BEFORE THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY

Bernadine Arrow Top, Charging Party,	)	*HRC Case No. 0006009236*
versus	)	*Order on Remand (Citing Authority*
Stone Castle Home Loans, Respondent.	)	*for Judgment as Matter of Law); Review and Complaint Filing Rights*

Respondent Stone Castle Home Loans ("the lender") timely moved for judgment as a matter of law. Claimant Bernadine Arrow Top requested an extension of time to respond and made a cross-motion for judgment as a matter of law. She filed her request and cross-motion five working days after her time to respond to respondent's motion had expired. The hearing examiner heard oral argument on the pending motions during the final prehearing conference on August 13, 2001. Prior to oral argument, the parties addressed the draft prehearing order and agreed upon uncontested facts as set forth in the final prehearing order (issued on August 13, 2001).

The hearing examiner granted the lender's motion. On Arow Top's objection to dismissal, the Human Rights Commission remanded, directing that the hearing examiner "provide clarification of the legal authority he relied upon" in concluding that respondent was legally precluded from providing a loan to charging party secured by her business and residence (in a single building). The parties have briefed the matter on remand. The hearing examiner again dismisses, on the following factual grounds and legal authority.

The evidence established, without any genuine question of material fact, that Arrow Top sought a $200,00.00 loan from the lender, secured by her business property (where she also resided) in Browning, Montana, on the Blackfeet Indian Reservation. She sought the loan for use both personally and in her business. The lender was a California corporation licensed by the State of Montana to contract for consumer loans in this state pursuant to Title 32, Chapter 5, MCA. The lender had no other licenses to do business in Montana at the time of the pertinent events.

The lender denied Arrow Top's initial loan inquiry,[1] verbally explaining that it only had authority to provide consumer loans, and could not give her a loan due to the"mixed use" nature of the loan she sought and her collateral.

[1] Arrow Top never completed and submitted a written loan application, on the form the lender utilized for that purpose.

Final Prehearing Order, "IV. Facts and Other Matters Admitted," Nos. 1-4; Affidavit of Pouya Yadegar and Exhibit A thereto.

After the denial of the initial inquiry, Adam Heno, a loan consultant for the lender, contacted Arrow Top by letter on February 22, 2000, signing his letter "Quality Control Manager."[2] In that letter, he told Arrow Top that, "based on the information you've given us, I think we can give you a loan."

Arrow Top then obtained a letter from the Blackfeet Tribal Business Council, dated March 22, 2000 indicating that her property was privately owned. Arrow Top faxed that letter to the lender. No appraisal of Arrow Top's property was ever completed with regard to her loan inquiry. The lender again rejected Arrow Top's request for a $200,000.00 loan. In April 2000, Arrow Top filed a formal complaint with the Department of Labor and Industry. The lender's only written explanation for denying Arrow Top's loan, dated May 14, 2000, was "insufficient collateral." Final Prehearing Order, "IV. Facts and Other Matters Admitted," Nos. 5-10.

A motion for judgment as a matter of law, supported by an affidavit and reference to matters outside the pleadings, is a motion for summary judgment. See, Rules 12(c) and 56, M.R.Civ.P. Pursuant to Rule 56, summary judgment is proper if there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.

The party moving for summary judgment has the initial burden of establishing both the absence of any genuine issue of material fact and the entitlement to judgment as matter of law. Only after the party moving for summary judgment satisfies this initial burden must the opponent present tangible evidence raising a genuine issue of material fact. *Bowen v. McDonald*, 276 Mont. 193, 196, 915 P.2d 201, 204 (1996); Rule 56(c), M.R.Civ.P.

In the present case, the lender has established that it could not loan money to Arrow Top for her use personally and in her business, with her business/residence as the collateral. Adam Heno did solicit a new application from Arrow Top, raising her hopes by telling her he thought a loan was possible. Even if he had the authority to act on behalf of the lender (as it appears he did from the letter), the record is devoid of any evidence that the lender could legally have provided any loan other than a consumer loan.

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[2] Heno's letter appears as an attachment to her "Uncontroverted Facts; Brief in Opposition to Respondent's Motion for Judgment as a Matter of Law; Request for Granting of Cross-Motion for Judgment as a Matter of Law." Given the uncontested facts, the hearing examiner can consider the contents of the letter in deciding the motions.

Likewise, it is clear that the lender could not legally have loaned Arrow Top $200,000.00 with her business/residence as the collateral. The statute defines a "consumer loan" as one "primarily for personal, family, or household purposes." §32-5-102(1)(a) MCA. The license the lender received specifically indicated that the consumer loan license did not authorize commercial lending. Arrow Top failed to present any evidence that the lender applied a different definition of "consumer loan" to mixed use requests from persons who were not Native American or not residents of the reservation.

When a respondent seeks summary judgment in a Human Rights case, and the claimant has alleged a prima facie case, the respondent must establish either that it had a legitimate business reason for its adverse action (circumstantial evidence case) or that the protected class status of the claimant played no part in prompting its adverse action (direct evidence case). ***See***, *Reeves v. Dairy Queen*, 287 Mont. 196, 202, 953 P.2d 703, 706 (1998).

The lender has met this burden. Illegality of the loan establishes both that the lender had a legitimate business reason for denying the loan and that the protected class status of the claimant played no part in prompting the denial. It was impossible for Arrow Top to prove that she was otherwise qualified for the loan, and that the lender therefore denied her the loan because of her protected class status as a Native American, because her mixed use loan request was not within the scope of the lender's license.

Neither can Arrow Top prove a mixed motive discrimination claim. A "mixed motive" claim arises if the evidence establishes that the respondent would have taken the same action without the discriminatory motive, instead of establishing that the discriminatory motive played no part in motivating the action. ***See***, ***e.g.***, *Laudert v. Richland County Sheriff's Dept.*, 301 Mont. 114, 2000 Mont. 218, ¶26, 7 P.3d 386, 391-92 (2000). Since the lender could not loan money to Arrow Top for business/personal use with her business/residence as the collateral, the alleged discriminatory motive necessarily played no part in its decision.

Consistently, in response to both of Arrow Top's loan requests, the lender declined to loan her money because she did not have sufficient acceptable collateral to secure the loan as well as because the mixed use to which she proposed to put the money included commercial usage. The nature of that collateral did not change between the first and second loan requests. The nature of her proposed usage did not change between the first and second loan requests. The basis for the denial did not change between the first and second loan requests. The authority of the lender to provide consumer loans in Montana did not change between the first and second loan requests. There is

no evidence that at any time pertinent to this case the lender had the power to loan Arrow Top $200,000.00 for mixed use, with the business/residence as collateral.

On the limited record before the hearing examiner, there remain the multitude of unanswered fact questions listed in the first decision. However, there is nothing of record to suggest that the answers to those fact questions will raise a genuine issue of fact regarding the potentially pretextual nature of the lender's reasons for refusing to make this loan. Arrow Top failed to raise a genuine question of material fact about her lack of qualifications to receive the loan. Thus, she failed to satisfy her burden under *Bowen* to demonstrate the existence of such a fact question to defeat summary judgment. Based upon all the matter now of record in this case, and the authority cited herein and previously of record, the lender did not illegally discriminate against Arrow Top, and the case is dismissed.

Dated: February 28, 2002.

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Terry Spear, Hearing Examiner
Montana Department of Labor and Industry

Notice of Right to Object and to File a Civil Complaint

Any party dissatisfied with the department's dismissal may seek Commission review (in informal proceedings under §2-4-604 MCA) by filing objections (an original and 6 copies) within 14 days of service of this order upon the parties, plus 3 days for service by mail. FILE ANY SUCH OBJECTIONS BY MARCH 18, 2002, with Terry Spear, Hearings Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624. At the same time, file copies of your objections with the Human Rights Commission, c/o Kathy Helland, Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, and with all other parties of record. File all submissions subsequent to the objections with the Human Rights Commission, care of Kathy Helland at the indicated address. DO NOT FILE SUBSEQUENT SUBMISSIONS with the hearing examiner.

WITHIN 90 DAYS OF THIS ORDER, plus 3 days for service by mail (BY JUNE 3, 2002) OR WITHIN 90 DAYS OF AN ORDER FROM THE COMMISSION AFFIRMING THIS DISMISSAL, THE CHARGING PARTY MAY COMMENCE A CIVIL ACTION IN DISTRICT COURT PURSUANT TO §49-2-509(5) MCA.