



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

October 24, 1985

Beverly Bell Williams
250 Parkwood Court
Winston-Salem, NC 27105

Vernita Ekey
1527 Quarrier Street
Charleston, WV 25301

Bruce Walker, Esq.
Assistant Attorney General
1203 Kanawha Boulevard, E.
Charleston, WV 25301

RE: Beverly Bell Williams V Vernita Ekey/HR-324-77

Dear Ms. Williams and Ms. Ekey and Mr. Walker,

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of HR-314-77/Beverly Bell Williams V Vernita Ekey.

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 black ink that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

BEVERLY BELL (WILLIAMS),

COMPLAINANT

V.

DOCKET NO.: HR-314-77

VERNITA EKEY,

RESPONDENT

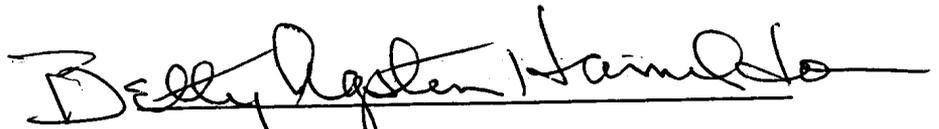
ORDER

On the 9th day of October, 1985, the West Virginia Human Rights Commission had before it the Respondent's Motion for Reconsideration.

It is ORDERED that the Motion for Reconsideration be denied.

By this Order the parties are hereby notified that they have the right to judicial review.

Entered this 22 day of October, 1985.



CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

BEVERLY BELL (WILLIAMS),

COMPLAINANT,

V.

DOCKET NO. HR-314-77

VERNITA EKEY,

RESPONDENT.

ORDER

On the _____ day of July, 1985, the Commission reviewed Hearing Examiner Robert R. Harpold, Jr's. Findings of Fact and Conclusions of Law and the Exceptions filed by the Respondent. After consideration of the aforementioned Proposed Findings of Fact and Conclusions of Law and Exceptions thereto, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own except as the relief differs below.

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 the Relief differs below.

The Commission hereby ORDERS the following relief:

1. The Respondent, Vernita Ekey, is hereby permanently ORDERED to cease and desist from engaging in any actions which deny full and equal rights to any individual or otherwise to discriminate against such individuals on the basis of race, sex, religion, color, national origin, handicap or blindness with respect to the leasing or renting of housing accommodations or real property owned by the Respondent or any other matter directly or indirectly related to leasing or rental of housing accommodations or real property owned by the Respondent.

2. It is further ORDERED that the Respondent shall pay to the Complainant compensation for out of pocket expenses suffered as a result of

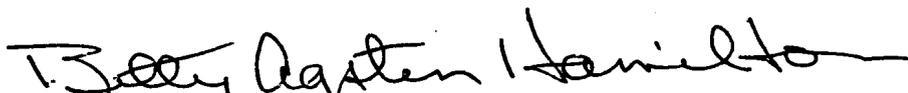
Respondent's unlawful discriminatory practices in the amount of five hundred and twelve dollars (\$512.00) together with interest at a rate of 10% per annum.

(3) It is further ORDERED that seven hundred dollars (\$700.00) be awarded to the Complainant for damages as compensation for humiliation, pain, suffering and imbarassment that she received as a result of the discriminatory conduct with the Respondent.

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
June 13, 1985
ARK

RECEIVED

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

JUN 27 1985

BEVERLY BELL (WILLIAMS)

Complainant

WEST VIRGINIA HUMAN RIGHTS COMMISSION

WJG

vs:

CASE NO. HR 314-77

RECEIVED

VERNITA EKEY

Respondent

JUN 21 1985

ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Pursuant to notice issued to the respective parties hereto, this matter came on for hearing on the 13th day of May, 1985, beginning at 9:00 a.m. in Conference Room C, Building 7, State Capitol Complex, Charleston, West Virginia. Robert R. Harpold, Jr., Hearing Examiner, presided, the parties having specifically waived the presence of a hearing commissioner.

The complainant, Beverly Bell (Williams) appeared in person and by her counsel, Bruce Walker, and the respondent, Vernita Ekey, appeared in person and represented herself.

It appearing to the hearing examiner 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 respective parties hereto and that the same appeared in person, the hearing was convened at the aforesaid time and place.

Upon due consideration of the evidence and the exhibits filed herein, the hearing examiner hereby makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

1. The complainant is a black female.
2. The respondent is a white female and owner of rental apartments located at 1527 Quarrier Street, Charleston, West Virginia. Mrs. Ekey had been in the rental apartment business for approximately 25 to 30 years. In these 25 to 30 years she had never rented to a black individual.
3. On or before March 1, 1977, the respondent advertised in the Charleston Gazzette that an apartment she owned was for rent. The advertisement stated, "Quarrier-Quiet 3 room. Mature professional lady 343-1556."
4. On or about March 1, 1977, complainant read the advertisement and telephone the number in the advertisement. A lady later identified as the respondent, Vernita Ekey, answered and indicated that the apartment was still vacant.
5. Prior to and including March 1, 1977, the complainant had been employed with the Federal Government in Charleston, however, had been living with her parents in Montgomery, West Virginia. She had been commuting back and forth to work and had been looking for an apartment in Charleston to be closer to her employment.
6. At 10:30 a.m. on March 1, 1977, or approximately 30 minutes after placing her telephone call about the apartment, the complainant appeared along with her companion, Debra Hall, a white lady, at the residence of the respondent, Vernita Ekey. The rental apartment was located in a building in back of the Ekey residence.

7. At that time the complainant was informed by Mrs. Ekey that the apartment had been rented.

8. The complainant later that day contacted the West Virginia Human Rights Commission who sent a tester, Connie S. Lewis, a white woman, to the respondent's residence to inquire about the availability of the apartment. The respondent showed Connie S. Lewis the apartment and indicated that it was still available for rent. Later that same evening Jane Hogue called the respondent back and told her that she didn't want the apartment.

9. Both the complainant and the respondent filed affidavits from individuals regarding this apartment. The complainant filed the affidavit of Debra Hall (Cl. Exhibit #3) and the respondent filed the affidavit of Jane R. Hogue (Resp. Exhibit #2). In view of the fact that neither of these individuals were present to testify, one cannot give much weight, if any, to their alleged statements.

10. The complainant continued to live with her parents in Montgomery until she found an apartment some six or seven months later.

11. The complainant's out of pocket expenses as a result of not renting the apartment amounted to \$312.00 which represented her mileage expense (gasoline) at a rate of \$52.00 per month. The complainant also asked for \$25.00 in maintenance cost and \$84 in parking fees, however, there is no indication that the maintenance cost would not have been needed even if she

had rented the apartment and there was no indication that she would have cancelled her monthly parking had she rented the apartment. In addition, the complainant had to travel to Charleston from North Carolina for these hearings for a total of 800 miles.

12. The complainant was embarrassed by the actions of the respondent which was evidence by the fact that she immediately contacted the West Virginia Human Rights Commission.

13. The respondent presented no written leases, cancelled checks or rent receipts showing that the apartment has been leased.

CONCLUSIONS OF LAW

The hearing examiner, having heard the evidence and having reviewed the exhibits filed at the hearing, hereby makes the following conclusions of law:

1. That the complainant, being a black female, is a member of a protected class.

2. That the respondent being the owner of rental property is a covered owner as defined by the West Virginia Human Rights Act (5-11-3).

3. That the parties are within the jurisdiction of the West Virginia Human Rights Commission.

4. That there is sufficient evidence to infer that the complainant was, in fact, discriminated because of her race.

Chapter 5, Article 11, Section 9 of the West Virginia Code states in part that:

"It shall be an unlawful discriminatory practice: (g) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons: Provided, that this provision shall not require any person named herein to rent, lease, assign or sublease any housing accommodations or real property, or any portion thereof to both sexes where the facilities of such housing accommodations or real property, or any portion thereof, are suitable for only one sex;

(2) To discrimination against any person or group of persons because of the race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons in the terms, conditions or privileges of the sale, rental or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment or sublease of any housing accommodations or real property or part or portion thereof, which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry,

sex, blindness or handicap or any intent to make any such discrimination and the production of any statement, advertisement, publicity, sign, form of application, record or inquiry purporting to be made by any such person shall be prima facie evidence in any action that the same was authorized by such person: Provided, that with respect to sex discrimination, this provision shall not apply to any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only one sex."

The forceful language used by the Legislature mandates the eradication of unlawful discrimination. State of West Virginia Human Rights Com. v. Pauley, 9 EPD § 10, 103 (W.Va. 1975).

Complainant need not prove that the respondent acted with specific intent to violate the laws; it is enough if respondent's acts and conduct had the effect of discriminatorily denying housing opportunities to a minority home seeker. U.S. v. Real Estate Development Corp., 347 F2d 776 (N.D. Miss. 1972).

It is clear from the evidence that the complainant made an inquiry to the advertisement in the newspaper, and at the time of said inquiry was told that the apartment was available. However, upon arriving at the respondent's address, only thirty minutes later, the complainant was told that the apartment had been rented. Having some concerns about this, the complainant contacted the West Virginia Human Rights Commission who sent a tester to the address of the respondent to inquire as to whether or not the apartment was available. The tester testified that she was shown the apartment and was told that it was still vacant

and was told the terms of the lease. Testers are commonly used by Human Rights Commission to verify or confirm information concerning alleged acts of discrimination in the rental of property. This has been sanctioned by various courts in this country. J. Howard Brandt, Inc. v. Pa. Human Rights Com., 324 A2d 840 (1974); Tomilinson v. Commonwealth of Pa. Hum Rts Com., 312 A2d 118. Testers can also be used to corroborate a complaint of discrimination. Bush v. Kain, 297 FSupp. 151 (Ohio-ND 1969); Tomilinson v. Commonwealth of Pa. Hum. Rts. Com., (Supra),

Although the respondent now contends that the apartment had been rented earlier in the morning of March 1, 1977, the preponderance of the evidence indicates otherwise. The respondent dismissed the tester's testimony with only that she had never seen or talked to Miss Lewis. It is felt that the only witness that had no interest in the outcome of this case was Miss Lewis who is now self-employed. To insinuate that she would perjure herself for no reason at all is totally without merit.

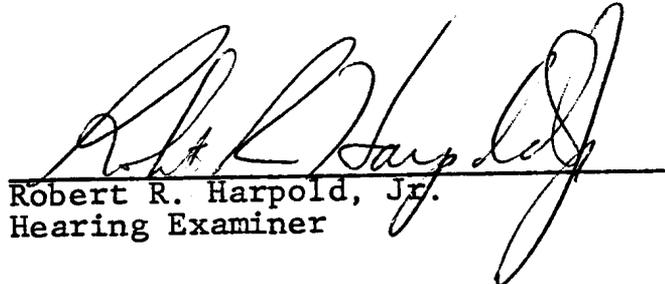
The Respondent presented no leases, rent checks or rent receipts indicating that the apartment had been leased. She only relied upon her testimony and an affidavit from an individual who had allegedly rented the apartment. Aware of the subtle ways in which housing opportunities can be denied minorities, courts have consistently been skeptical of subjective excuses for turning away minorities. Newbem v. Lake Loulie, Inc., 308 F. Supp 407 (S.D. Ohio 1968); Stevens v. Dobs, Inc., 483 F2d 82 (4th Cir. 1973); United States v. Real Estate Development Corporation, 372 F.Supp 766 (M.P. Miss 1972).

damages can only be awarded upon proof of a monetary loss. State of West Virginia Human Rights Comm. v. Pauley, 158 W.Va. 495, 212 SE2d 77 (1975). The purpose of awarding damages under the West Virginia Human Rights Act is to "make whole" the victim of the discriminatory act.

As noted in the findings of fact the complainant, by reason of her failure to rent the apartment, was required to commute between her parents' residence in Montgomery and her employment in Charleston. This expense amounted to \$52.00 per month, and that it was six months before she found an apartment in Charleston. Therefore, the complainant's out-of-pocket expenses amounted to \$312.00. In addition, the complainant had to make two trips to Charleston from North Carolina for these hearings. Her expenses in that regard were \$200 (.25/mile for 800 miles). In this respect, the examiner awards compensatory damages in the amount of \$512.00.

The law in West Virginia is clear that the West Virginia Human Rights Commission may award to the complainant incidental damages as compensation for humiliation and embarrassment. State Human Rts. Com. v. Pearlman, 239 SE2d 145 (1977). Although Pearlman clearly demonstrates the Commission's power to award compensatory damages for humiliation, embarrassment and emotional and mental distress and the loss of dignity on account of any discriminatory act on the part of the respondent, that authority should be exercised with restraint depending upon the facts and circumstances of each case and the amount of proof of

such humiliation and embarrassment. In this case, the only testimony regarding this element was the testimony of the complainant. No other witness testified as to the embarrassment or humiliation of the complainant. In view of this, the hearing examiner is reluctant to award an amount as argued by counsel for the complainant. In this respect, after considering all the evidence, especially the testimony of the complainant regarding her humiliation and embarrassment, the hearing examiner awards the sum of Seven Hundred Dollars as compensation for the embarrassment and humiliation caused by the acts of discrimination of the respondent.



Robert R. Harpold, Jr.
Hearing Examiner