

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ABDUL BARAM,

COMPLAINANT,

V.

DOCKET NO. PANO-254-82

K-MART CORPORATION,

RESPONDENT.

ORDER

On the 19th day of July, 1985, the Commission reviewed Hearing Examiner Anne B. Charnock'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.

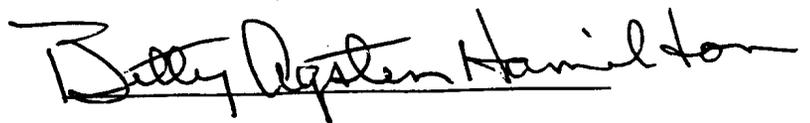
It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order except as it differs below:

The Commission ORDERS incidental damages of ten thousand dollars (\$10,000.00) payable by Respondent to compensate for the embarrassment, humiliation and emotional and mental distress, resulting from Respondent's actions.

By this Order, a copy of which to be sent by certified mail, 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 7/18 day of July, 1985.

RESPECTFULLY SUBMITTED,



CHAIR/VICE-CHAIR
WV HUMAN RIGHTS COMMISSION

Approved - SSK
6/4/85

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ABDUL BARAM,

Complainant,

Vs.

HRC CASE NO. PANO 254-82

K-MART CORPORATION,

Respondent.

RECEIVED

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FINDINGS OF FACT, CONCLUSIONS
OF LAW, RECOMMENDATIONS AND ORDER

ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

Pursuant to notice issued to the Respondent, this matter came on for hearing on the 8th day of April, 1985 in conference Room E of the Capitol Complex, Charleston, West Virginia. Betty Hamilton, Commissioner and Anne B. Charnock, hearing examiner, presided.

The Complainant, Abdul Baram, appeared in person and by his counsel, David Patrick Lambert, Esquire, Assistant Attorney General, State of West Virginia, and the Respondent, K-Mart Corporation, appeared in person by Don Coleman, Resident Assistant Manager of K-Mart Store Number 3198 in St. Albans, West Virginia and by its counsel, Larry W. Blalock, Esquire of Jackson, Kelly, Holt and O'Farrell, Charleston, West Virginia.

It appearing to the panel that notice as required by law, setting forth the time and place of the hearing and the matters to be heard, had regularly been served upon the Respondent and that the same appeared by their representatives, the hearing was convened at the aforesaid time and place.

Upon due consideration of the pleadings; the testimony, demeanor and credibility of the witnesses; a review of the exhibits

entered as evidence at the hearing and a review of the transcript of the hearing; the hearing examiner makes the following findings of fact, conclusions of law and recommendations;

FINDINGS OF FACT

1. The complainant, Abdul Baram, is a native of Syria who has resided in the U.S. since 1973 and more particularly in the Kanawha Valley since spring 1979. Although an engineer by training, (B.S. in electrical engineering, some masters work) he owns and operates a small chain of grocery stores which specialize in imported foods.

2. The Complainant is married to Hoda Dehneh, also a native of Syria. Mrs. Dehneh, a devout Moslem, has resided in the U.S. since September, 1980. She is presently a homemaker although she does have a B.A. in Islamic studies. They are the parents of two children who in September, 1981 were 2 years old and 2 months old.

3. The dress of a devout Moslem woman is a long, loose-fitting outfit, minus pockets, which covers nearly all of her body and therefore does not detail her body.

4. The Complainant and his wife were frequent customers of the KMart store (No. 3198) in St. Albans until September 1981. Since this time they have not returned to the St. Albans store, but do patronize the other two K-Mart stores in the area. The Complainant does have a K-Mart customer courtesy card.

5. On September 19, 1981, while entertaining relatives from Syria, Complainant and his family took them on a tour of the Kanawha Valley. One of the stops was the K-Mart in St. Albans. These relatives

were two couples; both men were businessmen in Syria. Neither woman was a practicing Moslem.

6. Those eight persons arrived at the K-Mart store at approximately five o'clock p.m. All were dressed in everyday "Western" outfits; the women, excepting Mrs. Dehneh, in street-length skirts and blouses and the men in pants and shirts. Mrs. Dehneh wore her customary outfit which this day was made of a light weight fabric.

7. The purpose of this shopping trip was for the relatives to purchase gifts to take back with them. Upon entering the store the infant was placed in a shopping cart and the group began shopping.

8. At some point in the shopping Mrs. Dehneh noticed she and the group were being observed by employees of the K-Mart store and members of the St. Albans Police Department.

9. Upon noticing continued surveillance Complainant asked one of the K-Mart employees why the group was being watched and followed. The Merchandise Manager of the store, Ken Kocher, told Complainant that all customers were watched and apologized for any embarrassment which might have occurred.

10. Shortly thereafter Complainant and his group left K-Mart without making any purchases. They walked to the other end of the St. Albans Mall while being followed by members of the St. Albans Police Department.

11. Complainant became involved in a heated discussion with the police officer who followed the group through the Mall. A number of other Mall shoppers observed this confrontation.

12. Complainant and his family were never asked to leave -
Mart nor denied entrance to the store.

13. No criminal charges of any type were filed against Complainant or any member of his group.

14. At 5:03 p.m. the St. Albans Police Department received a call from K-Mart "report of gypsies driving gray van-out front of store - " 4F - 4M and several children no problem yet - ck them out" (Respondent's exhibit A). Three officers responded to the call; officers James Hanshaw, Gary Halstead and Rodney Jones.

15. Officers Jones and Hanshaw arrived at the K-Mart three minutes later. In another three minutes they were met by Officer Halstead who was their supervisor. Halstead instructed them to "split up and go through the store ...but to let the people know we were there". (Transcript page 96)

16. Officer Halstead never saw any member of the group. Officers Jones and Hanshaw did see members of this "gypsy" group however both testified that they saw nothing suspicious while observing the group.

17. K-Mart suffers significant annual losses from "inventory shrinkage" (unexplained losses in inventory). In 1981 alone Store 3198 suffered \$202,000.00 of loss. To combat this problem all K-Mart employees receive training in customer observation, shoplifter detection and apprehension, etc. Additionally K-Mart has a seven page "Loss Prevention" section in their operations manual. (Respondents Exhibit B).

18. In the past numerous reports had reached K-Mart Store 3198 about "gypsies" being in the area.

19. "Gypsies" is a term used to describe a roving group of people who terrorize merchants by shoplifting. Officer Halstead

testified that "gypsies" are generally women in long, dark clothing; often-times wearing hoods and kerchiefs; having dark skin; wearing "strong and rancid perfume" and wearing jewelry. (Transcript pages 90 - 91). The men in the group create a diversion, allowing the women to shoplift. The other officers and store personnel testified in a similar manner as to the word "gypsy".

20. No store employee observed anything suspicious about Complainant and his family. The Assistant Manager Don Coleman, was so unconcerned about this group that he left the store before Complainant and his family exited.

21. Complainant and his wife were embarassed and insulted in front of their relatives and the other shoppers by the actions of the store employees and police.

22. Additionally Complainant and particularly his wife, were placed in fear of their safety by this activity.

23. Mrs. Dehneh was upset for an extended period of time after this incident and was afraid to go out in public alone for months after this incident.

CONCLUSIONS OF LAW

1. It is the public policy of the State of West Virginia to provide all of its citizens equal access to places of public accomodation. In the area of public accomodation this is defined as a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, or handicap. W.Va. Code §5-11-2.

2. The Complainant is a "person" within the meaning of the West Virginia Human Right Act. W.Va. Code §5-11-3(a).

3. The Respondent, store No. 3198, is a "place of public accomodation" within the meaning of the West Virginia Human Rights Act, West Virginia Code §5-11-3(j).

4. On November 17, 1981 Complainant filed a complaint against Respondent (PANO 254-82) alleging that Respondent had engaged in unlawful discriminatory practices prohibited by West Virginia Code §5-11-9(f).

5. Said complaint was timely filed as within ninety days of the alleged act of discrimination. W.Va. Code 5-11-10.

6. It is an unlawful discriminatory practice for any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accomodation to: refuse, withhold from or deny to any individual, because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap, either directly or indirectly, any of the accomodations, advantages, facilities, privileges or services of such place of public accomodation. W.Va. Code § 5-11-9 (f)(1).

7. Pursuant to the mandate issued by the court in Edith Allen, et al. v. State of West Virginia Human Rights Commission, et al. 324 SE2d 299 (W.Va. 1984) the public hearing was held.

8. The Respondent denied Complainant, his wife, and family, the advantages, privileges and services offered to other K-Mart customers because of the ethnic appearances, (and thus national origin), of Complainant and his family and because of the dress (and indirectly religion) of Mrs. Dehneh. Respondent called the St. Albans Police Department on this basis alone as the log indicates the type of car

(gray van) Complainant and his family arrived in. Obviously Respondent had to be observing the family exit the car to know the car was a van.

9. Although recognizing Respondent's duty to protect both the stores merchandise and store patrons Complainant and his family were the victims of Respondents unreasonable surveillance, intimidation and public embarassement and thus unable to purchase the gifts which they had intended. Furthermore Complainant and his family were made to feel uncomfortable, unwelcome and afraid to remain in the store, although they were never told or asked to leave by Respondent. Discrimination in access to public accomadations may arise through subtleties of conduct just as surely as through an openly expressed refusal to serve. Such discrimination may occur where no physical violence is used or threatened and where the defendant merchant is courteous. Browning v. Slenderella Stytems of Seattle, 341 P. 2d 859 (Wash. 1959).

10. Shoppers who are detained by store employees or police who lack probable cause to believe they were shoplifters suffer deprivation of their civil rights. Smith v. Brookshire, Bros., Inc., 519 F. 2d 93 (5th Cir.), cert. denied 42A U.S. 915 (1975; Duriso v. K-Mart, 559F, 2d 1274 (5th Cir. 1977). Shoppers who are forced to leave a store because of discriminatory, unreasonable actions of store employees suffer no less deprivation. Adickes v. Kress & Co., 398 U.S. 166 (1970).

11. The West Virginia Human Rights Act shall be liberally construed to accomplish its objectives and purposes. W. Va. Code §5-11-15.

12. The West Virginia Human Rights Commission may award compensatory damages for humiliation, embarrassment, emotional and mental distress and loss of personal dignity, without proof of monetary loss. State of West Virginia Human Rights Commission v. Pearlman Realty Company, 239 S.E. 2d 145 (1977).

THEREFORE, based on the foregoing, I make the following recommendations:

1. That Complainant be awarded incidental damages in the amount of \$1,250.00, payable by Respondent, to compensate for the embarrassment, humiliation, and emotional and mental distress, resulting from Respondent's actions.

2. That Respondent cease and desist from discriminatory practices and specifically modify and amend its store policies in the area of shoplifting/security to specifically include that persons who appear to be of a different national origin by their appearance, color, dress or national origin will not be treated as suspected shoplifters merely because of such different appearances.

3. That Respondent notify all store employees in the State of West Virginia regarding this policy change.

Respectfully submitted this 23rd day of May, 1985.



ANNE B. CHARNOCK
Hearing Examiner