42	

DAMAGE SUMMARY:

NET LOST EARNINGS	27,860.02
TOTAL INTEREST	10,358.40
EARNINGS/INTEREST	<u>38,218.42</u>
INCIDENTALS	1,000.00
TOTAL	<u>39,218.42</u>

CERTIFICATE OF SERVICE

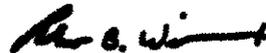
I, Robert B. Wilson, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing REMAND DAMAGE CALCULATION ORDER by depositing a true copy thereof in the U.S. Mail, postage prepaid, this 4th day of March, 1999, to the following:

ADA COLLEEN VANDEVENDOR
HC 73 BOX 21
MINGO WV 26294

JANIE O PEYTON
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
PO BOX 1789
CHARLESTON WV 25326-1789

SILVER CREEK UNIT OWNERS ASSN
PO BOX 66
SNOWSHOE WV 26209

JOHN TEARE JR ESQ
WILLIAM G ANDERSON ESQ
BOWLES RICE MCDAVID GRAFF & LOVE
PO BOX 1386
CHARLESTON WV 25325-1386



ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE