



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 9, 1986

Joseph C. Cometti, Esquire
605 Virginia Street, East
Charleston, WV 25301-2164

Fred Holroyd, Esquire
209 W. Washington Street
Charleston, WV 25302

RE: ER-493-83, Thomas v Charleston Area Medical Center

Dear Mr. Cometti and Mr. Holroyd:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Frances Thomas v Charleston Area Medical Center, ER ~~4~~93-83.

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 that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

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

FRANCES THOMAS,

Complainant,

vs.

Docket No. ER-493-83

CHARLESTON AREA MEDICAL CENTER,

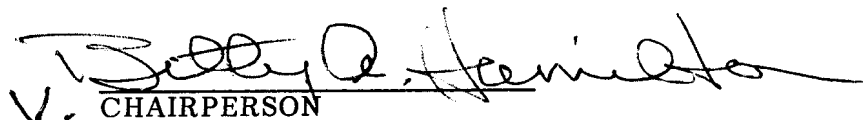
Respondent.

ORDER

Upon consideration of the Recommendation of Hearing Examiner, and of the file of the West Virginia Human Rights Commission in this case, it is the opinion of the Commission to approve and adopt the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner, which Findings of Fact, Conclusions of Law and Recommendation are hereby APPROVED and ADOPTED, and incorporated herein by reference. It is accordingly,

ORDERED and ADJUDGED that the Complaint filed in these proceedings be and is hereby DISMISSED by the Commission, these proceedings being deemed concluded.

ENTERED this 19 day of Dec., 1985.


V. Scott A. Hamilton
CHAIRPERSON
West Virginia Human
Rights Commission

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

Approved
A.P.S.
10/29/85

FRANCES THOMAS,

Complainant,

vs.

Docket No. ER-493-83

CHARLESTON AREA MEDICAL CENTER,

Respondent.

RECEIVED

OCT 15 1985

ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION

Pursuant to a Notice dated January 25, 1985, issued and served upon both Complainant and Respondent, a pre-hearing conference was held on February 11, 1985 at 2:30 p.m in Conference Room D, Building 8, State Capitol Complex, Charleston, West Virginia, at which time there were present before the undersigned Hearing Examiner, the Complainant in person and by Counsel, Joseph C. Cometti, and the Respondent by Counsel, Fred F. Holroyd.

The Hearing Examiner and Counsel for Complainant had been advised of a Motion to Quash Notice of Hearing and to Close the Case filed with the Human Rights Commission prior to the pre-conference hearing by Counsel for the Respondent asserting that Complainant filed suit on the matters in issue before the Commission in the Circuit Court of Kanawha County in Civil Action No. 84-C-4590 on November 9, 1984. Pursuant to a briefing schedule established by the Hearing Examiner, Counsel for the Respondent filed a Brief in support of the Motion to Quash and Close the case on February 15, 1985. Counsel for Complainant was to have filed a brief in opposition to this Motion on or before February 26, 1985 but failed to do so. This

case was held open for the filing of a brief on behalf of Complainant until one was finally received on October 8, 1985.

Upon consideration of the Complaint, the representation by Counsel at the pre-hearing conference that a Right to Sue Letter had been issued by the West Virginia Human Rights Commission in this matter on August 22, 1983 and upon the memoranda of both Complainant and Respondent on the question of jurisdiction, the undersigned Hearing Examiner recommends that the Commission adopt the following proposed Findings of Fact and Conclusions of Law and enter an Order in accordance with the same.

FINDINGS OF FACT

1. On February 22, 1983, Complainant filed a Complaint alleging that Respondent committed an unlawful discriminatory act in terminating her employment on January 3, 1983 because of race, Complainant being a black female.

2. The Commission issued to Complainant a Letter of Right to Sue on August 22, 1983.

3. On November 9, 1984, Complainant, by Counsel, filed suit against the Respondent in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 84-C-4590 based on the same matters in issue before the Commission.

CONCLUSIONS OF LAW

1. Complainant is a black female person and is authorized to file a Complaint and seek relief within the meaning of the West Virginia Human Rights Act, hereinafter referred to as the "Act". West Virginia Code 5-11-1, et seq.

2. Respondent is an employer within the meaning of the Act. West Virginia Code 5-11-1, et seq.

3. If a suit is filed, under Section 13 of Chapter 5, Article 11 of the West Virginia Code, as amended, the proceedings pending before the Commission shall be deemed concluded where suit has been brought either within ninety (90) days after the Complainant is given Notice of a Right to Sue, or, after said ninety (90) day period, at any time during which the applicable statute of limitations has not expired. West Virginia Code 5-11-13(b).

4. Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation. Crockett v. Andrews, 153 W.Va. 714, 172 S.E. 2d 384.

5. Although the West Virginia Supreme Court of Appeals has recognized in the Allen decision that the Commission has a statutory, non-discretionary duty to proceed to hearing on charges brought under the Act, the Court in the same decision " 'emphatically note(d)' that the Commission's duties with respect to Complaints filed are not extinguished by issuance of a Right-to-Sue Letter, but are only concluded 'if a suit is filed' " pursuant to a Right-to-Sue Letter under West Virginia Code 5-11-13(Supp. 1984). Allen vs. W.Va. Human Rts. Commission 324 S.E. 2d 99(W.Va. 1984).

6. The Commission gave Complainant a Notice of Right to Sue Letter on August 22, 1983, 180 days after filing the Complaint, and, upon Complainant's filing of suit in the Circuit Court of Kanawha County, these proceedings before the Commission shall be deemed concluded.

RECOMMENDATION

THEREFORE, pursuant to the above Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Complaint filed in these proceedings be dismissed by the Commission, these proceedings being deemed concluded.

DATED this 11th day of October, 1985.


HEARING EXAMINER