

C/JSK 10/22/85  
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THE STATE OF NEW HAMPSHIRE  
COMMISSION FOR HUMAN RIGHTS

Leona J. Samuelson v. Stationery Shop, Inc. ES 2106-1013-597  
Leona J. Samuelson v. Raymond Sanborn HSMS 2111-71-602-36  
Leona J. Samuelson v. Raymond and Carolyn Sanborn ES 2128-1032-609

These findings and order follow a public hearing held on May 22, 1985 at which the Commission received testimony and documentary evidence on the following three charges, timely filed, by Ms. Leona J. Samuelson:

- A. Samuelson vs. Stationery Shop, Inc. (Carolyn Sanborn), case no. ES 2106-1013-597 filed May 29, 1981 (Employment/Sex and Marital Status discrimination).
- B. Samuelson vs. Raymond Sanborn, case no. HSMS 2111-71-602-36, filed May 10, 1981 (Housing/Sex and Marital Status discrimination).
- C. Samuelson vs. Raymond and Carolyn Sanborn, case no. ES 2128-1032-609 filed July 27, 1981 (Employment/Sex and Marital Status discrimination-retaliation).

I. FINDINGS: EMPLOYMENT DISCRIMINATION COMPLAINTS

1. Respondent, Raymond Sanborn, was at all times relevant, the owner of Respondent company The Stationery Shop, Inc.

2. The Stationery Shop, Inc. was at all times relevant an employer as defined by RSA 354-A:3. \*1

3. Respondents, Raymond Sanborn and Carolyn Sanborn, were at all relevant times the owners of a six room apartment located above The Stationery Shop, and were, accordingly, "owners of a dwelling" subject to NH RSA 354-A:8,V.

\*1 In a motion to dismiss the employment and employment retaliation complaints, respondent misinterpreted NH RSA 354 A:3 (6) which precludes parents, children and spouses of any employer from filing a charge of employment discrimination against the employer, whether or not that employer had six or one hundred employees. The reason for this statutory exception to coverage under the NH Laws against discrimination was to keep from the commission intra-family grievances.

The statutory jurisdictional requirement that an employer have six or more persons in its employ is satisfied, however, by counting the employee-relatives of the employer. This is made clear by the carefully worded definitions. Accordingly, the Commissioners denied Respondent's motion to dismiss based on Respondent's assertion that it was not covered under the statute as Respondent had only five non-relative employees during the year in question. The Commission finds that John Sanborn, son of Raymond and Carolyn Sanborn, was an employee of the Stationery Shop, Inc., during May and June of 1981 (the period of discrimination), and that respondent corporation employed six persons during each of these months and is therefore an employer covered by RSA 354-A:8, under the provisions of RSA 354-A:3(5).

4. Respondent, Carolyn Sanborn was, at all times relevant, the manager of The Stationery Shop, Inc.

5. Complainant, Leona Samuelson Cram (nee: Leona Samuelson), was an employee of The Stationery Shop, and a tenant in the above-referenced apartment and accordingly has proper standing under NH RSA 354-A to bring her discrimination complaints before this Commission.

6. Complainant was hired by The Stationery Shop in September, 1980 as a part-time store clerk and stock person by Respondent, Carolyn Sanborn, manager.

7. On or before the time of her hiring, complainant was informed by Mrs. Sanborn that she would be trained for and promoted to the position of stocker/purchasing agent as that position was currently occupied by Ms. Betty Ann Hutchins who planned to leave the position within that year for personal reasons, i.e. She wanted to start a family.

8. In consideration for this future promotion, complainant accepted the position of store clerk and stock person.

9. Complainant worked an average of thirty-four hours per week from January 1, 1981 until May 20, 1981, at which time her rate of pay was \$3.70 per hour, a twenty cent raise having been effective in April.

10. The record is not clear as to how many hours per week were worked by complainant prior to January 1, 1981.

11. The Commission finds that complainant's performance was satisfactory from the time of her hire through the time of her leaving the employ of respondent, as the only criticism given to her by the respondent relative to her work habits was that she wore jeans. Upon being told to dress more appropriately for work, complainant complied. In addition, Respondent, Carolyn Sanborn, repeatedly inquired whether or not complainant was happy in her job, and whether or not she planned to continue in her position so that she could take over the job of Ms. Hutchins as planned. In addition, as late as April, 1981, Respondent, Carolyn Sanborn, expressed her desire that complainant continue her training for the promotion by performing additional product ordering and office procedures training.

12. Complainant's problems all began around May 12, 1981 when Complainant, then single, informed Respondent, Carolyn Sanborn, that she was pregnant.

13. Upon learning of Complainant's pregnancy and knowing her marital status, respondents embarked on a series of illegal actions including:

- a. Respondent Carolyn Sanborn informed complainant that complainant would have to leave her job if she decided to have her baby because the job entailed lifting of office supplies.

- b. Respondent Carolyn Sanborn informed complainant that complainant would have to leave her job if she decided to have her baby because she was not married, and Mrs. Sanborn did not want an unwed pregnant employee waiting on her customers.
- c. Upon complainant's return to work following an appointment with a medical facility for counselling on her pregnancy, during which appointment complainant's determination to complete her pregnancy remained unchanged, Mrs. Sanborn expressed surprise that complainant had returned to work so soon, assuming that complainant had undergone an abortion. When complainant reminded Mrs. Sanborn that she had informed Mrs. Sanborn earlier that she had decided she did not desire to terminate her pregnancy, Mrs. Sanborn reiterated that complainant would have to leave her job in three to four months. Mrs. Sanborn admitted to complainant that "she (Mrs. Sanborn) supposed" she would have decided otherwise had complainant been married.
- d. When Complainant suggested that such a forced firing would be illegal and that Mrs. Sanborn call "the Labor Board" to verify the illegality, Mrs. Sanborn's response was that if complainant planned legal recourse, she should leave her job immediately.
- e. However, complainant did work the next working day until Mr. Sanborn called her into a backroom to inform her "that the job she had been hired for was no longer available" and that her hours would be cut from thirty-four to sixteen; and that she would be informed as to which hours in the schedule would be assigned to her only upon one to two days notice; and complainant was told to take the rest of the day off and seek new employment.
- f. Respondent Raymond Sanborn admitted that this cut in hours was to "encourage the complainant to terminate her employment".
- g. Complainant continued to call in for her work schedule and for a short time (May 20 - June 15) was apparently assigned eighteen hours a week. No hours were assigned to her after June 15, although she continued to call in for the same, initially making daily calls, then weekly. Finally on July 20, she was informed by Respondent, Carolyn Sanborn, that no more hours would be assigned to her until after the discrimination complaints she had in the interim filed with this Commission were resolved. Complainant then filed her retaliation complaint.

14. Then, complainant, pregnant and unemployed and being forced to move out of Respondent's apartment and into another apartment, undertook part-time babysitting and house-cleaning jobs (which she earlier intended to undertake prior to the time her baby was born, in addition to her thirty-four hours per week with The Stationery Shop).

15. In November Complainant was married and her baby was born on December 27.

16. The Commission finds that the following actions were taken against the complainant solely because she was single and pregnant -- and would not have been taken against her if she had been married; and would not have been taken against her if she had not been pregnant; and would not have been taken against her if she had been married and pregnant:

- a. The elimination of complainant's promised promotion to stocker/purchasing agent with the assertion that "the job for which she was hired was no longer available", and
- b. The slash in her hours from thirty-four to sixteen then to zero -- her firing.

17. The Commission specifically finds that the "convenient" re-availability of Betty Ann Hutchins to remain in her position thus eliminating complainant's promised promotions, is "a red herring".

- a. First, when Respondent Carolyn Sanborn first informed complainant that complainant's decision to have her baby meant that she would have to leave her job in three to four months, Respondents had not been informed of Ms. Hutchins' availability to remain in the stocker/purchasing agent position;
- b. Next, when complainant reiterated to Respondent Carolyn Sanborn her decision to continue the pregnancy, at which time Respondent Carolyn Sanborn reiterated that complainant would have to leave her job in three to four months, Respondents had not been informed of Ms. Hutchins' availability to remain in the stocker/purchasing agent position.
- c. In fact, the way Respondent Carolyn Sanborn allegedly learned of Ms. Hutchins' alleged continued availability was when Respondent Carolyn Sanborn was lamenting to Ms. Hutchins about Mrs. Sanborn's situation with complainant, Mrs. Sanborn expressed how much she wished Ms. Hutchins didn't have to leave. It was only then that Mrs. Sanborn learned that although Ms. Hutchins had planned to leave she could actually now stay (since she was now separated from her husband). Obviously Mrs. Sanborn then thought she had a way out of the problem "legally" -- now she had an excuse to fire the complainant. This Commission finds that when Respondent Carolyn Sanborn first began her illegal discrimination (and retaliation) against complainant, she had no idea that Ms. Hutchins would be available to stay in her position, and that an after-the-fact understanding does not operate to change the intentional discrimination to a non-discriminatory business decision; there is a whole web of discrimination involved -- see, for example, the housing findings, infra, and this "defense" of respondent in justification for the firing merits no further comment.

18. The Commission therefore finds that Respondents Raymond Sanborn, Carolyn Sanborn and the Stationery Shop, Inc. unlawfully discriminated against Complainant in employment in violation of RSA 354-A:8, I and unlawfully retaliated against complainant in violation of RSA 354-A:8, VII.

19. The Commission further finds that as a result of Respondent's unlawful acts, complainant lost \$233.10 in wages from May 20, 1981 through June 14, 1981, and \$3629.70 in wages from June 15, 1981 to December 20, 1981, (one week before she gave birth), and that complainant received \$1461.00 in unemployment compensation for the period in question, leaving complainant with a net loss in pay of \$2401.80.

## II. FINDINGS: HOUSING COMPLAINT

1. The above findings of fact in the employment discrimination complaints are repeated and incorporated by reference herein.

2. In October, 1980, Respondents, Raymond and Carolyn Sanborn, agreed to rent to complainant the apartment located over the Stationery Shop, which apartment was owned by them, but which had been vacant for several months and for which they had not actively sought tenants.

3. The agreed upon rent was \$200 per month, which would increase to \$250 per month in the event complainant obtained a roommate.

4. Respondent Mrs. Sanborn encouraged the complainant to rent the apartment, as it was to Mrs. Sanborn's benefit to have the complainant, as an employee of the Stationery Shop, live close by the business.

5. During the oral discussion that resulted in the complainant's rental agreement, Respondent Mr. Sanborn informed complainant that his rental figure (\$200) was influenced by the fact that in order to lease the apartment for the summer season (at presumably higher rents) more extensive renovations would be required, and accordingly, it was to his benefit to lease it on an annual basis to complainant upon his doing relatively minimal repairs (including the providing of heat and a working bathroom). The rental agreement was oral.

6. Complainant began to occupy the apartment in the fall of 1980.

7. On or about April, 1981, complainant informed Mr. Sanborn that she had found a roommate. He informed her that as a result, her rent would increase, as agreed, to the \$250.00 per month; and no objection was raised by Mr. Sanborn about the roommate moving in at the end of May.

8. On May 18, 1981 during the same conversation with complainant during which he cut her working hours from thirty-four to sixteen per week (see employment findings of fact) Mr. Sanborn informed complainant:

a. That he now preferred she not have a roommate;

b. That her rent would increase from the agreed upon \$200 per month to \$485 per month during the summer season (July, August, September) and that he now required a \$250 damage deposit -- all to be effective July 1; and that if her roommate did move in as planned, the increase would be effective June 1.

9. On June 15 complainant filed the instant charge of housing discrimination.

10. On June 30, 1985 complainant vacated the apartment.

11. Thereafter, the apartment remained vacant at least through the date of this hearing, with no attempt being made by the respondents to rent the apartment to anyone else.

12. Complainant would have remained in the apartment had Respondent Mr. Sanborn not increased the rent as explained above.

13. Respondent Mr. Sanborn increased the rent as explained above with the express purpose of forcing complainant out of the apartment.

14. Respondent Mr. Sanborn knew that complainant could not afford the rental increase as he had just cut her working hours from thirty-four to sixteen.

15. Respondent Mr. Sanborn's actions were taken against complainant because of her status as a single, pregnant woman.

16. Respondent Mr. Sanborn's actions were also taken in retaliation against complainant for her having asserted her right not to be discriminated against because of her marital status (single), and pregnancy, in complainant's capacity as employee at the Stationery Shop.

17. Such discrimination and retaliation are in violation of the New Hampshire Laws Against Discrimination.

18. Complainant thereafter obtained a new apartment which she shared with her roommate.

19. Complainant was married at the end of November, 1981.

20. Had Respondent not raised her rent in violation of the NH Laws against discrimination, complainant would have remained in the Sanborn apartment through the end of November, 1981.

21. Complainant was required to pay a total of \$216.65 in increased rent and electricity costs, as a result of her having to rent another apartment from July 1, 1981 through November, 1981.

### III. RULINGS ON COMPLAINANT'S REQUESTED FINDINGS

1. Granted
2. Granted
3. Granted
4. Granted
5. Granted
6. Granted

7. Granted
8. Granted
9. Granted
10. Granted
11. Granted
12. Granted
13. Granted
14. Granted
15. Granted
16. Granted
17. Granted
18. Granted
19. Granted
20. Granted
21. Granted
22. Granted

23. Granted. In addition the Commission finds that the complainant's forced termination as a tenant and employee were because the complainant was single and pregnant.

24. Denied as worded, but the testimony indicated that neither complainant's job performance nor market conditions impacted upon respondent's decision to terminate complainant as employee/tenant.

25. Granted
27. Granted
28. Granted
29. Granted.

30. Granted. The Commission specifically finds that the evidence offered by respondents on this point is not credible.

31. Granted
32. Granted

33. Granted

34. Granted

35. Granted

36. Granted

37. Granted

38. Granted

39. Granted

40. Granted

41. Granted

42. Granted

43. Granted

44. Granted

45. Granted

46. Granted

47. Granted

#### IV. RULINGS ON RESPONDENTS' REQUESTED FINDINGS

1. Granted

2. Granted

3. Granted

4. Granted

5. Granted

6. Granted

7. Granted. But the Commission gives little weight to the testimony based on credibility and relevancy.

8. Granted

9. Granted

10. Granted



11. Granted. But the Commission also finds that during that conversation the complainant informed Mrs. Sanborn that she would not be having an abortion and was only keeping the appointment to receive counseling.

12. Denied. The Commission finds that it was Mrs. Sanborn and Ruth Wallace who "engaged in" the discussion with complainant.

13. Granted. Respondent and Mrs. Wallace did make these statements. Whether they believed them or not, and whether such (incorrect on the facts) conclusions contributed to the climate of discrimination are not issues on which we are asked to rule in these rulings.

14. Granted. And as discussed in the Commission's findings, one of the reasons it was allegedly in the complainant's "best interest" to abort -- despite her desire to have her baby, was because respondent Carolyn Sanborn made it clear to her that if she didn't abort, she'd be fired; and by clear implication, if she did abort, she could keep her job.

15. Granted. But the Commission finds that this was her next regularly scheduled time to work.

16. Granted

17. Denied. The Commission finds that complainant had first informed Respondent Carolyn Sanborn of her decision not to abort prior to her appointment at the clinic; and merely reiterated that decision to Mrs. Sanborn at the time discussed in this requested finding.

18. Granted

19. Granted, with the caveat that complainant's words were to the effect that she couldn't be fired "just because I am pregnant" -- in other words, respondent couldn't take action against complainant on account of her pregnancy alone; complainant never indicated that her pregnancy protected her from justifiable action.

20. Denied. Respondent responded to the effect that if the complainant planned to pursue her remedies then she should leave immediately.

21. Granted. As was made very clear at the hearing, Mrs. Sanborn resents a law which would keep her from firing an employee for any reason. It is a separate violation of the NH Laws Against Discrimination to take action against an employee for asserting her rights under the Laws Against Discrimination.

22. Denied. The Commission believes that Ms. Hutchins' "reconsideration" came only after Respondent Carolyn Sanborn expressed in frustration, "Oh, Betty Ann, if only you didn't have to go." (i.e. I wouldn't have to be left with the vacancy which is being caused by my firing of complainant.)

23. Denied

24. Granted

25. Granted

26. Granted

27. Granted

28. Granted

29. Granted. Mr. Sanborn testified that his wife was distraught. But the Commission finds that the real cause for her concern was that the law might preclude her from firing a pregnant single employee.

30. Granted

31. Denied

32. Granted

33. Granted

34. Granted

35. Granted

36. Granted

37. Granted

38. Denied

39. Denied

40. Denied

41. denied

42. Granted

43. Granted

44. Granted

45. Denied

46. Denied

47. Denied

48. Denied

49. Denied. And the Commission notes that a retaliation charge may start upon a respondent's reaction to a belief that a complainant would pursue remedies under the NH Laws Against Discrimination.

50. Granted

51. Granted

52. Denied

53. Granted

54. Denied. The evidence indicates that Mrs. Sanborn suggested to the complainant that the complainant rent the apartment.

55. Granted

56. Granted

57. Granted

58. Denied

59. Denied > The Commission finds that the Sanborns wanted to "rid  
60. Denied > themselves" of complainant both as an employee and as  
a tenant because she was single and pregnant.

61. Denied

62. Granted

63. Granted

64. Denied. But the Commission notes that actions taken by respondents against the complainant merely because such complainant expresses an intent to pursue lawful remedies under the NH Laws Against Discrimination is (1) illegal discrimination and (2) against public policy which encourages victims of discrimination to pursue their lawful remedies.

#### V. ORDER

1. Respondents are hereby ORDERED:

a. to pay complainant \$2401.80 for lost pay;

b. to pay complainant \$216.65 for actual financial loss as a result of respondent's discrimination in housing;

c. to pay complainant \$1119.27 in interest on her lost pay (ten per-cent annual interest compounded daily from December 20, 1981 to October 17, 1985);

d. to pay complainant \$102.71 in interest on her actual financial loss due to housing discrimination (ten per-cent annual interest compounded daily from November 30, 1981 to October 17, 1981);

e. to pay complainant \$82.85 for out-of-pocket expenses incurred in making long distance phone calls relative to bringing and pursuing the instant charges of discrimination;

f. to pay all attorney's fees incurred by complainant in bringing and pursuing the instant charges of discrimination;

2. Respondents are hereby ORDERED to pay awards (a) through (e) above by check payable to complainant, and mailed certified to the New Hampshire Commission for Human Rights, 61 South Spring Street, Concord, NH 03301, within thirty days of the date respondents or their attorney receive this order.

3. Complainant's attorney is hereby ORDERED to submit an itemized bill for all fees referred to in (f) above, and said itemized bill is to be submitted to the Commission within fourteen days of the date complainant or her attorney receive this order. A supplementary order regarding the payment of attorney's fees will then be issued.

SO ORDERED

October 18, 1985  
Date

Nancy Richards-Stower  
Nancy Richards-Stower, Chair

October 21, 1985  
Date

Gail F. Paine  
Gail F. Paine, Commissioner

Oct. 17, 1985  
Date

Barry J. Palmer  
Barry J. Palmer, Commissioner

CONCURRING OPINION - Nancy Richards-Stower, Commissioner

I am compelled to comment that these discrimination charges have brought before this commission the most egregious situation ever heard by the Commission during my seven years' tenure. Simply put, had complainant aborted her child, respondents would neither have fired her, nor forced her from her apartment. Respondents, in control of two of the most important factors of anyone's life -- employment and housing -- used their power on a single pregnant woman without economic resources shamefully, cruelly and illegally.

Because of respondents' initial threats to terminate complainant's employment (which threats were thereafter carried out) if complainant decided to continue her pregnancy, they were, in fact, forcing the complainant to choose between her job and an abortion. Such power wielding by an employer/landlord is made even more frightening in view of respondent's testimony that theirs was a "family business", purchased so that respondents' family could "work together". Respondents' concept of "family" somehow could not embrace the desire of complainant to have her own family.

Complainant testified as to the stress she experienced as a direct result of the respondents' actions -- stress that caused her great concern as to the health of the baby she was carrying; stress that was willfully and knowingly caused by the respondents. If ever there were facts that demanded compensatory and punitive damages, they are found in these consolidated cases.

Unfortunately, this commission currently lacks the authority to award compensatory damages [E.D. Swett, Inc. v. NH Commission for Human Rights, 124 NH 404 (1983)]; and therefore, inevitably lacks the authority to award punitive damages. For in view of the outrageous actions of these respondents, both types of damages would have been awarded by this commissioner. For certainly, this complainant cannot be "made whole" by the mere awarding of back pay and attorney fees; she (very understandably) does not seek reinstatement. This case of graphic discrimination provides a glaring example of how the Commission's hands are tied relative to the granting of relief to discrimination victims, and the carrying out of the goals of the statute. Hopefully, the legislative and judicial bodies of this State will soon look anew at the remedies authorized.

For this complainant, it may be that she can seek additional damages in the Superior Court relative to the termination of her employment, for it cannot be seriously disputed that her termination is in clear contravention of public policy.

October 18, 1985  
Date

Nancy Richards-Stower  
Nancy Richards-Stower, Commissioner