

# LIBRARY

*In re Barnett*



## FRANKLIN ADMINISTRATIVE CODE

### TITLE 8, CIVIL RIGHTS: CHAPTER 1. COMMISSION ON HUMAN RIGHTS.

#### § 101. Policy.

In the State of Franklin, there is no greater danger to the health, morals, safety, and welfare of the state and its inhabitants than the existence of groups prejudiced against and antagonistic to one another because of their actual or perceived differences. It is therefore the intent of the Legislature to end discrimination in housing based on the actual or perceived race, creed, color, national origin, gender, age, occupation, disability, sexual orientation, marital status, or alienage or citizenship status of such person or persons, or because children are, or may be, residing with such person or persons. The Franklin Commission on Human Rights established hereunder is given general jurisdiction and power to eliminate and prevent discrimination from playing any role in actions relating to housing.

#### § 102. Definitions.

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2. The term "person aggrieved" shall mean any person who has suffered injury as a result of an unlawful discriminatory practice.

3. The term "injury" includes loss of housing and related amenities and services, and economic, emotional, physical or other harm.

4. The term "unlawful discriminatory practice" includes only those practices specified in § 107.

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7. The term "national origin" shall, for the purposes of this chapter, include "ancestry."

\* \* \* \*

10. The term "housing accommodation" includes any building or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the residence or sleeping place of one or more persons.

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21. The term "alienage or citizenship status" means: (a) the citizenship of any person, or (b) the immigration status of any person who is not a citizen or national of the United States.

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**§ 107. Unlawful Discriminatory Practices—Housing accommodations.**

In all housing accommodations, it shall be unlawful for the owner, lessee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation to do any of the following on the basis of the actual or perceived race, creed, color, national origin, gender, age, occupation, disability, sexual orientation, marital status or alienage or citizenship status of such person or persons, or because children are, or may be, residing with such person or persons:

- (a) To refuse to sell, rent, lease, approve the sale, rental or lease, or otherwise deny to or withhold from any person or group of persons a housing accommodation or;
- (b) To discriminate in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation.

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**§ 109. Petition.**

Any person aggrieved by an unlawful discriminatory practice may petition this Commission for a hearing and determination.

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**§ 120. Decision and Order.**

If, upon all the evidence at the hearing, the Commission finds that a respondent has engaged in any unlawful discriminatory practice, the Commission shall issue an order requiring the respondent to cease and desist from such unlawful discriminatory practice and to take affirmative action to effectuate the purposes of this chapter including:

- (a) Directing the sale, rental or lease, or approving the sale, rental or lease of housing accommodations;
- (b) Directing the payment of compensatory damages to the person aggrieved by such practice or act, including damages for emotional distress;
- (c) Imposing a civil penalty of not more than fifty thousand dollars (\$50,000) where the Commission finds the respondent's actions were willful, wanton or malicious. Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the State.
- (d) Requiring the respondent to participate in training regarding the requirements of the law;
- (e) Monitoring the respondent's future housing practices; and
- (f) Directing the payment of costs and reasonable attorneys' fees to the prevailing party

**Rosa v. Brusco**  
Franklin Court of Appeal (2001)

This is an appeal from an order of the Franklin Commission on Human Rights ("the Commission") that found petitioners guilty of discrimination on the basis of race in denying rental of an apartment to a black woman.

Petitioner Angelina Brusco is the owner of the premises located at 309 West Street in Kingsfield, and petitioner Louis Brusco is her son and manager of the building. Petitioner Brusco Fuel Oil Co., Inc., is a fuel oil company that is alleged also to be a managing agent of the premises.

In July of 2000, Eneida Rosa, a black female law student at Kingsfield School of Law, attempted to rent an apartment in the subject building. The uncontroverted statements of Rosa and a white friend, Gail Gregory, indicate that Rosa was the victim of discriminatory treatment by Yvonne Lomelino, who said she was a rental agent for the landlord. She offered to rent the apartment to Gregory. She did not, however, offer to rent the apartment to Rosa even though it was apparently available, and she discouraged Rosa from filling out an application form. Although Lomelino ultimately accepted Rosa's application for the apartment with a check for one month's rent, her application was rejected, and the apartment was rented to someone else.

Rosa filed a complaint with the Commission. The Commission held hearings and found Angelina and Louis Brusco and the Brusco Fuel Oil Co. responsible for discriminatory conduct against Rosa and awarded Rosa damages.

The Bruscos and the company do not dispute the discriminatory treatment of Rosa. However, they deny liability on the ground that they are not responsible for the conduct of Lomelino, who, they insist, is not authorized to act as their agent either under § 107 of the Franklin Administrative Code or by general common-law principles of agency. They contend that the determination of the Commission is not supported by substantial evidence.

Although Lomelino identified herself as the rental agent, job titles are not dispositive on the question of whether an agency relationship exists. Instead, we look to the facts of each case. Here, evidence given at the hearing indicated that Lomelino was authorized to show apartments, had keys to the apartments, and had the initial authority to determine whether to submit applications for further consideration to the manager and owner. These facts create an agency relationship between Lomelino and the Bruscos. The responsibilities exercised by Lomelino establish that her actions are imputed to the owner and manager. The Commission was justified in finding that Angelina Brusco,

as owner of the building, and Louis Brusco, as manager, were responsible for the discriminatory actions of Lomelino. The failure of the Bruscos to monitor the performance of their agent cannot be a valid defense. Those who discriminate are not likely to do so openly.

Regarding Brusco Fuel Oil Co., there is no substantial evidence supporting the Commission's finding that the company was also a managing agent of the premises and thus responsible for discriminatory practices by the rental agent. The fact that Louis Brusco was employed at the company and, therefore, could be reached for inquiries and complaints at the telephone number of the company can in no way be interpreted as giving a management role to the company itself. Moreover, the testimony that Louis Brusco would, on occasion, send a company workman over to the subject building to make emergency repairs is not sufficient to show that the company did anything other than conduct a fuel business. The record is devoid of evidence that Brusco Fuel Oil Co. was in any way an owner, operator, or managing agent of the property, or that the company played any role in the discriminatory actions.

Accordingly, the Commission's order is vacated as it relates to Brusco Fuel Oil Co. and in all other respects affirmed.

**Sethi v. Austin**

Franklin Court of Appeal (2000)

This is an appeal from an order of the Franklin Commission on Human Rights finding George Austin liable for an unlawful discriminatory practice. The Commission awarded Anjali Sethi \$15,000 in compensatory damages for mental anguish. Although an award of compensatory damages in a nominal amount was warranted, we conclude that the Commission abused its discretion in fixing the amount of the compensatory award for mental anguish at \$15,000.

The Commission could reasonably conclude, from this record, that housing discrimination on the basis of color and national origin in violation of the Franklin Administrative Code was established. Sethi is a dark-skinned woman with a pronounced Indian accent. The evidence adduced at the hearing showed that Austin told Sethi in a telephone conversation that the house was no longer available even while he continued to advertise it in a local newspaper and was showing the house and negotiating its sale with others.

A claim for compensatory damages may be based entirely on mental anguish, as is the case here. When that is the case, the award must be supported by competent evidence concerning the extent of the injuries and a showing that a sufficient causal connection exists between the respondent's illegal acts and the complainant's injuries. Awards may be made on the basis of complainant's testimony alone. There is no requirement for

either expert medical testimony or lay corroboration, though both are permitted.

Here, the compensatory damage award was based solely upon Sethi's conclusory testimony that she was "upset and outraged" by Austin's actions. This testimony was unsupported by details and incidents from Sethi's life that could have painted a vivid picture of the injuries caused by the discrimination. That picture could show, for example, changes in the victim's relationships with family, friends, or coworkers, or changes in the victim's activities of daily living such as eating, working, sleeping, and recreation. Though not required in every case, trial records that support substantial awards frequently include a comparison between a complainant's life before and after the discriminatory incident, tracking changes in interests, self-perception, and attitude toward the future.

Here the record supports an award of compensatory damages in a nominal amount. However, there is insufficient evidence to support the Commission's order as to the amount of damages awarded to Sethi. We remand for further proceedings.

