

ADMINISTRATIVE OFFICE
CHARLESTON, WV

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

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W.V. HUMAN RIGHTS COMM.

LAWRENCE K. CHAPMAN

Complainant

vs:

CASE NO. REP-749-83

EXECUTIVE INN

Respondent

ORDER

Pursuant to the Findings of Fact and Conclusions of Law, which are attached hereto and made a part hereof, it is hereby ORDERED as follows:

1. The respondent is not an "employer" within the meaning of Chapter 5, Article 11, Section 3 of the West Virginia Human Rights Act since it did not employ twelve (12) or more employees at the time of the alleged discriminatory act.

2. The complaint be dismissed for want of jurisdiction over the subject matter

3. The complaint will be dismissed for lack of prosecution on behalf of the complainant, Lawrence K. Chapman.

It is so ORDERED entered this 19th day of July, 1985.



CHAIRMAN, WEST VIRGINIA
HUMAN RIGHTS COMMISSION

Approved 5/11/85
SDB

WEST VIRGINIA SUPREME COURT OF APPEALS
ADMINISTRATIVE OFFICE
CHARLESTON, W.V.

WEST VIRGINIA SUPREME COURT OF APPEALS, FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION AN 10: 47

LAWRENCE K. CHAPMAN

Complainant

vs:

CASE NO. REP-749-83

EXECUTIVE INN

Respondent

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER

Pursuant to proper notice, this matter came on for hearing on the 8th day of April, 1985, beginning at 9:00 a.m. in Conference Room C, Building 7, State Capitol Complex, Charleston, West Virginia. Mr. Robert R. Harpold, Jr., hearing examiner presiding.

The complainant, Lawrence K. Chapman, was not present, however, was represented by S. Clark Woodroe, Assistant Attorney General. The respondent, Executive Inn, was present by Juanita G. Tracy, president of Executive Inn and by their counsel, James M. Reishman.

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 by their respective representatives and counsel, the hearing was convened at the aforesaid time and place.

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ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

WEST VIRGINIA HUMAN RIGHTS COMMISSION
ADMINISTRATIVE OFFICE
CHARLESTON, W.V.
1993 MAY 28 AM 10:47

Counsel for complainant proceeded to file a motion for a continuance, along with an affidavit of Lesa Gulley, investigator for the Attorney General's office which affidavit set forth the attempts to contact the complainant in this matter.

The respondent, Executive Inn, made a motion to dismiss the complaint for want of jurisdiction of the West Virginia Human Rights Commission and filed, in support thereof, an affidavit of Juanita G. Tracey which stated that at the time the complaint was filed, the respondent only employed eleven (11) persons. There was no evidence offered by the complainant to dispute this. Counsel for the respective parties were given a time schedule in which they were to submit any evidence as to the number of employees and for filing a legal memorandum relating to the jurisdictional question and no further evidence was submitted.

Upon due consideration of the evidence, argument and brief of respective counsel, the hearing examiner hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The respondent, Executive Inn, employed at the time of the alleged act of discrimination, eleven (11) employees, one of which was only a part-time employee.
2. No communication has been received from the complainant, Lawrence K. Chapman, even though a certified letter has been sent to his Baltimore, Maryland address.

CONCLUSIONS OF LAW

WEST VIRGINIA
ADMINISTRATIVE SERVICE
CHARLESTON, W.V.
1995 MAY 28 AM 10:47

1. Executive Inn is not an "employer" within the meaning of the West Virginia Human Rights Act (Chapter 5, Article 11, Section 3(d) of the West Virginia Code).

Chapter 5, Article 11, Section 3(d) of the West Virginia Code, 1939, as amended, defines "employer" as follows:

"The term 'employer' means the State, or any political subdivision thereof, and any person employing twelve or more persons within the State: Provided that such terms shall not be taken, understood or construed to include a private club." [Emphasis added.]

The respondent contends that the West Virginia Human Rights Commission lacks jurisdiction to hear this alleged discrimination complaint because the respondent does not employ twelve (12) or more persons. While it is true that other types of alleged discrimination (i.e. lending money or selling or leasing real estate) do not require the alleged offender to be a certain size or have a number of employees, the unlawful discriminatory practice of failing to hire because of discrimination does require the employer to have a minimum number of employees. Federal law also requires a certain number of employees before an employer is subject to the provisions of the law.

In Walter v. Ritchie, 156 W.Va. 98, 191 S.E.2d 275 (1972), the West Virginia Supreme Court of Appeals stated:

Administrative agencies are created of statute and delegate of the Legislature. "[T]heir power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority

which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication. AN 10: 47

See also Mountaineer Disposal Service Inc. v. Dyer, 156 W. Va. 766, 197 S.E.2d 111 (1973).

Therefore, where the language of a statute is clear and unambiguous, its plain meaning must be accepted without resorting to interpretation. State ex rel Underwood v. Silverstein, 278 S.E.2d 886 (W.Va. 1981); State v. Warner, 308 S.E.2d 142 (W.Va. 1983).

Therefore, because of the evidence indicates that the employer, at the time of the alleged act of discrimination employed less than twelve (12) employees, the employer was not a covered employer and subject to the jurisdiction of the West Virginia Human Rights Act.

2. In view of the fact that numerous attempts have been made to contact the complainant by the Attorney General's Office, including contacting his parents and obtaining the complainant's Baltimore, Maryland address, no correspondence or communication has been received from Mr. Chapman regarding his desire to pursue this matter.

Therefore, one must conclude that the complainant Lawrence K. Chapman, does not desire to pursue the prosecution of this claim and, therefore, the claim shall be dismissed for lack of prosecution.


ROBERT R. HARPOLD, JR.
HEARING EXAMINER



WEST VIRGINIA
ADMINISTRATIVE OFFICE
CHARLESTON, WV

*File -
HCT-3*

1985 MAY 28 AM 10:46

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
~~XXXXXXXXXXXXXXXXXXXX~~
ATTORNEY GENERAL

April 30, 1985

Robert Harpold, Jr.
Hearing Examiner
1701 Charleston National Plaza
Charleston, West Virginia 25301

Re: Lawrence Chapman v. Executive Inn
Docket No. REP 749-83

Dear Mr. Harpold:

This office has been unable to locate the complainant in this matter. As indicated in the affidavit filed by Lesa Gully, certified mail sent to Lawrence Chapman at his Charleston address has been signed for by his parents. Mr. Chapman does not have a West Virginia driver's license. We obtained from Mr. Chapman's parents the Baltimore address and sent a certified letter there on April 3, 1985. We have received neither the green card nor any response from the complainant as a result of this mailing. In keeping with Section 3.10(b)(2) of the Emergency Rules Pertaining to Practice and Procedure before the West Virginia Human Rights Commission, I would therefore suggest that this case be administratively dismissed.

In view of the foregoing, it does not appear to me that it is necessary to pursue the briefing of the jurisdictional issue raised by the respondent.

Thank you for your attention.

Sincerely yours,

Emily A. Spielers
EMILY A. SPIELER
DEPUTY ATTORNEY GENERAL

EAS:reb

cc: Lawrence Chapman
James M. Reishman, Esq.
Harry Taylor
Russell Van Cleve

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