

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

TARA THOMPSON,
Complainant

v.

MAC MANAGEMENT AND NORMA KLEIMAN,
Respondents

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DOCKET NO. H-7079

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. The Complainant, Tara Neile Thompson, currently resides in Silver Spring, Maryland. (N.T. 13; 4/10/00)
2. In April, 1996, the Complainant was residing with her father in the North Hills section of Pittsburgh. (N.T. 13; 4/10/00)
3. At that time, the Complainant was also a student at the University of Pittsburgh. (N.T. 14; 4/10/00)
4. Respondent MAC Management consists of Rachel Krasnow, Rona Zell, Marilyn Sindler and Gina Levine, the four owners of the apartment building. (N.T. 101; 4/10/00)
5. Jocelyn Lehman is the mother of Rachel Krasnow, one of the owners of the building located at 631 Maryland Avenue. (N.T. 100; 4/10/00)32.
6. Ms. Lehman was taking care of the building in April, 1996. (N.T. 156; 4/10/00)
7. Respondent Kleiman is employed by Respondent MAC Management. (N.T. 137; 4/10/00)
8. Respondent Kleiman has lived at the building for forty-two years. (N.T. 137; 4/10/00)

*The following abbreviations will be utilized throughout for reference purposes.

Comp. Exh. - Complainant's Exhibit
N.T. 4/10/00 - Notes of Testimony for Public Hearing on April 10, 2000
N.T. 5/2/00 - Notes of Testimony for Public Hearing on May 2, 2000
Resp. Exh. - Respondent's Exhibit

9. Respondent Kleiman understood that if she could not reach Rachel Krasnow or Rona Zell, she should call Ms. Lehman. (N.T. 157; 4/10/00)
10. In the fall of 1995, Ms. Tscholl signed a lease from the fall of 1995 to the spring of 1996. (N.T. 11; 5/2/00: 3:15 and Resp. Exh. 3)
11. Ms. Tscholl's sister, Maria, also signed that lease. (N.T. 11; 5/2/00; 3:15)
12. Maria Tscholl did not live in the apartment during this time period, 1995-1996. (N.T. 12; 5/2/00; 3:15)
13. When Ms. Tscholl knew her sister would not be living there, she contacted Respondent MAC Management and said she needed two roommates. (N.T. 12, 13; 5/2/00; 3:15)
14. Respondent MAC Management indicated that this was fine and there was no need to rewrite a lease. (N.T. 13; 5/2/00; 3:15)
15. Ms. Tscholl found Heather Gorman through postings at the University of Pittsburgh. (N.T. 12; 5/2/00; 3:15)
16. Ms. Gorman, a white female, never signed a lease with Respondent MAC Management. (N.T. 12-13; 5/2/00; 3:15)
17. Ms. Gorman was not required to fill out a rental application for Respondent MAC Management. (N.T. 13; 5/2/00; 3:15)
18. Ms. Gorman never filled out a rental application for Respondent MAC Management. (N.T. 13; 5/2/00; 3:15)
19. Ms. Gorman resided at the apartment for approximately ten months. (N.T. 7; 5/2/00; 3:15)

20. Ms. Gorman paid her rent to Respondent Kleiman who lived below her. (N.T. 8; 5/2/00; 3:15)
21. Ms. Gorman made all of her checks out to MAC Management, and all of the checks were cashed. (N.T. 42; 5/2/00; 3:15)
22. Respondent MAC Management and Respondent Kleiman knew that Ms. Gorman was living at the apartment building. (N.T. 42; 5/2/00; 3:15)
23. Respondent Kleiman did accept rent payments for MAC Management. (N.T. 143; 4/10/00)
24. Respondent Kleiman never told Ms. Gorman that she had to leave the apartment. (N.T. 11; 5/2/00; 3:15)
25. Respondent Kleiman was in the apartment with Ms. Gorman when repairs were made. (N.T. 14; 5/2/00; 3:15)
26. Respondent Kleiman denied knowing Ms. Gorman and Ms. Fair, another roommate, at the fact finding conference in this matter. (N.T. 17; 5/2/00; 3:15)
27. Ms. Tscholl and Ms. Gorman had another roommate, Renee Fair, a white female. (N.T. 12; 5/2/00; 3:15)
28. Ms. Fair did not sign a lease with Respondent MAC Management. (N.T. 12; 5/2/00; 3:15)
29. Ms. Krasnow admitted that Renee Fair did not sign a lease. (N.T. 126; 4/10/00)
30. Ms. Fair was given a rental application eight months after she moved in. (N.T. 13; 5/2/00; 12:35)
31. Ms. Fair apparently never filled the rental application out. (N.T. 62;

5/2/00; 3:15)

32. The Complainant found out about this particular apartment from her friend, Heather Gorman. (N.T. 14; 4/10/00)

33. The apartment in question was located at 631 Maryland Avenue in the Shadyside section of Pittsburgh. (N.T. 15; 4/10/00)

34. The specific apartment number was No. 6. (N.T. 15; 4/10/00)

35. Ms. Gorman asked Complainant to move in because a roommate, Andrea Tscholl, was moving out of the apartment. (N.T. 15; 4/10/00)

36. The Complainant would be living with Heather Gorman and Renee Fair. (N.T. 15; 4/10/00)

37. The Complainant rented a U-Haul truck and planned to move in on April 29, 1996. (N.T. 15-16; 4/10/00)

38. The Complainant began moving into the apartment approximately 2:00 p.m. on the afternoon of April 29, 1996. (N.T. 15; 4/10/00)

39. While the Complainant was moving her things, Respondent Norma Kleiman asked her if she was moving in or out. (N.T. 18; 4/10/00)

40. After the Complainant told her she was moving in, Respondent Kleiman returned to her own apartment. (N.T. 18; 4/10/00)

41. On April 29, 1996, Andrea Tscholl was in her apartment (No. 6) with the door closed. (N.T. 20; 5/2/00)

42. Respondent Kleiman called Jocelyn Lehman and informed her that someone was moving into Apartment No. 6. (N.T. 140; 4/10/00)

43. Ms. Lehman telephoned Ms. Tscholl and inquired as to why someone was

moving into the apartment. (N.T. 21; 5/2/00)

44. Ms. Tscholl informed Ms. Lehman that the Complainant was moving in and subletting from her. (N.T. 21; 5/2/00)

45. Ms. Lehman was upset about the Complainant moving into the apartment and said she did not want her house turning into a "flophouse". (N.T. 21; 5/2/00)

46. Ms. Lehman also indicated that she wanted to speak with the Complainant on the phone. (N.T. 21; 5/2/00; 3:15)

47. Ms. Lehman did not say anything to Ms. Tscholl regarding the Complainant filling out a written application. (N.T. 64; 5/2/00; 3:15)

48. At this time Ms. Lehman told Ms. Tscholl that the Complainant needed to move out. (N.T. 64; 5/2/00; 3:15)

49. Ms. Lehman did not suggest any other options for the Complainant. (N.T. 64; 5/2/00; 3:15)

50. Ms. Lehman also stated that Ms. Tscholl was going to be thrown out of the apartment if the Complainant did not leave. (N.T. 65; 5/2/00; 3:15)

51. Ms. Lehman further stated that she would call the police and have the Complainant physically removed from the apartment. (N.T. 65; 5/2/00; 3:15)

52. Ms. Tscholl told the Complainant that she had to remove her belongings out of the apartment. (N.T. 18; 4/10/00)

53. Ms. Tscholl then handed the telephone to the Complainant. (N.T. 22; 5/2/00; 3:15)

54. Ms. Lehman then told Complainant that she [Ms. Lehman] was not running a flophouse and that the Complainant would be arrested for trespassing.

(N.T. 18; 4/10/00)

55. The Complainant then asked Ms. Lehman what she needed to do, and Ms. Lehman indicated that she needed to fill out a credit application. (N.T. 18; 4/10/00)

56. The Complainant, at this point, requested a credit application from Ms. Lehman. (N.T. 18; 4/10/00)

57. Ms. Lehman then told Complainant that there was no place in which to fill out the form. (N.T. 18; 4/10/00)

58. Ms. Lehman, at some point in the conversation, said she would bring a credit application to the Complainant by 3:00 p.m. (N.T. 18-19; 4/10/00)

59. However, later in the same telephone conversation, Ms. Lehman informed the Complainant that she would not pass the credit check anyway, and that the Complainant needed to move out or be arrested for trespassing. (N.T. 19; 4/10/00)

60. The Complainant was extremely afraid of being arrested by the police. (N.T. 19; 4/10/00)

61. The Complainant also felt that there was no way she would be able to move into the apartment. (N.T. 19; 4/10/00)

62. The Complainant began to move her belongings out of the apartment as quickly as she could. (N.T. 19; 4/10/00)

63. The Complainant, at this time, was extremely agitated, upset and was crying. (N.T. 20; 4/10/00)

64. As the Complainant and Ms. Tscholl were moving her things out of the apartment, Rachel Krasnow, another member of MAC Management called. (N.T. 24;

5/2/00; 3:15)

65. Ms. Krasnow then said that Complainant needed to leave, and if she did not, the police would forcibly remove her from the building. (N.T. 24; 5/2/00; 3:15)

66. Ms. Tscholl told Ms. Krasnow that the Complainant was moving at that time and would not be living at the apartment. (N.T. 24; 5/2/00; 3:15)

67. Ms. Lehman then called the apartment a second time and threatened to throw Ms. Gorman and Ms. Tscholl out of the building if the Complainant remained. (N.T. 24; 5/2/00; 3:15)

68. The Complainant moved her things back into the U-Haul truck, took the truck to a storage unit and returned the truck to U-Haul. (N.T. 20; 4/10/00)

69. The U-Haul truck was returned by the Complainant at 3:15 p.m. (N.T. 20; 4/10/00)

70. The Complainant desired to move into this apartment because it was very close to campus. (N.T. 20; 4/10/00)

71. Had the Complainant moved into the apartment, her father would have insured that her financial needs would be met. (N.T. 20, 29; 4/10/00)

72. On the following day, Ms. Lehman called Ms. Tscholl and reiterated her statements regarding the Complainant needing to be out of the building and threatening to throw Ms. Tscholl and Ms. Gorman out of the building. (N.T. 25; 5/2/00; 3:15)

73. Ms. Tscholl informed Ms. Lehman that the Complainant had moved her things and left the previous day. (N.T. 25; 5/2/00; 3:15)

74. When Heather Gorman mentioned the apartment to Complainant, she did

not feel it would be a problem. (N.T. 15; 5/2/00: 3:15)

75. Ms. Tscholl had previously mentioned to Respondent MAC Management that she was interested in subrenters and asked if she needed to change the lease. (N.T. 54-55; 5/2/00; 3:15)

76. Respondent MAC Management indicated that it did not matter as long as rent was paid.

77. Ms. Tscholl had subletted the apartment on several occasions to white females. (N.T. 10; 5/2/00; 3:15)

78. Since the Complainant would not live at the apartment, she resided with her father and commuted to school five days a week for eight weeks. (N.T. 21; 4/10/00)

79. The commuting mileage was approximately 1,120 miles times the mileage rate of .325 resulting in a cost of \$364.00. (N.T. 21; 4/10/00)

80. Since the Complainant commuted, she parked for a cost of \$8.00 per day, five days a week for eight weeks for a total of \$320.00. (N.T. 22; 4/10/00)

81. Because the Complainant did not rent the apartment, she had to place her things in storage for two months, May-June, 1996. (N.T. 22-23; 4/10/00)

82. Complainant paid a total of \$149.80 for storage over this two month period. (N.T. 24; 4/10/00, and Comp. Exh. 2)

83. The Complainant, after living with her father for two months, eventually found an apartment. (N.T. 24; 4/10/00)

84. Complainant moved in on July 1, 1996. (N.T. 24; 4/10/00)

85. The Complainant's rent at her apartment was \$325.00 per month.

(Comp. Exh. 3)

86. The Complainant's rent at 631 Maryland Avenue would have been \$263.00 per month. (N.T. 26; 4/10/00)

87. If not for the actions of the Respondents, the Complainant would have lived at 631 Maryland Avenue until August, 1997. (N.T. 27; 4/10/00)

88. The difference in rent was \$62.00 times thirteen months for a total of \$806.00. (N.T. 27; 4/10/00)

89. In order to attend the intake and the fact finding conference in this matter, the Complainant missed sixteen hours at a rate of \$13.00 per hour for a total of \$208.00. (N.T. 28, 29; 4/10/00)

90. The Complainant lost ten hours of work to attend the prehearing conference at a rate of \$32.56 for a total of \$325.60. (Comp. Exh. 4)

91. The Complainant missed sixteen hours of work for the public hearing on April 10, 2000, and eight hours for the hearing on May 3, 2000. (N.T. 31; 4/10/00 and N.T. 45; 5/2/00)

92. The loss of twenty-four hours at a rate of \$32.56 totalled \$781.44. (N.T. 31; 4/10/00)

93. The Complainant travelled to the State Office Building on three separate occasions, the prehearing and two public hearing dates. (N.T. 32; 4/10/00)

94. The Complainant incurred mileage costs of \$499.30. (N.T. 32; 4/10/00 and N.T. 45; 5/2/00)

95. The Complainant also incurred Turnpike tolls at a rate of \$4.40 each way times six or a total of \$26.40. (Comp. Exh. 5)

96. The parking costs for the Complainant for intake, prehearing and public hearing was \$61.00 (N.T. 36; 4/10/00 and N.T. 45; 5/2/00)

97. The Complainant was not only embarrassed, but humiliated by the actions of the Respondent. (N.T. 37; 4/10/00)

98. The Complainant was extremely upset and frustrated. (N.T. 37; 4/10/00)

99. The Complainant called her father shortly after this incident. (N.T. 86; 4/10/00)

100. The Complainant's father creditably testified that the Complainant was upset, her voice was crackling and she was crying. (N.T. 86; 4/10/00)

101. The Complainant told her father, "Dad, you can't believe what happened to me." (N.T. 86; 4/10/00)

102. The Complainant's father testified that this was the "most shocking thing" that has happened to the Complainant. (N.T. 86; 4/10/00)

103. The Complainant testified that because of this incident, she is now very leery of relationships with people. (N.T. 37; 4/10/00)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and the subject matter of the instant case.
2. The parties have complied with the procedural prerequisites to a public hearing.
3. The Complainant and Respondents are persons within the meaning of the Pennsylvania Human Relations Act. (hereinafter "PHRA")
4. The property at issue in the instant case was a housing accommodation within the meaning of the PHRA.
5. The Complainant established a prima facie case of race discrimination by showing:
 - a. Complainant is a member of a protected class;
 - b. the subletting was allowed and a vacancy existed;
 - c. the Complainant was qualified to fill the vacancy;
 - d. the Complainant was denied the opportunity to sublet; and
 - e. the vacancy remained available to rent.
6. The Respondent MAC Management articulated legitimate non-discriminatory reasons why the Complainant was not permitted to sublet the apartment.
7. The Complainant proved by a preponderance of evidence that Respondent's reasons were pretextual.
8. The Complainant has met her burden of persuasion that Respondent's actions violated the PHRA.

9. The Complainant did not have to continue to attempt to sublet the property once it was clear that any measure on her part would be futile.

10. Upon a finding of unlawful discrimination, the Commission may award actual damages, including damages caused by humiliation and embarrassment.

11. The Commission has broad discretion in fashioning a remedy after a finding of unlawful discrimination.

OPINION

This matter arises out of a complaint filed by Tara Neile Thompson (hereinafter "Complainant") on June 17, 1996, against MAC Management and Norma Kleiman (hereinafter "Respondents"), Docket No. H-7079. In her complaint, the Complainant alleges that, on or about April 29, 1996, the Respondents discriminated against her by denying her the opportunity to sublet property because of her race, Black. The Complainant asserts that Respondents' actions violated Sections 5(h), (1) and Section 5(h),(3) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744 as amended, 43 P.S. §951, et seq. However, a review of the instant case reveals that the substantive allegations are against Respondent MAC Management and an agent of MAC Management, not Respondent Norma Kleiman. Therefore the foregoing Opinion, Recommendation and Final Order will be directed to Respondent MAC Management.

The PHRC staff conducted an investigation of the complaint and found probable cause to credit the allegations raised in the complaint. After the finding of probable cause, PHRC staff endeavored to resolve the matter through conference, conciliation and persuasion, but such efforts were unsuccessful. Thereafter, PHRC staff notified the parties that the matter had been placed on the public hearing docket and was approved for public hearing.

The public hearing in this matter was held on April 10, 2000, and May 2, 2000, in Pittsburgh, PA. Permanent Hearing Examiner Phillip A. Ayers presided over this matter. The Commission's interest in this complaint was represented by Lisa Fanelli-Greer, Assistant Chief Counsel. The Respondents were represented by Stuart

M. Levine, Esquire. Both parties filed post-hearing briefs in this matter.

In the instant case, the Complainant alleges unlawful discrimination pursuant to Sections 5(h),(1) and 5(h),(3) of the PHRA. In pertinent part, the relevant provisions provide as follows: "It shall be an unlawful discriminatory practice...for any person to:

- (1) Refuse to...lease...or otherwise to...withhold housing accommodations from any person because of race[or] color...of any prospective owner, occupant or user of such commercial housing..."
- (3) Discriminate against any person in the terms or conditions of...leasing any housing accommodation because of the race, color..."

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) General Electric Corporation v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976). 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 burden of establishing a prima facie case of discrimination. Once a prima facie case has been established, the Respondent must then produce evidence of a legitimate, non-discriminatory reason for its action. If the Respondent is successful in meeting its burden of production, the Complainant can still prevail by showing that the proffered reasons are, in reality, a pretext for unlawful discrimination. The Complainant still has the ultimate burden of proving that she is the victim of unlawful discrimination. Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315

(1987). Using the above analysis to establish a prima facie showing, the Complainant must establish:

- A. Complainant is a member of a protected class;
- B. subletting was allowed and a vacancy existed;
- C. the Complainant was qualified to fill the vacancy;
- D. the Complainant was denied the opportunity to sublet; and
- E. the vacancy remained available.

In regard to the first element, it is un rebutted that the Complainant is a black female and is, therefore, a member of a protected class under the PHRA. The second element of the prima facie is also clearly shown. The record before the Commission reflects that a vacancy existed and that subletting was allowed in the apartment. (N.T. 89, 4/10/00) Thusly, the Complainant has met the second element of the prima facie showing.

The Complainant has met the third and fourth elements of the prima facie since she was qualified to fill the vacancy, and was denied the opportunity to sublet the apartment. The record before the Commission reveals that the Complainant attempted to rent the property in question under the same terms and conditions as the other women not in her protected class. Lastly, the vacancy remained available. Accordingly, the Complainant has met her burden of establishing a prima facie case.

As aforementioned, when the Complainant established a prima facie case, the burden then shifts to the Respondent MAC Management to present evidence of a legitimate, non-discriminatory reason for its action. In the instant case, the Respondent asserts that there was no subletting allowed in their apartment building

and that all residents must sign a lease with Respondent MAC Management. Under the analysis presented earlier, the above reasons satisfies the Respondent's burden of presenting evidence of a legitimate, non-discriminatory reason for its action.

However, the Complainant still retains the ultimate burden of proving unlawful discrimination by a preponderance of the evidence. As aforementioned, the Complainant may prevail by showing that the Respondents' proffered reasons are a pretext for unlawful discrimination. See Allegheny Housing Rehabilitation Corp. The record in this case is abundantly clear on this issue. The Complainant presented two witnesses (Heather Gorman and Andrea Tscholl), both white females, who testified that Respondent MAC Management did permit subletting in the apartment building. Specifically, Ms. Gorman testified that she resided in the apartment for ten months without a lease and without ever filling out an application. There was further credible testimony that Respondent Kleiman, who lived in the building, was aware of Ms. Gorman living in the apartment. Furthermore, Ms. Gorman paid rent to Respondent MAC Management, and all of her rent checks were cashed by Respondent MAC Management. Also, Ms. Tscholl testified that Ms. Lehman was in fact in the apartment at various times and met Heather Gorman. (N.T. 14; 5/2/00) Clearly, the Respondent MAC Management knew that Ms. Gorman was living at the apartment without signing a lease or filling out an application.

Ms. Tscholl also testified that she had other individuals sublet the apartment at issue. Initially, a woman named Catherine, last name unknown, sublet the apartment for an entire summer. This woman's name was on the mailbox at the apartment building. Catherine (white female) did not sign a lease or fill out a rental

application. In addition to the above testimony, Ms. Tscholl creditably testified that when her sister, Maria Tscholl, indicated she would not be attending school in Pittsburgh, Ms. Tscholl contacted Respondent MAC Management. When she told Respondent MAC Management that she needed two roommates, Respondent MAC Management informed her that there was no need to rewrite the lease. The evidence indicates that Ms. Tscholl had another roommate, Renee Fair, another white female. Ms. Fair did not sign a lease, fill out a rental application. Ms. Fair lived at the apartment for approximately eight months. At the fact finding conference, Respondent Kleiman denied knowing Ms. Gorman and Ms. Fair. This is an indication of the lack of creditability of the Respondents. Both Ms. Gorman and Ms. Fair lived at the apartment, received mail, and delivered their rent checks to both Respondent. It is simply unbelievable that the Respondent MAC Management had no knowledge of their existence.

The overwhelming evidence shows that Complainant has met her ultimate burden of proving discrimination by a preponderance of the evidence. The evidence indicates that the Respondents allowed white females to sublet on a regular basis, but the rules were changed when the Complainant, a black female, attempted to sublet. It is important to note that the problems for the Complainant began when Ms. Kleiman called Ms. Lehman, an agent for Respondent MAC Management. The circumstances of this case can only lead to the conclusion that Ms. Kleiman indicated that a black female was moving in, and as mentioned above, the rules changed. Ms. Lehman was the individual that everyone spoke with, and represented MAC Management. In fact, the Complainant was not really given an opportunity to fill out

an application. In addition, the Complainant cannot be required to perform a "futile gesture." Courts have found in housing cases that a Complaint does not have to engage in futile gestures. In Pinchback v. Armistead Homes Corp., 907 F.2d 1447 (4th Cir.), cert. denied 111 S.Ct. 515 (1990) the court found liability where a Complainant did not apply for housing when the Complainant was informed of discriminatory policies. In the matter before the Commission, the Complainant, after being told that an application would be brought to her, was then informed that she would not pass their credit check, the police would be called and she would be arrested. (N.T. 18; 4/10/00) Clearly any action by the Complainant to sublet the apartment at this time would have been futile. Having found that the Complainant has met her ultimate burden of persuasion, we now move to the issue of remedy.

The law is clear that the Commission has broad discretion in fashioning a remedy, Murphy v. Com. of Pennsylvania, PA Human Relations Comm., 506 Pa. 549, 486 A.2d 388 (1985). Under the PHRA, the Complainant may order the Respondents to "cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint and any verifiable reasonable out-of-pocket expenses caused by each unlawful discriminatory...as, in the judgment of the Commission, will effectuate the purposes of this act." Also the PHRA was amended in 1991 to include damages for embarrassment and humiliation and also the right to seek civil penalties against a Respondent. This remedy is restricted to housing cases making the housing provisions of the PHRA equivalent to the Fair Housing Act.

First, it is clear that a cease and desist order against the Respondents is appropriate. Certainly any Order by the Commission would require that the Respondents cease and desist from discrimination based on race with regard to housing. Also, the Complainant shall be reimbursed for the costs involving the processing of her complaint, and "any reasonable out-of-pocket expenses caused by the unlawful discriminatory actions of the Respondents." These costs include:

1. Mileage Expense for the Complainant's Commuting Costs from her father's home in the North Hills to Oakland to school for May-June, 1996
 $1,120 \text{ miles} \times \$0.325 =$ \$ 364.00
2. Parking Expense during the time Complainant commuted to school from her father's home in the North Hills to Oakland to school for May-June, 1996
 $\$8.00 \text{ per day} \times 5 \text{ days} \times 8 \text{ weeks} =$ \$ 320.00
3. Expense of U-Haul Rental on April 29, 1996
\$ 51.78
4. Storage Expense for Complainant's things during months of May-June, 1996
 $\$74.90 \times 2 =$ \$ 149.80
5. Difference in Rent between apartment Complainant actually rented in July, 1996 and apartment at 631 Maryland Avenue, Apartment No. 6
 $\$62.00 \times 13 \text{ months} =$ \$ 806.00
6. Complainant Lost Time from Work for the fact finding conference on August 8, 1996
 $\$13.00 \times 8 \text{ hours} =$ \$ 104.00

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|-----|---|-------------------|
| 7. | Complainant's Lost Time from Work for Intake of the Complaint | \$ 104.00 |
| | \$13.00 x 8 hours = | |
| 8. | Complainant's Lost Time from Work for Prehearing on January 12, 2000 | \$ 325.60 |
| | \$32.56 x 10 hours = | |
| 9. | Complainant's Lost Time from Work for Public Hearing on April 10, 2000 | \$ 520.96 |
| | \$32.56 x 16 hours = | |
| 10. | Complainant's Lost Time from Work for Public Hearing on May 2, 2000 | \$ 260.48 |
| | \$32.56 x 8 hours = | |
| 11. | Complainant's Mileage Costs from Silver Spring, MD, to Pittsburgh, PA, for Prehearing on January 12, 2000, Public Hearing on April 10, 2000, and Public Hearing on May 2, 2000 | \$ 499.20 |
| | 256 miles each way x 6 x .325 per mile = | |
| 12. | Turnpike Tolls from Silver Spring, MD, to Pittsburgh, PA, for Prehearing on January 12, 2000, Public Hearing on April 11, 2000, and Public Hearing on May 2, 2000 | \$ 26.40 |
| | \$4.40 each way x 6 = | |
| 13. | Parking Costs for Complainant for Intake of the complaint, Prehearing, and Public Hearings on April 20, and May 2, 2000 | \$ 61.00 |
| | TOTAL | \$3,593.22 |

Next we move to the award of damages for humiliation and embarrassment. Clearly, Pennsylvania case law has upheld damages for embarrassment and

humiliation. Allison v. PHRC, 716 A.2d 689 (Pa. Cmwlth. 1998) appeal denied (March 3, 1999) In most housing cases, the award for damages can be made on the basis of the complainant's testimony as to the impact of the Respondent's actions. In the matter before the Commission, there is strong evidence as to the embarrassment and humiliation suffered by the Complainant when she was forced to remove her belongings and threatened with trespass charges. (N.T. 37; 4/10/00) The Complainant testified that she was upset, frustrated, and crying. The Complainant's father creditably testified as to his daughter's emotional state when she called him. (N.T. 86; 4/10/00) The Complainant further testified that, because of this incident, she no longer trusts people and is reluctant to enter into relationships with people. The impact on the Complainant was still palpable at the public hearing. This matter certainly had a debilitating effect upon the Complainant. Because of this embarrassment and humiliation suffered by the Complainant, the Respondent MAC Management shall pay \$10,000 to the Complainant.

Lastly, we move to the issue of a civil penalty. Under the Pennsylvania Human Relations Act, a civil penalty may be awarded after a finding of discrimination. The factors to be considered are:

1. nature of the violation;
2. degree of culpability;
3. financial resources;
4. goal of deterrence; and
5. other matters as justice may require.

HUD v. Weber P-11, Fair Housing-Fair Lending, §§25,041 (HUD ALJ, 1993)

After having reviewed these factors in the context of the instant case, the Respondent MAC Management shall be assessed a civil penalty in the amount of \$5,000.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

TARA THOMPSON,
Complainant

v.

MAC MANAGEMENT AND NORMA KLEIMAN,
Respondents

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DOCKET NO. H-7079

FINAL ORDER

AND NOW, this day of , 2001, after a review of the entire record in this case, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves and adopts the foregoing ~~Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion, Recommendation and Final Order of the Permanent Hearing Examiner.~~ Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

- 1. That the Respondent MAC Management and its agents shall cease and desist from race-based discrimination with regard to housing.**
- 2. That Respondent and its agents shall comply with the PHRAct and shall take the following affirmative actions which, in the judgment of the commission, will effectuate the purpose of the PHRAct:**

a. Offer full, equal, non-discriminatory assistance without regard to race to all such persons who come to the Respondents seeking assistance regarding housing accommodations or commercial property.

b. Immediately issue written instructions reciting paragraph 1 of this order to all employees and agents, as well as directing them to abide by this order and comply with the PHRAct.

c. Furnish the Commission with a copy of said instructions within ten (10) days of the effective date of the order.

d. Post all appropriate notices, including but not limited to, the Fair Housing Practices Notice, citing the provisions of the Act relating to housing, in a conspicuous and well-lighted place in Respondents' normal place of business where both present and prospective customers and clients will normally see it and be able to read it.

e. Investigate promptly all complaints by applicants, clients and/or tenants of discourteous, rude or discriminatory behavior by Respondents' employees or agents or any other person acting on behalf of the Respondents, whether compensated or not, and take necessary disciplinary actions where warranted.

3. That within thirty (30) days of the effective date of this Order, the Respondent shall pay to the Complaint the lump sum of \$13,593.22.

4. That within thirty (30) days of the effective date of this Order, Respondent MAC Management shall desliver to PHRC Housing Division Assistant Chief Counsel Lisa Jo Fanelli-Greer a check payment to the Commonwealth of Pennsylvania, in the amount of \$5,000 in the nature of a civil penalty.

5. That within thirty (30) days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to Lisa Jo Fanelli-Greer, Esquire in the PHRC Harrisburg Headquarters Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: _____
Carl E. Denson, Chairperson

ATTEST:

Gregory J. Celia, Jr., Secretary