

Main (860) 418-8770

August 14, 2019

CHRO ex rel. Ezequiel Ramirez v. Smart Home Preservation CHRO No. 1730247 Fed No. 16a201700277.

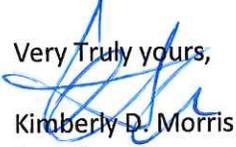
FINAL DECISION RE HEARING IN DAMAGES

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant and respondent's attorney.

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

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Elissa T. Wright, Presiding Human Rights Referee

State of Connecticut
Commission on Human Rights and Opportunities
Office of Public Hearings

Commission on Human Rights and Opportunities
ex rel. Ezequiel Ramirez, Complainant

CHRO Case No. 1730247

v.

Smart Choice Home Preservation, Respondent

August 14, 2019

FILED
CHRO OFFICE
August 14 2019
DR

Final Decision
Hearing on Damages after the Entry of an Order of Default

I
Procedural Background

On November 4, 2016, the complainant, Ezequiel Ramirez (complainant), whose address is 18 Valentino Drive, Waterbury, Connecticut, filed an employment discrimination complaint (complaint) with the Connecticut Commission on Human Rights and Opportunities (commission) alleging that his employer, Smart Choice Home Preservation, (respondent), discriminated against him on the basis of his ancestry (Hispanic) and his national origin (Dominican Republic). The complaint alleges that the complainant's employment with the respondent was abruptly terminated because of his ancestry and his national origin in violation of General Statutes §§ 46a-60 (a) (1)¹ and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, as enforced through General Statutes § 46a-58 (a). The respondent's business address is 100 Lawrence Street, Nanuet, New York.

On November 7, 2016, the commission caused to be served notice of the complaint on the respondent, through Liba Miller and Golda Wollner by electronic mail to Golda Wollner (CHRO Exs. 1, 3). The email notice to Golda Wollner was returned undeliverable (CHRO Ex. 3). There was no response to the electronic notice to Liba Miller (CHRO Ex. 1). On November 10, 2016, the commission again served notice of the complaint on the respondent, through Liba Miller, by electronic mail and received no response (CHRO Ex. 5). On November 14, 2016, the commission also caused to be served a notice of the complaint on the respondent, through Liba Miller and Golda Wollner, by certified mail (CHRO Exs. 9, 10). According to the United States Postal Service Tracking information, the notice sent to Liba Miller by certified mail was returned, notice left, no authorized recipient available (CHRO Ex. 10). Thereafter, on December 1, 2016, the commission caused to be served notice of the complaint on the Secretary of the State Writs Department (CHRO Ex. 4). On December 14, 2016, the Office of the Secretary of the State accepted the writs filing (CHRO Ex. 4). The commission received no answer from the respondent.

¹ Effective October 1, 2017, General Statutes §§ 46a-60 (a) (1) was recodified as §§ 46a-60 (b) (1). When the default order was issued, the statutory citation was § 46a-60 (a) (1). As there were no substantive changes to these provisions, and to avoid confusion, the references herein will be to the citations in effect at the time of the complainant's filing. *Angelsea Productions, Inc., v. Commission on Human Rights & Opportunities*, 236 Conn. 681, 683, n. 1 (1996).

Thereafter, on March 28, 2017, the commission requested a default order from the commission's executive director, Tanya A. Hughes, because of the respondent's failure to answer the complaint (CHRO Ex. 6). There is no indication in the record that a copy of the request for entry of a default order was properly served on the respondent by certified mail, return receipt requested, or other mail service that confirms receipt pursuant to § 46a-54-46a (b) of the Regulations of Connecticut State Agencies.

On June 5, 2017, pursuant to General Statutes § 46a-83 (l) and § 46a-83-54-46a of the Regulations of Connecticut State Agencies,² the commission's executive director entered a default order against the respondent for failing to file an answer under oath (CHRO Ex. 7). On August 30, 2017, the complaint and the order of default were transferred to the Office of Public Hearings to conduct a hearing in damages. On September 14, 2017, the Office of Public Hearings sent a notice of hearing in damages to the respondent, through Golda Wollner, by certified mail (CHRO Ex. 8, pp. 2-4). A copy of the June 5, 2017, default order was enclosed with the notice of the hearing in damages. On October 31, 2017, the notice of the hearing in damages was returned to the Office of Public Hearings (CHRO Ex. 2, pp. 2-4; and CHRO Ex. 8).

On January 11, 2018, a hearing on damages was held to determine the relief necessary to eliminate the discriminatory practice and make the complainant whole. General Statutes § 46a-83a (l); §§ 46a-54-46a (e) and 46a-54-78a (b) (5) of the Regulations of Connecticut State Agencies. The complainant and the commission appeared to prosecute the action. The respondent did not appear. On April 6, 2018, the commission filed a post-hearing memorandum regarding damages.

At the hearing in damages, the tribunal entered in evidence a number of record exhibits offered by the commission for the purposes of establishing that all procedural and jurisdictional prerequisites had been met for the presiding officer to determine the case regarding damages. It was only upon examination of CHRO Exhibit 6, a copy of the commission's request for default order and after the commission's post-hearing brief had been filed and the record closed, that the undersigned discovered that the commission had failed to provide the tribunal with any evidence that the request for default was served on the respondent as required under § 46a-54-46a (b) of the regulations.

The request for default order, dated March 28, 2017, states that it was served on the respondent by Certified Mail No. 7012 1640 0001 9157 2891 (CHRO Ex. 6). However, there is no mail service confirmation or other documentation in the record indicating that the request for default order was actually served on the respondent "by certified mail, return receipt requested, or other service that confirms receipt" pursuant to § 46a-54-46a (b) of the regulations.

A subsequent search by the Office of Public Hearings of the USPS Tracking Results for Tracking Number 70121640000191572891 indicates that the item "was delivered to an individual at the address at 9:59 am on May 31, 2017 in WATERBURY, CT 06702." See copy of USPS Tracking Results Tracking Number: 70121640000191572891, attached. Since the respondent is a New York business entity with a New York business address, service of the request for default order on an individual in Waterbury, Connecticut is

² Section 46a-54-46a (b) provides in pertinent part: "... Requests to enter default shall be mailed to the executive director along with copies to the complainant or the commission and the respondent. Service upon the respondent shall be made by certified mail, return receipt requested, or other service that confirms receipt. The stamped "Receipt for Certified Mail" or other mail service's confirming receipt shall be prima facie proof of the date of mailing."

facially insufficient because it does not comport with the regulatory requirement for notice required by § 46a-54-46a (b) of the regulations and due process.

As the default order was entered and the matter proceeded to hearing in damages without the requisite service on the respondent of the request to enter default, all procedural notices and jurisdictional requirements have not been satisfied and the matter is not properly before the undersigned to render a decision. Accordingly, the case is dismissed.

It is so ordered this 14th day of August 2019.



Hon. Elissa T. Wright
Presiding Human Rights Referee

Copy attached (1)

cc.

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Track Another Package +

Tracking Number: 70121640000191572891

Remove X

Your item was delivered to an individual at the address at 9:59 am on May 31, 2017 in WATERBURY, CT 06702.

 **Delivered**

May 31, 2017 at 9:59 am
Delivered, Left with Individual
WATERBURY, CT 06702

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