



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

February 24, 1986

William Algee
1907 Greywell Road
Wilmington, DE 19803

Ronald Jones
531 F Oakdale Road
Newark, DE 19713

Betty J. Thomas
2053 N. Woodstock Street
Apartment #3
Arlington, VA 22207

Sheryl Algee
1907 Greywell Road
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Louis S. Davitian, Esq.
217 Fourth Street
Parkersburg, WV 26101

Mary Kay Buchmelter
AA6
1204 Kanawha Boulevard, E.
Charleston, WV 25301

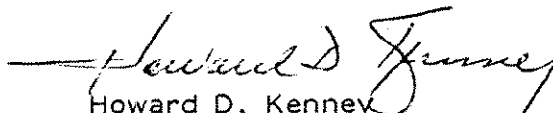
RE: PAR 258-75; PAR 196-75; PAR 195-75; PAR 199-75

Dear Above Parties:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of PAR 258-75; PAR 196-75; PAR 195-75; PAR 199-75.

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,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

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JAN 16 1986

W.V. HUMAN RIGHTS COMM.

Sheryl Algee,)
 Complainant,)
 v.)
 Friar Tuck's,)
 Respondent.)

Betty Joyce Thomas,)
 Complainant,)
 v.)
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William Algee,)
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 v.)
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Ronald Jones,)
 Complainant)
 v.)
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PAR 258-75

PAR 196-75

PAR 195-75

PAR 199-75

ORDER

On the 8th day of January, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner, Cathryn A. Nogay. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions

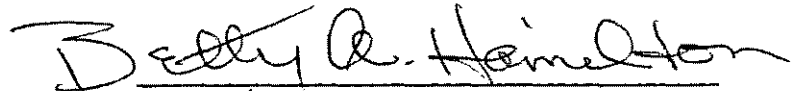
of Law as its own.

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 shall be sent by certified mail to the parties, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 4 day of Feb., 1986.

Respectfully Submitted



CHAIR/VICE-CHAIR
West Virginia Human
Rights Commission

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

2/11/85
ALS
11/1-185

Sheryl Algee,)
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Complainant)
)
v.)
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Friar Tuck's,)
)
Respondent.)

PAR 258-75

RECEIVED

DEC 13 1985

W.V. HUMAN RIGHTS COMM.

gjf

Betty Joyce Thomas,)
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Complainant,)
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Friar Tuck's,)
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PAR 196-75

William Algee,)
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PAR 195-75

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NOV 08 1985

ADMINISTRATIVE SERVICES
SUPREME COURT OF APPEALS

Ronald Jones,)
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Complainant,)
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v.)
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Friar Tuck's,)
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Respondent.)

PAR 199-75

RECOMMENDATION TO THE COMMISSION

The four above-styled cases were informally consolidated with four other cases involving the same respondent and same factual situation, and a public hearing was scheduled for October 15, 1985. The other four cases were Viola Strong v. Friar Tuck's, PAR 192-75; Neal Strong v. Friar Tuck's, PAR 191-75; Beatrice Brown v. Friar Tuck's, PAR 188-75; and Cynthia Brown v. Friar Tuck's, PAR 208-75. Complainants, Viola Strong, Beatrice Brown, and Cynthia Brown, appeared in person and by their counsel, Mary Kay Buchmelter, on October 15, 1985, and at the continuation of the hearing on October 25, 1985. Complainant Neal Strong appeared only on October 25, 1985. The Respondent, Friar Tuck's appeared in person by its President, Jeff Jones, and by its counsel, Louie S. Davitian on October 15 and 25, 1985. Complainants, Sheryl Algee, Betty Joyce Thomas, William Algee, and Ronald Jones, did not appear in person, but were represented by Mary Kay Buchmelter.

At the close of the Complainant's case, the Respondent moved to dismiss the cases of the four Complainants who did not appear and did not testify at the public hearing. Counsel for Complainants resisted the matter, but no excuse was given for the absence of the four complainants, other than the fact that they might have moved out of state.

Rule 7.06(a)(1) of the Emergency Rules Pertaining to Practice & Procedure Before the West Virginia Human Rights Commission states:

"The Complainant shall be present at the hearing unless excused by the Hearing Examiner because of extraordinary circumstances . . ."

The four Complainants did not request that they be excused from the public hearing, and when the Respondent objected to their absence,

there was no showing made that extraordinary circumstances prevented their appearance. Therefore, it is the opinion of the Hearing Examiner that the four Complainants did not comply with Rule 7.06(a)(1).

Counsel for the Complainants argued that the presence of the Complainants at the public hearing is within the discretion of the Hearing Examiner. Rule 7.06(a)(3) supports this argument. It states:

"In the event that Complainant fails to appear and has not been excused, the Hearing Examiner may proceed with the hearing and take evidence, or the Hearing Examiner may take any other action, including but not limited to, recommending dismissal without the taking of testimony."

In this case, the Hearing Examiner had already heard the Complainant's case in chief before the issue was raised. The only references made during the Complainant's case to the absent Complainants are as follows:

Cynthia Brown discussed a group of eight, but never named the members of the group. (transcript pages 6-15); Beatrice Brown Little also discussed a group, but didn't name its members, although she did say that Betty Thomas had made reservations. (transcript page 42); Viola Strong said she was not with the group. (transcript page 49); Neal Strong stated that a reservation had been made for eight people, and named the eight Complainants. (transcript page 92).

It is the opinion of the Hearing Examiner that even if the four absent Complainants were permitted to proceed by their counsel and by the Complainants who did appear, there was no showing that the absent Complainants were members of a protected class or that they were the subjects of an unlawful discriminatory practice. Therefore, a prima facie case was not established.

For the reasons cited above, it is the recommendation of the Hearing Examiner that the Complaints heretofore filed by Sheryl Algee, PAR 258-75; Betty Joyce Thomas, PAR 196-75; William Algee, PAR 195-75; and Ronald Jones, PAR 199-75; against Friar Tucks, be dismissed with prejudice.

DATED: November 6, 1985

Cathryn A. Nogay
Hearing Examiner



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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TELEPHONE 304-348-2616

February 24, 1986

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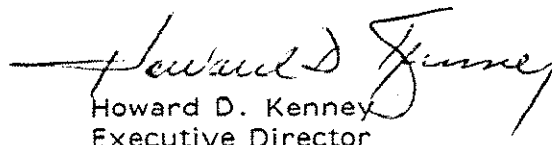
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PAR 258-75

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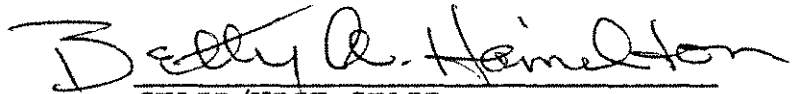
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Respectfully Submitted



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In this case, the Hearing Examiner had already heard the Complainant's case in chief before the issue was raised. The only references made during the Complainant's case to the absent Complainants are as follows:

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For the reasons cited above, it is the recommendation of the Hearing Examiner that the Complaints heretofore filed by Sheryl Algee, PAR 258-75; Betty Joyce Thomas, PAR 196-75; William Algee, PAR 195-75; and Ronald Jones, PAR 199-75; against Friar Tucks, be dismissed with prejudice.

DATED: November 6, 1985

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K.R.
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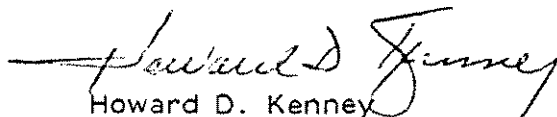
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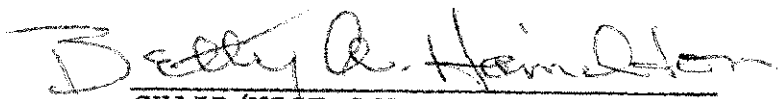
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