COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

DARLENE SWEIGART, Complainant	:	
v.	:	DOCKET NO. H-7407
BRUCE NICHOLL AND PATRICIA NICHOLL, Respondent	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

SUPPLEMENTAL FINAL ORDER - DAMAGES

FINDINGS OF FACT

1. The Respondents' are owners of an apartment unit was located in Souderton, PA. (N.T. 6-7)

2. The Complainant generally wished to live in Souderton because it was close to her job and she preferred the school district. She specifically was interested in Respondents' unit because it was close to her church. (N.T. 6-7)

3. The Complainant spent considerable time in matters involving her complaint. (N.T. 18)

4. The Complainant lost $300 she would have otherwise had the opportunity to make. (N.T. 18)

5. When she worked, the Complainant's hourly rate at that time was $15 per hour. In pursuing matters involving her complaint she lost at least 20 hours. (N.T. 18)

6. Despite her efforts the Complainant was unable to locate a two bedroom apartment in the Souderton area. (N.T. 12)

7. Because the Complainant could not locate an apartment in the Souderton area, the Complainant leased an apartment, thereby forcing her to put additional milage on her vehicle.

8. The only available housing acceptable to the Complainant was less comfortable. (N.T. 18-20, 50-52)

9. The Complainant was embarrassed and humiliated by Mr. Nicholl's familial based discrimination action. (N.T. 18-20; 50-52)

10. Renee Langley, Executive Director of the Fair Housing Council of Montgomery County, testified that the Complainant was

visibly shaken up by Mr. Nicholl's actions when she first contacted the Fair Housing Council. (N.T. 51)

11. Ms. Langley met and spoke with the Complainant on several occasions. (N.T. 51)

12. Each time the Respondent would re-advertise the unit, the Complainant would relive the ordeal of being discriminated again, and became distressed. (N.T. 52)

CONCLUSIONS OF LAW

1. Upon a finding of unlawful discrimination, the Commission has broad discretion in fashioning a remedy.

2. The Commission may award actual damages, including damages caused by humiliation and embarrassment.

3. Upon a finding of familial status based unlawful discrimination, the Commission may assess a civil penalty against Respondents.

4. The Commission may order Respondents to cease and desist from the unlawful discriminatory practices and to take other affirmative actions as justice requires.

5. A principal is responsible for the statements of the agent done within the scope of the agent's apparent authority.

O P I N I O N

In the instant case, the only issue before the Commission is a determination of the damages. The Commission on February 20, 2000, found that the Respondents' actions violated Section 5(h)(1) of the Pennsylvania Human Relations Act.

A hearing on the issue of damages was held on July 14, 2000 before Phillip A. Ayers, Permanent Hearing Examiner. The Respondents were represented by David H. Knight, Esquire. The Commission's interest in the complainant was represented by Nancy L. Gippert, Assistant Chief Counsel. Both Respondent Counsel and Commission Counsel filed post-hearing briefs on the issue of damages. At the hearing, the Complainant presented testimony as to the damages she suffered in this matter.

In the instant case, the Complainant testified that she generally wanted to live in Souderton because it was close to her job, her church and school district. Specifically, the Respondents' unit had two bedrooms which was desirable because of her family size. The Complainant also testified that, due to pursuing her complaint, she had to take time off work. When she took this time off, the Complainant lost approximately $300 in income. (N.T. 18) The Complainant further testified that, since she could not locate an apartment in the area, she was accepted an apartment which forced her to put more mileage on her vehicle in order to get to her cleaning jobs. (N.T. 12)

There is also testimony in the record as to the Complainant's distress and embarrassment and humiliation as a result of the Respondent's discrimination. The Complainant

presented a witness, Renee Langley, who spoke of the effect of the discrimination on the Complainant. Ms. Langley, Executive Director of the Fair Housing Council of Montgomery County, met and spoke with Complainant several times. (N.T. 50-51) Ms. Langley stated that the Complainant was very upset when she first came in and continued to be upset each time she saw her. (N.T. 52) The Complainant indicated that every time the Respondents re-advertised the unit, she would remember her situation and become distressed.

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 give Complainants the right to seek damages for embarrassment and humiliation and also give the Complainant the right to seek civil penalities against the Respondents. This remedy is restricted to housing cases making the housing provisions of the PHRA equivalent to the Fair Housing Act.

First, it is abundantly 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 familial status based discrimination with regard to housing.

Next we move to the issue of whether the Complainant can recover actual damages including embarrassment and humiliation. Specifically the Complainant is seeking damages in several areas:

(1) value of work missed;

(2) additional expense for additional mileage;

(3) loss of housing opportunity due to inferior housing ultimately obtained; and

(4) humiliation and embarrassment.

The Complainant is seeking three hundred dollars ($300.00) for the value of work missed during time spent in matters involving her case. Under the evidence presented in this matter, this is a reasonable figure that the Complainant should be awarded. Next the Complainant seeks damages for additional mileage she incurred because of the discrimination. The records produced by the Complainant were not precise figures, but rather general estimations. (N.T. 10) The damage amount for the additional mileage is calculated as follows:

ADDITIONAL MILEAGE

2,782 miles x 32.5¢ per mile = $904.15

The Complainant requests that the Commission award damages for the loss of housing opportunity. Specifically the Complainant argues that she was forced to obtain inferior housing (smaller and less comfortable) because of the Respondents' discrimination. There is case law showing that lost housing opportunity is considered actual damages to a Complainant. United

States Dept. of Housing and Urban Development v. Banai, P-H, Fair Housing-Fair Lending Reporter, §25,095, aff'd, 102 F. 3rd 1203 (11th Circuit, 1997). Upon review of the record, and the inability to secure desirable housing, the Complainant shall be awarded $500.00 for the lost housing opportunity.

The Complainant also then seeks the award of damages for embarrassment and humiliation. Pennsylvania case law has upheld damages for embarrassment and humiliation Allison v. PHRC, 716 A.2d 689 (Pa. Cmwlth. 1988) appeal denied (March 3, 1999). In the instant case, the Complainant testified to the embarrassment and humiliation she suffered as a result of Mr. Nicholl's familial status-based actions. A Complainant witness testified as to her observations of Complainant's level of distress. A review of the record clearly confirms that the Complainant was distressed by the Respondents. Because of this embarrassment and humiliation, the Complainant should be awarded $1,500.

Lastly, under the Pennsylvania Human Relations Act, a civil penalty may be assessed against the Respondents after a finding of discrimination. The awarding of civil penalties was upheld in the Allison case, previously cited. The factors to be considered in determining a civil penalty are;

(1) nature of the violations;

(2) degree of culpability;

(3) financial resource;

(4) goal of deterrence; and

(5) other matters as justice may require.

HUD v. Weber, P-H, Fair Housing, §25,041 (HUD, ALJ, 1993). After having reviewed these factors, the Respondents should be assessed a $500 civil penalty. Under general agency principles, Ms. Nicholl is jointly and severally liable for her husband's actions in this matter. Alexander v. Riga, 208 F.3rd 419 (2000).

An appropriate Supplemental Final Order - Damages follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

DARLENE SWEIGART, Complainant	:	
v.	:	DOCKET NO. H-7407
BRUCE NICHOLL AND PATRICIA NICHOLL, Respondent	:	

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned case, the Permanent Hearing Examiner finds that the Complainant did suffer damages. 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.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Phillip A. Ayers

Phillip A. Ayers
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

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DARLENE SWEIGART, Complainant	:	
v.	:	DOCKET NO. H-7407
BRUCE NICHOLL AND PATRICIA NICHOLL, Respondent	:	

FINAL ORDER

AND NOW, this 27th day of March, 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 Findings of Fact, Conclusions of Law, Opinion, and Final Order of the Permanent Hearing Examiner. Further, the Commission adopts said 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

O R D E R S

1. That the Respondents shall cease and desist from familial status-based discrimination with regard to rental of their properties.

2. That Respondents shall comply with the PHRAct and shall take the following affirmative actions which will effectuate the purpose of the PHRAct:

a. Offer full, equal, non-discriminatory assistance without regard to familial status to all persons who come to the Respondents seeking assistance regarding housing accommodations.

b. Post the Fair Housing Practices Notice, citing the provision of the PHRAct relating to housing, in a conspicuous and well-lighted place in both Respondent's normal place of business and each vacant rental unit where both present and prospective renters can see it.

c. Investigate promptly all complaints by applicants and/or tenants of discourteous, rude or discriminatory behavior by Respondent 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 Respondents shall jointly and severally pay to the Complainant the lump sum of $3,204.15 which represents:

a. Loss of work;

b. Additional mileage;

c. Loss of housing opportunity, and

d. Embarrassment and humiliation.

4. That within thirty (30) days of the effective date of this Order, the Respondents shall deliver to PHRC Housing Division Assistant Chief Counsel Nancy L. Gippert a check payable to the Commonwealth of Pennsylvania, in the amount of $500.00 in the nature of a civil penalty pursuant to Section 9(F)(2)i of the PHRA.

5. That within thirty (30) days of the effective date of this Order, the Respondents shall report to the PHRC on the manner

of compliance with this Order by letter, addressed to Nancy L. Gippert, Esquire, PHRC Headquarters Office, 101 South Second Street, Suite 300, Harrisburg, PA 17101.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Carl E. Denson, Chairperson

ATTEST:

Gregory J. Celia, Secretary

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

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PENNSYLVANIA HUMAN RELATIONS COMMISSION

Phillip A. Ayers

Phillip A. Ayers
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

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O R D E R S

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5. That within thirty (30) days of the effective date of this Order, the Respondents shall report to the PHRC on the manner

of compliance with this Order by letter, addressed to Nancy L. Gippert, Esquire, PHRC Headquarters Office, 101 South Second Street, Suite 300, Harrisburg, PA 17101.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Carl E. Denson, Chairperson

ATTEST:

Gregory J. Celia, Secretary