

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Case No.: 0051011431

DENNIS MCGEE,

Charging Party,

-v-

THOMAS MERCER dba UNION
SQUARE APARTMENTS,

Respondent.

**ORDER AFFIRMING
AGENCY DECISION**

Dennis McGee (McGee) filed a complaint of marital discrimination against Thomas Mercer (Mercer) with the Department of Labor and Industry. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined Mercer discriminated against McGee based on his marital status. Mercer filed an appeal with the Montana Human Rights Commission (Commission) and requested oral argument. The Commission considered the matter on September 20, 2006.

Elizabeth O'Halloran appeared and argued on behalf of Mercer. Karl Englund and Matthew Thiel appeared on behalf of McGee. Karl Englund argued on McGee's behalf.

In his appeal, Mercer asserted the hearings officer erred in finding that McGee held two separate jobs with him. Mercer argued that the hearings officer should have found McGee only held one job with him and that, accordingly, the complaint of discrimination should have been dismissed because McGee did not dispute that he was

legitimately terminated from his other position as resident manager. Mercer also asserted the damage award was in error for various reasons. McGee argued the hearings officer's determination that he held two jobs with Mercer was based on substantial evidence and contained no errors of law. McGee also asserted the damage award was proper in that it was based on substantial evidence and correct as a matter of law.

After careful and due consideration, the Commission concludes the Bureau's decision in this matter is supported by competent substantial evidence and the conclusions of law are correct. The Commission **affirms** the Bureau's decision and hereby adopts and incorporates the decision in its entirety.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of September, 2006.

Chair Franke Wilmer
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on September ____, 2006.

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