COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THERESA SMITH-JENNINGS Complainant	:	
v.	:	PHRC CASE NO. 200502949
FRANCISCO CORDICE Respondent	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. On or about December 7, 2005, Complainant, Theresa Smith-Jennings, (hereinafter "Smith-Jennings"), filed a PHRC Complaint against Respondent, Francisco Cordice, (hereinafter "Cordice").
2. Under cover letter dated July 26, 2006, the PHRC's Housing and Commercial Property Division filed a Petition for Rule to Show Cause. (N.T. 5).
3. On July 26, 2006, PHRC Motions Commissioner, Toni M. Gilhooley, issued a Rule to Show Cause which, in effect, notified Cordice that he had until August 28, 2006 to file an answer to the Smith-Jennings complaint. (N.T. 5).
4. Cordice did not file an answer. (N.T. 5).
5. On September 5, 2006, Motions Commissioner Gilhooley recommended to the full PHRC that Cordice be found liable for the Smith-Jennings' allegations. (N.T. 5).
6. By Order dated September 26, 2006, the PHRC found Cordice liable for harassing Smith-Jennings because of her sex female. (N.T. 5-6).
7. A public hearing on the issue of what, if any, damages are appropriate was held on April 13, 2007 in Media, Pennsylvania.

* 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 Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit

8. The PHRC's September 26, 2006, finding of liability was based on the allegations of the Smith-Jennings' complaint which includes:

> [Smith-Jennings has] been living at [954 Church Lane, Yeadon, PA] since October 1984.
> During June 2003, Mr. Cordice and his family took up residence [at 998 Church Lane]
>
> My protected class is sex, Female.
>
> From October 2003 and continuing to the present, I have been harassed by Mr. Cordice. He has challenged the placement of my fencing that compelled my moving them further inward upon my property.
>
> He was informed that this change was not to be confused with the actual property lines.
> He began gradually seizing possession and control of the vacated area by setting a 24-foot garden area, an 8-foot shed, and more fencing against my fence.
>
> During October 2005, I had my property surveyed and civil engineers placed property line markers into the ground.
>
> Mr. Cordice is preventing me from moving my fence to the property line markers. On November 2, 2005, I found an unread certified letter I had sent to the owners of the Cordice House inside one of the postholes I was digging. A warning "Stop" was written across it.
>
> On November 9, 2005, Mr. Cordice began verbally assaulting me in a clearly frenzied state and told me that I was wasting my time and he would tear down everything I built. He then yanked one post out of its hole and slammed it down on the ground. He filled the postholes with dirt and bricks.
>
> Mr. Cordice accused me of being less than a woman and that I needed to change and stop behaving like a man.
>
> The harassment was pervasive and regular because it is ongoing.
>
> I was detrimentally affected because his actions are causing me stress.
>
> I am not being allowed to have the full use of my property land.

9. Smith-Jennings is a senior citizen who lives alone. (N.T. 12, 31).

10. Smith-Jennings' and Cordice's properties are next door to each other. (N.T. 10).

11. Shortly after Cordice moved next door to Smith-Jennings, Smith-Jennings happened upon Cordice outside a local Home Depot Store. (N.T.11).

12. Being neighborly, Smith-Jennings asked Cordice how things were going. (N.T. 11).

13. Cordice responded by complaining about the property line between their homes. (N.T. 11).

14. As the interaction between Cordice and Smith-Jennings continued, Cordice began to talk over Smith-Jennings and became physically menacing to Smith-Jennings causing her to feel as though Cordice might strike her. (N.T. 11).

15. Cordice told Smith-Jennings that she needed to re-locate the fence that separated the two properties. (N.T. 11).

16. Although Smith-Jennings believed her fence did not encroach onto Cordice's property, Cordice did not afford Smith-Jennings with an opportunity to even tell him so. (N.T. 11).

17. The interaction gave Smith-Jennings an immediate headache and she felt her blood pressure rising dramatically. (N.T. 11-12).

18. All Smith-Jennings could do was to tell Cordice she would get back to him in a few days. (N.T. 12).

19. Cordice threatened to move the fence if Smith-Jennings did not. (N.T. 13).

20. After reviewing the state of her finances, Smith-Jennings concluded that she would not be able to afford a property line survey until 2005. (N.T. 12).

21. Instead, to ease tensions Smith-Jennings informed Cordice that she would move her fence. (N.T. 12).

22. By October 30, 2003, doing the work herself, Smith-Jennings moved approximately 70' of 4'x8' fencing back approximately one foot. (N.T. 12).

23. Once the fence was moved, Cordice was satisfied. (N.T. 13).

24. On July, 7, 2005, Smith-Jennings asked Cordice to move a garden Cordice had planted and other items he had placed up against Smith-Jennings' fence back away from her fence. (N.T. 13, 16).

25. Items Cordice had placed against the fence contributed to the fence's deterioration. (N.T. 13).

26. Cordice ignored Smith-Jennings' request. (N.T. 16).

27. Realizing Cordice had done nothing in response to her request, Smith-Jennings made arrangements to have the property line surveyed. (N.T. 16).

28. Smith-Jennings sent Cordice a certified notice regarding her intention to have a survey done. (N.T. 17).

29. On October 10, 2005, Cordice and his wife confronted Smith-Jennings generally challenging her plan to have the property line surveyed. (N.T. 17).

30. During this interaction, Cordice screamed at Smith-Jennings, lunged at her, and attempted to open a security door. (N.T. 18).

31. On October 28, 2005, a property line survey was conducted by H. Gilroy Damon Associates, Inc. (N.T. 14, 17; C.E. 1).

32. The survey cost Smith-Jennings $400.00. (N.T. 14; C.E. 1).

33. The survey revealed that approximately 45' of Cordice's garden was 14" on Smith-Jennings' property. (N.T. 14).

34. An 8' shed along with some sand and bricks Cordice owned were also 7" to 9" across the property line. (N.T. 15).

35. The surveyors put stakes at the corners of the property line and three additional stakes along the adjoining line. (N.T. 15, 17).

36. After the survey, Cordice still did not move his things off Smith-Jennings' property. (N.T. 17).

37. Between October 31 and November 30, 2005, Smith-Jennings, by her own efforts, removed the fence she had installed in 2003, and installed just inside the actual property line an entirely new 70' long, 6'x8' fence. (N.T. 18, 19, 22).

38. Smith-Jennings' cost for materials to install a new fence was $733.05. N.T. 19-21; C.E. 2,3 & 4).

39. Shortly after Smith-Jennings began to install the new fence, on November 2, 2005, Cordice's daughter came out and screamed at Smith-Jennings and for several hours a blaring speaker was directed at her. (N.T. 24, 30).

40. On November 8, 2005, Cordice called the police on Smith-Jennings, however, when the police arrived, they did nothing after being shown the survey markers. (N.T. 25).

41. On November 9, 2005, as Smith-Jennings was attempting to move plants in Cordice's garden back away from her property, Cordice first yelled out his window at Smith-Jennings. (N.T. 26).

42. Subsequently, Cordice came outside and began verbally abusing Smith-Jennings. (N.T. 26, 27).

43. Cordice followed Smith-Jennings up and down the property line threatening to rip up all the work she had done. (N.T. 26-27).

44. Cordice also yanked a fence post out of a hole and threw it down. (N.T. 27).

45. Cordice informed Smith-Jennings that he had no intention of respecting the survey. (N.T. 27).

46. Cordice also told Smith-Jennings that she was too busy trying to be a man, that installing a fence was man's work and he should be installing the fence because she was doing it wrong. (N.T. 28).

47. Cordice also informed Smith-Jennings that he had undermined her to others in the neighborhood. (N.T. 28).

48. Smith-Jennings felt her blood pressure rising and as she recalled Cordice's rage and brazenness of tactics in October 2003 outside of Home Depot, she became fearful. (N.T. 30).

49. Since October 2003, Smith-Jennings has not been comfortable using her yard and whenever she did, she was constantly vigilant out of fear. (N.T. 31).

50. As a result of her interactions with Cordice, Smith-Jennings has had significant problems sleeping. (N.T. 31, 32).

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, the Respondent's failure to answer or respond to a Rule to Show Cause resulted in the entry of a judgment for the Complainant on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. When, as here, a Respondent is found to have violated section 5(h) of the PHRA, Section 9(f)(1) of the PHRA permits the Commission to award actual damages, including damages caused by humiliation and embarrassment.
8. When Section 5(h) of the act is violated, the Commission may also assess a civil penalty.
9. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed by Theresa Smith-Jennings against Francisco Cordice. The Complainant's complaint at PHRC Case No. 200502949 alleged that from October 2003 until December 2005, Cordice harassed Smith-Jennings because of Smith-Jennings' sex, female. The complaint at Case No. 200502949 states a claim under Sections 5(h) of the Pennsylvania Human Relations Act ("PHRA").

Smith-Jennings' verified complaint at Case No. 200502949 was filed on or about December 7, 2005. By correspondence dated July 26, 2006, the Pennsylvania Human Relations Commission ("PHRC") Housing and Commercial Property Division petitioned Motions Commissioner Gilhooley for a Rule to Show Cause, indicating that Cordice had not answered Smith-Jennings complaint. The petition declared that Cordice had been served with the complaint on December 19, 2006. The petition further indicated that by letter dated June 20, 2006 an effort had been made to obtain an answer from Cordice.

On July 26, 2006, a Rule to Show Cause was issued, directing Cordice to respond on or before August 28, 2006. After no response was filed, on September 5, 2006, Motions Commissioner Gilhooley recommended a finding of liability to the full PHRC. On September 26, 2006, the full PHRC determined that Cordice harassed Smith-Jennings because of her sex, female.

After the finding of liability in this case, conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held April 13, 2007, in Media, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Stephanie M. Chapman, PHRC Assistant Chief Counsel. Cordice failed to attend the public hearing.

Since liability had been found after Cordice failed to file an answer, the only question at the public hearing was what damages Smith-Jennings could establish. Since this case is a 5(h) case, under Section 9(f)(1) of the PHRA, the PHRC is empowered to order the Respondent "to cease and desist from such unlawful discriminatory practice" and "the Commission may award actual damages, including damages caused by humiliation and embarrassment as in the judgment of the Commission, will effectuate the purpose of this act ..." Under Section 9(f)(2)(i), the Commission may also award a civil penalty not exceeding $10,000.

While the housing provisions of the PHRA emphasize protecting home seekers against discrimination in gaining access to housing, it also prohibits discrimination against an individual occupying their housing. All must be afforded the right to live where they wish, and discriminatory resistance to such civil rights must have a forum for redress.

A review of the complaint provided only a glimpse of Cordice's harassment of Smith-Jennings. Since the complaint, standing alone, did not afford an opportunity to assess a more detailed view of the victimization visited on Smith-Jennings, a summary account of Smith-Jennings general allegations was solicited through the testimony of Smith-Jennings.

What was shown in summary form was the story of a female, senior citizen, who is the sole owner of a home at 954 Church Lane in Yeadon, Pennsylvania. Smith-Jennings has lived in her home the past 22 ½ years, and it appears that until the end

of September 2003, she had enjoyed a peaceful existence. In the later part of September 2003, a dispute over the location of the property line between Smith-Jennings and Cordice began to develop.

In June 2003 Cordice moved into property next door to Smith-Jennings. As early as October, 2003, Smith-Jennings was given cause to form the impression that Cordice resented her as a female. During a brief encounter outside of a Home Depot. Cordice's demeanor towards Smith-Jennings became physically menacing causing Smith-Jennings to fear Cordice may hit her. Cordice's threatening behavior towards Smith-Jennings was intended to intimidate her to move her fence back from the property line.

For two years after Smith-Jennings did move her fence back a foot, things were at least cordial. However, things tragically deteriorated when in July 2005 Smith-Jennings asked Cordice to move some of his things away from her fence because they were causing damage to the fence.

Eventually, Smith-Jennings went to considerable expense to have a survey done to establish exactly where the property line was. After that survey revealed Cordice had indeed encroached upon her property, Smith-Jennings began to replace the damaged fence with a new fence that she installed just inside the established property line.

At this point, Cordice escalated a campaign of harassment that included derogatory verbal attacks on Smith-Jennings because she is a female. Collectively Cordice's actions put Smith-Jennings in fear and apprehension. Cordice had gone so far as to call the police regarding Smith-Jennings putting up a new fence. Appropriately, the police readily recognized Cordice's complaint lacked merit.

At the public hearing, Smith-Jennings produced evidence that the discriminatory acts of Cordice caused her to incur an expense of $400.00 for the property line survey, and an additional $733.05 to build a new fence closer to the property line. Accordingly, an award of $1,133.05 is appropriate for these actual expenses born by Smith-Jennings.

Next we turn to the question of appropriate compensation for the embarrassment and humiliation suffered by Smith-Jennings at the hands of Cordice's boorish and brutish behavior.. Precise proof is not necessary to support a reasonable award of damages for embarrassment and humiliation, Block v. R. H. Macy & Co., Inc., 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony. HUD v. Tucker, 2 Fair Housing-Fair Lending (P-H) ¶25,033, 25,350 (HUDALJ Aug. 24, 1992), submission of appeal vacated, No. 92-70697 (9th Cir. July 18, 1994)(unpublished order); see also Seaton v. Shy Realty Co., Inc., 491 F.2d 634, 636 (7th Cir. 1974); HUD v. Blackwell, 2 Fair Housing-Fair Lending (P-H) ¶25,001,25,011-13 (HUDALJ Dec. 21, 1989), affd, 908 F.2d 764, 872-73 (11th Cir. 1990). The main factor in determining the size of an award for embarrassment and humiliation is the victim's reaction to the discriminatory conduct. The gauges of the reasonableness and extent of a victim's reaction to the discriminatory conduct are the egregiousness of the conduct and the susceptibility of the victim. See generally, Robert G. Schwemm, *Housing discrimination Law and Litigation*, §25.3(2) (1994).

Here, the record demonstrates a heartless campaign designed to harass and intimidate Smith-Jennings. Cordice's cruel campaign dominated Smith-Jennings life for an extended period of time. In certain respects, Smith-Jennings was a captive in

her home, and when outside, she was exposed to varied indignities at the hands of Cordice. Smith-Jennings felt frustrated and embarrassed.

Cordice's humiliating and menacing campaign of harassment and intimidation not only damaged the self-esteem of Smith-Jennings, but enduring the series of hurtful incidents caused Smith-Jennings to worry about fundamental aspects of her life.

In light of the embarrassment and humiliation Smith-Jennings endured as a result of Cordice's discriminatory campaign, I conclude that Smith-Jennings is entitled to compensation in the amount of $15,000.00 for the humiliation and embarrassment she suffered. See HUD v. Simpson, 2 Fair Housing-Fair Lending (P-H) ¶25,082 (HUDALJ Sept. 9, 1994); HUD v. Kocerka, Fair-Housing-Fair Lending (P-H) ¶25,138 (HUDALJ May 4, 1999); HUD v. Gruzdaitis, Fair-Housing-Fair Lending (P-H) ¶25,136 (HUDALJ Aug. 14, 1998).

To vindicate the public interest, the PHRA also authorizes the imposition of a civil penalty upon a respondent who violate the PHRA. Determining an appropriate penalty usually requires consideration of five factors: (1) the nature and circumstances of the violation; (2) the goal of deterrence; (3) whether a respondent has previously been adjudged to have committed unlawful housing discrimination; (4) a respondent's financial resources; and (5) the degree a respondent's culpability. See, HUD v. Jerrard, 2 Fair Housing-Fair Lending (P-H) ¶25,005, 25,092 (HUD ALJ Sept. 28, 1990); HUD v. Blackwell, Fair Housing-Fair Lending ¶25,001, 25,014-15 (HUD ALJ Dec. 21, 1989), aff'd, 908 F.2d 864, 872-73 (11th Cir. 1990). Here, the PHRC Housing and Commercial Property Division attorney seeks a $750.00 civil penalty.

The nature and circumstances of Cordice's actions certainly merit a $750.00 civil penalty. The extent, character, and significance of volitional, sex-based indignities

perpetrated against Smith-Jennings amounts to a pattern designed to harass and intimidate Smith-Jennings. As such, the requested civil penalty should be awarded.

An appropriate order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THERESA SMITH-JENNINGS **Complainant**	:	**PHRC CASE NO. 200502949**
FRANCISCO CORDICE **Respondent**	:	

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Theresa Smith-Jennings suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the Pennsylvania Human Relations Commission. If so approved and adopted, I further recommend issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

July 31, 2007
Date

By: _____
Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THERESA SMITH-JENNINGS	:	
Complainant	:	
	:	**PHRC CASE NO. 200502949**
	:	
FRANCISCO CORDICE	:	
Respondent	:	

FINAL ORDER

AND NOW, this 27th day of August. 2007 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaints and hereby.

ORDERS

1. That Cordice shall cease and desist from: (a) making false reports about Smith-Jennings; (b) interfering with Smith-Jennings' quite, peaceful enjoyment of her home; (c) attempting to interfere with Smith-Jennings' fair housing rights; (d) and from making sex-based derogatory references to or about Smith-Jennings.
2. That Cordice shall pay Smith-Jennings the lump sum of $15,000.00, in compensatory damages for the embarrassment and humiliation she suffered.

3. That Cordice shall pay Smith-Jennings an additional $1,133.05 which amount represents expenses that Smith-Jennings incurred.

4. That, within thirty days of the effective date of this Order, Cordice shall deliver to PHRC Housing and Commercial Property Division Assistant Chief Counsel, Stephanie M. Chapman, a check payable to the Commonwealth of Pennsylvania in the amount of $750.00 which represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.

5. That, within thirty days of the effective date of this Order, Cordice shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Stephanie M. Chapman, Assistant Chief Counsel, PHRC Housing and Commercial Property Division, P.O. Box 3145, Harrisburg, PA 17101-2702

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____
Stephen A. Glassman
Chairperson

Attest:

_____
Daniel D. Yun
Secretary