

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

CANDY TAYLOR,

Complainant,

v.

DOCKET NUMBER(S): ERA-326-99

EEOC NUMBER: 17J990201

CHARLESTON JOB CORP CENTER,
(MANAGEMENT TRAINING CORPORATION),

Respondent.

FINAL DECISION

A public hearing, in the above-captioned matter, was convened on June 13, 2002 in Kanawha County, in Conference Room B of the West Virginia Human Rights Commission Offices at 1321 Plaza East, Charleston, West Virginia, before Robert B. Wilson, Administrative Law Judge.

The complainant, Candy Taylor, appeared in person and by her counsel, Dwight D. Staples, Esquire, with the firm Henderson, Henderson & Staples, LC. The respondent appeared in person by its representative, Beth Rutledge, Human Resource Manager; as well as by counsel, Webster J. Arceneaux, III, Esquire, with the firm Lewis, Glasser, Casey & Rollins, LLP. The Public Hearing was reconvened on June 14, 2002 and July 19, 2002. Evidentiary depositions were taken on June 3rd and 12th, 2002 of Rick Jarvis; on September 27, 2002 of Susan Kinney; on January 16, 2003 of Dennis Brady, Ph.D., and Beth Rutledge. Findings of fact and conclusions of law, memoranda of law in support thereof, and response briefs were received through April 11, 2003.

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. Respondent, has not contested that it is an “employer” and a “person” as those terms are defined in W.Va. Code §§5-11-3(a) and (d) respectively.
2. Complainant, Candy Taylor, is an African American resident of Charleston, West Virginia. She was born July 18, 1954. Tr. Vol. I, pages 132-134.
3. Complainant graduated from Northfork High School in West Virginia and attended Bluefield State College for two years, majoring in Business Management. She also attended Control Data Fair Break Center in Charleston receiving training in technology and clerical skills. Tr. Vol. I, pages 132 and 133; Complainant’s Exhibit No. 8.

4. From High School until 1990, complainant held a variety of jobs including among others working as a temporary at the Capitol Complex, library clerk at West Virginia State College, receptionist at Union Carbide locations, Stone and Thomas, Forklift Operator at Avetex Fiber Company, worked paying invoices for the Department of Health and Human Resources Long Term Care Division and clerical and receptionist duties at Vocational Rehabilitation. Tr. Vol. I, pages 134 and 135; Complainant's Exhibits No. 8 and No. 9.

5. Complainant was hired by respondent, Management Training Corporation, (hereafter MTC) for the Charleston Job Corp Center on September 17, 1990, as Records Clerk in the Records Department at the Charleston Job Corp Center. Tr. Vol. I, pages 134, 140 and 141.

6. Complainant became a Placement Assistant in 1995. At the time there was an internal Placement Specialist, Sonja Fullen at another location; while the External Job Developers, Doris Aldridge and Michelle Reed were at the physical location where Complainant worked as Placement Assistant. All these individuals were African Americans. Tr. Vol. I, pages 147 and 148.

7. Complainant maintained individual placement folders; maintained and monitored receipt and distribution of terminnee readjustment and living allowance checks; prepared ETA 6-78 Job Corp Placement and Assistance Records; conducted telephone placement follow-up; transmitted data to Job Corp Data Center; and provided clerical support to Job Developers and Outreach Specialists. On occasion she would step in and perform some of the job duties of the Job Developers, such as phoning to find out if students had worked, if they had signed up with

job service agencies, and update addresses. She took care of readjustment checks and W-2 forms until Mr. Jarvis put those duties back with the Job Developers. Tr. Vol. II, pages 8-15; Complainant's Exhibit No. 12.

8. An opening arose for the position of Placement Specialist, when former Placement Specialist, Sonja Fullen, became the Director of Social Development. Complainant submitted her job bid for the Placement Specialist position to Human Resources but was told by Human Resources Manager, Beth Rutledge, that the bid did not exist. Veronica Bowles testified credibly that Ms. Rutledge frequently addressed resident advisers who were all African American with the statement "You people think we owe you something." Complainant testified credibly that she was told she was "over the hill" by Ms. Rutledge and her current supervisor, Given Blake, at her fortieth birthday party. Tr. Vol. II, pages 15 and 21; Tr. Vol. II, pages 22 and 158-160.

9. An interview committee of Sonja Fullen, the departing Placement Specialist, who is an African American, and Susan St. George (Kinney), the Program Director, who is white, was created to conduct interviews for the vacant Placement Specialist position. This committee was charged with interviewing the applicant pool and recommending the top three candidates to Rick Jarvis, the newly hired Placement Coordinator, who is white, and would be making the final selection when he started working at the Charleston Job Corp Center in May 1998. Mr. Jarvis did not consider Complainant for this position as he was only given the applications of the top three candidates as selected by Ms. Fullen and Ms. St. George. Ms. St. George left the respondent's Charleston Job Corp Center shortly after the interviews in April

1998 prior to Mr. Jarvis's arrival. Respondent's Exhibit No. 12, page 30; Joint Exhibit No. 3, Vol. I, pages 11, 14 and 15; and, Respondent's Exhibit No. 10, pages 7 and 12.

10. There were six candidates for the Program Specialist position: Heather Aquino, who was the successful candidate, Veronica Bowles, Jamie Cross, Judith Hudnall, Susan Rayhill, and Complainant. Ms. Bowles, Ms. Cross and complainant, are all African American; while Ms. Aquino and Ms. Rayhill are white, and Ms. Hudnall is Native American and white. Ms. Bowles, Ms. Rayhill and Complainant, were over age forty at the time; while Ms. Aquino and Ms. Cross were under age forty at the time. Joint Exhibit No. 2; Tr. Vol. I, page 94.

11. The Placement Specialist was responsible for determining student qualifications for placement, conducting placement activities and placement follow-up, coordinating work experience and conducting the exit program in compliance with government and management directives. These duties included maintaining linkages with the U.S. Department of Labor and government agencies to provide placement services; identifying potential jobs, schools, military or other placements for terminating students; maintaining placement follow up on terminated students; compiling data from respective areas to prepare student resumes and placement documents; coordinating on and off center work experience; conducting pre-employment training/exit program; and, maintaining contact with off center industry and businesses to develop work experience sites and placement opportunities. Complainant's Exhibit No. 10.

12. Hilda Armstrong testified credibly that respondent had a hit list of mostly African-American staff (and one gay female) who had worked for more than ten years for

Respondent, that left employment during Ms. St. George's tenure either through termination, through resignation or through death. Ms. Armstrong further testified credibly that the upper administration and the accounting departments were all white; that the upper staff over counseling area had become all white as well; and, whereas the residential/recreation areas and security departments were predominantly or all African American at Charleston Job Corp Center. Ms. St. George had brought in a white managerial employee, Elizabeth White, who told Ms. Armstrong, "I'm here to whip you into shape." Ms. St. George testified that she had been warned against disciplining African-American employees and that she had in fact had to get on Ms. White about making politically incorrect statements because she was older, and that she ultimately had to leave because Ms. White did not fit in anymore. Doris Aldridge testified credibly that the makeup of the student population had changed during her tenure as recruitment targeted rural West Virginia resulting in greater numbers of white students enrolling in the Charleston Job Corp Center programs. Tr. Vol. II, page 67; Tr. Vol. III, pages 34, 37, and 58-62; Respondent's Exhibit No. 10, pages 38, 39, 43, 44, 46 and 47.

13. Complainant was not interviewed until April 8, 1998; while the other five candidates were interviewed on April 1, 1998. The three candidates that were rated strong for the Placement Specialist position were all white. Tr. Vol. I, pages 113-116.

14. Heather Aquino, a white female, age 28, was selected for the position as Placement Specialist. Mr. Jarvis selected her because she had management background, extensive data tracking experience, was very efficient with computers, was bright and very motivated, spoke clearly and concisely, and wanted to improve placement statistics, "all the

kind of stuff that as an interviewer you like to hear.” Ms. Aquino was close to obtaining her degree in Accounting at the time of the hiring decision and was well thought of in her position as Center Standards Assistant for the Disciplinary Officer at the Center for a period of about a year and some months. She had prior experience as a Front Office Manager at a Hotel prior to being terminated in a management shake-up there. Ms. Aquino was rated a strong candidate by Ms. St. George who considered her to be the most articulate of the group interviewed, an independent thinker and proven capable of handling the clerical component of the job given the performance with respondent as Center Standards Assistant; and, was given a first of five candidates ranking by Ms. Fullen, who found her to be energetic, capable of handling high volumes of work in her Center Standards Assistant position, possessing organizational skills and management experience. Joint Exhibit No. 2; Complainant’s Exhibit No. 4; Joint Exhibit No. 3, Vol. I, pages 16-17; Respondent’s Exhibit No. 10, pages 13-16; Tr. Vol. II, page 193; Respondent’s Exhibits No. 1, No. 3 and No. 4.

15. Ms. Aquino had not worked in placement for Respondent. She was initially hired by Respondent as a part time Operator, without requesting a waiver from DOL for hiring of a relative of a current employee of Respondent, her mother, Glori Steward, with Respondent’s Regional Office in Charleston. Complainant had worked for several years in placement for Respondent and had worked for Respondent since 1990. Complainant was not verbally informed of the opening of Placement Specialist and given the post as an internal candidate as the policy in effect at the time would have required. Ms. Rutledge indicated that all positions were posted at this time by Respondent and Mr. Jarvis indicated that no preference was given

to internal qualified candidates. Joint Exhibit No. 3, Vol. I, page 26.

16. In October 1998 a position for a Job Developer became available. Complainant submitted her job bid for that position on October 13, 1998, and interviewed with her Supervisor, Rick Jarvis. Mr. Jarvis indicated that Teresa Gillespie was selected as the successful applicant, based upon her prior experience in placement with a youth rehab facility, her college degree in criminal justice, and her outstanding ability to communicate. Ms. Gillespie was a white applicant who was born in 1970. Mr. Jarvis also rated Tia Wesley as a strong candidate for the position. Ms. Wesley was an African-American, with a college degree in communications, who evidenced experience in outreach activities and spoke very well. When a later Job Developer position became available, Mr. Jarvis had Human Resources contact Ms. Wesley and she was hired based upon her strong interview for the position in October 1998. Tia Wesley's date of birth is August 3, 1972, and she was not hired until May 24, 1999. The complaint in this matter was mailed on April 16, 1999. Joint Exhibit No. 2; Joint Exhibit No. 3, Vol. I, pages 23-25 and 29; Joint Exhibit No. 3, Vol. II, pages 66-67; Respondent's Exhibit No. 5 and Complainant's Exhibits No. 15 and No. 19.

17. The exiting students from all other Job Corp Centers who were returning to West Virginia were assigned to the Job Developers at Charleston Job Corp Center which had the DOL contract to be the placement agency in this area-now referred to as career transition. Job Developers were responsible for determining terminee qualifications for placement, conducting job development in the state, conducting placement activities, distributing readjustment and final living allowance checks, and preparing and distributing relevant

placement forms and documents. This included identifying , developing and maintaining job sites in West Virginia and establishing linkages with schools, colleges and training programs throughout West Virginia. It included documenting placement activities, job development and terminnee contacts (maintaining individual placement folders for individual terminees, accounting for receipt and issuance of readjustment and living allowance checks, and W-2's). Vol. II, page 99; Complainant's Exhibit No. 11.

18. Ronnie Spudich, who supervised complainant in her job duties as Placement Assistant gave Complainant very favorable evaluations. Complainant was responsible for entering all the data on line regarding placement and assistance records compiled by the Job Developers, these reports were always submitted in a timely fashion by Complainant. Ms. Rutledge commended her ability to account for and distribute the readjustment checks, never misplacing one, kept a log of when they were disbursed, if they were not picked up, she sent them back. Complainant was given high scores for her working with students in social skills area. Ms. Rutledge denies any knowledge that complainant may have made calls on behalf of Job Developers and states that she did not ever engage in job development with employers in the community. Tr. Vol. II, pages 108, 109, 111, and 134-143.

19. The Respondent submitted the testimony of an expert witness on statistics, Dr. Dennis Brady. He conducted a study of the Charleston Job Corp Center workforce over a period of 72 months from 1996 through 2002, and testified that both African-Americans and older workers (those over age forty) were favorably employed, i.e. the representations for those two groups were much greater than for the expected applicant pool based upon the

groups' overall representation in the greater Charleston Metropolitan Statistical Area. The number of African Americans in the Charleston Job Corp Center full time ranks varied between 57% and 51% of the total over that period; while that of age forty or older workers varied between 77% and 64% of the total for that period. The representation of African Americans in the overall population in the Charleston MSI was 5.11%. Such numbers could not be achieved without favorably selecting in favor of African Americans. Respondent's Exhibit No. 12, pages 13,14 16, 20 and 32; Respondent's Exhibit No. 12, Deposition Exhibit No. 2.

20. In terms of African-Americans it hit a high somewhere in 1997 near 60% (79 African Americans employed by Charleston Job Corp Center in June 1997) and a low of near 50% in 1999 (65 African Americans employed by Charleston Job Corp Center in February 1999). Dr. Brady did not make a separate study of promotions or demotions in the Charleston Job Corp Center. Nor did Dr. Brady look at the separate applicant pools involved with the decisions at issue in this case, separate out by divisions within the Charleston Job Corp Center, look at how many African Americans were hired in managerial positions, or look at how many African Americans were fired or quit during the period. Dr. Brady did not look at the qualifications of the applicants for the Placement Specialists or Job Developers positions. Respondent's Exhibit No. 12, pages 40, 45, 44, 46, 56, 65, 66 and 72-74; Respondent's Exhibit No. 12, Deposition Exhibit No. 2.

21. The complainant has proven by a preponderance of the evidence that a discriminatory motive based upon the race and age of complainant played a part in the decision to not recommend Complainant as a finalist in the selection of for the position of Placement

Specialist.

22. The Respondent has proven by as preponderance of the evidence that the Complainant would not have been the successful applicant for either the position of Placement Specialist or that of Job Developer.

23. The Complainant felt frustrated and demeaned by the failure of respondent to consider her application fairly for the position of Placement Specialist when Respondent's interview committee did not look at the fact that she had actually performed the job duties of the position and because her race and age played a role in the decision not to hire her. Tr. Vol. II, pages 46 and 47.

24. The complainant is entitled to an award for humiliation, embarrassment, emotional distress and loss of personal dignity.

25. The respondent has engaged in intentional discrimination in allowing race and age to play a part in its failure to promote complainant to the position of Placement Specialist and should be enjoined from engaging in such illegal discriminatory conduct.

26. The complainant has submitted attorney's fees and costs in the amount of \$27,646.56, which the undersigned finds to have been reasonably expended in the prosecution of this matter. Because the respondent has prevailed in its case regarding the position of Job Developer, those attorney's fees and costs must be prorated and Complainant is entitled to an award of \$13,823.28 for her attorney's fees and costs in this matter.

B.

DISCUSSION

West Virginia Code § 5-11-9(1) of the West Virginia Human Rights Act, makes it unlawful “for any employer to discriminate against an individual with respect to ... hire, tenure, conditions or privileges of employment if the person is able and competent to perform the services required...” The term “discriminate” or “discrimination” as defined in W.Va. Code § 5-11-3(h) means to “exclude from, or fail or refuse to extend to, a person equal opportunities because of race...[or] age...” In order to establish a case of employment discrimination under W.Va. Code § 5-11-9, the complainant must prove as prima facie case, that:

1. The complainant is a member of a protected class;
2. The employer made an adverse decision concerning the complainant; and,
3. But for the complainant’s protected status, the adverse decision would not have been made. Conaway v. Eastern Associated Coal Corp., 178 W.Va. 475, 358 S.E.2d 423 (1986).

A discrimination case may be proven under a disparate treatment theory which requires that the complainant prove a discriminatory intent on the part of the respondent. The complainant may prove discriminatory intent by a three step inferential proof formula first articulated in McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); and, adopted by the West Virginia Supreme Court in Shepardstown Volunteer Fire Department v. West Virginia Human Rights Commission, 172 W.Va. 627, 309 S.E.2d 342 (1983). Under this formula, the complainant must first establish a prima facie case

of discrimination; the respondent has the opportunity to articulate a legitimate nondiscriminatory reason for its action; and finally the complainant must show that the reason proffered by the respondent was not the true reason for the decision, but rather pretext for discrimination.

The term “pretext” has been held to mean an ostensible reason or motive assigned as a color or cover for the real reason; false appearance, or pretense. West Virginia Institute of Technology v. West Virginia Human Rights Commission, 181 W.Va. 525, 383 S.E.2d 490 (1989). A proffered reason is pretext if it is not the true reason for the decision. Conaway v. Eastern Associated Coal Corp., 358 S.E.2d 423 (W.Va. 1986). Pretext may be shown through direct or circumstantial evidence of falsity or discrimination; and, where pretext is shown, discrimination may be inferred. Barefoot v. Sundale Nursing Home, 193 W.Va. 475, 457 S.E.2d 152 (1995). Although, discrimination need not be found as a matter of law. St. Mary’s Honor Society v. Hicks, 509 U.S. ___, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993).

There is also the “mixed motive” analysis under which a complainant may proceed to show pretext, as established by the United States Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); and recognized by the West Virginia Supreme Court in West Virginia Institute of Technology, supra. “Mixed motive” applies where the respondent articulates a legitimate nondiscriminatory reason for its decision which is not pretextual, but where a discriminatory motive plays a part in the adverse decision. Under the mixed motive analysis, the complainant need only show that the complainant’s protected class played some part in the decision, and the employer can avoid liability only by

proving that it would have made the same decision even if the complainant's protected class had not been considered. Barefoot, 457 S.E.2d at 162, n. 16; 457 S.E.2d at 164, n. 18.

Th crux of disparate treatment claim is discriminatory motive, and the ultimate burden of persuasion to show that the employer intended to discriminate remains on the complainant at all times. Skaggs v. Elk Run Coal Co., 198 W.Va. 51 at 75, 479 S.E.2d 561 at 584-585 (1996).

Applying the forgoing principles of law to the facts as found by the undersigned herein the undersigned concludes that the complainant has proven by a preponderance of the evidence that impermissible factors of race and age entered into the decision of the respondent's interview committee not to include complainant as one of the most qualified candidates for Mr. Jarvis to select from for the position of Placement Specialist. The complainant is an African American woman who was forty three years old at the time of the initial hiring decision. The three candidates selected for Mr. Jarvis's consideration for the position of Placement Specialist were all white. A younger white woman was selected by Mr. Jarvis to fill this position. The complainant was qualified to perform the duties of Placement Specialist and her qualifications were approximately equal to those of the successful applicant. Thus the complainant has established a prima facia case of employment discrimination under the West Virginia Human Rights Act. The respondent has articulated a non discriminatory reason for its failure to promote complainant, that being that the successful candidate was better qualified and performed better in the interview process.

The undersigned found that the testimony of Doris Aldridge and Hilda Armstrong was

credible based upon their demeanor even in light of their own disputes with the Respondent. The testimony they gave concerning statements that were made could easily have been exaggerated into much more incriminating and serious allegations should they have been inclined to lie concerning these matters. Ms. St. George (Kinney), presided over an area under her which saw a number of older African Americans leave their employment with Respondent. These changes coincided with a push to recruit more rural West Virginia students. The supervisory make up of several departments seems to have been predominately white, while others seemed to be predominately African American depending on functions associated with those areas. Notwithstanding the fact that Ms. Fullen was herself African American, all three highest rated candidates for the Placement Specialist Position were white. Ms. Fullen was transferred out of Ms. St. George's area and a young white women was promoted out of a department that was predominately African American and into Ms. St. George's area. Ms. Fullen was promoted into an area that was predominately staffed by African Americans.

The successful candidates for positions selected by Mr. Jarvis were all individuals at least sixteen years younger than complainant. Given the nature of some of the comments Ms. St. George made concerning Ms. White and Mr. Jarvis's selections, it would seem that the factor of age also entered into these hiring decisions. The undersigned finds that a preponderance of the evidence in this case demonstrates that the race and age of Complainant played a part in the decision of Respondent not to promote Complainant to either the Placement Specialist or Job Developer positions.

Having determined that impermissible discrimination by Respondent played a part in

the filling of employment positions at issue, the Respondent must prove by a preponderance of the evidence that the same decisions would have been made even absent such discriminatory motive on the part of Respondent. Complainant testified credibly that she performed many of the duties that were central to both the Job Developer and Placement Specialist positions. The undersigned believes that she would make a fine Job Developer or Placement Specialist if given the opportunity. The undersigned is not however allowed to substitute his decision for that of the Respondent in filling the positions at issue. The undersigned finds as a matter of fact that the Respondent did not fill the position with a qualified person from within the Placement Department but instead decided to open the application process to find the person best suited for the job. Although that choice results in unfairly relegating Complainant to her Placement Assistant duties without giving her an opportunity to demonstrate her ability to perform if given a promotion; the undersigned must look to the motive of the Respondent in making its selection. In doing so the fact finder traditionally looks to the comparative qualification of the member of the protected class who did not receive the position and the person who was selected for that position. Looking to Ms. Aquino's qualifications, she was in the process of obtaining her accounting degree, she had management experience in the private sector, she was handy with adapting to new computer programs, and she had performed ably in her work with Respondent in the Center Standards Department working for the Disciplinary Officer. In addition she was more articulate and gave a better interview than did Complainant. This is clear and convincing evidence to the undersigned that Ms. Aquino would have been selected as Placement Specialist even absent an impermissible motive in the decision process to fill the

Placement Specialist position. The fact that she was the daughter of a long time employee of Respondent's who had supervised Ms. Fullen for years and was in Respondent's Regional Office upper management would be a strong motivator in a decision to hire Ms. Aquino as well. Although that motive may be in contravention of public policy, it is not based upon race or age and is not within my jurisdiction to consider in this forum. In the case of Mr. Jarvis's decision to hire Teresa Gillespie as Job Developer, Ms. Gillespie possessed a degree in Criminal Justice and prior experience in the area of job placement for individuals with barriers to employment. Again the objective evidence of comparative qualifications demonstrates by clear and convincing evidence that the Respondent would have made the same selection to fill the post of Job Developer even absent any impermissible motive in the selection process.

When a legitimate candidate for a job has demonstrated that he has been the subject of unlawful discrimination in the employment process, he is entitled to an injunction against future, or continued discrimination. Nanty v. Barrows Co., 660 F.2d 1327, at p. 1333 (9th Cir. 1983). In the case of King v. Trans World Airlines, Inc., 738 F.2d 255 (8th Cir. 1984), the court held that in an employment discrimination action based on sex, the district court was to consider the plaintiff who proved unlawful discrimination a prevailing party for purposes of attorney's fees.

The West Virginia Supreme Court has set forth a twelve factor test for determining reasonableness of the attorneys fees set forth in Aetna Casualty and Surety Co. v. Pitrolo, 176 W.Va. 190, 342 S.E.2d 156 (1986); See also, Brown v. Thompson, 192 W.Va. 412, 452 S.E.2d 728 (1994). Those factors are: (1) the time and labor required; (2) the novelty and difficulty

of the question presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee charged in similar cases; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and the length of the professional relationship with the client; and, (12) awards in similar cases. Counsel for complainant originally filed affidavits and requests for attorneys fees and costs in the amount of \$27,646.56. Hourly rates previously awarded recently by the Human Rights Commission have ranged from \$100.00 to \$300.00 per hour, and the rate of \$175.00 per hour requested in this instance is well within the parameters of recent fees awarded given the experience of Complainant's counsel. Public policy dictates that when complainants prevail, reasonable fees and costs be awarded, so that private counsel are encouraged to prosecute actions seeking to enforce the Human Rights Act. The undersigned finds that the complainant is entitled to reasonable attorneys fees in the amount of \$13,823.28 for her attorney's fees and costs in this matter; this is a prorated amount of one half that requested as set forth more fully in Complainant's Petition for Attorney Fees And Costs.

C.

CONCLUSIONS OF LAW

1. The Complainant, Candy Taylor, 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, Charleston Job Corp Center (legal name Management Training Corporation), is a “person” and an “employer” as those terms are defined under 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 age discrimination, and that her race and age played a part in the failure of respondent to promote Complainant to the position of Placement Specialist. The respondent has articulated a legitimate non discriminatory motive for the Respondent’s action, that the Complainant was not selected because other candidates interviewed better than complainant and had better qualifications for the positions; which the Complainant, by a preponderance of the evidence has not proven to be pretextual. The Respondent has proven by a preponderance of the evidence that the successful candidate for the positions of Placement Specialist would have been selected even absent the discriminatory motive which played a part in the hiring decision of Respondent not to give Complainant a promotion to Placement Specialist.

6. As a result of the Respondent’s unlawful discriminatory conduct, Complainant is entitled to an award of \$3,277.45 for humiliation, embarrassment, emotional distress and loss of personal dignity.

7. As a result of the Respondent's unlawful discriminatory conduct, Complainant is not entitled to back pay, as the Respondent has proven by clear and convincing evidence that it would have made the same selections for the positions of Placement Specialist and Job Developer, even in the absence of its consideration of the race and age of Complainant in making its hiring or promotion decision.

8. The Complainant is entitled to an award of her prorated reasonable attorney's fees and costs incurred in prosecution of this matter in the amount of \$13,823.28.

D.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby ORDERED,

that:

1. The above named Respondent shall cease and desist from engaging in unlawful discriminatory practices.

2. Within 31 days of the receipt of the undersigned's order, the Respondent shall pay the reasonable attorneys fees and costs incurred in the prosecution of this matter, in the amount of \$13,823.28.

3. Within 31 days of receipt of the undersigned's order, the Respondent shall pay the Complainant incidental damages in the amount of \$3,277.45 for humiliation, embarrassment, emotional distress and loss of personal dignity suffered as a result of Respondent's unlawful discrimination, plus post judgment statutory interest of ten percent.

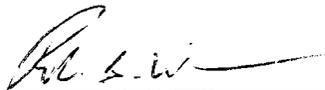
4. In the event of failure of the Respondent to perform any of the obligations

hereinbefore set forth, Complainant is directed to immediately so advise the West Virginia Human Rights Commission, Ivin B. Lee, Director, 1321 Plaza East, Room 108-A, Charleston, West Virginia 25301-1400, Telephone: (304) 558-2616.

It is so **ORDERED**.

Entered this 6th day of May, 2003.

WV HUMAN RIGHTS COMMISSION

BY: 
ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE