



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**1321 Plaza East  
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Charleston, WV 25301-1400**

**Joe Manchin III  
Governor**

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**VIA CERTIFIED MAIL-  
RETURN RECEIPT REQUESTED**

April 28, 2004<sup>5</sup>

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Nelson D. Cary, Esq.  
Jonathan M. Norman, Esq.  
Vorys, Sater, Seymour and Pease, LLP  
52 East Gay St.  
Columbus, OH 43216-1008

Re: Hapney v. Parkersburg Bedding, LLC  
EAD-482-02

Dear Parties:

Enclosed please find the Order/Decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective January 1, 1999, sets forth the appeal procedure governing a final decision as follows:

**April 28, 2004**

**Page 2**

“§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge’s final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the administrative law judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant’s petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant’s statement of the case or errors of law in the appellant’s argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before an administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before an administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the administrative law judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge’s decision is:

10.8.a. In conformity with the Constitution and laws of the state and the United States;

April 28, 2004

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10.8.b. Within the commission's statutory jurisdiction or authority;

10.8.c. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

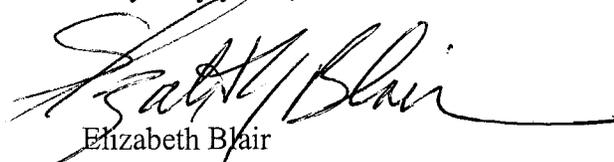
10.8.d. Supported by substantial evidence on the whole record; or

10.8.e. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact Ivin B. Lee, Executive Director of the commission at the above address.

Very truly yours,



Elizabeth Blair  
Administrative Law Judge

EB/mst

Enclosure

cc: Ivin B. Lee, Executive Director  
Charlene Marshall, Chairperson

**BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**HELEN M. HAPNEY,**

**Complainant,**

v.

**Docket Number: EAD-482-02**

**EEOC Number: 17JA200310**

**PARKERSBURG BEDDING, LLC,**

**Respondent.**

**ORDER**

This matter comes before the West Virginia Human Rights Commission on Respondent Parkersburg Bedding, LLC's Motion for Summary Judgment. This matter has been fully briefed by Respondent, Complainant, and the Attorney General on behalf of the Commission. The merits of the motion were argued before the undersigned, on the record by Rebecca Baker, Certified Court Reporter, on November 19, 2004 at the office of the West Virginia Human Rights Commission, Charleston, West Virginia. The transcript was filed with the Commission on December 16, 2004.

Based upon the evidence and arguments submitted by the parties and pursuant to Rule 7.13.a, of the Rules and Regulations of Before the West Virginia Human Rights Commission, the undersigned makes the following findings of fact, discussion/conclusions of law and order.

**I.**

**FINDINGS OF FACT**

1. Complainant Helen Marie Hapney alleges that in her Amended Complaint filed with the Commission in December 2002, Respondent Parkersburg Bedding discriminated against her in violation of the Human Rights Act. Specifically, Complainant challenges

Respondent's failure to return her to work as a janitor in November 2001, alleging that she was discriminated against due to her **disability, age and sex.**

2. Complainant's employment is governed by a collective bargaining agreement between Respondent and Complainant's union. Article 11 of that Agreement prohibits discrimination based upon, *inter alia*, age, sex, and disability in violation of federal, state, and local laws.

3. In addition to her Complaint filed with the Commission, Complainant submitted a grievance under the collective bargaining agreement alleging that Respondent, in discriminating against her in violation of law, breached Article 11 of the collective bargaining agreement.

4. On May 13 and 14, 2003, Complainant voluntarily proceeded with her grievance before Arbitrator Michael Zobrak, an experienced labor arbitrator on the Panel of the American Arbitration Association, selected by the parties.<sup>1</sup> Complainant and her counsel also agreed that Arbitrator Zobrak could apply public law principles to her claims in the labor arbitration process.

5. Arbitrator Zobrak conducted a two-day hearing addressing the same issues identified in Complainant's Amended Complaint: whether Respondent unlawfully failed to return Complainant to work as a janitor in November 2001, discriminating against her because of her disability, age and sex? During the arbitration hearing, Complainant was ably represented by counsel – the same counsel as represents her before the Commission in the instant matter. Both parties presented substantial evidence on, among other points, the essential functions of the janitor position and possible reasonable accommodations for Complainant. However, Complainant failed to present any testimony or evidence illustrating that age or sex was a factor.

<sup>2</sup> In his decision Arbitrator Zobrak expressly applied the West Virginia Human Rights Act and

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<sup>1</sup> Tr. p.6 Human Rights Commission Proceedings Held November 19, 2005.

<sup>2</sup> Tr. p. 22, Volume 2, page 56.

the Americans with Disabilities Act and determined that Respondent had not unlawfully discriminated against Complainant. Accordingly, Complainant's grievance was denied.

6. As part of its Motion for Summary Judgment, Respondent submitted Arbitrator Zobrak's decision along with a full transcript of the hearing, including exhibits.

## II.

### DISCUSSION/CONCLUSIONS OF LAW

1. Respondent's Motion is framed as a "Motion for Summary Judgment." The Attorney General and Charging Party correctly note that the Commission's Rules do not explicitly provide for summary judgment in the same manner as do the Rules of Civil Procedure. The parties' briefs argued extensively as to whether summary judgment should be available before the Commission. However, the existing Commission Rules provide sufficient authority to decide Respondent's Motion without reliance upon Rule 56 of the Rules of Civil Procedure. Accordingly, the undersigned need not decide whether summary judgment is available to either party in a Commission proceeding before an administrative law judge.

2. Rule 7.13. of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission gives an administrative law judge "full authority and discretion to control the procedure of the hearing." Moreover, "on any question which would be determinative of the jurisdiction of the Commission, or might otherwise result in the dismissal of the complaint, the administrative law judge may issue a final decision on the merits accompanied by findings of fact and conclusions of law, either before or after the taking of testimony."<sup>3</sup> Thus, an administrative law judge is clearly authorized to issue a final decision on the merits

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<sup>3</sup> See Rule 7.13.a.

dismissing a complaint before an evidentiary hearing is held. Therefore, Respondent's Motion shall be considered a "Motion to Dismiss" the complaint pursuant to Rule 7.13.a.

3. Respondent's primary argument is that Arbitrator Zobrak's ruling on Complainant's discrimination grievance should be given issue preclusion effect. Thus, argues Respondent, Complainant should not be allowed to relitigate her claims before the Commission.

4. Under West Virginia law, the decision of a non-judicial body, such as a labor arbitration proceeding, may bind a party to the results of that proceeding under the doctrine of *res judicata*.<sup>4</sup> Three factors must be considered to determine whether the arbitrator's decision should be given preclusive effect: (1) whether the parties were afforded a full and fair opportunity to litigate the matters in dispute; (2) whether applying preclusive effect is consistent with the express or implied policy which created the body; and (3) whether the body acted in a judicial capacity.<sup>5</sup>

5. The record from Complainant's labor arbitration proceeding is extensive. There were dozens of exhibits submitted, and nearly twenty witnesses testified before the arbitrator. Complainant testified at length in support of her own case and had an opportunity, through counsel, to cross-examine each of Respondent's witnesses. Complainant has not contended that her opportunity to fully litigate her discrimination claims was limited in any way. Accordingly, the undersigned finds that the first factor has been met.

6. Turning to the second factor, the application of preclusive effect to the labor arbitration decision is consistent with the policy which led to the creation of arbitration. Complainant's union negotiated the binding arbitration procedure whereby she could challenge

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<sup>4</sup> Mellon-Stuart v. Hall, 178 W. Va. 291, 299-300 (1987).

<sup>5</sup> Id. at 300.

any action of Respondent that allegedly violated the collective bargaining agreement. The determinations of the arbitrator are final and binding. Complainant voluntarily initiated the submission of her claims to arbitration and contended that Respondent violated the anti-discrimination article of the collective bargaining agreement by discriminating against her. Through counsel, she further agreed that Arbitrator Zobrak could utilize public law in deciding her claim. The arbitrator determined that no discrimination had occurred. It is consistent with the policies behind labor arbitration and discrimination law that the arbitrator's decision be given preclusive effect.<sup>6</sup> Furthermore, if the arbitrator had found in Complainant's favor, Respondent would have been bound to that result, which could have included an award of backpay.

7. Moreover, deferral to decision of a labor arbitrator is commonplace under federal law. The National Labor Relations Board routinely defers to the decision of arbitrators in cases of discrimination arising under the National Labor Relations Act.<sup>7</sup> Federal discrimination claims may be submitted to binding arbitration.<sup>8</sup> Accordingly, the undersigned concludes that the second of the Mellon-Stuart factors is met in this case.

8. Finally, the arbitrator acted in a judicial capacity when he rejected Complainant's discrimination allegations. The procedure for conducting hearings employed by the arbitrator is comparable to those employed by the Commission. Arbitrator Zobrak took sworn testimony of 17 witnesses; producing over 500 pages of transcript testimony; ruled upon evidentiary issues; admitted 56 exhibits; allowed post-hearing briefs; and issued a written decision explaining the

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<sup>6</sup> See Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 28-29 (1991) (holding that a statutory age discrimination claim may be subject of a mandatory arbitration agreement); Adkins v. Labor Ready, Inc., 185 F. Supp. 2d 628 (S.D.W. Va. 2001) (granting request to compel arbitration of federal and state wage and hour claims).

<sup>7</sup> See, e.g., Spielberg Mfg. Co., 112 N.L.R.B. 1080 (1955).

<sup>8</sup> See 42 U.S.C. § 2000e Note (encouraging the use of alternative means of dispute resolution, including arbitration, to resolve claims under federal discrimination laws); Gilmer, 500 U.S. at 28-29.

basis for his decision.<sup>9</sup> Furthermore, the arbitrator, with the agreement of both parties, expressly relied upon and applied the law of West Virginia and federal law to analyze Complainant's case. The manner in which the arbitrator resolved Complainant's allegations of discrimination, both procedurally and substantively, was substantially similar, if not identical, to the manner in which the undersigned would have resolved the contested issues in this case.

9. It is also noteworthy that neither the Complainant nor the Attorney General has suggested that the procedures employed by Arbitrator Zobrak were deficient. Nor have they alleged any error in his analysis of the Human Rights Act given the evidence presented.<sup>10</sup> No party has identified any evidence that would be presented at a hearing the undersigned would conduct, that was not presented to the arbitrator. Nor is there any suggestion that the ultimate result would differ in any way if Complainant's discrimination claims were to be relitigated before the Commission. Therefore, the undersigned concludes that the third of the above discussed factors is also met.

10. West Virginia law "recognize(s) that res judicata serves to advance several related policy goals--(1) to promote fairness by preventing vexatious litigation; (2) to conserve judicial resources; (3) to prevent inconsistent decisions; and (4) to promote finality by bringing litigation to an end."<sup>11</sup>

11. Under West Virginia law, preclusive effect is given to a decision that (1) is a final adjudication on the merits; (2) involves the same parties or persons in privity with them; and (3) involves the same causes of action identified for resolution, which must be identical or it must be

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<sup>9</sup> Tr. p.5, Human Rights Commission Proceedings held November 19, 2005.

<sup>10</sup> Tr. p. 6, Human Rights Commission Proceedings held November 19, 2005.

<sup>11</sup> E.g., Pitsenbarger v. Gainer, 175 W.Va. 31, 330 S.E.2d 840 (1985); Conley v. Spiller, 171 W.Va. 584, 301 S.E.2d 216 (1983), Mellon-Stuart v. Hall, 178 W.Va. 291, 298-29900 (1987).

such that it could have been resolved in the prior action.<sup>12</sup> Arbitrator Zobrak's decision meets each of these requirements and should be granted preclusive effect so as to bar Complainant's reassertion of the same claims before the Commission.

12. Complainant and the Attorney General prominently rely upon Vest v. Board of Education of Nicholas County.<sup>13</sup> This reliance is misplaced. Vest comes from a line of cases predating the United States Supreme Court's decision in Gilmer that has been recognized as abrogated in light of Gilmer.<sup>14</sup> Moreover, Vest is factually distinguishable as the arbitration decision in that case involved the application of different legal standards.<sup>15</sup> In the present case, the arbitrator expressly applied the Human Rights Act.

13. Therefore, for the reasons discussed above, Complainant's claims under the Human Rights Act are barred by the doctrine of *res judicata* and she is precluded from reasserting them before the Commission.

### III.

#### ORDER

Accordingly, Respondent's motion pursuant to Rule 7.13 is **GRANTED**. Complainant's Complaint and the companion charge pending before the Equal Employment Opportunity

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<sup>12</sup> Slider v. State Farm Automobile Insurance Co., 210 W. Va. 476, 480 (2001).

<sup>13</sup> 193 W. Va. 222 (1995).

<sup>14</sup> See Adkins, 185 F. Supp. 2d at 642-43 & n.13.

<sup>15</sup> See also Board of Educ. of the County of Tyler v. White, 216 W. Va. 242, 605 S.E. 2d 814, 818 (2004). (explaining how legal standards varied).

Commission are hereby **DISMISSED with prejudice and CLOSED** before the West Virginia Human Rights Commission in their entirety.

Finally, in addition to the parties' appeal rights to the Commission, pursuant to the West Virginia Human Rights Act §5-11-13 (b), the complainant shall be given a Notice of Right to Sue in circuit court.

**It is so ORDERED.**

Entered this 28<sup>th</sup> day of April 2005.

**WV HUMAN RIGHTS COMMISSION**



**ELIZABETH BLAIR  
ADMINISTRATIVE LAW JUDGE  
Rm. 108A, 1321 Plaza East  
Charleston, WV 25301-1400  
Ph: 304/558-2616 Fax: 558-0085**

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HELEN M. HAPNEY,

Complainant,

v.

Docket Number: EAD-482-02

EEOC Number: 17JA200310

PARKERSBURG BEDDING,  
LLC.,

Respondent.

CERTIFICATE OF SERVICE

I, Elizabeth Blair, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing **ORDER** by depositing a true copy via certified mail-return receipt requested, thereof in the U.S. Mail, postage prepaid this 28<sup>th</sup> day of April 2005 to the following:

Brian J. Moore, Esq.  
**Jackson Kelly, PLLC**  
PO Box 553  
Charleston, WV 25322

Helen Hapney  
PO Box 217  
Coolville, OH 45723

Nelson D. Cary, Esq.  
Jonathan M. Norman, Esq.  
**Vorys, Sater, Seymour and Pease, LLP**  
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Paul R. Sheridan  
Deputy Attorney General  
Civil Rights Division  
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Charleston, WV 25326-1789

Walt Auvil, Esq.  
1208 Market St.  
Parkersburg, WV 26101



ELIZABETH BLAIR  
ADMINISTRATIVE LAW JUDGE



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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**Joe Manchin III  
Governor**

**Certified Mail-  
Return Receipt Requested**

April 28, 2005

Helen Hapney  
c/o Walt Auvil, Esq.  
1208 Market St.  
Parkersburg, WV 26101

Re: Hapney v. Parkersburg Bedding, LLC  
EAD-482-02

Dear Mr. Auvil:

Pursuant to my order entered today in the above-referenced matter, please find the Notice of Right to Sue for your client, Helen Hapney.

Very truly yours,

  
Elizabeth Blair  
Administrative Law Judge

EB/mst

cc: Helen Hapney  
Nelson J. Cary, Esq.  
Johnathan Norman, Esq.  
Brian J. Moore, Esq.  
Paul R. Sheridan, Esq.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HELEN M. HAPNEY,

Complainant,

v.

Docket Number: EAD-482-02  
EEOC Number: 17JA200310  
Docketing Date:

PARKERSBURG BEDDING,  
LLC.,

Respondent.

NOTICE OF RIGHT TO SUE

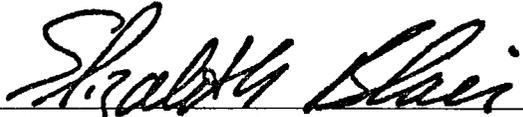
This is your **NOTICE OF RIGHT TO SUE**. It is issued pursuant to the requirements of West Virginia Code §5-11-13(b), as amended. If you intend to sue the Respondent(s) named in your charge, you will have ninety (90) days from the mailing date (postmark) of the Notice, **or until the statute of limitations on the claim has expired.**

If you intend to sue the Respondent(s) named in your charge, you must file your action in the circuit court which has jurisdiction in the county wherein the Respondent(s) resides or transacts business. It will be necessary for you to obtain an attorney if you intend to sue in circuit court. **The Commission will not provide or recommend an attorney for you.** If you do not have an attorney or if you cannot afford one, you should contact the West Virginia State Bar, Lawyer Referral Service, Capitol Complex, Charleston, West Virginia 25305, telephone number: (304) 558-7991.

If you have any questions about your rights under this **Notice**, please contact George Bearfield, Director of Compliance and Enforcement, West Virginia Human Rights Commission, Room 108A, 1321 Plaza East, Charleston, West Virginia 25301-1400, telephone: 304/558-2616, facsimile: 558-0085.

Entered this 28<sup>th</sup> day of April, 2005.

WV HUMAN RIGHTS COMMISSION



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ELIZABETH BLAIR  
ADMINISTRATIVE LAW JUDGE  
Rm 108A, 1321 Plaza East  
Charleston, WV 25301-1400  
Ph: 304/558-2616 Fax: 558-0085

**THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**Helen M. Hapney**

**Complainant,**

**v.**

**Docket Number: EAD-482-02**

**EEOC Number: 17JA200310**

**Parkersburg Bedding, LLC,**

**Respondent,**

**ORDER OF REMAND**

On December 8, 2005, the Commissioners of the West Virginia Human Rights Commission (hereinafter designated "Commission"), undertook review of the case of *Hapney v. Parkersburg Bedding et al.*, docket number EAD-482-02 pursuant to the appeal by Jonathan Mathews, Assistant Attorney General for Civil Rights and by Helen M. Hapney, complainant in this case, (hereinafter designated "Complainant"). The order in this current case (hereinafter, "Order") had been written by Administrative Law Judge Elizabeth Blair (hereinafter, "Administrative Law Judge") and the Order was dated April 28, 2005. After due consideration of the aforementioned Order, and after a thorough review of the applicable law related to hearing procedures W. Va. Code St. R. §77-8-13

(2000), the Commission remands this case to the Chief Administrative Law Judge of the Commission for further proceedings—specifically a public hearing.

A motion for dismissal of the complaint, in the present case, was filed by Respondent Parkersburg Bedding. The motion was fashioned as a motion for “Summary Judgment.” The Administrative Law Judge held a hearing on the motion. Following arguments by both the Respondent’s and the Complainant’s attorneys, the Administrative Law Judge granted the motion of the Respondent and dismissed the complaint in this case. Consequently, no evidence on the merits of the case was received nor made a part of the record in this case.

West Virginia case law instructs that the Commission has a mandatory duty to initiate a hearing in cases involving allegations of unlawful discriminatory practices. *Allen v. West Virginia Human Rights Commission*, 174 W.Va. 139, 324 S.E.2<sup>nd</sup> 99, 54 Fair Empl. Prac. Cas. (BNA) 2 (1984). Indeed, the Commission is required by law to hold a hearing in any case in which “probable cause” has been established. *Curry v. West Virginia Human Rights Commission*, 166 W.Va. 163, 273 S.E.2<sup>nd</sup> 77, 54 Fair Empl. Prac. Cas. (BNA) 28, 25 Empl. Prac. Dec. P 31,651 (1980). No grounds exist which could allow this case to be dismissed without a public hearing. Thus, a full evidentiary public hearing must be held in this case.

The parties in this case, the Respondent and the Complainant, were also parties in controversy in a labor arbitration held on May 13 and 14, 2003, before Arbitrator Michael Zobrak, an experienced labor arbitrator on the Panel of the American Arbitration Association. The arbitration was the result of a grievance brought by the Complainant

against the Respondent pursuant to the collective bargaining agreement (hereinafter known as “Agreement”) between the Respondent and certain classified employees of the Respondent. The issue in the arbitration was whether the Respondent had unlawfully discriminated against the Complainant in failing to re-hire the Complainant as janitor at the Respondent’s place of business. The Complainant alleged discrimination based on her age, sex and her disability. Discrimination on the basis of sex, age and disability was a violation of Article 11 of the Agreement. The Administrative Law Judge concluded that the Complainant sought, in the current action, to re-litigate the same issues as had been litigated at the hearing in front of Arbitrator Zobrak. Accordingly, the Administrative Law Judge dismissed the current action because such re-litigation of the same issues between these two parties was barred by the legal doctrine of *res judicata*.

The legal doctrine of *res judicata* prevents the re-litigation of the same issues between the same parties. Black’s Law Dictionary 1174 (5<sup>th</sup> ed. 1979). West Virginia law requires an assessment of three factors when considering *res judicata*. Consideration must be given to 1.) whether the body that previously acted on the issues between the parties acted in a “judicial capacity;” 2.) whether the parties were afforded a “full and fair opportunity to litigate the matters in dispute” at the prior determination; and 3.) whether applying the doctrine is “consistent with the express or implied policy in the legislation which created the body” that heard the prior determination. *Mellon-Stuart Company et al. v. West Virginia Board of Regents*, 178 W.Va. 291, 359 S.E.2<sup>nd</sup> 124 (1987).

Whereas, the Administrative Law Judge in the Order noted that she felt the issues between the two parties in the current case were identical to the issues between the

parties in the arbitration, Jonathan Mathews contended, in his brief in support of the appeal, that the issues between these two parties are not the same.

Additionally, Jonathan Mathews alleges, in his brief, that not only are the issues different, but the procedures of the Commission and the procedures employed in labor arbitrations, like that which Arbitrator Zobrak conducted, are different. The Matthews brief notes the three-prong test required by West Virginia law when considering the legal doctrine of *res judicata*. In cases involving *res judicata*, consideration must be given to 1.) whether the body that previously acted on the issues between the parties acted in a “judicial capacity;” 2.) whether the parties were afforded a “full and fair opportunity to litigate the matters in dispute” at the prior determination; and 3.) whether applying the doctrine is “consistent with the express or implied policy in the legislation which created the body” that heard the prior determination. *Mellon-Stuart Company et al. v. West Virginia Board of Regents*, 178 W.Va. 291, 359 S.E.2<sup>nd</sup> 124 (1987). The Mathews brief alleges that differences between the procedures of the Commission and labor arbitrations like the arbitration conducted by Arbitrator Zobrak exist in the form of: 1.) remedies; 2.) underlying policies; and 3.) litigation tools. These differences, according to the Mathews brief prevent the legal doctrine of *res judicata* from being applied to this case, because, in words of the Mathews brief “the quick and dirty process” of the arbitration procedure denied the Complainant “vital litigation tools” to present her case. On this point, the Mathews brief relies on the holding in the *Vest* case. *Barbara L. Vest v. Board of Education of the County of Nicholas*, 193 W.Va. 222, 455 S.E.2d 781, 68 Fair Empl. Prac. Cas. (BNA) 1763, 98 Ed. Law Rep. 1094.

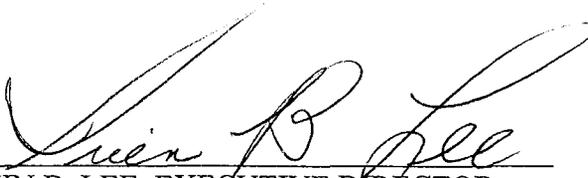
The Administrative Law Judge alleges the West Virginia law regarding preclusion because of the legal doctrine of *res judicata* has been since 1991 has been ruled by the United States Supreme Court decision in the *Gilmer* case. *Gilmer v. Interstate/Johnson Lane Corp*, 500 U.S. 20, 111 S.Ct. 1647, 56 Empl. Prac. Dec. p 40,704, 59 USLW 4407, 55 Fair Empl. Prac. Cas. (BNA) 1116, 114L.Ed.2<sup>nd</sup> 26 (1991). The Administrative Law Judge notes West Virginia has proposed a different conclusion under the law on this point. *Vest v. Board of Education* 193 W.Va at 228, 455 S.E.2d at 788. However, the Administrative Law Judge argues that the *Vest* case had been abrogated by the earlier federal court case of *Gilmer*. The Commission needs not decide these issues at the current time. These are issues that are best resolved at the full fact-finding public hearing to be held in this case.

Accordingly, it is ORDERED that this case be REMANDED for a full evidentiary hearing.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 2 day of Feb, 2006, in Charleston, Kanawha County, West Virginia.



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

**BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**HELEN M. HAPNEY,**

**Complainant,**

v.

**Docket Number: EAD-482-02**  
**EEOC Number: 17JA200310**

**PARKERSBURG BEDDING,  
LLC.,**

**Respondent.**

**CERTIFICATE OF SERVICE**

I, Ivin B. Lee, Executive Director, for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing **ORDER OF REMAND** by depositing a true copy via certified mail-return receipt requested, thereof in the U.S. Mail, postage prepaid this 2<sup>nd</sup> day of February 2006 to the following:

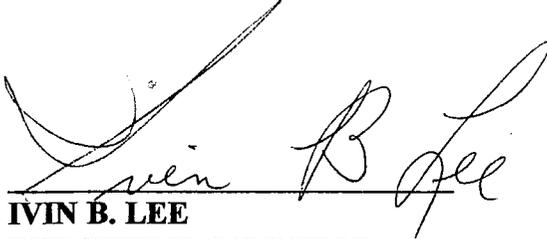
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**IVIN B. LEE**  
**EXECUTIVE DIRECTOR**