

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

NANCY FLAHERTY,
Complainant

v.

CLOVERLEAF MOBILE HOME SALES,
DAVID P. MILLER,
JAMES CODISPOTTI, and
JAMES and ANNA PALUMBO,
OWNERS,
Respondents

DOCKET NO. H-5973

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT *

1. The Complainant in this matter is Nancy Flaherty (hereinafter "Complainant").

2. The Respondents herein are Cloverleaf Mobile Home Sales, David Miller, James Codispotti, and James and Anna Palumbo (hereinafter, "Respondent Cloverleaf," "Respondent Miller," "Respondent Codispotti," and "Respondents James and Anna Palumbo").

3. Respondent Cloverleaf is owned by Respondent Anna Palumbo, and as part of its operation maintains a mobile home park known as Cloverleaf Mobile Home Park, on which mobile homes are situated. (NT 62.)

4. James Palumbo, Respondent Anna Palumbo's husband, died in 1961. (NT 164.)

5. Respondent Miller is the manager of Respondent Cloverleaf. (NT 62.)

6. In 1991, Complainant Flaherty began renting Lot #40 within the Cloverleaf Mobile Home Park located at 1800 Whited Street, Pittsburgh, PA 15210. (NT 61.)

* 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 these Findings of Fact for reference purposes:

CE	Complainant's Exhibit
NT	Notes of Testimony
RE	Respondents' Exhibit

7. In 1991, Respondent Codispotti also began renting Lot #44 in the Cloverleaf Mobile Home Park. (NT 61.)

8. Respondent Anna Palumbo, at the time of this complaint, was a widow. (NT 164.)

9. Respondent Miller has been the manager of the park since the 1960s. (NT 165.)

10. At or about the time Respondent Codispotti and Complainant rented lots, Respondent Cloverleaf had established no rules or regulations concerning residents' behavior. (NT 167-168.)

11. Once a tenant lodged a complaint, the normal procedure was for Respondent Miller to call the person who allegedly was creating the problem, notify them of the complaint, and attempt to resolve the problem. (NT 168.)

12. In 1991, Respondent Miller first heard complaints concerning Respondent Codispotti. (NT 168.)

13. Respondent Miller promptly called Respondent Codispotti and told him to "Line up, get straightened out, and quit fooling around." (NT 169.)

14. The Mobile Home Park Rights Act came into effect on November 24, 1976. (1976 Nov. 24 P.L. 1176, No. 261.)

15. The Mobile Home Park Rights Act provides four reasons to evict a tenant:

- 1) nonpayment of rent;
- 2) subsequent violations of the rules;

3) a change in the use of the land; and

4) termination of the mobile home park. (NT 174; RE 7.)

16. At this time, Respondent Codispotti always paid his rent. (NT 174.)

17. There was no subsequent violation of the rules, because there were no rules. (NT 174.)

18. There was no change in the use of the land. (NT 174.)

19. The mobile home park was not terminated. (NT 175.)

20. In 1993, Complainant filed a complaint with the Pennsylvania Human Relations Commission (hereinafter "PHRC").

21. On May 18, 1994, Respondent Miller wrote to Respondent Codispotti and informed him that his lease was being terminated, and he would have to move. (RE 1.)

22. Respondent Codispotti refused to move. (NT 179.)

23. Under date of December 6, 1994, Respondent Miller sent Respondent Codispotti formal notice, pursuant to the Pennsylvania Landlord and Tenant Law, that his lease was terminated effective January 31, 1995. (RE 2.)

24. Respondent Codispotti still did not move. (NT 178-182.)

25. On January 17, 1995, Respondent Miller returned a tendered rent check to Respondent Codispotti because his lease was terminated effective January 31, 1995. (RE 3.)

26. Since Respondent Codispotti refused to remove himself from the premises, Respondent Miller then instituted an eviction proceeding before Magistrate Richard King on February 22, 1995. (RE 5.)

27. The hearing was held on March 8, 1995. (RE 5.)

28. At the hearing, the magistrate rejected all of Respondent Codispotti's arguments and found in favor of Respondent Miller and awarded him a Writ of Possession for the premises. (RE 5.)

29. Respondent Codispotti then filed an appeal from the magistrate's decision in the Allegheny County Court of Common Pleas at LT 95-235, and Respondent Miller was required to file a complaint pursuant to said appeal. (RE 9.)

30. Respondent Codispotti then filed an Answer, New Matter and Counterclaim against Respondent Miller. (RE 10.)

31. A hearing was held on July 12, 1995, and Respondent Miller was awarded possession of the premises on July 12, 1995. (RE 11.)

32. Respondent Codispotti then filed an appeal for a jury trial. (RE 12.)

33. The Court then scheduled a jury trial for September 18, 1995. (RE 13.)

34. Thereafter Respondent Miller filed a motion for summary judgment, including a brief and pre-trial statement. (RE 14, 15.)

35. On September 26, 1995, Judge Bernard McGowan of the Court of Common Pleas of Allegheny County granted Respondent Miller's motion for summary judgment and directed that possession be given to Respondent Miller. (RE 17.)

36. On November 13, 1995, Judge McGowan issued a written opinion sustaining his actions in granting summary judgment. (RE 18.)

37. On October 12, 1995, Respondent Codispotti filed a notice of appeal from the decision of Judge McGowan to the Superior Court of Pennsylvania. (RE 19.)

38. On June 18, 1996, the Superior Court of Pennsylvania affirmed the action of the Court of Common Pleas and directed the removal of Respondent Codispotti from the park. (RE 28.)

39. On July 25, 1996, counsel for Respondent Miller wrote to counsel for Respondent Codispotti, indicating that he must remove himself by August 1, 1996, or that the sheriff would remove him. (RE 29.)

40. On August 1, 1996, Respondent Codispotti removed himself from the park and has not returned. (RE 30.)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and the subject matter of this complaint.
2. The parties have complied with the procedural prerequisites to a public hearing.
3. The Complainant and the Respondents are all persons within the meaning of the Pennsylvania Human Relations Act.
4. The Complainant has not met her burden of establishing a case of discrimination.

OPINION

On or about September 12, 1993, a complaint was filed by Nancy Flaherty (hereinafter "Complainant") against Cloverleaf Mobile Home Sales, David Miller, James Codispotti, and later, James and Anna Palumbo (hereinafter "Respondent Cloverleaf," "Respondent Miller," "Respondent Codispotti," and "Respondent Anna Palumbo"), alleging that on or about January 1991, the Respondents violated Sections 5(h)(1) and 5(h)(3) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, *as amended*, 43 P.S. §951, *et seq.* (hereinafter "PHRA").

The Complainant alleges that Respondents discriminated against her by denying her the opportunity to live and enjoy her property because of her gender, and by the sexual harassment of Respondent Codispotti, and the unwillingness of remaining Respondents to stop the alleged harassment. The Complainant later amended her complaint, on or about March 16, 1995, to include James and Anna Palumbo, owners of Respondent Cloverleaf. However, James Palumbo passed away in 1961 and is not a part of this case.

The Pennsylvania Human Relations Commission ("PHRC") investigated Complainant's allegations, and at the conclusion of the investigation informed Respondents that probable cause existed to credit Complainant's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conferences, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently the PHRC notified the parties that it had approved a public hearing.

The public hearing was held on January 22, 1997 in Pittsburgh, Pennsylvania, before Permanent Hearing Examiner Phillip A. Ayers. The Commission's interest in the complaint was overseen by PHRC Housing Division's Assistant Chief Counsel Jonathan J. Williams. Henry E. Rea, Jr., Esquire, appeared on behalf of Respondents Cloverleaf Mobile Home Sales, David Miller and Anna Palumbo. Respondent Codispotti represented himself in this matter.

Sections 5(h)(1) and (3) of the PHRA state, in pertinent part, "It shall be an unlawful discriminatory practice. . . for any person to. . .

(1) *Refuse to. . . lease. . . or otherwise deny or withhold any housing accommodation. . . from any person because of the sex of any person, prospective owner, occupant or user of such housing accommodation. . .*

(3) *Discriminate against any person in the terms or conditions of selling or leasing any housing accommodation. . . or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation because of the sex of any person.*

Upon review of the documents before the Commission, the Complainant's prayer for relief in this case is based on Respondent Miller's alleged refusal to take action against Respondent Codispotti. Essentially, Complainant is seeking monetary damages for humiliation and embarrassment allegedly suffered by the Complainant. However, before we enter a discussion of remedy, there must be a determination that the Respondents violated the PHRA.

In discrimination cases, the Pennsylvania Supreme Court earlier adopted the model established by the case of McDonnell-Douglas v. Green, 411 U.S. 792 (1973). Even though the McDonnell-Douglas model was adopted for employment

discrimination cases, the model has also been used for fair housing matters. The Federal Fair Housing Act is the federal equivalent of the Pennsylvania Human Relations Act. Under the McDonnell-Douglas model, the Complainant has the initial burden of establishing a *prima facie* case of discrimination. Once a *prima facie* case is established, the Respondents must produce evidence of a legitimate non-discriminatory reason for its action. Upon that showing by the Respondents, the Complainant may prevail by showing that the proffered reasons are pretextual, or unworthy of credence. Allegheny Housing Rehabilitation Corp. v. Pennsylvania Human Relations Commission, 516 Pa. 124, 532 A.2d 315 (1987). Also, the Complainant still must carry the ultimate burden of proving discrimination by a preponderance of the evidence.

In reviewing the instant complaint, Commission Counsel alleges a violation of Section 5(h)(1) in his brief. However, a reading of the entire brief as well as the transcript of the public hearing reveals that the documents do not reflect such a violation. Section 5(h)(1) clearly deals with a "refusal to . . . lease . . . or otherwise deny or withhold any housing accommodation." In the instant case Commission Counsel appears to abandon this argument. In his post-hearing brief, Commission Counsel sets forth the language of Section 5(h)(1) but does not follow with an argument that the aforementioned section was violated.

The remaining allegation in this matter is an alleged violation of Section 5(h)(3). This argument is so unartfully drafted that it is difficult to discern what the Complainant's arguments are. Complainant alleges that she was denied the opportunity to enjoy her property because of the refusal of Respondent Miller, as

agent of Respondent Cloverleaf and Respondent Anna Palumbo, to stop the sexual harassment by Respondent Codispotti of Complainant. Brandon v. Holt, 469 U.S. 464 (1985). Given a reading of Section 5(h)(3), the Complainant is alleging that she was discriminated against "in the terms and conditions of selling or leasing any housing accommodation. . . or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation."

The transcript of the public hearing is replete with evidence of instances where Respondent Codispotti sexually harassed the Complainant with sexual overtures and/or harassing statements. However, the point that we are obliged to focus upon is the other Respondents' alleged refusal to stop the actions of Respondent Codispotti. Specifically, it is solely the alleged inaction of Respondent Miller that Commission Counsel argues for damages.

It is clear from the record that in approximately 1991, both Complainant and Respondent Codispotti moved into Cloverleaf Mobile Home Park. At that time, Respondent Miller was the manager of the mobile home park. The record reflects that in 1991 Respondent Miller first heard complaints concerning Respondent Codispotti. (NT 168.) The record also reflects that initially the complaints revolved around a parking problem. The normal procedure for Respondent Miller, upon receipt of a complaint or dispute between tenants, was to call the person allegedly creating the problem and attempt to resolve the problem. The record before the Commission further indicates that Respondent Miller, on numerous occasions, contacted Respondent Codispotti in an attempt to resolve this dispute. Finally in 1993, the Complainant filed a complaint with the Pennsylvania Human Relations Commission.

The record reflects that Respondent Miller, on May 18, 1994, wrote to Respondent Codispotti informing him that the lease on his lot was being terminated. (RE 1.) Respondent Codispotti did not vacate the premises. On December 6, 1994, Respondent Miller gave Mr. Codispotti notice, pursuant to the Pennsylvania Landlord & Tenant Act, that his lease was terminated, effective January 31, 1995. (RE 2.) In total, Respondent Miller sent Respondent Codispotti three eviction notices and spoke with him on numerous occasions.

A review of the entire record before the Commission reveals that Respondent Miller spent over three years attempting to legally evict Respondent Codispotti from the premises before finally succeeding. Mr. Codispotti appealed each and every decision that was rendered in this matter, and prolonged this matter.

Initially, a hearing on the eviction was held before Magistrate Richard G. King on February 22, 1995. The magistrate ruled for Respondent Miller and granted him a Writ of Possession of the premises. Mr. Codispotti filed an appeal to the Court of Common Pleas of Allegheny County. Respondent Miller was required to file a complaint pursuant to the appeal. Mr. Codispotti then filed an Answer, New Matter and Counterclaim against Respondent Miller. (RE 10.) A further hearing was held, and Respondent Miller was awarded possession. Subsequently, Mr. Codispotti filed an Appeal for a Jury Trial from the decision of the Board of Arbitrators of Allegheny County. The court then scheduled a jury trial for September 18, 1995. Respondent Miller filed a Motion for Summary Judgment, including a brief. After Mr. Codispotti filed a brief and pre-trial statement, Judge Bernard McGowan granted the Motion for Summary Judgment on September 26, 1995, and directed that possession be given

to Mr. Miller. On November 13, 1995, Judge McGowan issued a written opinion. (RE 18.) On October 12, 1995, Mr. Codispotti filed a Notice of Appeal from Judge McGowan's decision to the Superior Court of Pennsylvania. On June 18, 1996, the Superior Court of Pennsylvania affirmed Judge McGowan's decision and directed the removal of Mr. Codispotti from the mobile home park. On July 25, 1996, counsel for Mr. Miller wrote to Mr. Codispotti, through counsel, and informed him that he must remove himself by August 1, 1996, or the sheriff would remove him. Finally, on August 1, 1996, Mr. Codispotti removed himself from the mobile home park.

It is necessary to recount this long tale of events to illustrate the difficulties that Respondent Miller had with this particular individual. The record before the Commission indicates that Respondent Miller did take reasonable means, within the law, to attempt to evict Mr. Codispotti. However, Mr. Codispotti appealed his case after every decision, and did not remove himself until he had exhausted every legal right.

Once again, we must focus on the Complainant's argument that Respondent did nothing to remove Mr. Codispotti, and that other Respondents should be liable for damages.

With that perspective in mind, it is clear that Respondent took reasonable means to have Mr. Codispotti removed from the mobile home park.

An appropriate Final Order follows.

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has not proven discrimination in violation of Section 5 of Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

By:



Phillip A. Ayers
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this Twenty-ninth day of September, 1998, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter, and incorporates same into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

ORDERS

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

By: Robert Johnson Smith
Robert Johnson Smith, Chairperson

Attest:

Russell S. Howell
Russell S. Howell, Assistant Secretary