



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**WV HUMAN RIGHTS COMMISSION**

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**Quewanncoii C. Stephens**  
Executive Director

December 12, 1991

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Michael Cline, Esquire  
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Charleston, WV 25301

Re: Hunter v. Sines  
Docket No. HR-107-90

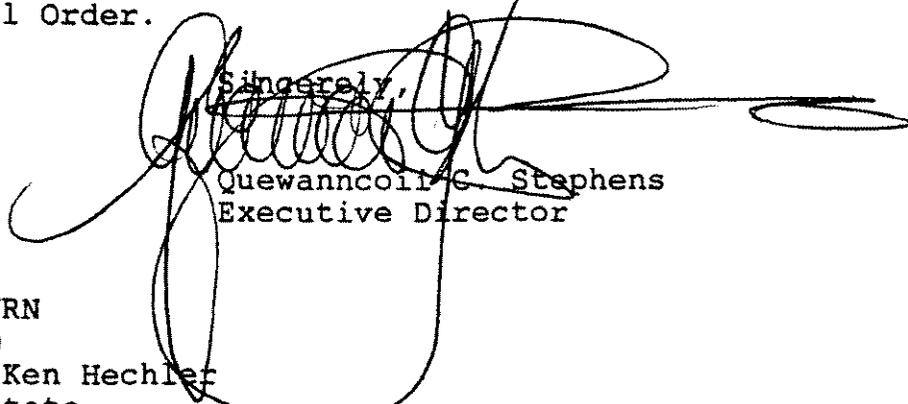
Dear Parties and Counsel:

Enclosed please find the Final Order of the West Virginia Human Rights Commission in the above styled and numbered case. Since the Final Decision of the Hearing Examiner was not appealed, this Final Decision is being issued without review, in accordance with § 77-2-10.9. of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission.

Pursuant to W. Va. Code § 5-11-11, as amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Issues not previously raised to the Commission on appeal are deemed to be waived.

Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for a review of this Final Order.

Sincerely,

  
Quewanncoii C. Stephens  
Executive Director

Enclosures  
CERTIFIED MAIL/RETURN  
RECEIPT REQUESTED  
cc: The Honorable Ken Hechler  
Secretary of State

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

VERONICA HUNTER,  
Complainant,

v.

DOCKET NO. HR-107-90

KATHRYN SINES,  
Respondent.

FINAL ORDER

On February 14, 1991, this matter came on for public hearing before Robert A. Goldberg, Hearing Examiner Pro Tempore. On July 29, 1991, after consideration of the testimony and other evidence, as well as the proposed findings and other written submissions of the parties, the Hearing Examiner Pro Tempore issued his Final Decision. This decision found in favor of the complainant and directed the respondent to pay the complainant the sum of \$2,000 in incidental damages, and further directed the respondent to cease and desist her discriminatory practices with regard to rental of housing accommodations.

No appeal having been filed pursuant to W. Va. Code § 5-11-8(d)(3) and § 77-2-10 of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission, the Final Decision of the Hearing Examiner has been reviewed only as to whether it is in excess of the statutory authority and jurisdiction of the Commission, in accordance with § 77-

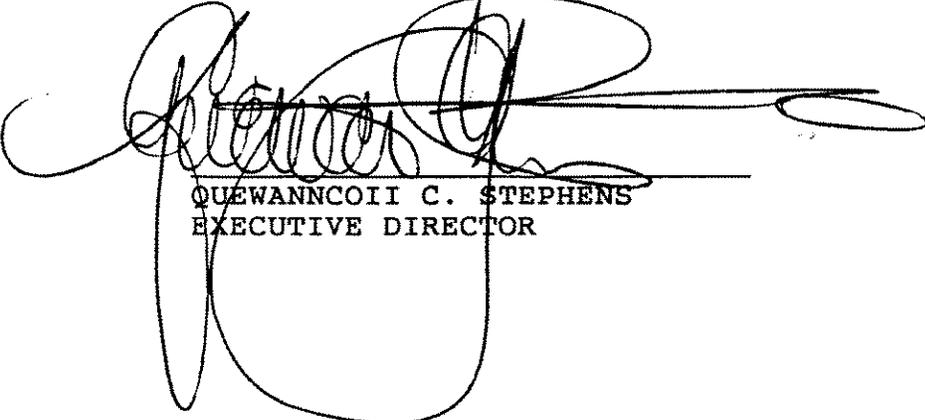
2-10.9. of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission. Other defects in said final decision, if there be any, have been waived. Finding no excess of statutory authority or jurisdiction, the Final Decision of the Hearing Examiner attached hereto is hereby issued as the Final Order of the West Virginia Human Rights Commission.

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 12<sup>th</sup> day of December, 1991 in Charleston, Kanawha County, West Virginia.



QUEWANNCOII C. STEPHENS  
EXECUTIVE DIRECTOR

### 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 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

VERONICA HUNTER,

Complainant,

v.

KATHRYN SINES,

Respondent.

DOCKET NO. HR-107-90

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HEARING EXAMINER'S RECOMMENDED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing on February 14, 1991, before Hearing Examiner pro tempore Robert A. Goldberg. The hearing was conducted at the law office of King, Betts & Allen in Charleston, West Virginia. Appearing at the hearing were the complainant Veronica Hunter and her counsel, Mary Catherine Buckmelter; respondent Kathryn Sines and her counsel, Michael R. Cline and Alfred Sines.

Upon the review of the file and consideration of the evidence adduced at the hearing herein, the Hearing Examiner makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. The complainant Veronica Hunter is a black female and a resident of Charleston, Kanawha County, West Virginia. Complainant is a single mother of twins, a boy and a girl. (Tr. 10-11).

2. In 1989, complainant lived in a two bedroom house in Kanawha City. She rented the house with assistance from the Housing and Urban Development Authority (HUD). (Tr. 11).

3. Because her twins needed separate bedrooms under the HUD program, complainant began a search for a three bedroom unit in or about January, 1989. (Tr. 11, 12).

4. Complainant saw an advertisement in the Charleston Gazette for a three bedroom townhouse that accepted a HUD voucher. This unit was located at 712½ Main Street, Charleston, Kanawha County, West Virginia. (Tr. 13).

5. In late August or early September, 1989, Ms. Hunter contacted respondent Kathryn Sines' answering service in response to this advertisement in the Charleston Gazette. After another telephone communication, a meeting was arranged between complainant and respondent at the subject property on Tuesday, September 5, 1989, at 6:30. (Tr. 15).

6. By correspondence dated September 5, 1989, respondent wrote to Teresa Shaffer, current tenant and occupant of 712½ Main Street, confirming that Ms. Shaffer gave respondent verbal notice on August 29, 1989, that Shaffer would be vacating on September 30, 1989. (Respondent Exhibit No. 9, p., 8, Tr. 161). The notice indicated that it was mailed on September 6, 1989, one day after the meeting with complainant.

7. On September 5, complainant picked up her brother and his friend from football practice and proceeded to her appointment with respondent at the Main Street property. (Tr. 16).

8. Upon arriving at this rental unit, complainant introduced herself to respondent. Respondent then told complainant that she (Sines) had just spoken with Teresa Shaffer and that Ms. Shaffer decided not to move. Complainant expressed a continued interest in viewing the unit, however, respondent advised her that Ms. Shaffer had refused her permission to show the unit. (Tr. 17, 154-56).

9. Disappointed and upset over her aborted meeting with Ms. Sines, complainant went directly to visit Michelle Henson, a white friend who lived nearby. (Tr. 19).

10. In order to investigate complainant's suspicion of racial discrimination, complainant and Ms. Henson arranged for Ms. Henson to make a phone call to respondent for the purpose of inquiring whether the subject rental unit was still available notwithstanding respondent's representation to Ms. Hunter to the contrary. (Tr. 97, 99).

11. Several hours later on the same day, complainant, instead of Michelle Henson, called respondent's phone number and testified that she spoke to respondent. (Tr. 22-23). Complainant identified herself as Michelle Henson and asked about the apartment at 712½ Main Street listed for rent in the newspaper. Respondent told complainant (who was posing as Michelle Henson) that the unit was available to rent and an appointment was scheduled to view the apartment. (Tr. 23).

12. Respondent does not remember receiving any phone call on the evening of September 5, 1989, concerning the subject rental property. (Tr. 156).

13. A day or two later, Ms. Henson received a phone call from a person identifying herself as Ms. Sines confirming an appointment to see the property. (Tr. 100). Respondent acknowledges that she ordinarily confirms appointments to show property. (Tr. 173). Ms. Henson did not keep the appointment. (Tr. 100, 101).

14. After advising complainant that the subject apartment was not available, respondent continued to advertise the unit for rent in the Charleston newspapers. (Tr. 156, 157, 158). Respondent testified that she continued the ad in place because she had a contract with the newspaper requiring that she run an advertisement every day. (Tr. 157, 169). However, the ad in question was not modified by respondent to delete the listing of the 712½ Main Street property even though respondent subsequently modified the ad to include another rental property. (See, Complainant's Exhibit No. 8).

15. By notice dated September 13, 1989, Ms. Shaffer notified HUD that she intended to vacate the apartment by October 30, 1989. (Respondent's Exhibit No. 9, p. 10).

16. Sometime after September 13, Ms. Shaffer asked Ms. Sines for an extension of the lease because the house which Shaffer planned to move into would not be ready on time. (Tr. 230-231).

This extension request was pursuant to a telephone conversation.  
Id.

17. By correspondence dated September 20, 1989, respondent notified HUD that Teresa Shaffer would be staying in the unit and renewing the lease for 1990. (Respondent Exhibit No. 9, p. 12).

18. The Shaffers actually vacated the apartment at 712½ Main Street in late November of 1989.

19. Teresa Shaffer testified that she does not recall ever refusing Ms. Sines' permission to show the unit. To the contrary, respondent repeatedly testified that Ms. Shaffer would not permit her to show the apartment to complainant. (Tr. 154, 166, 167, 168). The testimony of Teresa Shaffer is considered the more credible on this point as she has no interest in the outcome of this matter and would have no reason to deviate from the truth.

20. The Complaint in this matter was filed on September 29, 1989.

21. After the Shaffers vacated the subject property in late November, 1989, respondent rented the unit to white tenants. (Tr. 199).

22. Respondent has numerous rental properties and has rented to minorities before and after the date of the alleged discrimination in this case.

23. The complainant presented no evidence of pecuniary losses arising from her claim of discrimination. However,

complainant claims to have suffered emotionally from her perception of racial discrimination. (Tr. 54, 55).

## II. CONCLUSIONS OF LAW

1. The complainant Veronica Hunter is a citizen of West Virginia and an individual alleging an unlawful discriminatory practice relating to the rental of housing accommodations pursuant to W. Va. Code § 5-11-9(a)(6)(A) and § 5-11-9(a)(7)(A)&(B).

2. The respondent Kathryn Sines does not contest jurisdiction over her and the hearing examiner concludes that the Commission has jurisdiction over the parties and subject matter of the complaint.

3. The complainant has established a prima facie case of housing discrimination having proven the following elements:

(a) The complainant belongs to a protected class under the West Virginia Human Rights Act;

(b) The complainant effectively applied for and was qualified to rent the housing accommodations in question;

(c) The complainant was rejected despite her qualifications; and

(d) After complainant's rejection, the housing remained available to other persons and was ultimately rented to white tenants.

Shepardstown Volunteer Fire Dept. v. West Virginia Human Rights Commission, 309 S.E.2d 342 (W. Va. 1983); Robinson v. 12 Lofts Realty, 610 F.2d 1032 (2d Cir. 1979).

4. Thus, complainant established a rebuttable presumption of discrimination. Having created a rebuttable presumption of discrimination, the burden shifted to respondent to offer some legitimate and non-discriminatory reason for denying complainant an opportunity to view and rent the housing unit. Id.

5. Respondent proffered a legitimate, nondiscriminatory reason for denying complainant the opportunity to view and rent the property, i.e., that the rental unit was no longer available to rent and that the current tenant would not permit respondent to show the unit to complainant.

6. Respondent, therefore, met her burden of production by offering evidence of a legitimate and non-discriminatory reason for her actions toward the complainant.

7. Respondent having met her burden of production, then the burden fell upon complainant to show by a preponderance of the evidence that the reason proffered by respondent was a mere pretext for unlawful discrimination. A proffered reason can be considered a pretext if it was not the true reason for the decision. See, Conaway v. Eastern Assoc. Coal Corp., 358 S.E.2d 423, 430 (W. Va. 1986).

8. The hearing examiner concludes that the preponderance of the evidence indicates that the reason articulated by respondent to explain the denial of housing opportunities to complainant was a pretext and that the respondent was more likely motivated by an unlawful discriminatory reason. This conclusion is founded upon the following facts:

(a) By written notice dated September 5, 1989, the same day as the meeting between complainant and respondent, respondent confirmed that Teresa Shaffer would be vacating the unit by September 30, 1989. This notice was not mailed until the next day, September 6, 1989;

(b) By written notice dated September 13, 1989, Teresa Shaffer notified HUD that she would be vacating the unit at 712½ Main Street by October 30, 1989;

(c) After rejecting complainant for the rental unit, respondent informed complainant (posing as her friend Michelle Henson) that the unit remained available and scheduled an appointment for an inspection. Respondent later telephoned Michelle Henson to confirm the appointment;

(d) After the encounter between complainant and respondent, respondent continued to advertise the availability of the subject rental unit. Although respondent had an arrangement with the Charleston Newspapers to maintain an advertisement each day, respondent did not modify the advertisement to delete the subject rental property although she did modify the ad to include another property;

(e) The evidence demonstrated that Teresa Shaffer, did not inform respondent of her desire to extend the lease until after the September 5 meeting between complainant and respondent; and

(f) Teresa Shaffer did not refuse respondent permission to show the subject unit to complainant.

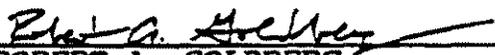
9. While Teresa Shaffer did in fact remain in the rental unit until late November of 1989, the extension of the lease beyond September 30, 1989, did not occur until after the discrimination against complainant and does not mitigate the discrimination. Further, the short extension of the lease until October 30, 1989, and then until late November, did not reasonably justify respondent's refusal to show the rental unit to complainant.

10. Accordingly, the hearing examiner concludes that respondent discriminated against complainant based upon her race.

11. Complainant is entitled to an award of incidental damages for humiliation, emotional and mental distress, and loss of personal dignity suffered as a result of respondent's acts in the amount of \$2,000.00. Having not proven any other damages, no other damages are awarded to complainant.

Based upon the foregoing, the hearing examiner recommends that the West Virginia Human Rights Commission enter an order sustaining the complaint of Veronica Hunter and awarding her the sum of \$2,000.00 as incidental damages, and ordering respondent to cease and desist from discriminating against individuals on the basis of their race when renting housing accommodations. In this regard, however, the hearing examiner notes that respondent has rented her rental units to minority members in the past and believes that future discrimination by respondent will be unlikely.

Copies of this recommended decision will be forwarded to counsel for the parties herein and the original will be forwarded to the West Virginia Human Rights Commission.

  
\_\_\_\_\_  
ROBERT A. GOLDBERG  
Hearing Examiner pro tempore

5-17 29, 1991  
Date