



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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**Cecil H. Underwood
Governor**

**Ivin B. Lee
Executive Director**

May 24, 2000

Teresa (Seaman) Henry
938-1/2 Madison Street
Charleston, WV 25302

Bigley Markets, Ltd.
dba Foodland Bigley Avenue
10 Spring Street
Charleston, WV 25302

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Re: Teresa (Seaman) Henry v. Bigley Markets, Ltd. dba Foodland
Bigley Avenue; Docket No. ED-228-99

Dear Parties:

Enclosed please find the final decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties of their counsel, a notice of appeal, and in its discretion, a

petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before an administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before an administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the executive director of the commission at the above address.

Yours truly,



Robert B. Wilson
Administrative Law Judge

RBW/mst/jk

Enclosure

cc: Ivin B. Lee, Executive Director

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

TERESA (SEAMAN) HENRY,

Complainant

v.

Docket No. ED-228-99

**BIGLEY MARKETS, LTD.
dba FOODLAND BIGLEY AVENUE,**

Respondent

**ADMINISTRATIVE LAW JUDGE'S
FINAL DECISION**

A Public Hearing in the above-styled action was convened on **Tuesday, April 25, 2000, at 8:30 a.m.** at the Human Rights Commission, Conference Room B, 1321 Plaza East, Charleston, West Virginia, before Administrative Law Judge, Robert B. Wilson. Complainant was represented by Counsel, Mary C. McQuain, Esquire, with the firm of Stuart Calwell, P.L.L.C., but Complainant did not appear in person. Respondent appeared by its representative and was represented by its Counsel, Thomas H. Vanderford, IV, Esquire, with the firm of Pauley, Curry, Sturgeon & Vanderford.

For reasons stated in the transcript of the Public Hearing of the above-styled action, the complaint of Teresa (Seaman) Henry in the above-styled action is hereby **ORDERED DISMISSED WITH PREJUDICE**, and will be stricken from the

docket of the Human Rights Commission.

It is so **ORDERED**.

Entered this 24th day of May, 2000.

WV HUMAN RIGHTS COMMISSION

BY *R. B. Wilson*
ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE