

State of Connecticut

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October 31, 2014

Maria Masterson
27 Myrtle Ave.
Bridgeport, CT 06604

Polish American Citizen's Club
845 East Main Street
Bridgeport, CT 06608

Michelle Dumas-Keuler, Esq.
CHRO
25 Sigourney St., 7th fl.
Hartford, CT 06106

RE: CHRO ex rel. Maria Masterson v. Polish American Citizen's Club CHRO No. 1420201.

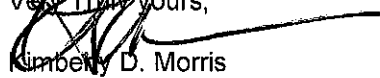
FINAL DECISION RE: HEARING IN DAMAGES

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 by certified mail, return receipt requested to the complainant and the respondent. The return post office receipt shall be proof of such service.

Very Truly Yours,



Kimberly D. Morris
Secretary II

cc.

Michelle Dumas-Keuler, Esq. – via email only
Michele C. Mount, Presiding Human Rights Referee

Certified No. 7014 0150 0001 0774 1987 (M. Masterson)

Certified No. 7014 0150 0001 0774 1963 (Polish American Citizen's Club)

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and
Opportunities ex rel. Maria Masterson,
Complainant

CHRO No. 1420201

v.

Polish American Citizens Club,
Respondent

October 30, 2014

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FINAL RULING ON HEARING IN DAMAGES

I.

Preliminary Statement and Procedure

On December 30, 2013, Maria Masterson (complainant), whose address is 27 Myrtle Avenue, Bridgeport, Connecticut, 06604, filed a complaint with the Connecticut Commission on Human Rights and Opportunities (Commission). Complainant alleged that the Respondent, harassed and terminated based on her age. Complainant alleged that the Respondent violated General Statutes §46a-60(a)(1), General Statutes §46a-58(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, as amended and enforced under C.G.S.46a-58(a).

On April 21, 2014, Executive Director, Tanya Hughes, entered an Order of Default against the respondent in light of its failure to answer the complaint. Thereafter, Executive Director Tanya Hughes entered a Default Order against the respondent on April 16, 2014. Pursuant to said Default Order, a notice of Hearing in Damages was

issued to the parties by the Office of Public Hearings (OPH). The notice, sent via certified mail was delivered to the respondent's address of record.

The Default Hearing was held on June 11, 2014. The Commission and complainant appeared at the hearing. There was no representative of the respondent present. The Commission, through the complainant, offered testimony at the hearing and tendered documents into evidence and were admitted.

II. Findings of Fact

In any hearing in damages upon default, the hearing is limited to the relief necessary to eliminate the discriminatory practice and make the complainant whole. After conducting the scheduled and noticed hearing and based upon the complaint, exhibits offered and introduced into the record, and testimony taken, the following relevant facts are found:

1. All procedural notices, and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the matter and render a decision.
2. The complainant is a member of one or more protected classes (age).
3. On or about September 6th or 7th 2008, Maria Masterson, complainant, was hired by respondent Polish American Citizen's Club, respondent, as a daytime manager/bartender. She would occasionally come in at night to cover for people who were out. (TR 4,5)
4. Complainant was 57 years old at the time of termination. (TR 4, Complaint ¶ 4)

5. Complainant worked for respondent Monday, Wednesday, and Friday from 9am to 5pm. (TR 4, EX CHRO-1)
6. Complainant earned \$9.00 an hour. (TR 5)
7. Stephanie Peterson was the person responsible for administering payroll. (TR 7)
8. Complainant was paid once a week at a rate of \$9.00 per hour. (TR 6, 7)
9. Complainant was suspended for two weeks on September 30, 2013 by Eric Ortiz, who was her direct supervisor. (TR 9,10)
10. The complainant objected to the reason for the suspension, especially the length of time. Complainant contacted Eric Oritiz and he stated that he had changed the suspension to two days. (TR 11)
11. Complainant then was disciplined for not showing up to work on the first Wednesday which was part of the suspension period and then complainant agreed to reinstate the original 2 week suspension. (TR 12, 13)
12. Complainant was not called in to work from the time of her suspension. (TR 12)
13. The Board of Directors did not take action to reinstate her following the two (2) week suspension. (TR 10-11)
14. Complainant contacted the Department of Labor (DOL) regarding unemployment on October 8th and was able to speak with the DOL on October 14, 2013.
15. Complainant's effective date of unemployment payments began on January 26, 2014. (Ex CHRO-4)

16. Complainant received 26 weeks of unemployment at a rate of \$79.00 per week for a total of \$2054.00. (Id)
17. Complainant sought employment from area stores and restaurants from the time of her unemployment to the present. (see TR 19-20)

III.

Law

The respondent failed to file a written answer and an order for default was entered. " General Statutes § 46a-83(i) expressly permits the executive director or her designee to enter a default order against a respondent: "(1) who, after notice, fails to answer a complaint ..." Also, Section 46a-54-64 of the Regulations provides the Executive Director with authority to enter an order of default against a respondent that fails to answer a complaint upon request by the Commission and after 10 days from the mailing of the request to the parties.

"Upon entering a default, the presiding officer shall conduct a hearing which will be limited to determining the relief necessary to eliminate the discriminatory practice and make the complainant whole. Section 46a-54-88a of the Regulations of Connecticut State Agencies. The default admits the material facts that constitute a cause of action and conclusively determines the liability of a defendant. See, *Sklyler Ltd. Partnership v. S.P. Douthett & Co.*, 18 Conn. 802 (1989). A Hearing in Damages was held on June 8, 2014. Evidence need not be offered to support those allegations, and the only issue before the tribunal is the determination of damages. See, *Carothers v. Butkin Precision Mfg. Co.*, 37 Conn. App. 208, 209 (1995)." *Commission on Human Rights and*

Opportunities ex rel. Wayne Rawls, Complainant v. Dev's on Bank Street, LLC, Respondent 2006 WL 4753465 (CT.Civ.Rts.). The entry of a default also operates as a confession by the defendant to the truth of the material facts alleged in the complaint. *Murray v. Taylor*, 65 Conn. App. 300, cert. denied, 258 Conn. 928 (2001).

The complainant had a duty to use reasonable efforts to find other employment to mitigate back pay damages. *Reed v. A.W. Lawrence & Co.*, 95 F.3d 1170, 1182 (2nd Cir. 1996); *Ann Howard's Apricots Restaurant, Inc. v. Commission on Human Rights and Opportunities*, 237 Conn. 2009, 229 (1996). "In order to meet this 'extremely high' burden of proving failure to mitigate, the [employer] 'must show that the course of conduct plaintiff actually followed was so deficient as to constitute an unreasonable failure to seek employment.'" *Evans v. State of Connecticut*, 967 F.Sup. 673, 680 (D.Conn. 1997), quoting *Bonura v. Chase Manhattan Bank*, 629 F.Sup. 353, 356 (S.D.N.Y. 1986). As in *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough*, CHRO No. 0470316, "the respondent, by virtue of its default, has obviously not met its burden in this case."

The complainant also seeks an award of post-judgment interest. In addition, complainant would be entitled to pre-judgment interest as well, both at a rate of ten percent compounded per annum. Pre-judgment and Post-judgment interest compensates the prevailing party when the prevailing party is deprived or does not have the use of the money between the order of payment and the actual payment by the losing party. *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough, Inc.*, CHRO No. 0420316 (June 30, 2006) 2006 WL 47534476. The victimized

person should not be deprived of the true value of the money. *Thames Talent v. Commission*, 265 Conn. 144-45 (2003.)

**V.
Order of Relief**

1. The respondent shall pay within one week of the date this ruling, **back pay**, calculated at: 22.5 hours a week x \$9.00 per hour = \$202.50 x 46 weeks = \$9,315 – (unemployment mitigation \$2,054.00) = **\$7,261.00**
2. The respondent shall pay to the complainant statutory **post-judgment** interest at the rate of **10% per annum** from the date of this decision.
3. The respondent shall pay to the complainant statutory **pre-judgment interest for 45 weeks at the rate of 10% per annum.**

It is so ordered this 30th day of October 2014.


Michele C. Mount,
Presiding Human Rights Referee

cc.

Maria Masterson – via certified mail no. 7014 0150 0001 0774 1987
Polish American Citizen's Club – via certified mail no. 7014 0150 0001 0774 1963
Yvonne Duncan, Esq. – via email only