



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION

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Quewanncoll C. Stephens
Executive Director

GASTON CAPERTON
GOVERNOR

April 24, 1990

Paul Clark
Janice Clark
712 Main St.
Parkersburg, WV 26101

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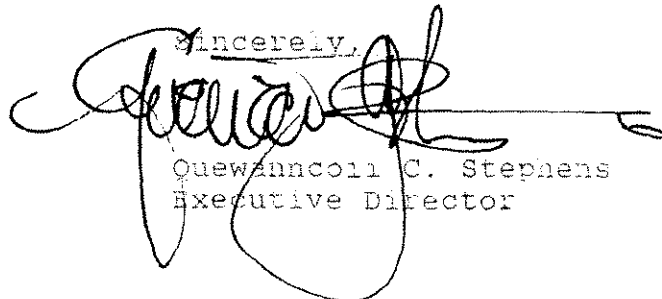
Orville L. Hardman
500 Green St.
P.O. Box 31
Parkersburg, WV 26102-0031

Re: Clark, Logsdon & Farrell v. Orville & Naomi Casto
HR-620-87

Dear Parties:

Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case. Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective July 1, 1989, any party adversely affected by this final order may file a petition for review with the Kanawha County Circuit Court within 30 days of receipt of this final order.

Sincerely,



Quewanncoll C. Stephens
Executive Director

Enclosures

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal you must file a petition for appeal with the clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a non-resident of this state, the non-resident may be required to file a bond with the clerk of the supreme court.

In some cases the appeal may be filed in the Circuit Court of Kanawha County, but only in: (1) cases in which the commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code Section 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PAUL CLARK, JANICE CLARK, CARROLL
S. LOGSDEN AND JESSICA FARRELL,

Complainants,

v.

DOCKET NO. HR-620-87

ORVILLE CASTO AND NAOMI CASTO,

Respondents.

FINAL ORDER

On 7 February 1990 the West Virginia Human Rights Commission reviewed the recommended decision filed in the above-styled matter by hearing examiner Gail Ferguson. After consideration of the aforementioned, and the transcript of record, briefs and argument of counsel and all exceptions filed in response to the recommended decision, the Commission decided to, and does hereby, adopt said recommended decision, encompassing the findings of fact and conclusions of law therein, as its own, with modifications and amendments as set forth below:

1. In the subsection entitled "Relief and Order," paragraph 2 is modified to read as follows:

"2. The respondents are ordered to pay the following monies as actual damages to the complainants:

"a. Complainants Jessica Farrell and Carroll S. Logsdan are awarded \$7,448.95 as reimbursement for the nineteen (19) monthly payments of \$392.05 made prior to the revocation of the Land Contract, minus \$4,524.00, which the record indicates was the total fair market value of the house for the 13 months during the time that said complainants lived in the house. The fair market value was determined by multiplying the number of months the Logsdan's lived in the house (13) times the amount paid by the Clark's for rent (\$348.00). Subtracting this fair market value from the amount awarded, we hereby make a net award in favor of Ms. Farrell and Mr. Logsdan in the amount of \$2,924.95.

"b. Complainants Jessica Farrell and Carroll S. Logsdan are awarded the sum of \$3,000.00 for reimbursement for the down payment which they placed on the property;

"c. Complainants Paul Clark and Janice Clark are awarded \$425.00 for moving expenses incurred as a result of

being forced to vacate the property in question; and,

"d. Complainants Paul Clark and Janice Clark are awarded \$2,080.00 as reimbursement for utility costs incurred as a result of being forced to vacate the property and their subsequent relocation into an apartment in which they were required to assume the cost of all utility services. This sum is based on the undisputed testimony of record that complainants Clark were required to pay, on average, \$150.00 to \$160.00 per month for water, sewer, trash, gas and electricity. We award them that amount per month for the period April 1987 until 1 May 1988, or a total of 13 months (13 times \$160.00 per month equals \$2,080.00)."

2. In the subsection entitled "Relief and Order," paragraph 3 is modified to read as follows:

"We award each complainant incidental damages in the amount of \$2,500.00 as compensation for the humiliation, embarrassment, emotional and mental distress and loss of personal dignity suffered as a result of the respondents' unlawful discriminatory act."

It is, therefore, the Order of the Commission that the hearing examiner's recommended decision, encompassing her

findings of fact and conclusions of law, be attached hereto and made a part of this Final Order, except as amended by this Final Order.

By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of the State of West Virginia, the parties are hereby notified that they have ten (10) days to request that the West Virginia Human Rights Commission reconsider this Final Order or they may seek judicial review as outlined in the "Notice of Right to Appeal" attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 30th day of March, 1990, in Charleston, Kanawha County, West Virginia.



QUEWANNCOII C. STEPHENS
EXECUTIVE DIRECTOR/SECRETARY

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PAUL AND JANICE CLARK,
CARROLL S. LOGSDEN AND
JESSICA FARRELL,

Complainant,

v.

DOCKET NUMBER: HR-620-87

ORVILLE AND NAOMI CASTO,

Respondents.

HEARING EXAMINER'S RECOMMENDED DECISION

A public hearing, in the above-captioned matter, was convened on August 24, 1988, in Wood County, at the Wood County Public Library, 3100 Emerson Ave., Parkersburg, West Virginia. The Hearing Panel consisted of Gail Ferguson, Hearing Examiner, and Nathaniel Jackson, Hearing Commissioner.

The complainants, Paul and Janice Clark, Carroll S. Logsdan and Jessica Farrell, appeared in person and by counsel, Antoinette Eates, Assistant Attorney General. The respondent, Naomi Casto, appeared in person and by counsel, Orville Hardman. Respondent, Orville Casto, did not appear because of his incapacitation due to a terminal illness.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well

as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings conclusions and legal analysis of the hearing examiner and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper decision. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

ISSUES

1. Whether the respondents discriminated against the complainants on the basis of race by revoking a Land Contract and Agreement in violation of the West Virginia Human Rights Act.
2. If such illegal discrimination on the basis of race occurred, what should the remedy be?

FINDINGS OF FACT

1. The respondents in this matter are Orville and Naomi Casto of Parkersburg, West Virginia.
2. The complainants in this matter are Paul and Janice Clark, Carroll S. Logsdon and Jessica Farrell, all of Parkersburg, West Virginia.
3. The property at issue in this complaint is located at 1008 Broadway Ave., Parkersburg, West Virginia.

4. The complainants, Jessica Farrell and Carroll S. Logsdon, entered into a Land Contract and Agreement dated May 23, 1985, to purchase the property at 1008 Broadway Ave. and 1008½ Broadway Ave. from the respondents, Orville and Naomi Casto.

5. The complainant, Carroll S. Logsdon, resided in the house at 1008 Broadway Ave. from approximately June 1, 1985 to June 30, 1986, and the complainant, Jessica Farrell resided there from approximately January, 1986 to June, 1986.

6. The complainants, Carroll S. Logsdon and Jessica Farrell, who are white, have real estate licenses or have had real estate licenses in the past.

7. The complainant, Paul Clark, is black and is married to the complainant, Janice Clark, who is white. The Clarks have two children. During the relevant time period, Mrs. Clark was pregnant.

8. The complainants, Paul and Janice Clark, entered into an Assisted Lease Agreement effective July 1, 1986, with the complainant, Carroll S. Logsdon.

9. Pursuant to the Assisted Lease Agreement, Paul and Janice Clark rented and took occupancy of the house located at 1008 Broadway Ave. on or about July 1, 1986.

10. Pursuant to the Assisted Lease Agreement, Paul and Janice Clark paid \$51.00 per month in rent to the complainant, Carroll S. Logsdon.

11. Pursuant to the Assisted Lease Agreement, the Parkersburg Housing Authority paid \$297.00 per month on behalf of Paul and Janice Clark to Carroll S. Logsdon.

12. Pursuant to the Assisted Lease Agreement, Carroll S. Logsdon provided all monthly utilities, a range and a refrigerator to Paul and Janice Clark during the Clarks' tenancy at 1008 Broadway Ave., Parkersburg, West Virginia.

13. Beginning on July 1, 1985, and pursuant to the Land Contract and Agreement, Carroll S. Logsdon and Jessica Farrell paid to the respondents, Orville and Naomi Casto, \$392.05 in monthly installments toward the purchase price of the property at 1008 Broadway Ave.

14. During the period from July 1, 1985 to February 9, 1987, Carroll S. Logsdon and Jessica Farrell paid every monthly installment to the respondents which was due except for the monthly payment due on or about August 7, 1986.

15. The complainants, Carroll S. Logsdon and Jessica Farrell, attempted to make the monthly payment due to the respondents in August, 1986, but when Logsdon and Farrell went to the bank in order to make the payment, they were informed that the respondents had pulled the payment documents and instructed the bank officials not to take the payment.

16. On August 11, 1986, the respondents sent the complainants, Carroll S. Logsdon and Jessica Farrell, a default letter.

17. The reasons for default stated by the respondents in the August 11, 1986, default letter were failure to make a payment since July, 1986, and failure to keep the premises insured.

18. After receiving the August 11, 1986, default letter, Jessica Farrell telephoned Mrs. Casto and was informed by Mrs. Casto that she would not accept Farrell's and Logsdon's August, 1986, payment.

19. Carroll S. Logsdon and Jessica Farrell were not in default of their monthly payments pursuant to the Land Contract and Agreement nor had they failed to keep the premises insured.

20. The Land Contract and Agreement states that the purchasers' rights to the premises can be terminated only after a default in monthly payments continues for a period of 30 days. No such default had occurred at the time the August 11, 1986, default letter was sent.

21. Prior to the time that the complainants, Paul and Janice Clark, moved into the house at 1008 Broadway, and during the time that the complainants, Logsdon and Farrell, resided in the house, Logsdon and Farrell were, on occasion, late making the monthly payments to the respondents which were due on or before the 7th of each month.

22. Logsdon and Farrell never received any default notices nor had any problems with the respondents regarding their late payments prior to the time that Paul and Janice Clark moved into the house at 1008 Broadway Ave.

23. One month prior to the time that Paul and Janice Clark moved into the house at 1008 Broadway Ave., Logsdon and Farrell were 18 days late making their June, 1986, payment to the respondents; but Logsdon and Farrell never received a default

letter or any other communication from the respondents regarding this late payment.

24. The respondents informed Jessica Farrell, when first executing the Land Contract and Agreement, that if Logsdon's and Farrell's monthly payments were late, that would not be a problem.

25. During the entire time that Paul and Janice Clark rented the house at 1008 Broadway from the complainant, Logsdon, the Clarks made all their monthly rent payments on time through March 1987; and kept the house in good condition.

26. Shortly after Paul and Janice Clark moved into the house at 1008 Broadway Ave., on July 1, 1986, the respondents began driving by the property.

27. In late summer of 1986, the respondent, Orville Casto, was at the property at 1008 Broadway Ave., and made a statement overheard by a neighbor, David Custred, that Casto did not want "no damn niggers" living there. The testimony of Custred is credited.

30. On February 21, 1987, the complainants, Logsdon and Farrell, received a default notice dated February 18, 1987, stating the Logsdon and Farrell were in default of the Land Contract and Agreement for not making the January and February 1987 payments. Logsdon and Farrell had not defaulted for a period of 30 days in their January and February 1987 payments.

31. Logsdon and Farrell made a payment on January 6, 1987 and February 9, 1987, but Mrs. Casto would not accept the February payment from the bank.

32. The default notice dated February 18, 1987, was legally improper as Logsdon and Farrell had not defaulted for a period of 30 days in their January and February 1987 payments.

33. The Land Contract and Agreement between Logsdon and Farrell and the respondents was revoked by the respondents.

34. The only notification Logsdon and Farrell received regarding the contract revocation was the February 18, 1987, default letter.

35. The respondents telephoned Janice Clark several times, upsetting her and causing her to telephone Paul Clark while at work.

36. The respondents came to the house at 1008 Broadway Ave. and informed the Clarks that they were their new landlords and that all rent should be paid to them, but they failed to show the Clarks any proof of such status.

37. The respondents never entered into a rental agreement with the Clarks which required the Clarks to pay the respondents rent.

38. The Clarks telephoned the Parkersburg Housing office after the respondents' visit and were advised to continue to pay Carroll S. Logsdon the monthly rent payments.

39. Paul Clark's testimony, that Mr. Casto during a telephone conversation referred to Clark as a "coon," is credited.

40. In a telephone conversation and a subsequent visit, Mrs. Casto told Janice Clark that the Clarks were to vacate the premises immediately or the sheriff would come and the property left in the house would belong to the respondents.

41. The Clarks moved out of the house at 1008 Broadway Ave. on or about April 2, 1987.

42. The Parkersburg Housing office informed the Clarks that the respondents would not sign a rental agreement with them.

43. Prior to moving from the house, the Clarks did not receive a termination of the Assisted Lease Agreement between the Clarks and Carroll S. Logsdon.

44. Carroll S. Logsdon paid all utility bills and tax statements which he received for the property at 1008 Broadway Ave. Prior to the February 18, 1987, default letter.

45. A water bill for the period from December 12, 1986 to February 19, 1987, and dated March 1, 1987, was mailed to 2104 Nash St., the respondent's residence.

46. Carroll S. Logsdon did not request that the City of Parkersburg send water bills to the respondent's residence.

47. Failure to pay utilities and keep the premises insured were not grounds for default and revocation of the Land Contract and Agreement between the complainants, Carroll S. Logsdon and Jessica Farrell, and the respondents.

48. Failure to pay property taxes and utility bills were not grounds for default and revocation of the Land Contract and Agreement in February 1987.

49. The Clarks incurred approximately \$425.00 in moving expenses after being evicted by the respondents from the house at 1008 Broadway Ave.

50. After moving from the house at 1008 Broadway Ave., the Clarks paid approximately \$160.00 per month in utilities in their new residence, through May 1988, in the amount of \$2,240.00.

51. Complainants, Logsdon and Farrell, paid \$3,000.00 as downpayment and earnest money on the property at 1008 Broadway Ave.

52. Complainants, Logsdon and Farrell, made 19 monetary payments of \$392.05 from July 1985 through February 1987, in the aggregate amount of \$7,448.95.

53. There was no provision in the Land Contract and Agreement preventing Logsdon and Farrell, as purchasers, from renting the property.

54. The complainants suffered hurt, humiliation, frustration, physical and emotional distress as a result of the respondents' actions.

DISCUSSION

West Virginia Code §5-11-1 et seq. and judicial precedent interpreting the West Virginia Human Rights Act clearly establishes the authority of the West Virginia Human Rights Commission to enforce the civil rights of our citizens to be free from discrimination in housing. It shall "receive, investigate and pass upon...complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations of real property..." Code, §5-11-8(c). West Virginia Human Rights Commission v. Pearlman Realty Agency, 239 S.E.2d 145 (1977).

Race is an impermissible consideration in a real estate transaction, and it need only be established that race played some part in the refusal to deal. Moore v. Townsend, 525 F.2d 482 (7th Cir. 1975). In the instant case, the refusal to deal amounted to a revocation of the Land Contract and Agreement once the property was rented to a black person.

West Virginia Code §5-11-9 places the burden on complainants to show that they were victims of illegal discrimination because they are members of a protected class. In general, a prima facie case of discrimination against a member of a protected class can be proven by direct circumstantial evidence, or by inferential evidence, or by a combination of evidence. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 67 L. Ed. 2d 207, 101 S. Ct. 1089 (1981); State ex rel. State Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., ___ W.Va. ___, 329 S.E.2d 77 (1985).

The requirements of the McDonnell Douglas prima facie case are not inflexible and must be tailored to each factual situation. Stated ex rel. State Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., supra. The task of proving a prima facie case is not intended to be onerous. Texas Dept. of Community Affairs v. Burdine, supra. 450 U.S. at 253.

In the present case, the complainants proved a prima facie case of discrimination in that it has been proven that the complainants, Carroll S. Logsdon and Jessica Farrell, who are both white, entered into a Land Contract and Agreement with the

respondents to buy the property in question; that Logsdon and Farrell subsequently rented the property to Paul Clark, who is black, and Janice Clark, who is white; that shortly after the property was rented to the Clarks, the respondents attempted to revoke the Land Contract and Agreement; that one of the respondents was overheard stating the he did not want blacks living on the property; and, that eventually the Land Contract and Agreement was revoked, resulting in the Clarks being evicted and Logsdon and Farrell losing their investment.

Of initial importance in the present case is the issue of the standing of the complainants, Carroll S. Logsdon and Jessica Farrell, white individuals, to enforce the provisions of the Human Rights Act based on an allegation of race discrimination.

By its terms, the benefits of the West Virginia Human Rights Act, in one respect, extends to everyone irrespective of race. Thus, all persons shall have the same right in this state to make and enforce contracts. As set forth in WV Code §5-11-9(g)(1) an unlawful discriminatory practice has been defined as:

"(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.***"

While it is true that they are white, it is apparent that the protection of the West Virginia Human Rights Act extends to them in connection with their right to purchase and rent real property as a housing accommodation.

Additionally, the Fourteenth Amendment prohibits all invidious racial discrimination. Thus, any actions based on a classification of race or privity by race are clearly arbitrary and violative of proscriptions against racial discrimination. Faraca v. Clements, 422 U.S. 1006 (1975).

The supreme court decision in Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969), when superimposed upon the provisions of the West Virginia Human Rights Act and the Fourteenth Amendment, leave little room for doubt that Mr. Logsdon and Ms. Farrell have standing to pursue a race discrimination complaint against Orville and Naomi Casto. Sullivan, supra, granted a white complainant the right to sue for damages for expulsion from membership in a community recreational club by virtue of his assignment of qualifying property rights to a black person.

Thus, a prima facie case in this matter has been proven. Once the complainants establish a prima facie case under McDonnell Douglas, the burden shifts to the respondents to rebut the presumption of discrimination by articulating a legitimate nondiscriminatory reason for their actions. The respondents need not prove the legitimate nondiscriminatory reason but must only articulate it. It is sufficient if the respondents' evidence raises a genuine issue of fact as to whether or not they discriminated illegally against the complainants. Texas Dept. of Community Affairs v. Burdine, supra, 101 S. Ct. 1094; Furnco Construction Corp. v. Waters, 438 U.S. 567, 57 L. Ed. 2d 957, 98 S. Ct. 2943 (1978); Shepherdstown V.F.D. v. West Virginia Human

Rights Commission, ___ W. Va. ___, 309 S.E. 2d 342 (1983); State Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., supra, 329 S.E.2d at 86.

In this case, the respondents state that they revoked the land contract because Logsdon and Farrell missed monthly payments and failed to keep the premises insured. In addition, the respondents assert that they subsequently evicted the Clarks because they failed to pay rent.

Once the respondents articulate a legitimate nondiscriminatory reason for its actions, the complainant may still prevail by persuading the trier of facts that a discriminatory reason more likely than not motivated the respondents, or indirectly by showing that the respondents' explanation is a pretext and unworthy of credence. The ultimate burden of proof always rests on the complainant. McDonnell Douglas Corp. v. Green, supra, 93 S. Ct. at 1825; Texas Dept. of Community Affairs v. Burdine, supra, 101 S. Ct. at 1095; United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 103 S. Ct. 1478, 75 L. Ed. 2d 403 (1983); State ex rel. State Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., supra, 329 S.E. 2d at 87.

A careful review of the evidence taken at hearing in this matter reveals the pretextual nature of respondents' articulated reasons for revoking the land contract and for evicting the Clarks.

Jessica Farrell and Carroll S. Logsdon, who are white, lived in the house at 1008 Broadway Ave. for approximately one year

before deciding to rent the property to the Clarks, an interracial couple. There was no prohibition in the Land Contract and Agreement against renting the property.

During the time that Logsdon and Farrell lived in the house, they made all the monthly payments--although they were late at times, once as late as eighteen (18) days. The respondents had informed Farrell that just as long as regular payments were made, it did not matter if they were late at times. During the period which Logsdon and Farrell lived in the house, no default notices were sent by the respondents.

Conversely, the respondents send a default letter to Logsdon and Farrell the month after the Clarks moved onto the property.

Notably, the examiner finds credible the testimony of the Clarks, that it was after the Clarks moved into the house at 1008 Broadway Ave. the respondents began to drive by the property observing the Clarks; and the testimony of a former neighbor that, shortly after the Clarks moved he overheard the respondent, Orville Casto, state, as he was walking across the property, that he did not want any "damn niggers" living there.

The default letter, dated August 11, 1986, states that Logsdon and Farrell were in default because they missed the July 1986 payment and because they failed to keep the premises insured. The payment ledgers and insurance documents indicate clearly that the July 1986 payment was timely made and that the premises were kept insured without interruption.

The respondents at this time, in addition to sending the default letter, pulled the pay documents at the bank and

instructed bank personnel not to take Logsdon's and Farrell's August 1986 payment. Farrell telephone Mrs. Casto, but Casto told her she would not take the payment. In effect, by their actions, the respondents revoked the Land Contract and Agreement for the month of August 1986. Logsdon and Farrell testified that after consulting with the respondents' attorney, the Land Contract was reinstated and Logsdon and Farrell made the next monthly payment that was due--the September, 1986 payment.

After the Land Contract was reinstated, Logsdon and Farrell made every monthly payment, including the February 1987 payment. On February 21, 1987, Logsdon and Farrell received a default notice from the respondents stating that the Land Contract was being revoked because they had failed to make monthly payments in January and February 1987. Even though the default notice was legally improper, as Logsdon and Farrell had not defaulted for a period of thirty days in their January and February payments, the Land Contract was revoked by the respondents.

The respondents may assert that Logsdon and Farrell missed the August 1986 payment, and when they paid on February 7, 1987, they were making the payment due for the month of January. By paying for the month of January on February 7, 1987, the payment due on January 7, 1987, was actually 31 days late.

If such an argument were to be made by the respondents, it would have to fail. The respondents will not be allowed to benefit from their own misconduct. As earlier stated, the respondents revoked the Land Contract in August 1986 based on the illegal consideration of race. Logsdon and Farrell attempted to

make the August payment and were unable to do so because the respondents had pulled the bank documents. Mrs. Casto admits this act. The contract, in effect, no longer existed. Once the contract was reinstated at the end of the month, upon advise of respondents' counsel, Logsdon and Farrell resumed making their monthly payments in September 1986. To be sure, the default letter and subsequent revocation of the Land Contract were calculated based on the illegal consideration of the race and upon race by association.

The discriminatory intent of the respondents is further evidenced in their actions after the revocation of the Land Contract in February 1987. The respondents began harassing the Clarks, insisting that the Clarks pay rent to the respondents. Mr. Casto called Paul Clark a "coon" during a telephone conversation at this time. The Parkersburg Housing Authority told the Clarks to continue paying Logsdon and Farrell rent since the Clarks had no rental agreement with the respondents. For the entire period that the Clarks lived on the property in question, they never missed a monthly rent payment to Logsdon and Farrell, nor were they ever able to enter into a rental agreement with the respondents, even though they wanted to continue living on the property on Broadway Ave. after the Land Contract was revoked. The Parkersburg Housing Authority informed the Clarks that the respondents refused to enter into a rental agreement with the Clarks and advised them to move.

Mrs. Casto's testimony, to the effect that she first became aware of Paul Clark's race only when the Parkersburg Housing

Authority informed her that he was black, is found by the examiner, in light of the testimony as a whole, not to be believed particularly when considered in relationship to the Castos' repeatedly driving by the property and the derogatory racial statements made by Mr. Casto.

The evidence, when reviewed in its entirety, proves that the respondents have acted in violation of the West Virginia Human Rights Act by revoking the Land Contract and Agreement and by harassing the Clarks to the point that they were forced to vacate the property in question.

CONCLUSIONS OF LAW

1. At all times referred to herein, Paul Clark, Janice Clark, Carroll Logsdon and Jessica Farrell are and have been residents of the State of West Virginia and are proper complainants within the meaning of WV Code §5-11-1 et. seq.

2. At all times pertinent thereto, Orville and Naomi Casto, respondents, were owners of real property in Parkersburg, West Virginia and are subject to the provisions of the Human Rights Act.

3. The complaint, in this matter, was properly and timely filed in accordance with the WV Code §5-11-10.

4. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of this action.

5. The complainants have established a prima facie case of racial discrimination.

6. The respondents have articulated legitimate nondiscriminatory reasons for their actions.

7. The complainants have demonstrated, by a preponderance of the evidence, that the reasons articulated by the respondents were pretextual.

8. The actions of the respondents toward the complainants constitute unlawful discrimination on the basis of race in violation of the Human Rights Act.

RELIEF AND ORDER

Therefore, pursuant to the above findings of fact and conclusions of law, it is hereby ORDERED as follows:

1. The respondents, their agents, employees and executors are hereby permanently ORDERED to cease and desist from engaging in discriminatory practices.

2. The respondents are ORDERED to pay the following monies as actual damages to the complainants:

- a. Jessica Farrell and Carroll S. Logsdon--
\$7,448.95 as reimbursement for the 19 monthly payments of \$392.05 made prior to revocation of the Land Contract;
- b. Jessica Farrell and Carroll S. Logsdon--
\$3,000.00 representing reimbursement monies and a down payment which they placed on the

property prior to entering into the Land Contract and Agreement with the respondent;

- c. Paul and Janice Clark--\$425.00 representing reimbursement for moving expenses as a result of being forced to vacate the property in question; and
- d. Paul and Janice Clark--\$2,240.00 representing reimbursement for monthly utility costs incurred in the apartment they were forced to move into.

3. Should the West Virginia Supreme Court of Appeals reverse or modify its prior ruling at Syl. p. 2 in Bishop Coal Company v. Brenda Salyers and West Virginia Human Rights Commission, Slip opinion 18138 (1989), the complainants would be entitled to incidental damages as compensation for humiliation, embarrassment, emotional and mental distress and loss of personal dignity in the following amounts:

- a. Jessica Farrell - \$2,500
- b. Carroll S. Logsdon - \$2,500
- c. Paul Clark - \$5,000
- d. Janice Clark - \$5,000

It is finally ORDERED that respondents provide to the West Virginia Human Rights Commission proof of compliance with the hearing examiner's recommended decision within 35 days of service

of said recommended decision by copies of cancelled checks, affidavits or other means calculated to provide such proof.

Entered this 10th day of April, 1989.

WV HUMAN RIGHTS COMMISSION

BY



GAIL FERGUSON
HEARING EXAMINER