

**ADMINISTRATIVE AGENCY STATUTORY
INTERPRETATION**

*GIRARD FINANCE CO. V. PENNSYLVANIA HUMAN
RELATIONS COMMISSION: TAKING A STAND AGAINST
UNFAIR LENDING PRACTICES*

I. INTRODUCTION

As demonstrated by *Girard Finance Co. v. Pennsylvania Human Relations Commission*,¹ racial discrimination is still a common occurrence and a real problem that can lead to litigation, specifically in the Commonwealth. Section 5(h)(8) of the Pennsylvania Human Relations Act makes it unlawful to discriminate in real estate-related transactions, including the making of loans that have a disparate impact on the basis of race, thereby giving those discriminated against a cause of action for the inequality they have faced.² The court in *Girard Finance Co.* addressed various issues related to the lending practices of the company and ultimately found that Girard Finance Company's lending practices and loan terms were predatory and unfair.³ In addition, the court found that the practices used by Girard Finance Company had a disparate impact on the basis of race.⁴ Therefore, the court awarded substantial damages to the petitioners in this case in an effort to remedy the discrimination they experienced.⁵

This survey begins in Part II with background information on relevant statutes and similar cases. It then moves to a detailed explanation of the court's decision in *Girard Finance Co.*, including the facts of the case, in Part III. Following that, this survey analyzes the multiple issues addressed by this case, the arguments advanced by the parties, the holding for each issue, and the rationale employed by the court to lead to its decision. In Part

¹ *Girard Fin. Co. v. Pa. Human Relations Comm'n*, 52 A.3d 523 (Pa. Commw. Ct. 2012).

² 43 PA. STAT. ANN. § 955(h)(8) (West 2009).

³ *Girard Fin. Co.*, 52 A.3d at 536.

⁴ *Id.* at 535.

⁵ *See id.* at 536.

IV, this survey evaluates the decision of the court in this case. Finally, in Part V, this survey will provide a conclusion.

II. BACKGROUND

The Pennsylvania Human Relations Act (PHRA), codified at title 43, sections 951-63 of the Pennsylvania Statutes, is the "principal legislative vehicle in Pennsylvania for assuring the civil rights of all citizens of the Commonwealth."⁶ Various sections of this act are relevant for purposes of this survey. First, section 7 of the PHRA lists the relevant powers and duties of the Pennsylvania Human Relations Commission (PHRC).⁷ One important power given to the PHRC is the power to "initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices."⁸ In addition, section 5 of the PHRA describes what acts constitute discrimination.⁹ Furthermore, this section provides that it is unlawful to discriminate in real estate transactions.¹⁰ This subsection additionally dictates that it is "unlawful for any person . . . whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction or in the terms of . . . such a transaction because of race, color, religious creed, [or] ancestry."¹¹ According to the PHRA, the making or purchasing of loans for commercial property is included in the definition of real estate-related transactions.¹²

A. *Statute of Limitations*

One issue that is discussed by the subject case of this survey involves the statute of limitations for a claim such as this. Therefore, there are several statutory provisions that must be detailed in order to examine this issue. The first is section 9 of the PHRA. This section dictates that a complaint filed pursuant to the

⁶ 1 SUMMARY OF PENNSYLVANIA JURISPRUDENCE 2D TORTS § 12:10 (2d ed. 2005).

⁷ tit. 43, § 957.

⁸ *Id.* § 957(f).

⁹ *Id.* § 955.

¹⁰ *Id.* § 955(h)(8).

¹¹ *Id.* § 955(h)(8)(i).

¹² *Id.* § 954(y)(1).

PHRA "must be so filed within [180] days after the alleged act of discrimination, unless otherwise required by the Fair Housing Act."¹³ In addition, the Fair Housing Act states "[a]n aggrieved person may commence a civil action . . . not later than [two] years after the occurrence or the termination of an alleged discriminatory housing practice."¹⁴ Lastly, the Pennsylvania Code makes further provisions regarding the statute of limitations in these and similar cases. This statute articulates that when "the alleged unlawful discriminatory practice is of a continuing nature," the computation of the 180 day statute of limitations is deemed to be "any date subsequent to the occurrence of the practice up to and including the date upon which the unlawful discriminatory practice shall have ceased."¹⁵

This continuing violation doctrine was also upheld by several state and federal court cases. For example, in *Jensen v. Frank*,¹⁶ it was held that similarly situated persons are not required to individually comply with the PHRA's statute of limitations because systemic violations allow similarly situated claimants to timely file their complaints.¹⁷ Furthermore, the Commonwealth Court of Pennsylvania has similarly found that a plaintiff may rely on the continuing violation doctrine to recover for discriminatory acts that fall outside the statute of limitations.¹⁸ Finally, the Supreme Court of the United States has also addressed the validity of the continuing violation doctrine. In *Havens Realty Corp. v. Coleman*,¹⁹ the court found that "where a plaintiff . . . challenges not just one incident . . . but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within 180 days of the last asserted occurrence of that practice."²⁰

¹³ tit. 43, § 959(h).

¹⁴ 42 U.S.C. § 3613(a) (2006).

¹⁵ 16 PA. CODE § 42.14(a) (2013).

¹⁶ *Jensen v. Frank*, 912 F.2d 517 (1st Cir. 1990).

¹⁷ *Id.* at 523.

¹⁸ *Barra v. Rose Tree Media Sch. Dist.*, 858 A.2d 206, 213 (Pa. Commw. Ct. 2004) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 (2002)).

¹⁹ *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

²⁰ *Id.* at 380-81 (footnote omitted).

B. Predatory or Racially Discriminatory Loans

A second issue detailed in this survey involves the determination of whether a loan is discriminatory or predatory. The seminal case in this area is *Hargraves v. Capital City Mortgage Corp.*,²¹ which prohibited reverse redlining.²² This case also outlined the two-prong test applicable to a claim for discriminatory lending.²³ In order to recover, "the plaintiffs must show that the defendants' lending practices and loan terms were 'unfair' and 'predatory,' and that the defendants either intentionally targeted on the basis of race, or that there is a disparate impact on the basis of race."²⁴ Moreover, the Supreme Court of the United States held that it is not necessary for a complainant to prove that the actions were undertaken with a "racial purpose or invidious intent."²⁵ A practice can be invalid merely because it had a disparate impact.²⁶

One clear indicator of a "predatory [or] unfair loan is one which exceeds the borrower's needs and repayment capacity."²⁷ Once a plaintiff demonstrates sufficient evidence to show that it is more likely than not that discrimination occurred, a presumption of discrimination is established, and the burden then shifts to the defendant.²⁸ If the defendant offers evidence from which the trier of fact could find that the actions were not discriminatory, the trier of fact must then decide which party to believe.²⁹ However, if the defendant does not produce evidence, the plaintiff must prevail if

²¹ *Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7 (D.D.C. 2000).

²² *Id.* at 20.

²³ *Id.* (citing *Jackson v. Okaloose Cnty.*, 21 F.3d 1531, 1543 (11th Cir. 1994)).

²⁴ *Id.* (citing *Jackson*, 21 F.3d at 1543).

²⁵ *Connecticut v. Teal*, 457 U.S. 440, 446 (1982) (citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)).

²⁶ *Id.*

²⁷ *McGlawn v. Pa. Human Relations Comm'n*, 891 A.2d 757, 774 (Pa. Commw. Ct. 2006).

²⁸ *Johnstown Redevelopment Auth. v. Pa. Human Relations Comm'n*, 556 A.2d 479, 483 (Pa. Commw. Ct. 1989) (quoting *Allegheny Hous. Rehab. Corp. v. Pa. Human Relations Comm'n*, 532 A.2d 315, 319 (Pa. 1987)).

²⁹ *Id.* (quoting *Allegheny Hous. Rehab. Corp.*, 532 A.2d at 319).

she produced enough evidence to present a *prima facie* case of discrimination.³⁰

C. Damages

Another important issue that is addressed in this survey regards the damages applicable to a claim for unlawful discriminatory practices. Relevant to this issue, it is important to understand section 9 of the PHRA. This section provides that if the PHRC finds that there was discrimination present, it "may award actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the [PHRC], will effectuate the purposes of this act."³¹ This ability to award damages for embarrassment has been further interpreted by various cases. For example, in one Commonwealth Court of Pennsylvania case, it was found that the award of damages for humiliation under this provision of the PHRA is a fact-specific inquiry, which takes into account evidence of the nature of the conduct, as well as the victim's reaction to that conduct.³²

Also, the Eleventh Circuit has found that "a plaintiff's own testimony of embarrassment and humiliation can be sufficient to support an award for compensatory damages."³³ In addition, in *McGlawn v. Pennsylvania Human Relations Commission*,³⁴ the court found that damages awarded under the PHRA have two purposes.³⁵ The first is to "restore the injured party to pre-injury status."³⁶ The second purpose is to discourage future

³⁰ *Id.* (quoting *Allegheny Hous. Rehab. Corp.*, 532 A.2d at 319).

³¹ 43 PA. STAT. ANN. § 959(f)(1) (West 2009).

³² *New Corey Creek Apartments, Inc. v. Pa. Human Relations Comm'n*, 865 A.2d 277, 282-83 (Pa. Commw. Ct. 2004).

³³ *Bogle v. McClure*, 332 F.3d 1347, 1359 (11th Cir. 2003) (citing *Ferrill v. The Parker Grp., Inc.*, 168 F.3d 468, 476 (11th Cir. 1999)).

³⁴ *McGlawn v. Pa. Human Relations Comm'n*, 891 A.2d 757 (Pa. Commw. Ct. 2006).

³⁵ *See id.* at 775 (citing *Parks v. Pa. Human Relations Comm'n*, 848 A.2d 204, 209 (Pa. Commw. Ct. 2004); *Williamsburg Cmty. Sch. Dist. v. Pa. Human Relations Comm'n*, 512 A.2d 1339, 1342 (Pa. Commw. Ct. 1986)).

³⁶ *Id.* (citing *Parks*, 848 A.2d at 209; *Williamsburg Cmty. Sch. Dist.*, 512 A.2d at 1342).

discrimination.³⁷ Furthermore, in *McGlawn*, it was found that damages awarded by the PHRC are only overturned if the award is an attempt to achieve ends other than the stated purpose of the act.³⁸

III. *GIRARD FINANCE CO. V. PENNSYLVANIA HUMAN RELATIONS COMMISSION*

The Commonwealth Court of Pennsylvania was given an opportunity to address various issues related to discriminatory lending practices in *Girard Finance Co.*³⁹ The case was initiated when Kevin Harris "filed a verified complaint with the PHRC on behalf of himself and other similarly situated persons."⁴⁰ Harris claimed that Girard Finance Company and its president, Thomas Richter, unlawfully discriminated against borrowers on the basis of their race when determining the terms and conditions of loans in real estate-related transactions.⁴¹

Public hearings were held before a hearing examiner to address Harris' claims.⁴² Girard Finance Company and Richter filed a motion for summary judgment, which was denied by an interlocutory order.⁴³ After the hearing, the examiner "found that Harris and other similarly situated persons had proven unlawful discrimination in violation of Sections 5(h)(1) and (4) of the PHRA."⁴⁴ A final order was then entered, adopting the findings of fact, conclusions of law, opinion, and proposed order of the hearing examiner.⁴⁵ This final order required Girard Finance Company and Richter "to cease and desist from unlawfully discriminating" based on race and/or national origin, pay money

³⁷ *Id.* (citing *Parks*, 848 A.2d at 209; *Williamsburg Cmty. Sch. Dist.*, 512 A.2d at 1342).

³⁸ *Id.* at 774 (quoting *Consol. Rail Corp. v. Pa. Human Relations Comm'n*, 582 A.2d 702, 708 (Pa. Commw. Ct. 1990)).

³⁹ *Girard Fin. Co. v. Pa. Human Relations Comm'n*, 52 A.3d 523 (Pa. Commw. Ct. 2012).

⁴⁰ *Id.* at 529 (footnote omitted).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Girard Fin. Co.*, 52 A.3d at 529-30.

damages and a civil penalty, "provide its employees with training regarding non-discriminatory practices," implement a system to track its transactions, and "report to the PHRC the means by which it will comply with the order."⁴⁶ From this final order, Girard Finance Company and Richter appealed.⁴⁷

On appeal, the Commonwealth Court of Pennsylvania considered five issues.⁴⁸ The first was "whether the PHRC erred as a matter of law when it asserted its legal authority and jurisdiction over commercial loans made to corporate tavern owners."⁴⁹ Second, the court determined "whether Harris and the other similarly situated Claimants had standing to bring this claim under the [PHRA]."⁵⁰ The third issue faced by the court was whether the statute of limitations barred the claims in this case.⁵¹ Fourth, the court needed to establish whether the loans at issue were predatory or racially discriminatory.⁵² Finally, the fifth issue addressed by the court was "whether the PHRC erred as a matter of law in awarding damages for which there was no record evidence, let alone the required substantial evidence."⁵³

With regard to the first issue, the court found that the PHRC did not err "as a matter of law when it asserted its legal authority and jurisdiction over commercial loans made to corporate tavern owners."⁵⁴ The court held this way because section 7 of the PHRA specifically gives the PHRC authority to investigate and adjudicate complaints alleging unlawful discrimination.⁵⁵ It is unlawful to discriminate in real estate-related transactions,⁵⁶ which includes the making of loans for commercial property.⁵⁷ Furthermore, the discrimination in this case amounted to reverse redlining.⁵⁸ The

⁴⁶ *Id.* at 529.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Girard Fin. Co.*, 52 A.3d at 529.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 530.

⁵⁵ *Id.*

⁵⁶ *Id.* (quoting 43 PA. STAT. ANN. § 955(h)(8) (West 2009)).

⁵⁷ *Girard Fin. Co.*, 52 A.3d at 530 (quoting tit. 43, § 954(y)(1)).

⁵⁸ *Id.*

Commonwealth Court of Pennsylvania has previously found that the PHRC has jurisdiction to remedy unlawful housing discrimination, including claims of reverse redlining.⁵⁹ Therefore, the court found that the PHRC had jurisdiction over the commercial loans at issue here.⁶⁰

Next, the court examined the argument raised by Girard Finance Company and Richter that "Harris and the other similarly situated Claimants did not have standing to bring this claim under the PHRA."⁶¹ Girard Finance Company and Richter challenged the claimants' standing because the individuals did not enter the loan agreements that were at issue.⁶² Girard Finance Company and Richter claimed that because of this, the claimants did not have a "substantial, direct, and immediate interest in this matter."⁶³ The Commonwealth Court of Pennsylvania, however, disagreed with the argument advanced by Girard Finance Company and Richter. The court recognized that standing " 'asks whether [the] party [bringing suit] has actually been aggrieved as a prerequisite before the court will consider the merits of the legal challenge itself.' "⁶⁴ The court found here that the evidence established that the loans at issue were made to the corporation, as well as the individuals.⁶⁵ Furthermore, Richter himself testified that it was standard for loan transactions to include personal guarantees, making the individuals personally liable for the loans.⁶⁶ Accordingly, the court found that the individuals had standing to bring the claims because the subject matter of the complaint was the loans for which they were personally responsible.⁶⁷

Third, the court addressed the statute of limitations. Girard Finance Company and Richter maintained that the claims were

⁵⁹ *Id.* (quoting *McGlawn v. Pa. Human Relations Comm'n*, 891 A.2d 757, 766 (Pa. Commw. Ct. 2006)).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Girard Fin. Co.*, 52 A.3d at 530.

⁶⁴ *Id.* (quoting *R.H.S. v. Allegheny Cnty. Dep't of Human Servs.*, 936 A.2d 1218, 1229 (Pa. Commw. Ct. 2007)).

⁶⁵ *Id.*

⁶⁶ *Id.* at 531.

⁶⁷ *Id.*

barred because they were brought after the 180 day statute of limitations.⁶⁸ Conversely, the PHRC "argue[d] that similarly situated persons are not required to individually comply with the PHRA's statute of limitations requirement."⁶⁹ The regulations provide that the date of occurrence is considered to be any date after the occurrence of discrimination, " 'up to and including the date upon which the unlawful discriminatory practice shall have ceased.' "⁷⁰ Since Girard Finance Company and Richter had a policy of predatory lending, the PHRC argued that the practices it used were systemic violations.⁷¹ Therefore, the PHRC claimed that under *Jensen*, as discussed above, the claims were filed within the statute of limitations, and the court agreed.⁷²

The court recognized that the continuing violation doctrine allows a plaintiff to recover for discriminatory acts that fall outside of the statute of limitations.⁷³ As explained by the Supreme Court of the United States, this doctrine is necessary because continuing violations " 'should be treated differently from one discrete act of discrimination . . . [because w]here the challenged violation is a continuing one, the staleness concern disappears.' "⁷⁴ Applying this rule to the present case, the Commonwealth Court of Pennsylvania found that the claims were not barred by the statute of limitations because "Girard Finance and Richter were not charged with isolated acts of reverse redlining, but rather, the unlawful practice of predatory lending."⁷⁵

Next, the court focused on whether the loans were predatory and whether Girard Finance Company's practices were discriminatory.⁷⁶ Girard Finance Company and Richter claimed that there was no evidence to prove it targeted minorities.⁷⁷

⁶⁸ *Id.*

⁶⁹ *Girard Fin. Co.*, 52 A.3d at 531.

⁷⁰ *Id.* (quoting 16 PA. CODE § 42.14(a) (2012)).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* (quoting *Barra v. Rose Tree Media Sch. Dist.*, 858 A.2d 206, 213 (Pa. Commw. Ct. 2004)).

⁷⁴ *Id.* at 532 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982)).

⁷⁵ *Girard Fin. Co.*, 52 A.3d at 532.

⁷⁶ *Id.*

⁷⁷ *Id.*

Additionally, the company asserted that "the mere fact that [its] customers are corporations owned by minorities simply reflects the composition of the relevant market and does not prove unlawful discrimination."⁷⁸ The PHRC, however, claimed there was evidence of "numerous unfair and predatory terms and conditions" in the loans.⁷⁹ In addition, the hearing examiner "found that Girard Finance and Richter charged a standard 20% add-on interest rate on virtually all of their loans, and used a repayment formula that resulted in a total loan payback amount of double the principal."⁸⁰ Girard Finance Company also "used the Rule of 78 as their amortization method."⁸¹ This applied a prepayment penalty if the loan was paid off early, effectively making the interest rate on the loans thirty-four percent.⁸² Thus, the PHRC claimed this rule was predatory by definition.⁸³

The PHRC also claimed "that Girard Finance and Richter charged unjustified points on their loans."⁸⁴ Normally, a borrower can reduce his interest rate by paying points; but, in the instant case, Girard Finance Company charged points without reducing the interest rates.⁸⁵ Further, the PHRC claimed that Girard Finance Company "engaged in the predatory practice of flipping loans."⁸⁶ This practice "is the act of repeatedly refinancing a mortgage loan with no benefit to the borrower."⁸⁷ According to the PHRC, Girard Finance Company additionally charged money while reducing the borrowers' equity in their properties, "used balloon payments in their loans," applied prepayment penalties, created a conflict of interest by forcing borrowers to put Richter or another employee on their Board of Directors, and "extending loans that exceeded the borrowers' needs and repayment capacity."⁸⁸

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Girard Fin. Co.*, 52 A.3d at 532.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Girard Fin. Co.*, 52 A.3d at 533.

⁸⁸ *Id.*

The court noted that "excessive interest rates may be characteristic of a predatory loan" under both state and federal law.⁸⁹ Another indicator of a predatory loan is that it exceeds the borrower's needs and repayment capacity.⁹⁰ There is a two-prong test applicable to reverse redlining: (1) the plaintiffs must show the "lending practices and loan terms were predatory and unfair," and (2) the plaintiffs must show that the "defendant intentionally targeted them because of their race or that the defendant's lending practices had a disparate impact on the basis of race."⁹¹ This determination is a question of fact.⁹² To demonstrate that this test was met in the present case, the PHRC presented an expert, who testified that a predatory loan is one that is given without considering the borrower's ability to repay.⁹³ This expert also testified that there are several "red flags of predatory lending," which include high interest rates, high upfront and late fees, hidden fees and costs, and a lack of disclosure.⁹⁴ Based on this testimony and the evidence presented, the court held that "there was substantial evidence to conclude that Girard Finance and Richter's lending practices and loan terms were predatory and unfair."⁹⁵

Therefore, since the first prong of the test was met, the issue became "whether Girard Finance and Richter intentionally targeted Claimants because of their race or whether their lending practices had a disparate impact on the basis of race."⁹⁶ It is not necessary to prove that the practice had an invidious intent; it may still be invalid if the practice had a disparate impact.⁹⁷ The PHRC produced evidence to show that Girard Finance Company made loans predominately to minority borrowers in minority neighborhoods.⁹⁸ This evidence, the PHRC claimed, was enough to

⁸⁹ *Id.* at 532.

⁹⁰ *Id.* at 533.

⁹¹ *Id.* (quoting *McGlawn v. Pa. Human Relations Comm'n*, 891 A.2d 757, 765 (Pa. Commw. Ct. 2006)).

⁹² *Id.* (quoting *McGlawn*, 891 A.2d at 769).

⁹³ *Girard Fin. Co.*, 52 A.3d at 533.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 534.

⁹⁸ *Id.* at 533.

show that Girard Finance Company's lending activities had a disparate impact.⁹⁹ The PHRC, therefore, showed a *prima facie* case and established a rebuttable presumption of discrimination.¹⁰⁰ The burden then shifted to Girard Finance Company and Richter to show there was a legitimate reason for their actions.¹⁰¹ Absent a response by the defendant, "the 'presumption' of discrimination arising from the plaintiff's *prima facie* case stands determinative of the factual issue of the case."¹⁰² If, however, the defendant offers an explanation for the actions, the presumption disappears and the trier of fact must decide which party to believe.¹⁰³

In response to the *prima facie* case established by the PHRC, "the only non-discriminatory explanation offered by Girard Finance and Richter" was given by an expert, who testified that he thought Girard Finance Company's business came from predominantly minority areas because the bars in the outlying counties do not have the same turnover rate.¹⁰⁴ The court found that this explanation was not definitive.¹⁰⁵ Even if this evidence did rebut the presumption of discrimination, the trier of fact has discretion to decide which party to believe.¹⁰⁶ The hearing examiner did not find that the presumption was rebutted by Girard Finance Company and Richter, and the court in this appeal found "no reason to disturb that determination" because the evidence showed that Girard Finance Company and Richter "preyed on minorities to make a profit."¹⁰⁷ Accordingly, the court found that "the PHRC proved that the loans at issue were predatory and that Girard Finance and Richter's lending practices were racially motivated."¹⁰⁸

⁹⁹ *Girard Fin. Co.*, 52 A.3d at 534.

¹⁰⁰ *Id.* (internal citations omitted).

¹⁰¹ *See id.* (McGlawn v. Pa. Human Relations Comm'n, 891 A.2d 757, 773 (Pa. Commw. Ct. 2006)).

¹⁰² *Id.* (quoting *Johnstown Redevelopment Auth. v. Pa. Human Relations Comm'n*, 556 A.2d 479, 483 (Pa. Commw. Ct. 1989)).

¹⁰³ *Id.* (quoting *Johnstown Redevelopment Auth.*, 556 A.2d at 483).

¹⁰⁴ *Id.* at 535.

¹⁰⁵ *Girard Fin. Co.*, 52 A.3d at 535.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 536.

The final issue addressed by the court was related to the damages awarded to Harris and the similarly situated claimants for embarrassment and humiliation.¹⁰⁹ Harris was awarded \$15,000 for embarrassment and humiliation, and further damages for embarrassment and humiliation were also awarded to the other similarly situated claimants.¹¹⁰ Girard Finance Company and Richter claimed there was no proof that the claimants suffered from any embarrassment or humiliation because of the loans.¹¹¹ The court, however, disagreed.¹¹² The PHRC has the authority to award damages caused by humiliation and embarrassment, as long as the award effectuates the purposes of the PHRA.¹¹³ These damage awards are fact-specific and take the victim's reaction into account.¹¹⁴ Thus, a claimant's own testimony of embarrassment is sufficient to support the award of damages.¹¹⁵ Further, the court found that it may only disturb the PHRC's award of damages if the award was used to achieve ends other than those given as the purpose for the PHRA.¹¹⁶ The purpose for awarding damages, as enumerated in the PHRA, is two-fold: (1) " 'to restore the injured party to pre-injury status,' " and (2) " 'to discourage future discrimination.' "¹¹⁷

Harris testified that he was devastated by the result of his transactions with Girard Finance Company and Richter, and that "on a scale from 1 to 10 he would rate his embarrassment and humiliation an '11.' "¹¹⁸ Therefore, the court held that the award for damages "for embarrassment and humiliation [was] not an attempt to achieve ends other than the PHRA's stated purpose."¹¹⁹

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 537.

¹¹¹ *Girard Fin. Co.*, 52 A.3d at 536.

¹¹² *Id.*

¹¹³ *Id.* (quoting 43 PA. STAT. ANN. § 959(f)(1) (West 2009)).

¹¹⁴ *Id.* (quoting *New Corey Creek Apartments, Inc. v. Pa. Human Relations Comm'n*, 865 A.2d 277, 282-83 (Pa. Commw. Ct. 2004)).

¹¹⁵ *Id.* (quoting *Bogle v. McClure*, 332 F.3d 1347, 1359 (11th Cir. 2003)).

¹¹⁶ *Id.* at 537 (quoting *McGlawn v. Pa. Human Relations Comm'n*, 891 A.2d 757, 774 (Pa. Commw. Ct. 2006)).

¹¹⁷ *Girard Fin. Co.*, 52 A.3d at 537 (emphasis omitted) (quoting *McGlawn*, 891 A.2d at 775).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Similarly, the court also held that the award of damages for embarrassment and humiliation to the other similarly situated claimants was likewise not an attempt to achieve ends other than the stated purpose of the PHRA.¹²⁰ "Given the amount of money Girard Finance and Richter acquired as a result of their predatory lending practices, and how much Claimants lost in the process . . . [the hearing examiner] appropriately awarded damages."¹²¹ Therefore, the court, for the above reasons, affirmed all issues addressed in the final order of the PHRC.¹²²

IV. EVALUATION

Girard Finance Co. demonstrates that discrimination is still a pervasive problem in society today. Members of minority groups continue to face prejudice in all aspects of their daily lives, including, as shown by this case, attempts to obtain loans to provide for their livelihood. With this type of systemic discrimination built into the banking and lending system, it will take a strong effort to dismantle these routines. Therefore, the court took an important step in *Girard Finance Co.* by demonstrating that these discriminatory practices will not be tolerated.

This holding was also consistent with prior Pennsylvania and federal precedent. Prior cases have come out strongly against reverse redlining and have demonstrated compelling public policy considerations against these discriminatory practices. The court correctly decided this case in favor of equality and justice. Awarding damages to the claimants here demonstrated that this type of behavior will not be tolerated and that there are severe punishments for those who engage in discrimination. Allowing the claimants to recover damages for embarrassment and humiliation, in addition to actual damages, shows that the court finds this behavior particularly egregious. Members of the banking and lending industry should evaluate their practices in accordance with the holding in this case, because, as this decision demonstrates, the Commonwealth Court of Pennsylvania, as well as other courts

¹²⁰ *Id.* at 538-41.

¹²¹ *Id.* at 541.

¹²² *Id.*

throughout the Commonwealth, have a low tolerance for any questionable practices and are willing to award damages accordingly to punish and deter particularly reprehensible conduct.

Finally, the court in this case demonstrated great deference to the agency and the hearing examiner. There was substantial evidence presented at the administrative hearing, and the court deferred to the hearing examiner's determination of the credibility of this evidence. In addition, the calculation of damages performed by the hearing examiner was not disturbed by the Commonwealth Court of Pennsylvania. This demonstrates the considerable influence the decisions of the agency and hearing examiner have on the court. Moreover, this case shows that agency interpretations must be highly unreasonable in order to be disturbed by the court.

V. CONCLUSION

In *Girard Finance Co.*, the Commonwealth Court of Pennsylvania held that the PHRC had jurisdiction over discrimination claims in reverse redlining cases, that the lending practices and loan terms used by Girard Finance Company were predatory and unfair, that these practices had a disparate impact on the basis of race, and that it was proper to award damages for humiliation and embarrassment. This holding shows that the court is intolerant of discriminatory behavior, especially in the commercial lending and banking industry, and will punish individuals who are engaged in such predatory or discriminatory practices.

*Camille Howlett**

* J.D. Candidate, Widener University School of Law (Harrisburg), May 2014. This survey is dedicated to my family and friends, without whom I never would have made it through the past three years. I would like to specifically thank my parents, Joe and Gladys, for their unconditional love and support; my fiance, Rob, for sticking by my side through this crazy journey and showing me what true love is; and my sister and brother, Megan and George, for always being there for me.