



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

August 24, 1987

Nancy K. Jackson
Rt. 5, Box 12-H
Alum Creek, WV 25003

Jack Skelton, DDS
140 Surf Court #66
Houston, TX 77058

Jeremiah McCormick, Esq.
2602 1st Ave.
P.O. Box 715
Nitro, WV 25143

Tom Hindes
Deputy Attorney General
812 Quarrier St.
Charleston, WV 25301

RE: Jackson v. Jack Skelton, DDS Family Dentistry
PAB-60-86

Dear Parties:

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

Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective April 1, 1987, any party adversely affected by this final order may file a petition for review with the supreme court of appeals within 30 days of receipt of this final order.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/mst
Enclosures

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE

AMENDED AND EFFECTIVE
AS OF APRIL 1, 1987

Enr. H. B. 2638]

3

116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same. or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

NANCY K. JACKSON,

Complainant,

v.

DOCKET NO. PAB-60-86

JACK SKELTON, D.D.S.,

Respondent.

FINAL ORDER

On the 12th day of August, 1987, the Commission reviewed the Examiner's recommended order in the above-captioned matter. After consideration of the aforementioned and the entire record, the Commission does hereby adopt the Examiner's order as its own with the modifications set forth below.

Under the subsection titled Conclusions of Law, number 10 is rejected.

Under the subsection titled Proposed Order, numbers 2 and 3 are rejected.

It is hereby ORDERED that the Hearing Examiner's recommended order encompassing findings of fact and conclusions of law be attached hereto and made a part of this final order except as amended by this final order.

Accordingly, it is further ORDERED as follows:

1. The provisions of the settlement agreement represented in the findings of fact herein and as is more specifically provided in the record dated January 16, 1986, are adopted and ratified by the Commission.

2. The complainant is entitled to enforcement of her settlement agreement in any court of proper jurisdiction.

3. The complainant is entitled to damages in the amount of \$5,000.00 for the compounded offensiveness surrounding the lack of good faith and contemptuous conduct of the respondent as is more fully set forth in the findings of fact and conclusions of law herein.

It is hereby accordingly **ORDERED** that respondent provide to the Commission proof of compliance with the Commission's final order within 35 days of service of said final order by copies of cancelled checks, affidavits or other means calculated to provide such proof.

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

Entered this 19th day of August, 1987.

RESPECTFULLY SUBMITTED,

BY Betty G. Samuelson
CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

NANCY K. JACKSON,

Complainant,

v.

DOCKET NO.: PAB-60-86

JACK SKELTON, D.D.S.,

Respondent.

EXAMINER'S RECOMMENDED ORDER

A hearing was held on December 29, 1986, before this Examiner to enforce the settlement of record in this matter reached by the parties and made of record in this case on January 16, 1986, before the Honorable John M. Richardson, Hearing Examiner.

The Complainant appeared in person and by her counsel, Heidi A. Kossuth. The Respondent failed to appear either by its counsel, or in person, after having received due notice.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighting the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Examiner, and conversely, to the extent the same are inconsistent to these findings and conclusions, the same are rejected.

FINDINGS OF FACT

1. On or about January 16, 1986, the parties in this matter, through their counsel represented to the Honorable John M. Richardson, Hearing Examiner, that this matter had been settled.

2. The settlement in this matter specifically provided for:

- a. The Respondent to issue a written apology to the Complainant relative to the incidences which gave rise to the complaint;
- b. The Respondent to agree not to engage in any further discriminatory practices relative to his practice of dentistry; and
- c. The Respondent to pay unto the Complainant the sum of Two Hundred Fifty Dollars (\$250.00) as settlement in full for any damages she may have incurred as a result of the alleged discriminatory practices.

3. It was further defined that the letter of apology was to include an acknowledgement that the Respondent was not knowledgable or aware of the West Virginia White Cane Law and handicapped statute and that the Respondent will agree to specifically provide in his letter that he was wrong to deny the services to the Complainant.

4. It was further agreed before Examiner Richardson that the Complainant's counsel would have an opportunity to review the

draft letter submitted by Mr. McCormick's office. The Respondent's counsel requested thirty (30) days by which to complete the necessary paperwork and payment.

5. Examiner Richardson concurred with that time frame and instructed the parties that he desired no delay in completing the outstanding obligations of the parties.

6. On December 29, 1986, at the time predesignated in an Order issued by the undersigned Examiner, the Complainant appeared by her counsel. The Respondent failed to appear by counsel or in person after receiving due notice.

7. The Examiner attempted to contact the Respondent's counsel's office and upon being informed that counsel had left for Putnam County, instructed the person answering the phone at counsel's office to call the Examiner the next day.

8. The Respondent's counsel has, to this date, failed to return the phone call of the Examiner nor has he provided an explanation as to why he or his client was not in attendance at the hearing.

9. On a previous occasion, Complainant's counsel had scheduled a conference call with the Respondent's counsel and this Examiner on this settlement. At that time, the Respondent's counsel was not available for the prescheduled conference call and made no subsequent contact with the Examiner to explain his unavailability.

10. The failure of the Respondent and/or his counsel to comply with the Order of this Examiner is contemptuous to the Commission.

11. The conduct of the Respondent and his counsel have compounded the significance of the discriminatory conduct conceded to have been committed by the Respondent in his proffered settlement.

12. The conduct of the Respondent and his counsel have caused considerable effort to be extended by Complainant's counsel which are above and beyond those acts necessary to perfect the outstanding obligations pursuant to the settlement reached by the parties.

13. Such additional effort has resulted in additional attorney time.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter herein.

2. A knowledgeable and mutual agreed settlement has been reached by the parties in this matter on January 16, 1986.

3. The provisions of the settlement and obligations of the respective parties thereto are unambiguous.

4. The Complainant has met all of her obligations in a timely fashion pursuant to the settlement agreement.

5. The Respondent has failed to exercise due diligence and good faith in his efforts to perfect the settlement reached between the parties.

6. The conduct of the Respondent and his counsel has compounded the offensiveness of the conceded discriminatory acts subject of this complaint.

7. The Respondent is herein determined to be in contempt of the Commission by violating a duly executed and noticed Order of this Examiner entered December 29, 1986.

8. The Complainant is entitled to enforcement of her settlement agreement in any Court of proper jurisdiction.

9. The Complainant is entitled to damages in the amount of \$5,000.00 for the compounded offensiveness surrounding the lack of good faith and contemptuous conduct of the Respondent.

10. The Complainant is entitled to attorneys fees in the amount of \$75.00 per hour for all of her counsel's actions subsequent to January 16, 1986, which were in furtherance of perfecting the settlement in this matter.

PROPOSED ORDER

Accordingly, this Examiner proposes the Commission to issue a final Order as follows:

1. Issue a final Order adopting the provisions of the settlement agreement represented in the findings of fact herein and as is more specifically provided in the record dated January 16, 1986.

2. That attorneys fees be awarded to the Complainant at the rate of \$75.00 per hour for each hour incurred by her counsel in the furtherance of attempting to perfect the settlement agreement in this matter.

3. That Complainant's present counsel of record be directed to submit to the Commission itemized hours for any attorney representing the Complainant in furtherance of

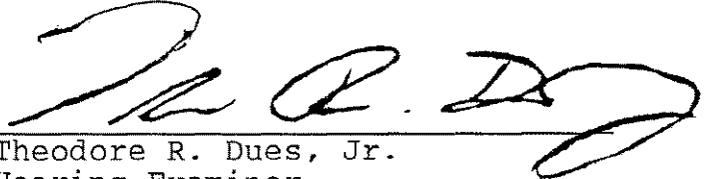
attempting to perfect the settlement in this case. Such itemization of attorney fees hours should be submitted to the Chairperson of the Commission no later than ten (10) days from the date of entry of this recommended decision.

4. That the Commission award the Complainant an additional amount of \$5,000.00 for the lack of good faith and contemptuous conduct of the Respondent.

5. That any monetary amounts awarded by the Commission be determined to accrue interest at 10% compounded annually from February 15, 1986; that date being the date that is deemed to have been the reasonable date for conclusion of these matters as determined from the January 16, 1986, record of these proceedings.

DATED: February 19, 1987

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner

CERTIFICATE OF SERVICE

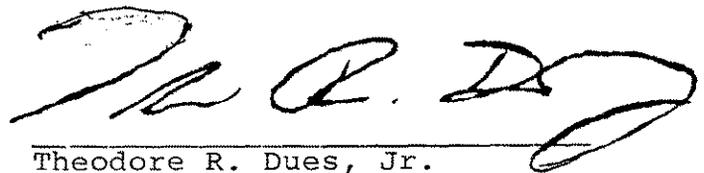
I, Theodore R. Dues, Jr., Hearing Examiner, hereby swear and say that I have served a true and exact copy of the foregoing RECCMMENDED ORDER upon the following:

Heidi A. Kossuth, Esq.
Assistant Attorney General
1204 Kanawha Blvd., E.
Charleston, WV 25301

and

Jeremiah McCormick, Esq.
2602 First Avenue
P.O. Box 715
Nitro, WV 25143

by mailing the same by United States Mail on this 19th day of February, 1987.

A handwritten signature in black ink, appearing to read 'T. R. Dues, Jr.', with a large, sweeping flourish at the end.

Theodore R. Dues, Jr.
Hearing Examiner