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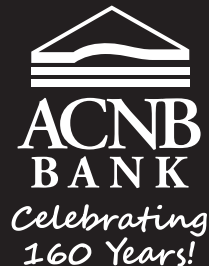
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DIVORCE NOTICE

SCOTT A. BRIGAMAN, PLAINTIFF AND  
MARY K. MCGRAIL, DEFENDANT,  
CASE NO. 2016-S-1144  
ACTION IN DIVORCE.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator  
Adams County Courthouse  
Gettysburg, PA 17325  
717-337-9846

11/17

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NOTICE OF FICTITIOUS NAME  
REGISTRATION

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Commonwealth of Pennsylvania, Department of State on November 6, 2017 for: MAZUMIFY located at 40 Strayer Rd., York Springs, PA 17372. The name and address of the entity interested in the business is Hilary Hunt Financial Education Consulting, LLC, 40 Strayer Rd., York Springs, PA 17372. This was filed in accordance with 54 Pa.C.S. § 311.

11/17

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## KATIE WYATT V. TOMMY'S PIZZA, INC.

1. A plaintiff is required to exhaust all administrative remedies available through the PHRC before filing a civil action in the court of common pleas.

2. The requirement of exhausting administrative remedies permits notice of the allegations to the charged party and provides an avenue for voluntary corrective actions without resort to litigation.

3. The only procedural requirements placed upon one filing an action before the PHRC is that the complaint be a verified writing which contains the name and address of the alleged perpetrator of the unlawful discriminatory practice and the particulars of the unlawful discriminatory conduct.

4. Interestingly, the (PHRA) regulations recognize the informality of documents sufficient to trigger administrative relief by permitting even a letter containing the required information to be sufficient to constitute a complaint.

5. Although ultimate discovery may justify revisiting this issue, the complaint specifically alleges the Plaintiff was harassed and discriminated against at work by her employer on the basis of her pregnancy. This claim is sufficient to survive a demurrer as a court must accept as true all facts set forth in the complaint.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 17-S-500, KATIE WYATT V. TOMMY'S  
PIZZA, INC.

Larry A. Weisberg, Esq., Attorney for Plaintiff

Anthony T. Bowser, Esq., Attorney for Defendant

George, J., October 18, 2017

### OPINION

Before the Court for disposition are the Preliminary Objections of Tommy's Pizza, Inc. ("Defendant") to the Complaint of Katie Wyatt ("Plaintiff") wherein Plaintiff alleges causes of action for disability and gender discrimination. Defendant objects to the Complaint claiming the Court lacks jurisdiction due to Plaintiff's failure to exhaust her administrative remedies under the Pennsylvania Human Relations Act ("PHRA"). Defendant further objects to the gender discrimination claim alleging the factual allegations in the Complaint are insufficient to support the claim.

On July 18, 2016, Plaintiff initiated her claim against Defendant by filing a form questionnaire<sup>1</sup> with the Pennsylvania Human Relations Commission ("PHRC"). The form submitted by Plaintiff included the name and address of the complainant; the name and

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<sup>1</sup> The form titled IN-4 FORM – GENERAL QUESTIONNAIRE is attached to the Preliminary Objections and appears to be a form developed by the PHRC.

address of the party alleged to have committed the practice complained of; the particulars concerning the alleged unlawful conduct; and was verified by Plaintiff. More specifically, Plaintiff alleged she was subject to harassing behavior by Defendant and Defendant's employees as a result of a medical disability which was aggravated due to her pregnancy. She claims the harassment caused her to resign on May 26, 2016. The document submitted by complainant was received and docketed by the PHRC on July 18, 2016. Concurrent with the filing of the document, legal counsel entered an appearance with the PHRC on behalf of Plaintiff.

On October 26, 2016, the PHRC responded to Plaintiff's submission by correspondence which included an enclosure referenced in the correspondence as a complaint. The correspondence directed that the enclosed document be returned to PHRC on or before November 9, 2016. The enclosure to this correspondence was apparently prepared by PHRC staff and was actually titled "Amended Complaint." The document omitted references to the pregnancy claim originally alleged by Plaintiff in the form questionnaire.

That same day, upon receipt of the correspondence from the PHRC, Plaintiff's counsel sent an email to PHRC staff questioning the reasoning for omitting the pregnancy claim. A flurry of emails between Plaintiff's counsel and PHRC staff followed culminating in PHRC legal counsel becoming involved. By electronic message dated November 17, 2016, the PHRC staff member advised Plaintiff's counsel that he had been instructed by PHRC legal counsel to remove "the pregnancy claim from the complaint." Plaintiff's counsel immediately requested to speak with PHRC legal counsel. Plaintiff's counsel further advised that his client was unwilling to sign an amended complaint which does not include charges she believed to be appropriate. By electronic message dated November 29, 2016, Plaintiff's counsel was advised by assistant chief counsel for PHRC that the pregnancy discrimination claim would not be included in the complaint, however, further investigation might permit future amendment to include the claim. On December 2, 2016, Plaintiff's counsel inquired if the PHRC had administratively closed the case in order to permit pursuit of further relief. He was advised on December 13, 2016 by the assistant chief counsel for PHRC "that without a signed verified complaint," the PHRC had no document to

act upon. In response to Plaintiff’s counsel’s request that the PHRC close the case, the PHRC staff member advised Plaintiff’s counsel that the PHRC would forward a lack of jurisdiction letter which “will show that you have exhausted administrative remedy.” By letter dated December 27, 2016, PHRC advised Plaintiff’s counsel that Plaintiff has been advised that her “complaint may not be accepted because it is clearly not within the jurisdiction of the Pennsylvania Human Relations Commission.”<sup>2</sup>

Defendant claims the foregoing history evidences Plaintiff’s failure to exhaust administrative remedies. Defendant argues that under Pennsylvania law, this failure precludes the current litigation. Plaintiff, on the other hand, suggests the verified questionnaire forwarded to the PHRC satisfies the requirements of a complaint and, as such, triggered administrative action on the part of the PHRC. Plaintiff further suggests the record evidences exhaustion of Plaintiff’s administrative remedies through the PHRC’s dismissal of the complaint.

Defendant’s Preliminary Objections implicate this Court’s jurisdiction over the litigation. 43 P.S. § 962. As correctly noted by Defendant, a plaintiff is required to exhaust all administrative remedies available through the PHRC before filing a civil action in the court of common pleas. *Marriott Corp. v. Alexander*, 799 A.2d 205, 207 (Pa. Commw. Ct. 2002). Permitting a discharged employee to commence an action in the courts without first exhausting all administrative remedies “would be logically inconsistent with the legislature’s having created the PHRC to function as an efficient mecha-

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<sup>2</sup> The letter, in its entirety, read:

This notice is to confirm that you have been informed that your complaint may not be accepted for filing, pursuant to Section 9(a) of the Pennsylvania Human Relations Act (PHRA), 43 P.S. §959(a). This also confirms that you have been told of your right to submit your complaint for filing and receive a formal decision as to whether your complaint would be accepted for filing. You have also been informed that your decision not to file a complaint may prevent you from filing an action in a Court of Common Pleas under the PHRA.

**You have been told that your complaint may not be accepted because it is clearly not within the jurisdiction of the Pennsylvania Human Relations Commission.**

You may wish to consult a private attorney familiar with discrimination law about whether any other remedies exist for your complaint.

nism for handling such disputes.” *Clay v. Advanced Computer Applications, Inc.*, 559 A.2d 917, 919 (Pa. 1989). Additionally, the requirement of exhausting administrative remedies permits notice of the allegations to the charged party and provides an avenue for voluntary corrective actions without resort to litigation. *Glus v. G.C. Murphy Co.*, 562 F.2d 880, 883 (3d Cir. 1977).

The PHRA sets forth the procedures one must follow in order to exhaust administrative remedies. Under the act, the person aggrieved by an alleged unlawful discriminatory practice must file a complaint with the PHRC within 180 days of the alleged act of discrimination. 43 P.S. § 959(a) and (h). Although commission representatives may not modify the substance of the complaint, the commission may refuse to accept for filing an untimely complaint, a frivolous complaint, or a complaint outside its jurisdiction. 43 P.S. § 959(a). Following the filing of the complaint, the commission shall make prompt investigation and if no probable cause exists for crediting the allegations of the complaint, provide notice to the complainant of such determination. 43 P.S. § 959(c). On the other hand, if the commission determines probable cause for crediting the allegations in the complaint and the complaint has not otherwise resolved through voluntary compliance and settlement, the commission shall conduct a hearing. Once again, following hearing, the complainant shall be notified of the result. *See generally* 43 P.S. § 959.

The initial issue before the Court is if and when did the Plaintiff file a complaint with the PHRC. She contends that her verified questionnaire filed with PHRC on July 18, 2016 satisfies all the procedural requirements of a complaint and therefore, for commencement of suit purposes, should be considered the equivalent. Defendant counters citing *Rhoades v. Young Women’s Christian Ass’n. of Greater Pittsburgh*, No. 09-1548, 2010 WL 4668469, at \*3 (W.D. Pa. Nov. 9, 2010), for the proposition that submission of the PHRC questionnaire is insufficient to trigger the commencement of administrative proceedings. Defendant concludes the absence of the filing of a formal complaint with the PHRC precludes further litigation as administrative procedures have not been exhausted.

Initially, I note Defendant’s reliance on *Rhoades* is misplaced as it does not stand for the proposition cited. The *Rhoades* Court, in dismissing a civil complaint for failure to exhaust administrative

remedies under the PHRA, **assumed** that the filing of a questionnaire was indeed the equivalent of the filing of a complaint. Thus, *Rhoades* does not provide any meaningful insight to the current issue. Therefore, it is necessary to turn to other authority to resolve this issue. A logical starting point for such a discussion is the authorizing statutory authority.

Turning to the plain language of the PHRA, I find it supports Plaintiff's position. The only procedural requirements placed upon one filing an action before the PHRC is that the complaint be a verified writing which contains the name and address of the alleged perpetrator of the unlawful discriminatory practice and the particulars of the unlawful discriminatory conduct. 43 P.S. § 959(a). Indeed, regulations adopted by PHRC pursuant to the PHRA confirm the minimum threshold necessary to trigger administrative action. These provisions provide:

(a) The complaint may be by letter or other writing and shall set forth the following:

(1) The name and address of the person claiming to be aggrieved, the Commission or the Attorney General, who will be designated as the complainant.

(2) The name and address of the person, labor organization, employment agency or educational institution alleged to have committed the practice complained of, who will be designated as the respondent.

(3) The particulars of the unlawful discriminatory practice complained of.

(4) A verification consisting of a sworn oath or affirmation or an unsworn statement by the signer to the effect that the complaint is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

(5) Other information as may be required by the Commission.

16 Pa. Code § 42.32. Interestingly, the regulations recognize the informality of documents sufficient to trigger administrative relief by

permitting even a letter containing the required information to be sufficient to constitute a complaint. This acceptable informality is highlighted by other regulatory language which directs that the identified complaint procedures before the PHRA supersede more structured complaint procedures applicable to other administrative bodies. 16 Pa. Code § 42.32(c).

Applying the PHRA procedural rules currently, it is clear that Plaintiff's verified questionnaire meets the minimum requirements sufficient to constitute a complaint. Indeed, the PHRC acknowledged as much when they docketed the filing and subsequently prepared a document titled "Amended Complaint." While it is puzzling as to why PHRC representatives prepared an amended complaint which deleted claims originally advanced by Plaintiff despite a clear statutory prohibition against PHRC staff doing so,<sup>3</sup> it is not necessary to resolve that issue as Plaintiff met her requirement for the timely initiation of administrative remedies.

Moreover, there is no support in the record for Defendant's argument that Plaintiff abandoned her complaint before the PHRC. To the contrary, Plaintiff consistently insisted that PHRC act upon both prongs of her complaint. The PHRC's inexplicable actions in refusing to do so while providing Plaintiff notice of a formal resolution sounds more of the inadequacy on the part of the PHRC to perform statutory duties than it does of non-performance or abandonment by Plaintiff. In essence, the history reflects that the PHRC refused to recognize the claims brought by Plaintiff until the statutory time period for filing a complaint expired at which time they dismissed the claim for lack of jurisdiction. The absurdity of the PHRC's correspondence rejecting the complaint on the basis of lack of jurisdiction is that it recognizes Plaintiff had attempted to file a complaint with the commission.<sup>4</sup>

In sum, Plaintiff took sufficient actions to trigger the commencement of administrative remedies. Thereafter, she timely filed her

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<sup>3</sup> 43 P.S. § 959(a).

<sup>4</sup> Reviewing the various correspondence between Plaintiff and PHRC reveals a pattern where Plaintiff was attempting to file with the PHRC a complaint which included a claim of pregnancy discrimination. The PHRC on the other hand insisted that the pregnancy claim be removed while at the same time advising Plaintiff of the right to submit her complaint for filing and receive a formal decision as to whether or not the complaint would be accepted. The history reflects the Plaintiff did just that.



civil action before this Court once the PHRC provided her a decision from which she could continue to pursue her claims. Accordingly, Defendant's preliminary objection on this basis will be overruled.

Defendant's second preliminary objection is essentially a demurrer alleging a lack of specific facts to support the claim. Although ultimate discovery may justify revisiting this issue, the complaint specifically alleges the Plaintiff was harassed and discriminated against at work by her employer on the basis of her pregnancy. This claim is sufficient to survive a demurrer as a court must accept as true all facts set forth in the complaint. *Emerich v. Philadelphia Ctr. for Human Dev., Inc., et al*, 720 A.2d 1032, 1034 (Pa. 1998). Accordingly, this preliminary objection will also be overruled.

For the foregoing reasons, the attached Order is entered.

#### ORDER

AND NOW, this 27th day of September, 2017, for the reasons set forth in the attached Opinion, Defendant's Motion for Suppression filed August 17, 2017, is denied.



**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

**FIRST PUBLICATION****ESTATE OF ROBERT M. BOCH, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Jennifer L. Bogdany, 315 Sechrist Flat Road, Felton, PA 17322

**ESTATE OF LINDA S. BONILLA, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Co-Executors: Teresa Carson, P.O. Box 734, Charles Town, WV 25414; Melody A. Heller, P.O. Box 267, Summerdale, PA 17093

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF SOPHEY M. CONSTANTINO, a/k/a SOPHEY MARIE CONSTANTINO, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executrix: Laura C. Wailes, c/o Bruce C. Bankenstein, Esq., Manifold & Bankenstein, 48 South Duke Street, York, PA 17401-1454

Attorney: Bruce C. Bankenstein, Esq., Manifold & Bankenstein, 48 South Duke Street, York, PA 17401-1454

**ESTATE OF BETTY VIRGINIA LITTLE,, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Lester Crist Kellison, III, 160 Clapsaddle Road, Gettysburg, PA 17325

Attorney: Jeffery M. Cook, Esq., 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF DOYLE A. SHANK, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Jeffrey Brent Shank, 155 Margate Road, York, PA 17408

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF GERTRUDE M. SIMMONS, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Executor: Edward F. Stephens, 614 East Middle Street, Hanover, PA 17331

**ESTATE OF JEAN MARIE SMALLWOOD, DEC'D**

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executor: Alan E. Smallwood, c/o Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

**ESTATE OF SHERRIL A. SMITH, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Carla A. Brennehan, c/o John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

Attorney: John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

**SECOND PUBLICATION****ESTATE OF MICHAEL L. ALDINGER, DEC'D**

Late of Redding Township, Adams County, Pennsylvania

Executrix: Cynthia J. Aldinger, 28 Bragg Drive, East Berlin, PA 17316

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF JOSEPH H. DERSE, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrix: Claudia Derse-Anthony, 2644 Marston Road, New Windsor, MD 21776

**ESTATE OF DOROTHY B. ERNST, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Kay E. Hollabaugh, 481 Carlisle Road, Biglerville, PA 17307

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

**ESTATE OF JEWELL O. GOOD a/k/a JEWELL OUTLAW GOOD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Janet A. Good, c/o Eveler & DeArment LLP, 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356

Attorney: Eveler & DeArment LLP, 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356

**ESTATE OF EDGAR S. KUHN, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Mark Joseph Kuhn, c/o Michael A. Scherer, Esq., Barie Scherer LLC, 19 West South Street, Carlisle, PA 17013

Attorney: Michael A. Scherer, Esq., Barie Scherer LLC, 19 West South Street, Carlisle, PA 17013

**THIRD PUBLICATION****ESTATE OF DORIS M. DULL, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Donald J. Smith, 970 Two Taverns Road, Gettysburg, PA 17325

Attorney: Amy E.W. Ehrhart, Esq., 118 Carlisle St., Suite 202, Hanover, PA 17331

**ESTATE OF NEVIN C. DULL, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Donald J. Smith, 970 Two Taverns Road, Gettysburg, PA 17325

Attorney: Amy E.W. Ehrhart, Esq., 118 Carlisle St., Suite 202, Hanover, PA 17331

**ESTATE OF ROBERT P. LANGAN, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Kaylin Langan, 999 E. Brysonia-Wenksville Road, Biglerville, PA 17307

Attorney: Jeffery M. Cook, Esq., 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF DAVID ALLEN MUMMERT, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Douglas Charles Mummert, 14 N. Pine Street, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF IRMA B. OGBURN, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Executor: Wayne B. Ogburn, 45 Sunnyside Road, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**THIRD PUBLICATION CONTINUED**

ESTATE OF RICHARD A. TROSTLE,  
DEC'D

Late of Germany Township, Adams  
County, Pennsylvania

Executrix: Deborah L. Boehning, 5123  
West Misty Willow Lane, Glendale,  
AZ 85310

Attorney: John C. Zepp, III, Esq., P.O.  
Box 204, 8438 Carlisle Pike, York  
Springs, PA 17372