



HR  
COPY

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

January 18, 1986

Jack W. DeBolt, Esq.  
12 Capitol Street  
Charleston, WV 25301

Forrest H. Roles, Esq.  
Suite 1380  
One Valley Square  
Charleston, WV 25301

RE: HR-564-79  
Smith V Country Club Village, Inc.  
& Paul Berchtold

Dear Mr. DeBolt & Mr. Roles:

Clerical errors were discovered in your Order served January 19, 1986 and by this letter with a copy of the attached Order and Proposed Findings of Fact and Conclusions of Law, those corrections are being made. The first error was the date the Order was entered said January, 1985, when it should have said January, 1986 and that has been corrected. The other error was an error in copying in which page 3 did not feed correctly through the copier and page 4 was missing.

Sincerely,

Howard D. Kenney  
Executive Director

HDK/kpv

Attachment



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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RE: HR-564-79/Smith V Country Club Village, Inc.  
& Paul Berthold

Dear Mr. DeBolt & Mr. Roles:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Marvin Smith, Sr. V Country Club Village, Inc., and Paul Berthold, HR-564-79.

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, appearing to read "Howard D. Kenney".

Howard D. Kenney  
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

NOV 22 1985

W.V. HUMAN RIGHTS COMM.

MARVIN SMITH, SR.,

COMPLAINANT,

v.

Docket No. HR-564-79

COUNTRY CLUB VILLAGE, INC.,  
and PAUL BERHTOLD,

Respondents.

ORDER

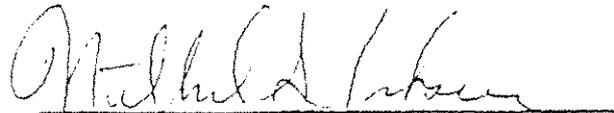
On the 14th day of November, 1985, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Cathryn Nogay. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this 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 ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 8 day of September, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR  
WEST VIRGINIA HUMAN  
RIGHTS COMMISSION

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

*Received  
9/15/85*

MARVIN SMITH, Sr., )  
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 Complainant )  
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 COUNTRY CLUB VILLAGE, INC., )  
 a Corporation, and )  
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HR 564-79  
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SEP 19 1985

W.V. HUMAN RIGHTS COMM.

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

Pursuant to notice, this matter came on for public hearing on the 31st day of May, 1985, beginning at 10:00 a.m. and was concluded on the 5th day of June, 1985. The hearing was held at the State Capitol, Charleston, West Virginia, Betty Hamilton, Commissioner and Cathryn Nogay, Hearing Examiner, presiding.

The Complainant, Marvin Smith Sr., was represented in person and by his counsel, Jack W. DeBolt, and the Respondents, County Club Village, Inc., and Paul Berchtold, appeared in person and by their counsel, Forrest H. Roles and Anna M. Norton.

ISSUE

Whether the Complainant, Marvin Smith, Sr., was discriminated against on the basis of his race by the Respondents, County Club Village, Inc., and Paul Berchtold, its principal stockholder, when the Respondents declined to renew the Complainant's lease.

## FINDINGS OF FACT

1. The Complainant, Marvin Smith, Sr., is a black male, age 33.

2. The Respondent, Country Club Village, Inc., owns and operates an apartment complex, located on Kanawha Turnpike in South Charleston, West Virginia.

3. The Respondent, Paul Berchtold, is the president and principal stockholder of Country Club Village, Inc.

4. The Complainant applied for an apartment at Country Club Village in October, 1977. The Complainant entered into a one year lease for the rental of Apartment 11-GB, the term of which began on November, 1977.

5. The Complainant entered into another one year lease for the same apartment, the term of which began on November 1, 1978.

6. Both leases entered into by the Complainant contained provisions stating that each month's rent was to be paid in advance, on the first day of the month, and that if the rent was not paid within ten days after the due date, the Respondent had the right to "repossess" the apartment without notice to the Complainant. The leases also contained provisions stating that the commission of nuisance on the premises by the lessee would be grounds for termination of the lease. (Complainant's Exhibit A).

7. Sonja Lusk Nafe was the resident manager of Country Club Village from the Spring of 1977 until August of 1978, and returned to Country Club Village for three weeks in March, 1979, to train another resident manager.

8. During her tenure as resident manager, Mrs. Nafe received several complaints about loud noise emanating from the Complainant's apartment. Mrs. Nafe informed the Complainant about the complaints and asked him to keep the noise level down and she informed Mr. Berchtold that tenants had complained about Mr. Smith.

9. During Mrs. Nafe's tenure, the Complainant's rent was often paid after the first of the month due date and was more than once paid after the expiration of the 10 day grace period.

10. In March, 1979, James Conti entered into a one year lease that commenced on April 1, 1979, and was to terminate on Oct. 31, 1979, for Apartment 11C, Country Club Village. Apartment 11C was located directly over the Complainant's apartment.

11. Thereafter, Mr. Conti complained to the Complainant several times about excessive noise coming from his apartment. The Complainant was initially gracious about the complaints, but he later became belligerent with Mr. Conti, and Mr. Conti thereafter directed his complaints to the management of Country Club Village.

12. On June 5, 1979, Paul Berchtold, as owner of Country Club Village, sent a letter to the Complainant advising him that Country Club Village had received a considerable number of complaints about noise, that therefore, the Complainant was in violation of his lease, and that if the complaints continued, the Complainant would be evicted. (Respondent's Exhibit 12).

13. The Complainant did not pay his June rent until June 15, 1979, in violation of his lease agreement.

14. On June 18, 1979, Country Club Village gave the Complainant notice that he was to vacate the premises by July 31, 1979, because of his failure to comply with several lease provisions. (Respondent's Exhibit 13).

15. On June 21, 1979, Marvin Smith, Sr. filed a complaint, HR 564-79, with the West Virginia Human Rights Commission against Country Club Village and Paul Berchtold, alleging that the Complainant was evicted because of his race. However, the Complainant testified at the Public Hearing on this matter that prior to the latter part of August, 1979, he did not feel that he was being mistreated on the basis of his race.

16. The Complainant did not pay his July rent until July 19, 1979.

17. The Complainant did not vacate his apartment on July 31, 1979. Country Club Village was unsuccessful in obtaining a Writ of Possession and accordingly, the Complainant was permitted to finish the term of the lease which was not due to expire until October 31, 1979.

18. The Complainant did not pay any rent for the month of August, 1979.

19. By letter dated August 27, 1979, the Complainant was notified that his lease would expire on October 31, 1979, and at that time, Country Club Village would take possession of the apartment.

20. One evening in September, 1979, Mr. Conti was grilling steaks on his balcony and an empty bag of charcoal fell off his balcony and onto the Complainant's patio. The complainant became incensed and exchanged heated words with Mr. Conti. Mr. Conti

called the State Police, who came and discussed the situation with the Complainant, and then left his apartment. When Mr. Conti returned to his apartment, the front door had been kicked in and off the frame.

21. After this incident, Mr. Conti advised Country Club Village that he was terminating his lease because of the problems with the Complainant. Thereafter he quit his lease on September 30, 1979, forfeiting his deposit.

22. On September 10, 1979, Marvin Smith, Sr., filed another complaint, REP 94-80, with the West Virginia Human Rights Commission charging the Respondents with retaliating against him for filing the original complaint by not renewing his lease.

23. The Complainant paid his rent for the month of September on October 2, 1979.

24. The Complainant did not pay his rent for the month of October.

25. The Complainant refused to vacate the premises upon expiration of his lease on October 31, 1979.

26. The Complainant paid no rent for the months of November and December, 1979.

27. On December 13, 1979, Country Club Village filed a complaint against Marvin Smith, Sr., in the Circuit Court of Kanawha County, West Virginia, seeking possession of the apartment and damages.

28. The Complainant vacated the apartment on December 26, 1979.

29. On February 1, 1980, the Circuit Court of Kanawha County entered an Order in favor of Country Club Village, granting it possession of Apartment 11GB, \$1,500.00 for back rent; \$150.00 for damages to the property and \$64.49 for sanitary sewer charges, which

were in arrears.

CONCLUSIONS OF LAW

1. The Complainant, Marvin Smith, Sr., is a protected person within the meaning of the West Virginia Human Rights Act (WV Code §5-11-1 et seq.)

2. The Respondents, Country Club Village, Inc., and Paul Berchtold, operate an apartment complex known as Country Club Village, which is a housing accommodation within the meaning of the West Virginia Human Rights Act.

3. On June 21, 1979, the Complainant filed a verified complaint against the Respondents alleging that they had engaged in unlawful discriminatory practices within the meaning of the West Virginia Human Rights Act.

4. The Complaint filed on June 21, 1979, was timely filed within ninety (90) days of the alleged act of discrimination.

5. On September 10, 1979, the Complainant filed a verified complaint against the Respondents alleging that they had retaliated against him for filing the complaint of June 21, 1979, by failing to renew his lease.

6. The Complaint filed on September 10, 1979, was timely filed within the ninety (90) days of the alleged act of discrimination.

7. At all times relevant herein, the West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of this action.

8. By Order dated June 14, 1985, (attached) the complaint of September 10, 1979 Case No. REP 94-80, charging the Respondents with retaliatic is dismissed because the Respondent did not have notice that the

complaint of June 21, 1979, Case No. HR 564-79, until November, 1979.

9. The Complainant violated the terms of the lease agreement he had with the Respondents by failing to make timely rent payments and by creating a nuisance with his excessive noise. Under the terms of the lease, both violations were grounds for its immediate termination.

10. The Respondents had valid reasons and a legal right to give the Complainant Notice to Vacate on June 18, 1979, and to refuse to renew the Complainant's lease at the expiration of its term on October 31, 1979.

11. The Complainant had the burden of proving that either (1) The Respondents' actions were discriminatorily motivated, Brown v. Conley (of Rand), HR 49-73 (August 19, 1975), adopting U.S. v. West Peachtree Tenth Corp., 473 F.2d 221 (5th Cir. 1971) or (2) The Respondents' conduct had a segregative effect which lacked adequate countervailing, legitimate justification. Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F2d 1283 (7th Cir. 1977).

12. The Complainant did not prove that the Respondent's actions were discriminatorily motivated or that they had a purely segregative effect.

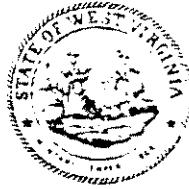
13. The Complainant did not prove that the Respondents discriminated against him in violation of the West Virginia Human Rights Act.

14. The Complaint filed in this matter, HR 564-79, should be dismissed.

Date: 9-16-85

Respectfully submitted,

Cathryn A. Nogay  
Cathryn A. Nogay  
Hearing Examiner



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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Sincerely yours,

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Howard D. Kenney  
Executive Director

HDK/kpv

Enclosure

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NOV 22 1985

W.V. HUMAN RIGHTS COMM.

MARVIN SMITH, SR.,  
COMPLAINANT,

v.

Docket No. HR-564-79

COUNTRY CLUB VILLAGE, INC.,  
and PAUL BERHTOLD,

Respondents.

ORDER

On the 14th day of November, 1985, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Cathryn Nogay. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this 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 ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 8 day of Summary, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR  
WEST VIRGINIA HUMAN  
RIGHTS COMMISSION

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

MARVIN SMITH, Sr., )  
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*Approved  
RHS 9/15/85*

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W.V. HUMAN RIGHTS COMM.

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Pursuant to notice, this matter came on for public hearing on the 31st day of May, 1985, beginning at 10:00 a.m. and was concluded on the 5th day of June, 1985. The hearing was held at the State Capitol, Charleston, West Virginia, Betty Hamilton, Commissioner and Cathryn Nogay, Hearing Examiner, presiding.

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ISSUE

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## FINDINGS OF FACT

1. The Complainant, Marvin Smith, Sr., is a black male, age 33.

2. The Respondent, Country Club Village, Inc., owns and operates an apartment complex, located on Kanawha Turnpike in South Charleston, West Virginia.

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Hearing Examiner



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RRR 9/18/85*

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4. The Complainant applied for an apartment at Country Club Village in October, 1977. The Complainant entered into a one year lease for the rental of Apartment 11-GB, the term of which began on November, 1977.

5. The Complainant entered into another one year lease for the same apartment, the term of which began on November 1, 1978.

6. Both leases entered into by the Complainant contained provisions stating that each month's rent was to be paid in advance, on the first day of the month, and that if the rent was not paid within ten days after the due date, the Respondent had the right to "repossess" the apartment without notice to the Complainant. The leases also contained provisions stating that the commission of nuisance on the premises by the lessee would be grounds for termination of the lease. (Complainant's Exhibit A).

7. Sonja Lusk Nafe was the resident manager of Country Club Village from the Spring of 1977 until August of 1978, and returned to Country Club Village for three weeks in March, 1979, to train another resident manager.

8. During her tenure as resident manager, Mrs. Nafe received several complaints about loud noise emanating from the Complainant's apartment. Mrs. Nafe informed the Complainant about the complaints and asked him to keep the noise level down and she informed Mr. Berchtold that tenants had complained about Mr. Smith.

9. During Mrs. Nafe's tenure, the Complainant's rent was often paid after the first of the month due date and was more than once paid after the expiration of the 10 day grace period.

10. In March, 1979, James Conti entered into a one year lease that commenced on April 1, 1979, and was to terminate on Oct. 31, 1979, for Apartment 11C, Country Club Village. Apartment 11C was located directly over the Complainant's apartment.

11. Thereafter, Mr. Conti complained to the Complainant several times about excessive noise coming from his apartment. The Complainant was initially gracious about the complaints, but he later became belligerent with Mr. Conti, and Mr. Conti thereafter directed his complaints to the management of Country Club Village.

12. On June 5, 1979, Paul Berchtold, as owner of Country Club Village, sent a letter to the Complainant advising him that Country Club Village had received a considerable number of complaints about noise, that therefore, the Complainant was in violation of his lease, and that if the complaints continued, the Complainant would be evicted. (Respondent's Exhibit 12).

13. The Complainant did not pay his June rent until June 15, 1979, in violation of his lease agreement.

14. On June 18, 1979, Country Club Village gave the Complainant notice that he was to vacate the premises by July 31, 1979, because of his failure to comply with several lease provisions. (Respondent's Exhibit 13).

15. On June 21, 1979, Marvin Smith, Sr. filed a complaint, HR 564-79, with the West Virginia Human Rights Commission against Country Club Village and Paul Berchtold, alleging that the Complainant was evicted because of his race. However, the Complainant testified at the Public Hearing on this matter that prior to the latter part of August, 1979, he did not feel that he was being mistreated on the basis of his race.

16. The Complainant did not pay his July rent until July 19, 1979.

17. The Complainant did not vacate his apartment on July 31, 1979. Country Club Village was unsuccessful in obtaining a Writ of Possession and accordingly, the Complainant was permitted to finish the term of the lease which was not due to expire until October 31, 1979.

18. The Complainant did not pay any rent for the month of August, 1979.

19. By letter dated August 27, 1979, the Complainant was notified that his lease would expire on October 31, 1979, and at that time, Country Club Village would take possession of the apartment.

20. One evening in September, 1979, Mr. Conti was grilling steaks on his balcony and an empty bag of charcoal fell off his balcony and onto the Complainant's patio. The complainant became incensed and exchanged heated words with Mr. Conti. Mr. Conti

called the State Police, who came and discussed the situation with the Complainant, and then left his apartment. When Mr. Conti returned to his apartment, the front door had been kicked in and off the frame.

21. After this incident, Mr. Conti advised Country Club Village that he was terminating his lease because of the problems with the Complainant. Thereafter he quit his lease on September 30, 1979, forfeiting his deposit.

22. On September 10, 1979, Marvin Smith, Sr., filed another complaint, REP 94-80, with the West Virginia Human Rights Commission charging the Respondents with retaliating against him for filing the original complaint by not renewing his lease.

23. The Complainant paid his rent for the month of September on October 2, 1979.

24. The Complainant did not pay his rent for the month of October.

25. The Complainant refused to vacate the premises upon expiration of his lease on October 31, 1979.

26. The Complainant paid no rent for the months of November and December, 1979.

27. On December 13, 1979, Country Club Village filed a complaint against Marvin Smith, Sr., in the Circuit Court of Kanawha County, West Virginia, seeking possession of the apartment and damages.

28. The Complainant vacated the apartment on December 26, 1979.

29. On February 1, 1980, the Circuit Court of Kanawha County entered an Order in favor of Country Club Village, granting it possession of Apartment 11GB, \$1,500.00 for back rent; \$150.00 for damages to the property and \$64.49 for sanitary sewer charges, which

were in arrears.

### CONCLUSIONS OF LAW

1. The Complainant, Marvin Smith, Sr., is a protected person within the meaning of the West Virginia Human Rights Act (WV Code §5-11-1 et seq.)

2. The Respondents, Country Club Village, Inc., and Paul Berchtold, operate an apartment complex known as Country Club Village, which is a housing accommodation within the meaning of the West Virginia Human Rights Act.

3. On June 21, 1979, the Complainant filed a verified complaint against the Respondents alleging that they had engaged in unlawful discriminatory practices within the meaning of the West Virginia Human Rights Act.

4. The Complaint filed on June 21, 1979, was timely filed within ninety (90) days of the alleged act of discrimination.

5. On September 10, 1979, the Complainant filed a verified complaint against the Respondents alleging that they had retaliated against him for filing the complaint of June 21, 1979, by failing to renew his lease.

6. The Complaint filed on September 10, 1979, was timely filed within the ninety (90) days of the alleged act of discrimination.

7. At all times relevant herein, the West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of this action.

8. By Order dated June 14, 1985, (attached) the complaint of September 10, 1979 Case No. REP 94-80, charging the Respondents with retaliation, is dismissed because the Respondent did not have notice that the

complaint of June 21, 1979, Case No. HR 564-79, until November, 1979.

9. The Complainant violated the terms of the lease agreement he had with the Respondents by failing to make timely rent payments and by creating a nuisance with his excessive noise. Under the terms of the lease, both violations were grounds for its immediate termination.

10. The Respondents had valid reasons and a legal right to give the Complainant Notice to Vacate on June 18, 1979, and to refuse to renew the Complainant's lease at the expiration of its term on October 31, 1979.

11. The Complainant had the burden of proving that either (1) The Respondents' actions were discriminatorily motivated, Brown v. Conley (of Rand), HR 49-73 (August 19, 1975), adopting U.S. v. West Peachtree Tenth Corp., 473 F.2d 221 (5th Cir. 1971) or (2) The Respondents' conduct had a segregative effect which lacked adequate countervailing, legitimate justification. Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F2d 1283 (7th Cir. 1977).

12. The Complainant did not prove that the Respondent's actions were discriminatorily motivated or that they had a purely segregative effect.

13. The Complainant did not prove that the Respondents discriminated against him in violation of the West Virginia Human Rights Act.

14. The Complaint filed in this matter, HR 564-79, should be dismissed.

Date: 9-16-85

Respectfully submitted,

Cathryn A. Nogay  
Cathryn A. Nogay  
Hearing Examiner