



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 15, 1986

Joan M. Gates
10 Marathon Place
Romney, WV 26757

Town of Romney Housing
Authority
Valley View Addition
Romney, WV 26757

Royce B. Saville, Esq.
P.O. Box 2000
Romney, WV 26757

Frances McElwee
Assistant Attorney General
Dept. of Human Services
State Capitol Bldg. 6
RM B-637
Charleston, WV 25305

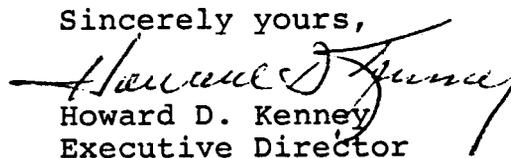
RE: Gates v. Town of Romney Housing Authority
ES-668-84 & ENOR-669-84

Ladies and Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case.

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
Executive Director

HDK/mst
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JOAN M. GATES,

Complainant,

v.

DOCKET NOS. ES-668-84
ENOR-669-84

TOWN OF ROMNEY HOUSING
AUTHORITY,

Respondent.

ORDER

On the 10th day of September, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner, James Gerl, in the above-captioned matters. After consideration of the aforementioned and exceptions filed thereto, the Commission does hereby adopt the Findings of Fact and Conclusions of Law of said Examiner as its own with the exceptions and amendments set forth below.

The Commission hereby amends the Recommended Decision of the Hearing Examiner by adding to the section titled Conclusions of Law the following:

"8. Complainant is entitled to the sum of \$20,225.00. This amount represents backpay plus 10% compounded interest on wages complainant would have earned but for respondent's unlawful failure to hire her, less interim earnings received by complainant since March 6, 1984 through September 5, 1986. Said total amount is calculated as follows: "

March 6, 1984 - March 5, 1985

\$12,000.00 - annual salary complainant would have earned if hired
by respondent

less

5,202.88 - Interim Earnings - 16 hrs wk.
(Nursing Home) 12.92 hr wk. @ \$7.00/hr. = 94.44 X 52 wks=
\$4,702.88 yr.

(Physicians Office) 3.08 hr wk @ \$3.13/hr= \$9.64 wk X
52 wks = approx. \$500.00 =
\$5,202.88 yr. TOTAL OFFSET

difference

\$ 6,797.12 principal amount
680.00 10% interest

\$ 7,477.00 entitlement March 5, 1985

March 6, 1985 - March 5, 1986

\$ 7,477.00 principal and compounded interest on difference in salaries
Complainant would have earned and interm earnings
748.00 10% interest

\$ 8,225.00 entitlement March 5, 1986

March 6, 1986 - September 5, 1986

\$ 4,112.00 principal and compounded interest (6 months) on difference in
salaries Complainant would have earned and interim earnings
411.20 10% interest

\$ 4,523.20

\$ 7,477.00
8,225.00
+ 4,523.00
\$20,225.00

"9. Complainant is entitled to incidental damages for humiliation, embarrassment and mental anguish suffered as a result of the act of discrimination perpetrated against her by respondent in the amount of \$5,000.00."

It is hereby ORDERED that the Hearing Examiner's Findings of Fact, Conclusions of Law and Discussion of Conclusions be attached hereto and made a part of this Order except as amended by this Order.

Accordingly, it is hereby ORDERED that:

1. Respondent shall, within 30 days of certified receipt of this Order, pay the complainant the sum of \$20,225.00 as more fully set forth in Conclusion of Law paragraph number 8 as recompense for respondent's discrimination against complainant on the basis of her sex in violation of WV Code 5-11-9(a) by failing to hire her as Executive Director;

2. Respondent shall hire complainant as its Executive Director within 30 days of certified receipt of this Order;

3. Respondent shall, within 30 days of certified receipt of this Order, pay to the complainant the sum of \$5,000.00 as incidental damages for humiliation, embarrassment and loss of personhood and dignity suffered by complainant as a result of the respondent's discriminatory failure to hire her;

4. Respondent shall immediately cease and desist from discriminating against individuals on the basis of sex in employment decisions; and

5. Respondent shall provide the Commission proof of compliance with the Commission's Order within 35 days of service of said Order by copies of cancelled checks, affidavit or other means calculated to provide such proof.

Additionally, it is hereby ORDERED that the complaint of Joan M. Gates, Docket No. ENOR-669-84 which alleges National Origin discrimination is dismissed with prejudice.

By this Order, a copy of which shall be sent by certified mail to the parties, the parties are notified that they have ten days to request reconsideration of this Order, and that they have the right to judicial review.

Entered this 9th day of October, 1986.

BY 
CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

RECEIVED

JUL 20 1985
W.V. HUMAN RIGHTS COMM.

JOAN M. GATES,
Complainant,

vs,

DOCKET NOS. ES-668-84,
ENOR-669-84

TOWN OF ROMNEY
HOUSING AUTHORITY,
Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing was convened for this matter on May 28, 1986 in Romney, West Virginia. The complaints were filed on June 14, 1984. The notice of hearing was served on November 25, 1985. Respondent answered on December 9, 1985. A telephone Status Conference was convened on December 16, 1985. Subsequent to the hearing, both parties submitted written briefs and proposed findings of fact.

All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views 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 issues as presented. To the

extent that the testimony of various witnesses is not in accord with the findings herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent discriminated against her on the basis of her sex and national origin by failing to hire her as Executive Housing Director. Respondent maintains that it hired the best qualified applicant.

FINDINGS OF FACT

Based upon the preponderance of the evidence, the Hearing Examiner has made the following findings of fact:

1. Complainant is of Canadian national origin.
2. Complainant is female.
3. Respondent advertised a vacancy for the position of Executive Director.
4. Complainant applied for the position of Executive Director with respondent.
5. Complainant was qualified for the position of Executive Director of respondent.
6. Respondent rejected complainant's application for the Executive Director position.
7. On March 6, 1984, respondent selected Moore, a male applicant, for the position of Executive Director.

8. The advertisement published by respondent in the Hampshire Review listed as qualifications for the Executive Director position housing management experience and knowledge of the rules and regulations of the federal department of Housing and Urban Development.

9. Respondent's Board considered construction experience as a qualification when filling the Executive Director position.

10. Complainant had approximately the same amount of construction experience as Moore.

11. Respondent employs an Inspecting Engineer to handle problems involving construction.

12. Respondent was not qualified to receive reimbursement from the federal Veterans Administration for Moores salary.

13. Complainant was more qualified for the position of Executive Director of respondent than was Moore.

14. As of March 6, 1984, complainant had thirteen years of "hands on" experience in managing multi-unit housing, whereas Moore had had only minor experience in housing management among many other duties during his military service.

15. As of March 6, 1984, complainant had an excellent working knowledge of HUD rules and regulations, whereas Moore had such difficulty with said rules and regulations that the Charleston, West Virginia HUD office required Moore to consult with the Executive Director of the Keyser Housing Authority concerning said rules and regulations.

16. Because of time pressures, the members of respondent's Board failed to adequately review the resumes and applications before them when selecting an Executive Director.

17. As a result of respondent's failure to hire her, complainant was embarrassed and humiliated.

18. Moore's salary as Executive Director of respondent is \$12,000.00 per year.

19. Complainant is currently employed outside of her home approximately sixteen hours per week. Complainant is employed part time at a nursing home where she receives \$7.00 per hour. In addition, complainant works approximately twenty days per year in a doctor's office for which she receives \$25.00 per day.

CONCLUSIONS OF LAW

1. Joan M. Gates is an individual claiming to be aggrieved by an alleged unlawful discriminatory practice and is a proper complainant for purposes of the Human Rights Act. West Virginia Code, Section 5-11-10.

2. Town of Romney Housing Authority is an employer as defined by West Virginia Code Section 5-11-3(d) and is subject to the provisions of the Human Rights Act.

3. Complainant has failed to establish a prima facie case of national origin discrimination.

4. Respondent did not discriminate against complainant on the basis of her national origin by failing to hire her as Executive Director. West Virginia Code §5-11-9(a).

5. Complainant has established a prima facie case of sex discrimination.

6. Complainant has demonstrated that the reason articulated by respondent for failing to hire her as Executive Director is pretextual.

7. Respondent discriminated against complainant on the basis of her sex in violation of West Virginia Code §5-11-9(a) by failing to hire her as Executive Director.

DISCUSSION OF CONCLUSIONS

In fair employment, disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E.2d 342, 352-363 (W. Va. 1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973). If the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate nondiscriminatory reason for the action which it has taken with respect to complainant. Sheperdstown Volunteer

Fire Department., supra; McDonnell-Douglas, supra. If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown Volunteer Fire Dept., supra; McDonnell-Douglas, supra.

In the instant case, complainant has not established a prima facie case of national origin discrimination. Although the record is clear that complainant is of Canadian national origin, the gravamen of complainant's national origin complaint is that respondent gave preference to applicants who were originally from the Romney area. Although such a policy may be regrettable and unfortunate, it is not national origin linked. Discrimination based upon national origin considers the country of origin and not merely which portion of a country or of a state the applicant or employee is from. Accordingly, a motion for directed finding with respect to the national origin complaint was granted at the hearing herein at the close of complainant's case.

Complainant has demonstrated a prima facie case of sex discrimination. The preponderance of the evidence in the record reveals that complainant is female; that respondent advertised a vacancy of Executive Director; that complainant was qualified for the position; that respondent rejected the complainant's application; and that respondent hired a male applicant for the position of Executive Director. Such facts are sufficient to

establish a prima facie case of discrimination because, if otherwise unexplained, they raise an inference of discrimination. Furnco Construction Company v. Waters 438 U.S. 567, 577 (1978); Texas Department of Community Affairs v. Burdine 450 U.S. 248 (1981).

Complainant has asserted that Moore never even applied for the position of Executive Director. The preponderance of the evidence does not support this contention. Complainant called one witness, Bland, who testified that Moore never submitted such an application. On the other hand, respondent called several witnesses who testified that Moore did in fact submit such an application. Accordingly, it is concluded that Moore did in fact apply for the position of Executive Director.

Respondent has articulated a legitimate non-discriminatory reason for its action in hiring Moore and in failing to hire complainant. Testimony of respondent's witnesses was that Moore was better qualified because of his construction experience, the possibility of payment of his wages by the Veterans Administration, his work as interim director, and his military experience.

Complainant has established by a preponderance of the evidence that the reason articulated by respondent for its failure to hire complainant is pretextual. First, the testimony of complainant and her witnesses was more credible than the testimony of respondent's witnesses because of their demeanor and because of other deficiencies in their testimony. In general,

the demeanor of respondent's witnesses indicated that their testimony was apparently rehearsed. One of respondent's witnesses admitted that respondent's witnesses discussed their testimony as a group prior to the hearing. Moore's demeanor during his testimony was very evasive.

Second, complainant was clearly more qualified for the position of Executive Director of respondent than was Moore, the male applicant. Respondent published an advertisement which stated the qualifications for the position. Such qualifications were determined to be appropriate for the job by the federal department of Housing Urban Development. Accordingly, anything other than the qualifications stated in the ad are necessarily a pretext. For example, respondent's witnesses testified that Moore's construction experience was significant in their decision to hire him. In fact, complainant had approximately the same construction experience as did Moore, but did not list her construction experience on her application because the ad indicated that such construction experience was irrelevant to the job. In any event, respondent employs an Inspecting Engineer to deal with construction problems that may occur. Even if it were valid to consider some of the alleged qualifications which were not stated in the advertisement, some of the factors cited by respondent's witness are clearly pretextual. For example, although some of respondent's witnesses claimed that the possibility of payment of Moore's wages by the federal Veterans Administration was a factor in their decision, respondent was clearly not

qualified for this funding.

If the qualifications as stated in the advertisement are considered, the only conclusion is that complainant is more qualified. Complainant had a working knowledge of HUD rules and regulations. Moore had such problems with HUD rules and regulations that he was required to consult with Keyser housing authority about such matters. Complainant had thirteen years of "hands on" experience in managing massive multi-unit housing. Moore had only minor experience "managing" military housing among his many other diverse duties in the military.

Third, complainant has demonstrated pretext by showing that respondent's Board did not properly consider her qualifications. Complainant's witness Anderson testified credibly that Mooreland, a member of respondent's Board, told her that because of a lack of time, the Board did not adequately review the applications for the Executive Director position, and, therefore, he was not familiar with complainant's qualifications. Mooreland, whose testimony was less credible, did not deny having made this statement to Anderson. Mooreland's testimony was only that he could not recall whether or not he made this statement. Because Anderson's memory is clearly better than Mooreland's memory in regard to this point, and because of the above-described problem with regard to rehearsed testimony, Anderson's testimony concerning

this matter is much more credible than the testimony of Mooreland. Accordingly, it is concluded that respondent's Board was not familiar with complainant's qualifications at the time that it made the decision to hire Moore as Executive Director. Thus, any argument by respondent that complainant was less qualified than Moore is clearly pretextual because respondent's Board did not take the time to familiarize itself with complainant's qualifications, and, therefore, would necessarily be incapable of determining whether complainant was not in fact better qualified than Moore.

PROPOSED ORDER

In view of the foregoing, Hearing Examiner recommends the following:

1. That the complaint of Joan M. Gates, Docket No. ENOR-669-84, which alleges national origin discrimination, be dismissed with prejudice.
2. That the complaint of Joan M. Gates, Docket No. ES-668-84, which alleges sex discrimination, be sustained.
3. That respondent hire complainant as its Executive Director.
4. That respondent pay complainant a sum equal to the wages that she would have earned but for respondent's unlawful failure to hire her. Such sum should be equal to \$12,000.00 per year minus the amount of money earned by complainant since March 6, 1984.
5. That respondent pay to complainant the sum of \$1,000.00

for incidental damages for humiliation, embarrassment, and loss of personhood and dignity as a result of respondent's discriminatory failure to hire her.

6. That respondent be ordered to cease and desist from discriminating against individuals on the basis of their sex in making employment decisions.

7. That respondent report to the Commission within forty-five days of the entry of the Commission's Order, the steps it has taken to comply with the Order.



James Gerl
Hearing Examiner

ENTERED: July 28, 1976

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served
the foregoing Proposed Order and Decision
by placing true and correct copies thereof in the United States
Mail, postage prepaid, addressed to the following:

Frances McElwee, Esquire
Assistant Attorney General
Dept. of Human Services
State Capitol, Bldg. 6,
Charleston, WV 25303

Royce B. Saville, Esquire
P.O. Box 2000
Romney, WV 26757

on this 28th day of July, 1986.

James Gerl
James Gerl