



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

November 13, 1985

Ivan D. Richardson
201 Monroe Street, Apt. 4
South Charleston, WV 25303

Bruce Walker, Esquire
Assistant Attorney General
1204 Kanawha Boulevard, E.
Charleston, WV 25301

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Calwell, McCormick & Peyton
P.O. Box 715
Nitro, WV 25143

RE: Ivan Douglas Richardson V Studio West
Docket No.: ER-481-83

Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Ivan Douglas Richardson V Studio West/Docket No.: ER-481-83.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

order book

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

IVAN DOUGLAS RICHARDSON
COMPLAINANT,

V.

DOCKET NO.: ER-481-83

STUDIO WEST
RESPONDENT.

ORDER

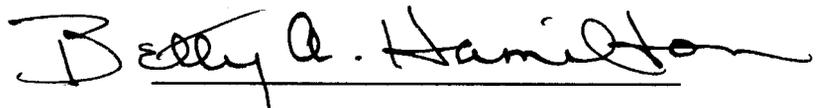
On the 9th day of October, 1985, the Commission reviewed Hearing Examiner, Marjorie Martorella's, Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE RIGHT TO JUDICIAL REVIEW.

Entered this 28 day of October, 1985.

RESPECTFULLY SUBMITTED,



CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

*Approved
Aug. 6, 1985
SRH*

RECEIVED
AUG 09 1985

ADM.
CLERK

WEST VIRGINIA SUPREME COURT OF APPEALS
WEST VIRGINIA HUMAN RIGHTS COMMISSION **RECEIVED**

IVAN DOUGLAS RICHARDSON,
Complainant

AUG 8 1985
W.V. HUMAN RIGHTS COMM.
[Signature]

v.

DOCKET NO. ER-481-831

STUDIO WEST,
Respondent.

FINAL DECISION

This matter was heard on June 7, 1985 pursuant to a notice dated March 8, 1985. The complainant, Ivan Douglas Richardson, appeared in person and by his counsel, Bruce Walker, Assistant Attorney General, and the respondent, Earl F. Canterbury appeared in person and by his counsel, Jerry McCormick. Each party testified in his own behalf and no other witnesses were called.

The issue presented by the complaint is whether the race of the charging party and or the fact of his association by marriage with a caucasian female was the basis for his discharge by the respondent.

The party stipulated to the following facts:

1. That the complainant, Ivan Douglas Richardson, is a member of a protected class in that he is black.
2. That Studio West and/or Earl Canterbury, Owner, is an employer within the meaning of the Human Rights Statutes.

3. That Ivan Douglas Richardson was terminated from his employment as a chef at Studio West, then doing business in Cross Lanes.

4. That the date of termination was December 13, 1982.

5. That prior to Mr. Richardson's termination, his salary was reduced by \$50 per week.

6. That the date of reduction of salary was approximately November 29, 1982.

7. That the Human Rights Commission has jurisdiction over the subject matter in this case.

8. The parties further stipulated to the admissibility and inclusion in the record of certain interrogatories, pleadings, and other documents which stipulations are contained on pages 7 through 11 of the transcript in this case.

ADMISSIBILITY OF EXTRAJUDICIAL STATEMENT

The Hearing Examiner specifically finds that the extrajudicial statement of Sharon Rose, agent of Earl Canterbury, as to Mr. Canterbury's aversion to mixed race marriages is within the scope of the agency and is an admission against the principal, Earl Canterbury, and that the remoteness of the statement goes to its weight and not its admissibility. WVRE 805.

FINDINGS OF FACT

Pursuant to full consideration of all the evidence, the Hearing Examiner finds as follows:

1. Complainant, Ivan Douglas Richardson, is black and was married at the time of this complaint to a caucasian female.

2. The complainant, Ivan D. Richardson, was employed as a chef at Studio West commencing in October, 1982.

3. On or about November 19, 1982, respondent, Earl Canterbury, acquired full ownership of Studio West.

4. At about the same time, Earl F. Canterbury met Ivan D. Richardson's wife, a caucasian female.

5. Approximately November 29, 1982, Ivan D. Richardson's salary was reduced from \$250 per week to \$50 per week.

6. After Earl F. Canterbury learned of the complainant's marriage to a caucasian female, white waitresses were told by Canterbury not to associate with the complainant, and Sharon Rose, Manager, told complainant that Mr. Canterbury did not like mixed race marriages.

7. None of the other employees at Studio West who were not black or not involved in mixed race marriages or relationships suffered any reduction in salary.

8. Mr. Richardson was terminated from employment by Earl F. Canterbury's agent, Sharon Rose, on December 13, 1982.

9. Complainant was not given any reason for his termination.

10. No other employees who were not black or involved in mixed race marriages or relationships were terminated.

11. Complainant, Ivan D. Richardson, was replaced by a caucasian female, Marlene Southall, on or about December 14, 1982.

12. Sharon Rose, Manager, told the complainant that a white female complainant seen working in the kitchen the day after complainant's discharge had been hired in his place.

13. Studio West went out of business due to financial losses in the late spring of 1984.

14. Complainant's lost wages due to the reduction in salary and his termination total \$17,100.

15. The complainant found other employment after his termination and earned income totaling approximately \$8,500.00, (a gross figure estimated from complainant's testimony of take home pay of \$600 per month) prior to the time Studio West closed.

CONCLUSIONS OF LAW

1. Studio West and or Earl Canterbury, owner, is an employer within the meaning of the Human Rights statue.

2. The Human Rights Commission has jurisdiction over the subject matter.

3. The Hearing Examiner finds that Mr. Richardson has established a prima facie case of discrimination and of disparate treatment in both the reduction in salary and the termination of employment.

4. For his defense, the employer claims that the discharge was based on misconduct by Mr. Richardson including tardiness, keeping customers waiting for excessive periods of time and undue use of the telephone during employment hours; he further asserts that the food part of the operation was not productive and that a business decision was made to close down the food operation, that the food operation was in fact closed down and no replacement was sought or hired for Mr. Richardson. The Hearing Examiner finds that the testimony of poor job performance is not supported by credible evidence and that the employer has not met his burden in this regard.

5. The Hearing Examiner further finds that Mr. Canterbury's testimony was inconsistent, evasive, unreliable, and not credible particularly in that he testified that no replacement for Mr. Canterbury was sought or hired and that he could not remember who prepared food on the premises subsequent to Mr. Richardson's departure. However, he admitted that Marlene Southall had been hired but could not explain her duties or responsibilities and admitted that he wrote "new cook" beside Marlene Southall name on business

documents from Studio West.

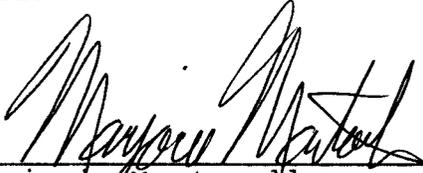
6. The Hearing Examiner finds that the employer's defense has not been established by any credible evidence. It is therefore unnecessary to consider or weigh complainant's evidence which might tend to rebut that defense, including evidence of the termination of a caucasian waitress, Kim Boak, in a relationship with a black male or evidence of disparate treatment of blacks at other business enterprises owned and managed by Earl Canterbury.

7. The record will support an award of monetary relief for emotional distress, humiliation, and embarrassment, particularly supported by the testimony of complainant's difficulty in explaining his loss of employment to potential employers.

THEREFORE, the Hearing Examiner recommends to the Commission that respondent be ordered to pay to the complainant the sum of \$8,600.00 as compensatory damages for loss of income and \$1,000.00 for emotional distress, humiliation, and embarrassment, and that each party shall pay its own costs and attorneys' fees.

ENTER

Date: 8-1-85



Marjorie Martorella,
Hearing Examiner