

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

TERRANCE F. STEWARD,	:	
COMPLAINANT	:	
	:	
v.	:	DOCKET NO. E-25195
	:	
CENTRAL MORTGAGE COMPANY, a	:	
subsidiary of PHILADELPHIA SAVINGS	:	
FUND SOCIETY,	:	
RESPONDENT	:	

STIPULATIONS OF FACT,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
OPINION,  
RECOMMENDATION OF HEARING PANEL,  
FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

----- :  
TERRANCE F. STEWARD, :  
 :  
Complainant :  
 :  
v. : DOCKET NO. E-25195  
 :  
CENTRAL MORTGAGE COMPANY, :  
a subsidiary of PHILADELPHIA :  
SAVINGS FUND SOCIETY, :  
 :  
Respondent :  
----- :

STIPULATIONS OF FACT

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required:

1. The Complainant herein is Terrance F. Steward, a black male.
2. The Respondent herein is the Central Mortgage Co. ("C.M.C.") a subsidiary of the Philadelphia Savings Fund Society ("P.S.F.S.").
3. C.M.C., at <sup>least beginning January 1, 1983,</sup> ~~all times relevant to the case at hand,~~ employed four or more employees in the Commonwealth.
4. The Complainant, on April 8, 1983, filed a notarized complaint with the Pennsylvania Human Relations Commission ("Commission") at Commission docket number E-25195, which designated P.S.F.S. as the named Respondent. A copy of the complaint is attached as Appendix "A".
5. In correspondence dated April 28, 1983 Counsel for C.M.C. submitted a Notice of Appearance form on behalf of C.M.C. and informed the Commission that C.M.C. rather than P.S.F.S. had been Complainant's employer.
6. In correspondence, dated May 27, 1983, C.M.C. informed the Commission that P.S.F.S. had not been Complainant's employer.
7. In correspondence, dated April 23, 1984, the Commission notified C.M.C. that probable cause existed to credit the allegations found in the

Joint Exhibit # 1

complaint.

8. In correspondence, dated May 9, 1984, C.M.C. notified the Commission that P.S.F.S. was not and had never been an employer of the Complainant and that C.M.C. had never been a "charged respondent".

9. C.M.C. has been aware of the existence of the aforementioned complaint since on or about April 28, 1983.

10. C.M.C., during the Commission's investigatory process, submitted a position paper; responded to requests for data and documents; made a number of C.M.C. employees available for interviews; and submitted a response to the finding of probable cause.

11. Subsequent to the determination of probable cause, C.M.C. declined an opportunity to resolve the matter by conference, conciliation and persuasion.

12. On June 2, 1984, the Complainant amended his complaint by indicating the named Respondent to be: "Central Mortgage Company, a subsidiary of Philadelphia Savings Fund Society". A copy of the Amended Complaint is attached as Appendix "B".

13. In correspondence dated August 31, 1984, the Commission notified C.M.C. that a public hearing had been approved in this matter.

14. The Complainant was initially employed by Industrial Valley Bank on February 15, 1980, and he worked in the Central Mortgage Servicing Division of IVB ("C.M.S.D.").

15. C.M.S.D., from the time of Complainant's initial selection until December 15, 1982, was a division of Industrial Valley Bank ("I.V.B.").

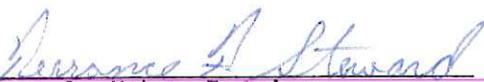
16. In March 1981, C.M.S.D. promoted Complainant to the position of Mortgage Service Collection Supervisor.

17. On December 15, 1982, I.V.B. merged C.M.S.D. into Central Mortgage Co., a subsidiary of I.V.B. and then sold the stock of Central Mortgage Co. to P.S.F.S.. As of that date Central Mortgage Co. became a subsidiary of P.S.F.S..

18. At the time of Complainant's dismissal he was earning \$21,120.00 annually.

19. At the time of his dismissal, the Complainant was the only black supervisor employed by C.M.C..

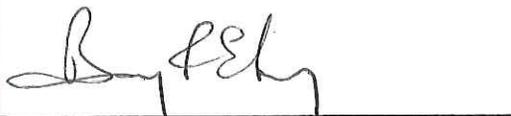
The Stipulations of Fact, together with all appendices, and the Witness Lists and Lists of Exhibits of each party will be incorporated into the transcript prepared during the course of any subsequent public hearing held in this matter.

  
~~Donna S. Kahn, Esquire~~  
~~Counsel for Complainant~~

  
Michael Hardiman, Esquire  
Counsel for the Commission

Date: 11/20/85

Date: November 20, 1985

  
Barry R. Elson, Esquire  
Counsel for Respondent

Date: November 20, 1985

FINDINGS OF FACT \*

1. At the time Complainant was hired, C.M.S.D. had serious long standing operational problems. (N.T.B. 111; N.T.C. 26)
2. The Complainant was hired as part of an effort to correct the problems. (N.T.A. 29, 30; N.T.C. 41)
3. John Marshall was the Complainant's immediate supervisor throughout the entire period of the Complainant's employment by the Respondent. (N.T.A. 30; 80)
4. During the Complainant's initial year of employment, he had numerous responsibilities including the School and State Retirement Funds; the Housing and Urban Development Assignment Program; and Forbearance Agreements. (C.E. 1; N.T.A. 30)
5. Prior to the Complainant's employment, each of the above areas were the responsibility of Mr. Marshall. Significant problems existed with respect to handling and control over these program areas. (N.T.B. 111; N.T.C. 28-32)
6. During the first year of the Complainant's employment, he assisted in attempting to reduce the problems related to the above referenced areas and to establish control over the various program areas. (C.E. 1; N.T.C. 36, 37)
7. On an annual basis, the Respondent used written performance evaluations to

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\*The facts contained in the "Stipulations of Fact" are hereby incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout:

S.F. Stipulations of Fact  
N.T.A. Notes of Testimony from transcript of 11/20/85 hearing date.  
N.T.B. Notes of Testimony from transcript of 11/21/85 hearing date.  
N.T.C. Notes of Testimony from transcript of 11/22/85 hearing date.  
N.T.D. Notes of Testimony from transcript of 2/27/85 hearing date.  
C.E. Complainant's Exhibit  
R.E. Respondent's Exhibit

measure its employees' performance contribution for the preceeding year.  
(N.T.C. 33)

8. The Complainant received an overall rating of "Distinguished" at the end of his first year of employment. "Distinguished" was the highest rating.  
(C.E. 1; N.T.C. 41)

9. In addition to written evaluations, the Respondent's evaluation process also included oral reviews. (N.T.A. 32)

10. Ronald Williams began serving as a consultant in the servicing division approximately the same time period as the Complainant began working for the Respondent. (N.T.B. 109)

11. In February of 1981, Mr. Williams was appointed as head of the Respondent's servicing division. (N.T.B. 110)

12. John Marshall reported directly to Williams. (R.E. 8)

13. During the Complainant's first year of employment, Williams was satisfied with the Complainant's performance. (C.E. 1; N.T.C. 41)

14. During the Complainant's first year of employment, he received two salary increases. (C.E. 1; N.T.A. 31)

15. In March of 1981, the Complainant was promoted to the position of mortgage service collection supervisor. (S.F.16; C.E. 2)

16. During the Complainant's second year, the Complainant was given verbal criticism of his work performance. The verbal criticism was followed by a written memorandum outlining the Complainant's deficiencies. (C.E. 5; N.T.A. 49, 50)

17. Williams did not just criticize the Complainant. Instead, Williams' memos contained both positive and negative reinforcement. The negative job performance comments were listed in a constructive manner. (N.T.A. 129, 145; C.E. 5, 6)

18. At the conclusion of the Complainant's second year of employment, his immediate supervisor, Marshall, recommended that the Complainant's performance be rated one level below the highest rating. (N.T.C. 45; C.E. 4)

19. Williams instructed Marshall to lower the Complainant's rating one further level to the mid level rating. (N.T.C. 46; C.E. 4)

20. Williams reduced Complainant's evaluation because there was a restriction on the number of employees who could be rated with the next to the highest rating. This restriction was based on economical considerations as an employee's evaluation rating was directly related to budgetary pay increases. (N.T.A. 133; N.T.C. 46)

21. The Complainant was dissatisfied with his second year overall rating and requested an opportunity to discuss his performance evaluation with Williams. The Complainant's request was approved. (N.T.A. 43, 47-48; N.T.C. 47)

22. On or about May 24, 1982, the Complainant received another written performance criticism which documented the Complainant's continued operational problems. (C.E. 6; N.T.B. 141; N.T.C. 58)

23. The May 24, 1982, memo instructed the Complainant that he would be assigned additional challenging job responsibilities. The memo also warned the Complainant that if his performance was unsatisfactory, he would be terminated. (C.E. 6)

24. Williams became dissatisfied with the Complainant's performance of one of the additional projects (the MIP project), during October of 1982. (N.T.B. 151; N.T.C. 59)

25. In October of 1982, the Complainant failed to send an error filled computer tape back for correction. This necessitated manually processing a large number of transactions which would have been more efficiently done by computer corrections. (N.T.A. 155).

26. By November of 1982, Williams knew that the mortgage servicing division would be sold to P.S.F.S. (C.E. 7)
27. In early December of 1981, Williams decided to terminate the Complainant because of the Complainant's unsatisfactory work performance. (N.T.A. 166)
28. In early December of 1981, Williams verbally informed the Complainant of his decision. (N.T.A. 168-169)
29. The Complainant agreed that he was told of Williams' layoff decision prior to a written notice dated January 11, 1983. (N.T.A. 70)
30. Williams told the Complainant that he was being laid off because one of the Respondent's large investors would not agree to transfer its business after the transfer of ownership of the Respondent. (C.E. 8; N.T.B. 70, 71, 164-166).
31. Williams' real reason for laying off the Complainant was the Complainant's unsatisfactory work performance. (N.T.B. 170)
32. Williams told the Complainant his layoff was related to the anticipated loss of business as a "face saving" tactic. By being laid off, Williams was also providing the Complainant with a headstart in locating another job. (N.T.B. 170; N.T. 63)
33. Had the circumstances not presented the option of layoff, Williams would have fired the Complainant for poor job performance. (N.T.B. 166)
38. The Complainant recognized that he could have been fired for the kissing incident. (N.T.B. 58)
39. The kissing incident was not a factor in Williams' decision to terminate the Complainant. (N.T.B. 182)
40. The Complainant's testimony, taken as a whole, was elusive, unresponsive, and not credible. (N.T.A. 138, 146, 158, 165; N.T.B. 55, 57, 71)

### CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and the subject matter of this case.

2. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.

3. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("Act").

4. Respondent is an employer within the meaning of the Act.

5. Complainant in this case has made out a prima facie case by proving that:

- a. He belongs to a protected class;
- b. He was qualified to perform the ~~job he held~~;
- c. He was discharged from his position; and
- d. The Respondent retained comparably qualified employees who were not Black.

6. Respondent has met its burden and rebutted Complainant's prima facie case by introducing admissible evidence of legitimate, nondiscriminatory reasons for its conduct.

7. Complainant has not established that the reasons given by Respondent for its actions were pretextual.

## OPINION

This case arises on a complaint filed by Terrance F. Steward ("Complainant") against the Central Mortgage Company ("Respondent") with the PA Human Relations Commission ("Commission") on or about April 8, 1983, at Docket No. E-25195. Complainant alleged that the Respondent had discriminatorily terminated his employment because of his race, Black. He alleged a violation of Section 5 (a) of the PA Human Relations Act, Act of October 27, 1955, P.L. 744 as amended, 43 P.S. §§951 et seq. ("Act").

The Commission investigated the allegations found in the complaint and in correspondence, dated April 23, 1984, informed the Respondent that probable cause existed to credit the Complainant's allegations. Thereafter, the Commission and the parties attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion. These efforts proved unsuccessful. In correspondence dated August 31, 1984, the Commission notified the Respondent that it had approved the convening of a public hearing.

The hearing convened on November 20, 1985, with Commissioner Alvin E. Echols, Jr., presiding and Commissioners Thomas L. McGill, Jr., and Benjamin S. Loewenstein also serving on the hearing panel. Additional testimony was heard on November 21, 1985, November 22, 1985, and February 27, 1986. The record was closed on March 19, 1986.

### Analysis

In the leading case of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 5 FEP 965 (1973), the U.S. Supreme Court set forth the basic allocation of burdens and the order of presentation of proof in a Title VII case alleging disparate treatment. Under this formula, which has been adopted by the PA Supreme Court for analyzing evidence in a case under the PHRA, General Electric

Corp. v. PHRC, 469 Pa. 202, 265 A.2d 649 (1976), the Complainant has the initial burden of proving a prima facie case of discrimination by a preponderance of the evidence. If the Complainant succeeds, the burden then shifts to the Respondent to produce evidence which demonstrates a legitimate, non-discriminatory reason for the adverse employment decision. If the Respondent is successful, the Complainant must have a full and fair opportunity to prove by a preponderance of the evidence that the proffered reasons are a pretext for discrimination. This burden merges with the Complainant's ultimate burden of persuading the fact finder that he has been the victim of discrimination. See Texas v. Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53, 25 FEP 113 (1981); United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 31 FEP 609 (1983). A prima facie case of discrimination, identifying the discriminatory criterion "as the likely reason for the denial of a job opportunity," White v. City of San Diego, 605 F.2d 455, 458, 20 FEP 1649 (9th Cir. 1979), must be established by a preponderance of the evidence. Burdine, 450 U.S. at 252-53. A properly established prima facie case allows an inference of illegal discrimination, creating a legally mandatory, rebuttable presumption against the Respondent. Id. at 254 n. 7; Casillas v. United States Navy, 735 F.2d 338, 343, 34 FEP 1493 (9th Cir. 1984). McDonnell Douglas set forth the specific elements of a prima facie case of disparate treatment. Under its oft repeated test, a Complainant must show: (1) that he belongs to a protected group; (2) that he applied for and was qualified for a job for which the Respondent was seeking applicants; (3) that, despite his qualifications, he was rejected; and (4) that, after his rejection, the position remained open and the Respondent continued to seek applicants from persons of his qualifications. McDonnell Douglas, 411 U.S. at 802. It has

repeatedly been emphasized that this four part test is not rigid; its satisfaction depends on the facts of each case. See Furnco Construction Corp. v. Waters, 438 U.S. 567, 575-76, 17 FEP 1062 (1978); Spaulding v. University of Washington, 740 F.2d 686, 700, 35 FEP 217 (9th Cir. 1984); White, 605 F.2d at 458; Reed v. Printing Equipment Division of Western Gear, 75 Pa.Cmwlth. 360, 462 A.2d 292 (1983).

Since McDonnell Douglas involved a refusal to hire, not a discharge, the four prong formula must be adapted. In the PHRC case of Oliver et al. v. Miley Security Services, Inc., Docket Nos. E-18942 and E-18943, we outlined the elements of a prima facie case in a case alleging a discriminatory discharge. These elements are:

1. That Complainant belongs to a racial minority;
2. That Complainant was qualified for the job;
3. That Complainant was discharged; and
4. That the job remained available after Complainant's discharge.

Citing Ray v. Safeway Stores, 614 F.2d 729, 22 FEP 49 (10th Cir. 1980).

This prima facie adaptation can be even further modified to fit the particular circumstances of this case. Federal Courts have frequently changed the fourth element of a prima facie case. One popular version comes from the Seventh Circuit. In Flowers v. Crouch-Walker Corp., 552 F.2d 1277, 14 FEP 1265 (7th Cir. 1977), the final element became: after the discharge, the Respondent assigned persons not in the Complainant's protected class to perform the same work.

Another variation of the fourth element was articulated by the Fifth Circuit in Whiting v. Jackson State University, 616 F.2d 116, 22 FEP 1296 (5th Cir. 1979). Their choice suggests: after a Complainant's termination, the

Respondent retains employees, having comparable or lesser qualifications, who are not in the Complainant's protected class. We have previously used this adaptation in Carrasquillo v. PA State Police, Docket No. E-24312 (PA Human Relations Commission, December 4, 1984).

One further, less restrictive, interpretation, indicates the fourth element is met if a Complainant can show that after the termination, the Respondent sought others with the Complainant's qualifications to fill his former job, see Osborne v. Cleland, 620 F.2d 195, 22 FEP 1292 (8th Cir. 1980).

The exact elements of a prima facie case are not hard and fast rules, but rather a set of standards whose application to differing factual situations requires individualized variations, Spruill v. PA Dept. of Transportation, Docket No. E-18816 (PA Human Relations Commission, February 28, 1983); Fisher v. Montgomery County Sheriff's Dept., Docket No. E-21522 (PA Human Relations Commission, August 9, 1984); Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

As the Complainant's burden was not onerous, see Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981), under the circumstances of this case, we find that Complainant has met his initial burden of establishing a prima facie case. The evidence clearly reveals that the Complainant belongs to a racial minority; he was qualified for the position he held; he was certainly discharged; and the Respondent retained comparably qualified employees who were not Black.

Equally clear was Respondent's demonstration of the existence of a legitimate, nondiscriminatory reason which explained the Complainant's termination. Generally, the Respondent's articulated reason for the discharge was the Complainant's unsatisfactory performance. Accordingly, the inference of

illegal discrimination created by the Complainant's establishment of a prima facie case was rebutted by the Respondent. See White v. City of San Diego, 605 F.2d 455, 20 FEP 1649 (9th Cir. 1979).

The evidence offered by the Respondent shows that for over a year prior to the Complainant's termination, the Complainant had been subject to verbal and written constructive criticism of his work performance by Ronald Williams, Respondent's chief management official. While offering encouragement to the Complainant, an intra-office memorandum dated November 24, 1981, directly advised the Complainant that he was not demonstrating a willingness to get directly involved in details and manual duties. Additionally, the Complainant was told that frequently he failed to adequately follow up jobs he had delegated to others. In January of 1982, the Complainant's yearly evaluation rating was substantially reduced from the prior year's marks.

Another subsequent memorandum dated May 18, 1982, advised the Complainant that he continued to fail to get involved in details of his job responsibilities resulting in several thousand dollars of excess expenses. This memorandum also advised the Complainant that previously noted discrepancies had gone uncorrected and that a change was necessary to demonstrate the Complainant's willingness to become a productive part of the Respondent's organization. The memorandum further indicated that the Complainant would be given the opportunity to be involved with two challenging projects. This new assignment was accompanied with a warning that failure to perform the projects in an acceptable fashion would result in the Complainant's termination.

The Respondent offered further testimony that the Complainant's eventual termination, which began as a layoff, came after the Complainant evidenced failure with one of the assigned projects.

This evidence raises a genuine issue of fact as to whether the Respondent discriminated against the Complainant. See Burdine, 450 U.S. at 253. Accordingly, the burden shifts back to the Complainant to demonstrate, by a preponderance of the evidence, that the Respondent's articulated reasons are pretextual.

The Complainant's case in this regard focuses on Ronald Williams, Respondent's chief management official at the relevant time period. In essence, the Complainant asserts that Williams treated him poorly because of his race. For the reasons which follow, it is our opinion that the Complainant has not shown by a preponderance of the evidence that the reasons offered by the Respondent for his discharge were pretextual.

First, the Complainant concedes the existence of evidence regarding unsatisfactory performance. The Complainant also correctly points out that the PHRC is solely responsible for resolving evidentiary conflicts; for determining the weight to give particular pieces of evidence; and for judging the credibility of witnesses. PA State Police v. PHRC, 16 Pa.Cmwlth. 320, 457 A.2d 584 (1982).

One glaring evidentiary discrepancy revolved around the degree and impact of the Complainant's contributions to the Respondent's business. At face value, the Complainant's testimony suggested that he was the primary factor which helped correct long standing operational problems. Conversely, the Respondent's testimony as a whole characterized the Complainant's efforts as acceptable but in need of fundamental improvement.

Complainant argues that a combination of his first evaluation which rated him as "Distinguished", the highest rate, and his subsequent promotion evidence his significant contributions towards reducing operational problems.

However, the Complainant's first evaluation covered only the first year of the Complainant's three year employment period. On the Complainant's next performance evaluation, the Complainant had dropped two levels on a five level rating scale. This evidences a substantial negative change from one year to the next. It was also during the second and third years of the Complainant's association with the Respondent that the Complainant received continued constructive criticism and warnings about his deteriorating work performance.

The Complainant's immediate supervisor was John Marshall. Marshall's supervisor was Williams. The Complainant suggests that Williams disregarded the fact that Marshall was his immediate supervisor and contends that Williams intentionally bypassed Marshall to get to the Complainant. The Complainant's second year evaluation was originally submitted by Marshall as a four rating. This was reduced to a three rating after Williams' review. The Complainant sees some malicious motivation, however, Williams' unrebutted explanation indicated that the Respondent's rating system was interrelated to budgetary influences. Williams testified that the Respondent had a salary administration program which restricted the number of employees who could receive an above average rating. Accordingly, employees were judiciously evaluated to insure that set numbers were not exceeded.

Additionally, it is clear from Williams' evaluation of Marshall for the same period as the Complainant, that Marshall was in a period of management development. Marshall's evaluation states in pertinent part, ". . . that [Marshall] continues to improve his management techniques. . ." Under these circumstances, it is more likely that Williams' review and modification of the Complainant's evaluation was simply a reaction to budgetary problems and close supervision of a developing manager rather than an intentional personal attack

against the Complainant.

Remembering that the Complainant bears the burden to rebut the Respondent's stated reasons, any conclusion to the contrary would simply be an unsubstantiated assumption. The Complainant submitted no evidence showing that Williams' review process was either unusual or that it was applied to him in an unequal manner. Accordingly, no negative implications can be surmised.

Complainant testified that on several occasions Williams said things to him which the Complainant believed displayed racial animosity. Williams characterized the Complainant as "90 percenter", wrote that the Complainant had "laziness traits", and in a discussion with the Complainant, told the Complainant, in effect, "There are a lot of job opportunities for Blacks who are articulate", and "You don't shuffle like you're from North Philly." On another occasion, Williams told the Complainant that his conduct had "degraded" Williams' secretary, Barbara Whistler.

Williams agreed that he used each phrase and offered an explanation for each of his contested word choices. Williams' explanation of the terms "90 percenter" and "laziness traits" are interrelated in that each was said to mean someone who could not quite finish the details of an assigned task. It is important to note that the term "Lazy" was also used on a White employee's performance evaluation who Williams' felt displayed similar attention to detail deficiencies.

Williams' articulation and shuffling comments must be weighed in light of the context of the conversation in which they were said, and as part of the general atmosphere in the workplace. First, there was considerable evidence that the Complainant often told racial jokes to co-workers including Williams. The working relationships were apparently quite friendly and

informal. Second, at the time of these comments, Williams had already told the Complainant that he was being laid off. Williams suggests there was no racial animus intended in his comments, only an attempt to encourage the Complainant. At the same time frame, Williams was attempting to either place the Complainant in another position or encourage the Complainant by showing him job opportunity listings. In short, there is not a sufficient basis upon which to conclude that Williams' statements evidence racial animus.

The comment that the Complainant "degraded" Whistler was made following an incident which occurred on December 23, 1982, at a company Christmas party. After the Complainant gave Whistler a small Christmas gift, she asked him if he wanted a kiss. The Complainant did kiss Whistler, however, the manner of the kiss upset and offended Whistler. Whistler told Williams about the event. Williams became angry and confronted the Complainant. During this confrontation the word "degraded" was used.

The Complainant's brief suggests the word "degraded" was used because Williams was upset that a Black man had kissed his White secretary. Once again this extremely negative assumption is unsubstantiated. On the contrary, the evidence reveals that the kiss given to Whistler was not a short kiss on the cheek. Instead, Whistler described the incident as totally unexpected. Instead of the anticipated kiss on the cheek, the Complainant "put his arms around [her], pulled [her] close, and proceeded to stick his tongue halfway down [her] throat. . ." for five to ten seconds." Whistler told the Complainant never to touch her again and went into Williams' office in tears. Later in the day the Complainant apologized for his conduct.

Even the Complainant recognized that his conduct was unacceptable. At the hearing, the Complainant agreed the kiss was too long and that he could

have been fired for the kissing incident. Interestingly, the Complainant went so far as to say the kiss was a "joking kiss." Obviously, Whistler did not find the Complainant's joke very funny and did indeed feel degraded. Not because of the color of the Complainant's skin, but because the kiss was extremely offensive.

During this hearing, much of the evidence presented was relatively consistent regarding the factual events. The inconsistency arises in the conclusions drawn from these facts. The Complainant's brief suggests that Williams' explanations for his actions are "unworthy of credence." We disagree. In fact, as a whole, the Complainant was the one whose testimony and demeanor at hearing demonstrated traits of elusiveness and equivocation. Numerous instances during his testimony, the Complainant either stretched the truth or attempted to avoid answering questions directly.

The Complainant attempted one other general evidentiary approach during the hearing. The Complainant suggested he was treated worse than White employees. The evidence did discuss the circumstances of numerous other employees, however, one major flaw permeated the presentation of the employment records of the "comparable" employees. The failure which surrounded the Complainant's attempt to establish disparate treatment was simply that the individuals to whom the Complainant compared himself had also been terminated.

It was readily apparent that working for the Respondent was not an easy undertaking. As the evidence unfolded, it became clear that Williams was a supervisor who did not hesitate to address developing problems. It was equally clear that his corrective measures readily included the termination of those employees he felt warranted it. Evidence was submitted on eight employees who were either terminated outright or who resigned before being

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fired. Interestingly enough, one of those terminated was James Marshall, the Complainant's immediate supervisor.

The Complainant's attempt to establish disparate treatment would have been more successful had he compared himself to an employee with similar performance traits and deficiencies but who was never-the-less kept as an employee. However, no such comparison was available because Williams would have no doubt terminated such an employee. In sum, the Complainant's bare conclusory allegations of disparate treatment fail to establish a genuine issue of material fact as to discrimination.

The Complainant has asked us to conclude that his performance did not warrant his termination. Without sufficient evidence, we will not substitute our opinion in place of the Respondent's regarding whether the Complainant's admitted shortcomings warranted termination. In a discharge case, an employer has the right to discharge an employee for a good reason or a bad reason absent discrimination. The question is not whether the Respondent's methods were sound or whether its dismissal was an error in judgment. The question is whether the Complainant was discriminated against because of his race. An unfair discharge without a nexus to prohibited discrimination is not actionable under the PHRA. However weak, the Respondent's proffered rationale for discharging the Complainant has not been shown by a preponderance of the evidence to be pretextual. Accordingly, the Complainant's complaint must be dismissed.

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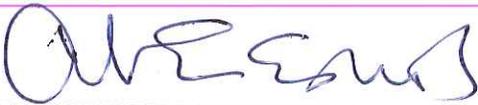
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DOCKET NO. E-25195

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in this case, we the Hearing Panel conclude that the Respondent did not violate the PA Human Relations Act, and therefore recommend that the foregoing Findings of Fact, Conclusions of Law, and Opinion be adopted by the full PA Human Relations Commission, and that a Final Order of dismissal be entered, pursuant to Section 9 of the Act.

October 27, 1986  
Date

  
Alvin E. Echols, Jr.  
Panel Chairperson

October 27, 1986  
Date

  
Benjamin S. Loewenstein  
Commissioner

October 27, 1986  
Date

  
Thomas L. McGill, Jr.  
Commissioner

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

TERRANCE F. STEWARD, :  
COMPLAINANT :  
 :  
v. : DOCKET NO. E-25195  
 :  
CENTRAL MORTGAGE COMPANY, a :  
subsidiary of PHILADELPHIA SAVINGS :  
FUND SOCIETY, :  
RESPONDENT :

FINAL ORDER

AND NOW, this 28th day of October, 1986, following review of the entire record in this case, including the transcript of testimony, exhibits, briefs, and pleadings, the PA Human Relations Commission hereby adopts the foregoing Findings of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Panel, pursuant to Section 9 of the PA Human Relations Act, and therefore

O R D E R S:

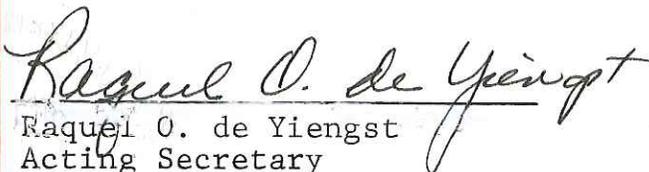
that the complaint in this case be, and the same hereby is dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 

Alvin E. Echols, Jr.  
Acting Chairperson

ATTEST:

  
Raquel O. de Yiengst  
Acting Secretary