



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304-348-2616

April 28, 1986

ARCH A MOORE, JR.
Governor

Stephen Weber, Esq.
Kay, Casto & Chaney
P.O. Box 2031
Charleston, WV 25327

Leroy Hazelock
332½ 16th St.
Dunbar, WV 25064

RE: Hazelock vs. JHM Laboratories, HR-274-79

Dear Above Parties:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Hazelock vs. JHM Laboratories,

HR-274-79

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,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LEROY A. HAZELOCK, JR.

Complainant,

v.

DOCKET NO. HR-274-79

JHM LABORATORIES,

Respondent.

FINAL ORDER

At its regularly scheduled meeting on November 13, 1985, the Commission reviewed the recommended decision of its full-time Hearing Examiner, John M. Richardson. Inasmuch as his proposed findings of fact, conclusions of law and order set forth the facts and circumstances surrounding this case and the Commission having found that it agrees with the content of said proposed findings of fact, conclusions of law and order, it is hereby adopted and attached hereto and made a part hereof.

It is, therefore, ORDERED that:

1. That the proposed findings of fact and conclusions of law made by Hearing Examiner, Richardson, be attached and made a part of this order thereby representing the Commission's findings of fact and conclusions of law.
2. The respondent is found guilty of unlawful discrimination.
3. The complainant is awarded the sum of \$150.00 representing the amount of money the complainant spent for increased rental payments.
4. That the complainant is awarded the sum of \$75.00 representing the moving expense incurred by him.

5. The complainant is awarded the sum of \$2,500.00 as incidental damages for the embarrassment, humiliation and suffering incurred by him which was a result caused by the respondent's unlawful action.

Entered this 27th day of March, 1985.

WV HUMAN RIGHTS COMMISSION

BY Betty A. Samuels
~~CHAIR~~/VICE CHAIR

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LEROY A. HAZELOCK, JR.,

Complainant,

V.

DOCKET NO. HR-274-79

JHM LABORATORIES,

Respondent.

PROPOSED FINDINGS OF FACT;
CONCLUSIONS OF LAW
AND ORDER

A. PRELIMINARY MATTERS

1. This hearing was based upon a complaint filed December 11, 1978 based upon an incident which occurred on or about December 5, 1978.
2. The complainant alleges that the respondent discriminated against him because he was a black male and that this discrimination took the form of an eviction from an apartment owned by the respondent.
3. The notice and complaint setting a public hearing was served on the respondent on April 2, 1985, and the public hearing was held on May 22, 1985, before George Duffield, Hearing Examiner.
4. The Hearing Examiner submitted his findings of fact and conclusions of law on June 24, 1985 to Chief Administrative Law Judge, Sam R. Harshbarger.

5. Thereafter, on June 10, 1985, the complainant by his attorney filed his proposed findings of fact.
6. On July 11, 1985, the Chief Administrative Law Judge, by his assistant, Harry C. Taylor, II, forwarded the file, record and proceedings to the Commission for its consideration.
7. On August 6, 1985, the complainant by his counsel, Bruce Walker, Assistant Attorney General, filed exception to the proposed findings of fact and conclusions of law of the Hearing Examiner.
8. At its regularly scheduled meeting in August, 1985, the Commission reviewed this case and determined that it was not able to make a ruling inasmuch as the Hearing Examiner's recommended decision was unclear and needed further review by the Chief Administrative Law Judge, to whom it was referred for further action.
9. Thereafter, Chief Administrative Law Judge, Paul R. Stone, by his letter of September 26, 1985 returned the matter to the Commission, via its Executive Director, directing that the Commission make a general finding in favor of the complainant or respondent and thereafter referred the same to the appropriate attorney for preparation of a final order, including findings of fact and conclusions of law.
10. The Commission at its regularly scheduled October, 1985 meeting reviewed the matter and determined that it was unable to make a general decision as to which party should prevail and then referred the matter to its full-time Hearing Examiner, John M. Richardson, for the purpose of obtaining from him a recommended findings of fact and conclusions of law together with a proposed order upon which the Commission would then act.

11. Thereafter, John M. Richardson, the full-time Hearing Examiner, reviewed the entire record and proposed the following findings of fact and conclusions of law.

B. ISSUE-CONTENTIONS OF THE PARTIES

1. Was the action of the respondent in evicting the complainant an act of unlawful discrimination and if the respondent did act in an unlawful discriminatory manner what damages should be awarded.
2. Did the agreed dismissal of the action of unlawful entry pending in the Kanawha County Magistrate Court preclude the complainant from pursuing his complaint pending before the West Virginia Human Rights Commission.

C. FINDINGS OF FACT

1. The complainant, Leroy A. Hazelock, Jr., is a blind black male.
2. On or about December 5, 1978, the complainant was given a notice to vacate the premises he was occupying and owned by the respondent which notice indicated that he was to vacate the premises no later than December 31, 1978.
3. Complainant filed his complaint with the Commission on or about December 11, 1978.
4. Complainant also filed a civil action of unlawful entry in the Kanawha County Magistrate Court and respondent filed a counter claim for damages to the rental property.

5. The civil action filed in Magistrate Court by the complainant was dismissed by agreement of the parties on or about May 30, 1980.
6. The complainant involuntarily vacated the rental premises owned by the respondent in February, 1979.
7. The respondent purchased the premises occupied by the complainant during the summer of 1978 for the purpose of remodeling and use as an addition to its laboratory facilities. The second floor of the rental premises contained the rental units, one of which the complainant occupied. One of the other units was occupied by another renter by the name of Pam Davis.
8. As the rental units became vacant, the respondent did not rent them to other parties but instead remodeled them for the exclusive use of the respondent and its laboratory facilities.
9. The respondent received a complaint from Pam Davis concerning the complainant having black visitors and that the visitors caused her to be afraid because they were going in and out late at night.

D. CONCLUSIONS OF LAW

1. The Commission has jurisdiction of the subject matter of the complaint.
2. The cause of action initiated in the Magistrate Court of Kanawha County was a different cause of action, namely, unlawful entry requiring different proof and the release executed by the parties causing that action to be dismissed was not an executed release affecting the complaint pending before the West Virginia Human Rights Commission.

3. The complainant involuntarily vacated the rental premises owned by the respondent for the reason that he was served with an eviction notice.
4. The respondent, by its own admission, evicted the complainant for reasons partially derived from the complaint of another tenant, namely, Pam Davis.
5. That the complaint of Pam Davis was that she was afraid because blacks were going in and out of complainant's apartment late at night.
6. The complainant has, therefore, established a prima facie case in that he has proven he was a black male who was evicted by the respondent and that there was a causal connection between the eviction and his race.

E. DETERMINATION

It is apparent herein that the respondent unlawfully discriminated against the complainant by evicting him for racially motivated reasons. In the case of Smith v. Sol D. Adler Realty Co., 436 F. 2d 344, 11 EOHC II 13018 [7th Cir. 1970] it was held that "race is an impermissible factor in an apartment rental decision and...it cannot be brushed aside because it was neither the sole reason for discrimination nor the total factor of discriminatron" see also; Burris v. Wilkins, 544 F.2d 891 [5th Cir. 1977]; Cf. Mount Healthy City Board of Education v. Doyle, 429 U.S. 274 (1977). Pursuant to the West Virginia Human Rights Act, the complainant. therefore, is entitled to recover damages from the respondent.

Those damages should be directed towards making the complainant "whole," and, in order to do so under the present circumstances, it is necessary to award the complainant the difference in the amount of rent paid by him during that period of time which he would have been allowed to remain in the rental premises owned by the respondent. The record indicates that the respondent did not continue to rent to any tenants after December, 1979. The testimony revealing that all tenants were gone by 1980 and that the respondent did not rent to other tenants but used the premises for the sole benefit of respondent's employees and facilities. The record reveals that the difference in the amount of rent was \$15.00 per month and extended over the period from March 1, 1979 through December, 1979 (a period of ten months). The record further reveals that the moving costs including expenses for renting a truck and hiring labor in the approximate amount of \$65.00 to \$75.00. The record further substantiates a finding in favor of the complainant for embarrassment, humiliation and suffering in as much as the complainant showed that he was blind and that the move was caused by an unlawful racial motivation together with the inclement time of year.

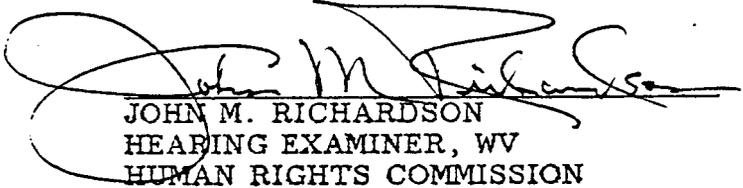
F. PROPOSED ORDER

Based upon the findings of fact, conclusions of law and other matters contained herein, it is recommended that the Commission take the following action:

1. That the respondent be adjudged guilty of unlawful discrimination;

2. That the complainant be awarded the sum \$150.00 as the amount of damages representing the increased rental payment;
3. That the complainant be awarded the sum of \$75.00 representing the moving expense incurred by the complainant;
4. That the complainant be awarded the sum of \$2,500.00 as incidental damages for the embarrassment, humiliation and suffering incurred by said complainant.

RESPECTFULLY SUBMITTED,



JOHN M. RICHARDSON
HEARING EXAMINER, WV
HUMAN RIGHTS COMMISSION