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STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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August 17, 1999

Cecil H. Underwood
Governor

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

William Danby-Cobbina
5000 D Colonial Park Dr.
South Charleston, WV 25309

A & A Raines Auto Rentals, Inc.
2350 Pennsylvania Ave.
Charleston, WV 25302

Paul R. Sheridan
Sr. Asst. Attorney General
Civil Rights Division
PO Box 1789
Charleston, WV 25326-1789

Robert G. Wolpert, Esq.
Sovick & Wolpert
1117 Virginia St., East
Charleston, WV 25301

Re: William Danby-Cobbina v. A & A
Raines Auto Rentals, Inc.
Docket No. PARNO-182-96

Dear Parties and Counsel:

Enclosed please find the Final Order of the West Virginia Human Rights Commission in the above-styled case. Pursuant to W. Va. Code § 5-11-11, amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for review of this Final Order.

Sincerely,

IVIN B. LEE
EXECUTIVE DIRECTOR

IBL/jk
Enclosures

cc: The Honorable Ken Hechler
Secretary of State

Mary Catherine Buchmelter
Deputy Attorney General
Civil Rights Division

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this Order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this Order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal, you must file a petition for appeal with the Clerk of the West Virginia Supreme Court naming the West Virginia Human Rights Commission and the adverse party as respondents. The employer or the person or entity against whom a complaint was filed is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, person or entity against whom a complaint was filed. If the appeal is granted to a nonresident of this state, the nonresident may be required to file a bond with the clerk of the supreme court.

IN SOME CASES THE APPEAL MAY BE FILED IN THE CIRCUIT COURT OF KANAWHA COUNTY, but only in: (1) cases in which the Commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the Commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this Order.

For a more complete description of the appeal process see West Virginia Code § 5-11-11 and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM DANBY-COBBINA,

Complainant,

v.

DOCKET NO. PARNO-182-96

A & A RAINES AUTO RENTALS, INC.,

Respondent.

FINAL ORDER

On June 17, 1999, the West Virginia Human Rights Commission reviewed the Administrative Law Judge's Final Decision in the above-styled action issued by Administrative Law Judge Robert B. Wilson. After due consideration of the aforementioned, and after a thorough review of the transcript of record, arguments and briefs of counsel, and the petition for appeal and answer filed in response to the Administrative Law Judge's Final Decision, the Commission decided to, and does hereby, adopt said Administrative Law Judge's Final Decision as its own, without modification or amendment.

It is, therefore, the order of the Commission that the Administrative Law Judge's Final Decision be attached hereto and made a part of this Final Order.

By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of State of West Virginia, the parties are hereby notified that they may seek judicial review as outlined in the "Notice of Right to Appeal" attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission
this 17th day of August, 1999, in Charleston, Kanawha County, West Virginia.

A handwritten signature in cursive script, reading "Ivin B. Lee". The signature is written in dark ink and is positioned above a horizontal line.

IVIN B. LEE, EXECUTIVE DIRECTOR
WEST VIRGINIA HUMAN RIGHTS COMMISSION

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM DANBY-COBBINA,

Complainant,

v.

DOCKET NUMBER(S): PARNO-182-96

A & A RAINES AUTO RENTAL, INC.,

Respondent.

FINAL DECISION

A public hearing, in the above-captioned matter, was convened on November 5, 1998, in Kanawha County, in the West Virginia Human Rights Commission Conference Room B, at 1321 Plaza East, Charleston, West Virginia, before Robert B. Wilson, Administrative Law Judge.

The complainant, William Danby-Cobbina, appeared in person and by counsel for the Human Rights Commission, Paul R. Sheridan, Senior Assistant Attorney General, Civil Rights Division of the West Virginia Attorney General's Office. The respondent appeared in person by its representative, Kelvin Raines; as well as by counsel, Robert B. Wolpert with the firm of Sovik & Wolpert.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the administrative law judge and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings,

conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or necessary to a proper decision. To the extent that the testimony of the various witnesses is not in accord with the findings stated herein, it is not credited.

A.

FINDINGS OF FACT

1. Complainant, William Danby-Cobbina, was born in Sekondi, Ghana, West Africa in 1958 and migrated to Charleston, West Virginia in 1991 where he has lived and worked since that time. Tr. Pages 16-18.

2. Respondent, A & A Raines Auto Rental, is and was at all relevant times, a "person" and a "place of public accommodations", as those terms are defined under W. Va. Code §§ 5-11-3(a) and 5-11-3(j), respectively. The respondent was owned in part and operated by Lester Raines at the times relevant herein, in conjunction with a used car lot, renting or leasing approximately 2,000 vehicles to the public in 1995. Tr. Pages 60 and 62; Commission's Exhibit No. 2.

3. Complainant's family language was Fanti, although he learned English in school in Ghana. Complainant is Black and speaks English with a strong West African accent. Tr. Pages 17 and 20.

4. Complainant filed a timely complaint against the respondent alleging that he was denied rental of an automobile, and refused a ride back home after being picked up and taken to respondent's place of business, on the basis of his race and national origin. Complaint.

5. When confronted with witnesses who had been past customers of respondent who

were Black and had not been discriminated against by Lester Raines in the rental of automobiles; counsel for the Commission stipulated to the fact that these native born Americans of African descent had not been discriminated against by Lester Raines or respondent in the rental of their vehicles. Therefore, the undersigned finds as a matter of fact, that respondent did not discriminate against complainant on the basis of race. Tr. Pages 79-81.

6. Complainant testified credibly that he had put his van in the shop for repairs and had rented a Ford Taurus from Enterprise Rent-a-Car because he had to go to Columbus for the weekend. Enterprise had a policy requiring that the customer call the day before renting. When complainant returned from Columbus on the following Monday, the van had not been repaired. At that point complainant called Mr. Raines about renting a car for a couple of days and Mr. Raines sent a driver to pick him up at his home and bring him to their place of business. Tr. Pages 21 and 22.

7. Complainant was shown a 1987 Chevy Nova with a wreck on the side, Lester Raines then took his license and insurance card and asked how he was going to pay; he said credit card. Mr. Raines took his credit card also. Tr. Page 23.

8. Complainant testified as to what Mr. Raines said as follows: He asked me if it was O.K. to take my picture. Complainant asked if he meant you want to take my picture and Mr. Raines said "Yeah". He then snapped his picture. When Complainant asked him if he did this with anyone renting a car, Mr. Raines responded, "No, I'm doing this so that when you run away with my car, I give this picture to the police." Tr. Pages 23-24.

9. Complainant indicated to Mr. Raines that he had just turned in the 1994 Ford Taurus that he had taken to Columbus to Enterprise Rent-a-Car. Tr. Page 24.

10. Complainant told Mr. Raines that he had full coverage. He said he could call Enterprise to verify it and showed him the receipt. Complainant did not have a copy of his declaration page or insurance contract and only had the proof of insurance card. Tr. Pages 35-36.

11. Mr. Raines went out of the room and came back and said they had made a call. He came back with a boy at the counter (this was David Lee Monk, Jr.), and they came back and told him he had to deposit \$1,000.00 and that the car was \$12.00 per day. Complainant said the car is only \$12.00 per day, why should I pay a deposit of \$1,000.00? They indicated that his card didn't have \$1,000.00 on it. Complainant said, I know there's not \$1,000.00 in it because it is the same card I used in Columbus. I got some charges on it but it has enough to pay for this car, for that three day rental. Complainant testified credibly that Mr. Raines did not tell him about a \$500.00 deposit or offer to give him the rental for a \$400.00 deposit. Tr. Pages 25-26 and 37-38.

12. Mr. Raines said he required \$1,000.00 and complainant said he didn't have it. Complainant said I'm real surprised you took a picture and that's O.K. if that's your policy. He still said he wouldn't, so complainant said O.K. take me back. His wife was waiting for him at Town Center. Complainant said "take me back to the nearest place like the Town Center so that I can walk there quick and tell my wife that it didn't go through because she was still waiting."

13. Mr. Raines refused. The boy with the pony tail (Mr. Monk) got mad and asked the driver if he could run him down and back real fast and the driver told him that Mr. Raines says no. So he said well I'm going to call a cab and give him \$5.00 to take you to Town Center. Then Mr. Raines came out and said, "No. You're not calling no cab, no cab is taking you anywhere. He's got to go back all by himself." Tr. Page 28.

14. The complainant suffered emotional distress as he was required to walk back down

town from South Charleston and was very late meeting his wife. She was extremely worried by the delay and complainant was unable to go to the bank and go shopping as a result of the bank closing. He did not get back to meet his wife until 7:00 p.m. Complainant did not leave respondent's place of business until 5:15 p.m. or 5:30 p.m. Complainant was hurt by this incident, and it made him feel unimportant. Tr. Pages 29-31 and 40.

15. Complainant had a friend, who was a native born Black American male, attempt to rent a car from respondent. This friend, Jeffrey Mason, did not have full coverage insurance. A car was rented to Mr. Mason and his picture was not taken by respondent's agents. Tr. Pages 41-43.

16. Complainant testified in a non credible fashion that there was no argument between he and Lester Raines concerning his not being given a ride back downtown. Tr. Page 40.

17. Kelvin Raines testified credibly that he is an owner and the principal operator of respondent at this time; that Mr. Lester Raines is now deceased; and, that he was not personally involved in the transactions between complainant and Lester Raines, giving rise to the complaint. Tr. Pages 54-55.

18. Kelvin Raines testified credibly, that it is respondent's policy to provide free or minimal cost pick-up and delivery service to qualified customers. Respondent typically qualified customers over the phone; and the qualifications were that they were 21 years old, have a valid driver's license and that they have they do not have to have insurance, but that if they do not have full coverage that respondent's insurance has to cover it. Thus the cost is typically the \$1,000.00 deductible on respondent's insurance plus the estimated rental costs. Tr. Pages 63-64.

19. Respondent's policy was to verify full coverage on everyone and that if they come in

after hours or on weekends they assume there is no full coverage unless they are provided with the declarations page. Even then, since policies can be terminated, respondent likes to verify coverage with the agent. Tr. Page 70.

20. Respondent's agent Lester Raines did have discretion to let customer's get by with less than what was required and varied the required deposit on a case by case basis on a totally subjective basis. Tr. Pages 72-73.

21. Kelvin Raines was not present and cannot testify that complainant's picture was not taken; but has testified credibly that he is not aware of that ever being done, or that a camera was ever on the premises of respondent. Tr. Page 25.

22. David Lee Monk, Jr. was employed by respondent to run its rental business when Alice Raines wasn't in. Tr. Page 83.

23. His testimony is biased in that he testified that the case seemed pointless to him because Lester Raines is deceased. He testified that "I don't understand what your looking for besides money. It's a waste of my time. I'm losing \$200.00 today by being here." Further he testified that his memory was fuzzy due to the passage of time. Tr. Pages 92 and 97-98.

24. Nevertheless Mr. Monk's testimony is the only evidence regarding what transpired by an eyewitness to the transactions besides the complainant. Mr. Monk testified that he did not take the complainant's call that he thinks a lot man took it. He states that Mr. Raines spoke with complainant and that he initially asked for the standard deposit of \$500.00 and that complainant's card would not hold that amount at which point Mr. Raines asked for \$400.00 plus the cost of the rental and that the card would not hold that either. At this point complainant requested a ride home and Mr. Raines said he couldn't do that. Tr. Page 85.

25. Complainant's card would have held \$534.09 at the time. Commission's Exhibit No. 6 and supplemental to Commission's Exhibit No. 6 under cover letter dated November 24, 1998 admitted as Joint Exhibit No. 1. Tr. Page 135.

26. Mr. Monk denies that Mr. Raines took a picture of complainant. Tr. Pages 86-87.

27. Mr. Monk testified credibly, that there was an argument between the complainant and Lester Raines when Mr. Raines refused to give complainant a ride back downtown. Tr. Pages 95 and 96.

28. Alice Raines manages the rental department for respondent. Tr. Page 104. She testified credibly that she had never known there to be a camera at the respondent's place of business and that they did not use a camera to take pictures of people renting from them. Tr. Page 111.

29. Alice Raines testified credibly, that the primary consideration in whether to rent to a customer was whether they had adequate insurance coverage. She testified that the typical deposit amount for insurance would vary between a minimum of \$500.00 and a maximum of \$1,000.00. Tr. Pages 105, and 118-119.

30. Alice Raines testified credibly, that she had checked the records for Jeffrey Mason and that he had paid a \$220.00 deposit. He paid with American Express which provides insurance if a person rents a car, on all of its cards. Other charge cards did not have this feature unless they were a gold or platinum card. Tr. Pages 111-112.

31. The undersigned finds as a matter of fact that Lester Raines did not rent a vehicle to complainant because he was unable to charge either the \$1,000.00 or \$500.00 deposit plus his expected rental cost and milage on the card provided. Lester Raines did not attempt to verify full

insurance coverage through Enterprise Rent-a-Car and was unable to verify it through complainant's insurance agent because it was closed. The undersigned further finds as fact that Lester Raines made no offer to rent to complainant for the \$400.00 insurance deposit testified to by Mr. Monk.

B.

DISCUSSION

As an initial matter, the undersigned must determine whether to consider testimony of the complainant regarding his transactions with the deceased, Lester Raines, or whether such testimony is not to be considered under the Dead Man's Statute at W.Va. Code §57-3-1. This statute excludes testimony of a party in interest regarding transactions and communications with the deceased against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee or survivor of the deceased. As noted by the Court in Miami Coal Co. V. Hudson, 332 S.E.2d 114 (W.Va. 1985), the purpose of this rule is to limit matters involving a transaction with or statement by the deceased; such matters it is assumed, are of a nature that the deceased would contradict them if he were alive; and, it is thought that to admit evidence which the estate may not be able to rebut will result in injustice. In the case of Meadows v. Meadows, 468 S.E.2d 329 (W.Va. 1996), the Supreme Court held that the Dead Man's Statute does not prohibit unilateral observations by the witness regarding appearance and demeanor of the deceased. Keeping in mind the Court's admonition that the exception should not be construed to include a narrative of observed facts, including those derived from the impressions or information from the deceased's conduct, condition or language; nevertheless, Meadows does not in any way authorize testimony of an agreement between the plaintiff and the deceased. See footnote 9. Thus the testimony

cited in the findings of fact will be considered in light of these considerations.

In order to make a prima facie case of discrimination in a place of public accommodation, the complainant must prove the following elements:

(A) that the complainant is a member of a protected class;

(B) that the complainant attempted to avail himself of the "accommodations, advantages, privileges or services" of a place of public accommodation; and,

(C) that the "accommodations, advantages, privileges or services" were withheld, denied or refused to the complainant. K-Mart Corporation v. Human Rights Commission, 383 S.E.2d 277, syllabus pt. 1 (W.Va. 1989).

The complainant's prima facie case can be rebutted if the respondent presents a nondiscriminatory reason for the action in question sufficient to overcome the inference of discriminatory intent. K-Mart Corporation v. Human Rights Commission, 383 S.E.2d 277, syllabus pt. 2 (W.Va. 1989).

The complainant may still prevail if it can be shown that the reason given by the respondent is merely pretext for a discriminatory motive. K-Mart Corporation v. Human Rights Commission, 383 S.E.2d 277, syllabus pt. 3 (W.Va. 1989).

The Commission has clearly established a prima facie case of public accommodation discrimination on the basis of race and national origin in that complainant is a member of a protected race, black, and national origin, Ghanain; complainant attempted to rent a vehicle from respondent, a place of public accommodations; and he was denied the rental of that vehicle. Nevertheless, respondent has established that it had a legitimate non discriminatory reason for failing to rent the vehicle to complainant. It is clear that the complainant arrived at respondent's

place of business at a time when the respondent's primary owner and operator was unable to verify that complainant had full coverage insurance as it was after five p.m. and he provided only his proof of insurance without the declarations page. It is also likely that even if respondent had offered to rent the vehicle with a \$500.00 deposit plus three days cost and tax, as the respondent would sometimes do in Mr. Raines subjective discretion, complainant's credit card would not hold that limit, either. It is equally clear that Mr. Raines never offered to rent complainant the vehicle for a \$400.00 deposit as testified to by Mr. Monk. The respondent has, nevertheless, articulated a nondiscriminatory reason for its decision not to rent a vehicle to the complainant.

Thus the undersigned must determine whether race and national origin played a substantial role in the decision of Mr. Raines not to rent a vehicle to the complainant. In making this determination the undersigned finds as fact that Mr. Raines did require that complainant post a \$1,000.00 deposit as he was unable to verify full coverage for the complainant; that Mr. Raines then exercised his discretion to see if he would meet the \$500.00 plus rental cost and tax, and that complainant's card would not hold that amount either. This conclusion is based on the evidence that those were the ranges that respondent would typically charge the deposit within and that Mr. Monk probably has correctly remembered running the credit card at two different amounts for complainant, but incorrectly assumed that the first amount was \$500.00 and the subsequent amount was for \$400.00. The undersigned also finds as fact that Mr. Raines did not tell the complainant that he would rent the vehicle to him for the lesser \$500.00 plus rental cost and tax, for which he had Mr. Monk run complainant's credit card. Next the undersigned must make a credibility determination regarding the complainant's only circumstantial evidence from which a discriminatory motive may be inferred on the part of Mr. Raines. That is the purported fact, that

Mr. Raines took his picture and made comments regarding the use of that picture at the time he initially showed up to rent the vehicle. In evaluating complainant's testimony in this regard, the undersigned finds that complainant's perspective is perhaps clouded by his anger toward the respondent. He has quite clearly testified that no argument occurred between he and Mr. Raines after he was denied the rental; when in fact the undersigned is clearly convinced such an argument did take place. Even if Mr Raines took his picture and made comments attributed to him it is clear that he would still have rented a vehicle to complainant had he been able to meet the deductible or to verify the full coverage insurance for complainant. The undersigned is convinced that the preponderance of the evidence demonstrates that Mr. Raines became frustrated that he was unable to verify the full coverage insurance for complainant and unable to run his credit card for either the \$1,000.00 or \$500.00 deposit, plus rental cost and tax; and that an argument ensued regarding his unwillingness to rent the vehicle to complainant under those circumstances.

The complainant was justifiably upset that respondent would not rent the vehicle since he had just returned the Ford Taurus to Enterprise and had the receipt to show they had rented him the vehicle with the same proof of insurance. The respondent's failure to offer to return him downtown following this transaction under the circumstances is outrageously shabby treatment. Respondent's failure to provide this basic courtesy to their potential customer after they had brought him down to their place of business simply cannot be justified. Nevertheless, the preponderance of the evidence convinces the undersigned that the decision to deny a ride to complainant resulted from his having gotten into an argument with Mr. Raines over his refusal to rent the vehicle; and perhaps with the lateness in the day when he felt he needed his staff to work

on other tasks, and had no basis in the race and national origin of complainant. Nevertheless, if one were to credit that Mr. Raines not only took complainant's picture as testified to by complainant and considered by the undersigned; but, that he also made the comments he is alleged to have made at the time, which the undersigned is excluding from consideration under the Dead Mans Statute, than the question whether the same treatment regarding the failure to give complainant a ride back following the refusal to rent the vehicle would have resulted, is very close and problematic. Were the undersigned to have considered and credited the testimony of complainant regarding his conversation with the deceased part owner and operator of respondent at the time Lester Raines took complainant's picture, the undersigned would conclude that Lester Raines discriminated against the complainant on the basis of race and national origin in refusing to offer the complainant transportation back downtown following his refusal to rent the vehicle to the complainant.

C.

CONCLUSIONS OF LAW

1. The complainant, William Danby-Cobbina, is an individual aggrieved by an unlawful discriminatory practice, and is a proper complainant under the West Virginia Human Rights Act, W. Va. Code §5-11-10.
2. The respondent, A & a Auto Rental, was a person and a place of public accommodations as defined by W. Va. Code §5-11-1 et seq., and is subject to the provisions of the West Virginia Human Rights Act.
3. The complaint in this matter was properly and timely filed in accordance with W. Va. Code §5-11-10.

4. The West Virginia Human Rights Commission has proper jurisdiction over the parties and the subject matter of this section pursuant to W. Va. Code §5-11-9 et seq.

5. The complainant has established a prima facie case of race and national origin discrimination, in that he attempted to rent a vehicle from the respondent. The respondent has articulated a legitimate non discriminatory motive for the respondent's action, that the complainant was unable to provide adequate proof of ability to pay the insurance deductible and cost of renting the vehicle and that his full coverage insurance could not be verified at the time he attempted to rent the vehicle; which the complainant, by a preponderance of the evidence has not proven to be pretext for discrimination based upon the national origin and race of complainant as alleged.

6. As the Commission has failed to prove by a preponderance of the evidence that national origin and race of the complainant were a motivating factor in the denial of services to complainant, the complaint in this matter must be dismissed.

D.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby **ORDERED** that this case be dismissed with prejudice and be closed.

It is so **ORDERED**.

Entered this 11th day of February, 1999.

WV HUMAN RIGHTS COMMISSION

BY: *Robert B. Wilson*
ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM DANBY-COBBINA,

Complainant,

v.

Docket Number: PARNO-186-96

A & A RAINES AUTO RENTAL,
INC.,

Respondent,

ADDENDUM TO FINAL DECISION

The Final Decision in the above-captioned matter incorrectly refers to the owner and operator of respondent at the time of the alleged act of discrimination, Lewis Raines, as Lester Raines. The Final Decision is hereby amended to read "Lewis" in place of "Lester" in findings of facts No. 2 at page 2; No. 5 and No. 7 at page 3; No. 17 at page 5; No. 20 and No. 23 at page 6; No. 27 at page 7; No. 31 at pages 7 and 8; and in the discussion at page 8 and page 12.

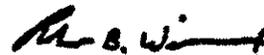
Also, finding of fact No. 14 at page 5 should read "Charleston" instead of "South Charleston" as the respondent's place of business is located at 2350 Pennsylvania Avenue, Charleston, West Virginia.

It is so ORDERED.

Entered this 19th day of February, 1999.

WV HUMAN RIGHTS COMMISSION

BY



ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE