COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SERENA SCOTT, Complainant v. NICK SAFLIN, Respondent	DOCKET NO. H-6515

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION
COMMONWEALTH OF PENNSYLVANIA

SERENA SCOTT, COMPLAINANT	:	
V.	:	DOCKET NO: H-6815 03-94-0850-8 05-8
NICK SAFLIN, OWNER 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 Serena Scott.

2. The Respondent herein is Nick Saflin.

3. On or about September 23, 1994 Complainant timely filed a verified complaint against Respondent, with the Pennsylvania Human Relations Commission (hereinafter Commission).

4. The Complaint was served upon Respondents on October 4th, 1994.

5. Respondent timely answered the Complaint.

6. Following an investigation, a probable cause find ing was approved by the legal division on March 5, 1998 and Respondents were notified of the same by certified mail.

EXHIBIT
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Joint TBF

7. A conciliation meeting was held March 23, 1998 but failed to resolve the matter. Other attempts at settlement have also failed.

8. The case was approved for Public Hearing by the Executive Director and was placed on the Public Hearing Docket by the Commission at its May, 1998 meeting.

9. The property involved in this complaint, was at the time of the alleged violation of the Pennsylvania Human Relations Act, owned by Respondent.

These Stipulations of Fact, will become a part of the official record in this case and will be incorporated into the transcript prepared during the course of any subsequent Public Hearing held in this matter.

By Respondent:

David C. Martin, Esquire — 2/11/99. Date

By: Pennsylvania Human Relations Commission:

Nancy Gippert, Esquire — 2/11/99 Date

FINDINGS OF FACT *

1. The Complainant in this matter is Serena Scott (hereinafter referred to as "Complainant"). (SF 1.)

2. The Respondent in this matter is Nick Saflin (hereinafter referred to as "Respondent"). (SF 2.)

3. During the relevant time period (1994), the Complainant, who is African-American, resided at 815 Rebecca Avenue in Wilkinsburg, Pennsylvania. (NT 37.)

4. In 1994, the Complainant was looking for a new apartment for herself and her three children. (NT 21.)

5. A friend of the Complainant, Mary Scott (hereinafter "Scott"), a white female, assisted the Complainant in looking for a new apartment. (NT 21.)

6. Scott had located a prospective apartment in the *Penny Saver*. (NT 41.)

7. The apartment was owned by the Respondent. (SF 9.)

8. Scott phoned the Respondent and informed him that she had a friend with three kids who was looking for an apartment. (NT 42.)

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* The foregoing Stipulations of Fact are 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 these Findings of Fact for reference purposes:

SF	Stipulations of Fact
NT	Notes of Testimony

9. Scott further inquired as to whether the apartment was still available. (NT 42.)

10. The Respondent indicated to Scott that the apartment was still available. (NT 42.)

11. Scott then gave the information regarding the apartment to the Complainant. (NT 42.)

12. The Complainant then phoned the Respondent and made an appointment to see the apartment. (NT 22.)

13. On the date of the appointment, September 2, 1994, Scott went up to the Respondent's door. (NT 45.)

14. The Complainant never spoke to the Respondent on that day. (NT 39.)

15. The Complainant was out of the Respondent's line of sight during Scott's conversation with Respondent. (NT 29.)

16. The Complainant walked up to Scott after Scott's conversation with Respondent was over. (NT 34.)

17. Ms. Scott informed Complainant that the Respondent would not rent the place to the Complainant. (NT 48.)

18. The Respondent told Scott that the apartment was rented. (NT 77.)

19. The Respondent offered to show the apartment because he believed that it could become available if someone changed their mind. (NT 77.)

20. Scott did not relay the entire conversation to the Complainant. (NT 35.)

21. The Respondent has been a landlord since 1979. (NT 79.)

22. The Respondent has never received any complaints involving allegations of discrimination. (NT 79.)

23. The Respondent, at the time of the public hearing, had minority tenants in his units. (NT 80.)

CONCLUSIONS OF LAW

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

2. The parties have fully complied with the procedural prerequisites to a public hearing.

3. The Complainant and Respondent are persons within the meaning of the Pennsylvania Human Relations Act ("PHRA").

4. The property in question was a housing accommodation within the meaning of the PHRA and was owned by the Respondent.

5. In order to establish a *prima facie* case of race-based housing discrimination, the Complainant must show that:

A. she is a member of a protected class;

B. the Respondent was aware of it;

C. the Complainant was qualified to rent the property in question;

D. the Complainant was denied the opportunity to rent the available property by Respondent; and

E. the property remained available to rent.

6. The Complainant has not met her burden of showing a *prima facie* case.

OPINION

On or about September 23, 1994, a complaint was filed by Serena Scott (hereinafter "Complainant") against Nick Saflin (hereinafter "Respondent"), alleging that on or about September 2, 1994, the Respondent violated Section 5(h)(1) 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 the Respondent unlawfully discriminated against her by refusing to rent her an apartment because of her race, Black.

The Pennsylvania Human Relations Commission (hereinafter "PHRC") investigated the Complainant's allegation, and at the conclusion of the investigation informed the Respondent on March 5, 1998 that probable cause existed to credit the Complainant's allegation. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion, but such efforts were not successful. Subsequently, the PHRC notified the parties that it had approved a public hearing in this matter.

The public hearing was held on February 11, 1999, in Pittsburgh, Pennsylvania, before PHRC Permanent Hearing Examiner Phillip A. Ayers. The Commission's interest in the complaint was overseen by PHRC Housing Division's Assistant Chief Counsel Nancy L. Gippert. David C. Martin, Esquire, appeared on behalf of the Respondent. Both Commission Counsel and Respondent filed post-hearing briefs.

In the instant case, the Complainant alleges unlawful discrimination pursuant to 43 P.S. §955 5(h)(1). The relevant provision is as follows:

"It shall be an unlawful discriminatory practice. . .

(h) for any person to:

(1) Refuse to. . . lease. . . or otherwise to. . . withhold any housing accommodation or commercial property. . . from any person because of. . . the race. . . of any person. . . occupant, or user of such housing accommodation or commercial property. . .

In discrimination cases, the Pennsylvania Supreme Court has adopted the model established by the case of McDonnell-Douglas v. Green, 411 U.S. 792 (1973). Even though the McDonnell-Douglas model was used for employment cases, the analysis has been modified for housing cases. Utilizing the McDonnell-Douglas analysis, the Complainant has the initial burden of establishing a *prima facie* case of discrimination. Once a *prima facie* case is established, the Respondent must produce evidence of a legitimate, non-discriminatory reason for its action. If the Respondent is successful in meeting its burden of production, then the Complainant still has the ultimate burden of proving that she is the victim of unlawful discrimination. There was a four-pronged *prima facie* model used in the McDonnell-Douglas case. In Allison v. Pennsylvania Human Relations Commission, 716 A.2d 689, (Pa. Cmwlth. 1998), the Commonwealth Court adopted the model established by McDonnell-Douglas. In Allison the court provided that in adapting to that model, the requirements of a *prima facie* case in a housing discrimination refusal to rent case are as follows:

1. the Complainant is a member of a protected class;
2. the Respondent is aware of the Complainant's protected class;
3. the Complainant was qualified to rent the property;

4. the Complainant was denied the opportunity to rent the property; and

5. the property remained available for rent.

The Complainant has failed to show two components of the *prima facie* case. The Complainant has not shown either that Respondent was aware of her protected status, or that the apartment remained available. Assuming, *arguendo*, that Complainant had established a *prima facie* case, we move to the Respondent's burden of production.

In such an event the burden of production would shift to the Respondent to present evidence of a legitimate, non-discriminatory reason for his action. The Respondent in this case has testified that the reason he did not rent the apartment to the Complainant was that the apartment was already rented. This rationale satisfies the Respondent's burden of production.

Since the Respondent has met his burden of production, the Complainant still has the ultimate burden of proving that she is the victim of unlawful discrimination. Allegheny Housing Rehabilitation Corp. v. Pennsylvania Human Relations Commission, 516 Pa. 124, 532 A.2d 315 (1987).

In the instant case, the Complainant simply cannot do so. The testimony of the Complainant and her witnesses at the public hearing fell short of the preponderance standard she must meet and, furthermore, was not credible. The testimony of the Complainant and her witnesses at the public hearing can best be described as both evasive and contradictory.

Firstly, the Complainant testified that, on the day of the alleged discrimination, she never actually talked to the Respondent. The record reflects that the Complainant was not present when Ms. Scott, her witness (hereinafter "Scott"), encountered the Respondent. The Complainant testified that after the conversation between Scott and the Respondent ended, she went up to Scott who told her that the Respondent would not rent the apartment to the Complainant. (NT 26.) The Complainant testified that she was not sure that the Respondent was even aware of her and her daughter standing in the corner. This testimony is consistent with Respondent's testimony that he was unaware of the Complainant. It clearly appears that the Complainant's case is entirely dependent on what her witness told her. Furthermore, the Complainant became extremely evasive when specifically asked about what information Ms. Scott gave her concerning this incident. (NT 34.) Finally, after repeated questioning, the Complainant admitted that Scott did not tell her that the Respondent had in fact offered to show the unit to them. (NT 35.) In fact, the bulk of the Complainant's testimony centers around responses such as, "Only Mary can tell you that;" and "I really can't remember but Mary could tell you." Upon review of the record, the Complainant's testimony is completely lacking credibility.

Next we move to Complainant's witness, Mary Scott, a friend of the Complainant who was assisting her in a search for a new apartment. Scott testified that there was a brief conversation with the Respondent in regard to the apartment. (NT 47.) During this conversation, Scott admits that the Respondent offered to

show her the apartment. Once again there is some evasiveness in the record as to whether this conversation was relayed to the Complainant. Also, Scott is unclear as to whether the Complainant could be seen by Respondent, or whether the Complainant could hear the conversation. (NT 55.) The Complainant earlier testified that Scott did not tell her about the conversation with Respondent. Viewed in its totality, Scott's testimony at the public hearing does not support Complainant's allegations. Once again, Scott's testimony could be termed evasive. The Complainant earlier testified that Scott did not tell her about any conversation.

We now move to Complainant's last witness, Ms. Lund. Ms. Lund is a friend of Scott, who allegedly called the Respondent to schedule an appointment to see the apartment on the same day. Ms. Lund testified that she made a phone call to the Respondent and scheduled an appointment. She further testified that when she went to the location, no one answered the door. Ms. Lund also testified that she spoke to a "lady" on the phone. It is interesting to note that the Respondent credibly testified that his wife did not know that the apartment was rented. However, on cross-examination, Ms. Lund testified that on at least four occasions she referred to a man as the person she had spoken to. (NT 64.) Also, Ms. Lund's testimony is further tainted because Scott had already indicated to her that she [Ms. Scott] had "suspicions and discomfort" over the situation. (NT 60.)

Finally, the Respondent testified credibly as to what transpired on that day. The Respondent also presented unrefuted testimony that he had always rented to minority tenants, and had minority tenants during the relevant time period. Upon

review of the entire record in this matter, the Complainant would not have been able to show that Respondent's explanations are pretextual.

Having found thusly, an appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SERENA SCOTT, **Complainant** **v.** **NICK SAFLIN,** **Respondent**	**DOCKET NO. H-6515**

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of Section 5(h)(1) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, 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.

Phillip A. Ayers

Phillip A. Ayers
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 20th day of December 1999, 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 Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, 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 dismissed.

By: Raquel Otero de Yiengst

Raquel Otero de Yiengst, Acting Chairperson

Attest:

Gregory J. Celia, Jr., Secretary