



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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**Gaston Caperton**  
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**Herman H. Jones**  
Executive Director

**December 17, 1996**

**Susan C. Crowder**  
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**Superior Mobile Homes/Toney Young**  
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**Re: Crowder v. Superior Mobile Homes, et al.**  
**Docket No. HS-155-94**

**Dear Parties and Counsel:**

Enclosed please find the Final Order of the West Virginia Human Rights Commission in the above-styled case. Pursuant to W. Va. Code § 5-11-11, amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for review of this Final Order.

Sincerely,

  
**HERMAN H. JONES**  
EXECUTIVE DIRECTOR

**HHJ/mst**  
Enclosures  
Certified Mail/Return  
Receipt Requested  
cc: **The Honorable Ken Hechler**  
Secretary of State

## **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 West Virginia Human Rights Commission and the adverse party as respondents. The employer or the person or entity 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, person or entity against whom a complaint was filed. If the appeal is granted to a nonresident of this state, the nonresident 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 § 5-11-11 and the West Virginia Rules of Appellate Procedure.

**BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**SUSAN C. CROWDER,**

**Complainant,**

**v.**

**DOCKET NO. HS-155-94**

**SUPERIOR MOBILE HOMES, TONEY  
YOUNG, and TERRY HATFIELD,**

**Respondents.**

**FINAL ORDER**

On November 14, 1996, the West Virginia Human Rights Commission reviewed the Administrative Law Judge's Final Decision in the above-styled action issued by Administrative Law Judge Mike Kelly. After due consideration of the aforementioned, and after a thorough review of the transcript of record, arguments and briefs of counsel, and the petition for appeal and answer filed in response to the Administrative Law Judge's Final Decision, the Commission decided to, and does hereby, adopt said Administrative Law Judge's Final Decision as its own, except as hereinbelow modified:

On page 13, Conclusion of Law No. 16, which assesses a civil penalty in the amount of \$5,000.00 against the respondents, is deleted, and the subsequent Conclusions of Law are renumbered in sequence.

It is, therefore, the order of the Commission that the Administrative Law Judge's Final Decision be attached hereto and made a part of this Final Order, except as amended hereinabove.

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 State of West Virginia, the parties are hereby notified that 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 17th day of December 1996, in Charleston, Kanawha County, West Virginia.**

A handwritten signature in black ink, appearing to read "Herman H. Jones", written over a horizontal line.

**HERMAN H. JONES  
EXECUTIVE DIRECTOR  
WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**BEFORE THE  
WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**SUSAN C. CROWDER,**

**Complainant,**

**v.**

**Docket No. HS-155-94**

**SUPERIOR MOBILE HOMES,  
TONEY YOUNG and TERRY HATFIELD,**

**Respondents.**

**FINAL DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

THIS MATTER matured for public hearing on 26 September 1995. By agreement of the parties, the hearing was held at the West Virginia Human Rights Commission, 1321 Plaza East, Charleston, Kanawha County, West Virginia. The complainant appeared in person and her case was presented by the West Virginia Human Rights Commission and its counsel, Assistant Attorney General Sandra K. Henson. Ms. Henson was assisted by Senior Assistant Attorney General Paul R. Sheridan. Respondents Young and Hatfield appeared in person and by their counsel Alexander J. Ross and Ross, Brown & Juba.<sup>1</sup>

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<sup>1</sup> It was admitted at hearing that Superior Mobile Homes is not, and never was, incorporated despite its occasional use of that legal designation. At all times relevant to this action, Superior Mobile Homes was a sole proprietorship owned by respondent Young. Mr. Young is no longer conducting business in the name of Superior Mobile Homes.

## **I. ISSUE TO BE DECIDED**

Whether respondent violated W.Va. Code §5-11A-5(a) or (b) by refusing or failing to submit complainant's application for credit for the purchase of a mobile home in her name only and submitting it, against complainant's wishes, as a joint application of complainant and her husband.

## **II. FINDINGS OF FACT**

Based upon the credibility of the witnesses, as determined by the Administrative Law Judge, taking into account each witness' motive and state of mind, strength of memory, and demeanor and manner while on the witness stand; and considering whether a witness' testimony was consistent, and the bias, prejudice and interest, if any, of each witness, and the extent to which, if at all, each witness was either supported or contradicted by other evidence; and upon thorough examination of the transcript of the proceedings, the exhibits introduced into evidence and the written recommendations and argument of counsel, the Administrative Law Judge finds the following facts to be true<sup>2</sup>:

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<sup>2</sup> To the extent that the findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and discussion as stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issue as presented.

1. On Saturday, 21 August 1993, Susan C. Crowder visited the sales premises of Superior Mobile Homes in Boone County, West Virginia with the intent of purchasing a mobile home. She was accompanied by her stepson, Richard Crowder, and his wife, Amy.
2. After touring the lot, Ms. Crowder settled on a 1993 Southern Energy II double-wide manufactured home.
3. Ms. Crowder negotiated the purchase with respondent Terry Hatfield. Mr. Hatfield was an employee of Superior and respondent Young and had wide latitude to negotiate and close a sale.
4. Ms. Crowder testified, and I credit as true, that Mr. Hatfield quoted her a price of \$34,000.00, with financing available at an annual percentage rate of 7% over fifteen years. Based on my assessment of credibility as explained infra, Mr. Hatfield's testimony that the selling price was \$43,300 and the APR 9.75% is specifically rejected as not credible.
5. After reaching an agreement on the price, Mr. Hatfield requested financial information from Ms. Crowder so he could complete a credit application. The application (Respondent's Ex. 1) was completed by Mr. Hatfield in his own handwriting.
6. During the course of filling out the credit application, Mr. Hatfield asked complainant if she was married. She replied affirmatively. He asked for her husband's name and Ms. Crowder told

him. Ms. Crowder also told respondent that she intended to purchase the mobile home on her own (for use by her stepson and his wife) and did not want her husband's name on the credit application. Mr. Hatfield responded that her employment earnings (approximately \$860 per week) were insufficient on their own to gain credit since she was already making a monthly mortgage payment of \$1,610 on her principal residence and other properties. Without her husband's name on the application, Mr. Hatfield told her, the debt to income ratio based on her own earnings would result in a rejection of the application.

7. The testimony as to what happened next goes to the heart of this dispute. The parties disagreed as follows:

(a) Ms. Crowder testified that when she told Mr. Hatfield that she had sizeable rental income and, therefore, did not need her husband's name or income to gain credit, he replied that it was Superior's policy to place the names of both spouses on the application when a married couple sought credit. Ms. Crowder, however, continued to resist the joint application and told Mr. Hatfield that she believed he was violating the law by refusing to submit the application in her name alone. She testified that Mr. Hatfield "didn't like it, but I insisted it be submitted in my name and my name only. He told me that I would have to send in copies of my leases and my tax returns and . . . something else I had to have, which I did send in . . .". (Transcript, p. 20). When she left that day, Ms. Crowder testified it was clear to all that the application for credit was to be submitted in her name only.

(b) Mr. Hatfield testified that once he informed complainant that she did not qualify for credit on her own she reluctantly gave him financial information about her husband. She did not like

it, he said, but she understood that there was no choice in the matter given her high debt to income ratio. When complainant left the premises, Mr. Hatfield said, she knew that the application was going to be submitted in both names.

8. I credit Ms. Crowder's version of the events surrounding the credit application and reject the testimony of Mr. Hatfield. My reasoning is as follows:

- (a) For reasons set forth infra, I generally assess Mr. Hatfield as lacking credibility; and
- (b) The credit application itself, completed by Mr. Hatfield, does not contain any financial information about Mr. Crowder. This fact is consistent with complainant's testimony that she considered her husband's finances to be immaterial since she was applying for credit in her own name, and is inconsistent with Mr. Hatfield's testimony. If Mr. Crowder's finances were crucial to making complainant's debt to income ratio acceptable to the financing agent, why is his income not included on the application? It is obvious that complainant insisted that the application be submitted in her name and, therefore, she did not provide respondents with the information concerning her husband.

9. The parties agree that at the conclusion of negotiations on 21 August 1993, Ms. Crowder left a \$500 check as a deposit on the purchase.

10. On Monday, 23 August 1993, Ms. Crowder faxed to Mr. Hatfield materials related to her property income which were to be submitted to MCI, the financing agent, along with her credit application. (HRC Ex. 1). The materials indicate that in 1993, Ms. Crowder owned nineteen separate properties and earned rental and mortgage income of \$9,655 per month. Adding her

employment income of \$3,600 per month, she had total income of \$13,255 per month. The materials state that her net worth in 1993 was \$816,000.

11. The materials faxed to Mr. Hatfield include Mr. Crowder's social security number. Complainant testified credibly that she added her husband's social security number after talking to respondent Hatfield over the phone earlier that day. Mr. Hatfield told her that he needed the number so that MCI would be sure that it was reviewing the credit record of the right Susan C. Crowder since her husband's name and number might be on her credit report.

12. On Tuesday, 24 August 1993, Ms. Crowder telephoned Superior to find out if her credit had been approved. Mr. Hatfield said that he had not yet heard from MCI. She called again the next day. This time, Mr. Hatfield told her that the application had been denied because of a 1984 bankruptcy and a history involving debt collectors. Ms. Crowder testified credibly as to what happened next:

I knew immediately what he had done, that he had submitted it in my husband's name. I told him that I had never filed for bankruptcy, ever, in my life." He said, "Well, I'm looking at it right here, Ms. Crowder, here it is. I'm looking at it, it's on here." I said, "No you're not looking at my credit report, you're looking at my husband's credit report." He said, "Well, I'm looking at it." I said, "No, what I want you to do is resubmit this in my name only." He said, "I can't do that, then they'll know what we're doing." I said, "What are we doing? I just want to buy this home, and I want to submit this in my name only as I asked you to to begin with."

(Tr., 30-31).

Ms. Crowder testified that at the end of the discussion, when Hatfield refused to submit the application in her name only, she told him "Well, you still have my check, right?" He said, "Yes", to which she responded "Well, I'll get my own financing."

13. Ms. Crowder immediately obtained a copy of her credit report from the West Virginia Credit Bureau. The report reflects that she has never sought protection in bankruptcy and does not have a history of collections. (HRC Ex. 2).

14. On Thursday, 26 August 1993, Ms. Crowder called Superior again and, when informed that Terry Hatfield was not there, left a message that she had obtained independent financing for the mobile home. The receptionist asked her to hold the phone. A man other than Mr. Hatfield then came on the telephone and, after Ms. Crowder identified herself, told her that her deposit check had been mailed back to her on Wednesday, 25 August 1993, because her credit had been denied and that the mobile home had been sold to somebody else.

15. On Saturday, 28 August 1993, complainant received an envelope in the mail addressed to "Mr. & Mrs. Richard Crowder". The envelope is postmarked 27 August. Ms. Crowder opened the envelope for the first time at the hearing. It contained her \$500 deposit check. (HRC Exs. 3 and 4).

16. Several weeks later, Richard Crowder received a "Notice of Adverse Action Taken and Principal Reasons" from MCI informing him that his application for credit through Superior had

been rejected due to "Garnishment, attachment, foreclosure, repossession, collection action or judgment, bankruptcy." (HRC Ex. 5). The notice does not mention Ms. Crowder and she never received a similar notice from MCI regarding her credit. The notice also makes no mention whatsoever about an inadequate debt to income ratio.

17. On 1 September 1993, Ms. Crowder contracted to purchase a mobile home from Oakwood Mobile Homes. She applied for financing in her own name. The purchase price was \$44,500.00, plus itemized expenses. She financed the purchase at 9.9% APR over twenty years. Ms. Crowder had searched extensively, without success, for a home comparable to Superior's Southern Energy II, and at a comparable price and financing rate.

18. As a result of her dealings with respondents, Ms. Crowder felt demeaned and humiliated, "like I'm not a real person . . . like I don't even exist." (Tr., p. 50).

19. I assess the credibility of Ms. Crowder favorably and Mr. Hatfield unfavorably for the following reasons:

(a) Ms. Crowder exhibited a demeanor on the stand and forthrightness in testimony consistent with someone who is sure of their testimony and is telling the truth;

(b) Mr. Hatfield appeared nervous and uncomfortable and his testimony was inconsistent and contradicted by other evidence;

(c) For example, Mr. Hatfield testified that he would never had sold the Southern Energy II for \$34,000 since Superior had paid a wholesale price of \$32,699 for the unit. The actual purchase

price he and Ms. Crowder had agreed upon, he testified, was \$43,300. The Commission, however, proved conclusively that the Southern Energy II was sold on 26 August 1993, the day after the Crowders' credit application was rejected, for \$36,000. (HRC Ex. 10), and;

(d) Respondents submitted at hearing a sales contract in the name of a female purchaser that had been altered to eliminate the name of a male co-purchaser. (See Resp. Ex. 3, HRC Exs. 12 and 13). This crude attempt to commit a fraud upon the Commission and these proceedings irreparably damaged respondents' credibility.<sup>3</sup>

20. I find as fact that respondents intentionally refused to submit a credit application in complainant's name because of her status as a married woman and that, instead, and in contradiction to complainant's express demand, they intentionally submitted a credit application in the names of Richard Crowder as "applicant" and Susan C. Crowder as "co-applicant".

21. The Commission presented credible evidence through the testimony of Mark Perine a financial planner, that as a result of respondents' actions, Ms. Crowder suffered damages in the amount of \$31,992.88, taking into account the differences in purchase price and interest rates between the Southern Energy II and the home ultimately purchased from Oakwood. (HRC Ex. 8).

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<sup>3</sup> I have no reason to believe, and do not believe, that respondents' counsel was aware of his clients' reprehensible conduct.

22. The respondents submitted documentary evidence (Resp. Ex. 3) that they had sold mobile homes to female buyers on numerous occasions without any problems or allegations of discrimination.

### **III. CONCLUSIONS OF LAW**

1. Complainant Susan C. Crowder is an aggrieved person under the West Virginia Fair Housing Act (FHA), W.Va. Code §5-11A-3(h)(1), and is a proper complainant within the meaning of W.Va. Code §5-11A-3(i).
  
2. Respondents Superior Mobile Homes, Toney Young and Terry Hatfield are in the business of selling dwellings as defined by the FHA, W.Va. Code §5-11A-3(b)(1), and are proper respondents within the meaning of W.Va. Code §5-11A-3(m).
  
3. The mobile home which complainant attempted to purchase from respondents is a dwelling as defined by the FHA, W.Va. Code §5-11A-3(b).
  
4. The complaint in this matter was timely filed pursuant to W.Va. Code §5-11A-11(a)(1)(A).

5. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of the complaint.

6. The FHA is violated if a respondent discriminates against a person "in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith" because of that person's sex. W.Va. Code §5-11A-5(b) (Emphasis added). Credit and financing are services which are connected to the sale of a dwelling

7. It is a violation of W.Va. Code §5-11A-5(b) for a person in the business of selling dwellings to refuse to accept a credit application from a potential purchaser because of that person's sex.

8. It is unlawful sex discrimination to treat the credit application of a married woman differently and adversely to the credit application of a married man. Persons of like creditworthiness are required to be given similar credit opportunities regardless of their gender. *See, generally, Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 91 S.Ct. 496 (1971).

9. It is a violation of the Equal Credit Opportunity Act, 15 U.S.C. §1691, to refuse a married woman the opportunity to apply for credit under her own name or to accept her application for credit only if tendered under the names of both her and her spouse.

10. The Commission did not attempt to show discrimination by circumstantial evidence indicating that respondents treated the credit applications of married women differently and adversely than the credit applications of married men.

11. The Commission showed by credible direct evidence that consideration of complainant's sex and marital status governed and controlled respondents' treatment of Ms. Crowder's credit application and that, due to sexist stereotypes, respondents refused because of complainant's sex to submit her credit application in her own name.

12. The Commission showed by credible direct evidence that complainant lost the opportunity to purchase the dwelling in question, at a favorable price and interest rate, because of respondents' refusal to afford complainant an equal opportunity to obtain credit because of her sex.

13. Proof that respondents sold dwellings to other females without incident or allegations of discrimination does not conclusively demonstrate that respondents' actions in this case were not discriminatorily motivated. See, *Furnco Construction Corp. v. Waters*, 438 U.S. 567 (1978).

14. The Commission showed by a preponderance of the evidence that respondents violated W.Va. Code §5-11A-5(b).<sup>4</sup>

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<sup>4</sup> For reasons unknown, the respondents were not charged with a violation of W.Va. Code §5-11A-6.

15. Pursuant to W.Va. Code §5-11A-13(g)(3), the complainant is awarded actual damages in the amount of \$31,992.88 for out-of-pocket losses, plus \$3,000.00 for humiliation and embarrassment, or total actual damages of \$34,992.88.

16. Pursuant to W.Va. Code §5-11A-13(g)(3), and to vindicate the public interest, respondents are ORDERED to pay to the West Virginia Human Rights Commission a civil penalty of \$5,000.

17. There being no objection to the hours worked or the requested hourly rates set forth in the petition and affidavits for attorney fees submitted by the Attorney General, and it appearing that an award of fees and costs to the Attorney General is permitted under W.Va. Code §5-11A-13(p) and 6 WVCSR §77-8-14.8.2, the Attorney General of West Virginia is awarded fees and costs in the amount of \$19,292.60.

18. There being no dispute that Terry Hatfield was at all times relevant herein an agent of respondents Young and Superior, the award of damages, penalties, fees and costs shall run jointly and severally against all respondents.

19. Finally, a cease and desist Order is hereby directed against respondent to cease and desist from engaging in acts of unlawful discrimination in violation of the West Virginia Fair Housing Act.

WV HUMAN RIGHTS COMMISSION  
ENTER this 30th day of July, 1996.

BY: Mike Kelly  
MIKE KELLY  
Administrative Law Judge  
Post Office Box 246  
Charleston, West Virginia 25321  
(304) 344-3293

cc: Herman Jones, Executive Director