



order

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 28, 1985

William F. Carroll
Deputy Attorney General
Room E-26, State Capitol
Charleston, WV 25305

Sidney Barton
2954 Hollywood Place
Huntington, WV 25705

City of Huntington, Office of
Community Development
Charles F. Albright
Office of Director of Law
City Hall
P. O. Box 2659
Huntington, WV 25717

Re: Barton V. City of Huntington
REP-245-84

Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Sidney B. Barton, III V City of Huntington, Office of Community Development, REP-245-84.

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
Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

Enclosure

FILED MAIL TAG 10/28/85

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SIDNEY B. BARTON, III,

COMPLAINANT.

V

DOCKET NO.: REP-245-84

CITY OF HUNTINGTON, OFFICE OF
COMMUNITY DEVELOPMENT,

RESPONDENT.

ORDER

On the 9th day of October, 1985, the Commission considered the Complainant's Motion for Reconsideration.

It is ORDERED that the Respondent's Motion for Reconsideration is denied.

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

Entered this 10 day of October, 1985.



CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SIDNEY B. BARTON, III
COMPLAINANT,

V.

DOCKET NO. REP-245-84

CITY OF HUNTINGTON, OFFICE
OF COMMUNITY DEVELOPMENT.

RESPONDENT.

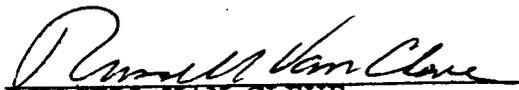
ORDER

On the 18th day of July, 1985, the WV Human Rights Commission reviewed the Hearing Examiners Proposed Order and Decision and the Exceptions filed by William F. Carroll, Deputy Attorney General, Complainant's counsel. After consideration of the aforementioned Order and Decision and Exceptions the Commission does hereby adopt the Hearing Examiner's Findings of Fact and Conclusions of Law as its own. It is therefore ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order. It is further ORDERED that Complainant be awarded no relief and that this case be closed.

By this Order, a copy of which is to be sent by certified mail, the parties are hereby notified THAT THEY HAVE TEN DAYS TO REQUEST RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 18th day of July, 1985.

RESPECTFULLY SUBMITTED,


RUSSELL VAN CLEVE
CHAIRMAN, WV HUMAN RIGHTS
COMMISSION

RECEIVED

JUN 11 1985

W.V. HUMAN RIGHTS COMM.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SIDNEY BARTON, III

Complainant,

vs.

DOCKET NO. REP-245-84

CITY OF HUNTINGTON, OFFICE OF
COMMUNITY DEVELOPMENT

Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSION OF LAW

This matter came on for hearing on June 5, 1985. The hearing was held at the Conference Room of the West Virginia University Extension Office, Cabell County Courthouse, Huntington. The hearing panel consisted of Theodore R. Dues, Jr., Hearing Examiner, and the Honorable Sid Allen, Hearing Commission.

The Complaint appeared in person and by his counsel, William Carroll, Deputy Attorney General. The Respondent appeared by its counsel, Charles Albright and by its representative, George Sexton.

FINDING OF FACT

1. The Complainant, Sidney Barton, filed a complaint with the West Virginia Human Rights Commission initially on May 31, 1983, and thereafter amended the same on June 15, 1983. Both complaints alleged racial discrimination against the Defendant in its decision to layoff the Defendant on December 3, 1982, from his position of Property Control Officer.

2. On May 8, 1983, the Complainant applied for employment with the City of Huntington seeking the position of Federal Jobs Coordinator.

3. The same application was used by the Respondent in considering the Complainant for the position of coordinator for Fairfield East Community Development.

4. The Complainant was interviewed for each of the positions.

5. The Federal Jobs Coordinator position was given to George Parker.

6. The Complainant and George Parker were similarly qualified, if not equally qualified, for the position of Federal Job Coordinator.

7. The Fairfield East Community position was given to Carolyn Brewer.

8. The Complainant was more qualified than Brewer for the Fairfield East position.

9. Carolyn Brewer received the position over the Complainant due to the close relationship she shared with the Board of Directors at Fairfield East.

10. The Respondent made the final determination as to who should receive the Fairfield East position but applied significant consideration to the recommendation of the Fairfield East Board of Directors.

11. The reason the Respondent applied such significance to the Fairfield East Board of Directors' selection for the position was the importance of having an individual in the position that could interface well with the Board and the City contacts necessary to perfect funding for the various programs the agency wished to implement. The Respondent's decisions to hire for the two positions subject of this complaint were not motivated by the fact that the Complainant had earlier filed a charge with the West Virginia Human Rights Commission alleging the Respondent to be guilty of racial discrimination.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties in this matter.

2. As in all cases, the Complainant bears the burden of proving the allegations of his complaint that the Respondent failed or refused to hire him, at least in part, due to the fact that he had filed a charge with the West Virginia Human Rights Commission alleging the Respondent to be in violation of the West Virginia Human Rights Act.

3. The Complainant failed to establish a prima facie case of reprisal in as much as he was unable to establish with sufficient and credible evidence that the Respondent refused or failed to hire him for the positions alleged in his complainant due to the

charge filed with the West Virginia Human Rights Commission in 1983 in which he alleged the Respondent to be guilty of racially discriminating against him.

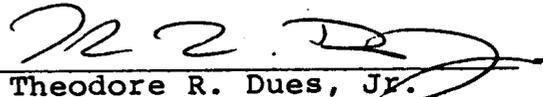
4. Accordingly, the Complainant has proven no violation of the West Virginia Human Rights Act.

RELIEF

The Examiner hereby recommends that the complaint in this matter be dismissed and that the Complainant take naught.

DATED June 10, 1985

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner