

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

RECEIVED PHRC
2002 MAY -2 P 12:26

CHARLOTTE SELLERS,

Complainant

v.

COUNTY OF BUCKS,
NESHAMINY MANOR HOME

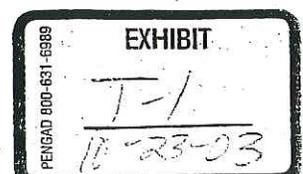
Respondent

Docket No. E-89905A

STIPULATIONS OF FACT

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

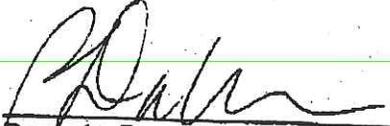
1. The Complainant herein is Charlotte Sellers, an adult female who was born on February 13, 1940 (hereinafter "Complainant").
2. The Respondent herein is County of Bucks, Neshaminy Manor Home (hereinafter "Respondent").
3. The Respondent at all times relevant to the case at hand, employed four or more persons within the Commonwealth of Pennsylvania.
4. On or about December, 14, 1998, the Complainant filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") at docket number E-89905A. A copy of the complaint will be included as a docket entry in this case at time of hearing.
5. On or about March 22, 1999, Respondent filed an Answer in response to the complaint. A copy of the Answer will be included as a docket entry in this case at time of hearing.



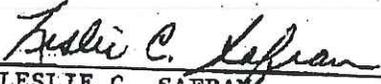
6. In correspondence dated September 10, 2001, Commission staff notified the Complainant and Respondent via a Finding of Probable Cause that probable cause existed to credit the allegations found in the complaint.

7. Subsequent to the determination of probable cause, Commission staff attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but was unable to do so.

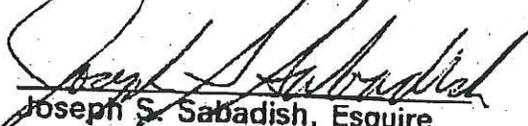
8. In subsequent correspondence, Commission staff notified the Complainant and Respondent that a public hearing had been approved.


Pamela Darville
Assistant Chief Counsel
(Counsel for the Commission
on behalf of the Complainant)

4-9-02
Date


LESLIE C. SAFRAN
(Counsel for the Respondent)

4/20/02
Date


Joseph S. Sabadish, Esquire
(Counsel for the Complainant)

4/29/02
Date

CARL E. DENSON
Vice-Chairperson
RAQUEL OTERO de YIENGST
Secretary
SYLVIA A. WATERS
Executive Director
HOMER C. FLOYD
Regional Director
SANDRA HOLMAN BACOTE



COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION

Philadelphia Regional Office
711 State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania 19130-4088
(215) 560-2496 (Voice)
(215) 560- 3682 (Fax)
(215) 560-3599 (TT)
www.phrc.state.pa.us

COMMISSIONERS
DAVID A. ALEXANDER
M. JOEL BOLSTEIN
JOSEPH J. BORGIA
THEOTIS W. BRADY
TIMOTHY CUEVAS
TONI M. GILHOOLEY
STEPHEN A. GLASSMAN
DANIEL D. YUN

Writer's Direct

Dial: 215-965-

7711

October 22, 2003

David Brier, Esquire
Ballard, Spahr, Andrews & Ingersoll, LLP
1735 Market Street – 21st Floor
Philadelphia, PA 19103 – 7599

RE: Sellers v. County of Bucks, PHRC Case No. E-89905A

Dear Mr. Brier:

I am submitting to you what I would like Valerie Kuehmstedt to stipulate to as stated in her deposition in lieu of her appearance at the public hearing:

Valerie Kuehmstedt:

1. Her date of birth is 1/22/44.
2. She has worked for Neshaminy Manor Home for nineteen years beginning in 1984.
3. She began working as a staff nurse and is currently a R.N. nightshift supervisor.
4. She became a R.N. nightshift supervisor in 1998.
5. She applied to become a R.N. nightshift supervisor by writing a letter of interest to Human Resources.

Sincerely,

Pamela Darville
Assistant Chief Counsel



J. 2

WILLIAM DENSON
Vice-Chairperson
RAQUEL OTERO de YIENGST
Secretary
SYLVIA A. WATERS
Executive Director
HOMER C. FLOYD
Regional Director
SANDRA HOLMAN BACOTE



COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION

Philadelphia Regional Office
711 State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania 19130-4088
(215) 560-2496 (Voice)
(215) 560-3682 (Fax)
(215) 560-3599 (TT)
www.phrc.state.pa.us

COMMISSIONERS
DAVID A. ALEXANDER
M. JOEL BOLSTEIN
JOSEPH J. BORGIA
THEOTIS W. BRADY
TIMOTHY CUEVAS
TONI M. GILHOOLEY
STEPHEN A. GLASSMAN
DANIEL D. YUN

Writer's Direct Dial: 215 - 965 - 7711
October 22, 2003

David Brier, Esquire
Ballard, Spahr, Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599

RE: Sellers v. County of Bucks, PHRC Case No. E89905A

Dear Mr. Brier:

I am submitting to you what I would like Mary Beth Otto to stipulate to in lieu of her appearance at the public hearing:

1. She is presently employed by Neshaminy Manor Home as an evening supervisor.
2. Her date of birth is 3/3/44.
3. She began working for Neshaminy Manor Home in August 1992.
4. She spoke with Patrick Kenny about the position of Health Care Supervisor in 1998.
5. She stated that he said it was a tight race.

Sincerely,

Pamela Darville
Assistant Chief Counsel



FINDINGS OF FACT *

1. The Complainant is Charlotte Sellers, (hereinafter "Complainant"), an adult female who was born on February 13, 1940. (S.F. 1)
2. The Respondent is the County of Bucks, Neshaminy Manor Home (hereinafter "Respondent"). (S.F. 2)
3. In 1991, Neshaminy Manor Home was a 360-bed facility divided into twelve units and each unit had a Clinical Coordinator and each unit was comprised of thirty residents. (N.T. 62)
4. Carmen Thome ("Thome") is the County's Director of Human Resources and, in 1998, she was the Assistant Director of Human Resources. (N.T.2, 153)
5. In 1998, Anne Markowitz ("Markowitz") was the County's Human Resources Administrator and reported to Ms. Thome. Dot Arnold ("Arnold") was the Educational Coordinator at Neshaminy Manor Home. Pat Kauffman ("Kauffman") was a Health Care Supervisor at Neshaminy Manor Home. (N.T. 222-23, 239-40; N.T.2, 53)
6. The County of Bucks has approximately 2600 employees, half of whom are employed at Neshaminy Manor Home and the Bucks County Correctional Facility. (N.T.2, 153)
7. The median age of employees at the County is 54. (N.T.2, 168, 206-07)
8. Generally, the promotion process follows these steps:
 - (1) The job is posted internally, and current employees are given a chance to apply;
 - (2) some time after the internal posting, the job is posted externally;

* To the extent that the Opinion that 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:

N.T. Notes of Testimony from October 23, 2003 Hearing
N.T.2 Notes of Testimony from October 24, 2003 Hearing
S.F. Stipulations of Facts
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit

- (3) arrangements are made to interview the internal and external candidates;
 - (4) Ms. Thome (or her designee from the County's Human Resources Department) and the department head interview the candidates;
 - (5) the relevant department head may then make a recommendation to Ms. Thome;
 - (6) Ms. Thome makes the final recommendation on behalf of the County; and
 - (7) the County Commissioners consider Ms. Thome's recommendation at a public meeting. (N.T. 187; N.T.2, 169-71)
9. The County Commissioners have never rejected a recommendation made by Ms. Thome. (N.T.2 171)
 10. Ms. Thome is guided by the County's policy that prohibits discrimination in all employment decisions. (N.T.2 171-73)
 11. Over the years, Ms. Thome has hired and promoted at least 57 individuals in their 40's, 50's and 60's. (R.E. 25)
 12. The position of Health Care Supervisor became available in 1998, and the Complainant applied for the position by completing a job posting sign-up form and submitting a letter of interest in the position to the Respondent's Human Resources Department. (N.T. 74-75)
 13. The qualifications for the position of Health Care Supervisor were posted as follows:

Graduate of approved School of Nursing. Current Professional Nurse License by the Department of State, Commission on Professional and Occupational Affairs, Commonwealth of Pennsylvania. At least 2 years experience in clinical nursing, preferably in a geriatric setting. Supervisory experience in a health facility preferred. Able to transfer and follow treatment procedures for residents. Keep medical records. Ability to respond quickly to medical emergency. (C.E. 5)
 14. On July 8, 1998, Dr. Patrick Kenny, the Respondent's Director of Nursing and Ms. Arnold, Respondent's Educational Coordinator, interviewed the Complainant, Ms. Tamburrino, and Ms. Horgan for this vacancy, and they also interviewed Ms. Seecoff on August 4, 1998. (N.T. 241-42)
 15. Dr. Kenny took notes of the interviews and indicated that he was concerned about the Complainant's ability to maintain confidentiality. (R.E. 6)

16. Ms. Arnold was concerned about Complainant's ability to maintain confidentiality (e.g., her past failure to be discrete), as well as her ability to represent the County in a management position. (N.T. 241-48, 256-57)
17. Ms. Arnold had these concerns about the Complainant for some time prior to 1998, and had discussed these concerns with Dr. Kenny and with Ms. Thome. (N.T. 247-48)
18. Complainant admits that she has no problem with the judgment of Ms. Arnold, and Ms. Arnold's "judgment" was that the Complainant was not the best candidate for the Health Care Supervisor position. (N.T. 126)
19. Complainant admits that Ms. Arnold, age 60, did not discriminate against her based on age. (N.T. 128, 241)
20. Sometime thereafter, Dr. Kenny spoke with Ms. Markowitz, the County's Human Resources Administrator in 1998, and told her that he recommended Ms. Horgan for the job. (N.T.2, 58, 93-94)
21. Ms. Markowitz said "okay" or something to that effect. (N.T.2, 114)
22. Dr. Kenny mistakenly took Ms. Markowitz's response as approval for him to offer the job to Ms. Horgan. (N.T. 206-08; N.T.2, 114)
23. Dr. Kenny was relatively new at the county (hired in April 1997). This was his first hiring of a management position at the county, and he had the authority to make such hiring decisions in his previous position. (N.T. 201; N.T.2, 174-75, 222)
24. At that point in time, Human Resources had not interviewed the candidates, Ms. Thome had not considered the candidates, and she had not made a final recommendation for the vacancy at issue. (N.T.2, 56-58, 122-23, 174-75)
25. On August 6, 1998, Dr. Kenny wrote to Complainant and Ms. Tamburrino to inform them that he had not selected them for the job. (R.E. 9)
26. On the same day, Dr. Kenny selected Ms. Horgan for the job of Health Care Supervisor. (R.E. 9)
27. Dr. Kenny did not have the authority to make these decisions on August 6, 1998. (N.T. 206-08; N.T.2, 93, 122-23, 173-76)

28. When Ms. Thome found out that Dr. Kenny had made this unauthorized offer, she immediately reprimanded Dr. Kenny for violating the County's procedure. (N.T.2, 174, 215-18)
29. Ms. Thome explained to Dr. Kenny that he had no authority to make the job offer to Ms. Horgan, and she instructed him on how the process works. (N.T.2, 174, 215-18)
30. She told him pointedly that if he made this mistake again, he would be fired. (N.T.2, 215-16, 217-18)
31. The County revoked the job offer made by Dr. Kenny to Ms. Horgan on August 6, 1998. (N.T. 206-08; N.T.2, 175-76)
32. Human Resources told the candidates that the County had rescinded the job offer and was going to restart the interviewing process. (N.T. 126-28; N.T.2, 56-60, 175-76)
33. Ms. Thome directed Ms. Markowitz to interview all the candidates. (N.T.2 177)
34. After Human Resources took over, Dr. Kenny deferred to the decision of Human Resources. (N.T. 206-08)
35. In August 1998, the County contacted Maryann Barnes about the vacancy for the Health Care Supervisor position and Ms. Barnes responded that she was interested in the job. (N.T.2, 39, 177-78)
36. Therefore, the County "reactivated" Ms. Barnes' application for employment from a previous position she had been offered by the County and she had turned down in March, 1998. (N.T.2, 158-62, 165-68)
37. Under County procedure, an employment application from an external applicant can be "reactivated" fro a period of one-year after its submission. (N.T.2, 159-62)
38. The County's effort to solicit Ms. Barnes' interest in the Health Care Supervisor vacancy was consistent with the County's recruitment policy, which seeks to increase the applicant pool for all jobs. (N.T.2 163-68).
39. As part of its recruitment policy, the County routinely contacts external applicants, who have an application on file, about a subsequent vacancy for which the applicant is a good fit. (N.T.2 163-64).
40. In August 1998, Maryann Barnes was added to the pool of candidates for the Health Care Supervisor position. (N.T.2 165-68, 177-78).

41. At that time Ms. Barnes was 56 years of age and had 26 years of nursing experience and most of her nursing experience was supervisory. (Ex. R-3) (N.T.2 32-33).
42. On September 3, 1998, Ms. Markowitz interviewed Ms. Barnes. (N.T.2, 39-40, 60-61)
43. Ms. Markowitz also interviewed the Complainant, Ms. Tamburrino, and Ms. Horgan, and she took notes of the interviews. (N.T.2, 58-59; R.E. 10)
44. Ms. Markowitz recommended Ms. Barnes for the job based upon her background, her supervisory skills, and her management ability. (N.T.2, 63-63)
45. Ms. Thome decided to offer the job of Health Care Supervisor to Ms. Barnes, age 56, and explained that she believed Ms. Barnes was the best candidate for the job, and that both Ms. Markowitz and Dr. Kenny recommended Ms. Barnes for the position. (N.T.2, 178-83)
46. Ms. Thome directed Ms. Markowitz to offer the job to Ms. Barnes. (N.T.2, 64)
47. On September 18, 1998, Ms. Markowitz called Ms. Barnes and offered her the job of Health Care Supervisor, and Ms. Barnes initially accepted the job offer. (N.T.2, 64-65, 178-81).
48. However, during a phone conversation on September 19, 1998, Ms. Barnes told Ms. Markowitz that she had decided to decline the County's job offer. (N.T.2, 41-42, 72-73, 179-80)
49. Ms. Barnes explained that her current employer had offered her a promotion, and she decided to stay with her current employer. (N.T.2, 41-42, 72-73, 179-80)
50. Ms. Barnes testified that she considered the County's job offer seriously, but ultimately decided to stay with her current employer. (N.T.2 41-42)
51. Following Ms. Barnes' rejection of the job offer, Ms. Thome considered the remaining candidates and decided to offer the job to Ms. Horgan, whom Ms. Thome felt was the best candidate for the position. (N.T.2, 183-86)
52. Ms. Thome stated that she "wanted someone who had a fresh perspective, was enthusiastic, was motivated, [and] was a leader of people. And I believe Sandy [Horgan] possessed those skills." (N.T.2, 184)

53. Many County employees spoke of Ms. Horgan's strong credentials, and even the Complainant admitted that every time she worked with Ms. Horgan as the Temporary Health Care Supervisor, Ms. Horgan did an "excellent" job. (N.T. 125)
54. Ms. Thome explained that she did not select the Complainant for the position based on her personal observation and experience with the Complainant, the Complainant's lack of leadership skills and her negative attitude. (N.T.2, 185-86, 213-14)
55. Ms. Thome said that the Complainant was someone who did not embrace change and was not a team player. (N.T.2, 185-86, 213-14)
56. Ms. Markowitz also declined to recommend the Complainant for the job. (N.T.2, 76-77, 83-85, 87-90)
57. Ms. Markowitz said that she personally saw "negativity" when she observed the Complainant interact with the other staff. (N.T.2, 89)
58. Ms. Kauffman, a Health Care Supervisor at Neshaminy Manor Home, also believed that the Complainant lacked the people and management skills to be a Health Care Supervisor. (N.T. 224-25, 229-34)
59. Ms. Kauffman explained that the Complainant harassed her for two years because the Complainant resented that the County hired Kauffman, rather than the Complainant, as Health Care Supervisor back in 1995. (N.T. 229-34)
60. The Complainant admitted that Ms. Thome, Ms. Markowitz, Ms. Arnold and Ms. Kauffman did not discriminate against her based on age and that the only person whom she accuses of age discrimination is Dr. Kenny. (N.T. 128)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC" or "Commission") has jurisdiction over the parties under the Pennsylvania Human Relations Act (hereinafter "PHRA").
2. The Commission has jurisdiction over the subject matter of the complaint under the PHRA.
3. The parties and the Commission have fully complied with the procedural prerequisites for a public hearing in this matter.
4. The Complainant is a person within the meaning of Section 5(a) of the PHRA.
5. The Respondent is an employer within the meaning of Section 4(a) of the PHRA.
6. The complaint filed in this matter satisfies the filing requirements set forth in Section 9 of the PHRA.
7. In order to establish a *prima facie* case of a failure to hire for the position of Health Care Supervisor, the Complainant must show:
 - a. She is a member of a protected class;
 - b. She met the general qualifications for the position;
 - c. She was denied the position; and
 - d. The Respondent continued to seek applicants and eventually hired someone younger than the Complainant.
8. The Complainant met her *prima facie* burden.
9. The Respondent articulated a legitimate non-discriminatory reason for its action.

10. The Complainant has not shown that the proffered reasons are pretextual.

OPINION

On or about December 19, 1998, Charlotte Sellers ("Complainant") filed a verified complaint with the Commission against the County of Bucks, Neshaminy Manor Home ("Respondent") at PHRC Case No. 19982554 and Docket No. E-89905A. The Complainant alleged that the Respondent failed to hire her for the position of Health Care Supervisor because of her age, 58. The Complainant further alleged that the Respondent's actions violated Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 955(a).

PHRC staff conducted an investigation and found probable cause to credit the allegations raised in the complaint. PHRC staff and the parties attempted to eliminate the alleged unlawful discriminatory practice through conference, conciliation and persuasion. Those efforts proved unsuccessful in resolving the matter, and the case was approved for public hearing.

The public hearing was held on October 23 and October 24, 2003 in Doylestown, PA. A panel of three Commissioners was assigned to hear this case. The Hearing Panel consisted of Commissioner Raquel Otero de Yienst, Chairperson of the panel, Commissioner Sylvia A. Waters and Commissioner Toni M. Gilhooley. Phillip A. Ayers, Permanent Hearing Examiner, served as Panel Advisor. Pamela Darville, PHRC Assistant Chief Counsel, represented the state's interest in the complaint. David E. Brier, Esquire, represented the Respondent at the public hearing. Both parties filed post-hearing briefs in support of their positions.

Section 5(a) of the PHRA declares it to be an unlawful discriminatory practice:

For an employer, because of the race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability, or the use of a guide or support animal because of blindness, deafness or physical handicap, of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required. 43 P.S. Section 955 (a)

In the instant case, there is an allegation of disparate treatment. The analytical model for cases of this nature was first set forth in the landmark case of McDonnell-Douglas v. Green, 411 U.S. 792. 93 S.Ct. 1817, 35 L.Ed. 2d 668 (1973). Under that model, the Complainant bears the initial burden of establishing a *prima facie* case. The burden of establishing a *prima facie* case is not an onerous burden. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1980). In several cases, the Pennsylvania Supreme Court approved the analytical model set forth in McDonnell-Douglas. See Allegheny Housing Rehabilitation Corporation v. Pennsylvania Human Relations Commission, 532 A.2d 315 (1987) and General Electric Corp. v. Pennsylvania Human Relations Commission, 365 A.2d 649 (1976).

Once a *prima facie* case is established, the burden of proof shifts to the Respondent to articulate a legitimate non-discriminatory reason for its action. Once the Respondent has met this burden, the Complainant, in order to prevail, must show that the proffered reason is pretextual. The Complainant always retains the ultimate burden of establishing by a preponderance of the evidence that she is a victim of unlawful discrimination.

In order to establish a *prima facie* case in the instant case, the Complainant must show:

1. She is a member of a protected class.
2. She was qualified for the position in question.
3. She was rejected for the position.
4. The Respondent continued to seek applicants and eventually hired an individual younger than the Complainant.

See Consolidated Rail Corporation v. Cmwlth. PA Human Relations Commission, 36 Pa Cmwlth. Ct. 147, 582 A.2d 702, 708 (1990).

Upon review of the record in the instant case, the Complainant has established a *prima facie* case. There is no dispute that she was 58 years old when she applied, and therefore, a member of a protected class (N.T. 79-80). There is also no dispute that the Complainant is qualified for the position of Health Care Supervisor based on her employment history and her licensure as a Registered Nurse. Next, the Complainant was not chosen for the position of Health Care Supervisor (N.T. 206). Lastly, the record reflects that, upon rejecting the Complainant, the Respondent continued to seek applicants and eventually hired a younger individual, Sandra Horgan. Ms. Horgan was 28 years old at the time she was hired for the position (C.E. 20). The aforementioned evidence adduced at the public hearing is sufficient to establish the existence of a *prima facie* case.

The burden of production now shifts to the Respondent to articulate the existence of a legitimate non-discriminatory reason for its. The Respondent in the instant case has articulated that initially it offered the position to a better-qualified

candidate in the same age-protected status as the Complainant. Also, the Respondent asserts, that when that person (Maryann Barnes) declined the position, the Respondent still selected an individual who was better qualified than the Complainant for the position. Accordingly, the Respondent has met its burden of production.

As we note in all cases involving allegations of disparate treatment, the Complainant retains the ultimate burden of demonstrating that the Respondent intended to unlawfully discriminate against the Complainant. The Complainant may accomplish this by showing that the Respondent's proffered explanation is pretextual. In other words, the Complainant must prove that the Respondent's explanation is not the actual reason for its decision, but rather it is a pretext for age discrimination. See Simpson v. Kay Jewelers, 142 F.3d 639 (3rd Cir. 1998).

The paramount issue in this case is whether Carmen Thome, the Respondent's decision maker, unlawfully discriminated against the Complainant when she recommended Maryann Barnes and then Sandra Horgan for the position of Health Care Supervisor. The record reflects that Ms. Thome did not act with age bias.

Firstly, the Complainant admits that Ms. Thome did not discriminate against her on the basis of age (N.T. 128). In addition, the Complainant further admits that others (Anne Markowitz, Dot Arnold and Pat Kauffman) involved in the selection process did not discriminate against her (N.T. 128). Ms. Markowitz had concerns about the Complainant's attitude and approach (N.T. 2, 76-77). Ms. Markowitz had

observed the Complainant in her years of working in Neshaminy Manor as Human Resources Administrator (N.T. 83-85, 87-90). Ms. Arnold had some concerns about the Complainant's attitude and ability to represent the Respondent as a supervisor (N.T. 242-248). Most importantly, Ms. Thome, had concerns about the Complainant's ability to maintain confidentiality, her negative attitude, her approach, and her ability to represent the Respondent as a supervisor (N.T. 2, 184-186). Ms. Thome further explained that based on her personal observations and experience with the Complainant, she felt the Complainant lacked leadership skills because of her negative attitude. Ms. Markowitz and Ms. Kaufman also testified as to the Complainant's negativity in interacting with the staff. All of the above record evidence certainly supports the position that the Respondent clearly had legitimate concerns regarding the Complainant's ability to perform the job.

Secondly, the first individual selected for the position of Health Care Supervisor was Maryann Barnes. Ms. Barnes was 56 years old when she was offered the position. In fact, Ms. Thome has a history of hiring and promoting individuals in their 40's, 50's and 60's. In fact, Ms. Thome had hired or promoted at least 57 employees in the aforementioned age ranges (R.E. 25). Ms. Thome is presently the Respondent's Director of Human Resources and in 1998 was the Assistant Director of Human Resources. (N.T.2, 153). She was the individual who made the final recommendations to the County's Board of Commissioners for management positions. The County Commissioners, at the time of the public hearing, had never rejected a recommendation made by Ms. Thome (N.T.2, 171).

The hiring process is as follows: (1) the job is posted internally and current employees are given a chance to apply; (2) some time after internal posting, the job is posted externally; (3) interviews are arranged for the internal and external candidates; (4) Ms. Thome and the department head interview the candidates; (5) the relevant department head may make a recommendation to Ms. Thome; (6) Ms. Thome makes a final recommendation on behalf of the Respondent; and (7) the County Commissioners approve Ms. Thome's recommendation at a public meeting. (N.T. 187; N.T.2, 169-171)

Ms. Thome testified that when making her final recommendation, she is guided by the Respondent's policy that prohibits discrimination in all employment decisions (N.T.2, 171-173). The record reflects that Ms. Thome complied with this policy in that she hired or promoted at least 57 individuals in their 40's through their 60's. As previously noted, the Complainant admitted that Ms. Thome did not discriminate against her.

The essence of the Complainant's allegation is based on some stray remarks made by Dr. Patrick Kenny, the former Director of Nursing. This argument is without merit because Dr. Kenny did not have the authority to make the job offer and the alleged statements were made prior to Ms. Thome's involvement in the process. When Ms. Thome found out about Dr. Kenny's unauthorized offer, she reprimanded and informed him that he would be fired if he repeated this mistake (N.T.2, 215-216). The Respondent formally revoked Dr. Kenny's offer and the job selection process was restarted. (N.T. 126-128)

Once the hiring process was restarted, and following interviews of candidates, the position of Health Care Supervisor was offered to Maryann Barnes, 56 years old. Ms. Thome, Ms. Markowitz and Dr. Kenny recommended Ms. Barnes for the position based on her nursing background, her supervisory skills, and her management ability (N.T.2, 63-64). Ultimately, Ms. Barnes declined the Respondent's offer and decided to stay with her then current employer. (N.T.2, 41-42, 72-73)

After Ms. Barnes declined the offer, Ms. Thome offered the position to Sandra Horgan. Once again, everyone who was a participant in the hiring process recommended Ms. Horgan for the position.

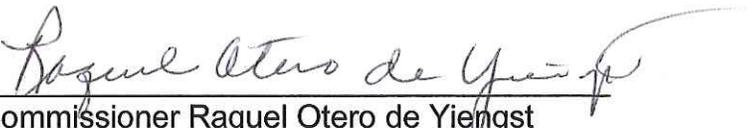
The record before the Commission reflects that Ms. Horgan had very strong credentials. Even the Complainant indicated that Ms. Horgan did an "excellent job" (N.T. 125). The Complainant consistently testified that none of the individuals involved in the selection process discriminated against her based on age.

Having found that the Complainant has failed to prove, by a preponderance of evidence, that she is a victim of age discrimination. An appropriate Order follows:

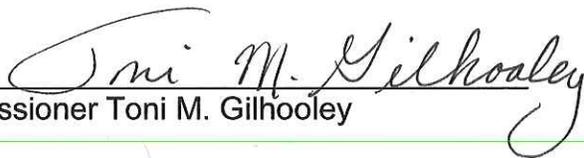
Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, this Hearing Panel recommends issuance of the attached Final Order.



Commissioner Sylvia A. Waters



Commissioner Raquel Otero de Yienst



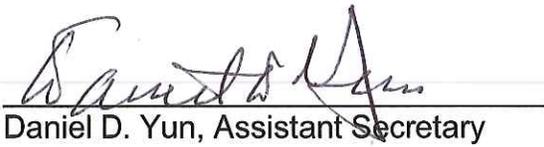
Commissioner Toni M. Gilhooley

ORDERS

that the complaint in this matter be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 
Stephen A Glassman, Chairperson

ATTEST: 
Daniel D. Yun, Assistant Secretary