



order

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616
December 16, 1985

Rose Marie Bradsher
P. O. Box 141
Wilkinson, WV 25665

Walt Auvil, Esquire
Assistant Attorney General
1204 Kanawha Boulevard, E.
Charleston, West Virginia 25301

Raymonds Inc.
c/o Raymond Kohn
P. O. Box 206
Logan, WV 25601

Thomas E. Esposito, Esquire
P. O. Box 1680
Logan, WV 25601

RE: Rose Marie Bradsher V Raymonds, Inc./ER-78-77

Dear Ms. Bradsher, Mr. Auvil, Mr. Kohn and Mr. Esposito:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Rose Marie Bradsher V Raymonds, Inc. ER-78-77.

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,

Handwritten signature of Howard D. Kenney in cursive.
Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ROSE MARIE BRADSHER,

Complainant

Vs.

ER 78-77

RAYMONDS, INC.,

Respondent

RECEIVED

SEP 19 1985

W.V. HUMAN RIGHTS COMM.

SUPPLEMENTAL
ORDER

Based upon the findings of fact and conclusions of law and recommendations of the Hearing Examiner, it is hereby ORDERED that Respondent pay unto Complainant the sum of One Thousand Thirty Two and no/100 Dollars (\$1,032.00) (in compensation for back pay and interest at ten percent (10%) per annum resulting from Respondent's discriminatory actions).

It is further ORDERED that Respondent pay unto Complainant the sum of One Thousand and no/100 Dollars (\$1,000.00) (in compensation for her humiliation, anger, and emotional and mental distress).

It is further ORDERED that Respondent implement the affirmative action plan attached hereto and incorporated herein as a part of this order.

ENTER:

Betty Agsten Hamilton
Vice Chairperson of West Virginia Human
Rights Commission

Date

December 5
1985

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ROSE MARIE BRADSHER

Complainant,

V

Docket No.: ER-78-77

RAYMONDS, INC.

RESPONDENT.

ORDER

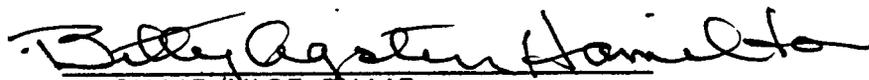
On the 14th day of November, 1985, the Commission reviewed Hearing Examiner, Anne B. Charnock's Findings of Fact and Conclusions of Law and Exceptions thereto. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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 TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 5 day of December, 1985.

RESPECTFULLY SUBMITTED,


CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION

*Approved
Aug. 24, 1985
SRH*

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ROSE MARIE BRADSHER,

Complainant,

Vs.

ER 78-77

RAYMONDS, INC.,

Respondent.

RECEIVED

AUG 21 1985

ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

FINDINGS OF FACT, CONCLUSIONS OF LAW,
RECOMMENDATIONS AND ORDER

Pursuant to notice issued to the Respondent, this matter came on for hearing on the 4th day of June, 1985, in the County Commission Courtroom of the Logan County Courthouse, Logan, West Virginia. Anne B. Charnock, Hearing Examiner, presided. The presence of a Hearing Commissioner was waived by the parties.

The complainant, Rose Marie Bradsher, appeared in person and by her counsel, Walt Auvil, Esquire, Assistant Attorney General, State of West Virginia, and the Respondent, Raymonds, Inc., appeared in person by Raymond Kohn, President of Raymonds, Inc. and by its counsel, Thomas E. Esposito, Esquire, of Esposito and Esposito, Logan, West Virginia.

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 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 the 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. Complainant, Rose Marie Bradsher, is a black woman and resident of Logan County, West Virginia.
2. Respondent is a corporation solely owned by Raymond Kohn, who is a white male and operates a clothing store in downtown Logan called "Raymonds".
3. Complainant is a graduate of Logan High School. Further she has completed some college although she does not have a college degree. Complainant ended her college studies in 1973.
4. Complainant obtained full-time employment in January, 1974. In August 1974 she lost that job and began actively seeking a new job in the Logan area. Her job search brought her to a number of stores in the downtown Logan area, including Raymonds.
5. By agreement of both parties at the hearing it was stipulated that no blacks were employed in a sales capacity by any downtown store at this time. Furthermore no black sales clerks are presently employed at Raymonds nor have any been employed in the interim.

6. The number of employees at Raymonds at this time ranged between eighteen and twenty-five. During the Christmas season the employees numbered up to forty. The employee turnover was high. Being a clothing store most positions were sales positions although management, stock persons, custodians, etc. are included. No formal requirements existed as to job qualifications although a high school diploma or its equivalent, was preferred.

7. On August 21, 1976, complainant went to respondent's Raymonds store, to apply for a job. Complainant was not given the opportunity to complete an application. Instead she was told by Irene Williamson, a white woman who worked in the office, that no applications were available because the duplicating machine was broken. (Transcript 10). Further Ms. Williamson testified that "most of the time if we was (sic) out I would even take their name, address, telephone number, you know, so that we could get back in touch." (Transcript 19). Complainant was told to seek employment elsewhere as the store had a "backlog of applications" (Transcript 45) Ms. Williamson did not attempt to take complainant's name and number (Transcript 45).

8. Respondent has no record of Complainant applying for a job during the period of August 1974-1976. According to Respondent a flood destroyed all of the Raymond's store records.

9. Complainant found employment in September, 1976 and has been employed since that time.

10. Other black females have attempted to obtain employment at Raymond's store without success.

11. Forty five persons were hired at Raymonds store from March 1, 1975 to December, 1976. More particularly two were hired on August 21, 1976, and eight from August 22, 1976 to September 30, 1976. Nine were hired from October 1, 1976 to December 31, 1976. Of this total 3 were black; 2 cleaning ladies and 1 stock boy (Complainant's Exhibit 1).

12. Complainant was qualified for the positions of sales clerk and office/clerical.

13. Blacks employed by Raymonds store worked as "cleaning ladies" or "stock boys". (Complainant's Exhibit 1).

14. Included with the written job application was a picture of the applicant taken at the store.

15. Complainant was "very upset" after this August 21, 1976 incident and testifies of weight loss and hair loss. (Transcript 45).

CONCLUSIONS OF LAW

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

2. The Respondent is an "employer" within the meaning of the West Virginia Human Rights Act. W. Va. Code §5-11-3 (d).

3. It is the public policy of the State of West Virginia to provide all of its citizens equal opportunity for employment. Equal Opportunity in the areas of employment is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness or handicap. W. Va. Code §5-11-2.

4. On September 11, 1976, complainant filed a complaint against Respondent (ER 78-77) alleging that Respondent had engaged in unlawful discriminatory practices prohibited by law. W. Va. Code §5-11-9 (a).

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

6. Pursuant to the mandate issued by the court in Edith Allen, et al v. State of West Virginia Human Rights Commissioner, et al, 324 S. E. 2d 299 (W. Va. 1984) the public hearing was held.

7. Racial discrimination need not be proved by direct or circumstantial evidence. Rather a four point standard had been adopted in both federal and state courts. McDonnell-Douglas v. Green 411 U. S. 792 (1973), Shephardstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S. E. 2d 342 (W. Va. 1983). This scheme requires the Complainant to meet certain criteria to establish a prima facie case. These requirements are: that complainant is a member of a racial minority; that she applied and was qualified for a job for which the employer was seeking applicants; that despite her qualifications she was rejected; and that after her rejection, the position remained open and the employer continued to seek applicants from persons of the complainant's qualifications. Complainant carries the burden of establishing the prima facie case. If complainant fails, the complaint is dismissed. McDonnell-Douglas, Shephardstown.

8. Complainant has established a prima facie case. She is a member of a racial minority, she was qualified in the jobs of sales clerk or office/clerical worker as a result of her high school diploma, and persons with apparently similar qualifications were

subsequently hired. The sticking point is whether complainant actually applied for a job. Undoubtedly complainant was not even afforded the opportunity to simply apply for a job on August 21, 1976, when she appeared at the Raymonds store and sought to complete an application but was denied.

9. Once complainant has established a prima facie case the responsibility shifts to the respondent to articulate some legitimate, non-discriminatory reason for complainant's rejection. McDonnell-Douglas, Shephardstown. This is but a burden of producing evidence to rebut the prima facie case and not the burden of persuasion. Texas Dept. of Community Affairs v. Burdine, 450 U. S. 248 (1981). Respondent contends that complainant was not provided an application because the duplicating machine was broken and none were available. Respondent has met this burden.

10. Once Respondent has articulated a legitimate, non-discriminatory reason for his action, the responsibility again returns to the complainant. She must now demonstrate that this reason is a "pretextual coverup for a racially discriminatory decision" McDonnell-Douglas, Shephardstown. Although a duplicating machine is of itself color blind and indiscriminate in its breakdowns even the most calloused observation indicates that something is amiss. On the very same day Ms. Bradsher was denied an application a sales clerk and a receiving clerk were hired by Raymond's store. And incidentally both new hires were white. Of the eight persons hired in the next six weeks all but one were white - a black cleaning

lady. Three sales clerks were new hires amongst these eight. Undoubtedly Respondent's reason is but a pretext as new employees were being hired on a regular basis.

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 back pay to compensate for wages lost due to discriminatory acts of a Respondent. W. Va. Code §5-11-10.

13. 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 (W. Va. 1977)

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

1. That the Complainant, Rose Marie Bradsher, be awarded back pay from the Respondent, Raymond's Inc., for the period of August 21, 1976, until September 26, 1976, in the amount of \$440.00 plus interest at the rate of ten percent per annum for a total award of \$1032.00 in back pay. (This was calculated at the value of \$2.20 an hour - minimum wage - (for forty hours a week and 5 weeks) and 10% interest added every year).

2. That the Complainant, Rose Marie Bradsher, be awarded further damages in the amount of \$1,000.00 for her humiliation, anger, and emotional and mental distress.

3. That the Respondent be ordered to implement an affirmative action plan as outlined in Complainant's post trial brief and identified as "Complainant's Exhibit 1", and which is attached hereto.

Respectfully submitted this 20th day of August, 1985.

Anastharnol

Hearing Examiner

COMPLAINANT'S EXHIBIT NO. 1

PROPOSED AFFIRMATIVE ACTION PLAN

1. Respondent shall direct a statement to all of its officials and supervisory personnel emphasizing the importance of its non-discriminatory employment policy with regard to race and advising them that supervisory personnel will be held strictly accountable for the effectiveness of such policy, and directing them to take all necessary steps to fully implement the policy. The respondent states that specific instructions for affirmative action to implement its non-discriminatory employment policy will be issued by respondent.

2. Respondent agrees to continue to periodically instruct all of its employees having hiring responsibilities of respondent's equal opportunity hiring policy and of respondent's expectation that this policy shall be implemented.

3. Respondent agrees that the notice required to be posted by the Act will continue to be conspicuously posted and kept upon its premises in a place where bulletins and notices to employees and/or applicants for employment are customarily and generally posted.

4. Respondent agrees to continue to prominently utilize the phrase "Equal Opportunity Employer" in all forms of its employment advertising.

5. Respondent agrees to identify black applicants and afford them every consideration for employment at its store.

6. Respondent agrees that it will not maintain any written or unwritten job qualifications or requirements which would be discriminatory on the basis of race and will delete the practice of photographing job applicants.

7. As part of its recruitment program and affirmative action effort, respondent agrees to take the following actions:

a. When respondent first decides to hire new employees and/or accepts applications and thereafter when necessary to meet the requirements of paragraph 9, respondent shall notify by letter, setting forth its non-discriminatory policy and affirmative action efforts, including the seeking of qualified black applicants, the following organizations and individuals:

Anna Bryant
Cora, West Virginia

Ravella Dickerson
Aracoma, West Virginia
Phone: 752-3587

Selena Banks
301 Holley Avenue
Aracoma, West Virginia
Phone: 752-6492

Sara Davis, Outreach Counselor
White & Browning Building
Logan, West Virginia
Phone: 752-3422

Kim Smith
400 Kirby Camp
Whitman, West Virginia
Phone: 239-2053

Rita Harris
504 White & Browning Building
Logan, West Virginia
Phone: 752-7056 (H)
752-4178 (W)

Compliance Director
W. Va. Human Rights Commission
1036 Quarrier Street
Charleston, West Virginia
Phone: 348-2616

Howard Page, Director
NAACP
Holden, W. Va.

Records of communications with these sources, shall be maintained for the time period established in paragraph 9 below and shall be submitted to the Commission with such other records as required by paragraphs 10 and 11 below.

8. For all black applicants, a record will be maintained for the time period established in paragraph 9 below reflecting:

- a. job for which considered;
- b. disposition, including, if rejected, reason therefor;
- c. if training or other corrective action would make individual a viable candidate, such action shall also be documented.

Goals and Timetables

9. For a period of two calendar years, commencing with the date on which respondent first fills a vacancy with a new hire, respondent's goal will be to hire at least one qualified black into a sales or clerical entry-level position for every white hired into sales or clerical entry-level positions. Respondent and the Commission understand that respondent shall not be in violation of the foregoing undertaking so long as it is making substantial good faith effort to comply as evidenced by respondent's compliance with affirmative action obligations under this Agreement.

Reporting and Recordkeeping

10. Within ten (10) days of receipt of an official copy of this order, respondent will furnish to the Commission, by certified mail to the Compliance Director of the Commission, a statistical breakdown reflecting the composition of the respondent's work force by race and sex codes utilized in federal equal employment opportunity reporting.

11. For a period of two years commencing with the date on which respondent fills vacancies for new hires, respondent shall report to the Commission, by certified mail to the Compliance Director of the Commission, on a quarterly basis the following:

a. a statistical breakdown reflecting the composition of the respondent's work force by race and sex codes utilized in federal equal employment opportunity reporting;

b. a breakdown of applicant flow by race and sex codes for the quarter;

c. a breakdown of the total new hires by race and sex codes and initial job classification for the quarter; and

d. an individual listing of all black applicants not hired during the quarter setting forth the information utilized in paragraph 8 above.

ENTERED this 20th day of August, 1985.

Anne B. Charnock

ANNE B. CHARNOCK
HEARING EXAMINER