



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

November 13, 1985

Daniel F. Hedges, Esquire
1116-B Kanawha Boulevard, E.
Charleston, WV 25311

John Skinner, Esquire
Nichols and Skinner
P.O. Box 487
Charles Town, WV 25414

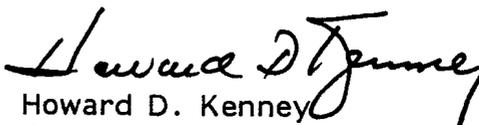
RE: Daniel Lutz V. Independent Fire Co. No. 1, Inc.
Docket No.: REP-272-78

Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Daniel Lutz V. Independent Fire Company No. 1, Inc./Docket No.: REP-272-78.

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/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

DANIEL LUTZ,

COMPLAINANT,

V

DOCKET NO. REP-272-78

INDEPENDENT FIRE CO. NO. 1 INC.,

RESPONDENT.

FINAL ORDER

The Commission, at its regularly scheduled meeting on October 9, 1985, examined the record of this case and adopted the Hearing Examiner's recommended findings of fact and conclusions of law as its own, and does, hereby, incorporate the same in this order and in addition thereto, makes the following findings:

1. That the Complainant is entitled to damages for embarrassment, humiliation and suffering in the amount of \$5,000.00.

2. That Complainant's counsel, Daniel F. Hedges, is entitled to an award of an attorney fee in the amount of \$2,943.75 which is supported by affidavit filed by said attorney.

It is, therefore, ORDERED:

1. That in as much as the Respondent has been found guilty of retaliation against the Complainant, the Respondent shall reinstate the Complainant as a member of its organization;

2. That the Respondent shall pay to the Complainant the sum of \$5,000.00 for the embarrassment, humiliation and suffering caused to the Complainant, which sum is payable upon entry of this order;

3. That the Respondent shall pay to the Complainant's attorney the sum of \$2,943.75 for services rendered by said attorney to the Complainant in the prosecution of this complaint, which sum is payable upon entry of this order;

4. That the Respondent shall cease and desist from denying females access to its organization and shall not retaliate against any person attempting to exercise their rights which are protected by the WV Human Rights Act.

Entered this 8th day of November, 1985.

WV HUMAN RIGHTS COMMISSION

BY Nathaniel Jackson
NATHANIEL JACKSON, CHAIR OR
BETTY HAMILTON, VICE CHAIR

Approved
8/13/85
LRL

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

W.V. HUMAN RIGHTS COMM.

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DANIEL LUTZ,
Complainant

vs

DOCKET NO. REP-272-78

INDEPENDENT FIRE COMPANY No. 1 Inc.,
Respondent

EXAMINERS RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for a hearing on June 25, 1985, in the Jefferson County Courthouse, Charles Town, West Virginia. The hearing panel consisted of Daniel C. Staggers, Hearing Examiner, both parties waived the presence of a Hearing Commissioner. The Complainant appeared in person and by his Counsel, Daniel F. Hedges. The Respondent appeared by its President, Donald W. Clendening and by its Counsel, John Skinner.

FINDINGS OF FACT

1. Respondent is a volunteer fire company located in Charles Town, West Virginia, receiving public and private funds for its operations, which include fire protection service for Charles Town, and the surrounding area. Complainant, Daniel Lutz, is a male who was a member of Respondent fire company, from March 1, 1969, until May 7, 1977.

2. People gained membership into the Respondent organization by submitting an application, to Respondent. Applications had to be endorsed by a current member. Upon submitting an application, an investigation, by a three (3) member investigating committee, was conducted of the applicant, and a report was made to the members at the next regular meeting. With a favorable report, the

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members voted by a blackball system, each member placed a white marble or a black marble into a container. Membership was gained to Respondent organization by that particular applicant receiving seventy-five percent (75%) favorable vote of the membership present, white ball elected, black ball rejected.

3. In April of 1977, Debbie Armstrong, submitted an application which was endorsed for membership by the Complainant.

4. Subsequent to Ms. Armstrong's application with the Respondent organization, the investigating committee for the Respondent conducted an investigation of the character and background of Ms. Armstrong.

5. At a regular meeting of Respondent on May 5, 1977, the investigating committee reported favorably upon the character and background of Ms. Armstrong to the membership of the Respondent. Upon the report being submitted to the membership, the membership voted on the application of Debbie Armstrong, a negative vote resulted. Complainant thereupon made a motion for reconsideration of the membership application of Debbie Armstrong, which motion was ruled out of order.

6. After the May 5, 1977, meeting had adjourned, Complainant encountered a Newspaper Reporter from the Hagerstown Newspaper, Hagerstown, Maryland. Complainant discussed with the Newspaper Reporter the results of the vote on Debbie Armstrong's application with Respondent organization. Subsequently, the reporter wrote an article concerning the application of Debbie Armstrong, the article being carried in the Hagerstown Newspaper. The newspaper article contained several comments of the Complainant concerning the application of Debbie Armstrong with the Respondent.

7. On May 9, 1977, Complainant visited the Respondent's fire hall. While at the fire hall, the Complainant was confronted by Donald W. Clendening, president of Respondent organization, Ernest Houser, chief of Respondent organization, and Edwin D. Smith, secretary of Respondent organization. The aforesaid members of the Respondent organization advised the Complainant that the Board of Directors had voted to indefinitely suspend Complainant from the Respondent organization.

8. Both parties herein admit that the bylaws of the company, relevant to discipline, was not followed in this case; bylaw No. article XV, which is as follows:

If any member or members should violate any of the bylaws of this company, and a report thereof be made to the president, he shall at the first meeting thereafter, appoint a committee of three (3) members to investigate the case. If the committee reports favorably respecting the accused, the matter shall terminate; if unfavorable, they shall state the case at large, and mention his or their names, when the accused, by a vote of two-thirds (2/3) of the members present, may be expelled or publicly reprimanded by the president, as shall be determined by the company- the accused always to be notified of the charge, time and place of meeting of said committee.

9. After the notification by the Respondent officers, the Complainant attempted to be reinstated to the Respondent organization. On November 4, 1977, Complainant was advised that his request for reinstatement had been denied.

10. Although Complainant may have violated many of Respondent's bylaws, Complainant eventually was suspended from Respondent organization for his actions surrounding the endorsement of Debbie Armstrong for membership with the Respondent organization, and providing information to the media with respect to Debbie Armstrong's membership application to Respondent organization.

CONCLUSIONS OF LAW

a. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties herein. Complainant has filed his Complaint with the Human Rights Commission within ninety (90) days after being denied reinstatement. Respondent denied Complainant's request for reinstatement on November 4, 1977, and Complainant filed with the Human Rights Commission on January 30, 1978, within the ninety (90) day jurisdictional limit.

b. Respondent failed to comply with and abide by the remedies and procedures properly established by it to conduct its affairs. Respondent established specific procedures to discipline its members for violation of its bylaws. Respondent failed to comply with article XV in disciplining Complainant. An organization has a duty to follow the rules it has adopted to govern its proceedings.

c. West Virginia Code § 5-11-9 [f] states:

It shall be an unlawful discriminatory practice... for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to: refuse, withhold from or deny to any individual because of his ... sex any of the advantages, facilities, privileges or services of such place of public accommodations;

d. Respondent had a practice of denying females access to the privileges of being a member of Respondent organization, a place of public accommodation.

e. Complainant sponsored and pushed for a female to become a member of Respondent organization.

f. Although Complainant may have violated many conditions of membership of Respondent organization, it was because of Complainant's activities sponsoring a female that Respondent suspended Complainant's membership with it.

g. On November 7, 1977, Complainant's Petition for reinstatement with Respondent was denied. Respondent retaliated against Complainant for his promotion of a female for membership with the Respondent organization, and therefore Respondent is determined to be in violation of West Virginia Human Rights Act.

h. Complainant is entitled to be reinstated to Respondent.

i. Complainant is entitled to reasonable attorney's fees upon the submission by his Counsel of a properly prepared affidavit and itemization of fees and costs incurred in the prosecution of this matter.

R E C O M M E N D A T I O N

1. That judgment be rendered in favor of the Complainant.
2. That Complainant be reinstated to Respondent organization.
3. That Complainant shall recover reasonable attorneys fees upon the submission by his Counsel of a properly prepared affidavit and itemization of fees and costs incurred in the prosecution of this matter.

DATED:

August 6, 1985

ENTERED:

Daniel C. Stagers

HEARING EXAMINER
DANIEL C. STAGGERS