



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

May 13, 1986

Marlon Allen
401 Ridge Street
Keyser, WV 26726

J. Paul Geary, II, Esq.
P. O. Box 156
Petersburg, WV 26846-0156

Robert C. Melody, Esq.
P. O. Drawer R
Keyser, WV 26726

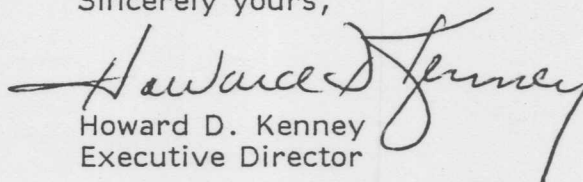
RE: Allen, V. Holderby/HR-158-79

Dear Mr. Allen, Mr. Geary, and Mr. Melody:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Marlon Allen V Hoseph Holderby Docket No.: 158-79.

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,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

MARLON ALLEN,

Complainant,

vs.

Docket No. 158-79

HOSEPH HOLDERBY,

Respondent.

O R D E R

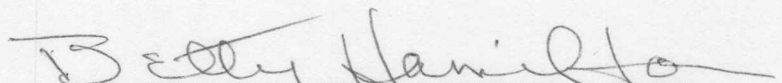
On the 8th day of April, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Christine M. Hedges. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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.

Enter this 21 day of April, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

BEFORE THE STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

MARLON ALLEN,
Complainant,
vs.
JOSEPH HOLDERBY,
Respondent.

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*Approved
RES Jan. 2, 1986*

CASE NUMBER HR-158-79

RECEIVED
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RECOMMENDED DECISION

ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

A. Preliminary Matters

The complainant, Marlon Allen, filed with the West Virginia Human Rights Commission a complaint alleging racial discrimination in housing which occurred August 31, 1978. The complaint was executed on September 8, 1978, and filed shortly thereafter. This matter was set for hearing September 17, 1985, by order of the West Virginia Human Rights Commission dated June 28, 1985, and the hearing was subsequently continued to October 15, 1985. A pre-hearing conference was held by telephone on September 24, 1985, at which time the complainant was represented by James Paul Geary, II, and the respondent represented himself.

A public hearing was held in Keyser, West Virginia, on October 15, 1985, at which time the respondent filed an Answer. The complainant appeared in person and by counsel, James Paul Geary, II, and the respondent appeared in person and by counsel, Robert C. Melody. Also appearing were witnesses for the complainant, Diane Parker and Eleanor

McFarland; and witnesses for the respondent, Carla Hastings and Mary Lou Finnell. The parties filed a written stipulation waiving the right to have a member of the Human Rights Commission present at the public hearing. The complainant's proposed findings of fact, conclusions of law and order were served upon the respondent and the hearing examiner on November 1, 1985. None were filed by the respondent. Upon consideration of all of which, the hearing examiner makes the following findings of fact and conclusions of law.

B. ISSUE

The complainant alleged that respondent violated the West Virginia Human Rights Commission Act, W. Va. Code §5-11-9(g), by refusing to rent housing accommodations to the complainant because of complainant's race. The respondent denied that he refused to rent a duplex apartment he owned to the complainant.

C. Findings of Fact

1. The complainant, Marlon Allen, is a black male and a "person" as that term is defined by W. Va. Code §5-11-3(a).

2. The respondent, Joseph Holderby, is an "owner" of rental "housing accommodations" as those terms are defined by W. Va. Code §5-11-3(k) and (p).

3. Both parties reside in Keyser, Mineral County, West Virginia, now and at the time this complaint arose.

4. On August 31, 1978, Marlon Allen responded to an ad in the local Keyser newspaper, by having his girlfriend call the number listed in the paper to see if the advertised apartment was available

for rent. Shortly thereafter Allen went to the residence of the landlord of the advertised apartment. Allen testified that he could not remember if he went alone, or if his girlfriend was with him. His girlfriend then, now Betty Allen, did not testify.

5. When Allen arrived, the babysitter, Carla Hastings, answered the door. Upon inquiry from Allen, Hastings indicated that she could not show him the apartment. Allen testified that he was told by the woman who answered the door that the apartment had already been rented. Hastings testified that she told Allen she did not have authority to show the apartment and he would have to come back later and talk to Mr. Holderby, the landlord.

6. Allen returned to Holderby's residence sometime after 4:00 p.m. that day. The testimony conflicted as to what transpired when Allen returned to the Holderby residence. The more credible testimony was that Allen knocked very loudly on Holderby's door, Holderby answered the door and in angry tones ordered Allen to leave. Both Allen and Holderby agreed that Allen had no opportunity to inquire if the apartment was for rent.

7. The day before Allen came to the Holderby residence, Holderby had accepted a \$50.00 deposit from a college girl for the apartment. The same evening, after Allen had returned to the Holderby residence but told to leave, the college girl returned to take back her deposit because she couldn't make arrangements for a third roommate to share the apartment.

8. Diane Parker, a friend of Allen, testified that she called Holderby's number and was told by a male voice that the apartment was

for rent. She was able to remember only that this was probably in August, 1978, and that it was before dark.

9. Eleanor McFarland, a friend of Allen, testified that when she had called Holderby, a woman told her the apartment was available but to call back later when Holderby was home. McFarland went to the apartment later that evening with friends, but was told the apartment was not available. McFarland testified that she spoke with Mary Lou Finnell and with Holderby, but she could not remember if she was shown the apartment.

10. Mary Lou Finnell, Holderby's girlfriend, testified that she showed the apartment to McFarland but that McFarland was not interested in renting because she had a problem with the space heater used in the apartment. Finnell's memory was better than McFarland's and her testimony was more credible to the hearing examiner.

D. CONCLUSIONS OF LAW

1. The complainant was a citizen of the State of West Virginia at the time this action was filed and is a person within the meaning of W. Va. Code §5-11-3(a).

2. The respondent is an owner of rental housing accommodations within the meaning of W. Va. Code §5-11-3 subsections (k) and (p).

3. Complainant filed a timely complaint and the West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of this action pursuant to Chapter 5, Article 11 of the West Virginia Code.

4. The West Virginia Human Rights Act is violated when the owner of rental property refuses to rent to a person because of the

person's race or color.

5. A complainant who claims he has been denied housing for discriminatory reasons may establish a prima facie case by proving (1) that he is black (2) that he applied for and was qualified to rent or purchase housing in question (3) that he was rejected, and (4) that the housing opportunity in question remained available. The burden then shifts to the defendant to come forward with evidence to show that his actions were not motivated by considerations of race. See McDonnell Douglas Corp. v. Green 411 U.S. 792, 93 S.Ct. 1817 (1973); Robinson v. 12 Lofts Realty, Inc. 610 F2d 1032 2nd Cir, (1979).

6. The complainant failed to establish a prima facie case. He did not show that he inquired about housing with the respondent. Although he apparently talked with the respondent's babysitter, she had no authority to even show him the apartment. When the complainant returned, he was not given a chance to inquire about renting the apartment, apparently because of his misunderstanding of the babysitter's authority and resulting conduct towards the respondent.

7. The evidence was insufficient to show that the respondent refused to rent to the complainant. The evidence produced did indicate however, that if given a chance, the respondent would have refused to rent to Allen, based on Allen's conduct on Holderby's porch.

8. The complainant failed to prove the fourth element of a prima facie case that the apartment was available for rent when he contacted the respondent. The evidence produced showed that even if the parties had acted civilly to each other at the time in question,

the apartment had already been rented, with a deposit accepted by the respondent.

9. The complainant failed to meet his burden of proof to show that race was a significant factor in the respondent's failure to rent to him.

E. DETERMINATION

The complainant failed to establish that the respondent refused to rent to him because of his race or color in violation of the West Virginia Human Rights Act, W. Va. Code §5-11-9(g)(1).

I. PROPOSED ORDER

The hearing examiner recommends that the Human Rights Commission dismiss the complaint in this case.

Dated: Dec. 30, 1985

Christine M. Hedges
Christine M. Hedges
Hearing Examiner

Approved:
Date: Jan. 2, 1986

Paul Stone
Paul Stone
Chief Administrative Law Judge
Supremem Court of Appeals

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

MARLON ALLEN

Complainant(s)

v.

CASE NO. HR 158-79

JOSEPH HOLDERBY

Respondent

STIPULATION

It is hereby stipulated and agreed by the parties in this matter that the Human Rights Commission hearing to be held in this matter may be held without the presence of a Human Rights Commission member. The parties recognize that they have the right to have a Commission member present, but stipulate and agree to waive that right.

Robert C. Moody

J. R. [Signature]

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BEFORE THE STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

MARLON ALLEN,
Complainant

-VS-

CASE NUMBER HR-158-79

JOSEPH HOLDERBY,
Respondent

ANSWER OF JOSEPH HOLDERBY

Comes now the Respondent, Joseph Holderby, and in answer to the Complaint filed herein says as follows:

1. The Respondent admits that the apartment in question had already been rented at the time of the inquiry of the Complainant.

2. The Respondent denies that he failed to rent the apartment to the Complainant because he is black.

3. The Respondent denies that he is in violation of the West Virginia Human Rights Act, as amended.

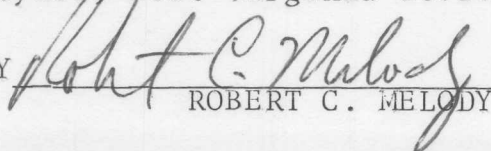
WHEREFORE, the Respondent, Joseph Holderby, respectfully requests that this Complaint be dismissed against him, and that he be awarded his costs herein expended.

JOSEPH HOLDERBY,
Respondent.
By Counsel

ROGERS AND MELODY
Counsel for Respondent
Post Office Drawer R
Keyser, West Virginia 26726

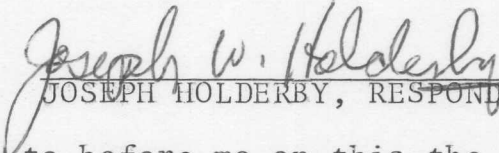
ROGERS AND MELODY
ATTORNEYS AT LAW
KEYSER, WV 26726

BY

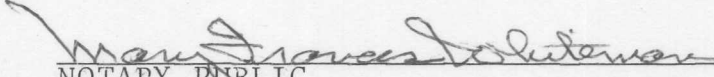

ROBERT C. MELODY

STATE OF WEST VIRGINIA,
COUNTY OF MINERAL, to-wit:

Joseph Holderby, the Respondent named in the foregoing Answer, being by me first duly sworn, deposes and says that the facts and allegations contained in the foregoing Answer are true, except so far as they are therein stated to be upon information, and that, so far as they are therein stated to be upon information, he believes them to be true.


JOSEPH HOLDERBY, RESPONDENT

Subscribed and sworn to before me on this the 14th day of October, 1985.


NOTARY PUBLIC

My Commission Expires: October 14, 1986.

CERTIFICATE OF SERVICE

I, Robert C. Melody, of Rogers and Melody, counsel for the Respondent, Joseph Holderby, do hereby certify that I served a copy of the foregoing Answer upon the Complainant, Marlon Allen, by delivering a true copy thereof to his counsel, James Paul Geary, II, on this the 14th day of October, 1985.


ROBERT C. MELODY

CERTIFICATE OF SERVICE

I, Paul R. Stone, hereby certify that I have this 2nd day of January, 1986, served a true copy of the Recommended Decision named in the foregoing letter by depositing same in the United States Mail in properly addressed and stamped envelopes to the following persons:

Marlon Allen
401 Ridge St, Keyser, WV 26726
Michael C. Dettinburn
33 North "E" Street
Keyser, WV 26726

J. Paul Geary, II, Esquire
P. O. Box 156
Petersburg, WV 26846-0156

Vacuum Services, Inc.
1 West Central Street
Petersburg, WV 26847

Robert C. Melody, Esquire
P. O. Drawer R
Keyser, WV 26726

Paul R. Stone

Paul R. Stone

SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA



PAUL CRABTREE
ADMINISTRATIVE DIRECTOR

ADMINISTRATIVE OFFICE
E-402 STATE CAPITOL
CHARLESTON 25305
304/348-0145

January 2, 1986

Mr. Howard D. Kenney
Executive Director
W. Va. Human Rights Commission
215 Professional Building
1036 Quarrier Street
Charleston, West Virginia 25301

Re: Allen v. Holderby
HR 158-79

Dear Mr. Kenney:

Transmitted herewith is the file in the above-referenced case along with the Recommended Decision submitted by the Hearing Examiner. I have reviewed this Decision and believe it is now ready for review by the Commission.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Paul R. Stone".

Paul R. Stone
Chief Administrative Law Judge

PRS:bc

Encs.

cc: Christine Hedges, Hearing Examiner